

# **EVALUATION OF THE CHILDREN IN MEDIATION PROJECT**

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*Prepared for:*

*The Family Justice Services Division  
Ministry of Attorney General*

*November 2009*

*Prepared by:*

*Colleen Getz  
c a walker & associates  
1649 Brousson Drive  
Victoria, B.C.  
V8N 5N2*

*Tel: (250) 721-6999  
E-Mail: cgetz@telus.net*

## Acknowledgements

Many people gave generously of their time and energy during this evaluation. In particular, however, three people deserve special thanks for their expert counsel and patience over the course of this project: Jan Fontaine, Colleen Shaw, and Cathy Tait.

Thank you, also, to all the Family Justice Counsellors and Local Managers who took time out of their busy schedules either to speak with me during my site visits, or to provide detailed commentary through the written survey.

Lastly, thank you to those parents — and the young girl! — who took the time to pass on their observations about the *Children in Mediation Project* in telephone interviews and the written survey.

*Thank you all!*

## **TABLE OF CONTENTS**

<b>EVALUATION HIGHLIGHTS</b>	<b>i</b>
<b>I. INTRODUCTION</b>	<b>1</b>
A. In This Report	1
B. Background Notes and Scope of Evaluation	2
C. Methodology	3
<b>II. REVIEW OF PROGRAM FOUNDATIONS AND CONCEPTS OF OBJECTIVE ACHIEVEMENT</b>	<b>6</b>
A. Program Foundations	6
B. Concepts of Objective Achievement	8
<b>III. PROJECT SUCCESS</b>	<b>10</b>
A. Child Inclusive	10
B. Communication-Centred	20
C. Enhanced	24
<b>IV. IN CLOSING</b>	<b>29</b>
A. Conclusion	29
B. Summary of Recommendations	30

## **APPENDICES**

- Appendix A. Child Inclusive Dispute Resolution Directive
- Appendix B. Flow Diagram of the Children in Mediation Process
- Appendix C. Family Justice Counsellor Survey: Summary of Results
- Appendix D. Parent Survey: Summary of Results
- Appendix E. Notes on Case Statistics

## EVALUATION HIGHLIGHTS

### Introduction and Background

The *Children in Mediation Project* was initiated by the Family Justice Services Division of the B.C. Ministry of Attorney General in June, 2007. In this Project, children are given an opportunity to express their views and to be *heard* about the matters that affect them in a family mediation process.

The particular emphasis of this project is on supplementing or augmenting the current family mediation process — with a view to enhancing the parent decisions that are the outcome of that process. Most typically, the child-inclusive component of the mediation is comprised of the mediator interviewing the child, and then conveying the information provided to the child’s parents in a subsequent mediation session. In relation to the children, the mediator — a specially trained Family Justice Counsellor (FJC) with the Division — may act in the role of an educator, a supporter, and/or a messenger. The mechanisms for program delivery, the interpretation of children’s needs, and the facilitation or enhancement of decision making in mediation are concretely defined within the context of these three roles.

Over a ten-month period from October 2008 to July 2009, a “formative” or process evaluation of the Project was undertaken to examine the design and delivery systems that contribute to the achievement of three specific project objectives. Some of the key observations made during the evaluation are highlighted below in terms of the main challenges and achievements associated with each objective, and in light of the stated goal for the Project:

... to facilitate and enhance parent decision-making by including children in the mediation process.

### Objective 1

*To give children a voice ...*

To provide a mechanism within the mediation process by which children can express views about the decisions that affect them.

- A content analysis of relevant training materials, policies, and procedures showed that these tools are appropriate, and supportive of the Project’s objectives. Greater clarity around the educator, supporter, and messenger roles of the FJC would, however, contribute to a better understanding of B.C.’s particular model of child-inclusive mediation.
- In a survey of designated FJCs, nearly all respondents indicated that they felt very well or adequately prepared to conduct a child-inclusive mediation following their training. Among the comments they had about the training, FJCs suggested that more practical material (written/video/role play/exercises) be provided about the interview process with children and providing feedback to parents.

- A content analysis undertaken of a Q and A leaflet, information contained on the consent form, and other written and on-line materials provided to parents and children taking part in child-inclusive mediations also showed that these materials are appropriate, and supportive of the Project's objectives.
- Most FJCs who had conducted child-inclusive mediations at the time of the evaluation reported that the information and materials with which they are provided to help prepare parents and children are beneficial. More importantly, most parent respondents surveyed felt the information and materials prepared them well for the child-inclusive mediation process.
- Among the observations they made about improving the information provided, parents indicated that the pamphlet *Information About Your Meeting with the Family Justice Counsellor* is geared too much to younger children.
- It is estimated that a child inclusive service was offered in just 8% of possible eligible cases, and did not proceed in about 3% of cases. The numbers and reasons given for parents and children declining an offer of this service indicate, however, that a lack of client support for the Project was not the main reason for low uptake in the Project.
- In those cases for which data is available, parents generally agreed to have their children take advantage of the opportunity to express their views through child-inclusive mediation. For parents who declined, respondents in the FJC survey speculated that a lack of familiarity with and/or understanding of the process by parents contributed to their unwillingness to participate.
- The FJCs who had some of the largest volumes of child-inclusive cases indicated that they make a point of offering the service in nearly every case eligible for a child-inclusive process. They observed that, sometimes, the mere offer of a child-inclusive process to parents has a positive effect on mediation, even if it does not subsequently take place.
- In the interviews and survey of designated FJCs, respondents indicated that they understand the Project objectives, share a common understanding of them, and support the goals of child inclusive mediation in connection with them.
- FJCs are uniformly enthusiastic about the child inclusive process! In spite of this enthusiasm, however, there remains somewhat of a predisposition in favour of conventional mediation approaches.
- Most parent respondents believed that their children were encouraged to express their views and feelings when interviewed as part of a child-inclusive mediation. Unfortunately, with one exception, it was not possible to ask the children directly whether this was so.
- Half the parents surveyed thought their children would have benefited from another session with the FJC once mediation had concluded. From their comments, both parents and FJCs would see the purpose of this session as more of a follow up or feedback session. The Division's policy currently directs that post-mediation meetings with the child place the emphasis on "ensuring the children understand the agreement".
- Most parents surveyed indicated that the child-inclusive mediation process was helpful to both themselves and their children. The parents' observations can be taken as an indication that the children's experience was generally a positive one. Again, however, a firm conclusion cannot be drawn in the absence of data directly from the children involved in the process.

## **Objective 2**

*To let parents hear ...*

To provide a mechanism within the mediation process by which parents can hear and consider the views of their children when deciding issues that affect the children.

- It can be concluded that most of the parents participating in the interviews and written survey did consider the views of their children when developing their parenting arrangements. Hearing these views helped them better appreciate the implications of their decisions for their children. As time goes on, it may even help them to better comply with the terms of the agreements they made in mediation.
- Family Justice Counsellors who have had the experience of both conventional and child-inclusive mediation processes confirm that the children's input not only influences the outcome, but also changes the nature of their parents' decision-making in a positive way.
- Nearly all parents surveyed believed that their children's viewpoints, concerns and/or feelings were provided to them by the FJCs in a way that helped them to take their children's views into consideration.
- Parents do not perceive that either joint or individual meetings are necessarily the "right way" to pass on the information from their children. Family Justice Counsellors usually have a particular preference, however, and tend to stay with one meeting format or the other.
- Roughly three quarters of the parent respondents in the telephone and written survey rated the child-inclusive mediation process, overall, as either favourable or very favourable. About two-thirds would recommend that other parents include their children in a mediation process like this.

## **Objective 3**

*To make decision-making better and make it better for children ...*

To better meet the needs of children, and enhance decision making in the mediation process, by acting as educator, supporter, and messenger.

- Most parents could not identify any additional information, assistance, or opportunities for communication that had not been provided during the child-inclusive process.
- The parents surveyed generally seemed to think the information needs of their children in this area were largely met, and that the FJC's efforts met their children's needs for support or assistance. As well, the results suggest that the FJCs, acting in their capacity of "messenger", seemed to meet the children's communication needs.
- Both parents and FJCs believe that decision making in mediation is improved by hearing the children's views.
- Although parents were less able to identify the specific mechanisms at work, they nevertheless did express the view that solutions to the issues affecting their children more clearly presented themselves as a result of the child-inclusive approach. Family Justice Counsellors echoed these observations, and were able to identify factors in both the process and outcomes of mediation that were enhanced by such an approach.

## **Conclusion**

The *Children in Mediation Project* is an innovative and insightful approach to child inclusive mediation. Its design around the mediator's capacity as an educator, supporter, and messenger for children makes it truly a unique model for providing child-inclusive mediation services. This evaluation shows that the Project is, indeed, *poised* for success — and, further, that longer-term program goals can be achieved if the child-inclusive process is fully implemented as a program of the Family Justice Services Division.

The results of the evaluation, overall, are very positive. There remain, however, some important unanswered questions. In the absence of stronger quantitative data and feedback from the children, the Project's main client group, some key perspectives on the process could not be accessed. There was, additionally, a low survey response rate from parents, the Project's secondary client group. Together, these evaluation challenges prevented firm conclusions from being drawn about whether the Project's three objectives had been fully met.

Nevertheless, the evaluation results did show that the design elements and processes established for this model of mediation are positioned for success — that is, it is designed to be a *child-inclusive, communication-centred, and enhanced* process of family mediation. Although more information must be gathered to know whether these goals have been fully achieved, there is every indication that this model of child inclusive mediation is on the right course. □

## **Summary of Recommendations**

1. In policy directives, and in associated procedural, training, and promotional materials, clarify the three roles of the counsellor in respect of the children — the educator, supporter, and messenger — and explain the practical application of these roles. In this way, Family Justice Counsellors, parents, and the general public will have a better understanding of B.C.'s particular model of child inclusive mediation.
2. In addition to providing a clear theoretical framework for child-inclusive mediation, provide more opportunities for Family Justice Counsellors to practice child-inclusive techniques within a training setting.
3. Prepare a second version of the pamphlet titled *Information About Your Meeting with the Family Justice Counsellor*, with both the content and cover design geared to older children.
4. To improve the Division's ability to monitor the uptake and progress of child-inclusive mediation, institute a data capture procedure to record:
  - the number of cases for which basic eligibility criteria is met (e.g., age of children, issues for mediation)
  - the number of cases in which a child-inclusive process is offered, and
  - in those cases where it is not offered, the reasons why it is not offered.



5. Depending on the uptake information made available through an improved data capture procedure (see recommendation 4), consider a policy directing that a child-inclusive process be offered in *all* eligible cases unless a Family Justice Counsellor determines that it is ill advised.<sup>1</sup>
6. Broaden the policy direction on post-mediation, follow-up sessions with children, so that such a session may be held with a child for reasons other than explaining an agreement arrived at by their parents — provided the FJC still acts in a manner consistent with their role as educator, supporter, and messenger.
7. Consider conducting a survey or similar method of assessment specifically geared to children and youth in order to better appreciate their experience in child-inclusive mediation.
8. In upcoming training sessions, allow for additional discussion about the criteria or conditions under which it may be preferable to conduct either joint or individual meetings with parents at the time their children’s views are communicated to them.

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<sup>1</sup> Such a policy may, however, be contingent upon all FJCs being trained and qualified to both determine eligibility and to conduct child-inclusive mediations.

## I. INTRODUCTION

### A. In This Report

This report documents the findings of an evaluation of the *Children in Mediation Project*<sup>1</sup> — a novel project initiated two years ago by the Family Justice Services Division of the B.C. Ministry of Attorney General. The origins of this project can, in fact, be found in the United Nation’s *Convention on the Rights of the Child*<sup>2</sup> which was brought into force almost twenty years ago. Among other things, this convention sets out the rights of children in being given the opportunity to express their views — and, perhaps more importantly, to be *heard* — about the matters that affect them.

How best to bring children’s views into decisions about the matters that affect them has, however, been the subject of some debate. In family mediation, the Division’s efforts to promote both the welfare of children and healthy family relationships have been particularly identified with the requirement to maintain a *child focus* in the process; that is, by ensuring that the best interests of children are always the uppermost concern. More recently, with its Children in Mediation Project, the Division has decided to expand this concept by involving children more directly in the mediation process — typically, by obtaining their information in a separate interview, and then bringing that information to their parents for consideration at the mediation table. The Project’s overall goal is:

... to facilitate and enhance parent<sup>3</sup> decision making by including children in the mediation process.

To assess achievement of this goal, an evaluation of the Project was initiated in the fall of 2009. The evaluation, as detailed in an evaluation framework prepared in April, 2008, involved a data collection period of ten months, between October 2009 and July 2009. During this period, observations were made in connection with a series of evaluation questions developed to assess the achievement of the Project’s goal and objectives. Additionally, to summarize these achievements in a more concise and meaningful way, three unique concepts or criteria of objective achievement were used in order to assess: the degree to which the Project was *child-inclusive*; whether the processes used were *communication-centred*; and the extent to which decision-making in mediation was *enhanced*. Together,

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<sup>1</sup> Throughout this report, the Children in Mediation Project is referred to, variously, by either its full name or as “the Project”.

<sup>2</sup> Under the *Convention on the Rights of the Child*, Article 12 reads as follows:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

[*Convention on the Rights of the Child*, General Assembly resolution 44/25, 20 November 1989. Entry into force in accordance with article 49, 2 September 1990]

<sup>3</sup> The parties in the Children in Mediation Project are most typically the parents, but they may also be grandparents, guardians, relatives, or other persons involved in the care and custody of children. The most typical parties — the parents — are referenced here, in the Project’s objectives, and throughout this report for easier phrasing and a simpler appreciation of the overall rationale of the Project.

these concepts formed an appreciation of what “success” looks like in the Children in Mediation Project. □

## **B. Background Notes and Scope of Evaluation**

The evaluation of the Children in Mediation Project was conducted in a manner consistent with what is known as a “formative” or process evaluation, in which the design and delivery systems that contribute to the achievement of the Project’s objectives are stressed as much as their actual achievement. The operative question in a formative evaluation is, then, “is the program *set up* for success?” In keeping with a pilot project that is oriented towards finding out what works, and what doesn’t, the evaluation was similarly directed at identifying which design elements and which processes contribute to the success of this project. It was also concerned with understanding whether these elements and processes might contribute to longer term success if the child-inclusive process were to be fully implemented as a program of the Division.

The child-inclusive process in this Project was uniquely designed within the confines of three roles which the mediators — mostly Family Justice Counsellors (FJCs) with the Division — assume in relation to the children. These roles were first described by K.K. Irvin in his article “Including Children in Mediation: Considerations for the Mediator”, and they include: the *educator*, *supporter*, and *messenger*.<sup>4</sup> As mentioned in the evaluation framework, these roles are significant both to the scope of the Project and to the scope of the evaluation to the extent that they concretely define the mechanisms for program delivery, the interpretation of children’s needs, and the facilitation or enhancement of decision making within the context of the educator, supporter, and messenger.

The scope of the evaluation that was eventually conducted differed in some respects from what was originally envisioned in the evaluation framework. This was due in part to some differences in practice as compared to the way the Project itself was initially conceived. The situation in which a child actually attends a mediation session with their parents — as opposed to being interviewed by the FJC in a separate meeting — occurred only once during the project period. Additionally, post-mediation meetings with children were offered by few, if any FJCs, and they were seemingly not conducted by the FJCs to “assist the clients to inform the child(ren) of the agreement reached by the clients and to answer any questions or respond to any feedback”. This means that these processes (as described in the practice directive in Appendix A, and illustrated as processes 3 and 4 in the flow diagram in Appendix B) were not fully assessed as part of the evaluation.

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<sup>4</sup> K.K. Irvin, “Including Children in Mediation: Considerations for the Mediator”, *Family Therapy Collections*, 12, 1985, pp. 101 – 102. Irvin described the roles as follows:

*Educator*: to teach about the mediation process, the divorce process, the ways in which change affects people and feelings associated with the process – in an effort to normalize these dynamics for the children

*Supporter*: to encourage and understand ideas and feelings expressed by the children, and to emphasize some of the positives that are likely to or already have taken place in the family

*Messenger*: to take to the parents those things that the children would like for them to know but have not yet been able to express.

Additionally, one very important study component — personal interviews with child participants — could not, in the end, be conducted. The inclusion of these children depended on the consent of both parents even before a child could be asked if they would like to participate in an interview. In all but one case, it was not possible to contact either one or both parents in order to acquire their consent. As a result, this particular study component had to be abandoned. In a Project that is all about hearing children’s voices, this was not only a great disappointment, but it presented a considerable methodological hurdle for the evaluation. In terms of scope, therefore, the evaluation results speak to the perspectives of parents and their mediators — not to that of the children, who are the “main act” in this mediation process.

Finally, it should be noted that partly by design, and partly because of some data collection challenges, this evaluation is prefaced on a “case study method”. In spite of best efforts to obtain feedback from parents, only a small sample of those involved in child-inclusive mediation ultimately participated in the telephone and written survey designed to reach them. Particularly in connection with this study component, then, no claims are made beyond what was observed in the cases studied. The observations made in these cases are, nonetheless, instructive, and do serve as points of discussion that can inform decision-making in this subject area. □

### **C. Methodology**

**D**uring the ten-month data-collection period for the evaluation, information about the Children in Mediation Project was gathered from a variety of different sources. The evaluation was comprised of four main study components:

- a review of all relevant program documentation
- field visits with four Family Justice Centres delivering child-inclusive mediation services
- a written survey of all FJCs designated to provide the service, and
- a telephone and written survey of parents who took part in a child-inclusive mediation process.

Apart from the analysis of case tracking data to provide a profile of the cases in the Project, these approaches relied largely on qualitative rather than quantitative methods of analysis. It is not uncommon for a formative evaluation to rely more heavily on qualitative methods — again, because an assessment of the Project’s design and delivery systems is as important as program outcomes in this kind of evaluation. A heavier reliance on qualitative measures is also not uncommon for a pilot project, as longer term outcomes cannot yet be measured quantitatively.

#### *i. Document Review*

The first task undertaken in the evaluation involved a review of relevant policy and procedural materials for the Project. The primary document in this respect is the *Child Inclusive Dispute Resolution Directive* issued on May 31, 2007 (see Appendix A). Additionally, however, a review was undertaken of materials for two training sessions: one in

April of 2007 prior to the start of the Project, and one in December of 2007. Reference materials on which the training was based — and which were later shared with training participants — were studied. As well, the participant evaluations for the training (administered by the B.C. Justice Institute) were reviewed for evaluation purposes.

*ii. Site Visits*

Another study component involved field or site visits to four locations around the province: Courtenay, Vancouver, North Vancouver, and Kamloops. Although only a small number of communities could be visited as part of the evaluation, an effort was made to select locations that represented different sizes of communities served, different regions of the province, and different numbers of child-inclusive mediations completed. At each site, interviews were conducted with the local manager, the FJC designated to provide child-inclusive mediations, and at least one non-designated FJC. As more in-depth information could be gathered in this format, these site visits were key to providing a more contextual or hands-on look at the Project's work.

*iii. Survey of Family Justice Counsellors*

More perspective from those who deliver child-inclusive mediation services was also gathered through a written survey of designated FJCs with the Project. At the time the survey was administered in early February of 2009, almost one-third of designated FJCs had not yet conducted a child-inclusive mediation. Two versions of the survey were therefore developed: a more detailed one for those who had experience with one or more of these cases, and a less detailed one for those who had not. The survey was e-mailed to a total of 22 designated FJCs across the province, 16 of whom had conducted child-inclusive mediations, and 6 of whom had not. Respondents were given the choice of completing the survey either electronically or in paper form. An overview of the survey results can be found in Appendix C.

*iv. Survey of Parents Involved in Child-Inclusive Mediation*

Finally the perspective of parents who participated in a child-inclusive mediation was gathered through telephone interviews and a written survey. The telephone interviews originally applied to cases initiated from September 22<sup>nd</sup> to December 22<sup>nd</sup>, 2008. In order to expand the number of cases eligible for the telephone interviews, this period was later extended by one month to capture cases initiated up to January 22<sup>nd</sup>, 2009. Parents who consented to be contacted by an evaluation researcher were invited to participate in interviews conducted a month to six weeks after their mediation had concluded. In the end, however, of the 19 parents who gave their consent to be contacted, just eight could be reached and agreed to an interview.

The written survey of parents was included in the evaluation framework as a possible data source, but it was not initially planned for the evaluation because of cost considerations. As the participation rate in the telephone interviews was low, however, a decision was made to conduct a written survey with the parents who had been involved in child-inclusive mediation prior to September 22<sup>nd</sup> 2008. Surveys were mailed by regular mail in June 2009, and respondents were given a two-week period in which to return their completed survey. To help

increase the response rate, a new \$5 bill was included as a gift incentive to complete and return the survey.<sup>5</sup> Again, however, the participation rate was disappointing, with just 11 (10.6%) of an anticipated 104 surveys returned.

Combining the numbers from the telephone interviews and the mail-out survey, feedback was received from 19 (16.1%) of the approximately 118 parents who participated in child-inclusive mediation from June 2007 to February 2009. Unfortunately, this sample is not large enough to draw conclusions about the larger population of Project clients. Therefore, the results in this report are discussed only in relation to that particular group of parents who agreed to participate in either the telephone interviews or the written surveys.

#### *v. Methodological Challenges*

The literature on survey research is filled, presently, with the laments of researchers experiencing new barriers to their attempts to access survey respondents. With call display and voice mail, people are capable of screening their phone calls to exclude anyone but their closest friends and family. Additionally, there is a surfeit of electronic communication mechanisms clamoring for attention, and many a market analyst or pollster in hot pursuit of survey participants. Perhaps it is not surprising, then, that the humble evaluation survey is given short shrift! While the sample size of the parent survey is not smaller than that seen in connection with similar types of research or evaluation studies, it is nevertheless discouraging that a better picture of the Project could not be acquired from this source.

Even more discouraging, however, was the inability to reach the Project's main client group — children. As explained earlier (see section B, above), children could not be approached for an interview without the consent of both parents. With this requirement, just one child was interviewed during the evaluation period. While her responses are not directly referred to in this report to preserve the confidentiality of her responses, they were still useful in providing context or a kind of “reality check” when examining data from other sources. Apart from this, however, the difficulties in reaching even one parent — let alone both — resulted in this study component being eliminated from the evaluation.

These methodological challenges point, of course, to the perils of research with human subjects. Still, in spite of the challenges, the information gathered did produce some important insights into this particular model of child-inclusive mediation. The above sources of information and methods of analyses provided a comprehensive view of how well the Project's objectives were achieved. Perhaps more importantly, they have also contributed to the discussion of the broader question about how best to include children in the matters that affect them. □

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<sup>5</sup> The decision to include a gift incentive to encourage survey participation was based on evidence in the research literature along the lines of the following: “Today most studies report that a pre-paid cash incentive, one that is delivered with the survey and not conditional upon completing the survey, has a substantial effect on response rate. In fact, this effect is greater than that of a conditional payment, even if the conditional payment is somewhat larger than the prepaid or unconditional one.” Jack Rabin, W. Bartley Hildreth, and Gerald Miller, “Classic Methods in Public Administration”, *Handbook of Public Administration*. 3<sup>rd</sup> Ed. (Boca Raton, FL: CRC Press, Taylor and Francis group, LLC, 2007), p. 927.

## II. REVIEW OF PROGRAM FOUNDATIONS AND CONCEPTS OF OBJECTIVE ACHIEVEMENT

### A. Program Foundations

The design and delivery of a program is necessarily impacted by both the larger context in which it works, and the underlying rationale on which it is based. A more detailed overview of the operating context and rationale for the Project was provided in the evaluation framework report. Some highlights are presented here, however, as background before introducing the evaluation results. Chart 1, below, sets out the program goal and accompanying objectives for the Children in Mediation Project.

<p><b>Program Goal</b></p> <p><b><i>The goal of the Children in Mediation Project is to facilitate and enhance parent decision making by including children in the mediation process.</i></b></p>
<p><b>Objective 1.</b> <i>To give children a voice ...</i></p> <p>To provide a mechanism within the mediation process by which children can express views about the decisions that affect them.</p> <p><b>Objective 2.</b> <i>To let parents hear ...</i></p> <p>To provide a mechanism within the mediation process by which parents can hear and consider the views of their children when deciding issues that affect the children.</p> <p><b>Objective 3.</b> <i>To make decision-making better and make it better for children ...</i></p> <p>To better meet the needs of children, and enhance decision making in the mediation process, by acting as educator, supporter, and messenger.</p>

**Chart 1. Program Goal and Objectives**

In their views about the role of children in family mediation, mediators are said to fall along a continuum — ranging from those who believe that children should not be included in the mediation process at all, to those who see themselves as full advocates on behalf of children.<sup>6</sup>

<sup>6</sup> Focus Consultants, *The Involvement of Children in Divorce and Custody Mediation: A Literature Review*. Family Justice Services Division, Ministry of Attorney General, March 2003, p.2. The authors quote Donald Saposnek [“The Voice of Children in Mediation: A Cross-Cultural Perspective”, *Mediation Quarterly*. Vol. 8(4), 1991, pp. 325-326], who observes as follows:

... child custody mediators tend to fall on a continuum: at one end are those who believe that the mediator’s role is simply to be a neutral facilitator of negotiations between two parents, and at the other end are those who believe that the mediator’s role is to be a strong and persistent advocate for children. Mediators who view themselves more as neutral facilitators presumably would be disinclined to include children in the process, since they would contend that mediation is a process of self determination by the adult disputants and that the mediator must not contaminate his or her neutrality by the influence of the child’s wishes. Mediators who view themselves as strong advocates for children cite clinical and research evidence ... that documents the frequent inability of parents going through divorce to

The Children in Mediation Project is perceived as lying somewhere in between these two positions. While still maintaining their neutrality in facilitating a resolution between two parents, FJCs are expected to carefully limit their roles — in relation to the children — to only that of the educator, supporter, and messenger<sup>7</sup>. They are not to act in a therapeutic role, and they are not to evaluate or weigh the children’s information in the context of the parents’ dispute. Largely, they are to act as neutral conveyors of the information that the children want brought to their parents attention.

A full description of the Project can be found in the practice directive in Appendix A, and an illustration of it can be found in the flow diagram in Appendix B. In brief, however, the service is available to families whose children are at least eight years of age, and are assessed to be sufficiently mature that they can participate fully in the process. Most typically, the child-inclusive component of the mediation involves an FJC interviewing the child, and then conveying the information he or she provides to the child’s parents in a subsequent mediation session. In special cases, an older child — no younger than twelve years of age — may be invited to attend a mediation session to convey the information to their parents. Additionally, if it is felt that a follow up is necessary, a post-mediation meeting may be held with both the parents and the child.

Initially, the Project was in place in eleven pilot sites in the province: Vancouver, North Vancouver, Nanaimo, New Westminster, Surrey, Langley, Abbotsford, Port Coquitlam, Kamloops, Prince George, and Terrace. After eight months, it was expanded province-wide so that FJCs with the specialized training required to include children in mediation were available in nearly all Family Justice Centres in the province. Family Justice Counsellors who provide mediation services at these Centres are fully qualified family mediators, and are certified with Family Mediation Canada. For the Project, just one mediator from each Centre was given additional training for child-inclusive mediation and “designated” to provide the service. Non-designated FJCs can, however, refer clients to the designated FJC for the child inclusive component of a mediation. In these referred cases, the designated FJC is the “secondary counsellor”, and may act as either a co-mediator in the case or attend a mediation session only to convey the information provided by the child.

The goal and objectives as shown in chart 1 (previous page) speak of a project in which children are given a voice, and parents are provided with a means to hear those voices. They also tell of a project in which — as a result of children speaking and parents hearing — there is both better decision-making, and the needs of children are better met within the mediation process. Since the mediators’ roles of educator, supporter, and messenger are particular defining features of this Project, the last objective specifically casts these improvements in decision-making and meeting needs within the boundaries of these roles. □

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consider clearly the real needs of their children. Thus, they believe it is essential that the mediator take on this role as child advocate throughout the mediation process.

<sup>7</sup> See footnote 4: K.K. Irvin, *Op. Cit.*, p.p. 101 – 102.



## ***B. Concepts of Objective Achievement***

As they provide an important contextual backdrop, the “concepts of success” referred to earlier (and described in greater detail in the evaluation framework) are also reviewed here before moving on to explore the results of the evaluation. The evaluation design centred on three concept categories that were used to summarize the three program objectives and the evaluation questions associated with them: child-inclusive, communication-centred, and enhanced.

First and foremost, the evaluation design was prefaced on the idea that for the Project to be a success, it must be *child-inclusive*. “Child inclusiveness”, from the Project’s point of view, is something different from a “child-focus” in mediation. The Family Justice Services Division emphasizes a child focus in its conventional mediation approaches by requiring that the best interests of children always be a primary consideration. The Children in Mediation Project, however, goes one step further. Children must be involved to an extent that, as the Project’s first objective states, they are properly able to express their views about the decisions that affect them.

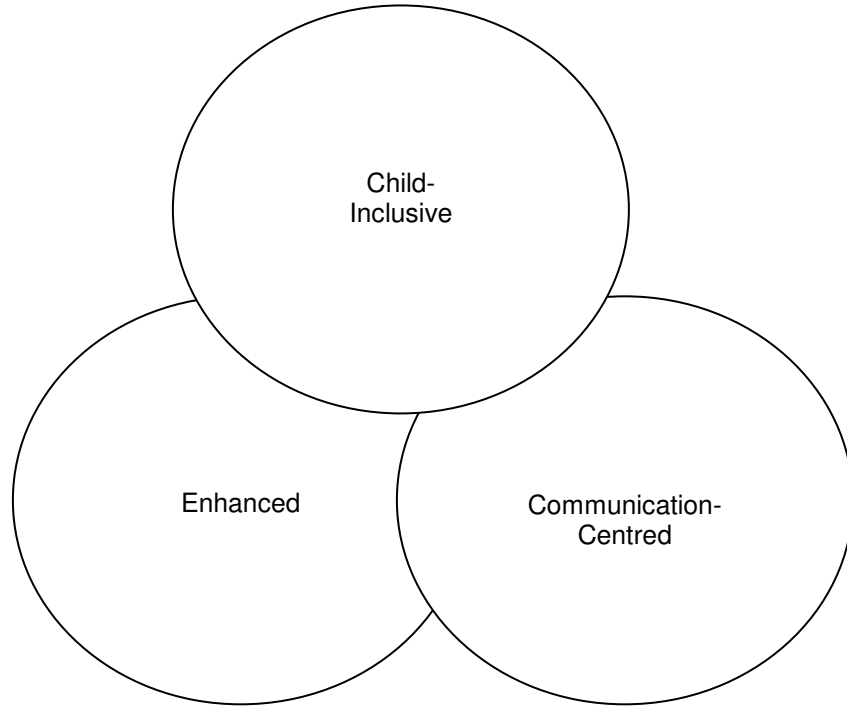
Secondly, a successful project must be *communication-centred*. Success, in this sense, means not only that children are included and able to express their views, but also that there is true communication — in other words, children must be both seen and heard. Modern communications theory uses what is known as the S-M-C-R model — encompassing the sender, message, channel (or medium), and receiver aspects of communication. In this model, real communication, and real understanding, occurs only when all these component parts are in place. Together, the achievement of both the first and second objectives for the Project would represent successful communication according to this model.

Finally, successful achievement of the third and last objective would indicate that family mediation within the Division is *enhanced*. A successful project would bring about enhancements or improvements in the parents’ decision-making process, and in meeting the needs of children within that process<sup>8</sup>. These improvements are particularly examined within the context of the educator, supporter, and messenger roles of the FJCs in the Project. This concept of success is also connected with the previous two concepts in that the process of decision-making in mediation, and the meeting of children’s needs, is seen as enhanced by the effective communication and the child-inclusive orientation of this model of mediation.

As shown in chart 2, next page, the three concepts of success overlap and combine, while at the same time each concept remains distinctive. This illustrates the idea that the concepts for understanding success for this project are interdependent, and that they have certain characteristics in common, but that each has a different emphasis. Taken together, these concepts express what is expected for achievement of the larger project goal and, therefore, overall success of the Project. □

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<sup>8</sup> “Meeting the needs of children”, in this context, does not mean that parents necessarily act on the wishes expressed by children, which may not be realistic or otherwise feasible. Rather, the Project is particularly concerned with meeting the children’s information, support, and communication needs — in relation to the FJCs roles as educator, supporter, and messenger — as explained in greater detail later in connection with the evaluation findings for objective 3.



**Chart 2. Concepts of Successful goal achievement in the Children in Mediation Project**

### III. PROJECT SUCCESS

#### A. Child Inclusive

##### Objective 1. To give children a voice ...

To provide a mechanism within the mediation process by which children can express views about the decisions that affect them.

The evaluation questions that were examined in connection with this first objective relate to the process or mechanism by which children are included in mediation, as well as to the experience of children in expressing their views about the decisions that affect them. Many of the questions common to a process or formative evaluation — relating to whether or not a program is geared or designed for success — were placed here, even though they might reasonably have been placed in connection with either of the other two objectives for the Project. They were placed with this objective, however, to emphasize the child focus of the mechanism for child-inclusive mediation. Overall, the questions relate largely to the concept of *child inclusiveness* as the indicator of success in the Project.

(1) *How well do the Project's training and policy/procedural tools prepare Family Justice Counsellors (FJs) to include children in the mediation process?*

This first evaluation question relates to the administrative supports in place for the Project. These were assessed, first of all, by undertaking a content analysis of the relevant training materials, policies, and procedures. Overall, it can be said that the results of the content analysis were positive. They indicated that the training, policy, and procedural tools utilized are appropriate, and are supportive of the Project's objectives.

One topic was found to be in need of more elaboration in these materials, however: the educator, supporter, and messenger roles assumed by counsellors vis-à-vis the children. The non-therapeutic character of the child inclusive process is explored in the training and in the reference materials provided to FJs during training.<sup>9</sup> In the *Child Inclusive Dispute Resolution Directive*, however, the educator, supporter, and messenger roles are described only in the form of definitions displayed at the bottom of the page in a footnote. Greater clarity around the three roles of the counsellor in respect of the children — and around the practical application of these roles — would contribute to a better understanding of B.C.'s particular model of child inclusive mediation.<sup>10</sup> This is important, as it is the emphasis placed on

It is helpful to hear the role described in these three parts. Where I feel that I have been well aware of the role of supporter and messenger, I now realize that I have been less aware of the role of educator.

— a FJC survey respondent

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<sup>9</sup> See: Joan B. Kelly, "Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice", *Virginia Journal of Social Policy & the Law*, [Vol. 10: 1], 2002, p. 158.

<sup>10</sup> The impression that these roles were not fully articulated in the project materials in terms of how they played out in practice was corroborated during the site visits. The FJs interviewed in the site visits admitted to not particularly knowing about these roles — or how they were defined — before they were described as part of the interview question. Once the roles were described, however, they felt that the way they conducted themselves in a child-inclusive mediation was, nevertheless, consistent with the description provided. The FJs who participated

these roles that essentially contrasts B.C.'s model of child inclusive mediation from that provided in other jurisdictions<sup>11</sup>.

Questions posed during site visit interviews and in the survey of FJCs also addressed training and policy/procedural tools. The training sessions, in particular, were very favourably received — 15 (93.8%) of 16 survey respondents indicated that they felt very well or adequately prepared to conduct a child-inclusive mediation following their training. Other tools, such as the *Child Inclusive Dispute Resolution Directive* and the bi-monthly Children in Mediation Committee meetings held by conference call over the course of the Project, were also thought to be helpful — although less so compared with the training received (64.3% and 78.6% [n=14], respectively, reported these tools as helpful or very helpful).

In interviews with Project and other Division staff, it was noted that the two instructors who delivered training to FJCs in two separate sessions were quite different in their training styles and in their orientation to the relevant materials. For both training sessions, however, the participant evaluations provided by the Justice Institute were, overall, very favourable. Participants gave the following suggestions:

- provide more practical material (written/video/role play/exercises) about the interview process with children and providing feedback to parents
- increase the length of the training session, as a large volume of material was covered, and
- clarify the policy requirements for the Children in Mediation Project.

The FJCs surveyed for the evaluation offered similar suggestions for the training. In addition, they suggested that follow up or continuing education be provided after the completion of initial training.

I am a strong proponent of ongoing professional development and believe the nature of this work requires strong skill sets in both interview techniques and strategies as well as a comprehensive understanding of child development. Opportunities for both advanced training and intermittent refreshers on 'basics' would be helpful.

— a FJC survey respondent

### **Recommendation 1**

In policy directives, and in associated procedural, training, and promotional materials, clarify the three roles of the counsellor in respect of the children — the educator, supporter, and messenger — and explain the practical application of these roles. In this way, Family Justice Counsellors, parents, and the general public will have a better understanding of B.C.'s particular model of child inclusive mediation.

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in the written survey similarly indicated that they fully understand and fulfil the objectives of these roles in the work that they do.

<sup>11</sup> See, for example, the child-inclusive program offered through Australia's Family Relationships Centres, as described in the study by Jennifer E. McIntosh and Caroline M. Long, *Children Beyond Dispute: A Prospective Study of Outcomes from Child Focused and Child Inclusive Post-Separation Family Dispute Resolution*. Melbourne: Family Transitions Pty Ltd., La Trobe University, October 2006.

## **Recommendation 2**

In addition to providing a clear theoretical framework for child-inclusive mediation, provide more opportunities for Family Justice Counsellors to practice child-inclusive techniques within a training setting.

(2) *How well does the material and information provided to parents and children prepare them for participation in child-inclusive mediation?*

A content analysis was also undertaken of the Q and A leaflet, information contained on the consent form, and other written and on-line materials<sup>12</sup> provided to parents and children taking part in child-inclusive mediations. These tools were similarly found to be appropriate and supportive of the Project's objectives.

Most of the Family Justice Counsellors participating in interviews, and most (81.8%, n = 11) of those participating in the survey who had conducted child-inclusive mediations at the time of the survey, reported that the information and materials with which they are provided to help prepare parents and children are beneficial. They gave the following suggestions as ways to further improve these materials, however:

- in the pamphlet *Information About Your Meeting with the Family Justice Counsellor* for older children, gear the content (not just the cover) to an older age group
- provide a resource list of where parents and children might turn for additional information, and
- in order to reinforce oral instructions on this topic, provide a written "caution" to parents not to question their child about what they are going to say or, after the interview, about what they did say.

Most importantly, parents felt the information and materials with which they were provided by FJCs prepared them well for the child-inclusive mediation process. Of the 16 parents who answered this question in the telephone interviews and written survey, 14 (87.5%) indicated that they felt well prepared for the way their child would be included in the process prior to their child being interviewed. They did, however, make the following observations that may be helpful in improving the information provided:

- the pamphlet *Information About Your Meeting with the Family Justice Counsellor* is geared too much to younger children
- suggestions about how parents can best prepare their children are particularly helpful, and
- whether the information is given orally or in written form, "... you should not be made to feel slow in understanding".

Because I have done it before, I knew that this is what [my child] needed. Some parents wouldn't be able to determine this. They might worry that the child is coached, and some could feel there would be repercussions for the child. Probably a little more preparation would be in order for [those parents].

— a parent interview respondent

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<sup>12</sup> These additional materials included: the [www.familieschange.ca](http://www.familieschange.ca) website, the *What Happens Next* book, and applicable research or child development information.

Unfortunately, an impression of how the children themselves viewed the information provided could not be directly assessed through the evaluation. Six (60.0%) of 10 parents surveyed, however, agreed or strongly agreed that the information their child was provided with helped him/her understand how they would be participating in the mediation process. Just one of the parents (10.0%) felt it did not prepare their child adequately (three others (30.0%) did not know, or scored the question as not applicable in their situation).

### **Recommendation 3**

Prepare a second version of the pamphlet titled *Information About Your Meeting with the Family Justice Counsellor*, with both the content and cover design geared to older children.

(3) *In how many cases is it determined that children should not be included in mediation, and what are the reasons?*

In order to determine the number of cases not included in a child-inclusive mediation, and the reasons why, it is necessary to determine the number of cases in which there are children eligible for the process in the first place. Unfortunately, this proved somewhat of a challenge in the evaluation. Data is retained in the Family Information System (FIS) on the numbers and ages of children, and any cases for which mediation is unsuitable because of family violence. Searching the FIS running records for notations regarding lack of suitability, however, or even for the number and ages of children in the Project, was not thought to be feasible or cost-effective for evaluation purposes.

Instead, as detailed in Appendix E, figures were extrapolated from two studies undertaken recently by the Family Justice Services Division — the *Assessment of Dispute Resolution Prevalence and Case Outcomes* (March 2008) and the *Dispute Resolution Longitudinal Study* (March 2008). Based on the observations from these studies, and the case volumes reported for the Project between June '07 and October '08, it is estimated that a child inclusive service was offered in about 8% of possibly eligible cases, and did not proceed in about 3% of cases.

It is suspected, however, that the number of cases in which a child-inclusive service was offered may have been somewhat under-reported. Family Justice Counsellors designated as child-inclusive mediators for Project purposes may not have reported in full the number of and reasons for declined cases, as completion of the case tracking form for cases that did not proceed may have been perceived as unnecessary. Additionally, non-designated FJCs may have offered the service, but they were not required to report this information. These figures provide, nevertheless, the best estimate available of the client population for the Project.

From the case tracking figures that were kept for the Project, FJCs reported that child-inclusive mediation was either declined by a parent or child, or an FJC later withdrew an offer of service, in 43 or 42.6% of the 101 cases in which it was offered. The reasons for declining service included the following:

- One parent unwilling to have child interviewed: 17 (16.8%)
- FJC withdrew offer of service: 3 (3.0%)
- Parents reached agreement prior to child involvement: 7 (6.9%)

- One parent not interested in any services with FJC: 4 (4.0%)
- Child unwilling: 2 (2.0%)
- Other/unknown: 10 (9.9%)

These reasons are instructive. Although it appears that the child-inclusive process was declined in close to half the cases in which it was offered, it was actually declined by a parent in just 17 cases (16.8%). The child was unwilling to be interviewed in 2 (2.0%) cases. This indicates, at least, that a lack of client support for the Project was not the main reason for the low uptake of the Project. The bigger question, however, is not so much why the service was declined once it was offered, but rather why the numbers of cases in which it was offered in the first place are so small. In the written survey, FJCs suggested that the following reasons might have contributed to the low rate of uptake:

- refusal by one or both parents to provide consent
- a lack of familiarity with and/or understanding of the process by parents and justice partners
- a lack of understanding by non-designated FJCs as to which cases should be referred for child-inclusive mediation
- initial discomfort with or hesitancy in interviewing children and briefing parents on the part of designated FJCs
- a lack of time/resources to take on child-inclusive mediation cases.

These reasons were also reported in the interviews with designated and non-designated FJCs and their local managers during site visits. Workload was mentioned as an issue, in particular, as other new initiatives were also taking the time of FJCs during the project period. A new “Justice Access Centre” was introduced on an experimental basis (in Nanaimo only); a new information system, known as the “Family Information System 2 (FIS2)”, was being implemented; and the “Small and Simple Property Project”, involving financial matters that were previously not accepted for mediation, was being piloted during the time the Children in Mediation Project was being piloted. Survey participants reported that, on average, a child-inclusive case takes four to six hours longer to conduct than non-inclusive cases (although there was wide variation in the times reported by different individuals).

Uptake rates early in the Project period were disappointing, prompting speculation that the minimum age level set for children eligible for the Project might be too high. The nature of family break up is such that it tends to occur earlier in a couple’s relationship, when children are likely to be quite young. The minimum age level for eligibility was therefore moved from 10 years to 8 years. Unfortunately, changing the age criteria did not seem to alter the rate of uptake over the second half of the project period. As it is estimated that up to 40% of all mediation cases in the Family Justice Services Division involve a child aged 8 and over (see appendix E), and given that the propensity of parents and children to accept an offer of a child-inclusive process is high, the low rate of uptake is baffling indeed.

It must be concluded, therefore, that the evaluation question about the number of cases in which there is a decision not to include children remains largely unanswered. Although the reported reasons for not including children in mediation are mainly supportive of the Project and its objectives, it cannot be said that these reasons tell the whole story.

#### **Recommendation 4**

To improve the Division's ability to monitor the uptake and progress of child-inclusive mediation, institute a data capture procedure to record:

- the number of cases for which basic eligibility criteria is met (e.g., age of children, issues for mediation)
- the number of cases in which a child-inclusive process is offered, and
- in those cases where it is not offered, the reasons why it is not offered.

*(4) How do FJCs view the inclusion of children in the course of their mediation practice?*

The way that FJCs view the inclusion of children in their mediation practice was construed both in terms of their support for the objectives of the Project, and in terms of their roles as educators, supporters, and messengers of the children. In both respects, the results are positive. In the interviews and survey of designated FJCs, respondents indicated that they understand the Project objectives and their roles, share a common understanding of them, and support the goals of child inclusive mediation in connection with them.

In the survey of FJCs, *all* respondents indicated that they support the three objectives for the Children in Mediation Project, agreeing that:

- It is important to give children a voice in the mediation process (10 or 76.9% strongly agreed, 3 or 23.1% agreed, n = 13);
- It is important to let parents hear the views of their children in the mediation process (11 or 84.6% strongly agreed, 2 or 15.4% agreed, n = 13); and
- The roles of educator, supporter and messenger are appropriate for FJCs in the child-inclusive model (12 or 85.7% strongly agreed, 2 or 14.3% agreed, n = 14).

Of those FJCs who had conducted child-inclusive mediations at the time of the survey (n = 11), all agreed that they had fulfilled the roles of “supporter” and “messenger” in their mediation practice. All but one person also felt they had fulfilled the role of “educator” in their child-inclusive mediation cases. Of the three, the educator role appears to be the most difficult to interpret in practice.

I have probably not fulfilled this role [educator] as much as it could be. Training in this area would be helpful.

— a FJC survey respondent

The interest in child-inclusive mediation is also shared by non-designated FJCs in the Family Justice Services Division. From June 2007 to January 2009, 17 (28.8%) of the 59 cases involving a child-inclusive process were recorded as cases in which the designated FJC acted as a secondary counsellor. It may be that even more cases than this were actually referred by a non-designated FJC. During the site visits, a fairly common practice was reported in which cases were referred to the designated FJC at the time of intake, or after a preliminary meeting with a couple, if it appeared that a case would be suitable for child-inclusive mediation.

The impression that there is a strong degree of support for the Project by non-designated FJCs, and by local managers, was further reinforced in the FJC survey. All but 2 of the 14 respondents (85.7%) agreed or strongly agreed that the non-designated FJCs in their offices



were aware of the Project and were supportive of its goals (1 [7.1%] disagreed, and 1 [7.1%] gave no opinion on this question). All but 1 of the 14 (92.9%) agreed or strongly agreed that their local manager was aware of the Project and was supportive of its goals (1 [7.1%] gave no opinion on this question).

Indeed, FJCs are uniformly enthusiastic about the child inclusive process! In spite of this enthusiasm, however, there remains somewhat of a predisposition in favour of conventional mediation approaches. In interviews with designated FJCs, non-designated FJCs, and local managers during the site visits, it was disclosed that many still believe that including a child in mediation is the exception rather than the rule — a “when all else fails” option.

The FJCs who had some of the largest volumes of child-inclusive cases, on the other hand, indicated that they make a point of offering the service in nearly every case eligible for a child-inclusive process. They observed that, sometimes, the mere offer of a child-inclusive process to parents has a positive effect on mediation, even if it does not subsequently take place. Their orientation to the process is, therefore, somewhat different from that of their colleagues — they contemplate the reasons why the service should *not* be offered, rather than why it should. That it *should* be offered — where possible, and in eligible cases — was something of a given in their mediation practice.

I have not counted the numerous times when the offer of CIM services was enough to redirect parents into a discussion of what the child might say, leading to a more fruitful discussion ...

— a FJC survey respondent

### **Recommendation 5**

Depending on the uptake information made available through an improved data capture procedure (see recommendation 4), consider a policy directing that a child-inclusive process be offered in *all* eligible cases unless a Family Justice Counsellor determines that it is ill advised.<sup>13</sup>

- (5) *If asked to participate in the Project, do parents agree to have their children take advantage of the opportunity to express their views by means of the procedure established — and if not, what are the reasons why parents decline?*
- (6) *Once their parents have agreed, do children agree to take advantage of the opportunity to express their views by means of the procedure established — and if not, what are the reasons why children decline?*

Since these questions are two sides of the same coin — one exploring the rate of uptake by parents, and one the rate of uptake by children — the answers to them are contemplated together here. As discussed earlier (see question 3, above), parents generally agreed to have their children take advantage of the opportunity to express their views through child-inclusive mediation. Parents specifically expressed an unwillingness to have their child interviewed in just 17 (16.8%) of the 101 cases in which the service was offered. Children further expressed an unwillingness to proceed in 2 (2.0%) of the cases in which it was offered.

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<sup>13</sup> Such a policy may, however, be contingent upon all FJCs being trained and qualified to both determine eligibility and to conduct child-inclusive mediations. There would otherwise be a potential for workload disparity problems in offices where only one FJC can provide the service.

Unfortunately, further insight into why the parents and children were unwilling to participate in these particular cases is not available, again because the expense of searching the FIS running records for notations in this regard was thought to be prohibitive for evaluation purposes. The possibility of surveying parents who decline was considered, but was rejected because of their decision not to participate in the Project and the subsequent complications in acquiring the consent of these parents for participation in the evaluation. Additionally, the problem of not knowing either the full population of eligible cases, or the exact numbers of parents to whom an offer of a child-inclusive process was made (as discussed under questions 3 and 4 above), makes it difficult to draw conclusions about those who may have expressed an unwillingness to proceed with the process.

Nevertheless, we can get some sense of why some parents choose not to proceed with a child-inclusive process from FJCs. Respondents in the FJC survey speculated that a lack of familiarity with and/or understanding of the process by parents contributed to their unwillingness to participate. As well, from comments they gave in telephone interviews and the written survey, parents conveyed the impression that involving one's child in a process like this requires a great deal of courage. Parents are already concerned about the impacts of family break up on their children, and worry that drawing them further into the struggle between themselves and their former partners could worsen the situation.

It's a weird thing to have to discuss your child with someone else ...  
I would rather [my daughter] didn't have to be involved — it was very difficult ...  
— a parent interview respondent

So much depends on the FJC's ability to reassure parents that their children will not be harmed by the process — in fact, that they will likely benefit from the opportunity to voice their concerns — and that the children will not be placed in a position of making decisions that are rightly their parents' to make. It requires a degree of salesmanship; a task made easier, no doubt, by the general degree of enthusiasm FJCs working in this area demonstrate for the child-inclusive process.

- (7) *Do children whose involvement occurred between mediation sessions believe that they have had a meaningful opportunity to express their viewpoints, concerns, and feelings?*
- (8) *Do children who attended mediation sessions believe that they have had a meaningful opportunity to express their viewpoints, concerns, and feelings?*

Whether or not children feel that they have had a truly meaningful opportunity to express their views about matters that affect them through this mechanism is, surely, the primary concern of the Project. If children perceive the process as lacking in meaning, the Project will have failed to achieve its objective of *giving children a voice*.

It should be noted that question 8, relating to cases in which children attended a mediation session, queries a process that did not occur in sufficient numbers to assess during the project period. As mentioned earlier (see Part I.C. *Methodology*), only one case of this type was recorded from June '07 to January '09. This is not, perhaps, unexpected, as the Division's practice direction in the *Child Inclusive Dispute Resolution Directive* anticipates its occurrence only "in select and exceptional cases ...". During the site visits, and in discussions at the time case details were gathered for parent interviews, FJCs agreed that including a child at a mediation session with the parents would be appropriate only under very

rare circumstances. Family Justice Counsellors suggested that the child should be older, perhaps late teens, or young adult; that there should be no conflict between the parents; and that the issue should be easily defined and concrete in nature (such as college finances, for example).

The evaluation therefore only focused on the circumstances visualized in question 7, in which children were interviewed separately and the information conveyed to their parents at a subsequent mediation session. In the written survey, 9 (90.0%) of 10 parent respondents agreed or strongly agreed that their child was encouraged to express his/her ideas and feelings about the issues being addressed in mediation (1 parent [10.0%] did not know). Although they were not asked to rate their answer, 7 (87.5%) of 8 parents interviewed similarly indicated they believed their children were encouraged to express their feelings (1 parent [12.5%] did not know). This is a very positive result. It gives us, however, only a second hand sense of how children themselves perceived their opportunity to express their viewpoints, concerns, and feelings. With one exception, it was not possible to ask them directly.

When asked, specifically, whether their children would have found it helpful to have another session with the FJC after mediation concluded, 9 (50.0%, n = 18) of the survey respondents thought their children would have benefited from such a session. They suggested that the reasons for this session might be: to provide follow up on the information their child provided to the FJC; to follow up or bring closure after their parents' mediation concluded; to hear about a new parenting arrangement; or simply as another opportunity to speak with someone other than a parent or relative about their situation.

...The kids became very attached to [the FJC] — they would have liked to share how things were going. A relationship is developed, and they felt the need to wrap things up.  
  
— a parent interview respondent

Four (36.4%, n = 11) of the FJCs surveyed who had undertaken child-inclusive mediation cases also suggested that a follow up session with children would be a way of improving the process. Under the current policy, follow up sessions with children are permitted. The purpose of this session, however, is rather more narrowly construed than either the parents or the FJCs conceived of it. The directive stipulates that:

The responsibility to discuss matters with the children would be primarily that of the clients, and the mediator's role would be to assist in that process. The role of the children would be that of an information recipient only. The emphasis would be on ensuring the children understand the agreement.

There were no reported cases during the project period in which a post-mediation meeting with the children took place. It may be that FJCs felt they had insufficient time to conduct a follow up session, even if they thought it would be beneficial. Child inclusive mediation is time consuming, and fitting in an additional, follow up session with the child may simply be seen as prohibitive. Besides the follow up session, FJCs also suggested the following as additional support or assistance that could be given to children<sup>14</sup>:

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<sup>14</sup> Parents also gave suggestions about additional assistance or support for the children, such as:

- provide counselling support
- permit FJCs to make recommendations, or give evidence in court, and
- permit FJCs an arbitration role, or allow them to impose decisions in the child's best interest.

- ensure parents understand the reasons for involving their children
- provide a video presentation for children as a lead-in, and
- encourage children to speak with a school counsellor or other support person.

[The FJC] was great! But talking through an intermediary is strange. Maybe [the child interview] would be better at a restaurant — not in an office?  
— a parent interview respondent

### **Recommendation 6**

Broaden the policy direction on post-mediation, follow-up sessions with children, so that such a session may be held with a child for reasons other than explaining an agreement arrived at by their parents — provided the FJC still acts in a manner consistent with their role as educator, supporter, and messenger.

(9) *Do children involved in the mediation process — either between or within mediation sessions — subsequently report that, overall, the experience was a positive one?*

The final question relating to the achievement of the Project’s first objective is an overall client satisfaction question. It is important that, after all is said and done, children come away with a positive feeling about the child-inclusive mediation process. Again, because a direct assessment of the children’s impressions of the process was not possible during the evaluation, this question was answered primarily by way of the parents’ observations of their children.

Sixteen (84.2%, N = 19) of the parents surveyed said “yes” or “partially” when asked if their children found it helpful. This is a very positive result for the *Children in Mediation Project*. There is, however, a possibility that the parents’ impressions of how valuable their children thought the process had been may have been coloured by their own impressions of it. Their views about whether their children found the overall process helpful exactly mirrored their own, with the same number — 16 (84.2%, N = 19) of the parents surveyed — saying “yes” or “partially” when asked if they thought the process was helpful. Just 1 (5.3%) indicated they did not think their child thought it was helpful, while 2 (10.5%) indicated they did not find it helpful for themselves. As well, comments given in response to various questions in both the interviews and surveys suggested that parents might have found it difficult to disentangle their views on the child-inclusive process from their views about their family situation, or about the outcome of the mediation.

It is unfortunate that a direct measure of the children’s impressions of the process was not possible during the evaluation. At some later date, and in keeping with the objective “to give children a voice”, it may be worthwhile to initiate a simple survey to better assess their views about the process. As children in the British Columbia public

Keep advancing in strategies and approaches to make the inclusion of children a comfortable/productive/successful experience for them.  
— a FJC survey respondent

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These suggestions, however, would be a clear departure from the current model which takes a non-therapeutic approach, and which uses mediation rather than arbitration as a technique for dispute resolution. These are difficult concepts for parents to understand, however. It may be that a better explanation of the B.C. model of child-inclusive mediation would help to clarify these issues for parents.

school system are introduced to survey concepts at a young age, most would be capable of completing a pencil-and-paper survey in the 8 to 10 age range. Presumably all would be capable of doing so from aged 10 and up. In the interim, however, it must be concluded that this question was not fully answered within the scope of the evaluation.

Nevertheless, it is reasonable to assume that, if their children had been distinctly unhappy with the process, the parents would have recognized this in some way, and would have said something about it when given the opportunity to express this in their survey. It is even reasonable to assume that, if their children were unhappy with the process, the parents would not have viewed the process as positively for themselves. Therefore, the parents' observations can be taken as an indication that the children's experience was generally a positive one. □

### **Recommendation 7**

Consider conducting a survey or similar method of assessment specifically geared to children and youth in order to better appreciate their experience in child-inclusive mediation.

## ***B. Communication-Centred***

### **Objective 2.** *To let parents hear ...*

To provide a mechanism within the mediation process by which parents can hear and consider the views of their children when deciding issues that affect the children.

**T**he second objective for the *Children in Mediation Project* is framed in terms of the parents' experience in the child-inclusive process. They are the "receivers" from a communications theory perspective, and the questions associated with the achievement of this objective relate to whether or not the "senders" — the children — have been able to transmit their "messages" in such a way that they can properly be received and understood by their parents. This is measured by way of the parents' own reports about how well they received their children's messages, and how both parents and FJCs observe the messages to have impacted decision making in mediation. To the extent that this objective focuses on closing the communication "loop" — ending not only with communicating, but also understanding the message — the questions associated with it relate, overall, to a *communication-centred* concept of success in the Project.

*(1) Do parents consider the views of their children when developing their parenting arrangements?*

Although seemingly straightforward, this question is actually somewhat difficult to address. Ideally, some contrast with the way parents take their children's views into account when they have participated in a child-inclusive process, as against those who have not participated in such a process, would have permitted the best answer to this question. But evaluation rarely

takes place in ideal circumstances. Rather, we must rely on the parents' own reflections about whether or not their children's input affected their decision-making.

About two thirds (9 or 64.3%, n = 14) of the parents interviewed and participating in the written survey agreed or strongly agreed that hearing their children's views affected the decisions they made in mediation. Parents were able to point specifically to the ways in which their decisions were affected. Eight (80.0%, n = 10) agreed or strongly agreed that hearing their children's views helped to clarify how the decisions they made in mediation would affect their children. Six (60.0%, n = 10) of those who had also finalized agreements in mediation indicated that their commitment to their agreement was increased by the involvement of their children (three [30.0%, n = 10] felt their commitment was the same, and one [10.0%, n = 10] did not know).

The interview respondents further indicated that hearing their children's views affected their decision making by:

- increasing their awareness of the impact of their decisions on their children
- influencing the way they characterized or approached the issues, and
- affirming or reinforcing the decisions they made.

Family Justice Counsellors also observed that parents are affected by what their children say in a child-inclusive process. They believed even more strongly than parents that this was so, with:

- 8 (72.7%, n = 11) indicating that, in some or all of the cases in which they were involved, hearing children's views influenced the decisions made by parents in mediation
- 9 (81.8%, n = 11) indicating that parents are more likely to reach resolution due to having received input from their children, and
- 9 (81.8%, n = 11) indicating that, in some or all of the cases in which they were involved, parents were able to reach resolution more quickly on child issues due to having received input from their children.

In some cases, the parents are intrigued to learn their child has shared something that is quite "different" from what they shared with them; and in these cases, they tend to be "influenced" and sometimes even "about face" from their original thinking on a previously proposed plan.

— a FJC survey respondent

From these observations, it can be concluded that most of the parents participating in the interviews and written survey did consider the views of their children when developing their parenting arrangements; and that hearing these views helped them better appreciate the implications of their decisions for their children. It may even help them to better comply with the terms of the agreements they make in mediation. Family Justice Counsellors who have had the experience of both conventional and child-inclusive mediation processes confirm that the children's input not only influences the outcome, but also changes the nature of their parents' decision-making in a positive way.

(2) *Do parents whose children's involvement occurred between mediation sessions believe that they were provided with their children's viewpoints, concerns, and feelings in a manner that enabled them to take these views into consideration?*

(3) *Do parents whose children attended mediation sessions believe that they were provided with their children’s viewpoints, concerns, and feelings in a manner that enabled them to take these views into consideration?*

Sometimes communication does not occur because the channel — or medium — is not structured in such a way that the message can properly be conveyed. These questions ask, then, about the manner in which the children’s views are brought to the parents. Once again, as in question B.8 above, note that cases in which children attended a mediation session did not occur in sufficient numbers to assess during the project period. The evaluation therefore only focused on the circumstances visualized in question 2, in which children were interviewed separately and the information was conveyed to their parents at a subsequent mediation session.

In cases of this type, 9 (90.0%, n = 10) of the parents surveyed agreed or strongly agreed that their children’s viewpoints, concerns and/or feelings were provided to them in a way that helped them to take their children’s views into consideration. These parents clearly approved of the manner in which their children’s viewpoints, concerns, and feelings were conveyed to them.

Most of the 18 parents interviewed and participating in the written survey expressed no particular preference for either individual or joint meetings as the meeting format that FJCs should choose to convey the children’s views. The formats these parents experienced were fairly equally distributed between the two meeting formats, as follows: 7 (38.9%) had individual meetings, 9 (50.0%) had joint meetings with the other parent, and 2 (11.1%) had both types. Thirteen (76.5%, n = 17) indicated that the format they had was satisfactory, or that either format would have been satisfactory. It would seem that parents don’t perceive that either joint or individual meetings are necessarily the “right way” to pass on the information from their children.

During the site visits, however, it was disclosed that FJCs do have a particular preference, and would tend to stay with one meeting format or the other. For example, some feel that it is best to provide the information jointly so that it is clear the same information is provided to both parents. Others feel that it is easier for parents to hear what may be difficult information from their child if the child’s other parent is not present to comment on that information. As there are points in favour of both formats, this topic could be explored more fully at upcoming training sessions. It may be that some criteria could be arrived at which factors in the nature of the information being conveyed and any other conditions that influence whether or not the information is best provided to the parents either separately or jointly.

The parent respondents were thoughtful about the sessions in which they had participated. Apart from comments about the meeting format, a few respondents offered the following suggestions as to how FJCs might improve the way they present children’s views to parents:

- shorten the wait time to schedule the child interview and the meeting to provide feedback to parents
- record the child interview

“My only complaint is that it takes a long time. It took a month for our child to get in to see the FJC.”

“I wouldn’t mind a follow up call to my daughter to find out if she would like another meeting.”

“It was fine. [The FJC] was very honest; but [s/he] also kept some things private – this was good, as some things that are said can be hurtful.”

— some parent interview respondents

- provide a copy of the notes from the child interview
- convey the child's words without any interpretation, and
- provide more time to discuss how the child's views can be incorporated into the parenting plan.

### **Recommendation 8**

In upcoming training sessions, allow for additional discussion about the criteria or conditions under which it may be preferable to conduct either joint or individual meetings with parents at the time their children's views are communicated to them.

- (4) *Do parents whose children were involved in the mediation process — either between or within mediation sessions — subsequently report that their experience was a positive one?*

In the same way that overall client satisfaction was assessed in respect of the children, overall satisfaction was also assessed in respect of the parents. This question asks whether, on the whole, parents came away with a positive feeling about the child-inclusive mediation process. Even if they had concerns about specific aspects of it, parents should still feel that the process was a valuable component of their experience in mediation.

Parents in both the telephone interviews and the written survey were asked to rate how favourable their impression was of the process of involving children in mediation. Of the 18 who responded, roughly three quarters of them (13, 72.2%) rated it as either favourable or very favourable. Parents were clearly very thoughtful when they answered this question. For example, 4 (50.0%, n = 8) indicated their views were either favourable or very favourable, even if there were some things they didn't like about the process.

"It was really a good thing! I'm disappointed that it didn't result in a settlement, but it was a good way of doing [mediation]."

"Children *should* be included. It's good that children know what is happening. Children are very hurt – they need to understand what is going on."

— *some parent interview respondents*

Three (37.5%, n = 8), however, indicated that their overall impression was either unfavourable or very unfavourable, and also indicated that there were things they didn't like about the way their children were involved. Nevertheless, the comments of these three about the things they did not like appeared to have to do with their disappointment with the outcome of their mediation or the nature of their circumstances, rather than with the child-inclusive process per se. None of the three subsequently articulated a problem specifically with this component of their mediation experience.

As a further examination of this question, parents were also asked if they would recommend that other parents include their children in a mediation process like this. About two thirds (13, 68.4%) of the parents said they would recommend it, but just one (5.3%) said they would not (a further 4 [21.1%] said maybe, and 1 [5.3%] said they didn't know).

Although a stronger or more definitive assessment would have been preferable, these results nevertheless indicate that the parent respondents did largely view the child-inclusive process in a positive light. Family mediation, most often, involves the effort of resolving some very emotional and difficult issues. It is, then, very much to the credit of the parents who gave of



their time to provide some feedback on the process that they were able to speak of it as plainly as they did. □

### **C. Enhanced**

**Objective 3.** *To make decision-making better and make it better for children ...*

To better meet the needs of children, and enhance decision making in the mediation process, by acting as educator, supporter, and messenger.

The third and last objective for the Project looks at the child-inclusive mediation process from two perspectives, decision-making in mediation and meeting the needs of children. Particular attention is paid to the three roles played by mediators vis á vis the children in this Project: the educator, supporter, and messenger roles. Therefore, the questions associated with the achievement of this objective relate to whether or not acting in these roles in a mediation context is both helpful to children, and improves the process by which their parents make decisions that affect those children. In this way, the questions speak to a concept of “*enhancement*” as an indicator of success in the Project.

- (1) *Do the roles of the FJCs in relation to the children— as educator, supporter, and messenger — adequately meet the needs of children in the decision-making process?*
- (4) *What information/education needs do children have (within the scope of the issues at mediation), and how are these needs met by their inclusion in the mediation process?*
- (5) *In what ways do children need support (within the scope of the issues at mediation), and how are these needs met by their inclusion in the mediation process?*
- (6) *What communication needs do children have (within the scope of the issues at mediation) — that is, what would children like to express to their parents — and how are these needs met by their inclusion in the mediation process?*

These questions have been drawn together here, as the answers to them are quite closely inter-related. Before discussing the evaluation results for these questions, however, a few explanatory notes are necessary. These were some of the more difficult questions posed in the evaluation, largely because of the difficulties in defining the needs of children as they relate to mediation generally, and to the roles of the mediator as educator, supporter, and messenger specifically. In the end, for evaluation purposes, children’s needs were fairly narrowly interpreted in terms of the way K.K. Irvin described these roles in his article “Including Children in Mediation: Considerations for the Mediator”<sup>15</sup>.

In keeping with Irvin’s descriptions, information needs in connection with the *educator* included information about “the mediation process, the divorce process, the ways in which

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<sup>15</sup> K.K. Irvin, *Op. Cit.* [see footnote 4].

change affects people and feelings associated with the process – in an effort to normalize these dynamics for the children”. Support needs in connection with the *supporter* included the children’s need for encouragement, for understanding when expressing their ideas and feelings, and for an appreciation of “the positives that are likely to or already have taken place in the family”. Lastly, communication needs in connection with the *messenger* included the need to communicate “to the parents those things that the children would like for them to know but have not yet been able to express”.

Unfortunately, the nuances of these definitions were somewhat lost on the parent respondents in the telephone interviews and written survey — and, certainly, the semantics around them were problematic when developing the interview and survey questions. During the telephone interviews, it became clear that parents were having difficulty differentiating between information, support, and communication as separate areas of need for their children.

In any case, it was possible to solicit comments from parents about any of their children’s needs that went unmet. When asked if they had any suggestions about additional information, assistance, or opportunities for communication that might have supported their children during the child-inclusive process, most parents (14 or 73.7%, N = 19) indicated that they did not have any suggestions. Of those who did have suggestions, just two specifically spoke to needs that parents felt were unfulfilled for their children through the current process:

- provide counselling support (2 or 10.5%, N = 19), and
- provide follow up interviews for children (1 or 5.3%, N = 19).

In respect of the former, counselling support, more emphasis from FJCs on the fact that they can make referrals to counselling professionals — as they cannot themselves provide these services — may go some way to meeting the needs of children in that area. And, in respect of the latter, follow up meetings, and greater clarity around or perhaps expansion of the policy in connection with follow up sessions with children may address the concerns there (see recommendation 5 and related discussion, on page 23).

The answers to a few questions about information needs also suggested that the parents surveyed generally seemed to think the needs of their children in this area were largely met. Most parents (7 or 70.0%, n = 10) in the written survey agreed or strongly agreed that the information their child was given helped them understand what mediation was all about. As well, when asked if they could think of any additional information that might have been helpful, but which wasn’t provided, most parents (5 or 71.4%, n = 7) in the telephone interviews could not think of any.

The parents surveyed also indicated that they felt the FJCs’ efforts met their children’s needs for support or assistance. Of those participating in telephone interviews, all but one (7 or 87.5%, n = 8) indicated that talking to the Family Justice Counsellor helped their children. Most parents (16 or 88.9%, n = 18) in both the interviews and written survey also indicated that they felt their children were encouraged to express their ideas and feelings about the issues addressed in mediation.

The FJCs in the Project provided a range of supports and information to the children with whom they worked. For example:

- 9 (90.0%, n = 10) helped the children by discussing concerns they had about their situation
- 7 (70.0%, n = 10) referred the children to the [www.familieschange.ca](http://www.familieschange.ca) website or library resources
- 6 (60.0%, n = 10) gave a counselling referral, or provided the children with information about another person or agency that could help them with the problems they were having
- 3 (30.0%, n = 10) recommended the books, such as: “What Happens Next”, and/or “How to Survive your Parents’ Divorce: Kids Advice to Kids”
- 1 (10.0%, n = 10) offered an additional meeting or other follow up, and
- 1 (10.0%, n = 10) conducted a role play.

... Always suggest that local libraries have [a] separate section on separation, divorce, step-parenting for all ages; that way children can access the information they want, feel as if they have chosen it, and will be more likely to read it as a result.

... Provide website information for children and publications where available and age-appropriate.

— some FJC survey respondents

Finally, the results suggest that the FJC’s acting in their capacity of “messenger” seemed to meet the children’s communication needs. Thirteen parents (76.5%, n = 17) in the both the interviews and written survey indicated that, through the child-inclusive mediation process, they heard concerns or observations that would otherwise have been difficult for their children to express.

Family Justice Counsellors were eager to share their suggestions about ways to better help children express their views in a family mediation context. These included:

- provide better preparation for parents in advance of the child’s session, so they can then better explain the content and nature of the child interview to their children
- develop rapport by “asking questions about their everyday life in both homes, including questions about routine, friends, school and how their lives have changed since the separation”; if possible and necessary, offer more than one meeting with the child in order to develop better rapport
- provide snacks and beverages
- provide drawing materials or toys for younger children
- “normalize” their situation, by describing how their observations or feelings are shared by others in similar situations, or by giving positive feedback about themselves or their family
- reassure the child that their information is confidential, and
- consider the developmental stage of the child.

... Family systems training, age-appropriate interview skills are the most important [tools] to have.

... The children I worked with seemed to be fairly comfortable having their views shared with their parents.

... I think for the most part we are so well trained that we have the skills to allow children to talk. I find interviewing the children is refreshing.

— some FJC survey respondents

It may be that, if a child/youth survey is initiated at some later date, more conclusive answers can be supplied for these evaluation questions. Although both parents and FJCs gave thoughtful answers to the questions posed, it was hoped that greater insight could be gathered into the nature of the children’s information/education, support, and communication needs — and into whether or not fulfillment of the educator/supporter/messenger roles necessarily meets those needs. Evaluation is, however, a rather blunt instrument to examine this topic, as it would require a specially-tailored research project to comprehensively investigate the needs

of children in these circumstances. Nevertheless, positive results were harvested in connection with the questions asked, and no significant category of needs was identified as having been unmet. This suggests that, by assuming the roles of educator, supporter, and messenger, FJCs were adequately meeting the needs of children as identified within the scope of the Project.

(2) *Are parents influenced in their decision-making — having heard the views of their children? If so, in what ways?*

(3) *How do FJCs think the children’s involvement benefited the decision-making process?*

Lastly, these two questions are also combined here for discussion purposes, as they both reflect on the decision-making process — first as it is viewed by the parents, and second as it is viewed by FJCs. There is a slight difference in the two perspectives, however. The parents reflect on the impact of their own children’s involvement, and as it relates to mediation in their own case. The FJCs, on the other hand, reflect on how the involvement of children affects decision making across all the cases in which they have employed a child-inclusive process — and even some cases in which it was offered, but not subsequently used.

Roughly two-thirds (9 or 64.3%, n = 14) of parents in the interviews and written surveys indicated that they believed hearing their children’s views had affected their decisions. When probing a little further into this topic during the telephone interviews, some respondents did not think it particularly made them reverse or substantially change their decisions. One parent observed that the process may even have affected his child’s decisions more than it did his, saying that “... my daughter started to come around afterwards”.

Several of the parents interviewed, however, felt that the child-inclusive process added clarity to the issues or decisions with which they were grappling. One commented that “... it reinforced the decisions I made — it didn’t really change them, but it affirmed them”; another said “... it helped me be a little more aware of the impact of my decisions on [my child]”. Parents in the written survey supported this view, with most (8 or 80.0%, n = 10) agreeing or strongly agreeing that hearing their children’s views helped to clarify how the decisions they made in mediation would affect their children.

I believe that the parents were able to hear the information that was provided by their child and were able to incorporate that information into their decision making. I don’t believe the information was new information however; I believe it reaffirmed what they knew were the issues with their child.

— a FJC survey respondent

A little more than a third of the parents (7 or 41.2%, n = 17) interviewed or participating in the written survey had no agreement, or their agreement was not yet finalized. As mentioned previously, however (see discussion under question B.1), many of those who did have an agreement (6 or 60.0%, n = 10) indicated that their commitment to their agreement was increased by the involvement of their children. As well, recall that almost three quarters of the respondents in the FJC survey (8 or 72.7%, n = 11) confirmed that hearing their children’s views did influence the decisions made by parents in mediation. Most (9 or 81.8%, n = 11) felt that parents are more likely to reach resolution due to having received input from their children. They even felt that, in some or all of the cases in which they were involved, parents were able to reach resolution more quickly on child issues due to having received input from their children (9 or 81.8%, n = 11).

Family Justice Counsellors commented on numerous ways in which hearing their children's views benefited the parents' decision-making processes, including:

- helping parents to see the impact of their behaviour and their decisions on their children
- helping parents to hear information from their children that might not otherwise have been provided, or which might be different from that which was communicated previously
- increased concordance on parenting issues
- better, more informed parenting plans, and
- improved custody/access arrangements and compliance with agreements.

Clearly, both parents and FJCs believe that decision making in mediation is improved by hearing their children's views. Although parents participating in the interview and written survey were less able to identify the specific mechanisms at work, they nevertheless did express the view that solutions to the issues affecting their children more clearly presented themselves as a result of the child-inclusive approach. Family Justice Counsellors echoed these observations, and were able to identify factors in both the process and outcomes of mediation that were enhanced by such an approach. □

## IV. IN CLOSING

### **A. Conclusion**

The *Children in Mediation Project* is, certainly, an innovative and insightful approach to child inclusive mediation. The Project — designed as it is around the mediator’s capacity as an educator, supporter, and messenger for children — is a unique program model for providing family mediation services. In this way alone, it can be expected to make a substantial contribution to the broader body of knowledge about how best to bring a child’s perspective into the family mediation process. It can also be expected to make a contribution to that broader body of knowledge by adhering more closely to expectations under the U.N. Convention on the Rights of the Child<sup>16</sup> — in which children have a right to both express their views, and to be heard, in the matters that affect them.

As explained early in this report, a key question in a formative or process evaluation is whether a program is set up or designed for success. In this way, a formative evaluation is concerned with identifying those design elements and processes which contribute to the success of a program. The design elements and processes examined in this evaluation suggest that, indeed, this model of child-inclusive mediation is *poised* for success — and, further, that longer term program goals can be achieved if the child-inclusive process is fully implemented as a program of the Family Justice Services Division.

The formative evaluation also asks, however, whether the objectives articulated for a program have been met. In other words, it asks not only whether a program is poised for success in the future, but also whether it is actually a success in the present — in as much as this can be ascertained over the short term. In light of the concepts of success fashioned for this project, then, the question that was asked is as follows: is this model of mediation child-inclusive, communication-centred, and enhanced?

The answer, unfortunately, is not so straight-forward, as there remain some unanswered questions. For example, it is not clear why the rate of uptake for child-inclusive mediation was much lower than expected. Other initiatives taking place within the Division that may have competed for the attention of both FJCs and parents do not appear to fully explain this; parents who declined the service could not be reached in order to ascertain their reasons; and a definitive figure for the number of families who might otherwise have taken advantage of the service remains elusive. Additionally, the feedback from those parents who did avail themselves of the Project’s services must be said to be incomplete, as the response rate for the survey of these parents was disappointing. Perhaps most disappointing, however, was that it was not possible to obtain any feedback from the most important players in the process — the children.

Nevertheless, the data to which access was possible in each study component indicates that, for the families that participated, the Project has been a success. The results of the content analysis of training and policy/ procedural materials, the site visits, the survey of designated FJCs, and the interviews and written survey of parent clients are generally all positive. The questions that remain unanswered relate, largely, to the challenges that faced the evaluation. They do not cast doubt on the achievements of the Project itself.

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<sup>16</sup> *Convention on the Rights of the Child*, Op. Cit. [see footnote 2]

Yet, because these questions remain unanswered, it is not possible to conclusively say that the objectives established for the Project have been achieved in full. The results certainly do point to such a conclusion. On the other hand, the absence of stronger quantitative data, and the inability to access the Project's main client group — and its secondary client group, only partially — is sufficient to assert that this question has not been fully answered in the evaluation.

In conclusion, then, the results of this evaluation show that the Children in Mediation Project is designed or positioned for success. They also show that the design elements and processes established for this model of mediation are positioned to be *child-inclusive*, *communication-centred*, and *enhanced*. Although more information must be gathered to know whether these goals have already been achieved, there is every indication that this model of child inclusive mediation is on the right course. Certainly, it is one for the annals of best practices on bringing the child's perspective more directly into a family mediation setting. □

## **B. Summary of Recommendations**

1. In policy directives, and in associated procedural, training, and promotional materials clarify the three roles of the counsellor in respect of the children — the educator, supporter, and messenger— and explain the practical application of these roles. In this way, Family Justice Counsellors, parents, and the general public will have a better understanding of B.C.'s particular model of child inclusive mediation.
2. In addition to providing a clear theoretical framework for child-inclusive mediation, provide more opportunities for Family Justice Counsellors to practice child-inclusive techniques within a training setting.
3. Prepare a second version of the pamphlet titled *Information About Your Meeting with the Family Justice Counsellor*, with both the content and cover design geared to older children.
4. To improve the Division's ability to monitor the uptake and progress of child-inclusive mediation, institute a data capture procedure to record:
  - the number of cases for which basic eligibility criteria is met (e.g., age of children, issues for mediation)
  - the number of cases in which a child-inclusive process is offered, and
  - in those cases where it is not offered, the reasons why it is not offered.
5. Depending on the uptake information made available through an improved data capture procedure (see recommendation 4), consider a policy directing that a child-inclusive process be offered in *all* eligible cases, unless a Family Justice Counsellor determines that it is ill advised.<sup>17</sup>

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<sup>17</sup> Such a policy may, however, be contingent upon all FJCs being trained and qualified to both determine eligibility and to conduct child-inclusive mediations.

6. Broaden the policy direction on post-mediation, follow-up sessions with children, so that such a session may be held with a child for reasons other than explaining an agreement arrived at by their parents — provided the FJC still acts in a manner consistent with their role as educator, supporter, and messenger.
7. Consider conducting a survey or similar method of assessment specifically geared to children and youth in order to better appreciate their experience in child-inclusive mediation.
8. In upcoming training sessions, allow for additional discussion about the criteria or conditions under which it may be preferable to conduct either joint or individual meetings with parents at the time their children's views are communicated to them.



**APPENDIX A**

***Operations Directive:  
Family Justice Services  
Children in Mediation Project***

# CHILD INCLUSIVE DISPUTE RESOLUTION DIRECTIVE

## May 31, 2007

### A. Preamble and Overview

Family Justice Services Division (FJSD) is implementing a Children in Mediation pilot project which will be offered as a dispute resolution tool to better meet the needs of families during or after separation/divorce. This document outlines the policy framework and associated procedures for the project.

Generally, children will be involved in mediation in three ways. The first is by way of a designated<sup>1</sup> Family Justice Counsellor introducing the children's views into the mediation session. Secondly, it may be appropriate for children to participate in the mediation session, but this will be an "exception." A third way of involving children may be by a primary mediator requesting a designated Family Justice Counsellor to assist in a mediation case by soliciting the children's views, and introducing their views into the mediation.

Designated and trained Family Justice Counsellors shall provide for the involvement of children as part of their s.3 FRA dispute resolution services. Unless otherwise stated, all existing Family Justice Counsellor policies and procedures for dispute resolution will apply. The role of the designated Family Justice Counsellor in conducting child inclusive mediation will continue to be that of an impartial third party. Within that overall role, these Family Justice Counsellors will have multiple functions when involving children. Based on the case circumstances, the Family Justice Counsellor can act, in relation to the children, as educator, supporter and/or messenger to the parents.<sup>2</sup>

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<sup>1</sup> "Designated" Family Justice Counsellor refers to fully trained and experienced Family Justice Counsellors selected for this project who have received specialized training in interviewing children. The locations that have designated Family Justice Counsellors include: Vancouver, Richmond, North Vancouver, Powell River/Sechelt, Victoria, Nanaimo, Duncan, Courtenay, New Westminster, Surrey, Langley, Abbotsford, Chilliwack, Tri Cities (Port Coquitlam, Coquitlam, Port Moody), Maple Ridge, Kamloops, Kelowna, Penticton, Cranbrook, Prince George, and Terrace.

<sup>2</sup> These roles are defined in Irvin, Including Children in Mediation: Considerations for the Mediator. P.101,2.

"Educator: to teach about the mediation process, the divorce process, the ways in which change affects people and feelings associated with the process – all in an effort to normalize these dynamics for the children

Supporter: to encourage and understand ideas and feelings expressed by the children, and to emphasize some of the positives that are likely to or already have taken place in the family

Messenger: to take to the parents those things that the children would like for them to know but have not yet been able to express."

The designated Family Justice Counsellor will not be working in an assessment role in that this work is not intended to provide the court with an assessment of the Views of the Child under s.15 of the FRA.

## **B. Screening of Cases**

1. All s.3 FRA cases within the office of the designated Family Justice Counsellor are eligible to involve children, provided they meet the criteria below.
2. The designated Family Justice Counsellor is responsible for determining whether a case is appropriate for the inclusion of the children. The identification of cases that may include personally meeting with the children in the office is based on the following considerations:
  - the parties, including the children, agree to the children being interviewed;
  - the child must be at least 8 years of age and, as assessed by the designated Family Justice Counsellor, of a developmental maturity to understand the implications of the interview and issues to be discussed;
  - the designated Family Justice Counsellor assesses that the level of conflict amongst the clients is such that they are able to handle conflict in such a manner so as to not harm the children;
  - cultural, religious, ethnic considerations or special needs of the participants can be addressed/are not an impediment to the children's participation; and
  - the clients are engaged in mediation/shuttle mediation and it is apparent to the Family Justice Counsellor that including the children will benefit both the process and the children.

## **C. Level and Type of Child Inclusion**

### **1 Within Mediation and Post-Mediation**

- 1.1 In most cases it is expected that the involvement of the children will occur within the mediation or post-mediation sessions. The interviews will be conducted in person only. Mediation includes shuttle mediation as well as joint sessions.
- 1.2 Within the Mediation: The clients are engaged in mediation and have requested that the children's views be brought into the process, prior to the next mediation session. The designated Family Justice Counsellor gathers the children's viewpoints, concerns, feelings and preferences and introduces the information into the client's mediation

process. The focus is on ensuring that the children's information is provided to the clients in a manner that minimizes the potential for the children to be directly subjected to the parents'/parties' conflict.

The role of the children would be one of information provider. Care is taken to ensure the children understand this role. The designated Family Justice Counsellor will inform the child(ren) that the role does not include decision making.

- 1.3 Post-Mediation: The designated Family Justice Counsellor assists the clients to inform the child(ren) of the agreement reached by the clients and to answer any questions or respond to any feedback. The responsibility to discuss matters with the children would be primarily that of the clients, and the mediator's role would be to assist in that process. The role of the children would be that of an information recipient only. The emphasis would be on ensuring the children understand the agreement.

## **2 Children Attend the Mediation Session**

- 2.1 In select and exceptional cases, the designated Family Justice Counsellor may provide for the involvement of the children to include attendance at the joint mediation session. The role of the children is of information provider, not decision maker.
- 2.2 The Family Justice Counsellor will ensure that the children's perspective is provided to the clients in a meaningful and constructive way by tailoring the mediation process to address issues or concerns the children may have.
- 2.3 Cases may be deemed appropriate for including the children in the mediation session only when:
  - The children are 12 years of age or older and are of an appropriate developmental stage;
  - The clients and the children are in agreement with the process of including the children in the mediation session, including in particular, that the children's role is that of an information provider;
  - The Family Justice Counsellor has determined that the case would be appropriate for this model of inclusion. Factors that the Family Justice Counsellor must consider include the issues under discussion, the openness of the clients to listen to the children's perspective, the level of conflict between the parties, the possible impact on the children, the information provided to the Family Justice Counsellor by the children in the individual session, and

the Family Justice Counsellor's assessment of whether the children's involvement will be helpful in resolving the issues under dispute; and

- The Family Justice Counsellor has consulted with his or her Local Manager and the Local Manager is in agreement, and that consultation is noted in the file notes or FIS.

#### **D. Designated Family Justice Counsellor involved as secondary counsellor**

1. A designated Family Justice Counsellor may be brought in to assist an ongoing case of another Family Justice Counsellor in the same office if the clients indicate that they would like to involve the children in the mediation process and it is felt by the parties and the designated Family Justice Counsellor that it would be beneficial.
2. The role of the designated Family Justice Counsellor is to provide for the inclusion of the children in the process.
3. Prior to commencing the involvement of the children, the two Family Justice Counsellors and the clients must agree upon the role of the designated Family Justice Counsellor. The designated Family Justice Counsellor may act as a co-mediator in the case, or may merely attend a mediation session to convey the information provided by the children.
4. Prior to personally interviewing the children, the designated Family Justice Counsellor will first meet with each parent by phone or in-person to build rapport and establish an understanding of the issues under dispute. Then the designated Family Justice Counsellor will interview the children in person and bring back the children's information to the mediation session.

#### **E. Participant preparation and interview protocols**

1. Designated Family Justice Counsellors shall, in individual interviews with the clients and the children, inform and prepare all participants for the child-inclusive process. These interviews shall include orientation regarding the process, defining the purpose and goals for involving children, identifying any special needs, and providing information about confidentiality.
2. Prior to proceeding, the clients must provide to the designated Family Justice Counsellor their informed written consent. In cases where this is not possible due to geographical distance or extenuating circumstances, verbal consent will be acceptable. This shall be noted

on the file as well as the reasons given for verbal consent only. The Family Justice Counsellor will seek the children's verbal consent and note that on the case file and FIS.

3. All interviews involving children will be conducted in person only in the Family Justice Services Centre or Family Justice Centre.
4. The length of the child interview should be no longer than one hour.

## **F. Confidentiality**

1. The confidentiality of the information provided by children to a Family Justice Counsellor is addressed in the Family Relations Act Section 3(3). This section of the Act provides that information received by a Family Justice Counsellor from a child must not be disclosed to any other party, which includes a parent and/or guardian, without the child's consent. The child must, however, be advised in language s/he can understand, of the exceptions to confidentiality.
2. All policy and procedures with respect to confidentiality found in Chapter 8 of the FJS Manual of Operations apply in child-inclusive mediations.
3. As part of the preparation interviews, all participants must be provided information about confidentiality.
4. In the event that a child consents to the provision of his/her information to the other parties in the mediation, that consent may be provided verbally and must be noted within the dispute resolution file and FIS. At the end of the interview with the child, the designated Family Justice Counsellor will confirm with the child the information that the child is consenting to be released and how it will be disclosed.
5. The designated Family Justice Counsellor will explain to the clients that the child cannot be compelled to disclose information without his or her consent.

## **G. Subsequent Contact with the Children**

1. In the event that the children contact the designated Family Justice Counsellor at a later date for assistance, after the mediation is completed, the Family Justice Counsellor shall inform the children that the Family Justice Counsellor can only reopen a mediation case upon request of one of the parents/adult parties. The children should be advised to discuss the further involvement of the Family Justice Counsellor with their parents or the adult parties.

## **H. Case Recording**

1. The Family Justice Counsellor will note the involvement of the children and the views expressed by the children in the file notes and FIS.

### Appendices:

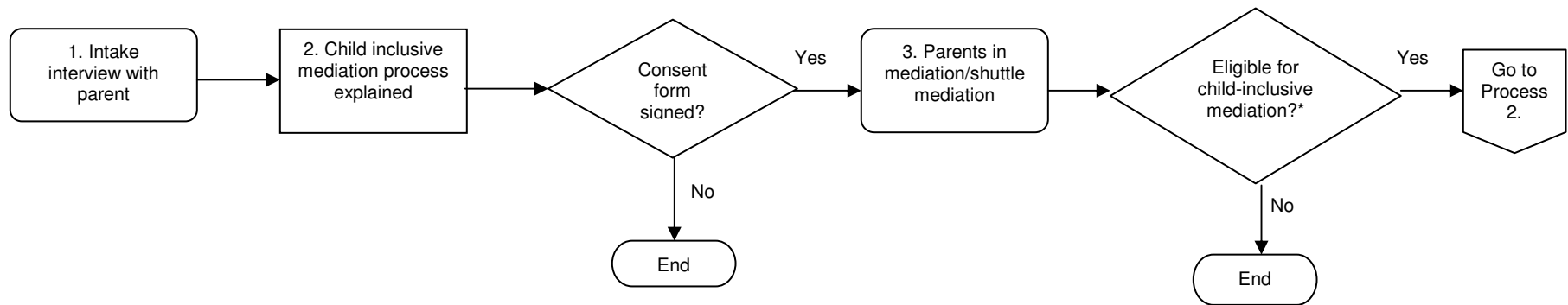
- Appendix A: Consent to Children Being Interviewed Form
- Appendix B: FJSD Tracking Form – Children in Mediation Pilot Project

**APPENDIX B**

**Flow Diagram of  
the Children in Mediation Process**



## Process 1. Intake and Application of Eligibility Criteria

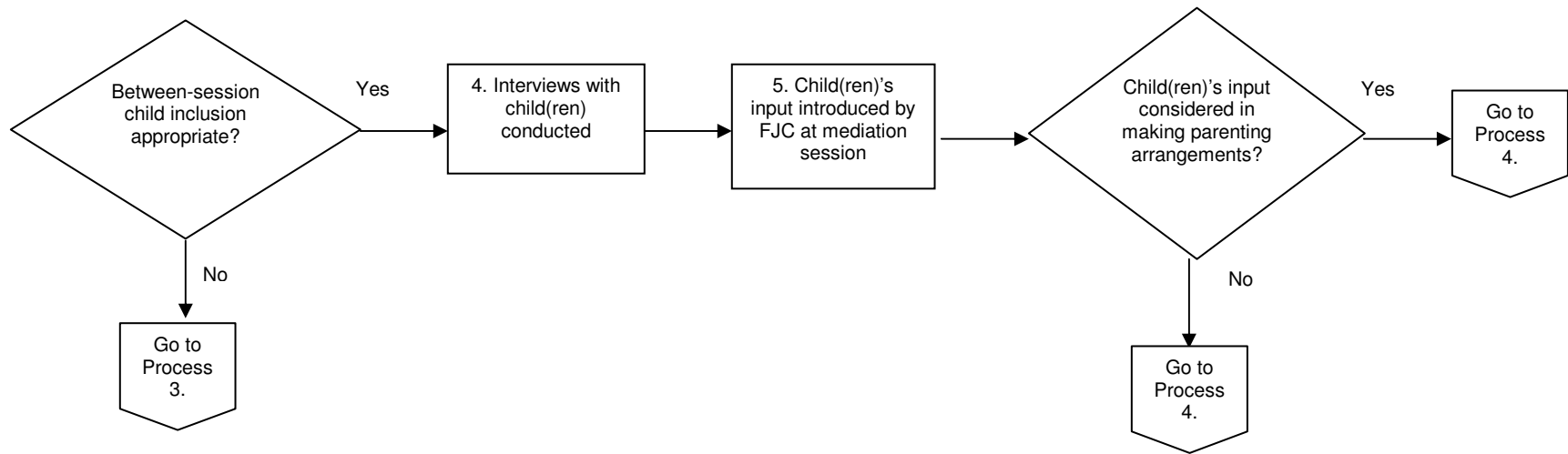


\* Criteria:

- parties and child(ren) agree to child(ren) being interviewed
- child(ren) are at least 8 years and assessed to be sufficiently developmentally mature
- level of conflict between parents assessed not to be harmful to the children if they participate
- cultural, religious, ethnic, and special needs considerations can be addressed
- parents are engaged in mediation/shuttle mediation and including the child(ren) thought to benefit both the process and the child(ren)

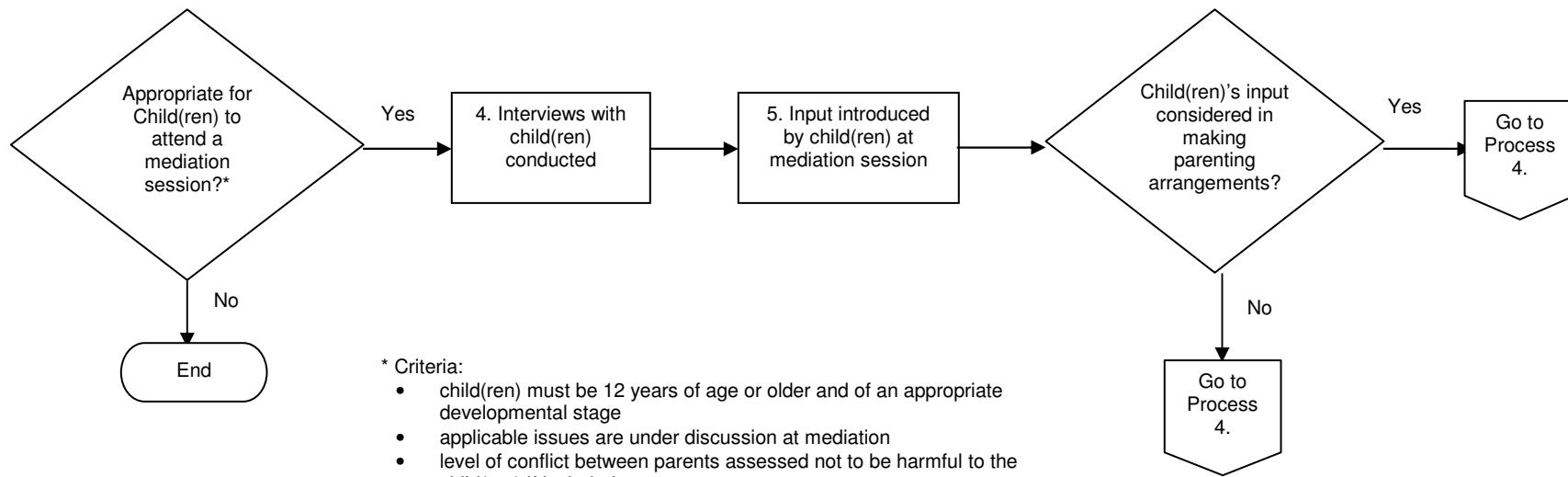
Flow Diagram of the Children in Mediation Process

## Process 2. Within Mediation (Between Session) Child Inclusion



Flow Diagram of the Children in Mediation Process

### Process 3. Within Mediation (Between Session) Child Inclusion

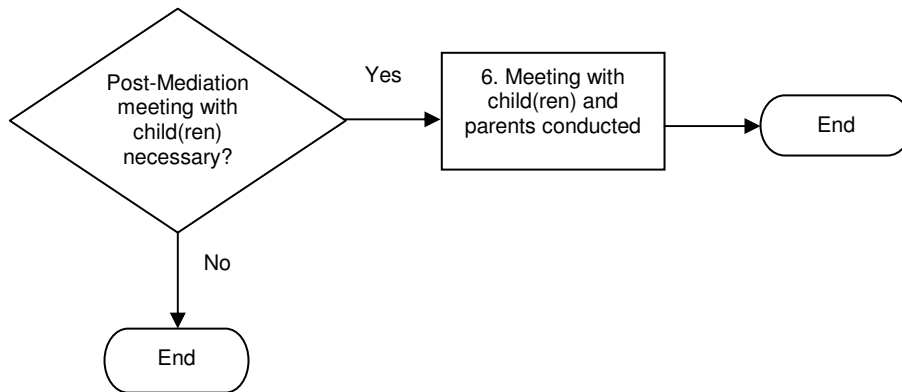


\* Criteria:

- child(ren) must be 12 years of age or older and of an appropriate developmental stage
- applicable issues are under discussion at mediation
- level of conflict between parents assessed not to be harmful to the child(ren) if included
- possible impact on the child(ren) assessed not to be harmful
- information provided to FJC by the child(ren) in individual session suggests that their inclusion would be appropriate
- involvement of the child(ren) assessed to be helpful in resolving the issues under dispute

**Flow Diagram of the Children in Mediation Process**

## Process 4. Post Mediation



Flow Diagram of the Children in Mediation Process

**APPENDIX C**

**Family Justice Counsellor Survey:  
Summary of Results**

# CHILDREN IN MEDIATION EVALUATION

## Results of the Family Justice Counsellor Survey

### OVERVIEW

The Family Justice Services Division (FJSD) of the Ministry of Attorney General has commissioned an independent evaluation of the Children in Mediation (CIM) Project that it implemented in June 2007. The purpose of this evaluation is to determine how the child-inclusive mediation process is working in practice and what, if any, improvements are required to meet the project's objectives.

One component of the CIM evaluation is a written survey of "designated" Family Justice Counsellors (FJCs) - the front-line FJSD staff who have received special training on including children in mediation. These designated FJCs are a key source of information about the project, as they are responsible for offering the CIM service to families when appropriate, interviewing the children and conveying the children's views to their parents.

As almost one-third of designated FJCs had not yet participated in a child-inclusive mediation case at the start of the evaluation, two versions of the FJC Survey were developed:

1. Survey A was designed for designated FJCs who had participated in at least one child-inclusive case. This survey was the longer of the two as it asked FJCs' to comment on various aspects of the CIM project based on their personal experience with child-inclusive cases.
2. Survey B was designed for designated FJCs who had not yet participated in a child-inclusive case. This survey contained a subset of the questions from Survey A that pertained to training and project objectives.

The FJC Survey was administered over a two week period, beginning January 30, 2009 and ending February 13, 2009. The survey was e-mailed to 22 designated FJCs across the province, 16 of whom were eligible to complete Survey A and six of whom were eligible to complete Survey B. Respondents were given the choice of completing the survey electronically or in paper form.

### SURVEY RESPONSE

A total of 14 designated FJCs completed the survey. The response rates are shown below.

Survey	Total Survey Population	No. of Surveys Returned	Response Rate
<i>Survey A – FJCs who have participated in at least one CIM case</i>	16	11	69%
<i>Survey B – FJCs who have not yet participated in a CIM case</i>	6	3	50%
All surveys	22	14	64%

While the survey populations are too small to perform any rigorous statistical analyses, there were no noticeable differences amongst the respondents for either version of the survey in terms of training sessions or years of experience as an FJC. For Surveys A and B combined:

- Six respondents (46%) attended the April 2007 training session, while seven (54%) attended the December 2007 session; and
- Nine respondents (64%) have 10 or more years of experience as an FJC, three (21%) have one to two years experience, and two (14%) have three to nine years experience.

## SUMMARY OF RESULTS

*It is important to note that the FJC Survey is just one component of the CIM evaluation and it is not the only source of data that will be used to answer the evaluation questions. Therefore, depending on the findings from the other data sources, the final analysis may differ to some degree from the results presented below.*

### **Training and Support for Designated FJCs (Surveys A & B)**

In general, the FJCs who responded to the survey indicated that they feel that the CIM training and policy/procedural tools have adequately prepared them to include children in mediation. For example:

- All but one of the 16 respondents felt adequately prepared to include children in the mediation process following their initial CIM training session. (While the FJC who did not feel adequately prepared has not yet been involved in a CIM case, he/she did not indicate that training was an obstacle preventing participation in the project.)
- Most respondents also find the CIM committee meetings and Child Inclusive Dispute Resolution Directive to be helpful (64% and 78% respectively).

In terms of suggested improvements, two strong themes emerged relating to FJC training:

- The FJCs were almost unanimous in recommending that videos or role-playing be added to the initial CIM training session. The purpose of these would be to demonstrate techniques for interviewing children of various ages/developmental stages and for providing feedback to parents.
- Many FJCs also recommended that some form of follow-up training be introduced to provide continuing support and professional development.

*“Have a follow-up one day training session to discuss FJCs’ experiences in the field practicing this process. Have a guest speaker to answer questions.” (A5)*

*“A second more in-depth training would be helpful now that I have done a few. It would be helpful if this training showed videos of FJCs role playing such interviews.” (A11)*

### **The Process for Including Children in Mediation (Survey A only)**

#### Time to Perform CIM Tasks

- While it takes FJCs an average of four to six hours to perform the tasks specific to the child-inclusive model, there was wide variation reported amongst individuals. For example, one FJC estimated that it takes from one to two and one-half hours to complete these tasks, while another FJC estimated 12 to 14 hours. Variables impacting the time required include the complexity of the case, whether siblings are interviewed together or separately, and whether feedback is given to both parents at the same time or separately.
- Despite the extra time required for child-inclusive mediation, 82% of the respondents strongly agree that the benefits are worth it.

### Information and Materials Provided to Parents and Children

- All respondents provide parents with a verbal explanation of the CIM process, a copy of the Q&As document, and the pamphlet – *Information About Your Meeting with the Family Justice Counsellor* – to pass along to their child(ren). The vast majority of respondents (82%) believe that this information is sufficient to prepare the parents for the CIM process.
- All respondents provide the children with a verbal explanation of the CIM process. Children should also receive a copy of the pamphlet - *Information About Your Meeting with the Family Justice Counsellor* – from their parents. Almost all respondents (90%) feel that this information is sufficient to prepare the children for the CIM process.

### Support Provided to Children

- All but one of the respondents have provided some form of additional support to the children (over and above the information and materials referred to above). Of the FJCs who have provided additional support:
  - 90% helped the children by discussing concerns they had about their situation;
  - 60% referred the children to the [www.familieschange.ca](http://www.familieschange.ca) website;
  - 50% provided other forms of support, such as providing the parents with information about counseling for the child;
  - 40% gave the children information about another person or agency that could help them with the problems they were having; and
  - 30% recommended the book, *What Happens Next*, to the children.
- Two-thirds of the respondents feel that there is an opportunity for FJCs to provide even more support to the children than they currently do. The most common suggestion was to allow for some form of follow-up between the FJC and the child, if appropriate, following the FJC’s meeting with the parents. Other suggestions included:

*“In my estimation, the best way to support children for the mediation inclusive process is to make sure that their parents understand well the reasons why they are involving their children, and are able to convey to the children that this is another piece of information they will use as they make decision about the parenting plan.” (A2)*

*“A video presentation designed for children may be a good idea as a lead in.....and also a tool for “normalization” of some of the things that they may be experiencing.” (A3)*

### Communication Needs of Children

- All respondents indicated that the children they interviewed were open in expressing their views about the decisions that would affect them.
- A number of the respondents provided suggestions as to how FJCs could better help children to express their views. While the recommended methods varied (e.g., from



improving interview techniques to providing snacks or toys), the common objective was an attempt to put the children at ease and build rapport.

### **Objectives of Child-Inclusive Mediation (Survey A only)**

- All respondents support the three objectives of the CIM Project, with a substantial percentage *strongly agreeing* that:
  - It is important to give children a voice in the mediation process (77%);
  - It is important to let parents hear the views of their children in the mediation process (85%); and
  - The roles of educator, supporter and messenger are appropriate for FJCs in the child-inclusive model (85%).
- All respondents agree that they have fulfilled the roles of “supporter” and “messenger” in most or all of their child-inclusive mediation cases. While the vast majority (92%) also agree that they have fulfilled the role of “educator”, it is interesting to note that this is the only role for which the percentage of respondents who “strongly agreed” was below 50% (at 46%) and the only one in which one person disagreed. Therefore, while this is still a very positive result, it indicates that some of the FJCs do not feel that they have fulfilled the “educator” role to quite the same degree as the other two.

*“It is helpful to hear the role described in these three parts. Where I feel that I have been well aware of the role of supporter and messenger, I now realize that I have been less aware of the role of educator.” (A2)*

*“I have probably not fulfilled this role [educator] as much as it could be. Training in this area would be helpful.” (A9)*

- In terms of support for the project within their office, almost all respondents agree that both their non-designated colleagues and local managers are aware of and supported the CIM Project.

### **Impacts of Child-Inclusive Mediation (Survey A only)**

Most of the respondents have observed an impact on the parents’ decision-making due to the inclusion of children in family mediation cases. Based on their experience:

- 73% of the respondents feel that, in some or all of the cases in which they were involved, the decisions made by parents in mediation were influenced by hearing their children’s views.
- 82% of the respondents feel that parents are more likely to reach resolution due to having received input from their children.
- 82% of the respondents feel that, in some or all of the cases in which they were involved, parents were able to reach resolution more quickly on child issues due to having received input from their children.
- Interestingly, the mere offer of the CIM Project to parents may be producing some positive outcomes as well. Two FJCs commented that in some cases, the parents’

discussion about including their children in mediation has had a positive impact on their decision-making, even if they do not opt for the service.

*“Some cases that were offered mediation resolved themselves because parents were aware of what their children would say.” (A6)*

*“I have not counted the numerous times when the offer of CIM services was enough to redirect parents into a discussion of what the child might say, leading to a more fruitful discussion...” (A8)*

### **General Comments (Surveys A & B)**

The CIM project is not without challenges, particularly with respect to uptake. Most respondents to Survey A (82%) feel that there is opportunity to undertake more child-inclusive mediation cases in their office, with the most common suggestion for improving uptake being to train some or all non-designated FJCs to conduct CIM interviews.

While it is not obvious from the results why CIM case volumes vary amongst individual FJCs, the survey responses do help to shed light on the reasons why overall uptake may be hampered. As illustrated by the comments below, these include:

- Refusal by one or both parents to provide consent;
- A lack of familiarity with and/or understanding of the process by parents and justice partners;
- A lack of understanding by non-designated FJCs as to which cases should be referred for child-inclusive mediation;
- Initial discomfort with or hesitancy in interviewing children and briefing parents on the part of designated FJCs; and
- A lack of time/resources to take on CIM cases.

*“FJSD should be disseminating info on this service so referrals come from judges and lawyers. It takes a great deal of effort for a frontline person to provide CIM services and explain and promote the service (even to other FJCs)” (A1)*

*“The Project needs to actively market the practice of child inclusive mediation if it is to effect a change in the mindset of justice partners, parents, and children.” (B3)*

*“I think only frequency, time and public knowledge of the program will increase the numbers. Right now, it seems a radical idea to many parents. The more it is offered, the easier it will become for parents to accept.” (A8)*

*“FJCs could handle more cases if more fte resources were put toward.” (A1)*

*“These cases are time consuming and serious considerations do need to be made about whether their case is suitable.” (A6)*

*“I think if more FJCs have exposure to interviewing children the numbers of cases would grow considerably.” (A4)*

*“I think it would be helpful to have all staff trained on the benefits and positive outcomes so that referrals are more forthcoming. I think people are still timid and unsure about the value of this*

*service and need to understand things firsthand.” (A6)*

*“More sharing of information about when CIM might be appropriate to colleagues not trained in order to increase the use of this model.” (A11)*

*“...Offering it as a first choice, not a program to be introduced when mediation is breaking down – which I know I do, largely because they are time consuming...” (A8)*

## **Conclusion**

The FJC Survey results are very positive. Designated FJCs, whether they have participated in a child-inclusive case or not, strongly support the CIM Project and are generally satisfied with the training, support and materials associated with the project. Importantly, FJCs who have participated in child-inclusive cases have observed some positive outcomes with respect to the parents’ decision-making process.

The FJCs’ comments also reveal potential opportunities for improvement within the CIM Project. In three areas in particular - training for FJCs, support for children and project acceptance/uptake - the FJCs provide specific, and often similar, recommendations for enhancement. All of this feedback, both positive and constructive, will be reviewed further in conjunction with the other information gathered as part of the evaluation and, where appropriate, recommendations will be provided as part of the final evaluation document.

**APPENDIX D**

**Parent Survey:  
Summary of Results**

**THE CHILDREN IN MEDIATION PROJECT:  
SUMMARY OF RESULTS FROM THE SURVEY OF PARENTS**

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**I. About the Project**

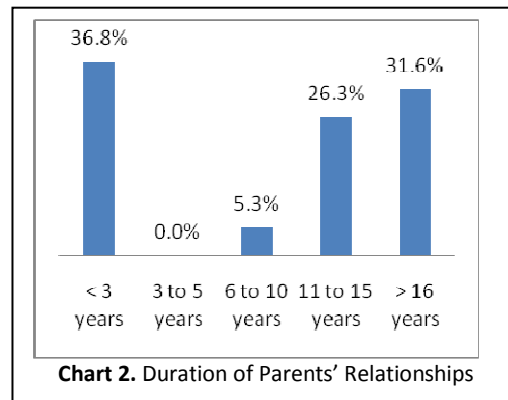
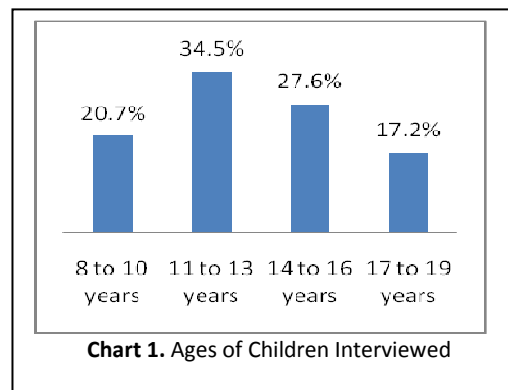
The *Children in Mediation Project* was introduced in Family Justice Centres around British Columbia in June, 2007. In this Project, children are given an opportunity to express their views and to be *heard* about the matters that affect them in a family mediation process. Most typically, this involves a mediator — a Family Justice Counsellor with special training in child-inclusive mediation — first interviewing the children, and later conveying the information to their parents in a mediation session. The goal of the Project is:

*“... to facilitate and enhance parent decision-making by including children in the mediation process”.*

**II. About the Survey and the Survey Respondents**

Between June 2007 and February 2009, a child-inclusive mediation process was conducted in 59 cases in the province. Of the approximately 118 parents who were involved in these cases, 19 (16.1%) could be contacted and agreed to participate in a survey about the Project. Of these, 8 (42.1%) participated in a telephone interview, and 11(57.9%) participated in a written survey. The survey respondents had the following characteristics:

- Just under half (9 or 47.4%) had participated in mediation before, and just over half (10 or 62.6%) had not.
- A little more than half (11 or 57.9%) had just one child who was interviewed as part of the mediation process, and a little less than half (8 or 42.1%) had two or three children who were interviewed.
- These parents represented 29 children who were interviewed. The children ranged in age from 8 to 19 years [see chart 1].
- Most parent respondents (16 or 84.2%) anticipated their children’s views might be helpful with issues relating to access, including visitation schedules. Other issues included custody, child support, guardianship, and general family concerns.
- The duration of the relationships respondents had with their former partners or spouses varied, but the largest categories of relationship duration were less than 3 years (7 or 36.8%) or greater than 16 years (6 or 31.6%) [see chart 2].



### III. Preparation for Child-Inclusive Mediation

Parents generally felt the information and materials given to them by Family Justice Counsellors prepared them well for the child-inclusive mediation process. Of the 16 parents who were asked about this in the telephone interviews and written survey, 14 (87.5%) indicated that they felt well prepared for the way their child would be included in the process prior to their child being interviewed. They nevertheless made the following observations:

- the pamphlet *Information About Your Meeting with the Family Justice Counsellor* is geared too much to younger children
- suggestions about how parents can best prepare their children are particularly helpful, and
- whether the information is given orally or in written form, "... you should not be made to feel slow in understanding".

"... Because I have done it before, I knew that this is what [my child] needed. Some parents wouldn't be able to determine this. They might worry that the child is coached, and some could feel there would be repercussions for the child. Probably a little more preparation would be in order for [those parents]."

### IV. Meeting Children's Needs

In the survey, parents were asked primarily about the information, support, and communication needs of their children. Generally, respondents indicated that their children's requirements in these areas were largely met in the process they experienced. For example:

- Most parents (7 or 70.0%, n = 10) in the written survey agreed or strongly agreed that the information their child was given helped them understand what mediation was all about.
- When asked if they could think of any additional information that might have been helpful, but which wasn't provided, most parents (5 or 71.4%, n = 7) in the telephone interviews could not think of any.
- Of those participating in telephone interviews, all but one (7 or 87.5%, n = 8) indicated that talking to the Family Justice Counsellor helped their children.
- Most parents (16 or 88.9%, n = 18) in both the interviews and written survey also indicated that they felt their children were encouraged to express their ideas and feelings about the issues addressed in mediation.
- Overall, most (14 or 73.7%) of the 19 parents surveyed indicated that they did not have any suggestions about additional information, assistance, or opportunities for communication that might have supported their children during the child-inclusive process.

### V. Hearing and Considering Their Children's Views

Parents were asked if they felt their children's views were presented in a useful way. Particularly in the written survey, 9 (90.0%, n = 10) of the parents agreed or strongly agreed that their children's viewpoints, concerns and/or feelings were provided to them in a way that helped them to take their children's views into consideration. Parents in both the telephone interviews and written survey did, however, have a number of suggestions for improving the way Family Justice Counsellors present children's views to the parents:

- shorten the wait time to schedule the child interview and the meeting to provide feedback to parents
- record the child interview
- provide a copy of the notes from the child interview
- convey the child's words without any interpretation, and
- provide more time to discuss how the child's views can be incorporated into the parenting plan.

Parents were also asked about the impact that hearing their children's views had on their decision making in mediation. The results showed that, while not all parents were sure that hearing their children's views necessarily affected the decisions they made, most believed that hearing those views clarified the issues for them. For example:

"... My only complaint is that it takes a long time. It took a month for our child to get in to see the Family Justice Counsellor."

"... I wouldn't mind a follow up call to my daughter to find out if she would like another meeting."

"... It was fine. [The Family Justice Counsellor] was very honest; but [s/he] also kept some things private — this was good, as some things that are said can be hurtful."

- About two thirds (9 or 64.3%, n = 14) of those surveyed agreed or strongly agreed that hearing their children's views affected the decisions they made in mediation.
- Eight (80.0%, n = 10) of written survey respondents agreed or strongly agreed that hearing their children's views helped to clarify how the decisions they made in mediation would affect their children.
- Six (60.0%, n = 10) of those who had finalized agreements in mediation indicated that their commitment to their agreement was increased by the involvement of their children (three [30.0%, n = 10] felt their commitment was the same, and one [10.0%, n = 10] did not know).

## VI. General Impressions

Finally, parents were asked about their overall impressions of the child-inclusive mediation process. Their responses were thoughtful, and generally positive. For example:

- Sixteen (84.2%, N = 19) of the parents surveyed said "yes" or "partially" when asked if their children found it helpful. Similarly, 16 (84.2%, N = 19) of those parents surveyed said "yes" or "partially" when asked if they thought the process was helpful for themselves. Just 1 (5.3%) indicated they did not think their child thought it was helpful, while 2 (10.5%) indicated they did not find it helpful for themselves.
- When asked to rate, overall, how favourable their impression was of the process of involving children in mediation, roughly three quarters of them (13 or 72.2%, n = 18) rated it as either favourable or very favourable.
- Three (37.5%, n = 8) indicated that their overall impression was either unfavourable or very unfavourable, and also indicated that there were things they didn't like about the way their children were involved. The comments of these parents about the things they did not like, however, appeared to have to do with their disappointment with the outcome of their mediation, or the nature of their circumstances, rather than with the child-inclusive process.

None of the three subsequently articulated a problem specifically with this component of their mediation experience.

- About two thirds (13 or 68.4%, N = 19) of the parents said they would recommend that other parents include their children in a mediation process like this. One (5.3%, N = 19) said they would not, 4 (21.1%) said maybe, and 1 (5.3%) said they didn't know.

"... It was really a good thing! I'm disappointed that it didn't result in a settlement, but it was a good way of doing [mediation]."

"... Children *should* be included. It's good that children know what is happening. Children are very hurt – they need to understand what is going on."

## VII. Overview

These results indicate that those parents who participated in the survey did, overall, view the child-inclusive process in a positive light. On the other hand, as family mediation, most often, involves the effort of resolving some very emotional and difficult issues, these parents also explained that involving one's child in a process like this requires a great deal of courage. Parents are already concerned about the impacts of family break up on their children, and worry that drawing them further into the struggle between themselves and their former partners could worsen the situation. This is important information for the *Children in Mediation Project*. Parents will need to be reassured that their children will not be harmed by the process — in fact, that they will likely benefit from the opportunity to voice their concerns — and that their children will not be placed in a position of making decisions that are rightly their parents' to make.



## APPENDIX E

### Notes on Case Statistics

## *Notes on Case Statistics*

- At the original 11 Family Justice Centres in the Project, there were 1900 “files opened”<sup>1</sup> from June 1, 2007, to January 31<sup>st</sup>, 2008, and a further 3470 files were opened province-wide in the subsequent period from February 1<sup>st</sup> to October 31<sup>st</sup>, 2008<sup>2</sup> — for a total of 5370 files opened in the locations in which a child-inclusive mediation service was available between June 1<sup>st</sup>, 2007, and October 31<sup>st</sup>, 2008 (includes rule 5 locations)<sup>3</sup>.
- From the *Assessment of Dispute Resolution Prevalence and Case Outcomes* (March 2008), it was found that about 54% of cases in the study sample were involved in dispute resolution during the study period.<sup>4</sup> Assuming that the sample of clients drawn for the outcome study are roughly representative of the general population of clients seeking services at Family Justice Centres, we can apply this figure to the number of cases in which files were opened between June 2007 and October 2008: suggesting that approximately 2900 of the 5370 cases were involved in dispute resolution.
- In the *Dispute Resolution Longitudinal Study* (March 2008), 51% (89/175) of the respondents had children six years of age or under.<sup>5</sup> Assuming that the sample of clients drawn for the Longitudinal Study are roughly representative of the general population of clients seeking services at Family Justice Centres — and roughly representative of the population of clients in the Children in Mediation Project — we can apply this figure to the cases in the Children in Mediation Project. We don’t know what proportion of the respondents might have had children aged 7, but, applying a conservative estimate, we might say that as many as 60% of cases would have been excluded because their children were under age: approximately 60% of 2900, or 1740 cases, would not have been eligible for child inclusive mediation. The other 40%, or approximately 1160 cases, would have been eligible for the service.

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<sup>1</sup> Under FIS 1, definitions for data captured about activity includes the numbers of files opened, files closed, brief services, and brief counselling.

<sup>2</sup> Figures are not provided after October 2008 because of the introduction of the new FIS 2 in November 2008 and a short period after which the case activity data was unreliable.

<sup>3</sup> The Longitudinal Study found a difference, but not a statistically significant difference, between the observations for Rule 5 locations and others. The volumes have not therefore been presented separately here.

<sup>4</sup> *Assessment of Dispute Resolution Prevalence and Case Outcomes* (March 2008): “When *all* cases in the sample were considered (without considering any case characteristics), data indicated that 54% of the cases were engaged in some form of dispute resolution in the review period”. p. 6. “All cases”, in this instance, referred to cases in which one or more people were involved. Note that this study also identified a difference when “potential” to become engaged in dispute resolution was taken into account — cases in which two rather than one person were involved — and a difference when two parents were involved rather than associate parties. As the subset of cases having these characteristics in the June 2007 to October 2008 period is unknown, the figures from the prevalence and outcome study in respect of the whole sample have been applied here.

<sup>5</sup> *Dispute Resolution Longitudinal Study* (March 2008): “Almost half (48% or 84/175) of the respondents had one child from their dispute resolution relationship; 34% (59/175) had two children, 16% (28/175) had three and 2% (4/175) had four or five. At Phase 1 of the study 51% (89/175) of the respondents had children six years of age or under.” p. 32.

- Although the numbers are likely higher than those recorded on the Project Tracking Form in respect of cases in which a service was offered<sup>6</sup>, a child inclusive service was recorded as being offered (during the June-to-October period) in 94 cases: approximately 8.1% of the 1160 possible cases in which it might have been offered. Of these, a child inclusive service went ahead in 55: approximately 4.7% of a possible 1160 cases, and was declined in 39: approximately 3.4% of a possible 1160 cases.

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<sup>6</sup> The Project Tracking Form was not completed by non-designated FJCs, so that it is likely that the service was offered but declined by considerably more clients than was reported. Additionally, there is some suspicion that designated FJCs may not have been inclined to make an entry on the tracking form and submit it if no child-inclusive service subsequently proceeded. The figures on the numbers of cases in which the service did go ahead are, however, thought to be reliable.