

**Conflict Resolution and Family Mediation in Ukraine:
The Development of a Training Program for the Social Services**

By: Nina Hayduk

**A practicum submitted to the
Faculty of Graduate Studies
In partial fulfillment of the requirements
for the degree of
Master of Social Work
University of Manitoba**

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Nina Hayduk

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

of

Master of Social Work

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Abstract

This practicum involved the development of a culturally relevant training program on conflict resolution and mediation. This is a new social work practice model in Ukraine, and was designed to promote the development of family-centered community-based services in Lviv, Ukraine. The training program was implemented under the auspices of the Department of Social Work at Lviv Polytechnic National University, and was targeted towards social service providers and social policy makers. The design of the training program was based on Canadian content and experiences, and was delivered with assistance from an expert in the field of mediation.

The activities of the practicum included: a review of the literature on conflict resolution and mediation, with particular attention to family mediation; participation in mediation training events and conferences in Canada; and the development, implementation, and evaluation of the training program.

The practicum context reflected the need in Lviv and the surrounding area to develop a model for social work education and practice and to establish a network of quality social services. This need is addressed through international assistance, specifically the "Reforming Social Services: Canada-Ukraine Project", which is an important part of the practicum setting.

The results of the program evaluation suggested that the mediation model created interest and enthusiasm among trainees. It also promoted ideas regarding further development of education in the area of mediation and the development of mediation services, specifically in Lviv area. The training program emphasized the capacity of mediation to contribute to fulfilling the mission of social work in the post-communist

state and its ability to address crucial social and human problems in relation to the needs and culture of the country.

Implications suggest that the training program developed in this practicum can be used as a basis for other programs and courses on mediation to be developed and delivered in the Ukrainian context. This model of service delivery is consistent with the principle of empowerment and is important to the goal of social development reform in Ukraine. The content from the training program will be incorporated into a course on mediation and conflict resolution, which will be taught to undergraduate social work students of Lviv Polytechnic National University.

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Chapter I

Introduction

Practicum Goals and Objectives

The general purpose of this practicum project was to develop a culturally relevant training program on mediation for implementation in Ukraine. The training program is based on the material on interpersonal conflict resolution as well as managing conflicts through the use of mediation, particularly in family matters. It was delivered to promote the development of family-centered and community-based services in Lviv.

There were two general practicum goals. The learning goal was to learn enough about mediation to develop, deliver and evaluate a training program on conflict resolution and mediation with particular attention to family issues. The task goal was to design and deliver a culturally relevant three-day training program and a revised one-day introductory module with assistance from an expert in the field of mediation.

These goals are interrelated and reflect the overall purpose of the practicum. The following objectives apply to both of these goals.

- To explore the social and cultural context for social work and mediation practice in Ukraine in general.
- To explore the role of mediation in the context of social work practice as a generic method that has specific implications for social work.
- To learn about mediation, specifically about conflict and conflict resolution processes, as well as managing and resolving the conflicts in families.
- To expand my knowledge, my learning the concepts, processes and skills necessary to design and deliver a training program to meet the multiple tasks

that mediation practice and training encompasses while participating in mediation training events during the practicum.

- To design and deliver a training program with assistance from an expert in the field.
- To evaluate the program developed and delivered.
- To translate the program materials into Ukrainian.
- As a follow-up to the practicum, to incorporate the product created by the practicum activities into a course on conflict resolution and mediation, which will be taught as a part of the Social Work curriculum to social work students of Lviv Polytechnic National University.

Background and the Role of Social Work in Ukraine

Ukraine, as well as other newly independent states of Eastern and Central Europe, has been struggling through a difficult period of economic restructuring. The transition to a market economy has been marked by major challenges, including changes to the political, economic and social structure in the country since its Independence in 1991.

Most of Ukraine's experiences during the transition period are common to other post-communist countries. However, Ukraine also has its own peculiarities. The present day situation in the country has been aggravated by the unfavorable legacy of the past. Ukraine traces its historical development to the founding of the prosperous Kyivan Rus State in the 9th century. Throughout its history Ukraine has been subject to frequent invasion due primarily to its geopolitical position, abundant resources and fertile soil. With the exception of the Kyivan Rus period, subsequent periods of Ukrainian statehood were relatively short-lived, having been gained at high cost to the Ukrainian people.

Now, after centuries of subjugation (Hrushevsky, 1934; Subtelny, 1988), Ukraine has a unique historical chance to build a civil democratic society.

Socio-Economic Problems and Related Lack of Services

The economic situation in the country has been characterized by a continuing major economic downturn. In the former Union of Soviet Socialist Republics (USSR) the economy of Ukraine was firmly tied into the centralized Soviet economy. With the collapse of the USSR, those structures were lost. In addition, Ukraine fell heir to all the ills that characterized the Soviet Union: inefficiency of production, poor management, outdated social programs, and corruption. Partially as a consequence of this heritage, the transition to a market economy has been coupled with declining productivity, low incomes and inflation, and increased social costs, particularly for vulnerable groups (Faculty of Social Work, University of Manitoba (FSWUM), 1999; Ryabchuk, 2000). Inefficiency and the low quality of production, resulted in the collapse of industrial and other methods of production, have resulted in growing unemployment, and as a consequence, the rise of social problems in the rapidly changing society. There are also reduced government resources available to address new and growing social problems. Social indicator data illustrate the growing scope and urgency of social problems (United Nations, 1996; United Nations, 1998). There are continuing concerns surrounding family breakdown and the high rate of divorce, child neglect, the growing number of children in residential settings, and the increasing number of homeless children and adolescents. New approaches are required to respond to the needs of families and children (FSWUM, 1999). While social work might normally be expected to play a key role in addressing these issues, the profession is only now in the early stage of being developed.

During the Soviet period, the oppressiveness of the totalitarian regime with respect to human and social needs, coupled with a lack of true democracy, and severe restrictions of civil rights prohibited the development of social work (Constable & Mehta, 1994).

Today, the absence of a well-established network of services, the lack of service providers with appropriate training, no professional standards of social work practice, and insufficient agency resources are the critical issues to be addressed in the social services.

The Role of Social Work and Social Services

The disappearance of authoritarian control demands reconstruction of the substance and rules of work and welfare, of family and community, of every institution. The development of a different kind of the social welfare system, related social work practice methods and education is centrally positioned in the process of change. The reconstruction of society comes from people who rediscover their own vital energies. Helping people to look to the future with hope, to reshape and determine to some degree the events and circumstances of their lives in an enlightened way is the restoration of the relational ties that are a part of our humanity. Understanding that this restoration is not just possible but inevitable in the face of common humanity, that making each of us human to the other is fundamental to social work practice. The mission of social work in the post-communist state is therefore to deal with crucial social and human problems, to begin to relate to the needs and culture of the country (Constable & Mehta, 1994, p.104). There is a hope that social work can help in the management of change taking place at the personal, family, institutional, community and societal level. The partial assignment of the responsibility for social reconstruction is in itself a radical change (Constable & Mehta, 1994, p.vi). Local service development is an important component of this process

(Imbrogno, 1994). Social services will help individuals and families use and develop supports including their own personal and network resources (Constable & Mehta, 1994, p105). This is fundamental to civil society, and empowerment is the key issue at all the levels. The new service system must be family-centered and community-based. The family focus is particularly important, especially because the family has traditionally been the basic resource for people in Ukraine.

The development of new social services depends upon the availability of qualified service providers who promote international professional standards of practice, as well as system change efforts that meet international standards of services (Edwards, Roth, Davis & Popescu, 2000). There is a need to develop a model for social work education and practice with due regard to local peculiarities, and to establish a network of community-based services. International collaboration and assistance can play a major role in this.

“The Reforming Social Services: Canada-Ukraine Project” appears to be the first formal social initiative in Lviv and the Lviv region, aimed at having this vital need met. The Project was initiated as a result of a long-term partnership between the University of Manitoba and Lviv Polytechnic National University, and between other Canadian and Ukrainian organizations. The Project responds to the needs of Western Ukraine in particular. There is a clear match between social welfare needs in Western Ukraine and the goals of the Canada-Ukraine Project. The Project Needs Statement reflects the problem existing in Ukraine, in that two major impediments to social reform are identified - “an outdated medical model of service delivery and the lack of professionally trained social workers to work collaboratively with government, communities and groups to develop new policies, programs and services”(FSWUM, 1999). There is an emphasis

on social development as both a model for education and for practice (Sanders, 1984; David, 1991; Midgley, 1995; Ferguson, 1999; FSWUM, 1999). It is anticipated that the Project will contribute towards democratic reform through the development of decentralized family-centered and community-based agencies and services in Lviv.

Empowerment and the Importance of Mediation

Empowerment is an important attribute of new services as “personal power refers to individual’s abilities to control their destiny and influence their surroundings”(Miley, 1999, p. 3). One that is arguably of importance is mediation. However, these services have been slow to develop.

Mediation is a generic, strengths-based approach fostering “empowerment” and “recognition”. Conflict exists as a fact of life in society at various levels and in various degrees of intensity. By facilitating a process whereby individuals and groups can respond to conflict in a positive and goal-oriented way, mediation offers individuals the opportunity for growth and positive change. It means encouraging and helping parties involved in conflict to use a positive response to conflict, as a vehicle for growth on a personal level, to realize and actualize their inherent capacities both for strengthening self as well as in relation to others. A positive response to conflict helps transform individuals from fearful, defensive, or self-centered beings into confident, responsive, and caring ones, thereby ultimately contributing to the transformation of society as well. Thus, the scope of mediation reaches far beyond resolving individual conflicts, in that there are implications for society as a whole. Mediation is connected to a developing vision of self and society, aimed at achieving full integration of individual freedom and social conscience, and establishing a new social order enacted through new forms of social

processes and institutions. The empowerment dimension of the mediation process involves the development of self-respect, self-reliance, and self-confidence among participants. The private, nonjudgmental character of mediation provides disputants an opportunity to explain and “humanize” themselves to one another, express concern and acknowledgment for each other as human beings, it being “the recognition dimension” of the process of mediation (Bush & Folder, 1994). Mediation is unconditionally constructive. The high moral content of mediation is a bonus (Fisher & Brown, 1989). In my view, mediation will harmonize with the major cultural strengths of Ukrainians, including our strong, deeply rooted religious traditions, and the family tradition of providing support to its members in need (Jarmus & Jarmus, 1995; Jarmus, 1998; Armstrong, 2000). This is further discussed in Chapter III.

Practicum Rationale

I find mediation to be of primary importance to me, a citizen of Ukraine, grieving for its current situation and the future. As one of those who will be teaching social work courses and promoting social service delivery in our country I am deeply interested in developing this area of social work, in promoting international professional standards of theory and practice, and in applying Canadian expertise in particular, to this new field of practice in Ukraine. The focus of my practicum, therefore, was the development of a training program in conflict resolution and mediation with particular attention to family mediation and, as a precondition, the development of my own knowledge and skills in this area.

The training program on conflict resolution and mediation was developed from Canadian content and experience and delivered in Lviv under the auspices of Lviv

Polytechnic Social Work program. The training program was targeted at social service providers and social policy makers.

Conflict resolution and mediation is directly related to the needs in Ukraine and its culture; it is also consistent with the mission of social work in Ukraine. The training program on conflict resolution and mediation, as developed and delivered, was envisaged as contributing to the development of family-centered and community-based services in Lviv.

The activities of the practicum included: a review of the literature on conflict resolution and mediation, with particular attention to family mediation; participation in mediation training events and conferences in Canada; and the development, implementation, and evaluation of the training program.

Chapter II

Literature Review

The focus of this literature review is to offer a synopsis of the literature addressing the goals of the practicum, which are learning about mediation, and designing and delivering a training program on conflict resolution and mediation with particular attention to family mediation. A literature review is a common element of a practicum report in developing the design of the practicum. The review of the literature in this chapter is more extensive in that this was one of major methods of meeting the practicum goals.

There is a large body of literature, which covers conflict resolution and mediation, specifically, in the family context. The following review is not exhaustive; however, it represents a review of the issues, which are relevant to the goals and objectives of this practicum.

The literature review has been divided into seven areas of examination. It begins by defining conflict and providing an overview of conflict management and resolution approaches, with mediation being one of those, in the first section. The second section examines negotiation between disputing parties to turn to mediation as an extension of the negotiation process in the third section. The third section of the literature review attempts to address the whole spectrum of the most important issues relevant to theory and practice of mediation. Specifically, it provides an excursus into the history of mediation, defines mediation as distinguished from other forms of dispute resolution, presents approaches to mediation, a variety of goals this nonjudicial conflict resolution process pursues, key mediation values and principles, and mediator roles, as well as the

issues of mediation context. The forth section introduces the mediation model and the process, strategies and skills, which characterize it. Family mediation issues are explored in the fifth section including conflict within a marriage, the goal of divorce mediation, the children's perspective within separated and divorced families, phases of divorce mediation, and mediating with high-conflict couples. A review of the results of the recent research in the area of divorce and custody mediation is framed as a separate section, and some aspects of training mediators are considered in the final section.

Conflict Management and Resolution Approaches

At the turn of the millennium, no more critical challenge faces the people, than how to get along. Of all the factors influencing the success of marriage the single most critical one is the ability to resolve conflicts cooperatively. The same holds true in every other relationship – between friends or business partners, neighbors or nations. So much depends on the ability to get along: our happiness at home, our performance at work, the livability of our communities, and, in the age of mass destruction, the survival of our species. Destructive conflict is widely accepted as an inevitable and prominent part of human existence. However, most of the time, most people get along. Therefore, one can argue that, in fact, *peace is the norm*. People could transform their conflicts if they choose to get along (Ury, 1999).

There is no one definition of conflict. Conflict is complex, and definitions focus on a combination of various factors. Conflict is defined as “a problem or disagreement between two or more people” (Picard, 1998, p.127). Rubin, Pruitt & Kim (1994) give a fuller explanation: “Conflict means perceived divergence of interests, or a belief that the parties' current aspirations cannot be achieved simultaneously”(p.5). In their definition of

conflict Hocker and Wilmot (1995) place the emphasis on the struggle between the parties: "Conflict is an expressed struggle between at least two interdependent parties who perceive incompatible goals, scarce resources, and interference from others in achieving their goals (p.21).

Conflict emerges "when disagreements, differences, annoyances, competition, or inequities threaten something important"(Beer & Stief, 1997, p.11). Conflict is a natural and inevitable part of life. Differences can be of value. As our world becomes increasingly interdependent, more and more people bump into one another in a rapidly changing international context. In itself, conflict is neither bad nor good. It is an inevitable consequence of change, particularly in the face of uncertainty. However, disputes could be viewed not as problems at all but as opportunities for growth and transformation. Conflict can be constructive if handled well, destructive if handled poorly (Ury, 1999; Fisher, Kopelman & Schneider, 1994). It is ultimately a question of how conflict is viewed, and how it is approached.

Conflict resolution application dates back to simpler societies. In our societies, conflict is conventionally thought of as two-sided. However, no dispute takes place in a vacuum. The third side is the surrounding community, which serves as a container for escalating conflict. It has also invested in the final outcome of the conflict. In the absence of that container, serious conflict can gradually be transformed from confrontation into cooperation. Thus the third side serves as a kind of social immune system preventing the spread of the virus of violence. The third part is people using the power of peers to support a process of dialogue and nonviolence aiming for a certain product – a "triple win". We are shifting away from passivity toward the active

intervention of the surrounding community. We are the third party. Abused children and battered spouses are no longer treated as a “family matter”. Support groups, marital counseling and family mediation are becoming much more common in Europe and North America (Ury, 1999).

Thus, old perceptions of human conflict are being radically reframed, and powerful approaches for dealing with human differences are presented. These approaches are aimed at transforming destructive conflicts into profitable cooperation.

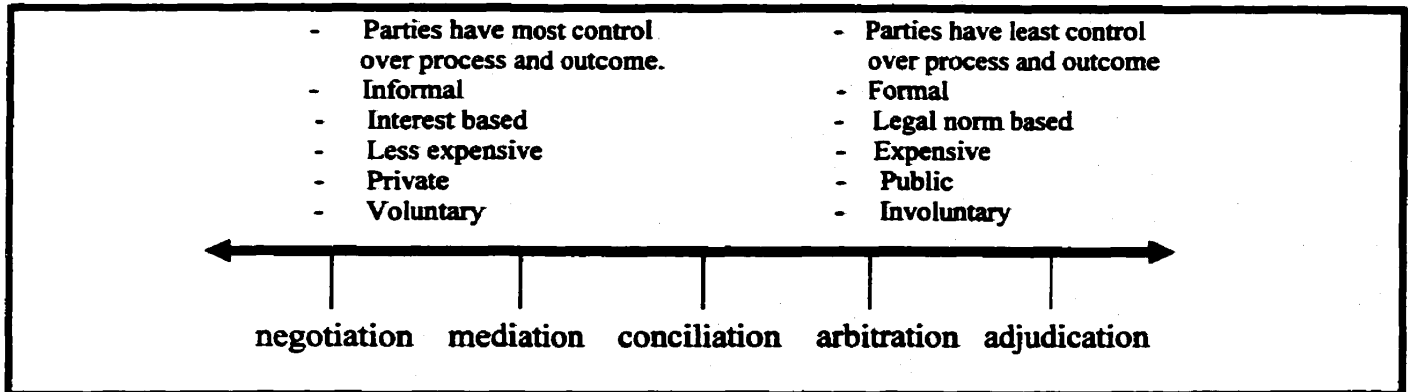
Moore (1996) generalizes existing conflict resolution approaches and provides a detailed list in which these approaches are subdivided into the groups as given below.

- (a) *Private decision making by parties*: (1) conflict avoidance, (2) informal discussion and problem solving, (3) negotiation, and (4) mediation;
- (b) *Private third-party decision making*: (5) administrative decision and (6) arbitration;
- (c) *Legal (public), authoritative third-party decision making*: (7) judicial decision, and (8) legislative decision;
- (d) *Extralegal coerced decision making*: (9) nonviolent direct action, and (10) violence.

These approaches are placed by Moore on the “Continuum of Conflict Management and Resolution Approaches” with respect to a number of characteristics, which provide rationale for their differentiation. Specifically, the extremes of the continuum are conflict “avoidance” on one hand, and “violence” on the other hand. The approaches belonging to groups (b), (c), and (d) illustrate increased coercion and likelihood of “win-lose” outcome (Moore, 1996, pp. 6-7).

The “Conflict Resolution Continuum” presented by Picard (1998) is a spectrum of such conflict management approaches as *negotiation, mediation, conciliation, arbitration, and judicial processes* (See Figure 1).

Figure 1: Conflict Resolution Continuum



Note: Adapted from Picard, 1998, p.8

Picard lays the extremes of the “Continuum of Conflict Management and Resolution Approaches” aside, namely, conflict avoidance, and informal discussion and problem solving on one hand, and the whole group of extralegal coerced decision making approaches such as nonviolent direct action, and violence on the other hand. She places the emphasis on distinguishing between (i) *alternative* and (ii) *adjudicative* methods of dispute resolution, actually dividing all the approaches in the “Conflict Resolution Continuum” into the relevant two categories of conflict resolution approaches. Picard introduces conciliation as belonging to the first category of the approaches into the Continuum as a mid-point between the alternative and adjudicative methods of dispute resolution.

There is a logical relationship between the conflict resolution approaches. The processes on the left side of the continuum give parties the most control, have the most

flexibility and privacy, and are the least expensive. As the dispute resolution processes approach the right side of the continuum the relevance of legal norms becomes greater while flexibility, privacy and the levels of control by the parties are diminished.

Negotiation is a process whereby the parties try to resolve a disagreement or plan a transaction through discussion and reasoned argument. These discussions may be conducted between the parties themselves or through representatives.

In mediation a neutral third party – the mediator helps disputants resolve a conflict. However, the mediator does not have the power to impose a solution.

Conciliation is similar to mediation but the neutral person acts as a shuttle for the parties who never meet. Conciliation can also be defined as the process of bringing parties to a point where they can manage their conflict without a third party.

An arbitrator's decision can be non-binding or binding. *Arbitration* is used to a large extent in labor relations for it is less formal.

Adjudication is a formal arbitration process, which is conducted by a judge or jury in a court of law. Decisions are based on legal principles rather than on conceptions of moral right or wrong (Picard, 1998, pp. 7-8).

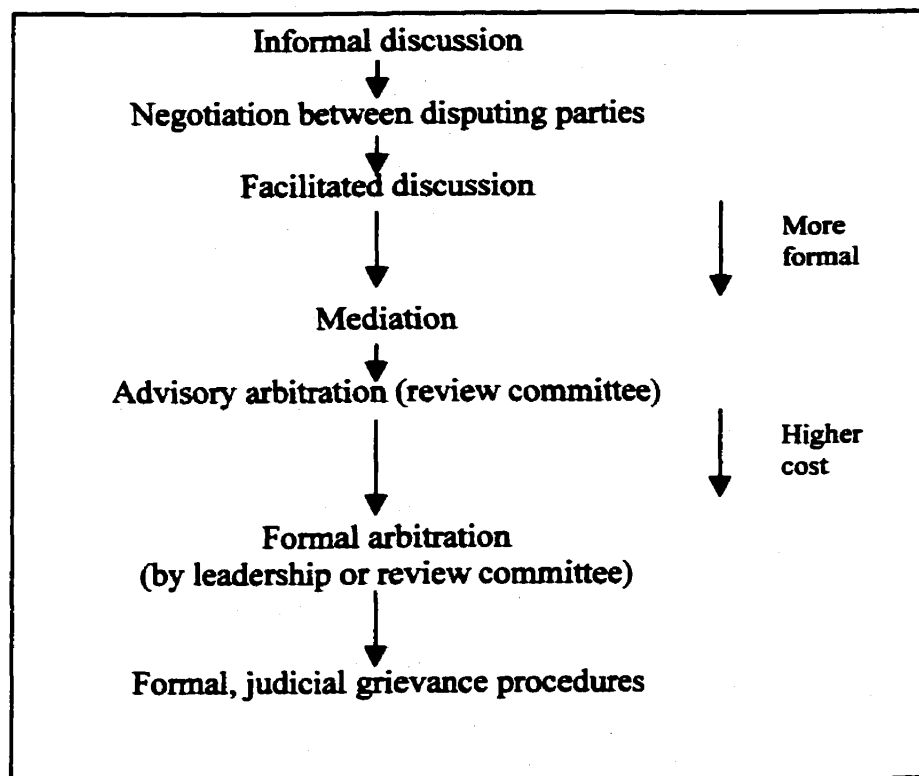
Isenhard, and Spangle (2000) bring *informal discussions* back into the spectrum of conflict resolution approaches as well as introducing *facilitation* into it. This makes the category of alternative approaches to conflict resolution broader.

Facilitation is related to a group problem solving process in situations where individuals cannot solve the problem alone. Group facilitation is defined as “a process in which a person who is acceptable to all members of the group, substantially neutral, and has no decision making authority intervenes to help a group improve the way it identifies

and solves problems and makes decisions, in order to increase the group's effectiveness" (Schwartz, 1994, p.4). The facilitator is an impartial leader, trained in conflict resolution, who helps parties make decisions or negotiate solutions to problems through dialogue. There is an overlap between facilitation and mediation, the key difference being in the emphasis placed by the facilitator on group processes to create consensus (Isenhardt, & Spangle, 2000, pp.107-108).

Isenhardt and Spangle (2000) arrange the approaches to conflict resolution at different levels of intervention in a system (such as an agency, organization or enterprise) for managing conflict.

Figure 2: Levels of Intervention for Dispute Design



Note: Adapted from Isenhardt & Spangle, 2000, p.5

In a system “*discussion*” and “*negotiation*” between disputing parties involves the least cost, the least need for assistance from the third party, and the greatest level of informality. Facilitation, mediation, or review committees can be low cost if the system can train its own staff. When there is a need to look outside the system for third - party assistance, costs and the degree of formality go up significantly. Budget (available funds), legal issues, the willingness of disputants to negotiate, and availability of third-party neutrals belong to the factors, which determine the level of intervention from external sources (p.166).

While the “Conflict Resolution Continuum” arranges all the approaches to conflict management at the same level, the system of “Levels of Intervention for Dispute Design” establishes a hierarchy at the top of which alternative dispute resolution approaches are found.

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is defined by Scimecca as “those non-coercive processes, which are alternatives to the formal legal or court system”(1993, p.212). The beginnings of ADR are rooted in the desire for harmony, efficiency and access to justice. It has been argued that adversarial processes are too costly, too painful, too destructive and too inefficient for a truly civilized people. To rely on the adversarial process as the principle means of resolving conflicting claims is a mistake that must be corrected (Burger, 1985, pp. 3-4). In 1850, Abraham Lincoln recommended, “Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses and waste of time”(Stern, 1961, p.15). Knebel and Clay (1987) point out that it took more than a century for

sufficient reforms to occur in the judicial system to make nonlitigated settlements readily available.

The informal justice movement gained momentum from concerns generating from inconsistencies in sentencing; the alienation of victims from their offenders; and, in the case of young offenders, the influence of labeling theory, which sought to minimize stigmatization. In the 1975 Law Reform Commission of Canada report, "Studies on Diversion", the use of ADR was supported based on the conclusion that adjudication was not always appropriate as the underlying problems of crime were not addressed. In the Report it was indicated that most of the crimes against persons involved people who knew each other and that the adversarial process contributed to creating a "winner and a loser", thus damaging human relationships (Picard, 1998, pp. 9-10).

Today, ADR is increasingly being sought as an administrative solution for an overworked court system. Critics of ADR suggest that it expands state control (Abel, 1982), that it is a product of the changing nature of state power and form of law (Spitzer, 1982) and, that it re-legitimizes the formal legal system (Harrington, & Merry, 1988). These as well as other arguments made by critics of ADR show that the ideals of ADR may not have been fully borne out. However, it is fair to say that in a relatively short period of time alternatives to the traditional court trial have become a significant factor in modern day dispute resolution. As ADR continues to grow in popularity, advocates will continue to seek to improve its procedures and techniques (Picard, 1998, p.10).

Many proponents of ADR envision the courthouse of the future as a "multidoor courthouse" that offers a whole selection of options from which people will select the most appropriate way to resolve a conflict (Isenhardt, & Spangle, 2000, p. 147).

The “Continuum of Conflict Management and Resolution Approaches” by Moore (1996), the “Conflict Resolution Continuum” by Picard (1998), and the “Levels of Intervention for Dispute Design” developed as a system for managing conflict by Isenhardt and Spangle (2000) appear to be reflecting the move away from adjudicated methods of conflict resolution. These conceptualizations encourage consideration of Alternative Dispute Resolution: innovative, nonjudicial conflict resolution processes aimed at achieving harmony, efficiency and justice.

Negotiation

A large body of literature on conflict resolution provides an overview of negotiation between disputing parties. However, there are several authors (i.e., Fisher, Ury & Patton, 1993; Ury, 1991, Fisher & Brown, 1989; Jandt, 1985; Lewicki & Litterer, 1985; and Fisher & Ury, 1981), who have written specifically about negotiation.

General Considerations

Negotiation is defined as “the process of bringing together those who are opposed on some issues and arranging for them to communicate clearly and fairly, to bargain and compromise, and to arrive at mutually acceptable agreements” (Barker, 1999). It is the process that creates and fuels collaboration enabling people to live and work together harmoniously (Isenhardt & Spangle, 2000, p.45). Keltner (1987) describes negotiation as a “peaceful procedure which reconciles and / or compromises difference and which depends on good faith and flexibility” (p.68).

The authors define negotiation as a strategic choice for managing problems. They distinguish between integrative and distributive negotiation. Integrative negotiation is a constructive, problem-solving process, the goal of which is to maximize interests of both

parties while protecting the relationship. Disputants who choose to negotiate begin in a spirit of cooperation and a climate of respect. They identify shared problems and interests through the exchanging of information. An attitude of integrative negotiation differs from bargaining (distributive negotiation) by the impact each has on disputants.

The "bargainer" seeks to achieve goals at the expense of the other, plays games in order to gain advantage in the processes, and coerces through demands and threats. The approach of the bargainer is positional, rigid, and insensitive to the interests of others. The "bargainer" approaches the resolution of differences or conflict with narrow, one-sided perspective and regards outcomes as fixed goals.

Integrative negotiation approaches conflict as a joint venture, and an opportunity for mutual gain. A negotiator seeks to achieve a goal compatible with the goal of others and rarely uses threats or demands. Conflict is approached with an attitude of creativity and flexibility. Integrative negotiation seeks to build collaborative discussion so that in addition to meeting needs or interests, a process is created for resolving further problems. The goal of negotiation is dialogue with mutually satisfying outcomes (Isenhardt & Spangle, 2000, p.46).

Fisher and Ury (1981) distinguish between positional bargaining and interest-based negotiation, and suggest that:

- Arguing over positions produces unwise agreements.
- Arguing over positions is inefficient.
- Arguing over positions endangers the ongoing relationship.

The authors state that traditional, positional strategies for negotiation often leave people dissatisfied, worn out, and/or alienated. They produce either agreement, or

breakdown. In either event, the process takes considerable time. The authors define positional bargaining as being either *soft* or *hard*.

The hard negotiating game emphasizes the importance of gaining victory. Each negotiator asserts what s/he won't do. The disputants see themselves *as adversaries*. The task of jointly devising an acceptable solution tends to become a battle. Hard positional bargaining can strain or even shatter the relationship between the parties. Many people recognize the high costs of hard positional bargaining on the parties and their relationship in particular.

The soft negotiating game emphasizes the importance of maintaining relationships, but often at the price of the legitimate interests of the parties. Negotiation primarily concerned with relationships, runs the risk of producing a "sloppy" agreement based on simple compromise, possibly leaving one or both parties feeling like they have not fully dealt with their legitimate issues.

In contrast to positional bargaining Fisher and Ury suggest "changing the game" in favor of "principled negotiation". This involves shifting the focus of the negotiation process from the parties' positions to a consideration of their legitimate interests. The authors see positional bargaining as a "win/lose" approach, and propose the basis of a "win/win" approach:

- (i) *People*. Separate the people from the problem.

The participants should come to see themselves as working *side by side*, attacking the problem, not each other. Every negotiator has two kinds of interests: in the substance and in the relationship. Positional bargaining puts relationship and substance in conflict, because the participants tend to identify themselves and each other with their positions. In

order to address the legitimate interests of the parties and safeguard their relationship, the issues need to be separated from the egos of the parties.

Conflict lies not in the objective reality, but in people's heads. "Truth" is simply one more argument - perhaps a good one, perhaps not – for dealing with differences. People tend to see what they want to see. The ability to see the situation as the other side sees it, as difficult as it may be, is one of the most important skills a negotiator can possess.

In communication, defined by Moore (1986) as “a central component in negotiation”, Fisher and Ury (1981) specify three big problems. They are: (1) frequently each side has given up on the other and is no longer attempting any serious communication; (2) one side is not hearing what the other side is saying; and (3) misunderstanding. The authors provide the following recommendations to resolve these problems:

- Listen actively and acknowledge what is being said.
- Speak about yourself, not about them.
- Prevention works best.
- Build a working relationship.
- Address the problem, not the people.

(ii) *Interests*. Focus on interests, not positions. Explore interests and avoid presenting a bottom line.

Compromising between positions is not likely to produce an agreement, which will effectively take care of the human needs that led people to adopt those positions. Behind opposed positions lie shared and compatible interests, as well as conflicting ones.

Interests define the problem. The most powerful interests are basic human needs. The purpose of principled negotiating is to serve the legitimate interests of the parties. The chance of that happening increases when the interests rather than positions are communicated and acknowledged as a part of the problem.

(iii) *Options*. Generate a variety of possibilities before deciding what to do.

Develop multiple options to choose from; decide later.

“Skilled negotiators generate five options or alternatives for every problem they can anticipate”(Isenhard and Spangle, p.50). Creative options can be generated by brainstorming: (1) separate the act of inventing options from the act of judging them; (2) broaden the options on the table rather than look for a single answer; (3) search for mutual gains; and (4) invent ways of making decisions easy.

(iv) *Criteria*. Evaluate the relative validity of options using realistic criteria.

Reason and be open to reasons; yield to principle, not pressure.

Ultimately, in order to be successful, an agreement must reflect some fair standard (such as market value, expert opinion, or law) independent of the naked will of either side. The basic points to remember are: (1) frame each issue as a joint search for objective criteria; (2) reason and be open to reason as to which standards are most appropriate and how they should be applied; (3) never yield to pressure, only to principle; and ultimately (4) Focus on objective criteria firmly but flexibly: “Please correct me if I am wrong”.

The four propositions of “principled negotiation” are relevant from the time the person / party begins to think about negotiating until the time either an agreement is

reached or the decision is made to break the effort. This period is divided into three stages: *analysis, planning, and discussion*.

The method of “principled negotiation” permits parties to reach a consensus efficiently on the basis of a joint decision making process thus making possible an “amicable” agreement (pp.3-84).

Strategies to Promote Mutual Gains in Negotiation

Various strategies are suggested to move negotiators on constructive paths for resolving disputes.

Fisher and Brown (1989) further develop the concept of “principled negotiation” and offer a straightforward strategy *to creating relationships* that can deal with difficulties as they arise. They state that effective working relationships have a high degree of rationality, understanding, communication, reliability, noncoercive means of influence, and acceptance. Each of these elements is part of the process of interaction between parties (individuals or groups) and independent of their substantive interests.

Practical advice is given for making a working relationship between “them” and “us” succeed, such as:

- Be unconditionally constructive.
- Do only those things that are both good for the relationship and good for “us”, whether or not “they” reciprocate:
- *Understanding*. Try to understand them. Always assume a need to learn more;

While Fisher and Ury (1981) state that in negotiation, particularly in a bitter dispute, feelings may be more important than talk, and emotions need to be made explicit and acknowledged as legitimate. Fisher and Brown (1989) give practical

advice to be *rational* and balance emotions with reason. Too much emotion can cloud judgment. Too little emotion impairs motivation and understanding;

- *Communication.* Three barriers to effective communication identified by Fisher and Brown (1989) and three big problems specified by Fisher and Ury (1981) as presented above are similar: (i) We assume there is no need to talk; (ii) We communicate in one direction – we “tell” people; (iii) We send mixed messages.

Three ways to strengthen the relationship are in order with the “three barriers” / “three problems” in communication, and are as follows: (i) ACBD: Always Consult Before Deciding; (ii) Listen actively; and (iii) Plan the communication process to minimize mixed messages.

- *Reliability.* Under the concept of reliability the authors suggest that it is important to be wholly trustworthy, but not wholly trusting. It is also important to help “them” to be reliable. The advice is given to be open to persuasion and try to persuade “them” as well as to accept “them” as worthy of our consideration. Behave as if “we” care – and “we” will.

The best strategy to adopt without knowing the other person’s strategy is cooperative tit-for-tat: Cooperate and be “generous” the first time.

Moore (1986) recognizes negotiation as a psychological process creating an atmosphere of trust and cooperation.

Fisher and Ury’s emphasis on relationship is important, specifically in situations where continuing discussions are necessary, such as disputes that involve community, family, public policy, or ongoing business negotiations (Isenhardt & Spangle, 2000).

A successful negotiation uses a process in which all parties have confidence in the results. The ultimate goal of negotiation is found in the following statement by Jandt (1985): "The goal of any negotiation should not be merely to get to "yes" - not merely to bend the other party to your will by whatever means you can - but rather to get past "yes" by resolving the conflict in a way that serves the best interests of both parties and encourages a harmonious, long-term relationship (p.143).

The strategy to build trust and share information as presented by Isenhard and Spangle (2000) appears to be a further development of the strategy to create working relationships as described above. Kimmel, Pruitt, Magenau, Konar-Goldband, and Carnevale (1980) found that when people trust each other, they are less likely to engage in positional statements and threats. People are more likely to share information or express openness to trade-offs if trust is present.

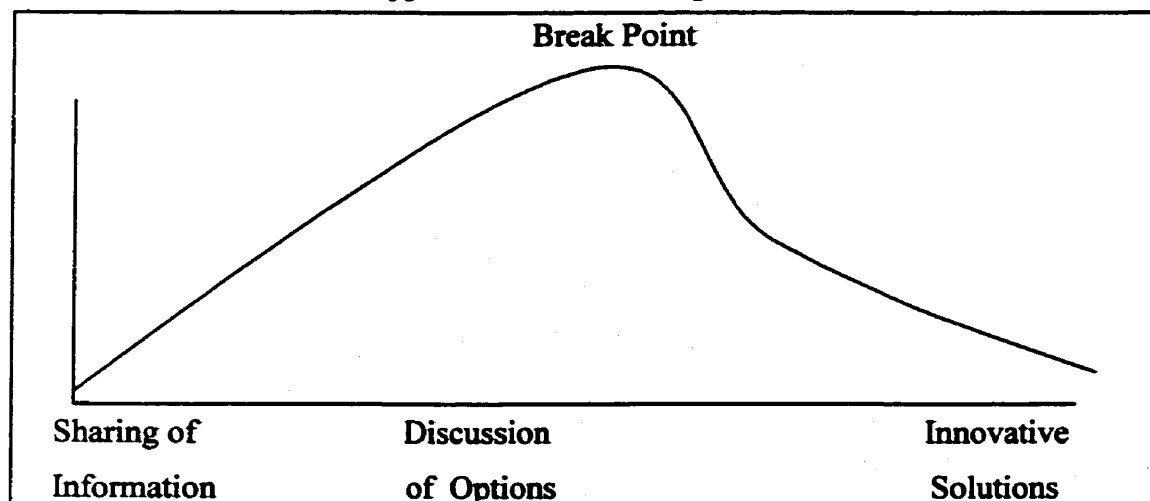
Another strategy to move negotiators on constructive paths for resolving disputes as presented by Isenhard and Spangle (2000) is to begin by agreeing in principle. The more complex the issue, the more important it is for parties to first agree in principle before moving to problem solving, i.e., to declare their intention to agree.

One more strategy shared by effective negotiators and also presented by Isenhard and Spangle (2000) is the practice of asking many questions. Skilled negotiators ask, on average, twice as many questions when compared to average negotiators. The questions uncover underlying issues, opportunities for options, and areas of potential agreement. In addition, questions create a perception that the negotiator is actively listening and is concerned about the interests and goals of the other parties. Effective negotiators do more listening, whereas average negotiators tend to do more arguing (p.49).

Jandt (1985) found that one of the most important skills of negotiators is the ability to mirror back tentative understanding. This accomplishes three goals: (1) it makes sure that all the parties are talking about the same issue; (2) it impresses others that the negotiator understands them; and (3) it encourages others to eliminate ambiguities (p.227). Negotiators demonstrate understanding through *paraphrasing*, *clarifying*, and *summarizing* the contributions of others.

Negotiators must be patient as they move toward reaching a conflict's break point, the moment when parties who feel hopelessly stuck finally see possibilities for resolution. Following the sharing of information about interests and goals, tension increases to a point where parties feel pressure to capitulate to bring the tension down or to entrench in positional statements. It is at this point, when all feel lost, that some of the most innovative, constructive solutions will occur. Negotiators need to remain hopeful and collaborative, in spite of unbearable tension, and look for the break point at which new possibilities will emerge spontaneously. Isenhardt and Spangle illustrate the escalation of conflict and how it then frequently moves to collaborative discussion.

Figure 3: Collaborative Approaches to Resolving Conflict



Note: Adapted from Isenhardt & Spangle, 2000, p.52

From Adversaries to Partners

Ury (1991) further develops the concept of principled negotiation by outlining a five-step strategy to get a reluctant partner to negotiate mutually satisfactory agreements. This strategy is described below.

The essence of the “breakthrough” strategy is indirect action to go around the opponent’s resistance. The term “opponent” as defined by the author does not mean an enemy but someone who has taken a position opposite to the other person. A “stone wall” tactic is a refusal to budge. The phrase “going to the balcony” is a metaphor for taking a step back and getting some perspective. BATNA is a person’s Best Alternative To a Negotiated Agreement. In each negotiation it is important for each of the parties to have a sense of the point beyond which the interests cannot be met. A good BATNA does not already exist; it needs to be developed. In summary, the five steps of breakthrough negotiation are:

1. *Go to the balcony.* The first step is to control your own behavior. When your opponent says “No” or launches an attack, you may be stunned into giving in or counterattacking. Suspend your reaction by naming the game. Then buy yourself time to think. Use the time to figure out your interests and your BATNA. Throughout the negotiation, keep your eyes on the prize. *Instead of getting mad or getting even, focus on getting what you want.* In short, take a long perspective, or go to the balcony.
2. *Step to their side.* Before you can negotiate, you must create a favorable climate. You need to defuse your opponent’s anger, fear, and suspicions. He/she expects you to attack or to resist. So do the opposite: Listen to him/her, acknowledge the point, and

agree with him/her wherever you can. Acknowledge his/her authority and competence, too. Disarm him/her by stepping to his/her side.

3. *Don't Reject ...Reframe.* The next step is to change the game. Instead of rejecting your opponent's position – which only reinforces it - direct his/her attention to the problem of meeting each side's interests. Take whatever he/she says and reframe it as an attempt to deal with the problem. Ask problem-solving questions, such as "Can you explain why is it important that you want that? or "What would you do if you were in my shoes? or "What if we were to...?" Ask for your opponent's advice. Ask "What makes that fair?" Make your questions open-ended. Tap the power of silence. Rather than trying to teach him/her yourself, let the problem be his/her teacher. Reframe his/her tactics, too: Go around stone walls, deflect attacks, and expose tricks. To change the game, change the frame.

4. *Build Them a Golden Bridge.* At last you're ready to negotiate. Your opponent, however, may stall, not yet convinced of the benefits of agreement. You may be tempted to push and insist, but this will probably lead him/her to harden and resist. Instead, do the opposite – draw him/her in the direction you would like him/her to go. Think of yourself as a mediator. Involve him/her in the process, incorporating his/her ideas. Try to identify and satisfy his/her unmet interests particularly his/her basic human needs. Help him/her save face and make the outcome appear as a victory for him/her. Go slow to go fast. In sum, make it easy for him/her to say "yes" by building him/her a golden bridge.

5. *Bring Them to Their Sense, not Their Knees.* If your opponent still resists and thinks he/she can win without negotiating, you must educate him/her to the contrary. You must make it hard for him/her to say no. You could use threats and force, but these often

backfire; if you push him/her into a corner, he/she will likely lash out, throwing even more resources into the fight against you. Instead, educate him/her about the costs of not agreeing. Ask reality-testing questions, warn rather than threaten, and demonstrate your BATNA. Use it only if necessary and minimize his resistance by exercising restraint and reassuring him/her that your goal is mutual satisfaction, not victory. Make sure he/she knows the "golden bridge" is always open. In short, use power of persuasion to bring him/her to his/her senses, not his/her knees.

The strategy of "breakthrough" negotiation, enables a person to change the game from face-to-face confrontation to side-by-side problem solving.

Destructive Tactics

Some people approach the negotiations from a destructive perspective. They engage in tactics, which some people call dirty tricks and others call unethical behavior. These tactics include lies about information; using gifts or bribes to get opponents to soften their position; using spies to learn about confidential information; undermining opponents in the eyes of their constituency; trying to demean or humiliate an opponent through public charges; or misrepresenting credentials, reputation, or expertise (Lewicki & Litterer, 1985, p.326). Dealing with tactics designed for deception or manipulation requires firm, reasonable responses. "Just because others have left the high road of ethical behavior does not mean that we must leave it as well. We always have the power to walk away or say "no" to whatever possibilities are before us. Our response should be to point out the disruptive nature of the tactics and return to a discussion about ground rules. After trust has been broken, one may need to require confidence –building measures, such as

small moves or concessions, on which one can build new trust” (Isenhard & Spangle 2000, p.58).

The goals of coercion or manipulation are to exert *power over others*. In extreme cases, a party may even resort to violence as a way to demonstrate power over others. The benefits of manipulation, litigation, and violence appear strong in the short term. However, the long-term costs of loss of relationship, cooperation, and community are great.

Collaborative power involves power with others to resolve differences and achieve interests. *Having power with others* involves an orientation based on principled negotiation, i.e., sharing power. If we can create conditions in which others are highly motivated to share information, engage in give-and-take, and believe that our intentions are genuine, then there will be less need for others to retaliate or fuel conflict spirals. Collaborative power values the opinions and the interests of both parties as core elements for settlement. Sharing power means that we are just as willing to allow others to influence us, as we desire to influence them. We may be firm on interests and needs, but we can be flexible about how we achieve them (Isenhard & Spangle 2000, p.25).

Craig and Craig (1974) describe this perspective as synergic power, in which the goal is “to increase the satisfaction of all participants by intentionally generating increased energy and creativity, all of which is used to co-create a more rewarding present and future”(p.62). An orientation of collaborative power enables parties to focus more effort on joint problems and less effort on designing ways to force opponents into compliance. “Whenever there are two positions in a negotiation, the solution will never

be one of those two positions. A successful solution depends on finding a third position that must be created or discovered”(Hargrove, 1988, p.223).

Pre-negotiation

Successful negotiation depends on information gathered before a negotiation begins. Many proponents of ADR consider prenegotiation to be critical for later success. It may uncover relationship problems that, if resolved before discussions, enhance the potential for success (Isenhard & Spangle, 2000, p.55). Saunders (1985) describes prenegotiation as the actual first phase of negotiation. In this phase, parties define the problem, develop a commitment to negotiate, and make arrangements for negotiations.

Principled negotiation is a universally applicable method for negotiating personal and professional disputes, which applies whether the other side is more or less experienced, a hard bargainer or a friendly one. It is an empowering process, which moves the escalation of conflict to “the break point” and collaborative discussion, demonstrating “power with others”. Principled negotiation as a “win-win” concept of resolving differences and a powerful tool in the ADR process is an all-purpose strategy. It can be used at all levels of conflict resolution from domestic to business and international disputes.

Perspectives on Mediation

When direct problem solving or negotiations break down, disputants frequently seek the assistance of a third party to help them resolve their differences. This is the mediation process.

Since the 1970s, the percentage of cases going to trial has been in a steady decline, largely because of the growing number of cases settled out of court (Isenhard & Spangle,

2000, p.71). In a relatively short period of time, the use of mediation has come to be regarded as a legitimate means to deal with many social and legal conflicts in Europe and north America. In 1995 more than five thousand dispute resolution professionals were known to practise in Canada (Picard, 1998, p.18).

History of Mediation

Mediation is not a novel invention. It is one of the oldest and most common forms of conflict resolution. Its current practice has evolved from that, which existed in other cultures and other times. For example, the Bible refers to Jesus as a mediator between God and man. In one of the earliest recorded mediations, Moses went to the top of Mount Sinai to intercede between the early Israelites and God. During the Middle Ages, the Catholic Church served as a prominent center for mediation activity in Western Europe (Isenhardt & Spangle, 2000). In ancient China, mediation was the principle means of resolving disputes. It has a rich history in Japanese law and customs. In parts of Africa the moot, or neighborhood meeting, has long provided an informal mechanism for resolving a variety of interpersonal disputes. The Early Native American tribal cultures used mediation to resolve their commercial disputes and marital disagreements.

The church or temple has played an important part in resolving conflicts among its members for centuries. The local parish priest, minister, or rabbi has frequently been called upon to serve as a mediator, particularly in family disputes, to suggest ways that the disputants might learn to live with each other or reorganize their relationship. Mediation is consistent with, if not central to, the biblical values of forgiveness, reconciliation and community (Garrett, 1994).

Much of what is known about the historical roots of mediation tells us that it has grown out of strong moral and social concerns. Early practitioners in the modern Western era were attracted to mediation for the betterment of society, albeit with differing motives. Social activists were interested in community empowerment. Legal reformers sought legal equality and access to justice. Church groups, especially the Mennonites and Quakers, were interested in reconciliation and restoration of harmony. Peace activists were drawn to collaborative problem solving by their concern about nuclear war and global destruction.

Early mediation programs in Canada evolved from court-based programs that were ideologically linked to restorative justice. Rooted in social activism, early proponents of mediation sought to assist individuals and groups to use non-violent and more effective problem-solving strategies with hope to return justice to the community. While mediation in labor disputes has been long used, it was not until the 1960's that mediation realized wider acclaim in the realms of community, family, public policy, and legal contexts. Mediation now commands the attention of scholars, researchers and legislators. Professional associations boast large memberships (Picard, 1998). For example, the Association of Family and Conciliation Courts, founded in 1963 in the US, to promote court-connected family conciliation, began promoting the use of mediation as an alternative to family court litigation. In Canada family mediation has more recently become an active area of private practice that has given birth to the new national organization, Family Mediation Canada, established in 1984. Most provinces and territories in Canada also have founded their own professional organizations to promote

custody and divorce mediation at a local level (Garrett, 1994). Similar organizations exist in the US and other countries.

Universities offer graduate and undergraduate degree programs in conflict resolution and mediation, and professional conferences abound. Corporations and individuals from a variety of occupations have responded to the growing demand for non-adversarial dispute resolution (Picard, 1998).

Defining Mediation

The word mediation is derived from Latin word “medi” or “medio”, which means middle. It is defined as “intervention in disputes between parties to help them reconcile differences, find compromises, or reach mutually satisfactory agreements” (Barker, 1999, p.295). Mediation can also be defined as “a process of assisted or facilitated negotiation where the mediator controls the process and the parties determine the outcome” (Picard, 1998). This echoes the definition of mediation as an extension of the negotiation process provided by Moore (1986): “Mediation is generally defined as the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute. In addition to addressing substantive issues, mediation may also establish or strengthen relationships of trust and respect between the parties or terminate relationships in a manner that minimizes costs and psychological harm”(p.15). Mediation is “a process in which a third party – who is impartial, has no stake in the outcome, and has no power to impose a decision – guides disputants through a nonadversarial discussion process that has as its goal the settling of disputes” (Isenhardt & Spangle, 2000, p.72).

Golberg, Sander, and Rogers (1992) point out that “mediation is usually a by-product of failure – the inability of disputants to work out their own differences through direct negotiation. Each party typically comes to mediation locked in a position that the other(s) will not accept” (p.105). The critical quality of mediation is said to be “its capacity to reorient the parties towards each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and disposition toward one another (Fuller, 1971, p.325). The success of mediation depends on “the disputants’ willingness to accept the mediator’s role as a process expert for resolving differences, as well as disputants’ willingness to share information that might lead to a mutually beneficial agreement” (Isenhardt & Spangle, 2000, p.72). Bush and Folger (1994) add, “The mediation process contains within it a unique potential for transforming people – engendering moral growth – by helping them wrestle with difficult circumstances and bridge human differences, in the very midst of conflict”(p.2).

A review of the literature focused on key issues in the area of mediation as related to above and also including Fisher & Brown, 1988; Cummings & Davis, 1994; Emery, 1994; Beer & Stief, 1997; and Ury, 1999 suggest the following:

Mediation as distinguished from other forms of dispute resolution is a brief, non-adversarial, task-oriented, interventive approach to the resolution of conflict. It is designed to leave the maximum possible control of decision making in the hands of the primary participants, while at the same time placing the management of the facilitative process in the hands of a third party – the mediator. This management function is the defining characteristic of mediation in relation to other forms of dispute resolution. The

principle of self-determination can assist in facilitating the empowerment of each participant without disempowering anyone in the process. Mediation is a generic, strengths-based approach fostering empowerment and recognition.

Approaches to Mediation

A new surge of interest in mediation has brought it to the fore of modern dispute resolution practice. Increasingly mediation is being used in an array of social and legal venues. There are those who believe that mediation presents a powerful opportunity to express and achieve a higher vision of human life. The more dominant approach, however, emphasizes mediation's capacity for finding solutions that are expedient, less costly and more satisfying than formal adjudicative processes (Picard, 1998).

Until quite recently, mediation has been considered more an art than a science. Early mediation approaches were described as being either content interventions (which focus on substantive issues), or process interventions (which focus on communication and relationship issues). The common practice when classifying approaches to mediation has been to situate them as polar approaches and use binary classification schemes. One of the early studies on mediation was carried out by Sibey and Merry (1986) who constructed a typology consisting of two ideal – type descriptions of mediator approaches – the bargaining style and the therapeutic style. In their view the bargaining style reflects a greater measure of control of the process and focuses on settling the dispute based on what parties “want”, while the therapeutic model focuses less on settlement and more on communication and relationships. Schwerin (1995) classified interventions as contrasting schools of thought about a mediator's role – one as facilitator, the other as activist. Riskin

(1996) described mediators as being either facilitative or evaluative. Kolb (1983) labeled the different functions of a mediator as a dealmaker or orchestrator.

A more recent, and controversial, account of mediation approaches has been put forward by Bush and Folger (1994) in their book "The Promise of Mediation". Similar to Sibley and Merry, Bush and Folger describe mediation as having moved toward a form that encompasses *a directive and problem-solving approach* where reaching agreement is paramount. They contrast the directive approach with *a transformative model* of mediation that gives individuals a greater sense of their own efficacy and a greater openness to others. Bush and Folger suggest that as mediation has developed, the problem-solving potential of mediation has been emphasized to such an extent that a directive, settlement driven model of mediation has become the more dominant form of practice.

Other authors have posited mediation approaches as dichotomous. For example, Carnevale, Lim, and McLaughlin (1989), and Kolb and Associates (1994) found that two primary frames, settlement and communication, reflected the tendency of mediators to define their roles and structure their activities. The approach used by a mediator is influenced by his or her past experience, training and ideology as well as the context in which mediation takes place. When mediators describe their role as "an art not science", they are referring to their role in the process. This focus on role-taking suggests that mediation approaches are dependent upon the mediator's perspective of his or her part in the process as well as their perspective of the other players. A mediator's perspective informs his or her choice about the order and use of particular tactics for the resolution process at hand (Kolb, 1983).

The choice of the approach to be followed by a mediator may also be influenced by findings indicative of favorable attitudes toward mediation stemming largely from how the process works, not from the outcome of the process. Two features are responsible for this: the degree of participation in the decision making that the parties experience, and the fuller the opportunity to express themselves and communicate their views (Bush, 1996). Parties are generally more satisfied with solutions that are mutually agreed upon than those imposed by a third party, and therefore compliance with mediation is high. In a study by Cook, Roehl and Sheppard (1980), eighty to ninety percent of disputants in varied criminal and civil disputes were satisfied with the mediator, the terms of the agreement, and the mediation process. For many, the attraction of mediation is much more than utilitarian. It is a vehicle for empowering individuals and groups to manage their own disputes without recourse to professionals or formal institutions. It allows them to regain control of their lives and achieve greater access to justice. Mediation goes beyond the "quick fix" to become an opportunity to strengthen relationships by fostering mutual recognition and gain (Picard, 1998).

While emphasizing the capacity of mediation for problem-solving remains the more dominant approach, there is likely to be a shift toward balancing directive and transformative approaches. This could be considered a reflection of the historical roots of mediation having grown out of strong moral and social concerns and its consistency with eternal values of forgiveness, reconciliation and community. For many, mediation promises justice and a new form of community and holds the potential to transform society. This shift is reflected by Bush and Folger (1994), with the authors raising the issue of rethinking the problem-solving orientation. Fisher, Kopelman, and Schneider

(1994) also argue that we need to move beyond one-shot “solutions” toward a constructive way of dealing with differences when faced with any conflict. They introduce an idea of the new paradigm in conflict management. These authors believe that it is more useful to think about *a good process* for handling a flow of problems than to think about “solving” a particular problem once and for all. *In fluid and turbulent times*, it is better to think in terms of *coping with conflicts* than resolving them.

Understanding our task as *conflict management* rather than *conflict resolution* is a *paradigm shift* – away from a conception of conflict and negotiation that stresses static substantive solutions and *toward an approach that stresses the power of process*. Fisher et al. (1994) see the difficulty in most cases lying not in the lack of potential substantive options but in the failure to design, negotiate, and pursue a process that moves us forward from where we are now to where we would like to be. The authors are not looking for a perfect solution. They do not assume that all conflicts can be settled peacefully or that all negotiations will – or should – lead to agreement. Nor do they assume that we operate in a rational world. On the contrary, they are trying to *reason about conflict with all its irrational components*.

The fact that mediation has received the most attention of all of the ADR processes, and is said to have emerged as the single most powerful tool in the ADR movement (Bush, & Folger, 1994) can be explained by both, directive and transformative approaches having contributed to the evolution of mediation. The binary nature of mediation is reflected in the definitions of mediation as presented above, specifically in the definition provided by Moore (1987). It must be due to both approaches that

mediation has been brought to the fore of modern dispute resolution practice as both of them have shaped today's mediation movement.

According to Bush and Folger (1994) the mediation movement can be characterized by four "stories" – the Satisfaction Story, the Social Justice Story, the Transformation Story and the Oppression Story. Each of these presents a view of mediation and its development from the perspective of different social interest groups.

According to the *Satisfaction Story*, mediation facilitates collaborative problem-solving rather than adversarial distributive bargaining. It is seen as a powerful tool for satisfying human needs, and has led to more efficient use of private and public dispute resolution resources.

The *Social Justice Story* tells of mediation helping to form effective grassroots community structures by reducing dependency on professionals and empowering individuals to participate in civic life.

According to the *Transformation Story*, participation in mediation helps individuals gain a greater sense of self-respect, self-reliance, and self-confidence. It strengthens their inherent capacity to acknowledge their concern for each other as human beings and promotes individual moral development.

Finally, the *Oppression Story* tells the tale of mediation that produces outcomes, which favor the stronger parties by ignoring or undermining the efforts of weaker parties. This version of mediation sees it as neutralizing social justice gains by helping to reestablish the privilege of the stronger class and perpetuating the oppression of the already disadvantaged.

Bush and Folger (1994) propose that two ideologies currently dominate the discourse on mediation – individualistic and rational. The individualistic framework sees the world as made up of separate beings of equal worth but different needs who naturally seek satisfaction of their individual desires. This framework tends to produce a problem-solving or directive approach, associated mainly with cost-effectiveness, timeliness, and satisfaction. A rational framework views the world as made up of persons with individual consciousness and diverse needs but who are also inherently connected to each other. This framework is associated with transformation or empowerment. Whatever perspective is taken, however, it is generally agreed that mediation is both diverse and pluralistic and that no one approach or ideology represents the ‘full story’ of mediation (Picard, 1998, p.16).

Mediation Goals

“Knowing when to use mediation and for what purpose is critical to the successful mediation” (Picard, 1998, p.21).

Mediation is eclectic and multi – disciplinary. It has been developed in the fields of anthropology, communications, economics, political science, social work, psychology, law, management, and industrial and international relations. Mediation is used to resolve issues in a variety of forums including the courts, business, schools and institutions of higher education, neighborhoods, families, and organizations. However, mediation is not a panacea. It should not be used when one party appears to be more interested in winning than collaborating, when the interests of one party cannot be fully represented, or, when one party would be placed in danger through his or her participation. Mediation should not be used as a substitute for therapy or counseling, as a coercive means to an end, as a

substitute for the proper exercise of authority, when competent mediators are unavailable, when power should not, or cannot, be balanced, or, when the goal is repressive. A useful caveat to remember is that "*parties who participate in mediation should never leave worse off than when they came*" (Picard, 1998, pp.20-21).

Mediation pursues a variety of goals. Cupach and Canary (1997) point out that "While there is an agreement concerning the basic principles that define mediation, the goal of the process is a matter of some dispute"(p.207). Mediator styles range from very *directive*, when the goal is reaching an agreement, to *nondirective*, which emphasizes dialogue, relationship, and organizational change. The mediator's choice of goals has concrete effects on techniques chosen.

The most common goal of mediators is reaching an agreement that will resolve differences or end conflict. Mediators from a variety of disciplines view problem solving as the ideal orientation for managing conflict. Mediators focus on problem – solving work in context, such as families, psychology, communication, labor unions, businesses, governmental groups, and churches. Through assisted negotiation, parties resolve differences and form agreements about specific, well-defined problems. *The goal is an efficiently produced agreement*, either in principle or formally written, that will be both durable and beneficial to disputants (Isenhardt & Spangle, 2000, p.74).

In a review of literature about successful mediations, Folger, Poole, and Stutman (1993) found that mediators often play a major role in *breaking attack/defend communication cycles* that create stalemates. The task here is to manage the discussion between disputants in a way that minimizes threats and fears. The assumption is that if the destructive cycle can be broken, the parties possess sufficient skill to resolve conflict.

Among the ways that mediators accomplish this task are (a) emphasizing their impartial role, (b) equalizing the parties' communication by performing in a referee – like role, and (c) reframing disputants' hostile or blaming language (Tracy & Spradlin, 1994). Muldoon (1996) suggests that this is accomplished by changing the conflict into a dispute and then turning the dispute into the negotiation of a deal.

Facilitating dialogue is another goal pursued / or described by mediators. These mediators emphasize process, communication, and the importance of relationship. Kolb and Associates (1994) report that “They see themselves as behind - the - scenes catalysts or orchestrators of the parties' own coping and problem solving skills...[who] foster in the parties a more immediate sense of ownership and a better foundation for dealing with each other in the future” (p.477).

The most far – reaching of the goals expressed by mediators is *organizational change*. This is a difficult, complex, and hard – to – measure goal. Kolb and Associates (1994) describe these mediators as facilitators of change who espouse a transformational vision. The goal is to create fundamental changes in people or processes so that conflict is managed more effectively.

Mediators will often have primary and secondary goals. For many, reaching an agreement is primary, although they hope that they can create dialogue that prevents future problems. Other mediators downplay the achievement of specific agreements and speak of the importance of creating dialogue for building relationships and trust. However, these same mediators list as a secondary goal the breaking of destructive cycles or an agreement about how decisions will be made or conflict resolved. It is context

which often directs the choice of primary or secondary goals (Isenhardt & Spangle, 2000, pp.74-75).

Mediation Values and Principles

A number of principles guide successful mediation. The list presented by Isenhardt and Spangle (2000, pp. 76-77) summarize studies that looked at values most common to the best mediators. These are described below.

Impartiality – Inevitably, mediators bring their own biases and predisposition, but these beliefs need not unduly influence the course of a mediation. Mediators may not be neutral, but they must behave professionally. They must be, and must be seen to be impartial. Unless mediators are trusted, mediation will not likely succeed.

Empathy – Parties who feel judged will become defensive, which is a barrier to achieving integrative solutions. The best mediators display empathy at appropriate points to let parties know that their concerns matter. When parties feel heard, there is a greater chance that they will be candid with their contributions and more confident about the process.

Effectiveness as a Questioner – Successful mediators are adept at asking probing and clarifying questions. They ask insightful questions that uncover concerns and interests, which underlie positional statements. Questions are used to teach rather than lecture, expose inconsistency rather than openly confront, and seek understanding rather than argue.

Valued Reputation – Two related attributes of the best mediators are good reputations and demonstrated records of success. Once a mediator loses a reputation for being fair, honest, genuinely concerned, and impartial, it takes a lot of work to rebuild it.

Confidentiality – The ability to function effectively heavily relies on the ability to honor the confidentiality of information shared by disputants. This includes information shared privately in a caucus and information shared with others in the community after the mediation is completed. A mediator serves as a safe listener and one with whom parties can share information that they would not otherwise share publicly. This is a matter of hard principle in negotiation. Exceptions to this principle occur, however, in situations where child abuse is revealed or laws have been broken. In such cases the mediator is bound by ethics and in many cases by law, to report to appropriate authorities.

Process Skills – Because the level of conflict is high when parties come to mediation, disputing parties expect the mediator to use a process that manages tension and destructive conflict behaviors.

In a study that involved identifying characteristics of effective mediators in labor disputes, Landsberger (1956) found that successful mediators also possessed:

- an appropriate sense of humor;
- the ability to act unobtrusively in conflict;
- the ability to create the perception of “being with” disputing parties and being concerned about their well-being;
- persistence and patience; and
- specific knowledge about the subject area in which they are mediating.

Rubin and Brown (1975) point out that the mere presence of a third party who is independent of parties in a dispute serves as a significant factor in the settling of disputes.

Mediator Roles

There is no clear consensus on mediator roles. Differences in background, training and professional discipline, as well as area of practice are reflected in differing and at times competing views of what it is that mediators do. One view is that a mediator is an active but neutral facilitator. Some of the tasks performed by a mediator involve structuring the process, managing emotions, organizing information, facilitating communication, helping parties to develop and evaluate solutions, and producing a written agreement.

Mediators play a number of roles including that of a catalyst, communicator, educator, translator, expander of resources, bearer of bad news, agent of reality, protector of the process, and in some cases, scapegoat. To serve these functions, a mediator should be capable of appreciating the dynamics of the environment in which the dispute is occurring; be an intelligent and effective listener; be articulate, patient, non-judgmental, flexible, forceful and persuasive; be imaginative and resourceful; be a person of professional standing or reputation; be reliable and capable of gaining access to necessary resources; be non-defensive and a person of integrity, as well as be humble, objective and neutral with regard to the outcome of a dispute (Stulberg, 1987).

Mediation Context

The mediation session provides a setting that alters how outcomes are achieved. First, the mediation setting serves as a *safe context* for sharing information that might not otherwise be shared. Disputants feel protected as the mediator minimizes threatening behavior, regulates the length of time people talk, and specifies the manner in which disputants treat each other.

Second, the mediation context *changes the focus of discussion* from positional statements to interest statements that express needs, concerns, and fears. Discussions based on merits of choices have a greater potential for creating durable and long-lasting solutions than do discussions characterized by defensive positions and blaming. Additionally, the focus changes as each party expresses commitment to engage in assisted negotiation. Agreement to participate in mediation symbolically communicates to other parties a willingness to resolve differences.

Third, the mediation context provides a setting in which a neutral party who is emotionally uninvolved with the dispute is able to *identify and clarify the underlying issues* of a complex situation. The thinking of quarreling parties often becomes distorted by their emotional involvement. They become overwhelmed by the complexity of the situation, and this prevents them from seeing ways out of a stalemate. As an impartial third party, the mediator provides an objective, outsider's look at what is keeping parties stuck in destructive, unproductive, patterns of conflict.

A fourth factor is the absence of a "leader" who might impose a solution on the disputants. Guided by a process expert, the disputants have *an opportunity to assume greater responsibility* for finding ways to resolve differences. Because disputants make significant contributions to potential solutions, there is greater possibility that they will suspend hostilities or implement an agreement to which they contributed (Isenhardt, & Spangle, 2000).

An overview of conflict resolution and mediation theory suggests that mediation has received the most attention of all non-adversarial processes. It is the single most

powerful tool in the Alternative Dispute Resolution movement, and both, directive and transformative approaches have contributed to it.

The Mediation Model: Process, Strategies and Skills

A large body of literature on conflict resolution provides an overview of the entire process of mediation. There are several models of mediation, which have been developed over the last decades. These models often vary in how the authors structure the tasks and stages of the mediation process. However, the overall process, strategies, and skills remain mostly the same. For the purposes of this practicum, the models utilized by the staff of Family Conciliation and Mediation Services, two social service agencies of Winnipeg, the Province of Manitoba, Canada have been used as a guide. Influential authors, such as Irving (1980), Irving and Benjamin (1985), Saposnek (1983), Blades (1984), Milne (1985), Moore (1987), Beer and Stief (1997), Stein and Ernst (1997), Picard (1998) and Lang and Taylor (2000) have shaped the mediation practices of these agencies. The following synopsis of the mediation model is a reflection of “Mediation Training Manual”(1996) by Kostiuk and Zurawsky and Manuals of Mediation Services (2000) distributed to workshop participants, as well as my own conceptualization of the mediation process based on my readings and training.

Stages of the Mediation Process

The stages of mediation process fall into two broad categories: preliminary stage prior to the beginning of the joint sessions, and the process once the mediator has entered into formal negotiations (Moore, 1987).

The process of mediation is organized into the following distinct stages constituting the mediation model:

I. Pre – mediation (Preliminary stage)

II. Mediation Forum:

Stage 1: Introductions (Joint orientation and contracting)

Stage 2: Issue identification

Stage 3: Uncovering underlying interests

Stage 4: Closure

The stages of the mediation model are considered to be basic guidelines for the manner in which mediation as the process of building and testing hypotheses progresses (Blades, 1984).

Pre-mediation (Preliminary stage)

In the pre-mediation stage, commitment to the mediation process is encouraged. The mediator is involved in screening the participants and orienting them to the mediation process.

The screening process begins with the first contact. It includes engaging the prospective participants to mediation, orienting the participants to the mediation process, responding to their concerns, anxieties, resistance, motivating the participants, gathering information regarding demographics and background issues, and assessing readiness for mediation, viability and appropriateness of mediation as a forum for dispute resolution. The screening process will not end in the pre-mediation stage. In essence, it continues throughout the mediation, as it is not always possible to determine the appropriateness of the mediation process in a given situation during the initial contacts. Often critical information impinging on the feasibility or appropriateness of mediation emerges only later in the process.

The orientation to the mediation process is aimed at educating the participants either individually or through the group format about mediation in a broad sense, normalizing the individual's experiences and reactions to them, and softening the more extremely held positions.

Mediators use several procedures to collect data: direct observation, secondary sources, and interviewing - prior to the commencement of mediation per se, the prospective participants are seen individually.

This stage is viewed as an opportunity to begin transforming adversarial attitudes and positioning into more cooperative orientations (Zartman, 1989) for the parties to shift from unilateral solutions to multilateral or mutual gains solutions; move from adversarial behaviors to cooperative behaviors; begin to believe that trade-offs might facilitate solutions; evaluate costs of concessions and failure to reach a settlement before commitments need to be made; and change the dynamics of the conflict into a cease-fire for the duration of the discussions (Isenhart & Spangle, 2000).

Introductions (Joint orientation and contracting)

The purpose of this stage of the mediation process, which is the beginning of joint sessions, is to set the stage for exploring the issues.

This step requires a basic understanding of the mediation process by the participants as well their ability to cover the necessary information. This is accomplished by explaining the goals and expectations of a collaborative process, the role of the mediator, and the ground rules that will guide discussions. Two of the strengths of the mediator's role are the mediator's impartiality and the confidentiality of discussions.

These factors should be emphasized in the opening statement. Typical guidelines for mediation could be the following:

- Only one person speaks at a time.
- No interruption while someone is speaking.
- No personal attacks are allowed.
- Information shared during the mediation session will be treated as confidential (Isenhardt & Spangle, 2000).

The mediator shares the guidelines, which offer predictability and safety for discussions. The participants should be asked whether they would abide by the principles as stated, and whether they would like to add any further rules.

The mediator also needs to emphasize the informal nature of the discussions. There are usually no tape recorders or formal minutes. Discussions are expected to be honest, open, and focused on problem solving (Picard, 1998).

Setting the stage is also instrumental in reducing participants' anxiety, through the creation of a safe environment, wherein they can begin to feel comfortable enough to discuss matters openly. This is accomplished by the mediator by setting a collaborative, comfortable tone for the session, assessing resistance and working with it, as well as affirming. As part of "setting the stage" the mediator assesses the participants' readiness to proceed, and elicits their commitment, formulating either an informal or formal contract.

While the mediation process usually involves joint sessions, at times individual sessions or caucuses may be necessary. A caucus allows strong feelings to be expressed in private, helps the mediator determine if there are mediator-party issues, which should

be addressed, allows a breather or cooling off period, and the possibility for the party to discuss options while not under the scrutiny of the other party. Caucuses are also important in that they allow for the exploration of fears and possible threats that could not be discussed in face-to-face meetings (Picard, 1998, pp.23-24).

Issue identification (Story – telling)

The purpose of the stage of issue identification is to: get the parties talking and involved; give the mediators a basic understanding of the conflict; let the parties hear each other's story as it is told to a third party; define issues and set an agenda; and give the mediators some idea of what to expect. The stage, described by many as storytelling, offers the mediator the opportunity to model active listening for parties and encourage constructive negotiation about the issues. The mediator models a constructive model of communication and dispute resolution, which in turn encourages the participants to deal with each other in a respectful manner.

This stage of the mediation process is highly structured. The two major components to this stage in the process are (i) opening statements and (ii) goal summary. Note taking is highly important for the mediator to analyze the positions, identify the content of the issues, and accurately reflect back to the participants their statements.

Interests on the part of the parties that are shared in discussion may fall into one of four domains: (i) procedural, (ii) substantive, (iii) relational, or (iv) philosophical. Procedural concerns involve beliefs about the way things should be done, and some parties will not engage in talk about substance interests until they trust that the process will meet their expectations. Substantive interests involve tangible items such as money, cessation of a behavior, or changes to an existing agreement. There are intangible

interests that fall within a third domain of interests, that is relationship. A party may be seeking respect, a sign that he or she is being heard, or a belief that he or she will have greater power in the relationship.

Philosophical interests occur when people believe they have to prove a point before they will listen to anything further. They want other parties to demonstrate respect for a principle or value before they are willing to go on with discussions. For example, a husband in marital dispute responded to a request for more sharing of the housework with, "I just want you to understand what it means for me as a male." This may be a difficult request for the wife, but her respect for the principle might increase his willingness to listen to discussion about division of the housework. When philosophical discussion gets in the way of dealing with concrete issues, the mediator may have to redirect the discussion, for at times philosophical discussion might even serve as a stalling tactic to prevent discussion of more immediate issues, i.e., this may reflect a position.

Occasionally, this stage includes the venting of emotions. Venting addresses a need identified by Folger, Poole, and Stutman (1993) of unearthing the historical roots of a problem.

After the participants have been given the opportunity to express their concerns (opening statements) the mediator gives a detailed feedback of what each person has said. The mediator then proceeds to formulate a goal summary, which is distillation of the issues presented by the participants. The goal summary is a neutral restatement, which begins to define the agenda for the mediation process, and identifies common ground where it exists.

Goal summary includes framing the issues, which are neutral and stating common ground. Initially, the mediator gives a detailed feedback of what each person has said in his or her opening statement.

The participants will be asked to agree on an agenda. "To get buy-in for the process, it is essential for mediators to involve parties in establishing the agenda" (Isenhardt & Spangle, 2000, pp.79-80). Yarborough and Wilmot (1995) state, "It has been our experience that framing and ordering the agenda set the stage for transforming negative conflict into a productive experience. Agreeing on priorities begins the process of cooperation"(p. 120).

To complete this stage a general statement summarizing what the participants may expect to accomplish in mediation is made.

Uncovering underlying interests

Having helped the parties to identify issues, the mediator helps the parties to begin to understand what is motivating them and what is important to the other party. The purpose of this stage is to continue to have the parties hear about the conflict from the other's point of view, explore the parties' underlying interests, have each party realize that it is possible to resolve the conflict.

Underlying interests cause a person to take a particular position and make demands in negotiation. Exploration of interests is *the heart* of the mediation process; it is where the "magic of mediation" occurs, i.e. shifting people from their positions (their wants), to their interests (their needs). Shifting from positions to interests is crucial for working towards creative solutions, which will work for each person in the conflict.

Disputants often have not previously talked about their interests with one another, and may not have consciously articulated their needs to themselves.

While uncovering interests is not the only work of the mediator, it is often the hardest because of the elusive nature of interests. Through the skilful use of *questioning*, the mediator attempts to discover the needs and concerns that are at the base of the participants' position and make them accessible to assessment, validation, and fulfillment (Picard, 1998). "Better questions are not about who is right and who is wrong, or about one-shot solutions, but about the process for dealing with inevitable changes that lie ahead... The quest for better and better questions is going to be endless" (Fisher et al., 1994). Picard (1998) proposes an acronym that helps define interests. CHEAP BFV stands for the concerns, hopes, expectations, assumptions, priorities, beliefs, fears and values of each party. Asking CHEAP BFV questions can help to uncover the interests giving rise to a conflict. Through the process of *reframing*, the mediator helps the participants to state their concerns in non-offensive terms, and terms that lend themselves to the consideration of options that are not mutually exclusive (Picard, 1998). Reframing is one of the crucial skills of a successful mediator.

Closure

When the parties have successfully clarified the problems, identified their interests, and established common ground for reaching a mutually acceptable solution, they are ready to explore alternatives for resolving problems and satisfying interests. The purpose of this stage is to assist the participants in the generation of the best solution of each issue, summarize the progress made and highlight areas of new understanding, develop a detailed agreement, and negotiate closure of the session. Allowing for a

thorough airing of issues, feelings and options for resolution empowers the participants (Stein & Ernst, 1997).

The mediator's job during the entire mediation process, is to firmly place ownership of the decision making with the participants. This process allows the participants to achieve a gradual sense of accomplishment, and eventual autonomy from the mediation process, through a final agreement. Finally, the mediator assists in drafting the terms of agreement and facilitates the termination of the process.

Effective speaking, active listening, questioning, paraphrasing, reframing, summarizing and brainstorming are *effective communication skills* used in the process of mediation.

Managing the Emotional Climate

Through the literature the need "to improve the process of coping well with conflicts" (Fisher, et al., 1994) is explored.

Coping with conflict means coping with the way people think and feel. In any conflict people think and feel differently from one another and the issue is whose perceptions are "true" and whose are "false". In a conflict situation, particularly if it has involved violence, feelings are likely to be more important than thoughts. Participants in a dispute are more apt to be ready for battle than for cooperatively working together on a common problem. *Angry people* often fail to hear what others have to say. And whatever they hear, they are likely to put the worst possible interpretation on both the words and actions of someone who is seen as an adversary. *Feelings are likely to drown rational arguments.*

If the objective is to affect what is going on in the heads of others, there is a need to be aware of emotions and motivations that may be surging through the minds of these people. The most direct approach is to focus on the perceptions of those whose minds we are trying to change. Understanding is not simply an intellectual activity. *Feeling empathetically* how others may feel can be as important as thinking clearly about how others may think.

Coping well with conflict also tends to strengthen a working relationship and to improve the ability of parties to deal with differences. *A focus on the process* tends to leave the parties on the same side (Fisher et al., 1994).

Dealing with anger

Anger is defined as “a common and usually normal emotion that occurs in response to an individual’s perception of being threatened or harmed”(Barker, 1999, p.25). Anger is a secondary emotion often triggered by the emotion of fear. It often plays a central role in conflict situations, and there is a need to recognize anger as a factor to be managed by the mediator. “Its manifestations often include irritability, physical or verbal attacks, increased heart rate and respiratory activity, and rage and negativism”(Barker, 1999, p.25). It is important to know that anger is a legitimate feeling and that it is okay to be angry. When understood and managed properly, anger can be a call to action, give energy and strength and indicate that something is wrong or needs attention. However, when anger is not channeled constructively, it can have devastating effects. There is a need to recognize and handle anger, specifically in mediation.

- *Trigger Stage.* When a person begins to feel emotionally or physically threatened by an external event or internally, his / her physiological system begins to prepare for it. There is something in the immediate situation that "triggers" the anger response.
- *Escalation Stage.* The body prepares for the fight response by pumping adrenaline into the blood stream causing: increased respiration (rapid breathing); increased heart rate and raised blood pressure; tense muscles (jaw, neck, shoulders, hands); voice pitch to alter and get louder; eyes change (pupils enlarge, brow falls).
- *Crisis Stage.* Crisis stage is the presence of uncontrolled anger. Unfortunately, people's quality of judgement is low and decisions are not made with the best reasoning.
- *Recovery Stage.* After action is taken the body begins to recover. Adrenaline does not leave the blood stream at once and it takes time for normal levels to be reached. Quality of judgement begins to return.
- *Post-Crisis Depression Stage.* The body enters a short period when the heart rate slips below normal. Awareness and energy return. Assessment of what occurred often leads to feelings of guilt, regret and depression.

The mediator's task is to help the parties negotiate difficult emotional issues with increased self-control and respect to other person. It is much easier for the mediator to prevent the parties from losing control than it is to regain control once it is lost. Mediators need to be directive and intervene immediately to deal with accusatory, blaming, and critical statements. It is very important to be supportive and acknowledge the valid feelings before redirecting the destructive angry behavior (Picard, 1998).

Creating Favorable Mediation Environment

Creating a favorable mediation environment, an aspect relative to managing the process of mediation, is an important consideration. These issues are discussed by Stein and Ernst (1997), and a summary of their major recommendations follow.

When making preparations for the mediation setting, there is much to remember. Everything matters: the style of mediation; the furniture and its arrangement; the colors of the room; the lighting; and seating orientation.

- *Location.* The location of the mediation setting should be perceived by both parties as *neutral* and *private*. The *imbalance of power* by meeting on either of the disputant's turf is enough to sink a battleship. When privacy is threatened, *confidentiality*-one of mediation's prime features - is threatened as well.

- *Lighting.* Harsh spotlights make people feel as if they are being interrogated. Dim lights make people feel vulnerable and threatened. Florescent lights can feel cold and harsh. Warm, moderate lighting invites cooperation, or at least does not inhibit it.

- *Color.* It is recommended that one avoid red because it has been associated with anger, violence, animosity and temper. Reds work to provoke emotions, increase energy, and create highly charged environments; greens impart feelings of practicality, tranquility, and healing; light blues calm emotions and are supportive; dark blues are cold and businesslike; yellows promote feelings of sharing and facilitate communication; and browns are stabilizing colors that add warmth and feelings of security. It is in the best interest of the mediator's objective to avoid antagonizing hues.

- *The great table debate.* From a physical standpoint, a table could be

considered a barrier between the members of the session. It could interfere with an act of physical aggression. A table offers a comforting barrier of security. The authors find tables to be unnecessary and interfering with the process because a table is a barrier, and the job of the mediator is to remove barriers.

- *Indicators of aggression and anxiety* are eyebrows drawn inward (tension), sitting on the edge of one's seat (doesn't intend on staying long, or is prepared to pounce), nervous idiosyncrasies (nail biting, knee bouncing, general fidgeting, etc.). Don't expect a physical confrontation, but be ready for anything.

- *Seating arrangement.* The chairs should be comfortable. Avoid the extremes: no granite slabs and no bean bag chairs. More important than the type of chairs is how the mediator and the participants are arranged. Avoid seating the disputants opposite each other: they won't be comfortable looking each other straight in the eye. Such settings are considered confrontational and in mediation, confrontations are counterproductive. The seating orientation for a mediation session is an excellent opportunity to put symbolism into practice. Think circles. Circles – a symbol of peace, unity and love - have permeated events and rituals in many cultures for generations. Wedding bands, the intersecting Olympic rings, halos, even the way we encircle with our arms those whom we embrace are all symbols of unity.

- *Keep the disputants about three feet apart* so as to discourage physical contact in the event the situation gets out of hand.

- *If a co-mediator participates in the session*, he or she is suggested to sit

directly opposite the lead mediator. This facilitates good eye contact and allows the mediators to experience the session from opposite viewpoints. Positioning both mediators together presents an “us-against-them” orientation and could facilitate antagonism.

The Mediation Model presents a highly structured process of mediation, “*where*” the “magic of mediation” occurs. The issues of managing the emotional climate and creating a favorable environment contribute to uncovering “*how*” the mediation process, a science and art, works.

Mediation in the Family Context

This section of the literature review is related to family mediation, and outlines the role of mediation in divorce and separation. The following represents a review of the issues of mediation in the family context, which are relevant to the goals and objectives of this practicum.

Over the course of the last two decades in Canada mediation has evolved as a resource for families in resolving their conflict situations. Family mediation has gone through a period of examination and professional growth. The legal system has been called into question as a system that is too expensive, too slow and cumbersome, and too adversarial for relationship disputes. Alternative dispute resolution mechanisms have increasingly been employed often at less monetary and emotional cost, and with great emphasis on cooperative problem solving. Many jurisdictions now require that clients be informed about, and in appropriate cases, attempt mediation before they proceed to litigation.

Women’s advocates questioned the process followed by many mediators of only seeing the couple together and not screening each party individually before deciding

whether they were able to negotiate as equals. Their criticism was the catalyst for the most significant changes in family mediation over the past decade.

The concept of family has gone through important developments in the past several decades. Present day family laws reflect a change in social attitudes to marriage breakdown. It reflects the concept that adults should be free to choose whether or not to remain in the marital union. Fault is no longer a necessary ingredient for being granted a divorce, and support and custody are no longer used as part of the social sanction against divorce. The government has been faced with the question of how best to ensure that children are adequately supported. Mediation encourages parents to cooperate – a distinct contrast to the traditional method of adversarial settlement. The direction is towards greater control by parents and less intrusiveness by the legal system, unless there are concerns about abuse, intimidation, or serious inequality of bargaining power. Hence the increasing interest in family mediation as a cooperative, empowering, and expeditious choice for families undergoing separation (Landau, Bartoletti & Mesbur, 1997; Emery, 1994; Irving, & Benjamin, 1985; Saposnek, 1983).

The need for changes in the traditional and legal approaches to addressing divorce and custody issues has arisen as a result of the relatively recent exponential increase in divorces, with the attendant increase in custody disputes. Such increases have revealed and highlighted the inadequacies of adversarial treatment of these issues (Saposnek, 1983).

Divorce is a symptom of the deep-seated distress of society as a whole, a condition whose causes are deeply imbedded in our collective social history. Divorcing couples are

not responsible for the general malaise of society. Rather they are prominent and numerous victims (Irving, 1980).

Family mediation and therapy share the historical antecedents, however each has a very different theoretical objective. Whereas family therapy is a process to assist families working to remain together, family mediation is a process to assist families where there has been a decision to separate and/or divorce (Landau et al., 1997). It helps parents to redefine new boundaries in their relationships (Emery, 1994), and it builds on the new perception of the family as continuing in a redefined form, even after a spousal separation.

Conflict Within a Marriage

Conflict within a marriage in itself does not indicate marital distress. Conflict in families is inevitable, and fighting often is adaptive. Problems cannot be resolved without conflict. How couples fight and the sources and contexts of the fighting are more significant indicators of marital distress. Couples benefit from constructive processes and strategies that move toward negotiation and the resolution of marital problems. So, the goal is not to avoid fighting. Rather the goal is to fight constructively. Well-managed marital disputes can lead to outcomes that are not inevitably negative. Dealing with conflict is a continuous task, not necessarily a situationally defined one (Cummings & Davis, 1994).

In the majority of adversarial divorces there is a great deal of conflict, pain and loss for the entire family. Three quarters of divorces involve children and all divorces affect the total family and friendship networks. Divorce will continue to exist, but it is not necessary to drive the conflict into destructive and expensive channels (Irving, 1980).

The goal of divorce mediation is to provide a basis whereby marriages can be terminated without destroying the couple or their children. It reflects ancient religious law in which the intent was not only to dispense justice but also to make peace among litigants. Divorce mediation does not offer a panacea to end or reduce divorce. It describes a method of minimizing the damage. It deals only with constructive conflict resolution. No one “wins” when using divorce mediation. Nonetheless, everyone benefits. When a marriage is over, it is not time to retaliate and take revenge. It is time to strike out for a new life while providing for and protecting the lives of children.

The mediator aims to help the divorcing couple focus *on the current relationships* to provide a mutual framework for negotiation, compromise and resolution of differences to serve the best interest of the couple and their children, and for the good of all family members. The approach grows out of experience with the adversarial system. A dispute, which is settled by court, often leaves a “winner” and a “loser”, and eventually the couple is back in court trying to change the decision. A dispute, which is settled by mutual agreement, is more likely to stay settled. There is less resentment because the involved parties made their own decision with the help of the third party, and the resolution is not defined in terms of “win-lose”. The benefits to the children and to the family unit as a whole are real and tangible. Divorce mediation lessens the possibility of serious harm. If the parties are able to agree on division of their property, custody, child support, and similar matters, this will decrease the chances of future litigation and they can then go about the important job of rebuilding their lives (Irving, 1980).

The task for the divorcing parents is to separate their marital and parental roles that are bound together in marriage but must be disentangled in divorce (Emery, 1994).

Children in the Divorced Family System

Emery (1994) notes that the children's perspective is a major perspective within separated and divorced families. The parent - child relationship is described in terms of intimacy and power. Four parenting styles are distinguished. *Authoritative* parents are warm and loving, yet they are strict but fair in disciplining their children. *Authoritarian parents* also are strict in discipline, but they are autocratic and offer their children relatively little love, understanding and support. *Indulgent parents* are the opposite of authoritarian parents. They give their children much love, but they provide them with little in the way of discipline. *Neglectful parents* offer their children little in the way of either affection or discipline. They show little concern for their children and have scant interest in parenting. In the context of divorce these approaches have a more critical impact on the children. The mediator needs to be aware of them.

Some parents who become involved in custody or visitation disputes have difficulty focusing clearly on the needs of the children; these children can be the real losers in marital disputes. Conflict distresses children even though the dispute may not be directed toward them. Children are affected by mere exposure to marital discord. Anger between adults, which is termed background anger, is stressful and emotionally arousing for children of all ages, and it also increases their own aggressiveness. Nonverbal expressions of anger are as distressing to children as verbally expressed anger. Chronic nonverbal expression of anger could possibly pose even more problems than verbal expression of anger over time. Intense expressions of anger are more distressing to children than non-intense expressions. Children are particularly disturbed by conflicts that include physical aggression. Children do not get used or accustomed to conflict;

rather they are sensitized to it and as a result become more vulnerable. Children benefit from observing the resolution of conflict. The degree of resolution matters (Cummings & Davis, 1994), in the context of divorce in particular, as children's adjustment to divorce is greatly affected by their parents' ongoing conflict or, conversely, cooperation (Emery, 1994).

The literature suggests that a sense of security for children be derived from the maintenance of a bond in which confidence in the availability of attachment figure(s) predominates over fears concerning the unavailability of this figure (s). In contrast, anxiety, sadness, depression, and anger may be produced by the threatened or actual loss of attachment relationship with principal care giver(s) or by unresponsive and unpredictable attachment relationships (Angeliki & Grigoris, 2000).

The impact of marital conflict on children must ultimately be understood in terms of the family system. Other subsystems may mediate the impact of exposure to marital conflicts on children and in some instances may even buffer children from negative outcomes.

As family systems theory would suggest, a child can at times be *an innocent but functional contributor* to conflict between the parents. From this perspective, it appears that the child, in attempting to get his or her needs met, initiates and participates in a behavioral sequence that results in overt parental conflict. Thus, the child behavior functions as a strategy to communicate distress and to escalate the family conflict to a climax and resolution. Added to the children's general manifestations of emotional distress are more specific and individualized reaction patterns, which are referred to as coping strategies. The clarity of meaning of children's strategies is age-linked. The

following are the common reactions by children in the context of family separation of which the mediator has to be aware, and find a way to interpret to the parents if necessary.

- (1) *Reuniting.* The desire for parental reunion is most intense for the children of divorce, and the strategies for attaining it are quite diverse. Underlying emotion is fear of abandonment, anxiety about his / her own survival without his mother and father together.
- (2) *Reducing separation distress.* For some time after the marital separation, young children often experience separation distress each time they make the transition between their parents. Each time such a child leaves one parent to go to the other, s/he experiences the emotional loss of the parent s/he is leaving. Because of the increased emotional stress following divorce any lack of adaptability is likely to be exaggerated.
- (3) *Detonating tension.* Very often, the tension between hostile separated parents feels the children like a volcano waiting to erupt. In effect, the child unconsciously or consciously offers himself / herself as a scapegoat to absorb the hostility between his parents.
- (4) *Testing love.* Both parents are frequently emotionally unavailable to their children for about a year following the separation. During this phase, children feel emotionally neglected and will occasionally test their parents' love for them.
- (5) *Proving loyalty.* Not infrequently, the emotional unavailability of both parents, or high level of conflict frightens a child enough to willingly sacrifice a relationship with one parent, at least temporarily. The child feels tremendously torn between the

parents and feels that s/he cannot love both of them if they do not love each other.

The child feels that s/he has to choose between the parents, withdrawing love from

one and investing it all in the other. This results in the development of a

dysfunctionally close bond with one parent and a dysfunctionally distant one with the other.

- (6) *Seeking fairness.* Children of almost any age will often attempt, to the point of self-sacrifice, to make everything come out exactly even between their parents. They fear confrontation between their parents and repress their needs and sense of individuality in order to keep their parents from overt conflict.
- (7) *Protecting self-esteem.* In the case of divorce, when parents are just looking for places to vent their anger, children are easy, available targets. Hence, they will commonly resort to strategies that protect their self-esteem.
- (8) *Protecting parents' self-esteem.* Children often are acutely aware of the fragility of their parents' self-esteem, especially following a marital separation. Partly out of genuine empathy and love for each parent, but mostly for their own emotional survival, they will make efforts to protect the self-worth of each parent. Children using these strategies generally are not aware of the resulting inconsistencies of their actions toward their parents' feelings.
- (9) *Permissive living.* Some older children and adolescents appear to deal with the divorce by manipulating the marital dissolution to their own immediate advantage. The motivation for their strategies may be a lack of any particular bond with parent, an exceptional degree of manipulative skill or self-centeredness, or a simple

withdrawal in response to feeling trapped between conflicting parents. This is often exacerbated by the parents' inability to set reasonable limits.

The mediator is in a position to utilize this information to reduce acrimony between parents. Because the child's problems are embedded in the family's dynamics, it is important that those problems be viewed within the context of the family system.

Mediators need to be well versed in child development and in marital and family dynamics. Moreover, they need to be thoroughly familiar with the legal practices and procedures of family law within their local areas of jurisdiction. In particular, they need to be fully aware of the various legal options locally available to couples who are making postdivorce parenting arrangements. Working together with an experienced attorney who specializes in family law is a useful way for the mental health professional to get access to legal information and advice on the pertinent legal literature (Saposnek, 1983).

Phases of Divorce Mediation

Irving and Benjamin (1985) describe three sequential phases of divorce mediation: (1) exploration, (2) problem solving and (3) resolution. Kruk (2000) identifies five phases of mediation process: (i) renegotiation, (ii) beginning, (iii) middle, (iv) ending, and (v) follow-up phases.

The phases of family mediation process as presented reflect Pre-mediation and Mediation Forum stages of the Mediation Model as described above. However, the mediation process has its own specificity in the family context mainly due to the issues related to children.

Exploration

Emery (1994) stresses the importance of careful evaluation and implementation of a number of policies and procedures involving important legal and ethical issues before mediation begins.

Initial discussion during mediation is usually carried out with each spouse alone. It is critical for the mediator to thoroughly explain the process at this time. By listening to what is said and observing what is done the mediator tries to understand where each spouse stands as well as what each wants to accomplish. The focus is not only on how the individual feels about a specific problem at hand, but also *on self-perception*. This process creates an atmosphere of trust between the client and practitioner. The major intent is to identify and clarify problems, while offering constant emotional support. Each relevant family member is approached in the same way (Irving and Benjamin, 1985).

Problem-solving

Emery (1994) presents the problem-solving model of the divorce mediation. The major steps in the model include:

- (1) identifying problems by focusing on issues rather than emotions;
- (2) brainstorming alternatives, while suspending evaluation so that creative solutions can be invented or voiced for the first time;
- (3) evaluating options in terms of children's needs and parent's underlying interests; and
- (4) allowing for experimentation, a stance that reduces pressure by allowing parents to alter agreements in the near or more distant future.

Irving and Benjamin (1985) stress the significance of helping parents see how

important it is that they set aside their personal interests when these conflict with the best interests of the children.

Resolution (Follow-up)

This final phase of divorce mediation usually takes a highly-structured form. It is nearly contractual in nature and details what parties will do. Each step is monitored so that everyone concerned knows what action is being taken on any agreements made. If anyone does not act as agreed, there will be almost immediate feedback. This reduces the “resolving door syndrome” in which couples repeatedly return to court to resolve issues in dispute (Irving & Benjamin, 1985).

Mediating with High –Conflict Couples

Models of mediation assume that participants can think and act rationally, whereas in reality, when anger and pain overwhelm individuals, their capacity for reason and logic diminishes. Many people in the midst of a stressful separation or divorce feel more inclined to cry or shout at the partner who has left rather than to sit together for a civilized discussion. Mediation about future arrangements may be very necessary and constructive, but *it makes the ending of the marriage or relationship more real and acute*. Agreements are looked for to pave the way for a divorce one partner may not want at all. This is expecting a great deal of people, especially if the time allowed for mediation is short.

Divorce is highly stressful. It scored the second highest score, next in level of stress to the death of the spouse. Redundancy, imprisonment, or the death of a close friend were all rated as less stressful than divorce. It is questionable how far people should be expected to take major decisions at a time of great distress and emotional vulnerability.

Mediators need to be able to recognize levels of psychological trauma in which mediation is not appropriate. They must also be aware of the degree of upheaval and change for both partners in every area of their lives and the different stages each partner may be at in coping with this upheaval. The emotional impact and psychological processes involved in separation and divorce are profound and far-reaching.

Emotional and psychological adjustment usually begins earlier for the partner who leaves than for the partner who is left. A partner who is abandoned is left behind emotionally as well as physically. Acute feelings of shock, rejection, and betrayal often spill over to children and financial issues. Many partners come to mediation in a very angry and fragile state. Yet, they are expected to negotiate over arrangements for children and financial matters in a reasonable way at a time when their ability to think rationally may be temporarily diminished. Outrage and anger can quickly spread from one issue to another. On the other hand, cooperation and agreement in one area help to maintain trust and increase cooperation in other areas.

Couples involved in relationship breakdown may be divided into three categories:

- (i) cooperative couples (those who are able to talk and work things out),
- (ii) high-conflict couples (those who argue and fight), and
- (iii) noncommunicating couples (those who cannot talk at all).

If there is not enough help and support, the partner who feels abandoned can slide from depression into despair. It is described as a downward spiral movement like an airplane that loses a wing and falls through the air like a leaf.

Mediations with high-conflict couples need more active and empowering interventions by the mediator and more careful structuring of sessions. An understanding

of systems theory is particularly helpful in considering the functions of conflict and varying needs to maintain it.

- It is important for the mediator to be aware of the issues of violence and abuse in the family context. All family mediators should be trained to screen for domestic violence and abuse.

- Reframing is one of many skills that mediators use differently from family therapists.

- Although mediators are not counselors or therapists, they need to show understanding by acknowledging both partners' fears and stress. The power of acknowledgement is considerable. It is important, however, not to acknowledge distress in mediation in a way that increases or exposes one party's vulnerability to the other.

- A mediator who is well centered can contain the conflict in the room with greater ease, maintaining eye contact with both partners and glancing from one to the other to see how each is reacting and noting their expressions and body language. "Flowing" with the person rather than "head on" opposition is important. A well-balanced position and centered body position also enables *the mind to move freely*. Instead of meeting force with counterforce, the mediator has a *flexibility of mind* that seeks to understand conflicting views so that they can be recognized, reviewed, and possibly resolved.

- Humor is often more effective in reducing tensions than are reasoning and common sense.

- A smaller degree of change may be less threatening and produce less resistance; pacing and prioritizing are important.

- The mediator must be able to decide that enough is enough and terminate a mediation where no progress can be made or where progress is regularly sabotaged. The practitioner needs to take care not to let himself / herself be drawn into other people's conflicts. Their conflict belongs to them, and their choice of ending it belongs to them too. Family mediators need to appreciate the intensity of the irrational feelings and reactions they see in mediation and to consider their personal impact. They need to take into account underlying needs: what appears irrational is often rooted in fears and concerns that may or may not be conscious (Parkinson, 2000).

Mediators can help *to contain family crises* by adapting the methods as described above to fit different levels and patterns of conflict. Underlying issues such as grief or hopes for reconciliation can also be addressed during this process, at least briefly (Emery, 1994).

As an alternative to the adversarial legal tradition, family mediation is constructive, sensitive and effective conflict resolution method, which offers guidance to families experiencing a marriage breakdown and minimizes the damage of divorce. Mediation is an optimistic perspective regarding conflict resolution in families with regards to children. It is a useful tool for helping parents renegotiate their relationship.

Mediation is of value because it encourages parents to cooperate – a distinct contrast to the traditional method of adversary settlement.

Family Mediation Research

A brief review of recent publications presents the results of research which generated data on a broad range of issues and concerns regarding the process of family mediation and the extent of variability of current family mediation practice. It

summarizes what has been learned to date about divorce and custody mediation. Some implications in relation to salient issues and debates in the field are suggested.

The use of mediation has expanded considerably from its beginnings in divorce mediation, which appeared two decades ago. Divorce mediation was advanced as a model for reducing conflict, improving communication and parental cooperation, producing better agreements in less time and expense, enhancing psychological adjustment for parents and children, and leading to more compliance with agreements. Currently, mediation is used for all types of family disputes in both the public and the private sectors (Kelly, 1996).

Supportive information about the effectiveness of mediation has emerged from a number of different outcome studies. Specifically, it is reported that, “when compared with non-mediated clients, those who mediated are more satisfied with their custody, access and financial arrangements, are more likely to reflect lower levels of conflict in dealing with other parent and conflicts that put children in the middle, are more likely to have a positive and supportive co-parenting arrangement, and are more likely to be jointly involved in co-parenting” (McKenzie, 2000, p10). Although the overall number of studies has been limited, research has helped to advance the field and mediation’s general acceptance to this point (Hahn, & Kleist, 2000).

Divorce mediation research has focused mainly *on outcomes* such as settlement rates, cost efficiency, client satisfaction, effect on levels of conflict and cooperation, psychological adjustment, and compliance. It is reported that variations in the amount and duration of change in co-parental behavior may be related to the number of hours in mediation. Most court-based custody mediation averages less than 4 hours of service,

whereas private mediation services typically report more hours and sessions. In general, lengthier processes appear to promote more frequent, less conflicted communication (Kelly, 1996).

It was found that postdivorce parenting disputes entail a longer process than the mediation of financial disputes in divorce. In regards to outcomes, two thirds of cases are reported to be successful, meaning that some form of settlement is reached via mediation. The majority (65%) of postdivorce parenting disputes result in mediation agreements in which the primary residence is with mother, paternal residential arrangements are made in mediation 12% of the time, and shared parenting or joint custody account for 22% of mediated agreements.

Nine factors appear to influence settlement rates in family mediation:

- (1) The age of the mediator (the older the mediator, the higher the rate of agreement).
- (2) Professional background (mental health mediators report higher settlement rates than lawyer mediators).
- (3) Practice setting (independent mediators indicate higher levels than court-based mediators).
- (4) Mediation experience (more experienced mediators report higher rates).
- (5) Level of mediation practice (the more one mediates in one's current practice, the higher the rate of settlement).
- (6) Mediation training (the higher the level of training, the higher the rate of agreement).
- (7) Those working with voluntary clients have more success than those working with mandated clients.
- (8) Those charging fees indicate higher levels of agreement than those not charging.

(9) Those directly involving children in the mediation process report higher agreement rates.

Fifty percent of family mediators agree with the statement that the role of the mediator should be therapeutic, 42% disagree (the remainder indicated “no opinion” or “neutral”), denoting a marked division in the field with respect to the place of therapy in mediating family disputes. *Mediators generally do not consider the therapeutic and structural negotiation roles as mutually exclusive or incompatible*: many see the role of the mediator as including both roles, with the family mediation process as therapeutic in focus and structured toward settlement of the dispute.

Most mediators disagree with the statement that divorce mediation is never appropriate in spousal (66%) and child (56%) abuse situations. Only 32% would use caucusing regularly. Only 36% feel that children should be directly included in the mediation process (Kruk, 2000).

Women were likely to view mediation as more helpful in empowering them to stand up to their spouses than using attorneys, and they rated themselves as more financially capable and knowledgeable as a result of the mediation process. This may positively alter women’s patterns of communication and problem resolution.

In all of the research, there is no empirical support for the claims advanced by the critics of mediation who purport that mediation forces women to give away custody or primary care entitlements or that women are disadvantaged financially by the strategic use of custody conflicts by men (Hahn & Kleist, 2000).

Parents using divorce mediation reported less conflict during the divorce process than do parents using litigation. And, at final divorce, mediation parents reported

significantly less conflict, more cooperation, more child-focused communication, and more noncustodial parent participation in decision-making about the children, compared with the adversarial sample (Kelly, 1996).

Positive features of mediation for clients in custody mediation center on the ability to communicate to the other spouse in a contained setting and include the opportunity for parents to express their viewpoint, talk about children, have their concerns taken seriously, and hear helpful ideas from mediators about parenting issues and plans (Hahn & Kleist, 2000). There are some indications that mediations that focus on communication and relational issues are more successful in achieving settlement and behavioral change (Kelly, 1996).

Fairness and satisfaction have been determined to be key factors in increased compliance and decreased relitigation. Most studies report higher rates of compliance with mediated agreements when compared with agreements reached in the adversarial process. Studies indicated that client satisfaction with both the mediation process and outcomes was quite high (Hahn & Kleist, 2000). Mediation parents are more likely to report that they each had “won” some of what they wanted; in contrast, litigation parents significantly more often described a “win – lose” outcome.

Mediation may be more beneficial than detrimental for couples among whom *domestic violence has occurred*. When compared to lawyer negotiations, mediation makes a greater contribution toward reducing postprocess verbal and physical abuse (Kelly, 1996).

However, less attention has been devoted to what is actually said and done in the mediation session – to the mediation process itself. There is *a lack of sufficient empirical*

understanding of what mediators do, how mediator interventions affect clients and outcomes in family disputes, and whether mediator behaviors are influenced by different contexts.

Most practicing mediators still consider the structured negotiation approach to be the foundation of family mediation. However, experienced mediators see this *as a starting point*. They have rejected an exclusive reliance on the structured model they were initially taught and have embraced a variety of approaches. Mediation training programs and certification standards need to emphasize the application of a range of practice theories to allow mediators to adequately understand and deal with a greater diversity of client and dispute characteristics (unresolved marital attachment, situations of high conflict, abuse and power imbalance, cultural diversity, extended family relations, etc.). Currently the emphasis is placed on the necessity for mediation to identify and fully describe different practice models, so they can be evaluated for their effectiveness in specific dispute-resolution settings, for the type and complexity of dispute, and in relation to the dynamics of the disputants. There are still many challenging issues to address if mediation is to mature further as a field and take its place among the major service interventions offered to clients in need (Hahn & Kleist, 2000; Kruk, 2000; Kelly, 1996).

Research on the mediation process and mediator behaviors has received very limited attention, and should be the focus of the next decade of research to elevate the mediation field to a more sophisticated, effective level of practice.

Some Aspects of the Training of Mediators

Approaches to Training Mediators

The perception of mediation as an emerging profession and growth industry raises various questions about standards, ethics and certification, particularly in the area of education and training of mediators. Because mediation encompasses different approaches, the field needs to develop a discourse that reflects both the approach and ideology of the service being provided. Creating a distinct discourse that sets out the limits of mediation will make more explicit the value-based and ethical viewpoints of individual mediators (Picard, 1998). However, at this point opinions vary. There is a perspective in accordance with which defining mediation as a single entity will require privileging a particular set of ideological views. Setting out the limits of mediation could restrict the practice of mediation and pose a threat to its diversity at a time when diversity is perhaps needed most (LeBaron, 1997).

Thus, today's mediators must be reflective and be able to think "outside the box". They must take a broad perspective in attempting to understand the dynamics of conflict and the impact of using mediation to resolve social and legal disputes. Finally, they need to utilize holistic and elicitive approaches in their work. To realize the full potential of mediation requires that there be more and easier opportunities for cross-fertilization of ideas and practices.

As the education and training of mediators moves toward professionalization, it reflects a variety of approaches to mediation as a maturing profession. This has resulted in a diversity of training approaches ranging from intensive skill-focused courses to doctorate level programs.

A significant increase in the number of course offerings is found in Canadian colleges and universities. Students now learn about effective management and resolution of conflict in business, public administration, criminology, law, education, human and social development, nursing, psychology and social work. The hallmark of all these courses and programs is the utilization of theory and skill development, a unique combination in academic approaches (Picard, 1998).

The literature provides an overview of various ideas regarding the needs of mediation training and education. Some of these needs are defined as given below:

- Citizens should begin conflict resolution work in elementary school, expand to peer mediation, and do advanced work through college peace programs and professional training programs and, eventually, at the workplace.
- Training participants need to be oriented about mediation training as a lifetime process.
- A deep understanding of conflict and its ramifications is essential for any mediation-training program.
- Mediators must be aware of societal and professional forces outside of the mediation room. Movements concerning regulation, certification, and ethics affect training.
- Mediators must be oriented to the fast-developing technology that affects mediators' work.
- Mediators must have training in working with a diversity of mediation participants.
- The roles of mediators must be expanded so that they go beyond resolving present conflicts to case management and prevention of future disputes (Moslen, 2000).

Training Mediators in the Area of Social Work

The “win-win” thrust of mediation fits well with social work’s values of the dignity and worth of each person, the importance of human relationships, and the pursuit of social justice (Bonta, Wallace-Capretta & Rooney, 1998). Evidence of this fit is seen in mediation outcomes. Parties to mediation report a higher level of satisfaction with the process and lower financial costs than parties who employ the traditional two attorney adversarial system to resolve their dispute (Hahn & Kleist, 2000; Kruk, 2000; Kelly, 1996). Still, mediation is a relatively unknown field of practice for many social workers, even though National Association of Social Workers in the United States published the Standards of Practice for Mediators in 1991 (Severson, 2000).

Severson (2000) presents a model for teaching mediation to university students, in which the emphasis is placed on the need for social work education programs to get involved in the training of mediators. Severson suggests that the university can help social work students become more effective mediators by designing electives that concentrate on three areas of skill development:

- (i) Advanced interviewing techniques and good communication skills, including active listening, rephrasing, mutualizing, and summarizing (basic communication skills often taken for granted and not stressed enough in either legal or social work curricula);
- (ii) Strategies for assessing the distribution of power in a relationship and ability to balance power adeptly when it is skewed;
- (iii) Good writing skills, as the mediator is always responsible for creating an official document that accurately details the agreement reached by the disputing parties.

The document must avoid ambiguity, cover every area of the dispute discussed in mediation, and contain only the terms of the agreement, including nothing of the process.

Finally, students need to have a clear ethical base from which to practice and an equally good sense of the laws of the territories in which they will practice.

As mediation services become recognized around the world as viable methods of dispute resolution, *the demand for social work education programs to get involved in the training of mediators becomes greater*. The university needs to develop comprehensive programs that will produce knowledgeable, competent, and experienced practitioners in all areas of mediation practice. This can readily be accomplished within the undergraduate social work curriculum, which, in addition to its focus on human behavior, has historically emphasized the role of supervision in the development of the social work professional.

Parsons (1991) substantiates the idea of getting social work education programs involved in the training of mediators, and suggests that mediation ought to assume a very important role in fulfilling social work tasks in society.

Social workers have the skills and tools for taking the mediator role because they assumed this role historically in the array of intervention points in social work practice. The theoretical base for the mediator role is conflict theory. Systems theory has been used heavily as a theoretical base for social work practice. The promotion of interaction between systems such as individuals and groups, organizations, or communities does not necessarily result in mutual reciprocity. Instead, further oppression on the part of the

more powerful system of the less powerful system may occur. The recognition of inherent conflict between systems provides the context for the mediator role.

The mediator promotes reconciliation, settlement, compromise, or understanding among two or more conflicting parties. The mediator role assumes that the mediation process creates choices whereby the quality of life for participants can be improved significantly. The promotion and facilitation of problem solving with parties in conflict is a power-retaining intervention; it can be thought of as an intervention with empowerment qualities. The mediation process has empowerment qualities not present in other problem-solving strategies. One is its educational nature. Participants are taught to identify their needs, interests, and solutions and to present them to the other party. The mediator educates participants to negotiate to get their needs met. It is joint advocacy wherein the social worker promotes the interests of each participant. Another empowering quality of the mediator role is the emphasis placed on each participant's own responsibility for decision making and outcome.

The social worker role of mediator is not just that of an objective, disinterested, nonbiased third-party intervener, but a role taken to help bring problems and issues to the bargaining table and to promote communication toward resolution within the value base of the social work profession. Mediation's purpose and place in problem solving are inherent in the definition of social work practice. Helping client systems assume power and efficacy to negotiate problem resolution is a needed empowerment-oriented strategy in social work practice.

The conclusion suggests itself that at the time when training in mediation moves toward professionalization, schools of social work must prepare to notch out a critical role in this development process.

Advancement Through the Stages of Professional Development

Lang and Taylor (2000) present a dynamic four- stage model of professional development in the area of mediation by discussing the methods, principles, and practices that assist mediators along the path of their professional development toward artistry. The authors present the principles that support the development of artistry and describe methods and practices that lead to excellence in mediation practice. The major areas of their focus are artistry, reflection, and interactive process, which are closely interrelated.

Artistry. Not all professionals are artists. The manifestation of artistry will be unique, reflecting the individual's innate abilities and talents, which have been enhanced through the acquisition of specialized knowledge and skills. Artistry develops over time. The four-part model presented by Lang and Taylor (2000) depicts the developmental stages through which professionals advance: (1) Novice – (2) Apprentice – (3) Practitioner – (3) Artist. The process of professional growth is not linear, nor is the end stage static or final. Artistry is a journey, not a destination. This path signifies a commitment to lifelong learning.

Reflection. Reflection is the process by which professionals think about the experiences, events, and situations of practice and then attempt to make sense of them in light of the professional understanding of relevant theory. Reflection occurs both during the performance of professional practice (reflection in action) and after the experience

(reflection on action). Reflection on action may be done either individually or with the help of an instructor, coach, or supervisor.

Interaction. Interaction is the interplay between the clients, between the clients and the mediator, and between each client and the mediator. In the interactive process, mediators look at how their clients respond to the techniques and strategies the mediators employ. In turn, mediators consider how their professional decisions are affected by how their clients are responding to them. The interactive process requires a microfocus, attending to critical moments in the course of the mediation. In these interactive critical moments mediators manifest their artistry. When the elements of interaction (relationship, power, communication, modeling) are working artistically and when critical moments are handled with skill and sensitivity, the outcome of this artistry in interaction is the unique experience of flow for the participants and the mediator.

Lang and Taylor draw the conclusion that advancement through the stages of professional development requires the ability and discipline to integrate reflective practice methodology and interactive process. Conceptual knowledge and skill competencies are prerequisites for attaining artistry.

The model suggested by Lang and Taylor reflects the proposition that mediation is an art as well as a science. This model is an example of utilization of theory and skill development in the process of mediator's professional development.

A Focus on Emotion in Mediation Training

Lund (2000) gives concrete expression to some of the ideas expressed by Lang and Taylor in terms of assisting mediators in the process of their professional development toward artistry. Specifically, the author presents information on training mediators to

handle high conflict participants, on the dynamics of conflict in particular, and on directing trainees toward information available on the process of divorce or other prolonged conflict.

Trainee mediators must learn to understand their own emotions and the emotional reactions of mediation participants to intervene effectively in conflict. To intervene strategically in the conflict, trainees need preparation and training so that they are not overwhelmed by emotion.

Most mediation training includes role-plays that can be used to increase a trainee's sensitivity to a participant's emotional issues. Trainees playing the role of participants in the mediation will experience emotion that will help them understand how mediator interventions are perceived. *Discussion of role-plays that includes debriefing the participants is a simple way to include a focus on emotion in the training.* It is important for trainers to give information about how the trauma of being in conflict produces behavior that is not necessarily characteristic of the participant's long-term functioning. Borrowing from systems models of family therapy training, mediation training can help trainee mediators develop a visual meta-perspective, an ability to detach from the emotionally charged experience of being with the participants by observing their patterns of interaction. This detached meta-perspective helps the mediator to not be overwhelmed and stuck with the participants in their cycle of emotion, and to focus on the process, not on the content. The mediator can then choose which way to respond and focus the participants back on the issues. Mediation trainings can easily include visualization and observation exercises that will begin to give trainee mediators a framework for understanding the complex dynamics of behavioral interaction during conflict. It is

important to spend some time getting the trainees to identify their own reactions to conflict and how those feelings can lead to the response in the mediation. Most commonly reported are feelings of sadness for the participants and helplessness, which can lead to the mediator withdrawing from the case. Trainees can realize their own investment in what they may have defined as a satisfactory outcome and / or need for control over the case. Sometimes *anger* of one or both parties is reported, which can lead to the mediator becoming emotional in the session and / or triangulated into the conflict on one side instead of remaining neutral.

The theoretical information provided in mediation training might help trainee mediators deal with the extremely strong emotions usually shown in such cases by making them aware of the part the mediator plays in a very high conflict case. It is very useful to include in training a presentation of how mediation fits into the whole spectrum of dispute resolution and the possibility that a high-conflict case may use different methods of dispute resolution over time. Knowledge about the course of conflict over time equips the trainee mediator not only with the cognitive tools to intervene but also with patience and humility. Not all conflicts can be resolved fully in session with the mediator. Some will stall and then return, some will need partial decision-making, and some will escalate to the point that they need traditional litigation to resolve them. The demand for social work education programs to get involved in the training of mediators becomes greater. The process of professional development reflects the proposition that mediation is an art as well as a science, and signifies a commitment to lifelong learning. A focus on emotion in mediation training is a way to provide trainee mediators with realistic understanding of the specificity of working with very high

conflict cases in order to help them respond with more empathy to participants on one hand, and to prevent mediator's stress and burnout on the other hand.

Conclusion

The literature review was organized into seven distinct subsections to explore the theory and application of conflict resolution and mediation, with particular attention to family mediation in a wide spectrum of issues. This is related to the goals and objectives of this practicum in that it provides the necessary information used in designing and delivering the training program in Lviv. The large body of literature reviewed will also be used in developing a university course on conflict resolution and mediation to be taught to social work students of Lviv Polytechnic National University.

The continuum of conflict resolution presented initially in this chapter reflects the move away from adjudicated methods of conflict resolution and elicits the tendency toward the ADR approaches in North America and Europe. Examining negotiation as a "win-win" concept of resolving differences highlights the value of collaborative power and the fundamental method of "principled negotiation", which is designed to shift people from their positions to their interests. Very important in itself, the negotiation section also serves as introduction to the following sections dealing with the major theoretical and practical tenets of mediation.

It is reported that mediation, one of the oldest forms of conflict resolution, has been going through a period of renaissance in North America and Europe. In a relatively short period of time this multidisciplinary approach has become a legitimate means of resolving disputes in the realms of community and family, public policy, and legal contexts. The approaches to mediation, and the mediation goals, values and principles, as

well as the mediator roles and mediation context reflect the diverse and pluralistic nature of mediation. This effective, non-adversarial, brief, task-oriented, and strength-based approach to the resolution of conflict fosters empowerment and recognition. Both the mediation process and its outcomes are found to be of significance. The literature suggests that a better understanding of how the process works is required, and this is relevant to further development of mediation.

The stages of a highly structured mediation process are presented. Examination of issues of family mediation, an optimistic perspective regarding conflict resolution, with respect to children in particular, as well as the results of the recent family mediation research have also revealed the need to place the focus on the mediation process and mediator behaviors.

The literature review attempts to address the need to emphasize the mediation process in the sections highlighting the practice elements of mediation. Specifically, this is done through exploring such issues as managing the emotional climate, creating a favorable mediation environment, mediating with high conflict couples, and focusing on emotion in mediation training. The final section of the literature review examines some aspects of training mediators, in the area of social work in particular. It explores the possible role of mediation as a generic method in the context of social work practice, and provides guidelines for developing a training program on mediation.

The literature review reveals the needs to be addressed in further development of mediation, including family mediation, as a social work practice model in Ukraine.

Chapter III

Practicum Context and Implementation

This chapter reviews the general context of Ukrainian culture and society and the practicum context and implementation activities.

In the first section, the context of Ukrainian culture and society in general is described. This section attempts to contextualize social work and mediation including family mediation to create “a system of meaning that must be understood” (Picard, 1998, p.14). This is necessary in order to apply mediation as a new practice model in Ukraine, from Canadian content and experience, but with due regard to Ukrainian peculiarities. This is aimed at determining how social work addresses the problems this Eastern European country is currently experiencing, and how mediation, which has developed into the most powerful approach in the Alternative Conflict Resolution movement in North America and Europe, corresponds to the needs and culture in Ukraine.

In the second section, the practicum context is outlined. It describes the setting and the need in Lviv and the Western Ukrainian area for quality social services. This need is partially addressed through international assistance, the Reforming Social Services: Canada-Ukraine Project in particular. This practicum has evolved in the context of this Project.

In the final section, stages of the practicum implementation activities aimed at achieving the goals and objectives of the practicum are described. This is done with regards to the Ukrainian peculiarities as highlighted.

Ukrainian Social and Cultural Context

In order “to develop practice models that are culturally relevant” (Edwards, Roth, Davis & Popesku, 2000, p. 181) and accomplish the task of designing a culturally relevant training program applicable in Ukrainian society to reach the task goal of the practicum there was a need to explore the historical and contemporary context of Ukraine.

Historical and Contemporary Context of Ukraine

The restrictive, oppressive nature of the closed Soviet totalitarian regime as well as the invasion and subjugation by neighboring powers Ukraine experienced throughout its history, have contributed to the devastating consequences of the current transition to a market economy. To better understand how ravaging the effects produced by the previous system were, and to what extent it has aggravated the difficulties of the present day, I examined these phenomena from a systems perspective. This made it possible to see that all the levels constituting the ecological system were eroded, those of the individual, the family, the community, the culture and the society. Oppression of the less powerful system by the more powerful system occurred (Parsons, 1991). This oppression can also be described as occurring along two dimensions: (a) “historical” and (b) “developmental”.

(a) Historical Dimension

In the course of history, Ukraine suffered frequent invasion, mainly as a consequence of its geopolitical position. The country is strategically located on the Black Sea. With the exception of the Carpathian Mountains in the Southwest and the Black Sea in the South, Ukraine has no natural barriers. It is abundant in mineral resources and has fertile soil, which earned Ukraine the name “breadbasket of Europe”. There is a history of

statehood in Ukraine but it is relatively short. Ukraine traces its historical development to the founding of the Kyivan Rus State in the 9th century. In the 13th century the Mongol - Tatar invasion wiped the once powerful Kyivan Rus off the political map. Halychyna, the Western Ukrainian region with Lviv being its center, retained its autonomy for a period of time (Hrushevsky, 1934). However, between the 14th and the 16th centuries, Lithuania, and later Poland, expanded their rule in the Ukrainian lands. Under Poland Ukrainians were subjected to religious and cultural oppression. In 1648 Ukraine regained its independence briefly before a treaty was signed with Russia, which divided the country in two. As a consequence of the treaty the central and eastern regions of Ukraine came under total Russian domination. Halychyna, its western region, remained under Polish rule, and was eventually incorporated as a part of the Austro-Hungarian Empire. Both Russian rule, and Polish dominance within the Austro-Hungarian Empire, were marked by cultural and social oppression. Under Russian rule Ukrainian political and cultural institutions were destroyed, and the population was subjected to serfdom. After a brief period of independence in 1917 Poland and Russia conquered Ukraine again, and the Ukrainian state was subject to invasion and partition by these two countries. In 1939 Western Ukraine was annexed to the USSR as a condition of the Nazi-Soviet Pact.

For more than seven decades Ukraine remained socially, economically, and politically integrated as part of the USSR, and subject to the process of "russification". The communist system encouraged individuals to subjugate their own needs to those of the society (Edwards, Roth, Davis & Popesku, 2000, p. 163). Under Soviet rule little if any attention was paid to the individual, and to her/his needs. An individual was "one of many". On one hand, individuality was suppressed, set off against collectivism. On the

other hand, collectivism as an idea, which in theory is an effective one, was distorted. It was implemented from above by the Soviet regime. One's activities were predetermined long before a person went to school (e.g., obligatory membership in procommunist organizations: Zhovtenyats'ka Orhanizatsiya - the Children's Great October Socialist Revolution Association, and Comsomol - Young Communist League). If one hoped to pursue a career, s/he needed to be a member of the Communist Party. Personal needs and wants were neglected, and personal identity was leveled. Families were deported to remote areas. Any independent community effort was eradicated. Ukrainian cultural values were disregarded, and this was particularly the case under Stalin.

Stalin's campaign to eliminate the Ukrainian nation, which wasn't reconciled to the Communist system, began in 1929. Dekulakization was the first attack. This involved the killing and deportation of well-to-do farmers (derisively named "kulaks"-suggesting grasping tight – fistiness) and their families, who were considered the most influential and most resistant to the party plan. Stalin's second measure involved the abolition of private property of land through the development of collective farms under the party control. The years of 1932-33 were the grim years of the genocidal famine in Ukraine, engendered through the setting of impossible grain quotas. This resulted in every handful of food being taken as a means to reduce the country into submission. Since Ukrainian nationalism was blamed for the failure to surrender all the grain, an attack on all Ukrainian culture, churches and intellectual institutions followed. The sheer numbers of Ukrainians who died during Stalin reign cannot be ignored. Estimates place the number who died at conservatively 3-6 million (Subtelny, 1988).

Stalin's plan to force the nation of Ukraine into submission was a calculated attempt to prove to other republics that recalcitrance in the face of the communist regime and the USSR would not be tolerated. The strategic geopolitical position of Ukraine, dividing Russia from the West in particular, was one of the main reasons why the USSR was determined to maintain a stronghold over the Ukrainian nation. The man-made famine reflects the persecution that the Ukrainian nation faced in the attempts to maintain its identity and culture (Chalk & Jonassohn, 1990).

Ukraine suffered the devastating effects of World War II, with the nazi invasion and subsequent battlefronts traversing its territory. Many of its population were imprisoned in concentration camps and deported for forced labor in Germany.

Under the Stalinist regime and long after World War II many people were exiled to Siberia or incarcerated only because their views were out of tune with the official ideology. Representatives of a certain culture could be exiled from the land of their ancestors to elsewhere, as it was the case with the Crimean Tatars, who were moved to Kazakhstan under the Stalinist regime. Ukrainian, as well as other national languages, was restricted mainly for use in everyday life. The Russian language became a national language of "the new historical identity", namely, the Soviet people.

Many churches were closed. Some became museums; others were used for other purposes, for example, as warehouses. Officially religion was not prohibited, but in practice people were not encouraged to go to church. For teachers and students attending church meant running risks. On Easter or other religious holiday schoolteachers would be sent to be on duty by the church to prevent school children from going to the temple. Atheism was an obligatory university course. National religious traditions were

substituted by new Soviet traditions, such as Leninist Subotnics (working during weekends without pay).

The Soviets went even further. Genetics as a field of study was prohibited under the Stalinist regime. The progress of psychology, religion and other sciences focusing on the human being was hampered. A whole science could be placed at the service of the Soviet repression, as it was with psychiatry, which was used to take dissidents in hand, with the objectionable person pronounced as a lunatic and isolated from society in an asylum.

Social work didn't have any basis for development. The society was proclaimed an ideal social welfare state. Ideology, economy and social protection principles were strongly interrelated. The system was, in part, based on equalization of supports that were provided as well as on centralization in decision-making. There were supposed to be no social problems, which was, of course, a myth. However, this contributed to the underdevelopment of any notion of social work and social welfare policy.

The harmful effect produced by oppression has been enormous. Along the historical dimension Ukraine has suffered huge losses. These include the suppression of individuality in favor of a distorted form of collectivism. Such cultural losses as the loss of the national language, the loss of the faith, and the loss of cultural identity are observed in all their magnitude in those parts of Ukraine, which were under the Soviet domination since the first years of the Soviet power. In Western Ukraine, not annexed to the Soviet Union until 1939, the negative cultural effects have been somewhat less. Nevertheless, Ukrainian cultural and religious institutions were destroyed. Ukrainian intellectual, political and religious leadership was exterminated. Individuals, classes,

groups, the whole Ukrainian society not compliant with the Soviet totalitarian regime experienced social, political and also physical extermination.

(b) Developmental Dimension

The harmful effect, produced by oppression throughout the history of Ukraine, specifically by the oppressive Soviet totalitarian regime, has considerably affected the current social and economic difficulties being experienced by the Ukrainian society.

At the personal level we have many cases of depression, pessimism, apathy, passivity, and disillusionment. Significant numbers of the population, particularly those raised under the Soviet regime, still carry "a blueprint of the culture's oppressive patterns"(Bishop, 1998, p.55). Since independent behavior was punished, the aversion to independent behavior is still present and has produced a deeply rooted fear of personal initiative, of taking action on your own behalf. The idea of shaping one's future appears alien to many people (Van Hon, Batako & Kreslavska, 1998). Many people see themselves in a distorted fashion, and blame themselves or each other for the troubled circumstances of their present day life. This is an internalized form of oppression, a process that occurs when "the oppressor gets in the head of the oppressed"(Mullaly, 1997).

At the level of the family we observe ineffective family support, family breakdown and high rate of divorce, an increasing number of children in residential settings and a growing number of homeless children and adolescents (FSWUM, 1999). As an example, it is worth noting that there was no adequate community support under the Soviet regime. This situation continues. Collectivism cultivated in its perverted form over a long period of time has considerably distorted the sense of the community.

Attempts by individuals and groups to take active part in social life frequently lead to strain and conflict (Zamfir & Ionescu, 1994, p.17). There is a need to develop a structure for active social participation. Given historical factors, there is a significant lack of trust among people. This lack of trust is a major obstacle to community building and economic development (Van Hon, Batako & Kreslavska, 1998).

If we consider the concept of the “continuum of health” here, relying on the classic statement given by the World Health Organization that “health is a state of complete physical, mental, and social well-being, and not merely the absence of disease or injury” (WHO, 1986), we will see a continuum of “ill health” throughout the Ukrainian society. Environmental pollution, the Chornobyl’ catastrophe in particular, has contributed to this effect. The developed bio-psychosocial and economic interaction has produced declining health and well being including incidence of disability related to environmental conditions. Recovery is the issue in Ukraine now. And it is not only traditional health care, which is needed (Evans, 1990, p.1347). A part of the solution is a social work planned change approach, social work intervention, which needs to be applied.

The systems perspective was applied to create a better understanding of the Ukrainian social and cultural context for the purposes of this practicum. In addition, the following concepts were assessed as important to a social development model in Ukraine.

An important goal is to introduce a “strengths model”(Rapp, 1998). The focus needs to be placed on “strengths rather than pathology” with regards to all the systems - those of the individual, the family, the community, the culture, and the society. In this context, problem recognition can be seen as a strength, if it becomes a motivation for action.

A second goal is to assist rather than treat the person, the family, the community, the culture, and the society. Empowerment is essential at all the levels.

A third goal is community development. There is a need for the community to come together. Relying on personal initiative, avoiding using any dictatorial or doctrinaire methods in establishing partnership relationships will promote the reemphasizing a “positive collectivism”. Efforts need to be directed “from below” to counterbalance the former way of promoting collectivism “from above”.

A fourth goal is to promote individuality. Maximum attention needs to be paid to empowering the individual, and to addressing personal needs. Promoting individuality is essential.

Cultural Strengths and Resources

There are cultural strengths and resources to assist in developing social work values and approaches in Ukraine. Religious faith and strong and deeply rooted religious traditions is one of them.

The church as an institution plays an integral role in Ukrainian culture. It is a part of a thousand-year-old history, a source of strength for the Ukrainian people in its struggles - “Even before they built a home, they built a church”(Armstrong, 2000). The unique value of the human being, the understanding of the needs and sufferings of the individual, and pastoral care focused on the person, have been central in all times and situations (Jarmus, 1995). The church has traditionally been the place to bring community together, to get the news, and to support those in need.

Having experienced the brutal and total suppression in Ukraine, including generations of state-imposed atheism, the Ukrainian Church has reemerged. Since 1991,

the Ukrainian nation has been experiencing the rebirth of faith (Armstrong, 2000). It is a precious national resource.

Another cultural strength is the strong family tradition of providing support to family members in need: the elderly, the disabled, and children of all ages. The family remains one of the major supports for people in resolving their critical life situations. It has always been the case with Ukrainians throughout the history despite all the difficulties. Love, harmony, mutual respect and support are essential to the health and well being of the Ukrainian family, for the development of the human being (Jarmus, 1995, p.264).

Scope of Problems in Ukraine

After centuries of subjugation Ukraine has a unique historical chance to build a civil democratic society. As noted, the transition to a market economy has been marked by major challenges in the light of the changes to the political, economic and social structure in the country since 1991, when Ukraine proclaimed independence (FSWUM, 1999; Ryabchuk, 2000).

The harmful effect of oppression as a major source of social problems is documented by Mullaly (1997, p.138), and this is particularly apparent in this historically disadvantaged society. It is also directly related to the current social and economic difficulties being experienced in Ukrainian society.

In the process of social transformation of the post-communist country, social work has been assuming an important role and function. Local service development is a significant component to this process (Imbogno, 1994, p.102).

Mediation is consistent with the task-oriented and strength-based approach required in Ukraine. This effective and most powerful model can help to empower individuals, develop a new form of community and transform society Ukraine is striving for in the process of social development.

Conflict could be viewed as a potential occasion for growth in two critical and interrelated dimensions of human morality. The first dimension involves strengthening the self. The second dimension involves reaching beyond the self to others. Responding to conflicts productively means utilizing the opportunities they present to change and transform the parties involved as human beings, ultimately transforming society as well. Thus, the effects of mediation reach far beyond resolving individual conflicts and have an impact on the society as a whole. The high moral content of mediation can help to sustain the major cultural strengths of Ukrainians including strong, deeply rooted religious traditions (Armstrong, 2000), and the family tradition of supporting its members in need (Jarmus & Jarmus, p. 25). Thus, it is directly related to the needs and culture and responds to the mission of social work in Ukraine.

Practicum Context

Problems that were not acknowledged under the totalitarian regime began to be recognized in the period following 1991, when Ukraine proclaimed independence. Such issues as domestic violence, alcohol abuse, unemployment and the like began to be addressed. It has become apparent that the serious social problems confronting the country require new kinds of public policies and service delivery organizations.

Before 1991 psychiatrists and psychologists were the only professionals available to people experiencing personal difficulties. The “medical model” was the only model for

evaluating people's problems. The notions of social work and social welfare policy were unknown. In resolving their life problems people could rely just on their families.

Since 1991 the situation has changed radically. The community has been very active in attempting to provide social services, establish self-help groups, etc. The outer boundary of the society as imposed by the "iron curtain" was no longer firm. People from outside the country, from the West in particular, started coming to Ukraine.

Many services have been established. However, there is a lack of professionals, resources, coordination and professional standards. In many cases, social services are being provided by workers without professional training, which has the potential for harmful effects.

Quality services depend upon qualified service providers who promote international professional standards of practice, as well as system change efforts that meet international standards of services (Edwards, Roth, Davis & Popescu, 2000). There is a need for international assistance in developing a model for social work education and practice and establishing a network of services with due regard to local differences.

"Reforming Social Services: Canada – Ukraine Project" is one of the first formal social work initiatives in Lviv and the Lviv region. It emerged from a long-term partnership developed between the University of Manitoba and Lviv Polytechnic National University, and between other Canadian and Ukrainian organizations. The Project responds to the needs in Ukraine, Western Ukraine in particular. The goal of the Project is to promote civil society and democratic development in Ukraine by contributing to the reform of the social work profession, the delivery of social services and strengthening disability organizations.

The development of the social work profession is viewed as an element in the reformation of the social service sector and the development of family-centered and community-based services. The Project's major component is the development of Social Work Education Program at Lviv Polytechnic National University (FSWUM, 1999).

As part of this practicum the training program on conflict resolution and mediation with particular attention to family mediation was designed and delivered in Lviv under the auspices of Lviv Polytechnic Social Work Program. However, it was based on Canadian content and experience. The training program was targeted at social service providers and social policy makers. These included social agency staff members as well as Lviv Regional and City Administration officers, specifically potential student field placement instructors and site supervisors undergoing social work professional development training.

Stages of the Practicum Development

My practicum activities were identified as several different yet inter-connected tasks to fulfil in order to achieve the practicum learning and task goals. These tasks were: (1) completing the learning activities pertaining to knowledge development of mediation, (2) designing the training program, (3) implementation of the program, (4) evaluation of the program, and (5) the program revisions. Although these various tasks did not occur in isolation, they constituted different stages of the implementation of the training program. They will be considered in this section of the chapter.

Completing Learning Activities

a) Review of Readings and Selection of Key Sources

My reading activities were guided by Mr. Andrew Zurawsky, MSW. Initially, he

provided me with a primary list of recommended readings. I began a review of the literature with books by such influential authors as Ury (1999), Fisher and Brown (1989), Moore (1987), Fisher and Ury (1981) and Irving (1980), which helped me to acquire basic understanding of major concepts of the theory of conflict resolution and mediation right from the very beginning of the practicum implementation process. Mediation training manuals (1996; 2000) were very helpful in shaping my conceptualization of mediation practice. Through the ongoing literature review I familiarized myself with a whole spectrum of theoretical and practical tenets of conflict resolution and mediation to achieve the learning and task goals of this practicum.

b) Participation in Training

On July 29 – August 2, 2000 I participated in Joint Conference of the International Federation of Social Workers and the International Association of Schools of Social Work in Montreal, Quebec, Canada. Participation in this conference expanded my knowledge about social work and its organization in different countries. I could compare the emergence of social work as a new profession and its entry into the education system in Ukraine with similar processes in other newly independent countries. Attending the conference workshops and meeting with social workers from different parts of the world helped me to better understand the current situation in my country, to contextualize social work practice in Ukraine in particular, which appeared to be essential for me in order to be able to design a training program relevant to Ukrainian culture and society.

To expand my knowledge, to learn concepts, processes and skills necessary to design and deliver a training program aimed at fulfilling the multiple tasks that mediation practice and training encompasses, I participated in mediation training events.

Specifically, I took part in training programs offered by Mediation Services including: (i) “Interpersonal Conflict Resolution” on September 6, 7, 9, 2000, (ii) “Mediation Skills – Level I” on September 18-20, 2000, and (iii) “Advanced Interpersonal Conflict Resolution / Negotiation Skills” on October 12-13, 2000.

I also attended workshops delivered at the Annual Conference of Family Mediation Canada on October 18-21, 2000. Participation in this conference provided me with a wider perspective of social practice and empowerment in the area of mediation.

During the practicum implementation period I received consultation and observed mediation sessions at Family Conciliation. On November 21, 2000 I participated in the program “For the Sake of the Children” at this agency. To proceed with my mediation training, specifically, to observe more mediation sessions and acquire new mediation practical skills, I maintained follow-up contacts with Family Conciliation in April – May 2001.

Design of the Training Program

The task of designing a culturally relevant training program on mediation to meet the task goal of the practicum, was aimed at introducing a new practice model in the context of emergence of social work as a new profession and its entry into the education system in Ukraine.

The objectives of the training program were to:

- develop awareness of the dynamics of conflict, and the importance of responding positively to conflict as opposed to reacting;
- develop an understanding of the role of communication in conflict;

- develop awareness of the issues involved in deciding the appropriateness of a case for mediation, preparing the parties to mediate, and dealing with interpersonal dynamics during the mediation process;
- develop an understanding of the role of mediator;
- develop an understanding of the applicability of mediation in the family context; and
- assist participants in determining to what extent the mediator role is applicable in their specific work context.

Development and Delivery of the Training Program

The Training Program Content

The content of the training program was based on my readings and training in Canada. I then reflected on the relevance of these materials to the culture and circumstances in Ukraine and designed the training program accordingly. The program includes the discussion of a variety of issues ranging from the nature of conflict to applicability of mediation, including family mediation, in the context of Ukraine. The need to meet the objectives of the training program and to adjust the program content to the Ukrainian social and cultural context, as well as the time limits of the three-day presentation format required a special focus on a number of key issues. These are described below.

In defining conflict, the focus was placed on it being an inevitable consequence of change, particularly in the face of uncertainty, a natural and inevitable part of life (Ury, 1999). This was designed to help participants apply the definition of conflict to real life situations, which are full of uncertainty, and when participation of individuals and groups

in social life frequently leads to conflict and tension (Zamfir & Ionescu, 1994). This is relevant to the current situation in Ukraine, in that there are many changes occurring in families and communities, public policy, and the legal system.

Positive aspects of conflict were emphasized as opportunities for growth and transformation (Ury, 1999), and this is important to recognize in Ukraine. A focus on shifting away from passivity toward the active intervention of the surrounding community as a common feature of social life (Ury, 1999) was aimed at empowering participants to take a more active role in personal and group involvement in social life of the country. Participants were encouraged to revisit old perceptions of human conflict and to reframe these into powerful approaches for dealing with human differences.

The importance of responding positively to conflict as opposed to reacting was accentuated through identifying the strategy of catching conflict as early as possible before it escalates, illustrating the conflict cycle and explaining the importance of breaking it, as well as distinguishing various conflict management styles.

Mediation was first introduced in a spectrum of such conflict management approaches as negotiation, mediation, conciliation, arbitration, and judicial processes (Moore, 1996; Picard, 1998). The emphasis was placed on differentiating between (i) *alternative* and (ii) traditional *adjudicative* methods of dispute resolution (Picard, 1998) as two different categories of conflict resolution approaches. Participants were helped to identify negotiation, mediation and conciliation as non-adjudicative processes.

Negotiation was introduced as a constructive, problem-solving process, “a peaceful procedure” (Keltner, 1987) of approaching conflict as a joint venture, an opportunity for mutual gain (Isenhardt & Spangle, 2000), and a “win-win” process. This was presented as

part of the strategy of “changing the game”, that is substituting the roles of the more usual positional bargaining by those of interest-based negotiation (Fisher, & Ury, 1981). Thus, through the concept of negotiation, a peaceful and empowering process, participants were introduced into “the magic” (Picard, 1998) of interest-based problem resolution, “crossing the line of understanding” and thereby gaining an appreciation of the legitimate interests and needs of the other person. For the purpose of making this concept clear, a chart illustrating “changing the game” as adopted from the training manuals (2000) was used (See Appendix C). Another chart “From Positions Through Underlying Interests to Solutions”(See Appendix C), as adopted and expanded from the training manuals (1986; 2000), was used to show how a third, i.e. shared position, can be identified in the process of negotiation, which helps to resolve the conflict situation (Hargrove, 1988, p.223). In this way participants of the training program were prepared to be introduced to the concept of mediation as an extension of the negotiated process (Moore, 1987).

Mediation was explained as a practice model, which differs from law and therapy. Mediation was introduced as distinguishable from other forms of dispute resolution, with the attention of participants being drawn to notions of “*empowerment*”, “*integrity*” and “*respect*” as hallmarks of mediation. It was stated that mediation grew out of a need of people to be more involved in *their own decision-making*. In the context of the historically disadvantaged society of Ukraine, the words “*empowerment*”, “*integrity*” and “*respect*” have meaningful and perhaps painful implications. The idea of involvement in decision-making is crucial for people brought up in the system based on the centralization in decision-making, and punishment of personal initiative.

At the initial stage of the training program, emphasis was placed on the history of mediation. Because of the time constraints it was not possible to dwell on this important aspect. However, mediation was presented as one of the oldest and most common forms of conflict resolution. Descriptive handout material was provided to the participants, which suggests that the church or temple has played an important part in resolving conflicts among its members for centuries. The local parish priest, minister, or rabbi was frequently called upon to serve as a mediator, particularly in family disputes, to suggest ways that the disputants might learn to live with each other or reorganize their relationship. The values underlying mediation were presented as being consistent with, if not central to, the biblical values of forgiveness, reconciliation and community (Garrett, 1994). This harmonizes with the major cultural strengths of Ukrainians as a nation with strong and deeply rooted religious faith.

An overview of mediation theory was delineated in accordance with the stages of the Mediation Model as identified in Chapter II. To develop awareness of the issues involved in deciding the appropriateness of a case for mediation and prepare the parties to mediate, the importance of pre-mediation as a preliminary stage of the Mediation Model was stressed. The need for the parties to have sufficient power in order to reasonably present their issues in mediation was emphasized, as any significant imbalance of power could render mediation inappropriate. Participants were exposed to the theory of mediation as well as the practice of mediation through a case situation. This case situation was adopted from the mediation manuals (2000), and adjusted to the Ukrainian context, by means of introducing Ukrainian names in particular (See Chapter IV). To develop an understanding of the role of mediator, a demonstration role-play of the

situation was followed by role-plays of different stages of the mediation process in which the trainees participated. The key management principle of mediation that “parties who participate in mediation should never leave worse off than when they came”(Picard, 1998, pp. 20-21) was accentuated.

In dealing with the complex dynamics of the mediation process, communication was emphasized as “a central element in interpersonal conflict”(Picard, 1998) and “a central component in negotiation”(Moore, 1987). Effective communication skills were accentuated, and dynamics of ineffective communication were pointed out. Participants’ attention was also drawn to strategies of managing the emotional climate and dealing with anger.

The process of helping parties in mediation to reach an agreement as the closure stage of the mediation process was explained. The trainees were shown an example of a written agreement, asked to brainstorm a possible version of an agreement to be arrived at in the case situation as discussed, and finally were shown an adapted version of the actual agreement made in the case situation having been dealt with (See Appendix B).

Family mediation was presented as an empowerment - oriented approach to dealing with conflict in families, particularly with regard to child related issues and as an advantageous tool for helping parents renegotiate their relationship and encourage them to cooperate. This is in direct contrast to the traditional adversarial approaches to dispute settlement. Mediation was presented as a means to empowerment and recognition, and participants were encouraged to consider its application in their professional activities and real life situations. The strong Ukrainian family tradition (of the extended family in particular) of providing support to its members in resolving difficult life situations was

accentuated as a strength in using the Mediation Model in Ukraine, specifically, in the context of family issues.

To develop an understanding of the applicability of mediation in the family context and assist participants in determining to what extent the mediator role is applicable in their specific context, mediation was discussed as a portable tool. As a result of the discussion, trainees were able to conclude that mediation can be used in a broad cross section of situations, including interpersonal, family, school, workplace, neighborhood, business, national and international concerns.

In wrapping up the training program, participants' attention was drawn again to the words "*empowerment*", "*integrity*" and "*respect*" as hallmarks of mediation. The trainees were encouraged to reconsider the possible implications of these words in the light of the knowledge and skills they acquired in the process of the training. This teaching technique was aimed at promoting the development of the trainee's personal conceptualization of the content of the training program on conflict resolution and mediation with particular attention to mediation in the family context s/he was exposed to, within the Ukrainian social and cultural context.

The Training Program Structure

The presentation of a variety of issues of conflict resolution and mediation was structured to accentuate the key points of mediation theory and practice for application in the Ukrainian context. The following is the outline for the presentation of the training program:

1. Introduction: Trainees' involvement in interactive activities
2. Dealing with differences: Nature of conflict / Conflict management styles

3. Communication and conflict: “Win / Lose” and “Win / Win” resolutions
4. Negotiation / Mediation as a form(s) of dispute resolution
5. Mediation:
 - a) Roots of mediation
 - b) Mediation as distinguished from other forms of dispute resolution:
 - Effective communication skills: Exercises
 - The Mediation Model:
 - Pre-mediation
 - Introductions (Joint orientation and contracting) / Skills
 - Issue identification / Skills
 - Uncovering underlying interests / Skills
 - Closure. Discussion of process / Skills
6. Applicability of Mediation:
 - a) Applicability of mediation in the family context
 - b) Mediation as a transportable tool
7. Empowerment and recognition in mediation: Applicability of mediation in the Ukrainian context
8. Evaluation & Wrap-up

Each new issue presented in the training program was developed as an extension of the previous one. Structurally the presentation was linked to some common themes.

These were:

(a) The discussion based on the “*empowerment*”, “*integrity*”, and “*respect*” issues introduced at the beginning and referred to at the end of the training program. These concepts were also stressed throughout the course.

(b) Demonstrating the chart “From Positions Through Underlying Interests to Conclusions” first and then emphasizing its parts throughout the course.

(c) Demonstrating and role-playing the same case situation while elaborating on each new stage of the mediation model, and finally illustrating the actual agreement made in that particular case.

Approaches to the Training Program Presentation

The approach to teaching can be characterized “interactive” and “trainee – centered”. The main principle of the presentation was “practice to learn” as opposed to “learn to practice”. Thus, there was an emphasis on doing interactive exercises, role-plays, small and large group work, encouraging group discussions and promoting questions to be asked by the participants, brainstorming new ideas, de-briefing and reviewing the material already introduced previously, at the beginning of each new day. At the end the trainees were asked to evaluate the training program. Despite time limitations, as much attention as possible was paid to introducing, demonstrating and practicing effective mediation skills and techniques, specifically effective communication skills.

Interactive activities also promoted rapport between the group of trainees and the presenters, and this was maintained throughout the process of the training program delivery.

Different visual teaching aids such as overheads, handouts and flipchart paper were used. Each trainee was supplied with a package of translated materials providing information about conflict resolution and mediation, family mediation in particular, related readings, as well as major handouts (See Appendix D).

Implementation of the Training Program

The training program was implemented with supervision and assistance provided by Mr. Zurawsky, an expert in the field of mediation, in two training sessions: (i) a three-day training program, and (ii) a revised one-day introductory module as a part of a larger training module.

The Three-Day Training Program

The three-day training program, as developed from the Canadian content and experience, was delivered *at the Social Services for Youth*, an agency in Lviv, on December 7- 9, 2000 under the auspices of Lviv Polytechnic Social Work Program. It pursued the training program objectives and reflected the program content and structure as identified above to achieve the task goal of the practicum.

Participants of the training program had been recruited by through program advertising and getting trainees involved through Lviv Polytechnic National University and the Social Services for Youth, the host agency for the training program. The University and the agency distributed the announcement of the program. There were 22 trainees consisting of 10 social agency staff members, 5 social agency administrators, with the host agency director being also an officer of the Lviv Regional Administration, 2 psychologists, 1 physician, 3 lawyers, and 1 priest.

The Revised One-Day Introductory Module

The revised one-day introductory module was delivered at Lviv Polytechnic National University on December 11, 2000 as a part of the second module of the social work professional development program. This program was developed and conducted from the Canadian content and experience under the auspices of Lviv Polytechnic Social Work Program. The professional development program was designed for potential student field placement instructors and site supervisors, and was delivered by Canadian instructors within the framework of the implementation of "Reforming Social Services: Canada-Ukraine Project". The introductory training module on conflict resolution and mediation, delivered to these participants, followed the training program objectives and

reflected program content that was similar to that provided in the three-day seminar. Its structure, however, was modified because of the time constraints. Specifically, there were no role-plays included in the introductory module agenda. Its practical part involved a case example demonstrated as a role-play by the presenters and the inclusion of some interactive exercises. At the same time group discussion was encouraged and all the questions the trainees asked were answered.

Collaborative Work in Design

I received on-going practicum supervision and assistance provided by Mr. Andrew Zurawsky, the Past President of Family Mediation Manitoba, a Practicum Committee member and my Reading Course Instructor. Specifically, Mr. Zurawsky

- guided my Reading Course activities,
- introduced me to a number of mediation settings in Winnipeg,
- helped me with identifying the training programs on mediation for me to participate in,
- provided on-going supervision and assistance to me in designing the training program, and
- supervised and assisted me in the program delivery in Lviv.

Conclusion

This chapter has explored Ukrainian historical and contemporary context, identified cultural strengths and resources and highlighted the scope of problems in this newly independent state. The Ukrainian social and cultural context, as explored, suggests that mediation is likely to address the needs and culture in Ukraine. There is a clear

match between the orientation of mediation in that it promotes problem solving and fosters empowerment and recognition, and the need for dispute settlement and empowerment in Ukraine in the process of developing a civil democratic society. There is also a match between mediation, a strength-based approach, and the Ukrainian cultural strengths. The general social and cultural context of Ukraine, as explored, highlighted the issues to be emphasized in the design of the mediation training program and in ongoing development of a mediation practice in Ukraine.

This chapter has also outlined the practicum setting, which reflected the need in Lviv and the surrounding area to develop a model for social work education and practice and to establish a network of quality social services.

In the next chapter a general description of the training program will be provided.

Chapter IV

Description of the Training Program

This chapter provides a general description of the process of the three-day training program as developed and delivered with reference to four appendices: A) The Detailed Outline of the Training Program, B) The Trainers' Preparatory Materials, C) Major Overheads, and D) The Trainee's Package in Ukrainian.

Day One Training

The objectives of the first day were:

- To develop awareness of the dynamics of conflict and the importance of responding to conflict as opposed to reacting;
- To develop an understanding of the role of communication in conflict;
- To introduce the Mediation Model, develop awareness of the issues involved in deciding the appropriateness of a case for mediation, preparing the parties to mediate; and
- To practice the Pre-mediation Stage and Introduction Stage of the Mediation Model.

Introduction to the Training Program

Trainees were introduced into the training program outline and structure. The objectives of the training program were identified, as well, the trainees were asked to identify their objectives. They were invited to participate in interactive activities beginning with a warm-up exercise, in which they introduced themselves to another person in pairs, and then each partner in the pair introduced the other to the larger group.

Dealing with Differences

The trainees were provided with an opportunity to learn new ways to resolve conflict. Conflict was presented as a natural and inevitable part of life. The sources of conflict were explored. Positive aspects of conflict were emphasized. The need to identify conflict as early as possible to prevent its escalation was stated. The conflict cycle (See Appendix C) was presented to show how conflict operates in life. Conflict management styles were differentiated and factors that influence the choice of style were specified.

The key points emphasized in this part of the training program were the positive aspects of conflict as opportunities for growth and transformation, the need to move from passivity toward active intervention of the surrounding community, and the importance of responding positively to a conflict as opposed to reacting.

The information was introduced through extensive group discussions. Wherever possible trainees were encouraged to brainstorm new ideas before information was presented.

Communication and Conflict

Lack of understanding was defined as a major source of conflict. The trainees were asked to do the exercise (See Appendix C) and guess the percentage of the total message received as attributed to each of the categories of the act communication, i.e., verbal (words), vocal and tonal (tone) or visual (body language). "Win / win" conflict resolutions were contrasted with "win / lose" ones to show that people can solve their conflicts and reconciliation is possible in a wide range of situations.

Bad communication was identified as blocking conversation and interfering with problem solving. Assumptions were analyzed as a major contributing factor in the

breakdown of communication and escalation of conflict. The overheads “Interest-Based Problem Solution (Changing the Game)” and “From Positions Through Underlying Interests To Solutions” (See Appendix C) were introduced to illustrate the process of working towards creative solutions, which will satisfy each party in the conflict. The latter one was used several times throughout the course of the training program delivery to emphasize separate stages of the mediation process and to illustrate it as a whole. The “Needs” exercise was completed based on the list of needs provided (See Appendix C).

A common, everyday view of conflict is that it involves differences in people’s positions. The theme emphasized in the training program was that conflict involves differences in people’s needs, desires, concerns and fears.

Forms of Dispute Resolution

Following a general discussion of conflict the continuum of conflict resolution was introduced. This was done to demonstrate a spectrum of such conflict management approaches as negotiation, mediation, shuttle mediation, negotiation with the help of two representatives and arbitration. The degree of control by disputants across various forms of dispute resolution was compared. Negotiation was presented as a constructive, problem solving and “win-win” process, a “peaceful procedure which reconciles and / or compromises difference and which depends on good faith and flexibility” (Keltner, 1987, p.68). It was defined as “the process of bringing together those who are opposed on some issues and arranging for them to communicate clearly and fairly, to bargain and compromise, and to arrive at mutually acceptable agreements” (Barker, 1999, p.324). The concept of mediation was introduced as an extension of the negotiated process. It was explained that this practice model was essentially different from law and therapy.

The notions of “*empowerment*”, “*integrity*” and “*respect*” were presented as key concepts in the development of mediation. It was stressed that mediation grew out of a need of people to be more involved in *their own decision-making*. The history of mediation was related to to show that mediation is not a new invention but one of the oldest and most common forms of conflict resolution. Mediation was presented as distinguishable from other forms of dispute resolution. The role of the mediator was outlined as that of a neutral third party to create the process and the environment, not the content. The issues of managing the emotional climate were considered and strategies in dealing with anger were identified.

The key points emphasized in this part of the program were the following: differences between alternative and adjudicative methods of dispute resolution; acceptance of negotiation and mediation by the participants as non-adjudicative processes; negotiation as a constructive, problem-solving and empowering process; the principle of shifting people from their positions to their interests; the notions of “*empowerment*”, “*integrity*” and “*respect*” as key concepts in the development of mediation; the need of people to be more involved in *their own decision-making*; the history of mediation; how mediation is distinguishable from other forms of dispute resolution; and the need for a positive response to anger.

Effective Communication Skills

Communication was emphasized as “a central element in interpersonal conflict”(Picard, 1998) and “a central component in negotiation”(Moore, 1987). Effective communication skills were accentuated, and bad communication skills were pointed out.

The list of effective communication skills was introduced, and each of the skills was illustrated with an example or exercise as presented below.

Effective speaking

An emphasis was made on “I” messages rather than “You” messages. An “I” message lowers the level of escalation and tension, while a “You” message raises the level of pressure and tension. “You” messages usually blame, threaten, order or make the other person feel guilty. An “I” message has three parts: “When” (specific behavior), “I feel”(specific feeling), and “ Because”(tangible effect). “When” separates the person from the problem. “I feel” indicates trust to the listener. “Because” indicates the ability to communicate interest rather than position. The trainees were asked to change a number of sentences into “I” messages. One example is: “You are always late” to “When you come late, I feel frustrated because I find it difficult to make last minute plans for the evening”(Mediation Services, 2000, p.36).

Active listening

The importance of facial expression and eye contact was accentuated. It was indicated that there are a number of ways to be a good listener including empathizing, validating, clarifying and paraphrasing.

Questioning

Questioning was presented as the process of discovering the needs and concerns of the other person. The importance of discussions to be oriented towards “solution talk” versus “problem talk” was emphasized. Different types of questions were introduced, “why” questions, close-ended questions and open-ended questions, in particular. The effectiveness of asking questions out of a desire for information as opposed to making

statements / judgements was focused. One example is: “Express your opinion” (the task for one person); and “Ask open-ended questions to understand the reasons for your interlocutor to have this particular opinion” (the task for another person).

Paraphrasing

Paraphrasing (stating back) was introduced as checking the “micro” level of conversation. A good paraphrase includes facts and feeling, and has a number of purposes. In particular, paraphrasing helps to ensure that the information is understood correctly. Paraphrasing exercise was done in pairs. One example of paraphrasing is: “When I go for a break, I always seem to sit by myself” (statement); and “You are really disappointed when you go for coffee breaks and end up sitting alone”(paraphrase) (Mediation Services, 2000, p. 30).

Summarizing

Summarizing (reviewing important issues) was emphasized as a “macro” level skill, which differs from paraphrasing in terms of the range of its focus. It is a brief sketch of previously covered ground. Summarizing is done by means of briefly listing the issues or highlighting what has been accomplished or stated. The formula to begin summarizing is: “In brief, your issues are...” or “We have covered ...so far”. An example of summarizing was provided.

Reframing

Reframing is a positive restatement of another person’s negative or blaming statement. A reframe attempts to uncover the underlying need in another person’s statement. Reframing was emphasized as a powerful tool of critical importance in mediation. The formula to begin reframing is: “It is important to you that...”, “It sounds

like..." and "So you value..." One example of reframing is: "You're always checking up on me. It bugs me that you don't believe I'm working."(statement); and "So, you'd really like to be trusted..."(reframe) (Mediation Services, 2000, p. 32). To demonstrate that different people see things differently the trainees were shown a picture (See Appendix D), which could be interpreted differently: as a young woman or an old woman.

Brainstorming

Brainstorming was introduced as a technique aimed at developing new ideas and considering alternatives or options. Brainstorming is a process (usually in groups) to generate a wide variety of ideas, without evaluating or critiquing them. The process is guided by a facilitator (in mediation, the mediator) who uncovers the free expression of ideas in a safe environment, and lists these on a board or flipchart. This is then followed by a process of evaluating and prioritizing the ideas.

Non-verbal communication (neutrality, balance, attending, preempting) to foster good listening was also introduced.

The stages of the mediation model were introduced as falling into two broad categories: the preliminary stage (Pre-mediation) prior to the beginning of the joint sessions and the joint sessions (Mediation Forum). The mediation model is outlined below and then discussed in more detail.

The Mediation Model

I. Pre-mediation (Preliminary stage)

II. Mediation Forum:

- Stage 1. Introductions (Joint orientation and contracting)
- Stage 2. Issue identification

- Stage 3. Uncovering underlying interests
- Stage 4. Closure. Discussion of process

Pre-mediation

In the pre-mediation stage, commitment to the mediation process is encouraged. The mediator is involved in screening the participants and orienting them to the mediation process.

The screening process includes engaging the prospective participants to mediation, orienting the participants to the mediation process, responding to their concerns, anxieties, or resistance, motivating the participants, gathering information regarding demographics and background issues, assessing readiness for mediation, and determining the viability and appropriateness of mediation as a forum for dispute resolution. Orientation to the mediation process is aimed at educating the participants (a group or individual format) about mediation in a broad sense, normalizing the individual's experiences and reactions to them and softening the more extremely held positions.

Criteria in assessing readiness, viability, and appropriateness for mediation were considered in the training session.

The Mediation Forum

Stage 1. Introductions (Joint orientation and contracting)

The purpose of this stage of the mediation process is to prepare for an exploring the issues. The process is characterized by setting a comfortable tone for the session, reminding the parties about the purpose of the meeting, describing the mediator's role, explaining the rules and establishing guidelines.

The following guidelines for mediation were presented:

- Only one person speaks at a time.
- No interruption while someone is speaking.
- No personal attacks are allowed.
- Information shared during the mediation session will be treated as confidential (Isenhart & Spangle, 2000).

Setting the stage is also instrumental in reducing participants' anxiety, through the creation of a safe environment, wherein they can begin to feel comfortable enough to discuss matters openly. This is accomplished by setting a collaborative, comfortable tone for the session, assessing resistance and working with it, as well as affirming. As part of "setting the stage" the mediator assesses the participants' readiness to proceed, and elicits their commitment, formulating either an informal or formal contract.

Introduction to Role-Play

Guidelines for role-plays were provided and a case example as given below was introduced.

Oksana:

I am one of five employees in an office that tends to be quite busy. I enjoy my work and the variety that comes with working in a small office, although sometimes work distribution seems haphazard. I like the people I work with but I find that people are quite sharp with each other because of time pressures. One of many tasks that are currently on my plate is coordinating the content of the newsletter that the office puts out each month. One of my coworkers, Mykola, coordinates the layout, design and printing of the newsletter. The other staff assists by writing the occasional content piece or finding people to write content pieces. The newsletter has been a constant source of tension between Mykola and me: he doesn't seem to enjoy working on it. Last Friday morning I received the last of the content pieces and passed the whole package onto Mykola. I waked into the staff room for lunch and I was horrified to hear Mykola running down my work in front of the other staff members. I got upset with him, and he accused me of being incompetent.

Mykola:

My office is very busy, demanding and stressful. I like the work I do, but very often I feel put upon to do many different things that I think are outside of my job description. There are no meaningful written job descriptions in my office, which is another source of frustration to me. I like the people I work with but I find that people treat each other harshly. I believe this is a consequence of time pressures. One of the many “extras” that is currently on my plate is the layout, design and printing of the newsletter that the office produces each month. One of the coworkers, Oksana, coordinates the content of the newsletter. The newsletter has been a constant source of tension between Oksana and me: she has been getting the content to me too late, and I end up scrambling around at the last minute trying to get the thing done on time. It happened again last Friday morning, and I spent the whole morning away from what I hoped to work on so I could get the newsletter out on time. I was blowing off steam in the staff room at lunch when Oksana walked in and got upset with me. I felt under attack and accused her of being incompetent. I would like to work things out with her (Adapted from Mediation Services, 2000, p. 47).

Demonstration Role-Play

A demonstration role-play was done by the presenters on the basis of this case example. The key management principle of mediation that “parties who participate in mediation should never leave worse off than when they came”(Picard, 1998, pp. 20-21) was accentuated.

To develop an understanding of the mediator role, the demonstration role-play of the situation was followed by role-plays of different stages of the mediation process.

Role-play "Stage 1"

A role – play of Stage 1 was done in small groups, with a large group discussion having followed it.

Day Two Training

The objectives of the second day were:

- To develop awareness of the mediation process dynamics; and
- To develop an understanding of the role of mediator.

The second day started with reviewing the information of the first day. Stages 2, 3 and 4 of the Mediation Forum were introduced.

Stage 2. Issue Identification (Story – Telling)

This is the participants' statement, which delineates their perception of the issues for the first time in joint session – this is the beginning of agenda formation. The purpose of this stage is to get the parties talking and involved, let the parties hear each other's story as it is told to a third party, begin to identify the issues and give each other the opportunity to hear the issues.

This stage of the mediation process is highly structured. The two major components to this stage in the mediation process are (i) opening statements and (ii) goal summary. Note - taking is essential in assisting the mediator to analyze the positions, identify the content of the issues and accurately reflect back to the participants their statements. Initially, the mediator gives a detailed feedback of what each person has said in his or her opening statement. From those statements, the mediator formulates in a neutral way the goal summary. The goal summary includes framing the issues, and identifying common ground where it exists. The participants will be asked to agree on an agenda based on the goal summary. To complete this stage a general statement summarizing what the participants may expect to accomplish in mediation is made. This is the working contract.

It was emphasized that effective skills and techniques to be used at Stage 2 include listening with empathy, restating the party's opening statement, using a minimal amount of questioning, and summarizing the issues identified by the parties after the opening stories or statements, forming the agenda and establishing a working contract.

Role-play "Stage 2"

A role-play of Stage 2 was done in small groups. It was followed by a large group discussion.

Stage 3. Uncovering Underlying Interests

The purpose of this stage is to continue to have the parties hear about each other's perspective on the issues, develop mutual understanding and empathy, explore the parties' underlying interests and begin to develop a sense of momentum.

Exploration of interests is *the heart* of the mediation process; it is where the "magic of mediation" occurs, i.e., shifting people from their positions (their wants), to their interests (their needs) (Picard, 1998, p.22). Shifting from positions to interests is crucial for working towards creative solutions. Through the skilful use of *questioning*, the mediator attempts to discover the needs and concerns that are at the base of the participants' position. Through the process of *reframing*, the mediator helps the participants to state their concerns in terms that lend themselves to the consideration of options.

It was emphasized that the effective skills and techniques to be used at this stage include active listening, paraphrasing, asking open-ended questions and reframing. Reframing was accentuated as a critical tool in mediation.

Role-play "Stage 3"

A role-play of Stage 3 of the Mediation Model was done. Debriefing in a large group followed it.

Stage 4. Closure. Discussion of Process

The purpose of this stage is to assist the participants in the generation of the best solution of each issue, summarize the progress made and highlight areas of new understanding, develop a detailed agreement, and negotiate closure of the session. The mediator's job throughout the process is to firmly place ownership of the decision-making process with the participants. Finally, the mediator assists in drafting the terms of agreement and facilitates closure. Summarizing, questioning, reframing and brainstorming were accentuated as effective communication skills used at this stage of the process of mediation.

Role- play "Stage 4"

A role-play of Stage 4 was done in small groups. Debriefing in a large group followed it.

Day Three Training

The objectives of the third day were:

- To review the Mediation Model;
- To develop an understanding of applicability of mediation in the family context; and
- To assist participants in determining to what extent the mediator's role is applicable in their specific context.

Review of the Stages of the Mediation Model

All the stages of the Mediation Model were reviewed. The trainees were also shown an example of a written agreement, asked to brainstorm a possible version of an agreement to be arrived at in the case situation as discussed previously, and finally were

shown the adapted version of the actual agreement made in the case situation having been dealt with (See Appendix C).

A discussion on applicability of mediation in the family context was held. The trainees were introduced to the area of family mediation by a discussion of developments in the Canadian context. A summary of this discussion follows.

Over the course of the last two decades in Canada mediation has evolved as a resource for families in resolving their conflict situations. Family mediation has gone through a period of examination and professional growth. Alternative dispute resolution mechanisms have increasingly been employed often at less cost, and with a special emphasis on cooperative problem solving. Many jurisdictions now require that clients be informed about, and in appropriate cases, attempt mediation before they proceed to litigation.

Present day family law reflects a change in social attitudes to marriage breakdown. It reflects the concept that adults should be free to choose whether or not to remain in the marital union. Fault is no longer a necessary ingredient for being granted a divorce, and support and custody are no longer used as part of the social sanction against divorce. The government has been faced with the question of how best to ensure that children are adequately supported. Mediation encourages parents to cooperate – a distinct contrast to the traditional method of adversary settlement. The direction is towards greater control by parents and less intrusiveness by the legal system, unless there are concerns about abuse, intimidation, or serious inequality of bargaining power. Hence there is increasing interest in family mediation as a cooperative, empowering, and

expeditious choice for families undergoing separation (Emery, 1994; Landau, Bartoletti & Mesbur, 1997; Saposnek, 1983).

The need for changes in the traditional and legal approaches to addressing divorce and custody issues has arisen as a result of the relatively recent exponential increase in divorces, with the attendant increase in custody disputes. Such increases have revealed and highlighted the inadequacies of adversarial treatment of these issues (Saposnek, 1983).

Divorce is a symptom of the deep-seated distress of society as a whole, and the causes are deeply imbedded in our collective social history. Divorcing couples are not responsible for the general malaise of society. Rather they are prominent and numerous victims (Irving, 1980).

Family mediation and therapy share the historical antecedents, however each has a very different theoretical objective. Whereas family therapy is a process to assist families working to remain together, family mediation is a process to assist families where there has been a decision to separate and / or divorce (Landau et al., 1997). It helps parents to redefine new boundaries in their relationships (Emery, 1994).

Conflict within a marriage in itself does not indicate marital distress. Conflict in families is inevitable, and fighting often is adaptive. Couples benefit from constructive processes and strategies that move toward negotiation and the resolution of marital problems. The goal is not to avoid fighting. Rather the goal is to fight constructively (Cummings & Davis, 1994).

In the majority of adversarial divorces there is a great deal of conflict, pain and loss for the entire family. Three quarters of divorces involve children and all divorces

affect the total family and friendship networks. Divorce will continue to exist, but it is not necessary to drive the conflict into destructive and expensive channels (Irving, 1980).

The goal of divorce mediation is to provide a basis whereby marriages can be terminated without destroying the couple or their children. Divorce mediation describes a method of minimizing the damage. It deals only with constructive conflict resolution. No one “wins” when using divorce mediation. Nonetheless, everyone benefits. When a marriage is over, it is not time to retaliate and take revenge. It is time to strike out for a new life while providing for and protecting the lives of children.

The mediator aims to help the divorcing couple focus *on the current relationships* to provide a mutual framework for negotiation, compromise and resolution of differences to serve the best interest of the couple and their children, and for the good of all family members. The benefits to the children and to the family unit as a whole are real and tangible. Divorce mediation lessens the possibility of serious harm. If the parties are able to agree on division of their property, custody, child support, and similar matters, this will decrease the chances of future litigation and they can then go about the important job of rebuilding their lives (Irving, 1980).

The task for the divorcing parents is to separate the marital and parental roles that are bound together in marriage but must be disentangled in divorce. The children’s perspective is a major perspective within separated and divorced families. Some parents who become involved in custody or visitation disputes have difficulty focusing clearly on the needs of the children, and in these circumstances children can be the real losers in marital disputes. Conflict distresses children even though the dispute may not be directed toward them. Children are affected by mere exposure to marital discord. They benefit

from observing the resolution of conflict. The degree of resolution matters (Cummings & Davis, 1994), in the context of divorce in particular, as children's adjustment to divorce is greatly affected by their parents' conflict and cooperation (Emery, 1994).

Family mediation was accentuated as an optimistic perspective concerning conflict resolution in families with regards to children and as an advantageous tool for helping parents renegotiate their relationship and encourage them to cooperate.

Applicability of Family Mediation in Ukraine

An extensive discussion regarding applicability of family mediation in Ukraine was held. The trainees expressed their interest in this area of practice and its development in the country.

Mediation as a Transportable Tool

To develop an understanding of applicability of mediation in the family context and assist the trainees in determining to what extent the mediator role could be adapted to their specific context it was stressed that mediation is a transportable tool. It was emphasized that mediation is used in a broad cross section of situations, including interpersonal, family, school, workplace, neighborhood, business, national and international matters. In each of these contexts, it has to be adapted to meet the needs of the clients.

Mediation as an Empowerment – Oriented Method

In the discussion the connection between mediation and empowerment was emphasized. Mediation was described as a brief, non-adversarial, task-oriented and interventive approach to the resolution of conflict. It is designed to leave the maximum possible control of decision making in the hands of the primary participants, while at the

same time placing the management of the facilitative process is in the hands of a third party – the mediator. The principle of self-determination can assist in facilitating the empowerment of each participant without disempowering anyone in the process. Mediation is a generic, strengths-based approach, which fosters empowerment and recognition. Recognition is achieved in mediation, when the parties “voluntarily choose to become open, attentive, sympathetic, and responsive to the situation of the other party, thereby expanding their perspective to include an appreciation for another’s situation” (Ury, 1999, p.89).

In wrapping up the training program, the trainees’ attention was drawn again to the words “*empowerment*”, “*integrity*” and “*respect*” as key concepts of mediation and the milestones of the training program. Figure 1 was used to lead this aspect of the discussion.

Figure 4: Strategy of Change

Controlling	→	Empowerment
Position:		Position:
Authoritarian	—	Managerial
Power-based	—	Task-based
Rigid	—	Flexible
Suspicious	—	Trusting
Secret	—	Open

In discussion that evolved from this stage of the program the trainees expressed their genuine interest in mediation and its development in the areas of education and

social practice in Ukraine. They also expressed an interest in establishing an Association for Mediation in Ukraine.

Chapter V

Evaluation of Practicum

This chapter addresses the areas of evaluation of the training program, as developed and implemented, and my learning, specifically dealing with the tasks I carried out to achieve the practicum objectives.

Evaluation of the Training Program

Design of Evaluation Methods

A questionnaire was designed (See Appendix B) to evaluate the training program. The purpose of evaluation was to identify the strengths and limitations of the training program to enable future modification and improvements, and to test my progress in meeting the practicum learning goal.

The setting of the training program delivery affected the final form of the questionnaire. In Lviv, training programs are usually delivered at educational establishments, and conducting a training program in the community is a rather new model. Thus, Question # 11 about the location of the training program was added to the questionnaire.

The questionnaire includes a set of closed-ended questions (# 1-12) aimed at getting multiple choice type responses. The open-ended questions (#13-15) were aimed at receiving unstructured answers and comments.

With the closed-ended questions trainees could simultaneously view all the response categories, such as: "Strongly Agree", "Agree", "Neither Agree nor Disagree", "Disagree", and "Strongly Disagree". The response options communicated the same frame of reference to all the respondents (Royse, 1999). The closed - ended questions

were developed to provide information about specific dimensions of the training program, such as the following: "Meeting the objectives of the program", "Organization of the program", "Length of the program", "Methods and techniques used", "Opportunity for discussion", "Appropriateness of the level of the training material", "Responses to the trainees' questions", "Applicability of the information and skills", and "Recommendations regarding the program continuation". The open-ended questions allowed the participants to take time to elaborate on their thoughts and communicate without having to choose from a set of prepared response categories.

Administering the Questionnaire and Generalizing Results

The questionnaire to evaluate the training was administered at the end of the three-day training program. It was completed by 19 participants. A variety of ideas were expressed. The responses provided an important source of feedback on the training program, as delivered.

Response Categories

The information presented in Figure 5 allows understanding the average response for the particular question, as reported by the mean. The questions were structured so as to allow for the following response categories:

- 1 - "Strongly Disagree"
- 2 - "Disagree"
- 3 - "Neither Agree nor Disagree"
- 4 - "Agree"
- 5 - "Strongly Agree"

It is noteworthy that in most cases responses were quite positive with the significant exception of items 5 and 8. This denoted some need for modification.

Figure 5: Training Program Evaluation

Question	Mean
1. Workshop met my objectives	4.79
2. Workshop met with objectives as stated by presenters	4.22
3. Content is likely to be valuable to me in my work	4.58
4. Presenters used effective techniques to present material	4.79
5. Length of program allowed adequate learning opportunity	2.79
6. Material was at an appropriate level for me	4.79
7. Program was well organized	4.84
8. There was enough opportunity for discussion	3.95
9. Presenters responded adequately to questions	4.68
10. I intend to apply the information/skills in my work	4.58
11. Program location was convenient	4.53
12. I would recommend this training program to others	4.89

The data generated by the program evaluation fell into three discrete categories: (1) program strengths, (2) program limitations, and (3) recommendations regarding the program continuation. A summary of responses received within each category follows.

1. Program Strengths

- The program met the objectives of the trainees.
- The program met the objectives as stated by the presenters.
- The program was interesting.
- The program prompted to think about conflict in life.
- The presenters used information from different areas of knowledge.
- The program content was valuable, and the trainees intended to apply the acquired information and skills in their work.
- The material was at the appropriate level for the trainees.
- The program was well organized.
- All the parts of the program were valuable.
- The presenters used effective techniques to present the material.
- There was a good selection of overheads and handouts.
- The presenters responded adequately to the questions asked.
- The location of the program was convenient.
- It is worth recommending the program to others.

2. Program Limitations

- More time was needed for mediation practice, specifically, for demonstration and role-plays, for discussions, for practicing stages 3 and 4 of the Mediation Model and writing an agreement.

Generally, two days and a half was too little time for this kind of a training program.

- The program would have benefited by using a movie about the mediation process.
- New mediation terminology in Ukrainian sounded somewhat formalized.

3. Recommendations regarding the program continuation

- The minimum duration of the program should be 5 days (one week).
- Ideally the program needs to last for 2-3 weeks.
- Such programs need to be conducted on a regular basis every 3-6 months.
- There is a need to provide professional training in mediation.
- There is a need to establish mediation services in Lviv including those to deal with family issues.

Evaluation of the Training Program by the Student

In my own evaluation of the training program, as developed and delivered, I followed the evaluation pattern established in the process of generalizing the results of the program evaluation and presented above for me to be able to compare my own conclusions with the results suggested by the data generated, and make comments regarding the results generalized.

The feedback I received from Mr. Zurawsky, de-briefing and ongoing discussions of the program development, implementation and delivery, and the results of the program implementation, which I had with my Reading Course Instructor, as well as my own self-evaluation allowed me to draw the conclusions as presented below.

Program Strengths from the Student's Perspective

The training program met its objectives as identified above in Chapter III, and as stated by the trainees, which is suggested by the responses to the close-ended questions (See Figure 5) in particular. All the parts of the program were found to be consistent with the objectives of the training program as pursued, and the experience of the training program delivery speaks to this.

Information from different areas of knowledge was used, and the trainees' questions were answered adequately. Specifically, this was emphasized in the responses to the open-ended questions. It speaks to mediation being eclectic and multi-disciplinary on one hand, which requires the presenter to be well versed in a broad spectrum of issues, specifically those relevant to conflict resolution and mediation. On the other hand, it is relevant to achieving the learning goal of the practicum in particular.

The program caused interest and enthusiasm among trainees. It encouraged discussion about conflict from a broad social perspective. Mediation values and principles were found to be appealing to the trainees right from their first exposure to this new model. The new practice model introduced in the course of the training program delivery is likely to be applicable and viable in Ukrainian society. This was accentuated in the responses to the open-ended questions and in the oral feedback received from the participants of the training program.

The location of the program was good.

Program Limitations from the Student's Perspective

There was lack of time for extending the practical part of the program, specifically for role-playing of the mediation process and having more discussions. The trainee's

need to observe the mediation process in more detail was not met, which was revealed due to the suggestion expressed in the response to the open-ended questions to use the movie in the training program. New special mediation terminology as introduced in Ukrainian sounded somewhat artificial.

Recommendations Regarding the Program Continuation

From the Student's Perspective

The fact that recommendations were given to continue the program could be considered a strength of the training program. I agree that the program itself needs to be longer. However, taking into account the introductory nature of the training, and questions of logistics, together with the issues of participants' ability to take time off work, this time period appeared most appropriate. However, it could be extended to 3 complete working days versus 2 complete days and a half-day session on Saturday as conducted. Consideration should be given to the provision of more beginning-level training programs, as well as advanced levels of training. An expanded training program could be used as a basis for the course on conflict resolution and mediation to be taught to social work students of Lviv Polytechnic National University. Some ideas regarding the development of this university course are presented in Chapter VI.

Revisions

Evaluation feedback suggests that no major changes in the training program are required. To address the program limitations as identified above, the following revisions to the training program, specifically to subsequent presentations are suggested.

- The program should be extended to last for 3 complete working days. More time will be envisaged for interactive activities, specifically, for role-plays,

discussions, practicing stages 3 and 4 of the mediation model and writing an agreement.

- To address the need of the participants to observe the mediation process in more detail, the demonstration role-play part should also be extended.
- Action to address the need for special terminology in the area of mediation used in the Ukrainian translation of the training program materials has been taken. It will be revised and introduced into the English-Ukrainian Dictionary of Social Work Terminology currently being developed under the auspices of the “Reforming Social Services: Canada-Ukraine Project”.

The revisions to the training program as identified will be reflected in subsequent presentations.

Evaluation of Student’s Learning

This practicum had several objectives, outlined in the introductory chapter. They are repeated below and provide the structure for this section of the chapter.

Practicum Objectives:

1. To explore the social and cultural context for social work and mediation practice in Ukraine in general;
2. To explore the possible role of mediation in the context of social work practice as a generic method that has specific implications for social work when incorporated within social work settings rather than a specific social work method;
3. To learn about mediation, specifically about conflict and conflict resolution processes, managing the conflicts, and resolving conflicts in families;

4. To expand my knowledge, to learn concepts, processes and skills necessary to design and deliver a training program meeting the multiple tasks mediation practice and training encompasses while participating in mediation training events in doing the practicum;
5. To design and deliver a training program with assistance from an expert in the field;
6. To evaluate the program developed and delivered;
7. To translate the program materials into Ukrainian; and
8. To subsequently incorporate the product created by the Practicum activities into the curriculum to be developed for a course on conflict resolution and mediation, which will be taught to social work students of Lviv Polytechnic National University.

My learning was evaluated on an on-going basis during the whole period of carrying out the practicum by the following individuals:

- Dr. Brad McKenzie, my Advisor and the Practicum Committee Chairperson, who provided general guidance and feedback regarding practicum goals and activities; and
- Mr. Andy Zurawsky, a member of the Practicum Committee and my Reading Course Instructor, who provided on-going supervision and assistance to me in the design and delivery of the mediation training program.

The Practicum Advisor provided specific feedback to me on the literature review, the training program outline, and delivery of the training program. The Reading Course Instructor provided me with formal supervision of the Reading Course assignments and

the training program, as developed and delivered. There was evaluation feedback on the three-day training program from participants, both in written and oral forms. Self-evaluation is an important part of learning and this was an ongoing process for me.

The objectives for the practicum were met. The practicum implementation activities were all completed.

The training program was to be introduced as a new practice model in the context of the emergence of social work as a new profession and its development as a post-secondary educational discipline in Ukraine. To meet the first practicum objective and develop a training program relevant to Ukrainian culture and society, there was a need to explore the social and cultural context for social work practice and mediation in general.

As a citizen of Ukraine I was aware of the challenges of the period of transition to a market economy my country has been struggling through. Since 1991, the year when Ukraine proclaimed its Independence, I have been able to witness the emergence of an interest in social work and social services in Lviv. However, to meet the practicum objective I needed to gain more knowledge of the role of social work and social services in post-communist countries like Ukraine and the experiences of introducing social work as a new profession there. Participation in the conference of the International Federation of Social Workers and the International Association of Schools of Social Work in Montreal on July 29 – August 2, 2000 provided me with a unique opportunity to expand my knowledge about the mission of social work in post-communist states, and the importance of adapting social work methods to the needs and culture in those countries. Then I challenged myself with a question regarding the particular situation in my country,

and how it was different from other newly independent states in Central and Eastern Europe. As a citizen of Ukraine I was aware of the hardships Ukraine had experienced throughout its history, under the Soviet totalitarian regime in particular. This historical context is important because it has influenced the current situation in Ukraine in a peculiar way. To explore this further I applied the knowledge gained since the time I became a student of the Faculty of Social Work of the University of Manitoba, the systems perspective in particular, to the situation in my country. It made me look at Ukraine in a new way and see the peculiarities of the situation there. Specifically, it enabled me to understand the harmful effect, produced by oppression. Given the extent and impact of oppression, another question emerges. How can one counteract the harmful effect of oppression? Previously, in the spring of 2000, I had had a chance to share my observations and views with others about the development of social services in Ukraine and the characteristics of this process by making several presentations, specifically at Klinik, a social service agency in Winnipeg, where I had been doing my placement. The feedback I had received then was positive. It encouraged me in my further search for the ways to approach the situation in my country with relevancy to its needs and culture. My learning brought me to the notion of “empowerment” and the “strengths-based” model of practice. I concluded that empowerment is a key attribute in development of social services for Ukraine. It is essential for the people to increase their strengths and to become personally and socially empowered to actively participate in the process of social transformation of this post-communist country. The quest for strengths and resources in Ukraine enabled me to recognize such cultural strengths as deep religious faith and the strong family tradition, the extended family in particular, which can help support its

members in need. I am sure that other cultural strengths and resources in Ukraine will be identified if one incorporates this perspective as a key element of the assessment process.

In the process of my learning I realized that in the “fluid and turbulent times” (Fisher et al., 1994) Ukraine is experiencing, mediation is a unique and relevant approach to Ukrainian culture and society. It fosters empowerment, “the process of helping individuals, families, groups, and communities increase their personal, interpersonal, socioeconomic, and political strength and develop influence toward improving their circumstances”(Barker, 1999, p.153). It also fosters recognition, which is achieved when the parties “voluntarily choose to become open, attentive, sympathetic, and responsive to the situation of the other party, thereby expanding their perspective to include an appreciation for another’s situation” (Ury, 1999, p.89). Mediation is unconditionally constructive and strengths-based. It harmonizes with the major cultural strengths of Ukrainians as identified above.

In the process of learning I was given recommendations and advice by my Practicum Advisor and Reading Course Instructor. The feedback I received from them was positive and encouraging. I think I gained knowledge and insight into the social and cultural context of social work practice and mediation and how this can be applied to Ukraine.

To meet another practicum objective I needed to explore the possible role of mediation in the context of social work practice as a generic method. The body of literature I reviewed suggested that mediation is eclectic and multi-disciplinary. It is applied in a variety of fields of knowledge to resolve issues in various forums, and it is diverse and pluralistic. It is not a specific social work method. At the same time, the

literature suggested that mediation process creates choices and thus holds the potential to significantly improve the quality of life for participants. Mediation goals and the role of mediator in problem solving are inherent in the purpose of social work practice. Helping client systems assume power and efficacy to negotiate problem resolution is a needed empowerment-oriented strategy in social work practice. The literature also suggested that there is a need for Schools of Social Work to take over a critical role in mediation professional training (Parsons, 1991). In the process of learning it became apparent that mediation assumes a very important role in fulfilling social work tasks in society. Introducing mediation, a new practice model, in the context of emergence of social work as a new profession and its entry into the education system in Ukraine reflects this general tendency.

The feedback I received from my Practicum Advisor and Reading Course Instructor was positive. This, as well as my own self-evaluation, suggested that I understood what specific implications mediation, a generic method, has for social work.

To meet another practicum objective there was a need to learn about mediation, specifically about conflict and conflict resolution processes, and resolving conflicts in families, which is a very large knowledge area. My knowledge about conflict resolution and mediation, including family mediation, was very superficial at the beginning stage of the practicum implementation. The task of acquiring the necessary knowledge to be able to develop and deliver a mediation training program was very challenging. It was complicated by the fact that mediation is an eclectic and multidisciplinary approach, and is both a theoretical concept and an applied skill, which requires commitment and much time and effort to master it. In fact, it is an ongoing process.

Regularly, once a week or once in two weeks, I had meetings with my Reading Course Instructor. Initially, Mr. Zurawsky provided me with a list of recommended readings and generally oriented me into the area of conflict resolution and mediation. This helped me a great deal with further readings. Each new portion of literature was discussed, and I submitted a summary and critique of each item of the literature, a book or an article, to Mr. Zurawsky for feedback. While these activities were relevant to the reading course, they were also relevant to the practicum in that I had to develop mastery of the field in order to design a training program. The supervision provided by Mr. Zurawsky was important in identifying relevant sources of information, providing me with specific direction, and sharing his knowledge and expertise in the field.

Mediation is a science and art. To expand my knowledge, to learn the concepts, processes and skills necessary to design a training program to meet the multiple tasks mediation practice encompasses I participated in a number of mediation training events. These were described in detail in Chapter III.

Initially, I entered the area of mediation with no idea as to how the process of mediation was structured. At the beginning stage of the practicum implementation, the mediation model was new to me, from both theoretical and practical points of view. The task of acquiring understanding of the mediation process and necessary practical skills was crucial. The importance of the mediation training events in helping to address this need cannot be overestimated.

The knowledge and experience I gained at the Mediation Services increased my awareness of the complex dynamics of conflict. I gained insight into conflict management styles and acquired an understanding of how different management styles

impact on the experience of conflict. I learned about a four-stage mediation model, developed the ability to use mediation skills to facilitate parties through the mediation process, enhanced communication skills in the role of a third-party mediator, and gained an awareness of the issues involved in deciding the appropriateness of a case for mediation. The exposure to the mediation process helped me to understand its complex dynamics. I also acquired interpersonal conflict resolution negotiation skills.

At Mediation Services I was able to role-play, participate in small and large group discussions, de-brief and review the information acquired. My involvement in interactive activities, specifically, simulations of real-life conflict scenarios and the opportunity to advance my communication skills helped me to develop effective mediation skills. I also gained a working knowledge of the stages of mediation. The training I received there also developed my understanding and vision of the teaching process. I learned specific teaching methods and techniques applied in the area of conflict resolution and mediation. The feedback I received from my instructors at Mediation Services and my own self-reflection assisted me to develop new knowledge and skills in the area of mediation.

At Family Conciliation I was exposed to both the theory and practice of divorce mediation. The staff members of the agency provided me with an opportunity to observe mediation sessions, participate in de-briefing and generally develop an understanding of how post-divorce relationships work, specifically with regard to children. It is there that I developed an understanding of how important it is for divorcing parents to separate their marital and parental roles in the interests of their children. At Family Conciliation I was able to observe how mediation encourages parents to renegotiate their relationships and to cooperate for the sake of the children. I was also given an opportunity to attend the

program for divorcing parents “For the Sake of the Children”, which is delivered by the agency staff members. The program provided me with important information about “parenting after separation”. The knowledge and experience I gained at Family Conciliation allowed me to develop an understanding of family mediation as a method of reducing conflicts in families with regard to children, and developing a co-operative approach to parenting. My follow-up contacts with Family Conciliation provided additional information and new practical skills in the area of family mediation.

Participation in the Annual Conference of Family Mediation Canada in October 2000 was a unique chance for me to expand my knowledge and learn new concepts in the area of family mediation. Specifically, I learned how all aspects of the mediator’s practice are affected by adoption of the transformative goals of empowerment and recognition, how to prepare clients to be at their best in mediation, and how the rate of successful mediation is increased through pre-mediation. At the conference I had many opportunities to participate in discussions, exchange views regarding the future of family mediation and the possibilities for its development in Eastern Europe. The workshops I attended also provided me with new effective skills of practicing mediation.

De-briefing and discussions of the results of my participation in the Annual Conference of Family Mediation Canada as well as in other mediation training events as described above, which I had with my Practicum Advisor and Reading Course Instructor, were very important in the on-going process of learning as they helped me to focus on the most important issues of theory and practice of mediation. These helped me develop the information I needed in designing the mediation training program.

To design and deliver a training program with assistance from an expert in the field, and thus to meet another practicum objective, I needed to review the literature and familiarize myself with the content of the mediation manuals (Kostiuk & Zurawsky, 1996; Mediation Services, 2000), which outlined the mediation process. The task of delivering the course was very challenging. A variety of mediation practice models, enormous amount of information and the limited time for the delivery of the training program complicated the task.

Mr. Zurawsky provided me with direction and support in the process of identifying teaching strategies, working out different stages of the program as well as selecting the most effective interactive exercises to use in the process of the training program delivery.

The training program outline was reviewed and discussed by Dr. McKenzie, my Advisor and the Practicum Committee Chairperson, and by the members of the Practicum Committee. The training program was then revised based on the recommendations from the Committee.

The training program on conflict resolution and mediation with particular attention to family issues was implemented as a three-day session on December 7-9 and a one-day introductory module on December 11 in Lviv as described in Chapter III. Mr. Zurawsky provided supervision and assistance to me in the process of the program delivery.

The training program was then evaluated by participants. The results of the evaluation completed by the trainees and by the student were presented in the first section of this chapter.

The feedback I received from Dr. McKenzie, who was present during a portion of program delivery, and Mr. Zurawsky, who was supervising and assisting me in the

process of the program implementation, was positive, and I have concluded that implementation of the training program was successful.

Most of the training program materials were translated into Ukrainian in written form. The translated materials were used in the program advertising, handed out to the participants, displayed as overheads and used as exercises. Because of the large amount of the printed matter and the time constraints it was not possible to translate every single item of the information to be presented in written form. However, the small portion of the program materials not translated in written form was translated into Ukrainian orally in the process of delivery of the training program. The feedback from participants revealed that some special mediation terms used in the process of the program delivery sounded somewhat artificial. To my mind, it reflects the existing need to introduce new terminology, for mediation in particular, into the Ukrainian language. These terms have received special attention and will be included in the English – Ukrainian Dictionary of Social Work Terminology being currently developed.

The contents of the training program are being incorporated as part of a course on conflict resolution and mediation, which will be taught to social work students of Lviv Polytechnic National University in September 2001. Thus, practicum activities have led to the development of a credit course for Social Work students.

Conclusion

The training program on conflict resolution and mediation, with particular attention to family mediation, was adapted to the Ukrainian context and delivered on a pilot project basis in Ukraine.

The tasks associated with the general purpose of the practicum were challenging. I felt an enormous responsibility for presenting mediation as a promising and non-adversarial approach to conflict resolution. In part, it was important to demonstrate that mediation could be a constructive tool for Ukraine in addressing some of the problems being experienced in the transition period to a market economy. The first training program was very important, as it would be quite influential in affecting motivation for introduction of the mediation model. I was hoping that the training program would encourage further development in mediation training, and further professional interest in this field.

The training program was implemented and the practicum goals and objectives were achieved. Mediation has been successfully introduced to a group of professionals in Ukraine, and it has been incorporated into the new Social Work curriculum. The results of the program evaluation suggested that the mediation model, a new practice model in Ukraine, stimulated interest in this field. It has encouraged further development of education in the area of mediation, providing professional training in mediation in particular. The participants were enthusiastic about the establishment of mediation services, specifically in Lviv and generally in the country. Moreover, they came up with the idea of founding an Association for Mediation in Ukraine. This speaks to the potential of continued development of this field of practice in Ukraine.

The positive results of the three-day training program implementation were supported by the explicit evaluation feedback on the one-day introductory module from its participants both in written and oral forms. This also suggests that the new practice model is likely to be viable in Ukraine.

Chapter VI

Implications and Conclusion

This chapter will consider the implications of practicum activities with particular reference to the literature reviewed, and the future of mediation in Ukraine. This is the most interesting piece of a practicum because it is where one connects theory with practice. This also contributes to a larger body of knowledge that can be used by others. Implications are discussed in relation to social work practice in general and the incorporation of mediation within social work education in Ukraine.

Mediation and Social Work Practice in Ukraine

Mediation is a promising perspective in Ukraine. It is a powerful tool for satisfying human needs as it helps the disputants "wrestle with difficult circumstances and bridge human differences in the very midst of conflict" (Bush & Folger, 1994, p.2). Based on experience in Western Europe and North America, mediation facilitates collaborative problem solving and leads to more efficient use of private and public dispute resolution resources. It helps to form grassroots community structures thereby reducing dependency on professionals and empowering individuals to participate in civil life (Bush & Folger, 1994). The goals of mediation are to produce an efficient, durable and beneficial agreement, break communication cycles that create stalemates, promote dialogue, and facilitate organizational change (Isenhardt & Spangle, 2000). These transformational possibilities are appealing in Ukrainian society, particularly during the present period of reconstruction. The mediation model responds to issues important to the social work change process in this newly independent state as it places the emphasis on strengths, empowerment, community development, and the promotion of individuality.

Mediation is consistent with the biblical values of forgiveness, reconciliation and community (Garrett, 1994). This harmonizes with the major cultural strengths of Ukrainians as a nation with strong and deeply rooted religious faith. Family mediation, which minimizes the damage of divorce, is an optimistic perspective regarding conflict resolution in families with regards to children. This is relevant to the tradition of the Ukrainian family, with its values of internal mutual support.

As a part of the practicum, the mediation practice model was introduced in the context of developing a model for social work practice and establishing a network of services in Lviv and the surrounding area. The three-day training program on conflict resolution and mediation, with particular attention to mediation in the family context, has the potential to contribute to the following:

- the development of quality family - centered and community – based services in the Lviv area;
- the development of a model for social work practice; and
- the outcomes associated with the “Reforming Social Services: Canada-Ukraine Project”, which are aimed at promoting civil society and democratic development in Ukraine, contributing to reform of the social work profession, the delivery of social services and strengthening disability organizations (FSWUM, 1999).

The “Reforming Social Services: Canada-Ukraine Project” is making an important contribution to the implementation of a social development approach that stresses community work, empowerment through capacity building among individuals and institutions, and the establishment of community-based services in Ukraine. The need for

international assistance in developing a model for social work education and practice and establishing a network of services with due regard to Ukrainian peculiarities is being met.

The Canada – Ukraine Project enabled me, an Instructor from Lviv Polytechnic National University, to complete the MSW program at the University of Manitoba. This has prepared me to return to Ukraine to teach social work courses to university students and to promote international professional standards of social work in my country.

There are constraints to consider in the process of establishing local social services, and these need to be recognized in promoting new services, specifically in relation to mediation. Among these are:

- (1) the hierarchical nature of social service organizations, particularly in the public sector;
- (2) the lack of resources; and
- (3) the lack of a specific institutional or legislative structure, which can facilitate mediation as a form of practice.

In order to overcome these constraints and reinforce social development there is a need for reform within the social services in Ukraine. Non-governmental organizations can help to model the benefits of a more community-based service -delivery model. In spite of their short history of existence in Ukraine, NGOs have demonstrated the ability to tap into international resources and respond more quickly to a reform agenda than governmental organizations. One example of this is the consumer-directed Independent Living Center in Lviv, which is demonstrating a self-help approach in providing services and working on the development of policies for independent living in Ukraine. A more

coordinated effort by the international community would assist in the on-going development of quality family – centered and community – based services in Ukraine.

However, it is also necessary to encourage the development of inner Ukrainian resources in the process of social development. The planning and implementation of social service programs must be community – based. In order to provide effective service agencies must encourage the empowerment of their clients. Concepts of “exit” and “voice” have evolved in the context of consideration of client empowerment. The concept of “voice” refers to the clients’ power to contribute to the development and provision of services. The concept of exit refers to clients’ ability to choose between services. “Exit empowers through the choice made by the customer to take his/her business elsewhere if not satisfied with the service.... Voice empowers through the user staying in the service, but willing and enabled to influence its nature.... It is often a long-term process and, above all, it is usually associated with the political life of the citizens”(Hudson, 1999, p.217). Social service agencies must strive to promote the exercise of voice through the individual and collective consumer involvement while working with individuals and the whole community. “The challenge for these agencies is to find ways to combine the direct-service role with the exercise of its proxy voice for the service user, and the enabling of the collective voice of the citizen/service user into a seamless whole. For it is in the exercise of collective voice that both the obligations and rights of the citizen are given their fullest expression, and it is here that citizens make their most important contribution to the nation”(Hudson, 1999, p.223). The Ukrainian community needs to find and direct its “collective voice” as consumers and contributors to building a civil

democratic society in Ukraine. Ukrainian people themselves are to become their own best spokespersons to create a new philosophy of how Ukrainian society should develop.

The training program on mediation developed as a part of this practicum demonstrates one method of promoting the exercise of “collective voice”. The enthusiastic response of participants to the training program provides support for the view that mediation can help to promote social reform in Ukraine. However, the capacity of mediation to contribute to the management of change taking place at the personal, family, institutional, community and societal level, and to fulfilling the mission of social work in Ukraine “to deal with crucial social and human problems, to begin to relate to the needs and culture of the country” (Constable & Mehta, 1994, p.104) needs to be further explored. Some of the additional steps may be considered in promoting the goals associated with mediation. These might include the following:

- developing a pilot project on family mediation in collaboration with governmental agencies or NGOs;
- providing basic and advanced training in mediation;
- facilitating the formation of an association that would promote the development of mediation; and
- collaboration with other projects that are also working in this area in Ukraine.

Mediation and Social Work Education in Ukraine

The mediation training program, specifically the revised one-day introductory module, brought mediation as an aspect of social work education into the Social Work curriculum. It was implemented in the context of developing a model for social work

education in Ukraine. There is a need to develop more extensive training on mediation with a view to:

- fostering interest and enthusiasm for mediation;
- promoting the professional development of mediation as a means to the reform of the social service sector and development of family-centered and community based services in Ukraine.

The literature review has highlighted some of the key issues to be included in designing new mediation training programs. Key aspects are: (1) participation in decision-making; (2) empowerment; (3) conflict resolution approaches; (4) negotiation; (5) mediation; and (6) mediation in the family context.

Participation in Decision-Making

The key concepts of “*empowerment*”, “*integrity*” and “*respect*” in mediation are connected to the need of people to be involved in their own decision-making. Mediation provides an excellent example of how this can unfold. One of the reasons for stressing the issue of participatory decision-making is to promote revision, better comprehension and effective summarization of the information acquired throughout the process of the training program delivery. Another reason would be to take one more step in orienting students to the issues of community development and the processes of democratic reform in Ukraine.

Mediation is primarily a decision-making process. It leaves the maximum amount of control over decision - making in the hands of the participants, while at the same time placing the management of the facilitative process in the hands of a neutral third party – the mediator. The mediator’s job is to firmly place ownership of the decision-making

process with the participants. When compared with other forms of dispute resolution, the management function is the defining characteristic of mediation. The challenge of the mediator is to develop incremental change for success, which leads to higher levels of confidence for the parties, and larger changes. The principle of self-determination is central in mediation, and it is this principle that facilitates the empowerment of each participant (Fisher & Brown, 1991; Kostiuk & Zurawsky, 1996; Ury, 1999). This principle has applicability at the personal, family, institutional, community and societal levels of the management of change taking place in Ukraine.

It should also be noted that today's mediators must be reflective and be able to think "outside the box". They must take a broader perspective and adopt innovative approaches in attempting to understand the dynamics of conflict and the impact of using mediation to resolve social and legal disputes. Finally, they need to utilize holistic and facilitative approaches in their work. In order to realize the full potential of mediation there needs to be more opportunities for cross-fertilization of ideas and practices (Picard, 1998).

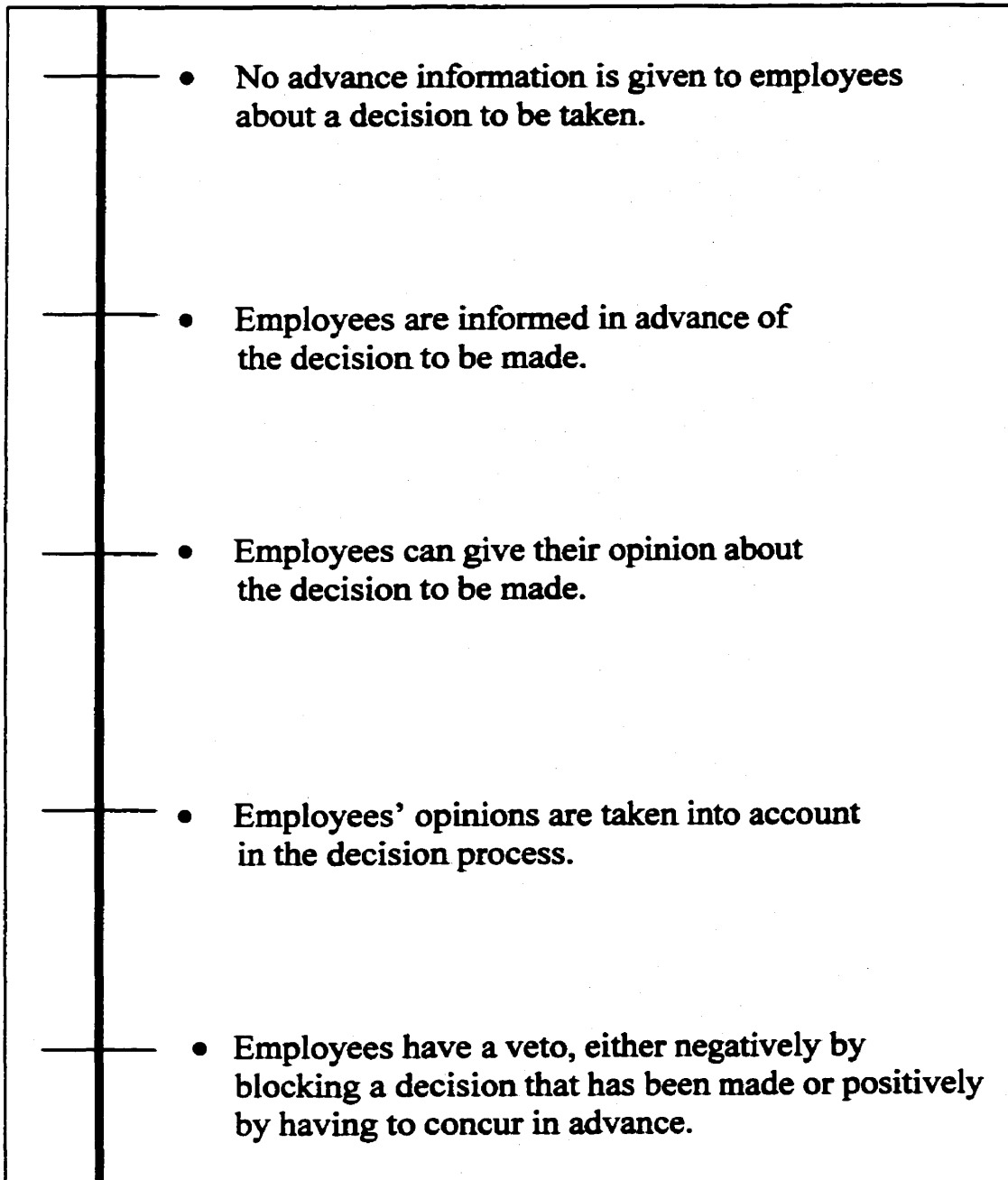
To promote thinking "outside the box", students could be oriented into the participatory approach to management in the social service sector. It should be noted that information about management of social services would be presented in detail to university students within the framework of other social work courses. However, accentuating the key point of democratic practices versus line authority already within the framework of the conflict resolution and mediation program / course will increase chances of raising the awareness of a larger number of people regarding the challenges of the process of democratic reform in Ukraine. Incorporating the issues of participatory

decision-making into the content of the mediation training program / course can be a means to address the constraints in the process of establishing local social services, including mediation services, as identified above. Specifically, it will allow for an emphasis of the issue of the hierarchical nature of the social service organization.

Students would be shown the “Influence power-sharing continuum” (See Figure 6) illustrating participatory decision-making as shared or transferred decision-making at either the individual job level or in broader organizational decision-making in the social service sector (Dachter & Wilpert, 1978). The continuum reflects:

- (a) the belief that all the members of an organization should have a say in setting agency policy and deciding how programs should be run;
- (b) the core social work values such as self – determination and a preference for democratic forms of governance, whether at the societal, organizational or group level; and
- (c) the social work inclination to think about organization along a harmony of interests theme that assumes a unity of purpose for the organization as a whole (Latting, 1994).

Figure 6: An "Influence Power-Sharing Continuum"



Note: Adapted and expanded from Dachler & Wilpert, 1978, p.19

Students need to be given recommendations as to making the participatory decision-making work. They are:

- provide training in conflict resolution, negotiation, and group problem solving; and
- avoid attempting participation under some conditions: participants have inadequate knowledge to make a decision; insufficient time is available for discussion before a decision must be made; and participating individuals truly prefer to problem solve alone rather than in a group (Latting, 1994, pp. 255-258).

Empowerment

The concept of empowerment must be promoted as a part of development of new services in Ukraine, and it needs to be clearly defined both in teaching about mediation and in other courses. Empowerment has been defined as “the process of helping individuals, families, groups, and communities increase their personal, interpersonal, socioeconomic, and political strength and develop influence toward improving their circumstances” (Barker, 1999, p. 153). The role of the social worker to “help people to empower themselves” (Simon, 1990, p. 32) needs to be emphasized. It should be pointed out that social work practice based on empowerment assumes that client power is achieved when clients make choices that give them more control over their presenting problem situations and, in turn, their own lives. Promoting empowerment encourages people not only to recognize their potential to resolve their own difficult life situations, but also to increase their strengths. Social work helps people realize their own power, take control of their own lives, solve their own problems, and contribute to society by

doing so. An emphasis on building strengths reinforces the ability of people, individually and collectively, to make changes. Client empowerment is characterized by two interdependent and interactive dynamics: personal empowerment and social empowerment. A person achieves personal and social empowerment simultaneously. A person empowered socially is a person who has the resources and opportunity to play an important role in his or her environment and in the shaping of that environment (Cowger, 1997). Both personal and social empowerment are vital in the process of social reconstruction in Ukraine.

Conflict Resolution Approaches

In introducing conflict resolution approaches within the course both “The Conflict Resolution Continuum”(Picard, 1998, pp. 7-8) and the “Levels of Intervention for Dispute Design”(Isenhart & Spangle, 2000, pp. 107-108) are important (See Figure 1 and Figure 2, Chapter II). The latter establishes a hierarchy at the top of which alternative dispute resolution approaches, mediation in particular, are found. This would accentuate the move away from adjudicated methods of conflict resolution toward Alternative Dispute Resolution, innovative, non-judicial conflict resolution processes aimed at achieving harmony, efficiency and justice and the growing demand for non-adversarial dispute resolution (Picard, 1994).

The “Levels of Intervention for Dispute Design” will also introduce facilitation, an ADR process, “in which a person who is acceptable to all members of the group, substantially neutral, and has no decision-making authority intervenes to help a group improve the way it identifies and solves problems and makes decisions, in order to increase the group "effectiveness" (Isenhart & Spangle, 2000, p.107). The emphasis

should be placed on group processes to create consensus. This is one of the steps that needs to be taken in linking mediation to the issues of community development and the processes of democratic reform in Ukraine.

Alternative Dispute Resolution as an important trend in modern day dispute resolution approaches needs to be emphasized. This will specifically show how adversarial processes contribute to creating a “winner and a loser”, thus damaging human relationships (Picard, 1998, pp. 9-10). Accentuating ADR creates a more optimistic perspective of the future as this suggests that there is a need to present society with a range of conflict resolution options, such as, for example, a “multi-door courthouse” (Isenhardt & Spangle, 2000), as opposed to the traditional rigid adversarial court process.

Negotiation

The course needs to incorporate a variety of approaches to conflict resolution because students will need to be adept at using a variety of these skills. One that is important is negotiation. Such concepts in negotiation as that of the conflict’s “breaking point”, as the point at which even if all seems lost, some of the most innovative, constructive solutions will occur (Isenhardt & Spangle, 2000), need to be presented. The figure illustrating the escalation of conflict and how it frequently moves to collaborative discussion demonstrates this (See Figure 3, Chapter II). Thus, negotiation will be presented as a constructive perspective to further elaborate on collaborative decision-making and reemphasize “power with others”, an orientation based on principled negotiation, which involves the sharing of power with others in the process of conflict resolution.

The concept of collaborative power promotes the acceptance of the opinions and the interests of both parties as core elements of the process of settlement. Sharing power means that we must be willing to allow others to influence us, as we desire to influence them. We may be firm on interests and needs, but we can be flexible about how we achieve them (Isenhardt & Spangle 2000, p.25). This perspective, described by Craig and Craig (1974) as synergic power, identifies the goal of increasing “the satisfaction of all participants by intentionally generating increased energy and creativity, all of which is used to co-create a more rewarding present and future” (p.62). This will be aimed at orienting the mediation program trainees to differentiate between “power over others” and “power with others” (Isenhardt & Spangle, 2000) as an important principle. Power “with others” can contribute to community development and democratic reform in Ukraine.

Mediation

Mediation as a tool in the process of dispute settlement is both an art and science. Different approaches to mediation shape today’s mediation movement. Mediation can be seen to have both a problem solving function and a “transformative” one. While there are differing schools of thought on these characteristics of mediation, one could argue that no one approach or ideology represents the “full story” of mediation (Picard, 1998). The study of mediation must be approached from this broad perspective.

The literature review, my participation as a student in mediation training, has convinced me of the importance of “process” in mediation. Such issues as “managing the emotional climate” and “creating a favorable mediation environment” should be emphasized in teaching the practical skills involved in mediation.

Conclusion

This practicum was established to develop a culturally relevant training program on mediation, based on Canadian content and experience, and applicable to the Ukrainian context. Particular attention was given to family mediation and the potential for promoting the development of family-centered and community – based services in Lviv, Ukraine.

The literature review provided information for designing the training program delivered in Lviv. It will also be used in developing a university course on conflict resolution and mediation to be taught to social work students of Lviv Polytechnic National University. Finally, it is relevant to the design of professional development courses on mediation, which can be delivered outside the regular academic curriculum. The literature review will also be used as required readings, for it provides an overview of a wide range of issues in the field of conflict resolution and mediation, with particular attention to family mediation.

The literature, which was reviewed, presented mediation as a diverse and pluralistic approach, which can be applied in a variety of fields of practice. The goals and approach to problem solving in the mediation process are consistent with social work principles and models of practice. The literature suggested that there is a need for Schools of Social Work in general to take a more active role in mediation training.

A consideration of Ukrainian culture and society suggests that there is a need for social work planned change approach to counteract the harmful effects of oppression. The effects of oppression are related to the current social and economic difficulties being experienced in Ukrainian society. Ukrainian cultural strengths and resources were

identified. Empowerment was found to be an important attribute of new services as “reconstruction of society comes from people who rediscover their own vital energies” (Constable & Mehta, 1994). In order to adapt mediation training approaches and content to the Ukrainian social and cultural context, a number of issues relevant to Ukrainian needs and culture were discussed. This was aimed at promoting the development of the trainee’s personal conceptualization of the content of the training program within the Ukrainian social and cultural context.

The results of the program evaluation suggested that the mediation model was met by enthusiasm from participants. This has encouraged the further development of educational materials on mediation, and provides a stimulus for the development of mediation services, specifically in the Lviv area. Mediation is a promising perspective in Ukraine because it facilitates collaborative problem solving and leads to more effective use of private and public resolution resources. It is a generic, strengths-based approach, which fosters empowerment and recognition. The success of the first steps in the provision of a training program in mediation reflects the capacity of mediation to contribute to the mission of social work in a post-communist state by promoting new methods of problem solving in relation to the needs and culture in the country.

The training program developed in this practicum can be used as a basis for other programs and courses on mediation to be developed and delivered in the Ukrainian context. It will be a part of a course on conflict resolution and mediation, which will be taught to social work students of Lviv Polytechnic National University in the 2001/02 term.

A mediation training program can be a part of a model for social reform, which promotes empowerment and the exercise of “collective voice” in Ukraine. The provision of conflict resolution and mediation must be a part of the planned change approach, which seeks to establish “a new social order enacted through new forms of social processes and institutions”(Bush & Folger, 1994).

Introducing mediation, family mediation in particular, into the social service sector in the Ukrainian context may have a spin-off effect as this is related to the Ukrainian cultural strengths and resources. The promise of family mediation is that it may become a key element of a larger area of social service delivery, i.e., for children and family, to deliver both family counseling and family mediation services. To support the Ukrainian family and children in the difficult time of transition to a market economy there is a need to establish a Family Center to do research, provide training to professionals and services to families who are experiencing the high social costs of adjustment during this period of transition.

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Appendix A
A Detailed Outline of the Training Program

Training Program Outline

Training Program Name: Introduction to Conflict Resolution and Family Mediation

Target Audience

This course is intended for:

- ☐ social agency staff members
- ☐ Lviv Regional and City Administration officers
- ☐ professionals working in various governmental and non-governmental settings

Course Objectives

The objectives of the course are to:

- ☐ develop awareness of the dynamics of conflict, and the importance of responding to conflict as opposed to reacting
- ☐ develop an understanding of the role of communication in conflict
- ☐ develop awareness of the issues involved in deciding the appropriateness of a case for mediation, preparing the parties to mediate, and dealing with dynamics during the mediation process
- ☐ develop an understanding of the role of mediator
- ☐ develop an understanding of applicability of mediation in the family context
- ☐ assist participants in determining to what extent the mediator role is applicable in their specific context

“A little fire is quickly trodden out, which being suffered, rivers cannot quench.”

William Shakespeare

Training Program Outline

Day I. Thursday

Understanding Conflict.

Mediation: A model of constructive communication and non-adversarial conflict resolution

10:00 a.m. – 11:00 a.m.

Introduction

- Training program structure
- Housekeeping issues
- **WARM-UP EXERCISE**

11:00 a.m. – 11:30 a.m.

Dealing with differences

- Definition of conflict. Discussion
- Conflict is natural and necessary. It brings about change. Positive aspects of conflict.
- Too much conflict at once can cause huge amounts of damage.
- The strategy is to catch conflict as early as possible before it escalates.
- The conflict cycle. Breaking the cycle
- Conflict management styles: Competing / Avoiding / Accommodating / Compromising / Collaborating.

11:30a.m. – 11:45 a.m.

Break

11:45 a.m. – 12:30 p.m.

Communication and conflict.

- **DISCUSSION.** Lack of understanding is a major source of conflict. The traditional view is that there is a right and wrong position in every situation, or that one person must be a winner and the other a loser in every dispute.

People can solve their own conflicts. There can be “WIN/WIN” resolutions.

Reconciliation is possible in a wide range of situations.

- Bad communication skills: Judging / Sending solutions / Avoiding the other's concerns
- Assumptions as a major contributing factor in the breakdown of communication and the escalation of conflict
- Shifting from positions to interests. Specific issues. Common ground. Needs exercise

Conclusion: Conflict is not between people's positions.

Conflict is between people's needs, desires, concerns, and fears.

Forms of dispute resolution

- Negotiation / Conciliation / Mediation / Arbitration / Adjudication
 - Negotiation: Negotiating on interests vs. Positional bargaining
 - Mediation: A model of constructive communication and non-adversarial conflict resolution

Mediation

Roots of mediation

- Mediation has its roots in being different from law and therapy.

Mediation grew out of a need of people to be more involved in their own decision making. Words like **empowerment**, **integrity** and **respect** became one of the landmarks of mediation.

- Mediation and conciliation have a rich history.

Mediation as distinguished from other forms of dispute resolution

- Mediation is primarily a decision making process.
Maximum decision making by the participants.
- Management of process in the hands of the mediator.
- All participants to the mediation are willing to invest the time required.
- Both/all participants are voluntary committing to the mediation process.
- The need to maintain the relationship is a significant factor for both /all participants.
- The balance of power is fairly equal.
- The process is:
 - goal – oriented,
 - confidential (except where disclosure is required by law).
- Rational problem solving can be applied to all conflicts. Emotion should be acknowledged and deescalated in order to move toward rational discussion.

Role of mediator

- Mediator is responsible for the process.
- Mediator neutrality. Mediator is an outsider/impartial, with no prior relationship to either party and no stake in the outcome.
- Mediator won't take sides.
- Mediator won't make judgements.
- Creating safe physical and emotional environment
 - No foul language
 - Respectful, open, honest communication
- Each to have equal opportunity to discuss issues and concerns.
- Establishing and maintaining a balance of power between the participants.
- Empowering each participant without disempowering anyone in the process.
- Mediator's challenge is to create incremental change for success, build on success, which leads to higher levels of confidence for the parties, and larger changes.
- An educator
- "A role model"

12:30 p.m. - 1:00 p.m.

Managing the emotional climate - Strategies in dealing with anger.

Anger: Definition. Arousal cycle. Positive response to anger.

Mediator's personal response to anger.

1:00 p.m. – 2:30 p.m.

Lunch

2:30 p.m. – 3:15 p.m.

Effective communication skills

*Effective Speaking / Active listening / Questioning / Paraphrasing
Reframing/Summarizing/Brainstorming*

- **Effective speaking.** “I” messages
- **Active listening:** Face / Eye Contact / Lean / Relax
- **Questioning** discovers the needs and concerns.
Asking questions out of curiosity vs. making statements/judgements.
Discussions should be oriented towards “solution talk” vs.
“problem talk”. EXERCISE
- **Paraphrasing** (stating back) is brief; it checks the “micro” level of conversation. EXERCISE
- **Reframing** (identifying the underlying interests) gets to the needs.
- **Summarizing** (reviewing issues) is a “macro” level skill.
- **Brainstorming** is a technique aimed at developing new ideas and considering alternatives or options.

Non-verbal communication

- Neutrality
- Balance
- Attending
- Preempting

3:15 p.m. – 3:45 p.m.

The Mediation Model

I. Pre-mediation

II. Mediation Forum:

Stage 1. Introductions (Joint orientation and contracting)

Stage 2. Issue identification

Stage 3. Uncovering underlying interests

Stage 4. Closure. Discussion of process

Pre-mediation (Assessing /Preparing)

- **Screening process:** Engaging the prospective participants / Assessing the situation

Mediator strategies:

- Orienting the participants to the mediation process
 - Responding to participants' presenting concerns / resistance / anxieties
 - Motivating the participants
 - Gathering information regarding demographics and background issues
 - Assessing readiness for mediation, and viability and appropriateness of mediation as a forum for dispute resolution.
- **Orientation to mediation process (group or individual):**
 - Educating in a broad sense
 - Normalizing the individual's experiences and reactions to them.
 - Softening the more extremely held positions

3:45 p.m. – 4:00 p.m.

Break

4:00 p.m. – 4:20 p.m.

Mediation Forum

Stage 1. Introductions (Joint orientation and contracting)

- Set a comfortable tone for the session.
- Remind the parties about the purpose of the meeting and describe each person's role
- Describe your role as mediator(s)
- Explain the rules and get consent to proceed
- Establish guidelines
- Assess the resistance and assist in diminishing it.
- Affirm: praise for the accomplishments

4:20 p.m. – 5:15 p.m.

- Introduction to role-play
- Demonstration role-play
- Role-play "Stage 1"

5:15 p.m. – 5:30 p.m.

Feedback

DAY II. Friday
Practising the mediation model

9:00 a.m. – 9:10 a.m.

Review

9:10 a.m. – 9:40 a.m.

Stage 2. Issue Identification

Opening statements

- Ensure uninterrupted time for participants to describe their point of view.
- Provide paper, and ask the listener to take notes.
- Ask participants to listen to each other carefully.
- Underscore that truly hearing the other participant/s does not imply agreement.
- Write down what participants are saying in order to gather the necessary information, and for feedback during “Goal Summary”.

Goal Summary

- Framing the issues, which are neutral. Stating common ground
- Making a general statement summarizing what the participants may expect to accomplish in mediation.

Skills and techniques

9:40 a.m. – 10:00 a.m.

Demonstration: Stage 2.

10:00 a.m. – 10:15 a.m.

Break

10:15 a.m. – 11:00 a.m.

Role-play “Stage 2”

11:00 a.m. – 11:15 a.m.

Feedback

11:15 a.m. – 12:00 noon

Stage 3. Uncovering underlying interests

Priorize and explore issues in terms of importance / “Accessibility”

- **Choose an issue.** Explore the related facts and feelings to enhance mutual understanding.
- **Explore underlying interests.**
- **Break issues down into workable segments,** deal with each segment in turn.

Facilitating the process: maintaining the momentum

- Periodic summation of the issues presented to maintain a focus, and a positive goal-oriented environment.
- Patience and pacing are important.
- Using future focused questions to initiate change. More discussions should be oriented towards “solution talk” versus “problem talk”.
- Asking questions out of curiosity versus making statements.
- Asking for specifics
- Watching for a shift in communication (attitude) between the participants, acknowledging and reinforcing it.
- Developing a more constructive form of communication for the future.

Skills and techniques

12:00 noon – 1:30 p.m.

Lunch

1:30 p.m. – 2:15 p.m.

Role-play “Stage 3”

2:15 p.m. – 2:30 p.m.

Feedback

2:30 p.m. – 2:45 p.m.

Break

2:45 p.m. – 3:30 p.m.

Stage 4. Closure. Discussion of process

- Assisting in the generation of the best solution / resolution of each issue.
- Summarizing the progress made and highlighting areas of new understanding and agreement related to each issue.
- Negotiating closure of the session
- Writing out a detailed agreement when applicable.
- Thanking the participants for their hard work and congratulating them on their willingness to meet.

Skills and techniques

Constructive termination

3:30 p.m. - 4:15 p.m.

Role-play “Stage 4”

4:15 p.m. – 4:30 p.m.

Feedback

Day III. Saturday
Applicability of mediation

9:00 a.m. – 10:00 a.m.

Review “Stages 1,2,3,4”

Feedback

10:00 a.m. - 11:00a.m.

Applicability of mediation in the family context

- In-tact family situations
- Family separation / divorce

11:00 a.m. - 11:15a.m.

Discussion re applicability of family mediation in Ukraine

11:15 a.m. – 11. 30 a.m.

Break

11:30 a.m. – 11:50 a.m.

Discussion “Empowerment and recognition in mediation”

11: 50 a.m. – 12:10 p.m.

Mediation as a transportable tool

Mediation as a tool in the conflict resolution is portable and applicable to a broad cross section of situations, including interpersonal, family, school, workplace, neighborhood, business, national and international concerns.

It is to be adopted to meet the needs of the clients.

12:10 p.m. – 12:35 p.m.

Break and small group discussion re applicability of mediation in the Ukrainian context

12:35 p.m. – 13:00 p.m.

Feedback

13:00 p.m. – 13:30 p.m.

Evaluation & Wrap-up

Appendix B

The Trainers' Preparatory Materials

**(Portions of these materials were distributed
to participants of the training program)**

“ A little fire is quickly trodden out, which being suffered, rivers cannot quench.”

William Shakespeare

DAY I.

Understanding Conflict.

Mediation: A model of constructive communication and non-adversarial conflict resolution

Dealing with differences

- Conflict is natural and necessary. It brings about change.
- Too much conflict at once can cause huge amounts of damage.
- The strategy is to catch conflict as early as possible before it escalates.
- **The anatomy of conflict**
- **Conflict escalation and change**

Conflict proceeds from latent tension /develops into overt conflict
erupts into a power struggle (Constructive ... Destructive).

- **The conflict cycle. Breaking the cycle**
- **Assessing the conflict: A checklist**
- **Conflict management styles: Competing / Avoiding / Accommodating /
Compromising / Collaborating**

Communication and conflict

- Lack of understanding is a major source of conflict. The traditional view is that there is a right and wrong position in every situation, or that one person must be a winner and the other a loser in every dispute.

People can solve their own conflicts. There can be “WIN/WIN” resolutions.

Reconciliation is possible in a wide range of situations.

- **Bad communication skills:** Judging / Sending solutions / Avoiding the other's concerns
- **Assumptions** as a major contributing factor in the breakdown of communication and the escalation of conflict
- **Shifting from positions to interests.** Specific issues. Common ground.

Conclusion: Conflict is not between people's positions.

Conflict is between people's: needs, desires, concerns, fears.

Forms of dispute resolution

- **Negotiation / Conciliation / Mediation / Arbitration / Adjudication**
 - **Negotiation:** Negotiating on interests vs. Positional bargaining
 - **Mediation:** A model of constructive communication and non-adversarial conflict resolution

Mediation

Roots of mediation

- Mediation has its roots in being different from law and therapy.

Mediation grew out of a need of people to be more involved in their own decision making. Words like **empowerment, integrity** and **respect** became one of the landmarks of mediation.

- Mediation and conciliation have a rich history.

Mediation as distinguished from other forms of dispute resolution

- Mediation is primarily a decision making process.

Maximum decision making by the participants.

- Management of process in the hands of the mediator.
- All participants to the mediation are willing to invest the time required.
- Both/all participants are voluntary committing to the mediation process.
- The need to maintain the relationship is a significant factor for both /all participants.
- The balance of power is fairly equal.
- The process is:
 - goal – oriented
 - confidential (except where disclosure is required by law)
- Rational problem solving can be applied to all conflicts. Emotion should be acknowledged and deescalated in order to move toward rational discussion.

Role of mediator

- Mediator creates the process and the environment, not the content.
- Mediator neutrality. Mediator is an outsider/impartial, with no prior relationship to either party and no stake in the outcome.
- Mediator won't take sides.
- Mediator won't make judgements.
- Creating safe physical and emotional environment
 - No foul language
 - Respectful, open, honest communication
- Each to have equal opportunity to discuss issues and concerns.

- Establishing and maintaining a balance of power between the participants.
- Empowering each participant without disempowering anyone in the process.
- Mediator's challenge is to create incremental change for success, build on success, which leads to higher levels of confidence for the parties, and larger changes.
- An educator
- "A role model"

Communication skills for effective mediation:

Active listening / Paraphrasing / Questioning /

Reframing/ Summarizing / Brainstorming

- **Active listening:** Face / Eye Contact / Lean / Relax:
- **Paraphrasing** (stating back) is brief, it checks the "micro" level of conversation.
- **Questioning** discovers the needs and concerns.
Asking questions out of curiosity vs. making statements/judgements.
Discussions should be oriented towards "solution talk" vs. "problem talk".
- **Reframing** (identifying the underlying interests) gets to the needs. Another way to reframe: (a) silence/paraphrasing, (b) asking an open-ended interest-based question, (c) reframing.
- **Summarizing** (reviewing issues) is a "macro" level skill.
- **Brainstorming** is a technique aimed at developing new ideas and considering alternatives or options

DAY II.

The Mediation Model

I. Pre-mediation

II. Mediation Forum:

Stage 1: Introductions (Joint orientation and contracting)

Stage 2: Issue identification

Stage 3: Uncovering underlying interests

Stage 4: Closure

Pre-mediation. (Assessing /Preparing)

- **Screening process:** Engaging the prospective participants / Assessing the situation

Once a request for mediation has been made, the mediator begins his or her tasks of engaging the participants and assessing the situation. These tasks, often referred to as the “screening process”, include the following components:

Engaging

The referral may come from any number of sources (the participants themselves, a lawyer referral, court referral, other agency, school personnel, etc.) Engaging the participants by informing them in a precise, non-threatening, clear manner, of who you are and what the mediation process is about, is an essential piece of the opening stage.

☞ Orienting

The mediator must decide how a fuller orientation (education) will be provided to participants, i.e. group orientation or individual sessions.

Responding

Almost inevitably, participants will voice concerns and show signs of anxiety during the initial stages of mediation. Resistance may be expressed at this time (and often at different stages of the mediation process), and must be addressed. Resistance is often an indicator of a lack of information and related fears. The participant will require information and will respond best when s/he feels heard and understood, and receives balanced, neutral responses to questions or statements. It is important not to assume that resistance is reflective of an inability to mediate.

Motivation

The potential benefits of motivation are increased if participants enter into this process due to an informed decision, versus as a response to external pressure, e.g. by “order” of the court. At this stage the mediator can best assist in motivating individuals by offering clear, precise information, quelling unrealistic fears by processing questions in a supportive, understanding manner, and by affirming participants’ strengths.

Gathering information

The mediator gathers information regarding the participants’ personal motivation by assessing their responses. This information assists in determining the viability, the appropriateness of mediation in the given situation – essential mediation task. A variety of questions are required. *Demographic questions*, basic information gathering questions, are determined by the type of mediation requested, e.g. the length of time people have worked together (labor dispute); the ages of the children (child welfare issues). The type of mediation will also determine *background information questions*. However, there are certain constants, certain information required in almost all situations, to assist in determining readiness and the appropriateness of mediation as a forum for dispute resolution. A list of questions can be developed.

Criteria in assessing readiness, viability, and appropriateness for mediation.

The following are the basic factors, salient in most mediations:

✓ **Time factors.**

The amount of time required to complete mediation will vary. What is germane is that all participants to the mediation are willing to invest the time required, and that undue pressures, unrealistic expectations do not prevail.

✓ **Voluntariness**

It is essential that both/all participants be voluntarily, consciously committing to the mediation process. In cases of court-mandated mediation, whether it is truly voluntarily may be in question in that people may only attend because they believe they must. However, even in these cases, people can only be informed as to the process and asked to attempt mediation. "Mandatory mediation" is a misnomer, as no one can be forced to negotiate.

✓ **Mediator neutrality**

The mediator cannot be personally involved in the situation, nor can s/he be invested in the outcome of the agreement. The mediator must always check her/his agenda and assess throughout the process whether s/he is forcing issues due to a personal need to have the participants arrive at a particular agreement. The mediator must NOT attempt to control the process in such a manner as to obtain a particular outcome. Mediation is a self-determining model of dispute resolution. It is the participants' agreement. They must live with it, not the mediator.

The mediator must also be certain that s/he is not forcing the participants to reach an agreement – *any agreement* – simply to reach one. Participants may not be ready to reach a "full agreement" at the time that they are attending for mediation. They may still benefit from the process, by reaching partial agreements, by learning some useful

communication skills, by simply realizing that they can face the other person without a disaster occurring. The mediator can still serve this participant population well.

✓ **Relationship maintenance**

The need to maintain or improve the quality of the existing relationship is a significant factor for both /all participants. They do not necessarily like, or need to like each other. They simply realize that they must continue to function as co-workers, co-parents, business partners, cohabitators, and may be aware that damage could occur should the relationship deteriorate.

✓ **Option exploration**

Participants are often more motivated to work through mediation if they have considered other options such as the disruptions a family through placement of a child, police involvement in neighborhood complaints, the legal arena for resolution of separation/divorce issues, boards of appeal or use of grievance in the workplace. Often the use of the above noted forums is not desirable, as most of the problems are interpersonal, and financial costs of mediation are often lower, less risky, and often less time consuming. Other options for resolving the dispute/conflict have been explored/considered and are not found to be as desirable as the mediation forum.

✓ **Willingness to address issues**

At times the role of the mediator includes “persuading” people to meet. Often people avoid direct confrontation, stating that “it won’t change for the better anyway”. The mediator assists with these concerns. However, ultimately participants should indicate that they are unwilling to continue avoiding the issues with each other, and that they have some hope that the matter can be resolved, or that their stress will decrease, and that a better relationship will result through their participation in mediation. The

participant should also be indicating that continuing in a conflictual relationship is neither longer desirable nor acceptable.

✓ **Power balance**

In conflict situations, power issues are often misunderstood and power may be misused. A precise assessment of power dynamics prior to meeting jointly with the participants is not usually possible, however, certain screening questions at an intake level will likely ascertain whether there has been an abusive element in the relationship(s). At the intake level the mediator must be alert to power imbalances which may indicate that the participants will not be able to interact without one intimidating the other. In situations where threats, dominance, or emotional and/or physical abuse are evident, it is never possible to arrive at a fair agreement. The mediator may suggest separate meetings in an attempt to control the imbalance or may make referrals elsewhere, such as to a counselor, lawyer, or arbiter.

If the screening process has not evidenced an abusive element, mediation can proceed. However, a mediator must be vigilant with respect to these issues, throughout the entire process. The mediator assists in balancing the power whenever possible by ensuring that both/all participants have access to the same information, have fairly equal "air time", by assisting in clear and respectful communication and ensuring that the focus is on positive goals and mutual interests. The patterns of communication, which contributed to the inability to resolve conflicts, often surface during mediation. The mediator attempts to assist in a change of communication patterns during the mediation process, which in turn can balance the ability to express feelings more equally, express thoughts, listen to others, and be heard.

✓ **Safety issues**

If there is a history of physical, emotional, or sexual abuse in the relationship(s), only a **highly experienced-trained mediator** should be considered for assessing the appropriateness/feasibility of mediation. The power balance has obviously been compromised in an abusive relationship, and the potential for continued intimidation, resulting in an unfair agreement, is high. In cases where there was abuse but abuse is no longer occurring, where the participants are apart and do not have easy access to each other, where there have been other forms of intervention (e.g. anger management counseling, victim abuse therapy). An altered form of mediation, often referred to as **shuttle mediation** or **shuttle diplomacy**, whereby the participants are not brought together, could be used.

No one's personal safety is dependent upon the outcome of the agreement.

✓ **Mediation vs. therapy**

Counseling techniques and those of mediation are often the same. However, the goal of each forum is different. The mediator must remember that mediation is primarily a decision making process. This process may be used as an adjunct to counseling, to deal with specific practical issues. Conversely, those in mediation may benefit from counseling. It is best that two different people, however, do counseling and mediation. In mediation the resolution of specific issues, rather than therapeutic intervention, is being sought.

Assessment or "screening" does not end in the opening stage. In essence it continues throughout mediation. Any number of factors may arise following initial contact, in the midst of mediation, which could require that the process be terminated or adjusted.

☞ Orientation to the mediation process (group or individual):

In this context, “orientation” is a broader concept than simply an introduction to the mediation process. Its function is not only informative in a narrow sense, but can have an educative function in a broad sense. An effective orientation will give the participant a clear understanding of mediation as a process, its scope and limitations, the role of the mediator, and the guidelines by which the process will be governed. The participants therefore approach mediation with a sense of familiarity, which serves to enhance their sense of control and empowerment in the process. They are also in a position to assess the appropriateness of mediation in their situation, and/or their own motivation to take part.

The orientation should address issues that are typically associated with a particular participant group, but in a general way, rather than in a way that is specific to the particular participant. This allows the participant to examine and consider issues in a more detached and objective manner, free of the defenses and biases that would automatically come into play if issues were to be discussed in the context of the individual’s own situation. This also has an effect of legitimizing and normalizing the individual’s experiences and reactions to them.

The orientation provides the participants the opportunity to reappraise their attitude and assumptions in a less threatening context, where they are less likely to cling to their position out of a sense of principle, or out of fear of losing face.

There is a further benefit in an orientation, if it is conducted in a group setting involving others with the same concerns (but in the absence of the other party to the dispute). The group dynamic can potentially effect the softening of a position, because the issues can be seen as also belonging to others.

Mediation Forum

Four Stages of Mediation Forum

Stage 1: Introductions (Joint orientation and contracting)

The Purpose is to set the stage for exploring the issues.

Once participants have been oriented to the mediation process and it has been determined that joint meetings are viable, the mediator moves to setting the stage. In essence, this appears to be a joint re-orientation, as some of the materials will have been covered in earlier stages. However, it is essential that the mediator addresses each issue with all participants to the mediation present, in order to facilitate management of the process in later stages. This step requires a basic understanding of the mediation process as well as the ability to cover the necessary information quickly (?) and comfortably. The process of setting the stage includes introducing all parties, explaining the procedure, including the role of the mediator, establishing guidelines, creating a safe environment, modeling behavior, and obtaining an agreement from each party to proceed.

Setting the stage is also instrumental in reducing participants' anxiety, through the creation of a safe environment, wherein they can begin to feel comfortable enough to discuss matters openly. It is important that the participants understand the mediator's role to be that of a neutral third party, who will manage the process and promote a cooperative and respectful dialogue by discouraging any destructive, disrespectful communication. In setting the stage, the mediator has a responsibility to demonstrate the skills, which are required to establish cooperative, respectful, open, and positive (constructive) communication. In this manner, the mediator's role is also of an educator and that of a "role model".

Because the process of setting the stage includes an explanation of the participants' responsibility in the process, and the gathering of the participants'

commitment to working together in mediation, the onus is placed with them early in the process. By establishing their responsibility in, and commitment to mediation, the participants begin to take ownership for the process and the agreement they will eventually establish.

Process

Introductions to a mediation session often have the following components:

1. Set a comfortable tone for the session

- Greet the people warmly. Make sure you know each other's name.
- Thank them for being willing to try mediation. It's a new experience for them.
- Help them feel comfortable. Normalize feelings of discomfort and stress.
- Begin to foster a positive outlook.

2. Remind the parties about the purpose of the meeting

- You might say, "*We are here today to discuss the incident, which took place on November 21st.*"
- Set modest but positive goals for the session, "*I hope we can reach a better understanding of the incident, examine some possible resolutions and arrive at some sort of an agreement.*"

3. Describe your role as mediator(s)

- To help participants better understand each other's perspectives and concerns.
- To summarize and ask questions of clarification.

- To assure them that you will not judge who is right or wrong, or make decisions for them.
- To help them develop their own solutions.

4. Explain the rules

- Reassure them that each person will have a chance to describe the situation or issue from his or her own perspective.
- Explain that the development of solutions or an agreement usually follows a period of discussion of the issues identified by the parties.

5. Establish guidelines

- Use discretion when deciding on guidelines. Guidelines are meant to facilitate open discussion of the conflict and to encourage a respectful, safe process. Present them in a way that respects the parties.
- Guidelines also help establish initial trust and rapport between the parties and mediators and represent an agreement that will guide the rest of the process.

The establishment of process guidelines is a very important step in the beginning stage of the process, and is part of contract formation. It serves to give the participants a better sense of understanding, predictability and ownership of the process. The clear enunciation of guidelines assists in establishing the role of the mediator as a manager of the process, and as someone who will make mediation safe for the participants. After listing the guidelines and explaining their rationale, the mediator asks the participants' permission to evoke them when that becomes necessary.

Some possible guidelines:

a) **Listen While the Other is Speaking.**

This guideline is used in most introductions.

E.g., *"We have found that mediation works best when we agree that one person will speak at a time. Everyone else listens. Each of you will get a chance to speak."*

b) **Confidentiality Discussion.**

Check with parties.

E.g., *"Is there anyone you need to report to? How would you like to deal with confidentiality? We are taking notes to help us stay on track. You may also take notes if that is helpful. All notes will be destroyed after the mediation is over."*

c) **Speak directly to us.**

This is particularly important when very strong emotions or language are anticipated.

E.g., *"At the beginning of the session we ask that you speak directly to us. As the mediation progresses we will encourage you to speak to each other."*

Use Respectful Language and any other guidelines if needed.

Concerns related to smoking should also be addressed at the beginning of the session. Respect the parties' desires to add other guidelines that may be important to them. If necessary, additional ground rules can also be added at any time during the process.

6. Formulate a Contract

As part of "setting the stage" the mediator assesses people's readiness to proceed, and elicits their commitment, formulating either an informal or formal contract. Some mediators have participants sign a formal contract. The informal contract can be termed

the moral commitment. It is helpful to elicit from the participants a statement of commitment to the mediation process.

E.g., “*Can you agree to follow this process? Any questions? Are you ready to begin?*”

7. Alert the participants to the following possibilities:

a) Separate meetings

Sometimes private or separate meetings may be helpful to the process. Private meetings can take place between individual parties and the mediator or the two mediators when they need to consult with one another about a problem that has arisen during the session. On rare occasions parties may want to meet without the mediator. Caution should be exercised in such situations.

b) Additional Meetings

When all the issues cannot be covered in one meeting, another session can be scheduled. In family mediation, multi-party or otherwise complex disputes, additional meetings are common. If the parties are aware of this possibility ahead of time, it may help reduce the stress and fear of failure associated with having to resolve everything in one session. The possibility of additional meetings also provides time to “think” about a variety of solutions as well as an opportunity to secure important information not available at the first meeting.

Some Comments

Working with resistance

Human beings experience changes as stressful, and are, by nature, resistant to change. The mediator’s role is to assist the resistance and to assist in diminishing it. The mediator determines whether the participants are feeling fearful, unacknowledged, powerless, or whether the resistance is being utilized in a manipulative manner. The mediator can work with participants, addressing their specific concerns. For example, the

mediator may say, *“One of the positive aspects of mediation is that you are given the time and opportunity to discuss what will work best for both/all of you. Mediation is a process designed to find WIN-WIN solutions for everyone.”*

Affirming

Participants rarely come to utilize mediation at the beginning stages of a conflict. They usually initiate mediation feeling defeated and sometimes hopeless with respect to their ability to resolve a dispute. The mediator works to counteract these feelings by normalizing conflict and affirming the participants' strengths and abilities. The mediator normalizes the participants' situation, by framing conflict, and the need for negotiation, and for resolution, as a common part of everyday life. This serves to diminish the participants' sense of being *“ the only ones who can't resolve problems ”*. Affirmations are useful in empowering participants, and in instilling hope.

Exercise. Write Your Own Introduction

Write an introduction script for the following conflict scenario. One that suits your personal style and allows you to feel comfortable and relaxed.

Mykola and Oksana are co-workers in a small agency that issues a monthly newsletter. Oksana's role is to coordinate the content of the newsletter, while Mykola's role is layout, design and printing. The atmosphere in the office tends to be somewhat stressful and demanding. Last Friday there was an altercation in the office between Mykola and Oksana. It started when Oksana walked into the lunchroom to find Mykola telling the rest of the staff about the problems he was having with Oksana's co-ordination of the newsletter. During the altercation he accused her of incompetence.

Make Sure You Include:

- introductions of mediator and parties
- reason for the meeting
- description of role of the mediator
- assurance of confidentiality
- overview of the mediation process
- ground rules
- request for consent of the parties to proceed

Role-play “Stage 1”

Stage 2. Issue identification (Story – telling)

The purpose is to:

- get the parties talking and involved
- give the mediators a basic understanding of the conflict
- let the parties hear each other's story as it is told to a third party
- begin to identify the issues
- give the mediators some idea of what to expect

Issue identification is an integral part of the mediation process, which is highly structured. It is important that the mediator manage this process well, demonstrating his or her ability to in fact maintain the safe environment they committed to, demonstrating the ability to hear and understand the participants' concerns. It is at this juncture that participants increase their direct interaction with each other in the process; it is here that the bulk of their concerns will be voiced. Trust in the process is increased through the skilful management.

Process

The two major components to this stage in the process are the *Opening Statements* and *Goal Summary*. The art of *Note Taking* is highly important.

Opening statements.

When conducting opening statements, the mediator should:

- Ensure uninterrupted time for participants to describe their point of view.
- Provide paper, and ask the listener to take notes.
- Ask participants to listen to each other carefully.
- Underscore that truly hearing the other participant/s does not imply agreement.
- Write down what participants are saying, in order to gather the necessary information, and for feedback during "Goal Summary".

1. Identify what you want to hear.

If this is a one-incident conflict, the parameters are obvious. If this conflict has a lengthy history, start by asking the parties to tell you about only the most recent incident or an issue of particular concern.

2. Decide who will speak first.

This can be done in two ways. Generally the mediator asks one of the participants to begin. Some reasons for selecting a person to speak first would be shyness or a power imbalance. Power imbalances can result from differences in gender, age, race, position, qualifications and so on.

If you sense a power imbalance, invite the person with less power to speak first. If a choice is not obvious, you can ask the parties who would like to begin.

3. Hear the story from Party A.

Part A is encouraged to explain the situation from his or her perspective with the following questions:

- a) E.g., *"Tell us what occurred in this incident." (fact-focused)*
- d) E.g., *"How did you feel about this?" (feeling-focused).*

4. Restate the first story.

One of the mediators briefly restates the basic facts and feelings of the first story.

This should be very brief.

5. Repeat Steps 3 and 4 with Party B.

Make sure Party B has roughly the same time as party A.

6. Ask questions.

When appropriate (based on the level of tension between the parties), you may want to ask the parties if they have any questions about what has been said so far or if there are things that need to be clarified. Before the mediator proceeds to summarize the issues, both people are invited to address questions directly to one another.

Note Taking

Note taking is largely a matter of individual approach. However, the mediator ought to have a way of recording statements by the participants, in order to be able to analyze their positions for such elements as fears, assumptions, expectations, beliefs and interests and also to identify the content of issues, i.e. whether the issues are substantive, emotional, or procedural. A second function of note taking is to allow the mediator to accurately reflect back to the participants their statements, thereby acknowledging and validating their legitimate concerns. Some systematic method of recording the information is necessary. For example, when working with individuals, a page divided in half down the center allows for the recording of the statements of both participants. Each statement can then be assessed for content, its significance designated by an abbreviated remark, such as: F (fear), A (assumption), etc.

Goal Summary

Initially, the mediator gives a detailed feedback of what each person has said in his or her opening statement. This is an important step in the process of “joining” with the participants.

The goal summary also serves the function of having each participant hear the other person again through the voice of a third, neutral party. This is an opportunity for the mediator to restate matters in a manner, which is less hurtful, and more goal-oriented.

This is a delicate matter. It is important while restating the issues, not to change the content of a person's statement as this would risk their feeling that you had not heard them.

The final function of goal summary is creation of the agenda. More issues may be added during the mediation process, however, the primary agenda is usually generated at this juncture.

7. Summarize the issues.

Summarize the issues, identified by the parties, which will need to be dealt with during the remainder of the mediation. Frame the issues, which are neutral and relevant to both parties. State common ground. Highlight common concerns too. Use neutral language to formulate the list of issues. Be general, speak to the big picture, not to specifics. Check with the participants to make sure that the list addresses their most important concerns.

Make a general statement summarizing what the participants may expect to accomplish in mediation.

E.g., "Both of you indicated that you don't want to go on like this. Resolving the issues you have identified, through mediation, will assist in reducing the stress you are experiencing in your relationship. You have worked well together today, in identifying your concerns. Now we'll look at what we can do to resolve those concerns".

Skills

Listen with empathy. Keep the stories brief and focused. It is important to involve both parties as soon as possible. If one party talks too long, the other party will begin to think the mediator is taking sides.

Restate the party's opening statement / story in your own words. Restate during the story when appropriate, e.g., if the person is having difficulty recounting the story.

Use a **minimal amount of questioning**. Save requests for information until both persons have finished "story-telling". Usually the second person answers the questions you would have liked to ask the first person. If the questions remain unanswered and you still need more information, ask them after you have restated both parties' stories. For instance, you could say, "I don't quite understand how Mrs. Jones is involved. Could you tell me about her?"

Summarize the issues identified by the parties after the opening stories or statements.

Deal with interruptions. Be firm about stopping interruptions. If a party feels that she or he must respond to the other person's remarks, provide a paper and a pen for taking notes, and remind her or him that there will be a chance to respond soon.

Deal with any Barbed Comments or Loaded Statements

- Address them immediately.
- Say to the person targeted by the comments, *"I know that you have a different view of this, and I want to hear it as well, in a few minutes."*
- Modify the comments with neutral restating or by reframing.
E.g., if someone says, *"And she was hollering lies about my kids and making a fool of herself,"* you might restate the comment by saying, *"You're upset because she said things that you think are not true."*
- Encourage the parties to speak about the incidents or issue in a way that will be respectful of the other people involved in the mediation.

Role-play "Stage 2"

Stage 3: Uncovering underlying interests

The purpose is to:

- continue to have the parties hear about the conflict from the other's point of view
- develop mutual understanding and empathy
- get the parties to identify and talk about the issues that concern them the most
- explore the parties' interests, needs, wants, fears, and concerns
- have each party realize that it is possible to resolve the conflict

Participants in most cases enter mediation with set and more or less rigid positions. These positions reflect the individual participant's perception of the "problem" and of what would represent a "good" solution. While usually well meaning, these positions address the needs of the particular individual, and to a lesser or greater degree disregard, or misinterpret the needs of the other party.

Positions, in addition to being the result of one-sided view of the situation, are often the product of a number of "historical" issues between the parties.

The participants may or not be aware of what motivates their positions, but are conceived of their validity. It is the task of the mediator to uncover the interests that underlie the positions, and to make them accessible to acknowledgement, validation, and clarification. It is then possible to explore ways in which these individual interests can be satisfactorily and mutually addressed. It usually becomes evident that interests need not be mutually exclusive, and more often than not, may in fact be commonly shared by the participants.

Process

Mediators often find it difficult to know when and how to begin this stage, and where to go once the discussion of an issue is finished. The steps listed below are followed most frequently.

(i) Work on one issue at a time following a summary of the issues.

A conscious decision about which issue to select first must be made. The mediator may begin by exploring the incident in an effort to develop mutual understanding of the story. It may also be effective to work at the issue that appears to be most important to both parties (i.e., a critical, common concern) and has a good chance of being resolved. Resolution of the first issue can help the parties feel more optimistic that the larger conflict itself will be resolved. As you make the transition, you might say,

"I have heard a number of things that seem important to you. First, both of you have indicated that your relationship is important. Pete, you have mentioned concerns about curfew, schoolwork, friends, and chores. Annie, you seem concerned about what happens when your Dad has been drinking. Another issue is your allowance. Are there any other issues that are essential to resolving the dispute? I'm wondering if we can begin talking about the curfew. Can you tell me what the present arrangement is and what each of you sees as the problem?"

The mediator asks the participants if they heard **any new information** during the story telling. This will work best when the tension level is relatively low and both parties appear to be at ease with each other. Try:

"Lori, I noticed that you were listening intently as Kate talked about her experience of the conflict. I'm wondering if there is anything that was new to you?"

The mediator asks for more information about the incident or problem when s/he or the participants are still confused about remains unclear or when it seems that someone

has only hinted at what seems to be an important underlying issue. Seek to get at feelings as well as facts. For example,

“John, I ‘m wondering if you could tell us what happened after the police picked you up.”

“Steven, you said that you had to spend some time in the hospital, how was that for you?”

“Rose, can you describe more fully what kind of damage was done to your office during the break-in? And, how did that affect your business that day?”

(ii) Explore underlying interests

To enhance mutual understanding and empathy explore assumptions and emotions related to specific issues. Use open-ended, probing questions to get underlying interests (needs, wants, fears, concerns, and hopes), to draw out a participant’s experience of a specific event or behavior, to clarify intentions and to shift participants away from patterns of blame and argument or rigid notions about what should happen to resolve the problem.

“Can you tell me what aspects of her communication with you is so upsetting to you?”

“Mike, you think the fence needs to be six feet high. Can you help us understand why having a tall fence is important to you?”

“If you had the chance to do it over again, what would you do differently?”

(iii) Break issues into workable segments

Breaking issues down into workable segments, and dealing with each segment in turn, not only adds to the efficiency of the problem solving process, but gives the participants a sense of structure and control in what can otherwise be an overwhelming situation to them.

Facilitating the process: maintaining the momentum

Priorize issues in terms of importance

Part of generating the agenda is the process of sorting out issues in terms of their perceived importance to the participants, in order to ascertain which are crucial to deal with, and which can be safely set aside. It is also necessary for the mediator to prioritize issues as part of a strategic approach, i.e. it may be important in the early part of the process to select issues that are simpler, and more amenable to resolution, in order to give the participants an early sense of accomplishment.

Periodic summation of the issues presented to maintain a focus, and a positive goal-oriented environment.

The mediator must retain focus on the issues as initially presented. A participant's persistent deviation from the agenda may indicate a previously unidentified agenda item or difficulty in dealing with the painful issues, or may be characteristic of their problem solving approach.

Patience and pacing are important.

The participants need the time to process their thoughts. The mediator needs to respect the participants' own comfort level in dealing with their issues, and allow for hesitation. To maintain the momentum it is important to respond to messages that indicate under-the surface issues, needs, and feelings. At times simple acknowledgement or validation is sufficient to assure the participant that s/he is being heard. This will free the participant to proceed with the issue at hand.

Using future focused questions to initiate change.

Acknowledge the “history” of the situation, but avoid retrospection. All talk must be about the problem and its solution versus just the problem. What clients don’t want is to be entrenched in the past. What they do want is a future without the same problem that brought them to the mediation. A future with hope and less problems is more inviting than a past with existing problems. Solution talk is more in the future. Problem talk is more in the past. Develop a more constructive form of communication for the future.

Asking questions out of curiosity versus making statements.

Asking for specifics

Statements such as, “He is inconsiderate”, “You always yell at the kids”, “She never gets her work done on time” need to be explored for specifics. How often is “never” or “always”, in what way does lack of consideration show itself, and in what way is it related to personal expectations as opposed to objective criteria. Such judgements are often based on assumptions, historic issues, personal perspectives and needs.

Watching for a shift in communication (attitude) between the participants, acknowledging and reinforcing it..

This is an indication of progress. It shows an effort by the participants to change their attitude towards the issues, to acknowledge the other’s issues, to let down defenses. An indication of such a shift needs to be acknowledged, and reinforced.

Skills and Techniques

Active listening

- Follow the parties.
- Identify the issues.
- Focus on the feelings, validate the feelings.
- Highlight the nuggets (apologies, common ground).

Paraphrasing is essential throughout this stage.

Open-ended questions are used to explore feelings and interests related to each issue.

Reframing is effective in defusing defensiveness which is a cover for the underlying interests. It is used to assist in surfacing the interests, and in identifying common ground. *However*, it is important to note that reframing prematurely can incur an angry response. Reframing will be effective *only if* the person is in a steady state, whereby s/he can stop and reflect upon what is being said. It is important not to rob people of their emotions. Listening comes first.

Be aware that reframing can be seen as an agreement. Ensure you reframe the *interest*, not the *position*.

Silence.

Don't be afraid of it. The participants may need some time to think about the situation or to get control of their emotions. The mediator may need this time of silence too!

Encouragement

Be encouraging when the parties get discouraged, especially if there is disagreement and a high level of emotions. Try saying, *"Mediation is not always easy, but it often works in difficult situations. Your presence indicates a willingness to try to resolve this issue."*

Establishing a commitment to the mediation process

Ask questions about the consequences of not resolving the conflict.

E.g., "What will happen if you are not able to reach an agreement here?"

You may also want to review the purpose and expectations of the meeting.

E.g., "What were you hoping to gain by coming here?"

Summarizing progress, areas of common concern and points of agreement.

Highlight areas where there is common commitment to the find a solution. This kind of summarizing can be especially helpful if the parties are discouraged. Areas of agreement are often implied in this stage.

E.g., "Both of you want to solve this quickly and avoid a court battle.", or

"Both of you seem to have appreciated each other before the incident."

Suggesting private meetings.

Consider setting up private meetings when

- people are tired,
- the session has continued for many hours,
- you think someone is withholding important information,
- an agreement appears to be coerced,
- someone appears to be intimidated or frightened,
- you are stuck.

The mediators to confer amongst themselves or to speak privately and individually with parties can use private or separate meetings as well. Parties should not be left together when the mediators are meeting with each other. Also, if you meet with one of the participants, always meet with the other one to maintain a sense of equality and impartiality.

Role Play "Stage 3"

Stage 4: Closure

The purpose is to:

- Assist in the generation of the best solution / resolution of each issue.
- Summarize the progress made and highlight areas of new understanding and negotiate closure of the session
- Write out a detailed agreement when applicable.
- Thank the participants for their hard work and congratulate them on their willingness to meet.

Process

The mediator summarizes areas of new understanding and helps the parties to bring closure to the session. The participants' efforts and accomplishments in the mediation process are acknowledged. They are given recognition for their hard work, and their perseverance in managing this difficult task and bringing it to a successful conclusion. The mediator's "job" during this phase, is to firmly place ownership of the decision making process, including its outcome, with the participants. The mediator also assists the participants in determining whether a written agreement is appropriate. If a written agreement is necessary, the mediator helps determine the best wording. Reality checking and testing of participants' understandings and agreements are important steps prior to the final closure of the session.

Encourage the Development of Possible Solutions

The mediator's task is to help the participants generate possible solutions. The mediator should ideally emphasize and summarize any areas of agreement that s/he has heard to this point, as this will form the basis for a more comprehensive agreement. Brainstorming is a helpful tool during this phase. Some typical questions are:

"What can you offer that will help resolve this conflict?"

"What will help you feel better about the situation?"

"Can you think of any other ideas that would help solve the problem?"

Assist in the Selection of the Best Solution

Make sure you get a solution for each issue that is important to resolving a conflict. Both parties will need to be able to live with the resolution, without feeling resentful. Ask each participant:

"Do you agree?" "Do you think this resolves the conflict?"

Summarize Areas of New Understanding in General

Name the more intangible elements of understanding that have been generated.

"It seems like both of you have reached a better understanding of how each other experienced what happened that day."

Summarize Areas of Specific Agreement and Understanding

The mediator assists the participants in defining what has occurred for and between them with respect to each particular issue.

"With respect to the incident itself, you agreed that you both regret what happened."

Negotiate Closure of the Session

This happens in a number of ways:

- **Checking Summary and Conclusion (Always)**

Check with the participants to ensure that the summary of agreements has been accurate

- **Conclude the Session with No Written Agreement (Sometimes):**

Highlight the achievements of the session and bring the session to a close.

Thank participants for coming and working on the issues.

- **Conclude with the Writing of the Agreement Specifics (Sometimes):**

If a written document is necessary or would be helpful, assist the participants in determining what should be written down.

Skills

Summarizing

This is probably the most fundamental skill of this stage. Summarizing allows the mediator to gather together the loose ends of the process, to name the understanding that has been reached, and to move people towards closure. Summarizing is used in the macro sense of naming overall progress as well as in the micro sense of naming specific agreements or directions that have been established.

Questioning

Both open and close-ended questions are important in this stage. Following summary, the mediator may inquire whether or not the summary matches the experience of the participants (close-ended). If the summary is judged inaccurate, the mediator may use an open-ended question to determine whether the summary is not on the mark.

E.g., Which aspect of the summary of progress and understanding does not fit for you, Peter?" or

"Can you tell me what things remain unclear for you, Mary?" or

"What else needs to happen or be said in order for the two of you to bring closure to this situation and move into the future?"

Reframing

By virtue of how a reframe is presented, the participant has the option of clarifying its meaning, if the reframe did not accurately reflect what they intended to say. This significantly reduces the possibility that the mediator will provoke a participant, by making them feel unheard.

Brainstorming

To generate multiple options for resolving the conflict, particularly when the parties are arguing about a specific solution or fixed demand, brainstorming is beneficial. It is a good way to break out the patterns of positive thinking. New and creative solutions are often discovered within a short period of time. When using brainstorming, remind the participants that all ideas are acceptable. Ideas are evaluated only after the brainstorming is complete. They are evaluated on the basis of criteria acceptable to all of the participants.

Constructive termination**Role play “Stage 4”**

Mediation as a tool in the conflict resolution is portable and applicable to a broad cross section of situations, including interpersonal, family, school, workplace, neighborhood, business, national and international concerns (Adapted from Kostiuk & Zurawsky, 1996; Mediation Services, 2000).

Conflict resolution and mediation

There is a large body of literature on conflict resolution and mediation. A review of the literature focused on key issues related to mediation (Blades, 1984; Moore, 1986; Fisher & Brown, 1988; Parson, 1991; Bush & Folger, 1994; Cummings & Davis, 1994; Emery, 1994; Kostiuk & Zurawsky, 1996; Ury, 1999); Anderson, Tunaley & Walker, 2000; Mediation Services, 2000) suggests the following:

Understanding conflict

At the turn of the millennium, no more critical challenge faces the people, than how to get along. Of all the factors influencing the success of marriage the single most critical one is the ability to resolve conflicts cooperatively. The same holds true in every other relationship – between friends or business partners, neighbors or nations. So much depends on the ability to get along: our happiness at home, our performance at work, the livability of our communities, and, in the age of mass destruction, the survival of our species. Destructive conflict is widely accepted as an inevitable and prominent part of human existence. However, most of the time, most people get along. Peace is the norm. In fact, people could transform their conflicts if they choose to get along.

Conflict is a natural and inevitable part of life. In itself, conflict is neither bad nor good. It is an inevitable consequence of change, particularly in the face of uncertainty. However, disputes could be viewed not as problems at all but as opportunities for moral growth and transformation. Conflict can be constructive if handled well, destructive if handled poorly.

Conflict resolution application dates back to simpler societies. In our societies, conflict is conventionally thought of as two-sided. However, no dispute takes place in a vacuum. The third side is the surrounding community, which serves as a container for escalating conflict. In the absence of that container, serious conflict between two parties easily turns into destructive strife. Within the container, however, conflict can gradually be transformed from confrontation into cooperation. The third side thus serves as a kind of social immune system preventing the spread of the virus of violence. The third part is people using the power of peers to support a process of dialogue and nonviolence aiming for a certain product – a "triple win". We are shifting away from passivity toward the active intervention of the surrounding community. The third part is we. Abused children and battered spouses are no longer treated as a "family matter". Support groups, marital counseling and family mediation are becoming much more common in the West.

There are different forms of conflict management approaches, such as negotiation, conciliation, mediation as well as arbitration, judicial, legislative, and extralegal approaches.

Mediation as distinguished from other forms of dispute resolution

Mediation is a brief, non-adversarial, task-oriented, interventive approach to the resolution of conflict. It is designed to leave the maximum possible control of decision making in the hands of the primary participants. while at the same time placing the management of the facilitative process is in the hands of a third party – the mediator. This management function is the defining characteristic of mediation in relation to other forms of dispute resolution. The principle of self-determination can assist in facilitating the empowerment of each participant without disempowering anyone in the process.

Mediation is a generic, strengths-based approach fostering empowerment and recognition.

The stages of mediation process

The stages of mediation process fall into two broad categories: preliminary stage prior to the beginning of the joint sessions, and the process once the mediator has entered into formal negotiations.

Beginning the mediation session, defining issues and setting an agenda, uncovering hidden interests of the disputing parties, generating and assessing options for settlement, final bargaining, and achieving formal settlement are the stages of the mediation process.

The mediation process and the mediator role

The mediation process is confidential, except where disclosure is required by law.

The mediator is in the role of a neutral third party, whose task is to manage and facilitate the goal-oriented process.

Mediators use several procedures to collect data: direct observation, secondary sources, and interviewing. The mediator identifies issues and interests with which disputants are concerned, the salience or importance of these issues and interests, and potential settlement options. The mediator models a constructive mode of communication and dispute resolution which in turn encourages the participants to deal with each other in a respectful manner.

The identification of the interests of each party is one of the keys to conflict resolution. Shifting from positions to interests is crucial for working towards creative solutions, which will work for each person in the conflict. Through the skilful use of

questioning, the mediator attempts to discover the needs and concerns that are at the base of the participants' position and make them accessible to assessment, validation, and fulfillment. Through the process of reframing, the mediator helps the participants to state their concerns in non-offensive terms, and terms that lend themselves to the consideration of options that are not mutually exclusive. The mediator assigns tasks, and assists in the establishment of guidelines that give the participants the opportunity to deal with each other in a more positive fashion outside the mediation setting. This process allows the participants to achieve a gradual sense of accomplishment, and eventual autonomy from the mediation process. Finally, the mediator assists in drafting the terms of agreement and facilitates closure.

Family mediation

Over the course of the last two decades in Canada mediation has evolved as a resource for families in resolving their conflict situations. Family mediation has gone through a period of examination and professional growth.

The legal system has been called into question as a system that is too expensive, too slow and cumbersome, and too adversarial for relationship disputes. Alternative dispute resolution mechanisms have increasingly been employed often at less cost, and with great emphasis on cooperative problem solving. Many jurisdictions now require that clients be informed about, and in appropriate cases, attempt mediation before they proceed to litigation.

Women's advocates questioned the process followed by many mediators of only seeing the couple together and not screening each party individually before deciding

whether they were able to negotiate as equals. Their questioning was the catalyst for the most significant changes in family mediation over the past decade.

The field of family has gone through several important developments. Present day family laws reflect a change in social attitudes to marriage breakdown. It reflects the concept that adults should be free to choose whether or not to remain in the marital union. Fault is no longer a necessary ingredient for being granted a divorce, and support and custody are no longer used as part of the social sanction against divorce. The government has been faced with the question of how best to ensure that children are adequately supported. The direction is towards greater control by parents and less intrusiveness by the legal system, unless there are concerns about abuse, intimidation, or serious inequality of bargaining power. Hence the increasing interest in family mediation as a cooperative, empowering, and expeditious choice for families undergoing separation.

Family mediation and therapy share the historical antecedents, however each has a very different theoretical objective. Whereas family therapy is a process to assist families working to remain together, family mediation is a process to assist families where there has been a decision to separate and/or divorce.

Conflict within a marriage

Conflict within a marriage in itself does not indicate marital distress. Conflict in families is inevitable, and fighting often is adaptive. Problems cannot be resolved without conflict. How couples fight and the sources and contexts of the fighting are more significant indicators of marital distress. Couples benefit from constructive processes and strategies that move toward negotiation and the resolution of marital problems. So, the goal is not to avoid fighting. Rather the goal is to fight constructively.

Children and marital conflict.

Children can be the real losers in marital disputes. Conflict distresses children even though the dispute may not be directed toward them. Children are affected by mere exposure to marital discord. Anger between adults, which is termed background anger, is stressful and emotionally arousing for children of all ages, and it also increases their own aggressiveness. Nonverbal expressions of anger are as distressing to children as verbally expressed anger. Chronic nonverbal expression of anger could possibly pose even more problems than verbal expression of anger over time. Intense expressions of anger are more distressing to children than non-intense expressions. Children are particularly disturbed by conflicts that include physical aggression. Children do not get used or accustomed to conflict; rather they are sensitized to it and as a result become more vulnerable.

The impact of marital conflict on children must ultimately be understood in terms of the family system. Other subsystems may mediate the impact of exposure to marital conflicts on children and in some instances may even buffer children from negative outcomes.

The resolution of conflict indicates that the parents' conflictual interactions have been to some extent constructive, and the children respond accordingly. Children need some cues that a resolution has occurred, even if they are only contextual ones. Children benefit from observing the resolution of conflict. The degree of resolution matters.

Well-managed marital disputes can lead to outcomes that are not inevitably negative. Dealing with conflict is a continuous task, not necessarily a situationally defined one.

The mediator role in social work practice

Social workers have the skills and tools for taking the mediator role because they assumed this role historically in the array of intervention points in social work practice. The theoretical base for the mediator role is conflict theory. Systems theory has been used heavily as a theoretical base for social work practice. The promotion of interaction between systems such as individuals and groups, organizations, or communities does not necessarily result in mutual reciprocity. Instead, further oppression on the part of the more powerful system of the less powerful system may occur. The recognition of inherent conflict between systems provides the context for the mediator role.

The mediator promotes reconciliation, settlement, compromise, or understanding among two or more conflicting parties. The mediator role assumes that the mediation process creates choices whereby the quality of life for participants can be improved significantly. The promotion and facilitation of problem solving with parties in conflict is a power-retaining intervention; it can be thought of as an intervention with empowerment qualities. The mediation process has empowerment qualities not present in many problem-solving strategies. One is its educational nature. Participants are taught to identify their needs, interests, and solutions and to present them to the other party. The mediator educates participants to negotiate to get their needs met. It is a joint advocacy wherein the social worker promotes the interests of each participant. Another empowering quality of the mediator role is the emphasis placed on each participant's own responsibility for decision making and outcome.

The social worker role of mediator is not just that of an objective, disinterested, nonbiased third-party intervener, but a role taken to help bring problems and issues to the

bargaining table and to promote communication toward resolution within the value base of the social work profession. Mediation's purpose and place in problem solving are inherent in the definition of social work practice. Helping client systems assume power and efficacy to negotiate problem resolution is a needed empowerment-oriented strategy in social work practice.

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TRAINING PROGRAM EVALUATION

Please circle the number which best describes your level of agreement with the statements.

Please feel free to elaborate, or make additional comments in the section provided.
Your comments will be helpful and appreciated.

		Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
1.	Workshop met my objectives	5	4	3	2	1
2.	Workshop met with objectives as stated by presenters	5	4	3	2	1
3.	Content is likely to be valuable to me in my work	5	4	3	2	1
4.	Presenters used effective techniques to present material	5	4	3	2	1
5.	Length of program allowed adequate learning opportunity	5	4	3	2	1
6.	Material was at an appropriate level for me	5	4	3	2	1
7.	Program was well organized	5	4	3	2	1
8.	There was enough opportunity for discussion	5	4	3	2	1
9.	Presenters responded adequately to questions	5	4	3	2	1
10.	I intend to apply the information/skills in my work	5	4	3	2	1
11.	Program location was convenient	5	4	3	2	1
12.	I would recommend this training program to others	5	4	3	2	1

13. The most useful part of the program to me was:_____

14. The least useful part of the program to me was:_____

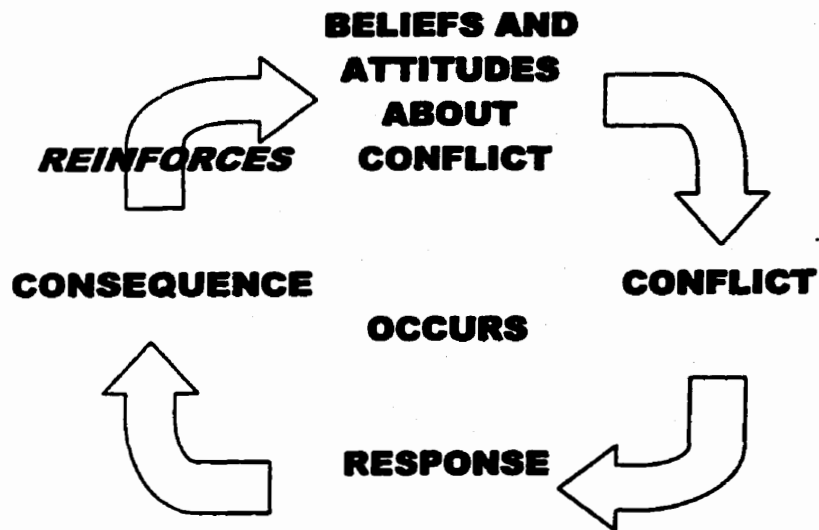
15. The following are my suggestions for improving the program:_____

ADDITIONAL COMMENTS: _____

THANK YOU

Appendix C
Major Overheads

THE CONFLICT CYCLE



Breaking the Cycle:

² Augsburger, David, *Conflict Mediation Across Cultures: Pathways and Patterns*, 1992

Communication and Conflict

Lack of understanding is a major source of conflict in almost every dispute. Frequently both parties feel angry, frustrated, or hurt and each believes the other cannot understand their point of view. This lack of understanding is compounded by the traditional view that there is a right and wrong position in every situation, or that one person must be a winner and the other a loser in every dispute. This latter view discourages people from trying to constructively resolve conflict, and often leads them to feel hopeless or isolated.

There are many reasons why communication breaks down. In a study conducted by Dr. Albert Mehrabian at UCLA, the act of communication between individuals was divided into three categories and the degree to which each aspect impacts the total message received was explored. In a given act of communication, what percentage of the total message received would you attribute to each of the following categories?

Verbal (Words) _____%

Vocal and Tonal (Tone) _____%

Visual (Body Language) _____%

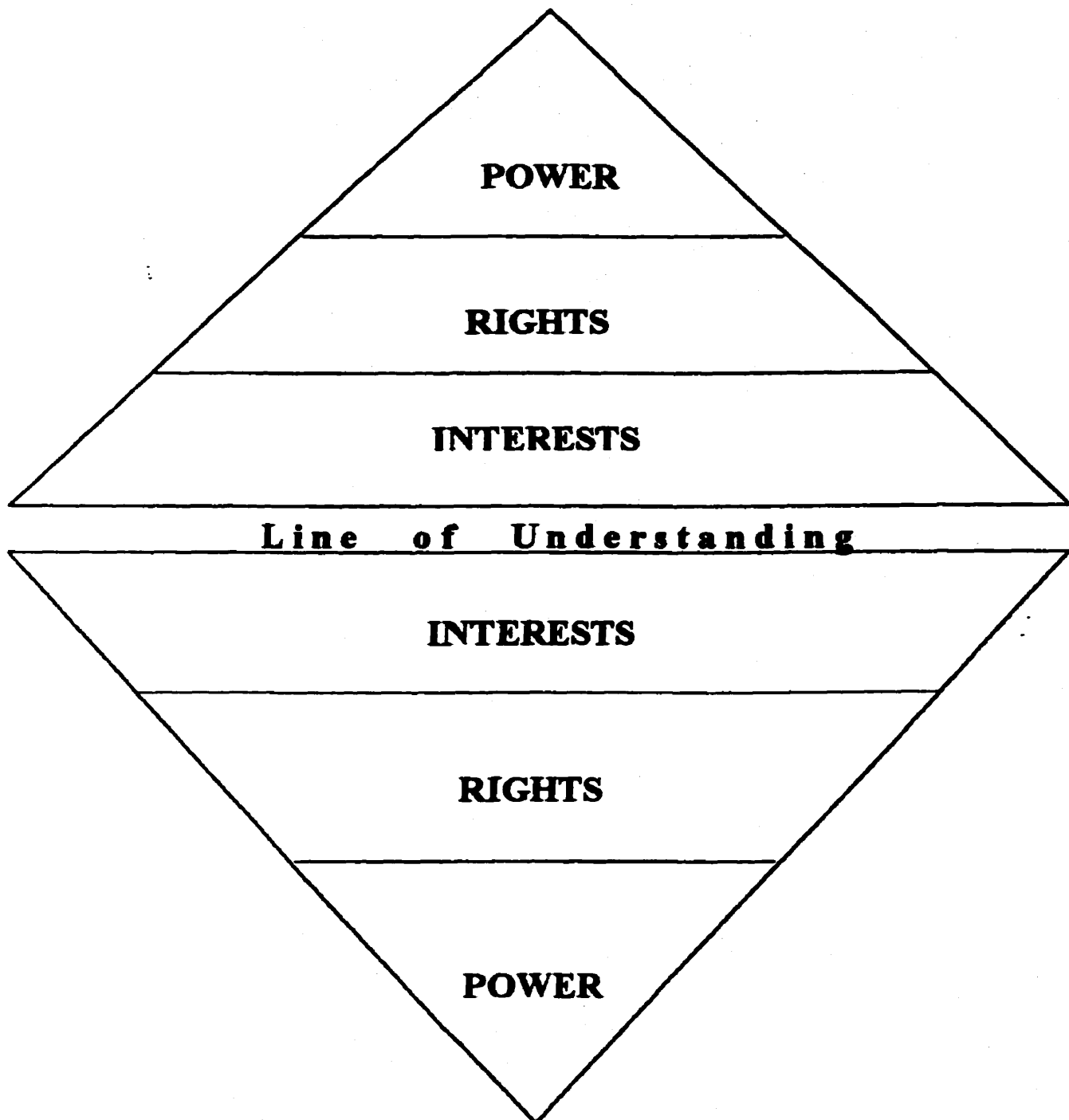
TOTAL MESSAGE _____
100%

Needs

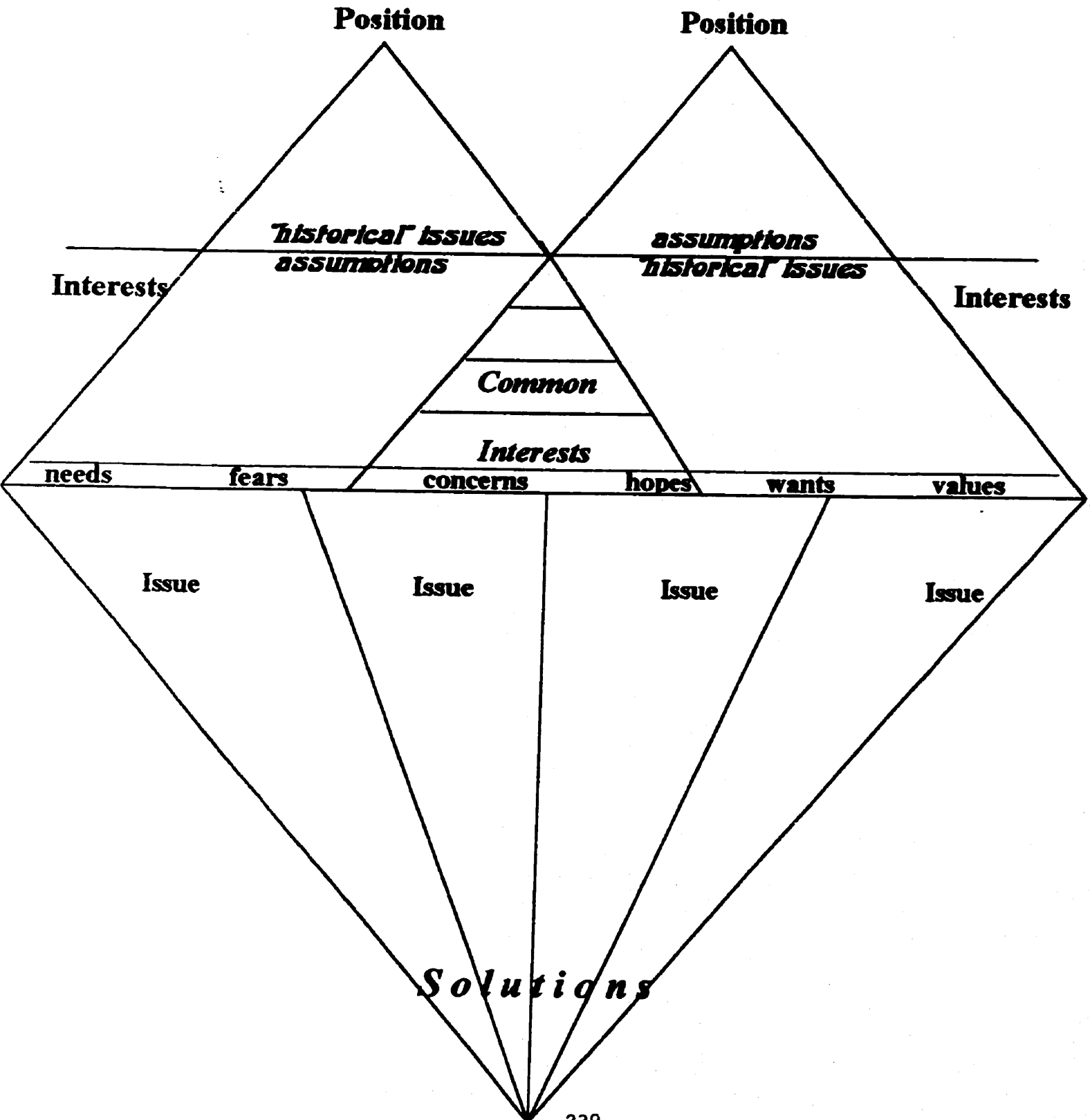
- ... to communicate
- ... to participate in physical activity
- ... to have personal time
- ... to have a relationship
- ... to be part of a community
- ... to resolve conflict
- ... to be emotionally supported
- ... to have cooperation
- ... to have time to grieve
- ... to have contact with other people
- ... to know who we are
- ... to know how others view us
- ... to be respected
- ... to share responsibility
- ... to have pleasure/fun
- ... to be given affection
- ... to be included
- ... to escape
- ... to relax
- ... to control
- ... to have job/work recognition
- ... to have clear direction
- ... to have predictability
- ... to have security
- ... to have physical/emotional safety
- ... to reproduce
- ... to be protected from threats
- ... to feel valued
- ... to have self-actualization
- ... to become the best person we can be
- ... to practice one's faith
- ... to share dreams/worries/fears
- ... to have dreams/worries/fears validated
- ... to have freedom

Interest-Based Problem Solution

(Changing the Game)



From Positions Through
Underlying
Interests To Solutions



**COMPARISON OF DEGREE OF CONTROL BY DISPUTANTS
ACROSS VARIOUS FORMS OF
DISPUTE RESOLUTION**

High -----> Low

	Negot'n.	Mediation	Shuttle	Two Rep.	Arbit'n.
Content:					
Process:					
Outcome:					

“ A little fire is quickly trodden out, which being suffered, rivers cannot quench.”

William Shakespeare

Mediation

Roots of mediation

- Mediation has its roots in being different from law and therapy.

Mediation grew out of a need of people to be more involved in their own decision making. Words like **empowerment, integrity and respect** became one of the landmarks of mediation.

Mediation as distinguished from other forms of dispute resolution

- Mediation is primarily a decision making process.

Maximum decision making by the participants.

- Management of process in the hands of the mediator.
- All participants to the mediation are willing to invest the time required.
- Both/all participants are voluntary committing to the mediation process.
- The need to maintain the relationship is a significant factor for both /all participants.
- The balance of power is fairly equal.
- The process is:
 - goal – oriented
 - confidential (except where disclosure is required by law)
- Rational problem solving can be applied to all conflicts.

Emotion should be acknowledged and deescalated in order to move toward rational discussion.

Role of mediator

- Mediator creates the process and the environment, not the content.
- Mediator neutrality. Mediator is an outsider/impartial, with no prior relationship to either party and no stake in the outcome.
- Mediator won't take sides.
- Mediator won't make judgements.
- Creating safe physical and emotional environment
 - No foul language
 - Respectful, open, honest communication
- Each to have equal opportunity to discuss issues and concerns.
- Establishing and maintaining a balance of power between the participants.
- Empowering each participant without disempowering anyone in the process.
- Mediator's challenge is to create incremental change for success, build on success, which leads to higher levels of confidence for the parties, and larger changes.
- An educator
- "A role model"

Effective communication skills

Effective Speaking / Active listening / Questioning / Paraphrasing / Reframing / Summarizing / Brainstorming

- ***Effective speaking.*** “I” messages
- ***Active listening:*** Face / Eye Contact / Lean / Relax
- ***Questioning*** discovers the needs and concerns.

Asking questions out of curiosity vs. making statements/judgements.

Discussions should be oriented towards “solution talk” vs. “problem talk”.

- ***Paraphrasing*** (stating back) is brief; it checks the “micro” level of conversation.
- ***Reframing*** (identifying the underlying interests) gets to the needs.
- ***Summarizing*** (reviewing issues) is a “macro” level skill.
- ***Brainstorming*** is a technique aimed at developing new ideas and considering alternatives or options.

Non-verbal communication

- Neutrality
- Balance
- Attending
- Preempting

The Mediation Model

I. Pre-mediation

II. Mediation Forum:

Stage 1. Introductions (Joint orientation and contracting)

Stage 2. Issue identification

Stage 3. Uncovering underlying interests

Stage 4. Closure. Discussion of process

Pre-mediation (Assessing /Preparing)

- **Screening process:** Engaging the prospective participants / Assessing the situation

Mediator strategies:

- Orienting the participants to the mediation process
 - Responding to participants' presenting concerns / resistance / anxieties
 - Motivating the participants
 - Gathering information regarding demographics and background issues
 - Assessing readiness for mediation, and viability and appropriateness of mediation as a forum for dispute resolution.
-
- **Orientation to mediation process (group or individual):**
 - Educating in a broad sense
 - Normalizing the individual's experiences and reactions to them.
 - Softening the more extremely held positions

Criteria in assessing readiness, viability, and appropriateness for mediation

- ✓ **Time factors.**

All participants to the mediation are willing to invest the time required.

- ✓ **Voluntariness**

It is essential that both/all participants be voluntarily, consciously committing to the mediation process. "Mandatory mediation" is a misnomer, as no one can be forced to negotiate.

- ✓ **Mediator neutrality**

The mediator cannot be personally involved in the situation, nor can s/he be invested in the outcome of the agreement. It is the participants' agreement. They must live with it, not the mediator.

- ✓ **Relationship maintenance**

The need to maintain or improve the quality of the existing relationship is a significant factor for both /all participants. They do not necessarily like, or need to like each other.

- ✓ **Option exploration**

Other options for resolving the dispute/conflict have been explored/considered and are not found to be as desirable as the mediation forum.

- ✓ **Willingness to address issues**

Participants should indicate that they are unwilling to continue avoiding the issues with each other.

- ✓ **Power balance**

The mediator assists in balancing the power whenever possible by ensuring that both/all participants have access to the same information, have fairly equal "air time", by assisting in clear and respectful communication and ensuring that the focus is on positive goals and mutual interests.

- ✓ **Safety issues**

If there is a history of physical, emotional, or sexual abuse in the relationship(s), only a **highly experienced-trained mediator** should be considered for assessing the appropriateness/feasibility of mediation. An altered form of mediation, often referred to as **shuttle mediation** or **shuttle diplomacy**, whereby the participants are not brought together, could be used. No one's personal safety is dependent upon the outcome of the agreement.

- ✓ **Mediation vs. therapy**

It is best that two different people do counseling and mediation. In mediation the resolution of specific issues, rather than therapeutic intervention, is being sought.

Stage 1. Introductions (Joint re-orientation and contracting)

The Purpose is to set the stage for exploring the issues.

This step requires a basic understanding of the mediation process as well as the ability to cover the necessary information. Setting the stage is also instrumental in reducing participants' anxiety, through the creation of a safe environment, wherein they can begin to feel comfortable enough to discuss matters openly.

The Process

1. Set a comfortable tone for the session
2. Remind the parties about the purpose of the meeting
3. Describe your role as mediator(s)
4. Explain the rules
5. Establish guidelines

Some possible guidelines:

- a). **Listen While the Other is Speaking.**
- b). **Confidentiality Discussion.**
- c). **Speak directly to us.**
- d). **Use Respectful Language**
and any other guidelines if needed.

6. Formulate a Contract
7. Alert the participants to: a) separate meetings; b) additional meetings

Working with resistance

Affirming

Stage 2. Issue identification (Story – telling)

The purpose is to:

- get the parties talking and involved
- give the mediators a basic understanding of the conflict
- let the parties hear each other's story as it is told to a third party
- begin to identify the issues
- give the mediators some idea of what to expect

The process

Opening statements.

1. Identify what you want to hear
2. Decide who will speak first.
3. Hear the story from Party A.
4. Restate the first story
5. Repeat Steps 3 and 4 with Party B.
6. Ask questions.

Note Taking

Goal Summary

- Framing the issues, which are neutral. Stating common ground
- Making a general statement summarizing what the participants may expect to accomplish in mediation.

Stage 2

Skills and techniques

Listen with empathy. **Keep** the stories brief and focused. It is important to involve both parties as soon as possible. If one party talks too long, the other party will begin to think the mediator is taking sides.

Restate the party's opening statement / story in your own words. Restate during the story when appropriate, e.g., if the person is having difficulty recounting the story.

Use a **minimal amount of questioning**. Save requests for information until both persons have finished "story-telling".

Summarize the issues identified by the parties after the opening stories or statements.

Deal with interruptions. Be firm about stopping interruptions.

Deal with any Barbed Comments or Loaded Statements

- Address them immediately.
- Modify the comments with neutral restating or by reframing.
- Encourage the parties to speak about the incidents or issue in a way that will be respectful of the other people involved in the mediation.

Stage 3: Uncovering underlying interests

The purpose is to:

- continue to have the parties hear about the conflict from the other's point of view
- develop mutual understanding and empathy
- get the parties to identify and talk about the issues that concern them the most
- explore the parties' interests, needs, wants, fears, and concerns
- have each party realize that it is possible to resolve the conflict

The process

Priorize and explore issues in terms of importance /

“Accessibility”

- **Choose an issue.** Explore the related facts and feelings to enhance mutual understanding. The mediator asks the participants if they heard **any new information** during the story telling.
- **Explore underlying interests.**
- **Break issues down into workable segments,** deal with each segment in turn.

Facilitating the process: maintaining the momentum

- *Prioritizing issues in terms of importance*
- *Periodic summation of the issues presented to maintain a focus, and a positive goal-oriented environment.*
- *Patience and pacing are important.*
- *Using future focused questions to initiate change. More discussions should be oriented towards “solution talk” versus “problem talk”*
- *Asking questions out of curiosity versus making statements.*
- *Asking for specifics*
- *Watching for a shift in communication (attitude) between the participants, acknowledging and reinforcing it.*
- *Developing a more constructive form of communication for the future.*

Stage 3

Skills and Techniques

Active listening:

- ***Follow the parties.***
- ***Identify the issues.***
- ***Focus on the feelings, validate the feelings.***
- ***Highlight the nuggets (apologies, common ground).***

Paraphrasing is essential throughout this stage.

Open-ended questions are used to explore feelings and interests related to each issue.

Reframing is used to assist in surfacing the interests, and in identifying common ground. However, it is important to note that reframing prematurely can incur an angry response.

Reframing will be effective only if the person is in a steady state, whereby s/he can stop and reflect upon what is being said. It is important not to rob people of their emotions. Listening comes first.

Be aware that reframing can be seen as an agreement. Ensure you reframe the interest, not the position.

Silence. Don't be afraid of it.

Encouragement

Establishing a commitment to the mediation process. Ask questions about the consequences of not resolving the conflict.

Summarizing progress, areas of common concern and points of agreement.

Suggesting private meetings.

Stage 4: Closure. Discussion of process

The purpose is to:

- Assist in the generation of the best solution / resolution of each issue.
- Summarize the progress made and highlight areas of new understanding and negotiate closure of the session
- Write out a detailed agreement when applicable.
- Thank the participants for their hard work and congratulate them on their willingness to meet.

The process

The mediator summarizes areas of new understanding and helps the parties to bring closure to the session. The mediator's "job" during this phase, is to firmly place ownership of the decision making process, including its outcome, with the participants.

- **Encourage the development of possible solutions**
- **Assist in the selection of the best solution**
- **Summarize areas of new understanding in general**
- **Summarize areas of specific agreement and understanding**
- **Negotiate closure of the session**

This happens in a number of ways:

- **Checking Summary and Conclusion (Always)**
- **Conclude the Session with No Written Agreement (Sometimes)**
- **Conclude with the Writing of the Agreement Specifics (Sometimes)**

Stage 4

Skills

Summarizing

Summarizing is used in the macro sense of naming overall progress as well as in the micro sense of naming specific agreements or directions that have been established.

Questioning

Both open and close-ended questions are important in this stage.

Reframing

By virtue of how a reframe is presented, the participant has the option of clarifying its meaning, if the reframe did not accurately reflect what they intended to say. This significantly reduces the possibility that the mediator will provoke a participant, by making them feel unheard.

Brainstorming

To generate multiple options for resolving the conflict, particularly when the parties are arguing about a specific solution or fixed demand, brainstorming is beneficial. It is a good way to break out the patterns of positive thinking. When using brainstorming, remind the participants that all ideas are acceptable.

Constructive termination

SAMPLE AGREEMENT

This agreement is between

Ken Miller

and

Carolyn Brown

They agree as follows:

1. Ken has apologised to Carolyn for the embarrassment she experienced last Friday at work.
2. Ken agrees to speak directly to Carolyn the next time there are difficulties with the production of the newsletter. Ken will do this within 24 hours of any problem.
3. Carolyn agrees to post a schedule for production of the newsletter at least 3 weeks prior to the printing deadline.
4. Both agree to meet at 9:00 am on the 2nd and 4th Monday of every month to review newsletter content and design.
5. Carolyn and Ken also agree to be open to hearing each other's ideas and to share their perspective skills, talents and creativity in the production of the newsletter.
6. The parties also agree that if they have problems with this agreement, they will contact Mediation Services, A Community Resource for Conflict Resolution (924-3410).

Dated this 14th day of September, 1995, in Winnipeg, Manitoba.

Signatures of the parties:

Witnesses:

Appendix D
The Trainee's Package in Ukrainian

**КАНАДСЬКО-УКРАЇНСЬКИЙ ПРОЕКТ
“РЕФОРМУВАННЯ СОЦІАЛЬНОЇ СЛУЖБИ”**

Фінансується Канадською Агенцією Міжнародного Розвитку

Назва курсу: “Розв’язання конфліктів і посередництво. Вступ”

Викладачі: Ніна Гайдук, Андрій Журавський

Опис курсу:

Курс ознайомить слухачів з концепцією розв’язання конфліктів та процесом посередництва – універсальним способом знаходження виходу з конфліктних ситуацій.

Курс призначений для працівників закладів соціальної служби, органів державної адміністрації, а також широкого кола представників урядових і неурядових організацій.

Цілі курсу:

- Формування розуміння конфлікту, особливостей динаміки процесу посередництва та його складових, ролі посередника, застосування посередництва в контексті родини зокрема;
- Визначення можливостей застосування посередництва в різноманітних сферах діяльності.

Програма навчального курсу

День 1. Четвер

Розуміння конфлікту. Посередництво – модель конструктивного спілкування і розв'язання конфліктів з позиції непротистояння

10:00 – 11:00

- Представлення курсу
- Організаційні питання

11:00 – 11:30

- Конфлікт і його роль у житті. Дискусія
- Цикл розгортання конфлікту. Переривання циклу

11:30 – 11:45

Перерва

11:45 – 13:30

- Спілкування і конфлікт
- Форми подолання суперечностей
- Визначення посередництва
- Визначення гніву. Цикл наростання гніву. Позитивна реакція на гнів

13:30 – 14:00

Обідня перерва

14:00 – 15:30

- Уміння та навички ефективного спілкування. Виконання вправ
- Модель посередництва
- Допосередництво

15:30 – 15:45

Перерва

15:45 – 17:00

- Форум посередництва
- Стадія 1. Вступ
- Рольова гра

День 2. П'ятниця

Використання моделі посередництва на практиці

9:00 – 10:00

- Повторення
- Стадія 2. Визначення категорій питань. Навички та вміння

10:00 – 10:15

Перерва

10:15 – 11:30

- Рольова гра. Обговорення

11:30 – 12:30

- Стадія 3. Виявлення внутрішніх інтересів. Навички та вміння

12:30 – 13:00

Обідня перерва

13:00 – 14:15

- Рольова гра. Обговорення

14:15 – 14:30

Перерва

14:30 – 16:00

- Стадія 4. Закриття
Допомога у визначенні оптимального варіанту вирішення питань кожної категорії
Прийняття угоди (усної чи у письмовій формі). Навички та вміння.
Конструктивне завершення процесу
- Рольова гра. Обговорення

День 3. Субота

Застосування посередництва

9:00 – 10:00

- **Модель посередництва. Повторення**

10:00 – 11:45

- **Застосування посередництва в контексті родини**

11:15 – 11:30

Перерва

11:30 – 12:10

- **Наснаження та визначення у посередництві. Обговорення**
- **Можливості застосування посередництва в різних сферах діяльності.**
Дискусія

12:10 – 13:30

- **Обговорення в малих групах щодо можливостей застосування посередництва в українському контексті**
- **Загальна дискусія**
- **Висновки**

Модель посередництва

I. Допосередництво

II. Посередницький Форум

Перша стадія: Представлення (Спільна переорієнтація і домовленість).

Друга стадія: Визначення категорій питань

Третя стадія: Висвітлення прихованих інтересів.

Четверта стадія: Закінчення. Обговорення процесу.

Допосередництво (Оцінювання та підготовка)

- Процес тестування: залучення передбачуваних учасників або оцінювання ситуації:

Як тільки виникає необхідність у посередництві, посередник розпочинає виконувати завдання щодо залучення учасників і оцінювання ситуації. Ці завдання, які часто визначаються як "процес тестування", включають наступні компоненти:

Залучення

Запит може прийти з будь-якого джерела (від самих учасників, від адвоката, суду, іншого агентства, шкільного персоналу тощо). Залучення учасників шляхом інформування їх у чіткий, непогрозуючий, зрозумілий спосіб про те, хто вони є, що таке посередництво, є основною частиною початкової стадії.

Орієнтування

Посередник повинен вирішити, яким чином краще зорієнтувати (навчити) учасників, тобто вжити групову орієнтацію чи індивідуальну роботу.

Реагування

Майже завжди на початковій стадії процесу посередництва учасники будуть виявляти хвилювання. У цей час (а часто і на інших стадіях процесу посередництва) може чинитися опір. Опір часто є ознакою браку інформації і тому - страху. Учасник потребуватиме інформації і буде найкраще реагувати, коли вона(він) відчує, що її(його) почули і зрозуміли і коли отримає виражені, нейтральні відповіді на запитання і твердження. Важливо не думати, що опір є реакцією на нездатність проведення процесу посередництва.

Мотивація

Потенційні позитивні моменти мотивації збільшуються, якщо учасники приєднуються до цього процесу завдяки поінформованому рішення на протипагу реакції на зовнішній тиск, наприклад, за рішенням суду. На цій стадії посередник може найкраще мотивувати учасників, надаючи їм чітку, зрозумілу інформацію, заспокоюючи їх страх шляхом підтримки і розуміння у відповідях на запитання і наголосу на сильних, позитивних якостях учасників.

Збір інформації

Посередник збирає інформацію, беручи до уваги особисту мотивацію учасників шляхом оцінювання їхніх реакцій. Ця інформація допомагає визначити життєздатність, придатність посередництва у даній ситуації, що є важливим завданням посередництва. Необхідно залучити різноманітні питання.

Демографічні питання, тобто питання стосовно збору основної інформації, визначаються типом посередництва, яке вимагається, наприклад, проміжок часу, впродовж якого люди працювали разом (диспут стосовно роботи); вік дітей (питання захисту дітей). Тип посередництва так само визначить конкретні інформаційні питання. Проте, існують певні константи, певна інформація, яка потрібна у майже всіх ситуаціях, щоб допомогти визначити готовність і придатність посередництва як процесу для вирішення суперечки. Можна таким чином скласти список питань.

Критерії для оцінювання готовності учасників і придатності посередництва

Нижче подаємо основні визначні фактори для більшості ситуацій:

Часові фактори

Кількість часу, необхідного для того, аби завершити посередництво, буде коливатися. Доречним є те, що всі учасники посередництва бажають вкластися у відведений час і що незапланований тиск, нереальні сподівання не мають місця у цьому процесі.

Добровільність

Дуже важливо, щоб обидва (всі) учасники добровільно, свідомо залучилися до процесу посередництва. У випадках посередництва, замовленого судом, важко визначити добровільність участі через те, що люди можуть залучитися, думаючи, що вони повинні це робити. Але, навіть у таких випадках, люди можуть бути поінформованими щодо самого процесу, і їм можуть запропонувати спробувати взяти участь у посередництві. "Примусове посередництво" – це неправильне словосполучення через те, що нікого не можна примусити брати участь у переговорах.

Нейтралітет посередника

Посередник не може особисто залучитися до ситуації, так само, як він (вона) не можуть впливати на результати угоди. Посередник завжди повинен перевіряти все, що він (вона) мають роботи і аналізувати протягом процесу, наприклад, чи він(вона) стимулюють питання щодо персональної потреби учасників прийти до конкретної згоди. Посередник не повинен намагатися контролювати процес таким чином, щоб отримати запланований ним результат. Посередництво – це угода між учасниками. Вони повинні жити з нею, а не посередник. Посередник повинен також бути переконаним, що він(вона) не примушують учасників досягти згоди – будь-якої згоди – просто, щоб її досягти. Учасники можуть бути не готові досягти "повної згоди", тоді, коли вони залучені до процесу посередництва. Але цей процес може так само добре вплинути на них, вони можуть частково прийти до згоди, навчитись деяких корисних навичок спілкування, просто усвідомити, що вони можуть позитивно ставитися до іншої особи. Посередник може добре порадити і таким учасникам..

Підтримування стосунків

Потреба підтримувати чи покращувати якість існуючих стосунків є важливим фактором для всіх учасників. Вони не обов'язково люблять або потребують любити один одного. Вони усвідомлюють, що вони повинні продовжувати функціонувати як співпрацівники, батьки-партнери, партнери по бізнесу, співмешканці і мають усвідомити, що вони можуть завдати собі шкоди, якщо стосунки погіршаться.

Дослідження вибору

Учасники часто більш умотивовані працювати за допомогою посередництва, якщо вони вже розглянули інші варіанти, такі як руйнування сім'ї у залежності від того, з ким залишається дитина, втручання поліції у проблематичні стосунки з сусідами, юридичне рішення питань з розлучення, апеляційні ради або розгляд скарг на робочих місцях. Часто залучення всіх згаданих вище заходів є небажане через те, що більшість проблем мають інтерперсональний характер, і фінансові витрати посередництва часто нижчі, менш ризиковані і забирають менше часу. Інші варіанти розв'язання конфлікту або суперечки також були розглянуті або досліджені і не були визначені придатними для посередницької діяльності.

Бажання розглянути категорії питань

Часом роль посередника включає "переконування" осіб зустрітися. Люди часто уникають прямої конфронтації, стверджуючи, що "це не зміниться на краще, як там не було". Посередник допомагає подолати ці проблеми. Однак, учасники, безперечно, повинні вказати, що вони не бажають продовжувати уникати суперечливих питань і що вони мають надію, що проблему можна вирішити, або що її стрес зменшиться і що, завдяки їхній участі у посередництві, складуться між ними кращі відносини. Посередник так само має вказувати на те, що продовження перебування у конфліктних відносинах не є більш бажане або прийнятне.

Рівновага сили

У конфліктних ситуаціях, питання сили часто розуміються неправильно і можуть бути використані помилково. Повністю оцінити динаміку сили перед зустріччю з учасниками звичайно неможливо, однак, певні оцінювальні питання на початковому рівні необхідно визначити: напр. чи був присутній елемент образи чи кривди у відносинах. На початковій стадії посередник повинен вважати на порушення рівноваги сили, на те, що може статися, якщо учасники не зможуть взаємодіяти без того, щоб один не залякував іншого. У ситуаціях, де погрози, домінування або емоційна і (чи) фізична образа є очевидними, ніколи неможливо досягти справедливої згоди. Посередник може запропонувати окремі зустрічі з метою контролю порушення рівноваги або може відсилати клієнтів до консультанта, адвоката чи арбітра. Якщо процес тестування не виявив елементу кривди, посередництво може продовжуватись. Однак, посередник повинен мати на увазі ці негативні моменти протягом всього процесу. Посередник допомагає збалансувати сили, коли це тільки можливо, запевнюючи, що обидва (або всі) учасники мають доступ до тієї самої інформації, мають приблизно однаковий "ефірний час", допомагає організувати чітке і вагомe спілкування і запевнює, що акцент ставиться на позитивній меті і взаємних інтересах. Моделі спілкування, в яких виявилась неможливість розв'язати конфлікти, часто виходять на поверхню під час посередництва. Посередник допомагає змінити моделі спілкування протягом процесу посередництва, який, у свою чергу, може збалансувати здатність висловлювати рівні почуття, виражати думки, слухати інших і робити так, щоб його почули.

Питання безпеки

Якщо існує картина фізичної, емоційної чи сексуальної кривди у відносинах, тоді запрошується дуже високо кваліфікований, з великим досвідом посередник для оцінювання придатності або здійсненності посередництва. Рівновага сили, безперечно, знаходиться у небезпеці у відносинах, базованих на скривдженні, і потенціал для тривалого залякування і несправедливої згоди є

дуже високий. Також це відбувається, у випадках, коли кривда мала місце, але більше не продовжується, коли учасники не контактують і почати їм спілкуватися дуже важко, коли мали місце інші форми професійного втручання (наприклад, консультування щодо опанування гніву, психотерапія скривдженої жертви). Тут можна застосувати змінену форму посередництва, яке часто називають човниковим посередництвом або човниковою дипломатією, за допомогою яких учасники можуть не зустрічатися разом.

Нічия безпека не залежить від результату згоди.

Посередництво на протигагу психотерапії

Методи консультування і посередництва часто збігаються. Однак, мета кожної з цих видів діяльності різна. Посередник повинен пам'ятати, що посередництво – це процес прийняття рішення. Цей процес можна використовувати як доповнення до консультування, для того, щоб розглядати специфічні практичні питання. І навпаки, ті, хто перебувають у процесі посередництва, можуть мати користь від консультування. Найкращим варіантом все-таки є той, коли двоє різних людей проводять консультування і посередництво. У посередництві шукають вирішення особливих питань, а не психотерапевтичного втручання.

Оцінювання чи “тестування” не закінчується на початковій стадії. Насправді воно продовжується протягом процесу посередництва. Будь-які фактори можуть з'явитися після першого контакту, у середині посередництва, що зможуть примусити закінчити або відрегулювати процес.

Орієнтація на процес посередництва (група чи індивід)

У цьому контексті слово “орієнтація” має ширше значення, ніж тільки введення у процес посередництва. Її функція – не тільки інформувати у вузькому значенні, але і вміти виконувати виховну функцію у ширшому значенні. Ефективна орієнтація дасть учаснику чітке розуміння посередництва як процесу, його об'єму і обмежень, ролі посередника і принципів, що будуть керувати процесом. Таким чином, учасники підійдуть до процесу посередництва з почуттям обізнаності, що служить для підвищення почуття контролю і наснаження у процесі. Вони також здатні оцінити придатність посередництва у їхній ситуації, і (або) їх власну мотивацію для участі в ньому.

Орієнтація повинна мати справу з питаннями, які звичайно асоціюються з конкретною групою учасників взагалі, а не конкретно з певним учасником. Це дає можливість учаснику перевірити і розглянути проблеми більш об'єктивно і незалежно, бути вільним від захисту і прихильності, які автоматично почнуть спрацьовувати, якщо проблеми обговорювались би у контексті особистої ситуації індивіда. Це також має ефект узаконення і нормалізації досвіду індивіда і реакції на нього.

Орієнтація надає учасникам можливість переоцінити їхню позицію і точки зору у менш загрозливому контексті, коли менш вірогідно, що вони будуть притримуватися своїх позицій через принципи або страх втратити своє обличчя.

Можна ще більше скористатися з процесу орієнтації, якщо вона проводитиметься у груповому оточенні при залученні інших осіб з такими ж самими проблемами (але без іншого учасника конфлікту). Групова динаміка може потенційно вплинути на пом'якшення позиції, тому що можна побачити проблеми, які існують у інших людей.

Посередницький Форум

Чотири стадії Посередницького Форуму

Перша стадія: Представлення (спільна переорієнтація і домовленість)

Мета:

- Закласти підвалини для дослідження категорій питань

Як тільки учасники зорієнтовані на процес посередництва і було визначено, що спільні зустрічі необхідні, посередник починає готуватися до організації процесу.

Фактично, це виглядає як спільна переорієнтація, тому що деякі матеріали були розглянуті на попередніх стадіях. Однак, важливим є те, що посередник розглядає кожну проблему разом з усіма присутніми на процесі посередництва учасниками для того, щоб посприяти організації процесу на подальших стадіях. Цей крок вимагає загального розуміння процесу посередництва, в також здатності швидко і спокійно зрозуміти необхідну інформацію. Процес початкової організації включає представлення всіх партнерів, пояснення процедури, включаючи роль посередника, визначення напрямків, створення безпечного оточення, моделювання поведінки і отримання згоди від кожного партнера щодо подальшої участі.

Початкова організація також допомагає зменшити хвилювання учасників за допомогою створення безпечного оточення, в якому вони відчувають себе достатньо спокійно, щоб відкрито обговорювати проблеми. Важливо, щоб учасники розуміли роль посередника як третього нейтрального партнера, який буде керувати процесом і спонукатиме взаємний і ввічливий діалог, знеохочуючи будь-яке руйнівне нешанобливе спілкування. На початковій стадії посередник бере на себе відповідальність за демонстрацію навичок, які необхідні для створення взаємного, шанобливого, відкритого і позитивного (конструктивного) спілкування. У такий спосіб роль посередника є також роллю вихователя і "моделлю ролі".

Через те, що процес початкової організації включає пояснення відповідальності учасників і їх згоди працювати разом у процесі посередництва, відповідальність покладається на них на самому початку процесу.

Покладаючи відповідальність на учасників і отримуючи їхню згоду щодо участі у процесі посередництва, учасники починають володіти процесом і згодою, яку вони в результаті досягнуть.

Процес

Представлення до посередницьких зустрічей часто мають наступні компоненти:

1. Створіть відповідний (спокійний) тон зустрічі.
 - Тепло привітайте людей. Переконайтеся, що ви знаєте імена одне одного.
 - Подякуйте їм, що вони висловили бажання спробувати взяти участь у посередництві. Для них це новий досвід.

- Допоможіть їм почувати себе зручно. Нормалізуйте почуття дискомфорту і стресу.
- Починайте створювати позитивний світогляд.

2. Нагадайте учасникам про мету зустрічі.

- Ви можете сказати: "Ми сьогодні тут зібрались, щоб обговорити випадок, який стався 21 листопада".
- Поставте скромну, але позитивну мету зустрічі: "Я сподіваюсь, ми зможемо краще зрозуміти випадок, дослідити деякі рішення і прийти до деякої згоди".

3. Охарактеризуйте свою роль посередника:

- Допомогати учасникам краще розуміти перспективи і проблеми одне одного.
- Підсумовувати і ставити питання для роз'яснення.
- Запевнити їх, що ви не будете судити, хто правий, а хто неправий, або приймати рішення замість них.
- Допомогати їм приймати свої власні рішення.

4. Поясніть правила

- Запевніть їх, що кожна особа буде мати шанс описати ситуацію або проблему з її(його) точки зору.
- Поясніть, що прийняття рішень чи згоди приходить після періоду обговорення питань, визначених учасниками.

5. Визначіть основні правила

- Будьте обережні при визначенні правил. Правила потрібні, щоб полегшити відкрите обговорення конфлікту і щоб сприяти безпечному, шанобливому процесу. Представте їх так, щоб виявити повагу до учасників.
- Правила також допомагають встановити початкову довіру і контакт між учасниками і посередниками і представити згоду, яка скерує напрямок подальшого процесу.

Визначення правил у процесі – важливий крок у початковій стадії процесу і частина формування домовленості. Він послуговує для забезпечення учасників кращим розумінням, провіщенням і керуванням процесом. Чітке визначення правил допомагає накреслити роль посередника як керівника процесу і як такого, який зробить посередництво безпечним для учасників. Після перерахування правил і пояснення їхньої важливості посередник просить дозволу учасників застосувати їх, коли це буде необхідним.

Деякі можливі правила

а) Слухай, коли інший говорить

Це правило застосовується у більшості початкових стадій.

Наприклад: Ми з'ясували, що посередництво найкраще спрацьовує, коли ми погоджуємося, що тільки одна особа буде говорити, а всі інші слухають. Кожен з вас отримає можливість говорити.

б) Обговорення конфіденційності

Перевірте з учасниками.

Наприклад, “Чи є хтось, кому Вам потрібно доповідати про Ваші справи? Як би Ви хотіли трактувати конфіденційність? Ми записуємо все, щоб дотримуватися цього правила. Ви так само можете записувати, якщо це допоможе Вам. Усі нотатки будуть знищені після того, як посередництво закінчиться.”

в) Звертайтеся безпосередньо до нас.

Це дуже важливо, коли очікуються дуже сильні почуття чи мовна експресія.

Наприклад: “На початку зустрічі ми просимо Вас звертатися безпосередньо до нас. Коли процес піде далі, ми будемо спонукати Вас звертатися один до одного.”

Вживайте шанобливу мову і інші заходи, якщо потрібно

Необхідно також на початку зустрічі підняти питання паління. Вислухайте інші пропозиції учасників щодо додаткових правил, які можуть бути важливими для них. Якщо необхідно, додаткові обґрунтовані правила можна застосувати улюбий час протягом процесу.

6. Сформулюйте домовленість

Частиною початкової стадії є те, що посередник оцінює готовність осіб просуватися далі, збирає інформацію щодо згоди брати участь у процесі, формулюючи неофіційну і офіційну домовленість з учасниками. Деякі посередники пропонують учаснику підписати офіційний контракт. Неофіційний контракт може бути складений за моральною готовністю співпрацювати. Дуже допомагає, коли пропонують учасникам висловити моральну готовність брати участь у процесі посередництва.

Наприклад: “Чи Ви погоджуєтесь взяти участь у процесі? Чи є будь-які питання? Чи Ви готові почати?”

7. Підготуйте учасників до наступних можливих видів діяльності:

а) Окремі зустрічі

Деколи особисті або окремі зустрічі можуть допомогти процесу. Особисті зустрічі можуть відбуватися між індивідуальними учасниками і посередником або двома посередниками, коли вони хочуть проконсультуватися один з одним стосовно проблеми, що виникла під час зустрічі. Дуже рідко учасники можуть хотіти зустрітися без посередника. У таких ситуаціях потрібно бути дуже обережним.

б) Додаткові зустрічі

Якщо всі питання не можна розглянути за одну зустріч, тоді призначають другу зустріч. У посередництві з проблем сім'ї, складних суперечках, коли є багато учасників або навпаки, додаткові зустрічі є типовим явищем. Якщо учасники усвідомлять завчасно, що є така можливість, це зможе зменшити стрес і страх поразки, який асоціюється з проблемою, що вони повинні прийти до рішення за одну зустріч. Можливість додаткових зустрічей дає також час “обдумати” всі можливі варіанти рішень, а також отримати інформацію, якої не було під час першої зустрічі.

Деякі коментарі

Як працювати з опором

Людські істоти трактують зміни, як щось негативне, і за своєю природою вони чинять опір зміні. Роль посередника полягає в тому, що він повинен допомагати визначити опір і зменшити його. Посередник визначає чи учасники відчують страх, невизнаність, безсилля, чи опір використовується ними як засіб маніпуляції. Посередник може працювати з учасниками, наголошуючи їхні специфічні проблеми. Наприклад, посередник може сказати: “Одним з позитивних аспектів посередництва є те, що вам дається час і можливість обговорити, що буде найкраще працювати на вас. Посередництво – це процес, призначений знайти такі рішення, за допомогою яких усі виграють”.

Схвалення

Учасники дуже рідко звертаються до посередництва на початкових стадіях конфлікту. Вони вдаються до посередництва, коли вони відчують поразку, а деколи і безнадійність щодо їхніх можливостей розв’язати проблему. Посередник працює, щоб протидіяти цим почуттям шляхом нормалізації конфлікту і ствердженням сили і можливостей учасників. Посередник нормалізує ситуацію, в якій вони знаходяться, шляхом окреслення конфлікту і потреби переговорів і рішення, як елементарної складової повсякденного життя. І це призводить до зменшення почуття учасників, що “тільки вони не можуть розв’язати конфлікти”. Позитивні твердження є корисними у наснаженні учасників і пробудженні надії.

Вправа. Опишіть стадію представлення

Опишіть представлення до наступного сценарію конфлікту, таке, яке відповідає Вашому особистому стилю і дозволяє Вам почувати себе зручно і спокійно.

Микола і Оксана – співпрацівники у невеликому закладі, який видає друком щомісячний інформаційний бюлетень. Оксана координує роботу з публікації бюлетеня і відповідає за його зміст. Микола є відповідальним за проектування і друк. Атмосфера в офісі є децю напруженою. Минулої п’ятниці між Миколою і Оксаною відбулась суперечка в приміщенні офісу. Все почалося, коли Оксана увійшла до кімнати і почула, як Микола розповідає іншим працівникам про проблеми, що він має з Оксаною, а саме з тим, як вона координує роботу з публікації бюлетеня. Під час суперечки він звинуватив її у некомпетентності.

Переконайтеся, що ви включили:

- представлення посередника і учасників
- причину зустрічі
- опис ролі посередника
- запевнення у конфіденційності
- огляд процесу посередництва
- основні правила
- запит на згоду учасників продовжувати процес посередництва

Друга стадія. Визначення категорій питань (Розповідь про ситуацію окремо кожною стороною)

Мета:

- спонукати учасників говорити і залучатися до процесу
- дати посереднику загальне розуміння суті конфлікту
- дозволити учасникам почути історію одне одного так, як вона розповідається третьому учаснику
- почати визначати категорії питань
- дати посереднику розуміння того, що можна очікувати

Визначення категорій питань є невід'ємною частиною процесу посередництва, який, у свою чергу, має чітку структуру. Важливо, аби посередник керував цим процесом добре, демонструючи свою можливість створювати, фактично, безпечне середовище, що і є його завданням, а також виявляти здатність чути і розуміти турботи учасників. Як раз на цій ділянці процесу учасники починають більше спілкуватися один з одним; як раз тут основні проблеми будуть виголошені. Довіра до процесу підвищується завдяки умілому керівництву.

Процес

Два головних компоненти цієї стадії процесу - це Відкриваючі Твердження (розповіді історій) і Цільовий Підсумок. Уміння записувати також дуже важливе.

Відкриваючі Твердження

Під час їх проголошення посередник повинен:

- надати достатньо часу кожному учаснику, щоб його не переривали, щоб він міг висловити свою точку зору
- забезпечити папером і попросити слухача робити записи
- попросити учасників слухати одне одного уважно
- підкреслити, що шире вислуховування інших учасників не вимагає згоди
- Записувати, що учасники говорять для того, аби зібрати необхідну інформацію і мати зворотній зв'язок під час формулювання "Цільового Підсумку".

1. Визначіть, що ви хочете почути

Якщо це конфлікт одного випадку, то параметри очевидні. Якщо цей конфлікт має довгу історію, почніть питати учасників про найпізніший інцидент або найважливішу подію.

2. Вирішіть, хто буде говорити першим

Це можна зробити двома шляхами. В основному, посередник просить одного з учасників говорити першим. Деякими причинами для вибору особи, яка буде говорити першою, будуть риси характеру, такі як сором'язливість, чи порушення рівноваги сили. Порушення рівноваги сили може бути результатом різниці у статі, віці, расі, положенні, кваліфікації тощо. Якщо ви відчули порушення рівноваги сили, запросіть людину з меншим

силовим потенціалом говорити першою. Якщо вибір не є обов'язковим, ви можете запитати учасників про те, хто почне говорити першим.

3. Вислухайте історію учасника А

Учасника А заохочують пояснити ситуацію з його точки зору такими питаннями:

- а) наприклад: "Розкажіть, що сталося?" (спрямоване на факти)
- б) наприклад: "Які Ваші почуття про це?" (спрямоване на почуття)

4. Перекажіть першу історію

Посередник коротко переказує основні факти і почуття першої історії. Це має бути дуже стислим.

5. Повторіть кроки 3 і 4 з учасником Б

Переконайтеся, що учасник Б має приблизно стільки ж часу, що і учасник А.

6. Поставте запитання

Якщо це доречно (залежно від ступеня напруження між учасниками), ви можете запитати учасників, чи у них є будь-які питання про те, що було сказано до цього часу або чи є щось, що треба в'яснити. Перед тим, як посередник підходить до підсумовування проблем, обидва запрошуються поставити запитання відкрито один до одного.

Записування (конспектування)

Записування значною мірою є справою індивідуального підходу. Однак посереднику слід мати можливість записувати твердження учасників, щоб змогти проаналізувати їхні позиції щодо таких елементів, як побоювання, припущення, надії, сподівання і зацікавлення, а також визначити зміст категорій питань, тобто, чи проблеми значні, емоційні або процедурного характеру. Другою функцією записування є можливість для посередника переказати учасникам їхні твердження, визнаючи і стверджуючи їхні законні права. Тут необхідний систематичний метод записування інформації. Наприклад, у роботі з учасниками сторінка, розділена на дві половини вниз по центру, що дозволяє записати слова обидвох учасників. Кожне твердження потім можна перевірити за змістом, маркуючи його значення скороченнями типу С (страх), П (припущення) тощо.

Цільовий Підсумок

На початку посередник представляє детальний зворотній вигляд того, що кожна особа сказала у своїй початковій інформації. Це – важливий крок у процесі об'єднання з учасниками.

Кінцевий підсумок також виконує таку функцію: спонукати кожного учасника почути іншу особу через голос третьої нейтральної особи. Це – можливість для посередника переглянути справи у менш шкідливий і більш цілеспрямований спосіб. Це делікатна справа. Важливо під час перефразування категорій питань не змінити зміст твердження учасників через те, що це може викликати відчуття, що ви не почули їх.

Остання функція кінцевої мети – це створення програми дій. Протягом процесу посередництва можна додавати більше положень, однак, основна програма дій звичайно складається на цьому етапі.

7. Підсумуйте категорії питань

Підсумуйте категорії питань, визначені учасниками, з якими треба буде мати справу упродовж процесу посередництва. Окресліть категорії питань, що є нейтральними і придатними для обох учасників. Знайдіть спільну основу. Підкресліть також спільні проблеми. Вживайте нейтральну мову для формулювання списку категорій питань. Узагальнюйте, розглядайте загальну картину, а не деталі. Перевірте разом з учасниками список, щоб переконатися, що він відбиває їхні найбільш важливі проблеми.

Зробіть загальний звіт, який підсумовує те, чого учасники можуть очікувати для завершення посередництва.

Наприклад: “Ви двоє визначили, що ви не хочете продовжувати далі ваші стосунки у такій спосіб. Вирішення проблем, які ви визначили через посередництво, допоможе зменшити стрес у ваших стосунках. Ви сьогодні добре разом попрацювали у визначенні ваших проблем. Зараз ми подивимось на те, що ми можемо зробити для вирішення цих проблем.”

Навички

Співпереживайте слухаючи. Слідкуйте за тим, що розповіді є стислими і цілеспрямованими. Важливо залучити обох учасників як можна швидше. Якщо один учасник говорить занадто довго, другий почне думати, що посередник підтримує першого.

Перефразуйте початкову інформацію чи історію учасника своїми словами. Перефразуйте під час історії, якщо це доречно, наприклад, якщо особа має труднощі з викладом історії.

Тут як можна менше задавайте питання.

Залиште питання для отримання інформації, поки обидва учасники не закінчать “розповідь історій”. Звичайно, друга особа відповідає на питання, які ви б хотіли задати першій особі. Якщо питання залишаються без відповіді і ви все ще потребуєте інформації, задайте їх після того, як ви перефразували історії обох учасників. Наприклад, Ви можете сказати: “Я не розумію ролі пані Мигель в цьому. Могли би Ви розповісти про неї?”

Підсумуйте категорії питань, визначені учасниками, після їх розповідей.

Боріться з перериванням

Наполягайте на припиненні переривань. Якщо учасник відчуває, що він (вона) повинні відповісти на зауваження іншої особи, запропонуйте папір і ручку для записування і нагадайте, що скоро буде можливість для відповіді.

Боріться із засміченими коментарями чи ускладненими твердженнями

- Негайно вкажіть на них
- Скажіть особі, яка націлена на коментарі: “Я знаю, що Ви маєте відмінну точку зору, і я хочу її так само вислухати через декілька хвилин”.

- Переробіть коментарі шляхом нейтрального перефразування чи переосмислення. Наприклад, якщо хтось говорить: "І вона вигукнула брехню про моїх дітей, роблячи з себе дурепу.", ви можете перефразувати коментар, говорячи: "Ви розстроєні тому, що вона говорила речі, які, як Ви думаєте, не відповідають істині".
- Посприяйте учасникам говорити про інциденти або проблему таким чином, щоб не ображати інших людей, залучених до посередництва.

Третя стадія: Виявлення прихованих інтересів

Мета:

- продовжувати сприяти учасникам у тому, аби вони почули про конфлікт з позиції іншої людини
- розвинути взаємне розуміння і співчуття
- сприяти учасникам у визначенні і розповіді про проблеми, які найбільше їх хвилюють
- аналізувати інтереси, потреби, бажання, побоювання і турботи учасників
- нехай кожен учасник усвідомить, що розв'язати конфлікт можливо

Учасники у більшості випадків залучаються до посередництва зі сталими і більш чи менш суворими переконаннями.

Ці позиції віддзеркалюють індивідуальне сприймання учасником проблеми і те, що представляло би "хороше" рішення. Маючи хороші наміри, ці позиції відтворюють потреби певного індивіда і менше чи більше ігнорують або неправильно трактують потреби іншого учасника.

Позиції, на додаток до того, що вони є результатом однобічного погляду на ситуацію, є часто результатом ряду "історичних" моментів, що існують між учасниками.

Учасники можуть усвідомити чи не усвідомити, що мотивує їхні позиції, але вони уявляють їхню вагомість. Завданням посередника є виявити інтереси, які лежать в основі позицій, і зробити їх доступними до визначення, ствердження і роз'яснення. Тоді було б можливим дослідити шляхи, які могли б взаємно задовольнити індивідуальні інтереси. Стає, звичайно, очевидним, що інтереси не повинні взаємно виключатися, більш того. вони звичайно, можуть бути поділені між учасниками.

Процес

Посередникам часто буває важко зрозуміти, коли і як почати цю стадію і куди піти після закінчення обговорення категорії питання. Кроки, перераховані нижче, застосовуються найбільш часто.

(і) Працюйте над однією категорією питань за один раз. беручи до уваги короткий виклад проблем.

Потрібно прийняти свідоме рішення щодо того, яке питання вибирати першим. Посередник може почати досліджувати інцидент, намагаючись створити взаємне розуміння історії. Може бути також ефективним працювати над категорією питання, яка здається дуже важливою для обох

учасників (тобто необхідна, спільна проблема) і яка може бути тепер вирішена. Вирішення першої категорії питань може допомогти учасникам бути більш оптимістичними щодо розв'язання конфлікту в цілому. Ви можете сказати у таких ситуаціях: "Я почув/ла про речі, які здаються для Вас дуже важливими. По-перше, Ви двоє визначили, що Ваші відносини дуже важливі. Петре, Ви переживаєте про школу, друзів і хатню роботу. Анно, Тебе хвилює, що відбувається, коли твій тато п'є. Друге питання – ваша ситуація. Чи ще є проблеми, які слід розглянути, щоб полагодити конфлікт? Я думаю, що ми могли б почати говорити про школу. Ви можете сказати, яка є зараз ситуація і в чому кожен з Вас вбачає проблему?"

Посередник питає учасників, чи вони почули нову інформацію під час розповіді. Цей метод буде найкраще спрацьовувати, коли рівень напруження відносно низький і обидва учасники вільно почувають себе один з одним. Спробуйте:

"Тетяно, я помітив/ла, що Ти уважно слухала, як Василь розповідав про своє бачення конфлікту. Цікаво, щось з'явилося для тебе новим?"

Посередник просить дати більше інформації про інцидент або категорією питань, коли вона / він / учасники все ще почувають себе невпевнено через неясні затишкові моменти або, коли здається, що хтось тільки натякнув на приховану проблему, яка може бути дуже важливою. Шукайте шляхи до почуттів так само, як і до фактів.

Наприклад,

"Іване, я хочу знати, що сталося після того, як міліція тебе забрала."

"Степане, ти сказав, що ти мав бути певний час у лікарні, як ти почував себе?"

"Роза, можеш ти сказати, яку шкоду зробили у твоєму офісі під час перерви? І як це вплинуло на твій бізнес тоді?"

(ii) Проаналізуйте приховані інтереси

Щоб покращити взаємне розуміння і співчуття, проаналізуйте точки зору і почуття, пов'язані із специфічними проблемами. Вживайте відкриті вивчаючі питання для визначення прихованих інтересів (потреб, бажань, побоювань, турбот і надій), для вивчення досвіду учасника у специфічній події чи поведінці, для виявлення намірів і усунення учасників від участі у моделях звинувачення і сварки або негнучких понять про те, що треба зробити, щоб вирішити проблему.

"Чи Ви можете сказати, які моменти її спілкування з Вами так сильно Вас пригнічують?"

"Михайле, ти думаєш, що паркан має бути два метри висотою. Чи можеш ти пояснити, чому це так важливо для тебе?"

"Якщо б ви мали можливість зробити це знову, щоб Ви зробили у іншій спосіб?"

(iii) Поділіть проблеми на робочі сегменти

Поділ проблем на робочі сегменти і праця за чергою з кожним сегментом не тільки підвищує ефективність процесу вирішення проблеми, але дає учасникам відчуття структури і контролю, інакше вони б опинились у безпорадній ситуації.

Сприяння процесу: підтримування моменту

Упорядкуйте категорії питань щодо їхньої важливості.

Частиною складання програми є процес сортування категорій питань щодо їхньої відчутної важливості для учасників для того, щоб переконатися, які є головними, а які можна спокійно відкласти у бік. Також посереднику необхідно зробити вибір категорій питань і представити їх як частину стратегічного підходу, тобто важливо на ранній стадії процесу вибрати проблеми, які простіші і більше надаються для вирішення з тим, щоб дати учасникам на початковій стадії почуття заспокоєності.

Періодично підсумовуйте представлені категорії питань, щоб тримати їх у фокусі, і створюйте позитивне, спрямоване на мету, оточення.

Посередник повинен весь час пам'ятати про проблеми, які були представлені на початку. Постійне відхилення учасника від програми може вказувати на невизначений попередньо пункт програми, або може характеризувати підхід на вирішення проблеми.

Важливо мати терпіння і просуватися поступово.

Учасникам потрібний час, щоб опрацювати свої думки. Посередник повинен поважати їхнє почуття комфорту, маючи справу з їхніми проблемами і дозволяти їм вагатися. Щоб підтримувати енергію, важливо реагувати на моменти, які вказують на приховані проблеми, потреби і почуття. Часом проста підтримка чи визнання достатні для того, щоб запевнити учасника, що його почули. Це допоможе учаснику просуватися далі у вирішенні проблеми.

Вживайте питання, націлені на майбутнє, щоб розпочати зміни.

Визначіть "історію" ситуації, але уникайте ретроспективи. Вся розмова має вестися про проблему і її вирішення, а не про просто проблему. Чого клієнти не хочуть, залишитися у минулому. Чого вони хочуть, це майбутнє без тої самої проблеми, яка привела їх до посередництва. Майбутнє з надією і меншими проблемами є більш привабливим, аніж минуле з існуючими проблемами. Дискусія щодо вирішення проблеми – це майбутнє. Обговорення проблеми – це минуле. Розробіть більш конструктивну форму спілкування для майбутнього.

Задавання питань через цікавість на протипагу формулюванню тверджень

Запитання про деталі

Такі твердження, як "він неухажливий", "ти завжди кричиш на дітей", "вона ніколи не виконує роботу вчасно" потрібно уточнити. Як "часто" означають слова "ніколи", "завжди", яким шляхом проявляє себе брак обдумування проблем, і яким чином це співвідноситься з особистими надіями на протипагу об'єктивним критеріям. Такі судження часто базуються на припущеннях, історичних питаннях, особистих перспективах і потребах.

Спостереження щодо зміни у спілкуванні (відносинах) між учасниками, сприяння їй і підсилення її.

Це є ознакою прогресу. Це показує намагання учасників змінити їхнє відношення до проблем, визнати проблеми інших, відкинути захисти. Таку ознаку зміни треба підтримати і підсилити.

Навички і способи

Активне слухання

- слухати кожного учасника
- визначити категорії питань
- концентруватись на почуттях, надавати їм чинності
- висвітлити позитивні моменти (пробачення, спільні засади)

Перефразування є ваговим чинником упродовж цієї стадії

Відкриті питання застосовуються для дослідження почуттів і інтересів, пов'язаних з кожним питанням.

Переосмислення – це ефективний засіб у розпізнаванні захисту, який є прикриттям прихованих інтересів, і не створює напруження. Він вживається у розпізнаванні інтересів і у визначенні спільної проблеми. Однак, важливо зауважити, що передчасна зміна структури вислову може викликати реакцію злості. Переосмислення буде ефективним тільки, якщо особа знаходиться у стабільному стані, тоді вона зможе зупинитися і обдумати, що обговорювалось. Важливо не позбавляти людей їхніх емоцій. Спочатку потрібно вислухати.

Пам'ятайте, що переосмислення можуть розглядати, як згоду. Переконайтеся, що ви переосмислюєте інтереси, а не позиції.

Пауза

Не бійтеся її. Учасники можуть потребувати деякого часу, щоб обдумати ситуацію і опанувати свої емоції. Посереднику може бути так само потрібна пауза.

Заохочення

Заохочуйте, коли учасники знеохочені, особливо, коли має місце незгода і бурхливі емоції. Намагайтесь сказати: "Посередництво не завжди легко проходить, але часто воно відбувається у важких ситуаціях. Ваша присутність вказує на бажання намагатися вирішити проблему".

Створення прихильності до процесу посередництва

Задавайте питання про наслідки невирішеного конфлікту.

Наприклад: "Що станеться, якщо Ви не зможете тут досягти згоди?"

Ви можете також захотіти переглянути мету і сподівання зустрічі.

Наприклад: "Чого Ви хотіли досягти, коли прийшли сюди?"

Зробіть підсумок прогресу, спільних проблематичних питань і моментів згоди.

Визначить сфери, де є спільний інтерес у вирішенні проблеми. Таке підсумування може особливо допомогти, коли існує незгода між учасниками. Сфери згоди часто визначаються на цій стадії.

Наприклад: “Ви обидва хочете вирішити це швидко і уникнути боротьби у суді” чи “Ви обидва, здається, поважали один одного до інциденту”.

Пропонування приватних зустрічей.

- люди втомились
- зустріч тривала багато годин
- ви думаєте, що хтось притримує важливу інформацію
- виявляється, що згода була примусовою
- виявляється, що когось налякали і залякали
- вас збили з пантелику

Для того, щоб обговорювати проблеми між собою або спілкуватися приватно і індивідуально з учасниками, посередники можуть так само використовувати приватні чи окремі зустрічі. Учасників не можна залишати разом, коли зустрічаються посередники.

Також, якщо ви зустрічаєтесь з одним з учасників, завжди зустріньтесь з другим, щоб підтримати статус рівності і безсторонності.

Четверта стадія: Завершення. Обговорення процесу.

Мета:

- допоможіть прийняти найкраще рішення або вирішення кожної категорії питань
- зробіть підсумок зробленого прогресу і підкреслите сфери нового розуміння і переговоріть про закінчення зустрічі
- напишіть детальну угоду, якщо це потрібно
- подякуйте учасникам за їхню важку роботу і привітайте їх з їхнім бажанням зустрітись

Процес

Посередник підсумовує сфери нового розуміння і допомагає учасникам закінчити зустріч. Зусиллям і досягненням учасників у процесі посередництва дається відповідна оцінка. Визначається їхня плідна робота і їхня наполегливість у виконанні цього важкого завдання і доведення його до успішного завершення. Робота посередника на цій стадії полягає у тому, що він надає право учасникам керувати процесом прийняття рішень, включаючи його результат. Посередник так само допомагає учасникам переконатися, чи письмова угода відповідає істині. Якщо потрібна письмова угода, посередник допомагає скласти її. Перевірка реальних фактів, переконань і угод учасників – важливі кроки, які передують фінальному закриттю зборів.

Заохочуйте до прийняття можливих рішень

Завданням посередника є допомогти учасникам генерувати можливі рішення. Посередник повинен ідеально зробити висновок і підкреслити будь-які

сфери згоди, про які вони почули через те, що це сформує основу для більш вичерпної угоди. Інтелектуальний штурм є дуже корисним методом у цій фазі. Ось деякі типові питання:

“Що ви можете запропонувати для вирішення конфлікту?”

“Що може вам допомогти стати оптимістом щодо ситуації?”

“Чи ви можете обдумати будь-які інші ідеї, які могли б допомогти вирішити проблему?”

Допоможіть у виборі найкращого рішення

Переконайтесь, що ви маєте рішення для кожної проблеми, яка є важливою у розв'язанні конфлікту. Обидвом учасникам потрібно буде жити з рішенням проблеми без почуття ненависті. Запитайте кожного учасника:

“Чи ви погоджуєтесь? Чи ви думаєте, що це розв'яже конфлікт?”

Підсумуйте сфери нового розуміння

Назвіть більш нематеріальні елементи порозуміння, які були узагальнені. “Здається, що ви обидва прийшли до кращого розуміння, ви відчули те, що сталося того дня”.

Підсумуйте сфери особливої згоди і порозуміння

Посередник допомагає учасникам визначити, що відбулося між ними стосовно кожної конкретної категорії питань.

“Щодо самого інцидента, ви погодились, що ви обидва жаткуєте про те, що сталося.”

Переговоріть про закінчення зустрічі

Це відбувається декількома шляхами:

- Перевірка підсумку і висновку (завжди)

Перевірте разом з учасниками, чи короткий зміст угод точний.

- Закінчення зустрічі без письмових угод (деколи)

Виділіть досягнення під час процесу посередництва та закінчіть зустріч. Подякуйте учасникам за те, що вони прийшли і працювали з проблемами.

- Написання детальної угоди (деколи)

Якщо письмовий документ необхідний або зміг би допомогти, допоможіть учасникам визначити, що потрібно написати.

Навички

Підсумовування

Це мабуть найбільш фундаментальне вміння на цій стадії. Підсумовування дозволяє посереднику зібрати разом окремі частини процесу, визначити порозуміння, яке було досягнуто, і привести людей до завершального моменту. Підсумовування вживається, у макросенсі, коли треба вказати на загальний прогрес, так само, як і у мікросенсі для називання специфічних угод чи правил, які були створені.

Опитування

Як відкриті, так і закриті запитання є дуже важливими на цій стадії. Посередник може запитати, чи підсумок відповідає досвіду учасників (закриті питання). Якщо підсумок вважається неточним, посередник може застосувати відкриті питання для визначення, чи дійсно звіт не відповідає вимогам.

Наприклад: “Яка частина звіту про прогрес і порозуміння не підходить тобі, Петре?”

“Скажи мені, що залишається для тебе неясним, Маряї” чи

“Що ще має відбутися чи має бути сказано, щоб ви двоє прийшли до закінчення цієї ситуації і стали дивитися у майбутнє?”

Переосмислення

Учасник може уточнити, що малося на увазі. Це значно зменшує можливість того, що посередник спровокує учасника тим, що примусить його відчувати, що його не почули.

Штурмування

Для генерування численних варіантів розв’язання конфлікту, особливо, коли учасники сперечаються про специфічне рішення чи усталену потребу, штурмування є корисним. Це хороший методі позитивного мислення. Нові, творчі рішення часто створюються у короткий період часу. Використовуючи штурмування, нагадайте учасникам, що всі ідеї прийнятні. Ідеї оцінюються тільки після закінчення штурмування. Вони оцінюються на основі критеріїв, що підходять усім учасникам.

Конструктивне завершення

Посередництво як інструмент вирішення конфлікту є гнучким засобом і може вживатися у широкому перетині ситуацій, включаючи інтерперсональні, сімейні, шкільні, виробничі, сусідські, ділові, національні та інтернаціональні проблеми.

Його слід пристосувати для задоволення потреб клієнтів.

ІСТОРІЯ ПОСЕРЕДНИЦТВА

Посередництво не є винаходом сьогодення, а є адаптацією концепцій, які існували в інших культурах та в інші часи. У стародавньому Китаї посередництво було основним засобом вирішення суперечок. І сьогодні посередництво широко практикується в Китайській Народній Республіці через інститут Комітетів Народного Примирення (People's Conciliation Committees). Навіть у формальній законодавчій системі Китаю, велике значення надається самовизначенню та посередництву у вирішенні всіх видів суперечок.

Примирення та посередництво давно присутні у японському законодавстві та у звичаях японців. Від керівника селянської громади очікували допомоги у вирішенні суперечок, які виникали між членами громади. Умови для залагодження персональних суперечок у японських судах були введені ще до Другої Світової війни. Багато письменників, аналізуючи схильність американського суспільства до вирішення суперечок у суді, в той же час помітили відносну відсутність адвокатів у Японії.

У деяких частинах Африки, традиція скликання "загальної ради", або зборів членів громади, довгий час забезпечувала неформальний механізм вирішення різних міжперсональних конфліктів. У кожній громаді є свої традиції скликання загальних рад, але усі вони шукають вирішення проблеми без судді, арбітра чи застосування конкретних санкцій.

Церква або храм століттями відігравали важливу роль в урегулюванні конфліктів між віруючими. Священника місцевої парафії, пастора або равина часто кличуть, особливо при місцевих сварках, щоб у ролі посередника, він запропонував шляхи вирішення сімейних проблем, міг би навчити людей жити разом або змінити свої бусунки. Посередництво знаходиться у відповідності до, а може і є головним у біблійних цінностях прощення, примирення та спільності. Квакери, ще починаючи свою діяльність у Сполучених Штатах, практикували і посередництво, і арбітраж у комерційних та подружніх конфліктах, не вдаючись до судових процесів. Вже в наш час Християнська Служба Примирення (the Christian Conciliation Service) започаткувала декілька експериментальних проєктів по навчанню та підготовці церковних посередників для вирішення персональних суперечок.

Найбільш відома модель посередництва у США і Канаді походить з досвіду вирішення конфліктних ситуацій у трудових/управлінських відносинах. Однак, у більш широкому сенсі, починаючи з кінця 1960-х років в американському суспільстві з'явилась велика зацікавленість у альтернативних формах урегулювання суперечок. Цей період характеризується боротьбою і незадоволенням на багатьох фронтах: війна у В'єтнамі, боротьба за громадянські права, студентські занепокоєння, зростаюча споживацька обізнаність, перегляд родових ролей, менша толерантність до явних порушень та зневірень. Також спостерігалась тенденція сприйняття розлучення як звичайного життєвого явища. Конфлікти, які раніше могли б залагоджуватись завдяки поважному ставленню, уникненню та покірливості, тепер скеровувались до суду.

Кількість звернень до суду, пов'язаних з домашніми конфліктами, різко зросла, і громадськість все більше розчаровувалась формалізмом, вартістю та повільністю судових процедур. У відповідь на збільшення кількості звернень до суду, незадоволення формальною системою судовиконання та зростаючу

схильність подавати позови та скарги, ряд існуючих організацій спробували надавати посередницькі послуги. Американська Арбітражна Асоціація (American Arbitration Association) почала розробляти основні напрямки та проводити підготовку для застосування узгоджувальних процедур, посередництва та арбітража у конфліктах між членами громади, споживачами та членами сім'ї. Професіонали з ААА та федеральних служб посередництва та примирення (Federal Mediation and Conciliation Services) в США, серед інших організацій, створили Товариство Спеціалістів у Вирішенні Конфліктних Ситуацій (Society of Professionals in Dispute Resolutions), щоб сприяти використанню "нейтральних людей" при вирішенні всіх видів конфліктів.

Наприклад, Асоціація Сімейних та Примирюючих Судів (The Association of Family and Conciliation Courts), заснована у 1963 р. для сприяння пов'язаних з судом примирень сімей, почала пропагувати використання посередництва як альтернативу судовому вирішенню сімейних конфліктів. Посередництво при вирішенні сімейних проблем останнім часом стало активною галуззю приватної практики і викликало виникнення нової національної організації, Family Mediation Canada. Більшість провінцій та територій утворили свої професійні організації для сприяння розвитку посередництва та проведення посередницької діяльності на місцевому рівні.

Вирішення конфлікту і посередництво

Існує дуже багато літератури з питань вирішення конфлікту і посередництва. Огляд літератури, спрямований на основні питання, пов'язані з посередництвом (Blades, 1984; Moore, 1986; Fisher & Brown, 1988; Parson, 1991; Bush & Folger, 1994; Cummings & Davis, 1994; Emery, 1994; Kostiuik & Zurawsky, 1996; Ury, 1999; Anderson, Tunaley & Walker, 2000; Mediation Services, Winnipeg, MB, 2000) пропонує наступне:

Розуміння конфлікту

На зламі тисячоліття перед людьми стоїть дуже актуальна проблема, а саме, як жити у згоді. З усіх факторів, які впливають на успіх одруження, є єдиний, найбільш важливий фактор – здатність вирішувати конфлікти спільно. Він придатний і в інших видах відносин – між друзями і партнерами по бізнесу, сусідами та націями. Дуже багато залежить від нашого уміння жити у згоді: наше щастя вдома, наша діяльність на роботі, життєздатність наших громад, і у вік масового знищення, виживання людського роду. Руйнівний конфлікт широко прийнятний як невід'ємна і суттєва частина людського існування. Однак, у більшості часу люди живуть мирно. Мир – це є норма. Фактично, люди можуть вирішити свої конфлікти, якщо вони виберуть мир.

Конфлікт – це природна і невід'ємна частина життя. Це – неминучий наслідок зміни, особливо, коли відчувається невпевненість. Але суперечки можна розглядати зовсім не як проблеми, а можливості для морального зростання і перетворення. Конфлікт може бути конструктивним, якщо ним добре управляти, і може бути деструктивним, якщо управляти погано.

Вирішення конфлікту застосовувалось з давніх давен. У наших суспільствах він традиційно трактується як двосторонній. Однак, жодна суперечка не відбувається у вакуумі. Третім учасником виступає оточуюче середовище, яке служить стримуючим фактором у конфлікті, що поширюється. При відсутності такого стримуючого фактору серйозний конфлікт між двома учасниками легко переростає у руйнівну боротьбу. Проте, в середині цього стримуючого фактору конфлікт може поступово перейти від конфронтації до співробітництва. Третя сторона служить таким чином своєрідною імунною системою, яка перешкоджає розповсюдженню вірусу насильства. Третя складова – це люди, що використовують владу для підтримки діалогу і відмови від насильства, щоб отримати певний результат – “потрійну перемогу”. Ми посуваємося від пасивності до активного втручання оточуючого середовища. Третій учасник – це ми. Скривджені діти і побиті дружини більше не трактуються як “сімейна проблема”. Групи підтримки, консультування подружжя і посередництво у сімейних справах стають все більш і більш нормальними явищами на Заході.

Існують різні фактори підходів до управління конфліктом, такі як переговори, примирення, посередництво, так само як арбітраж, юридичні.. законодавчі і неюридичні підходи.

Посередництво як форма вирішення суперечки, що відрізняється від інших форм

Посередництво – це стислий, неворожий підхід, зорієнтований на вирішення завдання і професійне втручання для розв'язання конфлікту. Він призначений для надання найширших можливостей учасникам контролювати

прийняття рішення і в той самий час передати керівництво процесом підтримки в руки третього учасника – посередника. Ця функція керівництва є визначальною у посередництві по відношенню до інших форм вирішення проблеми. Принцип самовизначення може допомогти дати насаги кожному учаснику, щоб не знесилити будь-кого під час процесу. Посередництво – це загальний, базований на позитивних характеристиках підхід, сприяючий насаженню і визнанню.

Стадії процесу посередництва

Стадії процесу посередництва поділяються на дві великі категорії: попередня стадія, яка передуює початку спільних зустрічей, і процес, який розпочався, як тільки посередник започаткував офіційні переговори.

Початок посередницької зустрічі, визначення проблеми і складання програми дій, розкриття прихованих інтересів учасників, що ворогують, вироблення і оцінювання альтернатив для вирішення, остаточні переговори і досягнення офіційного вирішення – це стадії процесу посередництва.

Процес посередництва і роль посередника

Посередництво – це конфіденційний процес, крім моментів, коли розкриття вимагається законом.

Посередник виступає у ролі третього нейтрального учасника, чийм завданням є керувати і полегшувати процес, орієнтований на досягнення мети.

Посередники використовують декілька методів для збирання даних: пряме спостереження, допоміжні джерела і інтерв'ювання. Посередник визначає проблеми і інтереси, які турбують учасників, важливість і помітність цих проблем і інтересів, і потенційні альтернативи рішень. Посередник створює конструктивну модель спілкування і вирішення конфлікту, який, у свою чергу, спонукає учасників ставитися з повагою один до одного.

Визначення інтересів кожного учасника є одним з ключових моментів у вирішенні конфлікту. Перехід від позицій до інтересів є важливим засобом для конструктивного вирішення, який буде працювати на кожного учасника конфлікту. Шляхом умілого опитування посередник намагається виявити потреби і турботи, які лежать в основі позиції учасників, і знайти доступ до можливості їх оцінити, підтвердити і задовольнити. За допомогою процесу зміни структури вислову посередник допомагає учасникам розповісти про свої проблеми, нікого не ображаючи, і скерувати їх на обдумування альтернатив, придатних для кожного учасника. Посередник призначає завдання і допомагає виробити правила, які дають можливість учасникам спілкуватись один з одним з більшою приязню поза посередницькими зустрічами. Цей процес дозволяє учасникам поступово прийти до сенсу вирішення проблеми і кінцевої автономії процесу посередництва. Нарешті, посередник допомагає накреслити пункти угоди і організовує закінчення процесу.

Посередництво у проблемах сім'ї

Протягом останніх двох десятиліть у Канаді посередництво розвинулось як допомога для сімей у вирішенні їхніх конфліктних ситуацій. Посередництво у проблемах сім'ї пройшло через період дослідження і професійного зростання.

Юридична система виявилась дуже дорогою, занадто повільною і занадто шкідливою системою для вирішення конфліктів у відносинах. Швидко

були впроваджені альтернативні механізми вирішення конфліктів, часто за меншу вартість і з великим акцентом на спільне вирішення проблеми. Багато сфер повноважень вимагають зараз, аби клієнтів інформувати і аби вони проходили процес посередництва у відповідних випадках перед тим, як долучитися до позову.

Адвокати жінок досліджували процеси, які вели посередники, - як вони бачили подружжя разом, а не оцінювали кожного учасника окремо перед тим, як вирішити чи вони можуть вести переговори як рівні партнери. Їхні дослідження були каталізатором для найбільш значних змін у посередництві в сім'ї за останнє десятиліття.

Інститут сім'ї пройшов через декілька важливих еволюцій. Сучасні закони сім'ї відтворюють зміну у соціальному ставленні до розлучення. Вона віддзеркалює концепцію, що дорослі повинні бути вільними вибирати залишатися разом чи розлучатися. Провина більше не є чинником для вимагання розлучення, і підтримка і опікунство більше не використовуються як частина соціальної санкції проти розлучення. Уряд поставили перед проблемою, яким чином найкраще засвідчити те, що про дітей постійно піклуються. Тенденції спрямовуються на більший контроль з боку батьків і менше втручання з боку юридичної системи, крім проблем стосовно скривдження, залякування або серйозної нерівності сил учасників. Звідси і зростаючий інтерес до посередництва у сімейних проблемах як спільного, наснажуючого, швидкого вибору для сімей, які знаходяться у стадії розлучення.

Посередництво у сімейних проблемах і психотерапія мають спільних історичних попередників, хоча кожен з них має різну теоретичну мету. В той час, як сімейна психотерапія є процесом, який допомагає сім'ям залишитися разом, посередництво у сімейних проблемах є процесом, який допомагає сім'ям, в яких було прийнято рішення розлучитися.

Конфлікт в рамках подружжя

Конфлікт в рамках подружжя сам по собі не вказує на подружні негаразди. Конфлікт у сім'ях неминучий, і суперечка часто виконує адаптивну функцію. Проблеми не можна вирішити без конфлікту. Модель подружніх сварок, їхні джерела і контекст є значними вагомими індикаторами подружніх негараздів. Подружні пари знаходять вирішення проблем у конструктивних процесах і стратегіях, які посуваються до переговорів і вирішень подружніх проблем. Таким чином, мета полягає в тому, щоб не уникати боротьби. Скоріше метою є боротися конструктивно.

Діти і подружній конфлікт

Діти найбільше за всіх страждають у подружніх негараздах. Конфлікт розстроює дітей, навіть якщо суперечка може не торкатися їх. На дітей впливає навіть просто існування подружньої незгоди. Злісні відносини між дорослими – передумова злісних відносин взагалі - викликають стрес і емоційний неспокій у дітей будь-якого віку, а також підвищують їхню агресивність. Несловесні вираження злості так само викликають стрес, як і словесно виражена злість. Хронічне несловесне вираження злості може створити навіть більше проблем з часом, ніж словесне. Інтенсивне висловлювання злості більш негативно впливає на дітей, ніж неінтенсивне вираження. Особливо хвилюють дітей конфлікти, які включають фізичну

агресивність. Діти не звикають до конфліктів, спочатку вони стають чутливими до них, і в результаті – більш вразливими.

Наслідки впливу конфлікту подружжя на дітей повинні, безперечно, розглядатися через систему сім'ї. Інші підсистеми можуть допомагати зменшити негативний вплив подружніх конфліктів на дітей і у деяких випадках навіть позбавити їх від негативних впливів.

Вирішення конфлікту вказує на те, що конфліктні стосунки батьків були у деякій мірі конструктивними, і діти відповідно реагують на це. Дітям потрібні натяки на те, що рішення прийняте, навіть якщо воно тільки контекстуальне. Дітям іде на користь, коли вони спостерігають за розв'язанням конфлікту. Ступінь вирішення конфлікту також має значення.

Коли добре керують подружніми конфліктами, результати можуть бути необов'язково негативними. Мати справу з конфліктом – це тривалий процес, не завжди визначений ситуацією.

Роль посередника в практиці соціальної роботи

Соціальні працівники мають навички і знаряддя для того, аби стати посередниками через те, що вони вже давно виконували цю роль під час професійного втручання у практиці соціальної роботи. Теоретичною базою для ролі посередника є теорія конфлікту. Системна теорія виступає теоретичною базою практики соціальної роботи. Стимулювання взаємодії між системами, такими як індивіди і групи, організації і громади не обов'язково дає взаємний результат. Замість того, може статися подальший тиск з боку більш потужної системи на менш сильну. Визнання конфлікту між системами пропонує контекст для ролі посередника.

Посередник сприяє примиренню, урегулюванню, компромісу чи розумінню між двома чи більше конфліктуючими учасниками. Роль посередника припускає, що процес посередництва створює вибір, а саме, яким чином якість життя учасників можна значно покращити. Стимулювання і полегшення вирішення проблеми учасниками, що перебувають у конфлікті - це професійне втручання із збереженням енергії. Це можна трактувати як професійне втручання з елементами наснаження. Процес посередництва має характеристики наснаження, які присутні у багатьох стратегіях рішення конфліктів. Однією з них є його навчальна природа. Учасників вчать визначати їхні потреби, інтереси і рішення і представляти їх іншому учаснику. Посередник навчає учасників вести переговори, щоб задовольнити свої потреби. Це спільний захист, за допомогою якого соціальний працівник просуває інтереси кожного учасника. Іншою рисою наснаження ролі посередника є акцент на власній відповідальності кожного учасника щодо прийняття рішення і його результату.

Роль соціального працівника як посередника не є просто роллю об'єктивного, незацікавленого, безстороннього третього учасника, який здійснює професійне втручання. а роллю, яка призначена допомагати зібрати проблеми для обговорення за столом переговорів і сприяти спілкуванню, яке веде до рішення в рамках ціннісної шкали професії соціальна робота. Мета і місце посередництва у вирішенні проблеми є невід'ємними чинниками у визначенні практики соціальної роботи. Допомога системам клієнта набутти сили і наснаження, щоб вести переговори для вирішення проблеми, є необхідною стратегією, скерованою на наснаження у практиці соціальної роботи.

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Поняття конфлікту

**Конфлікт – це виразна боротьба між окремими сторонами,
які
переслідують несумісні цілі,
використовують наявні обмежені ресурси
і перешкоджають іншій стороні у досягненні її цілей.**

Джерело:

**Джойс Уілмот, Вільям Уілмот. Інтерперсональний конфлікт
(Wilmot, J. & Wilmot, W. (1978). Interpersonal Conflict.)**

Спілкування і конфлікт

Відсутність взаєморозуміння – головне джерело конфлікту у більшості суперечок.

Часто обидві сторони мають негативні емоції щодо одна одної і вважають, що інша сторона не може зрозуміти їх точку зору.

Відсутність взаєморозуміння підсилюється традиційним поглядом на те, що в кожній ситуації існують

- *позитивна і негативна* позиції, тобто варіант
“ПЕРЕМОГА / ПОРАЗКА”

Традиційний погляд відвертає людей від намагань конструктивно розв’язувати конфлікти, викликає почуття безпорадності та ізоляції.

Розлад спілкування спричиняється різноманітними факторами. Акт спілкування між особистостями поділяється на 3 складові за рівнем впливу на передавання і отримування повідомлень (д-р. Альберт Мехрабіан, UCLA).

Який відсоток обсягу отриманого повідомлення є результатом впливу кожної з таких складових:

• Вербальна (слова)	-	7%
• Вокальна і тональна (голос)	-	38%
• Візуальна (мова міміки і жестів)	-	55%
Загальний обсяг повідомлення	-	100%

КОНФЛІКТИ РОЗВ’ЯЗУВАТИ МОЖНА!

Можливий спосіб розв’язання конфлікту:

“ПЕРЕМОГА / ПЕРЕМОГА”

Узгодження думок можливе!

Припущення

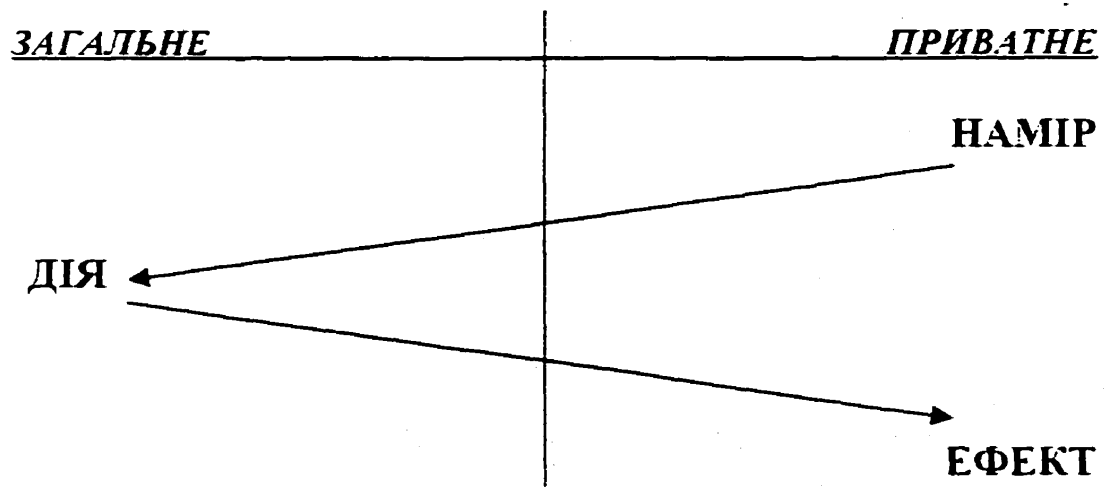
У повсякденному спілкуванні ми часто помилково тлумачимо поведінку інших. Припущення, які ми робимо, є головним фактором, що спричиняє розлад спілкування та ескалацію конфлікту. За умов стресу тенденція до помилкового тлумачення ситуації значно зростає.

Наше припущення щодо намірів інших часто визначається ефектом, який справляють на нас дії цих людей. (Наприклад: Якщо дії іншої людини завдають мені болю, я припускаю, що вона/він мали на меті спричинити мені біль.) Також ми припускаємо, що інша особа буде правильно тлумачити наші дії. Якщо нашим наміром є допомога, ми можемо припустити, що інша особа відчуватиме вдячність за надану їй допомогу.

Зазвичай дія сама по собі є лише частиною того, що виноситься на загальне. У конфліктних ситуаціях прогалина між нашими намірами і впливом наших дій може ставати все ширшою і ширшою.

Ефективний підхід до розв'язання конфліктів

Зробіть доступною для загальної більшшу частину того, що звичайно є "приватним".



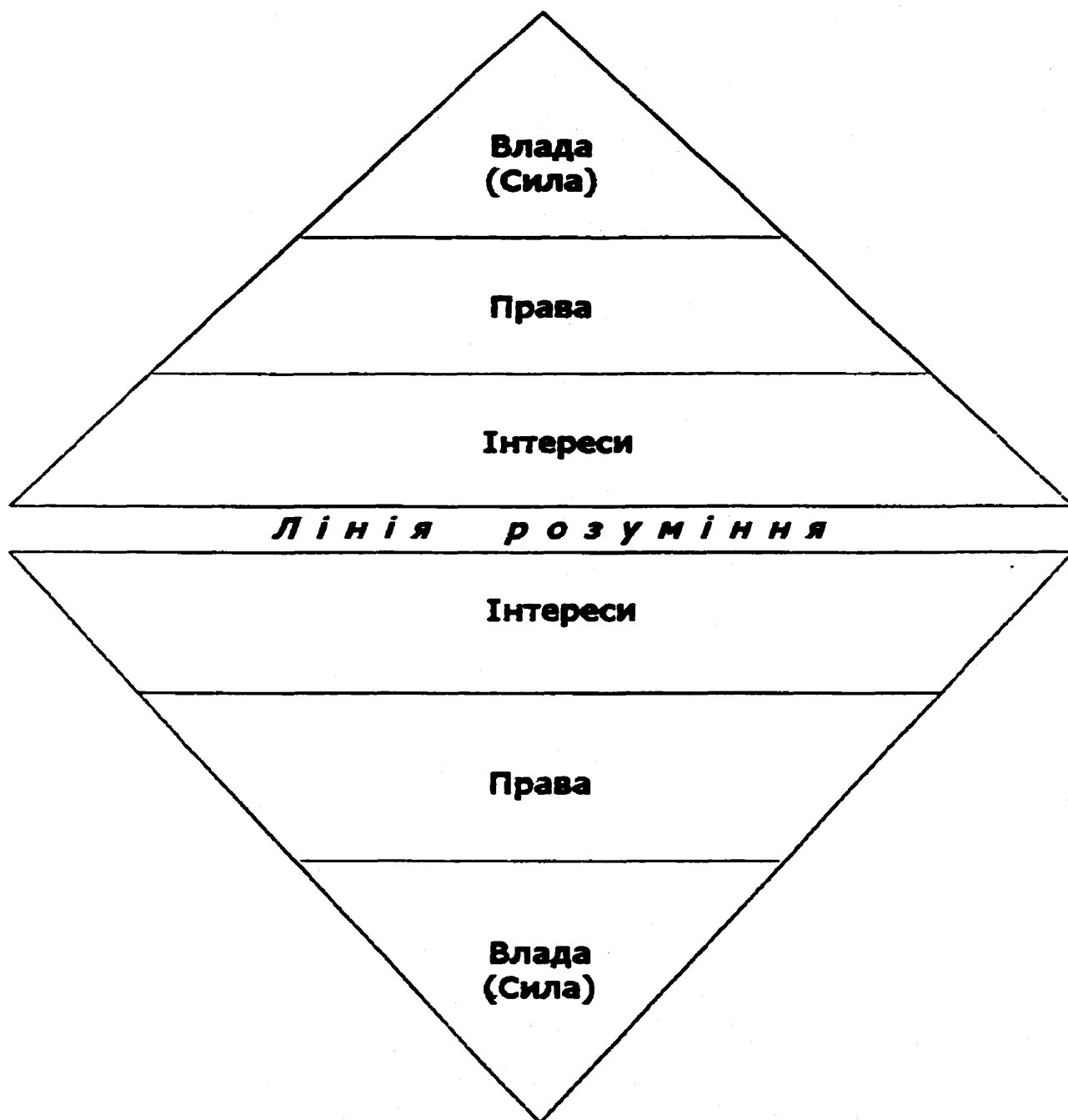
Твердження на зразок: "Я думав, що...", є часто свідченням припущень, які слід уточнити.

Самі по собі дії, тон і слова можуть вводити в оману.

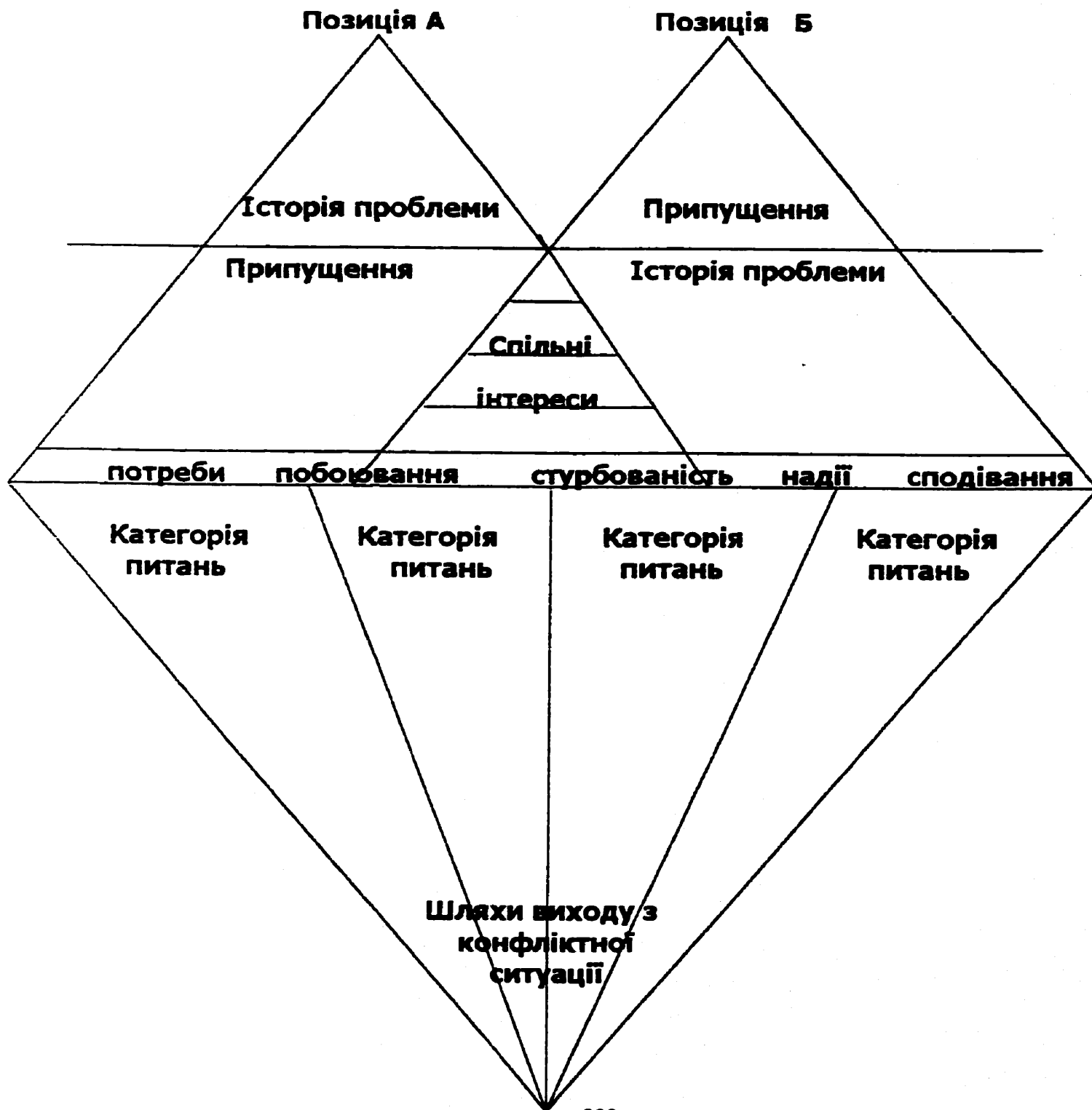
**Для ефективного спілкування
нам слід**

перевірити і уточнити наші наміри і припущення

**Розв'язування проблем, виходячи з
інтересів
(Зміна гри)**



Від зайнятих позицій **Через внутрішні інтереси** **До виходу із ситуації**



Елементи Переговорів за Правилами

- ☐ Відокремити людей від проблеми
- ☐ Зосередитися на інтересах, а не позиціях
- ☐ Створити можливість вибору
- ☐ Розробити об'єктивні критерії

Визначення посередництва

Забезпечення чітко структурованого процесу нейтральною третьою стороною для допомоги двом (або більше) учасникам конфлікту з метою отримання взаємоприйняттого рішення.

Учасники відповідають за визначення категорій проблем і потреб, а також результатів.

Посередник відповідальний за структуризацію процесу, що, у свою чергу, сприяє досягненню учасниками їх цілей.

Завдання посередника

полягає в тому, аби:

- зберігати наголос на поставлених цілях
- підтримувати орієнтацію на виконання поставленого завдання
- демонструвати терплячість
- підтримувати належний темп перебігу процесу
- зосереджуватися на теперішньому з орієнтацією на майбутнє
- давати схвальну оцінку щодо відходу від початкової позиції
- вивчати, досліджувати, з'ясовувати
- поділяти більше на менші частини
- встановлювати першочерговість

Принцип управління в посередництві

Мінімальною відповідальністю посередника є забезпечення гарантії того, що учасники не вийдуть з процесу посередництва в більш складній для себе ситуації в порівнянні з тим моментом, коли вони були залучені до цього процесу.

Навички та вміння ефективного спілкування

Ефективне мовлення / Активне слухання /

Перефразування / Переосмислення /

Підведення підсумків / Штурмування

- **Ефективне мовлення.** Фрази з “Я”
- **Активне слухання:** Вираз обличчя / Контакт очей / Нахил вперед / Ненапруження
- **Задавання питань** з метою визначення потреб і занепокоєння

Задавайте питання, виходячи із зацікавлення. Не висловлюйте тверджень-засуджень.

Скеровуйте обговорення на “розмову про розв’язання”, а не на “розмову про проблеми”.
- **Перефразування** у стислій формі (перевіряє “мікрорівень” розмови)
- **Переосмислення** для визначення внутрішніх інтересів і виявлення потреб
- **Підведення підсумків** для огляду категорій питань (перевіряє “макрорівень” розмови)
- **Штурмування** – спосіб формування нових ідей, визначення альтернатив, а також можливих варіантів
- **Невербальне спілкування** (нейтральність, рівновага, вияв зацікавлення)



Picture designed by the American psychologist E. G. Boring.

Правила Рольової Гри

1. Розважайтеся
2. Будьте поблажливі до себе - це не є випробування
3. На помилках вчаться
4. Деякі недоречності можливі
5. Зосередьтеся на процесі, а не на змісті
6. Пристосовуйте процес до виконання ролі посередництва
7. Намагайтеся увійти в роль: вирішіть, які ставлення, почуття і потреби характеризують ситуацію учасника
8. Залишайтеся в ролі якомога довше - виходьте з ролі на короткий час, коли виникає потреба обговорення
9. Обмінюйтеся думками в кінці процесу: поділіться враженнями - відзначте позитивне