

Mediation in the Resolution of Conflicts Involving Elderly

**Mediation in the Resolution of Conflicts Involving
Elderly**

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Abstract

The observation of the growth of the elderly population worldwide makes us look at this group of the population, and give importance to their needs, since in this aging process many of them need the help of third parties to manage issues related to this phase of life. In this scenario, conflicts may arise, related to health care, financial maintenance, etc. and mediation can be a tool to resolve conflicts that may arise within the family. The objective of this research is to analyze the application of mediation as an adequate method in the resolution of family conflicts involving elderly people, considering the interests of all those involved, in addition to their needs and available resources to implement whatever is eventually adjusted, especially for their pedagogical character in conflict prevention. The aging process was addressed, so that the elderly and their dilemmas can be better understood. The applied research methodology is a bibliographic, documentary, and qualitative review.

Introduction

According to United Nations data, around the world, the population aged 60 and over has been growing faster than all younger age groups. The number of elderly people aged 60 and over is estimated to double by 2050 and more than triple by 2100.

The interaction of the elderly for a longer period of time in the family environment has brought about changes in the family structure, which in turn reflect on society, involving issues such as beliefs, values and norms. In some Eastern cultures, the elderly are treated with respect and attention and the years lived are considered as accumulated experiences and revered for their wisdom. In Korean culture, for example, the elderly, in addition to being respected, the 60th and 70th birthdays are very important events and are celebrated with big parties (Martinez 2015). One of the factors is generational conflicts, where the non-acceptance of one generation's point of view by the other makes dialogue very difficult. Currently, mediation is a possible instrument of reunification, and mediators have a role in restoring the relationships of the parties involved in the conflict, providing and facilitating communication between the parties. The objective of this research is to analyze the application of mediation in the resolution of conflicts in the family environment involving the elderly.

1. Literature Review

1.1 Introduction

This dissertation aims to study mediation as a tool for resolving family conflicts involving the elderly, seeking to understand the peculiarities that involve family relationships. The specific objectives of the present work are to review the bibliography on conflict mediation applied to the elderly's issues; understand the peculiarities of family relationships; reaffirm the possibility of dealing with family conflicts in a different way; develop a practical analysis of mediation involving the elderly presenting data that complement the theory; aggregate data and information to strengthen the dissemination of mediation in this area. The in-depth study of conflict mediation aimed at the elderly is important, since it is a subject that basically goes unnoticed. There were few materials, publications and information found on this topic. In this sense, there is a lack and teaching on conflict mediation aimed at this group, which justifies the importance of academic production on the subject, as a way of validating and recognizing the value of this object. To address this issue, it is necessary to understand that the world's population is aging. The significant increase in the elderly population brought new challenges when dealing with social and legal aspects that involve autonomy, coexistence and care for this age group. In our society in general, when we talk about aging, the idea of loss comes to mind, rather than the understanding that this record of time and life can be measured by the accumulation of stories, experiences and knowledge. It is common to see the disqualification of old age and the elderly being treated with prejudice and segregation. Thus, the exclusion of the elderly in decision-making within the family, change of routine, place of residence, etc., generate many difficulties in family life.

Families go through several evolutionary phases with typical crises inherent to each phase. Crises can exist at any stage, as long as the family lasts, as there are several interpersonal conflicts, which require an adjustment on the part of the family group, which should preferably go through understanding and dialogue, since well managed, it can lead to the growth of all involved.

In this context, mediation proves to be important and adequate to facilitate communication and improve the quality of family relationships, focusing on the restoration

and maintenance of family ties. The strengthening of family ties and the consequent consolidation of interpersonal relationships based on respect has an impact on society, especially in view of the reduction of conflicts.

Folberg and Taylor consider conflict as a “set of divergent goals, methods or behaviors” (Folberg and Taylor, 1991, p.24). Conflict is present in all human relationships, and it happens because of the divergent point of view that people have on a certain subject. If people are not prepared to resolve a conflict, the situation can escalate into confrontation and violence. Litigation is often used to resolve conflict situations, but this form of resolution can often further damage the parties' relationship.

In his theory of conflict transformation, Dr. John Paul Lederach (2014) addresses two fundamental axes for its understanding: 1) the complexity of the conflict, when one realizes that the conflict represents much more than what is shown at the beginning and 2) the possibility of its transformation, which goes far beyond its simple resolution. He uses the figure of plants to explain his claim, saying that plants have much longer roots than the bushes we see on the ground. Lederach, differentiates the concepts of episode and epicenter, considering the episode the superficial and visible part of the problem, while the epicenter constitutes the part not immediately seen, in which the complexity of the conflict resides. The first solves the problem, while the second transforms it.

Lederach makes a brief comparison of perspective between resolution and transformation conflicts:

Key question

Conflict resolution: How to end something unwanted?

Conflict Transformation: How to end something destructive and build something desired?

Focus

Conflict resolution: content

Conflict transformation: relationship

Purpose

Conflict resolution: seek an agreement and solution to the problem that generated the crisis.

Conflict transformation: promoting the process of change and solutions that may or may not be immediate.

Process development

Conflict resolution: based on the immediacy of the relationship, where problems arise.

Conflict Transformation: Responds to symptoms and engages the systems in which relationships are embedded.

Time Frame

Conflict resolution: short term.

Conflict transformation: medium to long term

Conflict view

Conflict resolution: predicts the need to de-escalate the conflict process.

Conflict transformation: Conflict is seen as a dynamic of ebb (conflict reduction) and flow (conflict escalation). In this dynamic, constructive changes are sought after.

In Lederach's view, conflict transformation cannot be applied in all arenas, becoming limited where a quick and direct resolution of the problem is the most indicated.

According to Moore (2014), there are five sources for the origin of conflict: data conflict, which is caused by misinformation or miscommunication; conflict of interest, caused by competition for possession of something, such as land, money; structural conflict, caused by possession, power, control or unequal distribution of resources; conflict of values, caused by differences in criteria for evaluating ideas and way of life; and relationship conflict, the party has had previous negative experiences are more likely to have this type of conflict, caused by strong emotions, stereotypes, lack of communication.

As Simon Roberts noted in his studies, the act of "meeting and talking" has been used in most societies since ancient times to resolve disputes, and even in stateless societies where there is no central authority, that makes or executes decisions, mediators would have been used, actively seeking agreement between the parties. In order for there to be a good result in the mediation process or an agreement that satisfies both parties, there must be communication, empathy, and active listening. Communication will only be

effective if one of the parties clearly understands what the other is saying. In Mehrabian's (2007) communication model, known as the 7-38-55% rule, it says that when people are communicating the meaning of their feelings and attitudes is perceived in 7% of the words; 38% on the tone of voice, and 55% on body language, especially facial expressions.

Once the nature of the conflict is understood, we will approach the concept of *Mediation*. The term mediation comes from the Latin "*mediari*", which means to intervene, to place oneself between two parties, which means to be in the middle, expressing the concept of neutrality of the mediator. It is essential to understand that conflict mediation is not a recent event in humanity.

Historically, many peoples already used methods similar to mediation, it can be said that it already existed from the moment a third person intervened in the conflict trying to help the parties to resolve it. In primitive societies, it was up to the heads of families or clans, the role of conciliator, who took care of interests material and religious aspects of small family nuclei. There are historical accounts, dating from the early years of the Christian era, referring to principles of consensual conflict resolution, which can be found in the Holy Bible (Mt. 5:23-25). The Holy Bible is one of the first historical books to bring a concept of mediation when it presents Jesus Christ as the mediator of the conflict between God and men (Holy Bible, 1 Tim. 2:5).

Mediation is a process in which an impartial third party acts as a catalyst to help others constructively address and perhaps resolve a dispute, plan a transaction, or define the contours of a relationship. A mediator facilitates negotiation between the parties to enable to better communication encourage problem-solving, and develop an agreement or resolution by consensus among the parties.

(Menkel-Meadow, Love and Schneider, 2006, p.91)

1.2 Mediation Ethics

Mediator's Institute of Ireland Code (MII) and the Mediation Act 2017 sets out the ground rules for how mediators conduct.

Mediation Act 2017 aims to promote mediation as a viable, effective and efficient alternative when compared to legal proceedings, enabling the reduction of legal costs,

streamlining the resolution of disputes and also relieving the stress involved in legal proceedings.”

“The practice of mediation in Ireland is subject to the Mediation Act 2017, except where this Act excludes a specific type of mediation. MII Mediators are required to know the Law and consult it as appropriate. The Code of Ethics and Practice outlines the minimum standards that MII members must meet in their practice. If there is a conflict between the Law and the Code, the Law prevails. If there is any doubt about any matter relating to the Law, the Law should be consulted and not its representation in the Code, which may have been slightly amended to conform to the Code.”

Mediation Act 2017 obliges legal professionals to recommend mediation to resolve disputes before proceeding with litigation. The process allows the parties to broaden the parameters for negotiation, and it is possible for the parties to shape their own negotiation.

1.2.1 The Code of Ethics and Practice

According to the MII:

- The Code of Ethics applies to all Mediators, regardless of the location of the mediation, Ireland, another country or online.
- The Act applies to all mediations in Ireland, except where the Act expressly states that it does not. It does not apply to mediations in other jurisdictions.
- The code binds the mediator, the parties, the clients and all the participants at any stage of the mediation process.
- The provisions of the Code apply to mediation governed by law or to contracts and "agreements other than the Law and shall be modified as necessary to take into account the provisions and practices governing such mediations."
- Any queries regarding the application or interpretation of the Code we should contact the Chairperson of the MII Ethics and Standards Committee.

1.2.2 Ethics Guidelines

The purpose of ethics guidelines in mediation is to guide mediators on ethical issues that may arise during mediation. It is worth mentioning that ethics guidelines are not above the Law (Mediation Act 2017), if these guidelines are inconsistent, mediators must comply with the Law.

- The mediator must ensure that the parties understand and agree to the mediation process, he must inform the parties about his role as a mediator in the mediation and certify that the parties understand the terms of the mediation agreement.
- The voluntary agreement between the parties in a mediation process is fundamental and the mediator must act and conduct the process in a way that maximizes voluntariness.
- The mediator must be aware of the relevant issues in the process for the mediation to be effective. It is your responsibility to prepare before each medication session by reviewing statements and documents the parties have submitted. If the mediator feels unable to meet the expectations of the parties, he must refuse to act as a mediator or withdraw from the mediation if he has already started the mediation process.
- The mediator must maintain the confidentiality of the process. Before the start of mediation, the mediator must explain to the parties the confidentiality of the process, laws, and rules that prohibit disclosure. No confidential information may be disclosed by the mediator without the permission of all parties unless required by law or court order. If the mediation is conducted in accordance with rules or laws that require the disclosure of certain information, the parties must be notified. by the mediator before starting the session. Mediator's notes or other documents that contain confidential information, the mediator must store in a safe place and can be destroyed after the mediation process is completed, or even earlier if the parties by mutual agreement request or consent to do so.
- The mediator must be impartial in the mediation process and as such must conduct it. If the mediator becomes unable to maintain impartiality, he must withdraw from the process or if there is any conflict of interest that raises doubts about the integrity of the process, the mediator must also withdraw from the process. When the mediation process is completed, the mediator must refrain from conduct with one of the parties that puts the mediation process in doubt, without the agreement of all parties.

2. Research Methodology and Methods

The objective of this research was to investigate the application of mediation to resolve conflicts involving the elderly. We chose to adopt the qualitative method, of an exploratory nature. The collection of material for this investigation was selected based on themes focused on mediation, especially with a focus on the elderly. Published texts, articles and research in the mediation area were used. The specific objectives were to review the literature on conflict mediation applied to the problem of the elderly, analyze family relationships and conflicts in an interdisciplinary perspective; understand the peculiarities of family relationships; reaffirm the possibility of dealing differently with family conflicts; develop a practical analysis of mediation involving the elderly, presenting data that complement the theory, aggregate data and information to strengthen the dissemination of mediation in this area.

One of the interesting points in the research process was that, in other areas of science, it was possible to find a lot of information and knowledge that can add a lot to understand or facilitate the understanding of conflicts, behaviors, etc., in the context of mediation. It was possible to find many books and materials related to the topic of mediation, but when looking for materials that specifically addressed the topic: mediation involving the elderly, the field of research was limited. Age Action, an Irish-based organization for older people whose slogan is '*for a society that allows all older people to participate and live full, independent lives*', was contacted in the hope of obtaining more material to add to the research, but due to bureaucratic issues it was not possible to receive the material in a timely manner.

3. Presentation of the Data

3.1 Mediation Process

Mediation has grown in popularity and one of the factors is that mediation allows an agreement to be reached without resulting in litigation. Mediation is a relatively quick process when compared to court proceedings in addition to benefiting court services, once these are resolved, avoiding overloading the courts.

The pros have outweighed the cons when it comes to mediation, given the significant increase in the number of resolved cases attributed to the Act introduced in 2017.

Mediation is an informal, voluntary, and confidential process that offers those who are experiencing a conflict situation the opportunity and adequate space to seek a solution that serves everyone involved. Mediation can be applied in the most diverse areas and is effective in business, commercial, labor, environmental, school, organizational, international, community, and family conflicts, etc.

The mediator is a third party that helps the parties to re-establish communication, so it is important that they do not make a value judgment or advise the participants. Mediation sessions require preparation by the mediator and voluntary acceptance of the parties involved so that the result is productive, although sometimes may not always result in an agreement. Some techniques are applied to the session, depending on the moment, as there is a methodology in the procedure, with the preparation of the place and positioning of the parties at the table, in addition to the opening statement, followed by active listening, the recontextualization of the words spoken and care with the influence of personal positioning on the interpretation of the words of the parties, among other specifics.

In mediation, parties can express their thoughts and desire an opportunity to resolve important issues cooperatively and constructively. The purpose of mediation is to assist in reaching agreements that can build a model of conduct for future relationships, in a collaborative environment in which the parties productively dialogue about their interests and needs. It is important for the facilitator to develop key questions to be asked of each party.

After listening, the mediator presents a summary of what was expressed by those involved, delimiting the main issues to be analyzed next. In this phase it is very important to leave out what is not relevant and bring to the table only what really should be worked on in mediation.

In delimiting the interests of the parties, the mediator uses what everyone said and even gestures, to interpret and demonstrate that they are close in their intentions, continuing with the analysis of feelings and issues related to the conflict.

Interest and position are two nouns that denote what the conflicting parties really want and what they apparently seek out of the established controversy.

Faced with the established impasse, an important distinction to be made within the study of mediation concerns the distinction between position and interest.

The position, also called apparent interest or declared interest, is what a party, in the face of a conflict, declares that it wants or does not want it openly, that is, it is the position expressed by the party as an immediate desire.

Interest, better known by the expression true interest or real interest, is what a party, in the face of a conflict, really wants or wants as a result, that is, what the party actually intends, but which, generally, keeps for itself and does not declare to the other party.

According to human need theorists, Northrup (1989) one of the main causes of prolonged or intractable conflicts is the inflexible drive of people to meet unmet needs at the individual, group and social levels.

Mediation is important in family conflicts, as it provides the resolution of disagreements, without breaking the family structure, leading the parties to reflect on their decisions, whether legal or emotional. Mediation proposes to deconstruct the conflict, making the conflicting parties identify the reason for the dispute and resolve it. Mediation seeks to show that conflict is natural and inherent to human beings. Mediation can contribute by presenting new alternatives for individuals to deal with their conflicts, arising from the difficulties of everyday life, preventing them from becoming worsen and produce harmful consequences.

3.1.1 Fundamental Principles of Mediation

Mediation as a conflict resolution tool is guided by some principles, namely:
 Voluntary process. The parties voluntarily choose to undergo mediation, decide who will be the mediator, choose the matters to be dealt with in the mediation, decide on the agreement and its conditions, as well as the end of the process, when they wish. The parties have autonomy in the mediation process from beginning to end and the mediator must respect this. Confidentiality is applied at all stages of the mediation process. The parties involved undertaking to maintain the confidentiality of the process. The mediator is and will remain neutral and impartial. The mediator must refrain from granting any type of preference, favor, or differential treatment to any of the parties. They cannot be influenced by their personal

values and prejudices and must ensure a balance of power between the parties. The parties decide on their own solutions, no solution is imposed on the parties, and they have opportunity to find a solution to the conflict in a cooperative and constructive way. Each party must treat each other with politeness and respect without using shouting and cursing, listening to what the other party has to say, so that they can reach a consensus.

3.1.2 Improving Communication

According to mediation scholars, these are the auxiliary tools used to improve communication in the mediation process:

- Active Listening: those involved need to express themselves, express their feelings and impressions regarding the conflict, as they generally did not have this opportunity before. Verbal and non-verbal listening of gestures, expressions and feelings. Mediation uses the expression “need to empty” referring to all emotions related to the event, that is, talking about all motivations, indignations and expectations. It proposes attention to the interlocutor's speech, refers to not making judgments, giving advice, and getting rid of prejudices. Active listening generates connection and creates a bond of trust, and more fluid communication.
- Welcome: receiving the other with attention, pleasant place, relaxed and natural speech.
- Validation: we validate a feeling when we identify and verbalize it in a neutral way, making the person feel heard and understood, creating a collaborative environment. Validation is used not only to recognize positive feelings but also for moments of aggression and disrespect.
- Consideration of cultural differences: respecting the right to be different and reflecting on the potential positive interconnections provided by differences.

3.1.3 Advantages of Mediation as a Tool to Resolve Conflicts

Quickly resolve conflicts

Mediation respects the availability of the parties. The time invested to resolve the issue may only last a few days, depending on the pre-established agreement. The average

time of a claim through mediation is very short compared to taking the dispute to court. So, it becomes a good option to solve the demands quickly.

Effective control over the procedure

In mediation, the parties choose the mediator. Therefore, it is possible to analyze the mediator's qualifications and experiences beforehand. Therefore, there is a guarantee that the procedure will take place respecting the criteria and values valued by the parties.

Above all, there is no imposition of decision/judgment by the mediator, their role is to value and assist the parties in the composition of an agreement. When resolving a conflict through mediation, results not desired by the parties are removed.

Lower costs

First, the amount invested in the mediation process is predictable, the parties know what the total cost of the claim will be in advance, bringing more security to the parties and, above all, avoiding unexpected expenses.

Mediation can avoid and prevent new conflicts

Through appropriate techniques, the mediator is able to perceive conflicting points between the parties and restore communication and collaboration between them. Mediation seeks to reduce the emotional exhaustion caused to the parties during the procedure, consequently, the relationship between the parties is strengthened and the bonds of trust are renewed.

Process confidentiality

The right to privacy is guaranteed through mediation. In other words, confidentiality is maintained as far as the content of the demand is concerned, as well as the parts that comprise it. However, if it is the will of the individuals involved, the information can be disclosed, unlike legal proceedings, which are generally public.

3.2 What does the term 'elderly' mean?

The term elder has been used for centuries and comes from the noun Elder, which was considered a respected title. Many people, on the other hand, dislike the term 'elderly' because it connotes dependence and weakness.

Aging can be seen under three aspects: biological, psychological and social. The life expectancy of the world population has increased, due to several factors that directly influence this increase, such as: environmental sanitation services, food, violence, pollution, health services, education, etc. In other words, the increase in life expectancy is linked to the improvement of people's living conditions. Ten years ago, a 59-year-old person was considered elderly, today a 60-year-old person to be considered elderly depends on several factors. In most western countries, a person is considered elderly at the age of 65 to 70 years. It is at this age that most people retire and begin to receive some form of pension.

Troisième Âge, that is, *Third Age*, in English, was an expression created by the French gerontologist Jean-Auguste Huet, according to Haddad (1986), whose chronological age coincided with retirement, between the ages of 60 and 65. The term was first published in 1962 in the journal *Informations Sociales*. The expression appears in a French context of increase of the elderly population and that had to formulate a social policy focused on old age. This expression gains strength in the 70s of the 20th centuries with the creation of the Universities of the Third Age – *Universités Du Troisième Age*. The term "third age" appears to express new patterns of behaviour of a generation that is actively retiring and aging. Many people aged 65 and over are in good physical and mental health, actively participate in social activities and live independently.

Nobody escapes the aging process, many people face great challenges and difficulties in this process, decline in mental and physical health, reduced mobility, etc. When becoming aware of this stage of life, with difficulties and possibilities, the elderly need to believe in themselves, rediscover their identity, deal with the changes inherent to their age group and remain integrated into their social context, developing new interests and opportunities to continue learning with the new situations.

3. 2.1 Aging Process

Usually, the aging process can be defined in five main stages:

Independence: The person does not need help with activities of daily living, as he can perform almost all of them by himself. Even though mental and physical health may be declining, this decline does not affect a person's daily life. At this stage the person is usually between 60 and 70 years of age.

Interdependence: It may be that physical activity and mental health are deteriorating, making cognitive tasks and activities of daily living more stressful. There is a need for a caregiver to help her with activities of daily living, such as cooking, taking care of her appearance, driving, etc. People in their 70s and 80s are at this stage.

Dependence: A person is usually unable to handle their daily activities independently. According to ADA (American Diabetes Association) statistics, more than 50 percent of seniors aged 75 and over experience a disabling condition. At this stage, the vast majority of elderly people develop chronic diseases such as hypertension, arthritis, diabetes, or dementia and others suffer injuries or develop mobility, vision or hearing problems, seriously impairing their quality of life. Many reach this stage around the age of 70 onwards.

Crisis management and end of life: When reaching these final two stages of the aging process, people need care and assistance almost 24 hours a day, mainly because they suffer from various health problems such as respiratory disease, heart disease, loss of vision or hearing, dementia and mental disorders (the most common being depression). For this reason, most people at this stage stay in assisted living facilities or hospice care. Aging adults also suffer from a lack of respect and ageism in their communities and may have trouble finding a job, being refused travel insurance, receiving poor health care or experiencing substandard service in public places because of their age. Many aging adults may reach this stage in their late 70s, some may enter earlier, while others may find themselves in these late stages of aging much later.

3.3 Elderly Mediation

3.3.1 What is elderly mediation?

'Elder Mediation allows conflictual issues involving older people to be resolved with dignity and creativity.' (Brown & Marriott 2011, p.306)

Elderly mediation refers to any mediation in which life cycle events related to aging and death are addressed. It also includes issues of personal or medical care, finances, autonomy and independence, family issues, life, planning, decision making and communication that can divide the family in the near future. When communication becomes difficult and critical decision-making is delayed, families may need a skilled mediator to help them resolve issues that prevent them from moving forward.

Elderly mediation promotes dialogue for family decision-making. Mediation is private, confidential and completely voluntary. The mediator will facilitate a conversation between family members that will be intentional and focused and in which mediation participants will be encouraged to express their interests and concerns. During the mediation process, there will be informal meetings that will be held in places that meet the needs of the family, which can be in private homes, in the mediator's office or in homes for the elderly. The goals of mediation will be to: enable the family to create workable and mutually acceptable solutions to dispute issues and develop communication strategies to enable participants to work together to make important decisions in the future. The mediator needs to be aware of those issues unresolved for years can impact the mediation process, as well as being aware of the psychosocial and physical effects of aging and using this information to maximize the participation of the elderly and other participants in the mediation process. The knowledge acquired about the aging process can give the mediator awareness and sensitivity about what it is like to be elderly and the challenges of this phase of life. In the mediation process, participants, including the elderly, may present biases in relation to aging. The mediator must be aware of the social, generational and cultural biases surrounding this issue that can influence family attitudes and impact the mediation process. The mediator must use appropriate strategies to recognize prejudice and minimize its impact on the process.

In the mediation process, it is important to be aware of the factors that affect mediation ability, which concerns a person's ability to participate in mediation safely and effectively, i.e., whether the person has a cognitive disability, or whether any factors, for example. medication, depression, stress, etc. affect her abilities, preventing her from participating in or benefiting from mediation. The mediator does not have the power to decide whether a person has legal capacity to participate in the proceedings, the determination can only be made by a court. The mediator must be attentive so that he can identify whether the elderly person is suffering some type of abuse, as this situation affects the person's ability to speak freely, evaluate and make decisions about possible outcomes in the mediation process. In an abuse situation, the mediator has a responsibility to report it. In situations where competing ethical values are present, the mediator needs to analyze the benefits and risks of continuing or stopping the mediation process by verifying whether strategies exist to address or minimize the impacts of the dilemma. During the mediation process, the mediator needs to be aware of situations that put the elderly person at risk of losing their rights or benefits, recognize when the parties can benefit or if they need to consult a lawyer or specialist, ensuring that they receive the appropriate information for the situation. helping the parties in decision making. And more specifically, the mediation of the elderly aims to protect the rights and integrity of the elderly. Elderly mediators act as neutrals but expect families to consider ways to maximize their seniors' independence whenever possible. Mediation is inappropriate and cannot continue if the mediator finds that there is coercion, abuse or neglect.

3.3.2 Why do families choose mediation?

Mediation is a cooperative and non-adversarial process that allows family members to develop their own solutions, allowing satisfaction with the outcome to be quite high and solutions tend to be viable and lasting.

Certain family disputes reach the point of having already started legal proceedings or even threatening to start legal proceedings. By opting for mediation, families are able to keep their conflict out of court. When the conflict ends up in the courts, those involved lose control over the elaboration of the solution. When the decision is given by the court, it may

be that the parties are not satisfied with the result, as the judge will make the decision based solely on the interpretation of the applicable law.

Due to the contradictory nature of the litigation, the lawsuit will further damage the relationship between the family members. In contrast, in mediation, participants can control the process and the outcome, rather than leaving it to a lawyer or judge. Furthermore, because the parties control the process, mediation is less expensive than litigation, both in terms of time and money and emotion.

There are issues related to the elderly that need to be resolved, but are often avoided by the family, resulting in fewer choices, financial losses and emotional stress for the elderly and family members. Mediation is not just an alternative to litigation, mediation is effective and often more effective in that it allows the family to develop creative solutions to the problem in a way that a court cannot and is not able to do, as courts do not have of time or resources to explore options that meet the best interests of the elderly, preventing the family conflict from continuing.

In the mediation meeting, the mediator creates space for everyone to be heard and thus family ties can be strengthened, allowing the cause of the dispute to be addressed at a time when everyone is calm, thus enabling decision-making. These meetings often involve not just family members, but professionals such as attorneys, caregivers, social workers, geriatric care managers, and financial planners. These professionals are encouraged to participate because of their experience, which contributes a lot to the mediation process.

4. Data Analysis/Findings

In summary, it is noted that the principles of mediation are extremely important to define it, as they guide the procedure, granting the emancipatory character of Mediation. Although they have the same principles, there are different types of mediation, the three main schools are: *the Harvard School*, which emphasizes negotiation, with the mediator working as a facilitator of communication. It uses facilitative mediation, which adopts the development of its own techniques that facilitate negotiation with the support of an impartial third party. The focus of these techniques is to make the parties leave their initial positions and identify common interests, acting in a collaborative way; *narrative mediation*, also known as circular-narrative mediation, developed by Sara Cobb, gives the importance of

narrative in the construction of conflicts. The methodology consists of making the participants communicate through narratives about themselves, helping to resolve conflicts through a new narrative, and using the solutions chosen exclusively by the parties. In this way, those involved come to have a systemic view of the whole, focusing on people and circumstances, favoring interpersonal understanding through the deconstruction of their own versions of the facts, and *transformative mediation*, developed by Robert Alan Baruch Bush and Joseph F. Folger. It is based on communication, offering greater attention to relationships. It works with the fundamental concept of empowerment, understood as the enhancement of the protagonism of the parties, who perceive themselves responsible for both their actions and the solution of their conflicts. Its main objective is to modify the relationship of the parties, not having any pretension of agreement, focusing on the transformation of relationships.

Despite the existence of different models of mediation, all are based on the same principles, dialoguing with each other in different aspects, there is a common point between them, they all give importance to communication between the parties.

Each mediation model can be better applied in different cases, that is, for each type of conflict, the most appropriate model is applied. Due to the particularities, it is noted that the Harvard model can be better used for business conflicts, while conflicts that involve feelings and continued relationships will have better results through the narrative or transformative models. The mediator can develop his own “model”, adopting techniques and particularities from different schools, and applying them according to the demand of the case to be mediated. Considering that the main object of this work are family conflicts, the transformative model is adopted as the most appropriate method to mediate controversies of this nature. By definition, mediation was developed as an alternative to the adversarial process in dispute resolution, with the help of a trained mediator. It is argued that in mediation the powers are balanced for both parties in dispute, including when it comes to the elderly. However, according to Crampton (2013) critical legal and social science theorists argue that mediation can coerce parties to agree and marginalize vulnerable parties.

Mediation with elders has expanded from court cases to the broader field of elder mediation. When a family is in conflict, for example, when the elderly person wants to live in

their home, instead of going to a nursing home, to resolve this impasse, the family can request mediation services, instead of seeking an imposing solution in court. And so, mediation can empower the elderly and their families, who are looking for the best way to support this elderly person. Elderly mediation is recommended when the elderly has sufficient capacity to participate autonomously and rationally. In cases where the elderly is disabled, guardianship is recommended.

5. Discussion

Family mediation involving the elderly requires a sensitive and careful look from the mediator, but, at the same time, with the necessary impartiality to help all family members in this delicate moment. For this, it is important to keep in mind that in this context of mediation it is not just about solving financial, medical, assistance or ethical issues of children in relation to their parents, but mainly involves affective, human, and social relationships.

The feelings and affections that surround the family make relationships complex and mediation can deal with and facilitate the resolution of the dispute while preserving family ties. The more structured the family, the more influence it will have on the development of human beings as autonomous beings and responsible for their actions, especially if the family is based on respect for others, equality, peaceful coexistence, and protection of its members. The human being seeks in the family a place that can be free, happy, and fully realized. It is in the family that a person understands the temporal and material limits of coexistence. It is the first referential place of formation of the human personality, and it is there that the basic characteristics of personality, recognition, and affection of the individual are identified.

In this context, a family is a place conducive to the emergence of conflicts, requiring special treatment so that the relationships of those involved are preserved. Being one of the main cells that form society, in the family there are relationships with unique characteristics that differ from any other type of social relationship, which makes the conflicts arising from this bond extremely sensitive, involving deep issues of the human being and, therefore, being treated with care and attention when it comes to conflict resolution.

The ability to resolve conflicts depends a lot on communication between the parties, but it is not always possible to resolve a conflict directly with the other party, as there are people who fight back, and do not want to hear what the other has to say, break relationships, making it difficult to understanding. It is in this circumstance that mediation presents itself as an adequate method of conflict resolution, in which the family members involved are placed in dialogue with the help of a neutral and impartial mediator, aiming to expose the controversial issues to reach an agreement mutually acceptable. In mediation, family members have space to speak and listen, which induces cooperation, trust, and solidarity, leading to the resolution of differences, encouraging tolerance and responsibility.

In communication, when the spoken word is something different from what the body communicates, communication becomes confusing. Verbal and non-verbal communication must be in sync, otherwise, it will not convey credibility. Creating a relationship of empathy is also essential. Knowing how to put yourself in the other's shoes and get in tune with the other facilitates communication. And more, interpret what the other is feeling or thinking without judging or criticizing. Listening before speaking, knowing how to listen, not judging, showing real concern. Empathy is an essential tool in the care and delicacy with which family issues, for example, need to be dealt with so that people leave strong and recover from situations of dissatisfaction. The mediator will help the parties to use communication in a positive way, observing the parties' verbal and non-verbal language, trying to understand relevant information, encouraging them to express their emotions, and listening to each other.

In short, the concept brought by the *Mediation Act 2017*, considers that mediation is a technical activity carried out by an impartial third party, without decision-making power, which is chosen or accepted by the parties, which will help and encourage to identify or develop consensual solutions to the dispute.

The literature is quite unanimous in conceptualizing mediation as seen in the definitions mentioned above. The essence of the mediation concept, even with the different approaches to the methodology, contains the following elements: voluntary process; mediator as a disinterested third party without decision-making power; and the solution that is the responsibility of the parties in conflict. Being the basic principles that guide mediation, impartiality, voluntariness, and confidentiality.

By the principle of impartiality of the mediator, it is understood that during his performance, he must remain neutral, without his personal convictions interfering with his work, abstaining from taking sides.

Regarding confidentiality, the mediation process is confidential, and the mediator must ensure that the parties feel safe to bring questions and information, trusting that they will not leave that space. There is an exception to the principle of confidentiality when during the procedure there is a report of crime or violence against someone.

Conclusion

The objective of this research was to analyze the application of mediation in the resolution of conflicts in the family environment involving the elderly.

According to the United Nations, the number of people over the age of 60 will reach 2 billion people by 2050; this will represent a fifth of the world's population. The factors that explain population aging are linked to the fall in fertility and mortality rates, as well as the increase in people's average life expectancy.

In the aging process, people begin to face new challenges, such as depending on the assistance of children or other relatives. Many yearn to maintain independence and perform tasks and activities that they are no longer able to manage. Or, conversely, the elderly become increasingly frail and need more assistance than their children can provide. These situations can generate conflict between family members. When families face difficulties in talking, expressing feelings and opinions, they seek the help of a qualified mediator, in order to solve the problems.

Elderly mediation refers to any mediation in which events related to aging and death are addressed. It also includes issues of personal or medical care, finances, autonomy and independence, family issues, life, planning, decision making and communication that can divide the family in the near future.

It was noticed the importance of mediation since only the traditional judicial system has not been enough to give an effective response to family conflicts. Mediation is an alternative to the judiciary, because, as seen throughout this work, it is a much more

appropriate method to deal with certain types of conflicts, especially those of a family nature and its importance in causing real and transformative impacts for the disputes.

Thus, when talking specifically about the peculiarities of the relations family, the theoretical framework studied pointed out that they have their origin in love and affective involvement, which are structuring elements of families.

Family conflict involves closely related individuals and is unique in view of the great affective burden that permeates the subjects involved. Regardless of the type of family conflict, it concerns individuals who carry a history of feelings, which is potentiated, positively or negatively, by factors that add to this story over the course of the bond. Thus, it was possible to conclude that family conflict is different from any other conflict experienced by the subject, given the relevance and importance that the family plays for the individual.

Furthermore, the interdisciplinary approach used to deal with family relationships contributed to explain the complexity referred to about their conflicts.

The bias of psychology, anthropology, and sociology revealed how there is a differentiated need to work with issues involving family, especially in view of the perceptions sought in psychoanalysis, which explained the unconscious subjectivity that the subject carries within his family.

In addition, a single mediation procedure is capable of avoiding the origin of several procedural actions, since the different issues that would be dealt with in these multiple processes can be worked together during the mediation sessions.

In this sense, it is clear that the scope of mediation goes beyond the simple solution of the conflict. It seeks to re-establish communication between those involved, preventing new disputes and empowering the parties to feel like the protagonists of their issues. Mediation is truly a cultural paradigm shift, as families are still not used to the idea of actively participating in solving their problems.

Reflection

The motivation for deciding to write about mediation involving the elderly came mainly from my personal experience with my family, especially my elderly parents,

combined with my activity as a caregiver for the elderly, here in Ireland. In addition, I have a special affection for the elderly, I like to hear them talk about subjects and experiences from the time when they were young.

When starting the search for materials that could be used in the research, I could see that there was a lot of material, but I would need to manage the time for reading and research.

The choice of books and articles began with the search for the topic of mediation, as the idea was to start by analyzing the mediation process in general and then move on to the specific topic, the elderly.

Writing a dissertation is an arduous task. Sometimes I found myself walking in circles, and I couldn't progress to another stage of the research. I discovered that there is a time of day when I was more productive and focused on research development.

I also realized during the research that the specific bibliographic material, referring to the topic of mediation involving the elderly, as I reported in the topic of research limitations, is reduced. In the library, I picked up some very interesting books talking about mediation in general and family mediation, but I couldn't find any on this specific topic. In the bookstores of the WEB, I found some books with the mentioned theme, but with high prices.

Something that caught my attention was to see that there are several online courses on mediation involving the elderly. And I'm very interested in doing at least one of these.

Personal and family problems, during the period of preparation of this dissertation, prevented me from dedicating myself more in the preparation of it.

But, despite all this, it was worth researching, reading and knowing more about the mediation process and aroused a greater interest in studying issues involving the elderly.

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