

Co-Mediation

**Archie Zariski, BA, LLB, LLM
Mediator, High Clouds Incorporated**

(Text of a presentation to the Western Australian Dispute Resolution Association Seminar, October 25, 2005)

Co-mediation occurs when two or more neutrals form a panel for the purpose of conducting mediation. There are a variety of potential practical and strategic benefits from this approach that are outlined below. These benefits can only be realized, however, if each member of the panel has a clear idea of their role and responsibility within the process. This requires planning and coordination between co-mediators beforehand.

Mediating is a demanding, multi-faceted task and co-mediation is a practical way of sharing the load. A mediator can be described as having at least three parallel “tracks of thought” running through their mind during mediation. One is focused on managing the process – timekeeping, monitoring the physical environment and planning the next step. Another is focused on the dynamics of the parties’ interactions – analyzing statements, absorbing emotions and monitoring communication patterns. A final track is reflective – maintaining awareness of the mediator’s own reactions and responses to the unfolding events in the mediation. In co-mediation the first two tasks can be shared during the mediation process, lightening the burden for each mediator. The burden of self-reflection can be shared both during and after the mediation.

One example of an approach to co-mediation that is designed to reap the practical benefits of sharing responsibility for conducting the process is the model adopted by the Citizens Advice Bureau (CAB) Mediation Service in Perth, Western Australia. The principle on which this co-mediation scheme is based is maintaining equality of the neutrals while dividing the mediator’s tasks between them. Such sharing of responsibility is most evident in the beginning stages of the CAB mediation process which I will briefly describe here. The co-mediators together greet the parties and settle them at the table. One mediator will then undertake to establish forms of address and to give a general description of mediation and of the role of the mediator. The other describes the process to be followed in the session and helps set the ground rules for behaviour. The first mediator then asks for questions and confirms with the parties that the mediation session may begin. Dividing these tasks allows quiet observation time for each mediator and enables them to start adjusting to the situation and the frame of mind of each party while maintaining equality of status between the co-mediators through their equal participation in leading the process.

The next division of responsibility occurs during the parties’ opening statements. The mediator who took the lead at the previous stage now asks the parties to give their views of the problem they face. This mediator also explains that their co-mediator will be taking notes and will reflect the statements back once both parties have finished speaking. Such

sharing of tasks allows one mediator to focus on encouraging a party to speak and maintaining eye contact with them as well as observing the reactions of the other party to the statement. Meanwhile the other mediator is free to concentrate on the information being provided and to make accurate notes. While a summary of each statement is fed back to the parties by the note taker the first mediator has time to reflect on what has been said. That mediator thus has an opportunity to prepare quietly for their next task which is to help the parties define a list of issues for discussion. The beginning stages of the mediation process are probably the most demanding on the mediator; sharing these tasks can help ensure they are accomplished well and that mediation gets off to a good start. In the CAB model of co-mediation the mediators then participate actively and equally in all the following stages of the mediation session including meeting together with each party privately. At various points in the process they may however briefly separate such as when escorting a party to a private room or when pursuing a party who has decided to walk out. At all times the co-mediators are expected to display in their interactions with each other the respect, forms of communication and problem solving behaviours that they try to encourage between the parties.

A final practical benefit gained from co-mediation in the CAB model is the encouragement of reflection and debriefing between the mediators. This can occur during breaks in the process or following a mediation session. The mediation process is an intense one for a mediator while it is occurring and the aftermath can have a similar impact. Reactions to the emotional content of a dispute that were suppressed during the mediation may now surface in the mediator and the reflective mode of thought is very active. Why didn't that session go as expected? What triggered that outburst by a party? How could I have phrased that intervention differently? A mediator will have all these questions and more in mind following mediation. Through sharing them with a trusted colleague such as a co-mediator the burden of reflection can be eased. Co-mediation can thus serve both as a means of personal support for mediators and as a part of their ongoing professional development.

There are a number of strategic benefits that may also be gained from using co-mediation. One of these lies in the use of gender balanced panels of mediators. Where gender relations are likely to be an issue such as in marital or sexual harassment disputes the use of a male and female mediator acting together may help to prevent one party feeling outnumbered and at a disadvantage. By the same token, it may also help to discourage a party from trying to co-opt the mediator to their cause and gain an advantage through a gendered approach. If co-mediation is used to avoid gender-related problems in mediation the mediators must be careful to act as appropriate role models for respectful interaction and equality between genders.

Another strategic use of co-mediation is in answer to the perennial question whether a mediator needs expertise in the subject matter of a dispute. Some maintain that a skilled mediator can conduct a productive mediation in a field of which they have little knowledge. Others hold that subject matter knowledge is crucial for a mediator, particularly where technical issues abound. Structuring a panel of mediators so that mediation process knowledge and skill as well as technical background are represented is

one way of resolving this question. For instance, in matters where tax or other financial complexity is involved appropriate co-mediators might be a very experienced mediator and an accountant or financial advisor. In a dispute raising many interpersonal issues the panel might consist of counselor and a mediation process expert. Whenever co-mediation occurs some thought should always be given to choosing mediators with complementary skills and backgrounds. As with all co-mediation each mediator must know beforehand the specific role and functions they will be called upon to undertake.

Another strategic use of co-mediation may be in the training process for mediators. Although acting as a co-mediator requires its own particular skills, the presence of another neutral on a panel can be a support and backup for the novice practitioner. In this use of co-mediation the respective responsibilities of the mediators can be varied along a continuum to suit their individual levels of experience. Co-mediation might thus be part of a progression in practical mediator training starting with acting as a mediator's assistant who doesn't sit at the table, to a "junior" sitting at the table with a "lead" mediator to co-mediation as an equal.

I am sure you can think of other practical and strategic benefits that may be gained from co-mediation. Of course all these benefits are subject to the practicalities of cost and logistics in assembling a panel of two or more mediators. However, I believe those issues should not be allowed to obscure the important advantages to be gained from co-mediation in appropriate cases for the ultimate benefit of disputing parties and the mediation community.

This outline is based on my work over the years with many co-mediators at the CAB to whom I owe a debt of gratitude for their support, encouragement and sharing of knowledge and expertise. I have learned a lot from them and hope that I have also contributed to their development as mediators.

In conclusion, my advice is that if you have a chance to co-mediate, do it!