

## ALTERNATIVE DISPUTE RESOLUTION

## What is mediation's promise?

YOUNG

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that children and their families should know how they are going forward within weeks rather than months. The agreement can also build in triggers for updating the agreement. For example, I mediated a case involving a mother in rehabilitation for her addiction to crack cocaine. I helped both parents and the CAS worker design an agreement which gave the mother increasing access to the

children based on her success in reaching the milestones in her treatment program. The agreement was worded to express a positive expectation about the mother's recovery, something that was very important to her.

The regulations with respect to ADR were published earlier in November. Participation in ADR is voluntary and can be terminated at any time. A designated mediator must conduct the ADR in a neutral location and it must not be arbitration. To qualify, mediators must

pass the three-day advanced certificate course in child protection mediation designed by Justice June Mareska. To be eligible, mediators must be accredited family mediators with the Ontario Association of Family Mediation (OAFM) or equivalent. OAFM will mount a roster of qualified child protection mediators. The ministry will direct the children's aid societies to use only mediators on that roster.

There is still much work to be done. We cannot assume that the many partners in this complex system will leap at this opportunity. In his survey of pilot pro-

grams in Canada, Warren Morris found that in every instance referral rates were very, very low. If the promise of mediation is to be fulfilled this time around, social workers, families, lawyers and mediators need to address issues of mutual concern. What are the criteria for selecting cases to send to mediation? How will cultural and language differences best be served? How do we develop a common understanding of these and other issues, so that the promise of mediation is a promise kept?

What is the promise of child protection mediation? The

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

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## Even the disputants themselves can prepare

CHECKLIST

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- possible following a trial?
- What are the chances?
  - What is the worst outcome possible following a trial?
  - What are the chances?
  - Given the facts as legal counsel understands them, what is your opinion about a realistic settlement range?
  - What are your reasons?
  - Share this settlement range, your reasons and the facts that you base this on, with your client. Note: If there is a misinterpretation of the facts, or, if there are other facts that have not been brought to your attention, this is an opportunity to correct the problem.

### Other costs of focusing on the dispute

With your client, identify the other costs [in addition to legal fees and court-ordered costs] of focusing on the dispute and not settling at mediation by considering:

- the stress on relationships;
- the impact of trial on any relationship with the other disputant;
- adverse publicity;
- lost business and other opportunities;
- emotional distress; and
- absence from income-producing activities.

In conclusion, my answer to the question, Who prepares disputants for mediation? is Mediators may, and, with the right tools, lawyers, even the disputants themselves, can do so as well.

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