

Effectiveness in Mediation: a New Approach

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Abstract:

This Research Note reports the initial findings of content analysis of a selection of empirical studies of mediator techniques and their links with mediation outcomes. As part of the analysis, a new approach was devised for categorising effectiveness into simple and complex effectiveness, enabling a contextual comparative analysis of the selected literature. The analysis focused on contextual definitions of effectiveness in mediation. It was conducted as part of a larger research project seeking to establish what is known about effective mediators. The analysis findings suggest a lack of consistent definition and measurement of effectiveness in mediation research, the dominance of settlement as a measure of effectiveness in mediation across all contexts, and a lack of investigations of mediator influence over the achievement of mediation effectiveness. Finally, suggestions are made for future research, including investigation of possible links between complex effectiveness and the durability of mediated agreements.

Key Words: Mediation, effectiveness, definitions, content analysis

Introduction and Background

Effectiveness in mediation is often cited as being a core attribute, or selling point, of the mediation process. However, it has not always been clear which aspect of effectiveness is being lauded: its reputation for achieving settlement, or its reputation for achieving high levels of participant satisfaction, or both, or for some other beneficial attribute such as improving communication or supporting relationships.

This Research Note reports the results when a new approach, or analytical tool, is applied to measure the effectiveness in mediation. The analysis forms one component of a much larger research project that is seeking to establish what is known about mediator effectiveness. The larger project reports on an investigation of a selection of empirical

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studies of mediation (the selected literature), and includes bibliometric and terminological analyses, as well as a systematic review of the experimental methodologies applied to data collection within the selected literature.

This Research Note briefly describes the data to which the analysis is applied, the proposed new analytical tools, the findings of the analysis, and suggests some further research approaches to explore mediation effectiveness. In summary, the analysis confirms that a consistent methodology based on a theoretical framework approach is necessary to enable a productive contextual comparative analysis of mediation literature to be undertaken.

Four unexpected findings emerge from this work:

- (i) There is no consistently applied definition of effectiveness in mediation, despite it being the most frequently applied unit of analysis in research about mediation;
- (ii) Despite widespread claims from the mediation sector that participant satisfaction is a core benefit of mediation, the selected literature suggests that the majority of mediation research across a range of mediation contexts maintains a narrow focus on the achievement of settlement in mediation (the 'simple' effectiveness measure);
- (iii) According to the selected literature, the two mediation contexts reporting the highest incidents of simple effectiveness are labour/management, and family; and
- (iv) There is almost no investigation of the mediator's influence on the achievement of simple or 'complex' effectiveness (which also includes a range of other impact variables) in mediation.

Findings from the analysis suggest that divergences in the definition and measurement of effectiveness in mediation might be linked to the subject mediation context. It is possible that there is a circular, self-reinforcing relationship between definition and context, where the context of the mediation influences the choice of definition and measurement of effectiveness, and that choice – and the subsequent research findings - reinforces established views about effectiveness within that context.

As a first step in the investigation of the possible relationship between context and definitions of effectiveness, this analysis resulted in the creation of a theoretical framework for exploring a contextual comparative analysis of simple and complex effectiveness in mediation.

Data for analysis

The selected empirical studies of mediation that have been the subject of the analysis were accessed through The American Bar Association (ABA) Section of Dispute Resolution Task Force on Research on Mediator Techniques (the Task Force), of which the author is a member. The Task Force compiled a selection of over 150 reports from the mediation literature in the US, UK, and Australia. To be included in the compilation, articles had to meet several criteria including reference to empirical investigations of the links between mediator techniques and mediation outcomes. The Task Force's Final Report, including recommendations for future activity in the research field, has been finalised for publication by the ABA later in 2017.¹

Preferring to focus on primary sources, this research project applied further criteria to the Task Force compilation, in particular requiring that included articles be direct reports of empirical studies. Ultimately, forty-seven articles met the criteria for inclusion in this research project. Within this specific analysis, only thirty-eight of those articles referred specifically to effectiveness, and those thirty-eight (the selected literature) are the subject of this analysis.²

Simple and complex effectiveness in mediation

The concepts of simple and complex effectiveness were devised as part of this research project to enable comparative analysis of effectiveness between mediation contexts (contextual comparative analysis).

(i) Simple effectiveness

In this project, simple effectiveness refers to whether an agreement is reached within the mediation, and this appears to be the most frequently measured mediation outcome. For the purposes of this analysis, efficiency indicators and measures, such as timeliness and costs, are accepted as being qualifiers of settlement (e.g., where a settlement is achieved, was it achieved efficiently?), and are therefore included in simple effectiveness. Simple effectiveness is a case management statistic, a standard against which the effectiveness of many mediation services and programs is measured and assessed. Even a cursory assessment

¹ ABA Section of Dispute Resolution Task Force on Research on Mediator Techniques, 'Report of the Task Force on Research on Mediator Techniques' (Report, American Bar Association, 12 June 2017).

² A list of the thirty-eight selected empirical studies is available from the author.

of the broader mediation literature suggests that the focus on simple effectiveness may have influenced the design of many mediation programs and services.³ So widespread is its application in research and practice, simple effectiveness could be said to be an “industry standard” for mediation across all dispute and mediation contexts.

A focus on simple effectiveness bypasses more complex analyses of what actually happens within mediation, such as the contributions and influences of the mediator.

(ii) Complex effectiveness

Complex effectiveness includes the measurement of any, or a combination of any, mediation outcomes *additional to the achievement of settlement*,⁴ including, but not limited to, the following:

- Participant satisfaction (accepted as incorporating factors that relate to perceptions of fairness),
- Rates of compliance,
- Nature of agreements, and
- Improvement in participants’ post-dispute relationship.

It could be said that the above measures are each relevant to overall participant satisfaction and perceptions of fairness. In this Note, they are referred to collectively as “fairness and satisfaction measures”. Some of the selected studies used measures that are additional to, rather than being components of, effectiveness; for example, one program evaluation report includes measures of effectiveness drawn from the ADR objectives defined by the Australian Law Reform Commission in 1998.⁵ Where relevant, the additional measures are specified in this analysis.

Because of the nature of its achievements, complex effectiveness could be said to achieve broader resolution rather than narrow settlement.

³ For example, see: Laurence Boulle, *Mediation Principles Process Practice* (3rd Edition, LexisNexis Butterworths, Australia, 2011); Tania Sourdin, *Alternative Dispute Resolution* (5th Edition, Thomson Reuters, Australia, 2016).

⁴ None of the selected literature investigated effectiveness that did not include the achievement of settlement.

⁵ Australian Law Reform Commission, *Rethinking the Federal Civil Litigation System* (Issues Paper 20, Australian Law Reform Commission, 1998).

Complex effectiveness has been said to produce more durable agreements than simple effectiveness,⁶ yet is less likely to be considered than simple effectiveness in the assessment of mediation services and programs, and appears less frequently in the mediation literature as a component, or measure of effectiveness. In addition, while mediators may play a role in achieving the outcome standard of simple effectiveness, their role in relation to complex effectiveness is largely unexplored.

Method

The thirty-eight selected empirical studies of mediation were subjected to an initial manual content analysis to determine the context of each study, and to clarify the definition and measures of effectiveness that were applied in each individual study. Because of the inconsistencies in the definitions and measures relevant to the effectiveness component, the analysis was somewhat cumbersome. Subsequently, the measure of simple or complex effectiveness was devised and applied to a second analysis of the selected literature; the results of that analysis are reported below. The selected mediation literature includes articles that report on recent studies as well as studies conducted more than 30 years ago. In some instances, historical contexts may differ slightly from their modern counterparts. For example, in the US in the 1970s, community mediations were often conducted through a small number of Neighbourhood Justice Centers and the types of disputes to be resolved were limited to minor disputes between neighbours, landlord/tenant disputes, minor consumer complaints, and family disputes.⁷ A modern understanding of “community mediation” in the United States (U.S.) may have changed to include a broader category of disputes (such as consumer complaints), but not sufficiently to affect the focus of this analysis.

Mediation Context

The initial analysis of the selected literature established seven contexts within which subject mediations were conducted or within which research or evaluation took place; each of the selected thirty-eight reports was allocated to one context. Within this analysis, context is

⁶ Jess K. Alberts, Brian L. Heisterkamp, and Robert M. McPhee, ‘Disputant Perceptions of and Satisfaction with a Community Mediation Program’ (2005) 16 *The International Journal of Conflict Management* 218; Kenneth Kressel et al, ‘The Settlement-Oriented vs the problem-Solving Style in Custody Mediation’ (1994) 50 *Journal of Social Issues* 67; Nina R. Meierding, ‘Does Mediation Work? A Survey of Long-Term Satisfaction and Durability Rates for Privately Mediated Agreements’ (1993) 11(2) *Mediation Quarterly* 157; Dean G. Pruitt et al ‘Long-Term Success in Mediation’ 17(3) *Law and Behavior* 313.

⁷ Mauro Cappelletti and Bryan Garth ‘Access to Justice: The Newest Wave in the Worldwide Movement to make Rights Effective’ (1978) *Buffalo Law Review* 181.

taken to mean the setting within which the investigated mediations occur, as reported in each study, or as deduced during the analysis. The context groupings are described below:

- Court-connected context: as described in the selected empirical studies, a court-connected mediation is taken to be one that is conducted within, or in association with, a court or tribunal, and/or conducted by a practising or retired judge or legal practitioner. This contextual category does not include assessments or evaluations of court-connected mediation programs or services, which are included in a specific category of their own;
- Evaluation context: Funded evaluations or assessments of existing mediation programs and services where program and service evaluations tend to have their evaluation criteria established as part of their terms of reference, and such criteria usually include readily quantifiable measures of efficiency such as settlement rates, timeliness, and cost reductions;
- Labour-management context: as described in the selected empirical studies, a labour-management mediation is taken to be one where the issues in dispute concern collective workplace conditions, and the parties are management and employees, or their representatives and does not include workplace mediation between individual employees and individual employers/managers;
- Community context: as described in the selected empirical studies, a community mediation is taken to be one that is conducted at a community mediation centre, regardless of the professional standing of the mediator or the nature of the dispute;
- Family/divorce/child custody context: as described in the selected empirical studies, a family/divorce/child custody mediation is taken to be one in which the mediation is conducted by a family mediation service, and/or concerns matters associated with divorce proceedings and/or child custody and visitation rights⁸;

⁸ Family/divorce/child custody mediations usually occur in association with a purpose-specific court; however, they differ from legal mediations in that, in the selected literature, they are not reported to routinely include judge/legal practitioner mediators.

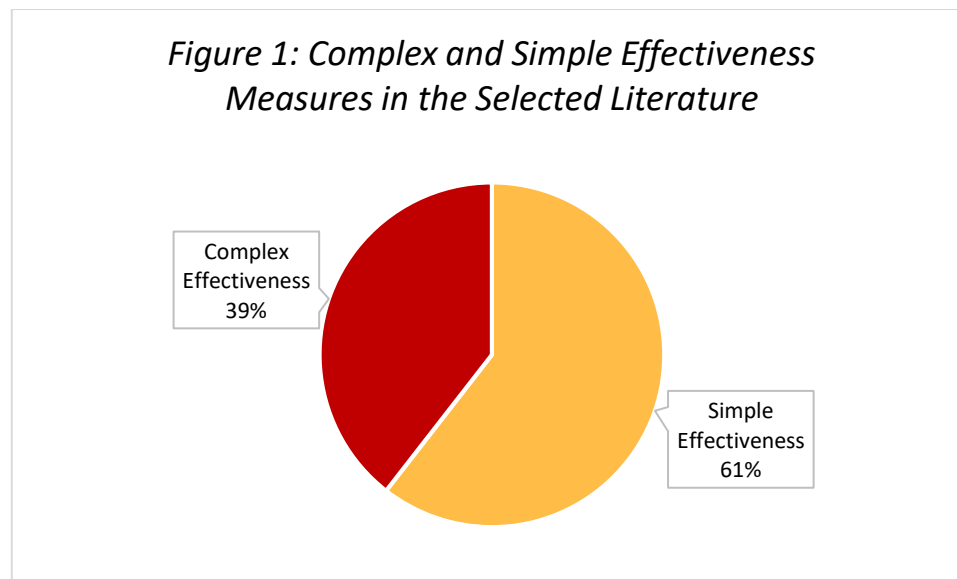
- Simulated mediation context: in this small cohort of studies, evaluation criteria were reported as having being set as part of the simulation design in the laboratory setting; and
- Construction and building context: there is only one report from a study of mediations conducted in a construction setting, and the majority of the mediators were reported to be either lawyers or retired judges; despite the legal background of the mediators, this study has been differentiated from legal and court connected mediations because of the nature and setting of the disputes themselves.

After each study had been allocated to its relevant context category, the definitions and measures of effectiveness in all studies were analysed according to the measure of simple and complex effectiveness.

Results of contextual comparative analysis

The results of the analysis suggest that applying simple and complex effectiveness criteria can be productive in contextual comparative analyses of effectiveness in mediation. The analysis shows a clear dominance of simple effectiveness across most contexts, especially in labour/management, family, and court-connected mediations. Although the use of complex effectiveness measures was reported in a significant minority of the studies, it is surprising that complex effectiveness is not applied more widely in empirical studies of mediation.

In summary, of the thirty-eight selected journal articles that explore issues related specifically to effectiveness, twenty-three, or around 60%, refer to settlement (including efficiency measures) as the sole measure for effectiveness. The two contexts with the highest proportion of simple effectiveness measures are the labour-management context (100%), and the family/divorce/custody context (80%). Of the legal context studies, 70% measured simple effectiveness only.



The results of the contextual comparative analysis are listed below, in descending order of contextual prevalence in the selected mediation literature.

(i) *The court-connected context*

Of the ten studies of mediations reported to have been conducted in a court-connected context,⁹ seven reported only on simple effectiveness.¹⁰ The other three studies reported on complex effectiveness that was measured in terms of settlement plus fairness and satisfaction measures.

(ii) *Mediation program and services evaluations and assessments*

⁹ Stephen B. Goldberg and Margaret L. Shaw, 'Further Investigation into the Secrets of Successful and Unsuccessful Mediators' (2008) 26(8) *Alternatives to the High Cost of Litigation* 149; E. Patrick McDermott and Ruth Obar, "'What's Going On" in Mediation: An Empirical Analysis of the Influence of a Mediator's Style on Party Satisfaction and Monetary Benefit' (2004) 9 *Harvard Negotiation Law Review* 75; Ralph Peebles, Catherine Harris, and Thomas Metzloff, 'Following the Script: An Empirical Analysis of Court-Ordered Mediation of Medical Malpractice Cases' [2007] *Journal of Dispute Resolution* 101; Roderick I. Swaab, *Face First: Pre-Mediation Caucus and Face in Employment Disputes* (Paper presented at the 22nd Annual Association of Conflict Management Conference, 15-18 June 2009) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1493514>; Roderick I. Swaab, and Jeanne Brett, *Caucus with Care: The Impact of Pre-Mediation Caucuses on Conflict Resolution* (Meetings Paper, IACM 2007) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1080622>; James A. Wall, Jr, and Suzanne Chan-Serafin, 'Processes in Civil Case Mediations' (2009) 26(3) *Conflict Resolution Quarterly* 261; James A. Wall, Jr, and Suzanne Chan-Serafin, 'Do Mediators Walk Their Talk in Civil Cases?' (2010) 28(1) *Conflict Resolution Quarterly* 3; James A. Wall, Jr, and Dale E. Rude, 'The Judge as Mediator' (1991) 76(1) *Journal of Applied Psychology* 54; Roselle L. Wissler, 'Mediation and Adjudication in Small Claims Court: The Effects of Process and Case Characteristics' (1995) 29(2) *Law & Society Review* 323; Roselle L. Wissler, 'Court-Connected Mediation in General Civil Cases: What We Know from Empirical Research' (2002) 17(3) *Ohio State Journal on Dispute Resolution* 641.

¹⁰ Where this analysis reports that effectiveness was measured in terms of whether or not settlement was reached, this binary question is considered to be different from so-called "settlement rates" because the studies do not consistently compare numbers of settlements across studies, or with other benchmarks.

Eight reports in the selected literature are of funded assessments or evaluations of mediation programs or services.¹¹ This category necessarily includes several mediation contexts, but program evaluations and assessments differ in that their research and evaluation criteria are established in their terms of reference. The terms of reference are likely to include readily quantifiable factors indicating effective case management: settlement, timeliness, and cost reductions.

The eight evaluations and assessments of mediation programs and services include five evaluations of court-connected mediation programs, one of a workplace mediation program, one of mediation services in the financial sector, and one of mediation services in a family/divorce/custody context.

Of the eight reports in this category, two report on simple effectiveness. The other six report on measures of complex effectiveness including measures of fairness and satisfaction. One of the six includes an additional measure of participant perceptions of justice within the subject (workplace) mediation program. Another includes additional measures of effectiveness that drew from ADR objectives defined by the Australian Law Reform Commission in 1998.¹²

The three evaluations of court-connected programs/services that measure complex effectiveness were conducted over a period of eight years, by the same researcher; that researcher also co-conducted a fourth program evaluation in a different context, the latter including measures of complex effectiveness. Because it is not clear whether the funding bodies, the researcher, or some other factor influenced the methodology and terms of reference for the five evaluations, it cannot be ascertained if they represent a trend (especially in Australia) towards measures of complex effectiveness in evaluations of court-connected, and other, mediation programs.

¹¹ Lisa Blomgren Bingham, 'Transformative Mediation in the United States Postal Service' (2012) 5(4) *Negotiation and Conflict Management Research* 354; Craig A. McEwen, 'An Evaluation of the ADR Pilot Project: Final Report' (Report, Bowdoin College, January 1992); Tania Sourdin, 'Dispute Resolution Processes for Credit Consumers' (Project Report, Conflict Resolution Research Centre, La Trobe University, 2007); Tania Sourdin, *Mediation in the Supreme and County Courts of Victoria* (Report, Department of Justice Victoria, Australia, April 2009); Tania Sourdin, *Resolving Disputes Outside Courts: Exploring Civil Pre-Action Requirements* (Report, Australian Centre For Justice Innovation, Monash University, October 2012); Tania Sourdin and Tania Matruggio, *Evaluating Mediation – New South Wales Settlement Scheme 2002* (2004) (La Trobe University, 2004); Roselle L. Wissler, 'Trapping the Data: An Assessment of Domestic Relations Mediation in Maine and Ohio Courts' (Report, Supreme Court of Ohio, 1999); James G. Woodward, 'Settlement Week: Measuring the Promise' (1990) 11(1) *Northern Illinois University Law Review* 1.

¹² Australian Law Reform Commission, above n 5.

(iii) *The labour-management context*

Of the seven studies of mediations reported to have been conducted in a labour/management context,¹³ all seven report only on simple effectiveness. None define or measure any aspect of complex effectiveness. One of the reported studies does include measures of the percentage of issues resolved, and any observed movement in the parties' positions or concessions made, but these relate directly to the ultimate achievement of settlement.

(iv) *The community context*

Of the five studies of mediations reported to have been conducted in a community context,¹⁴ two report on simple effectiveness, and three on complex effectiveness using fairness and satisfaction measures.

(v) *The family/divorce/custody context*

Of the five studies of mediations reported to have been conducted in a family, divorce, or custody context,¹⁵ four report on simple effectiveness. One study defines effectiveness in

¹³ David A. Dilts, and Ahmad Karim, 'The Effect of Mediators' Qualities and Strategies on Mediation Outcomes' (1990) 45(1) *Relations Industrielles/Industrial Relations* 22; Jean M. Hiltrop, 'Factors Associated with Successful Labor Mediation' in Kenneth Kressel and Dean G. Pruitt (eds) *Mediation Research: The Process and Effectiveness of Third-Party Intervention* (Jossey-Bass, 1989); Ahmad Karim, and David A. Dilts, 'Determinants of Mediation Success in the Iowa Public Sector' (1990) 19(2) *Journal of Collective Negotiations* 129; Ahmad Karim, and Richard Pegnetter, 'Mediator Strategies and Qualities and Mediation Effectiveness' (1983) 22(1) *Industrial Relations* 105; Thomas A. Kochan, and Todd Jick, 'The Public Sector Mediation Process: A Theory and Empirical Examination' (1978) 22(2) *The Journal of Conflict Resolution* 209; Patrice M. Mareschal, 'What Makes Mediation Work? Perspectives on Resolving Disputes' (2005) 44(3) *Industrial Relations* 509; Richard A. Posthuma, James B. Dworkin, and Maris Stella Swift, 'Mediator Tactics and Sources of Conflict: Facilitating and Inhibiting Effects' (2002) 41(1) *Industrial Relations* 94.

¹⁴ Jess K. Alberts, Brian L. Heisterkamp, and Robert M. McPhee, 'Disputant Perceptions of and Satisfaction with a Community Mediation Program' (2005) 16 *The International Journal of Conflict Management* 218; Dean G. Pruitt et al, 'The Process of Mediation: Caucusing, Control, and Problem Solving' in Rahim M. Afzalur (ed) *Managing Conflict: An Interdisciplinary Approach* (Praeger, 1989); Dean G. Pruitt et al, 'Long-Term Success in Mediation' (1993) 17(3) *Law and Human Behavior* 313; Gary L. Welton et al, 'Antecedents and Characteristics of Caucusing in Community Mediation' (1992) 3(4) *The International Journal of Conflict Management* 303; Josephine M. Zubeck et al, 'Disputant and Mediator Behaviors Affecting Short-Term Success in Mediation' (1992) 36(3) *The Journal of Conflict Resolution* 546.

¹⁵ Tricia S. Jones, 'Lag Sequential Analyses of Mediator-Spouse and Husband-Wife Interaction in Successful and Unsuccessful Divorce Mediation' in Rahim M. Afzalur (ed) *Managing Conflict: An Interdisciplinary Approach* (Praeger, 1989); Kenneth Kressel et al, 'The Settlement-Oriented vs the Problem-Solving Style in Custody Mediation' (1994) 50(1) *Journal of Social Issues* 67; Karl A. Slaikeu et al, 'Process and Outcome in Divorce Mediation' (1985) 10 *Mediation Quarterly* 55; Nancy A. Thoennes and Jessica Pearson, 'Predicting Outcomes in Divorce Mediation: The Influence of People and Process' (1985) 41(2) *Journal of Social Issues* 115; Lois Vanderkooi and Jessica Pearson, 'Mediating Divorce Disputes: Mediator Behaviors, Styles and Roles' (1983) 32(4) *Family Relations* 557.

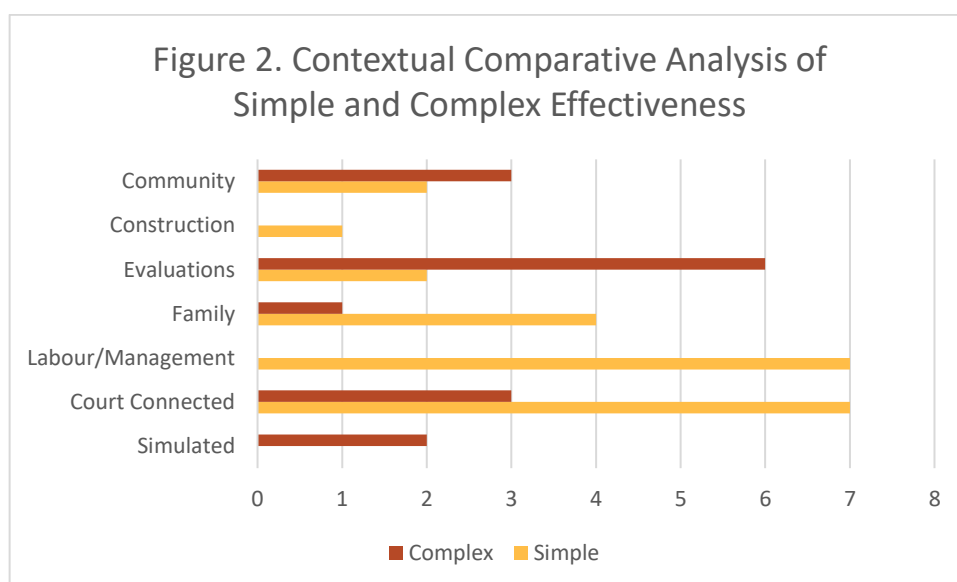
terms of settlement plus fairness and satisfaction measures, including the durability of the agreement and the participants' attitudes to the mediator.

(vi) *Simulated mediations*

Two reports are of studies conducted using simulated dispute scenarios and mediation sessions.¹⁶ The two reports measure effectiveness only in terms of settlement. Additional factors, such as participant perceptions of the mediator, participant use of reframing, and participant assessment of the mediator are the more dominant focus of the studies.

(vii) *Construction and business context*

Only one of the studies investigated mediations conducted in the construction and business context.¹⁷ It defines effectiveness in terms of whether or not settlement was reached, plus additional efficiency measures (reduction in costs, and timeliness).



Commentary

The application of simple and complex effectiveness measures has been productive in this analysis of empirical studies of mediation conducted across a range of contexts. Using simple and complex effectiveness as an analysis tool has enabled an overall analysis of

¹⁶ Jerry Gale et al, 'Considering Effective Divorce Mediation: Three Potential Factors' (2002) 19(4) *Conflict Resolution Quarterly* 389; William D. Kimsey, Rex M. Fuller and Bruce C. McKinney, 'Mediator Listening, Dispute Reframing, and Mediation Outcome: A Pilot Study' (1993) 7(1) *Journal of the International Listening Association* 74.

¹⁷ Douglas A. Henderson, 'Mediation Success: An Empirical Analysis' (1996) 11(1) *Ohio State Journal on Dispute Resolution* 105.

approaches to effectiveness, as well as contextual comparative analysis where previously such analysis had been too cumbersome to undertake productively.

Fifteen of the thirty-eight selected studies do include measures of complex effectiveness (i.e., around 39%). Additional year-of-publication analysis of the selected literature suggests that in no decade since the 1970s have measures of complex effectiveness outnumbered measures of simple effectiveness.¹⁸ The same year-of-publication analysis of the selected literature suggests that the 1990s might have been the decade in which there was greatest application of complex effectiveness measures.¹⁹ However, caution is advisable with this year-of-publication analysis because the very small number of studies published in some decades in itself precludes valid interpretation. Year-of-publication data alone cannot take into account the range of factors that might influence the choice of effectiveness measures at any time, in any mediation context.

An unintended finding from this analysis is the apparent lack of consistently applied definitions and measures of effectiveness in mediation. The application of the analysis tool (simple and complex effectiveness) has confirmed the dominance of simple effectiveness as a definition and unit of analysis in mediation research across many mediation contexts. Conversely, the analysis has revealed the minority status of complex effectiveness in mediation research, despite its relevance to participant satisfaction and its potential links to agreement durability. It is not known to what extent the focus on simple effectiveness limits the scope for assessment and development of mediation programs, the scope of research into mediation, and developments in the practice of mediation.

Although limited to the selected literature, the results of this analysis reveal which mediation contexts appear to be most strongly focused on achieving settlement, and which tend to take into account participant perceptions. Useful further research could include applying simple and complex effectiveness to analysis beyond the selected literature.

A small number of studies in the selected literature do report on investigations of the durability of mediated agreements, but none investigated the potential links between simple or complex effectiveness and agreement durability. A small number of publications have

¹⁸ For example, only one of the selected articles was published in the 1970s, and only two were published in the 2010s.

¹⁹ Of the selected literature, none of the seven articles published in the 1980s included any measures of complex effectiveness; in the 1990s, a little over 69% included complex effectiveness; in the 2000s, 60% included measures of complex effectiveness.

considered possible links between complex effectiveness and agreement durability; however, they are non-empirical studies that are not included in the selected literature.

Conclusion

As part of a broader research project, this analysis proposes the application of simple and complex types of effectiveness to overcome the divergent definitions and measurements of effectiveness in mediation, and to facilitate contextual comparative analysis of the selected empirical studies of mediation. Simple effectiveness includes only the measurement of whether settlement is achieved in the mediation; complex effectiveness includes several additional factors, usually relating to perceptions of fairness and satisfaction, in addition to whether settlement is achieved. Analysis of the selected literature demonstrates the dominance of simple effectiveness measures across seven mediation contexts. Unexpectedly, it suggests both a lack of consistently applied definitions and measures of effectiveness in mediation, and the dominance of settlement as a unit of analysis effectiveness.

This analysis has revealed a surprising lack of investigations into the mediator's influence on the achievement of either simple or complex effectiveness.

Accepting that durable mediation agreements are valuable for a range of reasons, additional empirical studies should investigate the reported links between the durability of mediation agreements and the achievement of complex effectiveness, as well as the influence of the mediator. The outcomes of such research would be major contributors to discussion about how mediation offers a return on investment.

Limitations

The relatively small number of selected empirical studies is a limitation; however, this reflects the relatively small and specialised field that is explored in mediation research; it also reflects the criteria for inclusion in this research project, in particular that a report be focussed on an empirical investigation of the links between mediator techniques and mediation outcomes. A second potential limitation is that the majority of included articles report on empirical studies conducted in the US. Although this is a reflection of the membership and affiliation of the Task Force, it is also a reflection of the US' dominance in the field of mediation research; however, a smaller number of the articles do report on studies conducted in the UK, Australia, and the Netherlands. The selected studies do not include empirical studies from Asia, or broader Europe, or other regions; nor do they include the so-called

“grey literature” which, though a potential source of valuable research findings, is unavailable through public forums.

A recent article published in 2017 reports on an empirical investigation of what mediators do to facilitate successful, or effective, mediations.²⁰ That investigation collected data from 13 mediators practising in France, Spain, Luxembourg, and Canada, but considers only simple effectiveness. Despite being published almost 40 years after the oldest report in the selected literature, the 2017 report confirms the literature’s dominant preference for defining effectiveness in mediation only by the achievement of agreement.

²⁰ Anne Pignault, Raymond Meyers, and Claude Houssmand, ‘Mediators’ Self-Perception of their Work and Practice: Content and Lexical Analysis’ (2017) 22(6) *The Qualitative Report* 1589.