



Mediating Child Protection Cases

by Joyce M. Young, C. Med., FM(OAFM)

The promise of child protection mediation is the promise of protecting children at risk and creating a climate in which child protection workers can use their authority in a way that does not irretrievably damage their relationship with clients. It is the promise of giving parents and children a stronger voice in their future. It is the promise of protecting children and supporting family integrity at the same time. What will it take to realize the benefits of ADR in this area? This article sets child protection mediation in context and identifies the challenges that lie ahead.

Background

Ontario's Children's Aid Societies (CASs) carry the onerous duty of protecting children at risk of harm. This difficult task is amplified by the fact that many of the families who come to the attention of CASs are the disenfranchised who suffer from poverty, domestic violence, substance abuse, discrimination or social isolation.

In addition to promoting "the best interests, protection and well being of children", *The Child and Family Services Act*, directs CASs to support "the autonomy and integrity of the family unit" (section 1. (2) 1.) and to take "the least disruptive course of action that is available" (section 1. (2) 2). This is a challenging duality, to say the least.

The Act provides CASs with two tools to carry out this work: a range of supports for parents and families, and the authority to intervene when

parents can't or won't cooperate. It's a sort-of "good cop - bad cop" approach. The "good cop" can offer such things as parenting education, rehabilitation programs for substance abuse, and access to subsidized child care. The "bad cop's" interventions range from a supervision order, which gives the CAS the right to monitor the family and make unannounced visits, to an apprehension, in which the CAS removes the child from the home. All of the interventions must be court sanctioned within prescribed timelines.

Children's Aid Societies have long voiced concern about this and other conflicts inherent in the current system. The Ontario government's response, *Child Welfare Transformation 2005*, is being implemented through a package of reforms contained in Bill 210.

Child Protection Mediation

Now, there is the possibility of a third voice at the table, that of a child protection mediator. Section 20.2(1) of the *Child and Family Services Statute Law Amendment Act, 2006* states "If child is or may be in need of protection under this Act, a society shall consider whether a prescribed method of alternative dispute resolution could assist in resolving any issue related to the child or a plan for the care for the child." Alternative Dispute Resolution in this instance includes: interest-based mediation, family group conferencing and talking circles in Aboriginal communities.



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The Ministry's policy directive to the CASs took effect on November 30, 2006. The *Child and Family Services Act* as amended by Bill 210 identifies the following occasions where a prescribed method of ADR must be considered:

- ...resolving any issue related to the child or a plan for the child's care (section 20.2(1))
- The court ... with the consent of the parties, may adjourn the proceeding to permit the parties to utilize a prescribed method of ADR to attempt to resolve the issues in dispute (section 51.1)
- On applications to vary or terminate an openness order before or after an adoption (sections 145.2 (7) and 153.1(10)).

(Ministry of Children and Youth Services Policy Directive CW 005-06)

In all situations, participation in ADR is with the consent of the parties and can be terminated at any time. A designated Mediator must conduct the ADR in a neutral location and it must not be arbitration. To qualify, mediators must pass the 3-day Advanced Certificate Course in Child Protection Mediation designed by Justice June Maresca, Genvieve Chornenki and Maggie Smith. To be eligible, mediators must be Accredited Family Mediators with the Ontario Association of Family Mediation (OAFM) or equivalent. OAFM has mounted a Roster of qualified Child Protection Mediators. You can view the Roster at www.oafm-cpmed.ca. The Ministry has directed the Children's Aid Societies to use only mediators on that Roster.

The first round of the CP Mediation training was delivered in Ontario last fall. On December 12, 2006, the Board of ADRIO created a new designation, which will be available to our members in 2007: Certified Family Mediator (C.F.Med.) (Details on requirements, fees and application procedures will be posted on the ADR Institute website shortly.)

The CAS's assessment that a child is in need of protection is *not* on the table in mediation. The purpose of mediation is to directly address the child protection concerns and identify the best option for the child's care. In the case of a supervision order, the parties may identify additional safeguards that need to be put in place for the child, goals for the parents and resources to assist the parents. In an application for crown wardship, the parties to mediation might turn their minds to identifying members of the extended family who could care for the children. Under the new "openness agreements", parents could also work out a plan for continued contact with their adopted children. Parents who have had a voice in designing a plan that recognizes their unique circumstances will be more likely to implement the plan. For example, I mediated a case involving a mother in rehabilitation for her addiction to crack cocaine. I helped both parents and the CAS worker design an agreement which gave the mother increasing access to the children based on her success in reaching the milestones in her treatment program. The agreement was worded to express a positive expectation about the mother's recovery, something that was very important to her.

The Challenge

There is still much work to be done. We cannot assume that the many players in this complex system will leap at this opportunity. In his survey of pilot programs in Canada, CAS lawyer, now mediator, Warren Morris found that in every instance referral rates to ADR were very, very low. (Unfulfilled Promise: The Underutilization of Child Protection Mediation. LLM-ADR Major Research Paper, 2001.)

If the promise of mediation is to be fulfilled this time around, CAS workers, families, lawyers and mediators need to address issues of mutual concern. What are the criteria that CASs could use to select cases to send to mediation? What are the limits to confidentiality and how can we ensure that clients understand them? How will the Office of the Children's Lawyer be involved? How will cultural and language differences best be served? How do we work together, as a community of interest, to ensure that the promise of child protection mediation is a promise kept?

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