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The Essential Aspects of Mediation in Child Protection Cases

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This study explores the process of mediation used in the context of child protection mediation. The general aims of this study are to explore aspects of mediation which are unique to this process, and to identify mediative processes which could be used effectively in other types of child protection interventions. The primary source of data is derived from interviews with child protection workers, mediators, parents and other family members who participated in mediation. The introduction of mediators in the child protection process was found to alter the dynamics and change the nature of the discourse between child protection workers and family members. However, other child protection service providers could employ many aspects of mediation.

The rapid growth of mediation in fields as diverse as commercial dispute resolution and divorce mediation has raised the interest of a growing number of child welfare service providers and scholars interested in finding a more constructive process for developing collaborative service plans with families (Mayer, 1987). Several jurisdictions have already introduced mediators at various levels of the child protection system (Barsky, 1995; Carruthers, 1997; Oran, Creamer & Libow, 1984; Thoennes, 1994; Savoury, Beals & Parks, 1995). Most of the writings to date have focused either on developing a rationale for using mediation in child protection (Eddy, 1992; Palmer, 1989; Wildgoose, 1987) or on evaluation of various programs (Campbell & Rodenburgh, 1993; Centre for Policy Research, 1992; Golten, 1986; Mayer, 1984; Smith, Maresca, Duffy, Banelis, Han-

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delman & Dale; Wildgoose & Maresca, 1994). However, there has been insufficient work describing the process of child protection ("CP") mediation, and analyzing ways in which mediation can be integrated into CP services (McIsaac, 1997). The present study was designed to provide an in-depth understanding of the process of CP mediation, and to identify the essential aspects that contribute to developing more effective working relationships with child welfare clients.

Our study is distinct from prior studies because it entails the use of extensive interviews with family members, as well as with professionals involved in mediation and other CP processes. An analysis of their experiences contributes to child welfare and mediation literature: (1) by beginning to determine the critical experiences of parties involved in the different processes; (2) by developing a framework delineating the essential aspects of the mediation process that are unique to mediation; and (3) by identifying mediative skills and strategies that can be employed in other areas of CP services.

Literature Review

In its broadest sense, mediation is any means of dealing with social conflict that uses a third party intervenor to help those directly involved in the conflict, where the third party has no power to decide the outcome for the parties (Duryea, 1992). Mediation literature tends to contrast mediation with legalistic and adversarial approaches to dealing with conflict. In contrast to the adversarial model of dispute resolution (which tends to generate win-lose outcomes), mediation encourages parties to work together for mutually satisfying solutions. Accordingly, mediation does not try to adjudicate on what has happened in the past or assign blame. Instead, mediation focuses on the future, and how all of the parties' interests can be maximized (Stahler, DuCette & Povich, 1990). Although conflict resolution literature frequently describes mediation as a new alternative, collaborative conflict resolution tactics have been documented in many different societies dating back to early civilizations (Capelletti, 1979).

In professional literature, mediation is generally seen to be a brief, cognitive intervention which can have therapeutic effects, but is not therapy *per se* (Irving & Benjamin, 1987). The mediator's role is to facilitate communication and to direct negotiations between the parties in order to

help them to arrive at mutually agreeable ways of managing or resolving the issues between them (Folberg & Taylor, 1984). While the mediator has no authority to impose specific outcomes on the parties, the mediator can promote positive interaction between them by using an array of techniques: setting the agenda; directing the flow; questioning; active listening; positive connotations; reframing; making neutral statements; pre-empting; task prescription; observation; giving information; confrontation; metaphoric storytelling; clarification; and summation (Irving & Benjamin, 1987; Donohue, Lyles & Rogan, 1989).

One of the problems in the current mediation literature is that there is no one broadly accepted definition of what mediation is or encompasses. Over one hundred facilitative, directive and manipulative tactics have been identified in the literature (Barsky, 1995; Zartman & Touval, 1985). Research is beginning to identify which factors lead to positive outcomes. Determining which aspects of mediation are crucial to its effectiveness seems to be related to the context in which mediation is being used (Pruitt & Carnevale, 1993). Although a myriad of mediation tactics have been recognized, the research does not identify a core group of essential aspects of mediation that is common across contexts. Often, the opposing definitions of mediation result from different contexts in which mediation is being applied: civil liability cases; environmental disputes; labour conflicts; victim-offender reconciliation; and so on (Kressel, Pruitt & Associates, 1989). In each context, there are particular types of issues, incentives, legal mandates, power dynamics and pitfalls. Accordingly, a model of mediation which is appropriate for one context may not be appropriate for another.

The breadth of strategies and functions described in general mediation literature is reflected in CP mediation literature. CP mediation is proposed by some advocates as a more effective method of engaging families in treatment (Bernstein, Campbell & Sookraj, 1993). Others argue that it could provide major time and cost savings by avoiding protracted court hearings (Morden, 1989; Wildgoose, 1987). Yet others maintain that mediation provides a basis for empowering families (Bush & Fogler, 1994) and ensuring that child protection services proceed in a manner that is least intrusive to families and children (Regehr, 1994; Wildgoose, 1987).

The circumstances which give rise to the need for mediation in child protection are somewhat different from those that apply in areas where mediation has been more commonly used. Mediation has been introduced

into CP cases to deal collaboratively with conflicts between the agency and family members (including parents, grandparents, foster parents and extended family members). Issues that have been mediated range from the types of services that a child protection agency will provide, to terms under which parent-child visitation will take place, to conditions that must be satisfied in order for a child to be returned to parental care, to termination of parental rights.

The mandate of CP agencies requires them to balance the interest of protecting children from abuse and neglect with two principles: first, the agency ought to support the integrity and autonomy of the family; and second, in cases where intervention is required in order to help a child or family, then the least restrictive or disruptive course of action should be taken (Bala, Hornick & Vogl, 1991). When parents and child protection workers ("CPWs") agree upon what needs to be done to further the best interests of the child, these values can be balanced with little conflict. Greater conflict arises when CPWs and parents have different views about the welfare needs of the child. Traditionally, if CPWs were not able to work out a plan on a consensual basis, their only alternative would be to go to court to request imposed intervention.

Given the mandate of child protection agencies, one of the key questions about CP mediation is whether it can be differentiated from just "good clinical practice" by CPWs. Otherwise, a CPW could fulfill the role, making mediation simply a duplication of services. The main argument in support of such a distinction is that the mediator has responsibility for establishing a collaborative problem-solving process, without incurring the task of determining the child's protection needs (Mayer, 1989). The mediator helps the parties develop their own mutual understanding about what needs to be done for the safety and welfare of the children. By examining the process of CP mediation in detail, the present study seeks to identify the essential aspects of CP mediation. This will help clarify which aspects are unique to the mediation process and which can be transposed effectively to other types of CP processes.

The Centre for Child and Family Mediation in Toronto developed the model of CP mediation studied in the present research. For a rich description of this model, including case examples, see Wildgoose and Maresca (1994) or Barsky (1997a).

Methods

In order to develop a better understanding of the dynamics of child protection mediation, this study used naturalistic inquiry methods (Denzin & Lincoln, 1994). The first author conducted a series of exploratory "long interviews" (McCracken, 1991) with family members, CPWs and mediators who had been directly involved in five mediation cases¹, as well as with family members and CPWs from three non-mediation comparison cases. The primary focus of these interviews was to have informants discuss what they felt were the critical issues in their experiences with mediation. The experiences of the informants in the pre-mediation interviews and in the non-mediation cases provided the contrast points used in identifying the essential aspects of mediation (Spradley, 1979).

Sample

Mediation cases were sampled on the basis of availability and willingness to participate, from a pool of approximately 30 mediation cases seen by the Centre for Child and Family Mediation. Although it was not possible to directly collect data on the non-study cases, the study cases had a similar profile to cases described in a prior evaluation of the Centre (Wildgoose & Maresca, 1994). The study cases involved a range of child protection issues including neglect, abuse, wardship, access and supervision. Parties involved in the research cases included CPWs, parents, grandparents, extended family members and foster parents. In both the study sample and the Centre's general profile, a single parent headed the majority of the families. The study sample included families with European-Canadian and African-Canadian backgrounds. The Centre has also mediated with Aboriginal-Canadian family members. The number of mediation sessions in the research sample ranged from 3 to 8, similar to the average number of sessions used by the Centre. The study sample included

¹ The two mediators included in the research sample were the primary mediators used by the Centre. The only other mediator for the Centre had been involved with only a few cases. The mediators were interviewed separately for each mediation that they conducted.

both cases that settled and cases that did not settle in mediation, however, the levels of conflict in some of the non-study cases that did not settle may have been higher than the levels of conflict in the study sample. None of the research cases proceeded to trial following mediation, whereas the Centre has had cases which have had to go to trial. Although the nature and size of the sample mean that the results of this study cannot be generalized, the main purposes of this research—to explore the experiences of parties involved in child protection mediation and to provide a rich comparison with the experiences of parties in non-mediation cases—were not compromised by the nature of the research sample that was actually drawn. This research was not intended to compare whether mediation was either more or less effective than other child protection processes.

The sample of non-mediated cases was drawn purposively on a cases-by-case basis by having CPWs from the mediation sample identify matching cases from their own caseload. Selection was done to ensure that the comparison cases matched the mediation cases in terms of demographic profiles, type and severity of maltreatment, placement status, and level of involvement by participants in the case planning process. In addition to these factors, it became apparent as non-mediation cases were being examined that one of the most important factors to consider was the type of interventions used in the non-mediation cases. Some types of interventions in the child protection process engender philosophies related to those which underpin mediation: e.g., solution-focused therapy; case conferencing; and plan of care meetings (Tjaden, 1994; Bernstein, Campbell & Sookraj, 1993). Accordingly, in order to explore whether mediation is qualitatively different from other child protection processes, three cases in which mediation-like interventions were employed were selected for comparison. Table 1 outlines the demographics of the families involved in the study.

Table 1
Sample Characteristics

	Mediation Cases	Non-Mediation Cases
Marital status of parents		
Common Law	2	1
Single	1	1
Separated/Divorced	2	1
Ethnicity of parents (as identified by family members)		
Canadian/European	4	3
Greek & Jamaican	1	
Number of children under 16		
One child	2	1
Two children	3	1
Four children		1
Age of children		
Under 2	1	1
2 to 10	2	2
10 to 14	2	-
Household income of primary caregiver		
Social assistance	2	2
Unemployment insurance	1	-
Under \$30,000	2	1
Gender of child's primary caretaker		
Female	5	2
Male		1
Presenting issues		
Return home	1	1
Terms of return home	2	1
Access	3	-
Child's wishes	1	1
Supervision	-	1
Process/stage at which case resolved		
Mediation / voluntary agreement	4	1
On consent in court	1	2

Data Collection and Analysis

Semi-structured interviews were conducted with family members, CPWs and mediators, one interviewee at a time (except in one case where the parents asked to be interviewed together so that they would be more at ease). Each interview was 50 to 90 minutes in duration and was conducted at a location of convenience to the interviewee. A questionnaire guide was developed on the basis of themes identified in the literature review (Barsky, 1995). Interviews were conducted flexibly in order to focus the study on the participants' perspectives on mediation and other child protection processes, rather than limit the research to preconceived areas of study. Additional information was obtained from mediation case files and data being collected for evaluative research on the Centre (Morden, 1989). This information helped to supplement and check information gathered in the qualitative interviews.

The interviews were audiotaped and transcribed (except in one case where a parent asked the interviewer to take notes rather than audio-tape). Each interview was read, re-read and analyzed as it was completed, rather than waiting to analyze all of the interviews together. Key themes and patterns from the interviewees' perspectives were identified from the transcripts (Lincoln & Guba, 1985). The interview guides were altered for subsequent interviews in order to further explore important topics and perspectives raised by interviewees that were not originally identified by the researcher. McCracken's five-stage model for data analysis was employed (McCracken, 1991). The transcribed texts were processed for analysis with the Ethnograph (Seidel & Clark, 1984) computer software package.

Lincoln & Guba's (1985) method for establishing trustworthiness was used throughout the study. Triangulation of data was ensured by collecting information from different participants (mediators, CPWs, parents, etc.), and checking whether facts collected are consistent with theory and findings in the literature (Denzin & Lincoln, 1994). Findings were discussed with the informants to ensure that interpretations reflected their understanding of the phenomena. Consultation with mediators from the Mediation Centre and with the first author's thesis committee were used as a form of peer debriefing on an ongoing basis (see Barsky, 1995 for further details).

Findings

Informants had no difficulty identifying a number of specific processes that played an important role in their mediation experiences, which can be subsumed under four essential aspects: (1) facilitation; (2) problem solving; (3) developing a mediation alliance; and (4) maintaining fair neutrality. In comparing the mediation and non-mediation cases, it appeared that many of the essential aspects of mediation were also reflected in non-mediation cases; however, certain dimensions of fair neutrality do appear to be unique to the mediation cases.

Facilitation

One of the essential aspects of mediation identified by all research participants was that it facilitated communication between the parties. Facilitation included processes ranging from providing a forum for bringing the parties together, to using communication strategies that ensured that all parties listened to one another in an open and non-confrontational manner.

Mediators, CPWs and family members each felt that the simple strategy of “bringing parties together” was central to the success of mediation, because it allowed parties to speak directly with one another. In some cases, the parties directly affected by the conflict had never actually sat down together and discussed their issues. In one instance, the major source of conflict was between the birth father and foster parents’ misperceptions of each other’s intentions. The birth father believed that the foster parents were “trying to steal” their daughter, whereas the foster parents questioned the father’s commitment to his daughter since he had never taken direct care of her. According to the mediator, mediation allowed the parties to just sit down and talk directly with one another. Through their discussions, the father was able to see that the foster parents were not “such horrible people, that they truly cared about his daughter, and loved her and really wanted the best for her.” The foster parents also learned to appreciate the father’s position when he spoke to them of his struggles to bring his children to Canada so that they could get a better education. While the father had not had an opportunity to care for his daughter directly, the foster parents were better able to understand the circumstance that had led to this separation.

Once parties were brought together, mediators played a key role in facilitating communication. Facilitating communication included simple strategies such as keeping all parties informed through regular telephone calls and correspondence, and helping parties listen to each other's concerns. One mediator defined her facilitation role as "making communication effective" between the parties. This involved helping parties identify their interests, helping them articulate these interests to the other people involved in the process, helping the parties clarify what they intended to say, and providing periodic written or verbal summaries of the content of the meetings. One of the mediators defined facilitation in the following way:

My role—not being a lawyer for them, not making any decisions, being there as a facilitator... helping them to talk to each other and sort out what was really important to them.

In a similar vein, a family member described the importance of the mediator's facilitation role:

Making sure that we talked about the relevant issues. You know, I think we made a list at the beginning of all the, the possibilities of what we should talk about and why we were there, and to go through them and to make sure that we touched on everything. To throw out questions, and be the leader, you know. Throw out questions, and make sure that people are, are thinking about those things.

One of the recurring themes from family members who participated in mediation was that the mediator helped to "keep peace" between the family and the CPW. They saw the mediator as someone who helped them keep their emotions in check. The mediator acted almost as a referee, setting out certain rules of behaviour from the outset and enforcing them if the parties started to stray from the rules. The mediator did not chastise or penalize the parties for breaking the rules, but rather identified the counterproductive behaviours and suggested other ways of approaching the problem. Some CPWs noted that the simple presence of a third person helped the parties keep their emotions under control and try to work out their dispute in a rational manner. The mediators described their role as having a "civilizing effect" on the communication patterns between the family members and CPWs:

I think the addition of a third party is a huge assistance in getting people to talk to each other in a civilized way... they have some sort of stake on a personal level, in not appearing like a total jerk in front of you... Because you do have this third person there that people are conscious of...

Various parties identified improved communication as essential because it enhanced each party's understanding of the other party's situation and interests. This aspect was emphasized most strongly by the mediators, and to a lesser extent by family members and CPWs. In explaining her goals for mediation, one mediator suggested that she measured success by the extent to which the CPW and family members developed a mutual understanding of one another's position:

If people try mediation and come away with some better understanding, or at least able to say, "I know you can't change your position. I can't change my position, but at least I know why you're taking your position, and we'll let the judge decide." Then, to me, that's a success because it's furthered a sense of understanding. Obviously, the highest level of that is really whether people can come out and say, "Not only do we understand, but we've managed to agree on something that we can now work together on," no matter what that may be. But if there's been that sort of progress interpersonally, I call that a success.

Problem solving

A second aspect of mediation that research participants identified related to various problem-solving techniques used in mediation. Three specific techniques were mentioned: developing options; focusing the parties; and contracting.

Proponents of mediation suggest that one of its advantages is that it encourages parties to explore options that they had not previously considered. Within the research sample, the mediators encouraged the parties to keep an open mind and consider new options. There were a number of examples where the parties were able to go beyond focusing on their original positions. Right from their initial meetings with the parties, the mediators asked everyone to look for creative solutions. A number of

CPWs and family members came into the process thinking that either one side was going to have to give in, or there would have to be a compromise where both sides had to give in. The mediator explained that the outcome of mediation did not have to be a win-lose proposition. Upon signing the agreement to mediate, the parties generally accepted that the purpose of mediation was to work towards a mutually beneficial agreement. This required that the parties change the ways that they viewed their conflict. As one CPW suggested:

Melanie² asked people to come in with an open mind, and to be willing to say that maybe it could be a different way.

CPWs wanted to demonstrate to family members that they were willing to look at different options with the family. In some cases, they sensed that family members viewed CPWs as inflexible. The following statement of a CPW is indicative of their belief that mediation allowed them to present their concerns about the child's welfare needs, but still be open to considering different ways of satisfying those needs:

I think [mediation] was a way of distancing the [CP agency] as being the one sort of making a plan. The perception of the family is, you know, that we have a plan, but the judge just sort of rubber-stamps what we do. It would show you as a parent that we were willing to talk over different options. Lay down our concerns on the table, but still looking at different ways to deal with it.

Various CPWs, mediators and family members believed that one of the main problems between the CPW and family members was that the parties were so invested in the argument that they would lose sight of the interests of the child. As one family member suggested:

² For ease of reference, the roles of each participant can be identified by the initial of their assigned pseudonyms: P - parent; C - child; M - mediator; W - worker. For example, Wendy is a worker (CPW) and Melanie is a mediator.

Everybody's so busy fighting and arguing over what they want and what they don't want, they all lose sight of who they're hurting here. It's the child...

Helping the parties to focus on the most important and relevant issues was identified by a cross-section of interviewees as another key problem-solving technique used in mediation. The mediator helped the parties focus their dialogue upon certain factors: the best interests of the child; the present situation and future plans; strengths of family members; the underlying interests of each party; and mutual interests of the CPW and family members. There was broad consensus that focusing helped the parties move toward agreement. For example, one CPW noted the following:

Martha was able to focus all of us on looking at the best interests of Carla... I think all the parties cared about the kid, this child. And there was a deep sense of wanting to look at what was best for her, with all the parties. The mother wasn't so caught up in her own needs that she couldn't look at what the child needed... I think the mother focused on [the child's interests] a little more in mediation.

Contracting was another important problem-solving technique identified by a cross-section of parties. Contracting was not just an outcome of mediation. Contracting was also identified as an essential aspect of the mediation process. Other child protection processes—lawyer-led negotiations and pre-trial settlement conferences, for instance—can produce agreements. In some of these other approaches, however, family members or CPWs are not directly in the contracting process. In child protection mediation, contracting was used to ensure joint participation in decision making and ownership of the agreement. Some mediators and CPWs also saw contracting as a way to help the parties avoid misunderstandings, affirm the parents' role as parents, enhance the commitment of the parties, and allow the parties to check out the workability of the agreement before trying to implement it.

Some parents viewed the contract itself as being an important guarantor that all parties would respect the outcome of mediation. One set of parents, for instance, thought that the agency could not be trusted with verbal agreements because of past experiences where a CPW said one thing and

did another. The father suggested that having a written agreement clarified matters and pre-empted arguments over what had been agreed to:

We're not arguing on a regular basis. It's all in writing, it's all down. Both sides agreed to it. It's right there in black and white.

Similar to the perspectives of family members, CPWs believed that having the terms of the agreement in writing would clarify each other's expectations and avoid misunderstandings. Some CPWs also suggested that putting an agreement into writing fixed the commitment of the family members to follow through on the agreement. One CPW said that although the mediated agreement was similar to an earlier court order, the mother was much more committed to the mediation agreement. All of these factors were expected to contribute to the ability of the parties to follow through on the agreement. These findings correspond with one of the main reasons put forward in favour of mediation; that is, that mediated contracts are more likely to be followed than terms imposed by a court or other authority (Wildgoose, 1987; Mayer, 1984).

Alliance between mediators and mediation participants

One of the recurring themes from participants was the positive working relationship that the mediator was able to build with the parties. In clinical work, this concept is often referred to as "therapeutic alliance." The responses of family members in particular suggest that they felt supported by the mediator:

I like Michele, actually. She is a nice lady. Basically, actually sometimes when we got there she would tell us, "Okay, what's going to happen in here today..."

Well, Martha as an individual is a beautiful person, and she tried to get what we wanted for us, and for everybody that was involved.

Family members provided specific examples of how their mediator listened to the individuals and kept them apprised of how she was trying to help them. For instance, the mediators used individual sessions to coach the parties on how to negotiate more effectively. One mediator helped a

mother by coaching her about how to respond if she was feeling put down by the others in the mediation session. Another mediator assisted a CPW with partializing her requests for the mother so that the mother would not feel overwhelmed. These types of interventions gave the parties the impression that the mediator was working together with them. Interestingly, mediators were able to develop alliances with individual parties without making the other party feel alienated or disadvantaged.

Fair Neutrality

Various research participants identified neutrality as key feature of mediation. Both CPWs and family members referred to neutrality as a major reason they agreed to participate in mediation and continued to stay with it. Upon further exploration of what they meant by “neutrality,” four themes emerged: not siding; absence of pre-existing bias; absence of decision-making authority; and no stake in a specific type of outcome. Neutrality was not an absolute objective of mediation, however, as parties also recognized the need for mediators to produce a fair process rather than a neutral one.

One of the most consistent themes across cases and parties was the understanding that a mediator could be “neutral” by not siding with one party more than any other. Family members and CPWs provided the following examples of how the mediator would treat everybody equally, giving everyone the same opportunity to speak and listening to all sides:

Patricia: [The mediator] never sided with us, or not really sided with us and not sided with Children’s Aid workers. She always tried to keep it into a medium... At the beginning of every meeting she would say, “Okay, well, I am not here to take your side or your side. I will sit and listen to both sides...”

Wendy: Martha had the ability to treat everybody as equal around the table, to give no one person’s ideas or voice more than the others. So it becomes presented in more on an equal footing. And everybody got their fair air time. Everyone’s opinion got heard...

Mediators were also conscious of how aligning or even appearing to align with one side would compromise their neutrality. If they met individually with one party, then they would be sure to meet individually with all of the parties. The mediators generally held the mediation sessions at

their own offices, rather than at the CPW's office or at the family's home, so as to avoid the appearance of siding with one party. They also tried to ensure that everybody's voice was heard within the mediation sessions by giving everyone a chance to speak and by asking questions to solicit their opinions.

"Absence of a pre-existing bias" was a second concept identified by some family members, CPWs and mediators as one of the components of neutrality. One uncle suggested that the mediator was able to treat the parties as equals because of the fact that the mediator had no prior history with the family:

We went to somebody who knew nothing about the case, because she met with people and heard their perceptions, and then came to the table as to talk to us as equal partners.

Neutrality in this sense meant that the parties did not see the mediators as being partial to a certain type of outcome.

In four mediation cases, family members believed that the protection agency had betrayed them in the past. Regardless of the worker's attempts to show the family good faith, the family members could not see the CPW as neutral. To the extent that a mediator could demonstrate that she was not part of the agency, the family believed that the mediator would not be biased in the agency's favour. Accordingly, there was a sense among family members that if the mediator were not directly connected with the agency, then the mediator could be accepted as more neutral. Family members who understood that the mediator was not bound by the same regulations as the protection agency also seemed to have more faith in the neutrality of the mediator:

Paul: Wendy... has her regulations and guidelines that she has to follow. By her explaining anything to me, I would have a little bit of doubt as to the sincerity of it because of her regulations, whereas Melanie has no involvement. So whatever she's going to do is going to be better for everybody involved. So, I would tend to not question as much what she says...

Both CPWs and mediators suggested that critical to mediator neutrality was the fact that mediators did not have any decision-making authority:

Carol: Maureen was not there making the decision... And that's where my role is different, because I have to make a decision and she doesn't.

Whereas CPWs have the mandate and power to remove children from their homes, initiate a child protection hearing and make recommendations to the court, mediators have no legitimate power to impose decisions on the parties and have no direct reporting obligations to the court. This concern was not as apparent from the responses of family members. The concern, however, was implicit in their references to wanting someone who was not biased and did not take sides. For family members, their explicit concern was not so much about a person having decision-making power, but whether the person with power was biased or sided against them.

The final keystone of neutrality was that mediators had no stake in a specific outcome. Mediators and CPWs identified this concern most specifically. One CPW referred to the fact that a mediator has nothing to win or lose in the situation. Similarly, the mediators tended to agree that a mediator had no stake in the outcome of the mediation other than trying to ensure that no one thinks (at the end of the process) that the mediator took sides.

Although some mediation literature stresses the importance of mediator neutrality, participants in this research often stressed the importance of fairness rather than neutrality. The parties defined "fairness" in a number of different ways. Mediators were able to talk about fairness of the process, as distinct from fairness of the outcome. Some CPWs and family members talked about the fairness of the outcome when asked about the fairness of the process. In other words, they tended to believe the process was fair if they were satisfied with the outcome; they questioned the fairness of the process if the outcome went against their position.

Neutrality and fairness tended to coincide in the research sample. If the mediator treated the parties equally and did not side with anyone or any position, then the parties tended to view the process as fair. When questioned about how the mediator should deal with power imbalances, CPWs and mediators both believed that the mediator needed to balance power in order to make the process more fair. They did not see any contradiction between rebalancing power and neutrality. CPWs understood that the mediator would sometimes offer more support to the parent, but that this was helpful to the process and not a sign of bias against them.

Comparisons and contrasts with non-meditated cases

While research participants involved in the mediation cases identified facilitation, problem solving, alliance, and fair neutrality as essential aspects of mediation, these elements were not necessarily unique to mediation. The non-mediation child protection cases included in this study provide examples of CP processes that may parallel mediated ones. These included a case conference, a plan of care conference and a case where solution-focused therapy was used.

Most of the facilitation processes noted in the mediation cases were also identified in the non-mediated cases. The use of case conferences provides a clear example of how CPWs can and have provided a forum in which various interested parties are brought together to exchange their views. Both CPWs and mediators were able to use individual sessions to encourage parties to talk about issues that felt embarrassing or otherwise difficult to discuss. The CPWs and mediators could ask leading questions or provide support to enable the individual to discuss the issues in the joint sessions. Even the role of a third party as "peace keeper" does not appear to be unique to mediation. In one case, for instance, the CPW played the role of referee and peacekeeper between two sets of grandparents. He described his role in a family conference as that of a facilitator, defining facilitator as "a person who just lets people talk, but controls it, doesn't let it get out of hand." If an argument between two sides of the family started to escalate, he would have been able to use the same types of strategies as a mediator: setting ground rules; meeting with them individually; reframing; and redirecting the patterns of communication from expressions of anger to problem solving.

Various problem-solving techniques were also clearly in evidence in the non-mediated cases. During case conferences, for example, CPWs used techniques similar to those used in mediation to enhance understanding between parties: asking questions to probe each party's understanding; asking each party to reiterate what they had heard the other party say; and using non-technical jargon to paraphrase the positions of each party. One grandparent who participated in a family conference did not believe that she was there to help make decisions, but rather to gain a better understanding of the agency's plans for her daughter and grandchild:

I just think that likely they called this [plan of care] meeting which I thought was nice, because it gave us a chance to say how we felt and it also gave us a chance to know what was going to happen, you know, with Christine, and also to see what Melanie was going to do.

Focusing was another problem-solving technique that was described as being important by both mediation and non-mediation participants, particularly in the case of the solution-focused intervention. Mediation and solution-focused models are relatively short term. Both use strategically focused discussion in order to facilitate change. Both mediators and solution-focused workers encourage their clients to think about and discuss what could be done to improve matters for the family, and particularly, for the child. In addition, both use a future orientation and encourage their clients to see problem solving as a joint process. In the case where a solution-focused approach was used, the CPW and the mother saw their common goal as helping the mother to be "the best parent she could possibly be." The mother said the use of direct and focused questions helped her to work on better ways to parent her son.

The questions, they were good. Like to get the information out of me. It was good because they were, it, not making a pun here, but they were focused. They weren't just questions like well, you know, "How do you feel during a day?" I mean, "How do you feel when this goes on?" or "How do you respond?" Very direct questions that sort of, it made me want to come back for more. That's how it was for me... it was very focused compared to all the other stuff we'd been doing.

Another problem-solving technique that was used in the non-mediation cases as well as the mediation ones was contracting. Contracting is certainly not unique to mediation (Maidman, 1984). Although some CPWs did not indicate that contracting was essential to their work, others said that they used contracting on an ongoing basis. Contracting was used even when cases were involved in court. Relatively few CP cases reach a full trial of the issues. Within the research sample there were many examples of interim agreements and court orders provided on consent of the parties. One CPW gave the following description of how she used contracting prior to using the services of the Centre for Child and Family Mediation:

I would speak with the grandmother who was actually caring for the child initially, and try to come up with some middle ground that would (a) ensure

this child was safely cared for, and (b) trying to make sure the mother was continuing to work on what she continued to work on. A lot of mediation around visits. A lot of working out details together, versus it, you know. We were in court, but we always had agreements.

“Alliance” was another element which participants identified as essential, but not necessarily unique, to mediation. Components of alliance, including empathy, respect and genuineness, are considered to be core conditions of any therapeutic process, and examples of each could be found in all of the non-mediation cases. CPWs noted that developing an alliance was particularly important in order to be able to engage involuntary clients. While both CPWs and mediators were able to develop alliances with family members, some of the ways in which alliance was developed differed:

1. CPWs were able to develop trust with clients over time, whereas mediators needed to build trust in the first or second meeting. Because mediation was voluntary, if mediators did not establish trust quickly, then mediation would be aborted.
2. CPWs provided families with instrumental support and access to concrete services (such as childcare respite and financial assistance) to help build trust, whereas mediators could only provide support in the context of mediation (such as helping a parent articulate concerns to the CPW).
3. Mediators encouraged families to see them as neutral in order to establish trust, whereas CPWs could not promise the same sort of neutrality.

The key aspect, which appeared to most strongly differentiate the mediated cases from the non-mediated cases, was neutrality. Mediators do not have authority over the parties and they have no stake in a particular outcome. Although some CPWs may appear neutral to the extent that they listen to all sides and can view a situation with an open mind, their position precludes their being able to assume a truly neutral position. It should also be noted that neutrality is bound by perception. Many people have preconceived ideas about CPWs. Even if a CPW tries to be open minded, flexible and non-judgmental, the CPW will have great difficulty in overcoming preconceptions of family members that contradict these efforts.

The related concept of fairness, on the other hand, is not unique to mediation. Although family members provided many examples of how certain CPWs treated them unfairly, they also identified significant instances of workers who treated them very fairly. CPWs who came across as authoritarian were viewed in the first category. In the extreme, family members said that the agency made its decisions about the family in case conferences where family members were not even involved. The initial investigations by intake workers were also cited as instances of being treated unfairly, as families felt accused and defensive. CPWs who were able to give the family more say and control over decisions were viewed as more fair. In solution-focused intervention, the CPW emphasized the mother's ability to identify her own best ways of parenting. Even though the mother recognized the involuntary nature of the CP system, she felt her worker treated her fairly. To the extent that CPWs did not have to exert their authority directly, they were able to emulate mediation by giving family members greater say in decision making.

Discussion

The present study was designed to provide an in-depth understanding of the process of mediation in child protection, and to identify the essential aspects that may contribute to developing more effective working relationships with child welfare clients. Through the use of extensive interviews with family members, as well as with professionals involved in mediation and other child protection processes this study identified four essential aspects to mediation in a child protection setting: (1) facilitation; (2) problem solving; (3) developing a mediation alliance; and (4) maintaining fair neutrality. These essential aspects provide a basis for developing a better understanding of the mediative skills and strategies that can be employed in child protection services, through both formal mediation as well as the adaptation of these skills and strategies in everyday practice.

Limitations of study

While this in-depth qualitative study produced a wealth of material on the processes of mediation in child welfare settings, several limitations in the design of the study must be carefully considered before drawing con-

clusions from the findings. As with many small sample naturalistic studies, caution should be used in generalizing the findings beyond the study sample. The study was carried out in only one agency using a specific mediation model. In addition, the sample was not randomly drawn, and did not appear to include some of the higher conflict cases seen in the program. The identification of a matched comparison group proved to be more difficult than anticipated. The investigators and participants had difficulty coming to agreement about what would constitute an equivalent non-mediated process, and at what point in the process should the interviews take place. Finding an equivalent group was particularly difficult given that the mediation program was a pilot program benefiting from the effects of a novel, voluntary and well-staffed demonstration program.

Aspects Unique to Mediation

Both the current research and existing child protection literature suggest there is considerable overlap between the essential aspects of mediation and aspects of other child protection processes. For example, contracting, bringing parties together and facilitating communication are social work functions generally (Shulman, 1991) and specifically in the context of child protection work (Maidman, 1984). Solution-focused intervention and case conferencing provided two examples of CPW practices that allowed CPWs to replicate many of the dynamics identified as essential to the mediation process. Although many techniques identified in this study were used both in mediated and non-mediated cases, mediated cases nevertheless stood out in two important ways: (1) the systematic and structured use of process in mediation cases, and (2) the position of neutrality assigned to the mediator (Mayer, 1989).

When a mediator is interposed between a CPW and family members, the mediator assumes responsibility for managing the process of communication and negotiation. The CPW can then focus on how to ensure that the welfare needs of the child are met. This division of responsibilities allows the mediator and the CPW to focus on their specified tasks. In non-mediated cases, process can become compromised by the CPW's primary focus on child protection. In principle, techniques like contracting and case conferencing can be used to facilitate communication and negotiation in non-mediated cases. In practice, however, CPWs do not always have the time nor the resources to ensure that these negotiations are adequately

conducted. The systematic and structured use of process in mediation ensures that the parties are brought together in a forum where common ground can be found.

The second key distinction between the mediated and non-mediated cases is that CPWs cannot be neutral in terms of decisions that may put a child at risk of maltreatment (Barsky, 1997b). Even when a CPW attempts to be fair and open-minded in working through a conflict with the family, the CPW's protection role does not allow her/him to assume a truly neutral position. However, the presence of the CPW frees the mediator to assume a neutral position and puts the mediator in a more favourable position to facilitate, support and help resolve conflict. In the present study, mediators were able to build rapport with family members even in situations where the family previously had a negative working relationship with the CPW. The mediators were also able to help both CPWs and family members gain better understanding of one another's situations. For CPWs, the mediators were able to help them take a step back from their positions and hear the experiences of the family members on a new level. For parents, the mediators were able to encourage the CPWs to explain their positions and limitations in terms that family members could understand more easily.

The differences between mediation and other child protection processes do not suggest that mediation is an inherently better process in all situations. For instance, mediators were able to build trust in some cases because family members saw them as independent of the child protection system. However, in some of the non-mediation cases, family members did not necessarily want to work with an independent professional. The CPW may have built up a positive working relationship through strategies unavailable to mediators (e.g., advocacy for the family with other systems; familiarity through intensive work over a longer period of time; provision of concrete services; and building trust by following through on successive agreements). Further, some family members wanted an intervenor who would make decisions. They wanted clear-cut solutions more than participation in the decision-making process. In some cases that had gone to court over an extended period, family members were frustrated by the lack of finality. Mediation does not necessarily conclude with an agreement. If the parties did not want or believe that they could come to an agreement, then mediation may not be their optimal choice.

One of the difficulties facing CPWs is how to reconcile their role as "child protection agents" for the state with their role as "helping profes-

sionals" for parents and families. On the other hand, parents involved in the child protection system can feel disempowered: not only do the majority come from backgrounds of poverty and other social disadvantages, but they are confronted with an alien system that may be threatening intrusion into the family, court action or even removal of their child(ren) from the home. Accordingly, a mediator needs to be aware of the dynamics of CP cases in order to be able to assist CPWs with role conflict, and to be able to empower parents in their dealings with CPWs.

Aspects Transposable to Good Child Welfare Practice

While some of the processes identified in this study appear to be intrinsically linked to mediation, others relate to techniques that are directly transposable to child welfare practice. These techniques could be used to improve upon the clinical practices of CPWs without the need for an independent mediator. If some of the useful attributes of mediation were replicable by CPWs, then one option would be to train CPWs to incorporate those attributes into their modes of practice. The choice becomes, should mediation be used in order to redress some of the deficiencies of other child protection processes, or should those other processes be reformed in order to build in some of the positive aspects of mediation. As the non-mediation cases illustrated, some of these aspects are already being practiced by CPWs.

Tjaden (1994) and Eddy (1992) acknowledged the benefits of mediation, but noted that there may not be sufficient political support or financing to provide for mediation services. Accordingly, they suggested that many of the elements of mediation could be incorporated into other child protection practices. Eddy (1992) offered a model called a "Negotiation Conference." Lawyers, CPWs and other professionals involved in child protection would be trained in how to be more sensitive to each other's point of view and how to collaborate in problem solving. The parties would follow a standardized protocol for the Negotiation Conference. Under this type of model many of the elements identified as essential to mediation would be incorporated: getting the parties together; focusing the discussion; contracting; developing options; and so on. One of the lawyers would be assigned so-called neutral tasks: for instance, summarizing the case and stating the purpose of the conference as an introduction.

Although this model has many of the attributes of mediation, there are still critical differences. All of the people involved in the conference have prior association and interests in the result of the conference. There is no neutral third party, even if one of the parties is assigned some of the "neutral tasks." This party may not be perceived or trusted to be neutral. Further, the Negotiation Conference model does not envision giving anyone the responsibility for ensuring that the process is fair. Without a mediator, there would be no one to strategically balance power between the parties. Finally, since Eddy's model provides for direct involvement of lawyers, the degree of direct communication between the CPWs and family members would likely be diminished. His negotiation model may be more akin to a pre-trial settlement conference than the model of mediation used by the Toronto Centre.

The Negotiation Conference may have certain advantages over mediation. First, this model would eliminate the need to bring another professional into the process. The parties would not have to tell their whole story over again to a new person. The cost of a mediator would be saved. Finally, this model would promote constructive negotiation by specifically training a range of professionals in the child protection process. CPWs and lawyers would be able to use these skills and strategies in all of their work with families. In contrast, when a mediation model is used, training is directed primarily at the mediators. Other participants might learn constructive negotiation skills on a more incidental basis.

Tjaden (1994) suggests that CPWs receive training to improve upon the way in which they conduct family conferences. Although this approach simulates some mediation approaches, the CPW is not a neutral facilitator. As noted earlier, case conferencing can be a very effective intervention. However, when there is a high level of conflict with the agency or perceptions of agency bias, then it would be extremely difficult for a CPW to act as a mediator.

Conclusions

This exploratory study of CP mediation provides a detailed analysis of the aspects of mediation that may contribute to developing more effective working relationships with child welfare clients. Mediation requires the use of a broad range of facilitation and problem-solving skills, careful at-

tention to maintaining a neutral position, and the ability to develop a constructive alliance with all parties. While many of these skills are not unique to mediation, the neutral position of the mediator appears, nevertheless, to place her/him in a particularly good position to help resolve conflicts that arise between CPWs and families.

Proponents for the use of mediation in CP cases lay strong claims about its desirability in terms of a broad range of outcomes: empowerment; understanding, timely settlement; individualized and durable solutions; high levels of participant satisfaction; and so on (Bush & Fogler, 1994). Critics question whether child protection mediation puts children at greater risk of maltreatment, imposes social control in an insidious manner, or duplicates the role of a child protection worker. Resolution of such questions, however, depends significantly upon how the process of CP mediation is defined and implemented. The essential aspects of mediation offered in the present analysis demonstrate some of the positive ways in which mediators can intervene in child protection cases. By using these elements to describe what one truly means by the term CP mediation, subsequent research can better assess the effectiveness of the mediation process and its key components.

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