



CHILD PROTECTION MEDIATION IN BRITISH COLUMBIA

MINISTRY OF ATTORNEY GENERAL, PROVINCE OF BRITISH COLUMBIA

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CHILD PROTECTION MEDIATION

Child Protection Mediation has been very successful in British Columbia and is used as a viable dispute resolution option for child protection matters. It promotes a collaborative approach to decision making between parents/family and child welfare social workers regarding the safety and well being of children. This process brings together parents, social workers, children, extended family, band representatives, legal counsel and others to identify common interests and joint solutions with the help of trained, qualified neutral mediator. It is voluntary and confidential and can occur any time an issue related to a child or plan of care arises. It is often used to settle issues related to a child's removal before court action commences.

Successful mediations result in agreements that typically define who will care for the children, who will have access to a child in care, how parents can participate in support services, and a plan for the children's safety and well-being. Participants in successful mediations speak about the creative magic associated with people working together to find solutions. Mediations typically build more trusting and less adversarial relationships between the parents, family and child welfare workers. Parents often say that mediation enabled them to "find a voice", therefore feeling empowered.

The Program

At the heart of BC's Child Protection Mediation Program is the partnership between the Ministry of Attorney General (MAG) and the Ministry of Children and Family Development (MCFD), who jointly lead the Program. This partnership stretches back to the drafting of the *Child, Family and Community Services Act*. The enactment of the *CFCSA* in 1996 was a key turning point in the development of child protection mediation and became the legislative foundation for it.¹

The two ministries work closely together to promote and support CPMP in all regions of the province. MAG's Family Justice Services Division (FJSD)² is responsible for the provision of mediation services and manages the roster of highly qualified and specially trained private sector mediators on a contractual basis.

Child protection mediations are one of several Collaborative Planning and Decision Making options which include Family Group Conferencing, Traditional Decision Making, Integrated Case Management, Family Case Planning Conferences and Family Development Response. These processes are intended to foster more collaborative relationships between families and child welfare workers, and reduce court-based decision-making for children.

The Child Protection Mediator Roster

A province-wide Roster of Child Protection Mediators was then created when the Child Protection Mediation Program was established in 1997. Mediator impartiality and neutrality are seen to be critical to the integrity and viability of the program, therefore, safeguarded by having MAG's CPMP contract for mediator services from the private sector.

¹ Section 22 of the *Child, Family and Community Services Act* provides: "If a director and any person are unable to resolve an issue relating to the child or a plan of care, the director and the person may agree to mediation or other alternative dispute resolution mechanisms as a means of resolving the issue."

² MAG's Dispute Resolution Office (DRO) managed the CPMP until April, 2010.

The Program uses a government contract solicitation process for procurement of child protection mediation services, “Request for Qualifications” (RFQ), with postings on BC Bid, to choose mediators who meet stated qualifications for the program in specific areas of the province. The qualifications include training, education and experience, as well as experience and knowledge of the context of child welfare in BC. The selection process involves a Qualifications Review Panel, chaired by the FJSD, which conducts an in depth assessment of the stated qualifications, reference checks, an interview, a written exam and participation in an Orientation. The Orientation process includes a three day training session and subsequent practice learning through mentored co-mediation with a senior child protection mediator.

Other requirements include a demonstrated annual commitment to meeting ongoing profession development, abiding by a code of conduct, as well as liability insurance and a criminal record review. Mediators who satisfy the qualifications and these requirements are awarded a contract with MAG and assigned to the Child Protection Mediator Roster (CPMP).

These Child Protection Roster Mediators are located in communities throughout the province and may travel to provide service in communities without a resident mediator. Participation in the program is voluntary and parties to a dispute must agree upon the choice of the mediator from the Roster. They contact the mediator directly to initiate the process and in some regions, MCFD Staff and others may be available to assist with the referral process.

Since 2004, the CPMP roster has been affiliated with the BC Mediator Roster Society (now part of Mediate BC Society) and the child protection mediators follow the relevant sections of the Society’s Standards of Conduct. The Directory of Child Protection Mediators is housed on the BCMRS website for ease of referral and FJSD is responsible for approving all assignments to the list.

Background

Much of the law in British Columbia relating to the protection of neglected and abused children is set out in the *Child, Family and Community Service Act* (the “Act” or “CFCSA”). The Act says that the Minister for Children and Family Development may designate one or more persons as “directors” to perform the duties and tasks associated with ensuring the safety and well-being of the children and offering assistance to families as outlined in the Act. Every social worker and supervisor (or team leader) is a designate of the director. Directors have many powers and responsibilities under the Act, including:

- Providing preventative and supportive services for families;
- Establishing residential services for children and youth;
- Voluntarily entering agreements to bring children into the care of the state; and
- Removing children from families when those children “need” protection and the child is in immediate danger, or no other less disruptive measure is available to protect the child.

The child protection social worker's mandate is a complex one. On the one hand, the social worker’s paramount duty is to ensure the safety and well being of the child, and the social worker has extraordinary powers to intervene and, if necessary, disrupt the family to do so. On the other,

the social worker is obliged to ally with the family to keep it functional and whole. The desire to disrupt the family as little as possible is balanced by the need for swift and decisive intervention when a child is at risk.

The use of collaborative planning approaches such as mediation are effective approaches to child welfare practice in British Columbia. For the most part, families do not come to the ministry voluntarily, nor can they terminate their involvement at will. Thus, from the perspective of the family, ministry involvement is often intrusive and adversarial, especially at the beginning of an investigation and during any court process. Negotiations between social workers and their clients may be emotional and adversarial. Distrust may be a major obstacle and communication skills are very necessary to build trust relationships with clients.

Mediation is an important means of building more trusting and non-adversarial approaches to its relationships with clients, with many positive outcomes for children and families.

Mediation in the Child, Family and Community Service Act

In 1996, the *Child, Family and Community Service Act* (“CFCSA” or “the Act”) was proclaimed, replacing the *Family and Child Service Act*. The CFCSA includes specific provisions designed to encourage early resolution of child protection disputes outside of the court process including mediation and family group conferencing³.

Section 22 of the CFCSA provides that:

“If a director and any person are unable to resolve an issue relating to the child or a plan of care, the director and the person may agree to mediation or other alternative dispute resolution mechanisms as a means of resolving the issue.”

Section 23 of the Act says that court proceedings may be adjourned by a judge for a total of up to three months in order to allow mediation to proceed. Any agreement made in mediation may be reduced to writing and filed with the court (s. 23(3)).

Section 24 of the Act creates a qualified (that is, less than absolute) statutory confidentiality for the mediation process:

Confidentiality of Information

- 24 (1) A person must not disclose, or be compelled to disclose, information obtained in a family conference, mediation or other alternative dispute resolution mechanism, except:
- (a) with the consent of everyone who participated in the family conference or mediation;
 - (b) to the extent necessary to make or implement an agreement about the child;
 - (c) if the information is disclosed in an agreement filed under section 23; or
 - (d) if the disclosure is necessary for a child's safety or for the safety of a person other than a child, or is required under section 14.

³ Note that s.20 of the CFCSA providing for Family Group Conferencing was brought into force in 2002.

- 24 (2) This section applies despite section 79 of this Act and despite any provision, other than section 44 (2) and (3), of the Freedom of Information and Protection of Privacy Act.

Section 9 of the *Child, Family and Community Service Regulation* (BC Reg. 527/95) says that the director must establish a “roster of mediators” for section 22 of the Act. When mediation is agreed to, a mediator acceptable to all parties must be chosen from the roster.

WHY CHILD PROTECTION MEDIATION

In many jurisdictions, mediation has presented itself as a viable option for resolving disputes about child protection matters. Mediation is seen to be an appropriate process for many reasons, such as:

- The importance of maintaining a good working relationship between parents and the social worker. If court proceedings damage the social worker/parent relationship, subsequent work with the family is that much harder.
- Child protection court proceedings, by their nature, often become polarized and very emotionally charged. Too often, from the parents’ perspective at least, court proceedings become an exercise in proving, in effect, that the parents are bad or inadequate.
- The conflicting interests that emerge once the state involves itself in a family to protect a child have traditionally been dealt with in the court room, but recent experience with mediation suggests that those interests can be fairly and safely dealt with in other ways.
- The court process is adversarial in nature, complex for many people, and lengthy. Too often, decisions about children are delayed because court cases cannot be scheduled and heard quickly. A 1998 report of the Chief Judge of the Provincial Court of BC noted that in one Provincial Court location, “If it is decided that a child needed to be taken from his or her parents it may be years before the future case of the child is finally decided. Some of that delay is the responsibility of the overloaded court⁴”.

Mediation has been used successfully for many years in British Columbia in other kinds of family law disputes (custody, access, property division and financial arrangements). In fact, the use of mediation is often promoted in circumstances where the opposing parties must necessarily continue in a relationship with one another after the initial dispute is resolved, as is often the case in child protection matters. The mediation process is particularly appropriate where there is a need to preserve a relationship between the parties because it is designed to minimize the tendency of disputing parties to polarize. "Mediation can help everyone involved look at highly polarized situations in a new light"⁵.

Experience in Other Jurisdictions

⁴ “Report of the Chief Judge; Delay and Backlog in the Provincial Court of British Columbia,” April 1998. The Honourable Chief Judge Robert W. Metzger. Page 16.

⁵ “The Child Protection Mediation Project” - The CDR Associates/ Center for Dispute Resolution, Colorado 1987

Child protection mediation was initiated in the 1980s in the United States and programs established throughout North America. Models differ; some mandate participation in mediation and others are voluntary in nature; some are court based. There is now a body of research, knowledge and experience to support implementation of such programs.

In 1985, the Center for Dispute Resolution (CDR) located in Denver, Colorado, began to mediate child protection cases. An evaluation of the first year of the program showed that all but four of the 67 cases in the study resulted in a written document concerning certain aspects of family interaction that were agreed upon by all parties. The conclusion was that: “Mediation enjoys a great deal of user satisfaction. Parents prefer it to private meetings with the caseworker and rate the agreements generated in the process very favourably. Caseworkers also rate the agreements favourably, and no more than 15% of the guardians *ad litem* and defense attorneys voice dissatisfaction with the agreements”.

Amongst numerous other conclusions, the Report states: “Like other researchers, we conclude that expectations for mediation must be moderate. A short term intervention like mediation cannot produce changes in the basic economic and psychological profile of participants. Families with more serious psychological pathologies and economic predicaments obviously require other types of interventions to effect changes in lifestyle and behavior. Nor does mediation preclude the need for enforcement mechanisms and supervision. However, the approach is valued by case workers and their clients and perceived by them to be a useful addition to the existing system”.

In her 1997 article, “*An Evaluation of Child Protection Mediation in Five California Courts*”, Nancy Thoennes presents the results of an evaluation of five California counties, utilizing court-based mediation services to process child neglect and abuse cases. The programs employed a variety of different service delivery approaches and targeted cases at a variety of different stages of the court process. The results indicated that mediation is an effective method of resolving cases which may offer a number of benefits over adjudication, including more detailed treatment plans and fewer contested court hearings. Among the findings:

- Mediation can produce settlements at all stages of the court process and all types of issues can be resolved at mediation. There was no evidence to suggest that some types of cases should be screened out;
- While mediation can be time consuming for professionals, and may initially be resisted for that fact, once implemented, there is widespread support for continuation of the service, although time constraints continue to be noted;
- Parents reported that they understood the mediation process and felt it provided them with a place to be “heard” and to hear what was required of them. Most parents preferred mediation to a judicial hearing;
- Mediated agreements are more likely than court-imposed agreements to include detailed visitation plans for children in out-of-home placements. They are more likely to address communication problems between family members or between the family and child protection authorities. They are also more likely to have the parent specifically acknowledge the need for services;

- Evidence suggests that mediation produces savings in time and money for the court and parents are more likely to comply with an agreement reached in mediation; and
- A variety of mediation models were shown to be effective.⁶

A special issue⁷ on mediation and conferencing in child welfare disputes, published in 2009 in the journal “Family Court Review” provides a compendium of learning and knowledge from leading programs in North America, including BC’s Child Protection Mediation Program.

Child Protection Mediation in BC

1) Initial Pilot (early 1990’s):

Mediating child protection disputes was first tested in Victoria, BC with 20 families referred to mediation, using the following definition:

A process of dispute resolution where the parties meet with a neutral third party for the purpose of assisting them to formulate their own consensual resolution of an issue in dispute. The mediator helps to structure the negotiation process but has no decision-making power. The process usually involves the following steps:

- The mediator tells the parties about mediation. The parties agree on the rules they will follow, and the mediator secures their commitment to proceed;
- The parties each describe the circumstances that bring them to mediation;
- The mediator facilitates identification of the underlying needs and interests of each party, and frames the issues and terms of these interests;
- The parties, with the assistance of the mediator, attempt to identify solutions that accommodate as many of the identified interests and needs as possible; and
- The mediator ensures that any agreement made is formalized.

Despite the limitations of a small sample group, the following indicators were noted in a 1993/94 evaluation:

- Most cases mediated resulted in agreements;
- Families who tried the process liked it. More than 85% of the families preferred mediation to meeting with a social worker alone, and 100% of single mothers preferred mediation. 79% of the families felt they “had a real say in working out the agreement”;
- Most often, social workers were satisfied with the agreement made, were favourably impressed by the mediator and regarded mediation as an effective use of their time.

⁶“An Evaluation of Child Protection Mediation in Five California Courts,” Nancy Thoennes. Family “The Child Protection Mediation Project” - The CDR Associates/ Center for Dispute Resolution, Colorado 1987

⁶“An Evaluation of Child Protection Mediation in Five California Courts,” Nancy Thoennes. Family and Conciliation Courts Review, Vol. 35 No. 2, April 1997.

⁷ “Family Court Review. An Interdisciplinary Journal,” Vol. 47, No. 1, January, 2009.

65% thought that the agreement reached was different from what would have been arrived at without mediation;

- Mediation improves or helps sustain the working relationship between the social worker and the family in a significant proportion of the cases.

These results encouraged further development, and a Child Protection Mediation Program and a Mediator Roster were established in 1997 to provide mediation services across the Province.

2) Surrey Court Project: The Facilitated Planning Meeting (2001-2003)

Significant progress was made to implement child protection mediation, however, the need for further strategic development for the Child Protection Mediation Program led to a second pilot project in Surrey, BC in the early millennium, known as the Surrey Court Project. The child protection mediation process designed for the Surrey Court Project is called a Facilitated Planning Meeting (“planning meeting”). While a planning meeting is mediation pursuant to section 22, it is a mediation model with some features unique to child protection, which are:

- Mediation is supported “on the ground” by a senior, experienced social worker (the Court Work Supervisor or CWS) who actively reviews and refers cases to mediation. The CWS also supports social workers during the mediation process, and attends all planning meetings with authority to agree to a settlement.
- Prior to a planning meeting being scheduled, the mediator conducts orientation sessions separately with each of the parties. The purpose of the Orientation Session is to understand the process, tell their story, review the case, identify issues/interests, focus on next steps and consider options for resolving the dispute. Cultural and other important needs to be brought into the mediation process are brought forward. Procedural issues, determining who will attend and what their role is, making decisions about capacity, power dynamics, safety, who else should attend the mediation and other important considerations are discussed.

At the end of the orientation sessions, the mediator is familiar with the parties and their interests, and has a list of issues the parties will negotiate at the planning meeting. Parties understand what can and what cannot be negotiated and have options in mind to facilitate negotiations.

- As a result of the orientation sessions, the planning meeting should be a focused, one-time event for resolving issues.

Evaluation of the Facilitated Planning Meeting of the Surrey Court Project

Evaluation findings show:

- 89% of cases that proceeded to mediation were completed in one planning meeting.
- 69% of cases were completed in less than 40 days from referral.

- 92% of all issues referred to mediation were resolved; the highest resolution rate (97%) was for issues concerning services and resources, and the lowest resolution rate (83%) concerned behaviour and parenting issues.
- Overall, 83% of cases had all issues resolved, 12% has some issues resolved and only 5% had no issues resolved.
- Overall satisfaction with the planning meeting process was rated at 6.2 out of 7 by parents, social workers, lawyers and judges interviewed for the evaluation.
- The orientation sessions are critical to the success of the Planning Meetings, allowing the parties to reframe their issues and arrive at the meeting more prepared and less defensive.
- The Court Work Supervisor role is critical to the project, particularly in promoting a collaborative approach to resolving disputes.

Other research conducted independently of the formal evaluation made these findings:

- the 34 cases referred to a planning meeting between September, 2001 – February 28, 2002 saved 82 *scheduled* trial days; and
- analysis by MCFD suggests that issue resolution achieved through facilitated planning meetings during the pilot project reduced by 30%, on average, child days in care.

The pilot project was completed in 2003, and the success of the project served as a catalyst for similar initiatives in other regions of the province. Although facilitated planning meetings continue to be offered as a mediation option in some areas, fundamental elements of the model, such as the Orientation process, have been incorporated into the program. Rather than “Court Work Supervisors”, a variety of different staffing models are used in some communities around the province to provide ground level support and administrative coordination. (See Staffing Models paper in Section 2).

Impediments to Successful Child Protection Mediation Services

Research and experience in the field suggests there are a number of issues that must be addressed for child protection mediation to become a viable dispute resolution option. Generally, these issues are consistent with findings in other mediation practice areas. For example:

- Voluntary programs have low uptake rates, despite the fact that people are highly satisfied with the service. Some explanations for this anomaly are: people may not have enough information to make an informed choice; fear of the unknown; the overwhelming inclination in our justice culture to “go to court” when disputes arise; lawyers may not refer clients to mediation; participating in mediation may be seen as a sign of weakness, etc.
- Mediation programs need to be promoted. Word of mouth is a strong persuader to try something new, and once people try mediation they tend to like the process. In the child protection context, high social worker staff turnover requires a constant flow of information and education about the mediation option.

- In the child protection context, social workers may feel uncomfortable or skeptical of the mediation process. Social workers employ negotiation skills every day in their work and may view mediation as redundant. Moreover, they may fear losing control of a case when a mediator becomes involved.
- In the child protection context, families may be suspicious of anything that is offered by government. A history of conflict between parents and the director may generate an atmosphere of significant distrust. Families are particularly vulnerable to a lack of information and may rely entirely on legal counsel to recommend dispute resolution options.

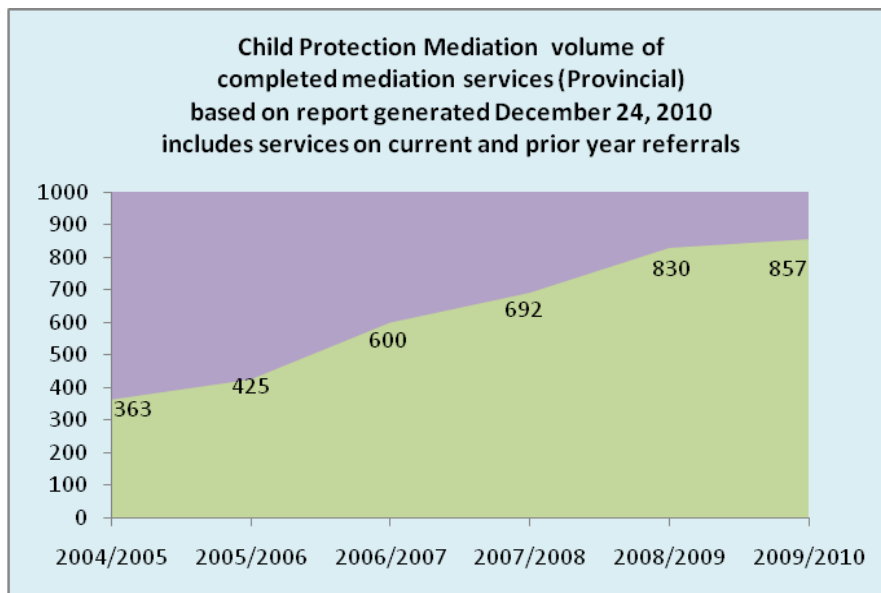
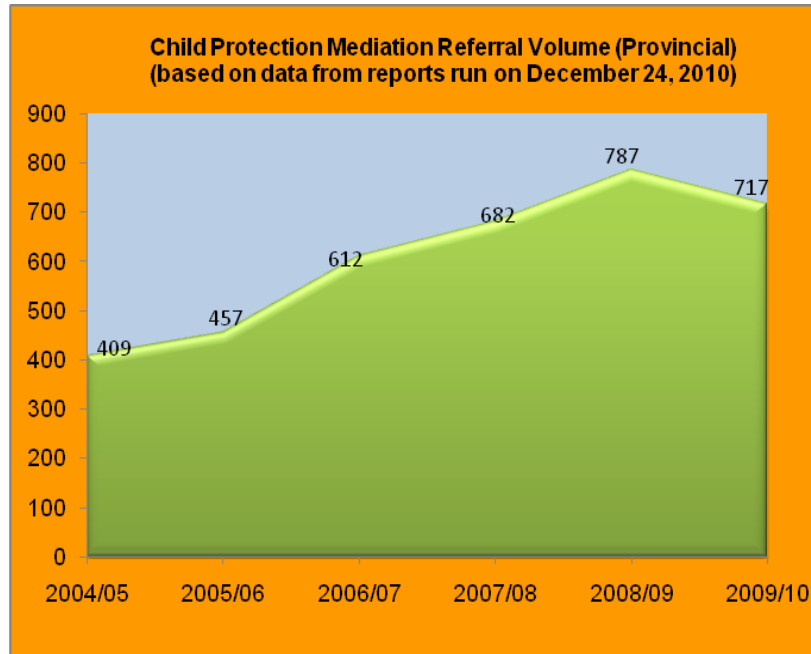
RECENT INITIATIVES AND PARTNERSHIPS

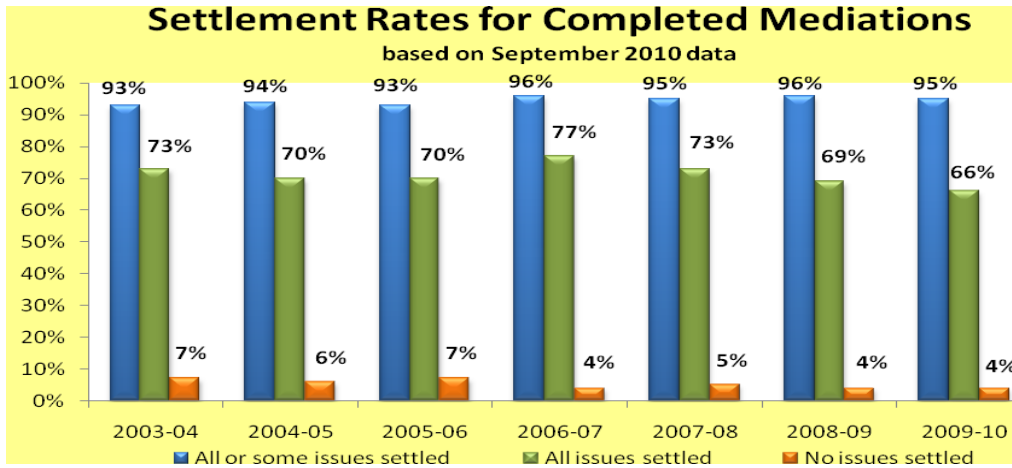
Both the MAG and MCFD have worked collaboratively to overcome some of these challenges and promote mediation. The Surrey Court Project was highly successful in educating social workers, counsel, judiciary and others to understand the importance of the child protection mediation program and their respective roles. The Surrey Court Project won the 2004 Premier's Award for Excellence and Innovation in the Partnership category.

Partnerships and alliances with other key organizations have been key to the significant growth and development of the program. The Legal Services Society and the Law Foundation of BC have supported the program and have led and supported various initiatives and funding contributions along with grants from the two government ministries (MCFD and MAG). Project initiatives to support child welfare collaborative planning and decision making processes, particularly for Aboriginal children, families and communities have been implemented.

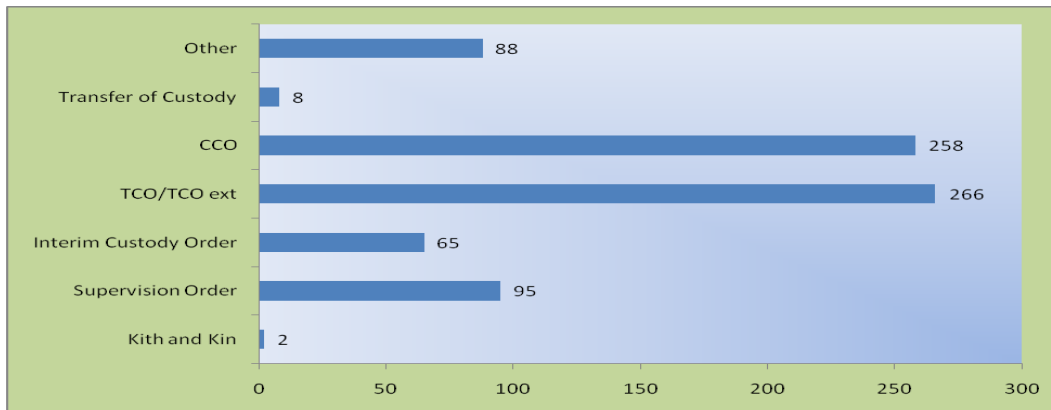
Mediate BC (recent amalgamation of the Dispute Resolution Innovation and the BC Mediator Roster Societies) is an important partner in working closely with the CPMP to support child protection mediator training and development, made possible through various funding grants. A specialized child protection mediation practicum project was designed and implemented to increase the number of qualified mediators in Aboriginal communities and in more remote areas.

CHILD PROTECTION MEDIATION PROGRAM KEY STATISTICS

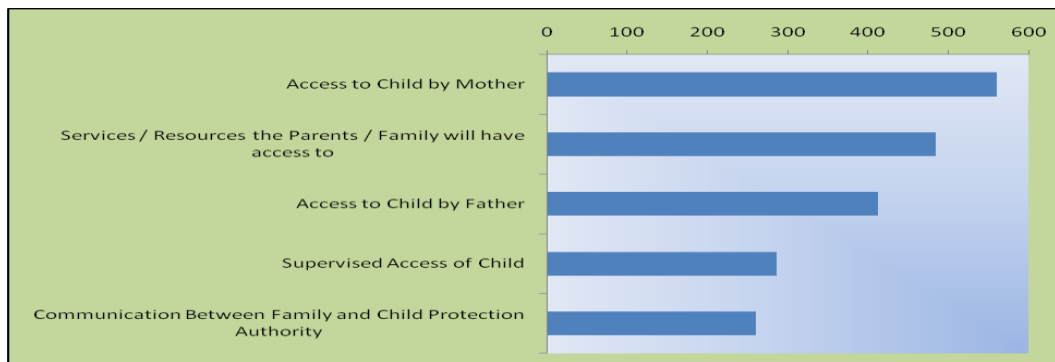




Distribution of Court Orders being sought, based on completed mediations in fiscal 2009/10
 Based on CPM database information as of September 2010



Top 5 mediation issues, based on completed mediations in fiscal 2009/10
 Based on CPM Database information from September 2010



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