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Connecting Children's Aid
Societies with ADR Professionals
in the South West Region of Ontario



Child Protection Mediation

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This Child Protection ADR Initiative is Funded by:
Ministry of Children and Youth Services

ADR-LINK connects parties in dispute with an independent mediator or family group conference coordinator. None of the mediators or family group conference coordinators are employees of the Centre for Children and Families in the Justice System (London Family Court Clinic, Inc.) or are affiliated with the Centre. However, all mediators are certified in child protection mediation by the Ontario Association for Family Mediation and listed on its roster and all family group conference coordinators have been trained and mentored through the George Hull Centre and listed on its roster. By participating in the ADR-LINK service, you acknowledge that the ADR service is not being provided by the Centre, and agree to hold harmless ADR-LINK and the Centre for Children and Families in the Justice System (London Family Court Clinic, Inc.) for any and all claims, actions, suits, etc. brought against ADR-LINK directly or indirectly.



Child Protection Mediation (CP)

can be used when a family does not consent to a plan for a child's care that will form the basis of a court application put forward by the CAS. It can also be used if a court application is contemplated and it is clear the matter would not proceed on consent. That application could involve a supervision order, custody order, wardship or a potential adoption plan or the openness arrangement for an adoption.

The family and a representative of the CAS meet together in the presence of a CP Mediator, who is a neutral person with no power to make decisions.



What does a CP Mediator do?

First, let's be clear about what the CP Mediator does NOT do. The Mediator does not decide what happens. The Mediator's job is to help the family describe the parts of the plan they oppose and explain why. The CAS representative - usually the worker assigned to the case - presents the CAS viewpoint. Maybe by having this discussion, they can find a new plan that is acceptable to the CAS and to the family.

Do the children come to the mediation?

No. Some teenagers may want to attend but this is not common. The Mediator helps you decide who will be at the mediation table.

So the family doesn't need a lawyer?

No, that is not true. Everyone who uses CP Mediation should have a lawyer or at least ask a lawyer to review any mediated agreement before signing it.

What is a "mediated agreement"?

This is a document written by the CP Mediator outlining what everyone agreed to during the mediation. Each person takes a copy of the agreement for review by a lawyer.

Is there a cost?

No. Costs associated with the mediation process are covered by the Ministry of Children & Youth Services.

What issues CAN be mediated?

Many things including conditions of a supervision order, length of a court order, specifics of the service plan, child's placement, client/worker conflict, custody or access, and features of an adoption.

What issues CANNOT be mediated?

1. You cannot use Mediation if one or more key party does not agree to mediate or feels forced into it.
2. Mediation cannot be used to determine if a child is "in need of protection."

In other words, all parties must want to try Mediation and all parties must accept that the CAS should be involved with the family.

Why use CP Mediation?

When contested cases go to court, they take a long time to finish and can cost a great deal in legal fees and time off work. Children may be left in limbo, not knowing what the future holds for them. Also, the process becomes a competition where only one side can "win." When a judge decides the outcome after a trial, someone always walks away unhappy with the outcome.

Mediation helps the parties “have their say” and may result in a workable plan for the children to keep them safe. It can also improve the relationship between a CAS worker and the family which, in turn, benefits the children.

Is the process fair to the families?

To ensure fairness, these are important points:

- the Mediator is an independent professional who does not work for the CAS
- the Mediator has no power to make decisions about the case
- the Mediator is not paid by the CAS and the Mediator assigned to the case is not selected by the CAS
- all Mediators listed on the ADR-LINK roster have satisfactorily completed training in Child Protection Mediation and are certified by the Ontario Association for Family Mediation
- certified CP Mediators agree to follow the Code of Professional Conduct of the Ontario Association for Family Mediation (which you can find on the OAFM website) and they carry liability insurance.
- any party can stop the Mediation at any time (or withdraw his or her participation)
- all parties are encouraged to review any mediated agreement with their lawyers before signing it

Also, if you believe the Mediator has a bias or conflict, you can ask for a different Mediator to be appointed.

How long will this process take?

The CP Mediator needs time to arrange a meeting of all the parties. After that, there are three parts. First, all parties meet for one or maybe two meetings. If an agreement is reached, then each party reviews the draft agreement with a lawyer. Third, everyone comes back to sign the agreement. Ask the CP Mediator for an estimate about how long this process will take.

Can my lawyer be there?

No, in most cases lawyers will not attend. That means neither the lawyer who acts for the CAS nor any lawyers who act for family parties. One purpose of CP Mediation is to help everyone have an open discussion outside the court environment. However, a lawyer from the Office of the Children's Lawyer who represents the child or children may be asked to attend.

If an agreement is reached, each party is given a written copy to show their lawyers.

What if I say “no” to Mediation?

No one can be forced to do Mediation. You are free to decline the option.

What if I change my mind?

It is important that everyone at the mediation table wants to be there. Some people think that once you start mediating, you have to keep going until everyone agrees about something. That's not true. It's your right to stop at any point, even if that means standing up and leaving the mediation meeting.

How do I refer a case?

Anyone can suggest a case for CP Mediation, including lawyers and family parties named in the court application. However, the referral to ADR-LINK comes from the CAS.

What are the steps in the referral process?

1. Seeing if the case qualifies for ADR. The CAS does this.
2. Securing consent of key parties to make a referral to ADR-LINK. The CAS does this.
3. Consulting the Band if the case involves a First Nations family. The CAS does this.
4. Notifying the Office of the Children's Lawyer. The CAS does this.
5. Making a referral to ADR-LINK. The CAS does this.
6. Matching an ADR professional from the ADR-LINK roster to the case. ADR-LINK does this.
7. Setting up and conducting the mediation. The CP Mediator does this.
8. Getting everyone's feedback and opinions about the process. ADR-LINK does this.

For more information on how to make a referral, see the pamphlet called Accessing ADR-LINK.



What if the CP Mediation doesn't end in an agreement?

If no agreement is reached, the case continues through the court system, just like before it was referred for mediation. Sometimes the parties agree on a few issues in mediation and the others will be presented to the judge for resolution.

What if I'm not happy with the process?

ADR-LINK asks for your opinions and feedback when the process ends. Having your feedback helps us all continually improve the process for users of the service. Some participants may want to voice their concerns directly to the CP Mediator. If you believe the CP Mediator violated the Code of Professional Conduct of the Ontario Association for Family Mediation, you can write to the President of that organization. See their web site for more information (www.oafm.on.ca). You can also ask your lawyer for advice.

Qualifying for Child Protection Mediation through ADR-LINK

Like other types of ADR, CP Mediation could be used in many cases. However, to qualify for the MCYS funding available through ADR-LINK, there must be a clear decision made by the Society that a court intervention is being considered, is pending or is in process. ADR-LINK serves the nine Societies in the South West Region of Ontario, specifically:

- Children's Aid Society of the County of Bruce
- Chatham-Kent Children's Services
- Children's Aid Society of London & Middlesex
- Children's Aid Society of Owen Sound & the County of Grey
- Children's Aid Society of Oxford County
- Family & Children's Services of St. Thomas & Elgin County
- Huron Perth Children's Aid Society
- Sarnia Lambton Children's Aid Society
- Windsor-Essex Children's Aid Society



That court intervention could be for any of these reasons:

- Supervision order (new application or status review)
- Society wardship
- Crown wardship
- Adoption openness arrangement

The court application is contested by one or all parties (or will be when it is launched).

Notice is given to the Office of the Children's Lawyer that a referral for ADR is being made.

All key parties freely consent to consider ADR.

All parties understand they can terminate the ADR process (or their role in it) at any time.

For more information

or to make a referral, contact:

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Pamphlets in this series are:

- **Child Protection ADR**
- **Family Group Conferencing**
- **Child Protection Mediation**
- **First Nations ADR/ODR**
- **Accessing ADR-LINK**