

London Child Protection Mediation Project

FUNDERS:

Legal Aid Ontario
Department of Justice
Ministry of Community,
Family & Children's Services

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Community Update

The Department of Justice in Ottawa, Legal Aid Ontario and the Ministry of Community, Family & Children's Services have joined together to fund a pilot project of mediation in the child protection context.

The Children's Aid Society of London & Middlesex was chosen as the venue and the Centre for Children and Families in the Justice System (London Family Court Clinic) is monitoring the process and outcome of the pilot. The project got underway in the fall of 2002 and will conclude in 2005 – a one year extension from the original time line. Other partners are the Ontario Association of Children's Aid Societies, the Office of the Children's Lawyer, and the Ministry of the Attorney General.

Focus is on cases involving supervision orders (original application or status review) where there is a disagreement between the caregiver(s) and the Society regarding the Society's application. The process and outcomes of 25 mediated case will be compared with those of 25 similar cases that proceed normally through the court process (the "comparison group"). Specifically, we will compare case outcome, satisfaction of all parties, time lines, and costs.

This document is an update on project activities for this first year.

Key activities in this year include finalization of intake criteria, definition of referral process, design of research instruments, survey of CAS staff about base-line opinions of mediation, hiring and training of five mediators, and design of draft mediation contract. In addition, a great number of presentations and media interviews were conducted to familiarize all involved professional communities with the project.

Referrals:

Referrals can come directly from families, from lawyers, or from CAS child protection workers. A majority of cases have been identified by the legal department at the CAS, flagged for review when a court application is launched for a new supervision order or a status review. As of September 5, 2003, 129 court applications for supervision orders have been referred to the Project Coordinator, 57 of which were not processed further once it was ascertained that the applications were proceeding on consent.

Intake Criteria:

Each case is vetted against the inclusionary and exclusionary criteria put in place at the beginning of the project. Of the 72 processed cases, 40 were

suitable for mediation and 30 were excluded, as illustrated in Figure 1. A case is excluded if there is:

- an immediate risk to the child
- concurrent criminal proceedings
- a party without the capacity to participate in mediation (e.g., cognitive delay, a serious and unmedicated psychiatric illness, active substance abuse)
- on-going spousal violence
- a court-ordered assessment under way

The majority of excluded cases were inappropriate because of serious and untreated mental health concerns for at least one party (6), concurrent criminal charges (6), severe and on-going domestic violence (6), or active substance or alcohol abuse (5). Less common reasons were cognitive delay, apprehension of children leading to wardship applications, and movement of clients out of the jurisdiction.

In 11 cases, at least one party decided against participation, disqualifying the case from mediation. In three cases, at least one party wanted a trial. In the other cases, most people were not interested in the mediation, the research component, or either.

Comparison Group:

Eighteen cases involving 42 children were inducted into the comparison group between November of 2002 and early February of 2003. Ten of these cases have concluded – one after trial – and the other eight are at various stages of the pre-trial process or awaiting an assessment.

Mediation Group:

Mediation has now been available for seven months. Eight cases involving 14 children have joined the mediation group since February of 2003. Of these, six have completed the mediation process but only two have both ended in an agreement and been finalized in court so far.

Mediation Process:

If an agreement is reached, copies are distributed to respective legal counsel for review. Unrepresented individuals are encouraged to consult duty counsel.

Mediation can result in an agreement about the length and terms of the supervision order or it can lead to a voluntary service agreement. The CAS will either withdraw the application (in the latter case) or revise the plan presented to the court to reflect the terms of the agreement.

If no agreement is reached, the mediation terminates and the case proceeds through the normal court process.

London Child Protection Mediation Project

Interim Observations:

As cases are finalized through the court, parties are interviewed by the researcher to ascertain their perceptions of the process. This is true of both the comparison and mediation groups. Almost half of the comparison cases – inducted into the project almost one year ago – are still not resolved. The length of time to achieve final disposition at court is somewhat greater than expected and will necessitate a longer follow-up phase.

Both the clients and the CAS child protection workers who participated have given positive feedback about the mediation process.

We have come to realize how important it is to have a Coordinator to oversee the time-consuming process of vetting referrals and liaising with the various parties and their legal counsel, especially in cases with multiple parties around the table.

Once families have decided to participate, mediators are assigned immediately from the roster of five and the mediation process is starting in a timely way.

The project is able to assist with transportation and costs for

child care which have been utilized by a number of families. This seems to be an important way to encourage attendance. Even so, there have been several missed appointments which have delayed the mediation process.

Next Steps:

The number of suitable cases is somewhat lower than expected. An agreement was sought with funders to extend the length of the project for one year, to March 2005. We will continue to process referrals and hope to have 25 appropriate cases by the summer of 2004.

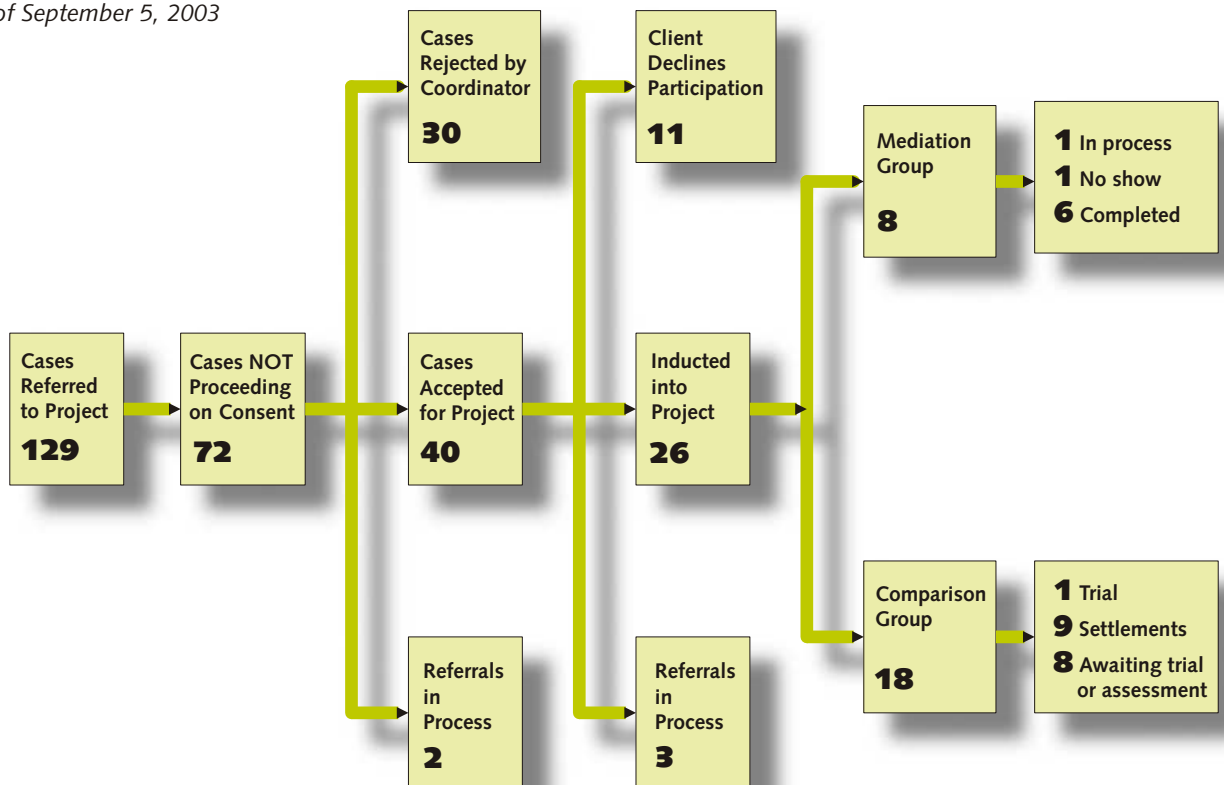
Data are collected on an on-going basis to measure time, costs, and satisfaction, and cases will be tracked for one year after disposition of the Society's application.

We are investigating ways to shorten the time between the point when a mediated agreement is reached and when the case is disposed of in court.

Both the local and provincial advisory committees are monitoring the progress of the project. Another community update will be produced in the spring but both the Project Coordinator and the Research Coordinator are available to answer questions in the interim.

Referrals to Mediation Project

as of September 5, 2003



A web page on the project with more information about the research component and links to other sources of information can be found at:

www.lfcc.on.ca/lcpmp.html