

Child Protection Mediation (CPM) is one of the prescribed methods for Alternative Dispute Resolution (ADR) in the Child & Family Services Act of Ontario. CPM is a decision-making process for resolving disputes between a children's aid society (CAS) and the family of a child who is (or may be) in need of protection. Funding from the Ministry of Children & Youth Services supports the use of ADR if a court intervention is being considered, is pending, or is in progress.

What does a CP Mediator do?

First, let's be clear about what the CP Mediator does NOT do. The Mediator does not decide what happens. The Mediator's job is to help the family describe the parts of the plan they oppose and explain why. The CAS representative --usually the worker assigned to the case -- presents the CAS viewpoint. Maybe by having this discussion, they can find a new plan that is acceptable to the CAS and to the family.

Do the children attend?

No. Some teenagers may want to attend but this is not common. The Mediator helps you decide who will be at the mediation table.

So the family doesn't need a lawyer?

No, that is not true. Everyone who uses CP Mediation should have a lawyer or at least ask a lawyer to review any mediated agreement before signing it.

What is a mediated agreement?

This is a document written by the CP Mediator outlining what everyone agreed to during the mediation. Each person takes a copy of the agreement for review by a lawyer.

Is there a cost?

No. Costs associated with the mediation process are covered by the Ministry of Children & Youth Services. However, the cost of a lawyer is not covered through this funding.

What issues CAN be mediated?

Many things including conditions of a supervision order, length of a court order, specifics of the service plan, child's placement, client/worker conflict, custody or access, and features of an adoption.

What issues CANNOT be mediated?

- if one or more key family member does not agree to CPM or feels forced into it,
- if one or more key party would not feel safe in a family meeting and no protections could be put into place, or
- if there are no supports or extended family to assist in developing a plan.
- CPM cannot be used to determine if a child is "in need of protection."



Child Protection Mediation

Why use CP Mediation?

When contested cases go to court, they take a long time to finish and can cost a great deal in legal fees and time off work. Children may be left in limbo, not knowing what the future holds for them. Also, the process becomes a competition where only one side can "win." When a judge decides the outcome after a trial, someone always walks away unhappy with the outcome.

Mediation helps the parties "have their say" and may result in a workable plan for the children to keep them safe. It can also improve the relationship between a CAS worker and the family which, in turn, benefits the children.

Is the process fair to the families?

To ensure fairness, these are important points:

- the Mediator is an independent professional who does not work for the CAS
- the Mediator has no power to make decisions about the case
- the Mediator is not paid by the CAS and the Mediator assigned to the case is not selected by the CAS
- all Mediators listed on the ADR-LINK roster are trained in Child Protection Mediation and accredited by the Ontario Association for Family Mediation
- accredited CP Mediators agree to follow the Code of Professional Conduct of the Ontario Association for Family Mediation and they carry liability insurance
- any party can stop the Mediation at any time (or withdraw his or her participation) all parties are encouraged to review any mediated agreement with their lawyers before signing it
- Also, if you believe the Mediator has a bias or conflict, you can ask for a different Mediator to be appointed.

What about Indigenous families?

Whether living on or off reserve, Indigenous families are welcome to use CPM if they and their advocates agree it might help to resolve a dispute with the CAS. However, the development of "Indigenous Approaches/ODR" of ADR in the South Region is ongoing through capacity building initiatives. This service is available for anyone identifying as Indigenous, First Nation, Métis, or Inuit. For more information on "Indigenous Approaches/ODR", please visit our website.

How long will this process take?

All parties meet for one or maybe two meetings. If an agreement is reached, then each party reviews the draft agreement with a lawyer. Everyone comes back to sign the agreement. Ask the CP Mediator for an estimate about how long this process will take.

Can my lawyer be there?

No, in most cases lawyers will not attend. That means neither the lawyer who acts for the CAS nor any lawyers who act for family parties. One purpose of CP Mediation is to help everyone have an open discussion outside



the court environment. However, a lawyer from the Office of the Children's Lawyer who represents the child or children may be asked to attend. If an agreement is reached, each party is given a written copy to show their lawyers.

What if I say "no" to Mediation?

No one can be forced to do this. You are free to decline the option.

What if I change my mind?

It is important that everyone at the mediation table wants to be there. Some people think that once you start mediating, you have to keep going until everyone agrees about something. That's not true. It's your right to stop at any point, even if that means standing up and leaving the mediation meeting.

How do I refer a case for Mediation?

Anyone can suggest a case for CP Mediation, including lawyers and family parties named in the court application. However, the referral to ADR-LINK comes from the CAS or Indigenous community that the child is affiliated with. The referral agent screens the case to see if it qualifies. The referral agent also determines if the key participants agree to consider CPM and notifies the Office of the Child's Lawyer.

What are the steps in the process?

1. If the referral agent is CAS, discuss the case with your supervisor. Some cases are not amenable to ADR or the referral may be premature. Your agency may have policies around inclusionary and exclusionary criteria. If the referral agent is an Indigenous community member, consult the Band or ADR-Link for your specific community referral contact.
2. Discuss the possibility of ADR with the family and get their agreement to consider ADR.
3. If this is an Indigenous family, regardless of who is making the referral, the Band is to be consulted.
4. Obtain written consent from all key parties, including children 12 and over, to make the referral to ADR-Link. Use your agency or communities own general consent form for this.
5. Complete all sections of the ADR-Link referral form. Submit the completed referral form, OCL notification form and signed consents to ADR-Link.

What if the CP Mediation doesn't end in an agreement?

If no agreement is reached, the case continues through the court system, just like before it was referred for mediation. Sometimes the parties agree on a few issues in mediation and the others will be presented to the judge for resolution.

What if I'm not happy with the process?

ADR-LINK asks for your opinions and feedback when the process ends. Having your feedback helps us all continually improve the process for users of the service. Some participants may want to voice their concerns directly to the CP Mediator. If you believe the CP Mediator violated the Code of Professional Conduct of the Ontario Association for Family Mediation, you can write to the President of that organization. You can also ask your lawyer for advice.

