



PARTNERS do BRASIL
Centro de Mudança e Democracia

Promoting mediation as an important aspect of establishing the Rule of Law

I. Problem Statement

Modern Mediation and other collaborative methods are still little known in Brazil, and since the general use of the expression “mediation” is quite wide, most lawyers believe they “already do it” in their Law Firms. When they start hearing about a method where a neutral third party facilitates the dialog between the parties, their general first impression is that they must fear this new “competition”.

II. How the Center Became Involved

A year ago, the Rio de Janeiro Chapter of the Brazilian Bar Association created a Mediation Commission with the mission of cultural change among lawyers. The Commission was tasked with educating lawyers in the benefits of collaborative methods, helping them grow their practice to include all conflict resolution methods that may be appropriate to their client needs, instead of looking at the Judiciary as the only option useful for their clients.

The Rio Bar organized courses and lectures, open to lawyers and non-lawyers, and taught their own staff to use Mediation in their assistance to disadvantaged communities, thus proving an example of the expansion of the legal practice.

The Brazil Center Director was the coordinator of all these actions.

III. Stakeholders

Key stakeholders included the Rio de Janeiro Chapter of the Brazilian Bar Association, and the professionals in and out of the Legal field that attended the Mediation and Non-Violent-Communication events and courses sponsored by the Bar and coordinated by the Brazil Center Director.

IV. Convening the Stakeholders

Lawyers were encouraged to participate in mediation courses during events organized and sponsored by the Bar, lectures at Law Firms and visits to the Court.

V. Processes Used

Prior to designing the courses and lectures, we interviewed more than 200 people on their level of knowledge and trust in Mediation (graphics below).

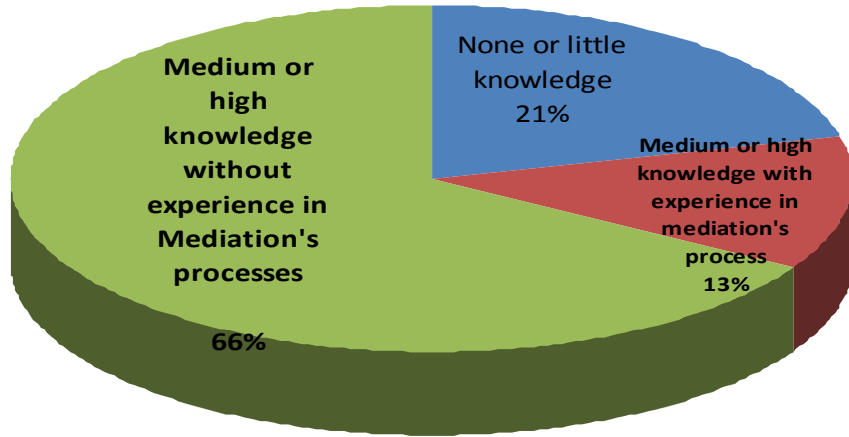
VI. The Driver of Change

The key element encouraging lawyers and other stakeholders to participate in the courses and take mediation seriously was the legitimacy of the Bar Association among our target group (lawyers) and the experience of Partners in Mediation processes and programs in different countries.

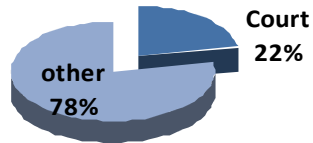
VII. Survey Results

When asked about the level of information on Mediation, the answers were divided among: (i) none or low; (ii) medium or (iii) high. Nonetheless, even among those who said they had a high level of information, very few already had practical experience in Mediation sessions (either as Mediators, parties or lawyers to the parties). It became evident that there is a great gap between the theoretical and the practical knowledge on Mediation. As a result, many interviewees declared that even believing that Mediation is a great idea in theory, they either cannot find Mediation services when they need it; or they can not picture their case being solved using Mediation. As the diagrams below show, there is an inverse proportionality between the knowledge of Mediation and the tendency to go to Court, and actual experience in Mediation plays a great role in reducing the tendency:

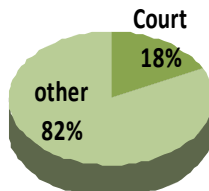
Level of knowledge in Mediation - interviews at the Rio Bar



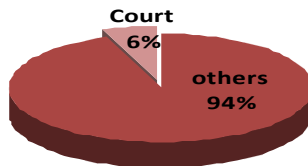
Primary method for conflict resolution



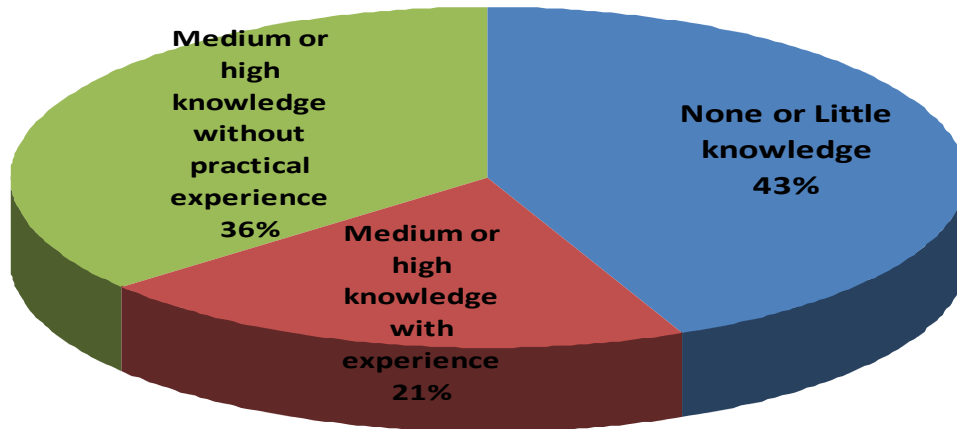
Primary method for conflict resolution



Primary method for conflict resolution



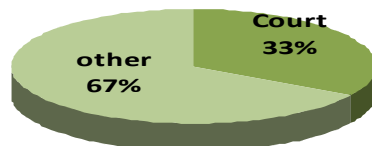
Level of knowledge in Mediation - interviews at the Court



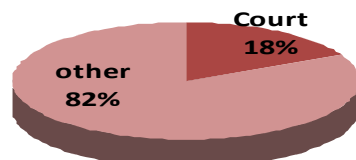
Primary method for conflict resolution



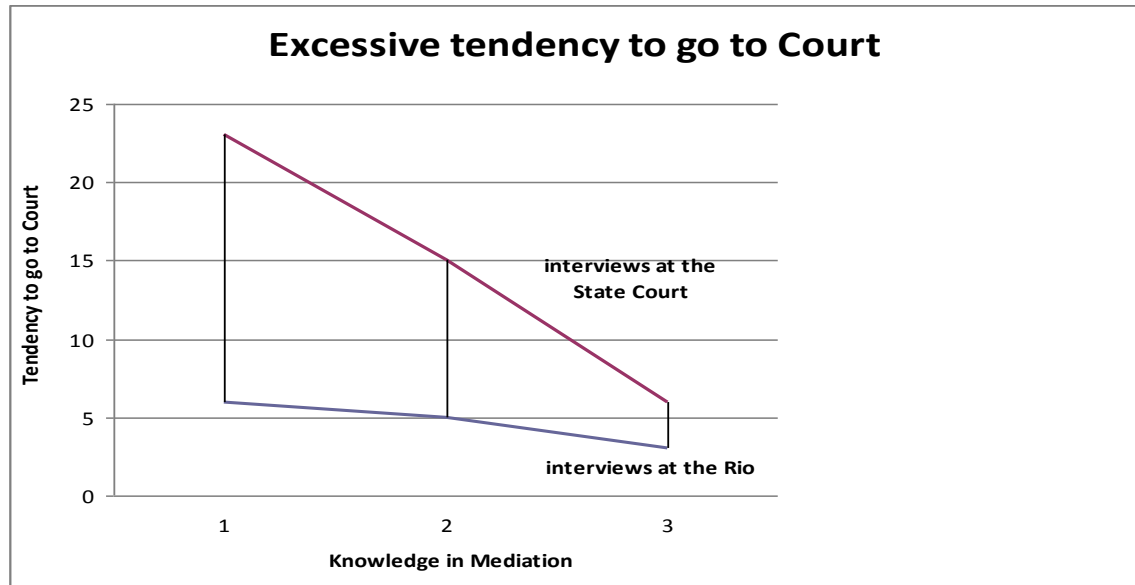
Primary method for conflict resolution



Primary method for conflict resolution



The graphics above also show that the tendency to use the Court as a primary method is much lower where the project is operating, which proves that the project has been effective.



VIII. Obstacles

- Lack of knowledge about ADR among lawyers;
- Lack of investment (work done mostly through volunteer work);
- Cultural issues related to "saving face," as using a collaborative method is often understood as "giving in";
- Lack of statutory mandate to mediate;
- Lack of statutory rules to protect Mediator confidentiality – especially in a Positive Law System;
- Difficulty in providing results that businesses can objectively evaluate when deciding what method to use;
- Most Mediation examples that people have heard of involve either family or neighborhood small claims cases. That doesn't motivate the best professionals to invest in Mediation training;
- Lack of experienced Mediators and established Mediation services (some people want to go for Mediation but do not know where to find it).

IX. Sustainability

The integration of mediation into laws governing court procedures makes the process much more legitimate and attractive for lawyers and their clients. In the Argentine example, mediation was made mandatory before access to Court, giving more people the chance to experience the benefits of the process and making them more likely to choose it thereafter.

People only have options when they have been exposed to different experiences. As the research above shows, having actual experience in Mediation make a very big difference when choosing a conflict resolution method.

X. Recommendations for donors and policy makers

Lessons learned are best understood and applied when they come from a legitimate voice. Therefore, messages geared to educate groups on new alternatives for conflict resolution should come with examples that are familiar to them and introduced by the hands of those who have lived through it.

In Brazil, the next step in making Mediation a widely-used, legitimate and practice is for the business sector to understand the value of Mediation.