

## ALTERNATIVE DISPUTE RESOLUTION

# COMMENTARY: Child protection cases cry out for early mediation

By Joyce Young  
and Catherine Davison

"I just closed a case after five years. The child was apprehended at birth. This is totally unacceptable." These were the words of a family court judge speaking at the Law Society of Upper Canada's recent seminar on child protection.

Children are being separated from their families for far too long. There is a simple remedy. Early mediation can bring needy families together with the supports children's aid societies can offer. It can reduce the heartache of children and parents who are separated for months while their case crawls through our over-burdened court system. It can save precious time and tax dollars.

That was the message from a panel of experts convened by the family section of the ADR Institute of Ontario.

Panelist Kristina Reitmeier, chief counsel and director of legal services for the Children's Aid Society of Toronto, reported that of the 1,600 cases opened for service in the fiscal year 2006-07, fewer than 600 cases were taken to court. She noted that only one case was mediated, and settled,

before court proceedings were commenced.

"The CAS is so busy with high risk cases that the marginal cases, where the parties would really benefit from mediation, are missing out," commented panelist Maggie Hall, an experienced child protection mediator. Reitmeier added, "Our workers are very busy. We need to give them a system that is 'one-stop shopping.' We can't create that system until the funding is in place."

According to panelist Lorne Glass, senior counsel at Glass, Murray, "The biggest problem is parents not showing up for mediation. They feel compelled to come to court, but they don't feel so compelled to come to mediation." Reitmeier agreed, "Our clients lack resources, they can't get themselves there."

The panel agreed that mediation before court is optimal, but it's problematic. Glass explained, "After the apprehension of the child, the parents have five days before court. They often don't get the documents until the fifth day. They haven't had a chance to get legal aid and retain a lawyer. The judge adjourns the matter and the

judge's next date is 30 days away. The child, possibly an infant, is now going to be in care for 30 days. Why not use those 30 days to try mediation?"

Why not indeed? To encourage child welfare system mediation, members of the family section suggested the following:

- The Ontario Ministry of Youth and Children's Services should quickly put a funding mechanism in place. This would enable the CAS to easily access mediation for appropriate cases.

- Judges could suggest and encourage mediation when they adjourn a case. If a judge suggested mediation, the parties would take it seriously. The judges could have a list of child protection roster mediators and the mediators' on-line calendars, and they could help the parties to select a mediator and set a date for mediation.

- Legal Aid Ontario could create an "express service" to expedite certificates for independent legal advice on child protection matters. The Office of the Children's Lawyer could try to reduce their two-week turn-around time for involvement in these cases.

- Mediators should explain mediation to parents, CAS workers and the family bar. Many people don't even know that mediation is an option. If the parties understand that mediation is voluntary, they can leave at any time, and they will not be pressured into anything, they might be more willing to try it.

An example of a case that was mediated before court involved a



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14-year old girl who had a fight with her mother. The mother hit the youth on the head with a cordless phone. The youth ran away to a friend's house and called the CAS, who apprehended the youth.

Two days before court, the mother agreed to mediation. She is a single mother with four children, living on social assistance. Her son was shot at school and lost his left leg. Her daughter is being bullied at that same school and has been suspended for three weeks. The principal refuses to transfer her to another school.

On the day of the argument, her daughter had been defying her all day. Then, her daughter punched her in the stomach and swore at her. That was when the mother hit her with the phone. She had never hit her before. In conversation with the mediator, the mother agreed that she needed to find new ways to discipline her teenager and that her daughter needed counseling.

The mediator began the joint session by asking the CAS what supports they could offer. The social worker agreed to help find an out-of-district school for the daughter and arrange counseling. The mother agreed to work with a parenting coach to learn more effective methods of discipline, to not use any form of physical disci-

pline, and to allow the CAS to have private meetings with her daughter.

The youth wanted to come home. The transfer was arranged for that day. The mother was advised to get independent legal advice and told where she could do that.

The parties signed a voluntary service agreement, and the court application was withdrawn. The youth was in foster care for three days. Had the case gone to court, she would have been in foster care for at least a month.

The amendments to the ADR provisions in the Ontario *Child and Family Services Act* create a major opportunity to mediate timely, sustainable solutions. However, they were proclaimed over a year ago and very few cases have gone to mediation. Lawyers, judges, CAS workers, and mediators need to work together to put them into practice.

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