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**Application of Mediation and Negotiation to Child Protection Work in the Field**

**By**

**W. John Hutton**

**A Practicum Report  
Submitted to the Faculty of Graduate Studies  
in partial fulfilment of the requirements  
for the degree of**

**Master of Social Work**

**Faculty of Social Work  
University of Manitoba  
Winnipeg, Manitoba**

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**Application of Mediation and Negotiation to Child Protection Work in the Field**

**BY**

**W. John Hutton**

**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**

**W. JOHN HUTTON©1999**

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## ABSTRACT

In July of 1996, I was hired by Winnipeg Child and Family Services for a 1 year term as Coordinator of the Mediation Expansion Project. With the agency's permission, I used part of this work as a practicum in order to complete the requirements of a Master of Social Work degree. The principle objective of the practicum involved the application of mediation and later negotiation - a related skill, to child protection work, in the agency's Central and Northwest Areas. Research for the practicum included an examination of problem-solving versus transformative mediation, issues of culture, the use of mediation with Aboriginal families, and mediating in conflicts where there has been violence. Research was also undertaken in order to develop a process of conflict resolution for use when one is a disputing party in a conflict (negotiation). The overall goal of the practicum was to expand the use mediation within the two areas specified, while utilizing existing staff. The strategy chosen to realize this goal was to enable child protection workers to apply mediation or negotiation as an intervention with clients in the field. To implement the strategy, a 1 day training in mediation or negotiation was developed and offered to line staff, and a set of formal guidelines was developed - the Field Mediation Model and the Field Negotiation Model. The practicum demonstrated that mediation and negotiation can be used as an intervention in the field as part of child protection work, and gave workers models for doing so. In this way, the practicum has moved the practice of mediation away from those designated as mediators into the hands of general practitioners, and has increased the profile of mediation as a *social work* intervention.

## ACKNOWLEDGEMENTS

Almost immediately following the practicum, I left Winnipeg for work in Brazil, so that I have had to complete the practicum report 'long distance'. This has undoubtedly placed an added strain on my committee. I am very appreciative of Denis Bracken, Brad McKenzie and Chris Freeman for their patience during this last year in addition to their insight and assistance. In particular, Chris, your thoughts and observations regarding mediation were extremely helpful.

I would like to acknowledge the cooperation I received from the entire staff at Winnipeg's Mediation Services and the valuable assistance of three Winnipeg mediators: Adrian Challis, Cameron Nicolle and Morley Tichborne. I would also like to thank Burt Galaway, Barbara Daté, Karen Ridd and Lyle Longclaws for freely sharing their knowledge and experience with me.

As I was completing this report, I learned with regret that Winnipeg Child and Family Services has disbanded its two Parent/Teen Mediation programs for reasons unknown to me. At this time, I would like to acknowledge the professionalism of each of my former mediation colleagues at the agency, and their invaluable assistance: Colleen Boomer, Bernadette Dempsey, Shelagh McCormick, Monique Raimbault, Shannon Cheekie, and Eleanor Moore. I would also like to thank three other former colleagues for their support, assistance and encouragement: Claire O'Connor, Karen Rayter, and Janet Mirwaldt.

Finally, I would like to thank all of those who agreed to be part of this practicum, especially those who consented to be interviewed.

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## **CHAPTER 1 - INTRODUCTION**

In July of 1996, I was hired by Winnipeg Child and Family Services (WCFS) for a 1 year term as Coordinator of the Mediation Expansion Project. My responsibilities were to generate and implement different strategies for expanding the use of mediation in each of the agency's four areas; Central, East, Northwest and Southwest, while reporting to an ad hoc, pan-agency committee. Members of the Mediation Expansion Committee were Glenda Edwards, a supervisor from Central; Cathy Hudek, Director of Abuse Services at Northwest; Loretta Doyle, a supervisor at Southwest; Claire O'Connor, a supervisor from East (to whom I reported directly); and the committee chair, Ellen Peel, Director of Services at East.

As preparation for my assignment, the agency arranged for me to take 28 hours of advanced training with Winnipeg's Mediation Services and to spend time in the field with workers from Central and Northwest, which included two nights going out on calls with the Combined After Hours Unit. I also spent time with staff from both the of the agency's two Parent/Teen Mediation programs.

The direction I received from the sub-committee was to develop a strategy for expanding mediation in each area, which would not require any additional staff. After an initial vetting by the committee itself, the proposed strategy would then be sent to the local area management team for their approval. If approved, I would work directly with each area in order to implement the strategy.

With the agency's permission I used part of my work as a practicum in order to complete the requirements of a Master of Social Work degree. The practicum focuses on the strategy for mediation expansion that I developed and implemented in Central and Northwest. Specifically, it involved applying mediation and later negotiation - a related skill, to child protection work in the field in these two areas. The practicum had a number of steps which included research into the use of mediation in the field, developing an intervention for workers to use when they were one of the disputing parties in a conflict (negotiation), training workers to use mediation or negotiation with clients, and developing formal guidelines (models) for each of the interventions; a Field Mediation Model and a Field Negotiation Model.

Mediation has been defined as "an informal process in which a neutral third party with no power to impose a resolution helps the disputing parties try to reach a mutually acceptable settlement" (Bush & Folger, 1994, p. 2). Mediation is informal in the sense that participation is voluntary, that practitioners have no power to enforce participation, and that the agreements are not legally binding.

Despite its informality, mediation generally follows clearly defined steps. These steps or guidelines are usually described as a model for mediation. "The value of a model [to the mediator] lies in its ability to organize the process in related parts, and to explain what's going on" (Chris Freeman, personal communication, March 1999).

With its emphasis on finding a mutually acceptable solution, mediation represents a cooperative rather than a competitive approach to problem solving. The principles of mediation assume that conflicts are best resolved by those involved (the disputing parties), although the parties may need help (from a mediator) in order to

communicate more effectively and to better understand the issues involved. Mediation assumes that when participants are able and willing to enter into a dialogue with each other, a win/win solution is possible in virtually any situation (Mediation Services, 1994b).

Mediation offers several advantages. Firstly, it empowers participants by allowing them to create solutions to their own problems. Secondly, there is a higher level of commitment to a solution that is self-created rather than imposed by a third party. Thirdly, the participation of the disputing parties in the process of finding a solution increases the likelihood that the agreement reached will meet their needs. Finally, even if a mediation does not produce a resolution, the process serves to increase constructive communication between those involved.

Because of its emphasis on empowering individuals, and strengthening relationships, mediation is an ideal form of intervention for use by helping professionals, especially social workers. The practice is, however, relatively new and not widely used in the field of child protection. I observed, while researching the practicum, that even those workers who did have mediation training were not, for the most part, using mediation as an intervention with clients.

At the start of the practicum the use of mediation within WCFS was limited primarily to two Parent/Teen Mediation programs, one in Southwest, and the other in East. Both programs were being funded under the Volume Management Initiatives, and were designed to reduce the number of children coming into the agency's care. The primary foci of the two mediation programs were to offer mediation in circumstances

where a teen age child might otherwise come into care or remain in care (Ken Murdock, personal communication, July 11, 1996).

The program in East was the larger with the equivalent of three full-time caseworkers. It also had a large pool of volunteers and a smaller pool of 'lead' mediators paid on a 'fee for service' basis. The program was based on a co-mediation model; all sessions were conducted by two mediators, normally a caseworker or a lead mediator, working with a second mediator, usually a volunteer.<sup>1</sup>

Southwest had a volunteer mediation program similar to that of East, with one staff person and a pool of trained volunteer mediators. In addition it offered mediation through a second staff person, Shannon Cheekie, who did not use a co-mediator model. Ms. Cheekie had developed her own method for using mediation in her practice, combining it with principles taken from Solution Focused Brief Therapy.<sup>2</sup>

The use of mediation within Central and Northwest, which did not have their own Parent/Teen Mediation programs, was much more limited prior to the practicum. There were only two instances where I encountered staff who were mediating with clients. The Combined After Hours Unit, serving both Central and Northwest, had assigned one worker to use mediation with selected clients. The In-Home Crisis Unit at Northwest had decided as a team to use mediation as an interventions to be used with clients. This unit had not been trained in mediation as a team but individual workers had taken mediation training on their own outside of the agency.

During the research stage of the practicum, a number of workers said they wanted to be able to respond by using mediation when they were one of the disputing parties in a conflict. As by definition however, mediation is a process applied by a third

party and not by one of the disputants themselves, something else was needed for these types of situations. Therefore, I began exploring a strategy based on the principles of cooperative problem solving found in mediation for use by a disputant in a conflict - a process which I called 'negotiation'.

In addition to being a tool a worker could use when he/she was a disputant in a conflict, negotiation also had to be a tool the worker could use single-handed. In other words it would be a tool that would work in the best interests of both parties even when only one side in the conflict was consciously using it. In his study of settlement roles Bercovitch (1984) offered support for considering negotiation for use in this fashion. He describes negotiators as "mixing both support and settlement behaviour...They represent only one party, *and yet serve both*"[italics added] (p. 118).

Compared to mediation little attention has been paid to finding strategies for responding to conflict as one of the disputing parties. Within WCFS, staff trained in mediation may apply some of their skills when attempting to resolve their own personal conflicts, but prior to the practicum there was no model of negotiation for use on a wider level. Therefore, the practicum provided an opportunity to meet a need identified by staff while it also promoted the use of negotiation as a special skill within WCFS.

The goal of the practicum was to expand the use of mediation and negotiation in two of the agency's four areas, Central and Northwest, by utilizing existing staff resources. The strategy for realizing this goal was to enable child protection workers to apply mediation or negotiation as an intervention with clients in the field. To implement the strategy, a 1 day training in mediation or negotiation was developed and

offered to line staff, and a set of formal guidelines was developed - the Field Mediation Model and the Field Negotiation Model.

Work on the practicum was divided into three phases. The first was the Research and Planning Phase consisting of research into the literature, interviews and time spent in the field with workers as they went about their day to day activities. The second was the Training Phase, involved the planning, development and delivery of eight different 1 day training sessions for workers in Central and Northwest. Six sessions dealt with mediation, one looked at both mediation and negotiation, and one dealt solely with negotiation. Finally there was an Evaluation Phase which consisted of a review of the training sessions, an evaluation of the practicum, and the completion of the practicum report.

The first part of Phase 1, the literature review, is set out in Chapter 2. The review begins with a study of the field of mediation in general, paying special attention to the practice of Family Mediation. The review also considers the current debate between those promoting a problem solving focus for mediation and those using a transformative approach.

The literature review also considers how culture can affect mediation, the appropriateness of mediation for use with Aboriginal clients, and whether mediation should be used in instances involving violence. Initially, these three questions seemed to go beyond the scope of the practicum. In effect however, the practicum opens a door for the use of mediation in child protection work, and these questions will emerge as workers begin offering mediation to clients.

Chapter 3 considers the rest of the research carried out as part of Phase 1, comprising of interviews with mediation professionals both inside and outside of the agency, discussions with front-line agency workers, and time spent in the field. This chapter also describes the process by which a plan for enabling workers to use mediation in their work was developed and approved. Chapter 4 includes a description of the development and delivery of the training programs. Chapter 5 describes the Field Mediation Model and the Field Negotiation Model, which were developed for the use of those workers trained and Chapter 6 contains an evaluation of the practicum.

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<sup>1</sup> Early in 1997 an internal re-organization placed this mediation program into the Family Preservation and Reunification Team. At the time I left the agency however, the actual service offered had not changed greatly.

<sup>2</sup> Her combined use of mediation and therapy and the fact that she did not use volunteers or co-mediators set her work apart from that done at the two volunteer mediation programs. Therefore while she is included in references I have made to 'mediation services offered by the agency' and 'stand-alone mediation programs' she is not included in references to 'volunteer mediation services' or 'the volunteer mediation programs'.

## CHAPTER 2 - REVIEW OF THE LITERATURE

Applying mediation to child protection work in the field constitutes a new use for mediation, and required extensive research. To begin, I used the literature to learn more about mediation in general, particularly Family Mediation. I then looked at the current debate within the profession between those who advocate using a transformative or empowerment focus in mediation versus those who feel that the primary goal of mediation should be problem solving, with a view to finding a middle ground between the two camps.

Early in the practicum I encountered a number of questions concerning the limits of mediation, and its feasibility in several different circumstances. I addressed these questions in part by using the literature to consider how culture affects mediation, the appropriateness of mediation for use with Aboriginal clients, and whether mediation should be used in extreme cases such as those involving violence.

Finally, I looked at how the political and social context in which the agency was operating might affect the use of mediation as an intervention. I did so by examining both an Environmental Scan and an Operational Review of Winnipeg Child and Family Services that were conducted during the period of the practicum.

### An Overview of Mediation

I began by considering the view of mediation reflected in the work of Winnipeg's Mediation Services. Founded as a victim/offender mediation program in 1979, it now offers a wide range of options including community and Parent/Teen Mediation, and

has had a profound impact on the development of mediation in Manitoba. Many of the province's mediators received training from Mediation Services as I had, and the two Parent/Teen Mediation programs run by WCFS had close links to Mediation Services as well (Colleen Boomer, and Shelagh McCormick; personal communication, September 1996).

Mediation Services (1994a) considers an understanding of conflict as a prerequisite for studying mediation. A key assumption in their work is that "in itself conflict is neither bad nor good. It can be constructive if handled well and destructive if handled poorly" (p. 3). From this, I construed that every negative conflict can be transformed into a positive one when properly handled. Mediation is a process for handling conflict well so that the final outcome will be positive.

Positive and negative conflict has been defined as this:

At the extremes, these terms are easy to define. Thus a conflict clearly has destructive consequences if its participants are dissatisfied with the outcomes and feel they have lost as a result of the conflict. Similarly, a conflict has productive consequences if the participants all are satisfied with the outcome and feel they have gained as a result of the conflict. (Deutsch, 1973, p. 17)

The importance lies "not in eliminating or preventing conflict" but in considering how to make it productive (Deutsch, 1973, p. 17). Conflict is transformed or made positive when the resolution is satisfactory to each of the disputing parties. According to this definition, negative and constructive outcomes are based on the perception of those in dispute. A conflict has not been transformed if the outcome is only perceived as beneficial by a third party. Mediation, which allows those in dispute to find a mutually

satisfying solution themselves, meets Deutsch's criteria for transforming conflict perfectly.

With its emphasis on mutual rather than individual satisfaction, mediation represents a cooperative, rather than a competitive approach to conflict resolution (Augsburger, 1992). That the mediator does not have decision making authority is mediation's most significant feature. Christopher Moore (1986) sets out that the mediator works with the parties involved helping them to identify their interests and needs. The mediator then allows the disputants to develop their own solutions. Much of what a mediator does is to ensure that each party's perspective is heard by the other; in other words a mediator facilitates the sharing of information between the two sides in a conflict (Shearer, 1990).

Moore also points out that parties in dispute turn to mediation in order to retain the ultimate decision making power. For child protection workers, this aspect of mediation has many advantages. A concern frequently expressed to me by caseworkers at the agency was that their clients did not have enough opportunities to practice making decisions for themselves thereby fostering dependence. Mediation addresses this concern because it does not take away from the client either the opportunity to deal with a problem or the responsibility for solving it.

In addition, when someone is able to design his/her own solution to a problem he/she is more likely to comply with it. Studies comparing settlements which were arrived at by the participants with cases where decisions were made by a third party, show that mediated cases have a much higher rate of compliance and in many instances the rate is almost twice as high (Roehl & Cook, 1989, 153).

### Transformative Versus Problem Solving Mediation

A recent book by Robert A. Baruch Bush, and Joseph Folger (1994), The Promise of Mediation highlighted a heated debate raging within the mediation profession. The authors describe two opposing groups of mediation practitioners, those who see mediation as being primarily for problem solving and those that approach mediation as a tool for empowering and transforming the participants. The two authors come out firmly in support of the transformative view: “The ideal response to conflict is not to solve ‘the problem’. Instead it is to help transform the individuals involved, in both dimensions of moral growth”, these being (i) strengthening the self, and (ii) “then reaching beyond the self, to relate to others” (pp. 81-2). Agreeing with this approach is Mark Umbreit (1995), a well known mediator and Professor of Social Work at the University of Minnesota. He writes that “although a settlement agreement is often desirable, the full power of mediation in important relationships can be achieved by viewing it as a growth and healing process that addresses the emotional context of the conflict” (p. 3).

Taking the opposite position, a problem solving focus, Sandra Dean (1995), director of Winnipeg’s Family Conciliation Agency sets out that “mediation differs from therapy in terms of the goals, process and the role of the mediator. While the effect of Family Mediation can be therapeutic, its goal is a negotiated settlement of the issues and not psychological change” (p. 6). Her statement reflects a clear orientation towards solving particular problems while rejecting the notion that mediation should seek to change the participants in a meaningful or lasting way. She does not rule out

however, the possibility that such a change might occur as a result of solving outstanding issues.

The danger of a problem solving approach is that it encourages practitioners to become too directive, leading participants towards solutions, instead of allowing participants to find solutions themselves. In being directive and leading the clients, the mediator is entering into the conflict, not as a neutral stakeholder but as a party who also has a stake in the outcome (Bush & Folger, 1994, pp. 66-74).

In some instances a settlement-driven focus is not practical because there may be no specific issue to resolve. Marty Price, who broke new ground by mediating a dispute between the family of a victim and an offender where there had been a loss of life, found in that instance there was “little or no conflict to mediate” because the offender did not deny her actions (Price, 1994, p. 1). The mediation centred almost entirely on the feelings and emotional responses of the parties to what had happened, with a restitution agreement used primarily as a tool to keep the victim’s family from focusing on “vengeful fantasies” (Menkin & Price, 1995, p. 2).

The transformative approach however, has received its share of criticism. Winnipeg mediators Bobbie Docking and Betty Pries (1995) have noted that those using a transformative approach “run the risk of blurring the boundary between therapy and mediation” (p. 11), a point Price (Menkin & Price, 1995) makes as well. He has stated that it is questionable whether a process where the primary aim is to provide an opportunity for healing should even be called ‘mediation’ (p. 3).

Another criticism is that a transformative approach to mediation may not place sufficient emphasis on solving problems that exist between participants. Bush and

Folger (1994) themselves state that empowerment, which is one of transformative mediation's two elements, "is independent of a particular outcome of the mediation" (p. 87), suggesting a lack of emphasis on bringing the mediation to a conclusion.

Essentially, each approach - the problem solving focus, and the transformative focus - considers one particular aspect of a dispute. This dichotomy has led to suggestions that the ideal solution would be a combination of the two approaches, a suggestion Bush and Folger (1994) take issue with.

While some might take this view, there are good reasons to believe that it is mistaken and that the transformative and problem solving approaches are fundamentally distinct and inconsistent...

The transformative dimension cannot really be articulated clearly or consistently put into practice without leaving the framework of problem solving altogether.  
(pp. 108 -111)

The position taken by Bush and Folger against combining the two approaches is supported in the findings of Donald Saposnek (1993), who wrote that in moving to a transformative view of mediation from a settlement driven focus one requires a shift from "linear, logical, analytical, rational, task-oriented thinking, to non-linear, intuitive, holistic, emotional metaphorical thinking" (pp. 7-8). He sets out that the two approaches are fundamentally opposed to each other. One or the other can be used, but no combination of the two is possible.

Neither Saposnek nor Bush and Folger however, consider that it may be possible to move from one approach to another as required during the course of a mediation.

This is the position set forward by Docking and Pries (1995) in an article written in response to Bush and Folger's book:

...despite attempts by proponents of either perspective to distance themselves from one another, these two models represent extremes along the same continuum. During the process of mediation, most cases do not remain static at one place along this continuum. Rather, mediators must continually assess when to support a transformative transaction and when to encourage the parties to move in cognitive directions such as problem solving. (pp 10-11)

Their position does not contradict that of Saposnek, Bush or Folger, since Docking and Pries are not proposing the two foci be mixed or superimposed on each other. Instead, they call on mediators to move from one approach to the other as circumstances warrant.

Their conclusion suggests that a model of mediation designed specifically for use by child protection workers should be flexible enough to allow the worker to employ either a problem solving *or* a transformation focus, depending on the circumstances. In practice this means that the worker must always keep in mind the importance of transforming the relationship between those in conflict, while considering the need for finding a solution to a particular problem.

### Family Mediation

The term 'Family Mediation' is used by practitioners both to describe mediation between family members -such as Parent/Teen Mediation, as well as divorce mediation. For the purposes of this study I am excluding mediation arising out of divorce when referring to 'Family Mediation'.

Family Mediation is characterized by the fact that those in conflict have an ongoing relationship which has to continue beyond the conflict (Shaw, 1985). Furthermore, conflicts between family members can occur with no clear cause or starting point. This has lead family mediators to develop a distinct approach. Rather than focus on a single incident or incidents, the participants are asked by the mediator to identify areas of their relationship which need improvement (Mediation Services, 1995).

A family mediator helps both sides in the dispute regain their trust of the other (Zetsel, 1985). The need to be trusted and the need for the mediator to be able to understand a family's unique way of communicating suggest that the mediator be someone close to the family. From this perspective, a caseworker assigned to the family would be well suited to offer mediation.

Inherent in both the practicum and in the agency's desire to expand mediation, is an assumption that mediation is beneficial to families when they are in conflict. The literature supports this assumption and a number of benefits have been documented:

- Mediation allows families a way to work out problems productively instead of getting stuck in the anger and frustration of no-win situations (Neighborhood Justice Center, 1989).
- The process demonstrates to parents and teens cooperative ways of communicating and negotiating with each other (Neighborhood Justice Center, 1989).
- Self-esteem of family members is enhanced, while tensions are reduced (Neighborhood Justice Center, 1989).

- The involvement of social service agencies is reduced when mediation is successful in keeping a family together (Elgie, 1995).
- If a teen does leave home it is done in a more peaceful manner, with a door left open for future reconciliation (Elgie, 1995).

As mediation is voluntary however, those involved must be prepared to enter into a joint dialogue. In a review of the Parent/Teen Mediation program at East, it was found that “families most likely to participate and benefit...are those who view the problem and the solution as shared between the parent and the teen” (Chapman, 1996, p. 14).

#### Limits of Mediation

Mediation is a voluntary process and in addition to a willingness to seek out a mutual solution there must be an adequate ability to communicate: “If one of the parties in a dispute is unable to state his/her own interests clearly, it is not likely that an effective, fair and mutually beneficial solution will be found” (Mediation Services, 1994b, p. 39). With this in mind, most Parent/Teen mediators use 12 or 13 as the minimum age for mediation depending on the teen’s ability to communicate to ensure that participants are able to express their own needs and interests.

Generally speaking mediation is not considered appropriate in instances where one disputant has physically or sexually assaulted the other (Mediation Services, 1994b, p. 39). While exceptions to this rule exist in various mediation programs, at WCFS mediation was not offered by the stand-alone programs when abuse has occurred within a family (Colleen Boomer, personal communication, August, 1996). Nor would mediation be offered if doing so would place one or more of the disputants at risk.

Generally speaking, the mediator is considered to be neutral and is not personally invested in the outcome of the agreement (Elgie, 1995; Mediation Services, 1994b; Moore, 1986). Child protection workers however, usually have a vested interest in disputes involving their clients, and interest is likely to be easily perceived by the disputants. For example, if a worker is mediating between a foster parent and a ward, the worker could have an interest in preserving the relationship so that the placement does not break down. This interest will be known or guessed at by the participants. Does the fact that workers have their own interest at stake make it inappropriate for them to mediate with clients?

To answer this question I looked at both 'modern' and 'traditional' approaches to mediation. Representing the modern stream, mediation pioneer Christopher Moore (1986) states that a mediator must be able to "separate his/her opinions from the outcome of the dispute...and focus on ways to help the parties make their own decisions" (p. 15). Moore would not disqualify caseworkers from mediating simply because they had an interest in the outcome - unless they are unable to separate their own interests from those of the disputants during the course of the mediation. Nor does he express concern over the fact that the participants may perceive the mediator to have an opinion of his/her own.

In traditional forms of mediation (such as those practised in various Aboriginal communities) the concept of mediator neutrality is not rigidly applied. For example, in mediation practised within the Navaho culture, the 'Naat'aanii' (literally 'peace-maker') as the mediator is called, is not quite neutral and his/her guidance is often value laden (Bluehouse & Zion, 1993). 'Naat'annii' is understood to have a point of view

which is based on his/her membership in the community - the same community to which the disputants belong as well. As members of the same community, both the participants and the mediator have a vested interest in restoring harmony. Rather than diminish the mediator, the bias and the vested interest add a dimension of authenticity to the process. From this perspective the vested interest of the caseworker gives him/her a common goal and a bond with those in a dispute which should be seen as an advantage, not as a disadvantage.

The challenge for caseworkers acting as mediators is to ensure that clients perceive the solution as coming from themselves and not from the workers (Chris Freeman, personal communication, March, 1999). If they do not perceive the solution as their own, then they will not feel empowered by the process and less inclined to uphold the solution. Helping clients to see solutions as their own however, can be incorporated by the worker in follow-up to mediation where the client's role in the decision-making can be highlighted.

#### Issues of Culture as They Affect Mediation

The site of the practicum roughly corresponds with Winnipeg's 'Core Area', and 'North-End', two areas which are characterized by a large population of New and Aboriginal Canadians. Once a centre for European immigration, Winnipeg now receives substantial numbers of immigrants from Asian countries, notably the Philippines, India, and Vietnam, as well as a large number of refugees from Central America. This is in addition to significant Aboriginal migration to Winnipeg from other parts of the Manitoba and North-western Ontario. Caseworkers in these two areas are faced with an extremely wide range of different cultures.

Furthermore, Winnipeg has no single First Nations culture. The city reflects a cross section of Aboriginal cultures from across Manitoba as a whole. By linguistic groupings, the Aboriginal community can be divided into Ojibwe, Cree, Dakota, Island Lake Dialect and Michif (Manitoba Association for Native Languages, 1996). From my own experience working in Northern Manitoba over a 4 year period however, I know that even within the same language grouping traditions and culture vary from one community to the next. Added to this, Aboriginal Canadians living in Winnipeg are further distinguished from each other by the degrees to which they adhere to their traditional culture (Longclaws, 1995).

Amongst immigrant groups, differences in culture occur frequently between members of the same family and particularly between adolescent children and their parents. Not only do the children retain less of the parents' cultural values, they absorb more of the 'new' (urban) culture. Within families tensions can increase because of role reversal when children become teachers to their parents instructing them in the ways of the new culture (Neighborhood Justice Center, 1989).

Little attention had been paid to the impact of culture on the mediation process until the early 1990's (Stutzman, 1994). One of the most prominent authors to write about culture and conflict is David Augsburger (1992) who directs mediators to distinguish between 'traditional cultures' and 'urbanized/westernized cultures'. He states that members of traditional cultures see conflict as a communal concern over which the group has ownership. Urbanized, western cultures see conflict as defined by the particular situation and as belonging to the individuals involved. These two views present a challenge for mediators. Within the first context, the process needs to be

broad enough to include all members of the community. Within the second context, the expectation would be that only the individuals directly involved should participate. The mediator must have enough awareness of the disputant's culture to know who to include in the problem solving process.

Conflicts between people of two different cultures can be caused by or exacerbated by a lack of understanding of how each culture functions. "Cues get mixed, signals scrambled, people become angry, embarrassed or reduced to inaction" (Augsburger, 1992, p. 24). In Hawaii, with its blend of European, Asian and Polynesian cultures, cross cultural conflict has led to the development of a model of mediation designed specifically for use between people of two different cultures. The Hawaii Model is used by the Neighborhood Justice Center in Honolulu for both family and community dispute mediation (the NJC recognizes that cross-cultural conflicts can occur between members of the same family). The model has two distinct features which set it apart. The first is an 'education process' which takes place before the mediation session begins. This process serves two purposes; it familiarizes the participants with mediation and it provides an opportunity for the mediator to undertake a cultural assessment of the participants. The assessment involves looking at how the participants' own culture is influencing their response to the issues in dispute. The second distinguishing feature is the lack of direct discussion between the participants. Once the participants have described the issues they would like dealt with the joint session is adjourned. At this point the two mediators move into private session with first one party, then the other, to discuss possible solutions. Once each party has come up with a list of possibilities, the mediators initiate a second round of closed meetings

to present the ideas to the other side. The joint session is not reconvened until a tentative solution has been worked out privately. The final face to face session is devoted to working out the acceptance of the agreement (Neighborhood Justice Center, 1986).

This model combines what Augsburg (1992) describes as non-traditional and traditional problem solving. The initial and the closing session, involving direct contact between the two parties, is part of a Western or individual approach to problem solving. The process of negotiation that is carried on through the mediator at the private sessions is part of a traditional problem solving process. The model, like Hawaii itself, is a mixture of the traditional and non-traditional.

Mediators in the continental United States and Canada were slower to recognize the impact of culture on mediation. In 1990 Jean Paul Lederach proposed training mediators specifically to work in the area of intercultural conflict using a strategy he called the *Sensitize-a-Mediator Approach*. This involved exposing an already trained mediator to the impact of culture as it affected mediation. The mediator would then be able to adjust his/her approach in response to what he/she knew about a particular culture. Lederach recognised two weaknesses inherent within this approach. One is the improbability of preparing a mediator in advance to understand all the different cultures he/she will encounter. A second weakness is that culture is treated as a special concern and not as an integral part of the mediation process.

Andrea Williams (1994) set out three strategies for responding to culture. The first, *Personal Interaction - Probing for the Cultural Dimension*, was not unlike the approach called for by the Hawaii Model, where the mediator must educate him/herself

about the culture of the disputants, during a pre-mediation session. The probing involves learning how the situation in question would ‘normally’ be dealt with in the disputant’s culture. Her second strategy was *Learning About Other Cultures* - reminiscent of the ‘Sensitize a Mediator’ approach, which is done in advance by a mediator and is part of the pre-mediation, case development process. Her last approach is *Altering the Organization , Procedures and Systems of the Mediation Process, to Make it a Better ‘Fit’ For Those Taking Part*. Once again, this is similar to the approach used in Hawaii where the process was changed to equally reflect different cultures.

It was apparent from the literature that what a mediator needed when dealing with cross cultural conflict, was a large degree of flexibility in terms of the approach used. The models developed during the practicum were intentionally designed to give workers flexibility to make ongoing decisions about how to proceed, based on their own experience, and on their knowledge of the clients’ needs and culture.

While the literature focused largely on theoretical approaches it provided few specifics for individual mediation practitioners on how to respond to disputants coming from different cultures. Some guidelines however, could be discerned.

- The mediator should not assume that everything he/she is saying is being understood (Duryea, 1994).
- Time should be spent by the mediator at the outset learning how those involved normally deal with conflict (Neighborhood Justice Center 1989, Williams, 1994).
- Mediation may require the involvement of the extended family or members of the family’s community (Augsburger, 1992).

- Face to face discussions of issues may not be appropriate. It may be necessary for the mediator to act as a 'go-between', carrying information back and forth between the parties (Augsburger, 1992; Neighborhood Justice Center, 1989).
- It can not be assumed that all members of the same family equally share the same cultural values (Longclaws, 1995; Neighborhood Justice Center, 1989).

### Mediation in the Aboriginal Community

Mediation is not new to the Aboriginal community although the process which has been traditionally practised differs considerably from the 'modern' one. Diane LeResche (1993) describes Aboriginal mediation as 'peacemaking,' a process which is inherently spiritual and "focuses on harmony, on balancing the spiritual, intellectual, emotional and physical dimensions of a community of people" (p 321). Griffiths and Hamilton (1996) found that "western adversarial systems of justice centre on winners and losers and have retribution as their primary objective; traditional Aboriginal law and justice are based on a restorative model (p. 180). It is restorative, because its ultimate aim is the re-integration ('restoration') of the party or parties back into the community.

Various forms of Aboriginal peacemaking, healing and mediation place an emphasis on community participation. An example of this is the Healing Circle program at Hollow Water, Manitoba (Griffiths & Hamilton, 1996; Stuart, 1996), which specifically considers the needs of the community along with those of the victim and the offender. Another example is the model of mediation developed by Rainy Jonasson (1993) for First Nation Communities in Northern Ontario which is designed to allow the entire community to participate in the resolution of disputes between individuals. As

the traditional approaches emphasize involvement of the whole community however, they would not be practical for use in urban settings. The need to modify traditional forms of mediation to take the urban reality into account was considered by Marg Huber in 1993.

Huber (1993) worked with several members of the First Nations community of Vancouver to develop a model of mediation specifically intended for urban Aboriginal people. The result was a model grounded in Aboriginal culture, “rather than (a model) modified from a dominant culture process” (p 357). Huber has shown that a approach for mediation specific to the Aboriginal community could be created and delivered in an urban setting.

The literature made it clear that mediation could be used with Aboriginal families. One might question however, whether a special model such as Huber’s Medicine Wheel was needed, or could mediation be offered using a standard approach? I did so as part of the planning process discussed in Chapter 3.

#### Use of Mediation in Cases Involving Violence

From the outset of this study, social workers I spoke with at the agency asked whether mediation was appropriate for use with extreme situations, that is those involving violence. Accepted wisdom amongst mediators for many years has been that mediation is not appropriate in instances where there is extreme levels of violence or abuse (Elgie, 1995; Mediation Services 1996); in recent years however, this position has been challenged, especially in the area of Restorative Justice Mediation (Victim/Offender Mediation). Mediation Services (1996), which does not solicit referrals for sexual assault, abuse and domestic violence cases, nonetheless recognizes

that there may be instances of this nature “where our program can be helpful in addressing the concerns of people involved” (p. 64). Marty Price (1994), a mediator from Portland, Oregon, received a great deal of publicity for a mediation he carried out between a drunk-driver who killed another women in an accident, and the victim’s family. As well, the Mennonite Central Committee (which was instrumental in starting up Winnipeg’s Mediation Services) has co-developed the Survivor Offender Mediation Network of South Africa which mediates in cases involving instances of rape, torture and murder (Stauffer, 1998).

Since much of this work is recent, there has not been a lot of evaluation done regarding the appropriateness of using mediation in extreme situations. Caren L. Flaten however, has reviewed seven cases where mediation was used between juveniles convicted with murder, assault and burglary on the one hand, and their victims or the families of a deceased victim on the other. Flaten (1996) found that in six of the seven instances, the victims and/or their families viewed the mediation process as very successful and helpful in bringing about a degree of closure. The offenders found it helpful to be able to understand how the victims had been affected by the incidents, and subsequently to be able to apologize directly to the victims or their families. The literature suggests that mediation can be used successfully with cases involving violence, but such mediation requires a great deal of preparation, follow-up, and highly skilled mediators (Price, 1994; Flaten, 1996).

#### Operational Environment of Winnipeg Child and Family Services

During the period of the practicum two external studies of the agency’s operations were undertaken. The first was an Environmental Scan (Prairie Research

Associates, 1996), which I was given access to as a staff member of the agency. The second was an Operational Review of WCFS commissioned by the Department of Family Services (Prairie Research Associates, 1997). I obtained a copy of the Executive Summary of this study shortly after it was released, near the end of the practicum. The two studies reveal a great deal pertaining to the political, economic and social context in which the agency operates. Of particular interest were observations that applied to the use of mediation within the agency.

The Environmental Scan revealed that Manitoba has a high number of children in care relative to other provinces. This fact was confirmed in the Operational Review. Both studies confirmed that the number of children coming into care would continue to increase in the immediate future for anywhere from 5 to 10 years unless economic conditions for Manitoba's Aboriginal population are significantly improved. The Scan also stated that Manitoba's rate of child poverty has remained consistently high, well above the national average. Both studies noted that collateral services in the areas of Health, Education and Social Services are shrinking due to provincial budget cuts. Consequently, the pressure on Child and Family Services will increase due to higher numbers of children in care, while at the same time services offered outside of the agency will have decreased. WCFS will have to look at new alternatives in terms of the services it can offer with existing staff - exactly the type of conditions which the practicum was designed to address.

The studies also cited a concern over the high number of foster placement break-downs the agency is experiencing, necessitating more expensive and institutional options, a concern that is also addressed in part by the practicum. While employed for

the agency, I was often asked to mediate between foster parents and teens when the relationship was threatening to break down. Workers identified this as one of the primary needs for mediation in their work. Yet prior to the practicum very few conflicts involving foster parents and clients were being mediated within the agency.

The summary of the Operational Review also contained a recommendation that some of the agency's Volume Management Initiatives be reduced, but it did not specify which ones. As the agency's two stand-alone mediation programs were being funded under VMI, their futures were uncertain. In the spring of 1999, the Parent/Teen Mediation programs were disbanded for reasons which may or may not have been connected to the Review (as this occurred after I left both Winnipeg and the agency, I am not aware of why the agency took this action). There is nothing in either report however, to suggest that mediation is not a suitable form of intervention for workers to use in the field.

## **CHAPTER 3 - RESEARCH AND PLANNING**

Undertaking research into the need for mediation in the Central and Northwest Areas, and developing a strategy for allowing these needs to be met involved several steps. The first was to review relevant literature, as discussed in Chapter 2. Secondly, I conducted a series of interviews with mediators both in and outside of the agency. I then met with supervisors and line staff in the two areas to discuss mediation expansion. Fourthly, I spent time in the field accompanying workers in their duties. While in the field, I was able to offer mediation to agency clients on three different occasions at their workers' request. Thus I was given an opportunity to test an idea that would emerge during the course of my discussions with staff at the agency by offering mediation 'on the spot' in a variety of circumstances. Finally, after meeting with two members of the Mediation Expansion Subcommittee, one representing Central and the other Northwest, I proposed a strategy for expanding mediation which was to enable child protection workers to apply mediation or negotiation as an intervention with clients in the field. This strategy was subsequently accepted by the area management teams in both areas.

### **Interviews and Meetings**

The process of meeting with a number of different Winnipeg mediators took place during the initial 4 months of the study, at roughly the same time as the literature review. The people I met with from outside of the agency included members of the Faculty of Social Work, faculty members of Menno Simons College at the University of Winnipeg (which offers courses in conflict resolution), Adrian Challis, a mediator working in private practice in Winnipeg, and several staff members from Mediation

Services. I was also able to meet with Lyle Longclaws, then director of the Aboriginal Services program at the Winnipeg Health Sciences Centre and author of several articles related to the impact of social work practices on First Nations people.

I had several meetings with the staff of the agency's two mediation programs to discuss their approach to service delivery, and to gain a better understanding of the service offered<sup>1</sup>. I came away from these meeting impressed by the degree to which my colleagues were open to adapting the process of mediation in order to best meet the clients' needs. For example, they might encourage a participant to bring a friend to the mediation session for moral support, or involve extended family members in the process. As well these colleagues were willing to meet clients during pre-mediation case development where they felt most comfortable - at home, school, or even over coffee at a local restaurant. I also came to see mediation as a process that could be adapted without losing its effectiveness.

Cross-cultural conflict is not confined to either Winnipeg's North-End or the Core Area. The agency's mediation staff, especially those working in the East Area had a great deal of experience with conflicts of this nature. They felt the model of mediation they were using did allow them to deal with cross-cultural conflict, as long as they were prepared to be flexible and sensitive to underlying concerns. These observations, more than the literature, lead me to believe that it would not be necessary to look at an entirely new approach to mediation for the purposes of the expansion; the Field Mediation Model that was later developed, as part of the practicum, was modified from a model for mediating family conflict very similar to that used by my colleagues in the two volunteer Parent/Teen Mediation programs.

I also began to meet individually with supervisors from both Northwest and Central, where there were no formal stand-alone mediation programs. The two existing programs however, did accept referrals from other areas. One of the questions I asked was whether clients from Northwest and Central were being referred to East or Southwest for mediation.

Those I spoke to did not think there was a great number of referrals, a fact which I later confirmed. The program at East was only getting about 2 or 3 referrals a month from workers in Central, and had only received two referrals from Northwest in the year preceding the practicum. The program at Southwest was receiving even less than this (Shelagh McCormick, and Monique Raimbault, personal communication, September 1996). The fact that few referrals from Central and Northwest were being made suggested that their client population did not require mediation or that it was not an appropriate form of intervention in these two areas. I learned however, that there were a number of other reasons for the small number of referrals.

Firstly, there was considerable confusion among workers as to the process for making referrals, and to whom should they be made. Another problem was that in Northwest, where there were the fewest referrals, many workers either did not know about the service being offered, or did not know that referrals were being accepted. Connected to this, I was told by Sue Hudson, supervisor of the Family Resource Centre in Northwest that there was no clear criteria for showing workers when mediation could be used with families (personal communication, September, 1996).

A reason for a low number of referrals specific to Central was that many potential candidates for mediation “simply don’t get past the intake process” (Janet

Mirwaldt, personal communication, September, 1996). The majority of the area's resources were being taken up with a caseload involving children under five; consequently families coming to the agency because of Parent/Teen conflict may have been referred to external services, and not taken on as new clients for eventual referral to one of the Parent/Teen Mediation programs.

Confusion over the referral process, the lack of any clear criteria for the use of mediation, a general lack of information about the programs and a focus on younger clients (at least at Central) all contributed to the low number of referrals. Therefore, I concluded that the limited extent to which mediation was being used as an intervention in Central or Northwest was not necessarily due to a lack of interest nor an absence of need.

Staff at the stand-alone mediation program at East had stated that one of their greatest difficulties was simply getting everyone together in one place for mediation (Colleen Boomer and Bernadette Dempsey, personal communication, September, 1996). From what I was later told, this would be an even greater problem in Central and in Northwest and that if offered, mediation should be conducted close to where clients live simply to ensure participation (Janet Mirwaldt, personal communication, September, 1996). This did not rule out referring the case to another area, as volunteers and staff from SW and Central had demonstrated a willingness to travel in order to conduct mediations. Travel by either the participants or the mediators however, takes time and adds complications. Clearly a service that could be offered as close to the participants as possible was preferable to one that required commuting.

It was also explained that families in both Northwest and Central tend to be transient and will often break or lose contact with the agency within a relatively short period of time (Ken Kroeker, personal communication, August, 1996). For this reason, the areas needed a form of mediation intervention that could be mounted quickly within a relatively short time span.

Lastly, at these meetings the fact that a majority of clients in Central and Northwest were Aboriginal was brought to my attention. The literature review had clearly shown mediation to be an appropriate form of intervention for use with First Nations people but I still needed to determine whether the agency should develop a model of mediation specifically intended for Aboriginal clients. This did not appear to be necessary: Nobody I spoke to in the research phase of the practicum, including a number of professionals working with First Nations people, identified this as a need or even a potential need. Secondly, the agency's existing Parent/Teen Mediation programs had successfully mediated with a number of First Nations families over the years without using a special model (Shelagh McCormick, personal communication, September, 1996).

There was a number of considerations to be kept in mind when mediating with Aboriginal clients: Mediators may need to include members of the extended family and immediate community in the process. Also, a transformative approach with an emphasis on restoring relationships would likely be needed. Lastly, mediation should be viewed as a healing, instead of a fixing process. I concluded however, that these factors could be addressed by using a standard approach as long as it allowed the mediator to be flexible.

In September of 1986, I was able to meet with the Maryland Protection Unit from Central at one of their monthly meetings to discuss mediation. At the meeting I gave a presentation which was to become standard whenever I met with a group of front-line workers. After providing an overview of mediation, I addressed four questions which were regularly posed to me by agency staff:

1. Can mediation be used as a form of intervention with low income families?
2. Can it be used with clients who move frequently?
3. Is mediation appropriate in crisis situations?
4. What are mediation's limits?

I explained that in terms of its appropriateness as an intervention with low-income families, community dispute and victim-offender mediation have been practiced in poor and ethnically diverse neighbourhoods of large US and Canadian cities for more than 30 years (Singer, 1994). As well the mediation program at East (and to a lesser extent the program at Southwest) was already working with low income families, especially in the neighbourhoods of St. Boniface and Elmwood.

In response to the second question, I said that mediation is normally of a brief duration, consisting anywhere from one to five or six sessions. The average duration of the entire mediation process was 6 weeks (Chapman, 1996).

As to whether mediation can be used in 'hot crisis' situations, I pointed out that the Combined After Hours Unit working in Northwest and Central already had one worker using mediation in order to stabilize a situation long enough to bring other resources into play (Andy Orobko, personal communication, September, 1996).

Furthermore, several Winnipeg schools have successfully implemented a program of

peer mediation where students offer this service to other students in response to 'hot' school yard conflicts (Adrian Challis, personal communication, July 13, 1996).

Therefore, I was of the opinion that mediation can be used in responding to a crisis, or 'blow-up' among clients, as long as they are willing and calm enough to talk rationally.

The primary limitation of mediation is that both sides must be *able* and *willing* to discuss the problem. This suggests that a minimum age of 12 to 13 is needed for mediation between teens and adults - a lower age limit may be used in conflicts in peer mediation where all sides are about the same age. Mediation can not be used where one or more of the participants is impaired or unable to think rationally. Participation in mediation is always voluntary and disputants can not be forced to take part. Generally speaking, while mediation can be used in instances where there has been some degree of violence, (such as a school yard conflict) it should not be used where one party has been abused or victimized by the other<sup>2</sup>.

Following the presentation I asked the workers to answer two of my own questions - which are summarized below along with the responses.

1. *Did they think mediation would be useful as a form of intervention for their clients?* Yes; mediation could be used to strengthen the relationship between teenage mothers and their own parents, to preserve family relationships, and to provide more support for young mothers. It could also be helpful in preventing placement breakdowns between foster parents and teenage wards. And it could be useful in inter-cultural conflicts between parents and children (i.e. immigrant parents and assimilated adolescents).

2. *How should mediation be offered to clients?* Mediation needed to be made more accessible to clients and it should be used 'on the spot' by workers.

Meeting with these workers demonstrated to me that mediation had value as a form of intervention for use in the field. I was also encouraged by their enthusiasm for being able to offer mediation themselves, even though it would be an additional task to perform. I believe they also saw a benefit from being able to deal quickly with a conflict in a constructive fashion when it came up as opposed to not being able to deal with the matter at all, or having to wait until the matter could be referred to some other part of the agency.

Shortly after this meeting I was invited by an intake worker in Northwest to mediate a conflict that had developed between one of her clients and a former foster parent, because the worker was seeking to return the client to that family. As a first step, I was to meet with the client to see if she would be willing to try mediation. Four separate appointments were made, before I was able to speak with her, as she missed the first three. Each time she missed an appointment her worker and I went out to look for her. Altogether we each spent 3 or 4 hours arranging a single, 30 minute meeting. As a result of this experience, I realized that a worker could save a great deal of time offering a intervention himself/herself rather than arranging for someone else to offer it on his/her behalf.

### Mediating in the Field

A small but significant component of my research involved offering mediation in the field on three occasions. In two cases the mediations were conducted in the clients' own homes and in one instance we met in the WCFS field office nearest to the

client. These mediations took place in the late fall of 1996, under conditions similar to those that would be encountered by a worker. The only condition I could not simulate, was that of being a stakeholder in the dispute, since I was not the participants' own worker and would not be personally affected by the outcome of the mediation.

Two of the mediations were arranged in advance at the request of the worker. The third mediation was undertaken on the spot without prior planning. The family had contacted the agency requesting help. When the assigned worker and I arrived, we made a decision jointly with the family to mediate then and there. The issues were typical; in two instances there was a conflict between a foster teen and the foster parent, which was threatening (or preventing) the placement; and in the third the conflict was between a mother and her teen-age daughter living in the same home.

Mediators in the agency's two stand-alone programs have no position of power over the disputing parties, whereas a worker mediating with a client can make and impose decisions on a client that have a profound impact. I had wondered if this power would make it difficult or impossible for a worker to mediate himself/herself. In the field mediations however, I did not find that my dual role as a 'social worker/mediator' was a disadvantage (while not his/her assigned worker, as a social worker with the agency, I would have been seen by the client as having the same power over them as his/her own caseworker - Alexander Wright, personal communication, November 3, 1996). In each case the parties appeared to be speaking freely, and did not appear inhibited.

The mediations were all very positive, with an agreement reached between the parties in two of the three situations. The sessions left me convinced that mediation

could be offered in the field by a worker under a variety of conditions, and that being able to do so would benefit both worker and client.

### Choosing the Strategy for Expanding Mediation

Near the end of the research phase, I concluded that enabling workers to use mediation skills themselves in the field was a viable strategy for expanding mediation in Central, and possibly Northwest as well. This 'let me do it myself' approach would allow conflicts to be dealt with more quickly, therefore increasing the likelihood of a constructive solution (Deutsch, 1973). Also offering mediation in the field, where the mediator comes to those in conflict, would increase participation and eliminate many of the problems involved in trying to schedule a referral and/or in arranging for the participants to travel elsewhere. Mediating in the field, especially if a worker is able to do so on the spot, reduces the amount of time clients have to wait for assistance in resolving a conflict. As well, the process could increase the rapport between workers and their clients.

The strategy would also expand the scope of mediation being offered by WCFS. Prior to the practicum (with the two exceptions previously noted, the Combined After Hours Unit and the In-Home Crisis Unit) mediation was only being offered in instances of Parent/Teen conflict where there was a likelihood of a child coming into care. Now workers could use mediation in disputes involving clients and foster parents, clients and members of collateral agencies, or even in disputes involving clients and the agency itself. Should a case prove too complicated to be mediated on the spot, or within the amount of time a worker has available, referrals could still be made to the mediation

programs in Southwest and East (if they involved Parent/Teen conflict, and met the criteria of the program).

In November, 1996, I met with Central's representative on the ad hoc steering committee, Glenda Edwards, to talk about the interest that workers had in being able to mediate themselves. We discussed proposing a single training, as a demonstration project, which could be followed by other training sessions. We agreed that I should prepare a proposal which she would then present to her management team.

In a memo dated November 28, 1996 I proposed to undertake a 1 day staff training in mediation skills. The training would be specifically tailored to those participating, and its usefulness would be evaluated following a period of 2 or 3 weeks. The memo described the proposed training as a stripped down, bare-bones approach: The training would take into account the skills and experience that workers currently had and instead of a discussion around a formal model, training would focus on key elements of the mediation process which the worker would then be able to apply according to each set of circumstances. The amount of time proposed for the training would be 1 day, with a follow-up session of 2 or 3 hours to be scheduled at a later date.

The decision to keep the training to a single day was a practical consideration. I had learned during my earlier meetings and discussions that there were three or four different types of training being offered internally at WCFS during this same period. It was recommended to me that unless I kept the training short staff would not have time to attend.

The response of the management team was far more positive than I had anticipated. Rather than agree to a single training, it was decided that Central should

have five separate training sessions, offered to two units at a time, encompassing virtually all of the front-line workers. They agreed that the training should be 1 day in length and would focus on providing staff mediation skills for use in their day to day work (at this time I was only considering *mediation* training - the need for *negotiation* as a skill had not yet been identified). The management team had taken my proposal to offer a single training and accepted it as the strategy for expanding the use of mediation within the entire area.

The research and planning in the Northwest Area had proceeded more slowly due to an internal reorganisation it was undergoing. It was not until January 1997, after I had met with three of the front-line units, and with several supervisors individually, that I had a clear idea of their need for and interest in using mediation. Like their counterparts in Central, Northwest workers that I met with had also expressed a strong interest in being trained to use mediation skills themselves. Also, the two teams in this area which were using mediation expressed interest in having additional training. Through Cathy Hudek, the area's representative on the ad hoc Mediation Expansion Committee, I proposed to Northwest that a series of 1 day training sessions in mediation or negotiation skills (as by now this need had been identified) for use in the field, be offered to their front-line workers as their strategy for expanding mediation. The sessions were identical to those already being planned for Central, except that they would only be offered to one unit at a time. The proposal was accepted and I was asked to approach each unit in the area directly and offer it training. The decision to participate would be left up to the individual supervisor and/or the workers themselves.

<sup>1</sup> During the last 6 months of the practicum I also volunteered as a mediator with the Parent/Teen program at East, which gave me a view of service delivery firsthand.

<sup>2</sup> Rare exceptions to this rule are made when the mediator is very experienced, and there has been sufficient lead time to prepare the parties, often several months - Flaten, 1996; Price, 1994.

## **CHAPTER 4 - DEVELOPING AND DELIVERING THE TRAINING**

Once it was accepted that workers would be trained in the use of mediation for their own work, the training sessions had to be prepared starting from nothing. The first step was to decide how the training sessions would be structured. I already knew each session could be no more than 1 day in length (approximately 6 hours), so I needed a design that would allow staff to learn enough about mediation to use it in their work within this short time frame. I then developed the content of the training in discussion with a number of fellow mediators, including my two co-trainers.

The training sessions were delivered over a period of several months, which allowed for improvements to be made, and for participant feedback to be considered when later sessions were developed. Whenever possible I met with those being trained before-hand, to discuss their particular interests so that these could be addressed as part of the training.

### Developing the Training

#### Training Structure

A common approach when offering mediation training is to begin by introducing a model, essentially a step-by-step description of the process, and then to teach skills for use with the model. This is the approach used at the agency's two Parent/Teen Mediation programs and at Mediation Services where I received my own mediation training. In the training offered to agency workers during the course of the practicum however, I took a different approach. My training sessions began with the theory of conflict and then moved to a discussion of the skills used in mediation or negotiation.

The model for applying these skills was the last piece of information the trainees received. In most instances the model was not sent out until several weeks *after* the training. The delay gave workers time to reflect on the skills taught and an opportunity to put what they learned into practice before receiving the model. Only those taking the training in negotiation received the model during the session itself.

I chose to structure the training in this way - theory first, skills second, model last for several reasons. Firstly, I was influenced by Dr. Barbara Daté, visiting professor at Menno Simons College during the period of my study. She observed that when a person is introduced to the model first, they may become too limited. The model is seen as the only way one can proceed. On the other hand, when someone learns the skills first, and has developed some confidence in his/her abilities to use these skills before encountering a model, he/she is far less likely to become slavishly devoted to it (personal communication, October 31, 1996). Dr. Daté stated that in her own work she frequently used different approaches when offering mediation, according to the circumstances. Therefore it is important that a mediator not be locked into a single way of proceeding, and that he/she has the confidence to be flexible in how to use a model and to be willing to consider other approaches as well.

Given the wide range of circumstances workers can be expected to encounter, any manner in which field mediation or negotiation is offered has to be flexible. In line with Dr. Daté, I believed workers would be more flexible if they were to become familiar with the theory and skills used in mediation and had an opportunity to apply the skills in various circumstances, before being shown a model. While it was not possible to leave the model out of the negotiation training as that process was too specific, it was

introduced last, after the participants had an opportunity to practice the skills involved in a number of exercises.

By structuring the mediation training so that the model came at the end of the practicum, I was also able to take into account the experience accumulated from the training sessions before finalizing it. Thus if I learned something new during the training, I did not have to go back and revise something already in the hands of workers.

Finally, I structured the training this way in order to make the best use of a short amount of time. With only 6 hours of training, I did not have time to discuss thoroughly theory, skills, *and* introduce a model. I chose therefore, to place the emphasis on the theory underlying mediation, followed by an identification of the various skills used and in what fashion.

Staff who used their new skills following the training did so without being conscious of having a model, but were not working entirely without one. The training was designed to make the model clear and understandable when it arrived, and the structure of the training reflected the structure of the field model. The Mediation Process described at the end of the training (see Appendix F) follows the model while not containing as much information or direction. Trainees could apply mediation by following the Process, using their own judgement when proceeding, until receiving the Field Mediation Model at a later date. The field model provides more detail and direction, but still allows practitioners latitude in deciding how to proceed (The Field Mediation Model is discussed at length in Chapter 5).

As mentioned, the decision to keep the training to a single day was a practical consideration. Supervisors I had spoken with felt that if the training was greater than a

day in length, staff would be too busy to attend. In contrast, similar training packages offered at Mediation Services and at the agency's two Parent/Teen Mediation programs, ran to 2 or 3 days in length. Much of this time however, was spent describing and discussing the particular model of mediation each program used. Given that I would not be introducing a model during the training itself, I would need less time. At this time I had not yet considered offering a training in negotiation, which did include discussion around a model. Due to its straightforward nature however, it did not require a lot of explanation. I also made the assumption that most child protection workers were already familiar with the skills which are practised in mediation and negotiation, although not with the context in which the skills would be used. Therefore the skills could be reviewed, rather than taught, which meant an additional savings in training time. With this modified training approach I felt the essentials of using mediation could be presented within a 1 day time-frame.

### Training Content

To prepare for each training session I met with each unit supervisor and when possible, with the unit themselves. The meetings gave me an opportunity to discuss the content in advance and to tailor the training package according to input I received. For example, most workers requested a training focused on *mediation* skills that could be applied in their work. However, in prior discussions the need for being able to respond to conflict constructively as an involved party, i.e. as one of the disputants, was identified. This is the process I call *negotiation*. As a result, I developed a separate training package and model for negotiation, which was offered to two groups during the practicum.

I began work on the preliminary training plan with assistance from Colleen Boomer, coordinator of the East Area Parent Teen Mediation Program. In March 1997, before the training sessions began, I also met with Karen Ridd, Training Coordinator at Mediation Services. Ms. Ridd made a number of very useful observations and comments which I have summarized below.

We discussed the importance of preparing parties for mediation and concluded that a goal of the intervention does not have to be mediating the dispute. It may be sufficient for a mediator to meet individually with one or more disputants to help identify what needs to be discussed. In this way they can then get together and work things out on their own without further assistance. The process is known as conciliation and it was discussed in both the mediation and the negotiation training.

Ms. Ridd stressed that workers need to be clear about their role. For example, are they in the role of mediator, not trying to direct the parties towards any particular solution, or are they in the role of an arbitrator who chooses a solution on behalf the parties? Since mediators and arbitrators have fundamentally different responsibilities, it is important that a worker not drift from one role to the other in mid-process. To address these concerns, I included a brief presentation on various third party roles, stressing the differences between each one as part of the training package. I also remained on the lookout for signs of role confusion or role blending during the sessions.

Her last comment dealt with the way field workers would begin to employ mediation after the training. She saw co-mediation as a useful tool for starting out and noted that in her experience learning to mediate with a co-mediator did not prevent

someone from mediating on his/her own later on. Her suggestion that workers begin mediating with a partner was passed along as part of the training.

As several of the training sessions involved groups of up to 20 trainees, I had received approval to utilize co-trainers for each session with more than 10 participants. For the sessions that comprise the practicum, there were two different co-trainers: Cameron Nicolle, a volunteer mediator with Mediation Services, who was also a member of their training team, and Chris Freeman, a staff member of Mediation Services, a 'Lead' mediator and former staff person in the East Area Parent/Teen mediation program. Mr. Freeman is also a member of my practicum committee. These two co-trainers, both practised mediators, augmented my own experience in this area which was not extensive, and each helped to develop the training plan for the session or sessions he participated in. In each case I first prepared a brief outline of the training and took it to a meeting with my co-trainer, where the outline was jointly revised. The revised form was given to participants at the training sessions (sample training outlines - for mediation and negotiation respectively, - are set out in appendixes F and G).

### Delivering the Training

Each unit trained was asked if it would consent to being included as part of the practicum. If even a single worker in a unit chose not to participate, I considered consent to have been denied and no reference to those units has been made. Those who agreed to be included in the study are listed below, along with the date, type of training received, and the name of the co-trainer in brackets, where applicable.

- Maryland Protection Unit/Wolseley Protection Unit, Central; mediation training.  
March 6, 1997 (Cameron Nicolle).

- Logan Protection Unit/Redboine Protection Unit, Central; mediation training. March 13, 1997 (Cameron Nicolle).
- Keewatin Protection Unit, Northwest; mediation training. April 21, 1997.
- In-Home Crisis Unit, Northwest; mediation and negotiation training. May 9, 1997.
- Adolescent Parent Support/Community Liaison Unit, Northwest; negotiation training. May 15, 1997.
- Combined After Hours Unit, Central and Northwest; mediation training. May 25, 1997 (Chris Freeman).

Although the training sessions were adjusted according to the needs of the individual units, they did not vary a great deal. Most of the revisions and the modifications dealt with the amount of time spent on each subject, or on the types of examples used. In some cases there was less emphasis on certain skills depending on the knowledge the trainees were bringing with them.

#### Training in Mediation Skills

The training package for the sessions dealing with mediation skills was originally developed for use with the Maryland and Wolseley Protection Units, who were the first to be trained. With one or two small changes discussed further on, this package (described below) was used in each of the subsequent training sessions (a sample mediation skills training outline is set out in Appendix A).

I began the session with an introduction which reviewed the purpose and objectives of the training. Participants were told that the purpose of the training session was to provide them with conflict resolution skills, drawn from a mediation model, which they could use with clients in the field. In addition, a number of specific

objectives were set out. These objectives had been previously identified at a meeting with the units' supervisors and were:

- To allow participants to enable clients to resolve conflict themselves.
- To prepare the participants to act as a neutral third party while assisting clients in finding their own solution to a problem.
- To give workers a clear understanding of when mediation is appropriate for use.
- To give staff a clear understanding of the implications of using mediation as an intervention in the field.

Following the introduction, the theory behind cooperative conflict resolution was introduced. This included a discussion of the difference between constructive and destructive conflict and a presentation of the guiding principles in mediation. The Conflict Cycle was also introduced along with a description of the different third party settlement roles (such as mediator, arbitrator, etc.).

At this point, the training session began to address skills used in mediation. As mentioned, the participants were not shown or taught a model before being instructed in the mediation skills. However, the skills were introduced within the context of the mediation process. In virtually every model of mediation, one of the first steps is for the mediator to explore the conflict, through the use of individual meetings with each disputant, or in a joint meeting. As part of this step, the mediator tries to identify the issues that need to be addressed, and begins the process of separating the disputants' positions from their interests.

Participants were told that in order to begin a mediation they would have to be able to constructively deal with the disputants venting of pent-up emotions. They

would also need to check assumptions and examine the positions and interests of each side in the dispute. The skills required for doing this included paraphrasing, reframing, summarizing and mirroring. As mentioned, it was assumed that participants were already familiar with these skills, so they were reviewed rather than taught. At the end of this section, the trainees took part in a role-play where they had a chance to practice the skills, while exploring a conflict as a third party. Participants were told that this first step in mediation is sometimes referred to as the conciliation phase, because it may be possible for those involved to resolve their difficulties without further assistance after a mediator has helped them through venting, and has assisted the disputing parties in identifying the issues that need to be discussed.

The last half of the day was largely devoted to the mediation process. Two additional mediation skills, the use of open-ended questions and brain-storming, were introduced to the trainees following lunch. Then an outline of mediation was discussed with the trainees. They were told to think of mediation as a process where:

- Issues are addressed.
- Mutual solutions are explored.
- Agreements are reached.
- The mediator leaves the conflict.

Following this discussion, the participants then took part in a role-play where they were able to use all of the skills they had learned while mediating a dispute between two other individuals.

The training concluded with a discussion of the implications of using mediation in practice, including such issues as mediator neutrality and distinguishing between the

role of mediator and other settlement roles. Finally, there was a discussion dealing with how to introduce mediation skills to field work.

The initial training plan had also called for three mini role-plays focusing on one aspect of the conciliation/mediation process, identifying positions and interests, and on two skills, paraphrasing and brainstorming. However, after the session the co-trainer and I decided this had been too much for one day, and these exercises were dropped from all subsequent training sessions. The only other variation in the subsequent mediation training sessions occurred with the After Hours Unit. They had identified an additional objective, to be able to use mediation as a way of stabilizing a 'hot' situation until other resources could be brought in. Therefore, this training session included an additional discussion on dealing with anger, and the examples used for the role play featured 'hot crisis' types of situations.

#### Training in Negotiation Skills

There was only one training session in negotiation offered as part of the practicum (the training outline is set out in Appendix B). This session also began with a introduction that focused on the training's purpose and objectives. The purpose was two-fold: To allow workers acting as a third party to better assist clients in solving problems themselves, and to give workers skills drawn from a mediation model which they could apply to conflicts where they are one of the disputing parties. In addition, there were a number of objectives identified. The training session should:

- Allow workers to assist clients in finding their own solution to a problem.
- Allow workers to demonstrate new communication skills to clients.

- Give participants a clear understanding of the implications involved in using mediation in practice.
- Prepare those taking part to resolve conflict as a disputing party.

Following the introduction, the training introduced the theory of conflict beginning with the Conflict Cycle, also known as the ABC's - Attitude, Behaviour, Conflict. It was explained that the three are interrelated. For example, our attitude towards a particular situation will affect subsequent behaviour and the nature of the conflict itself. Conversely, by changing our attitude our behaviour and the nature of the conflict will also be changed. More importantly, a conflict can be transformed by making positive changes at any place in the cycle. The training broke the cycle into three parts and focused in turn on changing attitude, changing behaviour, and changing (the nature of) conflict.

Participants were told that changing attitude is possible when a person perceives that a conflict has the potential to be positive. Discussion focused on the difference between destructive and constructive forms of conflict, and on the guiding principles of conflict resolution used in mediation (from which the negotiation model was developed).

The section around changing behaviour dealt with a description of the process of communication, three types of listening, and common barriers to communication. As part of this last issue there was a discussion around culture and how cultural differences affect communication.

Changing attitude and behaviour dealt largely with the theoretical, and no new skills were introduced. A number of skills were presented however, in the section on

changing conflict. These included paraphrasing and reframing for use when exploring *issues*; and summarizing, asking open-ended questions, and brain-storming while exploring *solutions*. The participants had an opportunity to use all of these skills in a role-play while exploring issues and possible solutions as a third party in a conflict.

All of this comprised the first part of the training, which was intended to help the participants understand conflict better, while learning how to prepare clients for dealing with conflict themselves (conciliation). The second part of the training dealt specifically with resolving conflict as a disputing party (negotiation). The trainees already had the skills they needed, since these had been introduced in the first part of the training. They were then introduced to a draft version of the Field Negotiation Model (this draft version did not differ significantly from the final version, set out in the next chapter, Figure 3). Participants were given a number of steps to follow when negotiating. These were:

- Acknowledging conflict and dealing with anger.
- Clarifying issues.
- Setting out a goal for resolving the conflict.
- Exploring 'win/win' solutions.
- Agreeing on how solutions would be implemented.
- Coming to an agreement on how to deal with similar solutions in the future.

After a step by step discussion of the process, trainees participated in a second role-play where they applied the negotiation process to a conflict of their own. The training concluded with a discussion of how workers could share these skills with clients, and with a description of conflict resolution resources that can be found in the community.

### Training in Mediation and Negotiation Skills

One training was offered which focused on both mediation and negotiation.

Members of the In-Home Crisis Unit in Northwest had been using mediation as a form of intervention prior to the practicum. When I contacted them, they requested that I put on a review of some of the more advanced mediation skills. These workers also wanted a presentation on the process for negotiation so they could teach it to their clients.

At their request, this training was only a 1/2 day in length. This did not allow time for role-playing exercises so the session consisted solely of discussions and presentations.

The purpose of this training session was also two-fold. Firstly, it was to provide workers with an opportunity to review and refine their skills in mediation. Secondly, it would focus on helping workers to teach clients how to use the Field Negotiation Model. To achieve these purposes, there were a number of specific objectives. It was intended that the training session would:

- Increase the participant's knowledge around the use of mediation and negotiation.
- Give them a clear understanding of the implications and assumptions involved in the use of mediation.
- Enable workers to teach negotiation skills to clients.

The first section of the training dealt with mediation. I presented the participants with a review of several new or advanced mediation skills. These included paraphrasing, re-framing, and how to respond constructively to anger. I then lead a discussion on several different aspects of mediation. The first of these was knowing

when mediation was appropriate for use as an intervention. The second aspect was applying the rules of confidentiality to a mediation session, and discussing how one deals with exceptions to confidentiality<sup>1</sup>. The third aspect was the impact a worker's vested interest may have on a mediation. In this discussion, I followed the position set out in the literature review. The fact a worker had an interest in the outcome, would not make it impossible for them to mediate as long as he/she was able to separate his/her own interests from those of the participants during the mediation process (Moore 1986). As well, the fact that a worker had an interest could actually give his/her participation more legitimacy (Bluehouse & Zion, 1993).

Negotiation was dealt with in the second part of the training session. I introduced the draft negotiation model (the same version I used in the negotiation skills training, discussed above) and took the workers through it step by step. Finally, I concluded the training with a discussion on how the model could be taught to clients for them to use themselves.

### Follow-up

As originally proposed, I intended to have a separate follow-up session with each unit trained. These sessions were to have combined an evaluation with a review and further discussion of skills. Although each unit was offered this opportunity, none chose to have a follow-up, citing time constraints. As part of the evaluation however, which is discussed in Chapter 6, I did conduct a small number of individual interviews with participants regarding what they had learned from the training sessions.

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<sup>1</sup> Normally everything discussed in a mediation session is considered confidential, with at least one exception. For example, if it was revealed that a child had been sexually or physically assaulted, the mediator would be required to report this to the proper authorities. I was

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trained to explain the limits of confidentiality to the participants before beginning a session, so they knew in advance what I would not remain silent about.

## CHAPTER 5 - THE MODELS

The process of applying mediation to child protection work has two parts; the training described in Chapter 4, and the models which act as an ongoing guide for using negotiation or mediation in the field, described below. They were finalized at the end of the practicum and the appropriate one was sent to each of the units who took part in the training. While not *finalized* until after the training sessions were completed, each model was developed in draft form before the sessions were developed. The training sessions were written to reflect the concepts that would be contained in the finished model, and acted as an interim guide until it arrived.

When mediating or negotiating a practitioner follows his/her own experience and judgement, and does not have to rigidly follow the procedure set out in the model he/she is following. The function of a model is to provide a means for organizing the process. It also serves as a checklist. With a model a mediator can look to see if there is a piece missing when the mediation process does not seem to be working (Chris Freeman, personal communication, March, 1999).

### The Field Mediation Model

The intent behind the Field Mediation Model ( set out in figure 1) is two-fold. Firstly, it is intended to serve as a guide for using the skills presented at the training. Secondly, it is intended to be a resource for workers who have already had mediation training but who have not discovered a way of using these skills directly as part of their work.

*Figure 1. Field Mediation Model. Developed by John Hutton.*

**Identifying Issues**

- Dealing with anger/venting.
- Checking assumptions.
- Identifying interests (and positions).

**Assessment**

- Are interests clear?
- Is mediation appropriate?
- Are participants committed to proceed?

**Exploring Solutions**

- Keep discussion focused on single issue at one time.
- Use brainstorming, open-ended questions to encourage disputants to identify possible solutions on their own.
- Ensure each party understands the implications of a possible solution.
- Check that each party feels the solution is to his/her benefit.

**Supporting Solutions**

- Ensure disputants know what part of the solution they are responsible for.
- Act as a resource for participants as they implement the solution.
- Follow-up at a later date to see if the mediated solution is working.

An important feature of the model is that someone with a knowledge of mediation skills acquired from another source would have no trouble using it. The terms used are all generic to mediation and the directions broadly stated. Given the short length of the training, I wanted workers to have a model that would allow them to incorporate any additional training they already had, or might take at a later date.

The basic premise of mediation for use in the field is that it will need to be carried out in an informal, spontaneous way, most likely in a single session. Accordingly, the predominate features of the field model are its simplicity and flexibility. In many ways it is more like a set of objectives, rather than a set of instructions. It seeks to break the process of mediating into recognizable steps, which are easy to recall, without dictating how each step is to be carried out beyond making suggestions. The steps are also logical, straight-forward and easily understood. It allows the worker the freedom to incorporate his/her own experience and intuition when deciding how to proceed and allows mediation to be carried out without a lot of prior planning or preparation.

The Field Model of Mediation was devolved from a Historical Conflict Model (HCM), commonly used in Family Mediation (figure 2). The two models retain some similarities. Firstly, both can be employed using either a single mediator or two co-mediators. Secondly, they both allow for the use of private meetings during a mediation session. Thirdly, each model has a step or stage devoted to exploring issues and exploring solutions. The manner in which the mediator is directed to explore these issues however, differs considerably.

*Figure 2. Historical Conflict Model for mediation, developed by Mediation Services (1995).*

**Case Development** (undertaken individually with participants, prior to joint mediation session)

- Preparing parties for mediation process.
- Assessing whether mediation is appropriate.
- May include a preliminary exploration of issues.

**Stage 1 - Introduction**

- Remind participants that this meeting is likely the first of a number of sessions.
- Explain how mediation is likely to proceed.
- Include other essential introductory components, such as guidelines, roles, etc.

**Stage 2 - Identifying Issues (Setting an Agenda)**

- Ask participants to respond to the following questions: What might be the consequences of not resolving this conflict today? What do you have to gain by resolving this situation here today?
- Restate and integrate concisely the main components of both participants' responses.
- Following initial statements, ask each person: "What are the two (or three) main issues that you would like to see addressed through mediation?"

**Stage 3 - Discussion (Interest Exploration and Brainstorming)**

- The mediators chose an issue to begin with. Participants are asked to share an incident to illustrate the difficulty of this particular issue. For example, if the issue is communication the mediator may ask for an example where communication has

been problematic. Both parties would then be allowed to give their perspective regarding this incident. The mediators summarize the interests and pull out the areas of agreement and difficulty. The number of examples that are discussed, the amount of time that is devoted to a particular example, and the decision about whether to 'resolve' the incident in question or simply discuss it as a symptom of the larger issue is contingent on a number of factors. Mediators should consider the level of violation participants experienced, the degree of emotionality around the issue, the need of the parties to resolve the particular problem and finally, the degree to which the parties appear to understand one another.

#### **Stage 4 - Agreement**

- Interim agreements are often written for mediations that involve more than one session.
- Agreements will be written up at the conclusion of mediation.

The primary difference is the formality of the Historical Conflict Model versus the informality of the Field Mediation Model. The HCM sets out a number of specific instructions, telling mediators what to say as well as what to do at different stages of the process. In contrast the field model is far less directive, suggesting a course of action rather than spelling out what that action should be. Its openness and the informality of reflects the different circumstances in which mediation will be used. Mediation in the field is likely to be short, to the point, and may not include separate meetings with the participants beforehand. As well, there are likely to be fewer issues for discussion,

because more complicated cases are likely to be referred to a stand-alone mediation program.

As the model is designed for use on the spot, without a previous case development meeting, it incorporates assessment into the mediation session. As well, issue development is entirely carried out during the mediation itself, during a joint session (a session involving all the participants in the mediation) or at a private meeting (individual meetings between each participant and the mediator[s], which can be held at any time during the mediation).

The last difference is the manner in which the mediation process is brought to a close. The final step of the HCM is called the 'Agreement Stage', and describes a process of obtaining a written agreement between the parties. The Field Mediation Model refers instead to a 'Supporting a Solution Phase' suggesting that the process of implementing a solution is ongoing rather than instantaneous, and that the worker/mediator has a role in the solution. As the family's caseworker the mediator is in a position to offer follow-up and play a supporting role in the settlement process. The mediator at Mediation Services or the WCFS stand-alone programs can not do this, as his/her involvement with the client normally ends with the conclusion of the mediation session.

In one way, the more structured Historical Conflict Model is potentially misleading. Set out step by step, mediation appears to be a process of following a set of prescribed directions, when in reality mediation sessions rarely if ever unfold in a prescribed fashion. The Field Mediation Model may be more realistic as its unstructured nature suggests that the mediation session will be broad-ranging.

### Field Negotiation Model

Negotiation, the process of resolving a conflict constructively *as an involved party*, is not widely considered within the mediation profession. Two sources I found helpful were David Bercovitch's (1984) study of different problem solving roles and training material developed by Mediation Services.(1994a, 1994b, 1995). Using these sources I was able to construct an approach to negotiation using the principles of mediation, which remains distinct from that process as no third party is involved.

The Field Negotiation Model (Figure 3) begins by *acknowledging that a conflict exists*. The fact that each party can recognize the existence of a problem becomes the first point of agreement. This step involves venting by the participants, and concludes with their agreeing to the mutual goal of trying to resolve the conflict. The perspective that conflict is resolvable is in keeping with the principle that reconciliation is possible in every situation, 'from Kuwait to your kitchen' (Mediation Services, 1994b, p. 3).

The second part involves *clarifying the issues in the conflict*. This includes a process of mutually checking assumptions and distinguishing between positions and interests. Using this model, the worker can help the other party express his/her concerns more clearly, by trying to draw out the underlying reasons (interests) for each position he/she has taken. This process is in keeping with the principle that people may need help to communicate more clearly (Mediation Services, 1994b). At the same time, the worker is advised to avoid setting out *positions* of his/her own; instead he/she is directed to describe his/her own *interests*. When the interests of both parties are known it is possible for both sides to find a mutually beneficial resolution, one that addresses these interests.

Figure 3. *Field Negotiation Model, Developed by John Hutton*

**Acknowledging Conflict**

- Encouraging constructive venting.
- Responding to venting.
- Setting out a goal for resolving conflict.

**Clarifying Issues**

- Mutually checking assumptions.
- Determining interests.
- Acknowledging the other party's interests.

**Exploring Win/Win Solutions**

- Asking open-ended questions.
- Brainstorming.

**Reaching Agreement**

- On how solution will be implemented.
- On how similar situations/problems will be dealt with in future.

The third part *involves exploring solutions that meet the interests of both parties*. The worker should attempt to focus the discussion at the place where the interests coincide. Potential solutions need to be explored to ensure that they are

mutually beneficial. In this manner one keeps with the principle that a cooperative approach makes win/win solutions possible (Mediation Services, 1994b).

The principle that those in conflict are the best equipped to find a solution (Mediation Services, 1994b), is reflected in the whole negotiation process, since the disputing parties are the only ones involved. The negotiation model however, does not prevent a third party entering the conflict at a later date for the purposes of offering mediation if the participants have been unable to come up with a solution on their own.

In addition to incorporating basic mediation principles, the Field Negotiation Model promotes a transformative approach, such as the one described by Bush and Folger (1994). This is illustrated in the final step of the agreement stage where in addition to choosing a solution, the parties are directed to come to an understanding on how to deal with similar situations that arise in future. In this way the model seeks to transform conflict and strengthen future communication between the parties. This is essential as in all likelihood the worker will have an ongoing professional relationship with the person with whom they are in conflict, making it necessary not only to solve the problem but to take steps to prevent the relationship.

The Field Negotiation Model is set out in a linear fashion, but like its counterpart, the Field Mediation Model, participants can change the order of the parts without diminishing its effectiveness. As well, parts three and four can be repeated for each issue identified in part two.

As the negotiation model is drawn from basic mediation principles it should be easily understood and employed by anyone with mediation or negotiation training and it is not limited for use to those who took part in the practicum. Also, while designed at

the request of a group of child protection workers, the model is not specific to conflicts arising in child welfare and could be used in any conflict where there is a willingness among at least one party to reach a mutually beneficial solution.

## **CHAPTER 6 - EVALUATION**

At the outset of the practicum I was given a goal by the agency which was to expand the use of mediation in the two designated areas utilizing existing staff. To carry out this goal, I created two initial objectives:

1. To understand the need for mediation in Central and Northwest.
2. To select an appropriate strategy for expanding mediation in these areas.

The strategy adopted was to enable child protection workers to apply mediation or negotiation skills as an intervention with clients in the field. I then developed two more objectives designed to allow the strategy to be implemented.

3. To train workers in mediation/negotiation skills for use with clients.
4. To create two models that would, respectively, serve as a framework for the use of mediation, and negotiation by WCFS workers in field settings.

The evaluation examines each objective in turn in order to determine if they succeeded in allowing the overall goal to be met. The evaluation concludes by considering the practicum's practical value and benefit to the agency.

## Evaluation of the Practicum Objectives

### Understanding the Need for Mediation in Each Area

The activities related to this objective included research into general and Family Mediation, interviewing mediators both in and outside of the agency, and meeting with supervisors and workers from the two targeted areas. Also, several days were spent in the field accompanying protection workers from Central, an Intake worker from Northwest, and workers from the combined Central/Northwest After Hours Unit.

As part of the assessment I considered whether mediation was appropriate for use in the two areas by looking at what set them apart, and what made their clients and caseloads unique. Northwest and Central are distinguished by having large populations of Aboriginal and New Canadian families, as well as taking in the poorest areas of Winnipeg. Many of these families move frequently and clients can be difficult to track down. I found that mediation is well suited for use in these circumstances because it can be offered quickly and has a short duration. I also found that mediation has a 30 year history of use in poor, inner-city neighbourhoods in the United States and Canada (which traditionally include large numbers of immigrants); and that mediation has long been used in Aboriginal communities as well. Also, the agency had already been offering Parent/Teen Mediation in Central and Northwest, by means of two programs located in other areas. In light of each of these factors, I concluded mediation was an appropriate form of intervention for use in the targeted areas.

During this time I also learned that mediation should be used in a broader context. In addition to use in Parent/Teen conflicts, mediation would be valuable in conflicts between clients and foster parents, between teen-age mothers and their own

parents, and between clients and staff from collateral organizations. As well, mediation skills could be used in conflicts where the worker was one of the disputants. Finally, I learned that workers preferred to acquire the skills to offer mediation or negotiation themselves, instead of having to rely on a third party or not being able to help the client with the conflict at all.

The assessment phase clearly supported the practicum, because it provided me with a strategy for carrying out the practicum's goal. This phase also gave me information that I used to prepare the training sessions and to develop the two field models, both of which were key components of the practicum.

#### The Strategy For Expanding Mediation

The idea of enabling workers to use mediation as an intervention in the field, was originally proposed by a group of protection workers, at a meeting I held with their team. I adopted the idea, and modified it into a strategy for expanding mediation for two reasons: Firstly, it was in the workers' own interests to have a skill they could apply themselves and secondly, the strategy met the agency's needs as well because it expanded the use of mediation without requiring additional staff.

The strategy has many advantages. Because there is no referral to arrange or third party to be brought in, mediation can begin right away reducing the likelihood that the conflict will escalate. Secondly, by taking mediation outside of the confines of the existing Parent/Teen programs, child protection staff can offer mediation in a broader range of situations. Thirdly, the strategy complemented the existing mediation services already offered in targeted areas. This was the mediation being practised by staff at the In-Home Crisis Unit (Northwest) and the use of mediation by one designated worker at

the Combined After Hours Unit (serving both Central and Northwest). As part of the strategy, workers at the In-Home Crisis Unit were given a refresher with some advanced skills, and model using mediation and negotiation in their work, which they did not have before. The After Hours unit was able to take training as a group, which gave other members of the team mediation skills while providing the designated mediator additional training. Finally, the strategy raised the profiles of the agency's existing mediation programs in Southwest and East (subsequently disbanded in the spring of 1999). The training, and the meetings I held with the workers beforehand to discuss mediation, made staff more aware of the existing programs, and gave them a clearer understanding for when Parent/Teen Mediation could be used.

The strategy moves the practice of mediation within the agency from the hands of those designated as mediators to child protection workers for use as part of their general practice. In doing so it raises a question relating to decision making power. While a mediator generally has no previous or on-going contact with the participants, and no history of making decisions on behalf of these individuals, it is likely that their case-worker has such a history. Does the fact that he/she has exercised decision making power with a client previously mean that the worker will be unable to step back and allow the same individual to arrive at his/her own decisions as part of a mediation process?

Certainly workers will encounter difficulty doing this. I observed some workers questioning the need for allowing clients to arrive at their own solutions during the training sessions. I also noted that some of the workers were being overly directive, and suggesting solutions of their own during the role-play exercises. The fact that it is

difficult however, doesn't mean it is impossible for a worker/mediator to leave decision making in the hands of the clients/disputants. This is an issue that should be specifically reviewed with staff as part of any follow-up offered by the agency. Fortunately, it is something that is bound to be covered in any additional training, offered either by the agency or an outside source, because allowing disputants to arrive at their own decisions is a basic principle of mediation.

Negotiation, on the other hand, does not affect decision making power between a worker and his/her client in this same fashion. When using the Field Negotiation Model, the worker does not relinquish any responsibility for making a decision. What the process requires is only that he/she shift from a competitive process to a cooperative process when deciding on a solution to the conflict.

Overall, the chief weakness of the strategy is the fact that workers would be offering mediation or negotiation on their own, with nobody to give them feedback or direction on how to proceed. With limited training a worker could make errors while mediating or negotiating without being aware of doing so. With regards to mediation, if it is not properly carried out, the clients will be back where they began, still in conflict and no better off. Both the client and worker would lose the benefits associated with mediation and the worker may stop trying to use mediation as an intervention if it does not seem to be working. Regarding negotiation, if a worker and a client are unable to cooperatively solve a problem, their relationship might deteriorate, and other difficulties arise. This concern, in terms of both mediation and negotiation, can be addressed by having regular refresher courses offered to workers by WCFS, a suggestion made to me by various trainees during the follow-up interviews, which I

passed along to the Mediation Expansion Sub-committee at the end of the practicum. Even if the agency does not offer such a course, individuals workers now introduced to mediation or negotiation have many options for acquiring additional skills on their own (with the likelihood of financial assistance from the agency). For example, Mediation Services offers a wide variety of courses (including at least one course on negotiation skills).

Altogether, I believe the advantages offered by the strategy chosen outweighed the disadvantages. It also allowed me to meet my first objective which was to find an approach for expanding mediation that met client and workers needs within the criteria laid down by the agency.

### The Training Sessions

Two different tools were used to evaluate the effectiveness of the training sessions themselves. The first tool was a questionnaire administered to each participant at the end of the training session. As there were usually one or two participants in each group who left early, the 68 questionnaires received represents a response rate of about 80%.

As the content of each mediation training was similar, the questionnaires were almost identical. A different form was used for the In-Home Crisis Unit who received training in both mediation and negotiation, and for the Adolescent Parent Support/Community Liaison Unit who were trained in the use of negotiation.

The second evaluation tool was an individual interview carried out with at least one participant from each training session. Of the eleven interviews, two were carried out in person, and the other nine were conducted by telephone. All interviews were

conducted at the end of June, or in the beginning of July, 1997. Since the training sessions had run from mid-March until the end of May, 1997, the time-lapse between training and interview varied from 4 to 10 weeks. A copy of the Field Mediation Model and/or Field Negotiation Model, and a copy of the questions to be asked was sent to each participant in advance.

The process for selecting those to be interviewed varied. In approximately half the situations the individual I spoke to was chosen randomly; the remaining half were chosen from among those workers I had known previously or met during the research phase of the practicum. My preference was to randomly select participants whom I did not know personally, but this was not possible in every case. As it was the beginning of summer, I ran into a problem with staff being away on holidays or being busier than usual as they were covering caseloads for vacationing colleagues. Many of the messages I left randomly selected workers requesting that they take part in an interview were not returned. Therefore, I also contacted individuals whom I knew on the assumption that they were more likely to respond.

Of the eleven workers interviewed, six were individuals I had met for the first time during the training or at a meeting with their unit to discuss the training; three were workers I had spent time with in the field prior to the training; and two were individuals I had know before the practicum. As discussed below, the results of the interviews were extremely consistent. As the responses were so similar, it does not appear that those workers I knew answered any differently from those I did not know.

### Training in Mediation

Four separate training sessions in mediation were offered, involving six units.

Fifty-five questionnaires were completed by those participating. Participants were asked to agree or disagree on a scale of one to five to a number of statements (the questionnaire is reproduced in Appendix D). For the purposes of this summary, responses one and two were placed together and referred to as 'disagreeing'. Those falling into category three, which was neither agreement nor disagreement are described as 'neutral'. Responses 4 and 5 were grouped together as 'agreeing'. A summary of each question and the response is set out below.

*Would the training allow you to prepare clients for resolving conflicts themselves (the process known as conciliation)?* Two of those responding disagreed, 21 were neutral, and 22 agreed. This is the only question where the number of neutral responses almost equalled those agreeing. Adding those who disagreed to those who were neutral, slightly more than half the trainees did not agree that the training had helped them prepare clients for resolving conflict themselves. This result suggests that more attention was needed to this part of the training.

I do not believe however, that this signals a serious weakness in the training. Conciliation, although part of the mediation process, has been taught by Mediation Services as an advanced skill, one that comes *after* a basic knowledge of mediation. In this light, a failure to fully grasp conciliation would not prevent workers from using mediation, at the basic level.

*Had the training prepared you to act as a neutral third party in conflict (i.e., as a mediator)?* Twenty-six participants agreed, while 5 disagreed, and 15 remained neutral.

*Had the training given you a clear understanding of when it was appropriate to use mediation/conciliation in your work?* Thirty-four participants said that it had; ten had no opinion, and only one disagreed. The response to this question indicates that it was one of the strongest parts of the training.

*Had the training given you a clear understanding of the implications for using mediation in your practice?* A significant majority (32) thought so, while 11 had no opinion, and only 2 disagreed.

The first and second questions dealt with the application of skills or the practical side of the training, while the third and fourth questions dealt with theory. Because more trainees answered affirmatively to questions relating to theory, I deduced that a greater emphasis on practical skills was needed. The training plan had been built on an assumption that the participants were already familiar with many of the skills involved in mediation. Based on what I observed during the training however, I came to realize that while many workers were familiar with different skills (such as reframing, paraphrasing, mirroring and asking open-ended questions) knowing the skills was not the same as being able to use them comfortably. Therefore, I have recommended to the agency that when similar training sessions are offered in future they should be at least a 1/2 day longer, with the additional time allotted to role-plays and exercises for practicing skills.

*Was there sufficient time for the training?* Only 2 people disagreed, 9 had no opinion, and 33 agreed. Given that the trainees were answering this question at the end of a long day however, there may have been a 'weary' bias affecting

their responses as the need for more time was raised in a number of the follow-up interviews.

*Would the training would be helpful to you in your work?* None disagreed, 12 had no opinion and 31 agreed that the training would be helpful. This was also a very positive response.

The response pattern from unit to unit was quite consistent, with one exception. Those evaluated in the very first session gave a proportionately higher number of neutral responses, suggesting an ambivalence as to whether or not they had learned anything. In reaction to this, the co-trainer and I discussed various changes to the training plan which were implemented beginning with the following session. The ambivalence was more likely the result of problems in how the material was presented, rather than being due to a lack of interest on the participant's part in learning how to mediate. Follow-up interviews showed participants from the first group as having the same interest in using mediation as their colleagues who took part in later training sessions.

After Hours workers were asked one additional question: *Would the training help you in stabilizing relationships between disputing clients?* This question reflected a specific interest they had as a team to be able to use mediation to stabilize volatile situations long enough for other resources to be brought in. . One person disagreed, three had no opinion and eight agreed that it would help them, suggesting that this interest had been adequately addressed.

As the second part of the evaluation, I conducted a small number of interviews 4 to 10 weeks after the training sessions, which gave me an on opportunity to compare

the sentiments of the participants expressed at the time of the training with their feelings after they had had an opportunity to use the skills in their work. For the most part the results of the interviews were consistent with what had been said in the questionnaires. A summary of the questions asked, and the responses, are set out below (a copy of the interview tool can be found in Appendix A).

*Did you have previous mediation experience?* Two of those interviewed stated they had while four had not. Those previously trained indicated that they had acquired new skills as a result of the training. When asked if they were using their new skills in some way all six replied that they were, and specified that they were using these skills to resolve conflict. The skills they mentioned using, included clarifying issues, checking assumptions, and carrying out actual mediations.

*Had the training prepared you sufficiently to use the skills presented during the session?* Five stated that it had, while one person declined to respond. One of the interviewees said the training had taken skills they had had previously and built on them. Comments from those not previously trained were that the session allowed them to get a feel for mediation, that it was good that the whole unit had learned the same thing, and that it helped her/him pick up skills at a deeper level.

*Had the training helped you find other ways of using mediation in your work?* Four trainees indicated that it had, while two declined to answer. One respondent (with previous training) observed that mediation skills were helpful in doing assessments. Another (with no previous training) discovered that

he/she was applying the principles of mediation to conflicts where they themselves were one of the disputing parties - de facto negotiation (following the interview, I sent this individual a copy of the negotiation model).

There was a number of additional comments made about the training. One trainee noticed that participants at his/her training were at different skill levels (relating to mediation) which made learning more difficult. Within any group of trainees there will always be differing levels of skills and abilities. In future however, I would consider delivering separate training sessions for those who have previous experience in mediation or negotiation and for those who have not.

Two of those interviewed made comments which suggested that the time allowed for the training was not sufficient, in contrast to what had been said on the questionnaires. One person said more time was needed; a second said 'it was difficult to pick up all of it'. This was the only instance where the responses from the interviews differed noticeably from the questionnaires.

The two remaining observations spoke to the value of mediation for use by workers in the field. The first was the observation by a worker that "mediation has its place in child protection", and the second was "I don't have empowerment to pass out to my clients, but there are times when you can do things that are empowering; these skills help create an environment in which they can feel empowered". I interpreted both of these comments as a strong endorsement for the training and for the use of mediation in the field.

While the questionnaires had shown a slight discrepancy between those trained first and those trained at following sessions, no discrepancy was apparent in the

interviews. All of those interviewed said they had found an opportunity to use the skills and found them useful. This suggests that the value of the skills became more apparent in actual use, and that the skills and concepts were easier to put into practice than the trainees might have perceived at the time they completed the questionnaire.

Interviews were also conducted with the two co-trainers (see Appendix B). They were asked to comment on the preparation and delivery in the mediation training sessions they had been involved with. Cameron Nicolle had taken part in the first two mediation training sessions, involving the four protection units at Central, while Chris Freeman had been the co-trainer in the last mediation training, with the Combined After Hours Unit from Central/Northwest.

Both respondents felt that the preparation had been adequate with sufficient time for planning and forethought. One specifically referred to the need to adjust the training to different populations (tailoring it from one unit to the next) and believed that this had been achieved. He went on to observe that the training had been delivered in a way that reflected the skills the trainees already had. The other recalled that the trainees were in different places in terms of the skills being presented, but that a degree of flexibility within the training itself allowed us to respond to these different needs.

Finally, one co-trainer made two additional observations. His first observation was that the training needs to focus more on concrete skills which I fully agree with. As mentioned, I recommended that future training should have a greater emphasis on practical skills and needs to be a least a 1/2 day longer in order to do so. His second comment was that teaching people to mediate is a long process,

so don't be discouraged if some people didn't feel ready after a single days training. I think however, that you can accomplish enough in a day to give people the skills, the concept, new ideas and a basis to begin using, learning and experimenting with mediation.

This observation is supported by the fact that all of those interviewed stated they had learned new skills for use in their work. If the training did not teach workers to *be* mediators in a day, it taught them enough *about* mediation that they could explore the field on their own, teaching themselves as they go. On this point, the trainees, the co-trainer and I are all in agreement.

#### Training in Negotiation

The only unit included in the study to opt for a day long training focusing on negotiation was the Adolescent Parent Support/Community Liaison Unit in Northwest. Six questionnaires were received, from the seven participants. None of the respondents disagreed with any of the statements. The answers all fell either in the centre or the on the agreement side of the scale. A summary of the questions and the responses, is set out below (see Appendix D).

*Would the training allow you to enable clients to resolve conflict themselves?*

Five responded in a neutral fashion and only one person agreed. This reflects a problem with the conciliation section of the training similar to that experienced by those in the mediation training sessions. Once again, I do not believe this weakness had a negative impact on the goal of the training, as it is considered an advanced skill.

I had intended to ask the workers if the training would help them demonstrate *negotiation* techniques to clients. Unfortunately, by error I asked if it would allow them to demonstrate *mediation* techniques instead. In light of the confusion this error may have caused I have disregarded the findings from this question.

*Would the training allow you to demonstrate communication skills to your clients?* Three workers found that it had, with three remaining neutral.

*Had the training given you a clear understanding of the implications of using mediation?* Four workers agreed that it had, with two remaining neutral.

*Would the training allow you to respond positively in a conflict when you are one of the parties in dispute?* Four participants agreed, with two neither agreeing nor disagreeing.

*Would the training be helpful to you in your work?* Four people agreed that it had (three most strongly) while two neither agreed nor disagreed.

The workers also found there was sufficient time for the training and that the material had been presented in a clear and logical fashion. Taken as a whole, the questionnaires from the negotiation training were more positive than those dealing with mediation.

One factor that might account for this, is the difference that exists between mediation and negotiation. In the former, a mediator appears to have less control over the process, as he/she allows others to arrive at their own solution. To someone being introduced to mediation for the first time this aspect could be intimidating. On the other hand, as the negotiator remains directly involved in the process of finding a

solution, which may have left the participants in the negotiation training feeling more comfortable at the end of the day.

The follow-up interviews supported the responses made on the questionnaires. I was able to conduct follow-up interviews with three of the participants from this group. Two of the three interviewed said they had been using new skills since the training. Both were able to identify several specific skills they had learned and both felt sufficiently prepared to use them. The third individual said he/she had not been able to use the skills at work.

One worker found that he/she had been already been doing a form of negotiation/conflict resolution with clients but had not been aware of doing so. Another commented that the whole approach to negotiation outlined in the training was positive and constructive as it did not involve defending oneself and criticizing others. Another commented that the training had not been long enough, differing from what had been said on the questionnaires. Overall, the responses to the interviews were consistent with those given on the questionnaires (with the exception being whether or not there had been enough time). The training the team received appears to have enabled a majority of the participants to incorporate negotiation skills into their work. As well, both the questionnaires and the interviews revealed that the workers felt these skills would be or are valuable for use with clients.

The training in negotiation presented three challenges. The first challenge was to create an approach using mediation principles to resolve a conflict in which one is a disputing party - a concept that I developed without using a precedent. Secondly, as it was the only training of its kind being offered, I had to 'get it right the first time'.

Thirdly, there is a stigma associated with being involved in a conflict which could have made people reluctant to discuss the subject openly, even at a training session. In light of these challenges I was very pleased with the positive response contained in the questionnaires and on the follow-up interviews, as they seem to indicate that the training was a success.

#### Training In Both Mediation and Negotiation

Members of the In-Home Crisis Unit at Northwest were the only ones trained already using mediation as a form of intervention in their work. They asked me to provide a review, rather than a full fledged training, focusing on some more advanced mediation skills. In addition, they requested that I present the Field Negotiation Model to them, so they could teach it to the families they worked with. Unlike the other sessions, this one was only 1/2 day in length (at the request of the unit). Altogether seven of the eight people present completed a questionnaire. A summary of the questions and responses are set out below.

*Had the training increased your knowledge of mediation?* Three people agreed that it had, and five respondents were neutral.

*Had the training increased your knowledge of negotiation?* Only two agreed that it had, and five participants neither agreed nor disagreed.

*Had the training had given you a clear understanding of the implications and assumptions involved with mediation?* Four people agreed, with two neutral and nobody disagreeing.

*Had the training allowed you to teach problem solving skills to your clients?* Three people agreed, with two neutral responses and one person disagreeing.

*Would the training be helpful to you in your work?* Only three thought so, with three people remaining neutral, and one disagreeing.

Judging by the questionnaires, the majority of the workers in this team did not feel they had learned a great deal from the training. The follow-up interviews however, painted a more encouraging picture. I spoke with two of the participants 8 weeks after the training. One worker identified two new skills he/she was now using. The other stated that much of the training had been new. Both workers felt the training had allowed them to use mediation or negotiation skills in their work with families. The final observations were also positive. One commented that the training had been good, providing “some new stuff, some old stuff with a new slant and a good review”. The other said that the discussion around the fact that a worker may have a vested interest in the outcome of a mediation had been helpful.

The contrast between the two follow-up interviews and the questionnaires suggest that the value of the training became more apparent with application. However the fact that a majority of respondents indicated on the questionnaires that they did not feel that the training had increased their skills in the area of mediation, and that the training would not help them in their work, remains cause for concern. Despite the fact that five of the respondents said they found the time allotted for the training was sufficient, I do not believe it was. The time-frame was too short to allow any role-playing exercises. There was no opportunity to practice ‘the new stuff’ and to give ‘the old stuff’ a new slant. Furthermore, given that the training dealt with both mediation and negotiation, little time was left for discussion. The fact that the discussion about mediator bias was cited as having been helpful in the follow-up interviews suggests

more discussion would have been valuable. It may also be that the material I presented on mediation was not challenging enough to this group of workers.

Nonetheless, in terms of the overall goal of the practicum I believe that this training was successful in further enabling workers to use mediation skills (as part of the mediation and negotiation processes) as a form of intervention with clients. As noted, it had offered new skills and a chance for the workers to discuss mediation and negotiation together as a group. Most importantly, the training was an opportunity to introduce the Field Mediation Model, giving workers a guide specifically intended for using mediation in their work which they had not had before (the participants' response to the field model is discussed in detail further on).

#### Additional Observations

*Size and composition of the training group:* Size of the group did not seem to be an issue in the training sessions. At no time did the trainee/trainer ratio exceed 10:1. More commonly it was 6:1 or 7:1. I noticed little difference between training a group of seven to eight by myself, than with a group twice as large where I used a co-trainer. Nor did the questionnaires indicate problems due to size. Composition of the sessions however, *was* a factor. After comparing the experience of training two units at a time at Central with training single units at Northwest, I realized the value of having a more homogenous group in a training session. Even though the Central teams were doing the same kind of work, at the same location and even sharing common office space with each other, there was a reserve among trainees when interacting with a member of a different unit. The role-plays and group discussions appeared to flow better within a single team, presumably because the workers felt more comfortable with one another.

Therefore in my recommendations to the agency, I suggested that future training sessions be delivered one unit at a time.

*Training Design:* The sessions began with theory, followed by the introduction of mediation or negotiation skills. The model was introduced last, and in most instances (those training sessions involving mediation) not until after the fact - anywhere from 3 to 10 weeks later. I designed the mediation training this way, to give workers time to reflect on the training they received and to put the new skills learned into practice before being given the model, so that they would not become overly concerned about a 'process'. Giving the model last was intended to make them less dependent on it, and more flexible in how they approached mediation, and I believe this did occur.

Those interviewed said they were using mediation in their work, before having received the field model. This meant they were deciding for themselves how to apply the skills, and relying on their own judgement based on the circumstances. This is the type of flexibility they were intended to have. Having begun using mediation in such a flexible fashion, it is not likely they would abandon an approach that had been working for them, after receiving the model. More likely they would incorporate their own approach into the model, and use the two together. Also, those responding stated they were using the skills in a variety of ways, not just in formal mediation, indicating a flexibility in thinking about how and where these skills could be used.

The potential risk of this approach was that workers would not be able to understand how to use mediation without first being shown the model. Another risk was that by waiting, workers would lose interest in mediating or forget how to do so by

the time the model arrived. Judging from those interviewed neither of these problems had arisen.

Overall, I believe that the training allowed the goal of the practicum to be met successfully. Mediation or negotiation skills were put directly into the hands of approximately 70 workers, who for the most part had no previous training or experience in this area. With only a single exception, the eleven people later interviewed said that they had been using the skills learned in both a general and a specific sense. Additionally, all of those trained were given a greater awareness of mediation resources already in place, namely the in-house Parent/Teen Mediation programs located in East and Southwest, and the Community Mediation program at Mediation Services.

#### The Models for Using Mediation and Negotiation in the Field:

The two Field Models were not finalized and placed in the hands of the workers until the end of the practicum. Therefore the sole evaluation tool was the follow-up interview. Each trainee interviewed was given a copy of either the Field Mediation Model, or the Field Negotiation Model and asked two questions: Had the training enabled them to understand the model, and what were their perceptions of the model? Seven trainees and the two co-trainers responded in regards to the Field Mediation Model and four trainees responded concerning the Field Negotiation Model.

#### The Field Mediation Model

In terms of whether the training had provided the trainees sufficient knowledge to understand the model, all seven replied that it had. One person went on to state that “we covered everything here during the training”, another said the training was a good introduction to the model.

The workers all had different impressions of the field model. One stated that “it is a very simple model. You could teach it to the client to use themselves. You don’t need a degree to use it. It’s very user friendly.” In keeping with this another worker said ‘the steps are easy to follow’. Two workers described it as being circular in nature. One said it was “unhierarchical, the ends almost meet. It is a holistic way of proceeding.” Another said “the steps flow together. You may deal with one issue, go through the process, then go back and start all over again to cover a different issue.”

The simplicity and the circular pattern set the Field Mediation Model apart from other Family Mediation approaches. It was intended to be simple and easy to remember since a worker mediating on the spot is not able to take out a training manual to refresh his/her memory before proceeding. As noted in Chapter 4 it contains far fewer instructions, and is much less directive than the Historical Mediation Model it is derived from. The Field Model of Mediation suggests a beginning and an ending point, a process for carrying out each step but as observed, staff can move through the steps over and over, in a circular fashion with each separate issue.

Another comment of interest was that the Field Mediation Model is “very similar to the standard approach for intervention used by Child and Family Services workers.” This respondent noted that in the field model , assessment is the second step of the process, following ‘identification of issues’. He/she likened this to his/her own strategy of exploring a situation before making an assessment. I did not set out to create the model around a standard approach, but its development was influenced by a number of people with backgrounds in child welfare so this may have happened unconsciously.

The two co-trainers received copies of the Field Mediation Model just prior to the interview which was the first time either had actually seen it. Both felt that the training plan had prepared the trainees for using the model. Neither expressed any concerns about its feasibility or appropriateness. One co-trainer suggested that as part of an assessment, a worker may wish to refer the client to another type of intervention in addition to offering mediation. He suggested it should specifically mention that it is possible to do both. I did not revise the model to incorporate his suggestion as I believe the workers had a good grasp of when mediation could be used (and/or when to refer clients elsewhere) and I wanted to keep the model from becoming too directive. His second comment was that assessment is really an ongoing phase - a concept I agree with as well, and the flexibility inherent in the model's design does allow for ongoing assessment.

The openness of the Field Mediation Model was a point the second co-trainer picked up on. He commented that "it is nice to have a bare-bones model that leaves a lot of room for expanding in each area...leaves those decisions open for the worker to decide on." He went on to say that he thought the model "is both structured and flexible at the same time: structured in setting out what mediation is, and flexible in terms of developing skills and suggesting where to employ them."

With regards to this model, there was one additional aspect to consider. During the literature review, I concluded that a model designed to allow mediation to be applied as an intervention in the field must be flexible enough to allow workers to employ either a problem solving or a transformative focus. As well, the model must

allow the worker to move back and forth between the two foci, according to the circumstances of the mediation.

The Field Mediation Model is flexible enough to do both of things, because it directs the worker/mediator to explore and identify *issues* dividing the disputants, instead of *problems*. Exploring an issue could lead to a specific problem, such as an argument that has taken place between those in conflict. It is equally possible that the exploration could uncover an issue that is undermining the relationship between the disputants, such as a lack of trust. The mediator can shift his/her focus according to the issues that emerge, and the shape they assume.

The need to be flexible and to be prepared to employ more than one focus in a mediation was discussed during the training session. Unfortunately, the limited time available did not allow for an in-depth discussion. It may be that the shortness of the discussion did not sufficiently prepare workers to shift foci while mediating. If so, it is a problem related to the training and not a fault of the model.

Neither the workers interviewed nor the co-trainers had a chance to try the model out in practice, so its usefulness is assumed rather than known. As none of those who examined the model however, especially the co-trainers who have a great deal of mediation experience, perceived any flaws or potential difficulties I concluded that the Field Mediation Model is workable, and that this particular objective of the practicum was achieved.

#### The Field Negotiation Model

Three workers from the Adolescent Parent Support/Community Liaison Unit who had taken the all day negotiation training, and one worker from the In-Home Crisis

Unit who had taken a combined mediation/negotiation training, were asked for their comments. All agreed that the training had taught them to understand the model. No-one expressed any concerns about the model or doubts about its usefulness.

One worker stated that “it seems very clear, user friendly. It’s a linear model - I like it.” In the next sentence they went on to say that “for me it’s a given that if you reach a snag at some point, it means you have to go back and revisit a previous step.” While the negotiation model can be perceived as being linear (perhaps a reflection of a ‘lets-go-forward-one-step-at-a-time’ approach associated with negotiation) it is not rigid, and the steps can be repeated or placed in a different order without diminishing their effectiveness.

Another worker commented that “it appears to be non-threatening - I like it (the Field Negotiation Model) because of this. I also like it because it is respectful to the parties involved.” The issue of negotiation, dealing with conflict as a participant, appeared to make some workers uncomfortable when I discussed it with them prior to the training. Therefore I felt it was important that the model be something that would make the workers feel comfortable from the onset, which would encourage them to see that their own conflicts were resolvable. Judging from the comments it would seem the model did so, especially as three workers freely offered that that they liked it.

### Conclusion

Approximately 80 workers participated in the practicum and received at least one of the two Field Models for their ongoing use (members of the In-Home Crisis Unit received both). The strategy of the practicum was to make it possible for these workers to apply mediation or negotiation skills as part of their day to day work in the field. I

believe this was achieved. Workers reported in the follow-up interviews that they were already using these skills as part of their work. The models, which they all now have, will make it easier for workers to continue offering these kinds of interventions.

When workers offer mediation on the spot in response to conflict occurring they do not have to arrange for a referral elsewhere. This saves them time and energy and benefits clients because dealing with a matter quickly keeps the intensity of the conflict from escalating. Being able to respond on the spot is also advantageous to staff when dealing with clients that frequently move and/or break off contact with the agency. Under these circumstances referring a client to a service decreases the likelihood that the client will be available or willing to attend. Workers then have to consume time and energy trying to track down clients who have moved, or disappeared after they fail to keep a scheduled appointment.

Clients benefit in a variety of ways when mediation is offered in the field. As Northwest and Central did not have their own stand-alone mediation programs, referrals for the service had to be made to either East or Central. While referrals were accepted at the two existing programs, for a variety of reasons few families from the targeted areas were benefiting from this service. With a number of workers in Northwest and Central trained to apply mediation themselves, their clients now have better access to mediation. As well, prior to the practicum (with two exceptions) mediation was only offered by the agency in specific types of conflict; those involving parents and teens where there was a risk of a teen coming into care. It is now possible for staff to mediate with clients in a wider variety of situations.

In addition, clients benefit because increased follow-up to mediation is now possible. A limitation of the agency's volunteer mediation programs was that once the session ended the mediator had no further contact with the participants, unless it was specifically requested. When mediation is offered by the family's caseworker however, he/she would be in position to monitor the progress of a mediated dispute on an ongoing basis and could take a role supporting the solution.

The agency has benefited from the practicum because they now have the means to train and guide workers in using mediation themselves in all four areas. While designed to accommodate the needs of Central and Northwest, the approach taken by the practicum is general enough that it can be used in other parts of WCFS, and by other child-protection agencies as well.

The practicum also offered a benefit to the agency's two stand-alone Parent/Teen Mediation programs (from the spring of 1997 until the spring of 1999, when they were disbanded). In a 1996 evaluation of the program at East, Dr. Erma Chapman found that families who were referred to mediation by their caseworker were almost twice as likely to complete mediation as those referred by a resource worker, and 2 1/2 times as likely to complete mediation than those referred by an intake worker. Prior to the practicum very few referrals to the two programs were being made by caseworkers in Northwest and Central. A primary reason for this was a lack of awareness about mediation and the Parent/Teen programs. The practicum directly increased awareness of the programs among those who participated, who were almost all caseworkers. At the time I left the agency, additional referrals from Northwest and Central were already coming in to the existing programs. Therefore, the practicum gave

them a new source of high quality referrals - i.e. referrals from line workers, where there was the greatest likelihood the family would carry through with mediation.

The final advantage of the practicum is that it has changed the way mediation is offered, moving the practice from the exclusive use of those designated as 'mediators' into the hands of general social work practitioners. This is an important because it serves to increase the profile of mediation as a *social work* intervention. Despite its appropriateness, mediation is not widely practiced, discussed or taught within the profession. For example, the single graduate level course I took involving mediation was offered by the Department of Family Studies, not the Faculty of Social Work, and when researching mediation, I had to visit the Law library to find the largest number of books.

While I believe the goal of the practicum has been met, it is not possible for me to measure the extent to which workers have been enabled, or to gauge their ability in using mediation or negotiation. Had time been available I would have proposed a third step for the practicum, a follow-up phase. As part of this phase I would have liked to return to the field as a co-mediator with each person trained to assist him/her in applying his/her new skills and to provide feedback on each mediation (which I found very useful when learning how to mediate). Time in the field would also have allowed for discussions regarding the types of situations where mediation could be best used. Finally, as part of a follow-up phase 'refresher' courses, requested by some of those interviewed, could also have been offered.

One of the circumstances of the practicum is that very little ground work had been done prior to the start of the expansion project. The agency had gone no further

than to decide that the use of mediation should be expanded. There was no clear goal for the expansion established or a vision for what the expansion should include. On the one hand, this meant I was able to consider a wide range of options and had an opportunity to involve a lot of agency staff in the process of choosing an appropriate strategy. This process however, took up almost half the time allotted for the practicum. Had I been presented with clearer direction and purpose from the outset, more time would have been available for the implementation and for offering a follow-up phase.

As desirable as it would have been, I do not believe that the lack of follow-up will prevent staff from using mediation in their work. Firstly, there are now many community mediation supports, external to the agency, which workers can seek out on their own, such as Mediation Services. Secondly, it was observed to me by former Mediation Services Director, Jan Schmidt, that when the first generation of mediators started out, "there was no one available to show us what we should be doing, and we taught ourselves as we went along" (personal communication, October 7, 1998). In a similar fashion, workers are capable of teaching themselves how (and how not) to use mediation with clients. Despite the limited time available for training, I believe the practicum reached its goal, because it taught workers *about* mediation. The training exposed them to the concepts involved, which many of them have now applied to their work, using skills they already had or skills learned in the training. Finally, for the first time child protection workers have a model designed for applying mediation or negotiation as an intervention in the field.

## Appendix A

### **MEDIATION SKILLS TRAINING OUTLINE**

#### **Introduction**

- ◆ Purpose of training.
- ◆ Objectives.
- ◆ Review of training outline.

#### **Introduction to Conflict**

- ◆ Story.
- ◆ Value of conflict.
- ◆ Destructive versus constructive conflict.

#### **Understanding Conflict Resolution**

- ◆ Guiding principles in conflict resolution.
- ◆ Conflict cycles.
- ◆ Conflict styles.
- ◆ Third party roles in conflict resolution - mediation and conciliation.

#### **Exploring Conflict**

- ◆ Ground rules, separate meetings.
- ◆ Confidentiality (disclosure discussion)
- ◆ Responding to venting.
- ◆ Communication skills used in Exploring the Conflict
  - Mirroring
  - Reframing
  - Paraphrasing/summary
- ◆ Identifying positions and interests:
  - Checking assumptions
- ◆ Summary of Exploring Conflict process (role play).

Appendix A, Continued.

**Mediation**

- ◆ Assessment Issues:
  - When to mediate.
  - When not to mediate - power imbalance etc.
- ◆ Exploring Win/Win Solutions.
- ◆ Additional Mediation Skills:
  - Open-ended questions.
  - Brain-storming.

**Process of Mediation:**

- Address issues (previously identified).
- Explore solutions.
- Reach agreement.
- Leaving the conflict/supporting the agreement.

**Mediation Role Play**

**Implications for Practice**

- ◆ Neutrality.
- ◆ Distinguishing between roles.
- ◆ Goals and limits.
- ◆ How to introduce skills.

**Conclusion**

## Appendix B

**NEGOTIATION SKILLS TRAINING OUTLINE****Introduction**

- ◆ Purpose of training.
- ◆ Objectives.
- ◆ Review of Training Outline.

**The Conflict Cycle - The 'ABC's'**

- ◆ Attitudes.
- ◆ Behaviour.
- ◆ Conflict.

**Changing Attitude**

- ◆ Perception of conflict.
- ◆ Destructive and constructive types of conflict.
- ◆ Guiding principles in conflict resolution.

**Changing Behaviour**

- ◆ Process of communication:  
Coding/sending/receiving/perceiving.
- ◆ Listening:  
Three types.
- ◆ Barriers to communication:  
Noise.  
Culture of community - discussion.

**Changing Conflict**

- ◆ Exploring *issues* as a third party:  
Venting.  
Checking assumptions.  
Paraphrasing/reframing.  
Positions versus interests.
- ◆ Exploring solutions as a third party:  
Summarizing.  
Asking open-ended questions.  
Brainstorming.  
reality checking.
- ◆ Role play (Scenario One).

Appendix B continued...

### **Resolving Conflict as a Disputing Party**

- ◆ Acknowledging conflict and dealing with anger:
  - Are we in conflict yet?
  - Encouraging constructive venting/responding to venting.
- ◆ Clarifying issues:
  - Mutually checking assumptions.
  - Mirroring.
  - Determining interests - yours and his/hers.
- ◆ Setting out a goal for resolving the conflict.
- ◆ Exploring 'win/win' solutions:
  - Asking questions.
  - Brainstorming.
- ◆ Agree on how solutions will be implemented.
- ◆ Come to agreement about how to deal with similar situations in future.
- ◆ Role Play (Scenario 2).

### **Roles in Resolving Conflict**

- ◆ Comparison of settlement roles.
- ◆ Who's who in a conflict?

### **Where Do I Go From Here?**

- ◆ Sharing skills with clients.
- ◆ Useful resources.
- ◆

### **Conclusion**

Appendix C

**SAMPLE EVALUATION QUESTIONNAIRE**  
**Mediation Training**

The purpose of the training is to provide you with conflict resolution skills, drawn from a mediation/conciliation model for use in your own work. To help determine if this purpose was achieved, please respond to the following questions, using a scale of 1 - 5.

(1 = strongly disagree, 5 = strongly agree)

1. The training you received today:
  - a) Will allow you to prepare clients to resolve conflict themselves.
  - b) Will allow you to act as a neutral third party, assisting clients in finding their own solution to conflict.
  - c) Has given you a clear understanding of when mediation is appropriate for use with clients.
  - d) Has given you a clear understanding of the implications of using mediation/conciliation in your practice.
2. There was sufficient time allowed for the training.
3. Overall, this training will be helpful to me in my work.

**Additional comments and suggestions:**

Name(Optional):

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Appendix D

**SAMPLE EVALUATION QUESTIONNAIRE**  
**Negotiation Training**

The purpose of the training is to provide you with negotiation skills, drawn from a mediation/conciliation model for use in your own work. To help determine if this purpose was achieved please respond to the following questions using a scale of 1 - 5.

**(1 = strongly disagree, 5 = strongly agree)**

1. The training you received today:
  - a) Will allow you to prepare clients to resolve conflict themselves.
  - b) Will allow you to resolve conflict when you are one of the disputing parties.
  - c) Has given you a clear understanding of the implications of using negotiation/conflict resolution with clients.
2. There was sufficient time allowed for the training.
3. The material was presented clearly.
4. Overall, this training will be helpful to me in my work.

**Additional comments and suggestions:**

Name (Optional)

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Appendix E

**SAMPLE EVALUATION QUESTIONNAIRE**  
**Mediation/Negotiation Training**

The purpose of the training was to give you an opportunity to review and refine your skills in conflict resolution while focusing on how these skills can be taught to clients for their on-going use. To help determine if this purpose was achieved please respond to the following questions, using a scale of 1 - 5. (1 = strongly disagree, 5 = strongly agree)

1. The training you received today:
  - a) Increased your knowledge around the use of mediation.
  - b) Increased your knowledge around the use of negotiation.
  - c) Has given you a clear understanding of the implications and assumptions involved in the use of mediation.
  - d) Will allow you to teach problem solving (negotiation) skills to your clients.
2. There was sufficient time allowed for the training.
3. The material was presented in a clear and logical fashion.
4. Overall, this training will be helpful to me in my work.

**Additional comments and suggestions:**

Name(Optional):

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Appendix F

**INTERVIEW GUIDE - TRAINEE**

Mediation Training/Negotiation Training

- Did you have any previous training in mediation? If so, did you learn any additional skills?
- Since the training, have you had an opportunity to use any of the skills you were taught?
- Do you feel the training prepared you sufficiently for using these skills?
- Did you learn other ways of applying mediation/negotiation to your work?
- Do you have any additional comments about the training?
- Did the training allow you to understand the model?
- What are your impressions of the model?
- Have you any other comments about the training, the model, or about the use of mediation/negotiation in child welfare?

Appendix G

**INTERVIEW GUIDE - CO-TRAINER**

- Do you feel that you were sufficiently informed about the nature and purpose of the training in advance?
- Do you feel that there had been enough time for you to prepare adequately?
- Do you feel that I was prepared adequately for the training?
- Do you feel the training plan addressed the needs of the trainees?
- Did the training plan prepare the trainees to use the model of mediation?
- What is your perception of the training?
- Do you have any suggestions or recommendations for future training?
- What are your comments regarding the Field Model Mediation?
- Do you feel the training would have prepared the participants for using the model?

Appendix H

**CONSENT FORM**

I have been informed by John Hutton that he intends to use this interview as part of research he is doing for a Master of Social Work degree. A summary of this interview may be included as part of his written practicum report.

I have been informed that I will not be identified or referred to in a way that would allow someone reading the study to recognize me. To protect my confidentiality, my name will not be recorded or used as part of the interview.

I understand that my consent is entirely voluntary. I can decide not to participate at any point in the interview simply by informing Mr. Hutton. I also understand that by agreeing to participate, I am not agreeing to answer all questions asked. I can choose not to answer one or more questions during the interview. No one outside of Mr. Hutton will know that I have been asked to participate and no one will know if I refuse. I understand that if I decide not to participate, this will not affect any services I receive from Child and Family Services, and saying no will not result in a withdrawal or refusal of services. I understand that Mr. Hutton has no power or authority to compel me to take part.

I have been informed by Mr. Hutton that he will give me a summary of the interview and will have me check it over for accuracy before he uses it as part of his research.

By signing, I indicate that I understand all that is written above, that I am at least 18 years of age and that I consent to being interviewed, and to having the interview used as part of Mr. Hutton's practicum.

(Signed) \_\_\_\_\_ (Date) \_\_\_\_\_

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