

ALTERNATIVE DISPUTE RESOLUTION

Why must children wait so long?

The use of mediation may help reduce the delays that children and their families experience when awaiting a decision regarding their status with Children's Aid.



Photo by Dougal Bichan

By Joyce M. Young

Thirty per cent of the children brought into care by Ontario children's aid societies (CASs) have to wait four months for an answer to a simple question: "When can I go home?"

CASs, the judiciary, the private bar and families have long voiced their concern about leaving children "in limbo" while their case meanders through an over-burdened court system.

While the *Child and Family Services Act*, RSO 2000, (CFSA) states that services provided should respect the children's need for continuity of care and for stable family relationships (s.1(2) para. 3(1)), in practice, children are left waiting. Statistics from the Ministry of the Attorney General show that almost one-third of the CFSA applications in the Ontario Court of Justice take more than 120 days to reach disposition. In the Family Court of the Superior Court of Justice, up to 41 per cent of cases face a 120-day court wait time. (Child Welfare Transformation 2005, Ministry of Children and Youth Services.)

In addition to that, as former CAS lawyer, now mediator Warren Morris pointed out in his study: "even if disposition for society wardship is made, it is not clear when the CAS will be giving up on

family reunification. These children are often ... in 'limbo', not knowing whether their stay in care is indefinite or whether there will be an ultimate return to the family home."

(Unfulfilled Promise: The Underutilization of Child Protection Mediation. LLM-ADR Major Research Paper, 2001.)

The Ontario government's response, *Child Welfare Transformation 2005*, is about to be implemented through a package of reforms contained in Bill 210. The government expects this to be proclaimed in the near future.

The timeliness of decision making is addressed in s. 5 of the *Child and Family Services Statute Law Amendment Act, 2006*. It states that CASs "must consider 'ADR'" where there is a dispute related to a child or a child's plan of care. "ADR" in this instance includes interest-based mediation, family group conferencing and talking circles in Aboriginal communities.

The CAS's assessment that a child is in need of protection is *not* on the table in mediation. The purpose of mediation is to directly address the child protection concerns and identify the best option for the child's care. In the

case of a supervision order, the parties may identify additional safeguards that need to be put in place for the child, goals for the parents and resources to assist the parents. In an application for society wardship, the parties at mediation might develop a set of goals for the parent or parents to achieve, a method for assessing goal achievement, and a schedule for returning the child to the home. Parents who have had a voice in designing a plan that recognizes their unique needs, abilities and resources will be more likely to implement the plan.

The promise of mediation is that children and their families should know how they are going forward within weeks rather than months. The agreement can also build in triggers for updating the agreement. For example, I mediated a case involving a mother in rehabilitation for her addiction to crack cocaine. I helped both parents and the CAS worker design an agreement which gave the mother increasing access to the children based on her success in reaching the milestones in her treatment program. The agreement was worded to express a positive expectation about the

mother's recovery, something that was very important to her.

The regulations with respect to ADR were published earlier in November. Participation in ADR is voluntary and can be terminated at any time. A designated mediator must conduct the ADR in a neutral location and it must not be arbitration. To qualify, mediators must pass the three-day advanced certificate course in child protection mediation designed by Justice June Mareska. To be eligible, mediators must be accredited family mediators with the Ontario Association of Family Mediation (OAFM) or equivalent. OAFM will mount a roster of qualified child protection mediators. The ministry will direct the children's aid societies to use only mediators on that roster.

There is still much work to be done. We cannot assume that the many partners in this complex system will leap at this opportunity. In his survey of pilot programs in Canada, Warren Morris found that in every instance referral rates were very, very low. If the promise of mediation is to be fulfilled this time around, social workers, families, lawyers and mediators need to address

issues of mutual concern. What are the criteria for selecting cases to send to mediation? How will cultural and language differences best be served? How do we develop a common understanding of these and other issues, so that the promise of mediation is a promise kept?

What is the promise of child protection mediation? The promise of protecting children at risk. The promise of creating a climate in which child protection workers can use their authority in a way that does not irretrievably damage their relationship with clients. The promise of giving parents and children a stronger voice in their future. The promise to not leave children in limbo any longer.

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