

London Child Protection Mediation Project

FUNDERS:

Legal Aid Ontario
Department of Justice
Ministry of Children and Youth Services

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Community Update

Legal Aid Ontario, the Department of Justice in Ottawa, and the Ministry of Children and Youth Services have jointly funded 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 the spring of 2005. 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.

The Project has two components. In the *implementation* component, the use of mediation in London/Middlesex was operationalized by efforts that included definition of a mediation model, selection of inclusionary and exclusionary criteria, outreach to the legal community about the project, hiring and training of mediators, definition of a referral protocol for appropriate CAS cases, and case management of referrals. Focus is on cases involving supervision orders (original application or status review) where there is a disagreement between at least one party and the Children's Aid Society (CAS) regarding the Society's application.

In the *research* component, the process and outcomes of 20 mediated cases are compared with those of 20 similar cases proceeding normally through the court process. All applications for the "comparison group" were launched in the period immediately before the advent of mediation. We will compare case outcome, satisfaction of parties, time lines, and costs. Cases are followed for one year after the final order.

This document is a brief update on project activities. A final report with all empirical findings and recommendations will be available in April of 2005.

Mediation Services

Intake of new cases for mediation has now ceased. Mediation was available for eligible cases from February of 2003 until April of 2004. During that time, 20 cases were deemed eligible for mediation and attracted the consent of all parties to participation in mediation. This number falls short of the 25 envisioned in the original proposal. The low volume of suitable cases, combined with a lengthier than anticipated time between first appearance and final court order, necessitated an extension of the research component to accommodate the follow-up. The cost of mediation and associated expenses (e.g., child care, transportation) were covered by the project funding.

Study Sample

The 40 cases under study involve 74 children and 67 parties. All 40 cases involve either an initial application (one third of cases) or status review of a supervision order where at least one party is opposing the CAS application. Reasons for opposition can focus on the length of the proposed order, one or more conditions, and/or the need for a supervision order. In the latter case, at least one party is typically opposing the proposition that the children are, or continue to be, in need of protection. This is an important point, as it turns out, because of the frequency with which the issue of "need of protection" is explicitly or implicitly brought to the mediation table.

Referrals

Referrals came directly from families, from lawyers, or from CAS child protection workers (CPW). A majority of cases were 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. By the close of intake, 222 court applications for supervision orders were referred to the Project Coordinator, 105 of which were not processed further once it was ascertained that the applications were proceeding on consent.

Intake Criteria

Each case was vetted against the inclusionary and exclusionary criteria put in place at the beginning of the project. Of the 117 processed cases, 58 were suitable for mediation and the remainder were excluded. 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 or past violence that compromises the ability to negotiate
- a court-ordered assessment under way

The three most common reasons for exclusion were addiction issues, concurrent criminal charges, and spousal violence.

Case Attrition

Case attrition has been an enormous issue during the Project, both because of case volume for mediation and because of the significant effort required to vet cases and secure consent from all parties (CPWs, family parties, and legal counsel). The difficulty in finding appropriate cases has extended the Project for one extra year and reduced the hoped for number of mediated cases

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from 25 to 20. The disposition of the 222 referred cases is illustrated in Figure 1. To simplify the numbers, almost half of supervision order applications in London Middlesex proceed on consent. About half of the other cases will be disqualified from mediation (using the criteria put in place at the outset of the Project). In almost half of qualifying cases, at least one party will decline the opportunity to use mediation.

Reasons for Declining Opportunity to Mediate

In 14 of the 32 cases accepted for mediation after the vetting process, at least one party declined the opportunity to use mediation. As a voluntary process, all parties must agree to mediate before the case can be deemed appropriate for mediation. In six of the 14 cases, at least one party and/or their legal counsel preferred to continue through the court process, usually because the chances of prevailing in a trial were strong. In three cases, at least one party could not be contacted directly to secure their consent. This was true despite numerous telephone calls, visits to the home, and efforts by the child protection workers to speak with the clients about mediation. In two cases, a settlement was thought likely in the near future and in one case a party who lived outside Middlesex County could not easily attend mediation in London. In one case, a disinclination to be involved in a research project was the reason given and in another case no reason was offered. While not the stated reason for declining the option of mediation, one family could not speak English and were obviously reluctant to participate in a process where private family matters were discussed.

Reasons for Declining Mediation

- declined by default (failed to return calls etc.)
- preference for trial by at least one party
- lawyer recommended against mediation
- settlement on horizon
- London too far for out-of-area parties
- cultural/ language barriers

Next Steps

As cases reach final order, data are collected to measure processing time, costs, and satisfaction of parties (families, CAS participants and mediators). Besides the costs borne by the CAS and the cost of the mediation, we are tracking the costs of legal aid certificates, use of duty counsel, estimates of the cost of court time, the costs borne by the office of the Children's Lawyer, and costs to the families, which include privately retained lawyers, time off work to appear in court, child care and transportation.

All 40 cases will be tracked for one year after final order. The intent of the follow-up is to discern the durability of measures put in place as a result of mediated agreements. Also to be measured are variables such as: status of case with the CAS at six and 12-months post-disposition, subsequent reports of

maltreatment, subsequent apprehensions of children, any escalation in intrusiveness of CAS involvement, decisions made at expiration of current supervision order, and major changes to the family.

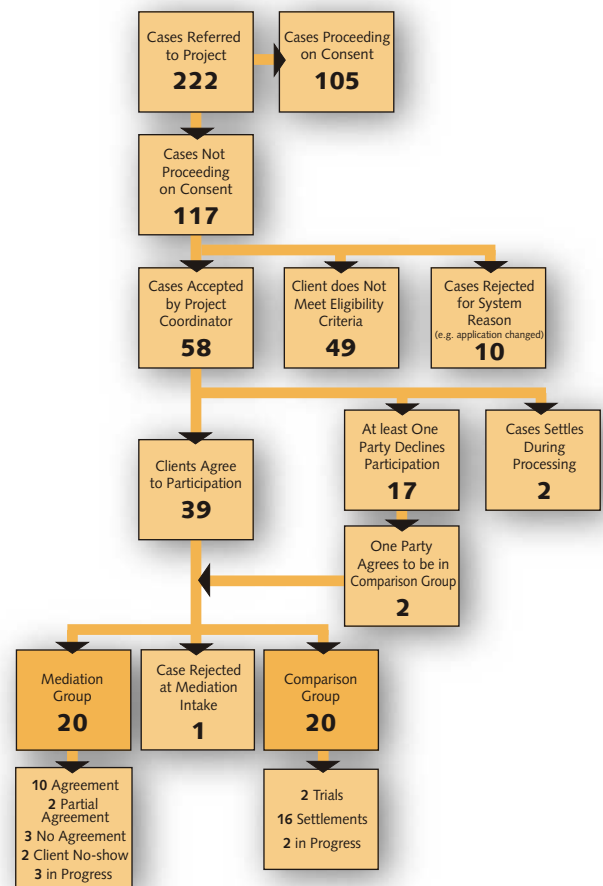
In addition to these case-specific strategies, the following tasks will occupy the research team over the next year:

- focus groups with the local legal community and judiciary
- solicitation of opinions of key stakeholder groups in Ontario and at the national level
- survey of the opinions of local CAS staff about mediation in general
- update of literature review on child protection mediation
- analysis of all data collected
- production of final report

The final report and recommendations will be available in April of 2005.

Referrals to Mediation Project

(October 2002 to April 2004)



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