CHILD PROTECTION MEDIATION:
MEDIATOR STRATEGIES FOR MANAGING THE PROCESS

by

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ABSTRACT

In this study fourteen child protection mediators responded to questions about their work through questionnaires, interviews, or both, and grounded theory methodology was used. The data was analyzed and the following four themes emerged: describing the process, explaining the process, strategies for managing the process, and evaluating success in managing the process. Key findings were that there are differences between the process issues that exist in the child protection context as compared to other types of mediation, successful process management strategies include having a pre-mediation orientation session and using non-party participants as a positive influence, and success is indicated by changes in the communication between the parties or personal empowerment as well as by whether an agreement is reached.

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CHAPTER I: INTRODUCTION

Although mediation has been used for many years to resolve disputes in a variety of settings using mediation to resolve child protection disputes is a more recent development. As a result, research on child protection mediation is somewhat limited and what research does exist focuses mainly on questions of program effectiveness rather than about the mediation process itself. This study fills an important gap in the research by examining process issues from the perspective of practicing child protection mediators. Rather than asking "does child protection mediation work?" the current study aims to understand more about the process itself. This study looks at process issues from the perspective of practicing child protection mediators. In specific, this study looks at what child protection mediators identify as process issues in child protection mediation, what strategies they have found to be effective when working in the child protection mediation context, and how they determine whether mediation has been successful.

A Synopsis of Child Protection Mediation

Child protection mediation is one specific type of mediation within the broader mediation field. Mediation is a structured process in which a neutral third party assists the disputants to find a mutually acceptable resolution to a dispute (Savoury & Beals, 1995). Child protection mediation has been described as a facilitated discussion led by a mediator which can occur at any point during the progression of a child protection case (Olsen, 2003). Participants in a child protection mediation case, which can include child protection workers, lawyers and parents, try to reach an agreement about the care and safety of a child on specific issues, such as visitation, home placements and other related matters, with the help of a mediator.

Studies in various jurisdictions have shown child protective mediation to be effective in regard to mediation outcomes. The satisfaction rates of participants are high according to several studies (Pearson, Thoennes, Mayer & Golen, 1986; Thoennes, 1997). Studies have also shown that mediation can improve the working relations between child protection workers and parents (Mayer, 1989), and that parents have a higher rate of complying with the terms of agreements reached in mediation that with orders made in court (Mayer, 1989; Thoennes, 1997).

Rationale and Design of This Study

Given the abundance of research verifying the positive benefits of child protection mediation, it is time to turn from the question of "is it effective?" to instead ask the question "why is it effective?" Answering this question necessitated examining the mediation process itself and asking questions such as 'how do child protection mediators conduct the mediation session?' and 'what challenges do child protection mediators face in conducting a child protection mediation session?' This study provides answers to these questions and others.

This study was carried out in the Province of British Columbia which has a successful province wide child protection mediation program. There are several Canadian provinces with child protection mediation programs and, according to Crush (2005), Canadian child protection mediation programs have varied in regard to program design and effectiveness from province to province. Several authors have identified the British Columbia program to be effective, as measured by factors such as considerable growth in referrals and capacity and by strong participant satisfaction and settlement rates. (Olsen, 2003; Robbins, 2003; McHale, Robinson & Clarke 2007). It was advantageous to carry out this study in British Columbia since it is a jurisdiction which has been identified by scholars as having a successful program. If instead this

study had been carried out in a program with service delivery problems this may have clouded mediator perceptions of success due to the impact of those systemic problems on their work.

The objective of this study was to learn more about process issues in child protection mediation. Fourteen mediators from British Columbia's child protection mediator roster were asked questions about their views on the mediation process and what methods and strategies they found to be effective in their work. Participants completed a questionnaire or participated in an interview or both. Analysis of the data showed that the mediators believe that there are differences between child protection mediation and other types of mediation, and that there are certain strategies which are effective in managing the child protection mediation process. In a later section of the paper these results are discussed in more detail, including mediator views on unique aspects to the child protection mediation process, what tools and strategies mediators use to manage the process and what the mediators identify as successful management of the process.

Description of Outline of This Paper

The next three chapters of this paper provide background information which offers a context for understanding the results of this study. In specific, chapter two contains a description of the historical development of child protection mediation and relevant child protection laws in British Columbia, chapter three contains a review of the existing literature on child protection mediation and chapter four explains the methodology used in this study. This is followed by chapters five through seven, where the results of this study are presented. Chapter eight contains a discussion of those results including comparisons with existing literature. The paper concludes in chapter nine with a discussion of the implications of the results and conclusions.

CHAPTER II: THE CHILD PROTECTION MEDIATION CONTEXT

A Working Definition of Child Protection Mediation

Mediation has been used to resolve disputes in a broad range of settings and by mediators coming from diverse professional fields. As a result the mediation field contains a wide range of philosophies, styles and models. Despite the diversity in the field as a whole there is a common understanding of what defines mediation. In the words of Henry (2005) mediation is "a process for working out disagreements with the assistance of a trained, impartial and neutral third party" (p.2). As applied to child protection mediation, a neutral and impartial mediator assists parents and child protection workers to reach an agreement intended to ensure the safety of a child in situations where there are concerns that a child may be at risk of harm.

History of Child Protection Mediation

The first child protection mediation program to be introduced in North America was in the Los Angeles juvenile court in 1983 (Olsen, 2003). Two years later the first systematically developed and evaluated child protection mediation program came into being. This program existed in Colorado from 1985 to 1987 and was operated by the Community Dispute Resolution Associates (CDR) in partnership with the Denver and Boulder County Departments of Social Services. This program was very influential long after the program ended in 1987 since many projects in other jurisdictions used the results of the program evaluation research to develop their own programs. As well, key individuals responsible for designing programs in Canadian jurisdictions were trained by CDR associates (Crush, 2005).

Although child protection mediation programs have now spread throughout North America, there are significant differences in these programs from jurisdiction to jurisdiction.

Barsky (1995) suggests that the terminology "child protection mediation" is being used to describe very different processes. Of particular significance, some programs are similar to court based judicial settlement conferences with a mediator rather than a judge whereas other programs are more broadly defined and are similar to mediation in other contexts. As an example, Barsky points out attorneys usually attend mediation in the United States where child protection mediation has a stronger settlement orientation whereas they do not attend mediation in several programs in Canada, such as the programs in existence in Ontario and Nova Scotia at the time he wrote this article.

In some jurisdictions in the United States, such as Florida, child protection mediation is quite closely aligned with the legal system. In those jurisdictions legislation makes mediation mandatory when there is a child protection dispute and mediation is supervised by the court. Crush (2005) critiques this model of child protection mediation because "the neutrality and independence of mediation is called into question when it is too closely aligned with the judicial system. When mediators are perceived as agents of the court parents are unlikely to feel empowered or to be candid about problems." (p.60)

In Canada, although several models have been used the three jurisdictions in which child protection mediation has been used to the greatest extent are Nova Scotia, Ontario and British Columbia. British Columbia is the only Canadian jurisdiction that has a province wide program, although Ontario is currently in the process of implementing one. The Nova Scotia program was intended to be province wide. However, the program suffered from low referrals and other problems and never expanded beyond the urban areas. This program is now considered to be a failure (Crush, 2005; Caruthers, 1997).

In Ontario, until recently Child Protection Mediation only existed in a few geographical areas. This changed in November 2006 when amendments were made to the *Child and Family Services Act.* This legislative change requires children's aid societies to consider mediation in a broad range of child protection cases. A province wide roster of child protection mediators has been set up to carry out those mediations. This legislation brings a significant change to the delivery of child protection mediation services in Ontario. Up until this change child protection mediation was offered though pilot projects or programs limited to specific geographical areas. In Toronto the Center for Child and Family Mediation provided child protection mediation for a number of years. In London Ontario a pilot project operated between 2002 and 2004. An evaluation of this project has recently been published (Cunningham & van Leeuwen, 2005). Other than these two programs, a few individuals or small programs in various areas of Ontario list child protection mediation as one of their services.

Child Protection Mediation in British Columbia

In British Columbia child protection mediation was first tested in Victoria in a one year pilot project from April 1, 1992 – March 31, 1993. A province wide child protection mediation program was introduced in 1997. Shortly before the program was introduced a legislative change was made. In 1996, the *Child Family and Community Services Act (CFCSA)* replaced the *Family and Child Service Act.* The *CFCSA* contains specific provisions allowing for mediation on child protection matters.

The *CFCSA* is the statute that outlines child protection laws in British Columbia. The *CFCSA* gives authority to a Director appointed by the Minister for Child and Family Development to take measures to ensure that children are kept safe. This includes removing children from families when no other less disruptive measure is available that would be sufficient to protect the

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child. The Director has designated many child welfare social workers[1] (child protection workers), supervisors, team leaders and managers with delegated authority. As such, child protection workers have the authority to intervene in situations where a minor is at risk of being harmed by abuse or neglect. The statute states that the intervention should be done by the least disruptive measure possible that will ensure the child's safety. Interventions include orders where a child remains in the home but with supervision by the child protection worker, or removal of the child. The child protection worker must attend a presentation hearing to obtain a court order authorizing the continuation of these measures within a certain period of time. At the presentation hearing a court date is set for a court hearing to determine whether a child is in need of protection.

Mediation is an alternative measure as set out in Section 22 of the *CFCSA* which provides that "if a director and any person are unable to resolve an issue relating to the child or a plan of care, the director and the person may agree to mediation or other alternative dispute resolution mechanisms as a means of resolving the issue." Mediation exists throughout the province as mandated under s. 22 of the *CFCSA*. Mediation can be held at any stage of involvement between child protection workers and families. Mediation can occur at any time in the continuum of child protection before court proceedings are initiated or sometime between the commencement of proceedings and final determination of the case by a court.

Section 23 of the *CFCSA* makes it possible for court proceedings to be adjourned so that mediation can be scheduled and held. This section also allows agreements made in mediation to be filed in court. Section 24 of the *CFCSA* has a provision for confidentiality ensuring that what

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[1] Although the words 'social worker' and 'child protection worker' are commonly used interchangeably, in actuality the words are not synonymous. Although child protection work falls within the scope of the child welfare field and child protection workers are commonly called social workers, not all child protection workers have a social work degree and the social work profession is much broader than child protection work. For example, social workers may work in a hospital setting or in the family therapy field. For the sake of clarity I have used the terminology 'child protection worker' to refer to employees of the Ministry of Children and Family Development who are working in the child protection context. However, in instances where the mediators interviewed for this study used the term 'social worker' I have left that terminology in direct quotations.

happens in mediation remains confidential in most circumstances. Mediation can be used to resolve issues such as services the family will receive, how long the child will be out of the home, where the child will live and what the access schedule will be. Whether or not a child needs protection is not an issue that can be mediated.

In British Columbia, there are two different models of service delivery, the Facilitated Planning Meeting (FPM), and Section 22 child protection mediation in which the FPM model is not used. The FPM model is offered as an option in certain geographical locations of British Columbia. The FMP model was designed and introduced in a pilot project in Surrey British Columbia in 1997 (the Surrey Court Project). The pilot project was completed in 2003 and project evaluations were quite positive. This particular model continues to be offered in parts of the lower mainland and is now also offered in Victoria and in Prince George. Variations exist in other communities in which designated child protection workers facilitate the referral and planning of mediations, as well as overall promotion and education in their communities. A recent unpublished evaluation in one area of the province highlights the importance of the availability of a designated mediation worker. (A. Clarke, personal communication, July 31, 2007)

The differences between the FPM mediation and mediations conducted under Section 22 but outside this model are primarily structural. In FPM the mediator is required to begin with individual orientation sessions with the parties prior to the parties meeting together. There is a very specific agenda that must be covered in the pre-mediation meeting, a court work supervisor (who is a senior ministry employee) attends as well as the child protection worker and only one mediation session is scheduled. This is different than child protection mediation outside the FPM model where an orientation session is optional, the court work supervisor or the mediation

supervisor[2] does not attend and more than one mediation session may be held. In both of these models the disputants choose a mediator from an approved roster. Regardless of which model is being used the mediator is chosen from the same roster (McHale, Robertson & Clarke, 2007).

In actual practice there is less distinction between the two models than was the case in the original program design. In training sessions since 2005 the DRO has been emphasizing the importance of conducting an orientation, and as the program has grown mediators have incorporated the orientation session into the child protection work regardless of whether or not the mediation is scheduled to be conducted within the FPM structure. The provision of an orientation and single mediation session is now an expectation set out in the contract for mediation services. Therefore, in practice, the biggest difference between the two is whether or not there is a court work or mediation supervisor involved. The court work/mediation supervisor schedules the mediation and the orientation sessions in the FPM model, whereas the mediator schedules these sessions outside the FPM model (A. Clarke, personal communication, July 31, 2007). It is safe to assume that the mediators who participated in this study usually conduct orientation sessions regardless of model. Although participants were not explicitly asked if they conduct orientation sessions when the mediations is not scheduled as a FPM, all participants who were interviewed answered questions about how they conduct orientation sessions without distinguishing between the two models.

Section 9 of the *Child, Family and Community Service Regulation* (BC Reg. 527/95) requires the director to establish a roster of qualified mediators to carry out mediation under Section 22. According to this provision, when mediation is agreed to a mediator acceptable to all parties must be chosen from the roster. The Dispute Resolution Office (DRO) at the Ministry of the Attorney General appoints mediators to the Child Protection Mediation Roster (the "roster")

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[2] In Prince George and Victoria this is called a mediation supervisor rather than a court work supervisor

based on qualifications and other specific selection criteria. Mediators are paid on a fee for service basis according to their contract with the DRO. This structure was chosen in order to safeguard neutrality after evaluations of the pilot project and experiences in British Columbia and other jurisdictions indicated that this would be the best means for doing so (McHale, Robertson & Clarke, 2007). In 2004 the Child Protection Mediation Roster became affiliated with the B.C. Mediator Roster Society which sets and maintains professional conduct standards for its members.

The DRO and the Ministry of Children and Family Development (MCFD) jointly administer the child protection mediation program. This joint initiative reflects the overlapping mandates of both ministries in regard to child protection mediation. The DRO is responsible for developing and promoting non-adversarial dispute resolution options within the justice system and government in British Columbia. MCFD is the government ministry which has legislated authority to ensure that children in British Columbia are protected from harm.

In regard to the referral process, either party can request mediation but it must be agreeable to the parents and to MCFD before a case can be referred to mediation. If mediation is agreeable to both parties the referral is made directly to a mediator listed on the roster. The number of cases being referred to mediation has been increasing each year since the programs inception in 1997[3]. As program demands have increased program capacity has also grown, especially since 2005. As of March 2005 there were 30 mediators on the child protection mediation roster. By 2006 the number of mediators on the roster had grown to 50. The DRO expects to add 15 or more

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[3] In the program's first year (1997/1998) 84 cases were mediated. By 2005/2006, the year that the data for this study was collected, 572 cases were mediated.. As well settlement rates have increased over time. Early in the program 70% of cases settled and at present 90% of cases referred to the program have some or all issues resolved (McHale, Robertson & Clarke 2007); Demand for the program continues to increase. The projection for number of cases mediated in 2007/08 is 925 (A. Clarke, personal communication, July 23, 2007).

mediators in 2007, many of whom will be Aboriginal persons available in local communities in the northern and more remote areas of the province (Clarke, McHale & Robertson, 2007).

As mentioned above, many different models of mediation exist throughout North America. As well there is a broad range of mediator style within the mediation field due to personality differences, variation in mediation training and other factors. In British Columbia there are two models of child protection mediation and mediators on the roster represent a range of styles. Despite these differences there is some commonality of approach regardless of mediator stylistic differences and choice of model. It is a program requirement that mediators use interest based mediation. Henry (2005) describes interest based mediation in the following words:

> Interest based mediation is a process that considers disputes not in terms of legal rights but rather in terms of people's underlying concerns, desires, needs, hopes, and fears which are referred to as interests. Typically people think in terms of the 'position' focusing on what they want or what they feel they are entitled to, rather than thinking about what is motivating them to hold such a position or what interests are behind their position. The mediator encourages the parties to a dispute to focus on their common interests and works with these people to create a mutually acceptable solution that resolves the points of dispute between them. (p. 2)

In British Columbia the mediator's role is to help the parties create a mutually acceptable solution based on an interest based approach. As well, in British Columbia participation in child protection mediation is voluntary and mediation discussions are confidential with a few exceptions explained to participants at the beginning. These program requirements ensure that cases referred to the program experience a similar mediation process, albeit with some stylistic differences from one mediator to another.

CHAPTER III: LITERATURE REVIEW

This chapter provides an overview of existing research on child protection mediation, identifies gaps in the literature and provides a rationale for this study. Previous studies have focused on certain research issues and have predominately been site specific studies. Due to differences from program to program research done in one site is not necessarily applicable to another. The scarcity of child protection mediation literature and the variations in program design supports the need for this study. Issues such as these are discussed in more detail in this chapter.

Previous Research on Child Protection Mediation

According to Crush (2005) there are currently two types of child protection mediation programs in existence. The results of studies on child protection vary depending on the type of program being studied. One type of program is time limited pilot or demonstration projects that have existed across Canada and the United States. Evaluations of these pilot projects have overwhelmingly shown that there are positive benefits to child protection mediation. The other type of program is permanent programs that have a legislated mandate and are state or province-wide. There is limited research on these programs although the research that does exist shows mixed results. Crush argues that mixed reviews on the success of permanent programs do not negate the value of child protection mediation as a process because the problems encountered have been in implementation rather than in the mediation sessions. One example of the difficulties province-wide programs have had is Nova Scotia. This program suffered from low referrals and design problems and eventually failed (Crush, 2005; Caruthers, 1997).

Studies of site specific programs have demonstrated the positive benefits of child protection mediation. Crush (2005) notes that "the weight of the evidence of these [pilot or

demonstration] projects is that mediation is an extremely effective method for resolving conflict and reaching durable settlements between families and the child welfare authorities. (p.3)

For example, Pearson et al (1986) conducted research on an early child protection mediation project in Denver Colorado. Interviews were held with participants in mediation including parents, mediators, child protection workers, and defence attorneys. Satisfaction rates were high among all participants, and agreements were reached in most cases. Attorneys were less satisfied with some aspects of child protection mediation than other participants were, but not overly so, with 15% dissatisfied with the agreements reached. Child protection workers and mediators were more satisfied with cases referred by the court than they were with cases referred by social services agencies.

Mayer (1989) carried out a quantitative research project in Denver Colorado. Mayer examined the compliance patterns of families who participated in mediation and those who did not to determine whether mediation increases the family's compliance with child protection intervention. He found that participation in mediation did increase compliance.

Thoennes (1997) carried out a research project in the courts of five different counties in California. This study reached the following conclusions about the five child protection mediation programs participating in the study: parents felt heard in mediation and preferred it to the court process, mediation saved time and money, a variety of mediation models are effective and mediated settlements result in more compliance by parents in the short term.

Closer to home, two different site specific research projects have been carried out in British Columbia. The first research on child protection mediation in the province was carried out on a pilot project located in Victoria from April 1, 1992 – March 31, 1993. During the one year project 20 families were referred to the program which received a positive program evaluation.

The second site specific research project was carried out on the Surrey Court Project. This pilot project was implemented in Surrey in 2001 using the FPM model. Two program evaluations were carried out to measure outcomes for cases referred to the project. These evaluations found many positive results including a settlement rate of 83%, a reduction in case duration, a high level of satisfaction by all major participants in the planning meetings, and a possible cost savings to the court and to Legal Aid (Robbins, 2003).

Gaps in the Literature on Child Protection Mediation

Although there is a large body of research showing that mediation is beneficial and that child protection mediation programs are effective there is less research on the process of mediation such as approaches and strategies used by mediators in child protection mediation and whether different mediation models and mediator philosophies affect the process. The evaluation of the Surrey Court Project carried out by Robbins (2003) did look at process issues to a very limited degree. The interview guide used for the evaluation of the project reveals that some process oriented questions were asked. For example, one question directed at parents was "how would you describe the contacts you have had with your child protection worker in this process compared to other contacts?" Although process oriented questions were asked, the focus of the published report is on outcomes and, therefore, the information provided to the reader focuses on the question of whether contacts had improved rather than the specifics of what happened to bring about any improvement.

A study by Barsky (1995) carried out in Toronto, Ontario is one of the few studies providing some information about the mediation process instead of evaluating the success or failure of a child protection mediation program. Barsky interviewed the participants in five mediation cases including parents, child protection workers and mediators. He found that

mediation altered the dynamics and changed the relationship between child protection workers and family members. Ten themes were identified by mediation participants as essential for the process. These were as follows: alliance between the mediator and the participants, bringing the parties together, facilitating communication, keeping peace, developing options, enhancing understanding, focusing the parties, contracting, and neutrality and fairness. Barsky also found that mediators introduced new dynamics where communication or trust had broken down. As an example of this, participants reported that they thought it was very valuable to be brought together to discuss the issues at hand.

One process issue that has been identified in the literature, but has only been studied to a limited degree within the context of child protection mediation, is the issue of managing power dynamics. Some general conclusions can be drawn based on research about mediation in general, but more research is needed that is specific to child protection mediation. For example, one outstanding question is where the line should be drawn between cases where the power imbalance is so significant that mediation should not proceed and cases where mediation can proceed despite the power imbalance. At present there is no agreed upon protocol. Barsky (1995) identifies this as an issue that requires more research. Firestone (1997) also identifies this as a potential research issue but broadens the question to process issues in general. In a paper analyzing trends and future directions for child protection mediation, he concluded that "other areas of dependency mediation that need to be addressed include process issues [such as] balance of power, relative effectiveness of different mediation models, etc..." (p.235).

As this literature review shows, most research about child protection mediation focuses on program evaluation and related substantive inquiries with very little research about the process itself. The few existing studies that do examine process issues, such as the study by Barsky (1995),

have been done in other jurisdictions where the child protection mediation model is often very different. Barsky, for example, points out that the Ontario model (which was in existence at the time he did the research) was very different than the model of child protection mediation used in the United States. He makes specific reference to attorneys attending mediation in the United States whereas they do not in Ontario and points out that there is a greater settlement orientation in the United States. The British Columbia child protection mediation program did not exist in 1995 when he was doing this research and therefore he does not compare the two programs. However, it is worth noting that there are also differences between the program in British Columbia and the program in Ontario in 1995. This includes lawyer attendance at mediations in British Columbia.

Given the scarcity of research about how the process of child protection mediation works the current research project is very timely and fills a gap in the literature. Rather than asking "does child protection mediation work?" the current study aims to understand more about how child protection mediation works. In specific, this study looks at process issues in child protection mediation from the perspective of the mediators in order to determine what strategies and approaches mediators believe to be effective in the child protection context.

CHAPTER IV: METHOD

Introduction to this Chapter

The method used in this study is informed by the grounded theory approach. What distinguishes this method is that the theory emerges out of the data rather than the theory being identified prior to data collection and becoming a hypothesis which is proved or disproved during the study. Strauss and Corbin (1998) define method as "a set of procedures and techniques for gathering and analyzing data" (p. 3). This chapter explains the procedures and techniques that are part of the grounded theory approach and describes how those procedures and techniques were applied during the data collection process which utilized questionnaires and interviews and through data analysis.

The Grounded Theory Approach

Charmaz (2003) describes grounded theory methods as a set of inductive guidelines for building theoretical frameworks to explain the data. She explains that "throughout the research process grounded theorists develop analytic interpretations of their data to focus further data collection, which they use in turn to inform and refine their developing theoretical analysis." (p. 250). Similarly, Strauss and Corbin (1998) point out that with grounded theory the theory arises from the data and the researcher "does not begin with a preconceived theory in mind" (p. 12).

I chose to use a grounded theory informed approach in this study because it is ideally suited to a situation where little is known in advance about the issue being studied. Since there has been very limited research on process issues in child protection mediation to date it would have been very difficult to formulate a theory in advance of beginning data collection. A grounded theory approach made it possible to begin with very broad general questions and to

narrow my focus over time as the salient issues became apparent by using the information

gathered in the initial stages of the project to inform and refine my developing theoretical analysis.

While grounded theory shares some characteristics in common with other qualitative

approaches there are also some features that are unique to grounded theory. According to Gilgin

(2001):

> The unique features are theoretical sampling and the gentle directives to identify social
> processes and elaborate on them in terms of their 'conditions, consequences, dimensions,
> types'.... The term constant comparison is also associated with grounded theory. These
> elements are integral to the most recent versions of doing grounded theory. (p. 347)

Constant comparison is imperative to the grounded theory approach. Data from the first

interview is compared to the data from the second interview. As more interviews are done the data

from these interviews are compared to each other. Theory begins to emerge out of this

comparative process. Once theory emerges then that theory is compared to the data. The theory

should be capable of explaining the phenomena being studied, including the conditions that give

rise to it, and the outcomes or consequences of the attempts of individuals or a group in dealing

with the phenomena.

There are variations in the specific analytic tools that may be used by grounded theory

researchers. Strauss and Corbin (1998) define analytic tools as "devices and techniques that can be

used by analysts to assist them with making comparisons and asking questions" (p. 87). Although

grounded theory methods are used by researchers from very different schools of thought what is

held in common is the view that the theory has to arise from the data and that making constant

comparisons between pieces of data is an important tool in achieving this result. In the words of

Charmaz (2006), "the flexibility and legitimacy of grounded theory methods continues to appeal

to qualitative researchers with varied theoretical and substantive interests" (p. 9).

In some cases researchers may choose a particular analytic technique because of personal preference and in other situations researchers may be drawn to a particular analytic technique because it fits with their own epistemological viewpoint. Chamberlain (1995) succinctly summarizes some of the epistemological differences and debates in the field. According to Chamberlain:

> [It has been argued that] the original approach presented by Glaser and Strauss (1967) was inconsistent in promoting both positivistic and phenomenological emphases. More recent presentations (e.g., Strauss, 1987; Strauss & Corbin, 1990) retain positivistic premises but emphasise phenomenology more heavily... Charmaz (1990), in contrast, takes a social constructionist approach to grounded theory. (para 5)

With these differences in mind I chose a grounded theory approach that fits with my own epistemological views, namely an approach informed by Strauss and Corbin (1998). Although some scholars have suggested that Corbin and Strauss maintain a positivistic perspective, I would argue that their point of view is actually post-positivistic. Trochim (2006), a historical scholar, explains the difference between these viewpoints in the following words:

> Positivists believed that objectivity was a characteristic that resided in the individual scientist.... Post-positivists reject the idea that any individual can see the world perfectly as it really is. We are all biased and all of our observations are affected (theory-laden). (p. 3)

My argument that Strauss and Corbin take a post-positivistic view of data analysis can be supported by reviewing their writings especially in their more recent works. For example, Strauss and Corbin (1998) note that it is "important to recognize that subjectivity is an issue and that researchers should take appropriate measures to minimize its intrusion into their analysis" (p. 42).

This sentiment is very similar to my own viewpoint. Although I believe that there are some universal truths, I am somewhat skeptical about the possibility that conclusions drawn from research can accurately find and reflect those truths due to the researcher's own perspective which comes into play when gathering and analyzing data. Like Strauss and Corbin, I believe that steps

can be taken to minimize the influence of the researcher's own perspectives when analyzing the data. This can be contrasted with the views of Charmaz (2006), a grounded theorist with a constructivist stance. She explains her views in the following passage:

> In classic grounded theory works Glaser and Strauss talk about discovering theory as emerging from data separate from the scientific observer. Unlike their position I assume that neither data nor theories are discovered. Rather we are part of the world we study and the data we collect. We construct our grounded theories through our past and present involvements and interactions with people, perspectives and research practices. (p. 11)

In their 1998 book *Basics of Qualitative Research* Strauss and Corbin offer many analytic tools to help the researcher be rigorous in order to minimize bias as much as possible. Although I followed the basic approach described by Straus and Corbin, I did not believe it to be necessary to use every possible analytic tool they describe. They differentiate between procedures that are essential to their approach and analytic tools which are available to be chosen for the appropriate situation. In their own words, "the basic operations of making comparisons and asking questions ….should be used consistently and systematically through analysis….[whereas] tools are used at the discretion of the user and matched to the task at hand". (p. 87) In other words, a particular technique should be used if it helps the researcher broaden the scope of questions or be more rigorous in data analysis.

I followed the basic procedures proposed by Corbin and Strauss: open coding, axial coding, selective coding, and developing conditions, actions/ interactions and consequences. I asked questions and made comparisons at all stages of data analysis in order to allow the theory to emerge out of the data rather than the data being forced into a preconceived theory of my own. I also used memo writing extensively. These procedures offered sufficient tools to analyze the data in this study. There would have been no added value to using the full range of possible analytic techniques.

Data Collection

Participants

Fourteen mediators from the Child Protection Mediation Roster in British Columbia participated in this study. The mediators on the roster are mediators in private practice who are paid according to a contract for services with the DRO. The mediators on the child protection roster are required to have specific qualifications which include completing approved mediation training courses and having practical experience.[4] Mediators who have the necessary qualifications must also participate in a selection process. Mediators who are successful in the selection process have the option of entering into a contract for services with the DRO and then being placed on the roster. The professional background and contact information for most of the mediators on the roster are posted on the website of the BC Mediator Roster Society.

Eight of the 14 mediators who participated in this study were located in the Greater Vancouver area. Six mediators were from various locations throughout British Columbia. Eight of the participating mediators had professional training as lawyers and six came from other backgrounds. A majority of the mediators who were lawyers were carrying out their work in the Greater Vancouver area. Length of time on the roster differed from mediator to mediator. For example, two mediators were very new and had five or less mediations, seven mediators had eight or more years' experience, and the other mediators had more than one years' experience but less than eight. Two mediators did not identify how much experience they had. Mediators with the same length of experience also varied in how many mediations they had completed in that time.

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[4] As of July 2007 mediators were required to have completed 80 hours of core education in conflict resolution with 40 of these hours in training specific to mediation, plus 100 additional hours in conflict resolution or a related field. In addition to classroom training mediators must have completed 10 paid mediations or 10 mediations in a practicum or approved training program.

For example, one mediator with eight years' experience had completed twenty five mediations and another had completed over one hundred.

Structure of the Study

The data was gathered in stages in order to be able to use the information gathered from questionnaires to develop questions to be asked in follow up interviews. In the first phase child protection mediators were asked to fill out questionnaires. In the second phase follow up interviews were scheduled with mediators who filled out the questionnaires and also with additional child protection mediators from the roster who did not fill out a questionnaire. During the one hour interviews mediators were asked semi-structured questions from an interview guide and to provide an example of a case that illustrated their work.

Questionnaires

At the outset of this study there were 30 mediators on the roster. Questionnaires were mailed to 24 of these mediators with six being eliminated due to not having contact information posted on the DRO website, being on a leave of absence or otherwise unavailable[5]. A copy of the questionnaire appears in Appendix A. Nine mediators returned questionnaires. Eight of these agreed to be interviewed by answering yes to the final question on the questionnaire which was whether they would be willing to participate in a follow up interview. At that point the data from the questionnaires was analyzed and an interview guide was developed. A copy of the interview guide appears in Appendix B. The purpose of this guide was to ask questions which would help

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[5] Sharon Sutherland, a mediator on the roster, was on my thesis committee. She did not fill out a questionnaire or participate in an interview in order to avoid a conflict of interest. She also did not have access to the original data and only provided feedback on the drafts of this thesis after data analysis was completed.

me better understand the themes found in the questionnaire data as well as to explore whether there were other important themes related to the mediation process.

Interviews

An interview was booked with eight mediators who had agreed to an interview at the end of the questionnaire. Letters were sent to 15 mediators on the roster who had been sent a questionnaire but had not returned it. This letter advised them of the opportunity to be interviewed about their work. Three of these mediators responded and agreed to be interviewed. A letter was also sent to eight mediators who had been added to the roster subsequent to the questionnaire mail out. Two of these new child protection mediators responded to the letter and asked to be interviewed. This brought the total of mediators willing to be interviewed to 13. Interviews were scheduled with each of the 13 volunteers. Interviews lasted for one hour with the exception of one interview in which the mediator was only available for 30 minutes.

Participants were advised prior to the interview that they would be asked to provide a case of their choosing in order to illustrate their work. The choice of an illustrative case was left entirely to the participants. Some mediators did ask what type of case they should choose but when mediators asked this question they were given a minimal amount of direction. The purpose in collecting these illustrative samples was to capture any additional information about the mediation process which might have been missed because the right questions were not asked. This completely open approach allowed participants to choose the material that they believed to be illustrative of effective or ineffective strategies in their work.

The interviews were carried out by phone or in person depending on practicalities and mediator preferences. All of the interviews with mediators from outside the Greater Vancouver area were carried out by phone. The mediators in the Greater Vancouver area were given the

choice of being interviewed in person or over the phone. Only two opted for a telephone interview and the other six were interviewed in person. This process allowed me to accommodate the mediator's schedules while being able to carry out all the interviews myself regardless of geographical location.

Building Comparison into the Structure of the Study

As discussed above, one of the essential elements of the grounded theory informed approach is making constant comparisons. Dick (2005) explains the process in the following words, "Constant comparison is the heart of the process. At first you compare interview (or other data) to interview (or other data). Theory emerges quickly. When it has begun to emerge you compare data to theory" (p. 1).

This study was structured in a way that enhanced the possibilities of data comparison throughout the duration of data analysis. Three types of data were collected and comparisons were made within each data type and from one data type to another. For example, the questionnaires were collected first. These were analyzed and some preliminary themes were noted. These themes were used to develop a semi-structured interview guide. This type of interview guide lists areas of inquiry and suggested questions but it does not require every question to be asked of every participant. This type of interview guide gave the interviewer the flexibility to modify the specific questions asked in each interview in order to follow up on new issues raised by mediators that had already been interviewed. The interviews were taped and once the tapes were transcribed data analysis began. Comparisons were made between the different interviews. During the interviews each participant was asked to provide an example of a case that illustrated their work. During data analysis these illustrative cases were also compared with each other and with the data from the questionnaire and interview questions.

Data Analysis

Coding

The basic procedures described by Strauss and Corbin (1998) were used in data analysis. The data from the questionnaires was analyzed and coded first using an open coding approach. Open coding has been defined as "an analytic process through which concepts are identified and their properties and dimensions are discovered in data." (p 101) During the first round of analyzing the questionnaires I coded by hand rather than using a computer program to assist because the amount of data was very small and therefore easy to organize.

During analysis of the questionnaires several themes began to emerge. These themes drew my attention due to being mentioned by a majority of the respondees. These are as follows:

1) A majority of the mediators believed that personal or relationship transformation was an indicator of a successful mediation and only two mentioned "reaching an agreement" as the sole indicator of success.

2) A majority of the mediators agreed that the presence of legal counsel has an impact on the mediation session with more identifying this as being positive than negative.

3) A majority of mediators stated that they do more pre-mediation work in child protection mediation than they do in other types of mediation practice.

4) A majority of mediators mentioned there are differences between child protection mediation and other types of mediation although they did not explain what those differences are.

5) A majority of mediators described balance of power issues as being a challenge that they face when conducting child protection mediations.

This information was used to inform the development of interview questions. The interview questions were designed to gather more information about these emerging themes and to discover further process issues in child protection mediation. Once interviews were complete and the tapes of the interview session were transcribed then I read the transcripts and took notes. The purpose of this initial examination of the transcripts was to familiarize myself with the data and to determine whether the five recurring concepts identified in the questionnaires also appear in the interviews. A secondary purpose was to begin identifying other recurring concepts.

Once this initial examination was completed I created preliminary codes along with descriptions of each code. I then coded the data from the questionnaires and interviews with the assistance of Atlas ti, a computer program designed for carrying out qualitative research. Altas ti is particularly well suited for grounded research. It allows the researcher to assign codes to fragments of text. Atlas ti's capabilities allow the researcher to gather all quotations assigned a particular code into one document, to connect codes into families or networks and to create diagrams to depict the associations between these codes.

Although I identified some codes prior to beginning coding further codes were created during data analysis when new concepts were discovered that could not be explained by the existing codes. A list of the codes as developed at this stage can be seen in Appendix C.

Once I was finished coding the documents I used the capabilities of Atlas ti to provide a document for each code that contained all quotations associated with that particular code. I read through these documents, wrote memos and asked myself questions about the data. At this point I realized that the codes I had chosen reflected descriptive concepts rather than abstract concepts. Strauss and Corbin (1998) state "once concepts begin to pile up the analyst should begin the process of grouping or categorizing them under more abstract explanatory terms" (114). The

codes I was using described events but did not explain them. I also realized that there were some concepts recurring through out the data that did not fit within the current coding categories. For example, some mediators mentioned strategies they used in the joint session to deal with process issues, yet there was no code to capture strategies used after the pre-mediation stage had finished and the parties were participating in joint sessions. Due to the limitations of the coding scheme at that point I found I was forcing data into the existing categories even when the data was not accurately depicted by that particular category. Once these shortcomings were discovered I reorganized the coding scheme around categories which explained rather than described the data.

During the process of reorganizing the codes I began to move from open coding to axial coding. According to Strauss and Corbin (1998) axial coding is a process in which "categories… [are related] to their sub categories termed 'axial' because coding occurs around the axis of a category linking categories at the level of properties and dimensions" (p 123). In other words, categories should answer the questions of what, who, where, when and why as related to the phenomena being studied. Although open coding, axial coding and selective coding represent different stages in the process according to Strauss and Corbin these stages may overlap and aren't necessarily carried out sequentially. This proved true in regard to the data analysis done in this project. At the same time as I began to move into the axial coding stage I also began to move into selective coding.

Selective coding is the process of refining the theory in order to be sure that the theory captures the full dimensions of each chosen category. The first step to be taken towards selective coding is to identify a central category that represents the main theme of the research. Dick (2005) explains that "after a time one category (occasionally more) will be found to emerge with high

frequency of mention, and to be connected to many of the other categories which are emerging. This is your core category." (p. 7)

The core category that emerged from the data in this particular study is managing the process. Not only does the term managing the process encapsulate the key essence of the information the mediators provided in the questionnaires, interviews and illustrative case studies, but some mediators used these actual words to describe their work.

Once I realized that the central category was managing the process I was able to develop categories which were capable of explaining the "who", "what", "why", "where" and "when" of 'managing the process'. The new codes, and what question each code answers are as follows: describing the process (what), explaining the process (how and why), strategies for managing the process (who, how and when) and evaluating success in managing the process (why). Once these new codes were created I began another round of data analysis and coding using the new categories. In some cases I was able to convert the data from the old codes to sub-categories of these new codes. In other cases I created new sub-codes as I was working my way through the data. The new coding scheme along with descriptions of each code and sub-code appears in Appendix D.

Theoretical Saturation

According to grounded theory methodology, data is collected until a particular category is saturated. Strauss and Corbin (1998) state that, "the ultimate criterion for determining whether or not to finalize the data gathering process still is theoretical saturation. This term denotes that during analysis, no new properties and dimensions emerge from the data, and the analysis has accounted for much of the possible variability." (p. 158) Usually this point is reached after conducting a certain number of interviews. Dick (2005) explains that when "collecting and

interpreting data about a particular category, in time you reach a point of diminishing returns. Eventually your interviews add nothing to what you already know about a category, its properties, and its relationship to the core category." (p. 8)

Other data sources can be used to make final refinements to the data. According to Strauss and Corbin (1998) theoretical sampling is used to saturate poorly developed categories. This means deliberately choosing persons or documents that will allow you to gather new data specifically targeted at answering questions or facilitating comparisons to the theory in order to ensure that the categories are saturated.

Conducting further interviews was not an option once I had interviewed all the mediators on the roster who had agreed to participate since the pool of child protection mediators willing to participate had been exhausted. Therefore, instead of conducting new interviews to collect additional data I returned to the data that was already collected to conduct a final analysis. Strauss and Corbin (1998) acknowledge returning to the data as one possibility for carrying out theoretical sampling.

In the final analysis I treated the data from the illustrative case studies as if it was new data. I examined this data to determine whether the participants provided any information in the case studies that were capable of adding dimension or scope to the existing categories. I chose to use the illustrative case studies for this purpose because this data had two distinct characteristics. These illustrative case studies contained information that the mediators themselves had identified as being relevant, whereas the other data used in this study was provided by mediators in response to direct questions. The illustrative case studies consisted of fairly lengthy descriptions of one particular mediation, whereas the other data used in this study consisted of information about what typically occurs in mediation sessions in general terms. This final comparative analysis did not

reveal any new information about managing the process or the specific related categories and sub categories. This suggested that the categories were saturated.

As a final step I compared the coded data from the three data sources: questionnaires, interviews and illustrative case studies. I first created a table which listed the number of times each code was used in each document. This table made it easy to see if all the codes and sub-codes appeared in each document type. I found that, although some sub-codes did not appear in each of the three document types, every code appeared in all three of the document types with some minor variations which will be further discussed in the chapters six and seven. This table appears as Appendix E.

I then examined the coded data in the chronological order of when the data had been collected, first questionnaires, second interviews, and third illustrative cases. Through this analysis I was able to track the recurring concepts which first appeared in the questionnaires to see how these were further developed during the analysis of interview data, and how these concepts were further refined during the analysis of the data from the illustrative cases. I concluded that the categories were well developed and were now saturated.

Establishing Trustworthiness (Validity)

Once saturation is completed then the trustworthiness of the theoretical scheme should be validated. According to Williams (2005), trustworthiness is established by demonstrating confirmability, transferability, dependability, and credibility.

Confirmability refers to the quality of the results including how well the results are supported by the participants and by events independent of the researcher such as other authors. In the current study confirmability was established by asking the participants to review the results

in order to ensure that they were in agreement with these findings. As well the results of this study were compared to similar studies where possible. This is discussed in chapter eight.

Transferability refers to how transferable the findings are to other settings. According to Williams (2005) this criteria is not determined by the researcher but by the reader based on the research itself and weighed against information provided by the researchers about the context of the study. In order to assist readers in determining whether or not the results of this study are transferable to another location I have provided information about the child protection mediation program in British Columbia and in other jurisdictions. As well I discuss issues of transferability in chapter 8 (discussion chapter).

Dependability is determined by how careful the researcher is to avoid mistakes in collecting, analyzing and reporting data. Throughout this project I kept meticulous notes and memos explaining my choices and approach.

Credibility is determined by whether a study is believable to the readers and approved by the participants. Some of the well recognized techniques for enhancing credibility include peer debriefing, member checking, triangulation, progressive subjectivity checks, prolonged engagement, and persistent observation (Williams, 2005). I used the first four of the six techniques on this list. Following is a brief description of how I used each of these techniques to verify the results of this study.

Feedback was elicited from other professionals in the field beyond the participants in this study (peer debriefing), such as mediators who did not participate in this study in several informal conversations. As well, Andrea Clarke, senior policy analyst at the DRO read a draft of the thesis.

Mediators who participated in the study were given the opportunity to review the results to ensure that their views had been represented accurately (member checking). At the end of each

interview participants were told that they would have a chance to review a draft of the results and this would include the opportunity to review any direct quotations from their transcript. Upon completion of a draft of the chapters summarizing the results (chapters five, six and seven), copies were mailed to each participant with a letter inviting feedback. If a direct quotation was used from any particular mediator then that quotation was highlighted in the copy of the draft sent to that particular mediator. This process gave mediators the option of checking the accuracy of specific quotes they had supplied while also providing feedback on the overall results if they wished to do so. Mediators were given a month to respond and provide feedback or corrections to the draft sent to them.

Triangulation was also used to verify the results of this study. Triangulation refers to using multiple sources of information, using multiple methods of data collection or acquiring observations from multiple inquirers. As mentioned above, data gathered from the interviews, from the questionnaires and from the illustrative case examples were analyzed separately and together. Themes emerging from the separate analysis of the questionnaires, the interviews, and the illustrative case studies were compared to enhance reliability.

I employed progressive subjectivity checks throughout the data analysis process. This technique requires the researcher to check and take note of changing expectations for the study. According to Williams (2005), this includes letting the reader know when the researcher became 'stuck' or 'frozen' on some intermediate construction. In this particular study I disclosed the fact that I developed a second coding scheme when I realized that all the data was not explained by the original coding scheme.

Conclusion to this Chapter

As detailed in this chapter the grounded theory informed method was rigorously followed while collecting and analyzing data for this study. As well the accepted procedures for ensuring that the results of a qualitative study are trustworthy were employed. Therefore, confidence can be placed in the results of this study which are detailed in the next three chapters.

CHAPTER V: RESULTS:

Introduction to this Chapter

The next three chapters provide a discussion of the results of this study. Each chapter emphasizes a different aspect of the results. The current chapter will explain mediator perceptions of the child protection mediation process including observed differences between child protection and other types of mediation. The next chapter will contain an explanation of the strategies and methods mediators use to manage process issues in child protection mediation. The third chapter will contain an explanation of how mediators evaluate whether a child protection mediation case has been successful. The results reflect the perceptions of the participating mediators. An analysis of these perceptions and a comparison between the results of this study and previous studies will be covered in chapter 8.

Results: A Grounded Theory Approach

In keeping with grounded theory methodology, the information presented in these chapters is essentially a summary and description of the major themes that emerged out of the data organized into categories and sub categories. The mediators who participated in this study came from many different professional backgrounds, there are differences in mediator style and no two child protection mediation cases are alike. As a result, one complexity was determining which issues being raised by mediators were common to child protection mediation as a whole and which were only relevant to a few mediators or to one type of case but not others. Although data analysis was a challenge, at the end of this process I was able to organize the results into four overarching themes (or concepts) which were commonly expressed by the participants. They were organized in such a way as to allow variations from case to case.

It should be noted that these categories are broad enough to allow some individual variation for case differences or mediator style differences. For example, in the next chapter several strategies mediators use to manage the child protection mediation process are described. This does not mean that every mediator uses every strategy in every situation. The mediators adapt and apply these strategies and methods as is needed and preferred. As one mediator explained "there are skills you bring as a mediator and that you adapt to any particular dynamic; and it's just how you sort through the particular dynamics with the skills you have."

Several mediators stated it was hard to make generalizations about child protection mediation or about the strategies they use because each case is so different. Nonetheless themes did appear as data analysis proceeded and a core theme was identified. The core theme, managing the process, captured the essence of the information provided by the mediators. There were four different aspects to this theme. These became the main concepts or categories for organizing the data. These concepts capture different aspects of what mediators believe to be true of their experiences of managing the process as child protection mediators. These concepts are as follows: a) describing the process, b) explaining the process, c) strategies for managing the process, and d) evaluating success in managing the process. Each of these themes will be discussed in more detail in the next three chapters. For organizational convenience I have organized the first two themes into one chapter.

What is Process?

Process refers to dynamics such as interpersonal conflict, communication patterns, emotions and other non substantive issues that a mediator needs to manage during mediation sessions. This differs from content, which refers to the substantive issues that are the subject of the dispute. According to one skills-based training manual:

Process deals with how things are being discussed, including methods, procedures, format, and tools used. It also includes group dynamics and the meeting climate. The process is "silent" and so it is more difficult to pinpoint and is often ignored while participants focus on the content. The content of any meeting is what is being discussed. Content is expressed in the agenda, and what is said. It is the verbal part of any meeting and so content is obvious and typically consumes the attention of participants. (NOAA Coastal Services Center, 2006)

A good mediator needs to be able to manage both the process and the content in order to be effective. Although this is true of all types of mediation, according to the mediators that participated in this study there are some unique challenges in child protection mediation and some of the dynamics are particularly challenging. As one mediator noted "the biggest...strength you bring is that ability to manage the process for them. And it's more squirrelly in child protection mediation than it is in other cases."

The interaction between the parties, the emotions in the room, the interpersonal dynamics and the expressions of power by parties in the mediation sessions are all process issues that need to be managed by the mediator. Managing the process requires a mediator to have the necessary mediation skills and to be flexible when using them. As applied to child protection mediation, it is important that the mediator be skilled but also to be able to adapt those skills to deal with the process issues that are unique to child protection mediation in general as well as to the individual child protection case.

Describing and Explaining the Process

Introduction to Themes in This Chapter

For the rest of the current chapter I will discuss the first two themes: describing the process and explaining the process. Describing the process refers to how the mediators view child protection mediation process issues; explaining the process refers to the issues and circumstances

identified by the mediators that explain the existence of particular process issues in child protection mediation including those process issues that differ from other types of mediation. The information in this chapter is foundational to understanding the concepts described in the next two chapters because it is necessary to understand how child protection mediation differs from other types of mediation to be able to understand why the mediators choose particular strategies in child protection mediation and why these strategies may be particularly effective in this context.

When mediators described typical challenges they face in child protection mediation or were asked to explain the differences between child protection mediation and other types of mediation, three themes consistently arose. These were: a) emotional climate, b) balance of power issues, and c) dynamics between the parties. These three issues themselves are not unique to child protection mediation, but specific aspects of how they manifest themselves in this setting are unique.

Emotional Climate

Some mediators claimed that the emotional climate is higher in child protection mediation. One mediator, for example, said that "it is a more emotional process. The defendants are usually very motivated to reach a resolution." However, mediators more typically described the emotional climate as different rather than greater. For example, when asked what differences there are between child protection mediation and other types of mediation one mediator stated that the level of conflict isn't necessarily higher but the process itself is different. Another mediator explained that there is emotion in other types of mediation as well but the quality of the emotion is different in child protection mediation. This mediator provided the following differentiation "there is probably more emotional anger and probably a less controlled emotional anger in child protection".

Contextual Factors That Impact Emotional Climate

One factor which mediators identified as contributing to the type of emotional content that exists in child protection mediation is the subject matter. As one mediator explained:

> Children are a much more visceral issue than whether the dry cleaner shrunk your favorite skirt. In other words, by definition, child protection mediation issues have a high emotional intensity. There is incredible social stigma attached to child protection. When a child is removed parents feel branded with the 'bad parent' label. The emotional intensity of conflict between the Ministry and parents, or between two people who are separated and in a co-parenting relationship, can be huge. Parents whose children are in foster care or whose children have been put up for adoption experience a huge sense of loss. This feeling of loss often is characterized as anger at the Ministry/foster parents and brings with it incredible emotion.

Other mediators who were interviewed identified parental feelings of loss and social stigma as factors which contribute to the intensity of the emotional climate in child protection mediation.

Factors such as parental cognitive and social disabilities were also mentioned. As well, mediators reported that the existence of issues such as mental health or substance abuse issues often complicate the communication process. As noted by one mediator:

> Frequently people's coping skills are not all that great. Kids are in care. They are usually not coping in other parts of their lives as well because that tends to be the last thing to fall apart. So they may well be running from pillar to post and feeling under-regarded in lots of different ways which heightens the emotional level.

History of Parties' Relationship and Impact on Emotional Climate

Mediators seemed to agree that the cases that come to mediation when there is a long history of contact between child protection workers and parents are the most difficult. In these situations parental trust is usually low, and the child protection workers have often become defensive or rigid in their position or views of the family. As one mediator noted:

> It's not unusual for the social worker to have had frightening, not violent per se necessarily, but threatening, frightening encounters with that parent, or other people in the office to have had that sort of encounter with the parent. So there's a degree of

defensiveness on the part of the social worker that can be difficult and that can, you know, that you have to sort of, you have to just spend some time.

Sometimes communications can break down completely and the child protection workers and parents can become locked into rigid or adversarial positions. One mediator provided a particularly poignant case example which illustrates how this dynamic can develop:

> The parent had been expressing concerns about some of the things that were going on in foster care, and with that child and around access and all that. And the response that she had been getting was to increasingly restrict her contact with her child....And that was making her behave badly. And the worse she behaved, the more her contact... You know? And so you can sort of see the dynamic. So this was a situation where the parent requested mediation, because she was having less and less contact with the child and was unable to um, make herself be heard....To me it's an interesting example... I had so many meetings with this mother because she was wild about the whole thing. She completely didn't trust anybody, including me because I was part of the system too.

Mediation can provide a safe neutral place where the parties can step out of this type of dynamic, but, as illustrated by this story, it can take a while for the parents to accept mediation as a safe neutral place. One mediator noted that:

> Part of the problem is that our child protection system is somewhat based on almost like a Napoleonic system of justice where the very person that is supposed to be helping you is also your prosecutor. So it's very hard for families to develop any kind of working relationship with the Ministry when they know that the Ministry will take away their children.

This mediator observed that the unique dual relationship creates dynamics which result in the parent denying the problems and not co-operating with the Ministry, which in turn limits the options open to the child protection workers. Once the children have been removed an adversarial situation is set up where the child protection worker is defending the decision. The dynamics between the parties can be very difficult. Very powerful emotions may be present. By the time a parent gets to mediation, especially if that parent has been in the system a long time, the parent may have very strong feelings of anger, guilt, shame and fear. On the other side the child

protection worker may be feeling defensive and even angry about how he or she has been treated by the parent.

Mediation provides an opportunity for the parties to step out of the dynamics created by the child protection worker's dual role whereby the child protection worker provides support to families while at the same time investigates suspected child abuse. The mediator, who described this as a "Napoleonic system of justice", contrasted child protection work intervention to mediation because mediation "allows the parents to have a neutral safe place to express themselves and they gain power in that, and once parents are empowered all sorts of things are possible...[This] is probably the biggest single reason that we are seeing success rates in child protection mediation that are approximating 90%".

Once parents realize that mediation is safe and neutral they often need to express their feelings about what has happened to them before they are able to move towards negotiating any resolution. Child protection mediation requires skills and knowledge about how to manage this type of emotional climate. The specific strategies mediators use to manage the emotional climate in child protection mediation are discussed in the next chapter.

Balance of Power Issues

Balance of power issues were identified as being an important dynamic in child protection mediation by more than half of the mediators who responded to the questionnaires. More data was gathered about this issue when follow up questions were asked in interviews. Although some data on power imbalances was gathered as a response to a direct question during interviews, some mediators volunteered information about power dynamics in child protection mediation before they were asked any questions about this issue. For example, at the outset of each interview the interviewee was asked to identify issues he or she thought important to be included for discussion

in the interview. One mediator gave the following response: "The one piece that I think is the ingredient that is necessary to address is the issue of the power balance. There is a huge power balance for most people".

Power Imbalances between Parents and Child Protection workers

The specific power dynamic most commonly identified by participants was the imbalance of power between child protection workers and parents. One mediator described it this way:

> I assume that we start from a place of imbalance because the Ministry has incredible power over parents. That is a given…So you start there. There is no illusion in my mind, or there shouldn't be, that parents can call the shots or that they have that same kind… if they want their child back there are hoops to be jumped through, and what they can do is negotiate the level of the hoops, type of hoop, not that there won't be any hoops.

Mediators provided information about specific factors that contribute to this power imbalance. These include a disparity in knowledge and skills between the trained child protection worker and parents who may be uneducated or unskilled; at the very least having less knowledge about the courts or about child protection legislation than the child protection workers. One mediator noted that "power balancing is often more pronounced in child protection mediation. Often it is in the form of a less educated or otherwise compromised client. Less refined communication skills and sometimes a 'victim mentality' can be a factor as well". These factors all contribute to making power balancing particularly challenging in child protection mediation.

Statutory Authority

Mediators also identified the fact that the power imbalances exist in all types of mediation but the imbalance between parents and child protection workers is unique due to the statutory authority that child protection workers have. The legislated mandate to protect children creates strictly prescribed parameters in regard to what child protection workers can negotiate. They are

not able to agree to anything which would compromise the safety of a child in any way. As one mediator pointed out:

> You can't change legislation, that's when the power imbalance is there. But you can work with it in the mediation setting because nobody is going to be telling either side what to do, but the power balancing comes in using respect, using language that everybody can understand, but mainly I think the concept that nothing happens here unless you are willing to let it happen. There is no greater power balance, I think, that's the bottom line.

It should be pointed out that most mediators viewed the power dynamics between child protection workers and the parents to be complicated with more to nuances to understand than the obvious power imbalance between a government ministry, with resources and statutory authority, and parents, many of who have social disadvantages. One mediator took the view that the power imbalance may be overstated:

> Well one of the really big focuses of the Ministry when they were recruiting was the power imbalance between the Ministry and the family and managing that power imbalance. And having now worked on some of these cases, I have experienced some of that. But often there is a very healthy relationship between the family and the child protection worker. It's a collaborative relationship - they see the social worker as a resource - sometimes overly so, like phoning all the time because the seven o'clock access phone call hasn't been made and they phone the Ministry to get them to fix it. But often a healthy communication - now behind that it can go in tandem with "I am still very critical with the Ministry and I'm going to sue you because you screwed up in the first place".

Perceived Power Imbalances

Mediators also pointed out that although the child protection workers have more power due to the legislated mandate this is not always how it feels to the child protection worker. Despite their statutory authority child protection workers participating in mediation may feel disempowered. One mediator gave an example of this by noting she has often had child protection workers say:

> Yeah, you're darn right, there's some power imbalance, and the parents…with the parents' counsel have all the power". So that's how it feels to them ….I think social workers feel like they get burned every which way they turn. And so I don't mind their attitudes when

they come in because I think stuff has happened that has caused them to feel weary on so many levels.

Another mediator provided an apt distinction to explain the interplay of power dynamics between child protection workers and parents by distinguishing between an actual power imbalance due to legislation and a perceived power imbalance experienced by child protection workers.

Child protection worker feelings of powerlessness may be due to factors such as being new and inexperienced, or alternatively very experienced but feeling defensive due to having their expertise challenged or feeling outnumbered around the table. As well, even though child protection workers are the ones who can make decisions about where the children are going to live the families are the ones who have the power to create actual change within their family systems. Child protection workers can't force families to change and the difficulty of working with families where changes are not occurring can feel disempowering. In addition, in some mediation sessions child protection workers can be outnumbered by the family which can lead to feelings of powerlessness. One mediator gave an example of a situation where the child protection worker in attendance was alone whereas the parents and extended family members supporting the parents added up to thirteen people.

Power Dynamics between Family Members or Non-Parties

In addition to managing the power dynamics between the parties[6] in the session (ie. child protection workers and parents) mediators need to be cognizant of other relationships around the table where power imbalances may exist. As well, power dynamics can shift and change during any one child protection mediation session. If extended family members are present in the mediation session then mediators need to be aware of potential dynamics which result in those

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[6] In the mediation context, 'parties' refers to the disputants, and non-parties refers to people attending the mediation session other than the disputants. Examples of non-parties in the child protection mediation context include the following: legal counsel, support people, observers, community elders and extended family members.

extended family members affecting the outcome for good or bad. Particularly because, in some families, extended family members wield a lot of power. Mediators regularly commented that the more people there are in the room the more complicated the dynamics become. However, this does not mean that dynamics are uncomplicated when only nuclear family members are present. There can still be challenges managing power dynamics. One mediator pointed out that:

> You have to know where the power in families lies. Quite often you will get a young mother and a young father and you are never sure whether there is abuse in the relationship or not and whether or not you are hearing from both sides, or you are hearing an accurate depiction of what is happening.

In order to be effective mediators must be able to identify power imbalances and to be cognizant of the effect that this dynamic may have on the session. In dealing with power imbalances there is a two part task. The power imbalances must be identified and dynamics arising out of the power imbalances must be dealt with. The next chapter will include a discussion of how the mediators deal with the power imbalances they face in child protection mediation.

Challenging Dynamics

Power dynamics is only one of a range of interpersonal dynamics that mediators need to manage when conducting child protection mediations. Although mediators in every context have to manage dynamics between participating parties some of these dynamics are far more intense in child protection mediation. According to mediators who participated in this study, this is, in part, caused by external factors which commonly exist in child protection cases. Changes to the circumstances of this client group regularly occur. As well there are an unusually large number of hidden agendas to weed through due to the multi-party aspect of child protection mediation.

Multi-Party Aspect

One mediator described the intensity and complexity of child protection mediation in the following way:

> It very much involves a multi-party process so there is a lot to keep track of and so that would be something that particularly people particularly from say legal backgrounds are much more used to working in sort of the interviewing of one person at a time, or working with two parties that disagree, that this is very much a herding cats kind of situation. You've got to keep a lot of balls in the air.

The two issues that were most often mentioned by mediators who participated in the study as contributing to the complexity of the dynamics in child protection mediation, metaphorically described as 'herding cats' by this mediator, are as follows: a) family circumstances change which affect who should be participating in the mediation, and b) it is not always clear at time of referral who should be participating in the mediation sessions.

Unlike other types of mediation, where it is clear who will participate in the mediation session in advance of the referral to mediation, in child protection mediation mediators may not know who should optimally be at the table until they meet with parents and child protection workers in pre-mediation orientation sessions. At this point mediators may find out about other extended family members who play an important role in decision making in the family or are very involved in the life of the child who is the subject of the mediation. Sometimes there may be specific people that the parents or the child protection workers ask to have included in the joint mediation sessions. This may include support people, family members or additional representatives of MCFD. As a result, the number of participants varies from case to case. One mediator noted that his cases have varied from two to 22 persons present, with the average number being around six or seven.

Mediators noted that it is important to include everyone that might be necessary for a decision to be made. For example, if one possible care option for a child is that the child will live with Aunt Suzie then it is important to include Aunt Suzie in the mediation. The downside to including participants beyond the parents and child protection workers is that the more people there are in the room the more complicated the dynamics become. One mediator noted that "you have to be careful. There is a general rule - the fewer people in the mediation session the more directive the session can be and the more on topic we are going to be because every time you introduce another party there is another dynamic and there's other side issues that are just floating around out there."

If extra participants are included mediators explained that it is important to keep the mediation focused on the main issues and avoid being side tracked on tangential issues. Mediators do this by ensuring that the participants are clear on the role that they will play during the joint session and by remaining aware of the different views around the table on any one issue in order to be able to facilitate a discussion of those differences when necessary. In the words of one mediator:

> I generally like everybody to be there...there may be five or six different viewpoints at the table so...I try to let everybody speak for themselves. In that case you certainly wouldn't want the mother speaking for the mother and the father; you'd want to hear from each one of them. And then hopefully you'd start to discern if there's differences between them and that will have to be fleshed out.

Changing Circumstances

In addition to complicated dynamics caused by the sheer number of potential participants, complications may be introduced by changing circumstances throughout the duration of the mediation. One mediator told of a mediation involving a youth. At the time the first session was held the youth was living in a foster home. Between that session and the second one the living

arrangement fell apart and she was moved to another home immediately after the second session. These types of changes are very common in child protection mediation. As one mediator described:

> Child protection mediation is very much a moving target. You interview a parent on one day and then three days later they've been on the street, or two months later they are dead; that sort of thing. Or, somebody has come into their life and there is a new man on the scene all of a sudden or ... So things are constantly changing in a child's...[life] for unrelated reasons.

In order to successfully mediate child protection matters mediators stated that it is necessary to be adaptable and flexible in order to accommodate the unpredictable nature of the proceedings.

Circumstances can sometimes be unpredictable from the beginning, even at the stage of contacting parties to set up pre-mediation meetings. Mediators mentioned experiences of having difficulty getting in contact with parents due to circumstances such as parents moving or phones being disconnected or a variety of other reasons. Mediators sometimes need to use a bit of creativity in getting mediations under way. This is a distinguishing feature with child protection mediation. Some mediators explained that this is very different than other types of mediation that they do where someone else makes all the practical arrangements for the mediation and all that is necessary is to show up on the day that the mediation will be held and to carry out the mediation. The next chapter contains a discussion of the specific strategies mediators use to deal with the changeable nature of child protection mediation and the complexity that this brings to the dynamics.

Conclusion to this Chapter

Mediators identified three process issues which are different in child protection mediation. First, a unique emotional climate exists. This is a result of the subject matter of the dispute, and the personal and sensitive nature that disputes about parental care are likely to have. Second, there

are unusually difficult power dynamics and imbalances resulting from the existence of the

statutory authority the child protection worker has and the involvement of extended family

members which bring the family's existing power structures to the table. Finally, complicated

interpersonal dynamics exist. These are a result of the multi-party nature of child protection

mediation and the shifting circumstances that often occur in child protection matters. The

strategies that mediators use to deal with these process issues are discussed in the next chapter.

CHAPTER VI: RESULTS CONTINUED

Introduction to This Chapter

In the previous chapter I described the child protection mediation process from the perspective of the mediators including those things that the mediators identified as being unique or particularly challenging in child protection mediation. This chapter describes the methods and strategies that the mediators who participated in this study identified as being effective process management strategies in child protection mediation.

Three categories of strategies were commonly identified by mediators as being effective. Each of the following represents closely related strategies, or a "category of strategies": a) using orientation sessions to lay the groundwork for the joint session, b) using non-parties to influence the results, and c) using the mediator toolbox to continue to manage in the joint session. For example, mediators use the orientation session to do important work which creates groundwork for the rest of the mediation. However, this does not mean that mediators always use the same techniques during orientation sessions. There is an array of specific techniques that mediators may choose from depending on which ones are the most appropriate to use in the particular case.

Evolution of the Themes in This Chapter

It should be noted that the three concepts discussed in this chapter evolved as I gained a better understanding of how mediators manage the process while I moved from analyzing the questionnaires to analyzing the interviews to analyzing the case illustrations. When the questionnaires were analyzed five common themes were identified: a) personal or relational transformation as an indicator of success, b) differences between child protection mediation and other types of mediation, c) the impact, positive and negative, that lawyers can have on mediation

sessions, d) the value of pre-mediation orientation sessions, and e) the need to balance power or empower parties in the sessions. Further data was gathered on each of these issues through interviews and illustrative case studies. At that point the categories were refined to fit what was learned from the new data.

Personal and relational transformation as an indicator of success became subsumed in the theme 'evaluating success in managing the process' which is discussed in the next chapter. Differences between child protection mediation and other types of mediation became subsumed in the themes 'describing the process', and 'explaining the process' which were the subject of the previous chapter. The other three concepts, the impact of lawyers on mediation sessions, the value of orientation sessions and the need to balance power, were refined and expanded into three different categories of strategies (or sub-themes) within the broader theme of 'strategies for managing the process'. These strategic categories are discussed in this chapter.

The value of pre-mediation orientation sessions continued to be a prominent theme during analysis of the interview transcripts. Participants were asked many questions about how they conduct pre-mediation orientation sessions, and over time patterns emerged in regard to what mediators were accomplishing during the orientation sessions and why mediators saw these orientations as being so valuable. This concept is captured as the sub-theme 'using the orientation sessions to lay groundwork for the joint session'.

During the interview stage questions were also asked about the role of lawyers in mediation. Over time it became apparent that the reason most mediators find the presence of lawyers to be beneficial is because lawyers are often a powerful influence in moving the parties towards resolution. When the data was analyzed from the interviews and illustrative case examples it also became apparent that other non-parties can be a powerful influence in moving the

case towards a resolution, and that mediators have specific strategies for using lawyers and other non-parties as key influencers in the sessions. This concept is captured as 'using non-parties to influence the results'.

During the interviews mediators were also asked what strategies they use to address power imbalances. During data analysis it became clear that mediators begin to address power imbalances during the pre-mediation session through various strategies, and continue use these strategies and others through the joint sessions. As well, mediators use their skills to continue to deal with emotions and interpersonal dynamics in joint sessions. This concept is captured as 'using the mediator toolbox to manage the process in the joint session'.

Strategies for Managing the Process

As described above, when both the questionnaires and the interviews were analyzed three different categories of strategies mediators use for managing the process were identified: 1) using orientation sessions to lay groundwork for the joint session, 2) using non-parties to influence the results, and 3) using the mediator toolbox to continue to manage in the joint session. Each of these will now be discussed in turn.

Using Orientation Sessions to Lay Groundwork for the Joint Session

More than half of the respondees to the questionnaires specifically mentioned that they do more work in the pre-mediation orientation sessions in child protection mediation than in other types of mediation[7]. The mediators continued to make similar statements in interview responses. The value mediators ascribed to orientations was mentioned with regularity and with strong

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[7] Mediators tended to use the words 'pre-mediation meetings' and 'orientation sessions' synonymously. Regardless of which terminology they used this refers to individual meetings held with those who would be participating in the joint sessions (always with parties and sometimes with non-parties). Meetings are held by phone or in person.

emphasis. This section of this chapter will present mediator views on the value of pre-mediation orientation sessions and mediator views on the purpose for these sessions.

Value of Conducting an Orientation Session

It was clear from the data that the mediators who participated in this study believed the orientation sessions are very important. In fact, two different mediators, both having extensive experience in the mediation field and carrying out a mediation practice broader than child protection mediation, stressed that they did not initially see the purpose for pre-mediation orientations but came to believe that these are terribly important. One explained how his appreciation of the value of the orientation developed over time:

> The biggest thing was I didn't originally do pre-mediation meetings. And I was of the opinion, and I've changed my mind now, that those were unnecessary because I always liked the idea of everybody getting there and I would introduce the whole thing and sort of take charge and everybody would meet me at the same time; so I wouldn't have had a prior meeting with somebody else. But I found that because everybody is so charged - emotionally charged at these things it really does help if you meet them ahead of time and I can kind of put them at ease as to who I am and what actually is or is not going to be decided or discussed and all this type of stuff. So that was recommended for years before I really adopted it and started doing it. So I wasn't a believer, I am now a believer in that.

Another explained that he first tried using orientation sessions when he was doing cases in the FPM model in the Surrey Court Project. Since orientation meetings were mandated in that project he tried it and found that it was so effective that he continued it. Although other mediators did not describe these types of conversions to a model using orientation meetings, they did stress that these meetings were very valuable particularly in the child protection context. Several mediators, in addition to the above mentioned mediators who described a conversion to doing orientation sessions in child protection mediation, commented that they do far more extensive pre-mediation work in child protection mediation than in the rest of their practice.

It should be noted that one mediator did point out that there was a potential downside to putting too much reliance on orientation sessions. This mediator pointed out that there is an increased emphasis on orientation sessions at a program wide level, and expressed a concern that this might result in mediators moving towards a conciliation[8] model where a mediator carries out negotiations by shuttling back and forth between the parties and the parties are kept separate rather than meeting face to face. This mediator explained his concerns in the following words:

> Philosophically I have a difficult time with pre-mediation as a way to bring out issues. I ... see it as really valuable in terms of informing people about the process and what is likely to happen, and just increase their comfort level. But in terms of...sifting through a lot of the content of the mediation and shuttling back and forth, it is almost like a conciliation aspect some of the time. Because my sort of philosophy is that one of the values of mediation is developing communication, which is I prefer that that happen face to face.

It should be noted that these comments reflect the only concern expressed about the orientation sessions. It does not seem that this mediator is suggesting there is no value in these sessions but rather that there is a danger that one of the potential benefits of mediation (namely improved communication) will be lost if these pre-mediation meetings evolve into a mediation model which primarily uses separate meetings (conciliation) rather than mediation where the parties meet face to face.

These sentiments may reflect more of a philosophical concern than a critique of common practices in the program. With one possible exception, mediators who participated in this study did not describe using conciliation to any great degree. Most mediators interviewed described using the orientation sessions to gather information about the issues. For example, when asked to identify effective strategies in child protection mediation one mediator replied "orientation

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[8] According to Morris (2002) "in Canada, the term "conciliation" generally refers to a process of dispute resolution in which "parties in dispute usually are not present in the same room. The conciliator communicates with each side separately using "shuttle diplomacy." The term mediation, by contrast, "is generally used...to describe third-party intervention in which the parties negotiate face to face". Although a mediator may meet with parties individually between joint meetings, the distinction is based on which structure is primarily used.

meetings – to gather background on case and to build trust with defendants". Another mediator explained:

> I conduct a pre-meeting/orientation session individually with all parties. The purpose of this session is to explain what child protection mediation is, what it means to sign the agreement to mediate and to gain an understanding of the issues from each person's perspective. As a result of these meetings I am able to estimate the time necessary for the mediation and come prepared with an understanding of the issues and where the emphasis is likely to be.

Although mediators described gathering information in orientation sessions what they did with the information gathered varied: some mediators used the information to create an agenda for joint sessions, others kept the information in the back of their minds but allowed the parties to develop the agenda and others rarely began a joint session with an agenda. These are stylistic differences from mediator to mediator.

Although mediators acknowledged gathering information about the issues in the orientation meetings this is not the same as doing conciliation during orientation sessions. It would be very difficult with this type of qualitative study to determine how many mediators incorporate some sort of conciliation process into the pre-mediation orientation stage, and, if some mediators use this approach, how often and under what circumstances. However, the mediators who participated in this study (with one possible exception) did not describe using this approach when specifically asked questions about what they try to accomplish in pre-mediation meetings.

It may be that some mediators have the impression that shuttle mediation is being used by other child protection mediators more often than it is. One mediator commented that prior to beginning work as a child protection mediator she had been given the impression that shuttle negotiation (or conciliation) was used extensively. She stated that she was now questioning whether this is actually true:

Which relates to another urban myth, or whatever impression that I had... that a lot of the actual agreements, per se, were made in the pre-meetings. And that isn't my experience. And so I don't know quite what to make of that. Sometimes as the mediator I think it certainly becomes apparent to you out of the pre-meetings what the possible outcomes are, what the range of outcomes are. Often on the Ministry side they will be very clear about what they are trying to achieve but often it's - we want the family to reach some agreement so we don't have to be involved. But the solution is always theirs, they take ownership of it and so I really am very un-directive in the pre-mediation meetings.

What Mediators Accomplish During Orientation Sessions

When mediators were asked what they tried to accomplish in orientation sessions the following were the most commonly mentioned: 1) diffusing emotion, 2) coaching and educating participants about the process, 3) identifying power imbalances, 4) gaining trust, and 5) deciding who will participate.

Diffusing emotion. Dealing with emotion is an important part of the mediator's work in child protection mediation. One respondent wrote in a questionnaire answer "mediator role tends to be management of emotional climate and clarification of MCFD expectations ". Mediators regularly described using the orientation sessions as an opportunity for the parents to vent in order to begin to diffuse the emotion. One mediator described this in the following words:

> I believe the parents need to have an opportunity to meet with the mediator prior to mediation to gain comfort with the mediator and the process. - I like them to have as much time with me as they want. I want them to feel really comfortable. You know they are talking about what is potentially the most important thing to them - their kids. In the eyes of the Ministry they have been deemed to have screwed up badly. They really need time. They have to be able to tell their side of the story. They have to be able to vent. They have to be able to cry.

Once parents have told their story, according to mediator reports, it seems easier for them to disentangle from the anger and to focus on future goals. One mediator was so confident that emotion can be diffused in orientation sessions that, in answer to a question about the emotional climate in mediation, she gave the following response: "Well, with luck, I mean if it's really bad

then I feel I haven't done my job in the pre-meeting. So that sometimes by the time we actually get

to the mediation it's a pretty cooperative process."

Coaching and educating participants about the process. Mediators also explained that orientation sessions provide an opportunity to prepare the participants to participate in mediation by giving them a better understanding of what mediation is and how to conduct themselves. There are two aspects to this educational process: 1) coaching the participants on how to present information in the joint session so that it will be heard and 2) providing information about the mediation process itself.

Several mediators used the word 'coaching' to describe informing and educating

participants about communication strategies. Mediators described coaching both parents and child

protection workers about how to express their feelings and concerns in a constructive way. This is

how one mediator described this aspect of the orientation sessions:

> Coaching is saying okay if you say that ... the way you just said it to me how do you think she is going to handle that? Oh, she's going to get totally ticked off. And I said okay, is that really what you want to do, tick her off or do you want to get your children home? Well, I want to get my children home. Okay, how can you say that because I think you should say that, but let's talk about how you should say it in a different way?

Although child protection workers may not need as much coaching about how to express their

emotions as the parents, child protection workers may need coaching on other issues. One

mediator explained that pre-mediation work includes coaching child protection workers "on how

to present opening statements to sound non judgmental, positive (in the circumstances) and future

focused".

Coaching is one type of education provided in orientation sessions. As well, mediators

offer information about what mediation is and what can and can not be accomplished in mediation.

In fact, providing education may be far more essential and, therefore, far more strategic in child

protection mediation than in some other types of mediation. Several mediators stated that they did

not find orientation sessions as important in other types of mediation. One mediator suggested that one reason for this may be socio-economic:

> My private mediation clientele tends to be more educated, more sophisticated, more economically advantaged, older people that have fewer children's issues and drug and alcohol issues and other ones. So probably I have less need for mediation, or for orientation, those kinds of sessions. I mediate a lot of doctors, lawyers, politicians, professional type of situations....What I try to do in orientation with the parents is ask them if they know what mediation is and if they don't I try to explain it to them. And if they've got the wrong idea I try to explain it to them. Yes, education is huge in those kinds of situations.

Mediators identified at least two benefits to providing education to the participants ahead of mediation. First, it ensures that participants understand which issues can be mediated and helps to bring some focus to the mediation. For example, if non-parties will be participating in the mediation sessions mediators can explain what their role will be, or if MCFD has a certain specific safety concern then the mediator can help the parents understand what that concern is. Second, it can also empower the parents and help to diffuse emotion. One mediator described a technique she uses for doing this. During pre-mediation meetings she shows the parents a flow chart that depicts the processes set out in the *CFCSA*:

> But I show them where they are in the Act, and show them where to read about what is going to be happening. So they can really understand they are in a process, and I say to them you know this is the law of the province. The social worker and I and you need to abide by this law. And if this isn't working, then certain things kick into place. And so because up here certain things weren't working, so here we've kicked into place - the social workers have and I have - and I show them that provision in the Act where mediation can happen. And then I tell them that right now since you have committed to mediation, it's like we can step out of this big 2X4 picture and out of this Act for a time and it's an opportunity to work through your issues just - around the table comfortably. And they really buy into that.

This technique of showing the chart and explaining the law of the province depersonalizes the dispute. It is no longer a just a conflict between the child protection worker and the parent.

Instead the issue is externalized; the problem is caused by the law and the parents are given an

opportunity to get some control back through crafting a solution in mediation.

Identifying power imbalances. During the orientation sessions mediators identify and

begin to deal with power imbalances. One aspect of this is taking steps to ensure that both parties

feel empowered to be able to represent themselves in the joint session. Several of the mediators

interviewed stated that this includes addressing the power imbalance created by the statutory

authority given to the child protection workers. Mediators do this by providing information about

the statutory process and about what the child protection worker's specific concerns are. Several

mediators explained that transparency about the situation is the key to balancing the power to

some degree or another. One mediator gave this example, of a case she had:

> When she tells me in pre-mediation 'I can't stand how they are like - they are in my face' -
> I said they are only going to be in your face more and you need to know that if that's what
> you want to do. Because that's what it is. That's what it is. So I want her to know what
> they are going to be looking for. And that, I think, increases a parent's power - to buy in or
> not. I mean it's not that I am working - I am not biased in what they do, but I think that
> information is really the interest in exposing what the social worker's interests are. I am
> really into full disclosure and I think that makes agreements whole. That is my belief. So I
> don't like a lot of surprises for them.

Another mediator explained that it is naïve to think that the power can be completely

balanced, but the effect of this imbalance can be ameliorated if limits dictated by statute or

Ministry policies are made explicit. This mediator explained that parents become very angry and

dispirited if they try to negotiate an issue and later find out that there never was any flexibility on

this issue.

> To the extent that the power imbalance means that the Ministry is taking, is limiting what
> they're prepared to move on, I think it's important for them to say that up front, because at
> least it's straightforward. And the parent can then make a decision about whether it's
> worth their while…[given] what they can realistically accomplish.

The mediator concluded "I think the best way to deal with power differences is to make them obvious, because I think that's fair. So, that's part of it…and the other part is just to… establish an atmosphere of respect."

In situations where a parent is made aware that they will not be able to address certain specific issues that they would like to have addressed they may still decide to participate. One example provided was of one parent who was initially disappointed to discover that her long term goal was radically different than the Ministry's. At first she questioned whether there was any point in participating in mediation and then decided to do so in order to try to improve access to her child in the short term.

The other aspect to addressing power imbalances in the pre-mediation sessions is sussing out where there might be power imbalances between the participants other than the two parties (parents and child protection workers) such as in the extended family. The mediators who participated in this study were agreed that in some cases it is important or necessary to include extra family members and that this can create problems because of power imbalances within the family structure. If, for example, a parent is afraid to speak when his or her mother is present then including the grandmother may make it difficult for that parent to fully participate. The mediator must weigh out the advantages of including the grandmother versus the impact that will have on the session. If the grandmother does attend the mediator must find a way to deal with that dynamic. The strategies the mediators use for doing this will be discussed further later in this chapter.

Gaining trust. Another important aspect of the orientation sessions is to gain the trust of the participants, particularly the parents. Many parents have a mistrust of the system[9]. Therefore, an essential element of the pre-mediation sessions is clarifying what mediation is and what the role of the mediator is. One mediator described gaining trust in the following words:

> From the parent's point of view to convince them that I'm not a government hack first of all - it is very important that I am somebody private - private practice - as you can see in a control aspect, and to empower them so that they know that they can express their feelings in front of a neutral person in a confidential setting without fear.

Although mediators seemed to draw a connection between providing information about the process and gaining trust merely providing information may not be enough. Mediators also talked about how important it is for the parents to feel heard and to feel safe expressing their concerns to the mediator.

It may be a particularly effective strategy in child protection mediation to ensure that parents feel respected and heard, given the previous life experiences of many parents embroiled in the child protection system. One mediator explained that:

> A number of people from the parent community are not, for whatever reason again some of the disadvantages socially and economically, are not used to feeling respected and sometimes in the pre-meetings it takes a while for them to realize that I mean what I say - that I really am interested in their feelings and their opinions.

Who should participate? One of the most interesting complexities of child protection mediation, as described by participants in this study, is the multi-party aspect. What is unique to child protection mediation is that it is not always known ahead of time who should participate in the joint sessions. In contrast, in other areas of mediation who will participate is likely known at

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[9] Although mediators may need the trust of participants in all mediation settings, gaining trust in child protection is especially important. Parents who have been involved with MCFD due to child protection concerns often have a heightened level of mistrust of anything they see as being associated with 'the system'. This s not surprising as this involvement may lead to their children being removed, and the dynamic created by being investigated leads to distrust. As well, according to mediators who participated in this study, families who have had long term involvement with MCFD may feel that previous agreements with the child protection worker have not been upheld (whether or not that is true).

the point of referral. For example, in divorce mediation it is normally the divorcing couple who will participate; in personal injury mediation the injured party, and the person being sued or the insurance representative (when the claim is subrogated) will participate. As discussed above, the more people who are included in a child protection mediation session the more complicated the dynamics become. On the other hand, parents may need support people in order to feel confident asserting their views, or it may be important to include certain extended family members because they play an important role in the child's life, or a child protection worker may wish to have another Ministry representative present.

One mediator described his experiences regarding choosing participants in the following words:

> I have had Aboriginal representatives from organizations such as VACFSS and other native assistance organizations that have been very helpful in the room. Occasionally we have had extended family; sometimes you have to have extended family because in some cultures the decisions are made by the extended family rather than the parents at the table so you have to involve them a lot. It is dangerous and I try only to have the central parties there. So if I have a brother or sister who want to be there for moral support I basically suggest that that's probably not a good idea. However if I have a brother there because the children are in his home and he has been caring for them and then the social worker tells me that in all likelihood that he is going to be the best resource because the parents aren't going to be able to make it.... So in those kinds of situations they are useful. In fact, they are probably essential to be at the table.

A delicate balance must be reached in order to include persons that will add a benefit to the sessions and to exclude those who will only be a detriment. This becomes an important part of the orientation sessions.

Further complicating this matter is the fact that it is not always apparent at the outset who will be an asset to the mediation proceedings and who will not. One mediator commented that she always insists that when parties want to include someone they explain what added value there will be to having that person there. She further noted that first impressions are not always correct. "In

some instances - and like I'm feeling this one out and we don't need that person and then the person shone at the table so it's not always foolproof."

This is a very important point because sometimes non-parties end up wielding considerable influence on the mediation sessions and play a key role in a resolution being reached. This is discussed further below. Since a mediator can not possibly always know what a non-party might bring to the session in the way of benefits or complications all that a mediator can do is his or her best to try to determine when a suggested attendee would be completely inappropriate, and, when there is someone the mediator is quite willing to have attend but other parties object, to try to understand why and to reach a resolution to the situation that all parties are comfortable with.

Several mediators described holding a series of orientation sessions with different constellations of family members to get a sense of what the dynamics are. In the words of one mediator:

> Whoever the party is - parents, grandparents ...sometimes those might be three different meetings. And it's a chance for them to tell their story. So from my perspective it does actually give me a lot of information and a lot of clues, especially about who has to be there.

Even deciding who should be included in each separate meeting can be complicated in many situations. As another mediator described:

> Let's say the mother and the father have broken up and half the issue is between the two of them, or there are grandparents involved on one side and you have to decide who can you meet with at the same time. I mean who actually is on the same page. That's kind of one of the tricky ones because you don't know. It's not just between the Ministry and one of the parents so, or even let's say the man is - has his anger problems or violence problems - well you really can't meet with him and the mother - so I think in that I've got to try to make a decision as to what's - who can I meet with together... it's not an exact science.

Most mediators stated that they do not impose decisions about who will be in attendance but get agreement from the parties about which non-parties will be there. However, some mediators did acknowledge making recommendations to the parties about who should be in

attendance. Mediators who were interviewed often talked about negotiating with the parties about who should attend. Sometimes one party wants a certain person there but another party does not. This must be negotiated, but even once an agreement is reached about who will participate complications can arise. Several mediators described situations where everyone had agreed on who the participants were going to be prior to the joint session but then on the day of the mediation someone unexpected showed up. This situation involves some more last minute negotiations. The following description is typical of mediator experiences on this issue:

> A couple of days before I get a phone call from the mother and she adamantly tells me that there is no way her father can come. You know, it is her call, it is her child. You've got to respect that, and the next thing you know he does show and we have to negotiate the terms by which he can just so she doesn't feel he is going to dis-empower her....[by] his presence there.

Using Non-Parties to Influence the Results of Mediation

As mentioned above, a vital strategy in child protection mediation is to choose the participants wisely. Additional participants around the table can affect the dynamics significantly. In some cases the mediator may be able to exert influence over who attends and in other cases the mediator has no influence. For example, lawyers are non-parties but as legal representatives for the parties they have the right to be there. As well, even if someone does not have a legal right to be there as lawyers do it may be important to include that person to optimize the possibility of success. For example, some extended family members play a pivotal role in child care and as such should be there because their input may be needed in order to make decisions that would require their co-operation. In situations where mediators believe that including a certain non-party will complicate the dynamics but can not exclude that person for some reason the mediator can still set the tone of the mediation by giving that person a particular role in the joint session or by setting guidelines around that person's participation.

How effectively mediators manage this aspect of the mediation process has a direct impact on the outcome of mediation. The data collected in this study clearly showed that non-party participants can influence the results of the mediation for good and bad. An important aspect to setting up the situation is being sure that non-party participants are the ones who will most likely contribute to positive resolution of the case, and that the non-party participants have clear guidelines about their roles and are not allowed to side track or undermine the mediation process.

There are two categories of non-party participants: 1) lawyers and 2) other non-parties. During data analysis the theme of non-parties as key influencers began to appear although the impact lawyers have on sessions was apparent much earlier than was the impact other non-parties have. The questionnaires were analyzed first. Two thirds of the respondees mentioned the influence that lawyers can have on the proceedings. Although some mediators expressed concern that lawyers can make things more difficult by taking an adversarial approach, others commented that having lawyers present can be very beneficial.

As more data was gathered through interviews it became apparent that lawyers were not the only influential non-parties. According to mediators, extended family and occasionally support people could also wield great influence, sometimes when least expected by the mediator. The data also showed that mediators use lawyers and other non-party participants in strategic ways to move the case towards resolution.

Lawyers as key influencers.

A majority of the mediators who responded to the questionnaires agreed that the presence of lawyers can affect the mediation sessions. The following two statements from the questionnaires serve as an example of the positive and negative effects from the perspective of the mediators:

Regarding positive benefits:

> When parties do not have legal representation, I believe I am required to work harder to ensure that the party's interests are identified and heard at the table. When director's counsel are not present, I am not as confident that full legal affects or obligations are canvassed by the CPW - requires greater reality checking.

Regarding the downside:

> There have been occasions where counsel representing the parties needed to be addressed for "sparring" with each other – I try to keep the focus on the principals and use lawyers for legal information.

The negative influence of lawyers. This issue was explored further in the interviews. Some mediators stated that it depended on who the particular counsel was how the presence of that counsel would affect the process. Some made a distinction between lawyers who understood the difference between mediation and court proceedings and those that did not and took an adversarial approach in mediation.

Comments about lawyers not understanding mediation was more common among mediators from outside the Greater Vancouver area. All eight mediators from the lower mainland who participated in this study expressed a positive view of lawyer attendance. Outside the lower mainland mediator views were mixed on this issue. [10] This suggests that there are some differences from jurisdiction to jurisdiction in regard to how often lawyers attend mediation or how familiar they are with it. More research would be needed to determine if this is true or whether these responses were a coincidence. Regardless, it is apparent that lawyers in at least one area of the province are less involved in mediation than they are in the urban areas. One mediator

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[10] Outside the lower mainland the responses were as follows: Three mediators expressed concerns about the possibility of having lawyers in attendance who were adversarial. One mediator did not express an opinion about lawyer attendance, and one explained that lawyers do not usually attend mediation. The only mediator from outside the lower mainland who had a singularly positive view of lawyer attendance was a lawyer by profession.

from a rural setting mentioned that "I've never had legal counsel actually sit through a mediation or a meeting".

The positive influence of lawyers. Regardless of any jurisdictional differences that may exist, the data did show that lawyers can have an effect on the dynamics in sessions they attend and that their influence can vary from lawyer to lawyer. One mediator described it this way:

> A reality check given by a lawyer in mediation has a lot more power than any reality check they give their client outside of the mediation process. Because it is very public and the ones that I have seen do it well, they do it so respectfully and so gently and so clearly. But they don't set their clients up. The good ones really understand that mediation is a process that's interest based, where you are trying to reach an agreement, not lobby for your position. The diehard litigators who threaten court if things aren't going their client's way are just not that helpful.

Mediators who were interviewed in this study spoke of the benefits of having lawyers present far more than they referred to any downsides. Mediators stated that these benefits include the following: counsel can be helpful in carrying out reality checks[11] with their clients, counsel can be helpful by explaining legal issues to their clients, counsel can be helpful by assisting with agreement writing and counsel can be helpful by organizing their clients to focus on the issues. The latter may be especially appreciated by some mediators in contrast to cases that they have had where parents have been unrepresented. One mediator described unrepresented parents in the following words "just so in their own place; they have no perspective."

Some mediators also suggested that the presence of lawyers helps to balance the power in the room. One mediator suggested that he takes a different view on this in regard to child protection mediation and that, although he likes having counsel present in child protection mediation he does not like having them present in other areas of his private practice. He noted

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[11] "Reality check" was terminology used by several mediators who participated in this study. "Reality check" is a term used in the mediation field to refer to helping participants examine how realistic their position is. If, for example, the dispute proceeds to court what is the likelihood of a court ruling that matches their position.

that this is because, in child protection mediation, it is easier to address power imbalances with lawyers present.

One mediator provided a specific example of a time Ministry lawyers played a key role in diffusing the power imbalance:

> They [the child protection workers] were so focused themselves and their lawyer was very effective, the Ministry lawyer, at themselves diffusing the power imbalance and the language they used, and they used words like 'collaborative' and then they put it right on the table too about we are trying to help you get your child back….The lawyer kept saying this isn't about an adversarial process between you and us. So they were so skilled at themselves addressing that power imbalance.

Another mediator provided a different example of a lawyer providing assistance with power balancing without any prompting from the mediator:

> I have actually seen one of the male lawyers do magic in the mediation where he actually very subtly aligned with the other party….[H]e didn't sit by the social workers, he sat by the grandparents. He would make comments like 'oh my I think that's a good point'. You know, stuff like that…..So that can change the power balance for the parent.

Strategies mediators use to benefit from lawyer influence. Although, on some occasions lawyers may contribute to power balancing and reality checking even without prompting by the mediator sometimes mediators employ specific strategies in using their presence to influence the results. In specific, several mediators talked about it being effective to hold a separate meeting, or caucus[12], with one of the parties and that party's counsel. One mediator described two specific strategies she uses in these caucuses:

> They need to have a united front for the other party. But often that's not what you find when you get into a separate meeting. You may have a lawyer who is quite realistic about what he or she can do for the client and… would like to figure out ways of working with that and I can give them a little bit of gentle support there….and get them talking. Other times if the lawyers are quite adamant and I pick up that the clients are a little more willing

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[12] The term caucus is "used in mediation… to describe circumstances when, rather than meeting at a common table, the disputants retreat to a more private setting to process information, agree on negotiation strategy, confer privately with counsel and/or with the mediator, or simply gain "breathing room" after the often emotionally-difficult interactions that can occur in the common area where all parties are present (Wikepedia, n.d).

to settle, I will probably identify it and say 'okay, Sam you are saying this but I am getting a feeling that you, Betty, are feeling a little differently about it. Tell me how that feels. This is just between us' and then that gives the lawyer a chance to explain the legalities and gives the client a chance to say well, actually I'd really like to get this settled.

By holding separate meetings with the parties and their lawyers the mediators are able to flesh out issues that they might not be able to access otherwise. The lawyer can provide a reality check or the mediator can draw out hidden issues by engaging counsel and the parties in private conversations about some of the hidden issues.

Other non-parties who are key influencers

Mediators described non-parties other than lawyers as having the potential to have a profound influence over the result of mediation, but the influence of non-parties did not become apparent until the different data types were compared. It was only in the case illustrations that mention of non-parties other than lawyers became common. In the questionnaires and the interviews the discussion of non-party influencers was primarily focused on lawyers.

During the analysis of the case illustrations provided by mediators a further nuance of this issue was discovered. Namely, in some cases a non-party participant unexpectedly plays a pivotal role in bringing the case to resolution. It is not surprising that this information was not provided during the interviews and the questionnaires because this issue was not specifically asked about as the interviewer was not aware of the significance of this occurrence in child protection mediation. This issue first appeared in the case illustrations where mediators were responding in response to an open ended request to provide a case that illustrates child protection mediation. In other words, mediators were given the opportunity to choose material that they thought to be relevant or interesting.

The unexpected influence a key non-party participant can have. One case in particular poignantly illustrated how a non-party participant can unexpectedly have a significant influence on the result of mediation. This was a situation where the mediator had carried out lengthy negotiations with the parties about who should participate in the joint mediation session. During pre-mediation meetings with the mother and her mother, the mediator found out that: a) there was conflict between the mother and the grandmother and the mother did not feel that she could talk freely in the presence of her mother, and b) the mother believed that she would be able to talk with the child's father present. Up until this point the mediator wasn't aware that this person existed. After some negotiation the grandmother agreed not to come and the child's father came instead. The joint session eventually included the mother, the estranged father, child protection workers and a community worker. Following is the mediator's description of the role the father played in the session:

> There were several times when the mother, whose emotional level was quite immature, would start to fall apart and get difficult and boy, he wasn't gentle but he really was effective and he could get her calmed down and none of the rest of us would have been able to do that.... I think the social worker was really wondering why he hadn't come forward to take the kids and she asked something about that and he explained his situation. He was just off substance use himself. He had been raised in care. He was really quite a diamond in the rough, but he was on top of things and he said I just don't know how permanent or how long it is – he had a new relationship and it was going well and he said I just feel if I took on the kids and the problems they are going to have at this stage that it would probably sink – he was really honest and then he turned to the mother and said so neither you nor I are really in a position to take care of these kids and she nodded and he did this sort of bonding with her around that without pointing out the differences and why that I think was a lot of why she could finally let go of the kids. So he was really very useful. And I mean I didn't know anything going into it, I just realized he was the person to be with her in the negative critical climate. I didn't even know he existed until I was practically through the first orientation trying to figure out what the heck to do with it.

In another situation a youth ended up being a key influencer in the case. Two children had been in the care of their mother and of their grandmother. There was tension between grandmother and mother, communication was gridlocked, and at issue was where the two children

were going to live. The oldest of the children was thirteen and he played a pivotal role in breaking

the log jam in the joint session. The mediator had met with both the children in pre-mediation

meetings but only the older child came to the mediation session.

> His sister felt comfortable that she be represented by her brother so she didn't come. But
> she was only 12, and he was fantastic and he didn't want to be a pawn. He really didn't
> like the thought of them going off - his grandmother and his mother and his sort of grandpa
> and father and he didn't want them to be bargaining over him without him there. So he
> came and he participated and he put it on the line that you know, Grandma, I - he was
> probably the most able in a way to express how he felt in a really positive way.

In both these cases someone other than the parties identified at the time of referral played a

key role in the mediation and exerted tremendous influence over the result. Although neither

mediator knew ahead of time what role the person would play, the mediator was able to effectively

incorporate them into the dialogue and to manage any dynamics that came as a result of their

inclusion. The mediators in these case illustrations effectively used the orientation sessions to

identify who the participants should be and as a result of using their skills, knowledge and

intuition wisely were able to benefit from the positive influence of these participants in the joint

session.

Using the Mediator Toolbox to Continue to Manage in the Joint Session

Mediators continue to use strategies and skills to manage the process during the joint

sessions after the orientation sessions are completed. Mediators did not emphasize the value of

the work they do in joint sessions as much as they emphasized the value of the work in the

orientation sessions. This may be because orientation sessions are somewhat unique to child

protection mediation whereas many of the skills mediators use in the joint sessions bear more

similarity to the work they would do in other types of mediation. As such, using these skills in

this setting can be described as taking mediator tools out of the mediator's toolbox and applying them as required in a child protection mediation session.

Mediators may begin managing process issues in the orientation sessions but process management does not end there but continues in the joint sessions, albeit with slightly different strategies and skills. For example, mediators may begin to deal with power issues in the orientation sessions but dynamics having to do with power imbalances will still likely appear in the joint sessions. Mediators described dealing with the power imbalance between the child protection worker and the parents in the orientation sessions by explaining the legislation and the limits to what can be accomplished in mediation to the parents. As well, mediators talked about ensuring that extended family members do not attend the mediation if their inclusion would completely inhibit the parents' ability to speak in the session. Despite the fact that a mediator takes steps such as these to address power dynamics in the orientation sessions other dynamics related to use of power by participants may become apparent during the joint session and the mediator will need to deal with those then. Similarly, mediators use the orientation sessions to diffuse emotions through allowing the parties to express their feelings and tell their stories. Despite doing this an issue may arise in the joint session that triggers strong feelings and mediators may need to refocus the parties or take a break to diffuse emotion once again.

In specific, mediators described several techniques they use to manage emotions, dynamics and power imbalances during the joint session. The most commonly described methods and strategies include the following: Focusing on the agenda, assigning and maintaining roles, transparency and caucusing. This next section of this chapter describes each of these in turn.

Focusing on the agenda

An important aspect of process management as described by the mediators is to keep the parties focused on the issues which are resolvable. The term 'future focus' was used by several mediators. As well, mediators reported being directive in regard to what can and can not be resolved. For example, whether or not abuse occurred in past is outside the scope of mediation, whereas decisions to be made about future care of the children can be addressed in mediation.

Managing emotion and keeping the focus on the issues rather than the emotional climate is one aspect of this. Parents may be angry about what happened in the past, but the past can not be changed through mediation and, therefore, focusing on it is not productive. Nonetheless, parents may need to express their feelings about it and, even if the parents have had the opportunity to express feelings during the orientation session, feelings may still arise in the joint sessions. Several mediators suggested that a mistake beginning mediators might make is to try to prevent emotions from being expressed. As one mediator put it "sometimes the fur has to fly". One mediator also explained that an ineffective mediation strategy is to:

> Shy away or hive off certain kinds of areas because they seem too volatile or you are not quite sure what is going to happen, or it's looking too emotional, which is often a reaction from someone coming from another area of mediation, let's say. That's bad.

The illustration this mediator gave was of a youth who felt his or her parents were too oppressive although the parents' view was that the teen was not following cultural expectations. As a result the teen was shuttling between mom and dad. To effectively deal with this particular case, various difficult issues may need to be addressed such as cultural beliefs and the relationship between mom and dad. The mediator concluded that it is necessary to step into some difficult areas with only the hunch that there is something there.

Mediators pointed out that some flexibility is needed in managing the child protection mediation process. While mediators need to keep the focus on the main issues and to prevent emotion from getting out of hand, good judgment is also needed and mediators need to be comfortable facilitating a frank discussion of potentially emotional or difficult issues. At the same time, in order to keep things moving towards resolution, mediators stated that it can be effective to direct the parties' attention back to the best interests of the child and to the future.

Assigning and maintaining roles

The counterpart to using the orientation sessions to choose participants is to use that time to clarify roles and provide guidelines for non-parties who will be participating. Mediators stated that it is essential to speak to non-party participants prior to attendance and to clarify what mediation is and what that person's role is. Several mediators described how they advise non-party participants of their role in the orientation sessions. The specifics of that role may vary from situation to situation depending on the identity of the non-party participant. For example, an extra child protection worker may come to observe, or a parent may want a support person there, or an extended family member may attend due to having a care giving role with the child. Logically, more participation would be expected of non-parties who have been invited to the session because they have ongoing involvement with the child than someone who is there strictly as a support person.

Remaining clear about roles is an important process management strategy. This begins in the orientation session and continues in the joint session where is necessary to ensure the guidelines about rules are followed. At the same time some flexibility is required if unexpected moments arise. The specifics of the guidelines may differ from mediator to mediator as there may

be stylistic differences in approach. One mediator spoke of arranging seating to reflect who will be a participant and who will be a support person:

> When I do have people who are support people …I talk to them ahead of time and I have a seating arrangement where their chairs are like two paces back from the table. I have talked to them … [and] I will say they are either observers or they are support people and your role is just that and so when either I ask you to participate or the person who is directly around the table does, then that will be fine if you can speak then and otherwise you are there to observe and support.

The mediator that gave this example of seating arrangements went on to illustrate how guidelines must sometimes be applied with some flexibility. For example, in some situations the mediator can become aware of a new piece of information which requires shifting the dynamics somewhat.

> I remember one time a gal was having a really tough time speaking. There was some sexual abuse with the children and it was just hard going for a few minutes and her support person just looked at me and motioned could she come closer and she did and she just moved her chair right up behind the person and put her hand on her shoulder. And that was wonderful. So there is a bit of movement there, but I don't want a three-ring circus. And so I am quite firm when I am setting up how that is going to look.

Transparency

When dynamics or issues arise during the joint session that interfere with the progress of the mediation, one of the techniques that mediators use to address these dynamics is to make these dynamics or this issue explicit. Some mediators used the word transparency to describe this. Once the hidden issue is made explicit then mediators are able to move past the issue that is bogging down the progress of mediation. One mediator gave the following example in which a mom had been involved in crystal meth and the family function had broken down. In that case there is "going to be a need to talk about, you know, mom's changes, or drugs quote unquote just like that. So that is sort of the elephant - or maybe there is the elephant in the room kind of thing that's going on as well". Other mediators who were interviewed also used the "elephant in the

room" analogy to describe hidden issues that should be brought to light in the joint session in order for things to progress[13].

In some situations it is a dynamic between the parties rather than a hidden issue that is preventing the session from going forward effectively. Mediators also spoke of the using the technique of making the dynamic transparency in these situations. Often this requires immediacy, which means drawing attention to the dynamic that is happening in a factual way and asking the participants to explain why the observed behavior is occurring. This is one aspect of transparency. One mediator used the following examples of dynamics that can arise in a joint session: a person feeling powerless and acting like a victim in a joint session due to facing an ex-spouse they haven't seen for a while, or someone lording power someone else. This mediator explained that "I use the skill of immediacy a lot in mediation. If something is happening that is interfering with the ongoingness of the process then we have to stop and address it. So if we do that publicly or privately depending on - you know. And so I just deal with whatever comes up".

Caucusing

Sometimes mediators take this immediacy into a private session with one of the parties for a number of reasons such as the possibility that person might be more forthcoming in private or because the issue has the potential to be quite sensitive for the party. If, for example, the situation is similar to the one described in the last paragraph where one party is acting powerless the mediator might meet alone with the particular party and say "I can't help but notice you are doing such and such, can you explain what is going on?"

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[13] With terminology such as 'elephant in the living room' or 'future focus' (appearing in the previous section of this chapter under the heading 'focusing on the agenda') it is impossible to know how much significance to give to the fact that several mediators used similar terms. Was this because those terms are the best terms to accurately describe the process or because there terms are used in mediator parlance in some mediation circles?

One mediator gave the following example of using immediacy in a caucus to be able to discuss dynamics that were occurring:

> At one point in time when the mom was particularly abusive I stopped and I asked the mom to step outside with her husband and I sort of said to her sort of both kind of open question - what do you think - how well do you think how you are relating to the social worker right now will get you what you need. And there was a big, dead silence. And they said it is not. And I said so what is it that you need to do to go back in there and change that same question.

Sometimes mediators follow this type of discussion with some coaching during the caucus to help the party figure out a different way of expressing their concern so that it will be more likely to be heard by the other party. As well, mediators may take a break to speak to the parties individually if one of the parties is being very positional[14] or when emotions are running very high. Although several mediators stated that it is not helpful to take a break every time there are emotions all agreed that there are some occasions that caucusing can be helpful. One mediator described caucuses this way:

> If somebody's getting upset, you know, just take a break and maybe calmly talk to them or just let them go for a little walk or cigarette or whatever it is. So I think it is just kind of a management thing and also keeping alert for the sort of non-verbal signals too. Where somebody's got their arms crossed and they are tilting back their chair, sometimes you have to stop and ask what's happening, what's going on in your head and then find out.

There are many similarities between caucusing and orientation sessions. In both cases it provides the mediator with an opportunity to find out more about each party's interests in a private safe conversation and, as well, to manage emotions and to deal with interpersonal dynamics between the parties. There are also some differences such as the timing of the meetings, how much information the mediator has about the dispute and the parties, and what needs to be accomplished in the private meeting. For example, in the orientation meeting typically more

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[14] According to the Dispute Resolution Dictionary a position is "what people say they want – the superficial demands they make of their opponent. According to Fisher and Ury, who first distinguished between interests and positions, positions are what people have decided upon, while interests are what caused them to decide". Being positional' is refusing to move from a particular negotiating position.

information would be given about the mediation process as the parties may be completely unfamiliar with mediation at the outset. During a caucus a mediator would be less likely to deal with issues of who will participate as that issue will often have been resolved in the orientation session.

Conclusion to this Chapter

Mediators described using three different strategies for dealing with emotions, dynamics and power issues in mediation. These were: 1) using orientation sessions to lay the groundwork for the joint session, 2) using non-parties to influence the results, and 3) using the mediator toolbox to continue to manage in the joint session. Of these three strategies the one that mediators put the most emphasis on was the orientation sessions. This is not surprising. At the stage in which the orientations sessions are held there is a lot of information that is unknown; the mediators have to figure out who should participate, what the key issues are and which issues are sensitive or need addressing in the joint sessions. Non-party participants can influence the result of mediation and the process will go more smoothly if the parties are clear on what issues will and won't be dealt with at the outset. Therefore, decisions about these issues become very important, both in setting a tone and because wise decisions help to create success. Nonetheless, the mediator's responsibilities to manage the process don't end there. When dynamics or emotions arise in the joint session, mediators draw upon their toolbox of skills to continue the process management work that began in the orientation session to deal with power imbalances, emotions that are blocking a resolution, or difficult dynamics between mediation participants.

CHAPTER VII: RESULTS CONTINUED

Introduction to This Chapter

One of the more interesting issues emerging from the questionnaires was in regard to answers to the question "explain how you know that a child protection mediation session has been successful?" In response to this question mediators emphasized personal or relational transformation more than whether or not an agreement was reached. Seven of nine mediators provided answers indicating that the success of a mediation session can be determined by factors such as improved relationships or empowered participants[15]. Only two mediators responded that an agreement was the sole indicator of success, and one of these two mediators clarified that an agreement was an indicator of success if all the parties were happy with the agreement. Three of the seven mediators who stated that transformation was an indicator of success stated that reaching an agreement was also an indicator of success. This emphasis on empowerment, improved relationships and other such transformative elements continued throughout the interview stage of data gathering.

This chapter presents a summary of the participating mediators' perspectives on success in child protection mediation. It should be noted that every case is different so specific indicators of success as described by the mediators may not be present to the same degree in every case. Nonetheless, the mediators did describe two specific types of transformative changes that occur which are indicators of success: a) changes in how the parties relate, and b) personal changes for at least one of the participants generally associated with empowerment. Mediators who participated

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[15] Mediators did not provide a definition of empowerment. However, one aspect of empowerment that was specifically mentioned was participants gaining the ability to speak up or represent themselves in mediation. This fits with the definition of empowerment provided by Miriam Webster's Online which defines "empower" as "to enable". Another possible use of the word is "to promote the self actualization or influence of" (Miriam Webster, n.d).

in this study also raised questions about evaluating success in child protection mediation. These questions are also be discussed in this chapter.

Evaluating Success in Managing the Process

Mediator response to the question about how they know if mediation has been successful was quite striking. This was the only issue on the questionnaires where almost all the responses reflected the same themes. The emergence of themes related to transformative change was a surprise because, prior to data analysis, this response seemed counter-intuitive. The DRO keeps statistics on how many cases settle within the program and publishes these statistics. The mediators are well aware that settlement rate for the program is quite high. One mediator who participated in this study mentioned that it is around 90%. Although it can not be known from this study whether the mediators feel any pressure to reach settlement, it would be logical to assume that if a mediator's own personal settlement rate fell well below the program average that mediator might feel some internal pressure to settle[16]. Therefore, I anticipated this to be reflected in the mediators' response to this question. Instead, mediator responses focused on less measurable outcomes.

Once the data from the interviews was also analyzed questionnaire responses to this question did not seem so surprising. During interviews and through case illustrations mediators described difficult work managing a very complex process. Therefore, it is not surprising that the mediators are attuned to changes in interpersonal dynamics in any particular case and consider changes in these dynamics to be one of the measures of success. For example, if a power imbalance exists at the beginning of a case, and the mediator is able to address the power

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[16] Other factors could also contribute to a mediator placing internal pressure on his or her ability to settle. Mediators on the roster are in private practice and the success of their business depends on being successful in marketing that business. Since parties generally enter mediation with the goal of resolving the issue mediators may place pressure on themselves to settle because a reputation for settling could enhance their marketability.

imbalance in a way that makes the weaker party feel empowered and better able to participate in the session, it is logical that the mediator will consider this accomplishment to be an aspect of success.

In addition, this response may be explained by the fact that it may not be possible for mediators to bring the parties to agreement unless some changes to the dynamics first occur. One mediator explained it this way:

> Most often if that shift isn't there we won't get an agreement. Once people start to feel heard, feel understood, that there is some face-saving going on…there is actually a physical connection you can actually see it.… If people start making eye contact, people start - you know their arms start uncrossing, their face softens, you can actually see a physical shift as well as a verbal shift.

The shifts that mediators described as occurrences in mediation include empowerment of individuals, and changes in how the parties relate. These are discussed next.

Empowering the Participants

Mediator responses to the question "explain how you know a child protection mediation session has been successful?" included references to personal transformation and changes in how the parties relate. Of these two responses the more common one was the reference to inter-personal transformation rather than personal transformation. However, some mediators did refer to personal changes primarily empowerment of one party. For example, in a questionnaire response to the question "how do you know when mediation has been successful?" one mediator responded, "the look in the eyes of the parent; if they have felt heard and respected then they are able to make even the most difficult of decisions". Another mediator wrote "when all are validated and empowered".

Mediators elaborated on the issue of empowerment during the interviews. Generally mediators who addressed this issue drew a connection between being empowered and feeling listened to. As one mediator explained:

> I think one of the things that the parents have reported back in evaluations is that it's a process which is empowering for them....one of the real issues for parents is, "am I being listened to?" So I think that the whole structure means that, in fact, on a more meaningful level they will be listened to in that context, but also that they will see that they're being listened to.

Another mediator told a personal story, which affirms the same point:

> And I have had people e-mail me or even call my office even though the office numbers aren't given out - but they look me up to say things like - that's the first time anybody ever really listened to me - which is kind of a sad commentary....I don't think it is necessarily the first time people have listened to them and heard them, but it's the first time that they felt it was being heard. In a sense a subtle difference, because I wouldn't want to say that the workers don't hear what they are saying, but somehow, sometimes the parents just don't feel that heard or acknowledged.

There were numerous stories and anecdotes from the mediators that suggested that in a successful mediation, or in a mediation that the mediators believe to have been successful, there is some aspect in which the participants feel empowered. Although an agreement may have been signed in these cases, the emphasis of the story or illustration was invariably on the empowerment aspect rather than the agreement itself. The following illustration is a good example. In this story the mediator explained that an agreement was reached but focused on how the parent felt empowered by the process.

> I said to the mother, if it turns out you can't have the kids with you, what would you wish for them? She had a list that just knocked the socks off - she wanted the two children kept together, she wanted them to be raised in a Christian home, she didn't care what religion but she wanted them to have a church background. She wanted them to know that she had loved them very much and there was just a list - by the time we finished it, about six things and the social worker's jaw just dropped....The social worker said she would just pass it on verbatim to guardianship because she couldn't think of anything to add to it and that's exactly where the Ministry would have gone because those are the things that are important to the Minister. Well the mother just glowed and then at the very end she was still very sad and she gave me a hug and she said 'tell the government to let my children follow their

dreams'. Well, you could have heard a pin drop in that room. It was just so amazing and I said well it's not in the written agreement we have all signed, but when I submit my report to the government I will quote you and say that you asked that the government to let your children follow their dreams. And I did.

The mediator concluded the story by pointing out that this woman would likely have eventually agreed to the agreement reached anyway but due to participating in this process "she clearly felt part of it and like she was having a hand in directing her children's future... [and] she will always be able to say I had some say and I told them what I wanted for my children".

Changed Relationships

More than half of the mediators who responded to the questionnaires specifically mentioned improvements in the relationship between the parties to be an indicator of success. Following are a few examples of responses to being asked how the mediator knew the mediation had been successful:

- "The clear increased level of support between the parties";

- "When fruitful and respectful solution oriented communication between family and ministry is re-established"; and,

- "When all parties can shift to a co-operative approach to resolve conflict".

In the interviews mediators continued to make a link between improvement to the relationship between the parties and successful mediation. Some mediators stated a belief that improving communications or otherwise changing the relationship dictates the long term success of the agreement to a greater degree than what is actually written on paper. One mediator explained it in the following words:

> I often say to people this agreement could break down but it's the spirit of the agreement that's going to carry on and make a difference. You know what is written on a piece of paper isn't where the magic is. It's in the changes in your relationship which - and even if it is just simply respecting an agreement, that's a change in the relationship.

Another mediator provided an explanation of why he believes relationship change in child protection mediation to be important. Parents "have had awful experiences…[with the Ministry]. Wouldn't it be neat if they could at least understand a little bit better, even if they don't like it, why people are doing what they are doing?" Similarly, another mediator pointed out that when parents become aware of what the child protection workers want it can change the dynamic between them:

> One of the other feelings that a lot of parents come with is hopelessness. So when the social workers offer very concrete proposals that really address what the parent is concerned about, or wants, or whatever, that can cause a really huge shift. You can see the parents becoming more relaxed, more relieved, trusting, or…

Mediators may also be more observant of relationship changes in the child protection mediation context because of the unique nature of this particular type of dispute. One mediator pointed out that:

> Even though the theory of mediation…[is that] people will have an ongoing relationship, the fact is that in many, many mediations they won't. But in this one, they definitely will…. And so, I think there's probably more focus in a child protection mediation than in others on the communication that happens. Put it this way, the communication pattern that can be established at the mediation table can be the most important thing that you achieve.

In many cases mediators do not see the parents after the mediation session and have no way of knowing whether the agreement held, or whether the observed improvements in mediation continued. However, there are some situations where mediators are able to obtain some news of progress after the session. One mediator told the following story:

> Finally she [the parent] said 'I know it was me who created this problem' and she just kind of totally self disclosed. She said 'I know that you don't trust me and you have every reason not to trust me and I want you to know that I worked really hard and I know that you need more time but I will continue to prove to you that I'm going to be a better mom and will do a good job'. She is actually living in [name of town removed] and I see her quite often and she looks so good. She looks really healthy. She looks quite beautiful actually. So that was one of the successful - but she had a lot of support. The relationship between her and the child protection worker really improved.

Questions about Whether the Process Was Successful

It should be noted that although mediators generally viewed relationship change, personal empowerment and signed agreements as indicators of success, they also raised some questions regarding evaluation success in child protection mediation.

One mediator wondered if, in some cases, child protection mediation sets up false expectations or hope for families. She pointed out that in some cases mediators may have done a good job and the family may have made major shifts, but do not have the capacity to maintain those shifts without support once the mediation is over.

> All of a sudden the mediator isn't there to keep that safe container and power balance and the whole thing falls apart afterwards and it makes people feel more discouraged. So it's built in false hope that something's going to be different.

She gave an illustration of a case where this occurred, in which a mother in a particular mediation session made some incredible disclosures including her own past history and how this was affecting the situation. The mother then actively participated in making an agreement. Although this seemed like a highly successful mediation at the time once the session was over the mother was not able to follow through on what she had agreed to do.

> Three weeks down the road mom couldn't show up for her appointment. Basically she lost her son and I think it was almost like in some ways the anger was better than failure. You know what I am saying? Before she could be angry at the Ministry - now she had failed. And that is sometimes when I think that people are at emotional and physical risk of suicide or something like that. Because they really got that it was them; that they screwed up, and that's the heartbreaking part.

A related issue was raised by one mediator. It may not always be easy to determine whether a certain child protection mediation session has been successful because there are intangibles to this type of work. This mediator described a situation involving an older youth in care. This youth was very difficult and was initially reluctant to participate. The youth eventually

agreed to attend the session within certain time limits and actually participated in the session. Although the professionals in attendance were very pleased and stated that the mediation had been a success (perhaps based on the fact the youth attended and participated) the mediator was left with questions about whether or not it was a success. As the mediator described "you come out at the other end and you have no agreement and no paperwork. No sense of... have you had success. You don't even know how to fill out the...forms. Did it complete or did it not complete?"

Conclusion to this Chapter

The two cases mentioned immediately above illustrate the fact that there are intangibles in child protection mediation. During a session it may seem that changes have occurred but it is impossible to know whether or not those changes will last. As well, some changes that occur can not easily be measured. It is easy to measure whether or not an agreement was reached and filed at court. It is more difficult to determine what the long term results are. Agreements often require the ongoing co-operation of the parties, and mediators may not know whether or not these agreements hold up after the mediation sessions have ended.

Despite these ambiguities mediators were able to point to changes that they observe during mediation. Regardless of whether these changes are permanent, shifts in personal and inter-personal power and other dynamics during the session allow the mediators to steer the participants towards an agreement in many cases. As well, in some cases, participants emerge with a better understanding of each other, or with a feeling of personal empowerment. These are indicators of success as explained by a majority of mediators who participated in this study.

CHAPTER VIII: DISCUSSION

Introduction to this Chapter

In this chapter the results of this study are discussed and a comparison is made between the results of this study and previous studies. The results are first compared to earlier studies on child protection mediation and then are compared to mediation literature in general. Due to the paucity of research on child protection mediation it is essential to go beyond previous child protection literature, to also compare the results of this study to research on other types of mediation. In order to provide a context for this discussion a brief summary of the results of this study is provided next. This summary is followed by an analysis of the relative importance of the themes which were identified in this study and literature relevant to the key findings is highlighted. Once these introductory comments are completed, the remainder of the chapter contains a discussion of relevant literature and compares that literature to the findings of this study.

Summary of Results of this Study

The themes describing the process and explaining the process were explained in chapter five. As discussed in that chapter, there are three distinctive process issues which are unique to child protection mediation: 1) a unique emotional climate, 2) balance of power issues, and 3) challenging dynamics between the parties caused by the multi-party aspect to child protection mediation and the changing circumstances of participants.

As detailed in chapter six, where strategies for managing the process were discussed, mediators use three distinct strategies in their work. First, the orientation session is used to lay groundwork for what occurs in the joint session. Groundwork is laid by diffusing emotions, coaching and educating about the process, identifying power imbalances, gaining trust, and

deciding who should participate. Second, mediators use non-parties to influence the results of mediation, both lawyers and other non-party participants. Third, mediators use various mediator tools (skills and techniques) to manage the joint session. The following tools were specifically mentioned: focusing on the agenda, assigning and maintaining roles, transparency and caucusing.

As detailed in chapter seven, where the theme evaluating success in managing the process was discussed, mediators use more than one standard to evaluate whether a case has been successful. Although settlement is an indicator of success, mediators also view improved relationships between the parties and empowerment of the parties as indicators of success. In some cases mediators also wondered how to determine whether or not a case had been successful.

A Summary of Relevant Existing Mediation Research

Research about child protection mediation is fairly limited. Mediators in this study identified three process issues which are unique to child protection mediation, namely power imbalances, emotional climate, and interpersonal dynamics. Of these three issues, the issue which has been researched to the greatest extent is the issue of power. Research on this topic has been carried out both in the child protection mediation context and in other mediation settings. In contrast, there is no applicable research about emotional climate in child protection mediation or the particular interpersonal issues that appear in child protection mediation such as the multi-party dynamics.

Mediators identified three strategies that they use to manage this child protection mediation process, namely orientation sessions, using non parties to influence the results, and using specific mediator skills in the joint session. Of these strategies there is limited research on orientation sessions and using non parties as an influence. Some of the research that does exist is specific to child protection mediation. In contrast, there is a fairly significant discussion in the

academic literature about the skills mediators use in joint sessions. Unfortunately, very little of this research is specific to child protection mediation. As well, this literature is mainly descriptive, and, with a few exceptions, does not evaluate the effectiveness or choice of these tools.

There is considerable research in the mediation field on how to evaluate success in mediation, although there is little research on evaluating success from the mediator's perspective or on mediator perceptions in general. There also is literature on a closely related issue, namely how to determine the appropriate standard to measure success. There is a debate in the mediation field about this issue with some authors focusing on the transformative aspects of mediation and others focusing on settlement and measurable outcomes. This issue has relevance to the results of this study because it may provide a better understanding of mediator responses which identified transformation as an indicator of success.

A final issue discussed in this chapter is mediator choice of strategy. The results of this study strongly suggest that mediators choose tactics strategically and purposefully. There is support for this view as will be detailed in this chapter.

Key Findings

Although several themes were identified through this study, some are far more significant than others. Whereas some themes appeared late in data analysis and were mentioned but not emphasized by mediators, some themes appeared early in data analysis and were further solidified as data was gathered. These themes were not only mentioned regularly by most or all the mediators, but mediators were emphatic about the importance of these themes.

Pre-mediation orientation sessions. Arguably, the theme using orientation sessions to lay groundwork for the joint sessions was the most significant theme identified. Orientation sessions were mentioned by mediators in both questionnaires and interviews, and stood out from other themes because of mediator comments on its importance. Orientation sessions were mentioned more often by mediators participating in this study than any of the other themes. This is summarized in the chart appearing as Appendix E. Several mediators explicitly stated that this was the most important strategy in child protection mediation. As well, this was the only issue where mediators explicitly stated they did something differently in child protection mediation than in other types of mediation. Two mediators described being converted to using orientation sessions having not used this technique in other types of mediation prior to trying it in child protection mediation. Other mediators mentioned using it more extensively in child protection work.

This would seem to suggest that orientation sessions are particularly valuable in addressing the particular process issues that are unique to child protection mediation. Mediators described these process issues as follows: a) challenging dynamics due to circumstantial changes and the multi-party aspect, b) emotions which have a different quality than in other settings, and c) unique power imbalances. Orientation sessions provide mediators with an opportunity to put guidelines and procedures in place that will help them manage these process issues in the joint session.

The particular process issues that exist in child protection mediation explain why the orientation sessions are so important. The orientation sessions allow mediators to take steps in the orientations sessions that lay the groundwork for managing these process issues beyond the individual meetings into the joint sessions. This includes diffusing emotion through gaining trust, allowing parents to tell their story, educating about the process, and dealing with power dynamics

by identifying power imbalances and shaping how the power dynamics will appear in the joint session by influencing the decision about who will participate. Following are three specific examples of how mediators begin to deal with these process issues in the orientation sessions: a) by influencing the choice of who will participate, thereby having an the affect on potential power dynamics in the joint session, b) by allowing family members to tell their stories to diffuse emotion, and c) by coaching participants on how to frame their interests in a non-inflammatory way, thereby lowering the emotional intensity in the joint session.

Given the results of this study it is somewhat surprising that there has been very little previous research on orientation sessions either in research specific to child protection mediation or in the general mediation literature. There is brief mention of pre-mediation meetings in some articles, and orientation sessions are the subject of one doctoral dissertation but beyond that there is no substantive discussion or empirical research about these topics. One possible explanation for the paucity of research on this topic is that orientation sessions are not used as often outside the child protection context, and, even then, may not be used in child protection mediation in all jurisdictions due to the great variations in program structure.

Other significant themes. Although orientation sessions appear to be the most important strategy used by mediators in child protection mediation there are other themes which also seem particularly significant. Two other concepts which appeared early on in data analysis and continued throughout data analysis are personal and relational transformation as indicators of success, and the influence of lawyers and other non-parties on the mediation. There is some previous literature on the topic of the influence of lawyers in child protection mediation. There also is a significant body of research on the issue of evaluating what constitutes success in

mediation. This literature is not specific to child protection mediation but it is relevant and is discussed later in this chapter.

Relevant Research in Child Protection Mediation

Introduction to Child Protection Research

Child protection mediation, or juvenile dependency court mediation as it is called in the United States, is in its infancy. As a result, although this use of mediation is currently growing throughout North America research on the topic is in its infancy. Minkus (2002), who recently completed a doctoral dissertation on child protection mediation in California, notes that "there is little empirical research that is specific to dependency court mediation. It is a relatively new usage of mediation that is quickly spreading throughout California." (p. 25) Furthermore, the focus of most existing research on child protection mediation is on outcome measures and program evaluation.

The current study examined mediator perceptions of the mediation process. There have been no previous child protection studies where the research question was related to mediator perceptions of process issues. This is not surprising as there is a shortage of research regarding mediator perceptions in the mediation field as a whole, something that has been commented on by several authors (Lim, 1990; Mareschal, 2005). However, previous studies have been completed which have examined process issues in child protection mediation, albeit not primarily from the mediator's perspective. Given the shortage of research into process issues in the mediation field as a whole, it is quite fortuitous that there is more than one relevant child protection mediation study to draw from.

There are four different researchers who have completed studies which have examined process issues in the child protection mediation context to some degree or another. These are Robbins, Mayer, Barsky, and Thoennes[17]. Following is a brief discussion of the methodology used by these four researchers:

Robbins (2003) carried out research on the Surrey Court Project, which was a child protection mediation program in one particular location in British Columbia. His research consisted included both a quantitative and qualitative analysis. Since the study was done in the same jurisdiction as the current study, and since the data collected included five interviews with mediators about their reflections on the process, the results of this study are quite relevant to the current study and are discussed further below.

The other three authors, who carried out research on process issues in child protection mediation (Barsky, Mayer, and Thoennes) carried out their research in other jurisdictions. Their research methodology included participant interviews or questionnaires. Barsky's methodology included interviews with mediators with questions on process issues and therefore his study has particular relevance to the current study.

Although the specific process issues that were examined in the studies conducted by these four authors are not identical to the process issues identified in this study, there is some overlap in the following areas: power imbalances, complex interpersonal dynamics, orientation sessions, the role of non-parties, and caucusing. These studies did not examine the emotional climate in child protection mediation, nor did they examine how to evaluate whether mediation has been successful or mediator views on this.

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[17] Robbins' study was published in 2003 and Mayer's in 1989. The two other authors published several articles on child protection mediation; Thoennes, was published in 1991, 1994, and 1997. Barsky completed a doctoral dissertation on child protection mediation in 1995. He later published one article based on this research in 1996, and two in 1997.

The issue that is discussed to the greatest extent in the literature on child protection mediation is power imbalances. Therefore, this issue is discussed first in the following section. This is followed by a more cursory discussion of the literature on the other issues.

Power Imbalances in Child Protection Mediation

The Views of Mediators in This Study

Mediators in this study stated that power imbalances can be more significant in child protection mediation than in other types of mediation. Although mediators were agreed that there are power imbalances in child protection mediation they were not agreed on how to deal with the power imbalances. Some mediators stated that power should be balanced and others held the view that power can not be balanced and that instead power imbalances should be dealt with by discussing them transparently. Power relationships were commonly viewed by mediators as being complex rather than unidirectional. Although mediators referred to the power imbalance between parents and child protection workers due to statute, mediators generally described power dynamics as being more complex than that. For example, even though child protection workers have statutory authority they may still feel powerless.

Mediators often referred to empowerment without defining exactly what that term meant to them. It is possible that some mediators were using the word synonymously with power balancing. In other words, through empowerment the less powerful party is made to feel more powerful. The data does not make it possible to determine how many mediators view empowerment in this particular way, or whether mediators that do ascribe to this meaning always equate empowerment with power balancing.

One interesting point about the results of this study is the fact that the participating mediators did not mention their own power to any great degree. This may be because mediators were not specifically asked questions about mediator power. Nonetheless, the absence of discussion on this topic is interesting given the lengthy discussions about power in mediation, and given the fact that mediators talked about ways that they influence, and in some cases control, aspects of the proceedings - for example, who should participate – all without reflecting on this aspect of mediator power.

Child Protection Mediation Literature and Power

The discussion in existing literature on process issues in child protection mediation is mainly directed at the issue of power imbalance. Thoennes (1991) provides an explanation of what this phrase means when applied in the context of child protection mediation. In her words, "when the terms 'empowerment' or 'balance of power' are used in child protection, the intent appears to be ensuring that parents' concerns and interests are fully heard and considered, and ensuring that all parties are treated with respect and dignity." (p 252)

Power balancing. One of the ongoing debates in the mediation field is whether there is a danger that mediators will lose their neutrality if they take steps to redistribute power in mediation, and, if so, whether it is appropriate for mediators to balance power. However, according to Barsky (1997a):

> [In child protection mediation] the mediator has a duty to ensure the process is fair. Balanced negotiations and private ordering cannot be assumed in CP mediation. Child protection agencies and workers tend to benefit from power advantages in negotiating with family members: better resources, familiarity with the system, judicial support and communication skills training to name a few. Family members are not without power and CPWs do not always exploit their power. However, power imbalances are inevitable in CP mediation and need to be taken into account by mediators. (p. 131)

Some scholars have suggested that there is a difference between 'empowerment' and 'power balancing', and that it is appropriate to empower participants but not to distribute power because this violates neutrality. Regardless, Barsky (1997a) found that the child protection workers, mediators and family members that participated in his study did not necessarily distinguish between power balancing and empowerment. He concludes that in child protection mediation power balancing may not be an issue for participants. According to Barsky (1995), whereas in other types of mediation the stronger party may not tolerate the mediator's power balancing efforts, in child protection mediation the more powerful party (child protection workers) may be more tolerant because they know they need the parents' co-operation and they understand the disadvantages the parents face. This is an interesting argument but it would need to be tested by further research. Mediators in this study did not have a universally held opinion on whether power can be balanced or, if so, what should be done to balance power. As well, mediators who spoke of balancing power between parents and child protection workers did not volunteer any information about child protection worker reactions to these efforts.

Barsky (1996) suggests that mediators can balance power by deciding who should participate in the child protection mediation process, coaching participants on how to present their case to the other party and using caucuses to keep peace and to stave off hostile language both in pre-mediation meetings, and during the proceedings when emotions are building up. Other power balancing techniques referred to by Barsky (1997a) include the following:

> Involving another party or support person, helping articulate a position, putting the power issue on the table, spending more time with family members, identifying the family member's concern in front of the…[child protection worker], helping the family work out a reasonable plan to present to the…[child protection worker], ensuring that all parties are operating from the same base of information, exploring precedents and other options, providing a neutral setting, helping family members to feel heard, and focusing on the best interests of the child. (p. 131)

Each of the power balancing techniques described by Barsky are techniques that the mediators in the current study also identified to be effective strategies in child protection mediation. Some of these techniques, such as 'deciding who will participate in mediation' and 'pre-mediation meetings' are rarely mentioned outside of the child protection context. Regrettably, Barsky does not discuss these techniques in detail, but rather only mentions them within the context of a broader discussion on fairness and neutrality in child protection mediation.

Barsky's research (1996) showed that child protection mediation empowered family members by generating options and expanding their perceived choice sets, involving family members in communication with the child protection workers on a more equal basis, focusing decision making responsibility back on the parties and rebalancing power. Interviews with mediators in the current study did not specifically include questions about how the mediator knew that parents were empowered, and parents were not interviewed as they were in Barsky's study. Therefore, it is impossible to know if parents were empowered in similar ways or in different ones in the two studies. This would be an interesting issue to pursue in future research.

Does empowerment continue after the session? Some mediators in the current study stated that they could not give an opinion on whether mediation has been successful because it is impossible to know what happens after mediation is completed. Other mediators explicitly stated that empowerment is an indicator of success. It is not as clear whether theses mediators believe that the empowerment observed in the sessions was an indicator of permanent change. Some mediators told stories which supported the view that empowerment of parents in the session continued beyond the mediation sessions but mediators did not explicitly state that empowerment results in a change that will continue beyond the session. Based on research in other jurisdictions it is quite likely that changes seen in the session do not continue long term. Both Barsky (1996)

and Mayer (1989) found that the basic power structures did not change as a result of mediation. In

Barsky's words:

> Mediation did not necessarily change the relative power of the parties. Instead mediation
> had an impact on how the parties used their power. Some family members said they had
> more say in hoe decisions were made in mediation than they did previously. They also
> noted that the mediator helped them to assert their positions with the CPWs [child
> protection workers]. The CPWs however retained their power or capacity to influence. If a
> CPW wanted to exercise her power she could always terminate mediation. This would
> return the parties to the relative position of power that existed prior to mediation. (p. 129)

This statement is similar to conclusions drawn by Mayer based on his research into the impact of

mediator intervention on parental compliance attitudes. Mayer found that, although mediation has

an impact on compliance with agreements, it does not change the substantive outcome. In

Mayer's words "mediation impacts compliance by affecting the process of interaction rather than

the results of the interaction". (p. 103)

Although the findings in other jurisdictions are interesting, in the absence of any relevant

data in the current study, it can not be known whether or not the changes observed by the

mediators in the child protection program in British Columbia are temporary or permanent. The

only conclusion that can definitively be made is that (according to the observations of mediators)

there are changes in personal perceptions of power in child protection mediation.

The role of counsel in power balancing. One of the themes in the current study is the

influence that counsel has in child protection mediation sessions. This bears some similarity to a

study by Thoennes (1991). Thoennes examined how parents are able to negotiate with the child

protection worker in mediation as equals. She found the following to be the factors that make this

possible: involving legal representatives, directing the process including the use of individual

caucuses and joint meetings, explaining the system, situations and options to parents in order to

make the process and any agreements understandable to the parties, and helping parties to identify

reasonable requests to make of the child protection agency. In a follow up study (1994) she concluded that involving legal representation in the mediation process was the most important method of balancing power.

In the current study mediators referred to all the tactics described by Thoennes as beneficial including having counsel present. Mediators in the current study described counsel as useful for such things as keeping their clients on track and giving their clients a reality check, but most mediators did not explicitly state that the lawyers help with power balancing. Even so, this can be inferred from mediator comments in which the mediators described ways in which lawyers exert influence over the participants and what happens as a result. Although there are various definitions of power and of empowerment in academic literature, one accepted view is that power equals the capacity to influence others (Barsky, 1995; Kelly, 1995). As applied to the current study, it would seem that despite the fact that mediators failed to explicitly state that the presence of counsel helps them to balance power, this is one of the benefits of their presence.

This particular finding of this study is quite interesting because the positive role of counsel may not be evident to someone who has not experienced counsel playing this particular role. The results of Barsky's study (1995) demonstrate this to be true. The model of child protection mediation existing in Toronto during the time that he was carrying out his research did not include the presence of counsel at mediation. When parents, child protection workers, and mediators were asked in post-mediation interviews whether it would have been beneficial to have had counsel present only one person answered 'yes'.

Other Process Issues in Child Protection Mediation

Two other process issues that are unique to child protection mediation, according to the mediators who participated in this study, are the unique emotional climate and the complex interpersonal dynamics. Emotional climate is not discussed in the literature on child protection mediation whereas the issue of complex interpersonal dynamics does have some discussion in the literature.

The complexity of the relationships in child protection mediation is discussed by Robbins (2003). Robbins carried out an evaluation of child protection mediation in Surrey, British Columbia. Although the primary intent of his study was program evaluation and the focus was on measurable outcomes such as satisfaction and settlement rates, he did interview five mediators about their observations of child protection mediation. These interviews elicited information about process issues that mirror information provided by mediators in the current study. This is not surprising since the mediators interviewed in both cases were carrying out their work in very similar, and possibly identical, models of service delivery. It is even possible that some of the mediators interviewed in this study also participated in Robbins earlier study although there is no way to know for sure.

One issue where the results of the two studies are quite similar is the complexity of relationships and dynamics in child protection mediation. Mediators in the Robbins study provided the following observation:

> There tends to be more sets of relationships and dynamics than in many mediation processes – e.g. between parent and social worker, between parent and parent, between parent and counsel, between Court Work Supervisor and social worker, etc. While having all players at the table is a major strength in this process, it means that meetings can take more time. (p. 29)

This is similar to the views of participants in the current study who stated that there are more sets of relationships in child protection mediation which results in dynamics which are more complicated than in other types of mediation.

Choosing Who Should Participate

The existence of complex relationships in child protection mediation means that is necessary for the mediators to decide who to include in the mediation sessions. Although there have been no studies specifically examining the issues related to mediator choice of participants, this has been identified in the literature as an important issue. Not only was this issue discussed at length by mediators participating in the current study but the issue comes into play in other jurisdictions.

Baron (1997) wrote an article which provides an overview of what is done in child protection mediation in different jurisdictions and offers some recommendations. He describes what is done in the following words:

> Other family members and interested parties, foster parents, guardians, placement staff members, psychologists, and therapists may also participate in mediation depending on their interest in the referred issues and the relevance of their input. They should be oriented to the mediation process at the very beginning of mediation. When and to what extent they are involved in the mediation will depend on the role they have to play.... Experience strongly suggests that the wider the net cast with regard to involving family members and other individuals who have a potentially supportive or significant interest in the case, the greater .the likelihood of arriving at the safest, most realistic and resourceful, and best available plan for the child. (p. 158)

One point that Baron does not make which was stressed by mediators in the current study is that although it is useful to include supportive people and those with an interest in the case it may be wise to exclude those who are not supportive or whose inclusion will make it hard for the parties to voice their views. This was regularly mentioned by mediators participating in the current study.

Strategies for Managing the Child Protection Mediation Process

The three strategies for managing process issues in child protection mediation identified by mediators in this study were carrying out orientation sessions, using non-parties to influence the results, and using mediator tools (skills) in the joint session. Of these three issues, the one that is discussed the most in the literature on child protection mediation is the influence of non-parties in the sessions. However, this discussion is mainly focused on using counsel to balance power in the sessions. Relevant literature on the participation of counsel in child protection mediation was discussed above. The other two process management strategies have some coverage in previous child protection mediation research. Research has been carried out on orientation sessions in child protection mediation and on caucusing although caucusing is the only mediator skill identified in the current study that is specifically addressed in previous child protection mediation research. These are discussed next.

Orientation Sessions

The research completed by Robbins (2003) had similar findings to the current study in regard to orientation sessions. Mediators who were interviewed in Robbins' study stated that orientation sessions are critical to the success of mediation. According to Robbins:

> Elements of the process include: being clear about what is not on the table (ie. rehashing the original apprehension, clarifying that the mediator is not a ministry representative, assuring them that they will have a full opportunity to state their concerns or needs in the planning meeting …[and] not being judgmental. If the mediator does not express judgments the parent is more likely to talk about drugs or alcohol or other worries that they have about their lives or those of their children. These are issues that the Ministry is also worried about. If the parent reaches this point of acknowledgement the mediator is more likely to be able to build a collaborative relationship between parent and social worker to jointly address the issues. (p. 30)

These comments are similar to what was stated by mediators interviewed in the current study, although the current study provided far more comprehensive information about what is

accomplished in orientation sessions. In addition to the tasks mentioned in the Robbins study, mediators in the current study stated that orientation sessions are useful in deciding who will participate in the joint session, for allowing parents to tell their story and to vent their emotions, and for coaching parties on how to present their issues in the joint session.

Discussion of Mediator Tools (Skills) Used in the Joint Session

Caucusing is the only mediator tool (skill) used in the joint sessions, as identified by mediators in the current study, which also has had consideration in other child protection literature.

Caucusing

Robbins (2003) interviewed child protection mediators about various aspects of their work including caucusing, and the responses of the mediators in that study and the current study have some similarity. Mediators interviewed by Robbins described caucusing but they were not agreed about whether or not caucusing is more important in child protection mediation or in other types of mediation. Some said it was more important in child protection mediation, and others said they used it less often than in other types of mediation. Those who used it less often explained that this is the case because important issues are already covered in the orientation session and because the focus in child protection mediation is on improving the relationship between the parties which requires the parties to be speaking to each other which makes individual meetings less viable.

What is similar in both studies is that in neither case did the mediators attribute as much value to caucusing as they did to the orientation sessions even though both are variations on private meetings with some of the mediation participants. It is clear from the results of Robbins' study and the current study that these meetings are not seen by the mediators as being of equal

value. In the current study almost all the mediators (12 out of 14) viewed the orientation sessions as being valuable or a key strategy, whereas only some mediators mentioned caucusing and none described it as an essential strategy.

Evaluating Success in Managing the Process

There is very little research on the issue of evaluating success in child protection mediation beyond the studies addressing this question at a program level. Such studies tend to look at outcomes, such as participant satisfaction or settlement rates, but not at the question of how to determine whether the process itself has been successful. In the current study, in addition to reaching an agreement mediators viewed improved relationship between the parties and participant satisfaction as indicators of success.

One study that does have relevance is the study carried out by Barsky (1997b). Barsky's study examined why parents agree to mediate. He found that parents did so because they wanted to end their relationship with the social work system. On the surface, this result would seem to contradict the view of mediators in this study who stated that improved relationships between the parties are an indicator of success. In Barsky's study the parents did not want an improved relationship, they wanted no relationship. One possible explanation is that the goals of mediators and participants may be quite different, and, since the current study looked at mediator perceptions whereas Barsky's study looked at parent motivations, the results are not contradictory. Another possibility is that these divergent results are a function of program differences between Ontario and British Columbia. Yet another possibility is one pointed out in Barsky's article which is that, even though parents want to end the relationship the only way they can do so is to first improve it and then work towards co-operative termination with child protection workers.

Previous Relevant Research from the Mediation Field as a Whole

Introduction to Relevant Studies in the Mediation Field

Since there is a limited amount of research about the child protection mediation process several issues identified in the current study have not been considered in previous child protection mediation research. However, some of those issues have been considered in the broader mediation field. As well, some issues which have been considered in child protection mediation research are discussed more comprehensively in the general mediation literature. In this next section of the paper relevant literature from the mediation field as a whole is discussed and is compared to the results of this study.

It is worth noting that the results of some studies conducted in other mediation settings may not be transferable to the child protection setting. As discussed earlier in this paper, the mediation field is broad and there is a great deal of variation in mediator styles and the specific features of any particular type of mediation. In fact, some services which self describe as mediation may not qualify as such in the view of others in the field. Gerurz (2001) notes that:

> Despite its tremendous growth which has made the practice of mediation more visible and common place and thus in a sense less "alternative" and despite the prolific scholarship in the field over the last two decades there remains little consensus with regard to what this process is actually about. (p. 135)

Differences in mediator style is one issue to consider when making decisions about whether or not results from a study on process issues in one mediation context is applicable in another. One view in the mediation literature is that different types of disputes require different styles of mediation. For example, a dispute over child custody may require different mediator skills than a dispute in the corporate sector. However, even amongst mediators attending to a particular type of dispute there may be many style variations. Payne and Overend (1990)

comment that mediation processes "come in many different shapes and sizes....[and] the search for a single or even a preferred model of mediation is therefore elusive if not illusory." (p. 27)

Another issue that complicates interpreting results, and thereby determining transferability, is a communication issue identified in a recent study by Picard (2002). In this study Canadian mediation trainers, who were also practitioners, were asked to reflect on their mediation style. Picard found that although mediators use common language to describe their style, such as facilitative or transformative or evaluative, they do not always mean the same thing when they use those words. She found that each of those descriptors had a broad range of meanings to mediators participating in this study. Picard notes that the results were "particularly noteworthy given that the study sample included only mediation trainers who are also practitioners" (p 261).

The remainder of this chapter contains a discussion of the findings of studies in other mediation contexts which are relevant to the results of the current study. In order to determine how much weight to give the result of a study completed in another mediation context this issue is mentioned whenever concerns arise. This discussion begins by looking at previous research on mediator choice of strategy and tactics. Mediators in the current study specifically stated that they employ certain techniques in child protection mediation that they do not in other types of mediation. This suggests that mediators choose tactics deliberately rather than randomly. Existing literature is reviewed to determine whether this can be supported by previous literature.

Mediator Choice of Tactics and Strategies

The Views of Mediators in this Study Regarding Choice of Tactics

The results of this study suggest that mediators choose strategies in a purposeful fashion. In this study mediators were able to identify differences between the process issues existing in

child protection mediation as compared to other types of mediation. Mediators also identified differences in how they do their work in child protection mediation in contrast to other contexts. The main difference that was identified is that mediators make greater use of orientation sessions. What is implied by these results is that the work that mediators accomplish in orientation sessions is strategic and addresses the issues that are unique to child protection mediation. In other words, mediators use these sessions in strategic ways that are unique to child protection mediation because these sessions are effective in that context.

Another effective strategy in child protection mediation, according to the participants in this study, is using non-parties to influence the results of mediation. This is an example of a strategy which works in one setting but not in others for circumstantial reasons; this tactic would not be applicable in some mediation contexts where there are no non-parties in attendance.

In their work child protection mediators use some strategies that are unique to the child protection context as well as some skills that are used in most mediation contexts. Mediators choose skills tactically and utilize them in the child protection context as needed. In the words of one mediator "there are skills you bring as a mediator and that you adapt to any particular dynamic; and it's just how you sort through the particular dynamics with the skills you have".

Existing Research about Mediator Choice of Strategy

There is a body of literature which supports the view that mediators choose tactics strategically. For example, Bercovitch and Wells (1993) write that:

> Mediators do not choose strategies randomly. Rather they make a rational cost benefit appraisal of the prevailing conditions in the conflict and adopt a strategy accordingly. The nature of the dispute, the nature of the issues, the nature of the parties, the nature of the relationship between the parties, and the identity and rank of the mediator affect the choice of strategy in any conflict. (p. 21)

Lim (1990) carried out a study which determined that mediators choose strategies based on the characteristics of the disputes and that they see some tactics to be effective in certain situations but not in others. In order to be able to draw these conclusions Lim looked at 255 cases representing many different types of dispute.

According to Bercovitch and Lee (2001) a mediation strategy is the overall plan that mediators have to resolve and manage conflicts, and the strategy varies according to how a mediator chooses to handle the mediation process and the context of the conflict. In their view "the practice and process of mediation revolve...around mediators' choice of strategic behaviors." (p. 3.)

Some research suggests that, not only do mediators choose tactics strategically, but that the wise choice of mediator tactics can have a positive effect on the results. Posthuma, Dworkin and Swift (2002), when summarizing the results of their study on mediator tactics, concluded "mediators are most effective at helping parties resolve their disputes when they employ tactics that are selected carefully to deal with the underlying causes of the dispute" (p. 94). Their study extended previous research by demonstrating that not only can mediator choice of tactics have a positive effect on the mediation, the opposite is also true. The choice of wrong tactics can have a negative effect.

It should be noted that not all researchers agree that there is a connection between choice of tactics and the result of mediation. For example, a study by Mareschal (2005) failed to find a relationship between mediators' tactics and successful mediation. However, this study narrowly defined success as reaching an agreement. It is possible that if the definition of success were more broadly defined the results of the study would have been different.

At a theoretical level, researchers generally make a distinction between a strategy and a tactic although this may not universally be the case. McLaughlin, Lim and Carnavale (1991) explain that "researchers have generally organized mediation tactics on the basis of mediation strategies. A strategy is a plan of action for resolving a dispute, whereas a tactic is simply a technique for achieving strategic objectives." (p. 465) Based on this definition, child protection mediator approaches such as using non-parties as key influencers and using the orientation session to lay the groundwork for the joint session would most likely be defined as strategies rather than tactics. If that interpretation is correct, the specific techniques that are used in the orientation sessions and the specific techniques mediators employ when using the influence of non-parties to bring about a positive result would be tactics.

Unfortunately, existing literature can not help to clarify whether these are strategies or tactics because there is no reference to these specific approaches in previous literature. Various taxonomies of strategies and tactics have been developed and appear in the literature. These taxonomies organize tactics into categories usually based on similarity of strategy. At present there is no universal agreement in the field regarding which taxonomy best captures mediation tactics and strategies. Regardless, in none of the existing taxonomies do 'using orientation sessions' or 'using non-parties as key influencer's' appear as strategic categories.

Likewise, neither 'using orientation sessions' nor 'using non-parties to influencers' are listed as tactics in the existing literature. Barsky (1995) identified over 100 different mediator tactics that have appeared in the literature and compiled them into a chart. Neither 'using orientation sessions', nor 'using non-parties as key influencers' appear on that chart. It should be noted that there is one tactic in Barsky's compiled list that has some similarity to 'using orientation sessions'. This tactic is 'use of joint meetings and individual caucuses' (p. 27).

Nonetheless, although both a caucus and an orientation meeting are private meetings there are significant differences between the two. Caucuses occur after the joint session has started and orientation sessions prior to any joint meetings. In regard to what is accomplished in these meetings there are similarities and differences. For example, mediators may do coaching and provide information in either of these settings, but the following two tasks are primarily accomplished in the orientation session: negotiating which non-parties will participate in the joint session, and educating the parties about child protection mediation.

As further support for differentiating between caucuses and orientation sessions, the mediators who participated in this study made a distinction between the two. Mediators described orientations as essential in child protection mediation, and only briefly mentioned caucuses when describing what they did in joint sessions without describing caucuses as being essential.

In conclusion, mediator tactics described in this study do not appear in existing taxonomies of mediator tactics or strategies, nor do they appear in Barsky's list of mediator strategies found in the mediation literature. It is safe to say that these strategies have not been identified previously in the literature. It is not known why the specific strategies identified by the mediators in this study are not identified as strategies in the existing literature. Whether this is because these strategies are unique to child protection mediation or whether it is for some other reason would need to be determined by further research.

Nonetheless, despite the fact that the specific tactics and strategies identified in this study do not appear in previous literature, existing research does support the findings of this study. Mediators stated choosing different strategies and approaches in the child protection mediation context than they do in other contexts. Mediators also viewed these strategies as being effective in the child protection context. These statements make it clear that mediators use these strategies

deliberately rather than randomly. Similarly, existing literature supports the view that mediators choose strategies according to the type of dispute, and that mediators are strategic in their choice of tactics.

Power in Mediation

The issue of power imbalances or dynamics came up often in the interviews with mediators. One thing that was clear from the interviews is that the power dynamics in child protection mediation are not only challenging but are also complex. Likewise, literature on power in mediation is complex.

Although a lengthy discussion of theories of power from the perspective of different academic disciplines is beyond the scope of this paper, it is worth noting that there are a variety of academic theories crossing over several disciplines. Although several theories have been discussed in the mediation literature, some are more widely recognized than others. One such theory is based on the view that that there are two dimensions to a conflict process, the distributive dimension and the integrative dimension. Mayer (1987) succinctly describes these dimensions:

> The distributive dimension involves needs or interests of a party that are in conflict with another and can only be satisfied at the expense of the other's needs or interests. A distributive approach to bargaining assumes that the essential issues to be decided involve a distribution of a fixed amount of benefits to the parties involved. The integrative dimension involves the interdependent or shared interests of the parties. In the integrative dimension, for one party to meet their interests the other party's interests must also be met....A distributive approach to conflict resolution emphasizes the use of power to induce the other side to give up as much as possible. There is a tendency to use coercive power and for each to settle based on their evaluations of an alternative to a voluntary agreement. (p.76)

People commonly associate power with coercive power or with the ability to force ones' wishes on someone else. This may explain one anomaly in the results of this study, which is that mediators offered very little information about their views about their own power as mediators.

The absence of discussion on this topic is interesting given the fact that discussions of power during the interviews were sometimes lengthy. One possible explanation is that mediators may not have provided this information because the interviewer did not directly ask about mediator power. Another possible explanation may be related to the fact that power is often seen as something negative. A foundational belief in the mediation field is the view that mediators should be neutral. Therefore, mediators may be predisposed to think that the influence they have in mediation is something other than power as long as they choose not to behave coercively and work to ensure they are maintaining neutrality.

Despite the commonly held association between power and coercion, there are other views of power in the mediation literature. Another view of power is that is the ability to influence the decisions of others (Mayer, 1987). If power is understood as the ability to influence it is clear that mediators have a considerable amount of power. As Mayer notes, although mediators can not avoid having power "what mediators can choose is whether to exercise this power in a deliberate way and with a specific purpose" (75).

An examination of the comments of the mediators in this study reveals that power manifests itself in different ways in child protection mediation. Power as the ability to inflict harm (or coerce), and power as the ability to influence can both be seen in the information provided by the mediators in this study. For example, both child protection workers and parents may try to coerce the other party into doing what they wish although the specifics of how this is expressed may be different. Child protection workers have the power to remove children. They can choose to use that power coercively or to not. Parents may also try to coerce the child protection worker through threats, such as threatening to go to the media. On the other hand, power as the ability to influence was also mentioned by the mediators who participated in this study. For example,

counsel can exert influence over a client by providing a reality check about his or her client's position.

Power can be expressed in many different forms. As well there are different sources of power. Mayer (2000) notes that, "power is an elusive concept because it has so many manifestations. Everyone has many potential sources of power, most of which he or she is aware of". (p. 53) Similarly, the complex nature of power dynamics was recognized by the mediators in this study who stated that, even though child protection workers have statutory authority which gives them power, power dynamics between the parties are more complex than this. For example, according to the mediators who participated in this study there are times that child protection workers feel less powerful than the parents.

The comments of Mayer (20000) easily explain these observations. Mayer lists eleven different types of power. Some of these are sources of power that both of the parties in child protection mediation have such as personal power, whereas some of the sources of power listed by Mayer apply mainly to one party or the other. For example, child protection workers derive power from formal authority (power derived from a formal position in a structure that confers decision making authority) and expert/ information power (power derived from having expertise in a certain area). Parents may have nuisance power (the ability to cause discomfort to a party short of being able to impose sanctions).

Gerwurz (2001) also provides a description of power dynamics which help to explain the observations of child protection mediators that both parents and child protection workers have power in the session. Gerwurz explains that "power is not a stagnant concept. Nor does it rest absolutely with one party or another. Power ebbs and flows such that it is constantly being reconstructed through the interaction between parties." (136) This description is particularly

accurate in child protection mediation where there are power dynamics between the parties, between the parents and other family members, between the child protection worker and the team leader, between counsel and the parties, and between non-parties. These dynamics may shift and evolve over time as mediation progresses.

Nonetheless, the statutory power of the child protection worker should not be overlooked or minimized. It exists and must be addressed in some way so that the child protection mediation does not feel coercive to the parents. This does not necessarily necessitate balancing the power between child protection workers and parents. Although there has been a longstanding belief in the mediation field that power must be balanced for the results of mediation to be fair, this viewpoint has now been called into question. Mayer (2000) writes:

> We have many misleading images of power. Perhaps the most prevalent is the idea that power can be balanced. This is a derivative of the view many have that power is a measurable quality. I believe that balance of power is a confusing and possibly meaningless concept. We can look at differences in power, at whether someone has the power to make something happen, at sources of power and at vulnerabilities to other's power. But the idea that power can be balanced so as to produce some equality or even equivalence of power is very misleading. Such a way of viewing power fails to account for the dynamics of power and the interactional context in which power must be understood. Instead of thinking that people need an equivalence or equality of power we might more usefully think that people need an adequate basis of power to participate effectively in conflict. (p. 51)

A similar view was expressed by several mediators who participated in this study. Although some mediators did mention power balancing others stated that power could not be balanced. Regardless, there is no dispute over whether both parties need enough power to participate effectively in the child protection mediation. When one participant feels so powerless that he or

she would be unable to effectively participate a child protection mediator needs to find ways to empower that person. If that is impossible the mediator should terminate the mediation.[18]

Mediators who participated in this study stated that one of the ways that they deal with the power imbalance between child protection workers and parents due to statute is to make the situation transparent. Mediators suggested that pretending this power does not exist or acting as if it will change doesn't work. Not only is there a likelihood that parents will feel discouraged if they try to negotiate things that can't be changed, but power dynamics can be like an "elephant in the room" if not acknowledged. Mediators stated that using transparency to deal with this unchangeable power structure is an approach that is effective.

There is some support for this view in the literature. Although this is not discussed in literature specific to child protection mediation other than a brief mention by Barsky (1997a) of "putting the power issue on the table" (p. 131), this issue is discussed in the context of workplace mediation where there are hierarchical power structures. Hierarchical employment structures and child protection matters are both examples of situations where there is a power imbalance which exists due to an institutionalized structure that will not change. In an article on mediating in hierarchical organizations, Wiseman and Poitras (2002) note that in situations where a clear difference in power exists this differential must be acknowledged. If this reality is not recognized a power struggle will ensue with the lower power people blaming the high power people, and the higher power people acting defensively when attacked or blamed. This is very similar to dynamics described by mediators in this study, in which parents blame the child protection worker and the child protection worker acts defensively.

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[18] One of the expectations set out in the service agreement (contract) between child protection roster mediators and the DRO is that the mediator will terminate mediation if "continuation of the process is likely to prejudice or harm the participant" (Ministry of the Attorney General, 2005, p. 30)

Mediators in the current study stated that once the power imbalance is made transparent by mediators describing the law in British Columbia, or by mediators clarifying what the child protection workers are willing to negotiate or not negotiate, it is possible to move the parties from being stuck in those positions. Wiseman and Poitras describe similar strategies. For example, they point out that mediators are able to do their job in a hierarchical structure if they define the scope of the mediation with the parties. Wiseman and Poitras also state that a change in the relationships between parties in the mediation doesn't equate with change in the overall power structure. This statement has also been shown to be true in the child protection mediation setting. Both Barsky (1995) and Mayer (1989) found that even when there are changes in how parties relate during the mediation it does not change the basic power structure or relations beyond the session.

Dealing with Emotion

The mediators that participated in this study described the emotional climate of child protection mediation and discussed dealing with these emotions in the orientation session through allowing participants to vent and to tell their story, and in the joint session through caucuses and keeping the focus on the present. Beyond those examples they did not discuss the specifics of this aspect of the work. Due to the lack of specifics provided by the mediators in regard to dealing with emotions and due to the fact that there is very little discussion of this issue in the mediation literature it is difficult to compare the results of this study to existing literature.

One of the few articles about dealing with emotions in mediation is an article by Jones and Bodtker (2001). In this article the authors provide an overview of some of the issues related to dealing with emotion in the child protection context. Jones and Bodtker point out that:

In conflict theory and practice literature, emotion is usually ignored. This is consonant with a general legacy in the social sciences in which emotion has been understudied. But the inattention in the conflict literature is a particularly egregious oversight given as we argue, the centrality of emotion to conflict processes. (p. 218)

Jones and Bodtker note that when emotion is mentioned in the literature it is usually in the context of discussing strategies for anger management or on preventing emotions from escalating. However, they argue that venting is not an effective strategy in isolation because people must rework their understanding of the event causing the emotion in order to process their emotions. The view espoused by Jones and Bodtker is based on their belief that a person's emotion is tied to how an event is understood more than the event itself. As such, an important part of a mediator's work is helping the client reappraise the situation.

In child protection mediation, mediators are able to do much of this work during the orientation. At least one mediator stated that if orientation sessions are done properly there will be less emotion in the joint session than would be the case in other types of mediation. Other mediators described using the orientation sessions to listen to the parent's story and to provide information about the process. This sounds very similar to what is described by Jones and Bodtker, as helping parents rework or reappraise their understanding of the situation. Mediators described parents feeling empowered and better able to engage in the process once they understood it wasn't just a conflict with a child protection worker but there was a broader context of laws and procedures at work. By using this technique mediators help the parents process their emotions, which is an important conflict management tool.

Dealing with Complex Relationships (Multi-Party Disputes)

Mediators who participated in this study stated that one of the main differences between child protection mediation and other types of mediation is the number of potential participants.

Unfortunately, there is very little discussion of this issue either in the child protection mediation literature or in the mediation literature in general. This issue may not be addressed in child protection mediation research as a result of having different models of child protection mediation in different jurisdictions. There may be fewer participants in some other jurisdictions due to program differences. For example, in the model in place in Toronto in the 1990's when Barsky carried out his research counsel did not attend mediation resulting in one or two less people in the room. There may be other program differences from jurisdiction to jurisdiction to explain the absence of discussion on this issue.

There is limited discussion of multi-party mediation in the broader mediation field. The literature that does exist primarily examines multi-party mediation in regard to international disputes. The international context is quite different from child protection mediation because in international disputes each participant may be representing countries or other large constituencies, and, therefore, the issues addressed in these articles are not relevant. For example, the following issues have no exact counterpart in child protection mediation: when to use teams of mediators, when to meet with a representative of a particular group, and when and how to meet with all the members of that particular group.

There are a few references to multi-party disputes where issues similar to those in child protection mediation are discussed. These sources provide some support for the views expressed by mediators in the current study. For example, mediators in the current study noted that mediation is more complicated when there are larger numbers of participants due to the complex nature or the dynamics between the parties. Similar views were expressed by Moore (2003), who notes that "when negotiations are between two or more people, interpersonal and group dynamics become exponentially more complex" (427). Also relevant are the comments by Payne and

Overend (1990) who discuss the importance of establishing who the parties are and the scope of the issues to be dealt with early on in the process. In their words:

> There is a big difference between using third parties, such as lawyers and accountants, for information purposes and involving third parties such as live ins or in laws as active participants in the mediation process. It is important for the mediator and the dependents to define at an early stage who is to be directly or indirectly involved and how. These decisions will turn in part on the preferences of the parties and in part on the approach taken by the mediator (p. 29).....At an early stage the mediator and the parties must define to the best of their ability the issues to be examined. They should also agree that new issues are not to be sprung on a party at a later stage. (p. 30)

This quote underlines the importance of dealing with these things early in multi-party mediation. In the case of child protection mediation in British Columbia, the orientation meetings provide the opportunity to do that.

Orientation Sessions

There is very little discussion of orientation sessions in the mediation literature. Although pre-mediation meetings are commonly used in some types of mediation such as divorce mediation, where many mediators routinely meet with each party individually prior to conducting mediation[19], there has been very little research about pre-mediation meetings or orientation sessions. One exception is Dyer (1989) who carried out an extensive study on orientation sessions to determine whether mediation is more effective when participants understand the process they are about to experience. Dyer's study looked at settlement rate, client satisfaction and understanding of the mediation process. Cases were randomly selected to be assigned an orientation session consisting of an informative lecture and video tape demonstration of the interest based approach. This study found a significant difference between the agreement rates for those who attended an orientation session and those who did not. However, it did not find any

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[19] In family mediation one of the reasons for separate meetings is to screen for abuse. For example, Family Mediation Canada (FMC) requires FMC certified mediators to meet privately with each party prior to beginning mediation to assess there is a history of abuse between the parties and, if so, whether mediation is safe and appropriate.

difference in satisfaction rates or attitudes and perceptions about the participants' understanding of mediation and their ability to perform conflict resolution and problem solving skills.

There are important differences in the structure of the orientation sessions in Dyer's study and the orientation sessions conducted in the British Columbia's child protection mediation program. Dyer's orientation was very structured and consisted of education only, whereas the orientation sessions in the British Columbia child protection mediation program have many different components beyond merely providing education and information. As well, although mediations carried out in the FPM model have an established structure, mediators conducting mediations outside that model may have more discretion over what is done during orientations.

Dyer's study found that orientation sessions increased settlement rates but found no connection between orientation sessions and the parties' ability to perform conflict resolution skills. Mediators in the current study viewed orientation sessions to be very valuable in order to manage the process in the joint sessions, but they did not specifically say that the orientation session increased settlement rates or parties' ability to use conflict resolution skills. Given the structural differences between the orientations in Dyer's study and the orientations in child protection mediation it is difficult to know how much weight, if any, to give to Dyer's study. It also is not possible to know whether the orientation sessions in child protection mediation improve settlement rates as was found in Dyer's study. However, the commonality is that in both cases orientations sessions were seen as having a beneficial effect. Child protection orientation sessions may also improve settlement rates, but further research is required in order to determine whether this is true.

Caucuses

Caucuses are private meetings held after the joint session has gotten underway. Even though mediators in this study described using caucuses they did not provide much elaboration. It is worth examining existing literature on the topic. There is a larger body of literature describing caucuses than there are studies which examine the efficacy of using caucuses with a study by Welton, Pruitt, and McGillicuddy (1988) being one exception. In that study data from 51 different dispute resolution hearings was examined. Results indicated that disputants in caucus sessions employed less direct hostility, provided more information and proposed more new alternatives than in joint sessions. Mediators, in parallel fashion, were more likely to request information and to challenge the disputants to come up with new alternatives. Mediators also exhibited more freedom to violate the neutrality norms during caucus sessions, giving greater support to the side that originally filed the complaint. These results support the use of caucusing as a route to issue identification and problem solving.

The mediators in the current study described using caucuses to manage the process. However, the mediators did not provide information about any differences between the use of caucuses in child protection mediation and caucuses in other settings. Therefore, all that can be said about these results is that caucusing is a strategy that is commonly used in mediation of all types including child protection mediation and that there is research supporting its effectiveness. More research would be needed to determine how effective caucusing is as a strategy in child protection mediation as compared to other types of mediation.

Evaluating Success in Managing the Process

The Views of Mediators in this Study

Mediators who filled out the questionnaire were asked how they knew mediation had been successful. The response in many cases was that mediation is successful when communications between the parties improves or participants feel empowered. This issue was followed up further in interviews. In the interviews mediators were not generally asked the question 'how do you know a mediation has been successful?' as that would have replicated the questionnaires but they were asked many questions about the mediation process. Through comments in the interviews and through the case illustrations provided by the mediators, it was very apparent that mediators are proud of the work they do when they observe changes in communications or participant empowerment. This sense of pride was obvious through the illustrations that mediators provided about particular cases in which a participant was empowered or the relationship between parents and child protection workers improved. What was being described by the mediators was "relationship transformation" and "personal transformation".

The Perspective Found in Existing Literature

It is impossible to directly compare the results of this study to other studies on mediator perceptions of success in mediation because there is very little literature on this issue. There have been no previous studies which have looked at mediator perceptions of success in the child protection context. In the mediation literature as a whole there has been very little study on mediator perceptions, let along studies on perceptions of success. However, there is literature on mediator style which has relevance to the results of this study even though this literature is not directly related. Mediator style should be distinguished from mediator tactics which were

discussed above. Although mediator style may affect the mediator's choice of tactics the two concepts are independent of one another.

Some existing literature advocates the view that there is a connection between a mediator's goals and values and the mediator's style and that mediator goals influence mediator perceptions of success. Although the current study did not ask mediators to describe their personal style this issue is worth examining. If there is a connection between mediator goals and mediator style then this raises the question of whether transformation was a mediation goal for mediators who identified transformation as an indicator of success. If so, how did that affect mediator style?

Mediator Style

Noce, Bush and Folger (2002/2003) argue that checklists of mediator competencies and similar initiatives "generally fail to consider the relationship of mediator goals and values to the observed performance, or the likelihood that there could be very different goals and values among mediators that could shape competent performance in fundamentally different ways" (p. 46). Kressel (2007) provides a succinct description of what the mediation literature says about mediator style:

> There has been considerable interest in what may be broadly referred to as mediator style—the overarching goals and definitions of the role, sometimes implicit, that shape how mediators behave and what they consider the legitimate goals of intervention. Three major styles dominate the practitioner literature. In the *facilitative* style, mediators are encouraged to focus primarily on helping the parties identify and express their interests and needs, on the assumption that so doing will bring to the surface underlying compatibilities or areas for trade-offs and compromise. In the *evaluative* style, mediators attempt to provide the parties with a realistic assessment of their negotiating positions. This is a more distributive approach to mediation and appears most common in settings where the disputants are contending around a single issue, usually money. Recently, we have seen the emergence of relational approaches to mediation, which focus less on agreement making and more on opening lines of communication and clarifying underlying feelings and perceptions. The best known of these relational models is the *transformative* style, popularized by Bush and Folger. (p. 251)

Some authors view the different styles as quite distinct and have argued that a mediator with goals connected with one style can not pursue goals that are associated with another style. For example, Bush and Folger (1996) write "if third parties have a sense of responsibility for producing certain outcomes in their interventions, they are unlikely to be practicing within the transformative framework" (p. 267). This would seem to contrast with the results of the current study where some of the mediators seemed to be simultaneously pursing settlement while also attempting to create positive relational or personal change. There may or may not be an actual contradiction between the views of Bush and Folger and the comments of mediators in the current study because mediators did not actually use the word 'transformative'. It is possible that their descriptions of relationship or personal changes do not specifically conform to the criteria for transformation as set out by Bush and Folger.

Even if the mediators in this study had used the word transformative they still may have been referring to something quite different than what Bush and Folger meant by 'transformative mediation'. Picard (2002) did research looking at mediator styles. She found that mediators mean very different things even when using the same words. In her study she asked mediators who self identified as evaluative, facilitative or transformative to describe their style. The responses were very broad. For example, even though Bush and Folger give a specific description of the transformative style as an approach where participants are empowered to resolve their dispute and become able to recognize what the other party is going through, this was not how mediators participating in her study understood the word. When Picard examined what mediators who identified as 'transformative' meant she found that:

> While some respondents did have similar understandings to Bush and Folger, others offered different meanings for the word 'transformative'. Some respondents defined 'transformative' as having the potential to change institution structures....In another instance emphasis was placed on the relational aspects of mediation....Another meaning

attributed to the transformative orientation was directed toward personal transformation.... In a fourth instance a respondent understood transformation as a spiritual event. (p. 263)

Although some authors, such as Bush and Folger, view each mediation style to be distinct a more popular view in the literature is that mediator style falls on a continuum. For example, Amadai and Lehrburger (1996) place mediator styles on a spectrum from a 'process oriented approach' on one end, and a 'substance oriented approach' at the other. The process oriented approach has a mediator who is a facilitator and it is based on the assumption that parties can find their own solutions with some assistance. The substance oriented approach mirrors the 'formal or judicial settlement conference'. According to Amadai and Lehrburger, "mediators fall on many points of the spectrum, based upon their own personal style and the cases that they handle. Although mediators often alter their styles based upon the demands of the cases before them, mediators may have a basic orientation." (p. 64)

The idea that mediator style falls somewhere on a continuum is the most common view espoused in the mediation literature. Picard (2004) suggests that it is more accurate to view mediator style in an integrative fashion. She notes that literature on mediation styles tends to posit mediation on dualistic systems, for example, facilitative vs. directive, or place the styles on a spectrum. However, she argues against the view that mediators work in only one style based on her own research. She asked mediators open ended questions about their work and created typologies based on the responses. The two typologies she developed in her study were pragmatic and socioemotional. The pragmatic style refers to mediators who describe their orientation as ideology with words such as settlement, directive or evaluative. The socioemotional style refers to mediators who associated their orientation or ideology with words such as humanistic, relational or transformative and describe their role as helping parties to communicate with each other.

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Picard found that the majority of mediators (54%) are neither pragmatic nor socioemotional but are a mixed style, having some understandings of their work that fit with the each of these styles. In response to these results, Picard argues that a new understanding of mediation styles is needed. In her words:

> Shifting to a more integrated framework for understanding mediation as I am suggesting is not to be viewed in the form of a continuum distinguishing more or less of a particular model. Rather it should be viewed as a matrix where mediators use contrasting theories interchangeably and concurrently to form new theoretical meanings. An integrated framework offers a more holistic and complete view of mediation and one that draws attention to its richness and complexity. (p. 308)

Picard is not alone in the view that mediators use a mixture of styles in their mediation work. According to Gewurz (2001) "though many mediators admit to having a basic style most actually employ a mixture of approaches in their practice – often changing styles several times in the course of a single mediation. " (p. 152)

In the current study mediators identified both settlement and transformation as being indicators of success. Although some mediators identified one goal or the other, other mediators identified both. This demonstrates that mediators can simultaneously pursue dissimilar goals. As well, assuming that a mediator's goal affects his or her mediation style, these results also suggest that mediators do utilize a mixture of styles in their work. Far more research would be needed to determine whether these results provide support for Picard's view that an integrated model of mediation should be developed or whether these results can be accommodated by the traditional view that mediation styles exist on a continuum. Regardless of the theoretical implications, these results do suggest that mediators can simultaneously pursue settlement and relational or personal change for the participants.

It may be that in some settings the two are closely linked. More than one mediator participating in this study suggested that unless there is a shift in how the parties relate there will

be no settlement. If this is the case then mediators may not be creating changes that last outside the session but are seeking changes that will make a settlement possible. It would be interesting to examine this issue further in a future research project which looks at personal change during mediation from the perspective of the participants.

Conclusion to this Chapter

In this chapter the results of this study were compared to the findings of existing literature. Areas of comparison were identified, as were some issues where more research is required. Of the issues identified by mediators in this study the one that has had the most previous consideration is power imbalances. Other than that, in many ways the current study is groundbreaking. This study not only expands our knowledge about process issues that have not been considered before, but it identifies issues that need further research. The implications of this study are discussed in the next chapter.

CHAPTER IX: IMPLICATIONS AND CONCLUSIONS

Introduction to this Chapter

This final chapter covers the implications of this study, avenues for further research and conclusions. This study has an interdisciplinary aspect due to the subject matter with child protection issues falling within the mandate and expertise of the social work field, and the legal system falling under the mandate and expertise of lawyers. Therefore, there are implications of this research for social work, law, policy and mediation. These implications are discussed next followed by a discussion of future avenues for research and conclusions that can be drawn from this study.

Implications of this Study

For Social Workers

The results of this research have implications for social workers who are working as child protection workers. However, there are also implications for the social work field and for social workers who are carrying out their profession in other settings. First, this research demonstrates a need for better understanding of the close affinity between the values espoused by the social work profession and the mediation field. Second, it supports the view that greater social worker involvement in the mediation field would be beneficial. These points are somewhat related but each is discussed in turn.

Barsky (2001) notes that there are many similarities between the practice of social work and the practice of mediation, although the degree of similarity differs depending on what mediation style the mediator is using. In Barsky's own words:

Many of the similarities and differences between professions depend on the models of intervention being compared. For example, the therapeutic and transformative models of mediation adopt methods similar to those used by clinical and social workers. The structural model of mediation focuses more on rights and resolving legal issues, similar to the traditional practice of law. (p. 40)

Barsky was not the first researcher to note similarities between these fields. In 1985 Chandler noted the similarity between the two professions. He describes the potential for social workers to use mediation in their social work practice in the following statement:

Social workers could easily utilize the skills of mediation in their practice. Aligned with social work values is the concept that within the mediation process itself people see and perhaps learn that social control can be internally created rather than externally imposed. Communication is maximized, differences aired, and a safe and neutral ground for bargaining and problem solving is provided. The concept of taking responsibility becomes behaviorally concrete. (p. 349)

Severson and Bankston (1995) have also noted a commonality of values between the two fields. In their words, "the mediation process compliments social work values by empowering clients to plan for their future and doing so with a problem solving focus" (p. 683).

Mantle (2002) examined the potential alignment between social work and mediation. He identifies four key uses for mediation in the social work field. They are as follows: 1) mainstream social work, 2) in a specific area of practice, such as victim-offender mediation or family mediation 3) as an aspect of supervision when clients and social workers come into conflict, and 4) when social workers come into contact with other professionals or other fields where mediation is being used. Child protection mediation would fit into the fourth use identified by Mantle.

The potential for using mediation in the social work field was identified in the literature more than twenty years ago but that potential has not been realized. Mantle (2002) describes the paucity of research regarding mediation in the social work field. In an examination of the *British Journal of Social Work* Volumes 20 – 31 inclusive he found only two references to mediation and

neither reference examines the questions about the relationship between mediation and social work. The word conciliation (often a euphemism) only appeared two times in volume 6-19.

The absence of the voices of social workers in the mediation field is disconcerting as the expertise that social workers have is invaluable in regard to certain types of mediation. Barsky (2001) notes that:

> Mediation is an interdisciplinary field but it has the potential to be co-opted by certain professions. For example, lawyers in some jurisdictions have attempted to confine mediation practice to people with legal backgrounds. Court affiliated programs have measured success in terms of settling legal issues. Social work academics need to ensure that other aspects of mediation are addressed in the literature: access, emotional concerns, social functioning, relational issues, and empowerment. There must also continue to explore the applicability of mediation for people from different backgrounds where gender, culture, power, and safety may be of a concern. (p. 44)

Not only do social workers have something to offer to the field of mediation, but the practice of mediation also has something to offer to the field of social work. Several articles have been written on the dual role of social workers who work in the child protection field. This dual role creates tension between the social worker's professional ideology and the social worker's role investigating families and acting as agents of social control. Poirer (1986) provides a particularly succinct description of the dilemma child protection social workers face in carrying out their responsibilities:

> In enforcing Canadian child welfare legislation in the 1980's one social worker is subject to conflicting roles. On the one hand, the social worker operates within a bureaucratic system whose main function is to enforce the law and to assume control over parents and their children when the child's development or security is in danger. In this role, the social worker acts largely as an agent of control on behalf of the community. On the other hand, the social worker is directed to consider himself as a professional whose main function is caring and helping individuals voluntarily submitting themselves for treatment. This role is at odds and perhaps even incompatible with an enforcement role, a problem as not yet adequately addressed by legal scholars. (p. 216)

This issue was identified by several mediators who participated in this study. One coined the phrase 'Napoleonic justice system' to describe the implications of the social worker's dual role.

It is worth noting that in some other jurisdictions social workers working in the child protection field have been resistant to mediator involvement out of a belief that mediators were duplicating a role that they could carry out themselves (Carruthers, 1997). Based on mediator comments in this study, this does not seem to have happened to the same degree in British Columbia. However, such concerns are somewhat ironic because mediators do not duplicate the work of social workers. There is an overlap in micro-skills such as empathetic listening. However, mediators are able to offer something quite distinct by coming into the situation from a completely neutral stance. They do not have an enforcement responsibility and therefore are able to provide empathy without also being responsible to monitor parents' behavior.

If some social workers were to enter the mediation field as mediators their expertise in handling family matters would be a great benefit in certain types of disputes. For example, if social workers were to work as mediators in the child protection field they would be able to enter disputes as a neutral party while still retaining the expert knowledge about human behavior they acquired as social workers. To date, large numbers of social workers have not entered the mediation field. However, this could happen in the future. One potential benefit to the growth of child protection mediation is that more social workers are becoming familiar with mediation through participation in that process, and this familiarity may inspire some to take mediation training.

Social workers would benefit from mediation training even if they don't plan to work as mediators. This training would enable them to better understand the mediation process and to be more effective in that setting as participants. At a minimum such training would enable social workers to distinguish between mediation and social work and to better equipped to be effective

advocates in the mediation setting which requires different skills than advocating outside the session.

In British Columbia it may be particularly important for social workers who are working in the child protection field to expand their skills and knowledge in the area of mediation because the use of child protection mediation in the social welfare field is growing. This growth is likely to continue given the policy direction set by the DRO and MCFD. MCFD plans to implement a "Presumption in Favour" policy initiative, with a projected start date in 2007. According to one of the DRO's publications this policy will establish "mediation, family group conferencing and traditional dispute resolution as the preferred options for child welfare decision making. Court ordered decisions are seen as options to collaborative practice and dispute resolution mechanisms." (McHale, Robertson & Clarke, 2007, p. 22) Goals of this initiative include cases resolving earlier and reaching resolution on most contested cases.

For Lawyers

Using mediation as an alternative to court is one example of a larger trend in the legal field. Mediation has become quite popular in a broad range of settings. As this has happened more lawyers have taken mediation training. However, the trend away from litigation in the legal field is much broader than just alternative dispute resolution. In a publication of the American Bar Association in 2003 Daicoff writes:

> A number of alternative approaches to law practice are emerging to replace the outmoded monolithic system. Since about 1990, a number of seemingly unrelated developments, or vectors, have appeared, all focused on reaching results for clients that optimize the clients' goals, satisfaction, emotional and relational health, and overall well-being.... Although the movement is not explicitly non-adversarial, it focuses on resolving legal matters in a way that leaves the parties in better—or at least no worse—shape, overall, than they were at the outset. It delights in creative win-win solutions and tries to preserve important interpersonal relationships by focusing on the parties' emotional well-being and

functioning. As a result, the comprehensive law movement often encourages non-litigious resolution. (p. 1)

According to Daicoff, the following are part of this movement: therapeutic jurisprudence, collaborative law, restorative justice, procedural justice, transformative mediation, problem solving courts, preventative law, holistic justice, creative problems solving. She describes this movement as "not being exclusively collaborative, non-adversarial, 'nice', or touchy-feely. It is not about backing down and being a pushover. It is about putting some new tools in the lawyering tool kit beyond the solitary 'hammer' of litigation that we learned in law school." (p 3)

These alternate mechanisms may be particularly appropriate when dealing with complex interpersonal matters as is the case in child protection cases. Madden and Wayne (2003), make a connection between mediation and the therapeutic justice movement. In their view "at the heart of therapeutic jurisprudence is the concept that the law, consistent with justice, due process, and other relevant normative values, can and should function as a therapeutic agent." (p. 339) Madden and Wayne argue that mediation is an approach which can be used by social workers when dealing with legal issues because of its potential to achieve positive therapeutic outcomes in addition to resolving the legal issues. This is contrasted with "the traditional adversarial nature of law [which] is ill suited for complex social issues such as family disputes and disintegration and mental health problems experienced by individuals." (p. 341)

Although Madden and Wayne were addressing their comments to social workers these comments ring true for lawyers as well. Traditional law is not well suited to resolve complex social issues. Legal expertise is required to determine whether or not potential solutions fit legal standards, and to help to generate options for resolution, but lawyers are generally not experts on issues such as mental health, social dynamics or how to deal with dysfunctional family dynamics. When those problems are occurring a better agreement will be reached with the input of other

professionals that have that expertise. Child protection mediation is one process that allows that to happen.

The mediators who participated in this study said it is very helpful to have the expertise of lawyers when crafting agreements as well as in helping to generate options. They contrasted lawyers who are familiar with mediation to those who are not and as a result may interfere with the mediation process by being very adversarial. The lawyers who are familiar are able to assist not just with agreement writing but also with the process itself by providing reality checks to their clients. This fits with the findings of some earlier research. Although some experts such as Lande (1997) view the participation of lawyers in mediation as unhelpful, there are others who argue the opposite. McEwan et al (1995) drew the following conclusions, based on research about mandatory mediation in Maine:

> Lawyer participation in the mediation sessions permits intervention on behalf of clients and buffers pressures to settle. Lawyers may also counsel clients to moderate extreme demands. In addition, once lawyers become accustomed to mediation, lawyer involvement in mandated mediation does not appear to prevent the meaningful participation of parties or inhibit emotional expression between spouses. (as cited in Lande, 1997, p. 893)

The results of the current study speak to the importance of providing training to lawyers on how to be effective in the sessions. Such training now appears in the curriculum of law schools. Hopefully over time increasing numbers of lawyers will be trained and familiar with mediation.

Policy Makers

Child protection mediation is a process which brings different systems with different values into contact. The values of the social work profession and the values of the legal profession are quite different. As well, the mediator's own personal values may also be different than those held by courts or by the legal system. This raises the question of how policy makers and program

developers can design a program which meets the needs of all the stakeholder groups (the legal, social work, and mediation fields).

Since the values of the social work profession and the legal profession are different some accommodation has to be made when professionals from the two fields work closely together. One possible result may be the adoption of legal values by the mediation field. It has been argued that the mediation field is drifting away from social justice norms towards a replication of the values of the legal system (Woolford & Ratner, in press). According to Woolford and Ratner, this shift is happening for the following reasons: a) more lawyers are entering the mediation field and are bringing the norms of their profession, b) the pressure to settle can lead to mediators adopting an evaluative style that fits more closely with the values of the legal field, and c) it may be more tempting to use an evaluative style, particularly when the dispute is solely focused on money. Woolford and Ratner use game theory to carry out their analysis, and describe the evaluative, transformative and facilitative styles as each being a particular game with particular rules with the legal game having a hegemonic influence. In their words:

> Given the perceived legitimacy of the legal game, it can be expected that mediators will increasingly seek to approximate legal practices in attempts to invest mediation with a similar aura of legitimacy. In other words, there is a tendency for facilitative and transformative mediation games to drift toward evaluative practices that are more similar to the overarching legal game.

Whether or not this argument is correct and such a drift is occurring in the field as a whole, it is not inevitable that particular mediators or mediation programs will necessarily be assimilated by the legal field even in situations such as child protection mediation where the work is being done in close proximity to the court process. Noce, Folger and Antes (2002/2003) carried out a study in Florida which examined how mediation programs were affected by contact with the legal system when the programs were court connected. Foundational to their research is the belief that

mediation and the justice system have very different value systems with the justice system focused on settlement and discouraging independent communication by the parties. Mediation, on the other hand, values party to party communication and assumes that human connection is needed for constructive conflict resolution.

Noce, Folger and Antes found three different types of adaptation by court connected mediation programs: 1) assimilation (adopting the values of the legal system), 2) autonomy (remaining quite separate from the court), and 3) synergy (something new develops that is bigger than the sum of the two parts). They found that the programs that assimilated had a focus on settlement and cost savings but the programs that remained autonomous or demonstrated synergy had a very different focus. As they explain:

> In these approaches the primary value articulated for court connected mediation was that mediation added something qualitatively different to the judicial system in terms of human interaction; an opportunity for people involved in conflict to talk with each other, in their own voices, build new understandings, and make their own decisions about how to proceed. Case management efficiencies were perceived as a by product of improved human interaction, but not treated as a goal in themselves. (p. 32)

The program in British Columbia is court connected in some aspects. Mediation often occurs after the court process has begun and counsel can attend mediation in this program. Nonetheless, mediators in this program are not solely pursuing goals which replicate the goals of the legal system nor are they adopting settlement as the primary goal. Instead the mediators who participated in this study recognized indicators of success which are less tangible than settlement such as empowering the participants and improving the relationship between the parties.

Given the results of the study by Noce, Folger and Antes it is not overly surprising that goals of child protection mediators in British Columbia do not replicate the goals of the legal system because assimilation isn't inevitable. However, it is worth keeping in mind the potential of a drift in the mediation field towards the norms of the legal field. Unless program developers

intend to design a program which is an extension of the legal system, they should be deliberate in building a program design that leaves room for goals other than settlement.

Picard (2002) provides a similar caution directed towards policy makers. She drew the following conclusion in regard to the findings of her study:

> One of the advantages of conceptualizing mediation as a plurality of practices rather than a single model approach is that doing so will legitimate the range of mediation practice and practitioner found today....Mediation leaders and policy makers should avoid endorsing single model mediation approaches....Policy makers must be careful not to (intentionally or unintentionally) align themselves with a single ideology of practice. Doing so is likely to stifle the growth of mediation and its entry into places where innovative dispute resolution is badly needed. (p.265)

The study by Noce, Folger and Antes demonstrates that assimilation isn't inevitable. However, the results also suggest that key program decisions are required by program administrators and developers. If, for example, the goal is to have a program which is congruent with values other than traditional legal values then this should be reflected in program design. Noce, Folger and Antes draw the following conclusion:

> An implication of identifying the value based nature of mediation programs is the need for program decision makers to develop a heightened awareness of how the nature of a mediation program is shared and reshaped with each program decision. Program administrators need to understand the importance of monitoring the fit between the articulated values underlying a program and the values that are visible in program decisions... A related implication of this study is that programs can examine their practices to determine whether their practices are consistent with the social impacts they wish to explore. (36)

In British Columbia, even though child protection mediation is carried out in close proximity to the legal system the program has not become assimilated by that system. Child protection mediators believe that success is demonstrated by changes less tangible than settlement outcomes. More study would be needed to determine specifically why this is the case. Is this a result of deliberate policy choices about program structure and expectations when the program was initially developed, or is this merely the result of circumstances outside the planning scope of

policy makers? For example, in British Columbia mediators come from a broad range of professional backgrounds and yet all manage to carry out child protection work in this program. Perhaps the mediators in the Florida programs come from a more limited range of professional backgrounds and, therefore, the pressure towards homogeneity is greater.

Regardless, of the theoretical implications, the broad range of mediator background and style represented on British Columbia's mediator is one of the strengths of the program. It speaks to the importance of not aligning a program with a single ideology of practice, and of allowing mediators to adapt their styles and choice of strategies to each particular case.

For Mediators

There are at least two implications of this study for mediators: 1) it supports the view that there is a fluidity to mediator style and that, to be effective, mediators need to adapt their approach to the particular context, and 2) it offers information about tactics and approaches used by child protection mediators some of which mediators may be able to use in other contexts.

Although the current study design does not make it possible to draw any definitive conclusions about the mediation style of particular mediators who participated in the study, nor does it make it possible to generalize about the parameters of existing models of mediator style, the study does provide support for the view that mediation approaches are fluid and mediators can adapt their style and strategies to the particular case or context. The mediators who participated in this study come from a variety of professional backgrounds and have completed training in mediation in different programs. Yet, individual mediators with different values and approaches are able to be successful as child protection mediators.

One implication of this is that mediators may be better equipped if they have a broader range of possibilities to choose from when applying particular tactics and strategies to a specific

situation. For example, this study describes two strategies that are not commonly discussed in the mediation literature namely orientation sessions and using non-parties to influence the results of mediation, and provides support for their effectiveness. It is not known whether these approaches would also be effective in other settings but it would be worthwhile for mediators to try these strategies to see if there is a benefit to their mediation practice. This study also suggests that mediators can simultaneously pursue different goals. If mediator goals do affect mediator style, as was discussed above, this suggests that mediators can feel free to use the model or style or combination of styles which are the most suitable in a particular situation without compromising effectiveness.

Mediators can learn lessons from the program in British Columbia. Since the structure of the child protection mediation program in British Columbia is not as highly prescribed as programs in other jurisdictions, mediators are able to bring their individual style to mediation to a greater extent than they might be able to in some other settings. This flexibility has allowed the program to develop a unique and effective structure based on specific approaches which have been proven to work. For example, the program initially had two distinct models, with orientation sessions required in one but not the other. Now that orientation sessions have proved effective these sessions are generally used regardless of the mediation model.

This flexibility can be contrasted to mediation approaches which are highly prescribed and may stifle mediator creatively. For example, Firestone (2005), in a professional workshop on child protection mediation, described programs in some jurisdictions that are structured to the point that social workers supply templates of settlement agreements which are then used by mediators in the mediation session.

For the individual mediator, working in a program with a less prescribed approach allows room for the mediator to fully engage his or her creativity in the process and to adapt mediation style to what is needed in the particular situation. Picard (2004) argues in favor of an understanding of mediation which is integrative and which allows mediators to draw on a broad range of theories to conceptualize what they do. This conceptualization seems particularly astute in an area such as child protection mediation where relationships and dynamics are very complicated requiring mediators to be flexible and able to try different approaches depending on the needs of the moment.

Avenues for Future Research

Throughout the previous chapter various issues were identified as issues which could be the subject of future research. Given the fact that this study is one of a small handful of studies which examine process issues in child protection mediation, almost any issue raised in this paper could be a subject of further research. However, there are a few issues where such research would be particularly beneficial.

One such issue is orientation sessions which mediators identified to be particularly valuable in child protection mediation. It would be worth carrying out research that would compare the beneficial effect of an orientation session in child protection mediation to orientation sessions other types of mediation. Another issue worth further study is the issue of mediator choice of strategy. This study provides support for the view that mediators choose strategies and approaches based on what they believe will work in a particular setting. This would be very interesting to investigate in a follow up quantitative study on child protection mediation. Such a study could examine mediator background, tactics used in the mediation setting and other factors such as presenting problem and number of participants.

Lastly, it would be valuable to conduct a follow up study which would use the same methodology in order to determine if there have been any changes since the data for this study was collected in 2005- 2006. Since that time the child protection roster has been expanded in British Columbia, both in regard to the number of mediators and the parts of the province where mediation is being carried out.

When the data was gathered for this study the child protection roster was weighted towards the urban settings. As a result only five of the fourteen participants were located outside of the Greater Vancouver or Victoria areas. As well, many of the mediators interviewed in this study came on to the roster in 1997. Most of the mediators who entered the roster at that time had attained a high level of mediation expertise prior to entering the child protection field and being placed on the roster. Over the past two years the usage of child protection mediation has increased through the province of British Columbia and the roster has been expanded. As a result, especially in rural areas, some less experienced mediators have been placed on the roster. Although these mediators all meet or exceed the minimum requirements set by the Ministry of the Attorney General, they do not have years of prior experience as did many of the initial mediators. Given these changes, it would be worth replicating the perceptions of the new mediators on the roster in comparison with the mediators on the roster at the time this research was completed.

Conclusions of this Study

This study was groundbreaking in many ways. Child protection mediation provides a forum for maintaining the mandates and values of two different professional fields, the law and social work. In mediation the concerns of both professional fields can be addressed. An agreement made through mediation makes it possible to agree upon a plan protecting the safety of a child, thereby fulfilling legal concerns, while at the same time doing so through a process which

is empowering and has a therapeutic aspect, thereby incorporating the values of the social work profession. As such, child protection mediation has a great deal of promise not just for the participants but also at a more profound societal level.

This study also provides new knowledge about child protection mediation. Some of the issues identified in this study would benefit from further research future but even without further research the identified issues still provide value insights that will undoubtedly be useful to professionals working in several fields. For example, mediators in this study identified orientation sessions as one of the most important strategies for child protection mediation. This is an issue that should be explored further yet even in the absence of additional research mediators in private practice may wish to try using orientation sessions to determine whether these would be beneficial in other types of mediation.

Given the groundbreaking nature of this study it is not surprising that the results of this study both identified areas for further research and highlighted key insights which can impact mediation practice immediately. As such this study expands our knowledge about child protection mediation in a number of key ways.

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APPENDIX A

Questionnaire

THE UNIVERSITY OF BRITISH COLUMBIA

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By filling out this questionnaire you will be providing useful information for the study *Child protection mediation in British Columbia: Effective and ineffective strategies, processes and methods from the perspective of the mediators.* **By returning the questionnaire you are consenting to having your answers included in the study. However, the anonymity of your identity will be protected. Your name will not appear in the study or otherwise be publicly released.**

Questionnaire

(Please feel free to write on the back of these pages if you need additional room)

1. Your name (optional) _____

2. Years experience as a mediator_____ Number of child protection mediations _____

Are all of these in B.C.? If not, how many child protection mediations have you completed in another jurisdiction? _____

3. Other types of mediation services you provide_____

4. What variations of Child Protection Mediation do you do? (check one of the following):
   Facilitated Planning Meetings_____ C.F.C.S.A. s. 22 _____Both _____

5. In your experience, how does the level of conflict in child protection disputes compare to other types of mediation work you do (on average)
Higher _____ Lower _____ The Same _____
(check one)

If there is a difference, to what do you attribute the difference?

6. Compared to other mediation work you do, as a child protection mediator are you usually:
More directive _____ Less directive _____ The Same _____
(check one).

7. Describe any differences between your approach and/or style in child protection mediation and in other types of mediation work you do.

8. What challenges do you face in dealing with the dynamics between the parties in a child protection mediation session?

9. What factors affect the dynamics in a child protection mediation session (for example, legal representation, who attends, location, whether it is a Facilitated Planning Meeting or a s. 22, etc), and how do you change your approach to account for these factors?

10. What strategies and methods have you found to be particularly effective in the child protection mediation setting?

11. When do you believe that child protection mediation is the most effective?

12. When do you believe child protection mediation is the least effective?

13. Explain how you know that a child protection mediation session has been successful.

14. Would you be willing to participate in a brief interview to discuss your experiences as a child protection mediator? (yes or no) _____

   If yes, please provide your preferred contact information (phone or email)

   _____

A yes answer indicates your consent to be contacted to discuss the project further. At that time, more information will be provided, and you will be able to choose whether or not you wish to be interviewed.

This is the conclusion of the questionnaire. Please enclose the questionnaire in the provided self-addressed and stamped envelope and mail it at your earliest convenience. Thank you for your assistance with this project.

APPENDIX B

Interview Guide

1) Training and Background of Mediator

Some issues to cover:

- Mention professional training (peruse website first)?
- What aspects of your training and experience have proved particularly helpful in preparing you for carrying out child protection mediation?
- How long have you been doing child protection mediation and how many cases have you done?
- What if anything, have you found to be unique or different about child protection mediation as compared to other types of mediation?
- In what ways has your approach from when you started doing child protection mediation until now?

2) Identifying key issues

This study is about effective and ineffective approaches, methods and strategies for conducting child protection mediation. Are there any specific issues related to this topic that you think are especially important?

If you were training someone who had experience in mediation but not cp med., what do you think would be important for them to know in order to be effective?

3) Pre- meeting Prep and orientation meetings

Some issues to cover:

- What do you do pre-mediation ie. before meeting with the parties in a joint session?
- How much preparation do you do before meeting with the parties (ie. how much info do you have about the case, how does that affect your work, etc)?
- Do you do an "in-person" orientation with both parties individually in every case?
- What party do you typically meet with and why?
- What do you try to accomplish during the orientation sessions?
- What education and or preparation for joint sessions do you do?

3) Joint Sessions

Some issues to cover:

- How do you identify and set the agenda for the sessions?
- What are some typical challenges of dealing with social workers in the session?

- What are some typical challenges of dealing with parents in the session?

4) Relationship between Ministry and Parent

Some issues to cover:

- Describe the emotional climate between parents and social workers
- How does this compare to the emotional climate and / or conflict levelin other types of mediation you have done?
- How does this affect the dynamics in the mediation session, and how do you manage the dynamics between these parties?
- Does mediation typically change how the parties relate, and, if so in what way and when is this most likely to happen?

5) Power balancing

- When is the power imbalance between the parties the greatest?
- When do you think it is the most difficult to balance power in the cp med setting, and what strategies do you employ to do so?
- What challenges, if any, do the presence of other extended family members or non-parties present when trying to balance power?

6) Legal counsel

Some issues to cover:

- How does the presence or absence of legal counsel affect the dynamics between the parties in the room?
- How does the presence or absence of legal counsel change your approach to the mediation?

7) Further Comments you would like to make?

8) <u>Case study</u>

Some issues to cover:

- Who was present?
- What were the basic issues?
- What happened at the orientation session?
- What challenges arose in the joint session?
- How did you deal with those challenges?
- Was there a key moment or a key strategy you used?
- What happened at the end of the session?
- Was this case fairly typical of both challenges you face and the strategies and methods you employ dealing with them? (if not, how was it unique?)

APPENDIX C

Initial Coding Scheme

1) Special Challenges
   - Culture (ethnic & subcultures)
   - Participants' personal limitations (eg. substance abuse / mental health/ abuse)
   - Relationship between parties (history, support capacity, and trust)
   - Constant changes/ shifting circumstances (of participants)
   - Statutory requirements and program parameters (such as schedule, timing)
   - Heightened intensity level (emotions and multi-parties)

2) Pre-meetings
   - Negotiating who will be there
   - Negotiating the agenda/ finding out issues
   - Allowing parties to vent/ managing emotion
   - Putting elephants on table (transparency)
   - Developing relationship with parties/ gaining trust (mediator and parties)
   - Educating (includes coaching/ providing information/ reality checking

3) Use of power in the mediation
   - Power of parties (ministry/ parents)
   - Power of extended family/ support people
   - Power balancing techniques
   - Power of counsel

4) Roles in mediation
   - Role of mediator (ethical issues)
   - Role of counsel
   - Role of non-parties (support people/ extended family)
   - Role of children in mediation

5) Changes through mediation/ measures of success (other than agreement)
   - Transformation of relationships
   - Personal change / empowerment of participants

6) Differences between CPM and other mediation

Revised Codes

Core Concept: Managing the process

This is the core concept which explains the phenomena being studied the best. The mediators are describing a process that must be managed in order for mediation to be successful. The what, how, who, when, and why can be answered by the following codes:

I. Describing the process

This code defines what the process is that needs managing in child protection mediation. This does not attempt to capture all aspects of the mediation process, but rather the parts that require managing. There are several components or aspects to this. These are captured by the following sub-codes:

1. Emotional Content

This sub-code describes the emotional content in child protection mediation and defines what that looks like.

2. Power

This sub-code describes what the power dynamics look like in child protection mediation. This includes the power dynamics between parties and non-parties and power dynamics that exist due to external factors

3. Dynamics

This sub-code describes the changeable nature of child protection mediation, and how that affects the direction of mediation. This includes circumstances changing, the amorphous nature of participant selection, and the hidden agendas and additional issues that arise

II Explaining the process

This code explains how the child protection mediation process is different from other types of mediation processes. This code refers to issues that are specific to child protection mediation and explains how these affect the child protection process. For example, power dynamics are present in every type of mediation. Therefore, which factors differentiate power dynamics in child protection mediation from power dynamics in other mediation?

1. Issues affecting dynamics at mediation

This sub-code refers to issues specific to child protection mediation that impact the dynamics and includes the following:

- Changeability
- Multi-party
- Issue identification

2. Issues creating power imbalances

This sub-code describes the issues (or external factors that create power imbalances in child protection mediation. These including the following:

- Personal limitations of parents
- Statutory parameters
- Inclusion of non-parties in mediation

3   Issues creating emotion
This sub-code refers to factors that make the emotion more volatile in child protection mediation. These factors include the following
- Value judgments
- Past History

III Strategies Used for Managing the Process
This code refers to the strategies and techniques used by mediators to manage the process

1. Setting the Groundwork (orientation)
This sub-code describes the pre-orientation session including the following:
- Value of the pre-mediation/ orientation
- What mediators try to accomplish in pre-mediation/ orientation

2. Other participants as key influencers
This sub-code refers to how the mediators use key influencers to create success in mediation, and how these are used as influencers by the mediator. .These key influencers include the following:
- Lawyers
- Non-parties

3. Tools used in joint session
This sub-code refers to approaches that mediators take during the joint session to deal with emotion, dynamics or power. These tools include the following:
- Choosing participants and assigning roles
- Transparency
- Coaching and educating
- Caucusing

IV. Evaluating Success in Management of the Process

This code refers to the outcomes that mediators associate with positive results in the mediation. This answers the question why manage and refers to the process, rather than success in reaching an agreement

1. Questions about the process
This sub-code refers to questions the mediators have about the success of the process

2. Changing relationships
This sub-code refers to mediator observations of changed relationships between parties

3. Changing the person (empowering)

This sub-code refers to mediator observations of personal changes or empowerment due to participation in mediation

APPENDIX E

Table Showing Which Documents Each Code Appeared In

Questionnaires

	1 A-Q	2 B-Q	3 D-Q	4 F-Q	5 G-Q	6 H-Q	7 J-Q	8 M-Q	9 N-Q	Total
Describe Dynamics	0	0	0	0	0	0	0	0	0	0
Describe Emotion	0	0	0	0	0	0	0	0	0	0
Describe Power	0	0	0	1	0	0	0	1	0	2
Evaluating Empower	1	1	0	0	1	1	0	0	0	4
Evaluating question	0	0	0	0	0	0	1	0	0	1
Evaluating Relationship	2	3	1	1	1	1	1	0	0	10
Explain Dynamics	0	1	0	0	0	0	1	1	0	3
Explain Emotion	1	2	1	1	2	0	0	1	0	8
Explain Power	0	1	1	0	0	0	1	0	0	3
Managing the process	0	0	0	0	0	0	0	1	0	1
Use pre med value	0	0	0	1	3	0	0	1	2	7
Use pre med describe	2	1	0	1	1	1	0	1	0	7
Using tools	0	2	2	0	1	0	0	0	2	7
Using key influencers	1	1	1	0	0	0	1	1	1	6

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Interviews

	10 A-I	11 B-I	12 C-I	13 D-I	14 E-I	15 G-I	16 H-I	17 I-I	18 K-I	19 L-I	20 M-I	35 J-I	TOTAL
Describe Dynamics	0	0	0	0	0	0	0	0	2	0	0	0	2
Describe Emotion	1	3	2	0	1	1	0	1	3	0	0	1	13
Describe Power	0	1	1	0	2	4	2	2	1	0	2	0	15
												0	
Evaluating Empower	0	0	0	0	0	2	0	0	0	1	1	0	4
Evaluating question	0	0	0	0	1	0	0	0	0	0	0	1	2
Evaluating Relationship	0	1	1	0	1	0	0	0	0	2	0	0	5
Explain Dynamics	0	0	2	2	1	2	0	0	2	1	2	1	13
Explain Emotion	2	1	1	3	1	1	0	0	1	3	1	1	15
Explain Power	3	2	2	1	2	2	0	4	0	2	1	1	20
Managing the process	0	1	2	1	0	1	0	0	0	0	2	0	7
Use pre med value	0	1	1	2	1	5	1	2	0	2	2	2	19
Use pre med describe	5	5	3	4	4	6	2	1	1	0	3	2	38
Using tools	3	2	2	3	4	3	2	1	3	3	2	1	29
Using key influencers	3	2	4	0	1	1	1	1	2	1	3	1	20

Case Studies

	21 ACS1	22 ACS2	23 BCS1	24 BCS2	25 CCS1	26 CCS2	27 CCS3	28 ECS1	29 ECS2	30 GCS1	31 HCS1	32 ICS
Describe Dynamics	0	0	0	0	0	0	0	0	0	0	0	0
Describe Emotion	0	1	0	0	0	0	0	0	0	0	0	0
Describe Power	0	1	0	0	0	0	0	0	0	0	0	2
Evaluating Empower	0	0	0	1	0	0	1	0	0	1	0	0
Evaluating question	0	2	0	0	0	0	0	1	0	0	0	0
Evaluating Relationship	0	0	0	1	0	1	0	1	0	0	0	0
Explain Dynamics	0	1	0	0	1	0	0	0	0	1	0	0
Explain Emotion	0	0	0	0	0	0	0	1	0	0	0	0
Explain Power	1	0	0	0	0	0	0	0	0	0	0	0
Managing the process	0	0	0	0	1	0	0	0	0	0	0	0
Use pre med value	0	0	0	0	0	0	0	0	0	0	1	0
Use pre med describe	0	0	0	0	0	1	0	0	0	2	0	2
Using tools	0	0	0	0	0	0	0	1	0	0	0	2
Using key influencers	0	1	0	1	1	0	0	0	3	0	0	0