

# Discussion Guide for Communities Implementing Child Protection Mediation

The Community Checklist from  
the London Child Protection  
Mediation Project



Funded by  
Legal Aid Ontario,  
Department of Justice Canada,  
and Ontario's Ministry of Children  
and Youth Services

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The London Child Protection Mediation Project is a collaborative initiative of the Centre for Children & Families in the Justice System and the Children's Aid Society of London & Middlesex, funded by Legal Aid Ontario, Department of Justice Canada, and Ontario's Ministry of Children and Youth Services.

For more information on the LCPMP, including all findings and recommendations, see Alison Cunningham & Judy van Leeuwen (2005). *Finding a Third Option: The Experience of the London Child Protection Mediation Project*. London ON: Centre for Children & Families in the Justice System.



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**OVERVIEW**

The London Child Protection Mediation Project offered our community the opportunity to explore how child protection mediation might help resolve disputes between a child-protection authority and its clients.

Disputes over court applications can become bogged down in the court process, delaying resolution, leaving children in limbo, elevating costs, and adding to the spiralling number of child welfare cases in the family courts.

At the Children's Aid Society of London and Middlesex, where mediation was tested on a pilot basis, about half the court applications for supervision orders are resolved relatively quickly, with consent of all parties. Even the majority of initially contested cases - probably about 30% of total applications - are resolved prior to a settlement conference. What about the remaining 20%?

We used a sample of 20 such cases to find out what is typical, in terms of system processing patterns, satisfaction of parties, and costs. We compared them to 20 cases where all parties agreed to try mediation. Our observations, results and 17 recommendations are detailed in a full report titled **Finding a Third Option: The Experience of the London Child Protection Mediation Project**.

As the government of Ontario is poised to amend the **Child & Family Services Act** (CFSA) to encourage the use of alternative dispute resolution, interest is sure to grow in how to develop this and other ADR strategies. Indeed, child protection mediation may well co-exist in many communities alongside other ADR options such as family group conferencing.

The intent of the LCPMP was never to give a "thumbs up" or "thumbs down" to the concept of child protection mediation. We have adopted instead a lessons learned approach, hoping to provide guidance to other communities where child-protection mediation will be used. We offer three overarching conclusions: mediation is a viable "third option" for contested court applications in the child welfare system; cases must be selected carefully; and, the best question to ask is not "if" we do mediation, but "how" we do it.

**MEDIATION IS A VIABLE "THIRD OPTION"**

When presented with a court application, a party in a child welfare matter has essentially two options: consent, or oppose the application in court. This is true whether they disagree with a few words in the historical overview or even one of the proposed conditions. In speaking with parties who contested applications, we learned that many people were not actively seeking their "day in court." They were taking the only option provided to them. When presented with mediation as a third option, many were willing to try. Providing a third option to parties will help address, but not solve, the rising volume of child welfare cases in the family court system.

**SELECT CASES PURPOSEFULLY**

At the same time, mediation is not a neutral intervention. Some may be tempted to take the view that, "there is no harm in trying mediation. If it works, it works. If it fails, we just move on." Clearly, based on our findings, mediation can work extremely well and leave everyone satisfied with both process and outcome. That is not the inevitable result, however. We also saw cases where mediation lengthened time to resolution, triggered a deterioration in the worker/client relationship, and drained more resources from the CAS. Cases should be selected for amenability to this particular ADR technique (as opposed to others) and screened for likelihood of success. Experience over time will help us learn how to accomplish this.

## **“HOW” WE DO MEDIATION IS IMPORTANT**

Like any other intervention, mediation is not inherently good or bad, effective or harmful. What is important is HOW we do mediation. At a system level, experience in other jurisdictions has shown that mediation can take off and be successful, or it can fizzle. What is the difference? Attention to the who, what, where, when and why of mediation - at the outset - may pay off in the long run with a mediation strategy that meets local needs. Child protection mediation is different than the mediation we are used to and taking the time to work through these issues will pay off. Ultimately, after our experience in London, we cannot recommend one model of mediation appropriate for anywhere in Ontario or Canada. Instead, we have created this checklist as a tool for communities contemplating the adoption of mediation. It can facilitate a group discussion, or perhaps many discussions, on how child protection mediation can be used to the greatest effect in your community.

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## **COMMUNITY CHECKLIST**

Child protection mediation can take many forms and its operation will ideally accommodate local needs and access to resources. There is no “one-size-fits-all” strategy. Each community planning the use of mediation is encouraged to review the key decision-making points outlined below. The result will be a mediation plan tailored to local contingencies with the input and endorsement of all stakeholders. Maybe the program will change over time, but starting this way ensures everyone has the same goals and expectations at the outset.

### **WHO PARTICIPATES IN THIS PROCESS?**

All stakeholders can/should have representation, including but not limited to these groups:

- the judiciary
- Legal Aid Ontario
- CAS senior management
- CAS front line
- Ministry of Children & Youth Services
- a Children's Lawyer
- parent's counsel / member of the family bar
- family-law duty counsel
- mediators
- Band representatives
- advocacy agency for abused women
- mental health / community living agencies
- addictions services
- any funder(s) not included above
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** Study after study talks about the importance of outreach and buy-in. One of our 17 recommendations is that each community form an advisory committee. Some mediation programs have not been sustained over time, so getting off on the right foot - with shared expectations and assumptions - will maximize chances for long-term success. In a successful pilot in Surrey, British Columbia, local stakeholders spent one year in the planning process.

The questions below are organized as who, what, where, when and why but we begin by suggesting that stakeholders articulate and discuss their assumptions and expectations.

## ASSUMPTIONS

To what extent do local stakeholders share assumptions about why mediation should be introduced here? To what extent do local stakeholders share expectations about what mediation can accomplish? Here are some examples of issues for discussion.

- delay / backlog in CFSA court cases is problematic here
- mediation is not a panacea to resolve court backlog and spiralling legal costs
- mediation is not a panacea to reduce worker/client conflict
- not all cases are amenable nor appropriate for mediation
- process is as important as outcome
- ADR techniques are viable alternatives to adversarial court proceedings
- mediation is one method of ADR and it can co-exist with others
- mediation is a voluntary process
- training is important
- outreach is important
- access to legal counsel continues to be necessary in mediation
- some CAS clients have vulnerabilities that need to be accommodated
- the legal process outlined in the CFSA is difficult for many people to understand
- the power imbalance between a CAS and a client is dramatic and extremely difficult to level
- safety of children is the paramount concern
- the child(ren)'s voice should be heard in the process
- other: \_\_\_\_\_
- other: \_\_\_\_\_

Consensus may not be required because different people can endorse mediation for different reasons. However, stakeholders should probably be in agreement that there is a problem needing to be addressed (e.g., court backlog, spiraling legal costs, overly litigious mentality, high rates of worker/client conflict, etc.) and that mediation might be “value-added” for your community and its pursuit of solutions.



**Just a thought:** before you work through WHO, WHAT, WHERE and WHEN, jump ahead to WHY, to discuss which of the many goals of mediation are shared and/or endorsed by stakeholders.

**WHO?**

These issues address role clarification and division of responsibilities.

**WHO REFERS?**

Who will identify cases which might be appropriate for mediation?

- judges
- child protection workers
- CAS supervisors
- legal counsel representing CAS clients
- CAS legal staff / department
- CAS clients /self-referral
- Children's Lawyers
- Band representatives
- mediation project staff / coordinator
- other: \_\_\_\_\_
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** Many (or most) mediation projects are under-subscribed in that referrals tend to be low. In part, that reflects the fact that not all cases are appropriate for mediation. It is also true, however, that all people in a position to refer cases should understand the referral process, feel empowered to make referrals, and know how to initiate a referral. Also, be aware of how some "referrals" can look like "mandatory requirements" to parties, as when a judge suggests mediation. In two provinces, mediation is overseen by program staff - employees of the provincial justice ministry - who review all court applications and seek the participation of parties in appropriate cases. They may be housed at the courthouse and some will themselves undertake the mediation.

**WHO QUALIFIES?**

Who among CAS clients will qualify or be disqualified from mediation?

Potential inclusionary criteria:

- all parties agree voluntarily
- all parties understand the mediation process
- there is an issue under dispute by at least one party
- there is at least one issue that is amenable to mediation
- no settlement is on the horizon
- all parties have the capacity to participate
- mediation will not jeopardize child safety
- the time to mediate is available vis-à-vis time limits in the CFSA
- no other available avenue is more appropriate (e.g., other ADR techniques such as family group conferencing)
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** In some American jurisdictions, mediation is mandatory. This may violate a key premise of mediation which is that participants have greater ownership over the process and mediated outcome. Also, the likelihood of reaching a viable settlement and gaining compliance with its terms may be lower if participants feel coerced. It can be argued that CAS clients are never entirely free to decline so efforts to secure voluntary consent must ensure parties believe there is no penalty for declining to use mediation. Experience over time will help us understand which cases are amenable to mediation and which are better served by other ADR techniques such as family group conferencing (and which cases need to be processed through court).

Potential exclusionary criteria:

- developmental delay
- unmedicated psychotic illness
- other mental disorder / disability affecting capacity
- active addiction / untreated addiction
- outstanding / pending criminal charge(s) for offence(s) relating to the children
- family violence
- learning disabilities that impair ability to track verbal discussions
- parenting capacity assessment currently under way
- clinical depression / suicide risk
- legal counsel recommends against mediation
- "difficult personalities" unlikely to come to an agreement
- cases that do not have a reasonable probability of agreement
- parents who are minors
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** The success of a mediation program depends upon selecting appropriate cases and screening out those with low probability of success, in which participants are not "free to bargain," and in which participants may be vulnerable (e.g., to woman abuse). Parties must have the cognitive capacity to participate in a discussion often involving legal issues, capacity to understand the implications and consequences of an agreement (e.g., when a mediated agreement assumes an admission that a child is in need of protection, when an agreement will form the basis of a court order), and capacity to understand their responsibilities in following through. Ideally (but not inevitably), participants should be able to propose a plan and be able to articulate their opinions and reasons for opposing the CAS plan. Certain forms of mental illness (but not all) can mitigate against capacity to participate. New English speakers will require interpreters and also extra care in explanation of the mediation process and legal implications. For some issues, it is not capacity per se but concerns over compliance and follow through with agreed upon conditions (e.g., serious addictions, clinical depression). While support for the idea of screening is near universal, some worry that guidelines could be applied too rigidly. For example, it may not be necessary to routinely disqualifying all cases with domestic violence, if a woman's safety and interests can be protected (e.g., mediate in separate rooms, permit victim to have advocate in the room). Nevertheless, processing inappropriate cases with low likelihood of success or in which clients are ill-suited to the technique will waste time and resources and potentially delay the process. Indeed, failed mediation can damage the worker/client relationship and increase system costs. Some observers argue that everyone should qualify because special protections can be used where capacity is an issue (e.g., lawyers attend mediation) and also because vigorous screening will circumscribe the total number of mediated cases. The skill and experience of a mediator will be an important factor in deciding to include participants whose capacity or vulnerability auger against mediation.

## WHO SCREENS?

Once criteria are chosen, who applies those criteria to disqualify cases if necessary?

- judge
- mediation coordinator / project staff
- mediator at intake
- CAS child protection worker
- other: \_\_\_\_\_

**Background:** Not all referral agents will have enough information to judge if a case is appropriate. The next step in the referral process, therefore, is to screen cases against the eligibility criteria. The person who screens cases must have access to relevant information (such as that which might be contained in a CAS protection file) or access to people who have that information. Another issue is the professional qualifications and experience of the person who does the screening. Should that person have a social work background, because screening requires the application of clinical judgment? At this point in the referral process, it is also possible to consider if another type of ADR is more suitable for the case, so the person should be familiar with those options, if available.

## WHO COORDINATES?

Once a case is selected for mediation, who organizes the logistics?

- mediator
- mediation coordinator / project staff
- child protection worker
- CAS administrative staff
- other: \_\_\_\_\_

**Background:** In London, each case selected for mediation required an average of 11 hours to contact parties, explain the process, secure consent, assign mediators, organize transportation, serve as the contact person for questions, and process bills related to the expenses incurred. Each case required on average five letters, 23 telephone calls, three faxes to parties including lawyers, seven e-mails and, in some cases, home visits. In addition, the mediators themselves spent time contacting parties, coordinating attendance by multiple parties at intake and mediation, re-scheduling missed meetings, and other administrative tasks not directly involving mediation. These responsibilities should not be off-loaded to child protection workers. Their time with clients is already limited and they may be reluctant to recommend mediation if expected to absorb these administrative tasks. It should be noted that these tasks are distinct from the screening tasks, which require an intimate knowledge of the child welfare system and the needs of child welfare clients. Deciding who undertakes the coordination may have cost implications.

## WHO MEDIATES?

Who will undertake the mediation?

- private practice mediators (of various professional backgrounds)
- private practice lawyers with mediation training
- mental health professionals with mediation training

- staff mediators (e.g., employees of MAG or MCYS)
- staff mediators in the employ of the CAS
- Legal Aid Ontario official
- judges
- respected community member or elder
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** Two issues predominate here: training and neutrality. There are few trained child-protection mediators in Ontario, especially outside the metropolitan areas. Even experienced family mediators need specialized training in and knowledge of the child welfare system and the needs of its clients. (Training is discussed in greater depth later.) The low rate of referrals expected in most areas suggests that gaining experience through practice may be a slow process. Some Canadian jurisdictions have staff mediators, employees of the provincial justice ministry. Such a model would permit centralized training and standards and even, potentially, the idea of mediators traveling through remote areas on a circuit. Mediators must be not only independent and neutral, but must appear to be independent and neutral. Lawyers who represent CAS clients or who work for the CAS on a fee-for-service basis may not be seen as independent. In some areas, such as New Zealand, judges oversee the mediation.

## WHO ATTENDS?

Who should be at the mediation table?

- Mediator
- CAS client(s)
- child protection worker
- Band representative (if applicable)
- interpreter (if required for language or communication disabilities)
- CAS supervisor of the worker
- CAS staff member assigned to attend mediations and approve agreements
- client's legal counsel
- duty counsel
- CAS legal counsel
- foster parents
- child(ren)
- Children's Lawyer
- other family members (e.g., extended family)
- advocate for family parties (e.g., therapist, woman abuse advocate)
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** At the table should be all parties whose input and agreement is required, both to make an agreement and to support the agreed-upon conditions over time. The Children's Lawyer could bring the child's voice to the table. Older children might themselves attend, in certain types of cases. Also, some CAS clients may require an advocate or extra support, such as a therapist or woman abuse advocate. The CAS supervisor must be consulted anyway so his or her presence may speed the process. In B.C., a "Court Work Supervisor" is a senior CAS staff member who attends all mediation sessions and has the authority to approve agreements. Clients should consult legal counsel before agreeing so again their presence may speed the process. On the other hand, too many people at the table makes the mediation unworkable and some worry that the presence of lawyers will detract from the ability of family parties to derive the full benefits of the mediation process. Also, mediation needs to be different than a settlement conference. Key players such as legal counsel and CAS supervisors can be available by telephone during the mediation or another session can be scheduled to give time for consultation as required. Some of these decisions have cost implications.

**WHO PAYS?**

Who will fund the mediation sessions and/or administration?

- CAS (\_\_\_\_\_%)
- Legal Aid Ontario (\_\_\_\_\_%)
- Ministry of Children & Youth Services (\_\_\_\_\_%)
- Ministry of the Attorney General (\_\_\_\_\_%)
- clients (sliding scale)
- other: \_\_\_\_\_

**Background:** Our data suggest that mediation might average 9 hours of time for the mediator and 11 hours for screening, coordination and administration. Other costs can include transportation and child care. Many CAS clients either do not qualify for legal aid or choose not to apply. If at least one party must be legally aided, many cases would be disqualified from mediation. Clients need to feel that the mediator is independent, a feeling which may be compromised when the CAS pays mediators. While mediation may save system costs in the long run, it is necessary to identify a funding source for today.

**WHO OVERSEES?**

Who will be ultimately responsible for keeping the mediation project process on track?

- chair of local advisory committee (or designate)
- a mediator
- project staff / coordinator
- CAS senior manager
- representative of funder
- other: \_\_\_\_\_

**Background:** Role diffusion might derail a mediation project if no one is "in charge" or is known as the "go to" person to answer questions and take referrals. The inevitable turnover of representatives of the key stakeholder agencies means that outreach and education is an on-going process. Vest in one person (or role) the ultimate responsibility for daily operational matters and tasks such as outreach.

**WHO MONITORS?**

Who will monitor how mediation is meeting our shared goals and expectations?

- chair of local advisory committee (or designate)
- a mediator
- project staff / coordinator
- independent consultant
- representative of funder
- no one
- other: \_\_\_\_\_

**Background:** Especially in the start-up phase, monitoring both process and outcome will generate feedback for stakeholders, identify problems, and generally facilitate transparency. It may be possible (subject to privacy laws) to provide feedback to referral agents about outcome and feedback to mediators about how cases progressed after the agreement. Such feedback helps refine practice. Monitoring tasks might include recording various performance indicators (key dates, number of mediation sessions, outcome of mediation, outcome in court), seeking feedback from participants, or follow-up on case developments. The person who monitors these operational matters would ideally be independent of the service delivery component. For example, it might be problematic if mediators were to collect client satisfaction feedback. This role may be filled by the same person who oversees the project in general.

**WHAT?**

**WHAT BARRIERS?**

Do any of these factors impede our ability to introduce mediation to this community?

- no funding
- no sustainable funding
- lack of trained mediators
- dealing with transportation and extending access to remote areas
- lack of cooperation of judges to adjourn cases pending mediation
- lack of cooperation of family bar to agree to adjournments
- lack of support / interest by key parties required for participation
- privacy laws re: disclosure of third-party information by CAS (e.g., assessments)
- high rate of unrepresented parties
- a paucity of appropriate cases
- power struggles over ownership
- other: \_\_\_\_\_
- other: \_\_\_\_\_
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** Both prior research and our own experience suggest that implementing mediation can be plagued with problems such as low referrals, lack of buy-in, in or even outright opposition. Problems to avoid include role confusion, role diffusion, off-loading tasks inappropriately, and under-resourcing the administrative / coordination functions. Identifying and addressing barriers at the outset will help the mediation project avoid these and other pitfalls.

## WHAT WORRIES?

Are there any concerns that need to be voiced and discussed?

- the voice of the child may get lost
- agreements might be compromises that jeopardize child safety
- the power imbalance between a CAS and its client is too stark for mediation
- neutrality / experience / skills of mediators
- time limits under the CFSA for children in care
- time limits under court rules
- duplication of other avenues of resolution such as settlement conferences
- potential to coerce CAS clients to participate
- extension of time to case resolution if mediation is not successful
- privacy laws may be compromised
- not having enough cases to make a mediation project viable
- non-compliance / follow-through by clients / plans breaking down
- most cases will be screened out as inappropriate
- clients who are not "high functioning" or well educated are disadvantaged in a process that requires the ability to follow verbal debate
- potential to undermine a worker's professional role with family
- potential to use mediation as a delaying tactic
- not enough protection of worker from exposure to liability
- other: \_\_\_\_\_
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** The introduction of any new technique will inevitably be met with some reticence in some quarters. Most stakeholders will have at least a few concerns at the outset. Putting concerns on the table permits open discussion and dialogue. Concerns identified at this point can be incorporated into any monitoring scheme (as discussed later). Also, strategies can be developed to address or avoid any of the potential problems identified.

## WHAT DISPUTES?

Which type of disputes will be mediated?

- contested court applications
- client complaints (e.g., request for change of worker)
- adoption-related issues
- contested aspects of plans of care
- conditions of special needs agreements

- conditions of visitation and access
- conditions of voluntary services agreements
- kinship care arrangements
- other: \_\_\_\_\_
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** Mediation is amenable to resolving a variety of "disputes" beyond those associated with court applications. Depending upon the shared goals and terms of funding, however, some communities may limit the use of mediation to contested court applications, particularly when mediation is adopted to address court backlog and reduce legal costs. In addition, clients can seek legal aid only if there is an active court application. The input of Children's Lawyers requires a court order (although this could change if pending CFSA amendments are proclaimed). Some types of client complaints may not be amenable to mediation, as when families disagree with the findings of an investigation. However, mediation could be added as an option to the pre-existing hierarchy of complaint resolution strategies, perhaps between the review by a senior manager and review by the CAS Board of Directors.

### WHAT APPLICATIONS?

Which type of court applications will be considered for mediation?

- all applications / no restrictions
- new or status review applications for supervision orders
- Society wardship applications
- Crown wardship applications with no access/contact contemplated
- Crown wardship application with access provisions
- adoption applications
- other: \_\_\_\_\_

**Background:** Supporters of child protection mediation posit that it can be used in all types of applications, even those which contemplate the termination of parental rights.

### WHAT ISSUES?

- physical harm by commission (e.g., physical abuse, inappropriate discipline)
- sexual abuse
- harm by omission (e.g., inadequate supervision, neglect)
- emotional harm
- abandonment / separation
- caregiver incapacity
- finding of child in need of protection
- parent / child conflict
- serious / sadistic physical abuse
- homicide
- other: \_\_\_\_\_

**Background:** In some jurisdictions, cases which centre on certain issues are screened out or mediated only with great care, such as sexual abuse, serious physical abuse, or homicide. Only very experienced mediators, ideally with a clinical mental health background, should attempt mediation in such cases. Some also worry that clients with a history of neglect and low parenting capacity may have difficulty following through on conditions. It is widely acknowledged that mediation is not an appropriate venue to determine if a child is in need of protection. In the London pilot, this issue was often brought to the table because clients contested the court application primarily for this reason. Where a mediated agreement involves a tacit finding that the child is in need of protection (e.g., when the agreement will form the basis of a supervision order), the clients must fully appreciate that they have agreed that the child is in need of protection.

## WHAT CONFIDENTIALITY?

How will confidentiality be dealt with?

- open mediation
- closed mediation
- semi-open mediation

**Background:** Family mediation is typically open or closed. In closed mediation, everything said at any point is confidential and cannot be used later in court. While some observers see this as the desirable option, child protection agencies are unlikely to endorse closed mediation because they may hear information that reflects upon child safety. In open mediation, anything said at any point is fair game for later use. The model that predominates in child protection mediation in Ontario is that of semi-open mediation. Anything said to the mediator in prior discussions is confidential (subject to reporting requirements under the CFSA) while anything said during mediation sessions can later be used in court. This is often, but not inevitably, linked to an understanding that the mediator him or herself cannot be called as a court witness by any party. The confidentiality provisions are typically spelled out in a pre-mediation “contract.” Use of plain language in both written and verbal explanations is highly recommended, especially in light of research finding that participants in child protection mediation often fail to understand the confidentiality agreement.

## WHAT FEATURES?

Which of these common features of mediation models will be adopted here?

- mediation as a voluntary process
- mediator as a neutral facilitator of discussion
- neutral location for mediation sessions
- neutral funding source
- opportunity for clients to meet with mediator prior to mediation
- pre-mediation contract spelling out confidentiality, etc.
- “ground rules” clearly spelled out
- agreed-upon measures provided to all parties in written form
- no agreement is binding until parties can review with counsel
- opportunity to consult legal counsel prior to signing agreement
- mediator not to be called as witness
- other: \_\_\_\_\_
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** There are various components to the mediation process, many of which are spelled out here. An important issue overlaying the process is that of informed consent: participants must be free to decline, understand the implications of participating (and declining), know their rights, and believe they can terminate the process at any point with no penalty. Plain language is desirable for all informational material, contracts, and in the agreement itself. In addition, all written material should be relayed verbally. We found in London that many mediation participants had literacy deficits and/or learning disabilities. Cultural interpreters should be used whenever necessary.

**WHAT INFORMATION?**

What information will be provided by the CAS to the mediator?

- nothing
- the application before the court
- the respondent's answer to the application
- the respondent's proposed plan of care
- most recent CAS plan of care
- results of any pertinent investigation
- access to the full CAS file
- other: \_\_\_\_\_

**Background:** To maintain neutrality in the process, the mediator need not be apprised of the entire case history. However, it is helpful to understand the issues immediately under dispute. An important consideration here is that of privacy, especially as it relates to disclosure of information about people who are not parties to the mediation. Parties at the mediation table will also want to preserve their privacy as far as possible. Some material in a CAS file will contain information about third parties or assessments provided with the understanding that the report will not be passed along. It may be logistically difficult for the CAS to provide the client's answer to the application, because it is contained in the court file. Clients might be asked to provide their answers or other documents directly to the mediator (if desired).

**WHAT QUALIFICATIONS?**

What credentials and education will the mediators possess?

- a professional degree or equivalent experience
- a graduate degree or equivalent experience
- accreditation designation with the Ontario Association of Family Mediation
- 40 hours of training in family mediation
- 20 hours of family mediation skills training
- completion of 5 family cases under supervision to the point of agreement
- completion of 20 family cases to the point of agreement
- professional liability insurance
- access to a neutral and convenient location to conduct mediation
- other: \_\_\_\_\_

**Background:** There are core skills required for family mediation, including screening, setting the agenda, prioritizing issues, helping parties identify their positions and interests, focusing discussion on the child's best interests, managing family conflict, conflict resolution, understanding models of negotiation, addressing power imbalances, appreciating the psychological factors in divorce and separation, communication skills (clarifying, re-framing, probing, etc.), and recognizing domestic violence. Accreditation is now available through the Ontario Association of Family Mediation, and attainment of this accreditation could be the principal criterion to select mediators. Or, the equivalency of the accreditation standards could be the criterion (core training, skills training, number of supervised cases, number of completed cases). Setting the requirements too high will exclude many good candidates, such as people who are respected in cultural communities. In rural and remote areas, finding mediators may be difficult. Setting the bar too high may increase that difficulty. On the other hand, it is desirable that people undertaking mediation have a base set of core skills and knowledge and conform to a code of ethical conduct such as that defined by the Ontario Association of Family Mediation.

## WHAT TRAINING?

What specialized training and knowledge should be required for child protection mediators?

- skills in recognizing and addressing power imbalances in the CAS context
- knowledge of local resources for children and families
- knowledge of the CFSA and the legal processes it defines
- thorough understanding of the duty to report child abuse
- knowledge of the court rules pertaining to child welfare matters
- understanding of the mandate of the CAS
- knowledge of child development and the needs of children of different ages
- knowledge of the profile and needs of maltreated children
- knowledge of the dynamics of family violence and its effects on children
- knowledge of the dynamics of sexual offending and child sexual abuse
- knowledge of the dynamics of physical abuse
- knowledge of the dynamics of child neglect
- knowledge of addictions and mental illness and their effects on families
- cultural issues important in our community
- other: \_\_\_\_\_

**Background:** Even people well experienced in family mediation will need specialized knowledge of the child protection context. Accordingly, after defining the basic expectations and qualifications, the next step is to define the specialized knowledge and skill areas. It may be helpful to contemplate where training might be acquired, especially at this early juncture in the evolution of child protection mediation. Work experience might be the best indicator. Florida has a certification program for child protection mediators. Perhaps such a system will develop in Ontario over time.

## WHAT PROTECTIONS?

What protections will be available to safeguard the interests of vulnerable parties?

- cultural interpreters
- use of plain language in written material including contracts
- use of plain language when writing up the agreement

- conveying information in multiple modalities (e.g., written, verbal, graphically)
- clarifying definitions of key terms at the outset
- matching specialized training or expertise of mediator to case
- reimbursement of clients for expenses (e.g., transportation)
- assistance with transportation in remote or rural areas
- accompaniment by advocate (e.g., support worker)
- home visits for intake
- attention to process and pace over outcome and haste
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** The exercise of mediation pre-supposes that all parties understand and can participate in verbal discussions and negotiations. Primary among the tasks of a child protection mediator is attention to the stark power imbalance. Expect that some parties will be also challenged by factors such as youth, perceptual learning disabilities, attention deficits, English as a second language, cultural factors, the effects of psychotropic medication, borderline cognitive functioning, health problems, or limited financial means. Efforts to attend to such vulnerabilities will involve careful screening, effective intake, attending to process, and potentially some special accommodations.

## WHAT OUTCOMES?

What variables should be measured to facilitate effective monitoring of mediation?

- referral rate
- proportion of referrals disqualified
- reasons cases disqualified
- proportion of referrals in which clients decline mediation
- reasons clients decline mediation
- settlement rate
- compliance with conditions
- satisfaction of parties
- perception of parties about the power imbalance
- length of time to resolution
- costs
- number of trials
- other: \_\_\_\_\_
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** There are many reasons to collect feedback on desired outcomes, including transparency and accountability. Refinement and improvement to the process can also be facilitated. Refer to the goals you define for mediation (see "WHY?" below) and outline a measurable indicator for each goal that is important in your community. Also, refer to any concerns stakeholders voiced in an earlier section. As suggested above, identify who is responsible for collecting this information.

## WHERE?

### WHERE MEDIATE?

At what location will mediation take place?

- mediator's office
- courthouse
- CAS offices
- other local agency with space
- other: \_\_\_\_\_

**Background:** The most crucial factor in choosing a venue for mediation is neutrality. For this reason, try and avoid conducting mediation at the CAS or, arguably, at the courthouse. In rural or remote areas, the choice of venues could be limited and participants may be travelling from far afield to a central location. Find a location that is mutually convenient. A venue should be accessible to the handicapped and conveniently located vis-à-vis public transportation. In the London pilot, the facilities of a hotel were sometimes used as well as an office of a community agency.

### WHERE LOCATE?

Especially if a staff model is chosen, where should the project staff be housed?

- courthouse
- CAS premises
- independent location
- other: \_\_\_\_\_

**Background:** Neutrality is important here but there are also logistical concerns. In some areas, project staff have an office at the courthouse and also can spend time at the child protection office. Convenient access to CAS workers and information that aids case screening is also helpful.

### WHERE TRAIN?

- CAS child protection curriculum
- professional development at agencies
- law schools
- college and university diploma and degree programs
- continuing education programs
- other: \_\_\_\_\_

**Background:** Access to relevant training may well be one of the most salient barriers as child protection mediation is rolled-out across the province. Most of these issues will be beyond the scope and reach of a local advisory committee, but some thought can be given to how best to encourage availability of this specialized training in all parts of the province.

**WHEN?**

**WHEN REFER?**

At what point(s) in the court-application process can mediation be contemplated?

- prior to application being launched
- after application is launched
- after parties indicate they are not consenting to application
- only after a finding of child in need of protection
- after respondent(s) files an answer
- only after settlement conference does not end in agreement
- only after case scheduled for trial
- any point: no restrictions
- other: \_\_\_\_\_

**Background:** Generally, it is believed that the earlier the better. A timely mediation at an early point in the proceedings will speed resolution and avoid the entrenchment of positions that can occur as court drags on. Mediate too early and you spend time and money on cases that were going to settle anyway. Also, it can be helpful to have at least a draft court application as a basis for discussion. Currently, parties will not qualify for legal aid until an application has been launched and Children's lawyers cannot be involved until there is a court order for children's representation.

**WHY?**

Which goals are important in your decision to make mediation available?

- improving worker / client relationships and communication
- reducing CAS legal costs
- reducing the backlog of CFSA cases in the family courts
- reducing legal aid expenditures
- shortening the time to case resolution
- giving clients a space to relate their perspectives
- increasing compliance by clients with conditions
- reducing the number of trials
- increasing satisfaction of client with process and outcome
- other: \_\_\_\_\_
- other: \_\_\_\_\_
- other: \_\_\_\_\_

**Background:** Proponents of child protection mediation posit many benefits, but research shows that mediation may be better suited to meeting some goals than others. Some goals may be in contradiction (e.g., being quicker and giving clients a space to be heard). Be realistic in selecting goals and find ways to measure your success in meeting them. Identifying goals is the first step in any evaluation scheme. The second is to re-state them to be measurable. Next, integrate into daily operations the ability to collect data on the measurable indicators of your goals. In the full research report, we provide a survey form suitable for use with clients after mediation.



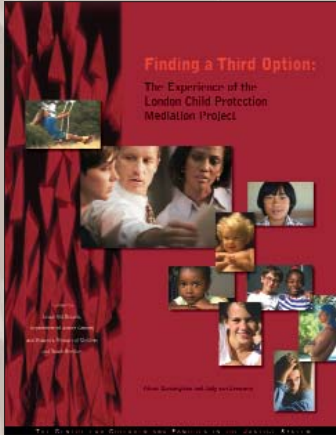


## RECOMMENDATIONS

In the full report of the London Child Protection Mediation Project -- Finding a Third Option -- 17 recommendations are put forward.

- Recommendation 1:** Child protection mediation is a viable alternative dispute-resolution strategy that will be useful in some, but not all, cases involving contested court applications and to resolve other disputes.
- Recommendation 2:** Participation in mediation should be voluntary rather than a mandatory requirement.
- Recommendation 3:** Efforts to implement child protection mediation should include rigorous case screening to exclude clients unable to fully participate in the process and to exclude cases with a low probability of success.
- Recommendation 4:** Jurisdictions using child protection mediation should consider creating a multi-sectoral steering committee with representation from all stakeholder groups, especially at the start-up phase.
- Recommendation 5:** Jurisdictions using child protection mediation should provide information to all sectoral groups on an on-going basis, to facilitate understanding of the mediation process as it is to be implemented.
- Recommendation 6:** Jurisdictions using child protection mediation should consider who will screen cases, when in the court process this will occur, what criteria will be applied, and how these tasks will be funded.
- Recommendation 7:** The definition of “parent” in the Child & Family Services Act should be reviewed with an eye to determining if unreasonable and unnecessary delays are created by the requirements for repeated service of court documents on parties with no biological or emotional ties to the children.
- Recommendation 8:** A video explaining the court process, from application through settlement conference to final disposition, would help parties make key decisions. The video should explain how mediation (and other ADR techniques available) fits into but is different from the regular court process.
- Recommendation 9:** A video should be developed to demonstrate the mediation process to clients. Such a video could be made available in the non-official languages most commonly represented in child-welfare client populations.
- Recommendation 10:** Conditions of supervision orders should relate logically and empirically to the risks faced by the child and the case-management plan.
- Recommendation 11:** All parties should be encouraged to engage in early resolution talks external to the court process and the CAS should be encouraged to case manage and facilitate such an opportunity.

- Recommendation 12:** In each community, a plan should be developed to encourage and mentor lawyers who currently feel unprepared to take child protection cases but are willing to do so.
- Recommendation 13:** Any effort to implement child protection mediation should address financial barriers that can prevent people from attending mediation.
- Recommendation 14:** Efforts should be undertaken to highlight the importance of independent legal advice to parties engaged in mediation.
- Recommendation 15:** If a mediator forms the opinion that the child's views should be independently ascertained, he or she should seek the consent of all parties to stop the process and find a means of ascertaining those views.
- Recommendation 16** A child protection mediation training curriculum should incorporate information on such issues as child welfare law, the child welfare system, augmented screening techniques, addressing the power imbalance, and sample agreements using plain language. The Ontario Association for Family Mediation and/or Family Mediation Canada may consider developing a mediator certification program and/or standards for the position of accredited child protection mediator.
- Recommendation 17:** Family group conferencing, family group decision making, and other ADR techniques can co-exist with a mediation program to provide a range of ADR options from which it is possible to select the best method for each case.



## ALSO AVAILABLE FROM THE CENTRE

Alison Cunningham & Judy van Leeuwen (2005).  
**Finding a Third Option:** The Experience of the  
London Child Protection Mediation Project.

The final report of the London Child Protection Mediation Project, detailing the experience of implementing mediation in London, Ontario. The promises and the cautions of child protection mediation are outlined in the context of a research study comparing the outcomes of 20 comparison cases with those of 20 mediated cases. Seventeen recommendations are offered and communities can find guidance on how to plan a child protection mediation project matching local needs. Included is a feedback survey suitable for use with clients after mediation.

## CENTRE FOR CHILDREN & FAMILIES IN THE JUSTICE SYSTEM

The Centre is a non-profit organization dedicated to helping children and families involved with the justice system, as young offenders, victims of crime or abuse, the subjects of custody/access disputes, the subjects of child welfare proceedings, parties in civil litigation, or as residents of treatment or custody facilities.

We seek to help children thrive and achieve their full potentials in life, through professional training, resource development, applied research, public education, community collaboration, expert testimony to the courts, mentoring students, and by providing informed and sensitive clinical services. Most of our resources and research reports are available at no cost on the Internet.



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