The strategic use of caucus to facilitate parties' trust in mediators

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Abstract

Purpose – Mediators' impartiality and empathy are two classical factors in the parties' trust in mediators. However, mediators are often torn between being impartial and being empathetic. The aim of this paper is to explore this empirically.

Design/methodology/approach – This study empirically tests the strategic use of caucus to improve the interaction between impartiality and empathy by splitting them into two phases: impartiality in joint sessions and empathy in caucus.

Findings – The strategy did create significant synergy between impartiality and empathy with the main impact of reducing the time needed to reach an agreement.

Research limitations/implications – All research data come from workplace mediation and from the same organization. Although it can be reasonably postulated that the results can be generalized to other mediation settings, this remains to be proven.

Practical implications – When mediators use the trust caucus strategy, impartiality and empathy work better together and parties put more weight on empathy than on impartiality. While the use of the trust caucus does not increase the likelihood of reaching agreement, it does significantly decrease the time needed to conclude an agreement.

Originality/value – The study uses a quasi-experimental design to test its hypothesis. Furthermore, the study uses real mediation cases.

Keywords Mediation, Impartiality, Empathy, Trust, Caucus, Negotiating

Paper type Research paper

For a mediation to be successful, it is legitimate to think that trust in the mediator is required. First, trust is the point of departure from which the mediator can bring to bear his or her expertise. In fact, studies have shown that parties who perceived a mediator bias toward the other party were much less accepting of the mediator's actions (Welton and Pruitt, 1987). Second, trust is also important because it determines whether a party will feel comfortable with openly stating his or her needs in the context of mediation (McCarthy, 1985). As a result, parties who distrust the mediator may not provide access to important information (Butler, 1999).

Establishing a mediator's trustworthiness is a complex process, mainly because of triangulation (Augsburger, 1992). Mediators are by definition "go betweens" that link two disputing parties. Their role can be limited to simply purveying offers from one side to the other, or can be much more complex, as in restoring relationships. In all cases, mediators must have strong rapport with both parties to be efficient. As a result, mediators have to build trust with both parties. For a mediator, a difficult challenge is often to build trust with one party without losing the other party's trust in doing so.

This paper studies how parties' trust in the mediator is built, and how the strategic use of caucus can help the mediator build rapport with both parties more efficiently. More specifically, we measure the effect of a trust caucus strategy that was first taught to mediators in a training session. To assess our hypotheses, we use a quasi-experimental design with a large sample of real mediation cases, focusing on the parties' point-of-view.

Trust, impartiality and empathy
Conditions that lead to trust have been studied frequently in the literature. Some authors identified a single trustee characteristic that is responsible for trust (Strickland, 1958), whereas other others define as many as ten characteristics (Butler, 1991). The Mayer *et al.* (1995) integrative model of trust proposed three key characteristics of a trustee: ability, benevolence and integrity.

In mediation, ability is the group of mediator skills, competencies and characteristics that make parties' feel that the mediator can move the mediation process forward. Benevolence is the extent to which a mediator is believed to do good to parties. According to Mishra (1996), caring is a key component of benevolence. Consequently, mediators demonstrate benevolence when they show some kind of empathy toward parties. Integrity is related to the parties' perception that the mediator adheres to a set of principles that parties find acceptable. According to Butler (1991), fairness is a key component of integrity. Thus mediators show integrity when they demonstrate fairness, which is often associated with impartiality in mediation (Moore, 2003).

While all three factors are important, we will focus more specifically on impartiality and empathy in this paper because these two ingredients of trustworthiness are often difficult to combine. By empathizing with one party, the mediator risks being perceived as partial by the other (Goldberg, 2005). As a result, mediators are often torn between being impartial and being empathetic. How can one be empathetic without appearing to take sides?

Mediators' impartiality and empathy
Mediators' neutrality and impartiality are frequently cited components of a mediator's trustworthiness (Albin, 1993). In the mediation literature, there are three basic hypotheses that could explain how a party comes to perceive a mediator as impartial. First, justice and impartial management are similar concepts that have been identified in the literature (Zaheer *et al.*, 1998). In mediation, this refers to activities such as informing parties without showing any bias or even maintaining procedural equity in managing the process (Moore, 2003). Second, individuals are more likely to trust others if they believe the other person has nothing to gain from untrustworthy behavior (Deutsch, 1958). It is therefore important for mediators to show the parties that they have no interest in favoring one party over another. Furthermore, mediators have to show that they will not be rewarded as a function of the conflict's outcome. Third,

impartiality may also encompass the perception that the mediator is concerned with finding a just solution (Augsburger, 1992). This is similar to the concept of "balanced partiality" (Wehr and Lederach, 1991). With this concept of neutrality, a mediator has a bias toward finding a win-win solution (i.e. a balanced outcome in which every party gains something). Because of the importance of impartiality, we postulate that when mediators demonstrate impartiality, they gain parties' trust:

H1. Greater mediators impartiality is positively related to parties' trust.

It is almost a truism that mediator should be empathetic and impartial. For example, Christopher Honeyman (1988) argues that one of the five elements for successful mediator is empathy. For McKnight and Chervany (2001), the idea of empathy involves two key elements: goodwill and receptiveness. First, Pruitt and Lewis (1983) notes that, to feel at ease, parties must have the impression that the mediator has a positive image of them. Parties must somehow feel the mediator cares about them. Second, Augsburger (1992) says that parties must feel that the mediator cares about their concerns. It is only when parties feel a mediator is receptive to their interests that they will feel comfortable with the mediator's interventions such as querying for information or suggesting concessions. More specifically, Zubeck *et al.* (1992) found that empathy was important for establishing trust in mediation. Consequently, we postulate that mediators' empathy will be positively linked with parties' trust:

H2. Greater mediator empathy is positively related to parties' trust.

Challenge of rapport building in mediation
A key step in the mediation process occurs when the mediator builds a rapport with each party (i.e. when a mediator establishes his or her friendliness and trustworthiness). During this step, the mediator sets up a positive relationship with the disputants so that they have a sense of his or her "empathic concern" (Kressel, 1972). A good rapport contributes to successful mediation by facilitating mediator influence over the parties and makes them more committed to the mediation process (Kelman and Cohen, 1979).

However, building rapport in the context of a mediation can be quite tricky. According to Stephen Goldberg (2005), the mediator must tread carefully in his or her rapport building activities to avoid appearing to be sympathetic to the other. Moreover, according to Vallone *et al.* (1985), even equal sympathetic attention that is provided to both parties might result in both parties' selectively perceiving that the mediator was biased in favor of the other side. Consequently, while impartiality and empathy are core elements of parties' trust in their mediator, these two elements might not be compatible. We therefore postulate that they have a negative interaction in regard to establishing a mediators' trustworthiness:

H3. Mediators impartiality and empathy interact negatively to hinder trust.

Caucus as a tool to build rapport
The proposed negative interaction of impartiality and empathy is not unsolvable. In fact, Deborah Kolb (1985) proposed that using caucus with one party is an excellent strategy to promote rapport building free from scrutiny by the other party. According to Welton *et al.* (1988), because the other party is not present to see and hear the mediator, he or she can interact more intimately and warmly with the disputant without appearing partial.

This encourages increased rapport and sharing of information. This is congruent with the caveat that mediator should be empathic but should not show partiality in joint session (Desivilya and Rotem, 2008). As a result, we propose the systematic use of a caucus to split mediator demonstration of impartiality and empathy. We call the use of caucus to facilitate rapport building the trust caucus strategy.

More specifically, the trust caucus strategy proposes demonstrating impartiality in joint meetings while exhibiting empathy in caucus. The basic idea is that in private caucus, the mediator may show more empathy to the parties (Sherman, 2003). The strategy can be broadly described in two steps. First, in the joint session, they must learn to be more oriented toward impartial process management (even if it makes them appear colder). For example, they should stress parties' equal opportunity to voice their concerns. Second, in the caucus session, they must relate to parties' preoccupations (even if it makes them appear less impartial). For example, the mediator could summarize a party's concerns and say he or she understands that these points are important to the party.

The trust caucus strategy is proposed as a mediation loop within the mediation process. We are not suggesting that after the first joint session the mediator should proceed only with caucus. Instead, we are proposing that the mediator use a quick caucus to build trust early in the first joint session. After that short caucus, the mediator can proceed with joint meeting or further caucus depending on what is needed to move forward the resolution of the conflict.

It is interesting to note that the proposed strategy is in line with the finding of Welton *et al.* (1988) that showed that mediators exhibited more freedom to "violate" the neutrality norms during caucus session. With the trust caucus strategy, we are proposing using this natural mediator propensity as a systematic strategy to build trust. More specifically, we postulate that such a trust caucus strategy will create a positive interaction between impartiality and empathy:

H4. When a trust caucus strategy is used, mediator impartiality and empathy interact positively to build trust.

Trust caucus strategy and performance indicators
While our focus at this point is on how trust is built rather than how much trust is built, it is still important to link the use of a trust caucus strategy with some performance indicators. What would be the point of using the proposed strategy should it not improve mediation outcomes? On one hand, as shown with numerous classic studies, the most usual performance indicator in workplace mediation is whether or not an agreement was reached (Poitras and LeTareau, 2009). The time needed to reach an agreement is far less studied. Most often, time is used to assess how long a conflict has been going on before mediation starts (Wall and Lynn, 1993). Furthermore, when time is considered in terms of the time needed to reach agreement, it is mostly to compare mediation with other dispute resolution options such as arbitration and litigation (e.g. Emery *et al.*, 1991). However, time is an important performance indicator in a lot of mediation program evaluations. As a result, we have included both agreement and time needed to reach agreement in our research design.

With regard to the likelihood of reaching an agreement, studies on the dynamics of conflict (Rubin *et al.*, 1994; Lewicki and Wiethoff, 2000) clearly indicate that conflict resolution is strongly linked to trust. Yiu *et al.* (2006) found that, based on mediators' perception, the greater the degree of trust, the greater the probability that an agreement

would result from the dialogue. We therefore postulate that the use of a trust caucus strategy will increase the settlement rate:

H5. When a trust caucus strategy is used, the likelihood of reaching an agreement increases.

With regard to the time needed to reach an agreement, trust might reduce the time by facilitating access to key information. Parties' trust in their mediator is important because, without a trust relationship, the mediator may not have access to important information (Butler, 1999; Moore, 2003). As a result, trust is necessary for ensuring that critical information (underlying interest, potential concession, bottom line, etc.) is revealed, in order to move parties toward an agreement. Consequently, it would be logical to assume that a high level of trust would enable a mediator to mediate more efficiently (i.e. gain access to critical information), and thus speed up the mediation process. In fact, a previous research has suggested that trust-building techniques shorten the length of time needed to settle a dispute (Tak Wing and Wai Ying, 2009). Since the trust caucus strategy is likely to increase parties' trust and because trust is linked to the time needed to reach agreement, we postulate that the strategy will decrease the time needed to conclude an agreement:

H6. When a trust caucus strategy is used, the time needed to reach agreement is reduced.

Method
The study was conducted in partnership with the *Commission des normes du travail du Québec* (CNT). This organization's mission is to inform the public about matters surrounding the Labour Standards Act, supervise its application and receive complaints from employees. One of the organization's roles is to achieve agreement between employers and employees with respect to disputes relating to the application of this Act and its regulations. The organization examines grievances dealing with dismissals without cause, prohibited work practices and psychological harassment complaints. The mediation program has been around for 15 years and has an agreement rate varying from 70 to 80 percent, which is within the range of what is normally seen in the field (Boulle and Kelly, 1998).

Quasi-experimental design
A quasi-experimental design is used to assess the impact of the trust caucus strategy. This design was selected instead of an experimental design because we could not divide the mediation cases randomly among the different groups and had to comply with administrative procedures. Mediation cases are thus dealt with in the order in which they are added to the CNT's case load. For each experimental condition, cases are therefore distributed on an administrative basis (i.e. based on the order in which requests for mediation are filed) instead of a pure random distribution. According to the program coordinator, there was no reason to suspect any variation in type of cases across the three time periods. Moreover, there were no parties involves in multiple cases. Thus the assignment of subjects to groups meets the requirement of quasi-experimental design.

Given that the study compares different mediation cases for each experimental group, specifications with separate samples were used. Cases were mediated only once, so the logic is not one of repeated measurement. The unit of analysis is the parties'

perspective. In this design, the mediator is a variable that should be set as a constant. As a result, we made sure that it was the same pool of mediators that conducted the mediation over data collection period. Furthermore, mediators were invited to play a part in the experiment on the basis of two criteria: they had to have at least two years of experience as a mediator, and they had to have been mediating on a full-time basis for at least one year. These criteria were used to select mediators with a relatively stable level of experience. We wanted to avoid the learning curve of very novice mediators (i.e. improvement due to a rapid increase in mastery during the initial mediations in a person's career). As a result, we argue that the mediator variable is held constant in this experimental design. The only thing that will vary is the use or not of the Trust caucus strategy. Figure 1 illustrates the quasi-experimental design used in this study.

The experimental design unfolds in three phases. While it is the same pool of mediators that conduct mediation during the three phases, different cases are reported in each phase (i.e. this is not repeated measurement). The first two groups of mediations are conducted before training. An initial group of mediations is carried out at time O_1 (before training 1). Afterward, a second group of mediations is conducted at time O_2 (before training 2). Mediators are then trained to use the trust caucus strategy at time X (i.e. between time O_2 and O_3). The training lasts a full day: the intervention principles are explained and the strategy is demonstrated before the mediators practice the strategy through simulations. As described in the previous section, the core of the trust caucus strategy consists of an initial joint session emphasizing impartiality; and a follow-up caucus emphasizing empathy. Once training has been completed, a third group of mediations is conducted at time O_3 (after training). It is the only group of mediations conducted after training.

It is important to note that, at the end of the training, all mediators pledge to use the trust caucus strategy with each new case for the next five weeks (i.e. until the end of phase O_3). All mediators reported having respected their commitment to use the strategy and most mediators decided to adopt the strategy beyond the five-week period. Consequently, the trust caucus strategy was not used at time O_1 and O_2, but was used systematically at time O_3. We therefore expect negative interactions between a mediator's impartiality and empathy at time O_1 and O_2, and a positive interaction between these two predictors at time O_3. A shift in the interaction pattern at time O_3 is assumed to result from the use of the trust caucus strategy.

With respect to internal validity, according to Campbell and Stanley (1963), the selected quasi-experimental design controls the following threats: maturation, testing, statistical regression and selection. However, this design is not as efficient when it comes to controlling the effects of history and instrumentation. With respect to history, we made sure that all trainings, conferences and readings that could influence the mediators' performance were controlled. In fact, the training on the trust caucus strategy was the

NR O_1 (X)

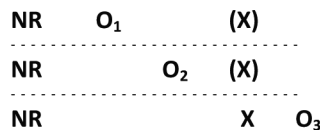NR O_2 (X)

NR   X O_3

Figure 1.
Pre- and post-test
quasi-experimental design
using separate samples

Notes: NR = non-random assignment; O = Observation;
X = Training; ··· = separate sample

Source: Campbell and Stanley (1963)

only learning activity offered during the period covering the five weeks before the training (O_2 – before training 2) and following the training (O_3 – after training). We thus mitigated the influence of circumstances external to the experiment. To control instrumentation bias, a confirmatory factor analysis of the rating scale was conducted to ensure the reliability of this instrument (Gerbing and Anderson, 1988).

As concerns external validity, note that this quasi-experimental design controls threats to the experiment's external validity (Campbell and Stanley, 1963), which are interaction effects, attrition of participants in a group, and reactive arrangements. The experiment's results may therefore be easier to generalize with respect to other mediation situations. In addition, the realism of the field experiment (in contrast to a laboratory experiment) is a strength of the study for external validity.

Sample
The response rate was 44 percent, which is acceptable for exploratory-type research (Saks *et al.*, 2000). A total of 251 valid questionnaires were kept for statistical analysis ($O_1 = 93$; $O_2 = 74$ and $O_3 = 84$). The sample is composed of employers (51 percent) and employees (49 percent). In terms of gender, 51 percent of the respondents were female and 49 percent were men. Nearly 61 percent have a high school education, 26 percent have an undergraduate university diploma and 13 percent have a graduate level university education. On average, the respondents are 41 years old, with 7 years of seniority in their organization. Most parties work full time (70 percent). The large majority of respondents work in the private sector (72 percent), while the rest work in the public sector. The average salary of respondents is CA\$46,031. There was no significant qualitative difference between groups (i.e. data collection periods).

Data collection
Participants are employees and employers involved in a workplace dispute mediated by a professional mediator from the *Commission des normes du travail du Québec* (CNT). Participants were recruited by 24 CNT mediators in eight regions of Quebec. The mediators' role in data collection was to serve as intermediaries between the researchers and parties by making sure the questionnaires were distributed at the end of the mediation according to a predetermined protocol to ensure the scientific validity of the data collection process. Once mediation was completed, mediators were required to inform the parties of the study. In order to avoid bias in selection on the part of the mediators, they had to systematically offer the option of participating to all parties involved in a new mediation case. Parties that agreed to participate responded individually to the questionnaire on site, then sealed it in the prepaid envelope provided to preserve the anonymity of their responses.

To protect the participants' anonymity, the CNT did not allow researchers to code the questionnaire; it was thus not possible to pair parties or link questionnaires with mediators. The data collection period was spread out over three two-month periods: September and October 2006 (O_1 – Before training 1), January and February 2006 (O_2 – Before training 2) and March and April 2006 (O_3 – After training).

Measurement scales
Three scales were developed to evaluate three specific dimensions of parties' trust in their mediators: the mediator's impartiality, the mediator's empathy and the party's general trust in the mediator. Impartiality is defined as giving both parties an equal chance to express themselves without favoring one party over the other. Empathy

means the mediator's general attitude toward the parties, such as warmth and showing consideration. General trust refers to the parties' general feeling regarding the mediator, rather than a specific aspect of trust.

Each scale included two items. For each statement, the parties indicated the degree to which they agreed with the statement, using a Likert-type scale of six points from "disagree strongly" (1) to "agree strongly" (6). The psychometric characteristics of the measurement scales were tested in three steps. First, the results of an exploratory factor analysis show an optimal structure with questions loading significantly only on a single scale (see Table I). Second, the results of a confirmatory factor analysis show a satisfactory construct validity ($p = 0.147$, RMSEA = 0.033, NFI = 0.99, CFI = 1.00, AGFI = 0.96). Finally, the degree of homogeneity of the scales was tested using the calculation of inter-item correlations. Results show satisfactory internal consistency for all scales: mediator's impartiality $r = 0.93$, mediator's empathy $r = 0.87$, party's trust in mediator $r = 0.86$.

In addition, parties had to indicate the outcome of the mediation in the questionnaire. Two outcomes were possible: agreement reached or mediation ended without agreement. Consequently, outcome is a binary variable in this research. The parties also had to indicate the approximate duration of their mediation. When the outcome was an agreement, we coded in minutes the time required to reach agreement. When the outcome was not an agreement, the time needed to reach agreement was kept blank. Therefore, only cases that ended in agreement would be used to compute the time needed to reach agreement. Finally, parties had to report their role in mediation (employee or employer). Furthermore, there might be significant difference between groups as to their reaction to the use of the trust caucus strategy by mediators.

Data analysis
The intergroup comparison embedded in a quasi-experimental design enabled us to assess the impact of the trust caucus strategy on key variables. The following linear regression procedures were used for all groups in our sample (before training 1, before training 2 and after training). First, a hierarchical linear regression analysis was used to

	Mediator's impartiality	Component Mediator's empathy	Parties' trust in mediator
(I1) The mediator did not demonstrate any partiality toward either side during the negotiation	0.937		
(I2) The mediator did not show any bias toward either party	0.827		
(E1) I felt that the mediator was compassionate		0.983	
(E2) I felt that the mediator understood me		0.731	
(T1) I felt very confident in the mediator			−0.968
(T2) I had the feeling that I could trust the mediator completely			−0.900

Notes: Extraction method: principal component analysis; Rotation method: Oblimin with Kaiser normalization; Factors loading below 0.30 are not shown because they are not significant

Table I.
Exploratory factor analysis

evaluate the influence of the two mediator characteristics (level of impartiality and empathy) on the parties' level of trust in their mediator while controlling for outcome (i.e. outcome entered first in the equation). We decided to control for outcome because we postulated that the result of a mediation could theoretically impact a party's evaluation of his or her mediator (Ross *et al.*, 2002). Second, we added mediators' impartiality and empathy as predictors of parties' trust in their mediator. Third, we added a regression equation including an interaction effect between the mediator's impartiality and empathy. The overall procedure enabled us to determine whether there is a significant interaction between mediators' impartiality and empathy for all groups. We predicted a negative interaction for the before training 1 and before training 2 groups (O_1 and O_2), but a positive interaction for the after training group (O_3).

Because trust, impartiality and empathy are highly correlated, we centered predictor variables to reduce the impact of multicollinearity. In addition, we splitted the cases according to role (employees and employers) in order to avoid using two evaluations of the same mediator in our sample. As a result, the regression procedure was used for both employers and employees separately. By splitting However, because dividing our sample reduced the statistical power of our analysis, we set the p value to $p < 0.10$ (one tailed p value).

Finally, we conducted two group comparisons between the three conditions (O_1, O_2 and O_3). First, to compare the settlement rate between groups, a Pearson Chi-Square test was used. Second, to compare time needed to reach agreement between the three conditions, an analysis of variance (ANOVA) test was used. The analysis was completed with multiple comparisons based on the Dunnett method, using the before training group 1 as the control. Contrary to regression analysis, we did not run separate group comparisons for employers and employees. This time, the subdivision of our sample reduced too dramatically the statistical power of our analysis. However, we set the p value to $p < 0.01$ to counteract the fact that pairs of disputants from the same mediation rated outcome and time and that this situation might magnify differences in outcome and time needed to reach agreement.

Results
Of the 251 questionnaires, 21 percent of the mediation cases did not result in an agreement, while 79 percent of the mediations resulted in an agreement between the parties. In general, mediators' impartiality ($\mu = 5.26$) and mediators' empathy ($\mu = 5.44$) were rated fairly high. Consequently, it is not surprising that parties' trust in their mediator ($\mu = 5.34$) was also rated high. Furthermore, there is no significant difference of mean for these three variables among the groups (O_1, O_2 and O_3). Finally, note that these three variables were all significantly correlated. However, the likelihood of reaching agreement was not correlated to any variable in the study. Table II highlights intercorrelations of the six variables of the study.

Linear regressions
Linear regression in all conditions (i.e. comparison, before training 2 and after training groups) resulted in significant models (see Tables III and IV). Furthermore, models accounted for about 85 percent of the variance, ranging from 80.6 to 91.6 percent. Consequently, models in each condition have both statistical and practical significance.

With regard to the role of mediators' impartiality and empathy as predictors of parties' trust in their mediator, *H1* and *H2* are both confirmed. For employers, mediators'

impartiality ($\beta_{O1} = 0.59$, $p < 0.001$; $\beta_{O2} = 0.794$, $p < 0.001$; $\beta_{O3} = 0.17$, $p < 0.10$) and empathy ($\beta_{O1} = 0.40$, $p < 0.001$; $\beta_{O2} = 0.17$, $p < 0.10$; $\beta_{O3} = 0.79$, $p < 0.001$) were significant predictors of parties' trust in the mediator in all conditions. For employees, mediators' impartiality ($\beta_{O1} = 0.69$, $p < 0.001$; $\beta_{O2} = 0.61$, $p < 0.001$; $\beta_{O3} = 0.23$, $p < 0.05$) and empathy ($\beta_{O1} = 0.30$, $p < 0.01$; $\beta_{O2} = 0.41$, $p < 0.001$; $\beta_{O3} = 0.67$, $p < 0.001$) were significant predictors of parties' trust in the mediator in all conditions.

Contrary to our prediction, there was no negative interaction between mediators' impartiality and empathy for the before training 1 and the before training 2 groups for employers ($\beta_{O1} = 0.13$, $p > 0.10$; $\beta_{O2} = 0.00$, $p > 0.10$) and employees ($\beta_{O1} = -0.10$, $p > 0.10$; $\beta_{O2} = 0.10$, $p > 0.10$). $H3$ is not confirmed. However, there was a positive interaction between impartiality and empathy for the after training groups for both employers ($\beta = 0.19$, $p < 0.05$) and employees ($\beta = 0.49$, $p < .001$). As a result, $H4$ is confirmed.

Inter-group comparisons

The cross tabulation of mediation outcomes and time needed to reach agreement with the three experimental groups highlights the significant and practical impact of the trust caucus strategy (see Table V). More specifically, the use of the trust caucus strategy did not significantly improve the agreement rate ($O_1 = 82$ percent, $O_2 = 77$ percent and $O_3 = 76$ percent, $p = 0.63$). As a result, $H5$ is not supported. However, there was a significant difference between groups in regard to the time needed to reach agreement ($F = 3.89$, $p = 0.005$). Furthermore, *post hoc* tests showed that there was not a significant difference between the before training 1 and the before training 2 groups ($\Delta\mu = 1.3$, $p = 0.922$) but that there was a significant difference for the after training group ($\Delta\mu = 21.5$, $p < 0.01$) with both before training groups. According to our research design, we therefore conclude that there is a significant difference in time needed to reach agreement when the trust caucus strategy is used. Consequently, $H6$ is supported.

Discussion

The findings of the study generate six points of discussion. Firstly, in all groups, mediators' impartiality and empathy are strong factors in determining parties' level of trust in their mediator. Moreover, impartiality and empathy account for on average 80 percent (ranging from 59 percent to 91 percent) of the variance in the parties' trust in the mediator. These results confirm the key role of impartiality and empathy in building the trust relationship between the mediator and parties.

Secondly, we were not able to support the predicted negative interaction ($H3$) between impartiality and empathy in the before training 1 and the before training 2

	Mean	SD	1	2	3	4	5
1. Outcome	0.72	–	–				
2. Parties' trust in mediator	5.34	0.83	0.13	(0.93)			
3. Mediator's impartiality	5.26	0.88	0.12	0.80[*]	(0.87)		
4. Mediator's empathy	5.44	0.91	0.09	0.83[*]	0.73[*]	(0.86)	
5. Time to reach an agreement (min.)	142.8	58.2	0.06	-0.10	-0.12	-0.09	–

Table II.
Descriptive statistics and correlations

Note: [*]Correlation is significant at the 0.01 level (2-tailed); Iter-item correlations are presented in the diagonal

	Before training 1 (O₁) n = 43			Before training 2 (O₂) n = 39			After training (O₃) n = 45		
	β	R^2	ΔR^2	β	R^2	ΔR^2	β	R^2	ΔR^2
Step 1: control variables									
Outcome	−0.012	0.000		−0.147	0.021		0.087	0.008	
Step 2: main effects									
Mediator's impartiality	0.593***			0.794***			0.168[a]		
Mediator's empathy	0.396***			0.167[a]			0.786***		
		0.844***			0.813***			0.783***	
Step 3: interaction									
Impartiality * Empathy	0.133			0.004			0.191*		
		0.851***	0.007		0.813***	0.000		0.806***	0.022*

Notes: *p < 0.05; **p < 0.01; ***p < 0.001; [a]p < .10

Table III.
Linear regression results
– Employers' trust in
mediator

	Before training 1 (O$_1$) $n = 50$			Before training 2 (O$_2$) $n = 35$			After training (O$_3$) $n = 39$		
	β	R^2	ΔR^2	β	R^2	ΔR^2	β	R^2	ΔR^2
Step 1: control variables									
Outcome	-0.013	0.000		0.020	0.000		0.361*	0.130*	
Step 2: main effects									
Mediator's impartiality	0.685***			0.605***			0.229*		
Mediator's empathy	0.301**	0.912***		0.411***	0.890***		0.669***	0.708***	
Step 3: interaction									
Impartiality * Empathy	-0.098	0.916***	0.004	0.103	0.895***	0.005	0.491***	0.828***	0.119***

Notes: *$p < 0.05$; **$p < 0.01$; ***$p < 0.001$

Table IV.
Linear regression results
– employees' trust in
mediator

groups. We propose two hypotheses could explain this result. The first is that our sample was too small to detect significant results. However, this hypothesis is not very compelling because the average interaction for all before training groups is only about 4 percent of the variance. It is very likely that there are no interactions between the two trust factors. The second is that mediators are probably already somewhere aware of the challenge of combining impartiality and empathy and are good at avoiding this pitfall of rapport building. In other words, mediators were able to avoid the interaction between the two factors. The third is that because mediators are very concerned with maintaining an aura of impartiality, perhaps they choose to be more impartial than empathetic. Mediators may have focus most of their effort on being impartial, thus showing very little empathy. By doing so, they avoided the negative interaction between the two factors. This hypothesis would be congruent with our results since the regression weights of impartiality is about twice stronger that the regression weights of empathy in the case mediated before the training. Since in all before training groups, the average regression weight of impartiality (mean $\beta = 0.669$) is about twice as large as the regression weight of empathy (mean $\beta = 0.319$), this hypothesis is probably the most likely explanation.

Thirdly, we did find a positive interaction between impartiality and empathy after the training. It seems that the trust caucus strategy does facilitate building rapport as well as maintaining the perception of the mediator as being fair. However, it is interesting to note that the interaction for employees ($\beta = 0.491$) is about 2.5 times higher than it is for employers ($\beta = 0.191$). Two hypotheses may explain this result. First, it is possible that employees are more negatively sensitive to "seeing" the mediator being empathetic to the employers. As a result, they "benefit" more from the use of the trust caucus strategy which prevents them from seeing mediators demonstrate that they care about the employers' concerns. The second hypothesis is that mediators are more empathetic to employees than they are to employers in caucus and thus create a greater impact. This would be congruent with the findings of Welton *et al.* (1988) who found that mediators usually give greater support in caucus to the side that originally filed the complaint.

Fourthly, we do observe a shift in regression weights between impartiality and empathy after the training. Before the training, the average regression weight of impartiality (mean $\beta = 0.669$) is about twice the regression weight of empathy (mean $b = 0.319$). After the training, the average regression weight of empathy (mean $b = 0.728$) is about 3.6 times higher than the average regression weight of impartiality (mean $\beta = 0.199$). Two hypotheses could explain this result. First, because there are fewer challenges to mediators' impartiality with the use of caucus, mediators focus more on empathy as a key to rapport building. Second, because mediators' impartiality is not the object of parties' scrutiny with the use of trust strategy, parties put more weight on the mediators' empathy in evaluating their trustworthiness. This hypothesis

Variable	Comparison group	Before training	After training	Level of significance
Agreement rate	81.7%	77.0%	76.2%	$p = 0.628$ ($X^2 = 0.932$)
Time to reach agreement (min.)	149.4 (59.3)	150.7 (54.2)	128.6 (54.2)	$p = 0.022^*$ (F = 3.89)

Notes: $^*p < 0.05$; $^{**}p < 0.01$; $^{***}p < 0.001$; Standard deviations are in parenthesis

Table V.
Intergroup comparisons

resonates with Mayer *et al.*'s (1995) proposition that empathy (benevolence) is eventually more important than impartiality (integrity) over time. Therefore, the trust caucus strategy would accelerate the process of putting more weight on empathy as a key component of trust.

Fifthly, we did not observe a significant increase in the likelihood of reaching an agreement when the trust caucus strategy was used. This result is congruent with the Weldon *et al.* (1992) findings that the use of caucus is not associated with an increase in the likelihood of reaching an agreement. The authors argue that, while the use of caucus has advantages, it also has disadvantages. They found that the use of caucus increases indirect hostility among parties (e.g. putting down the other, providing exaggerated negative information) and thus makes reaching an agreement harder. Thus, using a caucus strategy would not improve the likelihood of reaching an agreement because its disadvantages offset its advantages. A second hypothesis is that, while the trust caucus strategy does improve trust, it does not increase the likelihood of reaching an agreement because there is no linear relationship between the two variables. A recent study has found that there is a threshold relationship between trust and the likelihood of reaching an agreement (Stimec and Poitras, 2009). The study's result showed that, after a minimum level of trust is reached, any increase in trust does not translate into a higher settlement rate. A final explanation is that there might simply not be enough variation in trust levels to produce variation in agreement rates. Overall, it seems that the trust caucus strategy does not increase trust, but, as we postulated in the previous point, changes how trust is built.

Sixthly, we did observe a significant decrease in the time needed to reach agreement. It is surprising that the strategy reduces mediation time when it does not impact the likelihood of success. One hypothesis is that the trust caucus strategy does not improve the level of trust, but speeds up the trust building process. By adding a synergetic effect between impartiality and empathy, parties develop trust in their mediation more quickly. A second hypothesis is that by focusing more on empathy in caucus, mediators get deeper access to information. Welton *et al.* (1988) have found that parties provided more information in caucus than in joint session. It would be this deeper access to information that speeds up the mediation process. Because the shifts in regression weight between impartiality and empathy are more dramatic than the interactions between the two variables, the last hypothesis is the most likely.

Practical and theoretic implications

Our findings confirm what most mediators know intuitively, which is that using caucus to build trust is an effective strategy. When mediators use the trust caucus strategy, impartiality and empathy work better together and parties put more weight on empathy than on impartiality. While the use of the trust caucus does not increase the likelihood of reaching agreement, it does significantly decrease the time needed to conclude an agreement. One potential explanation is that by focusing on empathy, mediators gain access to key information more quickly, thus speeding up the mediation process.

The findings have two theoretic implications. First, while several authors have already postulated the key role of empathy in rapport building, this study goes one step further. The results suggest that empathy might ultimately be more important than impartiality in establishing mediators' trustworthiness. Second, the results show the importance of adding time needed to reach agreement as a performance indicator. If time had not been included in this study, we would have assumed that the trust caucus

strategy did not yield any improvement in performance. While outcome (agreement/no agreement) is the most classic performance indicator in mediation, it might be wise to include time needed to conclude an agreement as well.

Conclusion

Mediator impartiality and empathy are two classic factors in the trust relationship between mediator and parties. Unsurprisingly, this study confirmed the key role of these two factors. Although the theoretical antagonistic relationship between these two factors was not supported by our findings, we did find a synergetic relationship between the factors when impartiality and empathy are separated using a trust caucus strategy. Furthermore, the main practical advantage of this strategy was to reduce the time needed to reach agreement. However, the trust caucus strategy did not improve parties' trust in the mediator, nor did it improve the settlement rate. These findings have prompted us to hypothesize that the trust caucus strategy does not improve the level of trust, but rather speeds up the process of building a rapport between the mediator and parties.

Our study has three main limitations. First, all our data come from workplace mediation and from the same organization. Although we can reasonably postulate that the results can be generalized to other mediation settings, this remains to be proven. Second, it is important to note that the causal relationship between the trust caucus strategy and the time needed to conclude an agreement is only inferred. The use of caucus may possibly speed up the mediation process independent of its impact on the trust relationship. For example, using caucus might cut short unproductive conversation between parties at the beginning of mediation. Nevertheless, there was an interaction between impartiality and empathy when the trust caucus strategy was used and there was also a important shift in regression weight between the two variables. Third, trust, rapport, and impartiality are all subjective measures obtained from the same respondent. Hence a strong degree of common factor bias may have been introduced into the statistical results.

In future studies, it might be interesting to identify which mediating variable explains how parties' trust is linked to time required to conclude an agreement. One potential variable would be the mediator's access to critical information regarding the parties. Greater trust in a mediator means he or she has easier access to information to help guide parties toward a potential agreement. The faster a mediator gains the trust of parties, the faster he or she has access to information and the faster the mediation can be concluded.

References

Albin, C. (1993), "The role of fairness in negotiation", *Negotiation Journal*, Vol. 9 No. 3, pp. 223-44.

Augsburger, D.W. (1992), *Conflict Mediation Across Culture: Pathways and Patterns*, Westminster/John Knox Press, Louisville, KY.

Boulle, L. and Kelly, K.J. (1998), *Mediation: Principles, Process, Practice*, Butterworths Canada, Toronto.

Butler, J.K. (1991), "Toward understanding and measuring conditions of trust: evolution of a conditions of trust inventory", *Journal of Management*, Vol. 17, pp. 643-63.

Butler, J.K. (1999), "Trust expectations, information sharing, climate of trust and negotiation effectiveness and efficiency", *Group & Organization Management*, Vol. 24 No. 2, pp. 217-38.

Campbell, D.T. and Stanley, J.C. (1963), *Experimental and Quasi-Experimental Designs for Research*, Houghton Miffin Company, Boston, MA.

Desivilya, H. and Rotem, M.R. (2008), "Do mediators walk the talk?: a study of Israeli mediators", *Dispute Resolution Journal*, Vol. 63 No. 1, pp. 63-70.

Deutsch, M. (1958), "Trust and suspicion", *Journal of Conflict Resolution*, Vol. 2 No. 4, pp. 265-79.

Emery, R.E., Matthews, S.G. and Wyer, M.M. (1991), "Child custody mediation and litigation: further evidence on the differing views of mothers and fathers", *Journal of Consulting and Clinical Psychology*, Vol. 59 No. 3, pp. 410-8.

Gerbing, D.W. and Anderson, J.C. (1988), "An updated paradigm for scale development incorporating unidimensionality and its assessment", *Journal of Marketing Research*, Vol. 25 No. 2, pp. 186-92.

Goldberg, S.B. (2005), "The secrets of successful mediators", *Negotiation Journal*, Vol. 21 No. 3, pp. 365-76.

Honeyman, C. (1988), "Five elements of mediation", *Negotiation Journal*, Vol. 4 No. 2, pp. 149-52.

Kelman, H.C. and Cohen, S.P. (1979), "Reduction of international conflict: an interactional approach", in Austin, W.G. and Worchel, S. (Eds), *The Social Psychology of Intergroup Relation*, Brooks/Cole, Monterey, CA, pp. 288-303.

Kolb, D. (1985), "To be a mediator: expressive tactics in mediation", *Journal of Social Issues*, Vol. 41 No. 2, pp. 11-26.

Kressel, K. (1972), *Labor Mediation: An Exploratory Survey*, Association of Labor Mediation Agencies, Albany, NY.

Lewicki, R.J. and Wiethoff, C. (2000), "Trust, trust development, and trust repair", in Deutsch, M. and Coleman, P.C. (Eds), *The Handbook of Conflict Resolution: Theory and Practice*, Jossey-Bass Publishers, San Francisco, CA, pp. 86-107.

McCarthy, W. (1985), "The role of power and principle in getting to yes", *Negotiation Journal*, Vol. 2 No. 1, pp. 59-66.

McKnight, H.D. and Chervany, N.L. (2001), "Trust and distrust definitions: one bite at a time", in Falcone, R., Singh, M.P. and Tan, Y.H. (Eds), *Trust in Cyber-Societies*, Springer, New York, NY, pp. 27-54.

Mayer, R.C., Davis, J.H. and Schoorman, F.D. (1995), "An integrative model of organizational trust", *Academy of Management Review*, Vol. 20 No. 3, pp. 709-34.

Mishra, A.K. (1996), "Organizational response to crisis: the centrality of trust", in Kramer, R.M. and Tylers, T. (Eds), *Trust in Organizations*, Sage, Newbury Park, CA, pp. 261-87.

Moore, C.W. (2003), *The Mediation Process: Practical Strategies for Resolving Conflict*, 3rd ed., Jossey Bass, San Francisco, CA.

Poitras, J. and LeTareau, A. (2009), "Quantifying the quality of mediation agreements", *Negotiation and Conflict Management Research*, Vol. 2 No. 4, pp. 363-80.

Pruitt, D.G. and Lewis, S.A. (1983), "Achieving integrative agreements", in Bazerman, M. and Lewicki, R.J. (Eds), *Negotiation in Organizations*, Sage, Thousand Oaks, CA.

Ross, W.H., Brantmeier, C. and Ciriacks, T. (2002), "The impact of hybrid dispute-resolution procedures on constituent fairness judgments", *Journal of Applied Social Psychology*, Vol. 32 No. 6, pp. 1151-88.

Rubin, J.Z., Pruitt, D.G. and Kim, S.H. (1994), *Social Conflict: Escalation, Stalemate, and Settlement*, 2nd ed., McGraw-Hill, New York, NY.

Saks, A.M., Schmitt, N.W. and Kilmoski, R.J. (2000), *Research, Measurement, and Evaluation of Human Resources*, Scarborough, Nelson.

Sherman, M. (2003), "Mediation hype and hyperbole: how much should we believe?", *Dispute Resolution Journal*, Vol. 58 No. 3, pp. 43-51.

Stimec, A. and Poitras, J. (2009), "Building trust with parties: are mediators overdoing it?", *Conflict Resolution Quarterly*, Vol. 26 No. 3, pp. 317-31.

Strickland, L.H. (1958), "Surveillance and trust", *Journal of Personality*, Vol. 26, pp. 200-15.

Tak Wing, Y. and Wai Ying, L. (2009), "Efficacy of trust-building tactics in construction mediation", *Journal of Construction Engineering and Management*, Vol. 135 No. 8, pp. 683-9.

Vallone, R.P., Ross, L. and Lepper, M.R. (1985), "The hostile media phenomenon: biased perception and perception of media bias in coverage of the Beirut massacre", *Journal of Personality and Social Psychology*, Vol. 49, pp. 577-85.

Wall, J. and Lynn, A. (1993), "Mediation: a current review", *Journal of Conflict Resolution*, Vol. 37 No. 1, pp. 160-94.

Wehr, P. and Lederach, J.P. (1991), "Mediating conflict in central America", *Journal of Peace Research*, Vol. 28 No. 1, pp. 85-98.

Welton, G.L. and Pruitt, D.G. (1987), "The mediation process: the effect of mediator bias and disputant power", *Personality and Social Psychology Bulletin*, Vol. 13 No. 1, pp. 123-33.

Welton, G.L., Pruitt, D.G. and McGillicuddy, N.B. (1988), "The role of caucusing in community mediation", *Journal of Conflict Resolution*, Vol. 32 No. 1, pp. 181-202.

Yiu, T.W., Cheung, S.O. and Mok, F.M. (2006), "Logistic likelihood analysis of mediation outcome", *Journal of Construction Engineering and Management*, p. 1026.

Zaheer, A., McEvily, B. and Perrone, V. (1998), "Does trust matter? Exploring the effects of interorganizational and interpersonal trust on performance", *Organization Science*, Vol. 9 No. 2, pp. 141-59.

Zubeck, J., Pruitt, D., Peirce, R., McGillicuddy, N. and Syna, H. (1992), "Disputant and mediator behaviors affecting short-term success", *Journal of Conflict Resolution*, Vol. 36 No. 3, pp. 546-72.

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