

## LAWYERS' ROLE IN MEDIATION



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### Introduction

Mediation is an increasingly important part of legal practice with the institutionalization of alternative or appropriate dispute resolution in our legal system. Mediation has been embraced by courts and shall be part of pre-action requirements in Pakistan jurisdictions. How lawyers can best contribute to mediation has been discussed in the literature and is informed by ethical requirements. This article provides insights into the role of lawyers. It explores collaborative approaches that lawyers can adopt within the spectrum of roles that lawyers may take when representing a client in mediation.

The introduction of alternative or appropriate dispute resolution (ADR) within our civil justice system means that lawyers are increasingly engaging with ADR. Lawyers must adjust their practice to serve their clients' needs in a changing legal environment. ADR can include a number of different processes, ranging from arbitration to the most widely used mediation. Mediation is a standard feature of contemporary dispute resolution and is mandated in most courts in Punjab<sup>12</sup>. The approach of lawyers to mediation is important in achieving resolution to a dispute, as lawyers influence the process and success of mediation. Culture around legal practice and lawyers' attitudes to the ways that disputes should be conducted are important. Lawyers in mediation can embrace the underlying philosophy of much of mediation practice and engage in collaborative problem-solving that is non-adversarial in orientation. Alternatively, lawyers may stymie the potential for settlement by taking an adversarial, rights based approach in mediation. At times lawyers may need to lawyer vigorously for their clients' rights, but automatically approaching mediation with an adversarial mindset may defeat some of the potential of mediation to meet their clients' needs.

For many of the lawyers, participating in the in mediation is their first direct experience with mediation. They quickly became aware that the mediation process required a modified skill set. To assist their clients and advance the goals of mediation, it is often useful for lawyers to shift gears, adopt different strategies and emphasize skills which may lean more heavily towards being an advisor than a lawyer.

<sup>1</sup> <https://zafarkalanauri.com/wp-content/uploads/2020/12/PROCEDURAL-AUTHORITY-FOR-CASE-MANAGEMENT-CIVIL-TRIAL-IN-PUNJAB-NEW-AMENDMENTS-IN-C.P.C.-.pdf>

<sup>2</sup> <https://zafarkalanauri.com/wp-content/uploads/2020/05/THE-PUNJAB-ALTERNATE-DISPUTE-RESOLUTION-ACT-2019.pdf>

<https://zafarkalanauri.com/wp-content/uploads/2020/12/Punjab-Alternate-Dispute-Resolution-Rules-2020.pdf>

As a background to our discussion, we consider the specific legal and ethical requirements that lawyers must obey, and the nature of court-connected mediation. We explore existing research into lawyers' roles in mediation as well as current knowledge of what collaborative, constructive legal representation in mediation can mean. How then, can Lawyers, trained and experienced in trial advocacy, tailor their skills for mediation? Let us first distinguish between mediation and litigation or arbitration.

### **Mediation vs. Litigation and Arbitration**

**Mediation** is a confidential, private process in which a neutral third-party, guides disputing parties in a constructive conversation-essentially an assisted negotiation. The mediator helps the parties express their positions and proposals, listens thoughtfully to each, clarifies issues in dispute, searches for solutions that address the needs of all and works toward a fair, workable settlement to the dispute. The parties themselves are the decision-makers. This attribute, known among professional mediators as self-determination, is what makes mediation unique.

**Arbitration and litigation** also involve a neutral third-party, but can be distinguished from mediation in several respects. They are more formal and structured processes involving the presentation of testimony and production of documents. Generally, court proceedings are conducted in public and strictly according to sets of rules and procedures that can be enforced by the judge. The third-party neutral is also responsible for determining the final outcome of the dispute.

Mediation, by contrast, is a less formal and relatively uncomplicated process involving the disputants in discussions directly and indirectly with one another and empowering them with the responsibility for the outcome.

Given the more central role of disputants, what then, are the tasks and responsibilities of lawyers in mediation? To answer this question, it is necessary to examine the role of attorneys in two phases pre-mediation and during mediation.

### **Pre-Mediation**

As with litigation and arbitration, adequate preparation is vital to a successful mediation, and lawyers can prepare their clients by discussing the following:

- What is mediation and how the process is conducted. They may contrast mediation with other processes familiar to the client. They should point out that mediation is essentially a problem-solving process that has as its goals a thorough discussion of all issues in dispute, the exchange of information, ideas and proposals and the opportunity to seek creative solutions to the dispute.
- The differences between mediation, litigation or unassisted negotiations, and lawyers may explore whether participating in mediation is likely to be a positive and fruitful exercise.
- The role of the mediator, as a manager of the process, a facilitator of negotiations and a guide in the effort to secure a full settlement. In particular, lawyers emphasize that, in mediation, clients usually speak on their own behalf and are directly involved in making decisions with respect to the dispute. However, the value of lawyers at mediations should not be discounted as they often assist in moving the process forward.

- Lawyers should also inform their clients of the opportunity for private discussions either with the mediator or with the lawyer and client only.
- With respect to the issues in dispute, lawyers and clients should discuss opportunities for resolving the dispute, the range of possible outcomes, the issues on which the client may have greater or lesser flexibility for settlement and the minimum terms and conditions the client will accept. Lawyers should also have a frank discussion of the alternative to settlement and, in particular, the cost, time and risks of litigation.
- As they would in litigation or arbitration, attorneys must ensure that all documents and other materials essential to a complete discussion and resolution of the issues are prepared, reviewed and available at (or sometimes exchanged prior to) mediation. Resolving the dispute will depend in significant measure on the completeness of information available.

### **Lawyers role during Mediation**

The greatest shift in the lawyer's role and responsibilities arises once mediation begins. During mediation, lawyers typically assist their clients in some of the following ways:

- They acknowledge the client's central role and, in particular, do not speak for the client; instead, lawyers offer advice, guidance and information.
- They do not challenge or cross-examine the other party, spar with the other lawyer or, in other ways, treat mediation like litigation.
- Lawyers maintain a supportive, cooperative demeanour and demonstrate commitment to the mediation process by words and behaviour. They do not treat mediation as an adversarial process or as a means for finding the truth; instead, they acknowledge the importance of searching for solutions. Lawyers assist in defining the issues to be resolved.
- They provide normative information, usually in private, about the benefits and risks of specific proposals.
- They act as an agent of reality, helping the client to balance the risks of accepting or rejecting settlement offers and the potential complications of presenting the case to a third party for decision as well as the time, stress and expense of a trial.
- Lawyers help manage the process by asking for breaks, for opportunities to speak privately with the client or for a private meeting with the mediator.
- They assist clients to communicate by summarizing discussions or clarifying matters that are confusing or where miscommunication is preventing constructive problem-solving, or worse, leading to increased conflict.
- They help clients stay focused on the issues at hand, the information presented and options for settlement as well as remain calm as they deal with frustration over the pace of progress or feeling overwhelmed by direct confrontation with the other party.
- Lawyers encourage clients to find creative solutions that will resolve the dispute.
- They draft documents as required.

Those lawyers who view mediation genuinely as an opportunity for their clients to participate actively in discussions about, and settlement of, their own disputes are valued allies in the process.

This view is expressed repeatedly in comments from parties and mediators in the court-annexed mediation project of Lahore High Court. In discussing the role of the attorneys, one mediator notes:

*I used the lawyers a lot. I spoke to them separately,...I didn't give an opinion, but did a lot of talking about risk...Generally I worked with the lawyers and then sometimes left them to sell an idea to their clients, or sometimes sat in with them.*

Another mediator expresses appreciation for the lawyers in helping to resolve a very contentious mediation, in this way:

*...the lawyers from both sides were very helpful in bringing clarity regarding their legal positions. It was very fruitful and they were able to settle everything.*

At times, the shift from advocacy to advice collaboration can be awkward and unsettling for many lawyers. Recognizing that their clients benefit from this collaborative role, and that mediators appreciate their constructive participation, attorneys should utilize mediation as they would any other dispute resolution process wisely and with due regard for their particular role in making the most of its unique attributes. In managing the transition to mediation advocacy, attorneys may benefit from additional educational programs and seminars where they can learn to use their knowledge, experience and skills in support of their clients' participation in this helpful and constructive process. The transition from trial advocacy to mediation advocacy may be challenging, but the rewards are worth the investment of time and energy.

### **Lawyers' participation in Dispute Resolution**

Lawyers' participation in ADR, and mediation especially, is increasingly part of standard legal practice. Formal dispute resolution forums at all levels aim to shift legal culture 'from one of adversarial dispute resolution to one of cooperation and conciliation, one of improved access to justice, and one of utilizing the full benefits of ADR processes'. The past few years have seen Pakistan governments in multiple jurisdictions use legislation to attempt to bring about cultural change around lawyers' use of ADR. 'Overarching purpose' and 'pre-action' provisions have been central here. Overarching purpose provisions require parties, their lawyers, and sometimes the courts to facilitate the timely and efficient resolution of civil disputes. The 'overarching purpose of the legislative framework is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute'. Use of an ADR process, which includes mediation, is explicitly referred to as one method of achieving the overarching purpose. With the assistance of parties, court must give effect to a similar 'overriding purpose' to 'facilitate the just, quick and cheap resolution of the real issues' in civil proceedings. In code of civil procedure, parties to civil proceedings have been required to fulfil the 'overarching purpose' of civil practice and procedure, being the 'just resolution of disputes, as quickly, inexpensively and efficiently as possible'. Failure to comply with this duty must be taken into account by court judges when awarding costs.

Pre-action procedures encourage full disclosure of information between the parties, early settlement of disputes, and, where the matter cannot be resolved, the narrowing of the issues in dispute, all before proceedings have commenced. In relation to ADR, pre-action procedures are significant because they change the position of ADR within the civil justice system from court-connected or referred services, towards pre-trial ADR services offered by non-court providers or undertaken informally. As per new amendments, both plaintiffs and defendants must file 'genuine steps' statements prior to litigating. Genuine steps statements must include detail about party initiatives to engage with the dispute in a manner that promotes settlement. Consideration of, and participation in ADR processes such as mediation are 'genuine steps' that can be taken to resolve a civil dispute. Lawyers have a

duty to advise and assist clients with the filing of a genuine steps statement, and failure to do so may cause lawyers to be subjected personally to costs orders. These requirements are also enforced through the possibility of adverse costs orders against parties, and through non-compliance being taken into account by a judge when performing functions or exercising powers in relation to civil proceedings.

There are a number of ethical requirements in legal professional conduct rules that affect lawyers' conduct in mediation, including the duties owed to clients of honesty and courtesy, competence and diligence, loyalty and confidentiality. However, these more general requirements provide minimal guidance as to how lawyers should conduct themselves in mediation, other than obligations not to mislead. What is unclear from existing professional conduct rules in the United States, Australia, Singapore and the United Kingdom is whether mediators should be owed the same duties as a lawyer owes the court, or whether they should be treated as third parties. It is suggested that it may also be desirable for legal professional bodies in Pakistan to amend their codes of conduct or issue guidelines to define standards of practice for lawyers participating in ADR. Lawyers must therefore consider how best to represent a client in the process, and continuing professional education may assist them to do so.

In addition to binding professional conduct rules, there are a number of voluntary guidelines available to inform the task of legal representation in ADR. These guidelines provide an opportunity to reflect on the process and role of the legal representative. They are premised on the facilitative model of mediation, an approach to mediation practice that promotes collaborative problem solving, one of the founding principles of the contemporary mediation movement. The role of the lawyer in mediation contemplated by these guidelines is clearly non-adversarial, and goes beyond the mere provision of legal advice.

## **General Guidelines**

- The role of the lawyer in mediation and lawyer's role in mediation is to assist clients, provide practical and legal advice on the process and on issues raised and offers made, and to assist in drafting terms and conditions of settlement as agreed. The lawyer's role will vary depending on the nature of the mediation process and the conflict in which the client is involved.
- The lawyer must consider whether their presence at the mediation is necessary to safeguard the client's interests or whether they can merely give advice prior to the mediation.
- In considering when to mediate, the timing is an important factor in establishing a framework conducive to settlement and that lawyers should take into account the mindsets of the parties.
- The lawyers preparing for mediation should look beyond the legal issues and consider the dispute in a broader, practical and commercial context.
- The wider context may include personal needs and that lawyers should help their clients to identify positions and interests and the best ways to achieve outcomes.
- The lawyers should undertake a risk analysis, explain the process of mediation to the client, work with the client to identify interests rather than merely positions, and

together develop possible strategies that may result in settlement.

- The mediation is a problem-solving exercise. These provisions should contemplate a role for lawyers in mediation that goes beyond merely providing advice on the legal issues in dispute. Lawyers are encouraged to actively participate in the wider-problem solving tasks of facilitative mediation.
- In light of this, the contemplated role of the lawyer in the guidelines should on most occasions be non-adversarial: A lawyer who adopts a persuasive rather than adversarial or aggressive approach, and acknowledges the concerns of the other side, is more likely to contribute to a better result.

Overarching purpose and pre-action legislative requirements, in addition to professional conduct rules and non-binding guidelines, increasingly should ask that lawyers encourage their clients to participate in ADR, including in mediation. Where lawyers themselves are participating in mediation with their clients, they are encouraged to behave in a way that facilitates the resolution of the dispute in the least adversarial manner possible.

### **Court-connected Mediation**

As mediation increasingly becomes embedded in court and tribunal processes, there is a question of the extent to which mediation offers parties a genuine alternative to outcomes that a court or tribunal would deliver. In the early 1990s, at the dawn of the contemporary mediation movement, experts expressed concern that the involvement of lawyers in ADR would result in adversarial ADR processes.

Research conducted by us confirms that lawyers' involvement in court-connected mediation may reduce the control which parties have over outcomes in mediation, limiting the benefits of mediation over litigation. Generally, mediation is seen as a facilitative process, where the mediator has no advisory or determinative role in regard to the content of the dispute or the outcome, but where the mediator simply provides a 'process by which resolution is attempted'.

This is also known as 'the process-content distinction', and is consistent with one of the philosophical fundamentals of facilitative mediation-party empowerment (also known as self-determination or party control).

Facilitative mediation can therefore be distinguished from other dispute resolution processes, including litigation, where an outcome is imposed upon the parties by a decision-maker. An advantage of facilitative mediation is that because it is party-led, the outcome is likely to be more palatable to the parties and therefore durable. Facilitative mediation employs collaborative problem-solving and integrative bargaining techniques. One of the key criticisms of facilitative mediation is that it does not provide the same level of rights protection as the adversarial legal system.

Connected to this critique are strong concerns about the private nature of dispute resolution through ADR that comes with the ever-present possibility of concealed coercion. It is named as the coercive potential of ADR 'soft' violence'. It has been argued that the privacy of ADR processes permits the exploitation of imbalances of power by stronger parties. Some commentators have argued against the inclusion of mediation in the court-connected context due to the abdication of the state in dispute resolution that mediation represents.

The institutionalization of ADR is fully justified as parties' needs are not being met through systematic use of mediation. Nevertheless, the incorporation of mediation within court processes is now widespread in countries around the globe.

A common form of mediation used in the legal system is evaluative mediation (sometimes referred to as substance-oriented mediation). The goal of evaluative mediation is to reach agreement based on the legal rights and entitlements of the parties. This has the advantage of protecting the legal rights of the parties and reducing the chance of 'settling for less' in mediation. In evaluative mediation, the participants are focused upon persuading the mediator (rather than each other), and the advice of the mediator is central to the resolution of the dispute.

Practice in most court-connected contexts will frequently include evaluation, and the adversarial culture of the court-room is often transferred to the mediation. Evaluative mediation has been criticized for undermining the opportunity mediation presents for party participation and self-determination. Evaluative mediation is arguably an extension of the adversarial legal system. Lawyers largely retain control of the evaluative mediation process and it will provide few of the party-choice benefits that facilitative mediation offers.

Lawyers can influence the ways that mediation is undertaken in terms of the model used and the approach taken. Some lawyers have shown a preference for an evaluative, rights-based approach over the widely endorsed facilitative model. Such an approach undermines party-empowerment and self-determination.

However, it may increase rights protection for lawyers' clients. Often in mediation, clients were dominated by their lawyers and their lawyers' construct of what was best, to the point where clients' understandings and needs were frequently ignored. Lawyers' approach to mediation varied according to the sex of the lawyer, with female lawyers being more collaborative and relationship focused.

In some instances, legal representatives dominated opening statements-leaving clients' little opportunity to provide input to party statements; restricted use of interest-based approaches; and made extensive use of shuttle negotiation techniques.

Some mediations may be conducted in a way that is more comfortable for lawyers, rather than disputants. Lawyers choose the mediators and lawyers therefore play an important role in determining the process adopted.

The research found that parties expressed satisfaction with mediation in the courts, but that the process they experienced did not allow them to participate fully. Similar findings were reported from research on lawyers' role in mediation from the perspective of lawyers.

Lawyers did not generally encourage party participation because they feared that their client may disclose information that might later damage their case if it continued to a hearing.

The majority of lawyers showed little propensity for collaborative problem solving in mediation and instead engaged in incremental bargaining approaches. A minority of lawyers supported a more relational approach and encouraged clients to adopt non-legal solutions.

The lawyers there were mainly concerned with achieving settlement. These lawyers were often reluctant to involve clients in opening statements, citing concerns that clients might divulge information that may later harm their legal case. The approach of the lawyers

accorded with the aims of the court to achieve efficient and timely settlement.

Cumulatively, it is observed that lawyers practicing in court and tribunal-connected mediation processes tend to dominate the process and leave less scope for client input into the process and outcomes of mediation. The research confirms, that lawyers could colonize the mediation process as ADR becomes increasingly incorporated into the adversarial justice system.

Lawyers representing clients in this context may be intervening to protect their clients' legal rights, but the effect may be to undermine client empowerment and self-determination. Arguably, such an approach is more consistent with an evaluative than facilitative mediation process and closely aligns with the traditional roles of lawyer and client in adversarial litigation practice.

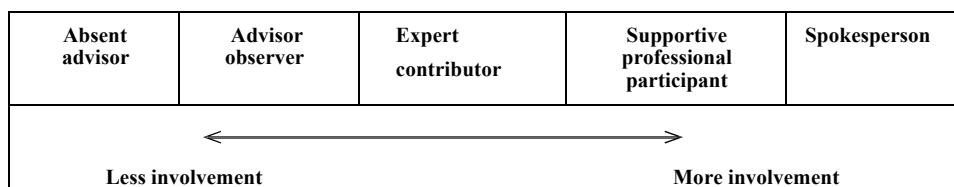
However, other evidence suggests that lawyers who are able to employ a collaborative, problem-solving approach within facilitative mediation are arguably more open to addressing the whole of the conflict presented in mediation, and not merely the legal issues. This opens up the possibility of genuine inter-professional collaboration between lawyers and mediators-a collaboration that may enhance client self-determination and protect legal rights in mediation.

### **Olivia Rundle's spectrum of lawyers' roles in mediation<sup>3</sup>**

The involvement of lawyers in and around mediation varies considerably according to the field of practice and the style of individual lawyers. In some areas of practice lawyers routinely attend mediation with their client, such as with compulsory conferences for damages claims for workplace injuries, and roundtable dispute management (family dispute resolution). In other contexts, such as family dispute resolution, lawyers are less often involved in attending centers with their clients for mediation, but centers are encouraged to develop cooperative arrangements with legal service providers in order to ensure clients have access to timely legal advice to assist them' before and after mediation.

Olivia Rundle has outlined a spectrum of five ways that lawyers can participate in mediation. The spectrum provides a more nuanced and comprehensive approach to lawyers' practice guidelines. Rundle acknowledges that lawyers are unlikely to adopt one model throughout a mediation, but rather will move between models.

Rundle's spectrum varies from almost no involvement of lawyers in mediation (providing clients with comprehensive self-determination) to almost total control of the mediation process by lawyers. A diagram of the spectrum is reproduced below



The first model-the 'absent advisor,' focuses on legal practice prior to as well as after the mediation. The absent advisor will provide both substantive and procedural advice to their clients, and coach them on participation, but will not attend mediation. They will also assist

<sup>3</sup> Olivia Rundle, 'A Spectrum of Contributions That Lawyers Can Make to Mediation' (2009) *Australasian Dispute Resolution Journal* 220.



clients to formalize agreements made in mediation. The remaining four models involve the lawyers attending mediation and participating to varying degrees.

The second model-the 'advisor observer', prepares the client for mediation and attends mediation with the client, but only to provide them with support and advice. The advisor observer does not interact with the mediator or the other party during the mediation session. A lawyer working as an advisor observer is able to hear first-hand from the other party and their lawyer in a mediation, which will assist the lawyer in advising their client. Rundle questions whether lawyers and clients would find value for money in this model and suggests that the advisor observer role is probably only a useful role for lawyers to adopt in mediation where data gathering is necessary, such as in complex cases where mediation is to be held early in the dispute before substantial information exchange has occurred.

In contrast, the third model 'the expert contributor', does participate in mediation, but limits their input to providing legal advice to their client which may then be shared with other participants. The expert contributor lawyer may engage with the other party's lawyer during mediation and they will often assist the client in 'reality testing the realistic alternatives to settlement proposals'. An expert contributor will not, however, negotiate on behalf of their client but will engage with other lawyers in a persuasive manner.

The fourth model is the 'supportive professional participant,' where the lawyer 'works with the client to prepare for the mediation and supports the client through the mediation process, by working collaboratively towards an acceptable outcome'. Both the lawyer and the client participate directly in mediation negotiations under this model. The supportive professional participant takes a more active role in mediation than the expert contributor does-the lawyer acting as supportive professional participant may negotiate, request a private session, draft a mediation agreement, and reality test the workability of a settlement proposal (which goes beyond reality testing alternatives to settlement). Rundle identifies that with this model, the benefits of lawyer participation can be maximized whilst retaining the essence of client-determination of the content and outcomes of the mediation process'. Rundle also argues that it may be particularly appropriate for lawyers to work as supportive professional participants in court-connected mediation settings where the client wants to participate in the dispute resolution process but needs significant assistance and support from the lawyer'. Arguably, this model is the most holistic problem-solving approach of the five models. Under this approach not only is legal advice given but the lawyer is also an active participant in coaching their client and reality testing alternatives in the manner of the facilitative model of mediation. The lawyer helps to bring out needs rather than positions in the negotiation. The creative aspects of the facilitative model, where solutions to a dispute are brainstormed, are assisted by the lawyer's role under this model.

The last of Rundle's models is the 'spokesperson'. This is a lawyer-centered approach where the lawyer speaks for the client, negotiates on their behalf and also provides appropriate legal advice. In this model the lawyer will interact with the mediator and the other side. The client, is largely silent through the mediation process and does not negotiate themselves. With this approach, there is likely to be a rights framework around the dialogue in the mediation. Rundle argues that this may be the most appropriate role for a lawyer to adopt in situations where mediation would otherwise be inappropriate because of capacity or power imbalance issues. This role most closely aligns with the traditional advocacy role which lawyers and clients have within the adversarial system. This approach is also consistent with evaluative mediation.

## Conclusion

As ADR has become so central to the operation of our civil justice system, the role of lawyers in mediation requires more attention. The research has shown that some lawyers working in court-connected mediation practices tend to dominate the process and leave little, if any space for client input into the process and outcomes of mediation. Such an approach undermines the self-determination philosophy of facilitative mediation and limits the potential of mediation to provide solutions beyond those which could be achieved through litigation. In this article on mediation practice at the established mediation service at Lahore, we have sought to pinpoint ways that lawyers can adopt constructive roles in and around court-connected mediation.

It is observed that the relationship between lawyers and mediators has progressed beyond the traditional rivalry of the two professions and towards a high level of inter-professional collaboration. In this collaborative context, there were a range of possible roles that lawyers might adopt to support and empower their clients in mediation. The mediators we spoke to generally supported an active but not dominating role for lawyers in mediation, with preferences most strongly centered around the expert contributor and supportive professional participant roles on Rundle's spectrum. The preferred roles all complemented the role of the mediator and enabled clients to experience the self-determination benefits of facilitative mediation, while still receiving the rights protection of legal representation in mediation. The mediators demonstrated how mediators can assist in developing and sustaining the inter-professional collaborative culture of the mediation service. Ultimately, the interpersonal contact between lawyers and mediators may be more effective in facilitating a less-adversarial culture around court-connected ADR than legislative and ethical requirements may be.

In the context of the institutionalization of ADR, the involvement of lawyers in the mediation process is a central feature of the success or failure of widespread use of ADR processes within the civil justice system. Lawyers' practices will influence whether mediation practices are facilitative or become evaluative in nature. There is the potential for lawyers to adopt a range of roles in court-connected ADR practice. Lawyers can adopt roles in mediation that provide clients with both the protection of legal representation around mediation but with the benefits of client empowerment through direct participation. Lawyers' contribution to mediation can go beyond client advocacy, even beyond legal advice and reality testing alternatives to settlement. In the right collaborative environment, lawyers can adopt more engaged practices such as active listening in mediation to provide more holistic advice, holistic reality testing with clients, strategically intervening in mediation by narrowing the issues in dispute and generating options, collaboratively working with others in mediation, advocating for vulnerable clients and, in some circumstances, providing creative solutions to client problems.

The key avenue for further research is to gain an understanding of what lawyers working collaboratively in court-connected ADR services themselves view their role as being in and around mediation. Our findings are limited to the views of mediators only, at one court-connected ADR service. The overwhelming majority of lawyers consulted thought that they should not be restricted to an advisory role in mediation and that they should also Lawyer and negotiate for their clients in mediation. The role envisaged by those lawyers is consistent with a traditional lawyer's role in litigation and goes beyond the role that most mediators saw lawyers as having around mediation. The civil lawyers did not appreciate the value of direct disputant participation in mediation.

In our view, the key to successful involvement by lawyers in mediation is a highly collaborative inter-professional relationship between lawyers and mediators at the particular ADR service. That collaboration can involve shared expectations of the dispute resolution process, a complementary services approach, and understanding and respect for the different professional roles in mediation and the use of positive advocacy practices by lawyers. The creation of a high-quality ADR processes within the legal system must involve collaboration between legal and dispute resolution professionals to balance the need to provide a flexible and empowering dispute resolution process that meets party needs against the necessity for protection of the rights of vulnerable parties. Education of lawyers especially about ADR processes is central. This may occur at law school and also in formal continuing professional development. However our research show that over time, as a court-connected ADR services becomes more established, non-adversarial legal practice around ADR can develop through active engagement with lawyers by mediators. This collaborative professional relationship becomes a powerful way of educating, or acculturating lawyers into non-adversarial legal practice around mediation.

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