

Diversity and Mediation- Member Survey August 2015

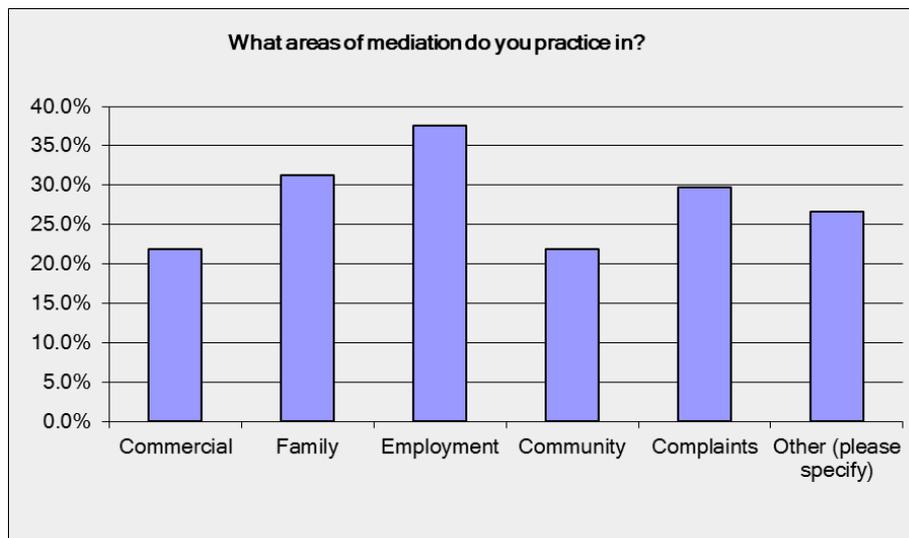
Background

LEADR & IAMA was approached by the Superdiversity Centre for Law, Policy and Business to survey commercial mediator members on whether there is an increasing trend towards disputes arising from intercultural misunderstandings. We broadened this survey to include practitioners working in other areas and added some additional questions to provide more information on the types of intercultural disputes mediators have experienced, the impact mediation has made and the skills required of mediators working with these disputes.

The survey ran from late July to early August 2015. A total of 64 people responded to the survey.

Participants

Respondents were spread across each of the practice areas, with the majority of respondents reporting that they work across multiple practice areas.

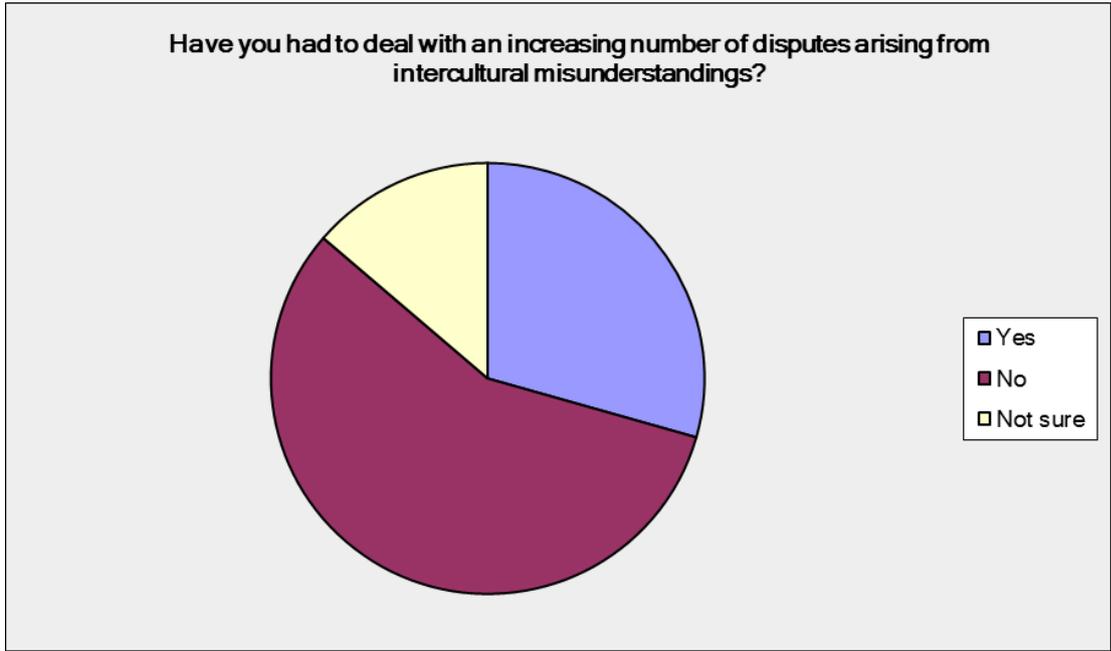


The majority of participants (78%) reported NZ European as an ethnicity. Small numbers also reported ethnicity as Other European, Maori, Samoan and other Pacific Peoples and other.

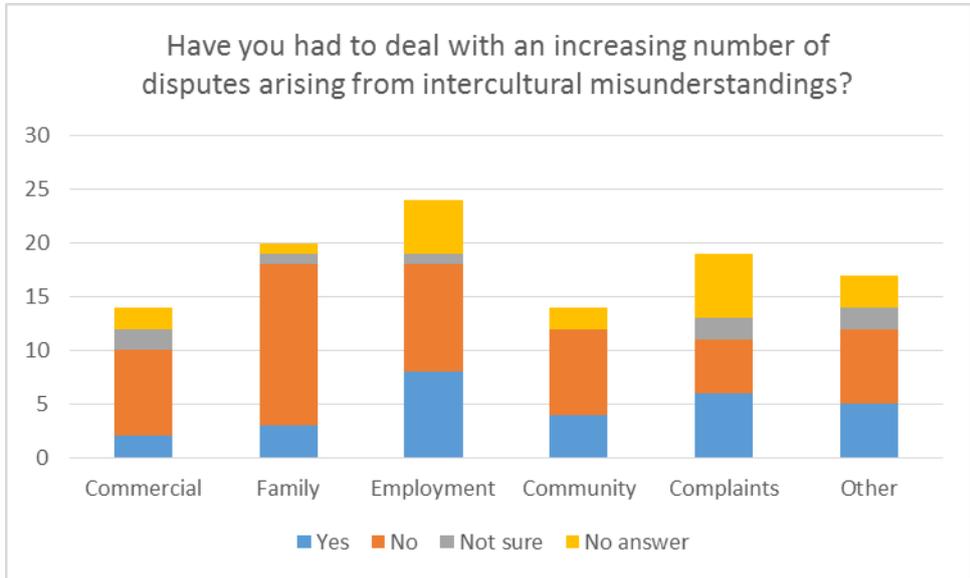
Are disputes arising from intercultural misunderstandings increasing?

57% reported that they are not dealing with an increasing number of disputes arising from intercultural understanding, compared to 29% who said they were.

A number of those who reported that they weren't dealing with an increase, made comments to the effect that cultural disputes have always been part of their mediation work.



Looking at whether the number of disputes arising from intercultural misunderstandings is increasing by area of mediation practice shows that mediators in the employment, community and complaints area are more likely to report an increase. In these areas around a third of mediators report an increase in disputes arising from intercultural misunderstandings, compared with around 15% in the family and commercial areas.



What issues have you encountered in disputes arising from intercultural understanding?

Common themes reported were:

- Communication issues either in terms of language issues or understanding of meaning/intent
- Differences in values or beliefs

- Issues of 'saving face'
- Different expectations of family, parenting, communication etc
- Differences in perception of authority, power relationships
- Expectations of the mediator/conciliator and acceptance of a female mediator/conciliator

"Face saving, collectivist vs individual, gender and status"

"Lack of knowledge of culture anxiety around not knowing new things, about doing the wrong thing feeling threatened by different ways letting go of what they've known for all of their life fear of their culture being subsumed"

"Misunderstanding of why each party acted in the way they did due to not being aware of cultural matters or not placing enough importance on them"

"I have seen complaints come across my desk where language issues are a problem. This is where the parties have had difficulties understanding each other in telephone calls and in written correspondence."

How has mediation assisted in resolving disputes arising from intercultural understanding?

Common themes reported were:

- Assisting parties to communicate effectively
- Providing translation services
- Assisting people to understand cultural differences and differences in values and beliefs
- Providing a process for working towards resolution and agreement

"By assisting with communication and ensuring the right people are present to support the process"

"Breaking through some assumptions about 'other' cultures increasing understanding about other people's perceptions."

"Assisting parents to recognise what is truly important for the child(ren), the good intentions of the other parent and that they will have to continue negotiating their way with different values - and so keeping talking about differences and how each parent will contribute their cultural heritage to the child. (That's when it's working well!)"

"It has helped even-out the power imbalances between parties."

"Access to interpreter services."

"The nature of mediation, without have predetermined paths and processes as a judicial system has, allows for meanderings and explorations which lead to better outcomes."

What skills do you think mediators need to mediate disputes relating to intercultural understanding?

Common themes suggested were:

- The importance of communication skills, questioning and reframing
- Awareness of own cultural perspective and how that impacts
- An understanding of the cultures the mediator is working with, balanced by not assuming anything because of culture
- Openness to listening, learning and asking

- The need for mediator training, awareness, advice and professional supervision

“Being sensitive to, active listening and communication skills, maintaining and showing respect and allowing for processes that meet the needs of the parties, understanding how different cultures traditionally deal with disputes.”

“Awareness of own cultural lens, willingness and openness to learning, ability to fill knowledge and information gaps.”

“An openness to learn and listen. Not to assume that because someone is of a particular ethnicity that they will hold to certain cultural practices as there is so much diversity. Always ask.”

“Read and understand the cultures you are dealing with. Do not take for granted your perception may be different from theirs. Have cultural supervision. Talk to someone of the same culture before you start.”

“1. Understand their own pepeha, origins, sense of self and values and see those as a bias. 2. Really know that there can be profoundly different values on fundamental issues. 3. Recognise that they, as mediator, can't know or guess at what is going on culturally with anyone but be open to asking appropriate open questions about these issues. 4. Get training in thinking about these things. 5. Recognise that we are operating in a multicultural society which is Tiriti based, and work on what that means in a positive open way.

“Same skills with any mediation really. Ability to listen and hear what is said and unsaid, courage to question, ability to keep calm under pressure. Open mind.”

“Patience, good questioning and reframing.”

Conclusion

There were mixed views on whether disputes arising from intercultural understanding are increasing or whether this has long tended to be an area where disputes arise. It seems clear though that mediators do encounter disputes that, at least in part, arise from intercultural factors. Mediators report that mediation can make a difference in these types of disputes.