

**“CHANGING OUR TUNE: A MUSIC-BASED APPROACH TO TEACHING,  
LEARNING, AND RESOLVING CONFLICT”**

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A DISSERTATION SUBMITTED TO  
THE FACULTY OF GRADUATE STUDIES  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF  
DOCTOR OF PHILOSOPHY

GRADUATE PROGRAM IN LAW  
YORK UNIVERSITY  
TORONTO, ONTARIO

March, 2015

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## ABSTRACT

The need for change within the legal profession and legal education is critical. To remain relevant and responsive to twenty-first century challenges and complexities the next generation of professionals must be creative, imaginative, and innovative thinkers. Emotional and social intelligence, the ability to collaboratively problem-solve, negotiate, and mediate complex conflict are essential skills needed for success particularly in increasingly settlement-oriented environments. Studies and reports have noted, however, that practitioners are lacking these key skills. How can these new perspectives and essential skills be taught and developed? This mixed methods research study involved five professional musicians and thirty-eight first year law school students. Data from musicians regarding effective collaborative music-making and most valued capacities for achieving optimal outcomes informed the design of a comparative teaching study that explored the effects of introducing a music-based metaphor and pedagogical approach to teaching, learning, and resolving conflict. The study provided insights into whether and how the musical ensemble metaphor might assist in shifting adversarial combative and competitive frames toward more collaborative, settlement-oriented mindsets and whether and how music-infused pedagogy might assist in developing enhanced skills and practice behaviours that lead to more desirable outcomes. Results from this initial study suggest that non-musicians in non-musical environments are able to learn from musical metaphors and concepts related to ensemble music-making and that such learning – cognitive, affective, and behavioural – translates into changed and more effective behaviour in practice. In simulated scenarios students exposed to the musical metaphor and other music-based learning appeared to outperform their colleagues not exposed to similar music-based learning. Engagement with music appears to reconnect people to their creative potential and lead them to see the efficacy of employing creative thinking in professional environments where analytical and critical thinking have generally been over-emphasized. There are indications that experiences with collaborative approaches to conflict have the potential to shift traditional norms and behaviours. This study and its results are of interest to those in the field of law, conflict resolution, those exploring arts-based teaching and learning in other professions, such as leadership and organizational behaviour, to music educators, and educators at all levels generally.

## **DEDICATION**

This work is dedicated to the human ensemble, wherein lies our collective creativity, our ability to meet our greatest challenges and achieve our highest potential – together.

## ACKNOWLEDGMENTS

This dissertation is, among other things, about ensemble collaboration and the power in the efforts of many to achieve the beauty of a singular one. As with all ensemble efforts, the goal cannot be reached without the contributions and participation of every member. It is those contributions I wish to acknowledge, without which this work could not have been done.

First and foremost I thank my mentor and friend, Dr. Nancy J. Adler, who gave me her tireless ear, wisdom, encouragement, and support every step of the way. To the wonderful musicians – Adi Braun, Ann Hampton Callaway, Barry Shiffman, Steve Wallace, and Dr. Mary-Lou Vetere – who so generously gave of their time to speak with me about their collaborative music-making experiences. These rich insights provided the underpinnings for the teaching study design. To the students who participated in the teaching project – without them there would be no dissertation. To Barry Shiffman who not only shared his own musical experiences with me but facilitated the workshop with the Cecilia String Quartet at the Royal Conservatory of Music so the students could meet, observe, and interact with the new metaphor-in-action. To the members of the Cecilia String Quartet – Min-Jeong Koh, Sarah Nematallah, Caitlin Boyle, and Rachel Desoer – who so generously and enthusiastically gave of their time and talents to provide the students with an unforgettable experience into the world of ensemble music-making. To Judge Harvey Brownstone, Alison McArthur, and Asif Quadir who took the time from their extremely busy schedules to speak with the students and share their personal insights and experiences of negotiation and mediation processes. To Dr. Annette Stevens who spent hours listening across the miles and helped me distill the volume of data and get to the heart of the matter. To Dr. Valerie Alia who shared her own doctoral experiences, her editorial wisdom and gave me much-

needed encouragement during the final writing phase. To my business partner, Joseph Sheridan, who made room so this work could happen, and to the good fairies at my law firm – Sonya Lazzer, Adrienne Yeates and Elena Korotkova – who kept everything in order while I was away and urged me to run to the finish line. To my wonderful friends (often neglected during this time) and to my amazing family – my sister, Laura Marsh, my brother David Ippolito, and especially my parents, Claudette and Ben Ippolito – who listened patiently to countless reports on the ups and down of the process and offered, as always, their love, support, and encouragement from start to finish. To the Sisters of St. Joseph in Cobourg, Ontario – Joan Driscoll, Alma Laval, Linda Gregg, Mary Rowell, Kathleen O’Keefe, and Helen Russell – who provided the sacred space, stillness, and the spiritual support for real insight to be born. To the Toronto Siddha Yoga sangham who gave their love and encouragement and for the wisdom of Swami Gurumayi Chidvilasanda whose words were a guiding mantra in this project – “Be present in the moment, Bring out the best in others, and Sing and Play with One Voice.” To my doctoral committee – Paul Emond for the many hours of conversations, the “So What?” rock, and the ultimate encouragement that things were “all good”, Shelley Gavigan for her care and thoughtful counsel, for believing in the teaching project and making it possible, and Michelle LeBaron for inspiring me to add my voice to the field of arts and conflict resolution and for pushing me to always achieve my personal best. To Fanny and Felix, the Persian cats, for sitting on my papers and on the computer, and distracting me when they knew I needed to take a break. And last but never least, to my beautiful, loving, supportive, and infinitely patient wife, Adreana Braun, who allowed this work to live with us day-in and day-out for the last five years – to her my eternal gratitude and love.

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## CHAPTER ONE - INTRODUCTION

“It is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change.”

(Charles Darwin)

### PREFACE

This dissertation is about “changing our tune” – the need to explore and adopt innovative and creative approaches to teaching, learning and resolving conflict. Albert Einstein stated: “We cannot solve problems by using the same kind of thinking we used when we created them.” In an increasingly complex and rapidly changing world, today more than ever we need new and more effective ways to deal with conflict and problem-solving, whether those conflicts and problems arise within our families, our workplaces, our classrooms, or our communities, on the street or in the stateroom.

Dispute resolution scholars and practitioners have long acknowledged the need for change and in the last fifty years have made enormous strides in developing processes and educational modalities responsive to twenty-first century challenges and complexities. In contrast, however, mainstream North American legal culture and legal education has lagged behind these advances, continuing for the most part to hold fast to the paramountcy of a rights-based adversarial framework and outmoded pedagogies.

The 2007 Carnegie Report on Legal Education (Sullivan, et al., 2007) and the 2014 Canadian Bar Association (CBA) Futures Report make it clear, however, that lawyers cannot afford to remain “stuck in the present, or worse still, mired in the past.” (CBA, 2014, p.66) The key to

remaining relevant in the future, the authors of the CBA report state (CBA, 2014, p. 6), is “innovation” which includes “new ideas about how lawyers are educated and trained”.

To the extent that the vanishing trial (Galanter, 2004) is a reality in the United States and Canada, and to the extent that traditional legal skills and behaviours are no longer as relevant today as they were in the past to delivering appropriate client-centered services, lawyers are being called upon to move toward more problem-solving and settlement-oriented frameworks (Macfarlane, 2008). While the need for this “new lawyer” appears to be inevitable, how to acquire the mindset and skills needed to embrace a settlement-oriented approach and to be successful in this emerging culture is another matter.

Julie Macfarlane (2008, p. 18) has noted the serious “skills gap” borne of a belief held by many legal professionals that “assuming the person of ‘Miss Helpful’, who takes on a friendly and helpful façade in mediation, will be sufficient”. As Macfarlane states “[...] there are complex and sophisticated skills involved in acting as a lawyer advocate in a settlement-oriented process and our current state of knowledge about these skills and how to enhance them is as yet quite underdeveloped”.

How, then, do we develop our knowledge of these skills and how to enhance them? Noting, as Lee Shulman (2005) states, that an inert pedagogy breeds an inert profession, the time is ripe for change. Building upon the work already started by international scholars and practitioners in the field of conflict resolution (Honeyman, Coben and De Palo, 2009, 2010; Ebner, Coben and Honeyman, 2012; Honeyman, Coben, and Wei-Min Lee, 2013), this dissertation offers an arts-

based methodology as an innovative approach in the teaching and learning of dispute resolution. Specifically, it proposes the use of a music-based metaphor – the ensemble – and music-based learning experiences to shift perceptions, cognitive frames, emotional responses and behaviour away from competitive positional bargaining and distributive approaches toward more collaborative, interest-based approaches to solving problems and resolving disputes.

Numerous articles and books stemming from conferences and workshops have provided compelling information about new approaches and directions, including arts-based methodologies (Honeyman, Coben and De Paolo, 2009, 2010; Ebner, Coben and Honeyman, 2012; Honeyman, Coben, and Wei-Min Lee, 2013; LeBaron, MacLeod and Acland, 2013; Barnowski, Del Mar, and Maharg, 2013; Barnowski and Del Mar, 2013). However, “evidence” of the efficacy of arts-based approaches as compared to conventional methods has, to my knowledge, not been presented in the legal context. This study provides initial results from such a comparative pedagogical study.

## **THE PURPOSE OF THE DISSERTATION AND RESEARCH QUESTION**

The research study compared two different pedagogical methods of teaching dispute resolution to first year law school students. The purpose of the study was to explore whether and how music<sup>1</sup> could enhance and transform individuals’ attitudes toward and abilities to address conflict

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<sup>1</sup> In this study, “music”, as further discussed in Chapter Five, takes the form of a collaborative music-based metaphor – the ensemble – in place of combative and competitive metaphors often associated with negotiation and dispute resolution. The ensemble model is not genre-specific or instrument-specific despite the fact that the students, as set out in Chapter Three, were exposed to a classical String Quartet. The ensemble could equally have been a choral group, a jazz combo, a drumming or chanting circle, or any other form of self-directed instrumental, vocal or mixed instrumental/vocal group. The genre of music is likewise irrelevant to both the research study’s framework and with respect to the type of music that could be made as part of the active music-making exercises described in Chapters Three and Four. The musicians interviewed in response to the first research question were a

situations. The study asked four questions related to the research purpose and was designed to explore:

- 1) key characteristics of effective collaborative music-making and capacities most valued by collaborative music-makers to achieve effective ensemble outcomes;
- 2) whether the negotiation and problem-solving skills and behaviours of ensemble music-making are learnable by adults who are not musicians;
- 3) whether such skills learned in a musical environment are transferrable to a non-musical environment in which there are complex conflictual situations; and if so
- 4) whether such practices, once learned, can change cognitive frames and affect, and thus lead to more effective behaviour and more desirable outcomes.

Both classes were introduced to collaborative metaphors for negotiation and problem-solving in place of more traditional competitive and combative metaphors. Group A was specifically introduced to the music-based metaphor “negotiation and problem-solving as ensemble music-making” and offered a set of music-based experiential exercises in learning dispute resolution skills and concepts. For comparison, Group B was offered an alternative, traditional set of non-music-based collaborative metaphors and experiences.

I predicted that teaching through music would enhance students’ learning and understanding of the concept of collaboration more so than conventional teaching methods, and that the ensemble metaphor had the potential to shift cognitive frames, emotional responses and behaviour toward a more collaborative mindset. I based this prediction on my own learning experiences, from my practice experiences as a lawyer and conflict resolution practitioner, and from my experiences as a musician, further elaborated below.

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mixed group of instrumentalists and vocalists (some of the musicians were both), from the classical, jazz, opera and cabaret musical communities.

## **RESEARCH APPROACH**

With the approval of the University's Ethics Committee, I embarked upon a two-part study. In the first phase of the study I conducted semi-structured interviews with five professional musicians from different musical genres. The purpose of these interviews was to obtain input related to key characteristics of effective collaborative music-making and capacities most valued by collaborative music-makers to achieve effective ensemble outcomes. The themes emerging from these interviews informed the design of the teaching study.

In the second phase of the study I taught two sections of a second term elective seminar in dispute resolution to thirty-eight first year law students at a Canadian law school. Each class met once weekly on Mondays and Wednesdays for a three-hour period for eleven weeks. I arbitrarily selected the Monday class of twenty-one students to receive the music-based teaching intervention. The Wednesday class of seventeen students received the non-arts-based pedagogical approach. The students in both classes were taught using the same text book and supplemental reading materials, all were given the same lectures and role-play assignments. Four specific music-based interventions were offered to the Monday class while the Wednesday class engaged in conventional non-music-based learning experiences. The experiential exercises in both classes culminated in simulated negotiations and problem-solving exercises. In addition to recording the outcomes of each exercise and negotiation, participants regularly recorded their reactions in reflection papers and questionnaires using both open-ended and close-ended questions. The observational and self-report qualitative and quantitative data was then analysed using a grounded theory-informed methodology.

## **MOTIVATIONS FOR THE RESEARCH**

My interest in arts-based teaching and learning stems from my background as a classical concert pianist. As a professional musician as well as a practising lawyer I have a unique vantage point from which to survey the conflict and disputing landscape. I have performed in both fields in a solo and a collaborative capacity. After more than twenty-five years in law, I have experienced firsthand the effects of traditional teaching modalities and the effects of socialization into a dominant culture adversarial mindset. I have seen and experienced how the adversarial approach to dispute resolution has impacted upon the way I do my work, how I interact with others, the resolution process choices I make and how I engage in problem-solving. Having also engaged intensively in post-graduate studies in alternative dispute resolution and in a variety of alternative dispute resolution training programs, I have also experienced the effectiveness, or lack thereof, of conventional negotiation and dispute resolution training in terms of its ability to introduce new concepts and shift established frames of mind, responses and behaviour. I have become increasingly dissatisfied with the inability of conventional teaching and training to bring about much-needed changes in dispute resolution behaviours and practice. I have also become increasingly concerned with the lack of responsiveness of our dispute resolution processes to address what is most important to clients.

My work in music, specifically in collaborative settings, led me to turn to the ensemble as a new metaphoric frame and to use music as a creative lens through which to reimagine the study and practice of dispute resolution. I believe that music holds significant potential to assist in developing more innovative, holistic and creative problem-solvers. All of these experiences and these beliefs have motivated this arts-based research study.

## **SIGNIFICANCE OF THE RESEARCH**

There has been a groundswell in arts-based activity related to conflict resolution and peacebuilding. At the same time, however, the arts are under-utilized in legal education. Their potential to enrich teaching and practice remains largely untapped. Whereas a wealth of studies demonstrate the positive impact of arts-based interventions on children (Catterall, 1998; Deasy, 2002; Rooney, 2004; Bamford, 2006; and Ruppert, 2006, among others), extensive and systematic research on adults is only now beginning to be conducted, particularly in the areas of business management and medicine (Berthoin Antal, 2009, 2011; Perry, et al., 2011). While some exploratory studies into the use of arts-based methods have been conducted in the context of workshops and training programs, my review of the existing literature has revealed no single comparative study related to arts-based teaching and learning in either legal education or dispute resolution teaching and training. It is my hope that this study and the further research that may flow from it will assist in filling this gap in the existing scholarship.

## **OUTLINE AND PREVIEW OF CHAPTERS**

Chapter Two is a review of the literature from several fields that inform and underpin the research study, namely, twenty-first century learning science, arts-based teaching and learning theory, legal pedagogy, arts-based initiatives in legal education generally, and in the teaching of negotiation and conflict resolution specifically.

Chapter Three is a step-by-step synopsis of the research process and a detailed summary of the data collection and analysis approach. In this chapter I discuss the multiple forms of data

collection, the process of data analysis for both the musician interviews that informed the course design, as well as the primary data gathered from the teaching study.

In Chapter Four, I set out the themes that emerged from the study, with extensive quotations from the students to ensure that their authentic voices are heard. Quantitative data is supplemented by the rich qualitative narratives gathered from the textual analysis of student responses.

Chapter Five provides the thematic analysis, interpretation and synthesis, and reiterates the initial study results. I also discuss the challenges of my role as researcher and teacher in this study as well as the limitations and strengths of the study.

In Chapter Six, I present the implications of the research for the field of legal and dispute resolution education. I recommend areas for future research with respect to arts-based pedagogy in legal education and in dispute resolution teaching, training, and practice, as well as the need to conduct further comparative and evaluative research using such approaches.



## **CHAPTER TWO – LITERATURE REVIEW**

### **PREFACE**

This chapter sets out a review of the literature relevant to the research study, its purpose and questions. I begin by providing an overview of the bodies of relevant literature and the sources I investigated, before providing a detailed critical review of those sources. The chapter concludes with a summary of the key themes from the relevant literature and how they, in turn, inform the research study design and methodology that follow in Chapter Three.

### **OVERVIEW AND SUMMARY OF THE LITERATURE**

To provide the contextual and theoretical underpinning for this study, I reviewed literature in the following fields: twenty-first century learning science concepts and objectives; arts-based teaching and learning in general and in the context of professional schools; traditional pedagogy and arts-based initiatives in legal education generally and in the teaching of negotiation and conflict resolution specifically, and; music as an arts-based teaching modality. Given the interdisciplinary nature of the study and the scope of the existing literature in each of these areas, this review is not intended to be exhaustive or comprehensive with respect to any one of these fields, rather, it is a cross-section of the scholarship most relevant to this study.

This review was ongoing throughout the data collection, analysis and synthesis phases of the study. I used multiple information sources, including books, dissertations, journals, periodical and Internet resources. I focused on literature primarily written within the last twenty years,

although the literature related to the evolution of law school education required a historical perspective of approximately the last century.

Teaching and training at all levels of education and with all ages of learners is taking place against a backdrop of learning objectives that have become more focused in the face of twenty-first century challenges and realities (Delors, et al., 1996). These complexities and realizations have brought to the fore the need to reexamine approaches to education to meet those challenges and to thrive in an uncertain future. These realizations have led to the development of learning theories that take into consideration an increasing awareness of the following: that globalization requires expanded capacities and sensitivity in order to engage across cultures in a myriad of ways, that the ability to work collaboratively and to problem-solve with creativity and imagination are essential skills, and that the development of emotional and empathetic capacities are as important as critical thinking skills (Delors, et al, 1996; Ananiadou and Claro, 2009; C21 Canada, 2012; Goleman and Senge, 2014, among others).

There has been increased interest in the use of interdisciplinary learning in education and practice. Interdisciplinarity is believed to be a means of gaining broader insight and understanding in a given field. It is also seen as a way to bring together the widest possible knowledge base in confronting problems, challenges and complexities (Rhoten, Mansilla, Chun and Klein, 2006). To develop a sense of felt experience as opposed to emphasizing only disembodied theoretical learning, the use of hands-on experiential modalities in education has also emerged over the last decade in particular in professional training and adult learning environments (Kolb and Kolb, 2005). There has also been an increase in teaching ethics within

the professions, in emphasizing individual leadership roles, and in placing a human face on those with whom people interact in their various capacities and professions.

One aspect of interdisciplinary experiential learning is the use of arts-based teaching and learning in non-arts fields. While scholarly writing on arts-based teaching and learning in various educational settings has proliferated over the past two decades, there has been a lack of empirical research related to the efficacy of these teaching and training initiatives; specifically, their ability to increase capacities, enrich cognitive understanding and behavioural responses, and improve outcomes in professional education and skills-based training courses. Most existing studies have been largely descriptive and anecdotal in nature, stemming from stand-alone experiences of single groups of participants in short-term educational engagements. Few studies have compared arts-based teaching methods to non-arts-based methods within a single subject between two or more classes. From my review of the literature no study of arts-based teaching and learning has been done to date within the field of legal education and conflict resolution training. This is the contribution that my research project seeks to provide.

## **TWENTY-FIRST CENTURY LEARNING SCIENCE CONCEPTS AND OBJECTIVES**

### ***Changing Learning Philosophies:***

To design effective twenty-first century learning experiences, it is critical that educators and trainers have an awareness and understanding of current learning theory and identified global learning goals and objectives.

Over the last century there has been increased emphasis in education on learning agendas, the clear enunciation of learning objectives, and the development of core competencies,<sup>2</sup> in order for learners to meet the economic, technological, social and political challenges and complexities of an increasingly interdependent global society (Delors, et al, 1996; United States Department of Education and Partnership for 21 Century Skills, 2002; Ananiadou and Claro, 2009; ArtsSmarts, 2010; Canadians for 21<sup>st</sup> Century Learning and Innovation, 2012). As these challenges and complexities differ in myriad ways from those of the past, education scholars and practitioners have similarly realized that the learning strategies and approaches of the past are no longer equal to the task of educating the next generation of global citizens. As a result, there has been an increased use of experiential learning modalities building on the work of such scholars as Dewey (1934, 1938), Kolb and Fry (1975), Kolb (1976; 1984), Rogers (1951; 1963) and Rogers and Freiberg (1994), as well as an increased focus on reflexivity building on the work of Boud (1985), Boud and Miller (1997) and Schön (1983; 1987; 1991), in particular, and on interdisciplinary learning at all levels of education.

Experiential learning,<sup>3</sup> part of a constructivist perspective, engages students as active not passive learners; students construct or create their own learning through personally meaningful, lived experiences (Itin, 1999). Such hands-on processes are believed to lead to deeper understanding and appreciation of phenomenon, linking past knowledge to present experience (see Dewey,

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<sup>2</sup> The British Columbia Ministry of Education (2013) defines core competencies as: “sets of intellectual, personal, and social and emotional proficiencies that all students need to develop in order to engage in deep learning and life-long learning.” Available at: <https://curriculum.gov.bc.ca/competencies> [Accessed on 06 September, 2014]

<sup>3</sup> According to M.K. Smith (2003), experiential learning suggests two different kinds of learning: learning by oneself and experiential education or experiential learning through programs structured by others. Smith, M. K. (2003). [Introduction to informal education](http://www.infed.org/i-intro.htm). *the encyclopedia of informal education*, <http://www.infed.org/i-intro.htm>. See also Association for Experiential Education (AEE): AEE definition of experiential education (Boulder, CO: Association of Experiential Education, 1994).

1938; Piaget, 1964; Vygotsky, 1978, among others). One of the main proponents of experiential learning, John Dewey (1938) believed that as everything occurs within a social environment, knowledge is socially constructed and therefore should be organized in real-life experiences to provide a context for information. Learners come to the learning table from their personal levels of capability and readiness; the goal of the learning experience is for the learner to be able to transfer the knowledge and skills acquired from the experience to a new situation. Teachers in experiential learning environments are facilitators of learning, tasked with organizing the content of and facilitating these learning experiences (Roberts, 2003, p. 9).

While there are other theories of learning, the experiential learning model has been “portrayed as an idealized learning cycle or spiral where the learner ‘touches all the bases’ – experience, reflecting, thinking and acting – in a recursive process that is responsive to the learning situation and what is being learned” (Mainemelis, Boyatzis and Kolb, 2002, p. 5). Mainemelis, Boyatzis and Kolb (2002, p. 6) describe this recursive learning cycle as a holistic, dynamic and adaptive process. The experiential learning model has been found to be an effective pedagogical method for achieving global learning objectives and developing the core competencies (McKenzie, 2013). Experiential learning has also become a focal learning perspective in legal education throughout North America in the wake of the 2007 Carnegie Report, “Educating Lawyers” (hereinafter “the Carnegie Report”) (Sullivan, et al., 2007). The American Bar Association has established the Alliance for Experiential Learning in Law and every major law school in North America has experiential-based programs, learning labs and clinics.<sup>4</sup>

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<sup>4</sup> See American Bar Association, “Alliance for Experiential Learning in Law”, a national initiative developed in response to the 2007 Carnegie Report:  
[http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/comments/201309\\_comment\\_ch\\_3\\_alliance\\_experiential\\_learning\\_law.authcheckd](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201309_comment_ch_3_alliance_experiential_learning_law.authcheckd)

In support of the notion that to be relevant and most effective students should create their own learning experiences, Carl Rogers (1951) maintained that learning can only be facilitated; another person cannot be taught directly. He further posited that for learning to take place, several core conditions needed to be present: learning material relevant to students; a non-threatening environment created by the teacher (particularly where assimilation of new materials that “would involve a change in the organization of self” is being encouraged); and an atmosphere in which students would have courage to explore new concepts and beliefs. Rogers (1951) maintained that teachers themselves must be open to reciprocal learning and act as interactive mentors guiding the learning process rather than acting as experts who tell, or impart the information to learners.

The concept of reciprocal learning accords with the twenty-first century learning agenda which redefines the relationship between teacher, student, and knowledge. The model of teacher as the possessor and imparter of knowledge and student as passive recipient of information has been replaced with a partnership approach. In this model, teacher and student learn from each other and experiences are learner-focussed (Kolb and Fry, 1975).<sup>5</sup>

Kolb and Fry (1975) developed the Experiential Learning Model (ELM) for use primarily with adult learners. This circular model is comprised of four elements (1) concrete experience (2)

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[am.pdf](#) and <http://www.northeastern.edu/law/experience/leadership/alliance.html>. Experiential Learning programs and curriculum content are part of websites for law schools including Yale, Harvard, Hofstra, Gonzaga, Georgetown, Albany, Case Western, UConn law, Northeastern University School of Law, NYU, NYLS, Loyola University Chicago, Colorado Law, Whittier Law School, Cal., University of Wisconsin, Duke, Boston, Notre Dame, Denver, and at Canadian law schools including Osgoode Hall Law School, Faculty of Law Queens University, Faculty of Law University of Toronto, Windsor, and University of British Columbia which announced the launch of its new Center For Experiential Learning in December, 2013.

<sup>5</sup> See also P. Friere (1972, p. 58) with respect to the “banking concept of education” in which “deposits” are made by teachers into the students’ minds.

observation of and reflection on that experience (3) formation of abstract concepts based upon the reflection, and (4) testing the new concepts. Although presented as a circle, Kolb and Fry stated that the model should be conceptualized as a continuous spiral in which the learning cycle can begin at any of the four points and is a process that continuously builds upon itself. Aligned with Dewey and Rogers, the ELM is based upon a concrete “here and now” experience to test ideas and incorporates the use of reflection as a way to change practices and theories. The model is structured to emphasize the developmental nature of learning and to assist in developing capacities related to all four elements of the model and the related learning styles that Kolb and Fry extracted from them.<sup>6</sup>

The opportunity for reflection has been identified as a key component of experiential learning. Numerous scholars, most notably Donald Schön (1983; 1987; 1991) and David Boud (1985; Boud and Miller, 1997), have explored the reflective element of experiential learning and its role as the transformational bridge between experience and learning.

Schön, in particular, studied reflection in the context of professional practice, and as such his work is particularly relevant to this study. Rather than being grounded in “technical-rationality”, a dominant paradigm that he stated was grounded in rigour not relevance, Schön proposed an alternative epistemology based on exploring and harvesting the knowledge of “artful doing” inherent in practice (Schön, 1983).

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<sup>6</sup> In response to criticism about the original Learning Style Inventory, namely, the psychometric properties of the measure, Kolb redesigned the inventory in 1985. Despite any continuing criticism, it remains widely used.

The concepts of “reflection-in-action” and “reflection-on-action” are central to Schön’s work. The former is the process of active reflection while engaged in doing – “thinking on one’s feet” (a form of improvisation) – and the latter, the process of reflection after an event, often documented through journaling or some form of recording or dialogue about the event with a mentor or supervisor.

In “reflection-in-action”, experience, feelings, and theory-in-use are simultaneously connected; this enables the testing of ideas and building of new understandings in the moment to inform action in a situation that is unfolding. In “reflection-on-action”, time is spent with the experience exploring why one acted as one did, what was happening in the encounter, and reflecting on all of its aspects. Through this process a set of questions and ideas are developed about activities and practice. Reflection “in” and “on” action enables a person to develop further responses and strategies to increase her “repertoire” for the future. Rather than being a set of established formulas or techniques, this “repertoire” of responses and strategies, gleaned from experience, form a unique collection of images, ideas, examples and actions that can be drawn upon in future situations. Both Schön and Dewey saw this learning outcome as central to reflective thought. By engaging with a situation in this manner it was Schön’s belief that an individual would be able to draw upon past experiences and his repertoire of responses to build theories and responses to fit the new situation (Schön, 1983).

Twenty-first century learning agendas, regardless of educational setting, are being constructed around learning platforms built on key “pillars of learning”. These pillars provide the foundations for developing skills related to “learning to know” (cognition), “learning to do”



(behaviour/experiential), “learning to live together” (social) and “learning to be” (existential) (Delors, et al., 1996; McKenzie, 2013).<sup>7</sup>

Within each of these areas, core competencies have been identified and their development held to be essential in order for learners to succeed in their fields. These core competencies are: creativity and innovation, critical thinking, problem-solving, the ability to work together collaboratively, effective communication including technological and digital proficiency, and cultural and ethical citizenship (Delors, et al., 1996).

While what constitutes a core competency is specific to each field, there appears nonetheless to be consistency with respect to what are regarded as twenty-first century “core” competencies regardless of educational environment or profession. Creativity and innovation, for example, appear to be a top priority in primary, secondary and tertiary education as well as in key professions such as law, medicine and management. Similarly, problem-solving, the ability to work together, and the development of what can best be described as a sense of humanistic consciousness, all rank as paramount twenty-first century capacities. With this in mind, it is clear that any effective learning experience must speak to these key constituents.

There has also been an increased recognition that diverse pedagogies should be utilized in order to engage students and to resonate with different learning styles and abilities. Twenty-first century educators are being encouraged to employ teaching modalities that make use of a variety of activities and draw from interdisciplinary sources. Developments in neuroscience with

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<sup>7</sup> See also 2007 Carnegie Report, discussed in more detail later in this chapter, which similarly sets out learning *foci*. These *foci* emphasize the development of the “whole learner” as opposed to over-emphasizing one competency – in the case of legal learning, critical thinking – at the expense of others.

respect to how we learn (Lee and Juan, 2013) combined with theories of multiple intelligences (Gardner, 1983; 1993; 2000) have led to an increased interest in learning “below the neck” and the connection of mind and body in the learning process (Damasio, 1994; Zull, 2002). The concept of “embodied” learning, “a somatic approach to education” has arisen more recently as a form of experiential learning that treats learning as a whole body experience (Kerka, 2002). Embodied learning, suggests Sandra Kerka (2002), “implies education that trusts individuals to learn from and listen to the information they are receiving from the interaction of self with the environment. Somatic or embodied knowing is experiential knowledge that involves senses, perceptions, and mind-body action and reaction”. There has also been a growing recognition that critical thinking must be balanced with the development of emotional and social intelligences for effective performance in any field (Coffield et al., 2004; Goleman, 1994, 2006; Goleman and Boyatzis, 2008; Boyatzis and Saatcioglu, 2008; Boyatzis, 2008a, 2008b; Goleman and Senge, 2014). As Nick Nissley (2010, p. 14) states “[r]ational analytical competencies are obviously valuable but insufficient by themselves.” Based on the work of such scholars as Boyatzis (2008a, 2008b; Boyatzis and Saatcioglu, 2008) and Goleman (1994, 2006; Goleman and Senge, 2014), emotional and social intelligence are now regarded as core competencies equal in importance to cognitive intelligence competency.

Since the 1990’s there has been a resurgence of interest in interdisciplinary learning, particularly at the post-secondary education level. Interdisciplinary learning has been defined as “a knowledge view and curriculum approach that consciously applies methodology and language from more than one discipline to examine a central theme, topic, issue, problem or work.” (Jacobs, 1989) As an educational tool, interdisciplinary learning answers the call for multiple

and diverse ways to respond to multiple and diverse learning styles and abilities. On a larger level, however, interdisciplinarity responds to the acknowledgment that the continued compartmentalization of knowledge limits our ability to respond to complex issues. Knowledge connection, as opposed to knowledge segregation, encourages knowledge expansion and opens possibilities for linkages between and across disciplines. The knowledge silos of the past have given way to the reclaiming of pre-Enlightenment notions that all knowledge is interconnected. Interdisciplinarity has become an important part of legal studies and conflict resolution studies as scholars and practitioners reach out in an attempt to gain greater understanding of and access to conflict and complex problem-solving.<sup>8</sup> However, within legal studies (more so than conflict resolution) there appears to remain a hierarchy of disciplinary blending that favours STEM<sup>9</sup> subjects as the “and” connections; in most cases the arts fields have yet to become part of these interdisciplinary pairings.

With creativity and innovation topping the list of core competencies, however, the use of the arts in interdisciplinary teaching and learning, presents as a logical fit. As will be discussed in more detail in the next section, arts-based teaching and learning has begun to proliferate at all levels of education throughout North America and Europe from primary to tertiary levels, as well as in professional schools, continuing education and specialized training programs. Within the law school environment, however, such pedagogical initiatives are in their infancy, while their potential to, as Alexander and LeBaron (2013, p. 555) suggest “supplement, complement, inspire

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<sup>8</sup> Numerous North American law schools advertise interdisciplinary programs on their websites. In 2011, the Graduate Law Students Association of McGill University in Montreal, Quebec, held a conference entitled “Amelioration of the Law Through Interdisciplinarity” exploring these themes. See also C. Menkel-Meadow (2007).

<sup>9</sup> STEM is an acronym for the fields of study in the categories of science, technology, engineering, and mathematics; its broader definition includes psychology and the social sciences.

and potentially transform experiential education, and take it to a new level of teaching and learning potential” remains largely untapped.

### **ARTS-BASED TEACHING AND LEARNING AS PART OF INTERDISCIPLINARY, EXPERIENTIAL LEARNING**

Ken Robinson (2006) asserts that “a creative intellect is essential to success in the twenty-first century knowledge economy.” As noted above, creativity and innovation are at the forefront of identified core competencies. These are concepts most commonly associated with the arts, therefore using the arts as a way to access and develop the creative, imaginative aspects of the learner makes sense.

Three main approaches to arts education are referred to in the literature: teaching “in” the arts, “about” the arts, and “through” the arts (ArtsSmarts, 2010, p. 8; Collins, 2011). Teaching “in” the arts includes hands-on art education focused on learning specific art skills and techniques.

Teaching “about” the arts includes exposure to the arts through performances, exhibits, and interaction with artists. Teaching “through” the arts emphasizes the use of arts, not as a separate subject or as a passive form of aesthetic appreciation, but as a primary pathway to learning concepts and skills in other areas.

Arts integration is a term that defines interdisciplinary pedagogy using all genres of arts – music, theatre, dance, and visual art – to facilitate learning of non-arts subjects. Arts integration blends core subjects with the arts to promote learning through various art mediums. It is believed that learning in one context assists learning in another through the concept of “transfer” (Catterall, 2002). In her study of the benefits of learning in and through the arts in K-12 public schools,

Collins (2011) reported findings related to transfer and the development of cognitive skills with linkages between visual arts instruction and reading readiness, dance and non-verbal reasoning, dramatic re-enactment and reading comprehension, and music instruction and spatial-temporal reasoning skills.

In the 1970s and 1980s scholars such as Harry Broudy (1972), Elliot Eisner (1972), Howard Gardner (1973), and Cassandra Whyte (1973) promoted the arts as a way to strengthen the imagination, develop a variety of cognitions, enhance creative problem-solving and decision-making, engage with material interactively and move learning beyond that which is written or read.

Eisner, in particular, has figured prominently in arts-based teaching and learning literature.<sup>10</sup> He criticized the “industrial model” of education that views schools as “effective and efficient manufacturing plants” where science is valued over art and a premium is put on measurable and testable outcomes in designing education programs (Eisner, 2004, p. 2). Referring to the ideas of Herbert Read (1944), Eisner argues for a new vision of education:

The aim of education ought to be conceived of as the preparation of artists. By the term artist neither he nor I mean necessarily painters and dancers, poets and playwrights. We mean individuals who have developed the ideas, the sensibilities, the skills, and the imagination to create work that is well proportioned, skillfully executed, and imaginative, regardless of the domain in which an individual works. The highest accolade we can confer upon someone is to say that he or she is an artist whether as a carpenter or a surgeon, a cook or an engineer, a physicist or a teacher. The fine arts have no monopoly on the artistic. (Eisner, 2004, p. 4)

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<sup>10</sup> Eisner died January 10, 2014.

Eisner (2004, p. 4) further argues that art evokes forms of thinking, “artistically rooted qualitative forms of intelligence”. Work in the arts, he suggests, teaches us ten lessons; among them, eight are particularly important to conflict resolution and negotiation (Eisner 2000, pp. 9-13).

First, paying attention to qualitative relationships is critical for creating a coherent and satisfying piece of work. It is also essential to achieving what Nelson Goodman (1978) refers to as “rightness of fit” between the elements, something that depends upon somatic experience.

Eisner (2000, p. 9) maintains that somatic experience is not restricted to the arts; “when fields of study and practices are treated as arts the somatic experience of relationships is a central basis for making judgments”. “Rightness”, he argues, does not mean “correctness” nor is it related to the rote application or following of rules. Arts involve “a cognitive use of emotions” in forming judgments.

Second, problems can have more than one solution and questions more than one answer. The arts embrace “diversity of outcome” and celebrate multiple perspectives. Creativity and ingenuity are sought as opposed to standardized solutions and uniform responses.

Third, purposes in complex forms of problem solving are seldom fixed, but change with circumstance and opportunity. As Eisner states,

Learning in the arts requires the ability and willingness to surrender to the unanticipated possibilities of the work as it unfolds. At its best, work in the arts is not a monologue delivered by the artist to the work, but a dialogue. It is a conversation with materials, a conversation punctuated with all of the surprises and uncertainty that really stimulating conversation makes possible. In the arts one looks for surprise, surprise that redefines goals; purposes are held flexibly.

The aim is more than impressing into a material what you already know, but discovering what you don't. (Eisner, 2000, p. 10)

Fourth, the limits of our language do not define the limits of our cognition. The arts are carriers of meaning and learning how to conduct rich and deep inquiries into their meaning gives us access to the complexities of a situation.

Fifth, work in the arts teaches us that small differences have large effect: “[t]he arts traffic in subtleties” (Eisner, 2000, p. 11). Eisner notes that paying attention to subtleties enables us to “explore the nuances of a visual field” as opposed to merely seeing to recognize. Developing such skills enables us to see the quality of and the relationships within visual images. The arts teach us not just to look and listen, but to see and hear on a deeper level, to explore auditory contours in music, movement in dance, and proportions in architectural form. Developing these skills requires us to slow down our processes and allow for connection with emotional response.<sup>11</sup>

Sixth, arts teach us to think through and within a material, since the different material and the choice of material with which we work produces different results. By working with the arts in this manner, we learn what it feels like to work within “the constraints and affordances” of a particular material, which Eisner (2000, p. 12) contends is a particularly sophisticated form of thinking.

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<sup>11</sup> Alexander and LeBaron (2013, p. 545) refer to Chinese calligraphy and tea rituals demonstrated and introduced during the Rethinking Negotiation Teaching conference in Beijing, 2011, which were used as ways to decelerate pace in order to connect with somatic responses and cultivate centeredness in personal life and conflict-related work.

Seventh, through the arts we learn a new form of discourse. By talking about art we are called upon to express things that are “ineffable”. As Eisner (2000, p. 13) maintains “the trick is to say what cannot be said” through the use of innuendo, connotation and metaphor. This requires us to “reach into [our] poetic capacities” in order to discuss and interpret what we see.

Finally, through experiences with art we learn to discover the range and variety of what we are capable of feeling. As Augusto Boal (1992, p. 49) states “[t]he whole body thinks, not just the brain.” Art offers mediums for embodied learning, opportunities to engage in “bottom-up” thinking not just “top-down” reasoning.

As noted above, these various “forms of thinking” are particularly relevant in conflict resolution and negotiation. Attention to detail, nuance, subtlety, and unspoken dimensions, depth of vision, creativity, flexibility, tools of expression, and attunement to the “constraints and affordances” of one’s materials, are keys to enhanced participation within conflict processes and with respect to quality of outcome.

The theories related to the benefits of arts-based teaching and learning have been put into practice through myriad education programs around the world, primarily in dealing with learners in grades K-12. Such programs within primary and secondary school systems include the implementation of whole-school arts-based activities focusing on a single project such as a mural, the creation of whole-school arts-based curricula or “arts immersion” schools, in-class programs involving “artists-in-the classroom” or an “artist-in-residence”, teacher skills development to enliven teaching methods, and as an instrument of comprehensive school reform,



to achieve school-wide change (see Rooney, 2004; ArtsSmarts, 2010, among others). The arts are also being used in schools as a way to reach and engage “special populations” of learners, such as those who struggle with academics or are disconnected or disengaged in some other way (Stack, 2007).<sup>12</sup>

Such programs and numerous others have been the subject of studies worldwide over the last fifteen years (Catterall et al., 1998; Fiske, 1999; Amdur Spitz and Associates, 2000; Deasy, 2002; Wolf, 2003; Meredith, 2003; DeMoss and Morris, 2005; Ruppert, 2006; Bamford, 2006). The research ranges from small case studies of five to six children, to broad-based national studies spanning years and involving thousands of participants. Common themes include measurable academic achievement; affective and cognitive benefits; improved student behaviour, attitudes and motivation; engagement of low-achieving and at-risk students; positive effects of arts, in particular music, on students’ neurobiology; and the value of arts education as a separate area of study (see Rooney, 2004; Stack, 2007; ArtsSmarts, 2010).

In their work on “Critical Links” and elsewhere, Winner and Hetland (2002) caution that although the connections created through arts-based teaching and learning are real, in their

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<sup>12</sup> In Canada, organizations such as ArtsSmarts (<http://www.artssmarts.ca>) and the Royal Conservatory of Music’s Learning Through The Arts (LTTA) (<http://learning.rcmusic.ca/ltta>) work in conjunction with the public schools to create arts-integrated programs or whole-school curricula. In the United States, the Leonard Bernstein Center for Learning’s “Artful Learning Model” is endorsed by the New American Schools as a model of comprehensive school reform. Teacher and artist training programs in arts-based modalities are offered through organizations like LTTA and the Kennedy Center’s “Changing Education Through the Arts” (CETA) (<http://www.kennedy-center.org/education/ceta/>). South Carolina’s ABC (“Arts in Basic Curriculum”) Project (<http://www2.winthrop.edu/abc/>) is an example of a statewide collaborative initiative whose mission is to ensure quality, comprehensive arts education from pre-school through to college level. Project Zero (<http://www.pz.gse.harvard.edu/research.php>), an educational research group at Harvard’s Graduate School of Education, explores how children and adults learn in and through the arts in a variety of environments. Project Zero has initiated and studied numerous arts-based programs since its creation in 1967 in an effort to gain more demonstrable knowledge on the subject.

opinion a definitive causal link between arts and academic achievement cannot be established. This has been an area of contention between researchers in the area of arts-based education. Winner and Hetland (2002) submit, however, that the inherent value of the arts, absent any such claims to improved test scores, should suffice as a justification for inclusion in school curricula. The Bamford Report (2006) noted other shortcomings in existing arts education research, pointing out, primarily, a lack of longitudinal studies and quantitative rigour in research analysis.

The arts education literature makes it clear that arts-based teaching and learning holds many benefits for learners (Project Zero, Harvard Graduate School, 2003; Rooney, 2004). The promise of increased academic performance, however, should not be the sole justification for arts integrated learning (Rooney, 2004). As Eisner (2000) maintains, the arts provide a way to view the world through an aesthetic framework, one that enables learners to understand, judge and compare the qualities of various aspects of the world around them and comprehend the complex relationships among them. This is particularly relevant to the study of complex fields such as law and conflict resolution. Experimenting with different media allows students to make decisions, problem-solve, and think in different ways (Sullivan, et al., 2007). Scholarship in arts-based teaching and learning has supported the conclusion that art and aesthetic experience adds richness and depth to learning and instruction, providing enhanced modes of communication, expression and perception (Winner and Hetland, 2000; 2001).

Critical skills in law and conflict resolution include the ability to engage in complex analysis, to approach problem-solving and decision-making with creativity and imagination, and to effectively and artfully communicate. Finding ways to teach these skills is part of the new law

school mandate<sup>13</sup> and a task to which arts-based teaching and learning appears to be particularly suited.

## **ARTS-BASED LEARNING IN PROFESSIONAL SCHOOLS**

Over the last thirty years the business world has increasingly turned to the arts in the hopes of developing creative capacities to encourage innovation in all aspects of corporate life, from leadership strategies, to product design, to employee performance (Nissley, 2002, 2008, 2010; Darso, 2004; Berthoin Antal, 2009, 2011).

Scholars in the field of business management and leadership development have begun to study the use of arts-based practices in the workplace and arts-based teaching and learning within its professional institutions and training programs. A growing body of research has emerged related to these experiential practices and educational programs (Nissley, 2002, 2008, 2010; Darso, 2004; Katz-Buonincontro, 2005; Adler, 2006, 2010; Gallos, 2009; Taylor and Ladkin, 2009; Schuijma, 2009; Sutherland, 2013). Arts-based programs are now situated within some of the most prestigious schools of management in the world (Amundson, 2011).

Nissley (2008) comprehensively identifies the research-based and practice-based scholarship that has emerged in management education, as well as the vehicles that enable this arts-based learning – conferences, institutions, communities of practice and formal management education programming. He notes that arts-based intersections have emerged as a result of a growing

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<sup>13</sup> Since the release of the 2007 Carnegie Report on Law School Education law schools have enlarged their curriculums to include emphasis on the development of skills that have been recognized as important for twenty-first century practice. The recent Canada Bar Association Futures Report (2014) includes specific recommendations related to New Models for Legal Education, including multidisciplinary education (“Law without walls”), and Problem Solving in the Practising World (Recommendations #15 and #16).

disillusionment in management education with traditional norms of teaching and the under-emphasis of the creative skills needed to respond to challenge in a rapidly changing and complex global environment (Nissley, 2008).

Similar concerns and objectives motivating a new approach to teaching and learning in primary and secondary schools have motivated people in the business world to seek out alternatives to out-dated or limited teaching modalities. As Anne Cunliffe (2002, p. 35) states, management education, in continuing to emphasize a normative approach to teaching and learning that is based on the systematic application of decontextualized theories and techniques, “fails to consider that practitioners deal with ill-defined, unique, emotive and complex issues”. To address the increasing “disenchantment with traditional [...] means of development and practice” (Sutherland, 2013, p. 25) management schools have also turned to arts-based methodologies to improve business students’, managers’ and leaders’ abilities to work effectively within the increasingly complex realities of the twenty-first century world (Amundson, 2011).

As Joan Gallos (2009, p. 191) summarizes with respect to the use of arts in management education, such arts-based teaching modalities “offer unique avenues for learning about the fundamental complexities of human nature and of modern organizational life; engender an openness and engagement in the learning process that facilitates deep cognitive, socio-emotional, and behavioural growth; and foster creativity and the complex skills development that are increasingly important for innovation and contemporary organizational leadership.”

Management education has recognized the need to develop artistic sensibilities and aesthetic ways of knowing in order to approach practice from a more creative perspective. In Adler's (Amundson, 2011, p. 10) view, "[t]omorrow's leaders must borrow from the spontaneity, adaptability, inventiveness, and collaboration of the artist to tackle rapidly evolving and unpredictable problems."

Just as the arts education literature struggles with the issue of producing empirical data to explain the "how" and "why" of arts-based educational interventions (Bamford, 2006) the management education literature faces the same challenge. In an effort to address this issue and suggest a research agenda, Taylor and Ladkin (2009, p. 56) put forward four distinct processes underpinning arts-based methods: (1) *skills transfer* – the development of artistic skills that can be applied in another setting; (2) *projective technique* – using artistic output "to reveal inner thoughts and feeling" not necessarily "accessible through more conventional developmental modes"; (3) *illustration of essence* – the ability to "apprehend" through art "the "essence" of a concept, situation, or tacit knowledge [...] revealing depths and connection that more propositional and linear developmental orientations cannot"; and (4) *making* – actual engagement with art-making for a personal reflective experiential purpose. They offer examples of each of these four processes in different settings: medical students being taught theatre skills to increase clinical empathy, managers building 3-dimensional representations of their organizational strategies using LEGO blocks, armed forces personnel watching the movie "Twelve O'Clock High" to illustrate leadership lessons, and MBA students taking art classes to enhance creativity (Taylor and Ladkin, 2009, p. 56).

As noted in Taylor and Ladkin's example of skills transfer, schools of management are not the only professional schools that have recognized the power of arts to enhance learning and assist in developing more sophisticated skills to achieve better results and better serve clientele. Medical schools are also employing arts-based teaching and learning models in their curricula (Rodenauser, 2004). As of 2004, twenty-six of the 125 public and private medical schools in the United States reported the use of mandatory arts-based courses, with another forty-three offering arts-based elective courses (Rodenauser, 2004, p.234). These programs integrate literature and creative writing, visual arts (including film), performing arts (including dance), and music, with clinical skills development. The goals of these courses include improving learners' visual diagnostic skills (Dolev, Friedlaender and Braverman, 2001; Reilly, Ring and Duke, 2005), communication, observation and interpretation skills (Bardes, Gillers and Herman, 2001; Shapiro, Rucker and Beck, 2006; Elder et al., 2006; Naghshineh, et al., 2008), cultivating cultural sensitivity (Boisaudin and Winkler, 2000; Bhugra, 2003), pattern recognition skills (Shapiro, Rucker and Beck, 2006; Naghshineh, et al., 2008), teambuilding and collaboration (Shapiro, Rucker and Beck, 2006; Naghshineh, et al., 2008; Schaff, Isken and Tager, 2011), and providing a space for reflection, contemplation, and insight (Schaff, Isken and Tager, 2011; Gaufberg and Williams, 2011). These programs have been the subject of several studies since 2001, including the first quantitative studies in 2008 and 2010, on the effects and effectiveness of such arts-based teaching and learning modalities (Naghshineh, et al., 2008; Klugman, Peel and Beckmann-Mendez, 2011).

These arts-based programs run the gamut from single session workshops to full-term structured courses and involve collaboration between clinicians and art educators in the classroom and at art

galleries and museums. The first reports on formal arts observation training (“FAOT”) and visual thinking strategies (“VTS”) emerged in 2001 from Yale School of Medicine and from Weill Cornell Medical School. These programs involved studying portraiture and specific representational works of art. As these programs expanded at various other schools, landscapes and contemporary or non-representational art were added. Other mixed arts interventions, including dance, music, and drama, were also used as both active (creative) and passive (appreciative) teaching modalities.

The various studies set out in the literature have all suggested that arts interventions can have positive effects on student well-being, attitudes, observation, interpretation and collaborative meaning-making skills, communication skills, and the cultivation of empathy. A common finding in the literature, however, as with other arts education programs in primary and secondary schools and in corporate training, is that these programs lack an evaluative component, and moreover, the evaluations that have been done are largely descriptive and anecdotal in nature. Several qualitative studies have been conducted using surveys, questionnaires and journaling, as well as post-course follow-up interventions (Rodenauser, 2004 and Naghshineh, et al., 2008). In 2008 and 2010, two quantitative studies were published. The 2008 study by Naghshineh and her colleagues at Harvard Medical and Dental School is the most comprehensive quantitative study to date. It examined an eight-session program in diagnostics training entitled “Training the Eye: Improving the Art of Physical Diagnosis” and compared two groups of pre-clinical students; one group instructed using an arts-based program, the other using a non-arts-based program of study. The results indicated increased “visual literacy” in relation to

diagnostic skills in the students who participated in the arts-based group (Naghshineh, et al., 2008, p.996).

The literature regarding arts-based interventions in medical schools indicates that the strongest evidence base regarding positive outcomes relates, at present, to their use in fostering diagnostic observation skills. The existing studies indicate that such skills are clearly affected by these programs. Further studies applying more rigorous methodology are still needed, to evaluate the effects of such programs in other areas where attitudes, behaviour and other technical skills are being affected by such arts-based training (Perry, et al., 2011).

Evaluation and measurement challenges extend to many arts-based initiatives and have been the focus of recent discussion at various academic and community arts conferences<sup>14</sup> and in research reports evaluating artistic interventions in organizations and in peacebuilding efforts (Berthoin Antal, 2009, 2011; Bergh and Sloboda, 2010).

## **THE LAW SCHOOL EXPERIENCE**

***“Signature Pedagogy”*** (Shulman, 2005)

Despite their use in other professional education settings, arts-based teaching and learning practices are largely absent from law school and from continuing legal education training. A smattering of one-off “improv” theatre courses<sup>15</sup> and public speaking courses<sup>16</sup> can be found in

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<sup>14</sup> Such conferences include the SocArts - Music and Conflict Transformation Symposium, College of Social Sciences and International Studies, University of Exeter, England, held in May, 2012, and Spectres of Evaluation, University of Melbourne and Footscray Community Arts Centre, Australia, held in February, 2014.

<sup>15</sup> See Osgoode Hall Law School, Professional Development Court: Improv(ed) Legal Skills – Improvisation Workshop for Lawyers, November 28, 2012; American Association for Justice, Improv for Lawyers Seminar,



continuing legal education and legal conference programming. With few exceptions, however, a connection between the arts and legal education and its potential to increase creative capacities and improve skills development has only arisen most notably within the last five years.<sup>17</sup>

The world of arts and the world of law (as well as business) appear to be diametrically opposed. The world of arts focuses on inspiration, imagination, creativity and paradox, while the world of law focuses on rationality, fact-finding in pursuit of a single truth, the application of rules and efficient processes. However, realizations that the world of tomorrow is not the world of yesterday, and the skills needed to succeed in the complex, change-driven world of today and tomorrow, require those very things that the arts focus on – imagination, creativity, spontaneity, flexibility and adaptability – have led many tradition-based professions to turn to the arts for help (see Pink, 2003, 2006; Austin and Devin, 2003; Adler, 2006, 2010, 2011, 2012; Adler and Hansen, 2012).

Legal education has been slow to change in any respect since its “signature pedagogy” – the case method model taught using the so-called “Socratic method” – was introduced and implemented over 140 years ago by Christopher Columbus Langdell at Harvard (Stevens, 1983). The case method is the core of law school’s traditional teaching and learning model. It combines conceptions of legal reasoning and legal doctrine with a pedagogical technique (Feinman, 1997,

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Continuing Legal Education, November 12, 2012: Article in Lawyers Weekly USA October, 2002: Improv Training Can Improve your Trial Skills by Amy Johnson Conner

<sup>16</sup> John Plank (“A Commanding Presence”) is a frequent Law Society of Upper Canada (Ontario) speaker (see: <http://www.commandingpresence.com/site/>).

<sup>17</sup> Osgoode Hall Law School offered an annual Artist-in-Residence Fellowship commencing in 2013 (see <http://www.osgoode.yorku.ca/about/art-in-the-school/>). The use of arts and artistic approaches in law school is not to be confused with the use of arts and artistic approaches in conflict resolution training and practice. Scholars and practitioners in the field of conflict resolution and peacebuilding have been exploring and utilizing such modalities for several decades.

p. 476). As Lee Shulman (2005, p. 52) states a “signature pedagogy” is an approach to teaching and learning that is unique to a particular profession. He identifies three professions with such “signature pedagogies”: law, medicine, and engineering.

Educating for a profession requires students to learn to think, perform, and act with integrity according to the norms and culture of that profession (Shulman, 2005, p. 52). Professional education takes place in an academic context, in the practice apprenticeship programs that follow, and once engaged in practice itself through experience and continuing – often mandatory – professional education. Law school education has been identified as overly focussing on the single aspect of learning to “think like a lawyer”, at the expense of developing practice skills and ethical training (Sullivan, et al., 2007; Macfarlane, 2008). According to the 2007 Carnegie Report on legal education (which studied Canadian as well as American law schools) this focus on narrow training in legal reasoning was historically a way to standardize and “purify” the bar. It also acted and continues to act as a form of intense “socialization” into a very particular mindset. Scholars have grappled for decades with a definition of what it means to “think like a lawyer”; in response, Jay Feinman states simply:

“Thinking like a lawyer” includes a few distinct skills, and nothing more. These skills include, first, the acquisition of a legal vocabulary, including the particular meaning, of common words such as “intent”, the meaning of distinctive legal terms, such as “remitter”, and the meaning of legal concepts, such as the elements of a cause of action for negligence. Second is an understanding of legal rule systems and the ability to situate problems within the systems and manipulate the systems; what is a contracts case, what is a torts case, and how can a lawyer move between the systems. Third is the ability to read and use judicial opinion, statutes, and regulations. Particularly important is the ability to generate broad and narrow holdings of cases and to employ techniques of statutory interpretation. Fourth is an understanding of the systematic nature of legal argumentation and of the recurrent categories of arguments and their use. Legal argument consists of repeated argumentative moves of which the lawyer must be aware; for example, the argument that no liability should be imposed without fault is met with the

argument that as between two innocents, the one who causes the harm must pay. Beyond this, it is interesting, as an intellectual matter, to see how the skills are applied in different contexts; but the particular skills and that interesting study are all there is to doctrinal analysis... There is nothing unique or mysterious about legal reasoning. Like analysis in other disciplines, it consists of relatively identifiable elements, and nothing more. (Feinman, 1997, p. 478)

Traditional legal education trained law students primarily in the skill of doctrinal analysis. This was in keeping with a corresponding vision of the purpose of law school and legal identity. That vision, however, is changing, and lawyering is being recognized as encompassing a full range of skills and values (Menkel-Meadow, 1999, 2000, 2001; Macfarlane, 2008). This expanded vision of the purpose of law school and lawyering has led to an expansion of teaching methods to include more clinical training, scholarship opportunities to write and publish, expanded course offerings and more hands-on teaching modalities. The literature references set out below indicate a move toward the “new” law school beginning in the early 1980s and culminating in the late 1990s; however, the curriculum developments in line with an expanded vision of legal education beyond traditional teaching have been fairly recent phenomena.

Despite these changes and this expansion, the case method and “Socratic questioning” pedagogy have held what James Eagar (1996, p. 390) refers to as “near-total dominance” in legal education. While there are benefits and detriments noted in the literature with respect to the use of both the case method and “Socratic questioning”, Eagar notes that the dominance of the case method tradition has limited the pedagogical choices instructors make in teaching law. Not only do law professors often lack information, experience, and training regarding alternative pedagogical methods, the need to seriously consider any other pedagogical method, for the most part, has not entered their minds (Eagar, 1996). As Robert McKay (1985, p. 494) asserts, “legal

education has been caught up in a virtual lock-step of conformity since Christopher Columbus Langdell established the case method at Harvard in 1870”.

A number of scholars have identified reasons for the lack of innovation in legal education (see Scordato, 1990; Woodhouse, 1993; Thomas, 2000; Macfarlane, 2008, among others). In the past, law teachers have not received formal training in education and as a result tend to fall back on the same methods by which they were taught (Eagar, p. 394). As Alice Thomas (2000, p. 61) states “[t]hat maxim [“if it ain't broke, don't fix it”] translated into the idea that because the Socratic method worked for me, it should also work for my students, and because lecturing worked for me, it should also work for them too.” New faculty also tend to accept the pedagogical approaches being used by their more experienced colleagues (Moskovitz, 1992, p. 241; Eagar, 1996, p. 394). Further, the emphasis on research by faculty as opposed to teaching is another explanation for a failure to develop alternative pedagogical methods (Moskovitz, 1992; Thomas, 2000, p. 92). As Martin Scordato (1990, pp. 375-376) states: “[b]ecause the dualist model [of teacher and scholar] creates incentives for law school teachers to minimize investment in classroom teaching, it has a powerfully negative impact on the pedagogical structure of law school courses. Barbara Woodhouse (1993, p. 1993) notes that “time spent on developing pedagogy is fast becoming the professor’s *pro bono* work – something extra, done for love, and in the face of formidable institutional disincentives.”

The use of the case method and Socratic questioning as pedagogy have been criticized from a number of perspectives (Stevens, 1983, pp. 51-72). The case method focuses on analysis of appellate court decisions. This situates legal analysis in the somewhat rarified air of the court of

appeal. At that level of proceeding the “messiness” and human face of disputes that occurs in a court of first instance has been largely extracted from the process. As such, students are not required to deal with the emotional, psychological, and other difficult human issues involved in “real-world” conflict. Once students have deemed such issues “irrelevant” and become indifferent or de-sensitized to analysis and inquiry at this level it becomes difficult for them to later re-animate that aspect of their person in order to deal appropriately and effectively with such issues in practice (Sullivan, et al., 2007). As Karl Llewellyn asserts:

It is not easy thus to turn humans beings into lawyers. Neither is it safe. For a mere legal machine is a social danger. Indeed, a mere legal machine is not even a good lawyer. It lacks insight and judgment. It lacks the power to draw into hunching that body of intangibles that lie in the social experience. Nonetheless, it is an almost impossible process to achieve the technique without sacrificing some humanity first. Hence, as rapidly as we may, we shall first cut under all the attributes of *homo*, though the *sapiens* we shall then duly endeavor to develop will, we hope, regain the *homo*. (Llewellyn, 1930, p. 116)

Seeking to engage students in only rational analysis is not sufficient. In the view of scholars like Susan Williams (1992, p. 1575), analysis must also produce questions that seek emotional responses, like empathy and moral outrage, “because knowledge creation occurs through all of these capacities.” Williams, among others, encourages the presence of emotions in the classroom, as they “can function as windows through which we can glimpse reality as seen from the perspective of a social position radically different from our own” (Williams, 1992, p. 1575).

Many scholars have long regarded the Socratic method as something that engenders negative feelings (Woodhouse, 1993, p. 92), produces an atmosphere of anxiety and is bullying, belittling, and humiliating to students (Lovell Banks, 1988, p. 141; Guinier, 1994, pp. 45-47; Davis and Steinglass, 1997, p. 272; Thiemann, 1998, p. 21). Whether intentional or unintentional, these

results are contrary to learning theory. Echoing the philosophy of Carl Rogers (1951) with respect to the importance of a supportive learning environment, critics of the Socratic method state that if a learner “feels bad all the time no meaningful learning can ever occur (Thomas, 2000, p. 92).” The Socratic method has been referred to as a “guess what I’m thinking” (Rhode, 1993, p. 1555) or “hide-the-ball” teaching approach (Weaver, 1991, p. 579), one that “intentionally adds obscurity or artificial teacher-based complexity to the doctrine and legal reasoning skills presented” (Delaney, 1991, p. 1358). The premise upon which the pedagogy is built is contrary to the tenets of effective learning theory. Moreover, given that the literature from learning science makes it clear that students learn best in a supportive learner-focussed environment the Socratic method is largely “teacher-centered” as opposed to “student-centered” learning. Advocates of the method suggest that it provides “real-legal-world” context to the learning (Guinier, 1994, p. 21). Practitioners do not, as a rule, teach core doctrinal courses and most non-practising law professors have little or no “real-legal-world” experience on which to draw. As such, these simulations of alleged “real-legal-world” behaviours risk becoming parodies of “real-legal-world” encounters. At the same time, such confrontational pedagogical methods perpetuate and normalize negative images of lawyers as aggressive, badgering interrogators, suggesting to students that such behaviour is not only acceptable but something to be emulated in their own future encounters with colleagues and clients. As June Cicero (1989, p. 1040, citing Spiegelman, 1988, p. 249) states “the law school curriculum and the Socratic teaching method conveys a certain message: ‘combat and competition (and winners and losers) are the product of human interaction.’” This feeds what Deborah Tannen (1998) refers to as “the argument culture” from within the very institutions where fundamental change needs to happen.

While some scholars have called for an abolition of Socratic method others have suggested a revival of the method or modifications to it (Williams, 1993, p.1575; Guinier, 1994) p. 130). Recommendations for reform have included engaging students in more of a dialogue or conversation format rather than debate or inquisition, using collaborative team approaches to responses, and allowing for a “pass” policy with respect to participation (Williams, 1993, p. 1575; Guinier, 1994; Thiemann, 1998, pp. 27-28). Without these modifications the Socratic method as traditionally practiced not only runs afoul of effective teaching methodology but is contrary to twenty-first century values and the best interests of the profession. As Feinman and Feldman (1985, p. 895) state, however, the “notion that we must be as concerned about the intellectual integrity of our learning theory as about our legal theory traditionally has not held sway in law schools.”

Reforms in legal pedagogy, as noted in the Carnegie Report (Sullivan, et al, 2007) and elsewhere in the literature, must address development of affective sensibilities as well as cognitive skills. As Thiemann (1998, p.29) states “[c]urrently in the law school classroom, imagination and creativity, supreme achievements by most educational standards, seem to have been demoted in favor of attaining legal tools.” Legal education must not teach students “to ignore and obscure the feeling side of life, to divorce emotion from logic, as if they were incapable of peaceful coexistence” (Culp, 1994, p. 79). Legal reform scholars are increasingly recognizing that a larger emphasis, in Socratic and other legal methodologies, should be placed on emotional responses, personal narratives, and collaboration, in the hope of encouraging differing responses, new thinking styles and understandings of various viewpoints (Thiemann, 1998, p.29).

Debates about the appropriate pedagogical approaches to employ in law school centre to a large extent around the question of the purpose of legal education. If law school is intended to produce practising lawyers, then a greater emphasis on skills development is needed to balance theoretical analysis. The larger question in the debate, however, may be one of legal identity – if law school is intended to produce practising lawyers, what kind of lawyer do we want to produce in the twenty-first century and what pedagogical means is best suited to achieve that end?

John Delaney (1991) concurs that what and how to teach in law school depends on how we view the role and function of a lawyer. The traditional view of lawyer as litigator is supported largely by the case method and Socratic dialogue. If a lawyer is viewed, however, as Menkel-Meadow (1999) suggests, as problem-solver, emphasis will be placed on developing problem-solving, negotiating and other ADR-type skills and practices. If a lawyer is viewed as legislator or regulator, critical policy and legislative analysis will need to be emphasized (Delaney, 1991, p. 1336). Utilitarian and jurisprudential perspectives require that they be taught as something in context; as such, history, social justice issues, equality issues, feminist and other perspectives, become more relevant (Delaney, 1991, p. 1336). These different roles and functions of law school and lawyering, however, are not mutually exclusive and there is overlap in the teaching and training required in each of them. As Delaney illustrates:

[W]hile all lawyers need critical skills, the nature and scope of such skills varies dramatically. There are real differences, for example, between the practical and case-oriented critical skills required in representing a criminal defendant at sentencing and the policy-oriented critical skills required in legislative assessment of the validity of any sentencing range, the purposes to be served thereby and the range of alternatives. (Delaney, 1991, p. 1337)



Clearly, law school must teach to multiple and diverse possible roles of lawyers in modern culture, and in order to do so effectively it must apply multiple and diverse pedagogical approaches.

Carrie Menkel-Meadow has written extensively on legal education and its reform, on the lawyer as problem-solver, on interdisciplinarity in law, and on the subject of creativity in legal education (Menkel-Meadow, 1999, 2000, 2001). She has looked at the question of whether or not creativity is not only possible in legal problem-solving but teachable in legal education. While she puts forward the clear existence of a concept of “legal creativity” she does not link the “how” of teaching such concepts to the arts themselves. Although she and other scholars support interdisciplinary connections between law and other disciplines in an effort to situate the study of law in a broader context and to provide a more expansive legal education to students, sadly, the arts are not one of the “ands” she refers to in order to accomplish this (Menkel-Meadow, 2001). While there appears to be no difficulty making the connection between law and economics, law and the social sciences, or law and literature, in order to create more well-rounded students integration of law and fine arts remains largely off the legal radar. This is the case even for scholars advocating more clinical education to link “legal thinking” and “legal doing” in more creative ways, and in skills-building courses and seminars with hands-on experiential exercises.

While legal scholars of the last half century seem to have overlooked the arts as a way to build these links, Karl Llewellyn clearly recognized their value. Although lengthy, his observations on arts-integration in law, offered as more of an aside in his 1935 article “On What is Wrong with So-Called Legal Education” merit quoting in full:

Neither does the job stop with this. Above I spoke of the student's whole self. That whole self needs attention. From the angle of a lawyer's dealings with clients, witnesses, jury, judge, and bench of five or seven. No less from the angle of a lawyer's living with self or children, after forty. Till forty – sometimes even till fifty – he can make out, after a fashion, on hard work, and (if he achieves it) on success.

But as in so many things, our law schools presuppose here some sort of ectogenic Culture, sprouted at home or in college, and somehow to be automatically reintroduced into the system in harmonious combination with whatever it is we teach. Now first, this Culture mostly has not sprouted. And second, our methods are such as to kill it if we can. "Make him think like a lawyer!" Park Culture at the door! This would be fine, if, after making the boy think like a lawyer, we really did re-introduce the Culture. Do we?

Indeed, the more "progressive" the school, the less time is left the student for anything but reading cases and chasing references – all with an eye as good as single to The Law. I think (and hope) that the Columbia level for a C+ man has now risen to over fifty hours a week of work. As a measure of a full time job, fine. But how of the work it-self? Rules, always rules – or decisions – in the forefront of attention. (Yet a brief, in due course, will call also for composition, poetry and style.) Clear, legally artificial, dehumanized thinking – a touch of policy; but how much? (Yet trial or appeal in due course, will call also for "atmosphere," and some attention to what legislatures may have ordered.) The "issue" in legalistically procedural terms. (Yet life, in due course, will call no less for understanding human conflict, and the drama of human conflict.) Meanwhile some kid regrets that he has no time for piano practice; another yearns to compare Millay and MacLeish; the third knows none of these, and cannot understand the conversation.

**The need is, in some fashion, for an integration of the human and the artistic with the legal. Not an addition merely; an integration.** Attempt at such integration finds response. This is not yet the place allotted to discussion of means, yet discussion of means may here help clarify objective. I cite instances:

There were six photographs of Konenkov's bust of Holmes (the bust now at Columbia and Harvard). There were an equal number of the anonymous Maria of Bamberg, and of the Uta of Naumburg, and of another modern head. The artist's chisel has reproduced the model for his Maria with tragic devotion. He loved her; he chose her as model for his Mary. He did not see or know, but he recorded, that she was venal, hard, treacherous, as well as lovely. So with the Uta. Though so idealized that the full face is ethereal, the profile shows up cat and shrew. These photographs, then, spread before a group of law students, with comment on the differences that light and angle made – on walking around the whole, to see it whole-on how the subject had determined the job, despite all canons. Then suggestion on how the seemingly simple record of a case could change in the light of color and experience of the observer – how every time an instructor read his cases over he saw new facets and new form. Or on how a single opinion rounded

out if one read it successively as a case in contracts, in waiver, in pleading, or in sales. Or on how judges, like artists, can respond to facts their fingers notice, while their minds deny those facts. One cannot easily catch faces or reactions into print. One simply knew that sculpture and cases had acquired, both, new meaning; and new relation. With similar pictures of the Winged Victory, what could be done! There was that boy who had no time to practice music, and found his law antagonistic to piano. And who saw, then, how the Bach fugue was what an instructor might try his poor best to emulate in a case-book chapter, or a lawyer in a brief; how the job of legal exposition might, and must, run upon the same lines as that of musical.

There was the attempt to study how to argue, with students turning back to all their college literature in search of style; and to their cases, in search of build-up and persuasiveness; and to novels (Sergeant Buzzfuzz' opening), and life, in search of keys to human nature.

So much for examples. But we need more than examples. The objective of a full life, though we starve it, is stubborn as a desert plant. **We must not let law smother the man in his study of it, nor let it cut him off from what art has to offer for and in its practice.** We must recapture, or find a substitute for, the old-time lawyer's Bible and his Shakespeare. But least of all must law cut its students off from living, from rich living, after they become lawyers. Professors who are sterile dissecting knives, and are no more, wreak tragedy... { **emphasis added** } (Llewellyn, 1935, pp. 663-664)

One of the results of interdisciplinarity in legal education is an expansion of legal thought and with it, an expansion of legal identity. Who we are and what we do as legal practitioners is integrated with what, how and why various subjects are being taught and with the need for expanded repertoires of teaching methodologies. Julie Macfarlane (2008) explores the evolving role of the lawyer specifically in the midst of the alternative dispute resolution movement. Macfarlane states that the image of the lawyer as adversarial “client warrior” practising according to a blind “zealous advocacy” tradition, is being viewed as outdated and inadequate. A corresponding rise of incivility in the profession has resulted in publications and continuing legal education courses on ethics and professional conduct aimed at dealing with this crisis. Courses at law schools related to alternative dispute resolution, collaborative lawyering,

negotiation and mediation are providing a different perspective on legal identity to students, shifting the focus from that of warrior and litigation strategist to problem-solver and the more neutral conflict resolution practitioner. Classes in such subjects, however, are largely electives, outside of the mainstream programming and regarded within legal academe as “outsider courses”. (Bakht et al., 2007) In attempting to embrace new concepts of lawyering, students (and teachers) are faced with the challenge of considering concepts that are at odds with a mindset that has already been embedded into their psyches through the “signature pedagogy”. Since first year doctrinal courses do nothing to dispel the myth of conflict and disputing as war or game and lawyers as anything but warriors or strategists, it is very difficult to dislodge these concepts once they have grown roots. With few alternative pedagogies in play, the ability to develop competencies and sensibilities outside of the traditional legal culture norms remains limited.

***The Carnegie Report*** (Sullivan, et al., 2007a)<sup>18</sup>

The publication of the 2007 Carnegie Foundation Report on Legal Education has been the single most important step in legal education reform in decades. Identifying deficiencies or shortcomings in the “signature pedagogy” on a number of levels, law schools have been attempting to respond to the recommendations put forward in the Report, while at the same time trying to balance the demands of law societies from the outside and competing pressures from the academic institutions in which most schools are situated on the inside (Arthurs, 2012).

The Report was based on field work gathered from a two-year study of legal education during the 1999-2000 academic year. The study involved sixteen American and Canadian law schools and re-examined the primary educational construct of “thinking like a lawyer”. The authors

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<sup>18</sup> Page references in this section are to the Summary Report.

made five observations<sup>19</sup> about law school teaching and learning and seven recommendations<sup>20</sup> based upon those observations (Sullivan et al., 2007a, pp. 5-10). The Report provides an overview of the law school curriculum, with its standard pattern of core courses in first year taught using the case study method and Socratic instruction, followed by elective doctrinal courses (usually taught in the same manner as first year core courses) and seminars (taught in a similar manner to arts and science courses) in upper years. In addition to core and elective courses, as the Report states, students gain skills training in legal practice, advocacy, research and writing through school-sponsored legal clinics, moot court competitions, supervised practice trials and law journals.

The main finding of the Report was that law school provided an exceptionally strong first year indoctrination into a particular legal mindset with an emphasis on the skills of legal analysis, but provided much less emphasis on practical, client service training and ethical grounding (Sullivan, et al., 2007a, p. 4) The authors remarked upon the “pedagogical power of the first phase of legal education” which is able to establish “a distinctive habit of thinking” in a relatively short period of time (Sullivan, et al., 2007a, p. 5). The Report also notes, however, that law schools rely heavily on this single form of teaching to accomplish this “socialization process”. “The consequence is a striking conformity in outlook and habits of thought among legal graduates” (Sullivan, et al., 2007a, p. 5).

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<sup>19</sup> The Five Key Observations: (1) Law School Provides Rapid Socialization into the Standards of Legal Thinking; (2) Law Schools Rely Heavily on One Way of Teaching to Accomplish the Socialization Process; (3) the Case-Dialogue Method of Teaching Has Valuable Strengths but Also Unintended Consequences; (4) Assessment of Student Learning Remains Underdeveloped; and (5) Legal Education Approaches Improvement Incrementally, Not Comprehensively.

<sup>20</sup> The Recommendations: (1) Offer an Integrated Curriculum; (2) Join Lawyering, Professionalism and Legal Analysis from the Start; (3) Make Better Use of the Second and Third Years of Law School; (4) Support Faculty to Work Across the Curriculum; (5) Design the Program so that Students and Faculty Weave Together Disparate Kinds of Knowledge and Skill; (6) Recognize a Common Purpose; and (7) Work Together, Within and Across Institutions.

In particular, the authors note that this priority in developing analytical thinking teaches students to “categorize and discuss persons and events in highly generalized terms. This emphasis on analysis and system has profound effects in shaping a legal frame of mind” (Sullivan, et al., 2007a, p. 5).

While the power of the pedagogy is compelling in establishing within a remarkably short time frame these “habits of mind”, it also has unintended consequences. This “signature pedagogy” asks students to see the world through a distinctive frame, characterized by this particular way of thinking. It “offers both an accurate representation of central aspects of legal competence and a deliberate simplification of them. The simplification consists in the abstraction of the legally relevant aspects of situations and person from their everyday contexts. In the case-dialogue classroom, students learn to dissect every situation they meet from a legal point of view” (Sullivan, et al., 2007a, p. 5).

The danger of this dominant pedagogy, in my opinion, is its future “fall-out” for students. When working with conflict in non-litigation settings such as negotiation, mediation or advising clients, practitioners trained in this manner often experience an inability to shift mindsets from this analytical frame, to consider other ways of analysing conflict, and to re-hydrate situations back to their full human states of rich complexity.

The authors of the Report (2007a, p. 5) characterize the Socratic method as a form of “questioning and argumentative exchange with faculty” through which students look for points of dispute or conflict. They then consider as facts “only those details that contribute to

someone's staking a legal claim on the basis of precedent." They are drilled, over and over, through this method to abstract facts from their natural context, then operate upon them "according to specified rules and procedures and draw conclusions based upon that reasoning." Most importantly the downside of this process "means redefining messy situations of actual or potential conflict as opportunities for advancing a client's cause through legal argument before a judge or through negotiation" (Sullivan, et al., 2007a, p.5). Students develop tunnel vision in approach and solution; the consideration of other options falls outside of their field of vision.

Echoing the limitations of this "signature pedagogy" expressed by scholars in the literature, the Report bears quoting in full with respect to the effect of the disconnect between legal thinking in the hypothetical realm and the real world of practice:

By contrast, the task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or technical aspects of the conclusions, remains outside the case-dialogue method. Issues such as the social needs or matters of justice involved in cases do get attention in some case-dialogue classrooms, but these issues are almost always treated as addenda. Being told repeatedly that such matters fall, as they do, outside the precise and orderly legal landscape, students often conclude that they are secondary to what really counts for success in law school and in legal practice. In their all-consuming first year, students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses. This warning does help students escape the grip of misconceptions about how the law works as they hone their analytic skills. But when the misconceptions are not addressed directly, students have no way of learning when and how their moral concerns may be relevant to their work as lawyers and when these concerns could throw them off track. Students often find this confusing and disillusioning. The fact that moral concerns are reintroduced only haphazardly conveys a cynical impression of the law that is rarely intended. (Sullivan, et al., 2007a, p. 6)

The Report highlights the need for students to take these important analytical skills beyond the act of competitive academic debating and marry them with appropriate practical, ethical and social skills in assisting their clients with their problems. An inability to do this, the Report

(2007a, p. 6) states, is the “unintended consequence of reliance on a single, heavy academic pedagogy.”

In putting forward its recommendations for a more integrated and innovative curriculum, the Report (2007a, p.8) suggests that “students need a dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis.” Perhaps most importantly, with respect to pedagogical methods, the authors (2007a, p. 11) state that “[l]egal education needs to be responsive to both the needs of our time and recent knowledge about how learning takes place.” They suggest that there be more attention to the issues of teaching and learning in general, and to the development of new and experimental teaching methods and scholarship in this area. Citing the benefits of medical school clinical education, the Report (2007a, p. 10) notes that “concerns come alive most effectively when the ideas are introduced in relation to students’ experience of taking on the responsibilities incumbent upon the profession’s various roles.”

The recommendations of the Report are aligned with the twenty-first century learning agenda enunciated by education scholars. It tacitly suggests the integration of more constructivist, experiential-based approaches to legal education, acknowledging the need to develop more creative, flexible and adaptable “habits of mind”, and expressly suggests the use of new and experimental teaching methods to achieve these goals.

Slow to change and staunchly fixed in a traditional mindset of their own making, law schools appear to be the last of the specialized professions to embrace the arts. Although use of the terms “creativity” and “innovation” are rampant within law schools and law firm advertising,



exactly how this creativity is being defined and how this innovation is being manifested in professional practise remains somewhat of a mystery. The expansion of the use of various forms of alternative dispute resolution may be one of those manifestations but an analysis of these processes (beyond the scope of this dissertation) would reveal that in the majority of instances “alternative” is being defined narrowly within the profession, in particular, as an alternative to litigation as opposed to an alternative way of thinking and behaving (Ippolito, 2012).

### *Arts-Based Work in Law Schools*

Use of arts-based approaches and arts-based research within the realm of legal education is limited. In 2013 York University’s Osgoode Hall Law School advertised an “Artist in Residence” fellowship; this may be the first such fellowship ever offered at a law school. In Canada, several law professors have initiated arts-based approaches to teaching. Most notably, Gillian Calder (University of Victoria) and colleagues (Adjin-Tettey, et al., 2008) have engaged in arts-based research using a scrapbook form of presentation to juxtapose embodiment of ideas and the rigidities of academic convention, as well as presenting papers using dance (Calder and Cowan, 2008). Calder has used arts-based teaching approaches in the classroom as a form of “embodied law” (Calder, 2009). Drawing on theatre and dance, Calder’s work has focused primarily on the teaching of elective seminar courses, referred to in the literature as “outsider” courses, using “outsider” pedagogy (Bakht, 2007; Menkel-Meadow, 2007) that draws on what Calder and Cowan describe as feminist teaching theory.<sup>21</sup> Calder draws on the work of Friere (1972) and Boal (1992) with Theatre of the Oppressed in approaching non-core subjects and

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<sup>21</sup> As Calder and Cowan state, *supra* note 179 at 130: “[T]his is a specifically feminist approach which situates both our bodies and our self-reflecting minds in the centre of our work, and challenges masculinist, racist and classist traditions of learning and theorising.”

reminds us that learning is a whole body experience<sup>22</sup> that helps us to understand concepts as dynamic rather than static. Calder and Cowan (2008, p. 110) note the challenges inherent in disrupting what they term “the deeply masculinist environments of academia.”

Desmond Manderson has incorporated music (Manderson, 2000; 2010), theatre and literature (Manderson, 2003; 2008; 2011; 2012; Manderson and Yachnin, 2010), images (Manderson, 2012), and popular culture (Manderson, 2013) into his teaching and research related to law and the humanities. He is currently the primary investigator on a research project at the Australian National University, College of Law, that began in 2011 entitled “The Sight of Justice: Images and the Rule of Law”; it studies the history, emergence, and modern debates around the rule of law through images.

“Beyond Text in Legal Education” was an international research initiative at the University of Edinburgh in 2008-2009 funded by the Arts and Humanities Research Council (AHRC). It used visual art, architecture, and dance in connection with an exploration of legal education, concepts and issues, from a non-textual perspective. Two texts (Barnowski, Del Mar, and Maharg, 2013); Barnowski and Del Mar, 2013) emerged from this project. The first text explores themes of interdisciplinary perspectives in legal education generally and arts and legal education specifically, highlighting some specific applications of the arts relevant to law school education and legal professionals. The second text contains a collection of articles suggesting how artistic modalities – especially those from the visual and performing arts – can assist in developing moral education in law schools and law firms to enable students and practitioners to confront ethical complexities with greater imagination. These texts suggest the use of artistic resources as

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<sup>22</sup> As Augusto Boal (1992, p. 49) states: “[T]he whole body thinks, not just the brain.”

a mode of self-reflection, as a way of gain creative insights, and to shift established cognitive schemas.

### ***Arts-based Work in Negotiation and Conflict Resolution Teaching and Training***

Negotiation and conflict resolution teaching and training has traditionally made use of a blend of mainstream teaching modalities: mini-lecture and group discussion combined with a variety of hands-on, skills building methods (simulations, “fish-bowl” observation/participation, and role-plays). The Harvard-type models of negotiation built in theory and practice on the “Getting to Yes” (Fisher, Ury and Patton, 1981) model of integrative, interest-based negotiation, continue to dominate the field of dispute resolution both in theory and practice. This stream of scholarship, referred to by Christopher Honeyman (Honeyman, Coben, and De Palo, 2009, p. 3) as “first generation” scholarship, and its related approaches have prevailed for the past 30 years with only minor shifts in focus. Through the seminal work of such scholars as Lawrence Susskind, Robert Mnookin, and their colleagues at Harvard’s Program on Negotiation (PON), this Western-centric approach to negotiation and conflict resolution continues to develop with an emphasis on the creation of more and “better” process formulas, improved communication techniques, strategies and situation-specific training (Honeyman, Coben, and De Palo, 2009, p. 3). Its teaching and application are characterized by “top-down” rational-logical methods of learning and processing of concepts. The focus of the continued research and practice in this vein largely remains on addressing episodes of conflict and on achieving results in a specific context, as opposed to delving into the larger issues of epicentres of conflict. Shifts in “first generation” teaching have included more emphasis on relational and cultural aspects of negotiation and conflict, and mild interest in symbolic and non-material domains. Despite such expansions, however, traditional

negotiation and conflict resolution theory and training remains largely an American export (Honeyman, Coben, and De Palo, 2009, p. 3) situated in the world of the game metaphor, as evidenced by the titles of many of the courses offered by PON. Within traditional training, negotiators are likened to diplomats, “improv” actors or athletes but never to artists. In my survey of training programs offered at PON since January, 2012, not once do the arts and arts-based approaches come into the discussion.<sup>23</sup> One summer intern (a Masters student in the non-legal Peacebuilding program at Brandeis University and artist doing work in peacebuilding in South Africa) was sponsored by PON in 2011.

This emphasis on formulas and strategies continues despite cautions from scholars in the field such as John Paul Lederach (2008), Bernard Mayer (2000), and Michelle LeBaron (2002), who have noted that such linear, Western-centric approaches are not culturally sensitive or effective for all parties in a time of increasing globalization. Such approaches are also not responsive to varying learning styles and modes of comprehension. Drawing on theories such as Gardner’s Theory of Multiple Intelligences (1983), scholars such as LeBaron have drawn our attention to the importance of developing expanded “ways of knowing”, including the intuitive and the somatic (LeBaron, 2002; LeBaron and Pillay, 2006). Developing expanded “ways of knowing” are essential to becoming effective practitioners capable of accessing and dealing with the complexities of present-day conflict and its resolution. It is difficult, however, to access or develop these “neck-down” intelligences with “neck-up” approaches.

“Rethinking Negotiation Teaching” was a multi-year, cross-disciplinary, global initiative co-directed by Christopher Honeyman. The project emanated through Hamline University School

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<sup>23</sup> From a review of regular subscription emails from PON from January 9, 2012 to present: September, 2014

of Law in partnership with the JAMS (formerly Judicial Arbitration and Mediation Services) Foundation, The Leading Negotiation Institute, CONVENOR Conflict Management, and the ADR Centre Foundation (Italy). Its objective, a generation after the emergence of the first dispute settlement courses in 1979, was to revamp standard “first generation” negotiation pedagogy. Based on discoveries that had arisen over the last three decades in the various fields involved in dispute resolution training, the goal of the five-year project was to create new training designs more responsive to diverse, global audiences.

International conferences were held in Rome (2008), Istanbul (2009) and Beijing (2011). From those conference, four publications emerged with contributions from a diverse group of interdisciplinary scholars (Honeyman, Coben and De Paolo, 2009; 2010; Ebner, Coben and Honeyman, 2012; Honeyman, Coben, and Wei-Min Lee, 2013). Honeyman, Coben and De Palo (2009, p. 3) speak of the “second generation” of negotiation teaching and topics, recognizing that the field is “ripe for a comprehensive attempt to rethink what is taught and how it is taught in basic negotiation courses.”

While the project did not give rise to a defined standard “second generation” negotiation course, it did lead to several keys realizations. Among those was the value of learning outside the classroom (“adventure learning” and learning in “authentic environments”), the role of emotions, the centrality of culture, and the “increasing interest in and emphasis on nonverbal, non-rational forms of intelligence”. (Honeyman, Coben, and Wei-Min Lee 2013, p. 3). In its conclusion, the project found that the field of negotiation had “new frontiers in all directions”:

[I]nward within the individual negotiator, toward an integration of the mental with the physical, and toward a “mathematics of emotions”; outward, toward

the engineering of more sophisticated tools for handling major public disputes; toward professionalization, with a new appreciation of the value of decades of prior work experience in a “new” professional negotiator; and simultaneously, toward broader dissemination of skills, with a new appreciation of the fact that virtually everyone will negotiate [...] but most will not ever take a course in the subject. (Honey, Coben, and Wei-Min Lee, 2013, pp. 4-5)

With respect to arts-related themes raised in these texts, Leonard Lira and Rachel Parish (2013) examined parallels between the theatre and the military and concepts related to “design thinking”. Ransie Howell and Lynn Cohn (2010) introduced the notion of taking the “negotiation as dance” metaphor seriously, proposing the literal use of dance as a teaching and learning tool. Nadja Alexander and Michelle LeBaron (2013) expanded this theme further, exploring kinesthetic intelligence through physical movement and dance. In their chapter, Alexander and LeBaron (2013, p. 541) advocate the use of movement as a form of “embodied negotiation”, as a way to unlock creativity, develop empathy and a heightened sense of “others” through “the gift of mirror neurons”, and as a way to “stimulate new neural pathways and shift cognitive habits.”

“Second generation” ADR scholars have begun to look beyond traditional teaching and training modalities as part of rethinking and expanding the field. The efficacy and appropriateness of many of the standard experiential learning modalities, including “canned” role-play exercises, is being questioned and more expansive, creative modes of learning are being explored. In addition to the work done over the five years of the “Rethinking Negotiation Training” project, there are other examples of “new directions” and creative approaches in conflict resolution. These include William Ury’s concept of “Abrahamic walks”, put forward in his 2010 TEDxMidwest talk, “Taking a Walk from No to Yes”,<sup>24</sup> Leonard Riskin’s work with mindfulness in mediation and its potential benefits for law students, lawyers, and their clients (Riskin, 2002; 2006; 2007;

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<sup>24</sup> Available at: [http://www.ted.com/talks/william\\_ury](http://www.ted.com/talks/william_ury). [Accessed on 24 November 2014].

2010), and explorations by other scholars into the neuroscience of conflict (Gelfand, 2006; Beausoleil, 2013; LeBaron, MacLeod and Acland, 2013). Although traditional methodologies continue to dominate the teaching of negotiation and conflict resolution, the use of film, games, acting, and other arts-based exercises have begun to find their way into more recent course designs.

Research initiatives using the arts in conflict resolution include the University of British Columbia's CRANE ("Conflict Resolution, Arts and Intercultural Experience") project, directed by Michelle LeBaron. Undertaken from 2004-2009, this project looked at the role of the arts in conflict and creative approaches to conflict within multicultural communities. The arts-based processes explored in relation to cross-cultural and community building included music, theatre, visual arts, photography, creative writing and poetry, and map-making. LeBaron, Carrie MacLeod and Andrew Floyer Acland (2013) have recently explored the topic of movement, conflict and neuroscience in a book of reflections by a diverse group of scholars and performers. Explorations with dance and embodied experiential learning inspired the contributing authors to write on a variety of themes including emotions, neuroscience, and creative and innovative teaching methods. Among other things, the book suggests multiple ways that movement can be incorporated into curricula.

In addition to the scholarship related to negotiation and dispute resolution training, the literature on the use of the arts and arts-based modalities in conflict resolution and peacebuilding (outside the scope of this dissertation) is extensive and represents a growing field (Urbain, 2008; Bergh and Sloboda, 2010; Cohen, Gutiérrez Varea and Walker, 2011). Much of the scholarship related

to the arts, conflict resolution and peacebuilding explores ways to bringing parties, communities and societies – locally, nationally and internationally – into engagement with one another for a variety of purposes, including education, resolution, transformation and reconciliation of conflict. My own research in this area has shown the use of arts, and in particular collaborative vocal music-making, as a way to access and work with conflict at the pre-, during-, and post-conflict stages (Ippolito, 2008).

### **THE SIGNIFICANCE OF MUSIC AS AN ARTS-BASED LEARNING MODALITY**

In focusing on music in this study, I drew upon my professional experiences and previous work related to music, conflict resolution and peacebuilding (see Appendix G; Ippolito, 2008). It has been noted in the literature on the arts and conflict resolution that music has been used with less frequency as a hands-on tool than other arts-based mediums (LeBaron and Welch, 2006, p. 16). One of the reasons for this may stem from a sense that particular skills and talents are required to engage in music-making. Steven Mithen posits that this, however, is more reflective of Western culture than it is indicative of a generally held perspective (Mithen, 2006, p. 56). Music, however, possesses many properties that make it an ideal teaching tool in dispute resolution. As Berendt (1983, p. 57) asserts, “[b]efore we make music, music makes us.” Sound and vibration are ordering principles in the universe. All objects, animate and inanimate, including human beings, are made up of vibrating matter (Berendt, 1983). These vibrations are not random but rather, are inherently harmonious. Building on Kepler’s “Harmony of the Spheres”, a scientific as well as poetic concept (Kepler, 1619; Warrain, 1942, Rodgers and Russ, 1979), Bruhn (2005, p. 39) posits that within the world there is a “paradigm of embedded consonance.” She states that “while numerous aspects of our world exhibit harmonious proportions, human



senses discern them most easily in the world of acoustics.” Sound and music would seem to be particularly potent in the field of dispute resolution if music offers a way to realign with a sense of inherent harmony.

Throughout history, music as a shared activity and collective ritual has connected us to the social world (Benzon, 2001, xii). William McNeill (1995, p. 27) argues that coordinated rhythmic activity is fundamental to life in society; by dancing and marching together, we bond with one another and become a group. Such unity occurs, he states, because of “the emotional solidarities aroused by keeping together in time.”

Musicologists have also found that communal music-making creates a shared emotional state and a sense of trust in one’s fellow music-makers (Blacking, 1973). Cooperation is inherent in collaborative music-making and it has been suggested that repeated collaborative interaction leads to a willingness to do so again in the future (Mithen, 2006, pp. 213-214; Axelrod, 1984).

Mithen and McNeill posit that there is a loss of self-identity in such group engagement.

Cooperation in collaborative music-making, Mithen submits, is therefore not entirely the correct term: “as identities are merged there is no ‘other’ with whom to cooperate, just one group making decisions about how to behave.” Mithen concludes (2006, p. 215):

Indeed, when psychologists have examined the result of experiments in which people are placed in prisoner’s dilemma-type situations, they have concluded that cooperation is fostered by the extent to which players come to see themselves as a collective or joint unit, to feel a sense of “we-ness”, of being together in the same situation facing the same problems.

With respect to a sense of “we-ness”, psychologist Linda Caporael (Caporael et al., 1989, p. 696) argues that group behaviour is not merely the sum of individuals acting to maximize their own

returns but is “mediated by a redefinition of self in terms of shared category membership or social identity”. Making music together is a way to create group identity.

It has also been noted by Benzon (2006, p. 23) that ensemble music-making “is a medium through which individual brains are coupled together in shared activity.” Musicians, he states, share in the creation of common sounds as opposed to merely exchanging musical messages with one another. This is a key difference between music-making and spoken dialogue.

Benzon further suggests that joint music-making attunes the nervous state of one participant to another through the process of synchrony or entrainment. When people synchronize the sounds and movements they make they create “a space of communicative interaction”, and a coupling between their brains results “in which each can affect the other’s internal states” (Benzon, 2006, p. 27).

In music, it is possible to have rhythmic, melodic, and dynamic entrainment. In an ensemble, such entrainment is a powerful aligning force. Brain coupling, synchrony, and the “collective intentionality” of those making the music, allows for the group to function with what Benzon (2006, p. 109) terms the coherence of a single brain.

Walter Freeman, a neurobiologist, posits that ritual music and dance trigger individual brain mechanisms that foster social bonding (Freeman, 2000). Such rituals, Freeman states, involve the neuropeptide oxytocin, which:

[...] appears to act by dissolving pre-existing learning by loosening the synaptic connection in which prior knowledge is held. This opens an opportunity for learning

new knowledge. The meltdown does not instill knowledge. It clears the path for the acquisition of new understanding through behavioural actions that are shared with others. (Freeman, 2000, p. 418)

This suggests that music-making can be used as a learning medium by which to dissolve pre-existing learning and open pathways for the acquisition of new knowledge.

Music and group music-making have powerful psychological, emotional and neurological effects. Such activities have powerful lessons to teach related to the development of trust, cooperation, and working together across lines of divide in pursuit of superordinate goals – all essential ingredients in negotiation and dispute resolution.

In dispute resolution processes practitioners are constantly striving to find new and more meaningful ways to connect people, to create environments that are conducive to negotiation, problem-solving, and creative option-generation. Science research indicates that music can assist in bringing people into alignment and in inspiring trust and willingness for people to cooperate and continue to cooperate with one another. Core dispute resolution concepts link with these music-based concepts and suggest a powerful alignment with respect to learning through music-based mediums.

## **SUMMARY OF THE CHAPTER**

The work of scholars and practitioners over the last several decades in the fields of education, legal education generally, and negotiation and dispute resolution training specifically, offers a roadmap with which to venture into the new frontier of “second generation” teaching and learning. The literature canvassed in this chapter provides insights into and examples of how

traditional pedagogy and practice might be changed to meet the needs of a rapidly-evolving world and build the skills needed for lawyers, negotiators and conflict resolution practitioners to address our most serious present-day and future problems and challenges.

Several themes relevant to the research study have emerged from the review of the literature in this chapter. These arise from the three areas of learning science, legal education, and arts-based teaching and learning and are summarized below.

Effective twenty-first century learning incorporates knowing, doing, collaborating with others, and developing the self. Learning agendas and specific learning objectives are needed to facilitate the development of core competencies. Creativity and innovation are recognized among those core competencies, along with critical thinking, problem-solving, working together collaboratively, communicating effectively (including technologically and digitally), and engaging in good cultural and ethical citizenship. Interdisciplinary experiential learning has been found to respond to diverse learning styles and abilities, addressing whole body learning and mind/body connections in learning. Safe and supportive learning environments are essential for students to be able to explore new and sometimes unsettling concepts and beliefs.

Collaborative learning and reciprocal learning communities are favoured in present learning theories. Reflective practice is also necessary for students to be fully engaged learners and ultimately fully engaged practitioners; critically reflecting from action enables students and practitioners to become more responsive and mindful of their actions in the moment and to the consequences of their actions.

Within the field of legal education, scholars and practitioners have identified the need to move beyond the “inert” signature pedagogy of the past, to expand experiential learning, interdisciplinary connections, and experimental pedagogies. Calls for changes in the profession (CBA, 2014) and the emergence of “the new lawyer” (Macfarlane, 2008) require a re-examination and redefining of the role of the lawyer in twenty-first century society. Teaching and training that supports a move away from “client warrior” stereotypes of the past and encourages creative and innovative problem-solving approaches will assist the profession in remaining relevant to its clients and equip the next generation of professionals with the skills needed to address twenty-first century problems. Rather than a rejection of past ways of being, as Macfarlane (2008) states, a convergence is necessary. The recent scholarship in legal education has made clear the importance of developing the law student as a whole person capable of thinking, feeling and behaving in a way that supports the new norms of legal negotiation (Sullivan, et al, 2007; Macfarlane, 2008). Legal education must balance the development of critical thinking with emotional and social intelligence capacities as well as cultural and ethical citizenship. New approaches to legal pedagogy have been identified to facilitate such changes and many of these approaches are being explored and utilized within the field of negotiation training in particular (Honeyman, Coben and De Paolo, 2009; 2010; Ebner, Coben and Honeyman, 2012; Honeyman, Coben, and Wei-Min Lee, 2013).

The literature in this chapter has shown that arts-based teaching and learning offers the possibility for knowledge and skills transfer from one learning domain to another (Catterall, 2002; Collins, 2011). It offers an alternative lens through which to view concepts, and an alternative environment in which to develop skills and new forms of thinking – what Eisner

(2004) refers to as “artistically rooted qualitative forms of intelligence.” Arts and arts-based learning spaces provide means and environments in which to create embodied representations of ideas and concepts, and explore the sensed and felt dimensions of learning experiences.

The unanimous short-coming set out in all of the arts-based teaching and learning scholarship canvassed is the lack of empirical research related to the effectiveness of these teaching and training initiatives to increase capacities and enhance cognitive, behavioural, and affective intelligence competencies. Most notably, there has been no study related to arts-based teaching and learning using music as the artistic medium within the field of legal education or conflict resolution training to date. As such, the teaching experiment that I designed, implemented and studied, guided by the themes enunciated above, set out to address this gap in the literature.

Having set out in this chapter the theoretical underpinnings that inform the research project, the next chapter will describe my methodology, the course design that formed the basis of the research project, and the objectives and design of the research study.

## CHAPTER THREE - METHODOLOGY

*"Not everything that can be counted counts, and not everything that counts can be counted."*  
(Albert Einstein)

### PREFACE

In this chapter, I discuss the purpose of the study, describe its design, and discuss my role within it. I then set out the research method used and the rationale for selecting the approach. A detailed discussion of the two phases of the study follows, providing a description of the research participants, the purpose of gathering the data from them, and the method of data collection and analysis. I conclude the chapter by identifying ethical considerations, issues of trustworthiness and limitations of the study.

### THE PURPOSE OF THE STUDY

This study compared two different pedagogical methods of teaching dispute resolution to first year law school students. The purpose of the study was to explore whether and how music could enhance and transform individuals' attitudes toward and abilities to address conflict situations.

The study asked four questions related to the research purpose and was designed to explore:

- 1) key characteristics of effective collaborative music-making and capacities most valued by collaborative music-makers to achieve effective ensemble outcomes;
- 2) whether the negotiation and problem-solving skills and behaviours of ensemble music-making are learnable by adults who are not musicians;
- 3) whether such skills learned in a musical environment are transferrable to a non-musical environment in which there are complex conflictual situations; and if so
- 4) whether such practices, once learned, can change cognitive frames and affect, and thus lead to more effective behaviour and more desirable outcomes.

## **SUMMARY OF STUDY DESIGN**

There were two components to the research study. Phase One consisted of interviews with five professional musicians actively engaged in various forms of collaborative music-making. The insights gathered from those interviews responded to the first research question and assisted me in designing the musical interventions used in Phase Two of the study. Phase Two was a comparative teaching study designed to address the remaining three questions. It involved thirty-eight first year law school students enrolled in two sections of a seminar course in dispute settlement.<sup>25</sup> One section, consisting of twenty-one students, was taught using a set of music-based experiences and a music-based metaphoric frame. The other section, consisting of seventeen students, was taught using a standard set of alternative dispute resolution (ADR) experiences and non-music-based collaborative metaphors. Each phase of the study is described in detail below.

## **MY ROLE IN THE STUDY**

I performed several roles within the study. Within Phase One, I designed the semi-structured interview questions, conducted the interviews and subsequently organized, analysed and synthesized the data from those interviews. With respect to Phase Two, I designed and taught a course curriculum in dispute settlement to meet the needs of the students and the school. Within that course design I incorporated musical and non-musical experiences for the students in the two classes. The two sets of experiences provided the comparative elements of the study. As a professional musician myself I was able to design and facilitate the arts-based experiential

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<sup>25</sup> Students involved in the study had chosen to enrol in this particular elective class in dispute resolution. They had a range of other seminars for which they could have balloted (for example, legal history, law and poverty, jurisprudence, among others). To this extent, the students in the two sections of this course had somewhat self-selected to be in this particular seminar.



exercises. My role as researcher included creating the musical and non-musical experiences, designing a series of weekly reflection papers and questionnaires with open- and closed-ended questions, observing participant behaviour in simulated negotiations, and ultimately analysing the data gathered from the participants.

The weekly reflection papers and questionnaires were collected from the students at the end of each class and put into envelopes. I did not review these papers during the eleven weeks of the course; no adjustments to the course curriculum were made as a result of the reflection papers or the responses to the questionnaires. I did not, in fact, review any of these documents until several months after the conclusion of the course, after all term papers (which did not form a data source for this study) were received, graded and returned to the school. In this way I kept my roles as teacher and researcher as separate as possible.

In order to design the musical experiences and shape the course curriculum I first conducted interviews with professional ensemble musicians. The purpose of these interviews was to explore key characteristics of effective collaborative music-making and to identify core capacities most valued by collaborative music-makers which they believed contributed to effective outcomes. A motivating factor in conducting these interviews was a desire to minimize any bias that might be perceived by reliance on my own ensemble music-making experiences as the source of this information.

As set out at the end of the chapter, ethics approval was received by the University Ethics Committee for both phases of the research study and all study participants provided written informed consent.

## **RESEARCH METHOD**

Interviews, pre- and post- study surveys, questionnaires, reflection papers, and my own notes and observations were the primary forms of research data. I used a mixed methods approach to data collection and analysis (Creswell and Plano Clark, 2011). I chose this approach in order to gather a comprehensive set of data. Using an approach that combined quantitative as well as qualitative methodology was best suited to achieve this end. It was particularly important to gather a wide range of data given the fact that there is minimal existing research into the effects of arts-based approaches to teaching and learning in this setting. The research objective behind employing this method was to gain the richest picture possible of the impact of the arts-based teaching model as compared to the non-arts-based teaching model.

Starting from the main query of how a music-based pedagogy might impact on the teaching of dispute resolution, the four specific research questions set out above were primarily exploratory in nature. I followed a grounded theory-informed approach to data analysis using open coding and a series of coding frames to organize the data and conduct a content analysis according to various concepts and categories, including response themes and patterns (Glaser and Strauss, 1967; Strauss, 1987; Corbin and Strauss, 1990, 2003).

## **RATIONALE FOR MIXED METHODS RESEARCH DESIGN**

I worked from a pragmatic perspective in designing the research study. As Bloomberg and Volpe note (2012, p. 29 referring to Patton, 2001), “[p]ragmatism is not committed to any one research philosophy or paradigm”; the focus is on “practical application and workable solutions to research problems.” As noted by Krathwohl (1998) and Robson (2011), the emphasis in a pragmatic approach is not on purity of methodological application but on how to best address the research problem; this is rooted in the belief that the research questions should determine the methods used.

As Creswell and Plano Clark (2011, p. 43) state a pragmatic approach “draws on many ideas” including employing “what works”, using diverse approaches, and valuing both objective and subjective knowledge.” It focuses “on the consequences of research, on the primary importance of the question asked rather than the methods, and on the use of multiple methods of data collection to inform the problems under study.” (Creswell and Plano Clark, 2011, p. 41) It was my belief that a pragmatic approach using multiple data collection and analysis methods would best meet the needs and purposes of this study.

As noted above, I primarily utilized a “grounded theory-informed methodology” in analyzing the content of the data. This enabled me to examine the changing experiences of the participants over time and to describe the reported dimensions of those experiences. The introduction of music in Group A and its absence in Group B facilitated the comparison of the two classes in which the different pedagogies were being applied.

Using a mixed methods approach provides rich descriptive narrative from the participants' perspective supported by quantitative statistical data. The research questions in this study could best be answered using such a mixed methods approach. As Johnson, Onwuegbuzie, and Turner (2007, p. 123) state:

Mixed methods research is the type of research in which a researcher or team of researchers combines elements of qualitative and quantitative research approaches (e.g., use of qualitative and quantitative viewpoints, data collection, analysis, inference techniques) for the purposes of breadth and depth of understanding and corroboration.

Regarded as the “third methodological movement” (Tashakkori and Teddlie, 2003, p. 5), “the third research paradigm” (Johnson and Onwuegbuzie, 2004, p. 15), and “a new star in the social science sky” (Mayring, 2007), mixed methods research combines the use of statistical data with narrative. This captures both the quantitative as well as the qualitative aspects of a phenomenon (Creswell and Plano Clark, 2011, p. 1) and provides a rich, holistic and multi-textured picture of a subject under study. Greene (2007, p. 20) refers to mixed methods thinking as “multiple ways of seeing and hearing.”

The use of both quantitative and qualitative methods elicited the rich data necessary to address the research purpose. It also provided statistical information to complement the descriptive data. As stated by Perry (2011), one of the critiques of the existing studies regarding arts-based learning within medical school curricula is reliance on qualitative data alone. The mixed methods approach used in this study assisted in partially addressing that concern; at the same time, I recognized the impossibility of a short-term preliminary study with limited sample size to yield any generalizable cause and effect conclusions. Combining both quantitative and

qualitative methods allowed me to offset weaknesses of each method and to draw on the strengths of both (Bryman, 2006).

Greene, Caracelli, and Graham (1989) enunciated five broad reasons for mixing methods, including triangulation, complementarity, development, initiation and expansion. Bryman (2006, pp. 105-107) has more recently provided a more detailed list of sixteen reasons that have evolved over the past twenty years for making use of a mixed methods design. He notes (2006, p.111) that many mixed methods studies make use of multiple reasons for mixing methods which aligns with the overall philosophy of mixed methods research, an essential aspect of which is being responsive to new insights. My primary reasons for employing a mixed methods design from this perspective were triangulation and complementarity of results to lend credibility and dependability to the study, and to provide elaboration, enhancement and clarification of results from one method to the other.

## **PHASE ONE OF THE RESEARCH STUDY – INTERVIEWS WITH COLLABORATIVE MUSICIANS**

### ***Purpose of gathering data from Musicians:***

In order to design an appropriate arts-based teaching and learning experience for the music group, I first conducted a series of foundational interviews with five professional musicians from different genres. These interviews were conducted to respond to the first research question – to ascertain key characteristics of effective collaborative music-making and the capacities most valued by these collaborative music-makers to achieve effective ensemble outcomes.

The data collected from these interviews enabled me to break down the elements of collaborative music-making behaviour and associated skills. This provided me with core concepts and themes to incorporate into the experiential and embodied learning exercises for the students to observe, absorb and apply in practice exercises. These elements of collaborative behaviour and ensemble music-making skills informed my design of the experiential learning activities.

### ***Research Participants:***

Foundational interviews were conducted with five professional musicians all of whom are actively engaged in ensemble music-making. The musicians were: Barry Shiffman, a Canadian classical violinist; Steve Wallace, a Canadian jazz bassist; Ann Hampton Callaway, an American jazz/cabaret vocalist/pianist; Mary Lou Vetere, a Canadian classical vocalist/pianist/accordionist; and Adi Braun, a Canadian jazz/cabaret and classical vocalist/pianist.<sup>26</sup> Each of these musicians has performed in a variety of collaborative settings from duos to large orchestral ensembles and as part of long-term as well as “one-off” collaborations. These musicians are colleagues of mine with extensive experience with collaborative music-making. I have personally worked with several of them in ensemble performance both in “one-off” (Callaway and Vetere) and in long-term collaborations (Shiffman and Braun).

The participant sample was criterion-based and purposive (Glaser and Strauss, 1967; Corbin and Strauss, 2008). These five musicians have experienced the phenomenon of ensemble music-making from multiple perspectives. They were able to provide insights and depth of understanding into the collaborative music-making process through their lived experiences.

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<sup>26</sup> Copies of musicians' biographies are included at Appendix A.

These participants were selected because they are active, professional performing artists; have engaged in ensemble music-making throughout their careers; represent a variety of musical genres; and are either instrumentalists, vocalists, or both. This purposive sampling enabled me to collect data within a variety of musical genres and instrumental/vocal disciplines. The musicians' differing experiences enabled me to achieve maximum variation within a small sample size while the number of distinguishing characteristics among them (including age, nationality, and gender) assisted in providing depth.

All of the participants gave written informed consent (Appendix B) and were interviewed either in person or by telephone. No inducements for participation were offered and all participants agreed to be identified by name.

***Choice of data collection method:***

I selected the interview as the primary method for data collection for this phase of the research in order to elicit rich, thick descriptions from professional musicians' lived experiences. Unlike a questionnaire or survey, as noted by Creswell (2007) and Marshall and Rossman (2011), interviews provide an opportunity to clarify statements and probe for additional information in a conversational setting. They also offer the interviewee's personal perspective of an event or experience.

The interview is a fundamental tool in qualitative research (Kvale and Brinkmann, 2009). It is an "attempt to understand the world from the subject's point of view, to unfold the meaning of the subject's experiences, to uncover their lived world" (Kvale and Brinkmann, 2009, p.1).

***Interview Questions:***

I developed a set of open-ended questions (Appendix C) that served as the basis for these semi-structured individual interviews. In crafting the interview questions I drew on my previous research, my teaching, training, and professional experience in the field.

Essential components of group problem-solving and negotiation include effective communication, the ability to work as a problem-solving/negotiating community toward a mutually beneficial goal, and the ability to connect on a human/relational level with other members of the group through the exploration and discovery of shared or overlapping goals and interests as well as a basic recognition of self in other.

The interview questions focused on these themes of communication, community, and communion from the perspective of the musical ensemble. Questions probed for insights into the collaborative music-making process and the skills and behaviours that were conducive to effective engagement. Interviewees were also questioned regarding challenges that they had experienced within the collaborative process and how they had addressed those challenges in practice.

The questions focused on six areas: collaborative experiences, communication within an ensemble, ensemble community/group dynamics, process issues, connection/communion with ensemble members, and ensemble skill-sets.



With respect to collaborative experiences, musicians were asked to describe their different collaborative music-making experiences, their most successful collaborations and what made them successful, and their least successful collaborations and what made them unsuccessful.

With respect to communication, I invited them to describe how they communicated within the ensemble environment and the different modes of communication they used. I asked them to describe the essence of effective ensemble communication, how criticism and input from others should be given and received, how to diffuse tense situations and have difficult conversations, and how to deal with impasse. Regarding ensemble dynamics they were asked how community, relationship and unity is created among ensemble members, how they establish a sense of common intention and purpose, how they achieve balance within the group, create a safe, respectful environment and encourage the full participation of all members. Regarding process issues, I invited the musicians to describe how they prepare for ensemble engagement, how they define and achieve their stated goals. I asked them to describe their leadership structure and the issue of hierarchy within the ensemble. They were asked to explain how problem-solving is dealt with and whether the assistance of third party interveners (such as conductors or coaches) is sought to help deal with challenging situations. With respect to connection/communion, the musicians were asked about the importance of relationship and human connection to the overall ensemble process. They were asked to explain how they dealt with issues of ego, emotions, power, and power imbalance. These questions were asked in the context of both “one-off” ensemble encounters as well as in situations where there are long-term ensemble relationships.

Finally, the musicians were asked to describe the most valuable and important skills and qualities of ensemble music-makers, about the specific role of improvisation, spontaneity, and risk-taking

to the process and outcome, and if there was any special training that they felt facilitated effective ensemble engagement.

***Interview Process:***

The questions were not given to the musicians ahead of time but were verbally administered by me. The questions guided the interviews, as opposed to being rigidly applied, and provided flexibility for both interviewer and interviewee to diverge from them in order to pursue an idea that warranted further elaboration or to respond in more detail. The interviews were each one to two hours in duration and were held either in person or by telephone. Each interviewee was sent, and asked to review and sign, the University-approved letter of informed consent required for participation in this study (see Appendix B). All interviews were tape-recorded in their entirety. On completion of the interviews, the audiotapes were transcribed verbatim. The recorded data was transferred to computer and backed-up on an outside storage device.

***Data Analysis and Synthesis:***

The interviews were transcribed from the recordings simultaneously with their collection and the recordings were transferred and backed-up to computer storage.

The inductive approach to this phase of the research began with listening to each recording twice and reading the transcripts and my notes from the interviews several times. As the interviews had taken place at different times over an extended period, I wanted to first develop an overall familiarity with the data. During the initial listening, reading, and reviewing, I did not engage in

any coding. However, on the subsequent reviews of the interview data I began to make notes of themes; these broad themes became the basis for my summary.

My next step in the analysis was to create a table with rows for each of the broad themes that emerged from the interview questions, and columns for each interviewee. Employing an unrestricted or open coding system (Strauss, 1987, p. 28), I parsed out the interviews. I was guided, in part, by the general theme categories arising from the interviews, primarily those related to communication within an ensemble, community/group dynamics, connection/communion, process/outcomes/goals, and ensemble skills. I inserted all relevant quotes from each interviewee into the chart to summarize the data based upon theme categories. This assisted in the next phase of coding, what Strauss refers to as “axial coding” (Strauss, 1987, p. 32), a multileveled process in which core themes from the data are broken down and intensely coded around single categories. Having the quotes of each interviewee side-by-side and organized according to themes and categories enabled me to explore connections between sections of text both within and across interviews. I reviewed the quotes of each interviewee and compared one against the other within the categories looking for common phrases and recurring themes. I then searched the body of the document to see how many times certain words and phrases repeated themselves in general and from one interviewee to another, thus preparing frequency lists for each category or concept.

As noted above, I broke the larger categories down into smaller segments to further investigate the details of the data. For example, within “communication” I began to code across the interviews for words and phrases that identified specific communication skills describing aspects

of the nature and quality of communication, and ways in which communication affected or impacted the other categories of community, communion, or process. I began to colour-code the table and to group words and phrases into these sub-categories. For clarity, I decided to make multiple copies of the table so there would be separate colour-coded copies related to each of these clusters of words and phrases.

The purpose of this segmented analysis was to note the most important elements of collaborative engagement from a music-based perspective and to see where concepts overlapped with dispute resolution skills and concepts. This, in turn, enabled me to see where the emphasis or the quality of the aspect of a category (communication, community, communion, process/outcome/goals, skills) might be different between a musical ensemble negotiation and a non-musical negotiation. This would then provide insight into where a shift in focus or emphasis might enhance the non-musical negotiation process and where I could incorporate these elements into the course design.

Once the data was broken down into separate categories and the details of the data further investigated, I began the process of synthesis, reconstructing a holistic and integrated understanding of ensemble music-making. The overarching theme emerging from all coding of the categories and sub-categories was that of “relationship”, the notion that all members in a negotiating group are in a constant state of relationship with themselves, with other members of the group, with the process, and the product – the performance – or goal. This sense of “relationship” is present through all of the five themes of communication, the creation of community and communion, process and outcome, and the specific skills needed to achieve these goals.

The analysis and synthesis of the data gave rise to three overarching themes related to the concept of relationship: those of **self-orientation**, **other-orientation** and **process/outcome-orientation**. Constructive attitudes, actions and behaviour regarding self, others, and the process/outcome were all key concepts that emerged from the interview data related to successful collaboration and enhanced outcomes.

In subsequently analyzing the data from the student responses recorded in the teaching study, the themes of self-orientation, other-orientation, and process/outcome-orientation also became key themes in the data.

### *Emerging Themes*

The main research question in this phase of the study was “What are key characteristics of effective collaborative music-making and capacities most valued by collaborative music-makers to achieve effective ensemble outcomes.” This question focused on individual and group skills and behaviours.

The following themes emerged from my analysis of the interview data:

- 1) communication skills (in particular listening) are of paramount importance in effective collaborative music-making;
- 2) emotional and social intelligence competencies are essential skills for collaborative musicians;
- 3) rotating leadership is important to a balanced and fully participatory process;
- 4) individual preparation of each member is critical to achieving the shared goal of producing an outstanding aesthetic product; and

- 5) the goal of the collaborative process is product-oriented. This product – an outstanding ensemble performance – is a superordinate goal that no one member of the group can achieve on his or her own.

**Theme #1: communication skills are of paramount importance in effective collaborative music-making**

All of the musicians stated that communication skills are of paramount importance in effective collaboration. In defining “communication skills”, they repeatedly and particularly referred to listening skills, as well as non-verbal communication (the ability to use and interpret body language and gesture), and the importance of the nature and quality of verbal communication (inviting contributions from others, valuing others, showing respect).

Effective listening skills were described as “heightened” (Shiffman), “acute” (Braun), and “developing an “inner ear” (Wallace). Shiffman stated that all of a musician’s skills are “listening based”. Further, he stated that ensemble members needed to be “in constant intense deliberate contact” with one another. Braun stated that “half of success is listening to self and others” and to “hearing and listening before attempting output.” The emphasis on listening to self is particular to musicians; while non-musicians are encouraged to be self-reflective, active engagement with “reflection-in-action” is less frequent than “reflection-on-action” after the fact.

All of the musicians described the importance of non-verbal signals and gestures, described by Braun, Callaway and Wallace as a “shared language”. “Body language is messages”, said Shiffman, and body language and gestures are “ways of communicating” (Vetere). Both body language and gestures are obvious as well as subtle (Shiffman). Callaway stated that “a huge component of communication is observing for signals, gesture and body language.”

Some of the communication skills as described by the musicians were akin to “active listening” skills taught in management and dispute resolution courses. Active listening is a communication technique whereby verbal and non-verbal feedback is given by the listener to the speaker to confirm what has been said and to confirm the understanding of both parties. For example, the classical musicians spoke of showing understanding or moving toward refinement of musical options and ideas by repeating back certain musical phrases, in a form of non-verbal “reframing” or “paraphrasing”. Other modes of listening described by the musicians, however, were the antithesis of “active listening” which, when taught and applied as a dispute resolution technique, often involves more speaking than listening. The type of listening described by the musicians was a form of “mindful listening” whereby members are finely tuned to what is being “said” (musically and otherwise) by others, by being fully attentive and present in the moment.

The nature and quality of the effective verbal communication was repeatedly described as needing to be “respectful”, showing “sensitivity” (Callaway) “inviting” and “welcoming of the ideas of others” (Braun), while at the same time needing to be firm and allow members to retain the ability to “make strong choices” (Callaway). Honesty, speaking from the heart (Braun), being truthful and getting truthful answers (Vetere) were also identified as important facets of effective communication. Acknowledging the efforts of others, giving encouragement and praise were identified as “crucial” by Vetere. Callaway and Wallace also stated that advising and finding out what each person “wants” or “needs” is a key to successful, open dialogue.

**Theme #2: emotional and social intelligence competencies are essential skills for collaborative musicians**

Goleman (1995) describes key elements of emotional intelligence as self-awareness (self-recognition), self-management (self-regulation), social awareness (awareness and understanding of the emotions of others), and relationship management (inspirational leadership, developing others, building bonds, conflict management, change catalyst, teamwork and collaboration). Social intelligence (which includes relationship management) involves empathy, attunement, values awareness, influence, developing other, inspiration, teamwork (Goleman 2006; Goleman and Boyatzis, 2008).

The musicians referred to the importance of each of these elements as keys to the success of the ensemble music-making process. They described the importance of being sensitive to others, showing empathy, respect, valuing the contributions of others, doing what was necessary to encourage and elicit the best performance from others, encouraging full participation. They also described the need to provide a safe and secure environment in which everyone could share ideas without fear of ridicule, of being dismissed, or diminished.

The jazz musicians, in particular, spoke about the need to allow for “mistakes” (Wallace), “mishaps” (Braun), and stated that this enabled them to “create newness or freshness” (Braun). Braun stated that “mishaps are opportunities” and all of the musicians, regardless of genre, reported the need to constantly “try things”. Vetere expanded that there was a need to “try things out without being fearful of being ‘wrong’ – it’s not about ‘right/wrong’”, and stated the importance of creating comfort and a feeling of safety. Braun cautioned that while one needed to



“make room in your heart for generosity” this needed to be done “without compromising excellence.”

With respect to creating relationship and a sense of connected community, Callaway, Braun and Wallace spoke of the need to find commonalities on a human level in order to create connection. Shiffman stated that community “comes from empowering others, being heard and noticed in a non-egoic fashion; it is the result of constant adjusting.” All of the musicians spoke about the need for flexibility, fluidity, and adaptability within the ensemble community. Callaway stated the need to “come from the place of the Golden Rule.” Vetere stated the need to balance the ensemble “to try to compensate, be flexible, monitoring and adjusting and reacting to what you are being fed” and “helping out and supporting others.”

All of the musicians spoke of the importance of developing trust and rapport. To achieve this they unanimously stated that everyone must feel respect, at all times, and that they are needed, valued and appreciated (Braun). Shiffman stated that “trust and respect come from listening” and Callaway added that “there is an energy in respect.” Respect and equality were key ingredients of creating community and connection. Trust and rapport, Vetere stated, “come from being attentive to others, to making sure others’ needs are being heard and met” and, as Shiffman stated, “you must give everyone’s ideas their due.” Key elements fostering trust, respect, and rapport were a safe and secure environment where all members encouraged, acknowledged and were receptive to the ideas and contributions of others, and saw the value of them to the whole of the ensemble and the ultimate goal they were striving for together.

**Theme #3: rotating leadership is important to a balanced and fully participatory process and the ultimate goal of an outstanding aesthetic performance/product**

The musicians described leadership within the group as “rotating leadership” (Vetere) and one in which leadership “is shifting, in tandem” with others (Braun). Braun stated that “everyone is a leader and everyone has something to offer. Each person has the opportunity to shine.” Wallace stated that each person provides the others with “something to dance on – you are giving a carpet to dance on.” Callaway and Vetere spoke of the importance of “modelling” positive qualities. Shiffman spoke of the need to encourage “continued dialogue” among all of the members. All of the musicians spoke of the importance of encouraging others in order to bring about their personal best while acknowledging individual contributions to the whole (Vetere, Callaway) and valuing everyone’s contributions and roles in the creative process (Vetere, Callaway, Braun). “A solo is not essential to have a voice or express yourself” (Wallace). The process was unanimously described as “consensus-based”. Each musician described using his or her social competencies and acting as leader at various times throughout the process to influence and develop others and to inspire, build bonds and foster teamwork.

**Theme #4: individual preparation of each member is critical to achieving the ultimate shared goal of producing an outstanding aesthetic product**

The musicians all stated that personal preparedness prior to meeting as an ensemble was crucial and expected. Part of preparedness was not just technical preparedness but also the state of mind with which they came to the process. Wallace stated that “pre-conceived ideas are a problem.” Braun, Callaway and Vetere all spoke of “openness” to the process and the ideas of others.

In terms of preparedness and proficiency, Braun and Vetere spoke about the need to achieve one's highest possible level of "personal best" for the sake of the ensemble. The goal, however, was not to shine as a soloist within the ensemble but to achieve equality and balance (Vetere). The musicians' observations revealed the importance of bringing together excellence at both the individual as well the group level. With respect to personal "state" – an integral part of a musician's preparation – that each musician brings to the ensemble process, both Shiffman and Braun spoke of the need for presence. Preparing to be present in the moment is essential to ensemble engagement, given that "things happen in seconds" (Braun).

**Theme #5: the superordinate goal that guides the group is always the production of an outstanding performance, a goal which no individual ensemble member can achieve on his or her own.**

The musicians all recognized at the outset of their engagement that the goal of an outstanding creative output or product was impossible to achieve by any one member alone; they all knew they needed the contributions of the others. Callaway spoke of establishing a shared intention, a common goal, at the outset of the process. While she spoke of encouraging others with a frame of "let's all do our best", and having a joint belief in the project and "a need to do it", Shiffman was more blunt and practical: "success", he stated "is the only option". Non-musicians rarely speak in such terms.

Once there is a performance commitment, the musicians do not share the mindset of non-musical negotiators that "walking away from the table" is an option. With an expectation of a product – in the form of an outstanding performance – at the end of the process, there is a sense that "we'll

try anything. You can't walk out" (Shiffman). Braun echoed this by stating "you can't walk off the gig."

The musicians unanimously focused on the end product as "inevitable"; there is no question that a "resolution" will occur. The product "is the accumulation of all the seconds of process" and the goal is to bring the music to life (Braun). To do this, members must be "reminded of the bigger picture, why they are there" as part of the process "building blocks" (Callaway). All of the musicians stated that realizing the goal at the end of the collaborative process is a "joint responsibility." Wallace stated that the responsibility is personal and to the group, and Vetere echoed more pointedly that "each takes responsibility *for* the group." The inspiration for achieving the superordinate goal, Callaway stated, "comes from knowing it's possible."

I used these five themes as core components in the design of the music-based interventions. They served to highlight the elements of collaborative music-making that needed to be emphasized in an ensemble-focused approach to dispute resolution theory and practice. I used them to re-define and re-prioritize certain negotiation and dispute resolution skills and concepts and to ensure the music-based exercises captured the essence of those skills and concepts described by the musicians.

In building the music-based exercises I incorporated the four purposes of arts-based interventions described by Taylor and Ladkin (2009, p. 56):

- (1) *skills transfer* –the development of artistic skills that can be applied in another setting

In this case, I was looking not so much to develop “artistic skills” as “artistic sensibilities”, particularly with respect to those related to communication, how to build effective negotiating communities, and to connect with others within the negotiating group.

- (2) *projective technique* – using artistic output “to reveal inner thoughts and feelings” not necessarily “accessible through more conventional developmental modes.”

In designing the intervention, I wanted to use music to explore feelings of self and other in furtherance of the development of emotional and empathetic capacities, and cultural sensitivity.

- (3) *illustration of essence* – the ability to “apprehend” through art “the “essence” of a concept, situation, or tacit knowledge...revealing depths and connection that more proportional and linear developmental orientations cannot.”

Music-based exercises were also designed to assist students in grasping abstract intellectual concepts in a sensed and felt way.

- (4) *making* – actual engagement with art-making for a personal reflective experiential purpose.

In the music class, the creation of playlists, the interactive observation of an ensemble rehearsal process, and active engagement in group music-making exercises with simple percussion instruments, were all aspects of “making” that had, among other things, a personal reflective experiential purpose.

Having conducted and completed this phase of the research project, I moved on to the next phase, the teaching study.

## **PHASE TWO – COMPARATIVE TEACHING STUDY**

### ***Description of the Teaching Course:***

Dispute Settlement – The Art of Conflict Resolution was an elective seminar course offered to first year students in the winter term at a Canadian law school. Both sections of the class were held in a large, open teaching space with adjacent break-out studios equipped with white boards and audio/visual equipment.

Each section of the course was held once a week for three hours from 2:30-5:30 p.m. and ran for eleven weeks from January to April. Both classes followed the same course outline, used the same textbook and supplementary reading materials and received the same lectures, with minimal variation. Students in both classes engaged in a series of experiential exercises in dyads, triads and multi-party ensembles, and in simulated negotiations and problem-solving exercises. They each went on a fieldtrip and the non-music class had a guest speaker.

Collaborative metaphors, in place of more traditional competitive and combative metaphors, were introduced to both classes. The musical ensemble, as a new metaphoric frame, was specifically introduced to the music group in the first week; the non-music group was encouraged to explore a variety of collaborative metaphors. The concepts of collaborative negotiation and a team approach to solving problems and resolving disputes were reinforced in both classes throughout the eleven week term.

The school's primary method of evaluation for all first year elective courses is a research paper. The design of the study had to be modified to allow for specific teaching and assignments related to writing a research paper. This reduced the time available for exercises related solely to the study, as further set out in the limitations section below.

The course was an introduction to the topic of dispute settlement and conflict resolution. It covered topics related to:

- (1) conflict analysis, including the nature of conflict, our perception of conflict, sources of conflict, conflict drivers, emotions and neuroscience in conflict, the anatomy, psychology and sociology of conflict, and our responses to conflict;
- (2) conflict handling mechanisms, including direct, representative, and facilitated negotiations (including mediation, collaborative practice methods and restorative

justice initiatives) both in civil and criminal law contexts, negotiation and mediation schools of thought (distributive/integrative approaches, evaluative/facilitative/transformation/narrative models), and private and court-annexed and mandated programs;

- (3) specific dispute resolution skills, including those related to communication (questioning and listening), creation of community (trust, rapport, unity, balance), and communion (relationship, shared vision and overlap in interests/goals);
- (4) emerging processes, including on-line dispute resolution, and the larger field of peacebuilding; and
- (5) challenges to process and critical evaluation of the field.

The role-play and in-class experiential exercises provided students with an opportunity to practice dispute resolution skills in both facilitated and non-facilitated settings. The course culminated in a two and one-half hour multi-party negotiation role-play and the writing of a research paper.

In addition to recording the outcomes of each exercise and negotiation, at the end of each class students recorded their reactions in weekly reflection papers and on questionnaires which used both closed-ended questions (a mixture of Likert-style questions, closed “yes/no” answers, and multiple choice selection) and open-ended descriptive narrative-style questions. These questionnaires formed the basis of the research data along with my own observational data and notes from group discussions and exercise debriefs. The observational and self-report qualitative and quantitative data was then analysed using a modified grounded theory methodology, as further described in detail below.

### *The Music Class – Group A:*

I had decided that the section of the class held on Mondays (Group A), would receive the music-based teaching experiences. The metaphor of the musical ensemble, introduced in the first week, provided the collaborative frame for this class and became the overarching negotiation and problem-solving metaphor.

Use of the ensemble metaphor was grounded in the belief that changing the disputing metaphor from one of contending to one of cooperating might shift dominant culture mindsets away from traditional win/lose dichotomies. Use of the ensemble metaphor was also rooted in the hypothesis that providing a tangible alternative metaphor would offer new roles (identities), goals, and process orientation to students forming their professional identities and habits of mind (Shulman, 2005).

In contrast to an “enemy” or “opponent” dynamic established by war (combative) and game (competitive) metaphors, the ensemble (collaborative/cooperative) metaphor contains no such inherent relationships. Ensemble musicians – as confirmed by the themes emerging from the musician interviews in phase one of the study – work in concert with one another, knowing that every voice in the group must be heard, that every thought and idea must be shared and experimented with in an atmosphere of openness and respect, that everyone must fully participate in the process in order for the ensemble to arrive at its superordinate goal of an outstanding performance – a goal that no one person can achieve on his or her own. Ensemble musicians have an acute awareness that they *need* one another, that any problems they face are



not one person's problems but everyone's problems. The essence of the ensemble is "we-ness" not "me-ness".

As a metaphor, the roles and goals in an ensemble stand in stark contrast to those of war and games. Whether in a jazz, chamber, drumming, or vocal ensemble, members are not warriors or strategists; while they may not like one another, they are certainly not enemies or opponents. The goal of the ensemble endeavor is not to win, to defeat, or to diminish one another, to outsmart, or to force one's ideas into dominance. The goal is to find a perfect balance of all the disparate elements at play in a culture of cooperation, and to rise above individual polarized positions to achieve unity of a shared vision.

Collaboration is not a skill that is emphasized in traditional law school education. In primary, elementary and secondary school training, the importance of developing collaborative competence as a core learning objective has only come to the fore in the last two decades (Delors, et al., 1996). While students in the past have been taught to work as teams, this has most often been for the purpose of competing or excelling against another team. Students have only recently been taught to collaborate as a means of maximizing everyone's potential, and as a means of pooling knowledge to meet challenges and solve problems for mutual good. With growing global interdependencies the need to work together on multiple cooperative levels has become essential. Within the legal and conflict resolution professions this has translated to a recognition of a need for more collaborative and less adversarial approaches to conflict resolution (CBA, 2014). Given these objectives, from both an educational and a practice

perspective, the introduction of the ensemble metaphor and exploration of its impact was particularly significant in the study.

The set of music-based experiences were designed to support students in exploring the nuances of communication, and in building effective collaborative communities and interpersonal connections. In addition, music was introduced as an explicit tool within a complex negotiation. The musical interventions, progressively emphasizing reflection, observation, and doing, included:

- (1) the creation of a playlist paired with a reflective exercise and in-class discussion exploring personal responses to conflict and its handling (Week Two);
- (2) a fieldtrip to the Royal Conservatory of Music in Toronto to observe and interact with the Cecilia String Quartet paired with a lecture on communication, community and interpersonal connection, that integrated musical ensemble concepts with negotiation, mediation and problem-solving concepts (Week Five);
- (3) team-based music-making with percussion instruments (embodied learning) building on the concepts introduced as part of the fieldtrip workshop and lecture (Week Seven); and
- (4) the use of music as a tool in the major role-play multi-party negotiation (Week 9).

The class also watched a TED talk on jazz improvisation.

### ***The Non-Music Class – Group B:***

The section of the class held on Wednesdays (Group B) received a standard experiential teaching approach to alternative dispute resolution (ADR). Such an approach included the use of well-known dispute resolution role-plays and skills-building communication exercises. Group B also went on a fieldtrip and engaged in-class with a guest speaker. They did not engage in any music-related exercises. In this class I also de-emphasized competitive and combative metaphors commonly most often associated with disputing and dispute resolution. I invited the students to

adopt collaborative metaphors of their choice connected with cooperative problem-solving and interest-based negotiations.

For each of the music-related exercises and experiential learning events in which Group A engaged, Group B engaged in corresponding non-music exercises. These exercises and experiences also moved progressively from reflection, to observation, to doing, and included:

- (1) a reflective exercise and in-class discussion exploring personal responses to conflict and its handling using words only (Week Two);
- (2) guest speaker - interactive talk on cross-cultural and international negotiations with senior legal counsel from a major financial institution. Students engaged in a discussion and question and answer period with the guest speaker (Week Five);
- (3) experiential “active listening” and “curious questioning” exercises (Week Five); and
- (4) a fieldtrip to one of the Toronto courthouses to meet with a judge and the director of the on-site court-sponsored mediation service. Students engaged in an interactive discussion and question and answer period with these two experts. I also gave a lecture on communication, community and communion (interpersonal connection) (Week Seven).

Group B did not use music as a tool in the major role-play multi-party negotiation.

***Research Participants:***

Thirty-eight first year law students elected to take the course “Dispute Settlement – the Art of Conflict Resolution”. As seminar class size is limited to approximately twenty students, two sections of the course were offered, one to be held on Mondays from 2:30 p.m. to 5:30 p.m., one to the held on Wednesdays from 2:30 p.m. to 5:30 p.m.. Without being aware of the difference in pedagogical methods, students enrolled in either the Monday or Wednesday class, based on

scheduling preference. The Monday class (Group “A”) was made up of twenty-one students and the Wednesday class (Group “B”) was made up of seventeen students.

The rationale for choosing second semester, first year law students related to the degree of socialization into traditional legal culture received in their first term of study and to the fact that they are in the early stages of their career development. I hypothesized that if a shift in thinking and behaviour could occur within such a socialized population at an early stage in their legal career development then a shift in professional culture might result. Further, if this mode of teaching and learning had a positive impact upon students’ cognition, affect, and behaviour, such arts-based approaches might be beneficial in the study of other legal subjects. Finally, if a shift in thinking and behaviour could occur within a strongly socialized population of learners, such arts-based approaches might have the ability to shift dominant culture frames and behaviours in less socialized populations of learners in non-legal setting. This would provide wider application of the study and its results.

Other than the fact that one class was held on Monday and the other on Wednesday, the students had no advance knowledge of the study and were unaware of any differences between the two classes. Students did not choose to be in the Music Class or the Non-Music Class, which would have created a selection bias. The rationale for employing this “blind” approach was to increase the validity of statistical results. At the same time, however, I recognized that given the size of the sample and the complexity of influences in and outside the classroom, it would be difficult to generalize from the results to a larger population.

None of the students knew about the research study until the course was over. They were invited at the end of the term, at the last class, to participate in the study by permitting their course work to be used as data for the study. All thirty-eight students enrolled in the two classes agreed to participate and provided their written informed consent. There were no inducements of any kind offered to participants. All data gathered came from regular classwork. Completion of weekly reflections was required as a core part of the coursework irrespective of its potential use as a source of data for the study.

The rationale behind not advising the students of the study at the outset of the course was to ensure that data would be useful to me as researcher and not tainted in some way. For example, if students had known about the research study they might have written their reflections to provide me, as researcher, with responses they might have believed I wanted to receive. Further, as the experiment was being done within a course in which I was the teacher and on which they were being graded by me it was important that they not believe participation in the study was tied in any way to their grading outcome. Lastly, another reason not to advise students of the study in advance was to ensure, as far as possible, that there was minimal cross-talk between the two classes which would also have potentially skewed results (for example, if role-play facts been shared between classes or surprising results given away by Group A to Group B). To the extent that such cross-talk might have occurred, this is one of the limitations of the study.

The delimitation of first year law students from the same school who had chosen this course was decided on for several reasons: to maximize their similar experiences with law school teaching,

training, and environment; their similar levels of socialization into legal thinking and culture; and their similar interests in alternative dispute resolution theory and practice.

The thirty-eight students enrolled in the course were representative of that year's admissions demographic profile with respect to gender ratios, age categories, and pre-law educational backgrounds.<sup>27</sup> In this way both Group A and Group B were statistically similar. As students had not chosen the classes for their specific pedagogical approaches, any difference between the groups was due to chance and not a selection bias.

***Methodological Format of the Comparative Teaching Study – Modified Experimental Study and Exploratory Inquiry:***

The study was a convergent design which enabled the concurrent collection of quantitative as well as qualitative data, their separate analyses, and the ultimate merging of the two data sets. This design was informed by the need for a comprehensive understanding of the topic and a need to validate and corroborate quantitative data with qualitative description. The quantitative and qualitative strands were implemented at the same time, both had equal emphasis and the results of the separate strands were converged by comparing and relating them to one another as part of interpreting the data.

The comparative nature of the study design (a type of modified experimental study) consisted of a prospective pre-course versus post-course evaluation (the Starting Points and End Points Questionnaires) within both groups and the use of mixed-methods data collection and analysis to determine possible causal connections between the two teaching conditions and outcomes.

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<sup>27</sup> See Appendix D.

While it was not possible for a number of reasons to create a formal experimental study, this approach yielded useful results. Using elements of an experimental study design enabled me to collect the broadest possible set of data. It was clear, however, that the most useful data related to changes in thinking and behaviour, as well as the impact of the music-based teaching and learning experience would emerge more fully from a qualitative explorative inquiry. I therefore chose to “nest” the qualitative and quantitative studies within each other and use a mixed methods approach, as explained earlier. The qualitative aspect of the study involved a grounded theory-informed approach to the eleven during-course reflections and questionnaires completed by the students in the two classes.

There are a number of ethical concerns related to the use of study designs that offer something to one group and not to another (Brady and O’Regan, 2009). Arguments could be made in this case that the Non-Music Group may have been deprived of something seen as beneficial that was offered only to the Music Group. Not using the music-based modalities in both classes, however, did not present an ethical dilemma. There was no harm done to students in the Non-Music Class by withholding the music-based modalities as they received a full teaching and training experience in dispute resolution using standard experiential ADR methods.

Other challenges related to the study, which will be further discussed in the limitations below, were its relatively small sample size and the short duration of the study. Without the qualitative component, the study did not produce enough quantitative data from which to draw reliable findings. The collection of student reflections and perceptions throughout the course was

essential to the study. The emergent data and grounded theory development came primarily from qualitative descriptive and observational data.

***Methods of Data Collection:***

To obtain the most in-depth understandings and to provide corroborative evidence, I used multiple methods of data collection and triangulation. Questionnaires, descriptive reflections, group discussion and observation were all employed as data collection methods.<sup>28</sup>

***Sources of Data vis à vis Course Design:***

In the first week students in Group A and Group B completed a Starting Points Questionnaire. This questionnaire contained fourteen questions requiring Likert-type responses, yes/no answers, and selection from a defined list of choices. The fourteen questions asked students to describe their beliefs and assumptions regarding alternative dispute resolution processes and professional norms and behaviours, including how success is defined and achieved within negotiation and mediation-based settings. The responses to these questions provided insights into how entrenched students were in traditional mindsets with respect to how problems should be solved and disputes resolved, what they believed clients expected of them as legal professionals, and how they perceived themselves as legal professionals. The Starting Points Questionnaire established a baseline profile of the students at the outset of the course.

The responses to the Starting Points Questionnaire were compared to an End Points Questionnaire completed by the students in the final week of the course. The End Points Questionnaire was essentially identical to the Starting Points Questionnaire; however, it

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<sup>28</sup> Copies of questionnaires and reflections/debrief used as sources of data are set out at Appendix E



contained three additional questions. These questions asked students if they believed they had experienced a shift in their thinking about conflict and disputing over the course of the eleven week term, which lessons or exercises had made an impact upon them, and what their most important learnings were and why. These three new questions provided insights into whether or not any changes had occurred by the end of the course and what the students identified as the source of those changes. The Starting Points and End Points Questionnaires were designed to provide information about the students before and after the course experience.

I designed three musical experiences for Group A while Group B was offered an alternative set of non-musical experiences. The set of music-based experiences included the creation of playlists, an interactive workshop with a String Quartet, and team-based music-making. These experiences – both music-based and non-music based – were designed to support the students in exploring the nuances of communication and in building effective collaborative communities.

During the second week, participants in both groups engaged in a reflective exercise that allowed them to explore their personal cognitive and affective responses to conflict and its handling. As a part of this reflective exercise, Group A created a playlist of music as an adjunct to their verbal responses, while Group B responded by using words only. This first music-based exercise was designed to foster the development of a lexicon for expressing the sensed and felt dimensions of conflict. To explore the role of emotions in conflict and its impact on people's responses to conflict, both Group A and Group B were asked to recall a conflict situation in which they had been involved and then reflect on how the conflict had made them feel. Group A then composed a playlist of three songs that not only expressed their feelings but could also act as a vehicle to

communicate their feelings to their colleagues. Students in Group B engaged in the same reflection, but without associating their feelings to music. Both groups subsequently described their conflict-related feelings to their colleagues.

In the fifth week, students in Group A attended an interactive workshop with a String Quartet. At the same time, Group B engaged in an interactive talk on cross-cultural negotiations with senior legal counsel from a major financial institution, and also took part in a series of verbal question-asking and active-listening exercises. Students in both classes received a lecture given by me on the importance of communication, community-building, and interpersonal connection to successful negotiations. Group A students then took part in an interactive workshop with the Cecilia String Quartet.<sup>29</sup> This second music-based experience provided students in Group A with a unique opportunity to observe how the Quartet communicated, collaboratively approached solving problems, utilized rotating leadership, and engaged in consensus-based decision-making during a rehearsal process. The Quartet provided a musical-metaphor-in-action and illustrated the essence of the collaborative negotiation process. At the same time, Group B was introduced, through the lecture, to the same concepts, but without the use of music or musical metaphors.

In the seventh week, Group A engaged in a series of hands-on group music-making activities, while Group B attended an interactive session with a family court case-management judge and the director of a court-sponsored mediation clinic. The experiential exercises that followed in both classes were designed to move from “knowing” to “doing”. In the final musical intervention, which aimed at behavioral integration, Group A students improvised and made music themselves. Using a variety of percussion instruments, students attempted to incorporate

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<sup>29</sup> Copy of Cecilia String Quartet biography attached at Appendix F

the concepts of communication, team building, and interpersonal connection into their individual and team behaviour. Rather than simply observe music being made by others, as they had done previously, the ensemble music-making required students in Group A to “perform” their understanding of the dynamics of communication, including finding a tempo and rhythm within their work as a team. At the same time, Group B engaged in a parallel series of verbal questioning-and-listening exercises.

After participating in the three previously-described experiences, both groups took part in the same two simulated negotiations. By comparing the two groups’ process and performance, it was possible to obtain data that provided some indication of both groups’ overall learning and pointed to possible outcomes of the music-based interventions.

During the eighth week, both groups took part in the Ugli Orange/Dilithium Dilemma negotiation.<sup>30</sup> This role-play is a classic direct two-person negotiation in which each party needs the same finite resource (all the oranges/rocks) to save people from catastrophic harm. When negotiators use open communication, demonstrate trust, and employ an interest-based negotiation strategy, the potential win/win solution – that one party needs the juice (inner rock crystal) and the other the rind (outer ore shell) – readily becomes apparent. By contrast, when parties engage in traditional positional zero-sum bargaining and fail to build sufficient trust and rapport to discover why each party needs the oranges/rocks, the results are disastrous, with at least some people hypothetically perishing.

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<sup>30</sup> The Dilithium Dilemma is an alternative version of the Ugli Orange created by me. The only difference in the role play is that an inner rock crystal and an outer ore shell are substituted for the orange juice and orange rind. The purpose of using an alternative version was to avoid cross-talk between the classes that would have spoiled the role play and the results. The role play characters and fact scenario sheets are identical in all other respects.

In the tenth week, both groups participated in the World Trade Center Redesign, a complex multi-party negotiation. In this role-play, participants representing five stakeholders engage in a time-limited negotiation to reach consensus on four critical issues related to the site of the post-September 11<sup>th</sup> fallen towers. Prior to the negotiation, all participants receive a list of possible resolutions to each issue. To experiment with music as an actual tool in a negotiation process, students in Group A were asked, as part of their preparation, to bring a piece of music to the negotiation that exemplified their resolution goals. This piece of music could be used in any way they chose during the negotiation; for example, they could use the music as an initial ice-breaker, as a tool for addressing an impasse, or as a ritual to mark progress or resolution. Students in Group B prepared for the negotiation without incorporating music into their planning or actual negotiating.

At the conclusion of each of the eleven classes, students in both Group A and Group B completed a reflection paper that contained a combination of Likert-like questions, closed-ended survey-style questions, and open-ended questions inviting descriptive narrative. In addition to this self-report data I also gathered observational data from the simulated negotiations, mediations and problem-solving exercises. In that manner both quantitative and qualitative data were collected from all of the students on each of the role-plays and in-class exercises.

The chart below sets out a list of teaching focus themes for each group and the weeks when music-based modalities were employed related to those themes, juxtaposed with the associated non-music-based modalities. The chart also indicates these teaching themes relative to the role-play exercises.

<b>Teaching Focus Theme</b>	<b>Group A Music-related Exercises</b>	<b>Group B Non-Music related exercises</b>
<p><b>Week 1:</b> Establishing Baselines and Starting Points Examining our assumptions re ADR, professional identity, roles, client expectations, goals and process metaphors Gaining awareness of emotions in conflict and personal feelings/responses to conflict and its handling</p>	<p>In-class: Starting Points Questionnaire</p> <p>Homework: Recall a conflict, past or present and create a playlist (“personal soundtrack”) of three songs/pieces of music that express how conflict makes you feel</p>	<p>In-class: Starting Points Questionnaire</p> <p>Homework: Recall a conflict, past or present and reflect on how conflict makes you feel</p>
<p><b>Week 2:</b> The nature of conflict, our personal responses and reactions to conflict; emotions in conflict</p>	<p>In-class: Class discussion on Playlist/Emotions exercise Thomas-Kilmann Conflict Mode Instrument</p>	<p>In-class: Class discussion on Emotions in conflict exercises Thomas-Kilmann Conflict Mode Instrument</p>
<p><b>Week 3:</b> World Trade Centre Analysis</p>	<p>In-class: Preparation in Negotiating Groups</p>	<p>In-class: Preparation in Negotiating Groups</p>
<p><b>Week 4:</b> Competitive vs. Cooperative Styles The present and future role of trust</p>	<p>In-class: “Win as much as you can”</p>	<p>In-class: “Win as much as you can”</p>
<p><b>Week 5:</b> Communication Community, Communion</p>	<p>Fieldtrip: Off-site lecture and interactive session at the Royal Conservatory of Music, Toronto with the Cecilia String Quartet</p>	<p>Guest Speaker: In-class presentation on negotiation and cross-cultural negotiation and with Toronto-based Senior Legal Counsel, Asif Quadir Skills-building experiential exercises: “active listening/curious questioning”</p>
<p><b>Week 6:</b> Skills in Action</p>	<p>In-Class: “Sally Swansong” negotiation role-play</p>	<p>In-Class: “Sally Swansong” negotiation role-play</p>

<b>Week 7:</b> Communication, Community and Communion	In-class: Embodied experiential learning “Percussion Discussion” – exercises related to trust, rapport, team-building, communication	Fieldtrip: Off-site interactive session at Ontario Court of Justice with Toronto-based family court judge, the Honourable Mr. Justice Harvey Brownstone, and Alison McArthur, director of on-site mediation program
<b>Week 8:</b> Communication, Community, Communion Skills in Action	In-Class: “Ugli Orange” negotiation role-play	In-Class: “Dilithium Dilemma”* negotiation role-play  *variation on Ugli Orange to avoid possible cross-talk between classes
<b>Week 9:</b> Skills in Action	In-Class: “Dirty Laundry”* mediation role-pay  *NB – adapted to remove racial stereotyping elements from original	In-Class: “Dirty Laundry”* mediation role-pay  *NB – adapted to remove racial stereotyping elements from original
<b>Week 10:</b> Putting it together	In-Class: WTC multi-party negotiation - each party to bring a song/piece of music to the table to exemplify goals for process and/or outcome	In-Class: WTC multi-party negotiation
<b>Week 11:</b> Harvesting the Learning: Repeat of Week 1 Starting Point Questionnaire with additional questions re “shift” and “take-away” experiences	In-Class: End-Point Questionnaire	In-Class: End-Point Questionnaire

In addition to the specific musical and non-musical experiences set out in the chart above, both classes engaged in the following:

- (1) “Win as Much as You Can” – a version of the classic game theory “Prisoner’s Dilemma” scenario that examines aspects of social dilemmas and situations where one must choose between either individual or group benefit. The present and future role of trust in negotiation and reputation features prominently. It incorporates

aspects of the “Tragedy of the Commons,” Pareto-efficiency – the concept that no one can be better off without making someone else worse off – and collective action.

- (2) Thomas-Kilmann Conflict Mode Instrument – a conflict style inventory developed to measure an individual’s behavioural choices and responses in conflict situations for the purposes of discovering if an individual is overusing or underusing one or more of the five conflict-handling modes.
- (3) “Sally Swansong” role-play – a two-party negotiation that compares principled negotiation with positional bargaining. It requires students to think “outside the box” to obtain the optimum resolution for each party. Optimum resolution is not primarily rooted in a monetary-based outcome and the exercise provides an opportunity for students to explore creative value-added resolutions.
- (4) “Dirty Laundry” role-play – a three-party basic mediation that enables students to engage in a facilitated process and deal with issues related to that facilitated process, including applying effective communication and interpersonal skills, handling emotions, applying a principled negotiation format in a non-partisan manner, and working together to generate value-added options for resolution.
- (5) TED talks – on collaboration (Howard Rheingold – “The New Power of Collaboration”, dated January 4, 2009) and improvisation (Stefon Harris – “There are No Mistakes on the Bandstand”, dated December 9, 2011).
- (6) Star Trek: The Next Generation – “Loud as a Whisper” (5<sup>th</sup> episode, 2<sup>nd</sup> season, aired January, 1989) – episode that addresses issues related to communication, the nature of mediator skills, cross-cultural mediation, exploration of shared goals and creation of shared meaning as a way to bring culturally different parties into collaborative engagement with one another.
- (7) “Managing as Designing” – video from 2002 conference at Weatherhead School of Management, Case Reserve University that explores "the design attitude," a new focus for analysis and decision-making for managers. Focusing on the work of keynote speaker Frank Gehry, it draws on examples of decision-making and leadership in architecture, art, and design. The approach to decision-making mirrors a problem-solving process and offers students a creative and innovative way to envision dispute resolution and collaborative negotiation.

### ***Data Analysis and Synthesis:***

The challenge of conducting a mixed methodology research study is the organization and sense-making of large volumes of quantitative as well as qualitative data arising from the use of

multiple data collection methods. Below is a summary of the data analysis and synthesis process I embarked upon for this comparative teaching study. I first describe how the raw data was organized for each exercise or learning experience; I then explain the analysis and synthesis of that data that enabled me to move forward and think about the broader implications of the research in terms of findings.

I began the formal analysis of the data by organizing the raw data according to the class timeline. Both classes had completed a Starting Point and End Point questionnaire as a pre- and post-course evaluation method, the Thomas-Kilmann Conflict Mode Instrument to measure individual behavioural choices and responses to conflict situations, and seven reflections on in-class role-plays and exercises. Group A completed two additional reflections, one related to the String Quartet Fieldtrip and another with respect to the “Percussion Discussion” music-making exercises. They also had add-on music components with respect to two other exercises (the use of music playlists for the emotions in conflict exercise and the World Trade Centre negotiation). Music was also used to provide context for the World Trade Centre and Sally Swansong preparation classes in Group A. With respect to the World Trade Centre exercise, news footage, inspirational songs that became synonymous with that event and songs written in response to the incident were played in class. With respect to the Sally Swansong preparation class, the role-play concerns the Bellini opera “Norma” and negotiations to replace an ailing younger singer with an aging diva. To provide context, the aria “Casta Diva” was played featuring Renée Fleming and Maria Callas. Without specifically asking students to respond to the impact of the latter, I was looking for possible differences in results between classes that may have related to providing this additional context.



To ensure anonymity and to increase the blind factor for me as researcher (and thus reduce bias on my part), each student was assigned an alphanumeric identifier. All students in Group A were coded from A001 to A021, and all students in Group B were coded from B001 to B017.

All of the reflections and questionnaires had been completed by hand by the students, with the exception of a few that were handed in after the class and completed by students on computer.

One of the first challenges in transcribing the data was deciphering the various handwriting. In some instances, words were lost as indecipherable.

### *Class Profile*

I began with my notes from the first class in which the students introduced themselves and gave background information about their education and motivations for taking the course. This enabled me to construct a class demographic profile for each section. I obtained statistical data from the law school with respect to the demographics of the first year law school class admitted in 2011-2012 academic year. The statistical data from the school provided, among other things, gender ratio, age category percentages, education background percentages by field of study.

Collecting this data on my specific classes and comparing it as against the first year admission profile for the year of the study confirmed alignment with the overall first year law student population. Comparing the data between classes confirmed the statistical similarity of the two groups under study, which was essential for the quasi-experimental study design aspect of the research project. In organizing this data for analysis purposes, I created bar graphs, colour-coded for the two classes; I used this colour coding for all subsequent graphs made to summarize the quantitative data.

*Starting Points and End Points Questionnaires:*

The next step was to organize the data from the Starting Points Questionnaire and End Point Questionnaire. In a notebook designated for data analysis I reproduced the questions that had quantifiable responses, either Likert-type responses, yes/no answers, or selection from a defined list of choices. I created a master data table for the questionnaires with a row per question and columns for each class and each time period, both Starting Point (“T-1” or Time 1) and End Point (“T-2” or Time 2). This enabled me to compare responses from each class at each of the two time-points. Given that Group A had twenty-one students and Group B had seventeen students I converted the raw numbers to percentages to enable comparison between classes. To supplement the written tables, I created a series of bar graphs to represent the data from eleven of the twelve quantifiable questions (I eliminated from analysis question #14 from the Starting Points Questionnaire as it duplicated part of a previous question).

The Starting Points Questionnaire was a way to establish a baseline for each class, to gather information from the students regarding their assumptions prior to the course. The questions focused on assumptions about disputing, different dispute resolution processes, their own level of perceived competency related to the subject, assumptions about roles and behaviours in dispute resolution both as professionals and as client representatives, and about their guiding dispute metaphors and professional role models. The answers provided me with insights into the level of socialization of the students from within legal culture (inside influences) and from outside legal culture (outside influences).

There were fourteen questions on the Starting Points Questionnaire, all of which were quantifiable in nature; five requested short narrative responses to further explain answers given to closed-ended questions. These descriptive responses from the Starting Points Questionnaire and the End Point Questionnaire were transcribed into tables with rows for each student and side-by-side columns for responses. Separate charts were prepared for each class so that answers could be compared within and between classes. Not all students provided the additional narrative responses to these questions.

The End Point Questionnaire was substantially identical to the Starting Points Questionnaire. This enabled me to capture student responses at two specific time-points and to note shifts and changes in responses, language use and the development of comprehension, insight and understanding. Questions 10-12 and 14 from the Starting Points Questionnaire were eliminated from the End Point Questionnaire. Questions 10 and 11 related to the sources of role models and images of dispute resolution practitioners in negotiation and mediation. Question 12 had asked how important students thought it was for transformation to occur between disputing parties in a dispute resolution process. Question 14 asked if students believed a different skill set was necessary between negotiators, mediators, and diplomats. These questions were not relevant to the study. In their place, three new questions were added to the End Point Questionnaire. These questions enabled me to capture more specific post-study information. The questions were as follows:

- 1) Have you experienced a shift in your thinking about conflict and disputing since this class began? Yes, No. If yes, how? If no, why not?
- 2) Were there any particular lessons/exercises that made an impact upon you – if so which one(s) and why/how?

3) What are your most important take-away learnings from this course and why?

For the three new questions, the quantifiable aspects of the answers were presented in bar graph charts, colour-coded to class, and qualitative, descriptive answers were transcribed by student and by class into table summaries. In Group A, all twenty-one students responded to all three questions. In the Group B, two students did not provide a descriptive response to accompany their yes/no answers.

*Thomas-Kilmann Conflict Mode Instrument:*

The data gathered from the Thomas-Kilmann Conflict Mode Instrument were not specifically used in the study.

*Emotions in Conflict Exercise:*

In this reflection, a series of the Likert-style questions were mixed with open-ended questions seeking descriptive narrative responses. The Likert-style questions were quantified by class and the data illustrated with bar graphs. The questions between classes differed to the extent that the Group A was asked whether the playlists they had created enabled them to express themselves on a level that was deeper than words. Students were also asked them if they felt they had learned more through the use of the playlists as opposed to just using words. Group B was asked if they felt they were able to fully express their feeling through words alone. Since Group B did not have another modality against which to compare the verbal expression, the results of this question were not particularly helpful. The descriptive narratives from the reflection were transcribed into tables, one table per question with a row for each student and side-by-side

columns for each class. The questions focused on what had been learned about self that was surprising, and what the most important personal learning had been from the exercise.

*String Quartet Fieldtrip:*

Students in Group A completed a lengthy narrative reflection that focused on the themes of communication, community, communion, and problem-solving within a musical ensemble during the negotiated rehearsal process.

There were twelve questions on the reflection that broke down into specific aspects of the theme topics, for example, modes of listening and communicating, the importance of presence, leadership structure, option-generating and decision-making within the negotiating group, conveying and attaining respect, trust and rapport, how balance/imbalance, positive/negative negotiating tactics sound and feel, the impact of this experience on students and the most important learnings garnered from the experience.

The responses to each question from the students present on the fieldtrip were transcribed into individual tables, one row per student. Two students were absent from this fieldtrip.

*Embodied Learning Exercises with Music (“Percussion Discussion”):*

Students in Group A engaged in two embodied learning experiential exercises, put forward as “Percussion Discussion”. The purpose of these exercises was to engage with music in a fully participatory manner, as opposed to the observatory manner of engagement with the String Quartet. The first exercise used rhythm and a coordinated team effort to build trust, rapport, and

connection through collaborative communication and behaviour. The exercise involved small groups of five and the tossing of bean-filled bags to a set rhythm established by me as facilitator. Eye contact with the person tossing was not permitted in order to enhance the sensed and felt aspects of the process. Groups could collaborate and communicate to establish how they would stand vis à vis one another, their manner and technique of tossing, and responses related to missed throws. A reflection on the experience was completed that asked students to reflect upon their individual and group “performances” in the exercise, their willingness to take risks, to be flexible and adaptive to change, and their reflections on what had contributed to individual and group success, as well as personal and group responses to less desirable results.

The second exercise was a Group Call/Response and Improv designed to explore the nuances of communication and the dynamics of communication within a collaborative community – the importance of tone, phrasing, tempo, of being fully present, and the impact of surprises and the ability to respond to changes and improvise in the moment. This exercise was done as an entire class group and involved me as facilitator first initiating a rhythm on my percussion instrument; I then invited each student in turn to respond with an answering iteration of the pattern. We communicated with body language, facial expression and gesture as opposed to verbal cues. We all established a group rhythm which was to be sustained throughout the exercise. After the initial rote and predictable call/response session, we then initiated calls and responses randomly throughout the group which posed the challenge for students of always being in a state of readiness to respond while at the same time being unaware what the person initiating the call would “say” to which they then needed to respond. The exercise enabled students to experience communication on a visceral sensed and felt level using non-verbal modes of communication.

The raw data from the reflections completed at the end of each exercise were transcribed into tables. I created one table for each exercise, with a row per student and columns for each of the questions on the reflection.

*World Trade Centre Redesign Negotiation:*

There were four issues that needed to be resolved in this exercise between the five parties – site plan, payment, timing of construction, credit for project. Groups had two and one-half hours to negotiate. There were three negotiating groups in each class. Collection of data on outcomes reached on all four issues was quantified on the basis of whether negotiating groups chose from the suggested options in the General Instructions or whether they arrived at an alternative option of their own; quantifying the results enabled comparison between the two classes.

Qualitative data was gathered from each class from responses to reflection questions asking how well they were able to communicate, whether they were able to create a negotiating community, and whether or not they were able to achieve sufficient connection to facilitate their process and outcome. This data was summarized by group and class. This data was also quantified pursuant to positive/negative and mixed responses.

Data was also collected from Group A related to a multi-part question regarding the use of music within the negotiation. Each party in Group A had been asked to bring a song or piece of music to the negotiation that reflected his or her individual goals for process and outcome. This data was transcribed onto tables with a row per student and columns for each component of the question.

*Sally Swansong, Dirty Laundry, Ugli Orange/Dilithium Dilemma:*

Data with respect to outcomes was gathered from each of these role-plays. These role-plays are standard negotiation and mediation exercises used in many conflict resolution training programs. For Sally Swansong and Dirty Laundry I categorized the results of each negotiating pair in each class based upon the quality of the settlement achieved in terms of value-added components. For example, in Sally Swansong, the results were categorized for each class noting negotiating pairs who achieved a result that was “monetary only”, “monetary plus publicity”, or “money plus publicity plus other value”. In the Ugli Orange/Dilithium Dilemma role-play the results data was recorded solely on the basis of whether or not the negotiating pairs were able to achieve the level of connection needed to produce a collaborative/integrative result as opposed to an unsuccessful distributive resolution to the detriment of one or both party’s affected populations. The data was collected from flip-chart notations made in class for each negotiating pair in each class that set out each dyad’s negotiation results in full. I created colour-coded bar graphs of the outcome data that compared the overall class results.

***Analysing and Synthesizing the Data from all Exercises/Reflections:***

I did not conduct any analysis of the data during the teaching term. Raw data was placed in envelopes for each week and for each class. I did not begin any analysis or revisit this material until three months later in the summer of 2012.

I began by reading all of the data that I had gathered. I started with the questionnaires, both Starting Points and End Points, then the weekly reflections. I did not begin any coding during this initial stage of review as I wanted to familiarize myself with the whole body of data.



I first focused on organizing the quantitative data as described in detail for each exercise, above. As noted, in a designated notebook I transcribed the raw data by hand, creating a series of summaries, tables, and graphs. This enabled me to tabulate and double-check numerical results from each class. For ease of comparison I designed tables that placed the results from each class and each questionnaire in side-by-side columns, using percentages to enable direct comparison between the classes. These handwritten notes were transferred to computer and made into a series of bar graphs, colour-coded for the two classes. I completed this organization of raw data for every exercise and reflection that contained a quantitative component.

I next turned to the organization of the qualitative data for each exercise. As noted, I transcribed the raw data directly to a computer, creating a series of summaries and tables. The tables were designed to facilitate comparisons between the classes and to note similarities and differences between them in terms of language use, length of response, and quality of response.

Below is a description, first of the quantitative data analysis followed by the qualitative data analysis noting the relationship between them and how one set of data informed the other.

### **Quantitative Data**

The quantitative data assisted in providing a context and frame for the descriptive qualitative data. It provided an enhanced portrait of each class with respect to specific composition (demographics), individual and group assumptions (starting points) and their shift (progression over the term of the course and end-point positions), individual and group conflict styles (starting points/demographics), the progression of skills development (self-assessment over the course of

the term) and practical outcome results (outcomes). It also provided a visual and numeric way of comparing the two classes where the nature and quality of response was not at issue. The quantitative data gathered around effectiveness of exercises and personal growth experienced contributed significantly to understanding the possible impact of the musical interventions. It also provided the statistical skeleton that was more fully fleshed out by the concurrent layers of descriptive qualitative data.

From the quantitative data I was able to note the similarities and differences between the two classes in exercises where no music-based interventions had been used as opposed to those in which music-based modalities had been utilized. I was able to note patterns that may have resulted from the use of the music-based interventions and to note the variation in results between the two classes in role-play outcomes after music-based modalities had been introduced.

Data analysis consisted of extracting, organizing, and tabulating percentage results within and between classes from specific exercises in terms of results achieved and by comparing responses from the T-1 starting point of the first class to the T-2 end point of the last class over the 11 week period. This enabled me to see where shifts or changes had occurred although not the nature and quality of the shift or change, which only emerged from the descriptive narratives.

The quantitative data took on more nuanced meaning once I had analysed and synthesized the qualitative data from this phase of the study. Patterns and themes that emerged from the qualitative data were then used as the lens through which the quantitative data was once again

viewed and re-analysed. As with the qualitative data, the quantitative data were read and reread multiples times.

The quantitative data provided me with time-related data – specifically snapshots from the start of the course (pre-intervention) to the end of the course (post-intervention) – in order to gauge changes between those two time periods. The data also assisted in comparing responses among and between classes. It further enabled me to gauge individual and group reactions to the use of music with respect to facilitating exercise objectives and students’ learning processes.

### **Qualitative Data**

With respect to analyzing the qualitative data, I used a similar method to the musician interviews. I applied a grounded theory-informed approach as well as a content analysis approach (Miles and Huberman, 1994). Given the exploratory nature of the study and the research questions asked, content analysis was appropriate in examining answers to questionnaires, while the grounded theory approach facilitated a systematic, dense, explanatory exploration.

I first engaged in an unrestricted, open coding of the data followed by multilayered coding frames. During the open coding phase, I read through the data summaries and tables several times. I began to categorize the data according to emerging themes. From the Starting and End Points Questionnaires, for example, these emerging themes included “assumptions about self”, “assumptions about others”, “assumptions about process/goal/outcomes”. Properties were established for each code. With respect to “assumptions about self”, for example, these

properties related to identity, behaviour, personal capabilities. With respect to “assumptions about others”, these related to expectations of and attributions to others. With respect to “assumptions about process/goal/outcome” these properties related to the purpose of the process, behaviour in process, and what was needed for success in process.

The research questions also provided categories for data coding related to shift and change in participants’ cognition and affect. Other categories related to depth of descriptive expression, personal insights and barriers to engagement related to the artistic processes. I highlighted examples of participants’ words that related to each of the categories and colour-coded recurring words and phrases related to theme categories.

The analysis of the qualitative data involved multiple readings of each reflection and questionnaire completed by the students and organizing of the data through a series of coding processes. I first read the reflections in the same order in which the students had written them. This provided me with a sense of how their language and responses changed over of the course of the term. It also provided me with a better sense of emerging themes arising as the course progressed. These themes related to changes or shifts in the students’ thinking and behaviour within the dispute resolution context, and with respect to a reframing of their professional identities. Given the volume of information collected, I separated general reflective data from the responses that specifically related to the music-based exercises.

The concepts identified during open coding were broken down in the next phase of analysis into further categories and sub-categories of textual data and sorted into groups of similar or related

phenomena. Having transcribed verbatim student responses into the tables and summaries described above, I was able to colour code for recurring themes and expressions as a way of creating these categories. Categories arose both from question areas in the reflections as well from the data itself.

I analyzed the data through these coding frames, looking for similarities and differences between and within the two data sets and for new connections between the categories and subcategories related to what the students said regarding shift and change. I specifically noted the context in which any reported shift or change had occurred, what conditions had been present, and the actions and consequences that had arisen as a result. From these patterns it became possible for me to begin to generate tentative hypotheses or statements of relationships between phenomena. I also looked for variations or contradictions in the data. The overall process was one of constant comparison (Glaser and Strauss, 1967; Berg, 2001) between category development and the larger body of data, with continual checking and questioning of emerging themes and tentative theories (Berg, 2001; Marshall and Rossman, 2011).

Once I had completed this analysis and synthesis, I was in a position to identify emerging themes, to begin to develop these themes into a tentative theory grounded in the data, and to consider the broader implications of the research. Those themes, implications, conclusions and related recommendations are set out in the chapters that follow.

## **ETHICAL CONSIDERATIONS**

The research project was reviewed and approved for compliance to ethics protocols by the Human Participants Review Subcommittee of York University's Ethics Review Board and conformity to standards of the Canadian Tri-Council Research Ethics guidelines. I obtained certificates of ethics approval from the Office of Research Ethics.

There were no serious ethical threats posed to any of the participants or their well-being by the study. A priority throughout the study was protecting participants' rights. This was accomplished through ensuring that the purpose of the study had been fully explained to all potential participants in both phases of the research and that informed written consent had been received from each of them. The musicians interviewed in Phase One of the research study had the choice of being named or remaining anonymous, and each indicated his or her preference on the informed consent document. Participants in Phase Two remained completely anonymous and I was committed to keeping their names and other significant identity characteristics of the sample institution confidential. All research-related records and data were securely stored; I was the only person with access to this data, including all hard copies of original documents, all original audio files, electronically-generated data and computer back-up. In this manner I took all necessary steps to protect the participants and the information related to the study.

## **ISSUES OF TRUSTWORTHINESS**

Throughout the study I was aware of the need to strive to control for potential biases in the design, implementation, and analysis of the study. This was particularly so, as I played a number of roles in this study as course and study designer, teacher, researcher, and as a musician.

In seeking to establish the trustworthiness of the study, I made my best efforts to ensure its credibility (validity) through triangulating data sources as well as through data collection methods. The data was gathered from multiple sources and by multiple methods in order to generate the fullest, richest picture of the subject matter under study. The methodological approach was a mixed methods design that included quantitative as well as qualitative data sources and analysis of that data to ensure maximum breadth and depth.

With respect to the issue of dependability (reliability) of the findings, the chief concern was to ensure that the findings of this study – the first of its kind within the legal context – were consistent with the specific data collected. To respond to this issue I documented my procedures and maintained an audit trail through the use of a research journal that recounted the evolution of my thinking and documented the rationale for choices and decisions that I made during the research process (Lincoln and Guba, 1985, p. 317). Maintaining such an audit trail accords with what Merriam refers to as “transparency of method” (Merriam, 2002, p. 21). My research journal and notes provide a route back to the original data.

### **LIMITATIONS OF THE STUDY**

Being aware of limits is an essential part of the research process. This study had several limiting conditions which are set out below. As a study being done in what Robson (2011) refers to as a “real-world” setting, modifications and adaptations were required to fit the requirements of the moment as the teaching course progressed and other needs arose related to the course.

As a single researcher with my own subjective assumptions, interests, and perceptions, researcher bias was a possibility. I hoped to minimize any perception of such bias by choosing a methodological approach that mixed statistical data collection and analysis with descriptive data gathered from multiple sources. As well, I chose to use the data gathered from the five professional musicians rather than rely solely on my experiences as a musician as the source of data within the study.

Participant bias was minimized by the timing of the request for participation in the teaching study. As noted previously I did not seek potential participants for the phase two teaching study until the course had been completed. This was done to minimize several potentialities: that students would write their reflections to provide me, as researcher, with responses they might have believed I wanted to receive; that they would fear their course mark was dependent in any way on participation in the study; and that cross-talk between the classes might be increased and skew the results. At the same time, I acknowledge that students in law school taking parallel classes do talk with each other; given the naturalistic environment of the study I could not prevent or limit such cross-talk.

One of the main limitations of the study related to the fact that this course was being taught in the context of a larger program of study. Numerous other factors and dynamics were operating on the students to influence their cognitive and behavioural development. As a result, it is not possible to suggest that any changes that occurred in students' mindsets and behaviours were attributable to this course specifically.



Another possible limitation relates to the sample size. A small sample size can result in a limited ability to generalize from a study to other groups and other programs.

A final limitation relates to running this study within the context of a course that had other teaching and learning objectives, namely the requirement of a research paper. This limited the time available for further music-based modalities and my ability to build the modalities in an optimally intensive and progressive fashion. It would be ideal to run the study again with a fully arts-immersed pedagogy using an appropriately-related evaluation method independent of any other academic constraints.

It is my hope that this work will be useful for the legal education and conflict resolution field and can be explored further in future research.

## **SUMMARY OF THE CHAPTER**

This chapter has set out a detailed description of the research methodology used in this comparative teaching study. A mixed methods approach was taken to the two-part research project:

- (a) to explore ensemble music-making in relation to dispute resolution and to use the findings from this inquiry in the design of a music-based experiential learning curriculum; and
- (b) to study the possible impact of music in the teaching and learning of dispute resolution.

There were two purposively selected research populations – five professional ensemble musicians from different musical genres who participated in semi-structured interviews, the

results of which informed the design of the music-based teaching intervention, and two classes (twenty-one students and seventeen students respectively) of first year law students who had elected to study dispute settlement in their second term.

Three primary data collection methods were used – interviews, questionnaires/surveys and descriptive reflections, as well as my own observational data. These data were reviewed, analyzed and interpreted using a content analysis and grounded theory-informed approach. I accounted for credibility and dependability through a variety of strategies including data source and method triangulation.

My research question and purpose formulation as well the literature review guided the development of a conceptual framework for the design and analysis. An analysis of the data led to themes and practical implications of those themes with specific findings and recommendations following in the next chapters.

## CHAPTER FOUR – EMERGING THEMES

### PREFACE

This study compared two different pedagogical methods of teaching dispute resolution to first year law school students. The purpose of the study was to explore whether and how music could enhance and transform individuals' attitudes toward and abilities to address conflict situations.

The study asked four questions related to the research purpose and was designed to explore:

- 1) key characteristics of effective collaborative music-making and capacities most valued by collaborative music-makers to achieve effective ensemble outcomes;
- 2) whether the negotiation and problem-solving skills and behaviours of ensemble music-making are learnable by adults who are not musicians;
- 3) whether such skills learned in a musical environment are transferrable to a non-musical environment in which there are complex conflictual situations; and if so
- 4) whether such practices, once learned, can change cognitive frames and affect, and thus lead to more effective behaviour and more desirable outcomes.

As set out in Chapter Three, interviews with five musicians were conducted to address the first research question. Five themes emerged from those interviews related to key characteristics of effective collaborative music-making and capacities most valued by collaborative music-makers to achieve effective ensemble outcomes. These findings were used to design the musical experiences in the comparative teaching study that followed. As further set out in Chapter Three, both classes were introduced to collaborative metaphors for negotiation and problem-solving in place of more traditional competitive and combative metaphors. Group A was specifically introduced to the music-based metaphor “negotiation and problem-solving as ensemble music-making” and offered a set of music-based experiential exercises in learning

dispute resolution skills and concepts. For comparison, Group B was offered an alternative set of non-music-based collaborative metaphors and experiences.

This chapter presents the key themes and insights gained from the teaching project, the quantitative and qualitative data gathered from the questionnaire/surveys and reflections of the 38 students in the two classes, the resolution outcomes from in-class simulations, and my own observations based upon group discussions, in-class exercises and simulations.<sup>31</sup> Detailed descriptions of each of the themes are set out in detail below. Extensive quotes from students are included, unedited for spelling and grammar, to provide the students' authentic voices in support of the emerging themes.<sup>32</sup>

I hope that the insights gained from this study will enable legal educators and trainers to proceed from a more informed perspective in designing and facilitating dispute resolution programs featuring innovative and creative approaches.

## **INITIAL RESULTS – ENHANCED LEARNING AND PERFORMANCE**

The results from this initial study suggest that non-musicians in non-musical environments are able to learn from musical metaphors and ensemble music-making and that such learning translates into changed and more effective behaviour. Moreover, in simulated scenarios, students exposed to the musical metaphor and other music-based learning appeared to

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<sup>31</sup> Where quantitative data has been presented as percentages it is important to note that this is not precise statistical data given the small sample size involved in the study and the fact that the two classes did not contain the same number of students.

<sup>32</sup> Students' use of "..." in the quotes is their syntax and not an editing of their text.

outperform their colleagues not exposed to similar music-based learning. Overall the results of the study point toward:

- (1) Cognitive learning: All of the students in Group A, as compared to less than three-quarters of those in Group B, reported a shift in their perceptions regarding conflict and how it could be handled;
- (2) Affective learning: None of the students in Group B, as compared to almost half of the students in Group A, described feeling differently about the importance of emotions and relationships in dispute resolution processes;
- (3) Behavioural learning: Both when acting individually and collectively, students in Group A integrated more of the new learning. When compared with students in Group B, Group A students communicated more effectively, formed more efficient negotiating teams, and generated more creative outcomes; and
- (4) Learning transfer: students in Group A were able to transfer concepts and skills from the music to the non-music domain.

The balance of the chapter reviews the emerging themes arising from the data, organized in five categories that follow the arch of the teaching study: impact of music on cognitive frames, affect, and behaviour; the impact of the musical experiences on the course learning; the impact of music on behaviour and performance in simulated negotiations; barriers to embracing new approaches; and post-course follow-up.

### **IMPACT OF MUSIC ON COGNITIVE FRAMES**

Data sources relevant to changes in cognitive frame (which influenced affect and behaviour) came primarily from the Starting and End Points Questionnaires that framed the study. As noted in Chapter Three, the main themes emerging from the musician interviews and the course study data clustered around an awareness of self (self-orientation), an awareness of other (other-orientation), and an awareness of relationship to process (process-orientation). Responses from the Starting and End Points Questionnaires were similarly clustered around these three

categories. Questions on the questionnaires had been designed to identify assumptions and beliefs related to process (goals and outcomes, descriptive metaphors), understanding and connecting with other (social intelligence skills of empathy, attunement, values awareness), and aspects of individual self – “doing” and “being” (skills and behaviours, role models). On the End Points Questionnaires, students were asked specifically if they had experienced any shifts in their thinking about conflict and its handling, to describe most impactful exercises, and most important learnings. The key insights emerging from the data related to these themes are set out below.

### ***Assumptions and Beliefs related to Process: Process-orientation, Metaphors, and Skills***

Three questions on the Starting and End Points Questionnaires related to process. Students were asked the extent to which they believed the enunciated alternative dispute resolution (ADR) goals of “win-win” outcomes were legitimate and possible, whose interests they felt they needed to focus on for success, what professional behaviours were needed or expected by clients to achieve successful results for clients, and what metaphors best described the dispute resolution process.

With respect to the legitimacy and possibility of “win-win” outcomes, students in both groups responded in a similar manner on the Starting Points Questionnaire.<sup>33</sup> The majority of students in Group A reported that they believed these outcomes were “legitimate” (52%) and “somewhat possible” (43%). The majority of the students in Group B similarly reported that they felt these outcomes were “legitimate” (47%) and “somewhat possible” (47%). At the end of the eleven

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<sup>33</sup> Each question offered a four-point Likert-style response scale with two endpoints, “not” to “very legitimate”/“very possible”.

weeks, their beliefs had shifted. Those in Group A, who believed “win-win” resolutions were a legitimate goal, decreased from 52% to 33%, and those indicating “somewhat legitimate” increased from 38% to 42%. However, those who believed “win-win” resolution goals were “very legitimate” rose from 9% to 24%. With respect to whether “win-win” outcomes were possible, those in Group A choosing “possible” increased from 38% to 43%. Those choosing “somewhat possible” and “very possible” remained the same at both time points (43% and 14% respectively). In Group B, the number of students indicating they believed “win-win” resolutions were “legitimate” rose from 47% to 59%. Those who believed “win-win” outcomes were “somewhat possible” decreased from 47% to 0%; those choosing “possible” rose to from 41% to 82%. At the end of the term both groups appeared to be convinced about the legitimacy and possibility of “win-win” goals and outcomes, although Group B’s percentages were higher.

Students were asked what they believed they needed to focus on in order to achieve the best result for their client. The choices were their client’s interests, everyone’s interests, and the law. Both groups responded almost identically on the Starting Points Questionnaire, 76% in Group A and 71% in Group B, moving on the End Points Questionnaire from focusing on their own client’s interests to everyone’s interests (100% in both groups). By the end of the course, both groups displayed increased appreciation of an interest-based negotiating model.

With respect to metaphors to best describe the dispute resolution process, students were offered a range of metaphors choices that were combative, competitive and collaborative in nature, specifically “war”, “prize fight”, “poker game”, “chess game”, “sports team”, “musical ensemble”, “other”.

At the start of the course the majority of the students in Group A (62%) and in Group B (59%) chose competitive game metaphors. The dominant game metaphor choices were the Chess Game (33% [7 of 21] in Group A and 41% [7 of 17] in Group B) followed by the Poker Game (28% [6 of 21] in Group A and 12% [2 of 17] in Group B). 28% [6 of 21] of Group A and 35% [6 of 17] of Group B chose collaborative metaphors at the start of the course. An equal number of students in both groups chose the collaborative metaphor of the Musical Ensemble as did the Sports Team (14% [3 of 21] in Group A and 17% [3 of 17] in Group B). 9% [2 of 21] of the students in Group A chose a combative fight metaphor (Prize Fight). No student in either group chose the war metaphor.

At the end of the course, an equal number of students in Group A chose competitive game metaphors to describe the dispute resolution process as chose collaborative metaphors (47% [10 of 21]). Within the collaborative metaphors, there was a marked increase in students' choice of the Musical Ensemble as a descriptive process metaphor (from 14% [3 of 21] to 33% [6 of 21]) as opposed to that of the Sports Team (which decreased from 14% [3 of 21] to 9% [2 of 21]). As an "other" collaborative option, Improv Theatre was put forward in Group A by one student (5% [1 of 21]).<sup>34</sup> While Chess Game – with its imagery of pitting the intellectual strategies of one player against the other on a playing field equally visible to both players – remained the dominant single metaphor (43% [9 of 21], an increase from 33% [7 of 21]), the Poker Game – with its imagery of concealment and trickery – decreased most significantly from 28% [6 of 21] to 5% [1 of 21].

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<sup>34</sup> One other participant offered the Supreme Court of Canada as an alternative metaphor, perhaps because of its "multi-member" adjudicative nature that might have suggested to the student an "ensemble" decision-making process. It was clear, however, that the student failed to note that (a) the Supreme Court of Canada is the ultimate litigation forum and (b) is not a consensus-based but a "majority rules" process.



In Group B the dominant metaphors of choice shifted from competitive game metaphors (41% [7 of 17]) to collaborative metaphors (53% [9 of 17]). On the End Points Questionnaire, the Musical Ensemble was chosen as the dominant single metaphor (41% [7 of 17]) followed by the Chess Game (35% [6 of 17]). Some students in Group B selected the Sports Team metaphor (12% [2 of 17]). By the end of the course, the Poker Game and the Prize Fight were each selected equally by 1 of 17 [6%] students. No “other” metaphors were offered by Group B; all choices were made from the proffered selections.

On both the Starting Points and the End Points questionnaires students were asked to list at least three skills they felt were most important to be effective as twenty-first century conflict resolution practitioners. These skills fell into three categories:

- 1) skills that were self-oriented – attributes of “being” (patient, calm, firm, assertive) or “doing” (listening skills and communication skills)
- 2) skills that were other-oriented (empathetic, understanding, compassionate, able to see another’s point of view, ability to understand other’s interests or motivations, cultural sensitivity)
- 3) skills that were process/goal-oriented (preparation, creativity, value creation, problem-solving, improvisation)

The majority of the skills put forward by both groups at the start of the course were self-oriented “doing” skills, followed by self-oriented “being” skills, then skills that were process/goal-oriented, and lastly, those that were other-oriented.

At the end of the course, the frequency and order of the skills in both classes were self-oriented “doing” skills, followed by skills that were process/goal-oriented, then those that were other-oriented and lastly, those that were self-oriented “being” skills.

In Group A, within the process/goal-oriented skills, there were two occurrences at the start of the course of students identifying “creative” and “create value out of nothing”, and three occurrences of “problem-solve”. In contrast, at the end of course, there were nine occurrences of “creativity” and “value creation”, “finding value added options”, “finding value in unexpected places”, and only one occurrence of “problem-solve” as process/goal-oriented skills.

In Group B, within the process/goal-oriented skills, there was one occurrence at the start of the course of students noting the importance of “creativity” and five occurrences of analytic skills (“problem-solving”, “strategic decision-making”). At the end of the course, there were seven occurrences of references to creativity/“looking for added value” and seven references to analytic skills (“problem solve”, “strategic thinking”).

Students appeared to have an awareness of and to develop an increased awareness of the importance of skills related to emotional and social intelligence capacities. Their ability to operationalize this awareness, however, differed between the two groups as revealed by simulation outcomes and their reflections on the simulated exercises.

### *Understanding and Connecting with Other: Other-orientation*

Two questions on the Starting and End Points Questionnaires asked students about their ability to recognize themselves in the other disputant and the extent to which they believed it was important to resolution to understand the other's point of view.<sup>35</sup>

At the start of the course, 62% (13 of 21) of those in Group A stated that they were "somewhat" able to see themselves in the other; 33% (7 of 21) stated they were "mostly" able to see themselves in the other, and 5% (1 of 21) identified as being "completely" able to see themselves in the other. Similarly, the majority of Group B (71% [12 of 17]) stated that they were "somewhat" able to see themselves in the other; 24% (4 of 17) stated they were "mostly" able to see themselves in the other, and 6% (1 of 17) identified as being "completely" able to see themselves in the other.

At the end of the course, those in Group A who identified themselves as "somewhat" able to see themselves in the other decreased significantly to 14% (3 of 21) with a corresponding increase to 81% (17 of 21) of those who identified as "mostly" able to see themselves in the other. Those who identified as "completely" able (1 of 21) remained the same at 5%. In Group B, those who had originally identified themselves as "somewhat" able decreased to 35% (6 of 17) with a corresponding increase to 65% (11 of 17) in those who identified as "mostly" able. No students in Group B identified as completely able (or unable) to see themselves in the other.

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<sup>35</sup> Each question offered a four-point Likert-style response scale with two endpoints, "not" to "completely"/"very important".

With respect to the importance to resolution of understanding the other's point of view, at the start of the course, 71% (15 of 21) of Group A stated that they believed it was "very important" to resolution to understand the other's point of view. Similarly, in Group B, 71% (12 of 17) indicated a belief that it was "very important" to resolution to understand the other's point of view. At the end of the course, however, students in Group A who had identified this as "very important" diminished slightly to 65% (11 of 17), and those who had previously indicated "important" increased from 19% (4 of 21) to 29% (6 of 21). Those in Group B who had indicated a belief that understanding the other's point of view was "very important" to resolution increased from 71% (12 of 17) to 82% (15 of 17) and correspondingly those who had previously indicated "important" decreased from 17% (3 of 17) to 12% (2 of 17).

### *Understanding and Awareness of Self: Self-Orientation*

On the End Points Questionnaire, students were asked if they had experienced a shift in their thinking about conflict and disputing since the start of the course. 100% (21 of 21) of the students in Group A answered this question in the affirmative as compared to 71% (14 of 17) in Group B.

The groups reported: (a) a shift away from an adversarial mindset, (b) an expansion away from a limited self-orientation to encompass a focus on "the other" and on the process, (c) an increased awareness of the role and importance of emotions and relationship in resolving disputes, and (d) increased theory and praxis knowledge. The extent of the reported shifts, however, differed markedly between the two groups.

### **Shifts reported by Group A:**

#### ***Shift away from dominant culture adversarial mindset (76%)***

76% of students in Group A reported a shift away from adversarial thinking as compared to only 17% of Group B.

In describing the nature and extent of the shift, the majority of the students (16 of 21 [76%]) wrote about a personal move away from dominant social culture assumptions and from traditional legal culture assumptions, primarily needing to be the “zealous advocate”, needing to maintain an aggressive stance in negotiations, and needing to “fight” for clients:

“A massive shift, actually. I used to be 100% convinced that a more aggressive, “zealous advocate” approach to conflict was the way to get what you wanted from the process. The relationships and other dynamics seemed “touchy feely” and impractical...I feel that emphasizing common interests and approaching conflicts in a way that is open to compromise will benefit me hugely, both as a lawyer and in my life outside work.” (A016)

“It is clear that there are a number of things that go into good conflict resolution skills. It is not all about fighting for your client but about understanding the needs of both sides and then using that to come to a mutually beneficial agreement.” (A014)

“Although I mentioned aggressive stance is where I would start, I am now more willing to shift this view during the process.” (A003)

“I used to believe that a purely aggressive approach would always be best in achieving your client’s goals, but I’ve realized that you must be reasonable, take the other party’s concerns and interests into account, and collaborate effectively to best reach a favourable resolution.” (A013)

“I have come to understand how important cooperation is to the conflict resolution process. I still think that it is important to aggressively fight for your client but I think it is possible to do so in a respectful, tactful, and understanding way.” (A006)

***Shift from a “self” to “other” and/or “process” orientation (57%)***

More than half (57% [12 of 21]) of the students in Group A reported a shift away from a self-orientation to a perspective that encompassed “the other” and the process, while less than a third (29% [5 of 17]) of Group B reported an equivalent shift. Group A students described personal insights they gained as well as having enhanced their personal awareness. Their descriptions revealed an increased subjective awareness of the importance of skills acquisition related to self, others, and process for successfully managing conflict and resolving disputes:

“I’ve learned that knowing one’s own interests is not as important as gathering information from the other side because the former leads to a narrow set of acceptable results while the latter leads to a broader value-claiming results.” (A007)

Many of the students spoke of a shift from asserting individual positions and competitive mindsets to an orientation that considers “the other” and focuses on the larger resolution goals:

“Particularly after working on my term paper and analyzing “second-generation” models of mediation that attempt to reconceptualise how we view conflict and narrative storytelling, I see conflict as more directly related to resolving issues of emotion and relationship as opposed to trying to “win”. While I have generally tended to think about conflict in terms of winning and losing as in a sports match, I now view conflict as something that needs to be overcome for everyone’s mutual benefit.” (A009)

“[I] realised that win for one party means lose for the other and there are no guarantees on who will win – negotiating for win/win is better idea!” (A008)

***Increased awareness of the importance of Emotions and Relationship in resolving disputes (47%)***

Almost half (47%) of Group A reported an increased awareness of the importance of emotions and relationship in resolving disputes. In comparison, no one (0%) in Group B described a similar awareness. Descriptions revealed increased sensitivity to emotions (one’s own and those

of others) and increased appreciation of the importance of relational elements such as trust, rapport and cooperation to process and outcomes:

“When I began this class I was more pessimistic on the true possibility of both parties leaving the table feeling satisfied with the outcomes. However, in most of the role-plays that we did throughout this class, most of the parties had a great deal of their interests met. I discovered the importance of understanding the interests and values of the parties in order to create a feeling of community and trust. The more people feel that you are taking into account their interests the more they are being heard and respected. This allows for a positive and collaborative approach to the discussions. My understanding changed most in this regard.” (A004)

“I listen more to the other parties and reflect on their underlying beliefs and motives. I also question/inquire more.” (A021)

“[I] became more aware of the importance of understanding people’s point of view. Less aggressive is a good thing.” (A015)

In general, the descriptions of students’ experiences in the Group A focused on *internal insights* and the *growth of personal awareness*. Students’ descriptions revealed an increased subjective awareness of the importance of particular attributes and skills related to self, to others, and to process resolution and successful outcomes.

### **Shifts reported by Group B:**

In Group B, 12 of 17 [71%] students indicated that they had also experienced a shift in their thinking about conflict and disputing from the start of the course to the end of the course. Students in Group B generally described the acquisition of *external skills* (analytical and practical) and *added theoretical and practical perspectives* regarding conflict and the dispute resolution process, as set out below:

***Shift away from dominant culture adversarial mindset (17%)***

A few students (3 of 17 [17%]) in Group B described a shift in mindset from an adversarial, competitive approach to a more collaborative, accommodating approach:

“Further, I have retrained from adopting a competitive approach and I am more willing to be accommodating when required.” (B008)

“Move away from adversarial mindset and move towards a collaborative approach.” (B009)

“Somewhat. I feel that I cannot do the secret strategy aspect of dispute settlement well; the course taught me this. So I tend to be more drawn to a more collaborative approach.” (B013)

***Shift from a “self” to “other” and/or “process” orientation (29%)***

Less than a third (29% [5 of 17]) of Group B students described shifts oriented away from a limited self-emphasis toward one that encompassed a focus on “the other” or on the process. Several of them (17% [3 of 17]) described the importance of working with the other side and viewing the conflict from different perspectives:

“I have a new appreciation for the importance with working with the other side. I have gained an understanding of how positions can change during a DR process as a result of information that is “discovered” during the process.” (B001)

“I didn’t realize how cooperative the process needs to be until this class. Both sides must work together and compromise in order to resolve conflicts. I also didn’t realize the process of how conflict escalates to different stages before this class.” (B006)

“I believe that I am able to think of collaborative solutions by viewing the conflict from both perspectives.” (B008)

Two students (12%) described their shifts in terms of working toward creative solutions:

“I’ve looked more at conflict and disputing with a collaborative perspective of thinking outside the box for solutions.” (B017)



“Learning to “expand the pie” and such creative solutions was important and will be important in my everyday life. Being able to work collaboratively to find win-win solutions is now more feasible.” (B011)

***Increased awareness of the importance of Emotions and Relationship in resolving disputes (0%)***

None of the students in Group B (0 of 17) described an expansion of their awareness of the role of emotions or the importance of relationship in the dispute resolution process.

***Increased theory and praxis knowledge (24%)***

A number of students (4 of 17 [24%]) described their shift in thinking as it related to increased knowledge of general theoretical conflict concepts – how conflicts become disputes (B015), that positions can change throughout the course of a dispute (B001), that conflict can be healthy and positive:

“Added theoretical and practical perspective into conflict and dispute resolution process.” (B003)

“Conflict is not always a bad thing. It can be very important for personal development if handled in the right manner, which I think is a collaborative manner.” (B005)

“I have realized that conflicts and disputes can sometimes be positive and healthy, and not always a bad thing. They can improve relationships and be a positive experience overall.” (B007)

“I did not understand the importance of understanding how parties came to a dispute. Understood conflict and maybe more open to specific ADR processes over others.” (B015)

***Group B students reporting no shift***

Of the seventeen students in Group B, five [29%] indicated that they either had not experienced a shift – having come into the course already acknowledging the potential of alternative dispute

resolution modalities (“I always believed in win-win outcomes.” (B010)) – or indicating that if a shift had occurred it had been slight:

“I feel like I experienced several small shifts regarding the nuances of a conflict situation. I think these shifts were very context specific because conflict is context specific.” (B002)

“Only because I felt the same way about ADR methods and how disputes arise – but now I have learned more skills to assess disputes and tools to help effective mediation/negotiation.” (B014)

“Somewhat. The main skills I thought necessary to be an effective resolver for conflicts and disputes is essentially the same.” (B016)

“Much of the material we covered reflected what I thought to be common sense (it is obviously not so common). I think a lot of the skills/strategies as discussed are a lot more innate and difficult to just learn in a 4-month class.” (B012)

### **Shifts as revealed through descriptions of Most Important Learnings**

The final question on the End Points Questionnaire asked students in both groups to describe their most significant learnings from the course. These fell into four categories: (1) those focused on an increased knowledge of theory and process, (2) the importance of an awareness of others, (3) the importance of creativity and value creation in process, and (4) a shift in mindset and approach to conflict resolution.

Of the students in Group A, 43% (9 of 21) described shifts in mindset and approach to conflict resolution as their most important learning:

“That a collaborative mindset is as if not more effective than an aggressive one. That active listening and information sharing are key to resolution on mutually acceptable terms. That emotions play a large and important role in the resolution process.” (A007)

“Practicing negotiations and mediation has led me to believe that many collaborative solutions exist where all parties still end up satisfied without taking an aggressive stance.” (A019)

“I think seeing the value of coming up with value-adding ideas to a negotiation as well as getting a strong understanding of the other side’s needs are the two most important things. I think if you can do those two things you will be in a strong position to find actually beneficial agreements no matter what the situation is.” (A014)

“The exercise with the biggest impact was the one called “make as much money as you can”. It made me really aware that I went into negotiations with an aggressive and self-serving approach because I “assumed” incorrectly that others felt the same. I feel that emphasizing common interests and approaching conflicts in a way that is open to compromise will benefit me hugely, both as a lawyer and in my life outside work.” (A016)

“The importance of collaborative problem-solving is a key learning point that I took away from this course. Unlike arbitrations that have an imposed decision maker, negotiations and mediations allow for the parties to engage passionately in the resolution of their own disputes. Conflict is not always a bad thing when parties can engage collaboratively in its resolution. Similar to the idea that parties control their own court processes, parties in alternative dispute resolution also get to do the same and that is an important thing to remember when you are engaged in them. It is about the parties coming to the best solution for themselves. Therefore flexibility and collaboration are key factors at play. There is hardly any room for rigidity or else the process will not move along.

The overarching theme that allows one to get to the collaborative approach is through understanding the interests of all the parties. Without this you are very likely to be unresponsive to any other matters other than your client’s position. Interests are tied to emotions and therefore you need to be cognizant of others emotions at the table as well. Taking into account emotions may seem unfavourable to a client because they don’t want sympathies to be at play in determinations, or they may if they are the side wanting to align themselves with such sympathies. But either way you need to be aware that emotions will play a role and being aware of them will help develop community, understanding of interests and thus collaboration.

While I entered the course thinking that a collaborative approach will really not get you what you want; I seem to have been mistaken in that belief. Really, standing firm on issues may only create a static process at the detriment of your client and the other side.” (A004)

As noted in the quotes above, many students (33% [7 of 21]) discussed the importance of an awareness of others – their interests and emotions – to the likelihood and quality of outcomes. A number of students (29% [6 of 21]) acknowledged the validity of alternative

dispute resolution mechanisms to achieve settlement. An almost equal number (24% [5 of 21]) acknowledged the importance of creativity and value creation to the quality of resolution.

The majority of the students in Group B (53% [9 of 17]) described increased knowledge and appreciation of non-adversarial dispute resolution processes as their most important learning. 35% (6 of 17) described shifts in their approach to conflict. A matching number of students commented on the importance of an awareness of others and their interests related to outcomes. 12% (2 of 17) commented on the importance of creativity and creating value in the resolution process:

“Litigation can be avoided. ADR can lead to solutions that are better than a court imposed solution. Opposing counsel is not your adversary, but rather your partner (in ADR).” (B001)

“When negotiating, try to work with the other person rather than against him or her if you want to have a positive outcome and not jeopardize the relationship.” (B004)

“My most important take-away is how critical it is to be mindful of everyone’s interests that are at stake. Putting yourself in another’s shoes is important in order to be able to move past differences and work toward a resolution.” (B006)

“Being relaxed and not too competitive. Being creative in discussing solutions. The way in which we are problem-solvers more than anything. We help people deal with their issues to the best of our ability.” (B013)

## **IMPACT OF MUSICAL EXPERIENCES ON LEARNING**

The students in both classes engaged in four role-plays during the course: Sally Swansong (two-party negotiation), the Ugli Orange/Dilithium Dilemma (two-party negotiation), Dirty Laundry (three-party mediation) and the World Trade Center Redesign Negotiation (five-party negotiation). There was no marked difference between the two classes with respect to their

results for the Sally Swansong (week six) and Dirty Laundry (week nine) role-plays; the majority of negotiating dyads in both classes produced results that included a “value-added” component as opposed to a distributive, strictly monetary resolution. The results of the Ugli Orange/Dilithium Dilemma role-play (week eight) and the World Trade Center Redesign Negotiation (week ten), however, were much more noteworthy. Their placement in the progression of the course, particularly in relation to the experiential learning modalities, is of most interest to the study. The music-based learning experiences and student responses to them are set out in detail below.

### **Summary of Comparative Learning Experiences**

As previously described, both groups were exposed to collaborative metaphors for negotiation and problem-solving which were reinforced throughout the eleven week course. Group A was specifically introduced to the new metaphor of negotiating and problem-solving as ensemble music-making. Three music-based learning experiences were designed for Group A<sup>36</sup> and three corresponding non-music-based learning experiences were used in Group B. The first of the three musical interventions occurred in week two when both groups engaged in a reflective exercise about conflict. Students in Group A created playlists to supplement verbal communication and reflection while Students in Group B engaged in verbal reflection and discussion alone. The second of the musical interventions occurred in week five when Group A had a fieldtrip to the Royal Conservatory of Music to observe and interact with the Cecilia String Quartet in rehearsal. In the same week, Group B had an interactive in-class talk with Asif Quadir, senior legal counsel from a major financial institution, who spoke about his experiences

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<sup>36</sup> As previously noted, music was also used on a fourth occasion in Group A as an express tool in the major role-play exercise.

with cross-cultural and multi-party corporate/commercial negotiations. The last of the three musical interventions occurred in week 7 when Group A engaged, themselves, in a series of music-making exercises with simple percussion instruments. Through these embodied experiential learning exercises students built through doing on the concepts observed during the String Quartet workshop. At the same time, Group B had a fieldtrip to the Ontario Court of Justice where students attended an interactive session with Mr. Justice Harvey Brownstone of the Family Court (a case managed court with numerous mandatory conference steps) and Alison McArthur, director of the in-house court-sponsored mediation service. Students in Group B also took part in a series of verbal questioning and active-listening exercises in the place of the experiential music-making exercises in Group A. Following these final experiential learning modules, both groups engaged in two key simulations, the direct two-party Ugli Orange/Dilithium Dilemma negotiation and the complex multi-party World Trade Center Redesign negotiation.

In the next section, the students' experiences with the various exercises are described as reported by them, followed by the comparative results of their behaviours and outcomes in the Ugli Orange/Dilithium Dilemma and World Trade Center Redesign simulations.

The next sections focus primarily on Group A responses to the music-based interventions as they relate to research questions two to four. With respect to the first exercise which focused on emotional and social competencies, both classes participated in a version of this exercise and comparative responses are set out below.

### **Creating Playlists: Developing an Expressive Lexicon**

At the end of the first class, students in both groups were asked to recall a conflict situation in which they had been involved and to reflect upon how conflict made them feel. The purpose of the exercise was to engage with reflective practice, to consider conflict from an emotional as opposed to a strictly intellectual perspective, to develop an expressive lexicon in describing the sensed and felt dimensions of conflict, and to explore the impact of conflict from a “self”, “other” and “process” orientation. Students in Group A composed a playlist of three songs that not only expressed their feelings but could also act as a vehicle to communicate their feelings to their colleagues. Students in Group B engaged in the same reflection but without associating their feelings to music; they prepared verbal responses only. Both groups subsequently described their conflict-related feelings to their colleagues.

After engaging in this exercise and the in-class discussion, both groups completed a survey/reflection with Likert-style questions and reflective narrative responses.

Students in Group A wrote lengthy, rich descriptive responses to the question “*What was one thing you learned about yourself through this exercise that surprised you?*” The language used by the majority of the students in Group A was internally self-reflective and textured. Students described personal insights, how the music provided an outlet to express feelings or gave them a voice they did not usually have:

“That music helps me cathartically release frustration and anger in a manner I’d be uncomfortable to express myself. Ex. I almost never raise my voice so my go-to music in conflict is usually all loud angry voices.” (A002).

Others described how the music gave them insight into their emotional patterns in conflict of escalation and de-escalation and into their general perceptions of conflict and their response styles:

“What surprised me was that I picked songs that were both sad and songs that were up-beat and how you might feel like when you are getting ready for an argument or court case. It was surprising how you could feel both excited and sad at the same time but when thinking about the assignment, these were the emotions that came to mind.” (A005)

“I realized that I view conflict in a completely negative light. When the word conflict comes up, I immediately associate it with extreme forms of dispute. When choosing songs for my playlist, I realized that the lyrics are about disputes (led to shootings, etc.) and was quite shocked that my view was more adversarial than I realized.” (A003)

The majority of the students in the Music Class (16 of 21 [76%]) described surprise at the range of emotions they experienced within a single recalled conflict and how their music choices revealed unexpected emotional nuances:

“I learned that it’s a lot harder for me to express how conflict feels to me than I originally thought it would be. There is no one emotion that takes over, but rather it is a blend of countless feelings.” (A006)

“I was surprised that the music that was more “angry” and shouting was music that got me revved up, and I felt was more motivational, almost. The music that made me feel the way I do in a conflict was not the “angry” music, but more creepy/stressful music.” (A016)

They also described how, by sharing the music of others, they were able to acknowledge, understand and relate to the feelings of others despite differences:

“I was very surprised by how different my approach was from that of the rest of my group. Most of my group members focused more on negative emotions and competitive approaches while I focused on a positive, accommodative approach. However, I was surprised to find that despite these differences I could understand and relate to their feelings. While I experience the negative aspects of conflict, I did not focus on that side in creating my playlist.” (A007)



In particular, one student noted how he and another student had chosen the same piece of music but for completely different reasons and how surprised he was to discover that the meaning of the same piece of music could be so very different for both of them:

“The most important things this exercise reinforced for me was the fact that I and another classmate both picked the same song, but for different reasons. I chose a specific rap song because I was thinking about the history of 2 rappers conflict, but my classmate chose the song more in relation to how it evoked emotions for her growing up. This made me think back to readings on how the same gestures can be interpreted very differently with different emotions.” (A009)

Others stated that they had never thought before about the entire process of how they felt in a conflict from beginning to end:

“I had never thought before about the entire process of how I feel in a conflict from beginning to end. I normally can’t remember how I felt in the heat of the moment.” (A019)

A few students (4 of 21 [19%]) looked outward in their responses, describing external realizations about themselves, such as labeling their dominant response style and deriving meaning by comparing themselves to others:

“Even though I’m a “competer”, I take less aggressive and more calm approach and am less “frazzled” by conflict than others seem to be.” (A012)

“Ya – it surprised me that others were not as methodical in their approach.” (A008)

“No real surprise. What surprised me was how most people have an erratic view of conflict. Most do not see it as a natural fluid state.” (A001)

In contrast, the descriptions of students in Group B were short; the majority of them (11 of 17 [65%]) wrote only a single sentence. They tended not to use their own words and meanings, but rather drew primarily on existing standardized categories to label themselves, others and the negotiating process itself. Most of the responses (9 of 17

[53%]) focused on self-labelling taken from the Thomas-Kilmann (1974) conflict modes (both classes had completed this conflict mode inventory) and focused on external ways of responding to conflict, such as engaging in critical discussion and problem-solving:

“More competing than I thought.” (B012)

“That I’m not as collaborative as I thought.” (B017)

“How unaccommodating I apparently am.” (B003)

“That I probably avoid conflict more than I think I do.” (B002)

“I knew I usually try to avoid conflict. However, in certain contexts when important things are at stake I will engage in critical discussion to solve the problem.” (B008)

“I never knew I avoided conflict so much! I always thought I was much more of a problem solver.” (B011)

Two students in Group B (2 of 17 [11.7%]) denied experiencing emotions related to conflict generally and denied, in particular, experiencing any negative emotions related to conflict:

“I rarely get into conflicts. It was hard to think of an example of a past conflict.” (B005)

“I’m much more comfortable with conflict than the average person.” (B016)

A couple of students (2 of 17 [11.7%]) appeared to question the legitimacy of emotions, or unpleasant emotions, in conflict:

“I didn’t feel much surprise about my participation in the exercise. My surprise came from our inability to separate feelings from rationality.” (B013)

“Nothing really, I’ve recognized myself as a person who enjoyed conflict for quite a while.” (B010)

Only 3 of 17 (17.6%) students in Group B described personal emotional insights other than those related to Thomas-Kilmann conflict mode-type labelling:

“I learned that how I approach conflict is based on many factors that are outside of the actual conflict. I also identified situations where I would not be likely to compromise, such as a situation where I am 100% correct.” (B001)

“I learned that I get very stressed and anxious when in conflict with some people but not others. It depends on who I am I conflict with and what the conflict is about.” (B006)

“Generally, I’m a pessimistic person. Hence I was surprised that the example I came up with regard to a conflict was one that elicited a positive emotion. Namely, deriving motivation from a conflict I experienced.” (B009)

Students in both groups had the opportunity to describe their experiences with this exercise more fully in the general feedback question related to most important personal learning and potential effect on future practice. Approximately one quarter of the students in Group A (24% [5 of 21]) described gaining single dimensional insights – in other words, those related to just the self, just the other or process alone. Of those five students, four (19% of total class) noted insights into “other” and one of those five (4.7% of total class) noted insights into “process”. No students reported insights into “self” that did not follow through to an insight related to “other” or “process”, or a combination of these. 71% [15 of 21] of Group A described gaining multi-dimensional insights. 33% [7 of 21] described how realizations about themselves informed an awareness of diversity in dealing with others. 24% [5 of 21] described how insights about self might affect process. 14% of Group A (3 of 21) made a connection between the impact of self, other and process, and between other and process.

In contrast, almost half of the students in Group B (47% [8 of 17]) described gaining only single dimensional insights into self alone (2 of 8 [12% of total class]), into others alone (3 of 8 [18% of total class]) or into process (3 of 8 [18% of total class]). Less than a third (29% [5 of 17]) described multi-dimensional insights. 18% (3 of 17) described how realizations about themselves led to realizations about others and 12% (2 of 17) described how realizations about themselves led to insights about process. One student described how insights gained about others led to insights about process. No student in Group B made a connection between all three dimensions from self-realization to other-realization to impact on process.

Almost a quarter of Group A (5 of 21 [24%]) described their most important learnings from this exercise and impact on future practice in terms of an increased awareness and appreciation of the gamut of emotions experienced in a conflict situation:

“I learned that there are many avenues for expressing how one feels about conflict as well as an array of different feelings that one may experience when involved in a conflict. I think this learning will assist me in understanding, realizing and appreciating the diverse array of feelings that my client and the opposing side may experience from being involved in a dispute.” (A013)

“I learned that conflict involves different responses/emotions in different people and that you cannot predict their conflict resolution style from the surface level of their everyday actions/mindsets. This exercise reminded me of the importance of being aware of the fact that my client may see/experience the conflict in very different ways than I do – and that it is my duty to ensure that our different mindsets do not make the situation more difficult for my client.” (A002)

“Everyone has a very different view of what conflict is, what it entails, what feelings are associated with it and its end result. I saw this as quite interesting to get such a wealth of different perceptions on what seems to be such a clear and straightforward concept.” (A004)

“A lot of people approached the exercise in very different ways as to how they perceive conflict, how it makes them feel and what their instincts with respect to

conflict were. The last one was the most common and made me realize that instincts and how I actually feel about conflict are two very different things. In practice, I would have people focus more on how they feel as opposed to the common “war/litigation” instinct which could hopefully promote people to understand that they would like to resolve the conflict to benefit their and others feelings and not be focused on purely winning.” (A019)

An equal number of Group A students (5 of 21 [24%]) noted that the vast array of emotions experienced by people in conflict would require not only a variety of approaches in dealing with other people in an effort to understand their points of view, but would also require a variety of different process approaches in order to reach settlement. One student described this as follows:

“I think that I initially perceived the focus on the negative elements of conflict as detrimental to resolution. However, through the group exercise and class discussion it became apparent that a focus on positive and accommodative approaches is not always appropriate and could function to escalate the conflict in the long-term. I also learned that individuals have very different approaches to resolution and a consideration of these different approaches is necessary in order to facilitate effective conflict resolution techniques that will meet the needs of all parties engaged in the dispute.” (A007)

Another student described the realization of the need for a personal shift in her perspective of conflict in order to play a more meaningful role in alternative modalities being implemented within the justice system where she hoped to eventually practice:

“I chose this [elective course] because I believe that alternative dispute resolution, specifically restorative justice in criminal law, is fundamental to ensuring individual rights are addressed. The exercise made me realize that I automatically associate conflict with negativity and dispute. The songs showed adversarial aspects. This is polar opposite of the models of restorative justice and tells me that I need to shift my perspective of conflict if I want to prove a meaningful role in the justice system and employ restorative justice principles, I need to shift my views to a more interest based and compromising model.” (A003)

A third (33% [7 of 21]) of the students in Group A described having made realizations and gained insights about themselves, others, process, and the nature of conflict with the assistance of the playlists. Several expressed conflict concepts by adopting the use of music-based language, describing the “*dynamics of conflict*” (A018), and “[u]nderstanding how conflict can build in *tempo* and intensity” (A020). Another student analogized characteristics of conflict to musical selections:

“The soundtrack I created was almost entirely composed of sounds which were repetitive and irritating. I think one of the reasons I’m interested in ADR is that I see it as a more efficient way of silencing/resolving those exhausting and repetitive conflicts which were symbolized in my playlist selections.” (A017)

In Group B almost half of the students (47% [8 of 17]) described their most important learnings in terms of theoretical external realizations about the nature of conflict:

“1) the reasons for conflict can be traced back to well beyond the time of the actual matter of disagreement 2) the parties we have conflict with impact the position we assume when dealing with conflicts 3) resolving conflicts quickly has benefits, and can be more important than going after all of my legal entitlements/rights. I think that this might affect my practice in that I will be able to encourage my clients to identify why the conflict is in need of a resolution, and determine what the long term strategy/objective should be. I think I will be able to help my clients understand their options for effectively resolving their disputes.” (B001)

“Conflict is what you make of it. Generally conflict is given a negative connotation, but a good lawyer and dispute resolver needs to learn to be able to transform it into something positive. I pride myself in being an even-keeled person and I believe that I have the skill set to facilitate this activity well when I become a lawyer.” (B009)

“I learned how important context is. Context can completely change an individual’s reaction. So I need to be aware of my clients’ context. Also, culture sparked an interest with me. I think it would be interesting to understand further how culture affects conflict.” (B017)

“The most important information that I take away from the exercise is recognizing that a single approach to conflict resolution always has shortcomings that need to be filled with other approaches. This understanding will make me a more competent lawyer.” (B010)

29% of Group B students (5 of 17) noted that their most important learning from the exercise was that different people approach conflicts differently. 12% (2 of 17) described how diversity might impact on process:

“That clients are complex, multi-faceted human beings, all of whom bring to the table a diverse array of experiences. The resolution of conflict cannot be approached through water-tight compartments – the interaction is an organized exchange and often what underlies the conflict is not what the parties initially believed to underlie it. Conflict resolution is an explorative process, no single technique works best.” (B003)

“Everyone in my group had a different approach to conflict. Just because I am very comfortable dealing with conflict and open to discussion doesn’t mean everyone is. To be sensitive to other people’s style of functioning is important to being an effective ADR practitioner. Frank, open, honest, in your face discussion is NOT going to work with everyone. In fact, it won’t work with most people.” (B016)

Only a few students in Group B described making realizations or gaining personal insights into themselves through the exercise (2 of 17 [12%]), while the majority noted the importance of being aware of diversity in dealing with others in conflict (8 of 17 [47%]). Some described insights into the nature of conflict (5 of 17 [29%]) and a few (3 of 17 [18%]) made reference to process-related insights.

Students in Group A were asked if creating the playlists had assisted them in expressing their feelings about conflict and if they felt that they learned more about themselves and their classmates through the creation and sharing of the playlists, as opposed to just talking about the subject. 62% of the students indicated the playlists had assisted them “well” (33%) or “very well” (28%); 38% indicated “somewhat” and no students indicated “not at all”. 76% of the students indicated that they had learned “a lot” (57%) or “more than anticipated” (19%) about themselves through creating and sharing playlists than had they

only used verbal expression. 24% indicated they had not learned more or had learned “somewhat” more through the use of the playlists.

### **Learning from the String Quartet: Collaboration in Action**

In week five, nineteen students from Group A participated in the interactive workshop with the Cecilia String Quartet at Toronto’s Royal Conservatory of Music; two students were absent class that day.

Prior to the session with the Quartet, I gave a lecture on “the 3C’s of successful negotiation – Communication, Community and Communion”. The lesson was taught blending music and dispute resolution concepts. Students then joined the Quartet’s rehearsal in progress to watch how members of the ensemble communicated with one another, built a successful negotiating group, and connected on a human level. They then engaged in a question and answer period with the musicians and the musicians were asked to illustrate various negotiation concepts through sound. These illustrations provided students with an opportunity to hear the effects of balance/imbalance, dominance/avoidance (non-participation), verbal and non-verbal communication techniques, the musical equivalents of “brain-storming”, option generation and assessment, and decision-making. At the end of the workshop, the Cecilia Quartet performed the complete Third Movement of the Dvorak String Quartet, Opus 106, for the class.

Students completed a twelve question in-class survey/reflection focused on the themes of the lecture and their observations of these concepts-in-action in the musical demonstration. They were asked to describe what they observed about different ways the members of Quartet



communicated, the Quartet's listening process, the importance of members' "presence" (being in the "here and now") while in process, their observations on the Quartet's methods of collaboration in contributing, trying out and evaluating ideas, how the members dealt with emotions and differing personalities, the Quartet's leadership structure, and how trust, rapport and respect are built and contribute to a successful negotiation and outcome.

In their descriptions of various communication techniques observed, students noted the possibility of communication beyond words through vocalizations:

"While exploring techniques the members are vocalizing the expressions. They are emphasizing using imitation of the various options." (A001)

"Vocalizing/sound making – varying pitch, volume, tone, notes, silence or no words (indicated mood/enthusiasm/atmosphere of the music) – used voices, feet and instruments." (A002)

They also reported observing communication through body language and gesture (A002, A007), through eye contact, through sounding out and demonstrating their intentions and ideas with music, and by other members also playing out the various options put forward:

"They talk about and describe what they want to hear or sound like. They give each other examples of how they think it should be played or how they think they are playing it and then wait for feedback." (A014)

"Members would critique each other, offer alternatives and make decisions on what they perceived as the most appropriate way to perform. They communicated through music – in order to communicate what they were proposing as a change they would play the suggestions on their respective instruments. Other members responded by talking about the alternative or attempting to play it themselves. They communicated non-verbally through their expressions and body language – at one point, one member perceived that she should speed up from another member's expression/body language." (A007)

Students commented on the effectiveness of the Quartet members' manner of communication – “respectful”, “welcoming”, “inviting”, “seeking input”, phrasing suggestions as questions not demands:

“Rather than being directive members are leading by using question.” (A001)

“A lot of the time, when the members of the quartet spoke to each other, they phrased their suggestions as questions. I found that this fostered a stronger group dynamic and demonstrated that they value the rest of the group's input.” (A006)

“They make suggestions instead of making demands and then try out different options.” (A012)

Others reported observing how the players sought consensus regarding ideas, and how they would paraphrase the ideas of others through musical reiteration to ensure understanding:

“If the word description is not enough is usually followed by demonstration to ensure perfect understanding, communicating in a way that showed the input of others was valued.” (A003)

“Lots of questions – validation from one another. Ideas are vocalized by saying ‘do you guys think...?’ ‘What do you guys want?’” (A015)

With respect to listening, the majority of the students (16 of 19 [84%]) noted a multi-level form of listening – or “polyphonic listening” – being utilized, as opposed to a simple “back and forth” exchange:

“They were all listening to each other's musical contribution. They were looking at each other between notes.” (A003)

“They had an awareness of their own individual sound, the sound of other members and the sound of the quartet as a whole. By listening on multiple levels they could make alterations to parts of the performance.” (A007)

“Their phrasing is responsive. They connect to each other. They glance at each other's movements too.” (A011)

“They listened very intently to both their own and each other's playing and if they thought something was off then they voiced their opinion on it.” (A014)

All of the students (100%) stated that being present in the “here and now”, as observed in the musicians, was essential to non-musical negotiation processes. In their descriptions, the students noted variously that being present enabled one to sense context, cues and clues necessary in order not to misread, misinterpret, or miss important information. Students noted that being in the “here and now” enabled negotiators to respond appropriately, hear others, be present to the feelings of others, to build upon changes, understand sub-issues and fully participate in the negotiating process. Students also noted that this level of attentiveness and engagement by the individual members “gave energy to the group” (A001):

“If you are not actually present you are missing important contextual clues and risk misreading the situation, the people, the key issues, and the underlying issues.” (A002)

“This is crucial in negotiation so you can pick up clues to everyone’s contribution, issues and concerns. If they are not alert then they would not be able to effectively address one another’s concerns because they wouldn’t know what they are.” (A003)

“Yes, I do think that presence is important in negotiation. If you are not aware of the “here and now”, it is easy to miss important cues that others involved in the negotiation may give you. If you miss out on these cues, you are more likely to misinterpret them or to respond in a way that offends the other party, which would risk bringing the negotiations to a frigid halt.” (A006)

“Yes! There is a lot of peripheral activity happening that completes the picture in a negotiation. At the same time, there is a lot of signals from other members that help clarify what the big picture actually looks like.” (A021)

Others observed that being present was a crucial part of listening and understanding:

“Absolutely. If one is not engaged in the present then something can be missed. It is important to always think ahead ie., the consequences of actions and speech but being in the present is integral to listening – and really hearing the others.” (A004)

“Yes, because it allows you to understand all of the sub-issues that are existent.” (A012)

“Yes, being present in the situation is crucial to understand the needs of the other party and how they are changing as the negotiation is progressing.” (A019)

Insights gained from observing the Quartet included a realization that presence is required at all times given the incremental nature of building a full agreement from individual terms:

“Yes – from watching the quartet and from my perspective on negotiations in general it seems that agreements are made in a step-by-step process – that is, smaller agreements throughout the process toward a broad general agreement. Because of this, being attentive and present throughout the process is important.” (A007)

“Yes, definitely. To build upon the changes they need to be attentive to each development.” (A011)

“Yes, it is important. To always link back to what they have agreed on is important to move negotiations forward.” (A015)

Students stated that presence was important in order to “feel engagement with the outcome and coming to a solution” (A016) and to being able to assess options in the moment, those “in which group feedback is important to group success.” (A008)

Students all agreed that listening was an essential element of being fully present and fully engaged as an active member in the negotiating process (A004). They noted that presence showed respect and understanding to other members of the negotiating group, and caring for the process. Other students observed that presence was necessary to fully contribute and participate and that it helped to create unity. One student noted that “the here and now is constantly in flux as a result of the feedback of all the people involved. If you don’t listen to each other you have a very small understanding that is not connected to the bigger picture of the situation” (A002).

“The ability to listen seems like it is essential to “presence” – without listening to the music and to each other’s opinions, each member could not be present in the negotiation process to effectively give their opinions and make decisions between alternatives.” Listening “establishes ownership for the final product.” (A020)

Students were asked to describe what they observed about the Quartet's method of collaboration. Many noted the use of humour, and the majority observed how Quartet members put ideas forward as questions (making "requests"), "played out" alternatives, demonstrated ideas individually, and then tried them out as a group before making decisions. All of the students remarked upon the fact that all ideas were tried out and none were discounted or rejected until they had been given a full hearing. Students also noted the importance of openness to ideas, suggestions and criticisms and that honesty, humility and respect created an environment where all felt safe about contributing to the process and open to receiving constructive criticism.

"It appeared that all group members were brainstorming and contributing to the discussion and then as a group they were collaboratively testing out the idea and reaching an agreement. They tried out ideas as a group and would then discuss whether or not it worked. All members would give an opinion and then they would come to a consensus through an open discussion. They were responsive to criticism and challenging of ideas. They took these challenges to better their performance and were not personally offended." (A019)

"They honestly spoke their mind – blunt, to the point but respectful. Tried all options to see which is best, they were honest. They saw themselves as working towards a common goal. They were very humble and open to criticism." (A020)

All of the students noted that each member of the Quartet had a voice in the process and that although some had more dominant personalities, the Quartet used a form of "rotating leadership" in their collaborative engagement. They remarked upon the fact that all voices in the ensemble and all ideas were valued, nothing was rejected or disregarded, all ideas and feedback were invited, welcomed and wanted, tried and discussed then judged by "the whole team" (A015).

"All players seemed to take a leadership role at some point during the rehearsal; in other words, leadership seemed to rotate through the group. Each player had an opportunity to voice their opinions. When members did not agree, the whole group would experiment with several alternatives. Ideas seemed to be valued because when 1 or more members did not like something, the group was willing to attempt different alternatives until they could reach consensus. Participation was encouraged for the most part. Members were

generally open to trying each other's suggestions and experiment with alternatives. Members also sought opinions from other members throughout the rehearsal." (A007)

"Every player was listened to attentively. No player's voice was neglected at any time. All ideas seemed to be valued in that they were all addressed in some way (through words or played musically). Whenever a suggestion was proposed players would stop speaking and listen to the person proposing the suggestion." (A013)

The students all observed that trust, rapport and respect were built through the Quartet's behaviour and manner of communication, including members' use of humour and apology, the group's modes of collaboration and consensus-based decision-making. Many students remarked upon the fact that through the trust and rapport that had been built the Quartet had created a safe environment which encouraged the offering of ideas. A number of students noted the importance of being supportive even when an idea did not work out (A002).

After listening to the sound-based examples of unbalanced communication, "give and take" and the effect of aggressive and dominating tactics, and the effect of mismatched tempi and pacing, the students were asked if they could relate these concepts back to the negotiation process. Of the nineteen students, seventeen (89%) stated that they could "translate" these experiences over to negotiating models. Of the two who stated they could not, one indicated she was unclear about the question and the other felt that it did not translate because participants in a mandatory mediation, as the example given, would not similarly value each other as the members of the quartet did (A019).

In considering "translations" between the two settings, students were able to identify similarities and connections between musical and non-musical negotiations. These ranged from connecting specific concepts from one domain to the other, to expanding their vision of possibilities for

creative option evaluation in non-musical negotiated processes. They noted the need in both musical and non-musical negotiations to try out all ideas (A001, A014) without negative attribution or reactive devaluation as well as the importance of working toward an overarching common goal (A002, A007). One observer noted that for the Quartet to perform at a high level and to reach that common goal:

“Disputes had to be resolved throughout, which required a consideration of alternatives and agreement. This is highly analogous to the negotiation process – the goal is agreement, which requires a consideration of alternatives and decision-making throughout.” (A007)

Another student observed the nuances of communication that are just as important in non-musical settings:

“[The] same principles apply to a negotiation: Tone, pitch, tempo dynamics [...]. When negotiations go well they are harmonious and creative and transforming; when they do not, there is discord. They adjusted tone and volume when criticizing to make it clear that the idea was a non-threatening, non-accusatory suggestion.” (A002)

Students noted the importance that achieving balance had on party participation and resolution. They noted that balance ensured full participation of all negotiating parties. One student observed that taking all interests into account can lead to mutually beneficial results while “an imbalance can lead to one individual prioritising their interests and the negotiation can be stalled” (A003). Another observed that “when there was cacophony in the quartet’s music, this made me think of a negotiation process where none of the parties were on the same page at all. It sounded unpleasant and it was almost stressful to listen to. Nothing was accomplished when the parties did not cooperate with one another” (A006).

One student observed that the effects of different tempi and pacing were similar to the escalation and de-escalation of emotions and that musical dynamic changes brought home varying intensities of emotions “depending on how powerfully expressed they are portrayed and received.” (A013)

Students were asked which aspects of collaborative music-making and which negotiation concept that they had heard and felt in a musical way had had the most impact upon them and might assist in their negotiation work. Students variously noted the importance of setting and having a common goal as a starting point, creating an environment conducive to discussions, and the importance of all members having a voice and feeling valued and useful in the process no matter how small their contributions. The majority commented on the necessity of having a balanced process as “imbalance [...] can trigger negative responses” (A004). Students commented that listening “becomes key when being part of the process of give and take” (A004). Others commented on the impact of the illustrations where one person overpowered another or where the group members played at different tempi: “overpowering [...] reminds me how important it is for all parties in negotiation to be equally heard, and the different tempos because this one sounded the worst to me and really made me see the value in all the parties being on the same page” (A006). Students noted that “taking and giving” was essential to negotiation as “[m]embers were open to each other’s opinions but were also willing to criticize and accept criticism. Members also seemed to pick their battles – they gave their opinions but deferred to the group where consensus was not possible. This is highly analogous to the negotiation process and in my opinion is necessary for positive outcomes in negotiation” (A007). Another observed:

“When Min {the first violinist} wasn’t playing in one piece, she was kind of “checked out” of the discussion; when she was asked to count the timing, she became much more



engaged and had a stake in the rehearsal now. It's a good lesson on how to get people engaged in a negotiation by finding a way they can feel useful." (A016)

One student further noted that "if one party was not involved in the balance (similar to negotiation), then by having them be involved by watching the tempo of the group, then it rebalances the negotiation and they become involved." (A019)

The importance of nuances of process, such as tempo - akin to the pace or speed of a negotiation – were also noted: "When there was no understanding of the right or consensual tempo there was no movement forward, no agreement. I feel that there should always be an initial agreement or something in common to work with before negotiations begin" (A018). Others noted the difference between distributive and integrative negotiations through the sound illustrations:

"Takers and givers' will likely have the most impact on me because it is a perfect way to master distributive negotiation, the ways in which you have trade-offs in demands while still maintaining your interests." (A021)

The penultimate question asked how hearing and observing the musicians' negotiation process affected students' understanding of the lecture concepts, if they felt the workshop enhanced their learning experience and if so, how. All of the students present stated that the session had enriched their learning experience.

Students commented that seeing and hearing concepts through this musical medium brought the concepts to life and enhanced their learning:

"Hearing and observing these concepts brought them to life versus reading about them because you can see the build-up to consensus and once consensus is reached, how the parties feel post it. Observing it from a bird's eye view also enhances objectivity." (A021)

“It was interesting to see different types of communication play out and how each type – verbal and non-verbal – played a role in the process. It was unclear to me how these 2 modes worked together; however, watching the quartet made this correspondence more clear.” (A007)

One commented: “I don’t think I’ve ever seen a negotiation process this effective. Although one person seemed to dominate, it was still consensus based. Many times in any negotiation someone might take the lead but still listens to each opinion and values them. Dominance does not mean adversarial necessarily” (A003). Another noted that hearing and observing “is key to negotiations. If you are not listening to others and observing body language or feelings of others then you cannot communicate properly and cannot reach a decision that is the best to the whole group but will also be the best for you as an individual within this group dynamic as well” (A004). Still another observed that this musical experience “allowed me to actually hear what conflict sounds like and it sounded very bad. I am a bit of a musical person, so hearing conflict in something other than a verbal way really spoke volumes to me.” (A006)

Students described being able to “see” things through the musical experience not ordinarily visible (A015). Many students commented on the importance of listening, of trying everyone’s ideas, of valuing the opinions of others and working to reach understanding. Moreover, one observed that “the quartet highlighted how trust, value and respect can have such an impact on negotiations.” (A010)

They connected these observations about the Quartet and its negotiation process to their own non-musical negotiations:

“Each player needs one another and so there is a consensus that needs to be reached for every negotiation. When parties in a mediation are involved in a dispute and there is a

long-term relationship at stake, there also needs to be a consensus that is reached for the ongoing relationship to last.” (A013)

“It demonstrated the potential for the kind of “mastery” of a situation that is possible in the mediation process. It was a memorable way of examining how a group positively addressed and solved conflicts when they know they can trust the group is operating towards their own best interests.” (A002)

Students stated that their biggest take-away points from the experience included hearing and observing the importance of having a common goal (A019, A020), the importance of trust, the importance of taking chances, valuing each other’s opinions (A014), trying out every idea (A003, A004), having an openness to alternatives and enabling the free flow of ideas, having mutual respect for others in the negotiating group (A020), and building consensus (A019). One student noted:

“From this experience I learned that not all negotiations have to be characterized by polarized end and goals. This showed me that a collaborative approach can be very successful. This is something can be surprising to some because being passive is usually correlated to collaboration but in this situation it was very much not the case. All issues and concerns were dealt with until there was a general feeling of comfort and understanding and this is a great example of a successful collaborative/cooperative approach. There is no right or wrong but rather working together allowed for collaborative decisions that everyone was comfortable with.” (A004)

Further with respect to the importance of a collaborative, “team” approach, one student stated:

“I loved that one of the violinists described herself as being a trapeze artist in saying that her fellow musicians know when to “catch” her, even if she “jumped” at the wrong time. This demonstrates the importance of being present in the “here and now”. I think that this is just as important in the legal field because if you are not present to catch another party after they try to communicate with you, this may very well botch the entire negotiation process.” (A006)

As documented in their reported reflections, the Quartet workshop appeared to heighten Group A participants’ cognitive and affective understanding of collaborative negotiation skills and behaviours.

### **Group Music-Making: Moving from Knowing to Doing**

In week seven, Group A engaged in a series of group exercises using simple percussion instruments. These exercises provided them with an embodied learning experience related to the themes of communication, community and communion. Nineteen of the twenty-one students were present for this exercise; two students were absent from class that week.

The first exercise, which explored creating collaborative community and connection (trust/rapport) through rhythm, involved grouping the students into small “ensembles”. These ensembles were asked to form circles and were given beanbags. Each member of the ensemble was to toss the beanbag to his or her neighbour without making eye contact and to do so in time with a tempo set by me as facilitator. I called the direction of the toss and changes in direction at random. Once the ensembles had had an opportunity to engage in this fashion for a period of time, a cross-toss was also introduced; eye contact between initiator and recipient was permitted during the cross-toss.

There were a number of learning objectives for the exercise, including team-building, proposing and trying options, taking risks, developing group strategy, building trust and rapport, experiencing non-verbal communication, dealing with the unknown, being spontaneous, being flexible and adaptable to change, being present in the moment, experiencing the feeling of a group goal being established and re-established upon changes that arise in the process, experiencing “mistakes” and “failure” and its impact on the group, and recovering from these situations.

At the end of the exercise students were given a survey/reflection form to complete with six questions, the first three of which were multi-part questions. All of the students responded positively to the exercise, many (6 of 19 [31.5%]) noting its fun nature; some reported that this element of play allowed them to build connections with their classmates and to have the confidence to try new things (A001). A few noted that it provided a safe forum where they could make mistakes (A001; A007) and where laughter helped to ease nerves (A008).

A few students noted that initial difficulties arose from a “fear of risk” and that, as expressed by one student, “once this risk was minimized through practice throws/humour, the task became a lot easier” (A002). Almost all of the students experienced the importance of needing to trust others and also noted that the experience of trust is reciprocal (A003). One student qualified that the rapport “developed really quickly (although maybe it was more “comraderie” [sic] than trust per se).” (A016)

Some of the students (4 of 19 [21%]) expressed discomfort with the physical proximity required by the exercise. One student, however, voiced a willingness to endure personal discomfort for the good of the group: “I was uncomfortable being in such a small space but it was strategic so was necessary to benefit the group.” (A019)

The concept underlying this exercise was rhythm, the importance of establishing a rhythm and a tempo (pacing) within a negotiating group, the ability to be flexible and responsive in the moment in order to adapt to changes in rhythm and tempo that arise as a process unfolds, and to

establish and re-establish rhythm throughout a negotiating process, like the “heartbeat” of the group.

In their reflections almost all of the students (17 of 19 [89%]) reported experiencing the importance of the rhythm (describing it from “fairly important”, to “very important”, to “crucial”) and its connection to group success, as well as how rhythm helped to build trust over time:

“It took a while, but once a rhythm was established, it was easy to trust the group.” (A005)

“We established a rhythm to get the trust going.” (A021)

“Trust in team members increased with each successful toss and catch. I was more willing/more comfortable with taking risk of catching and throwing with each successful catch and thrown...once a rhythm was developed with practice, level of comfort and trust increased.” (A007)

“After we used our strategy to move closer and we went through 3 or 4 rounds, I began to trust my group members more.” (A019)

The effect of the loss of rhythm on the group process was also noted:

“If one member lost the rhythm the entire group ended up falling apart. Showed how dependent the group was on all of its members for survival.” (A002)

“Crucial in order to all be able to catch the bag, if one person was off, the group failed. Establishing a rhythm with the entire group, in order to throw the bag was necessary or else it didn’t work for anyone.” (A019)

“One is off and the whole group starts dropping the bean bag.” (A003)

Students noted that the need to re-establish tempo, or flow, after a “drop” was similar to a negotiation situation where a setback or challenging/difficult conversation, comment or issue, can upset flow. In such circumstances, students commented that tempo/flow must then be re-established and noted the challenge of doing so:

“When you lost the rhythm it didn’t just come back right away. You had to work to get it back.” (A014)

“It did take time to establish the flow of things again.” (A005)

Participants also connected their experiences in this activity to the way that trust and rapport, rhythm and group cohesion are something one must keep working at within a negotiation process. At the same time, students also observed:

“When it [rhythm] failed, it wasn’t the end of the whole exercise, we worked through it.” (A016)

A number of students noted that re-establishing rhythm did not happen right away, that it took time to adjust to changes, and adaptations required the whole group to change:

“Everyone had to be adaptable and willing to be flexible in order to succeed as a group and if we didn’t strategize then the group didn’t function.” (A019)

“It felt like we all wanted to succeed as a group and make sure that with a change in toss in a way that would enable another person to catch it.” (A018)

This desire for group success appeared to lead participants to cooperate more:

“We helped each other out.” (A011)

“We wanted all to succeed and everyone tried to make everyone succeed.” (A018)

Many students described experiencing the need to be flexible, and to adjust their individual approaches to those of others:

“Once I figured out how the person to my left and right threw I had to adjust how I catch.” (A005)

“After the first couple of rounds, I started throwing the bags higher and found that they were easier to catch using this approach.” (A006)

“When the rules of the game changed I felt a bit nervous and uncomfortable but after adjusting myself I was able to respond successfully as were the other members of my group.” (A013)

“There was an element of trust. But mostly it was learning each other’s rituals.” (A020)

Others described experiencing the interaction of trust, group effort and intention, to group success:

“Seemed that we wanted all to succeed and everyone tried to make everyone succeed. Development of trust depends on how much you did and the efforts of the other; it takes efforts from both individuals.” (A018)

“Everyone had to be adaptable and willing to be flexible in order to succeed as a group and if we didn’t strategize then the group didn’t function.” (A019)

“In the beginning the exercise felt contrived. As the session went along it became a group goal. As it became more natural dialogue became more natural.” (A001)

In the absence of their usual verbal and visual communication methods, almost all of the students (16 of 19 [84%]) described “putting trust in” (A014), “counting on” (A016) and “relying on” others (for feedback, A001; on their movements, A011, A014, A018) and on other senses (hearing, A005; sound, A017).

All of the participants reported key learnings from the exercise in accordance with the learning objectives regarding trust, group intention, working toward a superordinate goal that no one member can achieve on his or her own. They also described insights regarding flexibility, the ability to adapt, and experimenting with different options to achieve a goal:

“The difference before beginning, that was chaotic, and harmonious ending made me realize that when you are working towards the same goal, once that goal becomes apparent, you tend to trust and cooperate more.” (A018)



“I could see the importance of group cooperation in order to achieve a changing goal. Also all members of the group had to be flexible in order to allow for a change in group activity (objectives) to happen.” (A002)

From their engagement in the exercise, students learned what was needed to work as a team, both in terms of building understanding and trust, as well as communicating as a unit:

“We started to understand each other’s strengths and weaknesses and worked through them/talked about them – we trusted our members more when strategies were talked about.” (A004)

“Yes, I realized that communication and getting all team members on the same page is key...Even in a simple, minimal risk game like this feelings of personal and group responsibility can arise and strategies to solve the problems and minimize risks. Trust can develop once the team is collaborative, comfortable with each other, and participate in the strategies we all helped develop.” (A013)

The concepts of cause and effect, the interdependence of work in a collaborative negotiating team, and the importance of trial and error and the “give and take” observed during the String Quartet workshop, were noted by several students:

“In the end you learned that other person’s catching was often based on how good your throw to them was. It was interesting putting trust into both the person throwing to you and catching your throw to make you look good...The biggest takeaway was seeing just how much the slightest change can mix you up.” (A014)

“I thought the exercise was fun and I guess the biggest take away is that groups need to find a common interest (or goal or rhythm) that they can align their work towards so that they are able to adjust and move forward towards it in the course of their work.” (A002)

“I learned that you have to try things and fail first before you can perfect them.” (A012)

“Preparation is important – we did establish distance, had taken chances, tried different things – important to outcome all options – we tried different distances, speeds of throwing, etc. – trust is established by efforts of both parties – very important to create or realize that there is a common goal.” (A018)

In the second exercise, which explored communication within collaborative community (group call/response and improvisation), the students selected a simple percussion instrument to be their “voice” and the full class sat in a circle. I acted as facilitator and initiated a simple rhythm with my instrument which students, one by one, around the circle, were instructed to repeat back. Participants were asked to listen for nuances of tone, articulation, and dynamic shape within the rhythmic phrase. After we had gone around the circle in order, I then randomly “spoke” to individual students with a rhythm he or she was to repeat back; the “conversation” was initiated with eye contact. Lastly, I started a conversation with a rhythm that a student was to answer with a rhythm of his or her own; that student, in turn, was to invite a fellow-student (through non-verbal means) to also respond back with an improvised rhythm. This proceeded until all members of the class had been invited into the conversation by someone. During all phases of the exercise, everyone kept an established beat by tapping their feet.

The learning objectives of this exercise focused on communications within a group and explored a number of aspects related to communication: the effects of *how* things are said in terms of the impact on a conversation of the tone, articulation, and dynamics used by the speaker and the recipient of the message. The exercise provided a forum for participants to discover whether they were really hearing and understanding what was being said, whether they were being fully present in the moment; and whether they were engaged in mindful listening as opposed to formulating their own responses while others were speaking. It also explored the concept of improvisation and the ability to participate and respond in the moment.

At the end of the exercise students were given survey/reflections to complete. The survey/reflections contained seven questions. Participants were asked about their engagement with the exercise (their comfort with putting their voice forward in this manner, taking personal risk, and venturing outside of their comfort zones), their listening experience, their experience within the group (feelings of safety and security, feeling “judged”, their comfort with improvising, and whether they had experienced a sense of an ensemble developing), shifts experienced through the exercise, and insights gained into the collaborative experience, communication and improvisation. A final question enabled them to identify their biggest take-away learnings from the exercise.

74% (14 of 19) of the participants described some degree of discomfort in putting their voice forward in this manner and of being outside their comfort zone in engaging with the exercise in general. Most attributed this to a self-perceived lack of musical or creative talent. With respect to putting their voice forward through a non-verbal medium, participants noted feeling “intimidated” (A002), “uncomfortable” (A003, A013, A019), “awkward” (A006, A019, A020), “nervous” (A014), “vulnerable” (A015) and “exposed” (A019), to finding the process “a bit nerve-wracking” (A013) and feeling “like I was on the spot to come up with something creative.” (A016)

Several, however, noted that these feelings dissipated with time (A003), or that despite feeling awkward the exercise was “fun” (A005, A010, A020), “ended upon being interesting (A003), “it was not too bad” (A006) or “ok – we were all in the same position” (A010). Others stated:

“I’ve never used this kind of ‘instrument’ before or participated in this sort of exercise so I felt a bit nervous, but also interested in how it would turn out.” (A013)

“It ended up being okay. Nothing bad resulted of it (yet) so it was worth venturing out.” (A014)

“I usually don’t feel comfortable with “public performance” but I felt more comfortable here because there was goal to keep the rhythm and listen/respond to others.” (A018)

Most of the students who described feelings of discomfort (10 of 19 [52.6%]) reported that these feelings came from an individual concern related to how they might be perceived by their classmates: “risk sounding like a fool” (A003); “the main risk to me was looking stupid in front of the class” (A006); “nervous because you are putting yourself out there to be judged” (A014); “my reputation was at risk if I screwed up the beat or did a poor job” (A016); “expose yourself of lacking music sense” (A015). Students’ reported discomfort or vulnerability also arose from a feeling that if called upon they might be “off rhythm” (A007), “disturb the rhythm” (A015), or ruin the rhythm of the group or the established beat (A012). One student noted feeling a high level of personal risk and discomfort that led to avoiding eye contact so as not to be called upon (A007).

With respect to the learning objective of being fully present in the moment and engaged in “mindful listening”, half of the class (10 of 19) reported that they were very engaged in active listening and of those who reported being present in the moment (15 of 19), many noted that this was “key” to being able to participate (“You have to listen to participate effectively” (A008)).

Almost a third of the students (6 of 19 [32%]) described falling into the habit of not fully listening to what was being said because they were formulating their own responses when others were “speaking”: “I was always formulating but never did what I had planned as it didn’t go with the previous beat” (A005); “[w]as split between listening to rhythm and planning move.”

(A008); “focused on my next “move”...I would always be thinking about my next turn.” (A010); “a lot of the time I was worried what my next move would be” (A012).

Some noted that trying to “pre-plan” their responses was difficult as one “could not predict” what someone would “say” (A002). Others observed that “it was difficult to actively listen and form a response” (A007), or reported being “[d]istracted by my own thoughts to come up with something new” (A015) or stated that they found it “[d]ifficult because I was worried I would be next and not have a ‘response’.” (A017)

Slightly less than a quarter of the group reported feeling “judged” (4 of 19 [21%]), however, most regarded the exercise as “fun” and if people laughed in response to their offering “it was okay”. One student noted that “everyone’s laughter made me feel more at ease” (A013). Most of the concern arose out of an individual’s sense of not wanting to ruin the rhythm of the group. The majority of the students noted that safety and security grew as the exercise progressed.

With respect to the experience of being part of an ensemble, a few reported that it became like a “long conversation” into which they were “inviting people to converse” (A021) using “the beat and eye contact (as connection)” (A010).

Almost all of the students present (18 of 19 [95%]) stated that they had gained insights into the collaborative experience, communication, and improvisation through this exercise. Observations included realizations that “one voice can throw a group off or get it back on track” (A002), that “there can be a conflict between ‘keeping the rhythm’ of the conversation and having an independent ‘voice’. There was pressure to keep the rhythm – this could parallel negotiation

exercises.” (A007). Some commented that “it was interesting to see how people could communicate without words” (A004), “saw the benefits of having an underlying rhythm” (A010), and that “there needs to be multi-tasking at all times to get the most out of a communication interaction” (A013). As one student described:

“I felt that there are at least 3 things that we as collaborators have to keep in mind: (1) our response (2) the rhythm of the dynamics of the entire process (3) and the address or response of the other party; I find that it might be difficult to keep all of these things together.” (A018)

One student reported that “I learned that the entire group will sometimes change their ‘rhythm’ to accommodate the ‘music’ of individual group members” (A012), while another added that “[p]eople are really creative and good at expressing themselves in original and distinctive ways. Probably the same in real life interactions as well.” (A014)

All of the students described take-away learnings that aligned with the objectives of the exercises. The exercise appeared to enable the participants to experience aspects of communication (listening and expressing themselves) in a sensed and felt manner and to connect these experiences to dispute settlement practice:

“The exercise taught me that when groups communicate we should be actively listening not only to the speaker but to the group’s response (vocalized or not).” (A002)

“Biggest was that communication does not always have to be words – just sounds can establish our underlying communication.” (A003)

“In this exercise we were forming a response in our heads before being “talked” to and this took away from actively listening. I think this is a problem in real ADR experiences.” (A007)

“Try less to follow the beat and more to have faith the group could keep it going if I had fun/did my own music.” (A008)

“How a great “listening” tool is to repeat back what you’ve heard – how you “phrase” a question impacts the type of response.” (A010)

“The biggest learning point was [...] that the group will sometimes conform and change based on the words or actions of an individual member.” (A012)

“Everybody has the tendency to cooperate. Just have to give a chance.” (A015)

“Take-away: listen fully to be fully present.” (A017)

Group A students described an array of learnings from the music-making engagement. Their responses indicated a further deepening of their understanding of collaborative negotiation and problem-solving concepts and practice skills.

### **IMPACT OF MUSIC ON PERFORMANCE IN SIMULATED NEGOTIATIONS**

Behaviour in the simulations that followed the three musical/non-musical interventions demonstrated the extent to which: the learning that was introduced through music was translated for use in a non-music domain, the learning was internalized, and the actual negotiating behaviours changed.

#### ***The Ugli Orange/Dilithium Dilemma: Two-person negotiation***

The role-play required the students in both groups to apply in practice the theoretical concepts learned through the various lectures, including the lecture on communication, community and communion, and the various experiential exercises in which they had respectively engaged. The key to a successful outcome in this role-play requires that negotiating parties build enough trust and rapport between them and communicate in an open, exploratory manner to reveal vital information about their interests – that one party’s serum requires the juice of the orange (or inner rock crystal), the other party’s serum requires the rind (outer rock shell). If the parties are

forthcoming with this information rather than focusing on positions and whose cause is more worthy, they will discover that this is not an “either/or” situation but a “both/and” situation and they can move forward to negotiating how to pool their resources to secure all of the available oranges/rocks, and the terms of working with the oranges/rocks, once secured, to produce their respective serums.

The differences in outcomes between Group A and Group B in the Ugli Orange/Dilithium Dilemma negotiation were striking. In Group A, six of ten negotiating pairs reached win/win solutions. The majority of the students uncovered the key fact that both parties could achieve their goal by sharing all of the resource and thus arrive at an integrated solution. In contrast, in Group B, only one of eight negotiating pairs reached a win/win solution while seven of eight negotiating pairs failed to make the same discovery and thus failed to achieve a win/win solution.

Based on observation and on participants’ own reflections, Group A negotiators approached their communications and engagement from a collaborative perspective, whereas Group B defaulted to using more conventional, competitive approaches.

Group A students reported that using “active listening skills of questioning, clarifying, and repeating were effective with communication and listening” (A009, A013, A012, A019, A007), that they rephrased for understanding, “asked a lot of questions – hoping for reciprocal sharing” (A004, A006), and approached questioning in a “very open” (A016, A015, A001, A005) manner. As they had noted regarding non-verbal communication in the String Quartet workshop, they also commented on use of “open body language” (A009, A014), use of gesture (A013, A021),



examining facial expression (A006) and being conscious of “choice of tone of voice” (A009, A014). Others advised that their demeanour was “attentive and sympathetic” (A011), that they adopted a “friendly tone, cooperative demeanour” or “friendly demeanour” (A008, A016, A010), and that they were “interested and open to suggestions” (A002), “paid attention” and “listened carefully.” (A003, A015, A005, A010). Building on lessons learned from the music-making exercises, one noted “[w]e each listened fully by not trying to talk over each other” (A017) and “did not interrupt, rush or out-talk each other” (A002).

In Group B students stated that they used active listening to clarify and confirm (B017, B005, B011, B003), for “questioning of each other’s side and points” (B009) and “to identify points of leverage” (B001). Others reported attentiveness in listening: “nodded and let him finish speaking. I did not interrupt him when he spoke. I wanted him to know that he had my full attention” (B007) and “[d]idn’t interrupt and asked for clarification.” (B015) Several students characterized their questioning as “investigative” (B014, B002) and “probing” although the questioning exercise they had engaged in had focused on “curious questioning” as opposed to examination-style questioning. In Group B only the pair who arrived at the win-win solution spoke of the purpose of their active listening in terms of unearthing needs and interests. “By carefully inquiring into her specific needs we discovered a breakthrough” (B008) and “I used active listening skills allowing me to hear out my partner and understand what her interests were” (B006).

With respect to demeanour in Group B, some noted that they made a “choice of “stern tone” and purposefully adopted a “defensive demeanour. I was guarding the information closely, trying to

probe for info. My tone of voice was aggressive but my body language was welcoming” (B001), that their demeanour was “blunt” (B017), “initially reserved, hesitant and cold, however as we discussed more we became more friendly, open and willing to collaborate” (B008). Others characterized their tone and demeanour as “cordial voice/body language” (B002), “professional, courteous” (B014), “we were both conciliatory – wanted our own way but showed the other that we were willing to negotiate. Used calm tone of voice and open posture.” (B012). Some reported adopting stances that were “friendly” (B018), “relaxed” (B013), or that they consciously “tried to tone down my usually not-so-passive demeanour” (B004). Others reported beginning calmly but becoming “increasingly sharp. Body language became stiffer and tone of voice lost respect for opposing side” (B015) or that they “started to get a little bit flustered near the end, as we had yet to reach a decision” (B009). With respect to the effect of body language, one student reported, “I had a rather open demeanour but was a bit distrustful. My partner had her arms crossed the whole time, which made it seem difficult to talk to her.” (B011) Another commented on trying to invoke sympathy in the other in order to persuade (B007).

Group A participants appeared more willing to abandon an argument-based approach and to repeatedly ask and answer the question “*why?*”. They also appeared more willing to risk revealing information and therefore less likely to withhold information. They noted that building trust occurred through open sharing of information (A009), “full disclosure of information” (A007), establishing mutual protections and looking for joint ventures (A004). They reported focusing on achieving mutual benefits: “We tried to reach resolutions to our mutual benefit” (A009). One commented on adopting the questioning style “I want to know this so that we can both benefit” (A016). Others stated “I used indirect questions at first such as what the orange

would be used for but then I posed the question directly “What if we need different parts of the orange?” (A018). With respect to information sharing, students reported: “We agreed to full and honest disclosure at the beginning of the process when we determined we both had important issues at stake” (A007) and “I purposely stated that from the outset I would be honest and forthcoming and laid out my case for the oranges. The fact that I took a risk entrusting [“E”] with that information set the tone as one of reciprocal trust.” (A002) With respect to information sharing, only one student in Group B stated: “At first we were hesitant but when we realized what we both needed the dilithium for we began to trust each other which led to all information being put on the table out in the open.” (B006)

Many in Group A commented on focusing on the common goal of saving lives (A004, A009, A012, A007) and noted this as a superordinate goal guiding the process: “we just progressively got to a point where we had to give detailed info and we both agreed it was necessary. We really did it out of need to keep the talks advancing over anything else.” (A014). Only one student in Group B expressly spoke about a common goal and how trust and willingness to be collaborative arose with information sharing: “By each sharing a little information at a time we discovered that the more information we shared the more we trust each other and were willing to work towards a common goal: saving lives.” (B008) Only the negotiating pair who arrived at the win-win solution said “we are both empathetic for the people whose lives we are trying to save. This led to our resolution of each being able to save the lives.” (B006)

With respect to outcomes, students in Group A reported that they realized they could “do good” and still “do well” (A013, A021): “we found a good balance between doing good and pursuit of

profit”. “The negotiation can be about more than ‘winning’ – the best outcome may entail a sacrifice to serve a greater purpose. We must pay attention to how we value things.” (A002)

Group B negotiators appeared unable to transcend the limitations of the traditional win/lose perspective and behaviours despite being aware of those limitations. A number of students reported that they purposely withheld information (B014, B007, B011, B015) or had shared very little (B012), or had “not shared fully” or fast enough” (B002, B008, B001). In terms of holding fast to adversarial or unethical tactics in pursuit of a traditional “win”, one student stated:

“Though no information was distorted, I think I should have lied, by saying millions of people would die. In comparison to feel other side was not as important” (B011). Those who used a more collaborative approach in Group B stated that they “tried to be calm and search for goals behind my partner’s words” (B013). In reflecting on the exercise, Group B students reported that if they could do the exercise over they would share more information and ask “*why?*”. Students stated: “I realized the importance of information sharing, collaboration and trust in reaching a win-win solution therefore next time I would refrain from initially adopting a competitive approach and try to establish trust from the beginning” (B008) and regarding resolution that “more disclosure = more options” (B003).

While Group A students unanimously reported that none of them used threats or posturing in the negotiation, a number of students in Group B indicated that these tactics had been used, including threats – “to drive price up” (B015), posturing and accusations – “to ‘screw’ the other person over” (B001, B018).

Those who did not arrive at the “win-win” solution in Group A reported having assumed an “evasive demeanour” (A003), that “withheld information resulted in no trust being established” (A003) and noted that “both had power and both refused to give it up” (A003). Other indicated that they had been “untrusting, defensive” (A017) or “did not read carefully/apprehend facts carefully” (A017, A015). Many students in Group B attributed their lack of success to a failure to read carefully (B012, B015, B009, B004, B013, B018, B005), stating “It immediately would’ve become apparent that there were common grounds to discuss and the problem was not a zero-sum outcome (B015).

### ***World Trade Center Redesign Negotiation***

In week ten, the penultimate class of the course, participants in both classes engaged in the “World Trade Center Redesign Negotiation” role-play. This complex multi-party scenario involves five characters who must reach a resolution on the post-9/11 redesign of the World Trade Center site with respect to four issues – Site Plan, Allocation of Funding, Timing of Construction, and Credit for the Project – in a time-limited negotiation. Each class had three negotiating groups. All groups engaged in the role-play simultaneously, each in their own negotiating space equipped with the same A/V equipment, and whiteboards. The negotiating groups in both classes had two and one-half hours of class time to conduct the role-play.

The participants in Group A were asked to bring a musical selection to the negotiation, a song or piece of music that embodied their character’s goals for the negotiation. The class was instructed that each negotiating group was to determine when and how the music would be used during the negotiation, for example, as an initial ice-breaker, as a tool for addressing impasse, or as a ritual

to mark progress or resolution. Group B students prepared for the negotiation without incorporating music into their planning or actual negotiating. Both classes had worked with the facts of the role-play throughout the term, had conducted a conflict analysis of the scenario (week three) and had met in character groups to discuss interests and strategies (week nine).

Similar to the outcome of the two-party negotiation, the results of this more complex multi-party negotiation were marked. Group A teams demonstrated more efficient use of their time and more creativity in crafting their own resolution outcomes (as opposed to using pre-set options provided). From my observations of the negotiation, the majority of the Group A negotiators demonstrated a greater ability to translate learned concepts into behaviour and utilized a wider range of communication and process options than did their Group B counterparts. Group A students appeared to embrace the ensemble concept that the overall goal is more important than the sum of the individual parts and negotiation positions.

In contrast, the majority of negotiators in Group B displayed a less complete assimilation of concepts in their negotiating behaviours and from my observations appeared less able to apply those concepts in practice and effectively obtain desired results. Group B negotiators appeared less able to bring creativity to the table and to engage in practices and behaviours outside of legal norms.

The teams in both classes were pressured by the same time constraints and all negotiating groups in both classes worked most intently in the last moments of the exercise. With the exception of one group that worked for an extra five to ten minutes, Group A teams completed the negotiation

and arrived at resolution in the allotted timeframe. In Group B, however, all three groups went into overtime with one group extending that overtime for an additional twenty to thirty minutes.

Following the exercise, participants in both classes were given a survey/reflection to complete. Group A's survey/reflection contained one extra question relating to the actual use of music in the negotiation; the surveys were otherwise the same. Four of the questions were relevant to the themes of communication, community/team-building and community/connection. These self-assessments asked participants whether they felt they had achieved a sense of community or "ensemble" within their negotiating group, if they felt their group had communicated effectively and if their group had achieved a sense of trust and rapport, and how.

The majority of the negotiators (four of five) in two of the three Group A teams stated that they had achieved a sense of community, had communicated effectively, and had achieved a sense of trust among group members. In the remaining Group A team only one of five stated that they had achieved a sense of community, three of five reported that they communicated effectively and four of five reported that they had achieved a sense of trust (one stating there had been mistrust and concealment). Interestingly, the two groups who felt they had achieved the three "essential ingredients" of successful negotiation were also the two groups that created all of their own resolution options and used music as a tool in the process. The third group, which reported less success in achieving the three elements, did not make use of the music selections as instructed, and in terms of outcomes, chose more of the pre-set resolution options as opposed to creating their own.

Responses to all three questions from Group B negotiating teams were mixed; three of five group members reported that they had achieved a sense of community, had communicated effectively and had achieved a sense of community. The Group B teams chose mostly pre-set resolution options; one group created one resolution option of their own, the second group created two original resolution options, and the third created three original options.

In my observations of the Group A teams, all three appeared to have established an interactive dynamic. Small groups or dyads were engaged in simultaneous communication, caucusing within the room and not outside of it. All of the teams utilized multiple forms of communication, including board-work, the use of individual computers to present data and keep track of options, or the use of a central electronic hub.

In contrast, Group B teams appeared unable to unify their communication platforms. In one group, one member suggested that information be recorded on the whiteboard but this was not supported by other members of that group and as a result was discarded. None of the Group B teams had a centralized recording system, either electronic or board-related, and as a result communication and connection appeared disjointed. The negotiating process seemed difficult to follow for members themselves and it appeared difficult for them to build negotiation momentum. Caucusing was done by leaving the room.

With respect to the actual use of music as a tool in negotiation, two of the three groups utilized their music as instructed, playing their selections for one another at the beginning of the session. They did not report using their musical selection at other times save and expect for one person



who spontaneously began to sing his song during a difficult moment in his group's negotiations. He stated that he did so as a form of humour and to remind the other negotiators of his goal of working together toward a mutually beneficial outcome (A009).

The group that did not use the music as instructed noted that their facilitator did not want to take time away from the negotiations for this purpose and "suggested it may not be the best use of our time" (A005). Another noted "our mediator/facilitator did not want us to play our songs. More focused on outlining an agenda and solution." (A003) As a result that team shared song titles and discussed their songs as they were setting up and settling at the beginning of the negotiation session; they did not, however, have the opportunity to actually play them for one another.

Group A negotiators were asked if the music had had an impact or effect on the negotiations and if so, how and if not, why not. In the first of the three groups, students reported positive effects but those were qualified in degree with words such as "maybe", "to an extent", and "perhaps":

"Yes – it was effective in introducing the divergent/common interests of the parties."  
(A007)

"Everyone picked fairly calm, relaxing songs, so that might have helped start agreeably."  
(A011)

"Maybe set the tone emotionally." (A012)

"Not really on the type of negotiation but perhaps on the level of friendliness/closeness."  
(A008)

"To an extent, as certain parties responded to this appeal to emotion to contextualize my position." (A009)

"Yes – it set the tone and allowed each party to see the other's view." (A017)

"I would say it opened the negotiations with a 'tone' of sympathy for the victims as many of the songs were sorrow." (A010)

In the second group, the students mostly described positive effects of music on the negotiating process. They observed:

“It gets everybody talking. It starts a more relaxed and friendlier environment for mediation.” (A015)

“It got everybody in a jovial mood so we all felt good going into the negotiations.” (A014)

“Not exactly sure – it did create a comraderie [sic].” (A020)

“Most of us had similar songs, so it made us aware we were coming from the same angle.” (A016)

“It had an impact of creating a sense of community and did have a positive impact ultimately on negotiations” (A018)

The group that did not play their musical selections but discussed them briefly at the outset noted that the songs either had no impact on their negotiations or reported that the mere discussion of the songs nonetheless played a small role in process:

“I think it did at first when everyone realized how everyone else was feeling coming into the process.” (A019)

“Not really because I didn’t know the songs my colleagues mentioned though they did say a little bit about what they were about.” (A002)

“Didn’t play a role because we didn’t really use it” (A005)

“I think the only impact the song played on the negotiation was on everyone’s perception of the families. When [“N”] mentioned that her song was one of the sad 9/11 songs written after the destruction it reminded everyone at the table of the horrific event and gave a sense of greater sympathy to them; essentially, creating a personal and emotional side of the discussions.” (A004)

Students in Group A were asked whether music use in the negotiation had helped to enhance communication, community and communion among the group and if so, how. The students in the first group who made use of the music reported that it played a role in “expressing and

evoking emotions” (A007; A010), in giving an “impression of cooperation” (A011). They also reported that it “set the tone” (A009; A010), “broke the tension by sharing something that was not so connected to the specifics of the negotiation” (A017) and that it not so much “enhanced” but “encouraged discussion of why picked” and “enhanced comfort level/friendliness” (A008).

In the second group, the students made similar observations, stating that “the music did enhance the communication by giving everyone in the room an impression what kind of strategy each of us will be engaging” (A015). They also noted the role of humour, that “we all had a good laugh at the beginning which created bonding with the group” (A014). Another noted that music played a role, “certainly, especially since 2 members had chosen the same song...that brought the group cohesiveness up” (A021). Several others observed that “it was a good way of starting to get us all feeling comfortable” (A016), and that “it enhanced community because we shared something personal and established a non-verbal connection among group members” (A018). Only one member of this team responded “not really” but at the same time added “it did give all group a general sense of how each party felt about the situations” (A013).

In the third negotiating group where the music had not been played but only discussed, two members of this group still responded that “it helped create a sense of communion because it made all the parties understand the people were willing to work together to achieve common goals” (A019), and that “the emotional side helped to establish more collaboration and community.” (A004). Interestingly, one student identified the lost opportunity of not using the music: “I think if we would have used the music it would have been helpful as we may have found common ground if we could all relate to each other’s music.” (A005)

**Lessons/Exercises Reported by Group A to have had the most impact on learning:**

Following the World Trade Center Redesign negotiation students completed the End Points Questionnaire in the last class. Students were asked which lessons or exercises had had the most impact on their learning.

Students in Group A chose the music-based exercises more frequently than any of the other exercises. The music exercises were followed in frequency of selection by the World Trade Center Redesign negotiation, the game “Win as Much as You Can”, the role-play exercises in general, and the “Ugli Orange” role-play specifically. Similarly, the students in Group B most frequently chose the World Trade Center Redesign negotiation and the Dilithium Dilemma role-play, followed by the game “Win as Much as You Can”, and the other role-play exercises.

Those in Group A who had identified the music-based exercises as the most impactful learning experiences of the course reported gaining insights about process and outcomes, skills development, and the experience of collaboration from the music-based lessons and exercises.

One student summed up the significance of the hands-on group music-making lesson as follows:

“[The] music circles exercise was [...] important because of the way it conveyed the idea that negotiation is a multi-level phenomenon that requires attentive listening and creative and quick reaction.” (A018)

Another stated that this embodied ensemble music-making “really stood out because it really created a vibe of a ‘tribe’.” (A021)

With respect to insights gained through using music as an adjunct to communication skills-building, one student observed that in the making-music exercises “repeating what you heard was more challenging than you thought.” (A010)

Regarding conceptual blending and music enhancing the teaching and learning experience, one participant observed:

“The most meaningful lesson to me was when we visited the RCM and saw the importance of collaboration and cooperation. However, I found it difficult to analogize this with a multi-party dispute because not everyone is on the same side. As the course progressed, though, I realized it’s not about who’s on which side, but it’s about coming up with the solution that works best for your client. If you come out of a negotiation with the exact outcome your client wanted, but the process was so cacophonous, draining, and emotionally taxing, this may not be the best solution.” (A006)

Students in Group B reported that the role-play exercises gave them an opportunity to put skills and concepts into practice, that these hands-on exercises impressed upon them the importance of intangibles such as trust, the importance of sharing information, and where they needed to work harder to improve their skills and performance:

“Dilithium Dilemma [...] negotiation: be sure to know what each party wants – got so involved in winning that I did not realize that both sides wanted different parts of the “pie”. There are many hidden ways to work together.” (B011)

“The World Trade Center Negotiation. It puts the theoretical learning into a new perspective. I wish we had much more practical exercises like that throughout the course.” (B017)

“I really enjoyed and learned a lot from the role playing. They were fun and a way to employ what we had learned through the course – made me realize that although I see myself as fairly cooperative, there are times when I guard my position and do not waver.” (B014)

“I think all the exercises were useful in some respect. My biggest takeaway from WTC was the belief that there needs to be structure in negotiations to achieve success.” (Q013)

## **BARRIERS TO EMBRACING NEW APPROACHES**

Despite self-reported and observed shifts in cognition, affect, and behaviour, many of the students in both classes nonetheless indicated personal tensions between embracing a collaborative problem-solving approach and behaving as legal professionals according to perceived social expectations and traditional legal culture norms and beliefs.

The source of students’ identity images and behavioural role models was telling in terms of explaining possible barriers to embracing new approaches to lawyering in general and negotiating specifically. On the Starting Points Questionnaire, students were asked to identify their role models and the origin of their images of the profession. They were asked to choose one or more of the following sources: TV/movies, the legal profession, literature, and “other”. TV/movies and non-legal “others” were chosen most frequently in Group A (twelve selections) and Group B (ten selections) as students’ primary sources of role models and images of the profession. The legal profession was selected less frequently, four times in Group A and seven times in Group B. Literature was selected once in each group. This provided a clear indication of the influence of the media on professional identity and behaviour, even among law students.

With respect to assumptions and beliefs regarding the type of behaviour that is necessary for success, students were asked if they believed it was necessary to take an aggressive stance on behalf of their clients in order to negotiate a positive result for him/her. At the start of the course, almost half of Group A (10 of 21 [48%]) stated a belief that it was necessary and an

equal amount (10 of 21 [48%]) stated a belief that it was not necessary (one student noted “yes/no”). In Group B, 29% (5 of 17) of the students stated a belief that it was necessary and 71% (12 of 17) stated that it was not. At the end of the course, Group A results changed slightly with 8 of 21 students (38%) stating a belief that it was necessary to take an aggressive stance, while 12 of 21 (57%) stated it was not necessary and one remained divided (“yes/no”). In Group B, responses remained substantially unchanged from their starting point beliefs with those indicating “yes” decreasing by one student who by the end of the term was of mixed belief.

In their accompanying descriptive responses, students in Group A clarified the word aggressive as “commitment”, “strong determination”, “loyalty”, “passionately positioning client’s interests”, “firmness in approach”, “persistent advocacy” [sic].

In the question about their perceptions of clients’ expectations related to the need for aggressive representation in negotiations and mediation,<sup>37</sup> Group A and Group B initially shared the belief that clients “mostly” expected their representatives to be aggressive in negotiations (10 of 21 [47.6%] in Group A and 8 of 17 [47%] in Group B). At the end of the term, the number of students who chose “mostly” increased to 57% (12 of 21) in Group A although those who had chosen “completely” decreased from 19% (4 of 21) to “0”. Similarly in Group B, there was an increase in those who chose “mostly” from 47% (8 of 17) to 65% (11 of 17). Those who had chosen “completely” (3 of 17 [17%]) maintained that belief at the end of the term.

With respect to the degree to which students felt clients expected aggressiveness from their representatives in mediation (as opposed to negotiation), the majority of students in both Group

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<sup>37</sup> Each question offered a four-point Likert-style response scale with two endpoints, “not” to “completely”.

A and Group B chose “somewhat” to reflect their belief in this regard both at the start and at the end of the term. The percentage of students who held this belief in each class, as with the negotiation question, also increased at the end of term from 11 of 21 (52%) to 16 of 21 (71%) in Group A, and 8 of 17 (47%) to 10 of 17 (59%) in Group B. However, those who had chosen “completely” to describe the extent to which they believed clients expected them to be aggressive in mediation decreased from 19% (4 of 21) to 0 in Group A and in Group B from 1 of 17 students to “0”.

Both at the start and the end of the course students in Group A and Group B described the challenges inherent in traditional legal norms and beliefs. With respect to client expectations, one student wrote:

“I believe the media has led clients to believe lawyers are there to win at all costs. This mindset can lead them to question your efficacy when you attempt to negotiate a win/win when the client has a viable chance of winning at the price of the other side losing. This can be very hard to work around.” (A002)

A number of students in Group A shared the belief that media images perpetuate the perception of the need for (a) aggressiveness in lawyering and the promotion of such behaviour as the way to success (A012, A017), and (b) that an adversarial approach and aggression are expected by clients in an adversarial system (A007, A009). Others reported that because they are being paid by clients, “hired to deal with such matters (A005), aggressive representation and an expectation that you will “fight for them” (A015) is a “reasonable expectation” (A003).

Other responses in Group A indicated students’ beliefs that clients equated aggressiveness with “powerful representation” (A010), that it was “the way to best promote clients’ interests” (A009,



A020), and that it shows “confidence and competency” (A011). Not being aggressive, in contrast, would indicate to clients “weak representation” (A010), “passivity” (A004), a perception of an inability to obtain results, and a lack of commitment:

“clients expect zealous advocacy in the promotion of their interests when trying to negotiate a deal that will be most beneficial to them. Otherwise, they would likely hire someone else to represent them in order to better promote their interests.” (A009).

The embeddedness of these beliefs regarding the necessity or the expectation of the necessity for aggressive behaviour was reflected in metaphoric language used by Group A students at the beginning and the end of the course. Their descriptions of client expectations, not necessarily their own behavioural choices, connected those expectations to “war” and “game” metaphors:

“Media paints the image of lawyers as weapons to be unleashed on one’s enemies.”  
(A002)

“the common understanding at a negotiation is that the person comes out on top over the other.” (A017)

“I think the general view of lawyers is that you will fight hard for their perceived rights.”  
(A014)

“They have certain interests at stake and they will hope and anticipate that you will not surrender easily...they will expect you not to yield to the other’s position too readily.”  
(A004)

Students in Group B similarly indicated dominant culture perceptions of the need for aggressive behaviour in negotiations – both their own beliefs and perceived client beliefs – and used language in their descriptions at the beginning and the end of the course similarly reflecting the embeddedness of dominant culture disputing metaphors:

“clients want to win. Winning requires the aggressive pursuit of client objectives.”  
(B003)

“they need someone on their team, going to bat for their needs.” (B017)

“I think it is important not to be a doormat and let the other side control the process. You have to stand up for your client and represent them in the best way possible which involves saying what you want and not being afraid of the other side.” (B006)

“Aggression wins. Clients are interested in winning. Passivity loses.” (B003)

“a client expects you to fight for their side.” (B016)

“clients want their rights upheld and their positions fought for. They may perceive that if you do not act aggressively then you are not “working for them”.” (B014)

Students in Group B expressed “zealous advocacy” ideology and that clients “want to get the best deal and expects me to do everything in my power to get it for them” (B010):

“clients expect the lawyer to go after exactly what is claimed and expect the lawyer to win. Also, clients may often expect legal representative to be aggressive given the adversarial nature of lawyering. Client often come to lawyers with anger and expect the lawyer to be angry and aggressive.” (B001)

Obligations of expectations related to payment for services were frequently reported in Group B:

“your client hires you to get behind them, to advocate for them in a way they may not be able to for various reason.” (B017)

“I feel like most people would want a little aggression because after all they do want something they are paying you to get for them and expect that of a lawyer.” (B012)

“they are paying you a lot of money. He/she expects you to be aggressive in advance his/her interests.” (B013)

“clients are paying a lot of money to lawyers to “win” for them. Clients don’t have ADR training and think aggression is the best way to meet this goal and maximize gain.” (B009)

“cultural expectation of lawyers as hired guns to get them the most they possibly can.” (B012)

“they hired you and are paying you to get them what they want – they expect you to do whatever it takes to get them what they want.” (B005)

A similar number of students in Group B as in Group A also attributed the root of aggressive lawyering to the media and to social culture. Despite recognition that these images and representations were not necessarily accurate perceptions, and despite their own beliefs that aggressive behaviour was counterproductive to settlement, almost a third of the students in Group B indicated willingness nonetheless to practice in an aggressive manner because clients had retained them and paid them to provide representation.

When responding to this question on the End Points Questionnaire, a number of students in both classes (33% in Group A and 24% in Group B) indicated a need to educate clients and the public in order to dispel inaccurate myths and perceptions about lawyers in general and the correlation between aggressiveness and success in practice specifically.

### **POST-COURSE FOLLOW-UP**

In the fall of 2013 I followed up by e-mail with students in both sections of the class. Now in their third and final year of law school, I invited all of the students from both classes to advise me what, if anything, from this course had stuck with them post-course and why. I received responses from five students who had been in Group A and from seven students who had been in Group B.

The exercises most recalled by Group A students at that time – approximately eighteen months post-course – were the String Quartet fieldtrip, the “Ugli Orange” simulation and the game “Win as Much as You Can”. Students commented on the learnings that had stayed with them generally and made observations on the music-based perspective and exercises specifically. A

number of students made reference to learning transfer from the musical to the non-musical domain. One student recalled that:

“the quartet visit was the highlight of the class for many of us, and I believe it was a good learning tool for understanding conflict resolution through the quartet itself. It was so interesting how musicians have their own unique “body language” and “musical language” to express pleasure or displeasure to the group as they play, and the ways in which they sought resolution to their conflicts. It was a privilege to see them perform and talk to them.” (A020)

Others stated: “I clearly remember the music field trip to watch the Cecilia String Quartet practice. I thought that was a really interesting way to show us how strong communication and negotiation skills can work not only in a legal setting but also in non-legal jobs” (A024) and “the musical language helped to understand some of the nuances of interaction in negotiations that verbal communication was not able to convey. As such, I found music to be an innovative and helpful tool.” (A018)

With respect to the actual use of music in dispute resolution environments, one student stated that “[t]he concept of incorporating music into negotiations and discussions is novel and seems to have some merit in setting a tone (Hopefully positive). In future I would like to try incorporating music as background during mediation sessions.” (A001)

With respect to the music-based approach in general, one student noted: “I also remember the activity where you gave us each a musical instrument to play and we stood in a circle and had to play them at specific time. [...] In the end, I thought the musical approach to class was an interesting one, which I enjoyed.” (A024)

Finally with respect to the durability of the learning, “I think the music-based exercises definitely made the learning more fun, especially the theory part. Not sure if it is the music exercise or metaphor but I do remember more from your class than some of my other first year classes.”

(A015)

Students in Group B recollected the World Trade Center Redesign Negotiation, the game “Win as Much as You Can”, and the “Dilithium Dilemma” role-play. They reported that the learning that had stayed with them post-course were exercises that had “evoked the most emotions”

(B016) (in reference to the World Trade Center Redesign), that made them aware of the importance of “the psychological perspective of the dispute settlement process” (B004), and exercises that had taught them team and collaborative approaches to resolution.

In recalling the game “Win as much as you can”, one Group B student noted that “[t]his game makes me believe that working as a team will help us achieve the best result. Therefore, even though sometimes I want to achieve the highest as an individual, I work with others as a team instead and help the whole group reach a common goal. [...] Every time I attend a mediation now, I think about the various techniques we learned. I try to compromise and ensure that everyone benefits.” (B007)

With respect to pedagogical approach, another noted that:

“Although it was a while ago when I took your course, I specifically remember and appreciate the importance that you placed on practical group exercises. These were a refreshing alternative from the book based courses that I experienced in the rest of my first year. One of the concepts that ran through your course was the intimate connection between people and the operation of our legal system. One cannot understand the law or how it works unless one understands how people work. The other courses that I have taken have not always illustrated this point so clearly. To the contrary, I think that many

of our courses suggest that the law is simply an amalgamation of rules and principles. Your course offered a different perspective that I will carry into my early practice years.” (B013)

One student commented on the importance of the class field trip, “meeting with Justice Brownstone to discuss mediations in the context of family law. It was valuable to see what we learned in seminar applied in a practical context” and the group mediations/activities and how the themes of collaboration and creative problem-solving had informed thinking and practice going forward (B015).

Two of the students reported that the class and their subsequent studies had made them aware of the important of recognizing “difference”. Referring specifically to the issue of Sharia law, one student reported: “ADR should involve a wide variety of processes, including those that may appear ‘different’ or upsetting from the perspective of the dominant groups in society” (B015). Commenting on experiences at a Japanese law school while on an exchange program, another student noted: “Coincidentally, yesterday I had an entire lecture on ADR in Japan [...] I couldn’t help but recall some of the things I learned in our Dispute Settlement class from nearly two years ago [...]. I think that sometimes it is helpful to take a step back from the processes and systems in Canada and consider what people in other countries and cultures do.”

In terms of creative thinking, one observed that in the Dilithium Dilemma negotiation “I feel I missed the mark and didn't "think outside the box". Your simulation reminded me of the need to look at each dispute with fresh eyes and truly consider all possibilities. [...] I am currently in the mediation intensive and during some of our simulations, some classmates have commented on my "thinking outside the box" solutions and I credit this process to your class.”

Students from both groups indicated that although most of them had not taken any other negotiation or mediation courses, concepts and skills learned from this first year course had made an impression that had impacted their general life, student interactions, and work placements.

While at the end of the course students in both classes had expressed some concern about adopting “new lawyering” behaviours, the responses of those students who participated in the post-course follow-up indicated less reluctance and perhaps more acceptance of “new lawyering” concepts with the passage of time, additional lessons learned through their law school experiences, and the settling of the learning.

## **SUMMARY OF THE CHAPTER**

This chapter has presented the main themes emerging from this study related to the second, third and fourth research questions flowing from the main exploratory research question. The data, gathered from student survey/reflections, role play results, and my observations, revealed students’ personal perceptions of their experiences with music-based teaching and learning modalities and the introduction of an alternative negotiation and problem-solving metaphor as compared to students who engaged with more standard experiential ADR teaching modalities. Extensive quotations from students’ written work were included in this chapter to provide to the reader the most accurate description possible of the students’ own experiences and responses to this teaching and learning project.

In summary, the study reveals six emerging themes:

First, introduction of a music-based frame and music-based exercises have potential to assist in bringing about changes in perception, in emotional and in behavioural responses to conflict and contentious situations that positively impact outcomes.

Second, although both groups were taught using collaborative metaphoric frames music appeared to assist Group A in better integrating and operationalizing the knowledge. Participants in Group A did not just “know” things differently they “did” them differently. The ensemble metaphor specifically appeared to assist students in shifting how they understood the concept of collaboration and what they needed to do to achieve successful outcomes in non-adversarial dispute resolution processes.

Third, multiple learning modalities were important to integration of the knowledge. In particular, embodied learning appeared more beneficial to knowledge integration than traditional disembodied experiences.

Fourth, music-based learning experiences appear to support deeper understanding of abstract concepts and the complexities inherent in conflict and its management.

Fifth, engagement with music appears to reconnect people to their creative potential and lead them to see the efficacy of employing creative thinking in professional environments where analytical and critical thinking have generally been over-emphasized.



Lastly, despite indications of shifts in cognition, in affect and in behaviour arising from collaborative frames, social and legal culture norms and behaviours appear to create barriers for young professionals interested in embracing new approaches and ideologies. These barriers make shifting entrenched frames difficult; young professionals, despite being aware of the benefits of new approaches, appear to continue to believe that adherence to traditional norms and behaviours is necessary for success in practice. There are indications, however, that experiences with collaborative approaches to conflict have the potential to shift traditional norms and behaviours.

The next chapter will provide an analysis, interpretation, and synthesis of these themes.

## **CHAPTER FIVE – THEMATIC ANALYSIS AND INTERPRETATIONS**

“The real voyage of discovery consists not in seeking new landscapes,  
but in having new eyes.”  
(Marcel Proust)

### **PREFACE**

In this chapter, I analyze and interpret the results emerging from the study, synthesizing the musician interviews in the first phase of the study and the comparative teaching study of the second phase. I begin by unpacking the research question to examine the significance of aspects of the study design and student responses within the study. I then review each of the themes that emerge from Chapter 4 in relation to the study questions, providing links to relevant literature that help to explain their meaning and importance. I conclude the chapter with a discussion of challenges I faced conducting the research as teacher and researcher, and the strengths and limitations of the study.

### **UNPACKING THE RESEARCH QUESTION**

The purpose of the research was to explore whether and how music could enhance and transform individuals' attitudes toward and abilities to address conflict situations.

Music had several meanings, in this context. Music meant introducing the new metaphoric frame, negotiation and problem-solving as ensemble music-making, to replace the competitive and combative metaphors most often associated with conflict and disputing. While both classes were offered collaborative metaphors and I emphasized the negative impact of competitive and combative behaviours and responses in dispute resolution, only Group A was specifically introduced to the musical ensemble metaphor.

Cognitive scientists have long recognized the importance of metaphor in shaping our thoughts, feelings, and behaviours (Lakoff and Johnson, 1981; Fauconnier and Turner 1997; Kövecses, 2002). According to linguist Deborah Tannen (1998, pp. 7-8), language “invisibly molds our way of thinking about people, actions, and the world around us. Military metaphors train us to think about – and see – everything in terms of fighting, conflict, and war. This perspective then limits our imaginations when we consider what we can do about situations we would like to understand or change.” Metaphors act as cognitive frames dictating how we think, feel and ultimately respond to situations. If conflict and the ways of resolving it are perceived as war then we think, feel, and act accordingly. If, however, we break frame and apply a new metaphor to our view of conflict, our perceptions and behaviours should similarly shift. This is a key assumption that underlies my research, which was designed to incorporate the new metaphor.

The research used music as more than a mere language replacement. In the context of the research question, music was used as an actual learning tool. As Buswick states (Amundson, 2011, p. 9) with respect to the use of art in business management education and training, “[t]he emphasis is on how the arts can be used to enhance [...] decision making by improving [...] [students’] ability to think in ways that are interdisciplinary, metaphorical, whole-brain, and collaborative [...] We’re not teaching art to business people, we’re using the arts as a way of thinking.” I have applied the same principle and method to the use of music for educating lawyers.

To explore whether or not these links between the arts and learning are supported by indications of efficacy in practice, this study employed several distinct music-based exercises. The objective

was to alter perceptions of conflictual and contentious situations, as well as to change people's behaviour in such situations. The use of music followed the premise that "the arts can [...] open up the mind in such a way that it can change behavior. By using or observing creative skills, students are taken out of a purely analytical framework, and that helps them view not only business issues," or in this case, conflict-related issues, "but the world at large, from a different perspective." (Buswick, cited in Amundson, 2011, p. 7)

Students in Group A used music and observed music through creating playlists as part of reflective practice, through observing the Cecilia String Quartet bring the collaborative ensemble to life, and through hands-on music-making as a form of embodied experiential learning. In contrast, students in Group B symmetrically used a series of standard ADR experiential skills-building exercises and engaged with legal professionals in interactive sessions.

The 2007 Carnegie Report on Legal Education (Sullivan et al., 2007) identified a number of shortcomings in traditional legal education. These include over-emphasis on purely analytical frameworks and under-emphasis on the development of emotional and social competencies. Macfarlane (2008, p. 20) argues that rather than rejecting one of these in favour of the other, "the new lawyer" should combine them.

From a pedagogical perspective I designed the course to address those identified short-comings. I incorporated experiential learning (Kolb and Fry, 1975, Kolb, 1984) and reflective practice (Schön, 1983, 1987, 1991) in both classes. However, in the music-based class, I made use of embodied experiential learning (Calder and Cowan, 2008; Calder, 2009; Alexander and

LeBaron, 2013) and sought to add new perspective to the learning by introducing concepts through an arts-based domain. Music was used in the manner identified by Taylor and Ladkin (2009), for skills transfer, as a projective technique, to illustrate the essence of concepts (in particular abstract concepts that are difficult to grasp), and to integrate the learning by experiencing and engaging with it through hands-on music-making. Thus, music was combined with negotiation theory and practice in a way that was interdisciplinary, metaphorical, whole-brain and collaborative.

The music-based experiences were designed to take participants beyond relying primarily on a cognitive approach – a purely rational analytical framework – and provide them with an integrated cognitive-affective-and-behavioral approach to solving problems and resolving disputes (Goleman and Senge, 2014; Alexander and LeBaron, 2013, p. 544; LeBaron, MacLeod and Acland, 2014). The objective was to develop participants' emotional and social intelligence. Whereas such intelligence has been identified as essential to performance effectiveness, it remains an under-developed competence among most professionals and absent from most professional training programs (Goleman, 1995; 2006; Goleman and Boyatzis, 2008; Boyatzis and Saatcioglu, 2008; Boyatzis, 2008; Goleman and Senge, 2014).

From a research perspective, the study was designed to respond to four questions emerging from the main research question. The objective was to explore (1) key characteristics of effective collaborative music-making and capacities most valued by collaborative music-makers to achieve effective ensemble outcomes; (2) whether the negotiation and problem-solving skills and behaviours of ensemble music-making are learnable by adults who are not musicians; (3)

whether such skills learned in a musical environment are transferrable to a non-musical environment in which there are complex conflictual situations; and if so (4) whether such practices, once learned, can change cognitive frames and affect, and thus lead to more effective behaviour and more desirable outcomes. The last of these inquiries was at the heart of the study. I knew that ultimately, the ability to learn and transfer such skills and behaviours to non-musical environments would only be significant if it, in fact, impacted upon cognitive frames in a way that positively affected behaviours and outcomes in negotiation and problem-solving settings. I also knew that I would not be able to conclusively establish the causal connection between music and these changes given the naturalistic environment of the study but rather, would only be able to point to possible outcomes of the music condition.

### **SIGNIFICANCE OF THE MUSICIAN INTERVIEWS**

Five themes related to the first research question and key characteristics of effective collaborative music-making emerged from the interviews with the musicians. Two were skills-oriented, namely the paramount importance of communication skills and emotional and social intelligence competencies. Three were process-oriented and output-oriented, namely the necessity of individual preparation, the importance of rotating leadership as well as full participation by all members, and focus on a common goal that no member can achieve of his/her own.

Seifter (2001, 2009, p. 6) notes four key elements in effective musical ensembles: (1) the ability to make or break a performance lies in the hands (or voice) of the people playing the music – each has the power over and responsibility for the outcome; (2) “Successful [...] ensembles

value and engage the leadership abilities of each member of the group” (Seifter, 2009, p. 6) – there is no single leader but a form of rotating leadership; (3) the music itself guides the distribution of leadership roles – each instrument takes a lead, and at other times, a supporting role throughout the piece; (4) each ensemble member is dedicated to the shared purpose of achieving the best possible performance outcome.

Similarly, in negotiation and problem-solving each member of a negotiating group, whether in direct negotiation or multi-party negotiation, has power over and responsibility for the outcome. Successful outcomes are more likely to occur where negotiating processes are balanced, where each party has an opportunity to lead as well as follow, and where everyone’s talents and contributions are valued and engaged while working toward common resolution goals. These dynamics stand in sharp contrast to adversarial conceptualizations of conflict and negotiation which focus on win/lose dichotomies and zero-sum outcomes. Despite the increase in use of alternative dispute resolution processes in practice, as found by Macfarlane (2002, 2008), among others, the mainstream legal community has neither easily nor readily embraced alternative assumptions (for example, collaboration rather than competition), alternative metaphors (for example, the musical ensemble rather than metaphors of war and combative games), or alternative strategies and tactics. This research study was therefore designed to explore how the next generation of lawyers would respond to the introduction of artistic processes into their core negotiation and problem-solving frameworks. The themes emerging from the musician interviews were integrated into the musical interventions and shaped the Group A course design.

## **SIGNIFICANCE OF THE TEACHING STUDY**

Given the small sample size and the limitations of the study, it would be impossible to state that the music-based pedagogy alone was the cause of changes in students' perceptions and behaviours related to conflict and its handling. Changes in cognition and affect could be attributable to a number of factors, including the study of alternative dispute resolution in and of itself and general collaborative approaches to interest-based negotiation and problem-solving, the differences in the pedagogical methods, and to influences extraneous to the course. Within the study, however, there were indications that the different pedagogies did impact upon students' perceptions, awareness and behaviours, with those in Group A both demonstrating and reporting more effective behaviour and more desirable outcomes in their simulations as well as demonstrating a deeper understanding and integration of theoretical concepts with practical skills than those in Group B.

The purpose of the study was not to critique standard dispute resolution pedagogy but to explore the impact, if any, of musical interventions in the teaching and learning of negotiation and dispute settlement. I did not directly compare one exercise to another between Group A and Group B unless both groups engaged in the identical exercise with or without music. Rather, the purpose of the study was to assess the overall learning of the two groups from the start to the end of the course based upon results, observation, and the students' own self-report data.

As described in Chapters Three and Four, the Teaching Study began with a Starting Points Questionnaire and concluded with substantially the same End Points Questionnaire. These questionnaires provided a source of pre-course and post-course evaluation of the students and



self-report baseline qualitative and quantitative data from which to gauge shifts in cognition, affect and behaviour.

The starting points for both classes were similar – students in both classes reported beliefs that ADR processes and mutually beneficial outcomes were more or less important and worthwhile in dispute resolution. They believed that they needed to focus on their clients’ interests alone to achieve success, that they needed to be aggressive to be successful, and that their clients expected them to be aggressive in negotiation and to a lesser extent in mediation. Their role models and images of the profession came mainly from pop culture (TV and movies), those being stereotypical “zealous advocate”-type representations of legal professionals. Their process metaphors of choice to describe disputing were game-oriented, either poker or chess, with collaborative-oriented metaphors ranking below competitive and combative metaphors.

As between the two classes, the majority of students in Group B appeared slightly more collaboratively-oriented from the outset, while the majority of the students in Group A appeared slightly more competitively-oriented as indicated by their responses to the Thomas-Kilmann Conflict Mode Instrument. I was concerned that the Group A students might be reluctant participants in an alternative pedagogical approach. Although I anticipated resistance to hands-on music-making exercises, stemming largely from an uneasiness that might be created by going outside of personal comfort zones and from fears of embarrassment, Group A students did participate fully in all aspects of the class and, in fact, chose the music-based exercises as the experiences that were most impactful upon their learning. I also realized that given their initial seemingly competitive-orientation, any movement in Group A away from these starting point

assumptions and beliefs might be more significant to the study results than would have been the case had the musical interventions been used in Group B where the students appeared to be more receptive to a collaborative approach at the outset. Interestingly, despite Group B's desire to be collaborative, their lack of tools perhaps flowing from the limitations of the standard experiential training received, resulted in their inability, in the majority, to move beyond the adversarial "default trap", as self-reported in their reflections from the role-plays and as observed by me in their interactions in the simulated negotiations.

In terms of end points, students in Group A shifted from believing that mutually beneficial outcomes were mostly "legitimate" to a greater number of them believing they were only "somewhat legitimate" and at the same time a greater number believing they were "very legitimate". Their belief that "win-win" outcomes were "possible" was stronger at the end of the term as compared to their beginning baseline. From their descriptive responses, it was clear that their experiences in the course had led them to mixed beliefs in a "win-win" philosophy and to the realization that outcomes are more nuanced than simple "win-win" representations.

In Group B, however, despite their experiences and less than optimal results in the simulations, students' belief that "win-win" was both a legitimate goal and possible nonetheless increased upward without a matching downward shift as in Group A. In attempting to ascertain why this might be the case, I could only speculate that the majority of the students in this group remained personally convinced and committed to a collaborative mindset independent of any correlation to the class.

By the end of term students in both classes believed that to achieve success they needed to focus on everyone's interests not just those of their own client and the belief that they needed to be aggressive in order to achieve success was also less pronounced. However, the belief that clients expected aggressive behaviour in negotiation and to a lesser extent in mediation, remained mostly unchanged or increased slightly, bringing home the extent to which legal and social culture norms and beliefs remain firmly entrenched and difficult to dislodge.

Despite their experiences in the class, many students in both groups still believed that they needed to assume a traditional identity to be marketable to clients and employers. They described their professional roles, particularly at the outset of the course, in traditional terms – as zealous advocates, hired to “fight” for their clients’ positions and interests to the exclusion of the other party. This did change in many respects by the end of course but, as noted in their descriptive questionnaire and reflection responses, students still struggled to reconcile their new awareness of what was truly effective in practice with what they believed potential clients and employers regarded as effective or necessary for success.

Notions of “success” and “effectiveness” appeared to be linked to beliefs and assumptions arising from and reinforced by media representations of the profession although students in Group A (as demonstrated in the Ugli Orange negotiation) appeared to very much embrace the concept of pursuit of a common goal as paramount to collaborative success. As noted above, students reported on the Starting Points Questionnaire that their role models and images of the profession came primarily from television and movie portrayals as opposed to from the actual legal profession. Course materials and practice exercises emphasized that these stereotypical and

often caricatured representations of the legal profession, lawyering behaviour in general and negotiating styles in particular, provide a false view of reality and a skewed professional identity to both the public and aspiring members of the profession. The entrenched nature of these representations, indeed, led students to mimic stereotypical negotiator behaviour in their first role-play exercise (Sally Swansong). This, in turn, led to misguided assumptions about the nature of the negotiation and to impoverished settlement outcomes in both classes. Similarly, in the first mediation role-play exercise later in the term (Dirty Laundry), students again defaulted to argument-based presentations to the mediator although they were well aware of the mediator's role as a neutral facilitator, not a decision-maker. Responses on the End Points Questionnaire from a number of students (particularly from Group B), who still maintained beliefs that because they were being paid for services clients could also hire their behaviour, highlighted the fact that more work needs to be done to dislodge or at least temper these outmoded and counterproductive mindsets.

With respect to metaphors, students in Group A shifted from a majority choosing competitive game metaphors (62%) at the start of the course to an equal number embracing collaborative team metaphors as did competitive game metaphors by the end of the course. Most significantly, the choice of the poker game - with its imagery of trickery and concealment – decreased to only one student choosing this metaphor, while the number of students choosing the musical ensemble doubled by the end of the course. The chess game – with its imagery of strategy – however, remained the dominant single process metaphor of choice in Group A (43%), followed by the musical ensemble (33%). One student introduced a new metaphor, improv theatre, which in combination with the rise in choice of musical ensemble suggested a move in general toward

more creative/collaborative metaphors as opposed to competitive/collaborative metaphors, such as sport teams.

In Group B, the majority of the students similarly chose competitive game metaphors (59%) to describe the disputing process at the start of the course; this shifted to the majority choosing collaborative team metaphors (53%) by the end of the course. Most significantly, the musical ensemble was chosen as the dominant single metaphor in Group B (41%) – although this metaphor had not been specifically introduced as a metaphoric frame in Group B – followed by the chess game (35%).

The question arises as to why Group B would choose the musical ensemble as the metaphor to best describe the disputing process, and what is the significance of their choice. It would seem that the ensemble metaphor holds real potential as a new process metaphor even when not specifically put forward as a frame. This suggests that there may be an aspiration within the next generation of legal professionals for change and a realization that ensemble approaches, as opposed to adversarial approaches, may be more effective in addressing and resolving conflict. It is interesting to note that our present descriptive lexicon related to disputing continues to be focused on war and fight metaphors, as noted by Tannen (1998) and Lakoff and Johnson (1981). This reinforces in our psyches the metaphoric war frame and all of its corresponding entailments. At the same time, however, none of the students in either class chose the war metaphor on either the Starting Points or the End Points Questionnaires and only one chose the prize fight on the Starting Points Questionnaire. This seems to suggest that the war metaphor may no longer be a

metaphor we need to “live by” (Lakoff and Johnson, 1981) and the time may be right to introduce new frames.

Most significantly, in terms of changes in perspectives from the start to the end of the course, Group A responses on the End Points Questionnaire demonstrated increased emotional and social intelligence competencies. For example, at the start of course, the majority of Group A (62%) indicated that they were “somewhat” able to see themselves in others in a conflict situation, whereas at the end of the course almost the entire class indicated they were “mostly” able to see themselves in the other, an increase from 33% to 81%. While Group B also correspondingly shifted, they did not report the same degree of shift in this regard, with those stating they could “mostly” see themselves in others increasing from 24% to 65%.

More than the Likert-style responses, the most telling shifts were revealed on the End Points Questionnaire in the descriptive responses to the specific question regarding whether students had experienced a shift in their thinking about conflict and disputing since the start of the course. All of the students in Group A responded “yes” to this question, while 71% of the students in Group B responded in the affirmative with 29% in that group indicating no shifts or minimal shifts. Further, the types of shifts reported by Group A as compared to Group B were more emotionally and relationally oriented and the number of students in Group A reporting these shifts were more pronounced in terms of percentages. For example, 76% of Group A students as compared to 17% of Group B students indicated a shift away from an adversarial mindset. Almost 60% of Group A reported a shift in perspective from a self-orientation to one that encompassed self, other and process as compared to only 30% of Group B who reported such a

shift in awareness. Most significantly, almost 50% of Group A stated an increased awareness of the importance of emotions and relationships in resolving disputes while 0% of Group B described a similar awareness. Instead, approximately one quarter of Group B students reported increased theory and praxis knowledge, something upon which Group A students did not specifically comment. In the end, 29% of Group B reported no or minimal shifts in their thinking about conflict and disputing from the start of the course, indicating that any changes were subtle or that they had come into the course already believing in the value of alternative dispute resolution processes and collaborative approaches.

Students in both classes listed skills they felt were most important in order to be effective twenty-first century conflict resolution practitioners. Interestingly, these skills matched with the capacities most valued by collaborative music-makers as reported by the musicians in Phase One of the study, in order to achieve effective ensemble outcomes. Identified skills included self-oriented “being” skills such as patience, calm and assertiveness, and self-oriented “doing” capacities such as empathy, understanding, compassion, cultural sensitivity, as well as the ability to see another’s point of view and to understand their interests and motivations. In addition, students identified skills and capacities essential to process and outcomes, including preparedness, creativity, the ability to create value, problem-solve and improvise. The overlap between the musical and non-musical domains enabled transfer of the music-based concepts to the dispute resolution environment. Given the transferability, the ensemble metaphor and lessons learned from the music-based exercises made sense to the students in the dispute resolution context. These exercises assisted the students in developing the skills they had identified as important in negotiation and problem-solving and in integrating them in practice.

The music-based interventions provided students in Group A with a creative way to reflect, observe, act and integrate dispute resolution concepts learned through a new frame. While students in Group B also explored a collaborative frame in contrast to an adversarial frame, the means of reflecting, observing, and behaving came from standard form ADR exercises and interdisciplinary sources such as the field trip to court and a mediation clinic, and the interactive session with a senior legal professional. They heard stories and anecdotes from these legal professionals about group negotiations, mediations, and other non-adversarial approaches and interacted with these professionals, but did not interact themselves with the collaborative metaphor. As the learning perspective came from within the profession, they did not experience a fresh perspective or polychromatic elements of the learning.

In summarizing the five-year efforts of the team of international scholars and practitioners who worked on the “Rethinking Negotiation Training” project, Honeyman, Coben and Wei-Min Lee (2013, p. 3), noted that in their attempts to formulate a “second generation” of negotiation pedagogy they discovered the importance of authentic learning environments (“adventure learning”) and experiences, the role of emotions, the centrality of culture, and an “increasing interest in and emphasis on nonverbal, non-rational forms of intelligence.” Contributors to the project, Nadja Alexander and Michelle LeBaron (2009, 2013), concluded that “canned” role-plays and other “first generation” training modalities needed to evolve into ones that were more relevant and authentic to participants. Revisiting other training possibilities that would be responsive to globalization and whole mind and whole body processes, they turned to dance as a form of embodied conflict resolution. Such processes make use of aesthetics, emotional intelligence and somatics and recognize advances in neuroscience and other disciplines with



respect to how we learn and make meaning, as well as how patterns and cognitive frameworks can change (Alexander and LeBaron, 2013, p. 554).

Other scholars have also noted the importance of developing multiple intelligences (Gardner, 1993) and “right-brain” thinking (Pink, 2006). Pink (2006, p. 1), in particular, notes that “the future belongs to a very different kind of person with a very different kind of mind – creators and empathizers, pattern recognizers, and meaning makers. These people – artists, inventors, designers, storytellers, caregivers, consolers, big picture thinkers – will now reap society’s richest rewards and share its greatest joys.” Rather than a right-brain/left-brain dichotomy, focus is on a whole brain approach to develop fully dimensional humans. Introducing arts-based processes such as music provided the students in this study an opportunity to engage in a whole brain/whole body experience and to reconnect with their own creativity. It has also been noted that artistic engagement as an embodied learning experiences involves whole-mind integration. This enables the loosening of old patterns upon which assumptions and beliefs are based and facilitates the rewiring of neural pathways for new information and perspectives (Freeman, 1995, 2000 p. 418; Doidge, 2007; Beausoleil, 2013, p. 14).

## **ANALYSING THE SPECIFIC IMPACT OF MUSICAL INTERVENTIONS ON LEARNING AND PERFORMANCE**

### **Creating Playlists: Developing an Expressive Lexicon**

The first of the music-based exercises operationalized what Taylor and Lakin (2009, p. 56) refer to as “projective technique – using artistic output “to reveal inner thoughts and feeling” not necessarily “accessible through more conventional developmental modes”. The creation of

musical playlists exercise was designed to assist students in developing an expressive lexicon related to conflict and disputing.

After this first musical experience, Group A already differed markedly from Group B in both their self-reflective insights and their demonstrated depth of understanding. Compared with Group B, students in Group A expressed greater insight relative to diversity among people and the importance in conflict situations of developing an awareness of differing values, beliefs and worldviews. They also expressed greater insight relative to the role of emotions in contentious situations (both one's own and those of others), and relative to the uniqueness of each negotiation in terms of the need to respond in unique and varied ways tailored to the parties and issues involved.

Group A students indicated that the music gave them an expanded expressive lexicon with which to describe the sensed and felt dimensions of conflict. Some found that music provided them with an outlet that they did not usually have to express feelings about conflict situations. Music thus expanded their expressive lexicon by providing a way for them to communicate "where words cannot go" and where words, in the past, had fallen short. In contrast, Group B students restricted their descriptions to reporting external observations rather than more subjective self-reflections. They tended not to use their own words and meanings, but rather relied primarily on existing standardized categories, such as those used in the Thomas-Kilmann (1974) conflict mode inventory, to label themselves, others, and the negotiating process itself.

Students in Group A reported that their learning was enriched through the use of the music playlists. Creating playlists helped them to access their inner emotions and to see the significance of such emotions to the context. They stated that creating playlists was particularly relevant and meaningful as it drew on their personal, real-life experience and required them to use their own creativity and imagination. Students' observations fit with experts' understandings that arts-based reflection is a form of "problem-solving from within" (Adler, as quoted in Amundson, 2011, p. 7), and thus a way to help people develop "from the inside-out" (Purg, as quoted in Amundson, 2011, p. 7). By creating playlists, Group A not only gained a greater depth of cognitive comprehension but, more important, that depth encompassed emotional, social, and interpersonal learning not expressed by those in Group B.

### **Learning from the String Quartet: Collaboration in Action**

The String Quartet exercise used art to provide an "illustration of essence" (Taylor and Ladkin, 2009, p. 56). In this case it provided an illustration of the essence of collaboration and the elements that must be present for successful engagement and aesthetic output. In this way, students were given "the ability to "apprehend" through art "the "essence" of a concept, situation, or tacit knowledge...revealing depths and connection that more propositional and linear developmental orientations cannot" (Taylor and Lakdin, p. 56).

As documented in their reported reflections, the Quartet workshop heightened Group A students' cognitive and affective understanding of collaborative negotiation skills and behaviours.

Following their meeting with the Cecilia String Quartet, Group A students easily translated their learning from the music to the dispute resolution domain. They quickly identified similarities

between musical and non-musical negotiations, including the need to try out all ideas without *a priori* negative evaluation and the importance of working toward an overarching common goal.

One student noted that for the Quartet to perform at a high level, “[d]isputes had to be resolved throughout, which required a consideration of alternatives and agreement. This is highly analogous to the negotiation process, where the goal is agreement, which requires a consideration of alternatives and decision-making throughout.” (A007)

Another student observed the similarity in communication styles: “[The] same principles apply to a negotiation: Tone, pitch, tempo, dynamics [...]. When negotiations go well they are harmonious and creative and transforming; when they do not, there is discord. [The Quartet] ... adjusted tone and volume when criticizing to make it clear that the idea was a non-threatening, non-accusatory suggestion.” (A002)

Still another noted the need to support others within the negotiation team for the sake of the process and the ultimate resolution goal: “I loved that one of the violinists described herself as being a trapeze artist in saying that her fellow musicians know when to “catch” her, even if she “jumped” at the wrong time. This demonstrates the importance of being present in the “here and now”. I think that this is just as important in the legal field because if you are not present to catch another party after they try to communicate with you, this may very well botch the entire negotiation process.” (A006)

In contrast to traditional representations of negotiating, such as poker game analogies, students were able to see collaboration in action and the positive effects to be gained from that form of open and flexible interaction as opposed to closed and rigid negotiations. Whereas students could have observed a group of practitioners engaged in a mock negotiation, observing the Quartet provided added dimension and a new perspective that would not have been found within an intra-disciplinary example. In this manner, art was used “as a way of thinking” (Buswick, as quoted in Amundson, 2011, p. 9). In particular, the Quartet provided the students with the unique opportunity to hear and feel the effects of abstract concepts brought to life through sound. The musical illustrations provided the students with examples of what it sounds like when someone drives the pace of a negotiation, what it feels like when the underlying pulse becomes unstable. Students equated such disconnections to conflict escalation and de-escalation, power imbalance, and other conflict resolution concepts. As one student stated, “when there was cacophony in the quartet’s music, this made me think of a negotiation process where none of the parties were on the same page at all. It sounded unpleasant and it was almost stressful to listen to. Nothing was accomplished when the parties did not cooperate with one another.” (A006)

Providing students with a visceral experience of concepts afforded them an opportunity to comprehend them on a whole-brain, whole-body level. In describing the experience of hearing negotiating concepts brought to life, students did not merely respond by using well-known terms such as “value creating” and “value claiming” but described these experiences in terms of group members “giving energy” (A001) to the process and demonstrating to them “the potential for a kind of ‘mastery’” (A002). Students’ descriptive language indicated a deeper level of

comprehension of conflict resolution concepts that would not have occurred using standard ADR experiential learning modalities.

The students' indicated that these musical illustrations "brought them to life versus reading about them" (A021), that they were able to "see" things through the musical experience not ordinarily visible (A015), and that observing the Quartet "allowed me to actually hear what conflict sounds like and it sounded very bad. [...] hearing conflict in something other than a verbal way really spoke volumes to me" (A006). They unanimously reported that their learning was enriched through this workshop with the String Quartet.

### **Group Music-Making: Moving from Knowing to Doing**

The third experiential exercise was an illustration of the Chinese Proverb attributed to Confucius (551 BC-479 BC): "I hear and I forget; I see and I remember; I do and I understand".

Constructivist learning theory, as noted in Chapter Two, espoused by Dewey, Piaget, Vygotsky, Bruner, and others stresses the importance of learning by doing. The active music-making exercises emphasized what Taylor and Ladkin (2009, p. 56) describe as "skills transfer – the development of artistic skills that can be applied in another setting" and "making – actual engagement with art-making for a personal reflective experiential purpose". Through these exercises students were given an opportunity to put observed skills into action. Group A engaged in multi-modal, active music-making exercises that involved kinesthetic, musical, and visual-spatial intelligences. Group B engaged in a series of two-way "active listening-curious questioning" conversations and a scripted responsive group exercise by which students practiced techniques such as paraphrasing, reframing, clarifying and reflecting. These exercises were

linear and verbal. It was clear when the students attempted to operationalize their learning from these exercises in the role-plays that not all experiential “doing” is equal in terms of effectiveness.

Group A students described an array of learnings that they attributed to the musical exercises. They reported further deepening their understanding of collaborative negotiation and problem-solving concepts and practice skills. They believed that the music-making had enabled them to experience the full range of understandings and skills needed for successfully resolving conflict, including the nuances of communication, team-building, and individual and group behaviours such as risk-taking, option generation and evaluation, and the development of group strategy, trust and rapport:

“...I realized that communication and getting all team members on the same page is key...[F]eelings of personal and group responsibility can arise and strategies to solve the problems and minimize risks. Trust can develop once the team is collaborative, comfortable with each other, and participates in the strategies we all helped develop.”  
(A013)

In addition, they perceived that they had increased their ability to deal with the unknown, be spontaneous and flexible, adapt to change, and be present (“in the moment”). They described learning the feeling of re-establishing a group goal upon encountering unexpected challenges. Likewise, they reported understanding the impact on the group of mistakes and failure and learning to recover from such potentially undermining, unintended occurrences.

In contrast and as exemplified in the simulations that followed, students in Group B who took part in the active listening and curious-questioning exercises appear to have learned less and incorporated less of what they learned into their own behaviour in the subsequent negotiations.

Group A's responses to the hands-on learning experience and their subsequent performance in the simulated negotiations suggest that the embodied learning provided them with a more effective learning experience than that received by Group B students. The verbal-based questioning/listening exercises, although experiential in nature, did not engage the body in the learning to the same extent. Recent explorations into neuroscience, learning and Cartesian assumptions of mind-body splits are being questioned, and along with it the efficacy of "disembodied" learning. As Alexander and LeBaron (2013, p. 543) note, "[s]ound thinking and decision-making involve the synergy of multiple intelligences [...] In other words, knowledge in the sense of "know-why" is inextricably linked to "know-how" and is optimally situated in bodily experience and somatic memory." The group music-making connected the intellectual with the physical and students thereby gained access to emotional, creative and intuitive responses related to the learning. In contrast, Group B students engaged on a narrower dimensional level and the exercises employed fewer senses. While both exercises engaged the senses of sight and hearing, Group A's exercises also involved touch, movement, and full-body engagement. The group music-making exercises also responded to a wider variety of learning styles (auditory, visual and kinesthetic) than did those used in Group B.

The results of the role-play exercises that followed and the observational data gathered related to behaviours in the role-plays, suggested that the kinesthetic element of the learning may have been instrumental in Group A's achieving enhanced outcomes and greater integration of the learning.



## **THE IMPACT OF MUSIC ON PERFORMANCE IN SIMULATED NEGOTIATIONS**

As noted in Chapter Four, behaviour in the simulated negotiations that followed the three musical/non-musical learning experiences pointed toward three things: the extent to which the learning that was introduced through music was translated for use in a non-music domain, the extent to which the learning experienced was internalized by each group, and the extent to which the actual negotiating behaviours changed as a result of the learning.

### *The Ugli Orange/Dilithium Dilemma*

Both groups engaged in this two-party direct negotiation in week eight. At the time of engagement Group A had participated in the playlist exercise, the String Quartet workshop, and the hands-on music-making exercises. Group B had used the alternative, verbal-based exercises and had participated in the interactive sessions with the guest practitioner and with the judge and mediation clinic director at the courthouse.

The differences in outcomes in this role-play between Group A and Group B were striking with six of ten negotiating pairs in Group A discovering the key to resolution while only one of the eight pairs of negotiators in Group B achieved this resolution. In putting the learnings into practice, the majority of the students in Group A were able to collaboratively approach their problem-solving in this exercise, build the necessary trust and rapport with their negotiating partner and ultimately disclose the key information needed to achieve mutual success. In contrast, Group B defaulted to traditional lawyering approaches of persuasion and to distributive bargaining frames. With the exception of two students, they appeared unable to rise above a traditional win/lose perspective and related behaviours, despite being intellectually aware of the

limitations of those perspectives and behaviours from previous discussions, readings, and exercises.

Students in Group A appeared more willing to abandon an argument approach to the negotiation. They were also more willing to ask and answer the question “*why?*”. The majority of the students in Group A were also more willing to risk revealing information. Students in Group B, as noted above, defaulted to an argument-based approach. They failed to ask and answer the question “*why?*” which would have immediately uncovered the key fact needed for an integrated solution. They remained guarded in their communication, unable to develop sufficient trust and rapport with their partner, and chose to withhold rather than offer information to each other. The results of this two-person negotiation indicate that interacting with music appeared to more effectively reinforce the core concepts that had been introduced to both groups in the preparatory presentations on communication, community-building, and interpersonal connection, and more successfully enhance skills development. Group A students disproportionately realized that neither side could achieve the superordinate goal of resolution without the cooperation of both sides; that is, that a win/lose dichotomy would never support a satisfactory resolution.

### ***World Trade Center Redesign Negotiation***

The differences in the results between the two groups of the more complex multi-party World Trade Center Redesign negotiation were similarly noteworthy. This exercise also involved the use of music, this time as a tool in the actual negotiation. Students in Group A were asked to bring a piece of music that embodied their character’s goals for the negotiation. Students in Group B were not asked to incorporate music into their preparation.

As set out in Chapter Four, six main themes characterized student performance in this simulation. These themes emerged from my observational data, as well as from the students' post-exercise reflections and actual recorded results.

First, Group A teams were more efficient, completing the negotiation within the allotted time whereas two of the three teams in Group B failed to reach consensus by the deadline.

Second, Group A teams demonstrated more creativity in crafting their own resolution to the four issues as compared to Group B teams. Two of the three teams in Group A rejected all pre-set options in favor of inventing their own resolutions to each of the four issues. The remaining Group A team accepted two of the pre-set options while creating two options of its own. In contrast, Group B teams resorted to using all or most of the pre-set options in formulating their resolutions. Only one Group B team invented its own resolution to more than half (three of four) of the issues.

The ensemble metaphor reframed identities, relationship, process and goals. It appeared that in working with that metaphor Group A negotiators were better able to develop an expanded vision of what could be done to solve the problems they were given and to imagine what was possible in terms of innovative outcomes. The new metaphor made it possible for them to venture beyond the limitations of traditional metaphoric negotiating and problem-solving frames.

Third, Group A teams demonstrated a greater ability to translate learned concepts into behaviour. Group B teams appeared to have more difficulty putting what they had learned into practice, defaulting to prior commonly-accepted adversarial, position-based bargaining and persuasive-

argument habits. Strikingly, as noted from the post-exercise reflection responses, Group B teams reported being aware of their short-comings and possessing a desire to improve, however, the standard skills-training, despite the use of collaborative metaphors, failed to produce the hoped-for changed behaviour in the actual negotiations.

Fourth, Group B teams limited themselves to a narrower range of process options. Group A teams used multiple modalities to address the issues in the negotiations: they talked, used their computers, drew diagrams, and engaged in multiple parallel discussions within the main negotiating room. In contrast, Group B teams either just talked, or used their computers but not interactively, and went outside to caucus rather than hosting multiple simultaneous discussions within the main room.

Fifth, Group A teams appeared more able than their Group B counterparts to recognize and translate difficult-to-grasp concepts into action. Having seen process-in-action through the lens of the String Quartet, as opposed to simply observing mediation and negotiation sessions, Group A students were provided with a new and dynamic perspective on how to resolve disputes. When they then engaged personally in music-making, they experienced the concepts of communication, team building and interpersonal interactions first-hand. The music-making allowed the concepts to come alive through embodied learning, with the depth of their assimilation revealed in how the Group A teams negotiated. In contrast, Group B students, who had received standard dispute-resolution training and had interacted with legal professionals alone to learn the process of negotiating, displayed a less complete assimilation of concepts.

Lastly, in addition, after having watched the Quartet rehearse and then made their own group music, Group A students appeared to embrace the ensemble concept that the overall goal is more important than the sum of the individual parts and negotiating positions. Group A negotiators also reported that using a more cooperative, team-oriented approach enabled them to work more effectively toward achieving mutually beneficial outcomes.

The results of these two role-plays, conducted after engagement with all of the experiential interventions, would suggest that exposure to the music-based collaborative model and hands-on embodied experimentation with the communication, community-building and connection concepts assisted students in Group A in more fully integrating the cognitive and affective learning into behavioural practice. Group B appeared to have difficulty operationalizing concepts and applying them to effectively obtain desired results.

### **SUMMARY REFLECTIONS**

In general, the music-based experiences and the new perspective offered by the ensemble frame appeared to enlarge Group A students' vision of the subject of dispute resolution. Their self-reports of a shift away from adversarial mindsets, expanded orientations beyond self-focused emphases, increased awareness of the importance of emotions and relationship to process and outcomes indicated an expansion of their cognitive and affective consciousness. The new metaphoric frame also appeared to enlarge their understanding of who they could be, how they could behave, what was possible to achieve and how to achieve it, within dispute resolution processes. Roles of self were not cast in terms of "warrior", "strategist", or according to "hired gun" aspects of the advocate. Roles in relation to others were not cast in terms of "enemy",

“opponent” or “the other side” and processes were group endeavours as opposed to adversarial polarized “us versus them” engagements. These changed roles and conceptions, in turn, altered students’ available behavioural choices; in particular it provided them the ability to bond with others as opposed to remaining separate or polarized from them. It also provided them the ability to reveal true motivations and interests and to share rather than conceal information. In musical ensembles while not all players have a close-connectedness to their colleagues, they do not regard them as enemies or opponents or individuals adverse in interest to them. There is a clear realization that the ultimate goal of the engagement process cannot be achieved without the full participation, input, and consensus of all group members. Group A students were able to better grasp this concept on a sensed and felt level by observing and interacting with the Cecelia String Quartet and by engaging with embodied music-making themselves. Traditional, limited dimensional “talking” and “doing” exercises engaged in by Group B did not appear to achieve the depth of learning reported and described by Group A students in their questionnaire responses and reflections.

One of my concerns in using music-based modalities with students in a non-arts environment was that they might question the use of this type of pedagogy and consider the exercises a waste of time. While there was definitely resistance and discomfort at first (particularly with respect to the music-making exercises), largely borne out of fear of losing face or from ego concerns regarding performance in front of their peers, the majority of the students in Group A identified the music exercises as the ones that had the most impact upon their learning. This suggests that with careful positive framing, such teaching and learning modalities can be implemented more widely.

In reflecting on the use of the ensemble metaphor and music-based exercises as teaching modalities, it was clear to me that the metaphor worked most powerfully around integration of the learning. The collaborative ensemble frame enabled the students to integrate all of the learning pieces – all of the voices – into a whole. The metaphor on its own, however, was insufficient. It needed to be experienced in action and it needed to be engaged with actively by the students themselves. At the same time, without the traditional theoretical learning underpinning the course design, the musical interventions on their own would not have been sufficiently rooted to support a full understanding of the concepts. The pedagogy was indeed a form of complex counterpoint.

### **REITERATING THE INITIAL RESULTS AND EMERGING THEMES**

Taken together, the results from this initial study appear to indicate that law students not only learn from music and ensemble music-making but they are also able to transfer that learning from the music domain into the non-musical domain of negotiation and dispute resolution. Moreover, the specific learnings appear to be commensurate with much of the learning considered most important for twenty-first century success (Delors, 1996; Goleman and Senge, 2014), for improved legal education (Sullivan, 2007) and negotiation training (Honeyman, Coben and Wei-Min Lee, 2013), and for moving toward the concept of the “new lawyer” (Macfarlane, 2008).

Seven key themes and insights ultimately arose from this teaching study – the six iterated at the end of Chapter Four and the additional seventh insight set out below: First, the metaphor of ensemble music-making and music-based learning experiences appear to have potential to shift

perceptions, cognitive frames, emotional responses and behaviour away from competitive positional bargaining and distributive approaches toward more collaborative, interest-based approaches to solving problems and resolving disputes.

Second, although both groups were taught using a collaborative frame, the music-based experiences appeared to assist Group A in better integrating and operationalizing the knowledge. Participants in Group A did not just “know” things differently they “did” them differently. The ensemble metaphor specifically appeared to assist students in shifting how they understood the concept of collaboration and what they needed to do to achieve successful outcomes in non-adversarial dispute resolution processes.

Third, multiple learning modalities were important to integration of the knowledge. In particular, embodied learning appeared more beneficial to knowledge integration than standard form disembodied experiences.

Fourth, music-based learning experiences appear to support deeper understanding of abstract concepts and the complexities inherent in conflict and its management.

Fifth, music-based experiences appear to support the development of emotional and social intelligence which, in turn, can lead to more effective performance and better outcomes in resolving disputes and solving problems.



Sixth, engagement with music appears to reconnect people to their creative potential and lead them to see the efficacy of employing creative thinking in professional environments where analytical and critical thinking have generally been over-emphasized.

Finally, despite indications of shifts in cognition, in affect and in behaviour arising from collaborative frames, social and legal culture norms and behaviours appear to create barriers for young professionals interested in embracing new approaches and ideologies. These barriers make shifting entrenched frames difficult; young professionals, despite being aware of the benefits of new approaches, appear to continue to believe that adherence to traditional norms and behaviours is necessary for success in practice. There are indications, however, that experiences with collaborative approaches to conflict have the potential to shift traditional norms and behaviours.

### **BARRIERS TO EMBRACING NEW APPROACHES AND CHALLENGES TO SUSTAINABILITY OF SHIFTS**

Both groups reported shifts in mindsets related to perceptions of conflict and responses to its handling. Despite those shifts, however, it is clear that to be sustainable, reinforcement of these concepts at multiple levels within social and legal systems would need to occur. This is particularly so given the extent to which traditional adversarial metaphors and mindsets are ingrained and embedded in social and legal culture, including the enculturation process of law school itself. A shift away from a “fight” mentality would require cutting against the grain of pop culture, media, and those people operating within the system who are quite happy with the existing frame.

The study revealed that despite their self-expressed mindset transformations and first-hand successful experiences with collaborative, interest-based practice methods, many students still expressed doubt and concern about how this new professional identity and dispute resolution style would be perceived in practice by clients and employers. In response to questions regarding their own and client's expectations with respect to the need for "aggressive" behaviour in order to achieve results, student responses remained relatively unchanged at the end of term from those expressed at the start of term. This illustrated the extent to which these assumptions, beliefs and perceptions are ingrained and embedded in disputing culture. To bring about sustainable culture shift is a larger challenge that would require the adoption of more supportive and reinforcing measures both within law school, continuing education training, and practice.

It is encouraging that students who responded to the post-study follow-up reported that specific exercises and lessons that had been learned in this first year dispute settlement class, in particular the music-based experiences for those in Group A, had stayed with them throughout the remaining two years of their law school education. The students who participated in the follow-up further reported that they had made use of the concepts learned from their work in this course in various clinic settings, in non-ADR-specific settings, and in dealing with personal conflict situations.

### **THE CHALLENGES OF BEING BOTH TEACHER AND RESEARCHER**

As teacher and researcher I constructed the music-based concept, designed the course and the research study and acted as teacher as well as researcher. While my primary duty was to the school to teach the seminar in dispute settlement, my underlying motivation was to gather data

for the research study into the efficacy of music-based pedagogical methods. A suggestion of bias might arise that I favoured the music-based exercises and administered the music and non-music-based exercises unevenly. This would have been a serious violation of my obligation to the school and to my students. Moreover, it would have slanted the research and misrepresented its results to the academic community to whom this study is being presented. I made every effort to carry out my various duties in an even-handed fashion. I tried to separate my teaching role from my research role in a variety of ways. For example, as previously noted, I collected the completed questionnaires and reflections on a weekly basis but did not review them until after the course had concluded. In this way I made no adjustments to the course or the musical interventions as designed in reaction to student feedback or responses as the course progressed. Given my level of involvement and my particular expertise as lawyer, teacher, and musician, it would be difficult for another single person to administer this study again without assistance. I would suggest that if the research were to be repeated, it would be advantageous to have a team involved in administering various aspects of the study. While I designed the music-based concept and the specific experiential musical interventions, I was not the primary author of the accompanying standard form teaching materials or the simulated negotiations that were used to gauge behaviour and performance throughout the study. These were largely “first generation” negotiation training materials (Honeyman, Coben, and De Palo, 2009) that are utilized in similar format at law schools, business schools, in continuing legal education and graduate programs, and in other professional negotiation training environments worldwide.

## LIMITATIONS AND STRENGTHS OF THE STUDY

In addition to the limitations set out in Chapter Three, the following additional limitations are important to note:

(a) *Small sample size*

The sample size of thirty-eight students is relatively small; however, it was sufficient for analysis. Several studies in management<sup>38</sup> and medicine<sup>39</sup> that have explored comparative teaching methods have also used small sample sizes but nonetheless provided compelling results. If the research were to be repeated, it would be important to expand the sample size significantly as well as the length of the teaching study.

(b) *Results come from simulated exercises only*

As this was a first-year law school elective seminar, the practice exercises were simulations. Had the research project been conducted within the context of a law school mediation intensive program or with upper year students who perform community outreach or attend small claims court and offer mediation services to the public, there may have been opportunities to observe results in actual negotiations or mediations. However, the overall objectives of the research encompassed more than just observation of performance in practice. If the research were to be repeated, involving students in upper year ADR seminars who have the opportunity to work in “real-life” settings would add another dimension to the findings.

(c) *Shift is subjective and not necessarily observable*

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<sup>38</sup> Romanowka, Larsson and Theorel (2012), “Effects on leaders of an arts-based leadership intervention”, *Journal of Management Development* 32:9, pp. 1004-1022, which had nineteen participants in each of two groups.

<sup>39</sup> Perry, Maffulli, Willson, and Morrissey (2011), “The effectiveness of arts-based interventions in medical education: a literature review”, *Medical Education* 2011: 45, pp. 141–148, provide a review of various comparative studies that used twenty, twenty-two, thirty-eight, and fifty-nine participants.

As shift was a self-reported phenomenon, it was difficult to get clear and reliable results. As Boyatzis and Saatchioglu (2008) observed from their research on development of emotional and social intelligence capacities in MBA students, a student may feel that s/he has changed a great deal, however, that change may be too small to be apparent to others. Internal shift is subtle and what a person senses within him- or herself may be different than the behaviour others see. “The person senses a change in himself/herself before he/she shows this in their behaviour, or shows it consistently enough for others to notice.” (Boyatzis and Saatchioglu, 2008, p. 99)

(d) *It is not possible to draw firm conclusions from the data related to the sustainability of shift*

Because this course was not part of an integrated curriculum effort, the conclusions are limited and separate from legal education in general. Sustainability of reported shifts was gauged from follow-up data obtained from students who had participated in the course and responded to a post-course call for input into the impact of the course. 5 students from Group A (24%) and 7 students from Group B (41%) responded to this request in the fall of 2013. While most of these students indicated that they had not engaged in ADR education beyond this first year course, all who participated in the follow-up survey indicated that specific exercises and lessons learned had stayed with them and that they had made use of the concepts learned from the course in non-ADR-specific settings, such as work and study environments, and in dealing with personal conflict situations.

(e) *Strengths lie in randomized participation, symmetrical study design*

One of the strengths of the study lies in the fact that the two groups were randomized in terms of participation; students did not choose to be in Group A or Group B with an awareness of

teaching methodology. Moreover, the initial profiles of the students did not differ significantly between the groups and despite other factors influencing the students the music group appeared to achieve better learning outcomes than the non-music group. An additional strength of the study was its symmetrical design. Neither pedagogical approach was consciously favoured in the study design. The same education purpose was applied to both groups and equal time for all lessons was allotted in both classes. The structure of the sessions were similar with music-based and non-music based experiences being the only internal variables. At the same time it is important to acknowledge that there are always variations in the context and character of a class and I could not control these variables. All students received the same traditional ADR teaching materials alongside the experiential learning exercises. The Starting Points Questionnaire provided me with approximately the same baseline for each group and the same motivation: for the students to develop and improve their skills and knowledge of dispute resolution over the eleven weeks of the course study. Despite the equalizing effects of the study design noticeable differences between the two groups developed by the end of the term.

## **SUMMARY OF THE CHAPTER**

Interviews with five professional musicians and the experiences of thirty-eight first year law students in two sections of a seminar course in dispute resolution formed the basis of this study. This chapter has elaborated upon, and interpreted the emerging themes set out in Chapter Four.

While it is not possible to draw definitive conclusions based upon the research from this initial study, I suggest nonetheless that music-based processes appear to have an important role to play

in enhancing the teaching and learning of legal education in general and dispute resolution training specifically.

In the next chapter, I make several recommendations with respect to the use of music-based teaching and learning modalities in law school and in conflict resolution training programs based upon the findings from this study. I also outline several areas of future research building on the themes and insights arising from this work.

## CHAPTER SIX – CONCLUSIONS, RECOMMENDATIONS, AND FUTURE RESEARCH

As previously stated, this study compared two different pedagogical methods of teaching dispute resolution to first year law school students, one using a music-based approach, the other using conventional teaching modalities.

The purpose of the study was to learn whether and how music could enhance and transform individuals' attitudes toward and abilities to address conflict situations. The study addressed four questions related to the research purpose and was designed to explore:

- (1) key characteristics of effective collaborative music-making and capacities most valued by collaborative music-makers to achieve effective ensemble outcomes;
- (2) whether the negotiation and problem-solving skills and behaviours of ensemble music-making are learnable by adults who are not musicians;
- (3) whether such skills learned in a musical environment are transferrable to a non-musical environment in which there are complex conflictual situations; and if so
- (4) whether such practices, once learned, can change cognitive frames and affect, and thus lead to more effective behaviour and more desirable outcomes.

Three hypothetical meta-themes were supported by this research study:

- (1) The ensemble metaphor for negotiation and problem-solving combined with music-based learning experiences has the potential to shift cognitive frames;
- (2) Embodied learning experiences assist in developing emotional and social intelligence and facilitate the reception of new information and perspectives;
- (3) Learning from the arts reconnects people to their creative potential and leads them to see the efficacy of employing creative thinking in professional environments where analytical and critical thinking have generally been over-emphasized.

These meta-themes were significant for the following reasons:



The music-based model and approach moved students away from outmoded and ineffective dispute resolution models and mindsets. The ensemble metaphor and music-based teaching modalities assisted in shifting cognitive frames. They not only moved students away from rights-based adversarial mindsets toward collaborative approaches but provided students in the music class with tangible illustrations of collaboration-in-action and the opportunity to engage in collaborative music-making themselves. The new music-based model and learning experiences brought abstract concepts to life and provided a new fresh interdisciplinary perspective on dispute resolution, negotiation and problem-solving.

Embodied experiences provided students with whole brain/whole body integrated learning. Students in the music-based class demonstrated more emotional intelligence and social intelligence than students who engaged only with the conventional pedagogical modalities. Further, such learning translated into changed and more effective behaviour and outcomes in simulated exercises. These learnings were important given that the ability to work together and empathize with others have been identified as key twenty-first century competencies and are essential to effective negotiation and problem-solving.

Students in the music-based class were able to connect with their own creativity and employ creative thinking in addition to analytical and critical thinking. In this way, they experienced a convergence of right-brain and left-brain skills in approaching the study of dispute resolution. As education scholar Ken Robinson (2010) has stated: “Human resources are like natural resources; they're often buried deep. You have to go looking for them, they're not just lying around on the surface. You have to create the circumstances where they show themselves.” The

use of music in teaching and learning enabled students to unearth and reconnect with their ‘natural resources’ of creativity and innovation in approaching negotiation and problem-solving.

### **IMPLICATIONS FOR THE FIELD**

The results of this study and the themes emerging from it are significant for both the fields of legal education in general and dispute resolution in particular.

Moving forward with new pedagogical models and methods is important in moving the legal professional out of the past and into the future. This study provides strong indications that employing arts-based methodologies in teaching assists students in developing the skills needed to address complex and challenging problems. Recent studies have made it clear that to maintain relevance and be responsive to clients, lawyers and lawyering need to change in fundamental ways (CBA, 2014). One such fundamental way is the area of education and training. Innovation does not end with the implementation of technology in classrooms and courtrooms, and the use of social media and other digital tools in practice. Innovation means fundamental and foundational changes in mindsets and not only mechanical changes in process modalities. Lawyers need to be responsive to people, not just principles, and this requires the development of skills previously believed to be outside the parameters of a lawyer’s job description (CBA, 2014). With the realization and reality that clients are prepared with increasing frequency to utilize the services of other professionals and to self-represent, lawyers can no longer afford to discount the relational and emotional aspects of problem-solving and dispute resolution. Western-centric approaches that fail to take into consideration the realities of globalization and an increasingly multi-cultural world-society are no longer sufficient or appropriate in addressing

twenty-first century issues. The time is now to change our tune. As the authors of the CBA Legal Futures Initiative report ask: “What are we waiting for?” (CBA, 2014, p. 66)

In considering what is needed in terms of knowledge and skills to train “the new lawyer”, it is clear that such a practitioner is not just settlement-oriented but also an innovative, creative and fully dimensional dispute resolution practitioner. These skills are useful to all lawyers, regardless of their area of practice. Those involved in law, business, public policy, international relations, urban planning, and other fields also require these abilities. In order to equip the next generation with the capacities needed to thrive and succeed in the legal world of today and tomorrow, legal education, continuing education training, and practice need to significantly change in order to meet this challenge.

With respect to the field of dispute resolution specifically, the focus for practitioners in this area is not only on resolving single episodes of conflict. To bring about real systemic change and address the roots of conflict, practitioners need the knowledge and skills to effectively address issues related to the epicentres of conflict (Ford, 2006). This requires expertise to delve far beyond the visible dimensions of conflict. This study has indicated that arts-based perspectives can assist in providing students with fresh perspectives and expanded parameters in looking at problems and exploring creative solutions.

Beyond adult professionals, whether legal or non-legal in origin, it is my belief that arts-based processes and the introduction of new cognitive frames for conceiving of and responding to conflict are essential in the teaching and learning of children and youth. No real social change will occur until such new models are embraced at all levels within society. To that end, the

results of this study should also be of interest to those involved in primary, elementary and secondary education, building upon the wealth of work that has been done to date in this regard.

## **RECOMMENDATIONS FROM THIS STUDY**

The following recommendations arise from the research study:

In order to bring about and sustain culture shift within law schools and the legal profession a number of changes need to occur:

- 1) law schools should investigate the value of ADR and offering ADR to all of their students, as a core course, as opposed to only offering this value to a small selection of their students in the form of an elective;<sup>40</sup>
- 2) innovative/interdisciplinary pedagogical approaches should not only be encouraged but actively implemented with corresponding de-emphasis and re-examination of traditional teaching methods; and
- 3) curriculum integration needs to be further developed. Law schools should develop an arts-immersed learning stream in their JD (juris doctor) programs in order to reinforce capacities related to multi-sensory intelligence.

Given students' expressed concerns regarding the effect of embracing new attitudes and behaviours on their marketability and client perceptions of their effectiveness, concepts related to the "new lawyer" and "new lawyering" (Macfarlane, 2008) need to be endorsed from within the profession. This could be accomplished in myriad ways; those flowing from this study would include encouraging the use of music-based methodologies in continuing legal education and training courses.

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<sup>40</sup> This should particularly be the case given that rules of professional conduct require such skills as part of practitioner competency. Rule 3 of the *Rules of Professional Conduct (Ontario)*, for example, specifically notes that a competent lawyer should be able to implement, as appropriate, negotiation, alternative dispute resolution and problem-solving skills, encourage compromise and settlement and discourage clients from commencing or continuing useless legal proceedings. (Law Society of Upper Canada, *Rules of Professional Conduct*, Rules 3.1-1(c), 3.2-4)

## **RECOMMENDATIONS FOR FUTURE RESEARCH**

I would suggest the following with respect to areas of future research that would build upon this study:

- 1) experimenting with a wider range of arts-based methods to see if they generate the same effects as the music-based methods;
- 2) further investigation into the sustainability and durability of music-based (and other arts-based) learning and how it affects practice. This would require a long-term study to follow students over a number of years;
- 3) repeating this comparative study with more music-immersed exercises in the experimental group and potentially involving other legal subjects in addition to dispute resolution;
- 4) introducing the ensemble metaphor and music-based methodology in the teaching of dispute resolution and problem-solving in primary, elementary, and secondary schools and other community-based dispute resolution programs; and
- 5) a multi-disciplinary research initiative involving law and other professional schools to examine the effect of arts-based pedagogy on learning and skills development within different professional environments.

## **FINAL THOUGHTS**

The field of conflict resolution, of course, does not live under the umbrella of the law and its practitioners are not, by any means, restricted to lawyers. In turn, I do not want to restrict recommendations related to and implications of the research study only to lawyers and legal education programs.

Those in the field of conflict resolution continue to work and search for innovative ways to respond to the world's most complex problems in a time of increasing global challenges. The conflict resolution field has long recognized that new pedagogical methodologies are needed as part of an overall conflict response initiative. Recent work being done by international scholars

and practitioners has revealed a groundswell in creative and imaginative efforts to energize and invigorate teaching and practice in the field of conflict resolution (Honeyman, Coben and De Paolo, 2009; 2010; Ebner, Coben and Honeyman, 2012; Honeyman, Coben, and Wei-Min Lee, 2013; LeBaron, MacLeod and Acland, 2013; Barnowski, Del Mar, and Maharg, 2013; Barnowski and Del Mar, 2013).

It is my hope that the themes emerging from this research project into the effects of a music-based frame and methodology on the study of dispute resolution will be an important and beneficial step in support of further research into the use of such modalities in aid of the ultimate quest for a more collaboratively-oriented and peaceful world.

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## ADI BRAUN – BIOGRAPHY

**ADI BRAUN** has a long list of cabaret, concert and theatre successes to her credit. She has performed in every major jazz and concert venue in Toronto, has toured Canada, the United States, and Europe. This fall Adi releases her fourth CD – "Canadian Scenes I" which marks her singer/songwriter debut. "**Canadian Scenes I**" follows Adi's three, critically-acclaimed CDs - "**Delishious**" (2003), short-listed for a 2004 Juno Award nomination, "**The Rules of the Game**" (2006), from which the song "Show Me Yours" was featured on an episode of the hit U.S. TV series "The "L" Word", and "**Live at the Metropolitan Room**" (2007), recorded off-the-floor at New York's acclaimed jazz/cabaret venue.

Born in Toronto, Adi Braun grew up in Europe surrounded by music and musicians. Her parents were opera singers, and her father, Victor Braun, was one of Canada's leading baritones. Her first instrument was piano, which she began studying at the age of six. With no formal voice lessons, she made her first pop/jazz recording at age 19. Following family tradition, Adi trained classically at the Royal Conservatory of Music and the University of Toronto's Faculty of Music. She began her singing career as a classical recitalist, a soloist with orchestra, and on-stage in operas and operettas alongside her brother, baritone Russell Braun.

Adi started "singing sideways" in the late 90's and returned to the music she loved, which she calls "cabarazz", drawing on aspects from both cabaret and jazz. After winning a local competition in 2001, she was catapulted to centre-stage as one of Canada's leading jazz vocalists. In 2007, Adi was nominated as "Best Major Jazz Vocalist of the Year" by the Manhattan Association of Cabarets and Clubs (MAC).

Her sophisticated style and subtle delivery evokes such vocal greats as Sarah Vaughan, Lotte Lenya, Judy Garland and Rosemary Clooney. Elizabeth Ahlfors of New York's *Cabaret Scenes* describes Adi as "*A tad Dinah Washington, a hint of Lena Horne, the enveloping warmth of Doris Day, all gift-wrapped up in a unique sound that is singular Adi Braun!*" Adi's repertoire ranges from the Great American songbook, to European cabaret, to contemporary songs by Canada legend's Shirley Eikhard and Gordon Lightfoot as well as her own originals. Whether she is singing in English, French, Spanish or German, Adi Braun is "*a power-frau who gives jazz standards a unique touch, telling stories that are miniature life moments*" (Rheinische Post, Düsseldorf, Germany).

## ANN HAMPTON CALLAWAY - BIOGRAPHY

**ANN HAMPTON CALLAWAY** is one of the leading champions of the great American Songbook, having made her mark as a singer, pianist, composer, lyricist, arranger, actress, educator, TV host and producer. A born entertainer, her unique singing style blends jazz and traditional pop, making her a mainstay in concert halls, theaters and jazz clubs as well as in the recording studio, on television, and in film. She is best known for Tony-nominated performance in the hit Broadway musical *Swing!* and for writing and singing the theme song to the hit TV series *The Nanny*. Callaway is a **Platinum Award** winning writer whose songs are featured on seven of Barbra Streisand's recent CD's. The only composer to have collaborated with Cole Porter, she has also written songs with Carole King, Rolf Lovland and Barbara Carroll to name a few.

Callaway's live performances showcase her warmth, spontaneous wit and passionate delivery of standards, jazz classics and originals. She is one of America's most gifted improvisers, taking words and phrases from her audiences and creating songs on the spot, whether alone at a piano or with a symphony orchestra. Ann has been a special guest performer with Wynton Marsalis and the Lincoln Center Jazz Orchestra, with Keith Lockhart and the Boston Pops at Symphony Hall and Tanglewood and is featured at many of the Carnegie Hall tributes. She has sung with more than thirty of the world's top orchestras and big bands, and has performed for President Clinton in Washington, D.C. and at President Gorbachev's Youth Peace Summit in Moscow. Callaway performed with her sister, Broadway star Liz Callaway, in their award-winning show *Sibling Revelry* at London's Donmar Warehouse. Their newest act "*Boom!*," a critically acclaimed celebration of the babyboomer hits of the 60's and 70's, was recorded on PS Classics which debuted in the top 25 on Billboard Jazz. Ann was featured in the Macy's Day Thanksgiving Parade telecast watched by 6 million people singing Emmy Award winning song "*Yes, Virginia.*" Recently Ann debuted her latest symphony show "*The Streisand Songbook*" with The Boston Pops and continues to tour the show with top orchestras across the country into 2015. Said Randall Fleischer after conducting the show with The San Francisco Symphony, "*Ann's tribute to Streisand is a glorious evening of great songs, brilliantly orchestrated and sung magnificently.*" After performing the show at 54 Below, she garnered two **Broadwayworld.com Awards** and the **2013 MAC Award for Show of the Year**.

Ann's new recording *The Sarah Vaughan Project: Live at Dizzy's* was released on September 16, 2014. She is featured on her sister Liz Callaway's holiday EP *Merry and Bright* as well as Arbor's Records CD *Johnny Mandel: The Man and His Music*. Her recent solo CD's *At Last*, *Blues in the Night*, *Slow* and *Signature* have received high critical acclaim. She has recorded two popular holiday CD's - *Holiday Pops!* With Peter Nero and the Philly Pops, and her solo CD, *This Christmas*. Ann's other recordings include *Easy Living*, *To Ella with Love*, *After Ours*, *Bring Back Romance*, *Ann Hampton Callaway*, and the award-winning live recording *Sibling Revelry*. Callaway has also been a guest performer on more than forty five CD's including Kenny Barron's CD *The Traveler*.

Ann's dream of working in film, TV and radio has been realized in several recent projects. She made her feature film debut opposite Angelina Jolie and Matt Damon in the Robert De Niro film "*THE GOOD SHEPHERD*", performing the standard "Come Rain or Come Shine". She recorded

"Isn't It Romantic?" and "The Nearness of You" in Wayne Wong's *"LAST HOLIDAY"*, starring Queen Latifah. Ann recently wrote songs for the upcoming movie musical *"STATE OF AFFAIRS"*, to be directed by Philip McKinley. And, as a part of her mission to keep the American Songbook thriving, she has produced and hosted two TV specials Called *"Singer's Spotlight With Ann Hampton Callaway"* with guests Liza Minnelli and Christine Ebersole for WTTW National which will dovetail into her radio series for NPR in development for 2014.

Ann devotes much of her time to philanthropic causes, both as a singer performing in numerous benefits, and as a songwriter composing songs in times of need. In September 2005, Ann performed her original composition *"Let the Saints Come Marching"*, written to honor Hurricane Katrina victims, on a national TV broadcast on the Fox News Channel. Her song *"Who Can See the Blue the Same Again?"* was released earlier in 2005 as a single, paying tribute to the tsunami survivors and raising much needed money for The Tsunami Fund of The PRASAD Project. In the aftermath of September 11th, Ann composed the stirring anthem, *"I Believe in America"*, which she performed on Larry King Live and released as a CD single. Just days after the tragedy, Ann heard an 8,000 year old prayer from the Rig Veda and composed the world renowned *"Let Us Be United"*. Ann recorded the song with Kenny Werner, The Siddha Yoga International Choir and five-year-old Sonali Beaven, who sang in honor of her father who lost his life on Flight 93. It was released on CD and DVD and its proceeds continue to benefit Save the Children and The PRASAD Project.

Ann's father was Chicago's legendary TV and radio journalist, John Callaway. Her mother, Shirley Callaway, a superb singer, pianist and one of New York's most in-demand vocal coaches, was recently featured at New York's Town Hall, singing with Ann and her sister, Liz.

Ann resides in New York. She lives by the creed best expressed in the Andre Gide quote: *"Art is the collaboration between God and the artist and the less the artist does, the better."*

## **BARRY SHIFFMAN – BIOGRAPHY**

**BARRY SHIFFMAN** joined The Glenn Gould School as Associate Dean and Director of Chamber Music in September 2010. He comes to The Royal Conservatory from The Banff Centre, where he has served as Director of Music Programs and Executive Director of the Banff International String Quartet Competition since 2006.

At The Banff Centre, Mr. Shiffman revitalized existing music programs and launched major new initiatives in chamber music, orchestral studies, popular music, and jazz. Some of his most dramatic achievements were in the field of new music; under his direction, the music program of The Banff Centre became one of western Canada's largest presenters of contemporary works. He increased the number of faculty residencies, attracting notable composers including John Adams, Osvaldo Golijov, Brett Dean, and Louis Andriessen. In the spring of 2009, he oversaw the coproduction of *EVOLUTION*, the CBC's competition for young composers, held at The Banff Centre.

Through Mr. Shiffman's leadership of the Banff International String Quartet Competition, it has grown to include career development, outreach, and commissioning programs, along with a program to nurture the talents of young artists. Its endowment has doubled, and Mr. Shiffman played an active and ongoing role in major gift fundraising and stewardship.

He also serves as Executive Artistic Director of Vancouver's Music in the Morning Concert Society, overseeing all programming for the celebrated concert presenter.

Beyond his achievements at The Banff Centre, Mr. Shiffman has had a rich and varied career as a performer and recording artist. Debuting with the Toronto Symphony Orchestra at the age of 15, he has appeared with orchestras and in recital throughout North America, Europe, and Japan. Recent appearances include his debut with the Los Angeles Philharmonic at Disney Hall and a Canadian tour as guest violist with the Gryphon Trio.

In 1989, Mr. Shiffman cofounded the St. Lawrence String Quartet through a joint program of The Royal Conservatory and the University of Toronto. During his 17 years with the Quartet he appeared in over 2,000 concerts in venues around the globe and recorded several critically acclaimed discs under an exclusive contract with EMI Classics. Passionately committed to contemporary composers, he has been involved in the premieres of hundreds of new works, both in the Quartet and beyond.

In addition to performing and recording, Mr. Shiffman is a sought-after violin and viola teacher and chamber music coach. He is the recipient of the Nadia Boulanger Prize for Excellence in the Art of Teaching awarded by the Longy School of Cambridge, Massachusetts. In 2009, he received an honorary doctorate from the University of Calgary. He served as artist-in-residence at Stanford University from 1998 to 2006 and as visiting artist at the University of Toronto from 1995 to 2006.

## STEVE WALLACE – BIOGRAPHY

**STEVE WALLACE** (bassist) was born on August 16, 1956 in Toronto, Ontario, Canada, and is today regarded by many as the most powerful bass player that Canada has produced. He is almost certainly the most experienced, having begun working with visiting jazz greats in Toronto clubs such as Bourbon Street, Lytes, and George's Spaghetti House while he was still in his twenties, backing some of the music's most famous names including Clark Terry, Harry 'Sweets' Edison, Eddie 'Lockjaw' Davis, George Coleman, Zoot Sims, and Pepper Adams.

He has also recorded and toured with some of the biggest names in Canadian jazz including Fraser MacPherson, Rob McConnell, Oscar Peterson, and Oliver Jones. In 1982 Steve became associated with the Concord Jazz label, touring the Soviet Union, Europe and Japan, and recording albums as a sideman with Rosemary Clooney, Ed Bickert, Mel Torme, and others.

Steve became bassist with Rob McConnell's 'The Boss Brass' in 1983 and remained with the band for ten years. In 1985, he replaced ailing bassist George Duvivier to tour Europe, Japan, and Australia with Woody Herman's All Stars, a group that included Al Cohn, Buddy Tate, Urbie Green, John Bunch, and Jake Hanna. Wallace toured frequently as a member of the Oscar Peterson Trio in the 1990's. He also appeared with the Rob McConnell Tentet and the Sam Noto Quintet,

He has been bassist with the Barry Elmes Quintet since its formation in 1991, and a founding member of D.E.W. East (Alex Dean, Barry Elmes, Steve Wallace), for whom Wallace also contributes his own new compositions. Steve performs regularly with the Mike Murley Trio, the Mark Eisenman Trio, and the David Braid Sextet.

Steve is also an accomplished writer. For years, he made his writing available via an email list to friends and colleagues. In 2012, he began posting his writing on a blog: [wallacebass.com](http://wallacebass.com)

Steve Wallace is likely the most-heard musician in the three-decade-plus history of the "Sound of Toronto Jazz" Concert Series at the Ontario Science Centre, having played bass on no fewer than 24 individual concerts.

### **Awards:**

2013 – JUNO Award for 'Traditional Jazz Album' for the Murley/Bickert/Wallace album "Test of Time"

### **DR. MARY-LOU VETERE - BIOGRAPHY**

**DR. MARY-LOU VETERE** retains a multifaceted career as a historian, performer, and educator. She has recently obtained the PhD in Historical Musicology. Her dissertation is entitled: "Italian Opera From Verdi to Verismo: Boito and La Scapigliatura." As a historian, she addresses topics that reflect the development of Italian opera between 1850 and 1924. Recently, she presented a paper for the American Musicological Society New York/St. Lawrence Chapter entitled, "Boito's Code: Solving the Secrets of the Scapigliati and Revealing the Language of Chaos," and is currently working on various other articles for publication and a book proposal for a critical biography on Arrigo Boito and the Scapigliatura.

Alongside her research and academic teaching, Dr. Vetere maintains an international career as an accompanist and highly sought after voice-coach. Her students have performed in performed in Canada, the United States, and Europe and she retains voice studios in Toronto, Niagara, and New York City. In 2009 she made her debut as a guest artist at Lincoln Center for the 25th Anniversary of renowned Metropolitan Opera star, soprano Aprile Millo and has since been her recital pianist and accordionist. The accordion has remained her most beloved musical companion.

An instrument of great difficulty, physicality, and virtuosity, Dr. Vetere is a fervent advocate for the resurgence of the accordion on the classical stage. She is a founding member, arranger, and performer in the nouveau-cabaret ensemble, L'Accordioniste, alongside her colleagues Kimberly Barber and Peter Tiefenbach. Having been the recipient of numerous prestigious awards and international recognition for her performing, recent critical reviews have deemed Vetere a "virtuosa" (The New York Times) and the "new face of the accordion" (The Toronto Star).

## APPENDIX B – PHASE ONE

Dear Prospective Research Participant,

My name is Linda Ippolito and I am a PhD student in the Graduate Program in Law at Osgoode Hall Law School at York University, Toronto, Ontario, Canada. I am writing to kindly ask for your participation in research that I am currently conducting for my doctoral dissertation. This dissertation focuses on the use of music, specifically collaborative music-making, in interethnic conflict as a way to build and restore relationship as part of the conflict resolution/transformation and peacebuilding processes.

I would very much appreciate your assistance by agreeing to participate in an interview(s) over the telephone or via e-mail. Your involvement could require several hours of your time. The interview(s) will consist of some general questions with respect to your experiences - positive and negative – as a participant in group music-making, and how you do or do not see music playing a role as a form of communication, a way to build community, and to heal fractured relationships in negotiating and maintaining interethnic coexistence.

In compiling this research I would like to provide examples of “real-life” experiences by participants in collaborative music-making ventures designed to bring people into relationship with “other”, how it does or does not create trust, mutual respect and empathy, and the long-term effects of the group music-making experience. These experiences, anecdotes and insights into music as a form of universal communication, community builder and shared identity maker, as well as healing ritual and reconciliation model, will greatly enhance my explorations of the dissertation. Through these interviews I hope to gain greater insights into the central question of whether or not the effects of group music-making among when engaged in by participants experiencing “realtime” conflict and the post-conflict effects of interethnic conflict, are the same or different from group music-making among persons not engaged or previously engaged in overt conflict.

I do not foresee any risks or discomfort from your participation in the research and anticipate this being a mutually worthwhile and meaningful experience. Your participation is completely voluntary and you may choose to stop participating at any time, for any reason, if you so decide. Your decision to stop participating, or to refuse to answer particular questions, will not affect your relationship with the researcher, York University or any other group associated with this project.

You may remain anonymous or, with your consent, be identified in the research and I would ask that you indicate your preference below. The data that I gather from the interviews will be confidentially stored on my personal computer, which only I have access to, and will be used solely for the purposes of this paper, and the interview notes will be destroyed exactly one year to the date of completion of this project which I anticipate will be 2014.

This research has been reviewed and approved for compliance to ethics protocols by the Human Participants Review Subcommittee of York University's Ethics Review Board and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines. If you have any questions about the project please do not hesitate to contact me at (416) 651-8116 or at [lmippolito@yahoo.ca](mailto:lmippolito@yahoo.ca) or my supervisor, Professor Janet Walker at (416) 736-5580 or [jwalker@osgoode.yorku.ca](mailto:jwalker@osgoode.yorku.ca) . If you have any further questions about this process, or about your rights as a participant in this research, please contact Ms. Alison Collins-Mrakas, Manager, Research Ethics, Office of Research Ethics, 5th Floor, York Research Tower, York University (416) 736-5201 or e-mail [acollins@yorku.ca](mailto:acollins@yorku.ca).

If you are willing to participate, I would appreciate you responding to me by e-mail at [lmippolito@yahoo.ca](mailto:lmippolito@yahoo.ca) by September 30, 2011.

Thank you in advance for your participation and for your time.

Sincerely,

Linda M. Ippolito



## APPENDIX B – PHASE TWO

### Informed Consent Form

**Study name:**

“Communication, Community, and Communion: Collaborative Music-Making in Conflict Resolution and Peacebuilding”

**Researchers:**

Researcher name – Linda M. Ippolito

Candidate – Doctoral, Graduate Program in Law

Email address: lmippolito@yahoo.ca, office phone: (416) 763-3399

Supervisor: Professor Janet Walker, jwalker@osgoode.yorku.ca , office phone: (416) 736-5580

**Purpose of the research:**

The purpose of the research is to determine if we can transform or shift our mindset from a dominant culture/traditional wisdom framework and approach to conflict to an alternative wisdom framework and approach by using music and collaborative music-making as the model and thus broaden our ability to deal with conflict and group problem-solving in a more creative and expansive manner.

The research will be conducted through the teaching of two classes of dispute settlement to first year law students. Both classes will use the same course materials and will be introduced to the same theoretical concepts. Both classes will be taught using experiential learning methods, group discussions, role plays/simulations, and students will keep reflective journals, engage in the same major role play, and write a research paper. The language, metaphors, and application of the concepts will differ between the two classes, one class utilizing music-based concepts, the other using non-arts-based concepts. Both classes will be evaluated based upon the same criteria and using the same evaluation rubrics.

The research data will be gathered from participant journals, classroom observations by the researcher, group de-briefs, and follow-up interviews.

The research will be presented and reported in the dissertation, as part of subsequent research and in any articles or publications written by the researcher. The data will be summarized by comparing and contrasting responses of participants from the two classes and categorized according to emerging themes.

**What you will be asked to do in the research:**

You will be asked to give your consent to the anonymous use of your written course work (reflective journals) which will be analysed by the researcher to determine if there are emerging common themes, impressions, etc. You will also be asked to engage in follow-up interviews

and provide your feed-back on in-class exercises and overall experience with the course following the completion of course. Within six months of completion of the course there will be a follow-up interview with respect to continued impressions of the learning experience and applications of skills learned.

Time commitment – as journals and in-class exercises were part of the work students will be requested to share with the researchers there is no outside-class time commitment for participants. The follow-up interview time commitments will require approximately 1 hour of your time for each session.

No inducements will be offered.

The research does not involve any deception.

### **Risks and discomforts**

There are no risks or discomforts related to participation in this research. The only "discomfort" you may experience is in pushing your own comfort zones with respect to engaging in participatory exercises with others. Your "performance" in the exercises, however, will not be part of the research or any evaluation; your mark in the course is not connected to participation in the research project.

### **Benefits of the research and benefits to you**

research project that is of value to law students and the development of legal pedagogy, to the legal profession, and potentially to the public at large in exploring more positive ways to recast and respond to conflict.

This research is integral to my dissertation. I anticipate this being a mutually worthwhile and meaningful experience.

### **Voluntary participation:**

Your participation in the study is completely voluntary and you may choose to stop participating at any time.

Your decision not to volunteer will not influence the relationship you may have with the researcher or study staff or the nature of your relationship with York University either now, or in the future. Your decision not to volunteer for your work to be used in the research project will not affect your grade in the Dispute Settlement class.

**Withdrawal from the study:**

You can stop participating in the study at any time, for any reason, if you so decide. Your decision to stop participating, or to refuse to answer particular questions, will not affect your relationship with the researchers, York University, or any other group associated with this project. In the event you withdraw from the study, all associated data collected will be immediately destroyed wherever possible, save and except for any work associated with the class which will be retained in accordance with school policies.

**Confidentiality:**

Participants will remain anonymous. No names will be used. Numeric coding will be used. Confidentiality will be provided to the fullest extent possible by law. The data will be stored on my personal computer and backed up on a separate drive. I will also keep interview notes and audio recording of interviews which will be transcribed onto computer files. All notes, recordings and computer files will be kept until the completion of the dissertation. Completion is anticipated within two years following the completion of the research project. Only I, my supervisory committee and possibly my examining committee would have access to this data. It is my intention to archive the data on a separate, secure computer drive. Neither the initial research gathered nor the archived materials will be stored at any time on a computer network. It is anticipated that the data will be stored for at least a 2 year period post-completion in the event that the research data needs to be reviewed or revisited for follow-up purposes.

**Questions about the research?**

This research has been reviewed and approved by the Human Participants Review Sub-Committee, York University's Ethics Review Board and conforms to the standards of the Canadian Tri-Council Research Ethics guidelines. If you have any questions about this process, or about your rights as a participant in the study, you may contact the Senior Manager and Policy Advisor for the Office of Research Ethics, 5th Floor, York Research Tower, York University, telephone 416-736-5914 or e-mail ore@yorku.ca . {If you have any further questions about this process, or about your rights as a participant in this research, please contact Ms. Alison Collins-Mrakas, Manager, Research Ethics, Office of Research Ethics, 5th Floor, York Research Tower, York University (416) 736-5201 or e-mail acollins@yorku.ca.}

**Legal rights and signatures:**

I, \_\_\_\_\_, consent to participate in research related to “Communication, Community and Communion: Collaborative Music-Making in Conflict Resolution and Peacebuilding” conducted by Linda M. Ippolito. I have understood the nature of this project and wish to participate. I am not waiving any of my legal rights by signing this form. My signature below indicates my consent.

Signature \_\_\_\_\_  
Participant

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Principal Investigator

Date \_\_\_\_\_

## APPENDIX C

### Interview Notes

- tell me about your different collaborative experiences
- what were some of your most successful collaborations – what made them “successful” - define “successful” in the context of musical collaborations
- to you what are the key ingredients of a successful collaboration
- describe some unsuccessful collaborations – what made them “unsuccessful”
- how could they have been transformed into “successful” collaborations
- how do you communicate in a collaborative group – different modes
- what is effective communication
- is there a “leader” – is there a “hierarchy” or a sense of equality among members – how important is that
- how do you achieve balance within the group
- how do you create “relationship”, “unity”, a sense of “community” among the group
- how do you deal with group problem-solving, differing opinions, giving everyone a “voice”
- have you ever had to use a third part intervener – who and in what circumstance(s) – were they helpful and how were they helpful
- what are the expectations coming into the group collaboration – a rehearsal, a performance – for yourself and others
- is there a sense of joint responsibility for outcome – what happens if there isn’t
- how do you define your goal(s) for the ensemble process and for process outcome (the performance) – do you discuss these, are they unspoken
- is there an awareness that this is a group effort
- how are individual egos dealt with among the group
- how do you deal with power (imbalance), gender, cultural diversity – are these factors that “matter” within a musical ensemble
- how do you deal with emotions

- how do you achieve “communion” (human connection) – is it important to achieve a level of human connection between the members
- how do you deal with criticism, input of others
- how do you diffuse tense situations
- what happens if you hit an impasse with respect to decision-making over a technical or musical issue – how do you overcome such “road-blocks” in process and with respect to “content”
- how do you create a positive environment in which everyone feels “safe” and “heard”/respected, where contributions are invited and valued
- what are the differences between a “one-off” encounter and a “permanent” ensemble
- how are you able to communicate, achieve community and a level of communion in a “one-off” group
- what is it about your training as a musician that enables you to achieve these goals/work together effectively in an ensemble environment
- to what degree does improvisation factor into your rehearsals/performances
- how do you improvise/be spontaneous/take risks in a classical music environment where your music is more “scripted”
- what, in your opinion, are the most important qualities of a collaborative ensemble musician

**APPENDIX D**  
**FIRST YEAR STUDENT PROFILE**

Gender		FA08	FA09	FA10	FA11	FA12	FA13
Male		47%	52%	50%	49%	51%	47%
Female		53%	48%	50%	51%	49%	53%
Area of Study Pre-law		FA08	FA09	FA10	FA11	FA12	FA13
Humanities		22%	23%	19%	22%	22%	25%
Social Sciences		44%	39%	42%	39%	42%	42%
Pure Sciences		14%	14%	10%	12%	10%	10%
Business Arts and Science		17%	18%	24%	20%	21%	16%
No University		2%	4%	4%	6%	5%	7%
Age							
Average		25	25	25	25	26	26
Range							
20-25		80%	80%	74%	70%	68%	72%
26-29		9%	11%	16%	18%	16%	9%
30-39		9%	6%	8%	9%	12%	16%
40 +		2%	3%	2%	3%	4%	3%

FA11 = First Year Admissions Fall of 2011 (Research conducted winter term 2012)

**STUDENT PROFILES GROUPS A and B**

**Group A – 21 students**

**Group B – 17 students**

**Gender:**

13 Female      8 Male                      7 Female      10 Male

**Ages:**

18 20-30 years      3 30+                      15 20-30 years      2 30+

**Area of Study Pre-law:**

Humanities              2  
Social Sciences        5  
Pure Sciences           5  
Business                4  
Arts and Sciences     3  
No University           1

Humanities              2  
Social Sciences        5  
Pure Sciences           2  
Business                5  
Arts and Sciences     2  
No University           1

## APPENDIX E

### STARTING POINTS- QUESTIONNAIRE:

- 1) to what extent do you believe “win/win” is a legitimate goal in a dispute settlement process?
- Not legitimate                  Somewhat legitimate                  Legitimate                  Very legitimate
- 2) to what extent do you believe that “win/win” resolutions are possible?
- Not possible                  Somewhat possible                  Possible                  Very possible
- 3) to what extent do you believe that you currently have the necessary skills to move a dispute toward resolution (defining “skills” as one or more of the following - the ability to effectively communicate; the ability to effectively problem-solve in a negotiated process with one or more parties; cultural fluency)
- Not at all                  Somewhat                  Competent                  More than competent
- 4) complete this sentence: “my client will get the best deal if I think ...
- (A) only of his/her interests  
(B) of everyone’s interests  
(C) of no one’s interests but only focus on seeing that the law is upheld
- 5) in a conflict situation/setting are you able to recognize yourself, or a part of yourself, in the other disputant
- Not at all                  Somewhat                  Mostly                  Completely
- 6) to what extent do you feel it is important in reaching a resolution to understand the other person’s point of view
- Not important                  Somewhat important                  Important                  Very important
- 7) do you believe it is important to take an aggressive stance on behalf of your client in order to negotiate a positive result for him/her
- (A) yes    \_\_\_\_\_  
(B) no    \_\_\_\_\_
- Explain why in a few sentences.
- 8) to what extent do you believe your client expects you to be aggressive:
- (A) in a negotiation
- Not at all                  Somewhat                  Mostly                  Completely
- Explain why in a few sentences.



(B) in a mediation

Not at all

Somewhat

Mostly

Completely

Explain why in a few sentences.

9) what metaphor best describes the way you see a disputing process:

(A) a prize fight

(B) a chess game

(C) a poker game

(D) a war

(E) a collaborative musical ensemble

(F) a sports team

10) where do your role models/images of a dispute resolution practitioner come from

(A) TV/movies – describe that image:

(B) literature – describe that image:

(C) members of the profession – describe that image:

11) do your role models/images differ as between a negotiator, mediator, diplomat.  
If so, explain why and how in a few sentences.

11) how important do you think it is for a transformation to occur between the disputing parties, and if so, why?

Not important

Somewhat important

Important

Very important

12) list at least 3 skills that you believe are the most important in order to be an effective 21<sup>st</sup> century conflict resolution practitioner.

-

-

-

13) do you believe there is a different skill set necessary to be an effective negotiator as compared to that of...

(A) a mediator

YES/NO

What skills?

(B) a diplomat

YES/NO

What skills?

**ASSIGNMENT NUMBER:** \_\_\_\_\_

**Reflections – Class #1**

**Playlist Exercise**

- 1) Did creating the playlists assist you in expressing your feelings about conflict?  
 Not at all      Somewhat      Well      Very Well
  
- 2) I gained insight into my own feelings about conflict by creating the playlist  
 Not at all      Somewhat      A lot      More than anticipated
  
- 3) What was one thing you learned about yourself through this exercise that surprised you?
  
  
  
- 4) I gained insight into the feelings of my classmates about conflict through sharing the playlists  
 Not at all      Somewhat      A lot      More than anticipated
  
- 5) Did creating the playlist enable you to express your feelings about conflict on a deeper level than words?  
 Not at all      Somewhat      A lot      More than anticipated
  
- 6) How did you feel about sharing your playlist with others as opposed to talking about your feelings (check off all that apply)  
 Vulnerable    \_\_\_\_\_      Safe    \_\_\_\_\_      Easy    \_\_\_\_\_  
 Exposed      \_\_\_\_\_      More nuanced    \_\_\_\_\_  
 Other (describe):
  
  
- 7) Do you feel you learned more about yourself/your classmates through creating/sharing the playlists than if you had just talked about your feelings?  
 Not at all      Somewhat      A lot      More than anticipated
  
- 8) What were your most important learnings from this exercise, for you personally? How do you think it might affect your practice as a lawyer/conflict resolution practitioner?

### Thomas Kilman Conflict Mode Instrument

- 1) did you have a pre-conceived idea of your dominant style?  Yes  No

If yes, what did you believe your dominant "style" would be: (circle the "style")

Competing      Collaborating      Compromising      Avoiding      Accommodating

- 2) were you surprised by your results  Yes  No

- 3) do you believe there is a "cause" for your dominant style? In other words is it something you were born with ("nature")  Yes  No

or something you have developed as a result of your upbringing, culture, experiences ("nurture")  Yes  No

If you believe it is something you have developed, what do you believe has been the biggest influence on your style to date

- 5) do you believe your "style" can change  Yes  No

If no, why not?

- 6) do you believe you have a choice in how you personally respond to situations of conflict

Yes  No

- 7) do you believe you have the flexibility now to alter your response choices

Yes  No

- 8) do you believe you can develop this flexibility  Yes  No

What would you need to do to be able to develop that flexibility?

- 9) What were your most important learnings from this exercise, for you personally? How do you think it might affect your practice as a lawyer/conflict resolution practitioner?

**ASSIGNMENT NUMBER:** \_\_\_\_\_

**Reflections – Class #1**

**Reflection Exercise: “what emotions does conflict illicit in you?”**

- 1) I gained insight into my own feelings about conflict through this exercise/reflection

Not at all      Somewhat      A lot      More than anticipated

- 2) What was one thing you learned about yourself through this exercise that surprised you?

- 3) I gained insight into the feelings of my classmates about conflict through the group reflection

Not at all      Somewhat      A lot      More than anticipated

- 4) Were you able to express your feelings fully through your words such that you felt understood by your classmates

Not at all      Somewhat      A lot      More than anticipated

- 5) How did you feel about sharing your personal feelings about conflict with others (check off all that apply)

Vulnerable    \_\_\_\_\_      Safe    \_\_\_\_\_      Easy    \_\_\_\_\_

Exposed    \_\_\_\_\_

Other (describe):

- 6) What were the most important learnings from this exercise, for you personally? How do you think it might affect your practice as a lawyer/conflict resolution practitioner?

### Thomas Kilman Conflict Mode Instrument

- 1) did you have a pre-conceived idea of your dominant style?  Yes  No

If yes, what did you believe your dominant "style" would be: (circle the "style")

Competing      Collaborating      Compromising      Avoiding      Accommodating

- 2) were you surprised by your results  Yes  No

- 3) do you believe there is a "cause" for your dominant style? In other words is it something you were born with ("nature")  Yes  No

or something you have developed as a result of your upbringing, culture, experiences ("nurture")  Yes  No

If you believe it is something you have developed, what do you believe has been the biggest influence on your style to date

- 5) do you believe your "style" can change  Yes  No

If no, why not?

- 6) do you believe you have a choice in how you personally respond to situations of conflict

Yes  No

- 7) do you believe you have the flexibility now to alter your conflict response choices

Yes  No

- 8) do you believe you can develop this flexibility  Yes  No

What would you need to do to be able to develop that flexibility?

- 9) What were the most important learnings from this exercise, for you personally? How do you think it might affect your practice as a lawyer/conflict resolution practitioner?

**Class #5 – Reflections on String Quartet Fieldtrip**

1) Identify three (3) ways the quartet communicates while negotiating their rehearsal process and describe what you observed for each

-

-

-

2) What did you observe about the quartet's listening process (ie. was it a "back and forth" exchange or "polyphonic" (occurring on multiple levels)/peripheral listening)

(a) while they were playing

(b) while they were speaking

3) Do you think "presence" - being alert in the "here and now" to what is happening - is important in negotiation - if yes, why; if no, why not?

4) Based on what you observed from the quartet's rehearsal and performance, how does the ability to listen to one another affect "presence"

5) What did you observe about the quartet's method of collaboration?

- how did they contribute ideas ("brainstorm/option generation")

- how did they try out ideas ("evaluate options")

- how did they deal with emotions and differing personalities (criticism, "rejection" of ideas, challenges to ideas)

6) What did you observe about the quartet's leadership structure

- did one player dominate

- did each player have an equal voice

- were ideas valued – if so, how was that conveyed

- how was participation invited/encouraged – discouraged

7) What did you observe about communion/connection within the quartet

- how did they convey respect

- how did they exhibit/convey trust

- how did they develop rapport

- how did they value diversity of ideas and experiences as part of decision-making

8) During the examples of “balance/imbalance”, the effect of different tempo/pacing, dynamics and phrasing choices, of “takers and givers” (value claimers and creators), we had the opportunity “hear” what these things “sound” like. Could you relate these concepts back to the negotiation process and see how they “translate” over into our negotiating models?

- yes/how

- no/why not

9) Which one of the examples from #8 had the most impact on you and why – how will it assist you in your negotiation work?

10) What kind of decision-making process did you observe happening in the quartet?

- unilateral (describe)

- consensual (describe)

- majority-rules (describe)



11) How did “hearing” and “observing” this negotiation process affect your understanding of concepts we talked about today? Did it enhance the learning experience and if so, how?

12) What was the biggest take-away point(s) for you from this experience?

**Trust Exercise Debrief – creating collaborative community and connection**

- 1) What did this exercise feel like for you in terms of
  - (a) establishing trust among the group;
  - (b) taking personal risk;
  - (c) venturing outside your comfort zone;
  - (d) anything else
  
- 2) Describe your ensemble experience
  - (a) did you feel you were part of a team by the end of the exercise;
  - (b) did you experience a sense of “synchrony” with the others;
  - (c) how important was establishing a group rhythm or inner “tempo” to the sense of ensemble;
  - (d) other impressions
  
- 3) Were you able to be flexible and adaptable to the changes
  
- 4) What effect did the absence of visual cues and verbal cues have on you in terms of your level of trust/risk comfort zone? How did you compensate – what other senses/skills did you rely on?
  
- 5) Did you experience any shifts in feeling, approach, response – when and how did they occur?
  
- 6) By the end of the exercise did you feel you had gained any new insights into the collaborative experience, into experiencing trust, taking risks, being flexible/adaptable to change?
  
- 7) What were the biggest take-away learning points from this exercise for you? If you did this exercise again what would you do differently?

**Group Call/Response and Improv Exercise Debrief – communication within collaborative community**

- 1) What did this exercise feel like for you in terms of
  - (a) putting your “voice” forward in front of others;
  - (b) taking personal risk;
  - (c) venturing outside your comfort zone;
  - (d) anything else
  
- 2) Describe your listening experience in this exercise in terms of:
  - (a) To what extent were you engaged in active listening in this exercise
  - (b) To what extent were you able to be present in the moment
  - (c) To what extent were you rehearsing/formulating your response while you were waiting for your turn
  - (d) Were you able to perceive the changes in the rhythms of the patterns, in the nuances of patterns as they occurred
  
- 3) Describe your experience within the group:
  - (a) Did you feel safe and secure – comfortable to put forward your “voice”
  - (b) Did you feel judged?
  - (c) Did you feel you needed to “get it right”?
  - (d) Did you feel comfortable “improvising”
  - (e) Did you feel a sense of “ensemble” developing within the group
  
- 4) Did you experience any shifts in feeling, approach, response in the course of the exercise – when and how did that occur?
  
- 5) By the end of the exercise did you feel you had gained any new insights into the collaborative experience, communication (expressing yourself/listening), improvising?
  
- 6) What were the biggest take-away learning points from this exercise for you? If you did this exercise again what would you do differently?

**Class #8 – Reflection on the Ugli Orange simulation**

Reflect upon your experience in the Ugli Orange simulation and the resolution, if any, that was reached.

- 1) Did you begin the negotiation or did your partner begin?
- 2) What was your opening?
- 3) Did you adopt a cooperative/collaborative approach or a competitive approach? How did your partner respond?
- 4) Did you reach a resolution – if so, what was it?
- 5) Did you feel that you disclosed too much information too soon?
- 6) Did you feel that you withheld too much information – would your negotiation have benefitted from more disclosure?
- 7) Think about the concept of “power” – who had it and where did it come from? (ie., did either of you have an air of authority that gave you power and where did this air of authority come from – credentials, affiliations? Was it resource or information-based? Was it based on BATNA?) Did you attempt to assert your power as a tool of “persuasion”?
- 8) Describe your communications with your partner. What communication techniques did you use, specifically:
  - (a) What kind of listening skills did you use?

- (b) What kind of questioning skills did you use?
  - (c) Describe your demeanour/your partner's demeanour? Tone of voice, body language?
  - (d) With respect to communication patterns – were there threats, posturing, or prevailing being used? To what effect?
  - (e) Did emotions come into play and if so, how did you deal with them?
  - (f) What was done to create trust, obtain information? Any particular skills or approaches used?
- 10) Think about the concept of “truthtelling” as it related to you and your partner
- was information purposely withheld by you? By your partner?
  - was information distorted? By you? By your partner?
  - did you lie? Did you partner lie?
  - Upon reflection, did you strategy/behaviour raise ethical issues of professional responsibility as a negotiator?
- 11) If you had this exercise to do again next week what would you do differently and why?

**Class #8 – Reflection on the Dilithium Dilemma simulation**

Reflect upon your experience in the Dilithium Dilemma simulation and the resolution, if any, that was reached.

- 1) Did you begin the negotiation or did your partner begin?
  
- 2) What was your opening?
  
- 3) Did you adopt a cooperative/collaborative approach or a competitive approach? How did your partner respond?
  
- 4) Did you reach a resolution – if so, what was it?
  
  
  
  
  
- 5) Did you feel that you disclosed too much information too soon?
  
  
  
  
  
- 6) Did you feel that you withheld too much information – would your negotiation have benefitted from more disclosure?
  
  
  
  
  
- 7) Think about the concept of “power” – who had it and where did it come from? (ie., did either of you have an air of authority that gave you power and where did this air of authority come from – credentials, affiliations? Was it resource or information-based? Was it based on BATNA?) Did you attempt to assert your power as a tool of “persuasion”?
  
  
  
  
  
- 8) Describe your communications with your partner. What communication techniques did you use, specifically:
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- was information purposely withheld by you? By your partner?
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  - Upon reflection, did you strategy/behaviour raise ethical issues of professional responsibility as a negotiator?
- 11) If you had this exercise to do again next week what would you do differently and why?

**CLASS # 10 - WTC REFLECTION**

- 1) Who set the agenda
- 2) Did you adhere to it during the negotiation or did it change over the course of the mediation
- 3) Was the agenda set in a way that assured you that your concerns in the negotiation would be addressed
- 4) What kind of negotiating style did you employ – did it change over the course of the mediation
- 5) Did your negotiating style help or hinder the negotiation
- 6) Did emotions come into play during the mediation – how were they dealt with and by whom
- 6) What role did the mediator play – what were the most helpful things the mediator did
- 7) Was the mediator effective in managing the conversation in a way that
  - Addressed and dealt with emotions
  - Created value
  - Created a sense of community
  - Created a sense of common purpose/superordinate goal
- 8) Did your group achieve a sense of community/"ensemble". How – describe:
- 9) Did your group communicate effectively or ineffectively. How – describe:



- 10) How did you use your songs/pieces of music in the negotiation?
  - At what point in time
  
  - Was it used more than once
  
  - Did it have an impact/effect on the negotiations and if so, how – if not, why not?
  
  - Did the use of the music enhance communication, community or the sense of communion among the group? If so, how?
  
- 11) Did any coalitions form during the negotiation – between which parties? Did it help or hinder the negotiations?
  
- 12) How did the mediator manage these coalitions
  
- 13) Was there any caucusing – if so, how did that feel in terms of group dynamic – was it positive or negative?
  
- 14) Did your group achieve a sense of trust and rapport or was their mistrust and concealment during the negotiation?
  
- 15) If you established a sense of trust and rapport how was that achieved
  
- 16) How did your preparation help or hinder the negotiating process
  
- 17) How important were initial expectations of the parties. When initial expectations were unrealistic, what worked to rein them in?

- 18) Who led the brainstorming/option generation
- 19) What kinds of value-creating moves were most helpful?
- 20) What were the challenges/obstacles to consensus building and how did you handle them
- 21) What were the challenges of multi-party negotiation and how did you handle them
- 22) What were the most important lessons you learned from this exercise and if you had to do it again with the same group next week what would you do differently?

CLASS # 10 - WTC REFLECTION

- 1) Who set the agenda
- 2) Did you adhere to it during the negotiation or did it change over the course of the mediation
- 3) Was the agenda set in a way that assured you that your concerns in the negotiation would be addressed
- 4) What kind of negotiating style did you employ – did it change over the course of the mediation
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- 6) Did emotions come into play during the mediation – how were they dealt with and by whom
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- 20) What were the challenges/obstacles to consensus building and how did you handle them
- 21) What were the challenges of multi-party negotiation and how did you handle them
- 22) What were the most important lessons you learned from this exercise and if you had to do it again with the same group next week what would you do differently?

**END POINTS - FINAL QUESTIONNAIRE:**

- 1) to what extent do you believe “win/win” is a legitimate goal in a dispute settlement process?  
 Not legitimate                  Somewhat legitimate                  Legitimate                  Very legitimate
- 2) to what extent do you believe that “win/win” resolutions are possible?  
 Not possible                  Somewhat possible                  Possible                  Very possible
- 3) to what extent do you believe that you have the necessary skills to move a dispute toward resolution (defining “skills” as one or more of the following - the ability to effectively communicate; the ability to effectively problem-solve in a negotiated process with one or more parties; cultural fluency)  
 Not at all                  Somewhat                  Competent                  More than competent
- 4) complete this sentence: “my client will get the best deal if I think...  
 (A) only of his/her interests  
 (B) of everyone’s interests  
 (C) of no one’s interests but only focus on seeing that the law is upheld
- 5) in a conflict situation/setting are you able to recognize yourself, or a part of yourself, in the other disputant (ie., respond with empathy)  
 Not at all                  Somewhat                  Mostly                  Completely
- 6) to what extent do you feel it is important in reaching a resolution to understand the other person’s point of view  
 Not important                  Somewhat important                  Important                  Very important
- 7) do you believe it is important to take an aggressive stance on behalf of your client in order to negotiate a positive result for him/her  
 (A) yes     \_\_\_\_\_  
 (B) no     \_\_\_\_\_  
 Explain why in a few sentences.
- 8) to what extent do you believe your client expects you to be aggressive:  
 (A) in a negotiation  
 Not at all                  Somewhat                  Mostly                  Completely  
 Explain why in a few sentences.

(B) in a mediation

Not at all

Somewhat

Mostly

Completely

Explain why in a few sentences.

- 9) what metaphor best describes the way you see a disputing process:
- (A) a prize fight
  - (B) a chess game
  - (C) a poker game
  - (D) a war
  - (E) a collaborative musical ensemble
  - (F) a sports team
  - (G) other: \_\_\_\_\_
- 10) list 3 skills that you believe are the most important in order to be an effective 21<sup>st</sup> century conflict resolution practitioner.
- - 
  -
- 11) have you experienced a shift in your thinking about conflict and disputing since this class began?  
 Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, how? If no, why not?
- 12) were there any particular lessons/exercises that made an impact upon you – if so which one(s) and why/how?
- 13) what are your most important take-away learnings from this course and why

## APPENDIX F

### CECILIA STRING QUARTET – BIOGRAPHY

Taking their name from St. Cecilia, the patron saint of music, the **CECILIA STRING QUARTET** continue to win praise following their 2010 First Prize at the Banff International String Quartet Competition (BISQC). “The balance between expressiveness and interplay was almost dauntingly perfect,” wrote the Berliner Zeitung after a performance in the Konzerthaus Berlin. European tours have taken the four Toronto-based Canadian musicians to the Concertgebouw Kleine Zaal (Amsterdam), Beethoven-Haus (Bonn), Wigmore Hall (London), and venues in Italy and Belgium.

The Cecilia String Quartet (CSQ) formed while students at the University of Toronto. They soon won acclaim for their ‘extraordinary commitment and maturity’ (Montréal Gazette). Prizewinners at international string quartet competitions in both Osaka (2008) and Bordeaux (2010) and winners of a Galaxie Rising Stars Award in Canada, the CSQ went on to capture the First Prize at the BISQC. “With a stunning spirit of creativity that consistently celebrated risk-taking and discovery, the Cecilia Quartet impressed the distinguished jury above all others,” said the competition’s Executive Director, Barry Shiffman, when announcing the winners.

The CSQ now perform for leading presenters in Canada, the United States, and Europe. They are also Ensemble-in-Residence at the University of Toronto’s Faculty of Music, a position that has been made possible by a generous gift from BMO Financial Group. Their concert recordings have been broadcast on more than a dozen international public radio networks, including Australia, Canada (CBC/SRC), and Germany. In addition to performing, they have a four-CD contract with ANALEKTA. The first recording of music by Dvořák was released in March 2012. The second recording of music by Janáček, Berg, and Webern, was released in March 2013.

Highly committed to teaching and outreach, the CSQ have held teaching duties at Austin Chamber Music Festival (Texas), San Diego State University (California), McGill University (Québec), QuartetFest at Wilfrid Laurier University (Ontario), Summer String Academy at Indiana University and were recent Quartet Fellows at the Glenn Gould School of the Royal Conservatory of Music in Toronto. They have presented educational programs for elementary and high schools across Canada, the USA, Italy, and France. The CSQ actively seek to develop new audiences and their presentations have taken them to venues as varied as the Monarch School for Homeless Youth (San Diego) and the SLAC National Accelerator Laboratory (Stanford).

The quartet enjoys developing innovative programming. In 2009 they created BLiM (Breathing Life into Music), a month-long residency in France in collaboration with ProQuartet and the Centres culturels de rencontre (Cultural Centres – Historic Monuments) association in France and Europe (ACCR). In 2010, they collaborated with the Afiara String Quartet in premiering and recording compositions by eight composers of the Common Sense Composers Collective at The Banff Centre. In 2011, they collaborated with actor and director Alon Nashman in the multimedia production *The Snow Queen*.

Min-Jeong Koh plays on a ca. 1767 Joannes Baptista Guadagnini violin, and Sarah Nematallah plays on an 1851 Jean Baptiste Vuillaume violin, both on loan from an anonymous donor. Rachel Desoer now performs on the 1929 Carlo Giuseppe Oddone cello on loan from the Canada Council for the Arts. The quartet would like to thank the anonymous donor and the Canada Council for the Arts for their generous support.

### **Caitlin Boyle, Viola**

Caitlin Boyle is originally from Dundas, Ontario where she was born in 1980. She began playing the viola at age three at the Hamilton Suzuki School of Music. More recently she completed Masters of Music at San Diego State University, with Brian Chen in 2009, and a Graduate Diploma at McGill under the guidance of Andre Roy in 2010. In the fall of 2005 she participated in a tour of the East Coast of the United States with the Munich Symphony Orchestra under the direction of Phillippe Entremont. Her passion for chamber music was fostered at the Southern Ontario Chamber Music Institute and the Domaine Forget Chamber Music Sessions and continued to grow through the support of such artists and teachers as Richard Lester, Terrence Helmer, and the St. Lawrence String Quartet. She has been a member of the Cecilia String Quartet since spring 2006. In fall of 2010, she was admitted to the Doctor of Musical Arts Program at the University of Toronto, where she is studying with Kathy Rapoport.

### **Rachel Desoer, Cello**

Rachel is a cellist from Hamilton, Ontario. She graduated from Oberlin Conservatory in 2008 with a Bachelor of Music degree. Rachel also attended the Juilliard School, McGill University and rounded out her education at the Banff Centre. Most passionate about chamber music, she has had the opportunity to study with some of the greatest chamber musicians of our time (St. Lawrence, Orford, Vermeer, Borromeo, Brentano, Colorado and Takacs string quartets). Rachel has performed in a wide variety of ensembles and musical styles. As a soloist she has performed with the Oberlin Orchestra and the National Academy Orchestra. As an orchestral musician she participated in the Institute of Orchestral Studies of the National Arts Centre Orchestra. Rachel has collaborated with dancers, composers, jazz musicians, vocalists and filmmakers as well performing many solo recitals. She has had the good fortune to tour Europe and China and compete in the 5th Melbourne International Chamber Music Competition. She is honoured and excited to be the recently appointed cellist of the Cecilia String Quartet.

### **Min-Jeong Koh, Violin**

Korean-Canadian violinist Min-Jeong Koh joined the Cecilia Quartet in 2007. Before she decided to spend every day of her life with these fine three ladies, Min was a top prize winner of the 2006 Eckhardt-Gramatté Competition, where she was also awarded the Prize for Best Performance of the Commissioned Piece, a winner of the Galaxie-Rising Stars Program from the CBC, the Kathleen Parlow Concerto Competition, as well as the Felix Galimir Award for Chamber Music Excellence. More recently, Min was a winner at Canada Council's 2009 Musical Instrument Bank Competition for the Arts, which won her the use of a ca. 1767 Joannes Baptista Guadagnini violin.



As a soloist, Min has appeared with the Banff Festival Orchestra, Toronto Youth String Orchestra, North York Concert Orchestra, Mooredale Concerto Players, University of Toronto Symphony Orchestra and with Via Salzburg. She holds a Bachelor of Music from University of Toronto and a Masters of Music Degree from San Diego State University. She has also studied at McGill University and at the New England Conservatory of Music. Her dedication to performance and study led to an invitation to the national honor society, Pi Kappa Lambda. Min's former teachers include Lorand Fenyves, Erika Raum, Scott St. John, Mayumi Seiler and Hyung Sun Paik. When she is not with Sarah, Caitlin, or Rachel, Min can be found roaming the halls in University of Toronto, where she is pursuing a Doctor of Musical Arts Degree.

### **Sarah Nematallah, Violin**

Sarah Nematallah has been delighting audiences with her violin playing since the age of three. Ms. Nematallah has studied chamber music intensively with Lorand Fenyves, Terence Helmer of the Orford Quartet, and Roman Borys of the Gryphon Trio. In 2005 she was awarded the University of Toronto Felix Galimir Chamber Music Award as a founding member of the Cecilia String Quartet. Ms. Nematallah has been the recipient of numerous awards and scholarships to aid her in her studies at the University of Toronto, and in 2005 she was awarded the University of Toronto William and Phyllis Waters Graduating Scholarship, an award for a graduating student deemed by the university to have the greatest potential for making an important contribution to the field of music. Ms. Nematallah has appeared as a guest soloist with the Brampton Symphony Orchestra, Mooredale Chamber Orchestra and Cathedral Bluffs Symphony Orchestra on several occasions. She plays on the 1851 Jean Baptiste Vuillaume on loan from an anonymous donor.

## APPENDIX G:

### LINDA IPPOLITO – BIOGRAPHY

**Linda Ippolito** is well-known to national and international audiences as a solo pianist, vocal and chamber music collaborator, and as a duo pianist. In describing her playing, the Toronto Star wrote: *“the music flowed like a torrent shot through with vivid colour”* and Greg Finney exclaimed she *“was phenomenal all night!!!”* Linda has performed in concert, on radio and television, throughout Canada, the United States and Europe, appearing in recital and as a soloist with major orchestras, including the Toronto Symphony Orchestra and the Montreal Symphony Orchestras.

Throughout the 1980's Linda distinguished herself in competitions both at home and abroad, as a semi-finalist in the Montreal International, at the Tchaikovsky International in Moscow, the Sydney International in Australia, winning first prizes in the Canadian Music Competitions' International Stepping Stones division, the Montreal Symphony Orchestra Competition, among others. During the 1990's she began to perform in a collaborative capacity and today is a much sought-after as a collaborative pianist, partnering with such vocal luminaries as the late Victor Braun, Adrienne Pieczonka, Barbara Hannigan and Aprile Millo, among others.

A native of Toronto, Linda Ippolito attended the Royal Conservatory of Music as a scholarship student where she studied with Boris Berlin, Pierre Souvairan and Irina Kugucheva. After graduating from the Royal Conservatory, Linda was accepted to both the Juilliard School of Music and the Mannes College of Music in New York City. She ultimately completed her undergraduate studies at the University of Toronto's Faculty of Music with Patricia Parr, also studying accompanying and chamber music with William Aide and Greta Kraus. She graduated from the University in 1988 on the Dean's Honour Role with the W.O. Forsyth Award.

Linda holds Bachelor of Laws, a Master of Laws in Alternative Dispute Resolution, and a Doctor of Philosophy in Law from Osgoode Hall Law School, York University. While at law school she founded the Osgoode Hall Musical Society, staging musical theatre revues and chamber music recitals. In 1995, she co-founded “Blue Rider Musical Productions” producing and performing in cabaret-style recitals in Toronto. Linda is a senior partner in the Toronto-based firm of Sheridan, Ippolito & Associates with a practice focused primarily in family and estates law. She is a certified collaborative family practitioner and mediator, and has taught a number of subjects, including negotiation theory and practice, to law students, lawyers and non-legal professionals, at Osgoode Hall School, Queens University, and Osgoode Professional Development executive programs, among others. She is the founding principal of the consulting firm, “Ensemble Solutions Inc.”

Her passion lies in the intersection between music, problem-solving, conflict resolution and peacebuilding. Both her Masters' thesis and her PhD dissertation explore collaborative music-making as an innovative approach to negotiation, problem-solving, conflict resolution and peacebuilding from a practical and pedagogical perspective.