

MEDIATING MINOR ASSAULT CASES

PRACTICUM REPORT

By
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BY

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**A Thesis/Practicum submitted to the Faculty of Graduate Studies of The University
of Manitoba in partial fulfillment of the requirements of the degree
of
MASTER OF SOCIAL WORK**

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Abstract

This practicum report explores the mediation of eight cases: seven victim/offender cases involving minor assaults and one threatening bodily harm. Four measures were evaluated: impact of face-to-face mediation, writing an agreement, fulfillment of restitution, and learning objectives. The focus was to determine whether mediation restored communication between disputants. Anger halted proper communication and resolution of the incident in all cases. All parties were acquaintances and conflicts were incident-based. The mediation was based on a restorative paradigm. Restorative justice maintains that four parties are affected by criminal behaviour: victim, offender, community, and government. It emphasizes that the goal of the criminal justice system is to assist all parties in reaching resolution. Resolution therefore requires that the victim receive reparation for injuries and the offender assume responsibility for the crime.

Initial screening for potential mediations was done in private information court. Out of a number of cases (not documented) thought appropriate by the Crown for mediation eight cases proceeded to mediation; a written agreement was reached in three cases and a verbal agreement in two cases. The mediation process followed the model of introduction, issue identification, discussion, and agreement. Variation in the model existed when case development and mediation were done in the same evening. The State Anger Scale (SAS) was utilized. Results of the pretest and posttest indicated that seven out of eight of the complainants and three out of eight of the accused were less irritated after the mediation. Tabulated results are outlined for eight cases and recommendations for future mediation work are discussed.

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Introduction

Mediating conflicts of minor assaults has gained popularity as the court systems have become increasingly overburdened and unable to provide a forum for victims and offenders to voice their issues. Allowing victims and offenders to meet face-to-face has enabled victims to receive answers to questions they have about the crimes committed against them, to express their concerns directly to the person who victimized them, and to voice an opinion regarding the penalty the offender should ultimately receive. Offenders have the chance to take direct responsibility for their actions, to portray themselves as more than just criminals and to make amends through negotiation and payment of restitution to their victims. This practicum report is based on mediations involving minor assaults. The first chapter will compare the restorative model of justice to the traditional criminal justice system. The second chapter will review literature relating to victim/offender mediation. The third chapter will outline incident-based and historical models which were used for the practicum plan. Chapter four will discuss the detailed mediation plan that was devised prior to the practicum. The implementation of the practicum plan will be discussed in chapter five. Chapter six will present the results of the eight cases that were mediated. Chapter seven will summarize the practicum and preparations for it, with recommendations for future mediation work. It is important to note that the terms "victim" and "complainant," and "offender" and "accused" are used interchangeably, the term "disputant" referring to either victim or offender.

Chapter 1 - Restorative Justice and Mediation as an Alternative to the Traditional Criminal Justice System

The historical ideology of justice, punishing the offender for crimes committed and court mandated restitution, has sustained society for a long period of time. This concept is very old, for in the book of Exodus it is said that restitution shall be made if a man steals an ox or a sheep, or puts his cattle to graze in another man's field (Wright, 1982, p. 252). This "eye for an eye" concept not only has permeated North America's criminal justice system, but has affected the way in which society perceives victims and offenders. The criminal justice system, used today, is based on retribution which is defined as "deserved punishment for evil done" (Van Ness & Strong, 1997, p. 38). A retributive system of justice asks the question, "Which law has been broken?" and "What punishment should the offender receive?"

The Restorative Model of Justice

In contrast to the traditional system of retributive justice is the evolving restorative system of justice. This system "looks at the harm caused by an incident and seeks to repair or heal this harm" (Mediation Services, 1996, p. 40). A restorative approach to conflict focuses on questions such as: "Who was hurt?" "What are his or her needs?," and "Who is obligated to address those needs?" Restorative justice theory holds the view that four parties are affected by criminal behaviour: victim, offender, community, and government. It emphasizes that every crime involves specific victims and offenders, and that the goal of the criminal justice system should be to help all parties reach resolution.

Resolution requires that the victim receive reparation for his or her injuries and that the offender take responsibility for his or her crime, and recompense the victim. Recompense has been defined as "something given or done to make up for the injury" (Van Ness & Heetderks Strong, 1997, p. 38). The offender who causes the injury should be the one actively involved in repairing the damage.

The restorative theory of justice looks at both micro and macro influences in maintaining safety within the population. While governments provide safety by imposing orders upon individuals, communities also have to strive for safety by forming strong, stable, and peaceful relationships among their members. This cooperative relationship provides the basis for crime prevention. The victim's and offender's need for resolution and the government's and community's need for public safety have to be addressed within the same process. The government ought to assist in reestablishing order by ensuring that victims receive reparation and that offenders are treated fairly in the process. The restorative theory of justice also considers the function of community. Communities need to strive to restore justice between victims and offenders while at the same time helping them reintegrate into the community. For victims this entails a process of healing and for offenders, rehabilitation.

This circular pattern outlines the interdependent relationships necessary under the restorative justice theory. "Peace without order is as incomplete as recompense without vindication; healing without redress is as inadequate as rehabilitation without fairness" (Van Ness & Heetderks Strong, 1997, p. 40-41). The comprehensiveness of the model is the central aspect of restorative justice.

It seeks to address and balance the rights of victims, offenders, communities, and governments (Van Ness & Heetderks Strong, 1997, p. 41).

A restorative system of justice is based on three fundamental propositions. The first is that justice requires restoration of victims, offenders, and communities which are injured by crime. "Crime leaves injured victims, communities, and offenders in its wake, each harmed in different ways and experiencing correspondingly different needs" (Van Ness & Heetderks Strong, 1997, p. 32). Victims are those who are harmed by the offender and may have sustained physical injury, monetary loss, or emotional pain. Though each individual may have sustained differing injuries because of varying circumstances, all victims express two common elements: the need to regain control over their own lives and the need for vindication of their rights. The experience of being victimized encompasses a sense of powerlessness because the victim was unable to prevent the crime from occurring. Communities also experience a sense of loss when a crime is committed. The sense of safety, confidence, and order for its members is threatened and the common values of the community are violated. Finally, the offender's injuries have to be addressed. Such injuries may have occurred as the result of the crime or may have contributed to the crime. These wounds may be physical (the offender was harmed during the crime) or emotional (the offender experienced shame). It is important to note that offenders are likely to be reharmed by the traditional criminal justice system's response, alienating them from their communities, straining family relations, and prohibiting them from making amends to their victims.

The second proposition is that victims, offenders, and communities need to have the opportunity for active involvement in the restorative process as early and as completely as possible. Since the current retributive approach considers the government to be the party harmed by crime, victims, offenders and communities are reduced to passive participants in the process. Victims are thus merely "pieces of evidence used by the state to obtain a conviction" (Van Ness & Heetderks Strong, 1997, p. 34). Similarly, defendants have few incentives to take responsibility for their actions and many incentives to remain passive while the state builds its case and lawyers tear arguments apart. Community participation is solely limited to jury duty. Restorative justice, on the other hand, seeks to involve all three participants in the process, aiming to restore and rebuild victim-offender-community relations. "[T]he efforts of community members to repair the injuries to victims and offenders serves to strengthen the community" (Van Ness & Strong, 1997, p. 35).

The third proposition is that in promoting justice the government is responsible for preserving order and the community for establishing peace. Both order and peace are required for sustaining public safety. Peace has been defined as a "cooperative dynamic fostered within a community" (Van Ness & Heetderks Strong, 1997, p. 35). Viewed in this light, communities must respect individual rights and help resolve interpersonal conflict. On the other hand, individuals also have to respect community rights. Order, in contrast, is imposed on the community by external forces: governments and criminal laws. It acts to minimize conflict and reduce chaotic factors. The combination of these two

forces, order and peace, maintain harmony and safety within a community. "Safety comes as both government and community play their parts in upholding order and establishing peace" (Van Ness & Heetderks, 1997, p. 36).

A restorative approach to conflict resolution emphasizes both concepts of restitution and reparation as a means of restoring the victim/offender relationship and compensating the victim for losses. Reparation is the restorative way for the justice system to respond to the harm done to victims. Reparation has been defined as "the act of making amends, offering expiation, or giving satisfaction for a wrong or injury; something done or given as amends or satisfaction" (Van Ness & Heetderks Strong, 1997, p. 91). A reparative sanction such as restitution is one that requires the offender to compensate the victim for his or her losses and the harm done. Restitution represents recovery of losses, but its real importance is symbolic. "It implies an acknowledgment of the wrong and a statement of responsibility" (Zehr, 1990, p. 192). Making right is a form of vindication that promotes healing of both the victim and the offender. Restitution is made by returning or replacing property, by monetary payment, or by performing direct services to the victim. For instance, victims who have experienced bodily harm are often extremely angry and saddened by the conflict. Reparation allows them to explore and express their rage towards the individual who caused unnecessary harm to them and to receive compensation for their losses. This could consist of monetary payment for the loss of salary or assisting the disputant with household chores. "[M]y goal was to have the offender see face to face that it was a person he had violated...to be able to have him understand that it was a loss and hurt"

(Umbreit, 1989, p. 55).

Failings of the Traditional Model

In the traditional criminal justice system, only two parties are involved in the adversarial process, the state and the offender; the victim lacks information about the progress of his or her case, and suffering is often ignored. The failure to include victims' interests in the process is becoming more and more apparent to those involved in the criminal justice system such as victims, lawyers, offenders, and community groups. Victims suffer a perverse kind of double jeopardy that excludes them from the process almost from the moment the crime is committed. In effect, they are being victimized once by the offender and then again by the criminal justice system. The offender is also denounced and silenced in the process; ties to the community are weakened, the process assumes win or lose outcomes, and response to the criminal activity is factored on the offender's past behaviour. The active party is the government and the passive recipient of punishment is the offender. Punishment does not assist in repairing the harm done, but causes further injuries; both the victim and the offender are further injured. "The process neglects victims while failing to meet its expressed goals of holding offenders accountable and deterring crime" (Zehr, 1990, p. 178-179). Criminals have been viewed as owing a debt to society that must be repaid, and this model has ignored both the victim's and offender's feelings, concerns, and needs (Zehr, 1990, p. 193).

Further, inappropriate sentencing based on skewed evaluation has been an apparent weakness in the retributive paradigm. Van Ness and Heetderks

Strong (1997) discussed various methods which have emerged and become standard tools in correctional decision making. This standardized process of assessing stakes as well as risks has led to sentence disparity and unfair evaluation. For example, a frequent petty shoplifter may have a high risk of reoffending, but the stakes involved are relatively minor. The community and judge are therefore likely to consider this person as a nuisance but not a danger. Yet, even if a murderer's chances of reoffending are extremely low, the stakes involved are very high. Thus, even if this person is not likely to murder again, the stakes are high enough that he or she is treated as a serious offender (Van Ness & Heetderks Strong, 1997, p. 102). Individual assessment and evaluation are generally not taken into account. "A significant percentage of current prisoners could be serving community-based sentences instead of prison without significantly increasing public risk" (Van Ness & Heetderks Strong, 1997, p. 99).

Discrepancies between the treatment of wealthy and poor individuals have also caused concern in the criminal justice system. Unlike wealthy people, the poor are severely disadvantaged since they are unable financially to compensate their victims for the crimes they committed (Wright, 1982, p. 253). They are forced into alternative methods to make amends, such as imprisonment. "Tallack thought that the remainder of those unable to pay would have to be sent to prison, so as to ensure that they did not escape scot-free..." (Wright, 1982, p. 253).

There has been much debate as to whether punishment under the retributive model has been an effective means of curbing crime. While some

have maintained that imprisonment and parole reduce the recurrence of crime, others believe that programs based on restorative principles may be more effective than current programs (Wright, 1982, p. 179). Experimental psychology has offered some insight into the effects of punishment on human behaviour. A famous experiment by the psychologist Skinner not only showed the long-term ineffectiveness of punishment, but why popular belief in punishment persisted. When rats were punished for pulling the food supply lever, at first they pulled it significantly less than unpunished rats. Yet, at the end of a few hours they were doing it as much as those rats that have not been punished. Even for humans, penalization appears to be an effective deterrent in the short term, but its effects quickly wear off (Wright, 1982, p. 180). Mild punishment deters unwanted behaviour if prompt, predictable, and informative. Severe punishment produces lasting effects such as anxiety, neurosis, and inability to respond. Extremely severe punishment "produce[d] the pathological response of fixating the behavior instead of eliminating it" (Wright, 1982, p. 180). This enhanced criminal and pathological response to penalty therefore creates ineffective and non-functioning human beings. The traditional justice system therefore has been reinforcing criminality instead of discouraging it. A study of adult parolees found that a group released early to a restitution center had fewer new convictions than a matched group released to parole after serving a normal period of imprisonment (Galaway, 1988, p. 678).

Victim participation in the retributive criminal justice system is severely minimized; victims do not have input into the process or the outcome. In the

retributive system of justice, victims have four primary functions. They are the primary source of referrals, they are witnesses, they act as recipients of information and are providers of impact statements (Galaway, 1985, p. 618). Victims do not have the right to voice their concerns or meet the offender who caused them significant emotional, psychological, and physical grief.

Instead of ignoring victims and placing offenders in a passive role, the new paradigm places both disputants in active and interpersonal problem-solving roles. Crime is no longer viewed as a violation against the state, but as a misdoing of one individual against the other. Injury to the victim is the main component of the crime. In reviewing past literature, Sebba (1982) developed two theoretical models based on the present retributive system and the emerging restorative paradigm. It should be noted that this author utilized historical terminology in describing the two systems of justice which do not correspond to the present definitions. Sebba stated that the criminal system is based on a Social Defense-Welfare Model (retributive). The concept of victim/offender confrontation is eliminated entirely and the state performs the mediating role between disputing parties. Governments take on the primary role of controlling the threat to communities by offenders and at the same time catering to the needs of victims. The principle objective is to maximize the benefits and minimize the harm to all individuals and communities involved (Sebba, 1982, p. 232). In contrast, the Adversary-Retributive Model (restorative) focuses on restoring or improving the victim/offender relationship. Injury to the victim is the main component of the crime. The state plays the primary role of ensuring and

overseeing that the victim is compensated for the crime (Galaway, 1985, p. 619-620). The two paradigms have distinctly different objectives. One is oriented toward basic social norms and values, while one focuses on individual relationships. One deals with breaches of law, while the other seeks to settle personal disputes (Bussman, 1992, p. 319). Mediation within a restorative paradigm seeks to address the shortcomings of the traditional retributive system.

The Mediation Movement

Allowing the victim's voice to be heard, addressing the victim's and offender's needs and concerns, and assisting both parties in reaching a mutual understanding of the conflict are important elements of the restorative theory of justice. Mediation is the practice to serve this new paradigm. This process has been defined as a collaborative, problem-solving process in which an impartial third party assists the disputants in clearly identifying the issues, understanding each other's perspective, and reaching a resolution that is acceptable to all involved (Mediation Services, 1996, p. 1). The mediation process involves four dimensions: 1) introducing the disputants to the mediation process; 2) listening to the parties' perspectives of the incident; 3) assisting the disputants in understanding each other's viewpoint; and 4) drafting a mutually satisfying agreement (Mediation Services, 1996, p. 4). "Probably the most important innovative aspect of mediation does not lie in its humanistic Christian approach but in its communicative or discursive paradigm" (Bussman, 1992, p. 323). Mediation enhances communication between two disputing parties. Three overriding goals of restoration on which mediation is based are: 1) empowering

victims in direct involvement and emotional closure; 2) impressing on offenders the human impact of their antisocial behavior, and 3) compensating victims for their losses by utilizing restitution by the offender (Nugent & Paddock, 1995, p. 355). "To be made to think can be harder than to be made to suffer" (Wright, 1992, p. 530).

Mediation is based on four assumptions. First, conflict is a natural and inevitable part of human existence; conflict *per se* is neither positive nor negative. When it is handled appropriately, it can be constructive and spur change in the dynamics of human relationships. Handled wrongly, it can result in damage or even destruction. Viewing and approaching human conflict from this perspective greatly affects one's response to another individual. Second, individuals are capable of solving their own conflicts. The most satisfying resolution comes from the individuals involved in the dispute. Mediators assist people in deciphering and comprehending a complex issue that has become entangled in emotions and reactions. Assisting in resolving a problem makes disputants aware that conflicts can be resolved without utilizing adversarial methods and helps disputants build internal skill that can be utilized in future conflicts. Third, there can be win/win resolutions. Past experiences of win/lose conflicts maintains individuals in adversarial modes of thought, limiting the resolution of conflicts. A win/win outcome is more likely to occur when people work together to resolve disputes. This collaborative approach rebuilds the dynamics of the relationship that are destroyed as a result of the conflict. Fourth, reconciliation is possible in a number of varying situations and degrees of seriousness. Disputes that contain a

tremendous amount of hostility and pain, such as incidents of assault, can be mediated just as successfully as a straightforward conflict (Mediation Services, 1996, p. 2).

R. Bush and J. Folger (1994) have suggested that at the heart of the mediation movement is the belief that the fundamental aim is to bring about the resolution of conflict. "Above all else, mediation makes it possible for agreements to be reached, and for those agreements to be ones that the disputants find satisfactory" (Bush & Folger, 1994, p. XI). Another objective is to improve or enhance the relationship between disputants. These authors further argued that mediation encompasses the power and potential to "transform" people's lives *via* empowerment and recognition. Mediation increases an individual's own sense of personal efficacy (empowerment), while at the same time creating "a greater openness to and acceptance of the person seated on the other side of the table (recognition)" (Bush & Folger, 1994, p. XII). Even where no written agreement is drawn up, mediation still functions as a source of empowerment and recognition.

1) Goals of Mediation Within a Restorative Framework

Certain characteristics make up the restorative framework of mediation (Wright, 1992, p. 528-529). During the process stage, victims are able to meet offenders for mediation at a time that is right for them. Meetings take place when victims are emotionally and psychologically ready for the process, rather than it being linked to any one stage in the criminal justice system. Reparation agreed upon between the victim and the offender must be supported by the court system. Measures imposed by the courts must be reparative, not punitive. For victims

whose offenders have not been caught or for victims who do not wish to meet their offenders, separate victim/offender groups should be arranged. Finally, restricting one's right to freedom need only be imposed for the protection of the public. Deprivation of liberty should only be exercised when there is no alternative to public protection. This takes two forms; restricting activities or taking one into custody.

Wright (1992) discussed that the outcome of a restorative system of justice encompasses three elements. As opposed to a retributive paradigm in which there are multiple aims, the single primary goal in a restorative framework is to restore and improve the condition of the victim. Where offenders are known, sanctions take the form of reparation to the victim *via* mediation. Finally, reparation may be made to victims by offenders agreeing to be involved in rehabilitative programs to avoid future offending.

II) Restitution Within a Restorative Framework

There had been much discussion to address ways in which the offender can make restitution to the victim. The literature outlines that within a restorative system of justice the amount paid to the victim may be based on the level of earnings determined by the seriousness of the offence. Weekly payments over a long period of time may function as a method to bridge the gap between the rich and poor, act as a constant reminder of the crime committed, and maintain the person in a period of supervision. Requiring amends in community work service in place of money is also an effective means of restitution for both rich and poor individuals. Accepting opportunities for training and completing one's education

foster self-confidence and the development of social skills (Wright, 1982, p. 254). The enhancement of these skills provides opportunities for employment and close relationships in the future.

Mediation is a viable tool to implement a paradigm shift from a retributive system of justice to a restorative one. "This would embrace not only the restorative principle but also the recognition that crime prevention should be based on general incentive rather than general deterrence" (Wright, 1992, p. 525). Disputants become active rather than passive participants in the justice system. Face-to-face encounters are based on a restorative paradigm that enables victims to express their anger, anguish, and sorrow to those who violated them physically and emotionally. It provides a mechanism for rehabilitating offenders while offering them the chance to make amends in a very personal way. Rather than encountering a faceless state, people who have committed crime have to experience the consequences of meeting face-to-face those individuals whom they hurt. Mediation provides the mechanism for enabling victims and offenders to experience the justice system in an understandable, humane, and satisfying manner.

Chapter 2 - Literature Relating to Victim/Offender Mediation

Mediation literature at present primarily concerns juvenile property offences. This literature review is therefore based on general victim/offender programs and outcome studies. Only one article was found which involved mediating minor assaults. Two queries guided the following review of the literature: is implementing a victim/offender mediation program feasible, and what was the impact of mediation on both victims and offenders? With respect to implementation, the research highlights five central interlocking factors which need be considered in effectively mediating disputes: staffing and training, time requirements, feasibility, participation in reconciliation, and communication.

1) Staffing and Training

The literature indicates that there have been wide discrepancies in the expertise of mediators and their use in the mediation sessions (Hughes & Schneider, p. 1989). Trained staff were used as mediators in 55% of programs, 37% of the programs used a combination of staff and volunteers, and in the remaining 8% only volunteers served as mediators. There was also a wide discrepancy in the number of mediators working in a program. Respondents from 13 programs indicated having only one mediator, and 25 respondents claimed fewer than three. In six programs however 50 or more mediators were used and one respondent reported that over 100 were involved. The median was five. Discrepancies in staffing was also apparent in monitoring the completion of agreements. Hughes and Schneider (1989) discussed that in almost all programs (91%) the contract was monitored to make sure that the offender completed all

requirements. This task was performed by either program staff (35%) or by probation department staff (33%). In some instances monitoring was performed by a combination of personnel (25%) or in a few cases the mediator did all the monitoring (6%).

There were further disparities in the number of training hours mediators received. Some respondents in the Hughes & Schneider (1989) study reported that their programs required no training at all (4%), one said that the training was done by trial and error, and another stated that training was done on the job. At the other extreme, two respondents reported offering 80 hours of training. The average training time was 20 hours with nine hours follow-up. Umbreit (1989) reported that in minor assault mediation, the extended length of time for each case and the complex issues involved required more highly trained professional mediators. Mediator training needed to be upgraded from the existing 12 to 15 hours to 40 to 60 hours in order to include training in post-traumatic stress, grief counseling, severe trauma intervention, and information on mental health resources. Training included follow-up strategies for victims and offenders such as post-mediation victim/offender meetings. Such wide discrepancies in staffing and training hours, have raised the question as to whether disputants were in fact receiving adequate care.

II) Time Requirements

A significant amount of time is necessary for the process of victim/offender mediation, due to the complexities of human emotion and the intricacies of relationships. Mediators spend a substantial amount of time with disputants

before, during, and after mediation to ensure that the mediation addresses victim/offender needs and that resolution in form of an agreement is accomplished within the agreed-upon time frame. The literature indicates that minor assaults have been successfully mediated only through extended mediation sessions. "[T]hrough face-to-face communication, in the presence of a trained mediator, the conflict can be humanized, tension reduced, and stereotypes of each other modified" (Umbreit, 1989, p. 100). Umbreit's (1989) article outlined that although there was potential for victim/offender mediation involving minor assaults, the basic VORP (Victim Offender Reconciliation Program) design had to be altered due to the complexity of human emotion. Three basic principles guided work with victims who have experienced bodily harm. First, sensitivity had to be exercised as to the timing for approaching victims of minor assault to be involved in mediation. Umbreit (1989) noted that usually several months had to elapse and family and friend support systems had to fade before suggesting the possibility of victim/offender mediation. Second, extreme sensitivity was also necessary so that victims did not feel that they were being coerced into the mediation process or that they had to reconcile with the offender; forgiveness had to be genuine. Third, victims of violent crimes required extensive counseling and support services to help them reach a successful resolution.

As mediators moved from the above principles to the actual practice of mediation involving violent cases, the task became very difficult. "The experience in Genesee County indicates that far more time is required for each case" (Umbreit, 1989, p. 110). Rather than the usual single meeting with the victim

and the offender, at least three individual sessions with each party were often required. The average case was likely to average 15 to 20 hours rather than the normal four to six per case. Post-mediation meetings were most often required in crimes of violence to ensure the emotional and physical safety of disputants. There was no doubt that a longer period of time was needed to build trust with both victims and offenders.

Mediators had to spend time both preparing for the mediation session and monitoring the completion of the agreement (Galaway, 1988). In this study a victim/offender mediation program in Minneapolis-St. Paul was designed primarily to handle cases of juvenile burglars and their victims. The project began however to receive a few referrals from adult offenders and some referrals from juveniles for offences other than burglary, including one armed robbery and one sexual assault case. 183 offenders including eight adults were referred to the program by February of 1985. Of those 183 referrals, 18 offenders did not participate; six referrals were withdrawn by probation officers, two were withdrawn by judges, four offenders made restitution with their victims on their own, one youth went missing, two offenders were re-incarcerated as a result of new offences, and treatment professionals working with two youths did not want them to engage in the program.

Galaway (1988) explained that the initial step was for a VORP case manager to meet with the offender and his or her parents to discuss participation in the program and to focus on the loss from the victim's perspective. Parents were strongly encouraged not to participate in these mediation sessions. After

visiting with the offender, the case manager scheduled a meeting with the victim to review the victimization and to discuss his or her experiences and perceptions of the criminal justice system. Meeting first with the offender may have caused difficulties, for if the victim refused mediation, the offender had to be advised of the reasons for refusal. On the other hand, initial meetings with a juvenile offender assisted in understanding the offender's perceptions and in answering the victim's questions. If the victim agreed to meet with the offender, the case manager arranged a preliminary meeting and served as a neutral facilitator. This meeting encompassed two distinct stages. First, the victim and offender had the opportunity to share reactions and perceptions of the crime. Second, the meeting concentrated on the damages that were done and the possible development of an agreement by which the offender could make restitution to the victim. Apologies were extended and an agreement was produced which was presented to the probation officer and the courts. If offenders failed to comply with the terms of the agreement, the case manager contacted the probation officer and an effort was made to try to reconvene the parties to revise the agreement. All agreements included a date by which the restitution obligation was to be completed. Victim/offender agreements were closed for one of four reasons: 1. the agreement was completed by the deadline date 2. the agreement was completed after the deadline date 3. the resolution had been re-negotiated and then completed 4. the agreement had not been completed. The author concluded that 52% (66) of the agreements were closed and fully completed by the deadline, 19% (24) were fully completed but beyond the deadline, 9% (11) were

re-negotiated and completed and 21% (27) were not completed" (Galaway, 1988, p. 673). As this study shows, mediators need to invest an extended amount of time to properly see through the mediation process.

III) Feasibility

Feasibility in the context of victim/offender mediation entails both the flexibility of implementing a process and the victim's willingness to participate in that process. Research has indicated that victims have been generally reasonable and concerned for the offender's welfare. They were not, as some believed, vindictive and self-serving in their requests from the offenders. The Minneapolis-St. Paul study indicated that mediation of burglaries was in fact feasible. The study suggested that victims were reasonable in their requests and that offenders could successfully complete agreements that were negotiated (Galaway, 1988, p. 676).

Galaway (1988) further concluded, and there is a growing body of literature to support this—that victims were not vindictive when it came to negotiating with their offenders. "[C]ontrary to the expectations of some observers, the victims did not demand the maximum authorized punishment" (Galaway, 1988, p. 675). "Shapland's study of victims of violent crime in England found that both in their wishes at the beginning of the case as to what sentence should be passed and in their reactions to the actual sentence, victims were not punitive" (Galaway, 1988, p. 675). Shapland, Willmore, & Duff (1985) studied victims of violent crimes and found that some victims liked the opportunity to meet with their offenders and judges to work out an agreement (Galaway, 1988, p. 675). It is noteworthy that

most of the documented victim/offender programs concerned juvenile property offenders and their victims. Cases involving violent crimes, such as minor assaults, however have begun to emerge (Galaway, 1988, p. 676).

Umbreit (1989) noted that victims did not often lie about the offence nor were they overly concerned with punishment. This was perhaps due to the process being one which addressed the needs of both victim and offender in a manner which personalized the process of justice by providing both parties with an opportunity to resolve the conflict at the community level. Umbreit expressed his view that crime should be viewed as relational: emphasize the conflict between individuals rather than the offence against the state. Consequently, response to crime should be restorative and ought to address the needs of both victims and offenders, "allowing for expression of feelings and opportunities for healing of emotional wounds" (Umbreit, 1989, p. 101). Reconciliation tended to lead to a greater understanding of the incident and less stereotyping of the offender as a terrible criminal. The incorporation of a neutral and non-judgmental third party, that being the mediator, into mediation was integral to the victim/offender reconciliation program.

Research shows that the victim's primary focus was understanding his or her victimization and hearing the offender's explanation for the crime. Generally, the victim did not aim to severely punish the individual who had caused the harm. Once the victim became aware of the offender's motivation and reasoning for the incident, the victim felt more secure and comfortable in pursuing daily activities. As it was expressed in one case, "[t]he actual mediation session gave Jim and Al

an opportunity to explain their motivation, describe some of their background, and to apologize to Carl" (Umbreit, 1989, p. 103).

S. Hughes & A. Schneider (1989) conducted a nationwide study in an attempt to fill some of the gaps in understanding the feasibility of mediation in the juvenile system. Fourteen leading programs were surveyed across the United States and Canada. The purpose was to report program characteristics, reasons for not using mediation, differences in programs in larger and smaller counties, older and newer programs, and programs handling a larger or a smaller number of cases. Questionnaires were sent to 171 programs, with the request that they be completed by the person most knowledgeable about the mediation or restitution program. Most of the programs surveyed were part of the juvenile justice system. Therefore, responses reflected data pertaining strictly to juveniles. The authors found that the final contract signed upon resolution most often included monetary restitution to the victim. Less common was community service, a combination of monetary restitution and community service, and behavioral requirements for the offender. It was noteworthy that working for the victim was not a common practice since most had concerns regarding liability. The disputants usually agreed on the final contract and rarely did the judge overrule it. The authors found that victims were reasonable and did not focus primarily on punishment (Hughes & Schneider, 1989, p. 225). Victim/offender mediation programs were therefore feasible.

IV) Participation in Reconciliation

As restorative justice supposes that conflict belongs to the parties

involved, it is they who have the intrinsic right to participate in the resolution of the conflict. This is in contrast to the traditional criminal justice system where such "rights" are appropriated by the state. Restitution as an alternative measure to punishment therefore needs to be put back into the hands of the victim rather than fall into the exclusive jurisdiction of the state (Galaway, 1988, p. 669). As such, VORP programs were "shaped with the idea that victims have the right to meet their offenders and, if they choose, to participate in a process of negotiating redress" (Galaway, 1988, p. 670). Victims of course also had the intrinsic right not to participate in VORP programs. In Galaway's (1988) study 54% (87) of the victims agreed to participate, and 46% (75) declined (p. 671). Those victims who declined to participate claimed that they did not want to go through the hassle of a mediation session since their losses were insignificant.

Umbreit (1989) discussed that victims of violent crimes should not be coerced into mediation or made to feel that an agreement must be reached. He stated that mediators have to be sensitive to the needs and concerns of victims traumatized from a violent crime (Umbreit, 1989, p. 109). The victimized need to be put into positions of power and control by allowing them to decide whether or not to meet the accused, whether meeting the offender is psychologically feasible, and on what terms an agreement can be reached. Placing victims back into the process of redress openly implies that their input is necessary for the successful resolution of the case.

Hughes and Schneider (1989) clearly argued that the retributive approach, which demands that the offender pay a debt to society, often leaves the one who

has been wronged feeling resentful and deprived of any voice in the justice system. Mediation, on the other hand, empowers victims and offenders by giving them a sense of meaning and worth. Mediation received an average of 8.4 on Hughes and Schneider's 10-point effectiveness scale whereas non-mediation programs scored 7.9. Respondents involved in mediation believed that victim interests had been served (a score of 8.5), that offender interests had been served (8.4), and that mediators had done a good job (8.5) (Hughes & Schneider, 1989, p. 228). Hughes and Schneider found that whether restitution took the form of behavioral commitments or monetary payment it was crucial for the victim and the offender to be involved in the resolution of the dispute. Despite differences in program age, the programs surveyed were quite similar in structure and goals. Exceptions were that newer programs gave more importance to the goal of reconciling the victim and offender and that private and nonprofit organizations administered the programs rather than the court system. Mediation contracts that called for the offender to work for the victim and for monetary restitution were used less often as programs became larger. Respondents from the largest programs reported the use of behavioral agreements on the part of the offender, while those from smaller programs indicated that the agreements had no such requirements at all.

V) Communication

Fostering open communication between victim and offender is the fifth factor identified in the literature for successful mediations. With such openness offenders appreciated sharing their perspectives of the crime with their victims

(Umbreit, 1992). It was the role of the mediator to create a safe and peaceful atmosphere in which an offender could voice his or her concerns. Umbreit (1992) outlined four common themes that emerged for offenders in the mediation program.

First, getting to know the victim and finding out if the victim was nice was an important factor to all offenders. "The victim was nice. He understood the mistake I made and I really did appreciate him for it" (Umbreit, 1992, p. 435). Second, the level and quality of communication between the two disputants was also important. Many offenders mentioned that they enjoyed the honesty of the situation and therefore could discuss the incident openly. Apologizing to the victim with an explanation of what happened, and working out an acceptable agreement were further matters of importance to offenders. "Ninety-five percent (95%) of the offenders in this study actually offered an apology to their victim" (Umbreit, 1992, p. 434). The most common negative experience that offenders encountered was anxiety before and during the mediation session (Umbreit, 1992, p. 435).

With regard to the victims, there were three common things they liked about the process of mediation. Telling the offender in what ways the crime affected them emotionally and financially was important to victims. Also, victims felt the need to directly confront their offender and make him or her aware that criminal behavior had adversely affected another human being. A desire to help the offender was the final common element among victims. 86% stated that meeting the offender was helpful and the majority ultimately had a positive

attitude toward their offender. Most victims liked the honesty of the process and felt good to be able to express how they felt (Umbreit, 1992, p. 435).

Similarly, Umbreit and Coates (1993) made it clear that it was crucial for offenders to meet victims face-to-face and discuss their feelings of the incident. Offenders noted that mediation provided the opportunity to 'make things right' by apologizing to the victim. "Offenders indicated that making things right was their primary expectation, followed in frequency by having the opportunity to apologize to the victim and, finally, by being able to be done with it (Umbreit & Coates, 1993, p. 571). Similarly, mediation provided the victim with the chance to share his or her view of the incident: the opportunity to inform the offender of the personal and financial effects of the crime, and the chance to receive answers to questions about the incident. Furthermore, the victim sharing his or her perspective greatly influenced the offender's thoughts and ultimately altered his or her attitude (Umbreit & Coates, 1993, p. 577). The importance of this change in attitude was reflected in a statement made by a judge who stated that the main impact of victim-offender mediation was a "major learning experience for kids about the rights of others, with implications far beyond just the delinquent act" (Umbreit & Coates, 1993, p. 577).

With mediation, for the first time in the criminal justice system, the offender has the opportunity to meet the individual whom he or she victimized and to make amends. The effort to revise the judicial system by implementing victim/offender mediation has been favorable. Studies have demonstrated that involvement in the process of arriving at a mutually agreeable restitution plan, rather than

imposed detention, counseling, or probation addresses victim/offender concerns and assists in reducing the recurrence of crime (Hughes & Schneider, 1989, p. 217-218).

Impact of Mediation on Victims and Offenders

Investigating the impact of mediation on disputants is necessary for complete comprehension of the utility and feasibility of a restorative framework. Research provides mediators with knowledge of mediation outcomes and the effectiveness of the restorative paradigm in practice, so that the intrinsic value of the mediation model can be determined. The literature identifies four common factors which bear upon the success of the mediation model: recidivism, re-humanizing the offender, satisfaction, and completion rates.

1) Recidivism

Studies reveal that recidivism was reduced after mediation as compared to after traditional methods of punishment. Negotiation and completion of restitution, either monetary or behavioral, was a predominant symbol of reconciliation (Umbreit, 1989, p. 101). Although the primary goal was mutual understanding and self-empowerment, the advent of an agreeable resolution validated the victim's experience and signaled that the offender had to take responsibility for his or her actions.

Findings from the impact of mediation on recidivism indicate that juvenile offenders committed fewer additional crimes—an 18% recidivism within a one year period following the mediation, than those who committed similar offences in court-ordered restitution programs (Umbreit & Coates, 1993, p. 579). When

offenders were mandated by the court to complete restitution, there was a 27% rate of recidivism. After mediation, reoffenders also tended to commit crimes that were less serious than the original offence referred to mediation. Umbreit and Coates (1993) discussed that although this finding was not statistically significant, structured restitution programs for juvenile offenders have been found to have had a significant impact on reducing recidivism.

Heinz, Galaway, and Hudson (1976) reported on a 16-month outcome study of eighteen adult felons who, as an alternative to prison and parole, participated in a restitution program at the Minnesota Restitution Center. Their aim was to determine whether being involved in a restitution program reduced reoffending rates. These eighteen offenders were compared with a matched control group which was involved in the conventional system of prison and parole. Members of the restitution group had committed eleven burglaries, four forgeries, and three thefts. Offenders in the matched group had committed six burglaries, six forgeries, two receiving and concealing stolen property, two thefts and one unauthorized use of a motor vehicle.

Findings in this study indicated that involvement in the restitution centre as compared to conventional parole supervision resulted in a decreased number of new offences and greater employment rates during parole. "11 percent (2) of the restitution group compared to the 39 percent (7) of the matched group were convicted of one or more felonies during the sixteen month follow-up period" (Heinz, Galaway, & Hudson, 1976, p. 153). This reduction in recurrence ultimately signaled to victims that they were not as susceptible to re-victimization. If felons

re-offended significantly less after mediation than prison and then parole, victims were more apt to feel a higher level of safety for themselves and their families (Heinz, Galaway & Hudson, 1976, p. 153).

Having the opportunity to meet with the victim, discuss the incident openly, and have input into the agreement, gave the offenders a heightened sense of control over their destiny. In turn they took the agreements seriously and made a much greater effort to complete the contracts. This was evident in the follow-up findings between the restitution and the parole groups. The restitution group was convicted for six new offences during the follow-up as compared to sixteen new convictions for the matched group. "Twenty-eight percent (5) of the restitution group compared with 67 percent (12) of the matched group were convicted of one or more offences during the follow-up" (Heinz, Galaway, & Hudson, 1976, p. 153).

A significant difference was also found between the restitution and parole groups when employment during parole was analyzed. The restitution group members were employed for a greater proportion of their parole during the sixteen-month follow-up than were the matched group. "The mean percentage of time employed for the restitution group was 76 percent, compared to 45 percent for the matched group" (Heinz, Galaway, & Hudson, 1976, p. 153).

II) Re-Humanizing the Offender

The second common factor was the success of the mediation process in avoiding the stigmatization of the offender, and humanizing him or her even in the eyes of the victim. Research details that victims experienced reduced fear of re-victimization and could view the offender in a positive light after the mediation

sessions. Umbreit (1992) discussed that after the mediation session, 94% of victims experienced no fear of re-victimization, 100% of victims felt that the negotiated restitution plan was fair to the offender, 98% indicated that the restitution plan was fair to the victim, and 92% noted a positive attitude toward mediation and the mediator (p. 434). Victims commonly expressed that mediation resulted in them seeing the offender as a human being rather than just a nameless and faceless criminal.

With respect to victim perceptions of the offender, Umbreit and Coates (1993) reported on the first cross-site analysis of victim/offender mediation programs to occur in the United States. A total of 5,458 victims and offenders were referred by the juvenile court system to four victim/offender mediation sites during 1990 and 1991, representing 2,799 victims and 2,659 individual offenders. Of those referred 83% represented property crimes such as vandalism, theft, or burglary and 17% involved violent crimes, primarily minor assaults.

It was found that after the mediation, victims were significantly less upset about the crime and less afraid of being re-victimized by the same offender. The authors outlined that prior to the mediation session 23% (154) of victims were afraid of being re-victimized by the offender. Following mediation only 10% (166) of victims experienced an initial or continuing fear of re-victimization. This significant finding at the .003 level indicated that mediation assisted in reducing the fear of re-victimization. Victims, in meeting with their offenders were able "to see that the offender was human too" (Umbreit & Coates, 1993, p. 573).

III) Satisfaction

Mediation empowers by entitling both victim and offender to determine their own needs, which in turn influences the outcome of the mediation session. This self-determination in mediation leads to a perception of satisfaction in the process itself. Heinz, Galaway, and Hudson (1976) reported on a sixteen month outcome study comparing eighteen male property offenders released on parole to the Minnesota Restitution Center after four months imprisonment to a group of matched offenders who were released to conventional parole supervision. They described in their study that the restitution program included victim negotiations, ongoing contacts, residency in a community corrections facility, and intensive parole supervision as compared to the traditional parole services. Findings in the study demonstrated that the restitution group did better on all four outcome measures (new offences, percentage of time employed, parole-rule violations, and overall parole success) than the group who was sent to prison and then given parole. "The restitution group had fewer convictions, were employed for a higher percentage of time, and were rated higher on the Glaser scale of parole success" (Heinz, Galaway, & Hudson, 1976, p. 148).

The significant difference between the two groups was reported to be due to the fact that a substantial amount of time and greater interest was invested into the restitution group. This effort encouraged in the offenders a heightened sense of self-esteem and made them aware that resolution was possible. "These findings indicate that the members of the restitution group have done better on four outcome measures than the matched control group" (Heinz, Galaway, & Hudson, 1976, p. 154). The conventional methods of imprisonment and

supervision acted to diminish the offender's self-worth and take the responsibility of the crime away from him or her. The authors noted that public safety and the needs of both victims and offenders were more adequately addressed by early prison release to a community corrections facility and supervising restitution to victims of crime than lengthy imprisonment (Heinz, Galaway, & Hudson, p. 1976, 155).

Mark Umbreit (1992) discussed a study of a well-developed program in Minneapolis called Minnesota Citizens Council on Crime and Justice (CVOM). It began functioning in 1985 and received referrals of juvenile offenders. Participation was completely voluntary. The mediators initially met with the offender and victim separately to hear their stories and explain program procedures. If both disputants agreed, a mediation session was scheduled.

Data collected from this study indicated a high level of satisfaction among both victims and offenders in mediation. Satisfaction with the mediation process was evident in that restitution agreements were reached in 96% of all cases. Yet, in comparison to the conventional justice system that focuses on recouping losses and punishing the offender, victims involved in the mediation process were more concerned with helping the offender rehabilitate. While three out of four victims stated that receiving restitution was important, nine out of ten victims rated non-monetary resolutions such as counseling and rehabilitative services for the offender as important in their view (Umbreit, 1992, p. 433).

Offenders in the program were also quite satisfied with the process and outcome of mediation. Telling the victim what happened, working out a mutually

agreeable restitution plan, paying back the victim, and apologizing to the victim were necessary features to nine out of ten offenders. In fact, 95% of offenders actually apologized to their victims. Still, Umbreit (1992) noted that offenders indicated a slightly lower level of satisfaction with their mediator and the outcome of mediation than did victims. Whereas 92% of victims indicated a positive attitude toward their mediator, only 88% of offenders felt this way. Similarly, there were additional discrepancies between victims and offenders when fairness of the resolution was discussed. Whereas all victims indicated that the actual agreement was fair to both parties, only 88% of offenders stated that the agreement was fair to them and 95% indicated that it was more favorable to the victim. Ninety-four percent of the offenders believed that the process was helpful; 95% felt better after meeting the victim, and 84% believed that the victim had formed a better opinion of them. Umbreit outlined in his article that some offenders were so satisfied with the mediation process and reacted positively to mediation that they would even suggest this process to a friend (Umbreit, 1992, p. 435). Overall, The mediation process appeared to result in greater satisfaction and greater perception of fairness than found in a matched sample who were not referred to mediation (Umbreit, 1992, p. 431).

Umbreit (1992) collected data from a preliminary analysis based on findings from three sites: a mediation group, a referred but no mediation group, and a non-referral group. This study suggested that "the mediation process was far more likely to result in a perception by either victims or offenders that their cases were handled fairly by the system" (Umbreit, 1992, p. 439). The author

noted that victims experienced greater satisfaction with the justice system when their cases were referred to mediation. Eighty-five percent of victims in the mediation group stated that they believed their cases were handled fairly, compared with only 39% in the referred but no mediation group and 64% in the non-referral to mediation group. For offenders in mediation, 95% felt the process fair, compared with 79% of offenders in the referred but no mediation group and 75% in the non-referral to mediation group. All of the findings were significant at the .05 level.

Umbreit and Coates (1983) outlined that overall, victims and offenders were more satisfied with mediation than with how traditional methods of justice deals with crimes: "It gave us a chance to see each other face-to-face and to resolve what happened" (Umbreit & Coates, 1983, p. 574-575). Unlike the conventional system of justice, mediation provided a safe environment in which offenders were able to gain insight into their actions and learn how their behavior impinged on the rights of other persons: "Through mediation I was able to understand a lot about what I did...I realized that the victim really got hurt and that made me feel really bad" (Umbreit & Coates, 1993, p. 577). Again, a significant difference (at the .05 level) was found as between victim satisfaction and offender satisfaction. The authors noted that offenders were slightly less satisfied with the process and outcome of mediation than victims, but were more satisfied than with the traditional criminal justice system (Umbreit & Coates, 1993, p. 574).

The authors found that while negotiating restitution was important to nine

out of ten victims at both the pre- and post-mediation sessions, actually receiving restitution was important to only seven out of ten victims. It was concluded that victims were more interested in meeting their offender and working out a fair restitution plan than in receiving compensation. Victims noted that it was necessary for them "to receive answers from the offender about what happened and to tell the offender how the crime affected them after, rather than before, the actual mediation session" (Umbreit & Coates, 1993, p. 576). Negotiating restitution, telling the victim what occurred and apologizing to the victim were important to nine out of ten offenders. There was a significant change in attitude in offenders from initially entering mediation to resolving the conflict. "Victim-offender mediation humanizes the process...victims gain a sense of control and power...offenders learn the real human impact of what they have done" (Umbreit & Coates, 1993, p. 577).

IV) Completion Rates

The fourth common factor in the literature was the commitment of offenders in completing the agreed-upon requirements in mediation. Since offenders were involved in the drafting up and implementing of restitution plans, agreements tended to be realistic, catering to the needs of both victims and offenders. Court-mandated restitution often does not take into account an offender's emotional and financial situation. It is law which dictates the sum of restitution, often leaving offenders alienated from their communities and without resources to make restitution to their victims (Van Ness & Heetderks Strong, 1997, p. 34).

Galaway (1988) found that 95 of the 135 victim/offender mediations resulted in successful resolutions. The majority of the resolution agreements consisted of monetary restitution, providing personal service *via* labour for the victim, community service restitution through contribution to a community organization, and an apology. The other written agreements consisted of behavioral commitments. For example, in one case a son had run away from home and burglarized his parents. The youth agreed to spend time doing chores at home and seek part-time employment. "A second phase of the mediation focuses on the damage that was done and the development of an agreement by which the offender can make amends to the victim" (Galaway, 1988, p. 671).

Umbreit and Coates (1993) discussed that the most obvious outcome of the mediation sessions was successful agreements concluded between victims and offenders. Such agreements primarily focused on payment of financial restitution by the offender to the victim. Similar to the study by Heinz, Galaway, and Hudson (1976), the authors noted that offenders who negotiated agreements with their victims through a process of mediation were significantly more likely to complete their restitution obligations than similar offenders who were ordered by the court to pay a set amount of restitution (Umbreit & Coates, 1993, 579).

Eighty-one percent (167) of offenders in the mediation sample (experimental group) successfully completed restitution as compared to 58% (221) offenders in the non-referral matched sample (comparison group). The implications of this study for victims who had their expectations raised by court-ordered settlements and never received compensation is obvious. Through the

traditional criminal justice system, victims often experienced revictimization (Umbreit & Coates, 1993, p. 578).

Umbreit (1992) studied offender completion rates of restitution at two sites, Minneapolis and Albuquerque. He outlined that in both sites, offenders who negotiated restitution agreements with their victims *via* mediation were more likely to successfully complete their restitution obligations than similar offenders who were court-ordered to pay a set amount of restitution (Umbreit, 1992, p. 439). Sixty-nine percent of offenders who participated in the Minneapolis program successfully completed restitution as opposed to 54% of offenders in the non-referral group. Similarly, in Albuquerque 86% of offenders who participated in mediation completed their restitution agreements as compared with 57% in the non-referral group. Restitution completion rates among offenders involved in mediation were greater than among offenders not referred to the program because, as Umbreit illustrated, offenders felt it was important to uphold their restitution agreements (Umbreit, 1992, p. 441). Prior to mediation, between 75% to 89% of offenders believed that it was important to complete restitution. After the session, between 74% to 100% felt that it was crucial to compensate their victims. This change in attitude may be due in part to the offender feeling that he or she had some measure of control in the process. Such empowerment may therefore have led the offender to genuinely want to offer his or her apologies to the victim and successfully complete restitution.

Conclusion

Two issues were addressed in the victim/offender mediation literature: 1)

the requirements of a mediation program and 2) the impact of mediation on victims and offenders. Specialized training and staffing, the necessity of establishing sufficient time, feasibility in implementing the mediation process and ensuring commitment and communication of participants were found to be essential elements in a successful mediation program. The findings that mediation reduced recidivism, re-humanized the offender, was more satisfactory than the traditional justice system, and contributed to higher completion rates indicated the successful impact of mediation on both victims and offenders. These findings assisted in guiding a workable implementation of the mediation model and the devising of a practicum plan, discussed in detail in chapters 3 and 4.

Chapter 3 - Mediation Model

There are two types of conflicts, incident-based and historical. The primary model used in mediation when disputants do not know each other is called incident-based. Where a conflict has existed for some time, the model used is called historical. The length of the conflict will affect techniques used. Both mediation models are predicated on a co-mediation paradigm, consisting of two pre-mediation stages (case development and preparation), four mediation stages (introduction, issue identification, discussion, and agreement) and one post-mediation stage (follow-up). These stages will be discussed with reference to incident-based conflicts. Any different approaches due to the situation being a historical conflict will be discussed.

Co-Mediation

The model used in the practicum was based on a co-mediation method used by both Mediation Services and Conflict Mediation Services of Downsview. Co-mediation involves two individuals mediating a case. There are both advantages and disadvantages in using a co-mediation model. The first advantage is it allows a sharing of ideas and differing perspectives in the mediation process. Second, it provides mediators with an array of opportunities to deal with diverse participants. For example, when one disputant is Spanish speaking and the other is English speaking, the mediators can balance language barriers by having a Spanish speaking mediator and an English speaking mediator. Third, the co-mediation model minimizes mediator bias. By having two individuals present there is a greater likelihood that one mediator can not impose

his or her beliefs or value system on the disputants.

The disadvantage in using a co-mediation model is the potential for mediator conflict. For example, co-mediators may each want to focus on different aspects of the case in question. This of course is avoidable. First, styles of mediating and techniques must be discussed prior to the mediation to ensure conformity. Second, each mediator has to be aware not to disempower the other mediator by overriding his or her ideas and methods of communicating. Third, both must work in tandem to maintain a methodical and coherent line of questioning.

Pre-Mediation Case Development

Case development in incident-based conflicts entails meeting separately with offender and victim to evaluate whether mediation is a suitable process for the conflict (Umbreit & Coates, 1993 p. 572). Mediation is appropriate when parties are willing to face each other and discuss the incident openly. If one party refuses to sit down with the other party in the same room, mediation is not viable.

Umbreit (1993) stated that mediators first meet with the victims to determine whether they are willing to proceed with mediation (p. 70). If the victim agrees, the mediators proceed to set up a meeting with the offenders. "This process of caucusing with individuals prior to the joint mediation session is believed to be essential in the co-mediators building trust and rapport with both parties, as well as for collecting information that can contribute to later conflict resolution" (Umbreit, 1995, p. 111). During the individual sessions, the co-mediators listen respectfully and allow victims and offenders to express their

perspectives of the incident. Central issues and concerns are identified. Mediators then inquire as to what goals, expectations, and hopes victims and offenders have for the mediation process. Screening and assessing questions are then posed as the next step in this initial meeting. Questions such as "Have you heard of mediation?" and "Can you imagine being in the same room as the other person or talking to the other person?" assist in determining whether disputants are emotionally and psychologically prepared for mediation. Mediators probe the disputants' interests by asking, "If you could trade places with the other disputant, how do you think he or she feels and thinks?" and "What resolution do you hope to achieve?" The mediators then ask the individual how familiar they are with mediation, and briefly describe the process. Mediators empower the participants by allowing them to decide who will participate in the mediation session. Finally, the program is clearly outlined and the parties are encouraged to participate rather than proceed to court. Encouragement, however, should not be confused with coercion as the mediation process is designed to empower disputants. "The process is meant to empower victims and offenders by presenting them with choices" (Umbreit, 1993, p. 70).

Case development in historical conflicts is similar to the incident-based model. The only difference is that it is usually more extensive due to a longer history in deeply-ingrained disputes. Sometimes, a list or an agenda is constructed prior to the meeting. This enables parties to focus prior to the session (Mediation Services, February 1996, 1).

Pre-Mediation Preparatory Stage

The preparatory stage for incident-based conflicts involves preparing the room for the mediation. Prior to the session the mediators must also take time to review the conflict, and focus energy so that they can be calm, relaxed, and ready to deal with strong emotions, emotional outbursts, and entrenched positional bargaining.

The mediators focus on three crucial tasks. First, they prepare the environment for the disputants to ensure that it is as comfortable as possible, such as ensuring access to washrooms, smoking areas, and providing beverages. Second, the mediators arrange the seating of the room to ensure that arrangements are non-confrontational and flexible. Parties should not be placed in chairs that are facing each other directly. In minor assault cases, mediators may place a coffee table between disputing parties. This will provide a forum for openness as well as a comfortable distance between the disputing parties. When arranging seating, the mediators take into consideration the power distribution between the disputing parties: for example, all chairs are similar in height. Mediators ensure that they are able to see their co-mediators well enough to catch one another's non-verbal cues. Third, the mediator checks-in with his or her co-mediator to review the case file. The co-mediators then discuss who will proceed with the introductions, and who will restate the stories or summarize the issues. Anticipating any difficulties and considering the use of any verbal and non-verbal clues during mediation is important for it assists co-mediators in knowing when or when not to intervene. For instance, in one session the co-

mediators decided that if one of them were stymied, he would scratch his forehead to indicate the need for assistance (Mediation Services, 1996, p. 3).

The preparatory stage for historical conflicts is identical.

Stage 1: Introduction

In incident-based conflicts mediators spend approximately two to three minutes on the introductory stage. Disputants are informed of what to expect during the session and the co-mediators explain their roles (Umbreit, 1993, p. 70). The rationale for this stage is to provide a comfortable, friendly, and relaxed setting so that the disputants will feel safe in expressing thoughts, feelings, and concerns. This stage is necessary because it allows the mediators to re-summarize the process and briefly explain what the disputants can expect from mediation (Mediation Services, 1996, p. 5). Disputants are given the opportunity to ask additional questions.

The beginning process of mediation encompasses certain core characteristics. When participants arrive, mediators greet them to ensure that names are properly exchanged. These initial courtesies are important since friendliness and warmth tend to normalize feelings of discomfort and stress. Mediators then ask the disputants whether all wanted for the mediation are present. This is especially necessary in cases of juvenile minor assaults where parents often feel it important to accompany their children. Co-mediators ask the youths whether they are comfortable with the presence of their parents, so to allow such disputants to decide for themselves the path the mediation session will acquire. "To foster empowerment, the mediators could allow the parties

themselves to address the issue” (Bush & Folger, 1994, p. 116).

Explaining the reason for the meeting is the next step in this process. For instance, a mediator might say “We are meeting here today to discuss the incident that occurred on January 28, 1997, which led to the charge of assault.” Setting modest but positive goals helps disputants have a clear idea of what to expect. Such goals can be outlined in the following statement, “I hope we can reach a better understanding of the incident and reach an agreeable resolution.” In outlining the role of the co-mediators, disputants are made to understand that the co-mediators will not judge or criticize them about the incident; rather the co-mediators will assist them in reaching mutually agreeable solutions.

The mediators then describe the mediation process to ensure complete understanding. When describing the process mediators should not strictly define it in terms of reaching an agreement (Bush & Folger, 1994, p. 117-118). A remark such as, “mediation helps people reach an agreement in an unhappy situation,” should be avoided as it signifies to the disputants that the primary goal of mediation is reaching a settlement, not empowerment nor recognition. Bush and Folger (1994) stated that mediators should attempt to correct the misinterpretation that they act as judges and should attempt to place equal importance on the option of reaching an agreement or not reaching an agreement (p. 118). By clearly informing the disputants that mediators do not function as judges nor are they present to implement an agreement for the disputants, clarifies to the participants that the final resolution remains in their own control. A transformative approach requires making an opening statement that encourages

empowerment and recognition expressed in simple language, utilizing settlement as just one amongst a variety of possible outcomes.

Reviewing the process with the disputants entails assuring them that each participant will have the chance to describe the situation from his or her viewpoint and that final agreement will be achieved only after the discussion of each issue. Establishing guidelines functions to facilitate open conversation in a respectful and safe environment (Conflict Mediation Services of Downsview, 1998, p. 12). Mediators request the parties not to interrupt each other and to utilize respectful language by saying, "We have found that mediation works best when the parties listen, do not interrupt, and use non-abusive language when addressing one another. Each of you will get a chance to tell your perspective." Asking the disputants to speak directly to the mediators helps to funnel hostility away from the other person and to encourage constructive verbalization. Mediators thus state, "At the beginning of the mediation, we ask that you speak directly to us. Later in the session you may address the other individual." Obtaining consent to proceed and informing the participants of the possibility of separate or additional meetings is the final step prior to commencing with the story-telling stage.

In historical conflicts there is often deeply entrenched grief and pain. In these cases, a mediator must set a comfortable tone and remind participants about the process, its purpose, and the likelihood of multiple mediation sessions. Bringing to the forefront the rules of confidentiality, lack of interruption, and speaking directly to the mediator is essential when a poor pattern of communication has been in effect for a long period of time (Mediation Services,

February 1996, p. 4).

Stage 2: Issue Identification (Story-Telling)

Stage two in incident-based conflicts involves engaging the disputants in conversation, letting the disputants hear each other's stories as told to a third party and beginning to identify the issues (Umbreit, 1994, p. 120). It is in this stage where the co-mediators develop a basic comprehension of the conflict (Galaway, 1988, p. 671). Deciding who will begin the story-telling is the first step. The disputants may decide who will begin themselves or the co-mediators may instruct one party to proceed. Where there are power disparities, it is preferable for the co-mediators to make this choice.

Story-telling begins with party A recalling the incident from his or her perspective. The mediators interact with the disputant by making requests or asking questions such as, "Tell us what occurred in this incident" or "How do you feel about the incident?" While the first question is fact-focused, the second is centered on feelings to ensure a well-rounded understanding of the situation. One co-mediator then very briefly restates the story including all relevant facts and feelings. Party B then tells his or her perspective of the incident and the other co-mediator summarizes that story.

The co-mediators require active listening skills in order to weed out from the stories central facts and issues, and so the mediators are able to keep track of all the information (Conflict Mediation Services of Downsview, 1998, 13). Listening with empathy and keeping stories brief and focused is important. For example, if one party talks too long, the other party may feel that the mediators

are taking sides. Restating and summarizing the stories allows the mediators an opportunity to check in with the participants to explore whether or not they fully understand each other's stories. If there are gaps of information in the stories, the mediators can ask questions such as "I do not quite understand how Jane is involved in the assault. Can you provide me with additional information?" It is also necessary for co-mediators to deal with loaded comments in a kind and respectful manner. One method to handle such incidents is to "launder" the comments, that is to restate the statement in more neutral terms. For instance, if one participant states "He was screaming lies about my girlfriend and giving us a bad name," one of the mediators may restate this by saying "You are annoyed and hurt because he was proclaiming untrue statements." Encouraging disputants to speak to each other in a respectful way is central to a successful mediation session.

Disallowing either party from interrupting the other is important during this stage. This can be accomplished by providing a pen and paper to take notes. Reminding the disputant that he or she will also have the opportunity to voice concerns serves to calm the atmosphere and keep the session focused.

Mediators must pay close attention to ways in which the parties communicate verbally and through body movements. For example, if one party is constantly glancing at the other party for approval, it may become apparent that one individual holds more power than the other (Neuman, 1992, p. 223). Power discrepancies result in one-sided resolutions. In such situations mediators are able to halt the intimidation by either giving the weaker party space to voice his or

her opinion, or by compensating his or her low negotiating skills by actively helping the weaker party to identify his or her concerns and issues. "The mediator must be able to provide such support within the context of serving as and being perceived as an impartial third party to the dispute" (Davis & Salem, 1984, p. 20). Knowing when to terminate mediation is another required skill, and termination is recommended under the following conditions: when the mediator's guidelines are not being followed; when an individual can not identify and discuss his or her interests and weigh the consequences of the agreement; when a person is so uninformed that the terms of the agreement can not be based on informed consent; when a party agrees to settle out of fear of violence; or when one of the participants want to terminate the session (Davis & Salem, 1984, p. 15).

The mediators then inquire as to whether any of the participants have any questions or require clarification. At this point the parties are invited to communicate with each other directly. Summarizing the issues is one of the final steps in the story-telling stage (Conflict Mediation Services of Downsview, 1998, p. 13). The mediators utilize neutral language to list the topics that will be discussed in stage three. This is crucial to ensure that the list addresses the disputants' most important concerns. Bush and Folger (1994) warned against refusing to share control of the agenda with the parties; they stated that an insistence on keeping focused on the issues that co-mediators feel to be important and maintaining a strict level of control resulted in the disempowerment of the disputants. Instead, co-mediators can help the parties stay on track by saying, "I understand that you are concerned about some other incidents that you

see as related to the present matter. But in order for us to be able to help all of you clarify your concerns and look for ways of addressing them, we find that the most effective thing is to work on just one thing at a time” (Bush & Folger, 1994, p. 121). Ensuring an orderly discussion is in itself empowering to participants. Finally, it is necessary to check with the participants by asking, “Is there anything else that needs to be discussed to resolve this conflict?” Once all the disputants’ concerns have been addressed the mediators proceed to stage three.

The most significant difference in approaching historical conflicts is that setting an agenda takes the place of story-telling. Mediators proceed by asking the disputants to identify the areas in which they are experiencing conflict or have them focus on two or three areas of concern to them. Participants are asked to respond to questions such as, “What are two or three main issues that you would like to see addressed during this mediation session? “ and “Can you restate or reintegrate the main components of both participants’ responses?”

Stage 3: Discussion (Problem Solving)

Stage three in incident-based conflicts involves continuing to have the parties hear about the conflict from the other’s point of view. The parties’ needs, wants, fears, and concerns are explored (Mediation Services, 1996, p. 10). Mediators facilitate options on each issue that will enable the parties to leave the conflict in the past.

Transition into the problem-solving stage can be accomplished by utilizing three methods. One option is that after the disputants’ stories are well-understood, mediators restate the first issue to be mediated. Mediators ask each

disputant to tell the other how he or she felt about the incident. Each must then summarize what the other has said, allowing both to confirm that they have been heard. Mediators use this technique to help disputants begin to talk to one another in a constructive manner. Once a conversation begins, mediators ought to interject only to clarify and amplify important points to further facilitate communication. Once both disputants have fully expressed their feelings on the first issue, the mediators ask whether the parties are ready to problem solve on the next issue. Tentative agreements can be made until all issues have been explored (Conflict Mediation Services of Downsview, 1998, p. 14). Choosing firstly to deal with the issue that has a good chance of being resolved spurs optimism for later issues. A second alternative is for the mediators to inquire whether any new information has been heard during the story-telling. This will be effective if tension is low. For example, "Jane, I noticed that you were listening closely as Martha was telling her story. Was there any information that was new to you?" Third, mediators can ask for more specific information about the incident when there appears to be gaps in the story, when what really happened remains unclear, or when it seems that someone only hints at an underlying issue (Mediation Services, 1996, p. 10).

The literature suggests that "both offenders and victims may develop stereotypes of each other" (Galaway, 1988, p. 677). This stage allows the participants the opportunity to eliminate false assumptions they may have about each other and to see each other as people first. A redefinition of the self can bring mediation to a new level of comprehension (Bush & Folger, 1994, p. 124).

The mediators assist in developing mutual understanding and helping disputants come to the realization that it is possible to resolve the conflict and reach an agreement. Beginning to work toward a resolution by generating options puts the conflict in the past. The negotiation of a mutually acceptable restitution agreement is a symbol of conflict resolution and a sign of accountability (Umbreit, 1993, p. 70).

Mediators ought to use open-ended and probing questions to isolate disputants' experiences of the specific event, to clarify intentions, and to shift them away from rigid notions about what should happen to resolve the conflict. Mediators can ask, "Can you share with us what aspects of what she said upset you?" Mediators should encourage the parties to communicate using "I" messages, that is avoiding accusatory language. For example: "I felt frustrated when I saw your car in the parking lot because I had heavy equipment to carry" (Conflict mediation Services of Downsview, 1998, p. 14). This technique assists the disputants in expressing feelings without placing blame on each other.

Problem solving occurs once each individual has fully expressed himself or herself. Once both parties understand each other and are aware of what the other desires, the mediator's task is to generate possible solutions that address needs and concerns. Summarizing points of mutual agreement is beneficial because it ultimately leads to a more comprehensive agreement in stage four. Brainstorming techniques break positional thinking and foster new approaches to resolving the conflict. When brainstorming, disputants need to be reminded that all ideas are acceptable and will be evaluated at the end of the brainstorming

process. Mediators need to focus the disputants on potential solutions for each issue. By stating, for example, "Both of you have worked very hard to resolve this conflict. It would be a shame not to come to an agreement in mediation" mediators may push them through an impasse. Asking each what he or she is willing to offer to resolve this conflict spurs creative thought processes. Mediators can use a flip chart to list possible solutions that are put forth. Testing the solutions for practicality and duration is the next step in this stage. Discussing the various solutions assists in selecting the most appropriate and realistic resolution. It is crucial to observe carefully whether there is any hesitation or resistance from either disputant. If the mediator notices reluctance, it is important to ask how might the proposed solution be modified so that it will be more to his or her satisfaction. This is accomplished by questions such as, "Do you agree and feel comfortable with the resolution?" Mediators have to ensure that solutions are reached for both victim and offender for each particular issue.

Private meetings may be suggested where mediators feel that one party is withholding relevant information and will not share it in the presence of the other party. Mediators also can call for separate meetings when obvious coercion or significant power imbalances emerge. Caucusing provides the weaker party with a safe forum to voice his or her concerns without fear of disapproval (Perry, 1994, p. 320). If separate meetings occur, each disputant has to receive an equal amount of time with the mediators to ensure neutrality.

Stage three in historical conflicts entails extensive work in focusing the participants on their respective interests, exploration of these, and brainstorming

possible solutions. Once all issues are presented, mediators choose an issue and select one of the parties to speak to that issue. Questions such as "What happened?" and "How do you feel?" assists in clarifying the disputant's perspective. The mediator then asks the other disputant the same questions to obtain his or her perspective on the conflict. If tension between the disputants is minimal, mediators are able to invite the parties to address one another directly. As in the incident-based model, facts, feelings, and underlying interests can be explored using open-ended and probing questions. Asking each individual "What would you like to see as a possible solution for resolving this issue?" and "Do you have any other alternatives?" helps the disputants think about the best possible solution for each issue. This procedure is repeated for each additional issue.

Stage 4: Agreement (Closure)

Stage four involves assisting participants in achieving healthy closure to their session regardless of what has taken place. Mediators briefly restate what understandings have been reached in stage three. Mediators prepare to move the parties beyond the present meeting to think about ways in which future dealings and interactions can be handled (Mediation Services, 1996, p. 13). Bush and Folger (1994) emphasized that encouraging the parties to continue the dialogue and listen to each other for additional information during the agreement stage is essential. These last moves "leave a final impression that the session is ending but the kind of interaction that the parties have engaged in is not" (Bush & Folger, 1994, p. 188). Tying up the loose ends is accomplished by stating, for instance: "It appears that you reached a better understanding of how each person

perceives the incident in the library.”

Mediators can negotiate a comfortable closure of the session in three ways. First, mediators check with the disputants to ensure that the summary of the agreement is accurate. If the agreement is not accurate, the mediators seek clarification until there is complete agreement. Second, the mediators assess whether the disputants require a written agreement; the mediation session can also conclude with no written agreement. If a written agreement is required, the mediators assist in drafting who does what, where, when, and how.

Proper written agreements need to be both specific and balanced; mediators should avoid ambiguous words like “soon” and “reasonable,” while stating that both parties will give something so that both can receive something in return. The agreement also has to be positive, realistic, and appropriate. Mediators should structure the agreement in terms of what the parties ought to do rather than what they ought not do. For example, “John agrees to... rather than John should not or will never again...” Further, it is necessary to avoid judgmental expressions such as “good behaviour” and “bad behaviour.” Times and deadlines must be clearly stated. For instance a term might read: “Ted agrees to pay a total of \$2,000.00 in 10 installments of \$200.00 on the first of each month beginning March 1, 1997.” Then, the agreement is signed and participants are thanked for having engaged in the mediation process.

Modeling for historical conflicts is nearly identical in the agreement stage. The significant difference in historical conflicts is that there can be a number of interim written agreements prior to the drafting and signing of a final document.

In the case of such interim agreements, the parties are made aware that these are trial agreements which can be revised or evaluated at another session (Mediation Services, February 1996, p. 2). Mediators arrange with the parties a date and time for the second mediation session. For encouragement all parties are thanked for their commitment in resolving the conflict through mediation.

Post-Mediation Follow-Up Stage

The follow-up stage for incident-based conflicts consists of monitoring completion of any negotiated restitution (Wright, 1995, p. IV). Two to three months after the mediation the mediators contact both disputants by telephone to determine whether the victim and the offender have completed the plan outlined in the parties' agreement (Umbreit, 1993, p. 70).

Umbreit and Coates (1993) discussed that this stage is especially important in cases of minor assault because victims often feel re-victimized if the offender does not complete the agreed-upon restitution and reparation. Since the entire process is guided by the disputants, they may reconvene to reassess the agreement if circumstances change or if one party cannot fulfil his or her obligations (Umbreit & Coates, 1993, p. 572). The follow-up stage is identical for historical conflicts.

Summary of Mediation Model

There are four stages in the mediation model (introduction, issue identification, discussion, and agreement) plus two pre-mediation stages (case development and preparation), and one post-mediation stage (follow-up). The purpose of case development is to evaluate whether the mediation process is

suitable for a particular conflict. If one party is unwilling to be in the same room as the other party mediation can not work. In this stage the mediators meet with the victim/complainant and offender/accused separately. The same mediators follow through with the whole mediation process, from case development to follow-up. Mediators first meet with the victim to determine if he or she wishes to proceed. If the victim wants to continue, the mediators ask him or her to tell his or her side of the story. The mediators then contact the offender to hear his or her perspective on the incident. If a suitable time for both mediators and the disputant can not be arranged, case development is done over the telephone. Each mediator hears one disputant's story, and a time for the mediation session is arranged. The preparation stage involved creating an environment conducive to open dialogue in the mediation room.

In the introductory stage (stage 1) mediators introduce themselves to the disputants. The mediators then explain the procedures, including the role of the mediators, which is to act as catalysts to assist people in communicating and arriving at an agreeable resolution. The mediators empower an individual to tell his or her side of the story in front of the other person, helping each disputant understand what occurred and helping them learn how to deal with the same situation in the future. Ground rules are established and disputants are asked if they are willing to proceed.

In the story-telling stage (stage 2) each party is asked to explain the situation from his or her perspective. The mediators then ask each disputant to express how he or she feels about the situation. After each party states his or

her viewpoint, the mediators restate each disputant's story to ensure all facts are understood. A summary of the issues are presented.

During the discussion stage (stage 3) mediators emphasize areas of common concern to both disputants and encourage commitment to resolve the conflict. For each issue the mediators guide the discussion and explore interests and feelings. Mediators empower the parties to recognize and understand each other's perspective. Mediators ask the disputants to generate options that meet common needs by using the brainstorming technique. Private meetings are used if the mediation is at a stand still, if there are inconsistencies in the disputants' stories, or if one party wishes to speak to the mediators separately. The focus is on the present and the future, not on the past. This means that mediators move from discussing the incident to exploring future interactions.

Agreement (stage 4) is the final stage in the process where mediators highlight the progress made and point out areas of agreement. If the parties desire a written agreement, the document is made specific: who does what, by when, where, and why. Agreements should also be balanced and non-judgmental. Mediators assist in writing the agreement and giving it to the disputants to sign. A copy of the agreement is given to each of the disputants. The focus of this practicum report is on the number of agreements reached.

Two to three months after the mediation the mediators contact both disputants to ensure that the terms and conditions of agreement are honoured. There is a three month time period in which disputants are able to complete the agreement. A letter is sent outlining whether or not an agreement is reached in

the mediation session.

Chapter 4 - Preparation for and the Devising of a Practicum Plan

This chapter discusses the implementation of the mediation model for the practicum plan. Pre-practicum training will be outlined. The four learning objectives (using neutral language, linking the various stages of mediation, avoiding rushing to solutions, and appropriate control of the process) and the three mediation objectives (reducing anger, writing an agreement, and fulfilment of the restitution plan) will then be presented. Methodology consisting of the practicum plan's three stages (case development, mediation, and follow-up) follows.

Training

Mediators require a general introductory course prior to beginning the practice of mediation. Training was received at Mediation Services in Winnipeg, Manitoba and Conflict Mediation Services of Downsview in Toronto, Ontario. In Winnipeg the following courses were taken: Interpersonal Communication, Mediation Skills Level I, Mediation Skills level II, Anger Management, and Workplace Conflicts. Three courses, Interpersonal Conflict, Mediation Skills Level I, and Mediation Skills Level II, were taken over a two to three day period and focused on building and honing mediation techniques. While at Conflict Mediation Services at Downsview, a three day training session on mediation training was attended. This training introduced the process and the four stages of mediation. Role playing allowed the participants to practice techniques and skills that had been discussed. This benefited the participants because it allowed them to utilize what they had learned. This training also included a discussion on

techniques to use in cross-cultural mediation. The same co-mediation models were practiced at both of these agencies.

Learning Objectives

Four learning objectives were to be assessed during the practicum to determine mediation technique: using neutral language, linking the different stages of mediation, not rushing to solutions, and appropriately controlling the mediation process. Developing skills in using neutral and non-judgmental language was the first learning objective. The use of neutral terminology is important because it signals to the disputants that the mediator's role is to assist in the process; not to judge right or wrong. This technique equalizes responsibility by reframing and redirecting loaded comments.

Effectively linking the different stages of mediation (introduction to issue identification, issue identification to discussion, discussion to agreement) was the second learning objective. The even and slow movement through the stages allows disputants to explore their issues and concerns within a comfortable framework. The third learning objective, not rushing to solutions, allows the victim and offender to communicate and resolve concerns at their own speed. This skill aids in restoring relationships rather than focusing on a determination of guilt or blame. Guiding rather than directing is the philosophical basis of mediation.

Learning to control the mediation process was another technique that is necessary for the mediator to develop. Although mediation empowers by placing grievances back into the hands of the victim and offender, a mediator is still

responsible for facilitating a safe and comfortable process. For example, a mediator has to encompass skill in setting and maintaining ground rules to ensure that disputants do not interrupt or swear at each other.

Mediation Objectives

The practicum was to be completed at Conflict Mediation Services of Downsvew. Three objectives of mediation were to be explored during the practicum: reducing anger, reaching agreement, and fulfilment of the restitution plan by the offender. The first objective to be assessed was reduction of anger. Studying whether there was a reduction in anger before and after mediation would enable an understanding of changes in the level of anger reported by complainant and accused before and after the mediation session. Writing an agreement was the second objective to be assessed. This practicum plan focused on one outcome, reaching an agreement, in evaluating whether the disputants came to understand one another's perspective of the incident, and reached resolution. Documenting the number of agreements reached based on the number of sessions co-mediated, was to allow the number of mediations successfully completed to be determined.

The third objective was to assess the offender's fulfilment of the agreed-upon restitution plan. Completion of restitution was seen as crucial because it signaled the offender's acknowledgment of his or her wrong-doings and the making of restitution and reparation to the victim. Studying restitution completion would allow for the analysis of whether offenders were more likely to complete restitution when involved in voluntary mediation.

The Downsview Practicum

The practicum at Downsview was to began August 4th, 1997 and was fully completed by December 31, 1997. Downsview serves a culturally and racially diverse population. It is common practice at this site for the same individual to be involved in both case development and mediation. The practicum plan was to implement the mediation model discussed in chapter 3 in eight cases. The intended population was to be adult offenders who committed minor assaults.

Methodology

The practicum plan was drawn up to consist of three stages: case development, mediation, and follow-up. Eight cases were to be mediated, referred by the Crown Attorney in North York Private Information Court.

1) Case Development

Case development was to constitute contacting disputants separately and discussing with them the possibility of resolving their conflict through mediation as an alternative to court. In addition, an evaluation had to be made whether mediation was suitable for a particular case. Meeting with the disputants in person was preferred but if time was a factor the meeting was to be conducted over the telephone. It was intended that the victim be contacted first to determine if he or she was willing to proceed with mediation. If he or she wanted to proceed, then the offender was to be contacted to hear his or her side of the story.

Conflict Mediation Services Of Downsview does not separate the functions of case development and mediation, and therefore mediators who perform the

case development also participate in the face-to-face meetings.

II) The Mediation Session

The plan for mediation was to follow the model discussed in chapter 3. Reduction of anger before and after mediation was to be evaluated utilizing the State Anger Scale (SAS). "State anger is defined as an emotional condition consisting of subjective feelings of tension, annoyance, irritation, or rage" (Speilberger & London, 1994, p. 629). Levels of anxiety and irritability were to be measured prior to mediation (pre-test) and after (post-test) (Fischer & Corcoran, 1994, p. 629-631). The results then would be compared to establish whether 1) These feelings in both victims and offenders were reduced after mediation, and 2) if communication and input into the resolution minimized irritability and anxiety. The State Anger Scale was selected because it can evaluate the disputants' state before mediation and after mediation. Further, it is a standardized scale, which provides reliability and validity. On the 15-item form, scores could range from 15 to 60. Higher scores reflected greater anger.

Prior to the actual mediation session, a questionnaire package was to be mailed to the disputants which consisted of the following: the letter explaining the purpose of the study, the participant consent form, and the pre-mediation questionnaire (Appendix A, p. 1-3). The opening letter clearly asked disputants to return the package to the mediator at the time of the scheduled session. Following the mediation, both participants were to be asked to take a few minutes to complete a duplicate questionnaire of the SAS Scale (Appendix A, p. 4). To preserve anonymity and confidentiality, the questionnaires were to be

sorted by number; neither the names of the disputants nor facts of the incident would be recorded.

Downsview has a clear mandate to ensure that this process is completely voluntary and that disputants have the right at any point to halt the session. Disputants in the eight cases would be aware however, that this was their only alternative to court proceedings. This fact could place mediators in a position of power and authority since disputants would be cognizant that if mediation was not successful, the case would automatically be transferred back into the court system. It is therefore possible that some disputants could think that if they had not participated in the study, their mediation would be negatively affected. There was to be an attempt to alter this perception by clearly stating on the forms that participation was completely voluntary and would in no way affect the outcome of the mediation session.

The intention was to also focus on how many of the eight cases reached resolution and resulted in written agreements. Resolution rates appear to be a valuable indicator of whether the mediation model is effective. The agreements would be indicators that disputants understood one another's perspective of the incident and could come to a mutual agreement without intimidation or coercion. It would signal that the participants had proceeded through a process of communication and understanding. Some disputants might even reach a level of forgiveness, although forgiving was not intended to be a prerequisite to reaching agreement. To properly document whether agreement was reached in mediation, an Agreement In Mediation form (Appendix A, p. 5), was devised to keep track of

whether agreement was reached, whether a second session was required, whether the session was postponed, or canceled, or whether one or both of the disputants had not been present for the mediation. A numbering system was designed to match and identify the forms and cases. While the success of a mediation was to be measured by the attainment of an agreement, it was also important to recognize that mutual acceptance and recognition could be reached without an agreement. An agreement was just one of many possible outcomes.

A chart entitled Mediator's Notes (Appendix A, p. 6) was to be used to keep track of the disputant's names, stories, issues, and concerns. This system would allow for the recall of essential facts and issues during the mediation session. This chart would be destroyed after the mediation for two reasons: first, to ensure confidentiality and anonymity; and second, if the courts were to subpoena them, there would be no written records available.

The co-mediation model was to allow for discussion of the mediation session and the receipt of feedback on mediation skills. Upon completion of the mediation session, the co-mediators would be required to fill out the Mediation Summary Form (Appendix A, p. 7). This form would assist in the debriefing process and help caseworkers by highlighting the disputants' main issues, and whether any follow-up is required. Further, it was intended to allow co-mediators to assess each other's strengths and weaknesses. In addition, co-mediators would complete and discuss the Mediation Evaluation Form which was designed to assess the four learning objectives (Appendix A, p. 8), and highlight areas where improvement was needed.

III) Follow-Up

The practicum plan was also to involve follow-up. Victims and offenders were to be telephoned two months after mediation to ascertain whether restitution had been completed. The purpose for the follow-up was to assess the fulfilment of the agreed-upon restitution plan. A Fulfilment of Agreement chart was created to document the number of cases that resulted in a completed agreement, the number of cases that would not be completed, and the number of cases that were to be completed (Appendix A, p. 9). The data could then provide insight into whether agreements were taken seriously and were successfully completed. A numbering system was to be used to identify each mediation and match all of the forms and questionnaires. This would maintain confidentiality and anonymity.

After follow-up a letter was to be sent to court stating whether or not the mediation had been successfully completed within the stipulated time frame. The practicum plan included mailing out the results to all participants at the completion of the practicum. The intent was to give disputants the opportunity to discuss the results with a mediator if they so chose.

Summary of Practicum Plan

Four learning objectives (using neutral language, linking the various stages of mediation, avoid rushing to solutions, and appropriate control of the process) and the three mediation objectives (reducing anger, writing an agreement, and fulfilment of the restitution plan) were to be assessed in the practicum. The practicum plan was to involve three stages: case development, mediation, and follow-up. Case development was to entail evaluating whether or not a case was

suitable for mediation. The mediators would contact both victim and offender to hear each party's perspective of the incident. The mediator was to carry the cases from beginning to end, case development to follow-up. Eight case developments involving minor assaults were to be mediated.

Prior to the mediation session, the victims and offenders were to receive a SAS pre-test questionnaire. It was to be returned at the time of the mediation. The mediation would then take place in four stages: introduction, issue identification (story-telling), discussion (problem solving), and agreement (closure). After the mediation the disputants were to complete the post-test. An Agreement In Mediation Form would also be completed to keep track of whether agreement was reached (Appendix A, p. 6). Once the disputants departed, the co-mediators were to complete the Mediation Summary Form (Appendix A, p. 8) and the Mediation Evaluation Form (Appendix A, p. 9). It was anticipated the co-mediation model would assist in assessing the mediation and allowing for feedback regarding the co-mediators' strengths and weaknesses.

Two to three months after the mediation was to take place, both victim and offender would be contacted to determine whether or not their restitution plan had been completed. Restitution was to be tracked with the aid of the Fulfilment of Agreement chart (Appendix A, p. 10).

Chapter 5 - Implementation of the Practicum Plan

This chapter discusses the implementation of the practicum plan and changes to it. A brief summary of all eight cases will be presented. Three cases will be discussed in detail to illustrate the mediation process. Names of the disputants in these cases have been changed to maintain client confidentiality. It is important to note that seven of the eight cases were minor assaults, while one involved threatening bodily harm.

The Practicum

Every Thursday morning the mediators met with the Crown Attorney, prior to court, to review which cases were appropriate for mediation and which could be resolved by other means. Once each case had been discussed the Crown Attorney marked on the file possible resolutions for the case: peace bond, withdrawal of charge, mediation, or proceed to trial. This gave the mediators a number of options to discuss with the disputants.

At the beginning of Private Information Court, the Crown Attorney announced to disputants that mediation had become a new alternative to the traditional court process and that a portion of the disputes on the docket could be resolved through mediation. The Crown then called all the cases which he or she and the mediators felt were suitable for mediation and asked the parties to follow the mediators into an empty courtroom. The mediators began first by outlining mediation and discussing how the process could serve all parties better than the traditional court process. The mediators then asked to speak to the complainant and accused in each case to obtain details and to discuss possible resolutions to

the criminal charges outlined above. If the disputants were willing to try mediation, the mediators recorded the victim's and offender's names and addresses and informed them that they would be contacted within two weeks' time. The mediators then returned to the Private Information Courtroom to inform the Crown Attorney what each set of disputants had decided. The ultimate decision as to whether a case proceeded to court, was withdrawn, or was mediated rested with the Crown. Since the mediators were involved in both the court attendance and the mediations, the schedule of data collection did not rely on referrals from the case co-ordinator at Downsview. Suitable cases for the practicum were decided upon at court culminating in the eight cases discussed in this report.

1) Case Development

Case development was carried out by contacting each disputant separately to review the process and fully explore what each party hoped to achieve from mediation. Victim and offender were also asked what they would be willing to give and what they expected in return in order for the conflict to be resolved. This was an important question because it forced disputants to begin thinking about possible solutions to resolve the conflict. This initial contact was made one to two days after court for two reasons. First, reassurance and support was required since it was assumed that the disputants felt anxious about both the charges and the process of mediation. Second, the newness and uncertainty of mediation demanded immediate contact prior to the disputants changing their minds about mediation and thus returning to the regular court system.

In five of the eight cases, case development followed the outlined plan. In three of the eight cases, case development was done the same day as the mediation. The mediation model was slightly altered as such due to time constraints; disputants had neither the time nor the desire to come to Downsview to meet with the mediators for case development and then return a second time for the mediation. To complete two case developments successfully within an hour, case development was done at half-hour intervals. The mediators arrived half an hour before the first party attended to prepare the boardroom for mediation: making coffee and tea, arranging the chairs, and preparing the flip chart. One party was requested to come to the site half an hour before the second party. Once the first party's case development was accomplished, the mediators then spoke to the second disputant in a separate section of the office. After both the complainant and accused shared their perspectives of the incident with the mediators, all parties were welcomed into the large boardroom to begin the mediation.

II) The Mediation Session

After the disputants had taken their seats, a few minutes were taken to introduce and explain the practicum plan and the reason for the questionnaires. It was explained that one of the mediators was a Masters of Social Work student from the University of Manitoba, distributing questionnaires on the mediation of minor assault cases. The parties were asked whether they would agree to participate in the practicum plan, and were told that a willingness or lack thereof to participate would in no way alter the mediation service they were receiving.

The disputants were guaranteed anonymity and confidentiality. They then agreed to fill out the pre-test and post-test questionnaires. It took approximately ten minutes for the disputants to review the consent form and then complete the pre-test questionnaire. Two participants requested copies of the documents.

Introducing the research and asking the disputants to fill out the pre-test and post-test questionnaires differed from the original plan. The decision was made not to mail the questionnaires because it was felt that the disputants would not fill out the documents or return them at the time of the mediation. It appeared that there was a greater chance of the complainant's and accused's participation in the study if an explanation of purpose was given in person.

a) Stage 1: Introduction

Introductions commenced once the pre-test questionnaires had been completed. The practicum plan was followed exactly as outlined in chapter 4. The co-mediators began by briefly re-explaining the mediation process to the disputants, and establishing ground rules (no yelling, swearing, interrupting) to ensure proper communication. Each party was asked to speak to the mediators until both parties felt comfortable talking to one another directly. This technique was useful in the Alemnesh/Swaran case described below. If the mediation process had initially begun with both disputants speaking to one another, anger and resentment would have impaired proper communication patterns. The mediation would have broken down from the beginning of the process.

b) Stage 2: Issue Identification (Story-Telling)

The disputants were given the opportunity to decide who would begin

relaying his or her perspective of the incident. While each story was verbalized, the other party had to show respect by not interrupting. If one party did interrupt, as occasionally occurred, he or she was reminded of the ground rules and told that he or she would have the same opportunity to share his or her perspective. The story-telling promoted a shared understanding of the incident and helped to locate areas of agreement and disagreement. For example, in the *Adi/Pete* case, once the disputants were able to hear each other's perspective of the incident they asked one another questions. Adi informed the mediators that he wanted Pete to become aware that individuals could not go around punching other people without facing consequences for their actions.

This stage in its implementation varied slightly from the original plan in the three detailed cases because case development was done the same day as the mediation. Story-telling was brief and did not always follow a logical sequence of events. For instance, many times during the story-telling stage the disputants had to be reminded that it was essential to share the complete story with the other party. When stories were not complete the mediators had to ask leading questions in order for the complete story to be heard. In the *Adi/Pete* case, both disputants were annoyed with having to repeat the sequence of events twice. They felt that since they had already relayed the incident in case development, there was no need to re-tell the story in this stage. In these three cases story-telling became a quick summary of events.

c) Stage 3: Discussion (Problem Solving)

Stage three of the mediation model was not modified from the original

plan. After each story was fully understood, the mediators explored each issue and the underlying interests. Brainstorming techniques were used to break positional thinking and foster new approaches to resolving the conflict. Visual presentation sometimes assisted in clarifying underlying interests and clearly outlining various solutions. In the Alemnesh/Swaran case, a flip cart was utilized to outline each disputant's issues; one column for Swaran and one column for Alemnesh. To explore each issue a rotation process was used. As previously described in the practicum plan, after each issue was explored, an X was drawn over the word. The mediators assisted the disputants in reaching a resolution by summarizing any progress made, outlining points of agreement, and clarifying areas of mutual concern. These techniques seemed to foster a commitment to finding a solution. Once a resolution was reached the mediators asked the disputants whether they felt the solution was fair and satisfactory.

d) Stage 4: Agreement (Closure)

The agreement stage followed the practicum plan. The mediators assisted the parties in understanding each other's point of view. In the Susan and Alan/Steven and Kim case for example, the mediators pointed out to Susan and Alan (the complainants) that Steven and Kim (the accused) had believed that they were wrongfully accused of stealing since items in their possession had been given as gifts by the complainants. Similarly, the mediators made it clear that Susan and Alan felt betrayed by the accused for what they perceived as the theft of certain items from their home. In each of the eight cases, each party was asked to restate briefly what the other person had verbalized. Areas of

agreement were summarized and closure was established. In the Susan and Alan/Steven and Kim case, the mediators stated that it was evident that inadequate communication patterns resulted in an explosion of anger. This mediation resulted in a detailed and accurate agreement.

III) Follow-Up

This stage generally followed the practicum plan except for two modifications. First, results were only mailed to those disputants who requested a copy. Second, after the cases were finished a letter was sent not only to the court, but also to the victim and offender outlining the outcome of the mediation and whether or not the parties would reappear on the remand date. The court instituted a three month period in which the agreement was to be completed, and if agreement was not reached in mediation, the parties were remanded to court.

One of three letters were sent:

1. A mediation session was held on (date) in the above-noted matter. The issue was successfully resolved between the parties and it was therefore recommended that the charges be withdrawn.
2. A mediation session was held to resolve the above-noted matter. The parties were unable to reach an agreement and were advised to appear in court on the remand date.
3. The complainant and accused did not wish to participate in mediation and preferred to have the court determine the outcome. In this case the mediators withdrew their involvement in the case.

Summary of the Eight Cases

A brief summary of the eight mediated cases follows. The four factors that guide this discussion are the cultural backgrounds of the participants, the nature of dispute, whether or not anything of interest happened during the process, and the result of mediation.

The first case involved two Caucasian males; Mr. B was hearing impaired while Mr. A was physically impaired. Ms C asked Mr. A to cut her hedge which she thought was too high. This hedge bordered Mr. B's property and he was upset that Mr. A was cutting the hedge without his consent. As Mr. A was trimming the hedge Mr. B approached him and tried to ask him to stop. Mr. A could not hear Mr. B over the hedge trimmers and continued trimming the hedge. Mr. B then grabbed the trimmers from Mr. A's hand and wrestled him to the ground. Mr. A charged Mr. B with minor assault. The interesting factor about this case was that though the charge only encompassed two people, it was found during case development, that Ms C needed to be involved. Since Mr. A had taken direction from her it was necessary to first deal with the height of the hedge and then deal with the assault charge. Two mediations occurred within the context of one case. First, a mediation occurred between the next door neighbours. After Ms C left the room a second mediation occurred between Mr. A and Mr. B. An agreement was reached between the two neighbours. Mr. A, who had charged Mr. B with assault decided to withdraw his charge because he claimed that he did not have the time nor the money to deal with the incident any longer. A letter was written to court recommending that the charges be

withdrawn.

The second case involved two individuals of Latin American descent. Mr. A spoke both English and Spanish, while Mr. B only communicated in Spanish. Both English and Spanish speaking mediators were used. Mr. B had just started his own garage and was hired by Mr. A to fix his car. Mr. A was a computer technician and relied heavily on his car to get him from job site to job site. Since his car was used primarily for work, his employer paid for most of the repairs. After the work was done Mr. A asked for a receipt so that he could be reimbursed by his employer. Mr. B agreed to give him one as soon as his office computer was running. When Mr. A returned to the garage to get a receipt, both could not agree on what had been paid for parts and labour. Both men became angry and Mr. B grabbed Mr. A and slammed him against the office computer. Mr. A charged Mr. B with minor assault. This case was interesting because in the agreement stage both parties were unwilling to compromise and were entrenched in their own thought patterns. It was uncertain whether resolution would be reached. The mediators caucused with each disputant to ascertain what each party needed from the other to reach resolution. It became clear that each party was infuriated with the other. The mediators discussed these feelings with each party and suggested that this be discussed with everyone. All reconvened to explore these intense emotions. In the end, a written agreement was reached.

The third case involved a man and a woman: Mr. A, a landlord, was Polish and Ms B, his tenant, was Caucasian and Canadian born. Mr. A stated that Ms B had not paid the monthly rent for some time and wanted her to vacate the

apartment. Ms B claimed that Mr. A had turned off the heat to her apartment and was continuously hassling her. An argument ensued When Mr. A came down to Ms B's apartment. Ms B was charged with assault after she hit Mr. A with her shoe. The mediators found this case interesting because in stage 2, issue identification or story-telling, the woman refused to tell her side of the story. She proclaimed that her landlord was hassling her and there was nothing she could do for him. The mediators tried to explore her feelings, both within the session and in an individual meeting, but she stated that she just wanted to leave. An agreement was not reached and the case was diverted back to court on the remand date.

The fourth case involved two men of Iranian descent. One man spoke English, while the other required an interpreter. Two assault charges were laid after Mr. A, the owner of a garage, refused to give Mr. B, the supplier, money for automobile parts. Mr. B came into Mr. A's garage and demanded payment. Both parties swore at each other in front of customers. Mr. A told Mr. B to leave and that he would come to his shop to pay him the money. When Mr. A came to the shop, Mr. B grabbed Mr. A's shirt and hit him in the face. Mr. A retaliated by hitting Mr. B. several times. Mr. A claimed that he was then taken to the back of the store and was beaten by three men, one of which was Mr. B. When Mr. A went to the hospital to see a doctor, he noticed that he was missing money from his back pocket. Mr. A notified the police and an assault charge was laid against Mr. B. Mr. B then went to court and counter-charged Mr. A with minor assault. This case was interesting because it was impossible to reconvene the parties for

the second mediation. When no agreement was reached after the first mediation, the disputants informed the mediators that they required one or two days to consider if the mediation process was satisfying their needs. After three days the mediator tried to contact both parties; one was accessible, while the other's business line had been disconnected. Since the mediator was unable to reach one of the disputants no agreement was reached and the case returned to court on the remand date.

The fifth case involved a Caucasian Canadian born woman and a black man of African descent. Ms A, the property manager, approached Mr. B the tenant, in the parking lot and asked him not to park his car in visitor parking. Mr. B. became enraged and they argued for some time. When the tenants heard the commotion they ran outside to see what was happening. The tenants claimed that Mr. B began swearing and hit Ms A, while holding a beer bottle. Ms A has no recollection of Mr. B trying to hurt her. Mr. B claimed that Ms A threw a beer bottle at him and tried to kick him. The tenants called the police and told them that Mr. B committed an assault. The police charged Mr. B with minor assault. Mr. B then went to court and counter-charged Ms A with minor assault. This case was interesting because during the case development Ms A was not willing to speak to the mediators. She insisted that she wanted her lawyer to speak on her behalf and did not want to sit in the same room with the tenant. During the case development the mediators had to spend a lot of time explaining the process to both her and her lawyer. The woman's anger and fear surrounding this case were discussed in-depth. An agreement was not reached and the case went

back to court on the remand date.

The sixth case involved two women; one was of Indian descent and one was of African descent. This case is explained in-depth in Case Example #1: Swaran/Alemnesh.

The seventh case involved two men; one was of Indian decent, while the other was Caucasian and Canadian born. This case is illustrated in Case Example #2: Adi/Pete.

The eighth case involved four people; all were Caucasian and Canadian born. This case is detailed in Case Example #3: Susan and Alan/Steven and Kim.

A Description of the Three Case Examples

1) Case Example #1: Swaran/Alemnesh

a) Background

Swaran (complainant) went to the Justice of the Peace in North York and charged Alemnesh (accused) with assaultive behaviour. In response, Alemnesh counter-charged Swaran with assault. The disputants came from differing racial and cultural backgrounds. Alemnesh was of African heritage, while Swaran was of Indian heritage. They resided in the same apartment complex. Case development was done the same evening as the mediation. My co-mediator and I felt this was appropriate since we had seen the disputants in court and we were already aware of the issues and concerns.

b) Stage 1: Introduction

As soon as the parties entered the boardroom, I sensed extreme hostility and resentment. To calm the disputants my co-mediator and I began the

mediation session by re-introducing ourselves and stating the importance this work held for us. We proceeded by stating the reason for the present meeting. I then described my study and asked the disputants to participate. Both were willing to assist me. After the pre-test questionnaire was completed, I set the ground rules for the mediation session. Since the disputants brought intense feelings of anger and resentment into the room, guidelines needed to be put in place to ensure a successful mediation. By setting such boundaries, the disputants came to realize that proper communication could be restored in an appropriate fashion. I asked the disputants who would like to begin the session by discussing her perspective of the incident. Both parties agreed that Swaran would begin the mediation session. I utilized the Mediator's Notes form to record facts of the stories.

c) Stage 2: Issue Identification (Story-Telling)

Swaran's Story

Swaran explained to the mediators that on August 5th she, as usual, went to pick up her children from the school bus. While she was waiting on the corner she witnessed a van hitting the rear end of a cab at the stop sign. The taxi cab driver asked Alemnesh for her phone number and address; she refused to present identification. The cab driver then approached Swaran and asked if he could have her phone number since she was a witness to the accident. Swaran informed the mediators that she just wanted to help; she offered that although she shared the same cultural background as the taxi cab driver, this had no bearing on the situation. After Swaran gave the taxi driver her phone number,

Alemnesh hit her in the stomach, spat on her, and called her names. Swaran claimed that she had never seen or met Alemnesh prior to this. Swaran informed us that "I felt very upset and I had no way to defend myself as I had my children's school bags in my hand." Bystanders tried to stop Alemnesh, but she refused to listen to anyone. Alemnesh then screamed at Swaran, "You live in my building in Garden City and I will see you." After Swaran had finished explaining, I briefly summarized her story to ensure the mediators had heard all significant and relevant facts. This technique impacted on Swaran by making her aware that the mediators were actively listening to her story and were striving to understand her perspective. After I summarized Swaran's story she smiled and said to me, "That is exactly what happened."

Alemnesh's Story

Alemnesh explained to the mediators and Swaran that she was sitting in the car with her husband, who had just arrived from the United States to visit her. As she was struggling to recline her seat, she accidentally hit the side of the cab. She and the driver were then trying to settle the matter amicably. A short while after the accident happened, Swaran came to the scene and was trying to judge the situation; Alemnesh became annoyed and felt that she was being insulted. Alemnesh explained that when Swaran approached the scene, she demanded that Alemnesh give the taxi driver the registration information he wanted. Alemnesh refused because she was afraid that the taxi driver would take her license and report her to the authorities behind her back. Swaran became upset and claimed that Alemnesh would not co-operate with the taxi driver since he was

Indian, as was Swaran. Swaran began speaking to the taxi driver in their native tongue. Alemnesh started swearing at Swaran and told her to go away and mind her own business. Both disputants became very angry, screaming and spitting at each other. Swaran then punched Alemnesh in the chest, and her glasses fell to the ground and broke. As Alemnesh reached down to pick them up Swaran tried to hit Alemnesh on her back with a video cassette. Swaran's strike missed Alemnesh, but knocked out one of Alemnesh's husband's teeth and bruised his upper lip. Almenesh stated that Swaran was racist; she was against her because she was black. Once the story was completed, my co-mediator summarized the facts to ensure that the mediators had a comprehensive understanding of the incident. By summarizing the facts and issues Alemnesh felt that she was finally being heard. She turned to my co-mediator and proclaimed, "Finally, someone is listening."

To complete the story-telling stage, the mediators identified issues that arose from both Swaran's and Alemnesh's. Swaran had two areas of concerns. First, Swaran continuously mentioned that she did not want to hurt Alemnesh and the only purpose for her giving out her phone number was because the taxi driver had asked for it. Swaran claimed that she strove to be a good and honest citizen. Second, she was angry that Alemnesh viciously assaulted her without reason. My co-mediator and I pointed out that Alemnesh had three areas of concern. First, she wanted to know why Swaran interfered. Second, she questioned how one neighbour could deceive the other. Third, she was angered over the assault. The overriding themes throughout Swaran's and Alemnesh's stories were respect

and safety. My co-mediator and I then checked with the disputants to ensure that all crucial issues were outlined. This was done for two reasons: first, to allow the disputants to guide the process; second, to give them a final opportunity to contemplate additional concerns.

d) Stage 3: Discussion (Problem Solving)

I utilized the flip chart to outline visually each disputant's issues: one column for Swaran and the other for Alemnesh. Each participant was asked to number the issues from one to ten according to significance. The mediators then noted areas of agreement between the disputants. Both shared beliefs that respecting one's neighbour and having a sense of safety were essential when living in a multicultural society. The women wanted to be able to greet each other without worry if they happened to see each other. It was interesting to observe both parties' amazement when points of mutual agreement were outlined. Finding common ground amongst the parties provided a starting point in which to begin discussing and working through problem areas. Similarities thus assisted in bringing the parties together. The issues of the two assaults and the charge of racism became less significant as each party understood the other's point of view.

The issues of wanting to be a good and honest citizen, the assault, interference, and deception were explored using a rotation process to assure fairness. Once an area had been examined and discussed, an X was drawn over the word. I felt that as the disputants conversed, a shared sense of understanding emerged. My co-mediator and I pointed out areas of agreement.

Noted similarities helped to reduce irritability and anxiety. Tensions decreased in the room when Swaran commented that she did not mean any harm and that she desired a good relationship with all her neighbours. She apologized for any inconvenience that her interference had caused and stated that she "just wanted to help." I noticed that Alemnesh's anger prohibited her from hearing Swaran's explanation; Alemnesh continued to convince the mediators that her perspective was accurate. To help Alemnesh hear and acknowledge Swaran, I turned to her and asked her to repeat what Swaran had stated. When the mediators realized that Alemnesh had not heard the statement, Swaran was asked to once again repeat what she had said. I then asked Alemnesh to restate Swaran's words. Once Alemnesh restated the other disputant's sentence, I could see from the expression on her face that she finally understood that Swaran was taking responsibility and apologizing for her involvement. This technique assisted Alemnesh in hearing and processing what Swaran had said. Both Alemnesh and Swaran discussed that they felt bad about the incident and agreed not to proceed in court.

e) Stage 4: Agreement (Closure)

The mediators assisted the parties in reaching closure and highlighted that miscommunication had blocked the immediate resolution of the conflict and had caused the incident to proceed to Private Information Court. The mediators helped the parties move beyond the discussion stage to contemplate techniques that were to be used in future dealings such as being cordial in the elevator and hallways. This guided the disputants in moving from the present situation to

future encounters. Swaran and Alemnesh admitted that miscommunication and inaccurately analyzing each other's intentions had enhanced the conflict. The disputants shook hands and agreed that the incident was resolved. They did not feel the need for a written document. I then asked the two women to complete my post-test and return both questionnaires. As the complainant and accused left the mediation session, they invited each other over for coffee.

f) Follow-Up

Two months after the session I contacted both Swaran and Alemnesh to assess whether mediation had helped them maintain good relations. Both women stated that since the mediation no problems had occurred between them. I sent a letter to Swaran, Alemnesh, and the court stating that the issues were successfully resolved between the parties and it was therefore recommended that the charges be withdrawn.

II) Case Example #2: Adi/Pete

a) Background

Adi (complainant) went to the Justice of The Peace in Etobicoke and charged Pete (accused) with assault. The parties came from racially and culturally different backgrounds; Pete was white (Irish) and his native language was English, while Adi was of Indian descent and English was his second language. Adi brought his wife to the mediation to assist in translation. I mediated this case with two volunteers from the Etobicoke Conflict Mediation Team (ECMT). Determining a suitable time was a problem for both parties. Case development was executed the same evening as the mediation. We asked

Pete to come to the Mediation Centre half an hour prior to Adi. He stated that he felt remorseful that he had hit Adi and wished he had controlled his temper. The charges being dropped were of utmost importance to him. The mediators then heard Adi's perspective of the incident while Pete waited in the main lobby. Adi relayed to us that he wanted Pete to take responsibility for his actions and hoped Pete now realized that he did not have the right to assault. The issue of racism was briefly mentioned to the mediators. Adi believed that perhaps he was not promptly served because he was Indian. This mediation session lasted three hours.

b) Stage 1: Introduction

The mediators sensed more resentment and anger from Adi than from Pete when the two parties entered the session. The mediators were cognizant from the case development that the complainant, Adi, was embarrassed and humiliated by being assaulted in his workplace. Respect and dignity were of utmost importance to him. We began the process by introducing ourselves and I requested the disputants' participation in my research study. After the complainant and accused completed my pre-test questionnaire, I informed them of the process of mediation, and established the usual behavioural guidelines. In this stage my co-mediator and I introduced the notion of caucusing. We felt that the anger and resentment in this case could halt the mediation process and the mediators would therefore be compelled to speak with each party separately. Caucusing could assist in bringing forth concerns and issues. Balancing the language barrier in the session by allowing Adi the time he needed to verbalize

his thoughts and feelings was necessary to ensure an equalization of power. The mediators asked Adi to begin explaining his side of the incident. This intervention impacted on Adi and Pete in two ways: first, the intervention reinforced the idea that Adi's opinions and thoughts were just as valued as Pete's; second, it assisted in balancing power differentials due to language.

c) Stage 2: Issue Identification (Story-Telling)

Adi's Story

Adi explained to the mediators that prior to the incident he had just begun working for a trucking company that transported large containers. On February 2, 1997 he went to the RX transport site to pick up two shipments. Pete had worked for years as a lift operator, loading containers onto the flatbeds. Upon entering the yard Adi was uncertain which truck would be helped first since there was no routine logical order. He raised his hand signaling which containers he desired and repositioned his truck in order to receive the shipment at his perceived angle. When Adi realigned his truck, Pete completely ignored him and continued to serve other customers. As time passed Adi grew extremely angry because he was not being served. Adi informed the mediators that Pete then climbed down from his lift and motioned to Adi to leave his truck. Pete approached Adi and asked why he had moved his truck. Adi explained to Pete that he was trying to straighten the truck so that loading would be simple and quick. Adi could see the frustration and anger building within Pete; he yelled at Adi for realigning his truck, made a rude gesture, and punched him on his hard hat. After the assault, Adi went to the office and reported what had occurred. After Adi was finished, I

summarized his perspective. I made a conscience effort to speak slowly because of the language barrier. By summarizing slowly I sensed that Adi felt that he was given the opportunity to finally relay his story. This technique assisted in balancing the power differential. Adi thanked me for listening to his perspective.

Pete's Story

Pete began by informing the mediators that Adi was not an experienced driver and had never loaded the containers by himself. This incident occurred the first time he came to load *solo*. Pete told us that when Adi entered the yard he had noticed his arrival but was preoccupied loading other trucks. As Adi drove into the yard he was perfectly aligned with the containers, thus making it simple for Pete to lift the shipment on his flatbed. When Pete saw Adi realigning, he could not comprehend why he would do so if he was already perfectly in place. Pete told the three mediators that his job was extremely stressful; the truckers' ability to maneuver the trucks effectively made his job easier. Pete climbed down from his truck and the two disputants began to argue. Pete admitted that as he and Adi argued he became furious. Pete claimed that Adi was creating additional labour for him; instead of Pete loading the truck within two minutes, the job required half an hour. Pete continued to ask Adi why he had pulled ahead so far that he could not properly load Adi's flatbed. Out of rage, Pete punched Adi on the head. After the incident Adi ran into the office to report the incident and Pete followed. Pete admitted that he made a mistake by punching Adi on the head and realized that he should have controlled his anger. One of my co-mediators summarized Pete's perspective of the incident. We then asked each disputant

whether we could proceed with the process, empowering them with this decision.

After both stories had been outlined, the three mediators identified the relevant issues on the blackboard to ensure that both parties understood the concerns. From Adi's perspective it was important that Pete recognize and assume responsibility for his wrong. He wanted Pete to know that individuals can not go around punching other people. Adi indicated that he desired respect and friendliness from Pete. Here, Adi declined to raise the issue of racism in front of Pete. When one of the mediators tried to explore this issue in front of Pete, Adi resisted and brushed it off. I believe that this caused Adi embarrassment and shame. He retreated from his accusation of racism because he simply did not want to exacerbate the issues already on the table. Racism never re-arose as an issue. Pete's prominent issue was how the charge would adversely affect him. He realized that having a criminal charge could prohibit him from progressing to a higher paid position. He was also concerned about Adi's method of communicating, the positioning of his truck, and awareness of the time constraints inherent in loading trucks.

Areas of agreement became evident from the story-telling stage. The mediators noticed that Pete and Adi desired the immediate resolution of the incident and did not want the involvement of the criminal court system. Pete and Adi agreed that they felt they could work out their concerns. Both disputants acknowledged that a wrongful assault had occurred. I then asked if either disputant had any other concerns that he would like to discuss. Adi responded to this question by stating that he needed certain things from Pete in order for this

incident to be resolved; a letter of apology, priority service, and respect from Pete.

d) Stage 3: Discussion (Problem Solving)

The mediators used the blackboard to record and thoroughly discuss each disputant's concerns: one column for Pete and the other for Adi. One mediator stood and wrote while my co-mediator and I sat with the disputants. As each issue was explored an X was drawn over the word. To explore each issue we used a rotation process to ensure fairness. Once every concern was discussed we asked the disputants to brainstorm for viable solutions; this technique empowered the disputants by allowing them to arrive at a mutually agreeable resolution. Pete began first since Adi had initially told his story. Disagreement arose when the issue of communication was discussed. Pete felt that to communicate effectively which container Adi desired, he should have come out of his truck. Adi believed that the use of gesturing was adequate. The mediators assisted in resolving this difference by helping each individual communicate his feelings and thoughts arising from the issue, and giving each ample time without interruptions from the other disputant. At one point I suddenly had to interrupt Adi's remarks to ask Pete politely to refrain from gesturing and commenting. Both Adi and Pete smiled at my comment because they became aware that irritability brings out the worst in individuals.

As the three-hour mediation session progressed, the parties began speaking to each other instead of each directing his comments toward the mediators. I felt that the point at which tensions significantly diminished was

when Pete turned towards Adi and said, "I am very sorry for punching you in the head and I would very much like to resolve my mistake." By Pete admitting his mistake he, in Adi's view, was assuming responsibility for his actions. Adi and Pete discussed Adi's desired solutions in order to move forward: written apology, respect, and priority service. Pete stated that he had two requirements: first, in the future, Pete needed Adi to locate himself at the rear of the truck to indicate which container he required; second, he wanted Adi to leave his truck aligned with the containers unless otherwise advised. Both agreed to meet the each other's needs.

e) Stage 4: Agreement (Closure)

The three mediators assisted the parties in reaching closure by articulating what had been outlined and resolved in the third stage. Once again we used the blackboard to illustrate these facts. It became apparent that prior to the mediation session hostility halted the path for proper communication patterns which resulted in increased anger and negative feelings. Consenting to a written agreement gave the parties the opportunity to outline clearly what they required for a complete restitution and reparation. The terms and conditions of the written agreement were as follows: 1. a written apology from Pete for the incident 2. priority service for Adi by Pete, 3. respect and friendliness from Pete to Adi, 4. Adi would stand at the back of his truck to indicate his orders and 5. Adi would leave his truck in position unless otherwise advised. The mediators asked the disputants to envision the next encounter and then describe it to us. This technique helped Pete and Adi form new methods of interaction. I asked the

disputants to read over the document and sign. We witnessed the signatures. I then asked the disputants to complete the post-test.

I believe this was a strong written agreement because it was balanced and specific. It clearly stated the needs of both parties, what each individual gave up and what each received. Pete and Adi shook hands, smiled at each other and then strolled out of the session.

f) Follow-Up

Two months after the mediation session I contacted both Pete and Adi to inquire about the agreement. They each told me that they were fulfilling the conditions of the document. I then sent a letter to Pete, Adi, and the court stating that the issues were successfully resolved between the parties and it was therefore recommended that the charges be withdrawn.

III) Case Example #3: Susan and Alan/Steven and Kim

a) Background

Susan and Alan, husband and wife (complainants), had gone to the Justice of the Peace and charged Steven and Kim, their tenants (accused), with threatening bodily harm. I decided to use this case because threatening bodily harm and an assault charge are very similar in nature. Threatening to harm another individual may in fact lead to an assault. The incident arose from a landlord/tenant dispute: Steven and Kim had been living in the basement of the complainants' residence. Case development was done the same evening as the mediation due to time constraints. The complainants arrived half an hour prior to the accused. Susan and Alan then waited in the central office while my co-

mediator and I heard the accused's perspective of the incident. The case development and mediation session lasted three hours.

b) Stage 1: Introduction

Upon entering the mediation session, we sensed intense hostility between the parties. We instructed the disputants where to sit; we placed ourselves between the parties. I believe that this technique assisted in minimizing the irritability in the room. I noted that as the disputants seated themselves, angry glances passed from person to person. At that moment I realized that strict guidelines would have to be followed to ensure a safe environment in which each disputant could express himself or herself freely. My co-mediator and I began the session by introducing ourselves and thanking the parties for pursuing mediation. I described my study and asked the parties to participate. All disputants were willing to assist me. After the pre-test was distributed and completed, I informed the parties of the ground rules to ensure a successful mediation. I informed the disputants that if any of them felt they required a break, they merely had to tell the mediators. Sensing that emotions could flare up, I mentioned that the mediators might need a break to caucus with each other or with one party at a time. I then asked which party would like to begin telling their story; both agreed that Susan and Alan should begin. I kept track of the facts using the Mediator's Notes form.

c) Stage 2: Issue Identification (Story-Telling)

Susan and Alan's Story

Susan and Alan informed the mediators that they had been involved in a landlord/tenant relationship with the accused for about three years. Steven and

Kim had been tenants of Susan and Alan in two of their homes. In the first residence the accused were very clean and quiet. Susan had spent a significant amount of time in the accused's basement apartment and had been invited to all of Steven's and Kim's gatherings. When Susan and Alan sold the house and bought another home, they asked Steven and Kim to come with them and once again reside in the basement. Steven and Kim consented since they had enjoyed living with the complainants. All parties agreed to the following terms because the basement of the new house was not completed: Steven and Kim would structurally complete the basement and in return they would receive two months free rent and six months free food. The complainants informed the mediators that in the second residence the accused were unkempt and extremely noisy. When the landlords noticed the disturbances progressing they asked Steven and Kim to vacate. The tenants became upset and threatened to hurt both of them. Steven and Kim left the complainants' residence, taking a bedroom set, microwave, drapes, and tools. The complainants insisted on having these items returned or receiving \$800.00 in cash. As Susan and Alan finished their story I noticed the anger on their faces and they stared into the accused's eyes. My co-mediator then summarized the story to ensure that we had understood the sequence of events and all relevant facts.

Steven's and Kim's Story

Steven and Kim stated that they had lived with Susan and Alan for three years and had thought they had a superb rapport with their landlords. As the accused made this statement they turned to the other party with disbelief and

frustration on their faces. The accused relayed to the mediators that they felt betrayed by the complainants since they had thought them to be friends. Steven and Kim continued their story by stating that when they all moved into the second house, there was a verbal agreement that the accused would complete the basement for a reduction in rent. Steven and Kim felt that they had had a good relationship with their landlords until they were asked to vacate. The accused stated that while in the second residence Susan had given them a bedroom set and microwave. Kim then stated, "Alan had no idea what Susan was doing and he had no idea that she gave us the furniture." As Kim verbalized her thoughts tears ran down her face. "We are not thieves," she screamed. Steven and Kim asked the mediators if they could have a few moments to themselves. I asked if they needed any assistance; Steven and Kim responded by claiming that they needed a few minutes to discuss the situation amongst themselves.

After about ten minutes my co-mediator and I reconvened the mediation session. Steven and Kim continued with their story. The couple informed the mediators that Susan had called the police two days after they vacated; they questioned why she waited. Kim stated that both parties threatened each other when the couple moved; the threats were out of rage. Steven and Kim informed us that once they had moved they refurnished their new apartment and had given the bedroom set to Steven's parents and the microwave to their friend. The items therefore could not be returned. Once the story was completed, I summarized the facts to ensure that the mediators had a complete understanding of the situation.

With both stories were completed, using neutral language, I identified the significant issues for the disputants. It was evident that Susan and Alan felt betrayed by the tenants of whom they once thought so highly since, in their opinion, they stole belongings and then threatened to hurt them. They believed that they had been deceived. The complainants wanted their microwave, bedroom set, and drapes to be rightfully returned. The central issue for Steven and Kim was that they were being wrongfully accused of stealing. Both stated that they had not stolen the items but that they had been given by Susan. The accused repeated several times that they just wanted to be left alone. The overriding theme throughout both disputants' stories was that each couple felt betrayed by the other. This was extremely hurtful since each felt that the other was their friends. My co-mediator and I then checked with the parties to ensure all important issues were mentioned. This gave them a feeling that they were in control of the process.

d) Stage 3: Discussion (Problem Solving)

The parties agreed that the issue of betrayal was the most pressing issue. Using a rotation process each disputant relayed to the others how they felt about the incident and the others' perceptions. As thoughts and feelings were identified, it became clear that each couple had developed a negative stereotype of the other. Susan and Alan perceived Steven and Kim as criminals, while Steven and Kim perceived Susan and Alan as deceptive and untrustworthy landlords. The use of open-ended questions and probing assisted in eliminating the perceived negative images and in restoring proper communication. I noted

that as soon as each couple envisioned the other as human, a common ground was found. The disputants realized the hurt the situation had caused. I noticed that as soon as Susan mentioned that she did not want to hurt "these kids," Steven and Kim redefined her as non-threatening and began to envision her as a caring individual. The fact that both parties outlined similar issues, rapport and trust between the couples became possible in the context of the mediation. This helped in building rapport and trust between the couples. We assisted the disputants in exploring underlying interests by asking questions and moving them through the various stages of the process. Agreement was reached when I pointed out to the parties that perhaps there had been miscommunication about the items. My co-mediator and I assisted the parties in discussing the miscommunication that may have occurred. Susan commented that she thought she had told Steven and Kim that they could just use the items, not keep them. Then she said, "Maybe they did not hear what I said or maybe I did not say what I meant." Similarly, Steven admitted that maybe he had jumped to conclusions instead of confirming what Susan had meant. I summarized this discussion by stating that individuals have often misunderstood one another or have not stated what is actually intended, instead assuming the other party would understand. By clarifying I assisted the parties in fully understanding that miscommunication caused problems.

The mediators discussed with the disputants what each wanted and what each individual would be prepared to give. We explored the importance of compromising to reach a mutually satisfying agreement. This spurred the

disputants to begin discussing what each needed and what each individual was willing to give in order to resolve this disagreement. Susan and Alan stated that they really wanted the bedroom set and the microwave returned. Both were willing to forgo the drapes. Steven and Kim hesitated and then mentioned that the only item that was possible to return was the microwave since Steve's parents had sold the bedroom furniture. Susan and Alan appeared extremely disappointed and mentioned that they wished Steven and Kim had not given away the furniture. After a few minutes Susan and Alan stated that they were willing to accept only the microwave and did not want the charges to proceed in court. All parties agreed that this issue was resolved.

e) Stage 4: Agreement (Closure)

My co-mediator and I assisted the disputants in reaching closure and in identifying what each party had come to realize. It was evident that each party had not been communicating what they intended to express. Threats of bodily harm emanated from the explosion of anger. My co-mediator and I encouraged the parties to continue listening to one another in order to reach a complete and satisfactory agreement. We assisted them in moving beyond discussion to the final stages of the mediation process. This assisted them in reaching closure. All parties felt that a written agreement was necessary in order to outline clearly where, when, and how the exchange of the microwave should occur. The terms and conditions of the agreement were as follows: 1. the microwave would be returned to Susan and Alan on Sunday August 30, 1997 at 2:00 PM at Safeway grocery store. 2. Susan and Alan agreed not to communicate directly or indirectly

with Steven and Kim. 3. Steven and Kim agreed not to communicate directly or indirectly with Susan and Alan. I believe the written agreement was strong since it was precise and directly outlined what each party would receive and what each would give. After the document was drafted and signed I thanked the parties for engaging in mediation and asked them to complete the final questionnaire. When each party left, the mediators complemented them for their effort. This made each disputant feel that they had contributed to a positive process. Steven and Kim then left the mediation session and Susan and Alan followed.

f) Follow-Up

Two months after the mediation session, I contacted Susan and Alan and Steven and Kim to ensure that the agreement had been followed. Both parties informed me that the microwave had been returned to Susan and Alan as planned. The conditions of the no direct or indirect communication between the parties had been followed. I sent a letter to Susan and Alan, Steven and Kim, and the court stating that the issues were successfully resolved between the parties and it was therefore recommended that the charges be withdrawn.

Conclusion

The implementation of the practicum mediations was generally consistent with the plan outlined in chapter 4. Variations in the practicum plan were as follows: 1) in three of the eight cases, case development was done the same day as the mediation, 2) pre-test questionnaires were not mailed out to disputants, 3) the story-telling stage was brief for the cases where case development and mediation occurred the same day, 4) in the follow-up stage, form letters were sent

not only to the court, but also to victim and offender stating the result of the mediation and 5) results were only sent to those disputants who requested a copy. The results of all eight cases, including detailed results of the three highlighted cases, will follow in chapter 6.

Chapter 6 - Results

This chapter discusses the results of the three mediation objectives and the four learning objectives outlined in chapter 4. This is done through detailing the results of the three highlighted cases, in addition to presenting the results of all the eight cases mediated in the practicum.

The Three Mediation Objectives

The three mediation objectives were as follows:

a) Reducing anger

The State Anger Scale (SAS) was used to evaluate whether mediation reduced the complainant's and accused's level of anger before and after mediation. The scores for the pre-test and post-test represent how the disputant felt before and after the mediation process. A greater number for the pre-test and a smaller number for the post-test signified a trend toward a reduction in anger and irritability. In discussing the results, the letter C represents the complainant and the letter A signifies the accused.

b) Writing an agreement; and

c) Fulfilment of the agreed upon restitution plan

The Four Learning Objectives

The four learning objectives were as follows:

a) Use of neutral, non-judgmental language;

b) Linking the various stages in mediation;

c) Allowing disputants to process each stage fully to arrive at a mutually agreeable resolution; and

d) Maintaining appropriate control of the process and allowing the disputants to control as much of the process as possible.

These objectives will be discussed together rather than individually.

Results of the Three Case Examples

I) Case Example #1: Swaran/Alemnesh

Swaran's and Alemnesh's reduction of anger was the first mediation objective that was evaluated. The pre-test component of the State Anger Scale (SAS) (Appendix A, p. 1-4) was consistent and reflected the hypothesis. On the pre-test both disputants scored 25/60. On the post-test questionnaire Swaran scored 17/60, while Alemnesh scored a total of 15/60. Two additional questions were posed on the post-mediation questionnaire to decipher further whether mediation would assist in making the disputants feel less angry with the incident: 1. Were you satisfied with the outcome of the mediation? 2. Did you feel that the agreement was fair to both the complainant and accused? Swaran and Alemnesh both answered "yes" to being satisfied with the outcome and believing the agreement was fair.

Writing an agreement was the second mediation objective that was evaluated. Although a written agreement was not drafted, it appeared that the disputants proceeded through a process of understanding and forgiveness. The complainant and accused left the mediation session with a sense of peace. This was evident by observing them shake hands and state that the conflict was resolved. It was recorded on the Agreement in Mediation form (Appendix A, p. 5) that this case was successfully completed in the first session.

Fulfilment of the agreed-upon restitution plan was the third mediation objective that was assessed although in this case there was no restitution. In any event, in the interest of follow-up, three months after the mediation both parties were contacted to determine how they were feeling since the mediation and whether they had encountered each other since the session. Swaran and Alemnesh declared that after the mediation they had coffee together to build a positive relationship. It was indicated on the Fulfilment of Agreement form (Appendix A, p. 9) that both disputants had successfully completed the verbal agreement.

Upon completion of the mediation the co-mediators filled out the Mediation Summary Form (Appendix A, p. 7) and the Mediator Evaluation Form (Appendix A, p. 8). The first form, Mediation Summary Form, assisted in clearly outlining that the main issues for the participants were respect and safety. The mediators learned that it was important to move the discussion from focusing on blame to what both parties could do to improve circumstances in the future. The mediators also discussed when the best time was to present a questionnaire to the parties. In this case, stage 1 (introduction) of the mediation process was interrupted to ask the disputants to complete the questionnaire. Both mediators felt that this detracted from the case.

The second form, Mediator Evaluation Form, was a useful tool in evaluating the four learning objectives. Strengths and weaknesses were clearly identified and methods of enhancing skills were discussed. The first learning objective, use of neutral language, was recorded as "doing well". The second

objective, linking the various stages of mediation, was slightly weaker and therefore was marked "okay". The third, avoid rushing to solutions, was noted as "needs improvement"; disputants needed to process each stage fully. The fourth objective, keeping the discussion moving, was marked as "needs improvement". Significant improvement was needed in keeping the discussion flowing smoothly. It was mentioned that a mediator should not raise their voice or display feelings through facial expressions, as was the case on one occasion. Calmness needed to be modeled for the disputants.

II) Case Example #2: Adi/Pete

The first mediation objective that was evaluated, the reduction of anger, resulted in a trend toward a reduction in anger for the complainant. On the pre-test component of the State Anger Scale (SAS) (Appendix A, p. 1-4), the complainant scored 31/60, while on the post-test the result was 15/60. This disputant was satisfied with the outcome of the mediation and felt that the agreement was fair to both parties. The accused's results were as follows; 17/60 on the pre-test and 18/60 on the post-test. Given the insignificance of a one-point change there was in effect no change from the pre-test to the post-test. The fact that the accused's scores were constant from the pre-test to the post-test may have been due to the anger and frustration he felt throughout the whole process, having been charged for an offence. The resulting anger may not therefore have subsided in a mere three-hour mediation session. Although Pete was relieved to have the charge withdrawn, the process had not been extensive enough to rid his anger. Nevertheless, Pete indicated that he was satisfied with

the outcome of the mediation and believed the agreement to be fair to both himself and Adi.

The second mediation objective, writing an agreement, was accomplished in this mediation session. The written document assisted the disputants in clearly outlining their solutions. Complete understanding and forgiveness was evidenced when Pete, during the mediation, wrote an apology. Findings were recorded on the Agreement In Mediation form (Appendix A, p. 5). This case was successfully completed in the first session.

Fulfilment of the agreed-upon restitution plan was the third mediation objective that was assessed. Two months after the mediation both parties were contacted to determine if the agreement was being honoured. Pete and Adi stated that their working relationship was respectful and satisfactory. The Fulfilment of Agreement form (Appendix A, p. 9) indicating that the disputants had successfully completed the agreement was filled out.

After the completion of the mediation the Mediation Summary Form (Appendix A, p. 7) was utilized as a debriefing tool. The mediators felt that the main issues for Adi were respect and obtaining an apology from Pete. Pete's main concern was eliminating the criminal charges. As the case was reviewed the mediators believed that there had been an overlap between case development and story-telling which caused the disputants to become frustrated with the process. The mediators felt that if case development was to take place the same night as the mediation, the case development should have been altered to halt the continuous repeating of the stories. In lieu of separate case

developments for each party, they could have been done in the presence of both disputants. It was noted that the turning point in the mediation arose from Pete's apology.

The co-mediators discussed the impact that Adi's wife, who acted as interpreter, had on the mediation process. It was felt to be beneficial for an interpreter to be present since Adi's command of the English language was poor and he required translation on key terms such as compromise. This forced the mediators to slow down the mediation process so that Adi could understand the entire process. Further, his wife acted as a support system. The unexpected presence of Adi's wife however, was a surprise to the mediators and the accused. Although Pete consented to having Adi's wife in the mediation, Adi obtained emotional support, while Pete had none. The mediators felt that this unequal power distribution could have negatively impacted the mediation process. It appeared that this finding materialized in the accused's post-test scores indicating no reduction in anger.

The Mediator Evaluation Form (Appendix A, p. 8) was then completed in order to fulfil the four learning objectives. The first objective, using neutral language, was marked on the form as "doing well". Similarly, linking the various stages of mediation was checked as "doing well". Weaknesses lay in the third and fourth objectives. In the third, the co-mediator marked "okay" for allowing disputants to process each stage fully and allowing disputants to discuss emotional issues to arrive at a mutually agreeable resolution. The fourth objective, appropriate control of the process, was marked "okay" referable to

whether the parties had been helped in identifying and articulating their underlying needs. The mediators discussed that improvement was needed in allowing the parties to have more control of the process.

III) Case Example #3: Susan and Alan/Steven and Kim

The pre-test and post-test questionnaires (Appendix A, p. 1-4), evaluated the reduction of anger on both Susan and Alan and Steven and Kim. The pre-test score for Susan and Alan was 31/60, as compared to 19/60 for the post-test. This was consistent with the hypothesis that mediation assisted in reducing the level of anger participants experience. The complainants marked that they were satisfied with the outcome and felt that the agreement was fair to both parties. Steven and Kim scored 30/60 on the pre-test, yet the result of the post-test rose to 50/60. It appeared that since Steven and Kim were the accused, there was extreme anger and agitation on their part which had not been completely alleviated by the mediation. The three-hour mediation session may not have been adequate to calm and make the accused feel less angry about the situation. Although the mediators tried to balance power, the accused may have felt coerced into an agreement simply to eliminate the charges. The accused indicated that they were not satisfied with the outcome of the mediation and did not feel the agreement was fair. This may have been as a result, in part of having to get back the complainants' microwave from their friends and return it. The couple added on the form that the "other party does not agree on anything; do not understand."

Writing an agreement was the second mediation objective that was

measured. It represented that a resolution had been reached despite feelings by the accused that they were misunderstood. It was recorded on the Agreement in Mediation form (Appendix A, p. 5) that this case was successfully completed in the first mediation.

Fulfilment of the agreed-upon restitution plan was the third mediation objective. After the return of the microwave, both parties were contacted to confirm the exchange of the microwave. The disputants stated that the exchange had been completed without any problems. The Fulfilment of Agreement form (Appendix A, p. 9) was then marked indicating that both parties had completed the written agreement.

After completing the mediation the mediators debriefed by filling out the Mediation Summary Form (Appendix A, p. 7). It was noted that when each party observed the other's emotions, positional and uncompromising thought patterns began to diminish. It became evident that when Kim began to cry, Susan realized that Kim was hurt and that compromise was necessary to reach a reasonable solution. The mediators also discussed that understanding was acquired when each couple realized that there had been a significant amount of miscommunication and that intentions had not been clarified.

The mediators completed the Mediator Evaluation Form to assist in evaluating the four learning objectives. The first objective, using neutral language, was marked as "doing well". Similarly, linking the various stages of mediation was noted as "doing well". It discussed that work needed to be done on the third and fourth learning objectives; avoiding rushing to solutions and

appropriately controlling the process. It was felt that the disputants were not given adequate time to process each stage fully and there was difficulty in keeping the discussion moving smoothly. These two learning objectives were marked as "needs improvement".

Results of all Eight Cases

The results of all eight cases are presented below with respect to both the mediation and learning objectives outlined at the beginning of the chapter.

I) Mediation Objective - Reducing Anger

Figure 1

The State Anger Scale

Cases	Complainant Pre-test (out of 60)	Complainant Post-test (out of 60)	Accused Pre-test (out of 60)	Accused Post- test (out of 60)
1	22	15	19	20
2	27	27	30	30
3	34	31	19	19
4	31	15	17	18
5	31	19	30	51
6	34	33	18	17
7	29	23	40	19
8	25	17	25	15

In the first case C scored 22/60 on the pre-test, 15/60 on the post-test and A scored 19/60 on the pre-test, 20/60 on the post-test. In the second case, C scored 27/60 on the pre-test, 27/60 on the post-test and A scored 30/60 on the pre-test, 30/60 on the post-test. In the third case, C scored 34/60 on the pre-test, 31/60 on the post-test and A scored 19/60 on the pre-test, 19/60 on the post-test. In the fourth case, A scored 31/60 on the pre-test, 15/60 on the post-test and A scored 17/60 on the pre-test, 18/60 on the post-test. In the fifth case, C scored 31/60 on the pre-test, 19/60 on the post-test and A scored 30/60 on the pre-test, 51/60 on the post-test. In the sixth case, C scored 34/60 on the pre-test, 33/60 on the post-test and A scored 18/60 on the pre-test, 17/60 on the post-test. Since there were charges and counter-charges in the seventh and eighth cases, the initial charge was used to label the disputants as either complainant or accused. In the seventh case, C scored 29/60 on the pre-test, 23/60 on the post-test and A scored 40/60 on the pre-test, 19/60 on the post-test. In the eighth case, C scored 25/60 on the pre-test, 17/60 on the post-test and A scored 25/60 on the pre-test, 15/60 on the post-test.

The above results indicate that seven complainants scored higher on the pre-test than the post-test. One score was the same for both the pre-test and the post-test. For the accused, three scores were higher on the pre-test than the post-test, three were lower on the pre-test than the post-test, and two scores were the same for both the pre-test and the post-test. This meant that 7/8 (87.5%) of the complainants felt less annoyed and irritated after the mediation, while only 3/8 of the accused (37.5) were less irritated in the aftermath. The

results of the effect of mediation on complainant can be found in Figure 2 and the results of the effect of mediation on accused can be found in Figure 3.

Figure 2

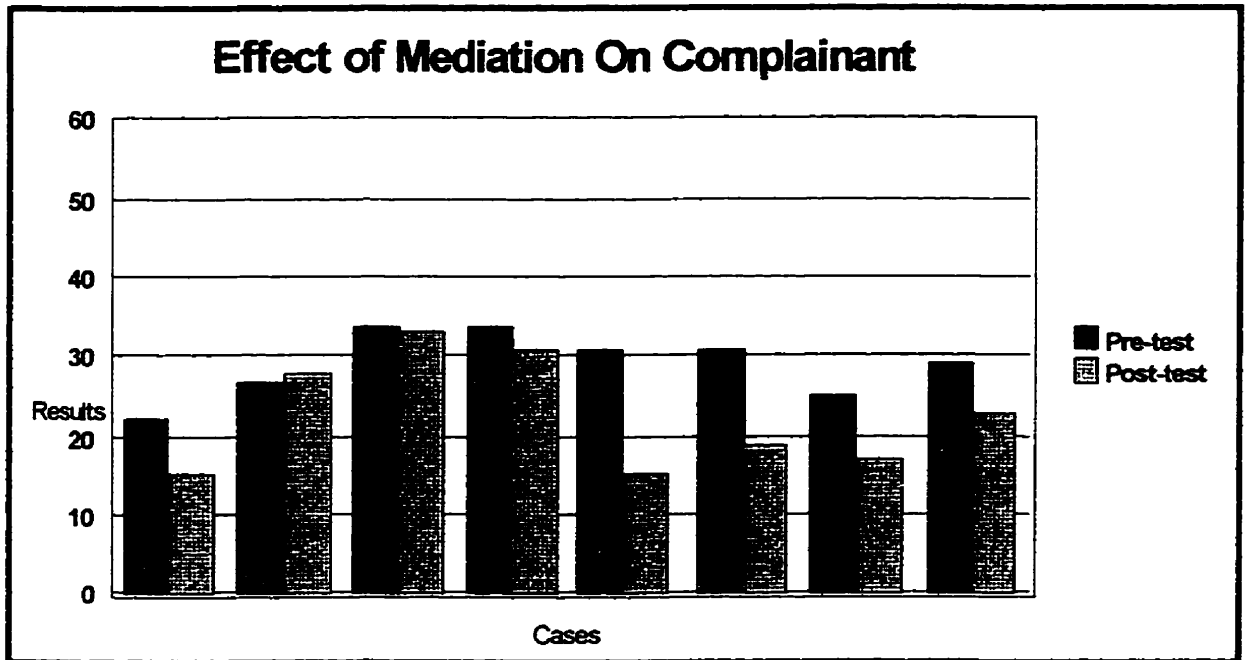
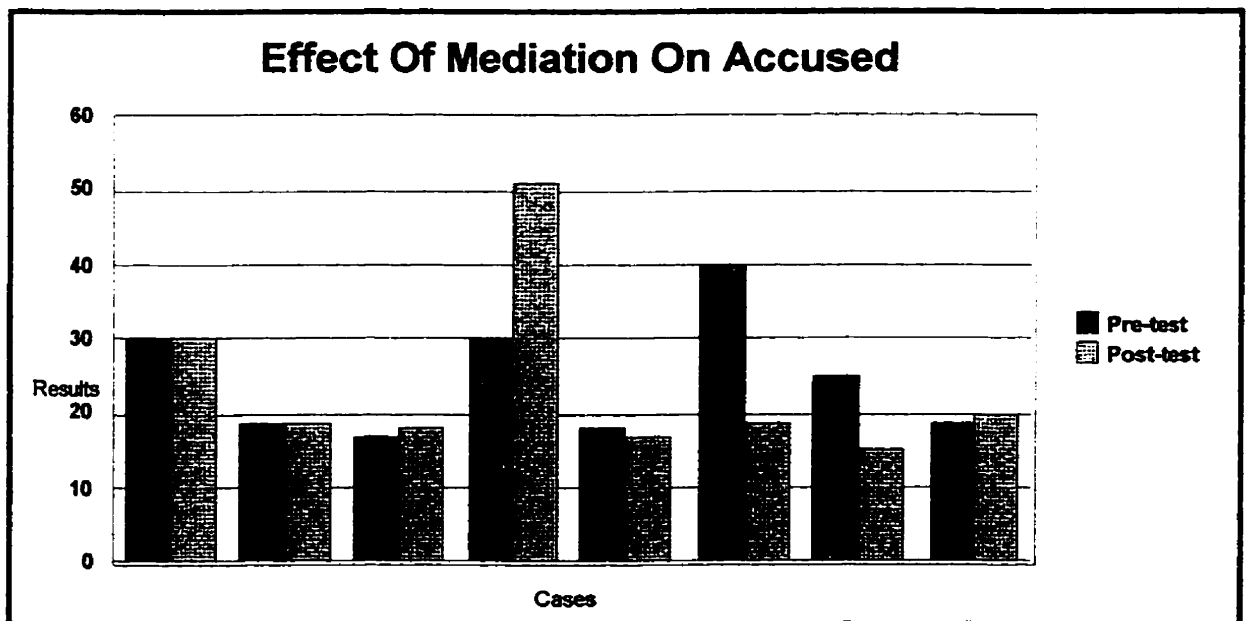


Figure 3



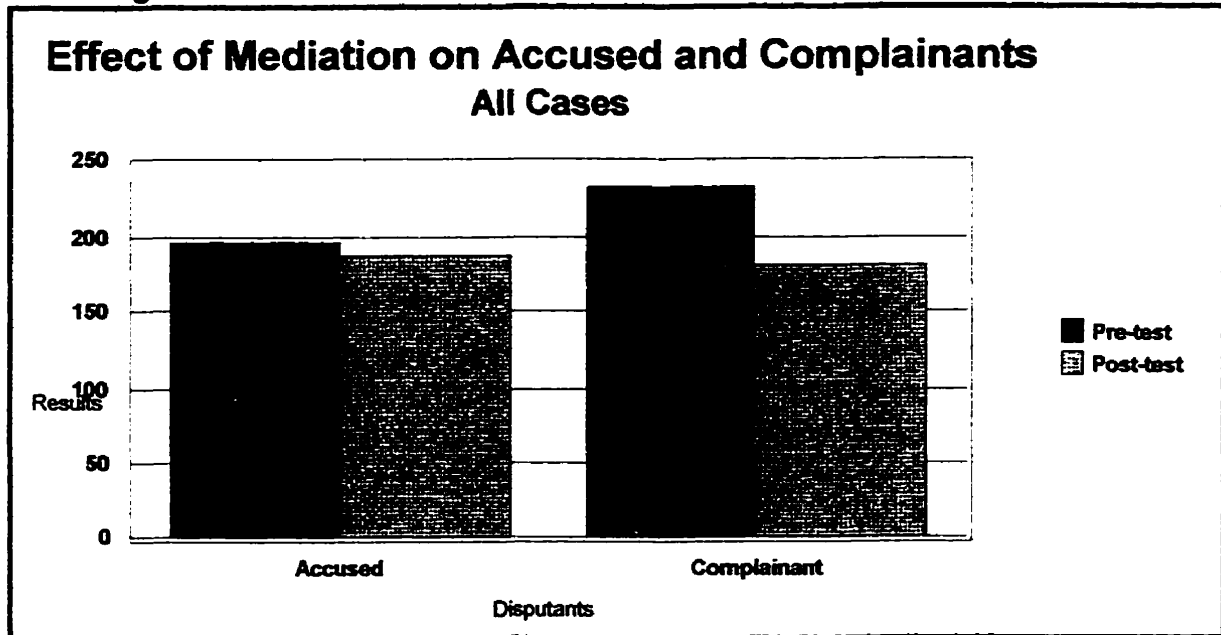
There was an apparent six point variation in the complainants' irritability and anger after the mediation. Although it appeared that the complainants were much more likely to benefit from the mediation process, it was uncertain as to whether this improvement was large enough to claim that mediation reduced irritability and anxiety. This finding was compared with normative data (Spielberger & London, 1984, p. 629). These authors evaluated the State Anger Scale for 1252 working adults. Mean scores for a subsample of working adult women between the ages of 23 and 32 years was 13.71. For a subsample of working adult men between the ages of 23 to 32 the mean score was 14.28. The finding of the mean score in this report, 23/60, was higher than the normative data. This six point variation demonstrated a general trend toward a reduction in irritability and anger at the completion of the mediation process.

When analyzing the sum scores of the accused there was only a one point variation from the pre-test to the post-test. This slight difference did not reflect change in anger as a state. Therefore, the accused were just as irritable and angry from the time they began mediation to the point at which mediation was completed. There were three possibilities for this result. First, perhaps the accused were more likely to hold greater anger and frustration because they had been accused and faced dealing with the consequences of a criminal charge. Mediation sessions were not long enough to diminish this extreme emotion. Second, the accused could have maintained a considerable amount of anger because he or she did not feel entirely in the wrong. Third, the idea of being penalized could have added further anger and irritation. After the mediation

session the offender had to be concerned with restitution.

A comparison of the effect of mediation on complainants and accused is exhibited in Figure 4.

Figure 4



While viewing the graph it becomes clear that there is a greater trend in reduction in irritability for the complainants than for the accused when comparing the pre-test and post-test.

The average pre-test and post-test scores for both the complainant and the accused were calculated. The average results for the complainant for the pre-test was 29/60 and 22/60 for the post-test. For the accused, 24/60 was the tabulated result for the pre-test and 23/60 for the post-test. The average pre-test score for the complainant was higher than the post-test. This meant that there was a trend towards decreased anger after the mediation process. There was no change for the accused. The Swaran/Alemnesh case may be juxtaposed to the

Pete/Adi case to compare scores where agreements were drafted and scores where agreements were not. When analyzing these cases, scores did not relate to whether an agreement was put in writing or not. In the Swaran/Alemnesh case, the pre-test score was lower than the post-test score. In the Pete/Adi case it was only the complainant who scored lower on the post-test. The average results for the complainant and accused in all cases before and after the questionnaire can be found in the following chart.

Figure 5

State Anger Scale - Average Results

Complainant Pre-test (out of 60)	Complainant Post-test (out of 60)	Accused Pre-test (out of 60)	Accused Post-test (out of 60)
29	22	24	23

II) Mediation Objective - Writing An Agreement

In 3/8 (37.5%) of the cases a written agreement was drafted in the first mediation session. In these cases it was thought that the complainant and accused understood one another's perspective and found mediation empowering. After the mediation was over the disputants commented that they understood each other's perspective and felt positive about the other individual. Although no written resolution resulted from 2/5 (40%) of the cases where agreements were reached, mediation resulted in verbal agreements. In these cases it appeared that the disputants had come to an understanding and had proceeded through a process of communication. They believed here that a verbal agreement suited their needs. Three common factors were apparent in the 3/8 cases that did not

reach agreement. First, the disputants entered the first mediation session with a negative attitude and the assumption that this process would not work. Second, the disputants' anger stopped them from pursuing the entire process of mediation. Third, they were uncompromising and they were set on having the courts determine the outcome of the case. All disputants met once to discuss the incident, regardless of whether a written, verbal, or no agreement was reached.

In the first case which did not result in any agreement, the disputants met for an hour at the agency to discuss the incident. Both parties were extremely hostile and refused to hear each other's perspective. Continuous interrupting occurred. The mediators therefore felt that this case was not suitable for mediation and stopped the process. The parties were advised to return to court on the remand date. In the second case, the complainant listened to the accused's story and began to argue with his issues and concerns. The complainant then informed the mediators that he wanted the courts to decide who was right and who was wrong. He did not wish to discuss the incident with the accused because he felt justice could only be served through the criminal justice system. In the third case, the disputants met for three hours to discuss the incident. A second mediation was arranged for the following week. The mediator received a phone call from the complainant's lawyer prior to the second meeting stating that his client wanted the accused to vacate the premises. The lawyer stated that mediating the assault charge would not resume until the Civil Courts decided whether or not the accused would vacate the house. The case was on hold for three months and was then returned to Private Information Court on the

remand date.

III) Mediation Objective - Fulfilment of Agreed Upon Restitution Plan

A few months after each mediation session which resulted in agreement, the parties were contacted to determine whether both the victim and offender had completed their respective restitution agreements. After reviewing the Fulfilment of Agreement chart (Appendix A, p. 10), the investigator concluded that 5/8 (62.5%) of all mediations were successfully completed in that their agreements were fulfilled. Of mediations which reached agreement, either written or oral, the fulfilment rate was 100 percent. 3/8 (37.5%) of mediations did not reach verbal or written agreements and consequently there was no fulfilment of agreement.

The Four Learning Objectives

The eight Mediation Evaluation Forms were analyzed (Appendix A, p. 9) to assess my strengths and weaknesses. The eight co-mediators observed that three main strengths emerged. The use of non-judgmental language (1A) was, in all of the eight forms, marked as "doing well". Second, the skill of assisting in restoring relationships rather than focusing on determining guilt or fixing blame (3E) was also assessed as "doing well". Helping the parties identify and articulate underlying needs (4E) was the third strength that was common among the forms. One of the co-mediators wrote on the bottom half of the form that the parties were encouraged to express interests and concerns and were provided with the forum to discuss the issues openly.

The first weakness that the eight co-mediators marked was my difficulty in keeping the discussion moving evenly (4A). Second, there was difficulty in not

rushing to solutions and in allowing the disputants to process each stage fully (3A). One co-mediator in particular noticed that when the parties came to an impasse, I became impatient and attempted to assist in the solution. Although the use of non-judgmental language was maintained, the co-mediators noticed impatience in body language and facial expressions. For example, in one mediation I had not agreed with a comment made by one of the disputants, and indicated such with a frown and nod of the head. After the session, I was told that too much passion was displayed and that there was a need to model calmness for the parties. My third weakness was a lack of ability to flow evenly from issue identification to discussion (2B). The co-mediators pointed out that there was discomfort when moving through the process from identifying the issues to verbalizing thoughts and feelings around the issues.

After four of the eight mediations were completed, a review of strengths and weaknesses was completed in order to clarify what skills needed to be maintained and what skills required improvement. The remaining four mediations were used to improve those skills that needed enhancement. The goal of improving mediation skills was successful. The remaining co-mediators marked the skills: flows evenly from the issue identification to discussion; allows disputants to process each stage fully; and keeps the discussion moving evenly, "okay" rather than "needs improvement". To further the first skill, keeping the discussion moving, the remaining four co-mediators allowed me to lead the discussion stage. This was the most difficult stage in which to maintain control of the process since each person's issues and concerns were being brought forth.

The second weakness in the area of allowing disputants to process each stage fully, was improved by consciously slowing down and not rushing from stage to stage. After each stage was completed, the disputants were asked whether they had any questions and whether they could move on to the next stage. In this way, the parties were allowed to move through the mediation process at their own speed. Careful attention ensured that my thoughts and feelings were not displayed in body language and facial expressions. To improve the third skill, flowing evenly from issue identification to discussion, notes for stage two to stage three were made prior to each mediation. This enabled me to consider phrases that would evenly lead from issue identification to discussion. For example, after issue identification (story-telling) was completed, I utilized a phrase such as, "Now that we have heard each person's story, we are going to begin discussing concerns and hopefully develop methods of handling them," in order to lead the mediation into the discussion (problem solving) stage.

Conclusion

The results of the practicum's eight mediation cases indicates that the mediation process is a viable alternative to the traditional criminal justice system, where the parties involved are willing to create their own resolutions. Although the results indicated that there was no measurable change in the accused's level of anger and there was only a trend toward a reduction of anger for the complainant, the fact is that five of the eight cases resulted in agreements. Of those five cases, all restitution obligations were completed. It can therefore be said that mediation gives disputants the opportunity to resolve their own disputes.

Where this opportunity is taken up, mediation allows disputants to create solutions which address their own needs. As the results indicate, where such solutions were arrived upon, the disputants in each and every case honoured their agreements thereby putting the responsibility of problem-solving back into their own hands, resulting in the constructive empowerment of the individual.

Chapter 7 - Summary and Conclusions

Chapter 7 consists of two sections. First, a summary of the practicum plan and its implementation will be presented. Second, conclusions about the practicum will be drawn. This involves comparing mediation literature to the experience of mediating in the practicum, discussing the accomplishment of both mediation and learning objectives, and presenting the strengths and limitations of the process as found in the practicum. Recommendations for future mediation work will conclude this practicum report.

Summary of Practicum Plan and Its Implementation

In fulfilment of the practicum, a number of steps were taken to both prepare for and implement the mediation practicum plan. Prior to the practicum, theories of restorative justice and its implementation through mediation were explored as an alternative to the traditional criminal justice system. Literature relating to victim/offender mediation was reviewed to understand the requirements of a mediation program and the impact of mediation on both victims and offenders. Incident-based and historical co-mediation models were outlined as the paradigms to be used for mediation. Mediation training, the devising of the practicum plan, and the mediation and learning objectives were then outlined. All of this was in preparation for eight cases which were mediated, their results explored in context of the mediation and learning objectives.

The restorative model of justice was compared to the traditional criminal justice system. It was found that the retributive paradigm tended to ignore injuries to victims, to communities, and to offenders. Victims did not have the

right to voice their opinions about the offence nor the opportunity to meet the individual who caused harm to them. Mediation within a restorative framework was devised to correct the wrongdoings of the traditional system by balancing the rights of victims, offenders, communities, and governments and assisting them in reaching resolution to crime. Restitution was to be agreed upon by both victim and offender and had to be acceptable to both parties.

Reviewing literature related to victim/offender mediation was necessary to understand past accomplishments and areas that needed further work. The review was based on general victim/offender studies since mediation programs aimed at addressing minor assaults have only begun to emerge. Two questions guided the investigation of the literature. First, was it possible to implement a victim/offender mediation program and how would one devise it? Second, what was the impact of mediation on both victims and offenders? With regard to the first question, it was found that staffing and training, time requirements, feasibility, participation in reconciliation, and communication were the five factors that trainees needed to consider in successfully mediating disputes. Recidivism, re-humanizing the offender, satisfaction, and completion rates were the four common factors in the literature when considering the impact of mediation on victims and offenders.

A detailed plan was devised prior to the practicum. Four learning objectives (using neutral language, linking the various stages of mediation, avoiding rushing to solutions, and appropriate control of the process) and three mediation objectives (reducing anger, writing an agreement, and fulfilment of the

restitution plan) were to be evaluated. The learning objectives were to be assessed by the completion of the Mediation Evaluation Form (Appendix A, p. 9). The mediation objective, reducing anger, was to be evaluated utilizing the State Anger Scales (SAS). Writing an agreement was to be evaluated utilizing the Agreement In Mediation form (Appendix A, p. 5). A Fulfilment of Agreement chart (Appendix A, p. 9) was created to assess the objective fulfilment of the restitution plan. The methodology consisted of three parts; case development, the mediation session, and follow-up.

The implementation of the practicum was generally consistent with the planned outline. Five variations made to the practicum plan were: 1) in three of the eight cases, case development was done the same day as the mediation; 2) pre-test questionnaires were not mailed out to disputants; 3) the story-telling stage was brief for the cases where case development and mediation occurred the same day; 4) in the follow-up stage, form letters were sent not only to the court, but also to victim and offender stating the result of the mediation and; 5) results were only sent to those disputants requesting a copy. While all eight cases were briefly summarized in this report, three were discussed in-depth.

The mediation objective results from all eight cases indicated that while there was a trend toward a reduction in irritability and anger for the complainants, there was no change for the accused. All of the five mediations that reached agreement resulted in completion of restitution. This may be due to the disputants feeling responsible for the completion of the agreements since they were the ones who devised it. Three common factors accounted for the three

cases which did not reach agreement: the disputants were continuously arguing with one another, they did not believe in the benefits of mediation, and they were uncompromising. Results from the learning objectives indicated that the three most commonly noted strengths were the use of non-judgmental language, assisting in restoring relationships rather than focusing on determining guilt or blame, and helping the parties articulate underlying needs. Difficulty keeping the discussion moving, not allowing the disputants to process each stage fully, and allowing facial expressions and body language to express thoughts and feelings were the noted weaknesses.

Similarities and Differences Between the Practicum Results and the Literature

Similarities and differences between results found during the practicum and those referred to in the literature will be discussed with regard to eight areas. These include the following: 1) communication; 2) time requirements; 3) vindictiveness of victims; 4) attitudes of offenders; 5) victims view of offenders; 6) the writing of agreements; 7) restitution and; 8) fulfilment of agreed upon restitution plans. It is important to note that results did not differ in all eight areas.

Communication is the first area which was found to be important in both the literature and the practicum. Umbreit (1992) noted that it was crucial for the offender to communicate openly about the incident and for the victim to outline the adverse affects the criminal behaviour had caused. Similarly, it was found in the practicum that it was important to both disputants to tell each other their perspective of the incident and how the dispute adversely affected them.

Time requirements is the second area in which both similarities and

differences existed in the literature and the practicum findings. In the literature, Umbreit (1989) noted that a significant amount of time was needed when dealing with minor assault cases. Both victims and the offenders required frequent contact prior to the actual mediation session. Similarly, findings from the practicum showed that questions needed to be answered prior to the session as to the process of mediation and how it differed from the courts. Further, an explanation of the process was necessary for the disputants' lawyers, since many disputants felt more comfortable engaging in mediation on advice from counsel. Yet, unlike Umbreit, this practicum did not find that the actual mediation sessions required a significant amount of time. In fact, a large majority of disputants wanted to enter mediation immediately after being referred to Downsview and desired to complete the process quickly. Sensitivity to the timing in which cases were mediated was another matter that differed from the literature. Mediators were cautioned to exercise sensitivity in approaching victims of minor assaults (Umbreit, 1989). It was suggested that several months must elapse prior to commencing victim/offender mediation. In the case of Conflict Mediation Services of Downsview the court dictated when each case would appear before the Justice of the Peace and hence the mediators did not have the opportunity to control for time.

The third common area in both the literature and the practicum results was that victims were not vindictive and self-serving. Both Galaway (1988) and Umbreit (1992) indicated that victims were reasonable and were not vindictive; eighty-six percent of victims in Umbreit's article (1992) victims believed that

meeting with the offender was helpful. Similarly, the results of this practicum report found that 87.5% of victims found that sharing his or her perspective of the incident was beneficial. Discrepancy existed between Umbreit's and Galaway's findings and the results from the practicum when it came to victims wanting to help the person who victimized them. The literature indicated that victims were concerned for helping the person who victimized them (Umbreit, 1992, 433). Yet, in this practicum report general concern for the offender's welfare was not present and counseling or rehabilitative services were never recommended by the victim. Complainants wanted to discuss the incident, reach an understanding, and arrive at a mutually agreeable resolution.

The fourth common finding between the literature and the practicum is the attitudes of offenders. Umbreit & Coates (1993) found that offenders tended to recognize his or her wrongdoing and apologize for the incident in order to resolve the situation and make things right (Umbreit & Coates, 1993, p. 571). They noted that the offender's apology was the primary focus. These findings were consistent with that of Heinz, Galaway, and Hudson (1976). Having the opportunity to meet with the victim, discuss the incident openly, and arrive at a mutually agreeable resolution gave the offender a heightened sense of control. In turn the verbal or written agreements were taken seriously and greater effort was made to complete the contracts. Similarly, it was found in this practicum that offenders wanted to apologize for their wrongdoings and resolve the situation. Having the opportunity to meet with the victim gave the offender control over his or her situation and in turn all verbal and written agreements were fully completed. Results of the

practicum showed however that offenders also wanted an apology from their victims. They wanted their victims to recognize and take responsibility for the fact that their actions may have precipitated the assault. Receiving an apology was therefore just as necessary as giving one; it symbolized shared responsibility. It appeared that this was important for the offender in minor assault cases because both disputants could have been physically harmed and personally humiliated by the incident.

The fifth area is the finding that mediation assisted the victim in viewing the offender in a positive light. Umbreit & Coates (1993) noted that the victim's irritability and fear of re-victimization was reduced when the offender was seen in a positive light (p. 576-577). Mediation allowed for greater understanding and less stereotypical views of the offender as a terrible criminal (Umbreit, 1989, p. 101). It was found that after mediation the victims were relieved that the incident had been resolved and had acquired an understanding of why the offence occurred. Umbreit (1992) also indicated that offenders showed a slightly lower level of satisfaction with the mediation process and mediators than the victims. Similarly, the results from this practicum report indicated that there was a reduction in anger and irritability between the pre-test and post-test questionnaires for the victims. This strongly suggested that viewing the offender in a positive light assisted in reducing irritability and anger for the victim. For the offenders, there appeared to be no statistically significant reduction in anger and irritability thereby indicating that they had a lower level of satisfaction with the mediation process than did their victims.

The seventh area of commonality is the type of restitution which was agreed upon by both victims and offenders. The literature found that the final contact generally included monetary restitution to the victim. Less common was community work service or behavioural requirements for the offender. Working for the victim was not a common practice since there was concern for safety and liability. Further, Hughes and Schneider (1989), found that judges and crowns rarely overruled disputants' decisions not to proceed in the courts. Similarly, the results of the practicum demonstrated that restitution agreements did not include community work service and or working for the offender. Further, behaviour modifications were required in some of the written agreements. For example in the Adi/Pete case, both agreed that Pete would treat Adi with respect and friendliness.

The sixth area of commonality between the literature and the results of this practicum report is the writing of an agreement. Umbreit's (1992) research outlined that in over half of the cases, 96%, that went to mediation resulted in restitution agreements. The results of this practicum report showed that 62.5% of the cases resulted in agreements. Of the five of eight cases that resulted in agreements only three resulted in a written agreements and two in verbal.

The eighth area is the offender's fulfilment of the agreed-upon restitution plan. The literature noted that offenders' involvement in the writing and implementation of agreements tended to make them feel responsible for successfully completing these agreements. Heinz, Galaway, & Hudson (1976) discussed that as compared to the traditional methods of prison and then parole,

those involved in mediation may have had greater success in completion rates (p. 154). Restitution rates were greater for offenders involved in the mediation process because it was seen as important to them to uphold their restitution agreements (Umbreit, 1992, p. 441). The negotiation and completion of restitution was a predominant symbol that validated the victim's experience and signaled to the offender that acknowledgment of wrongdoing had to be taken (Umbreit, 1989, p. 101). Similarly, results of this practicum experience indicated that all of the restitution agreements were completed by the offender. It appeared that the offenders were committed to acknowledging their wrongdoings and completing their agreements.

Accomplishment of Objectives

The mediation process did not fully accomplish what had been expected. Upon writing the proposed mediation plan the assumption was that both the victim and the offender would feel less angry after the mediation session. The belief was that the offender would feel relieved that criminal charges would not be pressed against him or her and that the victim would have the opportunity to state needs in relation to the crime. After co-mediating in eight cases it was found that victims felt less angry after the mediation session than did offenders. It appeared that complainants were much more likely to benefit from the process in this sense than the accused. This discrepancy could be accounted for by the greater anger the accused might have felt because of being charged with a criminal offence.

Another discrepancy between the perceived expectations and the outcome was in writing the agreement. It was believed that in cases where agreement

was reached, a written document would ensue. In practice, only three of the cases resulted in written agreements while two culminated in verbal agreements. The expectation that the majority of the cases would result in resolution and not proceed to court was met; five of the eight cases were resolved. As thought, 100% of the mediations that reached agreement had those agreements fulfilled by both disputants. The hypothesis that most mediations would help disputants come to a mutual understanding of the incident was correct. The majority of disputants informed the mediators that they left the mediation session with a positive feeling that the issues and concerns had been resolved.

Viability and Strengths and Limitations of Mediation

I) Viability

Conflict Mediation Services of Downsview has served the North York region for ten years, a region which encompasses a culturally and racially diverse population. After engaging in the practicum, it appeared that mediation was extremely effective and was a viable alternative to court. Mediation provided a forum for individuals from diverse ethnic backgrounds to come together and meet one another. This aided in reducing negative pre-conceptions and stereotypes about minorities. Relatedly, it was found that some of the disputants did not have a good command of the English language since they had just recently arrived in Canada. By utilizing mediators who spoke the same language as the disputants, an open atmosphere was created in which the disputant could express himself or herself and share his or her feelings with the other person. Disputants could take as little or as much time as was required to come to an understanding and/or

resolve the dispute. The court system did not provide individuals with the opportunity to relay concerns and often disputants felt overwhelmed in the process. Whether or not language assistance was required, mediation provided an arena in which to meet the other party and listen to his or her perspective. As each case proceeded it became obvious that true understanding emerged when one disputant came to view the other person as a human being and not just as a criminal. Court had not provided the opportunity for this understanding and transformation to evolve.

Mediation was also viable with this population because it assisted in resolving disputes outside the court system, thereby eliminating lawyer fees. Conflicts were settled more quickly and with less cost to the disputants outside the judicial system. Since many of the participants were new immigrants to Canada they did not have the funds to settle a conflict in court and may felt frustrated with the backlog.

It is the agency's belief that in order for complete resolution to take place, an understanding must be reached between disputants to ensure that future interactions within their communities be successful. As a community-based agency, Downsview was responsible to its communities by attempting to ensure that offences would not recur and that disputants would be able to function in the community without further conflict. This was based on the notion that it was only by arriving at a mutual understanding that both parties were able to leave mediation and return to their communities with a sense that resolution had been achieved. True resolution could only be achieved when all four elements (victim,

offender, community, government) were in harmony. Allowing the victim's voice to be heard, addressing the victim's and offender's needs and concerns, and assisting both parties in reaching a mutually agreeable resolution were important elements of mediation based on a restorative framework.

Based on the practicum experience the mediation model was found to be an effective tool in helping disputants reach an understanding and arrive at a mutually satisfying agreement. Still, as with other models, strengths and limitations existed.

II) Strengths of Mediation

The mediation model employed in this practicum can be said to have three strengths when viewed in contrast to the traditional criminal justice system or other models of dispute resolution. First, since mediators had the opportunity to meet the disputants in court prior to case development, there was greater insight into the concerns and issues of each disputant. Conversing with the disputants twice, at Private Information Court and during case development, provided the opportunity for the mediators and the participants to build trust and establish understanding. Second, the mediation model not only focused on resolving the present dispute, but aimed at improving future interactions. After each dispute was resolved the mediators asked the disputants to consider various methods of dealing with the other party in the future. Third, the process of mediation empowered the disputants and placed responsibility for the offence back into the victim's and offender's domain. Instead of the courts solely outlining restitution, the victim and offender had the opportunity to draft a mutually satisfying

agreement. Further, the mediation model allowed the victim and offender to lead the process and determine if mediation satisfied their needs. If either of the disputants believed that this process was not suitable for any reason, he or she had the power to halt the process and return to court.

III) Limitations of Mediation

There were five main limitations of mediation based on the experience at Downsview. First, the most critical limitation was that culture and language were not taken into account. A large majority of the disputants were born in other countries and English was not their native language. In some mediations it was necessary to repeatedly explain the mediation process, questionnaire, and terminology. The nuances of the English language also had to be explained within the context of mediation. Neither the mediation model nor the SAS Scale accounted for cultural or linguistic variation. While the use of same-language mediators assisted, it could not eliminate entirely the disadvantage or two disputants not conversant in the same language.

Second, the practicum plan did not take into consideration the method in which cases were received and the influence that had on the pre-test scores. The pre-test scores may have been skewed because in-court details of the case were discussed and disputants' were allowed to vent their frustrations prior to receiving the pre-test. By the time the pre-test was given disputants' anger may have diminished. Third, it appeared that mediation was unable to deal with lingering feelings of worry, trust, and resentment. Even though both disputants may have agreed to a written document, in some cases it appeared that the

accused still harboured some anger and wondered whether he or she could trust the complainant and the courts to eliminate the criminal charge completely. Fourth, in some cases the logistics of mediation were time-consuming in that there was difficulty co-ordinating schedules, disputants did not always arrive on time or at all, and parties were sometimes uncompromising leading to frustration for all involved. Fifth, a systematic lack of faith in mediation made it difficult to bring disputants together. For example, in court, the mediators had to convince and constantly reassure the disputant's that mediation was useful.

Recommendations for Future Mediation Work

After assisting and observing the development of victim/offender mediation in the North York Courts, it is evident that some development is required in the mediation program. Five recommendations for future mediation work are discussed below.

First, enhancements to the mediation diversion program may be made if the agency were to expand into the arena of police-laid charges. By being involved in both private information and police-laid charges, there would be a higher volume of cases and a greater opportunity to mediate cases that have serious allegations. On the other hand, cases involving police-laid charges could make disputants feel that if they did not engage in the process they would be viewed negatively. This is an important point since forcing disputants to mediate, whether real or perceived, eliminates the voluntary aspect of mediation. In essence the agency could be seen as ignoring the voluntary and collaborative aspect of mediation. Mediators however can deal with this by clearly outlining to

disputants that mediation is completely voluntary and that if at any point in the process one party does not wish to proceed, the mediators will stop the process. Further, the mediators are able to tell the disputants that they will not be penalized if they feel that court is better suited to address their needs.

Second, consideration should be given to annexing Conflict Mediation Services of Downsview to the courts. The relationship between the courts and the agency would certainly be strengthened since the agency would be part of the judicial system. All cases, whether minor or serious, could then be considered for mediation. The agency and the courts would jointly decide which cases would be appropriate for mediation and which ones would proceed to trial. On the other hand, being annexed to the courts could stifle the agency's autonomy and force the agency to function according to the court's agenda which often ignores victims' interests. Further, the agency's association with the judicial system could alter the public view. Conflict Mediation Services of Downsview could be perceived as biased, not a neutral third party. This problem however could be dealt with by the agency being actively involved in the implementation of the mediation program and clearly defining both its and disputants needs and interests in relation to the courts'. Further, the courts and the agency could seek to inform the public that while both work together to resolve conflicts, the courts do not hold power over the agency. Any such annexation would require clearly delineated responsibilities vis-a-vis the two bodies.

Third, the courts should reinforce written agreements reached in the mediation sessions by staying the charges for a period of a year. In this time-

frame, restitution agreements would have to be fully completed by victim and offender. The criminal charges would then be completely withdrawn assuming the agreement in question was fulfilled. Fourth, Downsview should actively solicit the Crown Attorney in the Toronto region to introduce mediation as a diversion program in the downtown Criminal Courts. By actively soliciting and educating the courts about mediation the agency would: 1) begin to develop a name for itself in the area of victim/offender mediation and; 2) possibly implement a wider victim/offender mediation program thereby gaining additional financial support. Reputation and financial support will assist the agency's expansion. Fifth, reliance on volunteers to mediate cases should be shifted to the use of paid mediators. There was a significant problem in the agency since some volunteers did not return phone calls and too much time had elapsed before mediators could be assigned to the cases. By utilizing paid mediators, the professionalism of mediation would become heightened and more serious cases could then be mediated. This phenomena has already begun to occur in the Civil Courts where mandatory mediation has now been implemented. On the other hand, paying mediators would eliminate the grassroots approach, which is to use volunteers within the community to help resolve disputes. Notwithstanding this concern, an expansion of "mediatable cases" and the extended length of time required demands mediators who are readily accessible professionals, and seen as such. The recognition of responsibility demands paying mediators for their time.

Conclusion

Notwithstanding its present limitations, mediation was found to be a viable

alternative to the traditional court process. Mediation places the responsibility of the crime back into the hands of the disputants by allowing them to control the resolution. By focusing on the restoration of relationships and communication patterns, rather than on blame, disputants can reach an understanding of the incident which brought them into the judicial system, and provide them with tools for future interaction, both with each other and others. After the experience of assisting in the implementation of a mediation diversion program in the North York Courts and co-mediating eight mediations, it appears that there is tremendous opportunity for growth in the area of minor assault mediations.

APPENDIX A

Conflict Mediation Services Of Downsview
95 Eddystone Avenue
North York, Ontario
M3N 1H6

Dear Mediation Participant:

I am a Masters of Social Work student at the University of Manitoba completing my educational requirements at Conflict Mediation Services Of Downsview. Your assistance would be greatly appreciated to evaluate the impact of face-to-face mediation on people who choose to participate.

A questionnaire will be given to you prior to the mediation session. I am asking you to complete it. Upon completion of the session you will be asked to fill out a second questionnaire. By comparing the two questionnaires I will explore the impact of mediation.

Your participation in the evaluation is important and your views will help me understand the effectiveness of mediation. However, your participation is completely voluntary and has no effect on your involvement in the program. If you do not wish to participate in the questionnaire, please indicate this decision on the consent form and return it to the mediators at the time of the meeting. Please indicate your willingness to participate by checking the appropriate box and signing the consent form on the next page.

The information that you share is completely confidential. It will not in any way deny you service or affect the outcome of your mediation.

I hope that you will participate because your views will provide me with knowledge about whether mediation is addressing participants needs and concerns. Improvements to the process of mediation can then be made. Thank you for your consideration.

Yours very truly,

Shani Reich

Consent Form Participant

You are being asked to consider participating in a study on mediation - the impact of mediation on victims and offenders.

This study is confidential and no one but the researcher will have access to this data.

Your participation is voluntary and you may withdraw at any time. But your participation would be appreciated. If you sign this form you are also saying that you are taking part of you own free will.

You are entitled to see the summary report when it is finished.

Please check one of the following and fill in the appropriate information. You need not answer every question.

1. I agree to complete a brief questionnaire prior to the mediation session. __Yes __No
2. I agree to complete a brief questionnaire immediately after the mediation session. __Yes __No
3. I need to talk to the researcher before I agree. You may call me to discuss it. __Yes __No
4. I agree to participate in this study. __Yes __No

Name: _____

Circle if over/under 18 years

Address: _____

Phone #: _____

Date: day/month/year

Signed

Researcher Name: Shani Reich

Status: M. S. W. student, University of Manitoba, Winnipeg, MB.

Phone: 740-2522

QUESTIONNAIRE

Pre-Mediation

Client #: _____

Please check one of the following to identify yourself:

Complainant: _____ Accused: _____

A number of statements that people have used to describe how they feel are given below. Read the statements below and indicate how you feel about the incident prior to meeting the complainant/accused.

- 1=Not at all
- 2= Somewhat
- 3=Moderately so
- 4=Very much so

1. ___ I am mad
2. ___ I feel angry
3. ___ I am burned up
4. ___ I feel irritated
5. ___ I feel frustrated
6. ___ I feel aggravated
7. ___ I feel like I'm about to explode
8. ___ I feel like banging on the table
9. ___ I feel like yelling at someone
10. ___ I feel like swearing
11. ___ I am furious
12. ___ I feel like hitting someone
13. ___ I feel like breaking things
14. ___ I am annoyed
15. ___ I am resentful

Additional Comments: _____

QUESTIONNAIRE
Post-Mediation

Client #: _____

Please check one of the following to identify yourself:

Complainant: _____ Accused: _____

Please check one of the following:

1. Are you satisfied with the outcome of the mediation?

Yes _____ No _____

2. Do you feel that the agreement is fair to both the complainant and accused?

Yes _____ No _____

If not briefly explain: _____

A number of statements that people have used to describe how they feel are given below. Read the statements below and indicate how you feel about the incident after the meeting with the complainant/accused.

- 1=Not at all
2=Somewhat
3=Moderately so
4=Very much so

1. ___ I am mad
2. ___ I feel angry
3. ___ I am burned up
4. ___ I feel irritated
5. ___ I feel frustrated
6. ___ I feel aggravated
7. ___ I feel like I'm about to explode
8. ___ I feel like banging on the table
9. ___ I feel like yelling at someone
10. ___ I feel like swearing
11. ___ I am furious
12. ___ I feel like hitting someone
13. ___ I feel like breaking things
14. ___ I am annoyed
15. ___ I am resentful

Additional Comments:

Agreement In Mediation

<u>Date</u>	<u>Client #</u>	<u>Agree</u>	<u>No Agree</u>	<u>2nd Session</u>	<u>Postponed/ Rescheduled</u>	<u>Canceled</u>	<u>No Show</u>

Total Scheduled.....

- met and mediated.....
- reached agreement.....
- no agreement.....
- second session scheduled.....
- postponed or rescheduled.....
- canceled.....
- no show.....

Mediator's Notes

Complainant Name

Accused Name

--	--

Summary of Issues

Mediation Summary Form

Mediators: _____

Date: _____

Participants: _____

File #: _____

Agreement: written _____ verbal _____
no agreement: _____

Others: _____

Length of Session: _____

Information for Caseworkers

1. What were the main issues of the participants (e.g. restitution, respect, safety, privacy, etc.)?

2. What was the level of tension between participants?

Comments:

at beginning of session: Low 1 2 3 4 5 High

at end of session: Low 1 2 3 4 5 High

3. What, if any, follow-up is required in this case (e.g. monitor restitution payments, arrange another mediation session, arrange Community Service Work, etc.)?

We assume all disputants are given photocopies of their agreement at the signing. Please indicate if any parties have not received a copy of their agreement.

4. Please voice any comments or observations that may be helpful to the caseworker in her/his future contact with these parties and/or the Crown Attorneys (i.e. specific concerns about the agreement, session, or parties e.g. willingness to resolve incident, taking responsibility, remorse, etc.).

5. **Downsview** often gets requests from the media to interview persons who have participated in mediation. Would it be appropriate for the caseworker to contact these persons? Yes ___ No ___ If yes, which ones? _____

Comments:

Mediators' Debriefing

In addition to debriefing with your co-mediator, it is often important to debrief a mediation session with the caseworker. We would encourage you to do this if you would find this helpful.

I am planning to contact the caseworker* to debrief this session.

name: _____

I would appreciate a call from the caseworker in regards to this case and session.

name/time/phone #: _____

For discussion and debriefing with your co-mediator:

1. I felt comfortable with...
I felt uncomfortable with...
2. I learned...
3. I might do _____ differently next time, because...
4. Greater understanding reached between the parties in this session when...
As mediators, we encouraged this understanding by...

*Caseworker's initials are found at top right corner of face sheet:
DBN=Dorothy; CF=Chris; RD=Rudy; BDI=Brandi; SKH=Sandy;
BP=Betty; MW=Mary; ML=Mike

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Mediator Evaluation Form

This assessment is designed to evaluate whether the four learning objectives were established in the mediation session:

1. using neutral language
2. linking the various phases of mediation
3. controlling the process
4. avoiding to rush to solutions

Date: _____

Mediator: _____

Session #: _____

Apprentice: _____

	<u>Needs Improvement</u>	<u>Okay</u>	<u>Doing Well</u>
1. Use of neutral language			
A. Uses non-judgmental language	_____	_____	_____
B. Equalizes responsibility by reframing and redirecting loaded comments	_____	_____	_____
C. Does not generalize; avoids using always or never	_____	_____	_____
D. Does not accuse; telling one party his or her intentions	_____	_____	_____
E. Does not give advice	_____	_____	_____
2. Link the various phases of mediation			
A. Flows evenly from the introduction to issue identification	_____	_____	_____
B. Flows evenly from issue identification to discussion	_____	_____	_____
C. Flows evenly from discussion to agreement	_____	_____	_____
3. Avoids rushing to solutions			
A. Allows disputants to process each stage fully	_____	_____	_____
B. Allows disputants to discuss			

emotional issues to arrive at a mutually agreeable resolution

C. Does not solve problems for the disputants

D. Allows the disputants to converse the majority of the time

E. Assists in restoring relationships rather than focusing on determining guilt or fixing blame

4. Appropriate control of process

A. Keeps the discussion moving

B. Clarifies interests and issues

C. Handles conflict so that disputants do not become embedded in positions

D. Ensures that the ground rules are followed

E. Helps the parties identify and articulate underlying needs

Additional comments:

Fulfillment Of Agreement

<u>Date</u>	<u>Client #</u>	<u>Completed</u>	<u>Not Completed</u>	<u>Not Yet completed</u>
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Total completed.....

Total not completed.....

Total not yet completed.....

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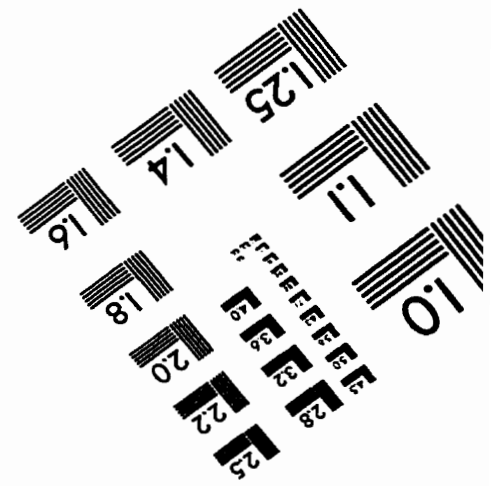
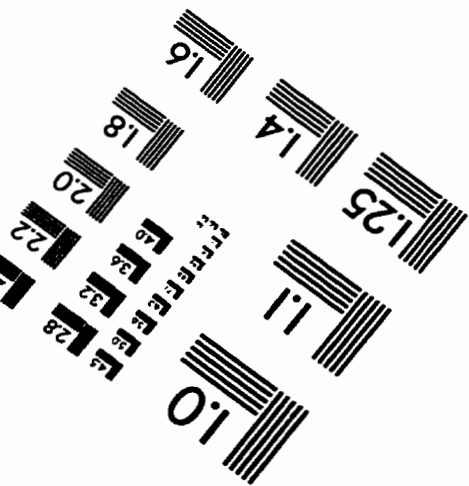
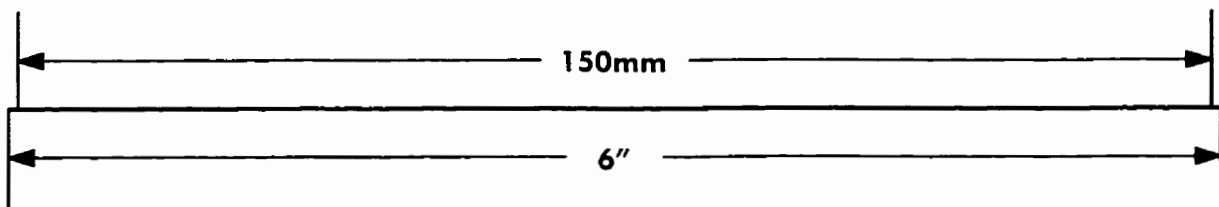
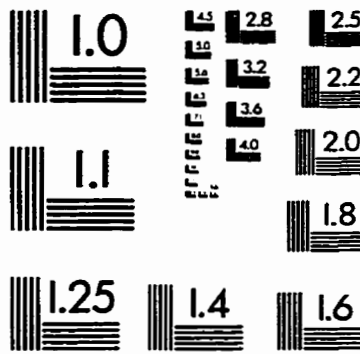
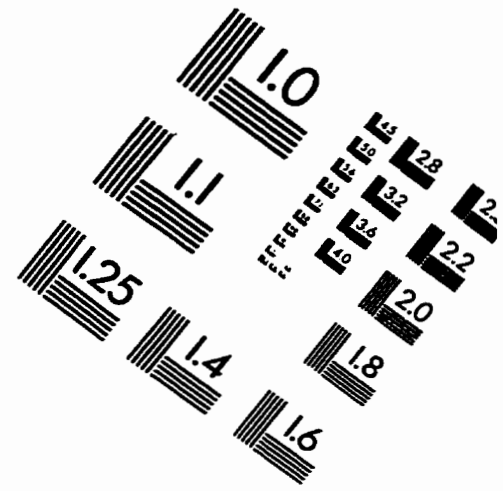
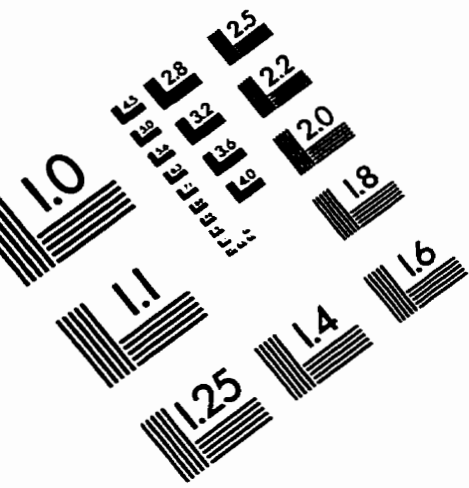
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IMAGE EVALUATION TEST TARGET (QA-3)



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