



The Involvement of Children in Family Mediation: a Summary of the Key Principles and Concepts

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In a social context where the number of family break-ups is on the rise, important measures have been adopted to minimize the negative impacts of these break-ups on all the members of the concerned families. It is in these circumstances that family mediation has grown in importance in North American and European practices since the early 1980s. The goal of this field of practice is to help families get through the transitions of a parental break up as well as possible, while facilitating the search for viable and equitable solutions for all the family members. Numerous researchers and practitioners agree on the necessity of giving the children a place in the process if these objectives are to be attained (Achim, Cyr & Filion, 1997; Cloutier, Filion & Timmermans, 2012; Joyal, Quéniart & Châtillon, 2001). The present document provides an overall view of the key principles and concepts concerning the involvement of children in family mediation. What exactly does this involvement consist of? What are the risks and advantages? Are there precautions and considerations that will ensure proper professional practice? The information presented in this issue is based on the literature review of a master's thesis in social work (Richard, 2014).

Children's rights in a family context

In order to understand the underlying principles of children's involvement in mediation, it is important to consider their rights in a family context. In the past, children were considered to be an object of rights rather than a subject, that is beings who were dependants of their parents' rights and who required constant protection. They were excluded from all decisions concerning the legal issues of divorce and separation. In Canada, the current legislation stipulates that children



have their own rights that are distinct from those of their parents, but that they nonetheless require protection due to the vulnerability related to their age. Regarding divorce, the most important aspect of this legislation resides in the acknowledgment of the children's capacity to make decisions about issues that directly concern them, for example, custody and access rulings. The United Nations Convention on the Rights of the Child, ratified by Canada in December 1991, is the first international document to state that children have the right to express their viewpoint about what interests and concerns them (United Nations, 1991). Moreover, the convention does not indicate a minimum age at which children can be consulted during a parental break-up. The subjective criterion of maturity, which here is related to the child's capacity to understand and exercise good judgment, is chosen over the more objective criterion of age.

Why involve children in family mediation?

A quick look at the literature indicates that children are undeniably affected by the consequences of a family break-up (Cloutier et al., 2012; Kelly & Emery, 2003; Maes, De Mol & Buysse, 2012). If their family does break up, children can have the impression that their whole world is falling apart (Cloutier et al., 2012; Filion, 1995). For these reasons and because children

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will be subjected to numerous changes (Achim et al., 1997; Cloutier et al., 2012), it is important to concentrate on what they are experiencing at the time of the break-up. Practitioners can involve children in the family mediation process to give them a neutral, safe place where they can express their opinions about their parents' break-up. This involvement can give children the feeling that they are contributing to the family reorganization and grant them a time and place where they can speak about their subjective reality. As part of this family restructuring, mediators also serve as guides who direct the parents toward consensual, equitable, and long-lasting solutions. Mediators play an important part in the exchange of information that takes place during mediation sessions and that serves to draw couples away from their relationship setback and redirect them toward the reorganization of their parental roles (Achim et al., 1997; Drapkin & Bienenfeld, 1985). Given that parents can have a great deal of difficulty overcoming their personal disappointment



and frustration about their break-up, the mediator must consider various strategies to get them to concentrate on their children's needs. Clinical observation shows that the involvement of the children can act as a strategic mechanism that encourages the parents to solve conflicts that are keeping them from arriving at just and equitable agreements (Drapkin & Bienenfeld, 1985; Joyal et al., 2001; Saposnek, 1991).

The distinction between direct and indirect involvement

A recent report from the Department of Justice Canada showed that family mediators attach a great deal of importance

to the children's viewpoint in the family mediation process (Birnbaum, 2009). There is however some divergence about how this viewpoint should be taken into account. Indeed, there are two ways in which children can be involved in family mediation, namely direct and indirect. Whereas direct involvement supposes that children state their viewpoint in the family mediation process by being physically integrated, indirect involvement means that the children's opinions are taken into account symbolically.

The indirect involvement of children in family mediation is a precise episode in which mediators step away from their impartial, neutral role to adopt a more directive and



therapeutic approach in which they defend the children's interests (McIntosh, Wells & Long, 2007). The goal of this strategy is to create a discussion with the parents that is centred on the children's needs and interests. Indirect involvement in family mediation is thus based on the parents' viewpoints concerning their children's needs, interests, and experiences. This work can be carried out by including a picture of the children during the family mediation process or by distributing texts that can help the parents take better account of their needs (Joyal et al., 2001). The arguments in favour of this type of involvement are based on a discourse focusing on the children's protection. According to the principles of indirect involvement, there are several reasons that children should not be directly involved in the family mediation process. These include, for example, the harm that children might suffer if they felt that the weight of a decision was on their shoulders or that their words could be used as weapons by their parents. Furthermore, many professionals feel that divorce and separation are subjects meant for adults and that it is with them that mediators should work.

That being said, the goal of having the children directly involved in family mediation is to gain a better understanding of how the children feel about certain aspects of parental responsibility. A document

analysis has shown that this approach is recognized as being the clearest and most precise way of obtaining information about children's needs (Birnbaum, 2009). The arguments in favour of direct involvement are numerous. For example, rather than giving parents vague generalizations about the impact of divorce and separation on children, the mediator is able to identify the children's specific needs and feelings and make the parents aware of them (Drapkin & Bienenfeld, 1985; Joyal et al., 2001). In other words, a direct interview helps mediators to help parents integrate the feelings, preferences, and developmental needs of their children in the negotiation process. The children's direct involvement in the family mediation also allows the mediator to promote a healthy and effective model of communication as well as to foster an atmosphere of mutual cooperation between the parents. The mediator can likewise play the role of a confidant in as much as the neutrality of the intervention can help children to express their real feelings (Achim et al., 1997).

The characteristics of direct involvement

The many and varied facets of children's direct involvement in family mediation are often left to the discretion of the mediators. For example, some professionals prefer to meet a child alone and then meet with them and their parents. Others meet the



child alone and then meet with the parents alone to discuss the child's comments. Still others meet the child with their siblings, whereas others prefer to meet the brothers and sisters individually. What is more, children can be met at the beginning of the process, at the end, or several times during the process. There are nonetheless some guidelines that family mediators follow. First of all, the participation of children in mediation is voluntary and requires their consent (i.e., they must be old enough to fully understand) and that of the two parents and the mediator. The parents can also propose to the mediator to meet with their children. That being said, inviting the child to participate must be based on a decision by the two parents and the mediator. Certain criteria are considered to favour direct involvement, namely:

1. the children ask to participate (on the condition that they were not manipulated by a parent);
2. the parents do not agree on the children's needs;
3. the parents do not seem to be aware of the impact of their relational conflicts on their children (Filion, 1995; Saposnek, 1983).

Conversely, some family mediators prefer not to meet the children when: the parents agree about how to share parental responsibilities; the children are less than three years old; the children refuse to participate; and the questions under

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discussion do not concern the children, such as the sharing of financial responsibilities (Achim et al., 1997; Drapkin & Bienenfeld, 1985).

Precautions concerning direct involvement

The direct participation of children in a decisional process has some sizable limitations and risks that must be understood and managed by professionals so as to protect the children in their entirety (Achim et al., 1997). Consequently, children's participation in family mediation must not be: 1. an occasional moment here and there when children are given the false impression that they have a chance to speak and be heard; 2. a moment when the children are obliged to speak; 3. a moment when the children are left to themselves to make decisions on their own (International Bureau for Children's Rights, 2009). Even though children are asked to talk about their preferences and experiences, they have a different status than that of their parents,



who must make decisions in the children's best interests. Moreover, parents who participated in a study on the involvement of their children in family mediation emphasized the importance of this point (Richard, 2014). They likewise underlined the importance of adequately preparing parents and children before beginning the direct involvement process. Finally, it is worth noting that specific training on child development, family dynamics, the effects of divorce, and interviewing techniques are all useful elements for family mediators practicing direct involvement (Saposnek, 1983).

By working to establish viable and equitable solutions for all involved, family mediation has led us to take children's viewpoints and experiences into account in parental separations. Indeed, young people are increasingly being asked for their opinion in order to identify the best solutions for their well-being. As long as the appropriate conditions are provided and respected, this perspective allows them to play a role, be it direct or indirect, in the family mediation process.



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