

6-5-2011

Mediation in Cases of Elder Abuse and Mistreatment: The Case of University of Windsor Mediation Services

Gemma E. Smyth

University of Windsor, Faculty of Law

Follow this and additional works at: <http://scholar.uwindsor.ca/lawpub>

Recommended Citation

Smyth, Gemma E.. (2011). Mediation in Cases of Elder Abuse and Mistreatment: The Case of University of Windsor Mediation Services. *Windsor Review of Legal and Social Issues*, 30, 121-141.

<http://scholar.uwindsor.ca/lawpub/24>

This Article is brought to you for free and open access by the Faculty of Law at Scholarship at UWindsor. It has been accepted for inclusion in Law Publications by an authorized administrator of Scholarship at UWindsor. For more information, please contact scholarship@uwindsor.ca.

MEDIATION IN CASES OF ELDER ABUSE AND MISTREATMENT: THE CASE OF UNIVERSITY OF WINDSOR MEDIATION SERVICES

Gemma Smyth*

ABSTRACT

Mediation in cases of elder abuse and mistreatment is increasingly employed in North America to resolve conflicts that disproportionately affect older adults. The attendant dangers of mediation in these cases requires awareness of and sensitivity to issues facing older adults and their families, including elder abuse, ageism, and consent and capacity. This article charts the introductory stages of an elder mistreatment mediation project started through a law school-based mediation clinic. Responding to expressed local need, the project developed an Intake Guide that attempts to balance the autonomy of the older adult with safety screening. The model employs an interdisciplinary approach, with specialist social workers acting as advocates throughout the process. Lessons learned from the project include: the importance of training; the need for flexible approaches to mediation; the importance of a specialized intake and screening tool; the benefits of interdisciplinary, strengths-based approaches; and the centrality of collaborative community relationships to ensure program sustainability.

RÉSUMÉ

La médiation dans les cas d'abus et de mauvais traitements des personnes âgées est très utilisée en Amérique du Nord afin de résoudre des conflits qui ont un effet disproportionné sur les personnes âgées. Les dangers concomitants de médiation

* Gemma Smyth is Assistant Professor and Academic Clinic Director at the Faculty of Law, University of Windsor. She was previously the Director of the University of Windsor Mediation Services. The author wishes to thank the Ontario Victim Services Secretariat for project support, the Elder Abuse Resource and Prevention Committee for their collaborative, elder-centred assistance in supporting and advising throughout the project, and Citizen Advocacy for their Social Work Advocate and resource supports. Thanks to Ryan Duval and Kenny Leung for their research assistance. Thank you to my mother, Elisa Smyth, for her helpful editorial work, and to the peer reviewers for their thoughtful comments. The views expressed in this article are those of the author and do not necessarily represent the views of the partner agencies, groups, or funders. The author wishes to acknowledge with gratitude the stories told by clients in some of the most difficult times in their lives. University of Windsor Mediation Services clients sign a confidentiality agreement that allows dissemination of their stories for the purposes of research. All identifiers have been removed.

dans ces cas précis nécessitent une prise de conscience et une sensibilisation des problèmes dont font face les personnes âgées et leurs familles, y compris l'abus, le mauvais traitement et la discrimination fondée sur l'âge. Cet article indique les étapes d'introduction d'un projet de médiation sur le mauvais traitement d'une personne âgée, en commençant par une clinique de médiation basée sur la faculté de droit. En répondant au besoin local exprimé, le projet a développé un Guide d'Accueil qui essaye d'équilibrer l'autonomie d'une personne âgée avec un visionnement sécuritaire. Le modèle utilise une approche interdisciplinaire avec des travailleurs sociaux spécialisés qui agissent en tant que défenseurs pendant tout le long du processus. Les leçons apprises par le projet sont : l'importance de la formation : le besoin d'approches flexibles pour la médiation ; l'importance d'outils d'accueil et de visionnement spécialisés, les avantages des approches interdisciplinaires et basées sur la force ainsi que la centralité de relations communautaires collaboratives pour s'assurer d'avoir une bonne durabilité du programme.

I. INTRODUCTION

The increasing number of older adults in Canada¹ and around the world² marks a human development achievement. Aging populations, however, require governments, nonprofits, NGOs, economists, social scientists, and many others to

¹ Statistics Canada, *Analysis Series* (Ottawa: StatCan, 2006) at Fig 1, citing Statistics Canada, *Census* (Ottawa: StatCan, 1956-2006); Statistics Canada, "Population Projections for Canada, Provinces and Territories" by Alain Belanger, Laurent Martel & Éric Caron-Malenfant (Ottawa: Minister of Industry, 2005) at 46-47.

² "By 2030 the world is likely to have 1 billion older people, accounting for 13 percent of the total population. While today's proportions of older people are typically in more developed countries, the most rapid increases in older populations are occurring in the less developed world. Between 2006 and 2030, the number of older people in less developed countries is projected to increase by 140 percent as compared to an increase of 51 percent in more developed countries", see National Institute on Aging, "Why Population Aging Matters: A Global Perspective" Publication No 07-6134 (National Institute on Aging: Washington, March 2007). See also United Nations Department of Economic and Social Affairs (Population Division), *World Population Prospects: The 2004 Revision*, UN Doc ESA/P/WP193 (2005) at 7. In Canada, low fertility rates and increasing life expectancy will lead to an aging population. According to Statistics Canada data, "[o]n January 1, 2008, 16.9 percent of the population was aged 14 and under while 13.5 percent was aged 65 and over... In 1972 close to three in 10 persons (28.9 percent) were children while 8.1 percent were seniors. This aging of the population is expected to accelerate into the future, especially from 2011 onward when the first of the large cohort of baby boomers reaches the age of 65. It is expected that the number of seniors will exceed the number of children in Canada by about 2015, regardless of the growth scenario," see *Population growth and age structure*, online: Statistics Canada <<http://www.statcan.gc.ca/pub/91-209-x/2004000/part1/population-eng.htm>>.

effectively respond to this new and growing reality.³ Governments around the world are facing complex choices to effectively address elder care and associated issues of aging, including the use of a wide range of legal and legislative tools.⁴ Although mandating filial responsibility, as proposed in a recent legislative amendment in China⁵, represents one way to address issues of aging, it is also a blunt tool that can exacerbate inter-family conflicts and undermine the positive ability of people to craft solutions that work for their unique family situations.

One of the many other ways to address legal and non-legal conflicts that directly involve older adults is through mediation. Mediation is generally defined as a process in which an impartial third party supports two or more people or groups in discussing and, where possible, resolving some or all of the issues in dispute. A relatively recent mediation specialization is generally referred to as elder mediation, although elder care mediation, guardianship mediation, and other sub-specialties are also common.⁶

In 2007, the University of Windsor Mediation Services⁷, in partnership with Citizen Advocacy⁸ and the Elder Abuse Resource and Prevention Committee

³ The Director-General of the World Health Organization, Gro Harlem Brundtland, wrote “[t]he ageing of the global population is one of the biggest challenges facing the world in the next century. It is also potentially a great opportunity”, see World Health Organization, *Ageing: Exploding the Myths* (1999) at 2, online: World Health Organization <http://whqlibdoc.who.int/hq/1999/WHO_HSC_AHE_99.1.pdf>.

⁴ China, for example, has significantly improved its elder care government programs using subsidies, see “China to Establish Subsidy System for Elder Care Services” *People’s Daily Online* (8 November 2010), online: The People’s Daily <<http://english.peopledaily.com.cn/90001/90776/90882/7192014.html>>. For a further discussion of the Chinese approach, see Yuantig Zhang and Franklin W Goza, “Who Will Care for the Elderly in China?” *Centre for Family and Demographic Research*, Working Paper Series 05-07 at 1. In Canada, however, approaches include income support mechanisms and measures aimed at keeping older adults in their own homes for longer, see *Canada Pension Plan Act*, RSC 1985, c C-8. See also *Old Age Security Act*, RSC 1985, c O-9. Ontario has adopted a multi-pronged approach to addressing issues of health care, long term care, and funding through the Ministry of Long-Term Care, see “Aging at Home Strategy”, online: Ontario Ministry of Health and Long-Term Care <http://www.health.gov.on.ca/english/public/program/ltc/33_ontario_strategy.html>. See also Ontario Local Health Integration Networks, “Aging at Home Strategy”, online: Local Health Integration Networks <<http://www.lhins.on.ca/page.aspx?id=880>>.

⁵ Law of the People’s Republic of China on Protection of the Rights and Interests of the Elderly (adopted at the 21st Meeting of the Standing Committee of the Eighth National People’s Congress on 29 August 1996, promulgated by Order No 73 of the President of the People’s Republic of China on 29 August 1996, and effective as of 1 October 1996).

⁶ It is important to note that elder mediation and mediation by elders in a community are distinct. Although older adults may indeed act as mediators in either scenario, traditional community practices in which elders in a community are called upon to resolve disputes will not be examined in this article.

⁷ University of Windsor Mediation Services is a mediation clinic offering free mediation and facilitation services to members of the Windsor and Essex communities, see “Mediation

Windsor-Essex⁹ responded to the local needs of older adults by developing a specialized elder mediation program – the Elder Mistreatment Mediation Project (“EMMP”). This program, initially funded by the Ontario Victim Services Secretariat (“OVSS”)¹⁰, resulted in the development of an elder abuse mediation Intake Guide, or screening tool, that responds to the concerns of advocates for older adults and supports a strengths-based decision making model. The first year of the program allowed initial testing and the results provide insights into the practice of elder mediation, particularly in a community mediation setting.

The article begins by placing the EMMP in the larger context of elder abuse, and examines why mediation may be a particularly appropriate choice in some cases. Thereafter, it considers special considerations that arise in the practice of elder mediation. The final section provides further details on the first year of implementation and results of the EMMP. These initial results demonstrate the importance of thorough training, interdisciplinary collaborations, and the development of comprehensive screening tools targeting the needs of older adults.

II. WHAT IS ELDER ABUSE?

Before examining the EMMP, it is important to better understand the phenomenon of elder abuse. One must clearly identify who qualifies as an “elder”. Legislation, agencies, and groups usually define an older adult as a person over the age of 65.¹¹ The EMMP employed the term “older adult” to refer to clients aged 55 and over, although because of increasing life spans the term might be a misnomer. In order to be as inclusive as possible, the EMMP served older adults over the age of 55. This was also the requisite age for service from partner agencies. However,

Services”, online: University of Windsor Faculty of Law <www.uwindsor.ca/mediation>. At the time the project began, the author was Director of Mediation Services and one of the leaders of the project.

⁸ Citizen Advocacy is a nonprofit organization providing advocacy services for older adults and persons with disabilities, see Citizen Advocacy, online: <www.citizen-advocacy.ca>.

⁹ See Elder Abuse Resource and Prevention Committee (“EARPC”), online: <<http://www.citizen-advocacy.ca/elderindex.htm>>. EARPC is an interdisciplinary collective comprised of nonprofits, police, health care workers, educators, and older adults. The group organizes educational outreach programs regarding issues related to elder abuse, and also provides a case conferencing function in which difficult cases are discussed anonymously and collaboratively.

¹⁰ Mediation Services also receives funding from Osler, Hoskin & Harcourt LLP, the City of Windsor and the Faculty of Law, University of Windsor, as well as private donors, see “Mediation Services”, *supra* note 7.

¹¹ For example, Canadian older adults are eligible to receive an Old Age Security pension (“OAS”) when they reach the age of 65, although there are special allowances for persons 60-64. Benefits are available for older adults as early as 60, in particular circumstances, see Old Age Security Program, online: Service Canada <<http://www.servicecanada.gc.ca/eng/isp/oas/oastoc.shtml>>.

gerontologists' use of the term "young-old" to refer to persons between the ages of 55 and 75 was helpful in understanding the unique needs and perspectives of this group, as well as the needs of those over 75.¹² The program used the term "elder" largely because the literature in this area uses the term to define an area of law or practice, such as elder law or elder mediation. The term "mistreatment" in the title was drawn from a Waterloo-based elder abuse response project.¹³ Various team members debated the use of the term "abuse" rather than "mistreatment", eventually settling on mistreatment primarily because older adults tended to refuse interventions if they had to self-identify as "abused" rather than "mistreated". The interventions, however, were premised upon the fact that older adults were in fact being abused.

There are also variations on what is defined as abuse. The most common definition, adopted by the World Health Organization (WHO) in 1992, defines elder abuse as "[s]ingle or repeated acts, or lack of appropriate action, occurring within a relationship where there is an expectation of trust, which causes harm or distress to an older person."¹⁴ Forms of elder abuse generally include physical, emotional, financial, and sexual abuse as well as neglect, including self-neglect.¹⁵ After piloting the Intake Guide, the EMMP also included "spiritual abuse". As with most forms of abuse, elder abuse occurs on a continuum, sometimes starting with signs such as depression, fear, anxiety, odd patterns of spending, and/or disappearing items of value, and can escalate to serious abuse of any kind.

The incidence rate of elder abuse varies widely. The 2009 Statistics Canada "Family Violence in Canada: A Statistical Profile" suggested that 2 percent of all police-reported incidents of Criminal Code offences were committed against older adults. Perhaps because of increased awareness, Statistics Canada noted a 20 percent increase in police-reported violence against older adults between 1998 and 2000, and a 3 percent increase between 2000 and 2007.¹⁶ Because this data only captures

¹² Bernice L Neugarten, "Age Groups in American Society and the Rise of the Young-Old" (1974) 215:1 *Annals of the American Academy of Political and Social Science* 187 at 198.

¹³ Arlene Groh, *A Healing Response to Elder Abuse and Mistreatment: The Restorative Justice Approaches to Elder Abuse Project* (Kitchener, ON: Community Care Access Centre of Waterloo Region, 2003).

¹⁴ "What is elder abuse?" (1995) *Action on Elder Abuse Bulletin* 11, online: Elder Abuse United Kingdom

<http://www.elderabuse.org.uk/About%20Abuse/What_is_abuse%20define.htm>; World Health Organization, "The Toronto Declaration on the Global Prevention of Elder Abuse", online: World Health Organization

<http://www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf>.

¹⁵ *Forms of Elder Abuse* (2008), online: The Ontario Network for the Prevention of Elder Abuse <<http://www.onpea.org/english/elderabuse/formsofelderabuse.html>>. There is some controversy over what qualifies as abuse. The greatest debate relates to what constitutes "neglect", see generally Mark Lachs & Karl Pillemer, "Current Concepts: Abuse and Neglect of Elderly Persons" (1995) 332:7 *New Eng J Med* 437 at 443.

¹⁶ Statistics Canada, *Family Violence in Canada: A Statistical Profile* (Ottawa: Minister of Industry, 2009) at 43.

reported crime, and because elder abuse is under-reported, it is difficult to assess how closely this data reflects an actual incidence rate. Further, all forms of elder abuse are not captured by criminal law, nor may they be identified by police as a crime. For example, neglect of older adults is one of the most common forms of elder abuse, but it is often difficult for police, doctors or caregivers to identify. Statistics Canada's 1999 General Social Survey¹⁷ found that 7 percent of older adults "experienced some form of emotional or financial abuse by an adult child, caregiver, spouse or common-law spouse with whom they had contact in the five years prior to the survey."¹⁸ This data also relies on the older adult identifying his or her treatment as abusive, which may not occur for a variety of reasons. The EMMP encountered such cases; in one, a 78 year-old mother said her son "deserved" the money he stole from her "because she took up so much of his time." In other cases, children who stole from their parents were excused as "just borrowing", "having a hard time right now", or "paying for my expensive care."

Other jurisdictions have gathered additional statistics relevant to the Canadian experience. The Boston-based Pillemer and Finkelhor study confirmed that the most common perpetrators of elder abuse are relatives or caregivers: the spouse was identified as the most common perpetrator, with 90 percent of cases perpetrated by a family member.¹⁹ Claudia Cooper and her colleagues conducted a global, systematic review of evidence on rates of abuse in 2008, finding approximately 6 percent of older adults in the general population reported significant abuse in the preceding month, with 5.6 percent of older adult couples reporting physical violence in their relationship.²⁰ When vulnerable older adults and their caregivers were surveyed, significant psychological abuse was reported in approximately 25 percent of cases, with 1 percent reporting physical abuse.²¹ Family caregivers for older adults self-reported physical abuse rates of 11-20 percent, and overall abuse was reported by 37-55 percent.²² Among professional caregivers, 16 percent reported committing significant psychological abuse, with 10 percent of staff admitting they committed physical abuse against an older adult, and 40 percent reporting psychologically abusive acts within the last year. More than 80 percent of nursing home staff reported observing abuse, but very few reported it to their supervisors.²³

¹⁷ Canadian Centre for Justice. *Seniors in Canada* (Ottawa: Minister of Industry, 2001), online: Statistics Canada

<<http://dsp-psd.pwgsc.gc.ca/Collection/Statcan/85F0033M/85F0033MIE2001008.pdf>>.

¹⁸ *Ibid* at 7.

¹⁹ Karl Pillemer & David Finkelhor, "The Prevalence of Elder Abuse: A Random Sample Survey" (1988) 28:1 *The Gerontologist* 51 at 51-57.

²⁰ Claudia Cooper, Amber Selwood & Gill Livingston, "The Prevalence of Elder Abuse and Neglect: a Systematic Review" (2008) 37 *Age and Ageing* 151 at 157.

²¹ *Ibid* at 157.

²² *Ibid*.

²³ *Ibid* at 158. Additional studies have identified particular indicators associated with increased risks for abuse of older adults, including: older adults suffering from Alzheimer's

Elder abuse is often private and misunderstood. This “hidden crime”²⁴ makes it difficult for professionals of any kind to spot and manage.²⁵ The reasons behind under-reporting often lie with older adults themselves. They may avoid reporting abuse, wanting to protect the abuser who is statistically likely to be a caregiver. The potential social stigma or shame associated with abuse may serve as a further deterrent.

The traditional justice system also poses problems for older adults. Handler’s 1989 article describes the problems associated with using a rights-based approach to elder abuse:

Under the best of circumstances, it is hard to know whether dependent people are exercising free choice, are aware of alternatives, are participating in decisions, and are receiving proper care ... Because they fear retaliation, dependent people often fail to exercise their legal rights. This generalization is not always true; on occasion, the powerless will use rights effectively, and, if they are aggressive enough, even intimidate officials. But in the main, this is rare; in the more usual situation, power easily corrupts procedures.²⁶

Initial discussions with the Crown Attorney’s office in Windsor confirmed the difficulty not only with reporting elder abuse, but also with bringing cases to trial.

disease, depression, confusion and/or frailty, see Gregory J Paveza et al, “Severe Family Violence and Alzheimer’s Disease: Prevalence and Risk Factors” (1992) 32:4 *The Gerontologist* 4930; Lachs & Pillemer, *supra* note 15 at 438 (increased risk of elder abuse and neglect associated with increasing age); AC Coyne, WE Reichman & LJ Berbi, “The Relationship Between Dementia and Elder Abuse” (1993) 150:4 *American Journal of Psychiatry* 643 (older adults with personal histories of abuse); Scott Beach et al, “Financial Exploitation and Psychological Mistreatment Among Older Adults: Differences Between African Americans and Non-African Americans in a Population-Based Survey” (2010) 50:6 *The Gerontologist* 744 (increased risks of financial exploitation and psychological mistreatment were found with African American men and women over the age of 60).

²⁴ Elder abuse is often referred to as a hidden crime because of its subtle nature, and the fact that it is rarely reported. The term has been used in a wide variety of books and journals, including Judith Wahl et al, “Elder Abuse: The Hidden Crime” (Advocacy Centre for the Elderly and Community Legal Education Ontario: November 2010); Sarah Sandusky, “The Lawyer’s Role in Combating the Hidden Crime of Elder Abuse” 11 *The Elder Law Journal* 460; Patricia Brownell et al, “Grandparents Raising Grandchildren: The Risks of Caregiving” in Elizabeth Podnieks, *Elder Abuse: Selected Papers from the Prague World Congress on Family Violence* (Binghamton, NY: Haworth Press, 2003) 5 at 15, 29.

²⁵ Even when jurisdictions require physicians to report elder abuse, the rate of reporting remains low, and one study cited only 16 percent of cases of elder abuse reported to relevant authorities, see e.g. Michael Rodriguez et al, “Mandatory Reporting of Elder Abuse: Between a Rock and a Hard Place” (2006) 4:5 *Annals of Family Medicine* 403.

²⁶ Joel Handler, “Community Care for the Frail Elderly: A Theory of Empowerment” (1989) 50 *Ohio St LJ* 541 at 544.

Older adults may not wish to testify against their caregivers, who may also be a relative. In addition, older adults may be (or are assumed to be) less reliable witnesses. Although reluctance to testify may stop an older adult from pursuing a case criminally or civilly, it can also prevent older adults from voicing their concerns in a mediation process, particularly if the older adult is doubly bound by dependency and/or cognitive impairment.

Ageism, defined by Robert Butler in 1969 as “[a] process of systemic stereotyping and discrimination against people because they are old, just as racism and sexism accomplish this for skin colour and gender”,²⁷ is another important part of the analysis. In a mediation process, social structures and ideologies can be reproduced in almost imperceptible ways.²⁸ Assumptions that older adults are ‘incompetent’, ‘frail’, ‘stupid’ or any number of negative stereotypes can lead to silencing and marginalization without significant awareness-raising.

Systemic causes of elder abuse are also worthy of consideration. Groh points to systemic causes associated with elder abuse, suggesting:

Public policy creates a system that allows abuse to occur. For example, in Waterloo Region, there is an extensive waiting period for subsidized housing. Such housing limitations may have contributed to the poor health of a senior who was admitted to hospital with severe dehydration, malnutrition, and exceptionally poor hygiene. Her family ‘cared for her’ in her home. The family, six people in total, including a great grandchild, all lived together in her home on her pension cheque.²⁹

Abuse and neglect, perpetuated by public policy, is particularly troublesome in legal and mediation settings, where agreements are usually confidential. Although the problem is occasionally over-stated, it is possible that mediation subverts public civic engagement and activism to spur positive social change.³⁰ However, the process may also serve to actively include participants who may otherwise be marginalized or discounted as decision makers. This is particularly relevant in elder mediation, if steps are taken during the process design phase to include voices of older adults.

²⁷ Robert Butler, “Ageism: Another Form of Bigotry” (1969) 9 *The Gerontologist* 243.

²⁸ See e.g. Trina Grillo, “The Mediation Alternative: Process Dangers for Women” (1991) 100 *Yale LJ* 1545 (Grillo argues that social stereotypes about women’s expressions of anger led mediators to silence female parties more often than men).

²⁹ Groh. *supra* note 13 at 6-7.

³⁰ See e.g. Richard L. Abel, “The Contradictions of Informal Justice”, reprinted in Richard L. Abel, ed. *The Politics of Informal Justice*, vol 1 (London: Academic Press, 1982) 267; Owen M. Fiss, “Against Settlement” (1964) 93 *Yale LJ* 1073.

WHY MEDIATION?

Although this article will not explore the benefits of mediation in great depth, certain elements in cases of elder conflict are particularly relevant. There are many potential process benefits to mediation, including timeliness, generally lower costs, informality, and accessibility. One of the greatest benefits of mediation is its ability to include the voices and stories of participants. Like many mediation programs, the EMMP employed a facilitative mediation model in which the mediator assists parties in communicating effectively without the use of evaluation. Bernard Mayer identifies the “hallmarks of facilitative mediation” as: process oriented, client centered, communication focused, and interest based.³¹ For these reasons, facilitative mediation is also particularly appropriate in cases involving older adults. Unlike a traditional adjudicative process, mediation allows for and indeed encourages both traditionally logical or rational knowledge (privileged by court processes) and what Michael Polanyi called “tacit knowledge”, the implicit, personal and interpreted knowledge that co-exists and shapes our understanding of phenomena, as well as what phenomenologists might call “lived experience”.³²

In EMMP cases, for example, the older adults’ understanding of themselves, others, the specific disputes, and disputing generally – along with “facts” and how they are experienced – were essential to a fuller conception of the conflict. One 82 year old woman, an accomplished psychotherapist who maintained an active practice, demonstrated what her family perceived to be irrational behaviour when she refused to move out of her increasingly unmanageable house and put her husband into long-term care. Her husband’s mid- to late-onset Alzheimer’s put her at risk both emotionally and physically. All but one of her children had given up bargaining with their mother, and their narrative increasingly assumed her incompetence in all areas of her life. However, their mother’s tacit understanding of her complex, lifelong relationships and her emotional experiences made her decision both understandable and logical. Her eventual decision to move her husband into long-term care (but keep the house) was the result of discussions that encompassed both rational and personal/tacit knowledge and lived experience.

These complex relationships are increasingly common, with multi-generational families that rely on one another for support, rather than reliance on care homes or medical supports. According to data from Statistics Canada, the number of older adults who receive informal support (family and friends) is far greater than the number of older adults that receive formal support (institutions or professional

³¹ Bernard Mayer, “Facilitative Mediation” in Jay Folberg et al, eds, *Divorce and Family Mediation: Models, Techniques and Applications* (The Guilford Press: New York, 2004) at 32-33.

³² Michael Polanyi, *The Tacit Dimension* (Doubleday and Company, Inc.: New York, 1966). See also William Dilthey, *William Dilthey: Selected Works Vol. I: Introduction to the Human Sciences*, translated by Rudolf A Makkreel & Frithjof Rodi (Princeton University Press: New Jersey, 1991).

assistance).³³ However, inter-family conflicts can exacerbate stress for older adults and impair the quality of care given by their children. For example, in 2001, Deborah Gentry studied conflicts that siblings experienced while caring for aging parents. She found that nearly 40 percent of children caring for an aging parent had experienced what she termed “serious conflict” regarding the care of a parent.³⁴ Further, increasing numbers of older adults live at home. Between 1981 and 2001, the number of older adults living in an institutional setting fell while the number of older adults living with a spouse, child or grandchild, or alone, increased.³⁵ The social imperatives of modern Canadian family structures require a more nuanced approach to the resolution of conflicts involving older adults.

III. WHAT IS ELDER MEDIATION?

Elder mediation has developed as a specialized form of mediation in Canada over the past two decades. Although what constitutes ‘elder mediation’ is still debatable, Elder Mediation Canada suggests that the following areas can fall into this category:

- Health care – at home, in the community, in the hospital or in continuing care and long term care communities.
- Retirement
- Financial concerns
- Housing and living arrangements
- Nursing home decisions, medical decisions
- Safety
- Environment
- Care for the caregiver as well as caregiver burden
- Intergenerational relationships
- Relationship concerns
- Holiday schedules
- New marriages and step-family situations
- Abuse & neglect
- Religious issues
- Family business
- Driving
- End of life decisions

³³ “Seniors Who Received Care Because of a Long-term Health Problem: Informal and Formal Sources of Help” (2002) at Table 4.3.8, online: Statistics Canada <<http://www.statcan.gc.ca/pub/89-519-x/2006001/t/4122069-eng.htm>>.

³⁴ Deborah Gentry, “Resolving Middle-Age Sibling Conflict Regarding Parent Care” (2001) 19:1 Conflict Resolution Quarterly 31.

³⁵ *Ibid.*

- Guardianship
- Estate planning³⁶

This exhaustive list is reflected in many elder mediation programs in the areas of long-term care,³⁷ wills and estates,³⁸ end-of-life decision-making,³⁹ and guardianship.⁴⁰

Although there are many elder mediation service providers, there are few to no nationally or internationally recognized standards or regulations for elder mediators. Currently, groups such as Elder Mediation Canada (EMC) are attempting to professionalize the field of elder mediation through the use of a roster program regulated by a set of criteria for membership.⁴¹ EMC maintains a list of mediators who the organization has determined are qualified to provide elder mediation services. However, elder mediation – like mediation in many other fields – still appears dominated by private mediators with a variety of backgrounds and professional designations. Since mediation in general is not regulated in the same way as other professions in Canada, there are few specific designations required to practice. As such, training programs vary widely in the areas and hours of training for certification.⁴²

While there are many university-affiliated elder law clinics in the United States,⁴³ and one at Queen's University in Ontario,⁴⁴ publicly funded or non-profit

³⁶ "What is Elder Mediation?", online: Elder Mediation Canada, <www.eldermediation.ca>.

³⁷ See e.g. Janice Barrocas & Diane Persson, "Mediating Disputes in Long-Term Care" (2005) 26:4 BIFOCAL 36.

³⁸ See e.g. Susan N Gary, "Mediation in Probate" (2004) 7:2 Elder Law Newsletter 4; David Gage & Dawn Martin, "The Benefits of Mediated Family Estate-Planning Retreats" (2005) 4:4 ACResolution 18.

³⁹ See e.g. Erin Furlong, "Legal Trends in End-of-Life Health Care Decision-Making" (2005) 27:2 BIFOCAL 21.

⁴⁰ See e.g. Neil Rodar, "Eldercare and Adult Guardianship Mediation" (2010) 36-Fall Vt BJ 1. See generally "Adult Guardianship Mediation Project" (1996) 6:1 Dispute Resolution News 3.

⁴¹ "Elder Mediation Certification Pilot Project", online: Elder Mediation Canada <<http://www.eldermediation.ca/page6/page6.html>>.

⁴² Elder Mediation Canada, for example, requires 100 hours of training in family life cycle and intergenerational dynamics (minimum 30 hours); elder abuse (minimum 14 hours); family and elder law (minimum 7 hours); power imbalance (minimum 7 hours); grief and loss (minimum 3 hours); ageism (minimum 8 hours); dementia and chronic diseases (minimum 14 hours); financial and estate issues (minimum 7 hours); and ethical issues (minimum 7 hours). Applications can be requested from admin@eldermediation.ca, see *Elder Mediation Certification Application Form* (2008), online: Elder Mediation Canada <www.eldermediation.ca/page11/files/Certification%20Application.doc>.

⁴³ Elder law clinics affiliated with law schools include: New York Law School's Elder Law Clinic, online:

<http://www.nyls.edu/academics/catalog_and_schedule/alpha_list/elder_law_clinic>; Southern University Law Center, online: <<http://www.sulc.edu/administration/clinical->

elder mediation services remain relatively rare. Some community mediation centres, as in Windsor, provide elder mediation services as a part of a menu of other mediation services. Models of elder mediation vary. In 1998, a group of Waterloo Ontario-based agencies introduced an inter-agency elder abuse protocol to establish coordinated responses to elder abuse. The model employed a restorative justice approach in appropriate cases of elder abuse and mistreatment. This approach involved referral to a community mediation agency in some, but certainly not all cases of elder abuse.⁴⁵ It is unclear what models of mediation are employed by other elder mediation projects. The Elder Mediation Canada website, for example describes their process as follows: "Elder Mediation is a cooperative process in which a professionally trained elder mediator helps facilitate discussions that assist people in addressing the myriad of changes and stresses that often occurs throughout the family life cycle."⁴⁶ This description might describe a facilitative mediation model, although transformative elements might also be present. Since the field remains dominated by private mediators, the types of services and the mediation models employed range widely.

IV. ELDER ABUSE AND MISTREATMENT PROJECT

The EMMP grew rather organically out of cases that presented themselves to Mediation Services and other community partners, including the Elder Abuse Resource and Prevention Committee. A local community agency, Council on Aging had received a grant to start a Senior-to-Senior mediation project. After funding ran out, the project was transferred to Mediation Services. The program was relatively inactive until Mediation Services opened a downtown location. The move coincided with several additional factors: older adults began contacting Mediation Services in greater numbers; the EARPC increasingly began discussing the option of mediation in complex cases; the Ontario Aging at Home Strategy launched; the Waterloo Elder Abuse Response Team and an associated mediation program started (as described above);⁴⁷ and the economic downturn seriously affected the local community.⁴⁸ I

education/theclinics.htm#4>; University of Pittsburgh Law School, Elder Law Clinic, online: <<http://www.law.pitt.edu/academics/juris-doctor/clinics/elder>>; University of Miami School of Law, Health and Elder Law Clinic, online:

<<http://www.law.miami.edu/news.php?article=1747>>.

⁴⁴ The Elder Law Clinic, online: Queen's University

<http://post.queensu.ca/~elderlaw/Elder_Law_Clinic_at_Queens_Law/Welcome.html>. For a newspaper report on the clinic, see Paul Schliesmann, "Seniors Welcome Legal Help" *The Kingston Whig Standard* online: <<http://www.thewhig.com/ArticleDisplay.aspx?e=2920843>>

⁴⁵ Groh, *supra* note 13.

⁴⁶ Elder Mediation Canada, online: <<http://www.eldermediation.ca>>.

⁴⁷ See generally *Elder Abuse Response Team* (2007), online: Family Response Project of Waterloo Region <<http://www.fvpwaterloo.ca/en/partners/eart.asp>>.

community discussions, Citizen Advocacy⁴⁹, a local non-profit serving older adults and persons with disabilities, identified statistics that older adults were often reluctant to report any kind of abuse, particularly because the abuser was usually the child, relative, and/or primary caregiver. Thus, older adults were rejecting legal and social services if the result might alienate a caregiver. Although the answer was not to let the older adult stay in an unsafe situation, community partners recognized that a 'softer' approach might encourage or support older adults in reporting their abuse, thereby either disengaging from the abuser or forming a healthier relationship with appropriate supports and safeguards.

It was clear that to respond to elder abuse successfully and creatively, a different approach to advocacy and mediation was required.⁵⁰ Supported by a grant from the Ontario Victim Services Secretariat ("OVSS"), research led to several key theories of the project: the adoption of an interdisciplinary model, the importance of training, and the necessity of a superior screening tool.

INTERDISCIPLINARY MODEL

According to Dow, the interdisciplinary approach to elder mediation "[s]trives to address the complexity of the issues... [and] encourages co-ordination among professionals from several disciplines, and values the sharing of broader perspectives in understanding the abuse."⁵¹ A true interdisciplinary model relies on mutual understandings of each discipline. Despres, Fortin, Joerin, Vachon, Garri and Moretti identify four types of knowledge that must be integrated: scientific knowledge, ethical knowledge, practical knowledge, and aesthetic knowledge.⁵² With the inclusion of mutual training on substantive, ethical and "practical" problem solving, ongoing informal opportunities to liaise, and a project model structured on communication, the EMMP attempted to establish a true interdisciplinary partnership. The EMMP also relied on a community-based partnership involving a wide range of professional groups. As with other cases, the mediators themselves were law and social work students working with the Director. The partner for the

⁴⁸ Windsor, Ontario has the highest unemployment rate in Canada, see *Labour Force Characteristics, Unadjusted, by Economic Region* (28 January 2011), online: Statistics Canada <<http://www40.statcan.gc.ca/l01/cst01/lfss05d-eng.htm>>.

⁴⁹ Citizen Advocacy, *supra* note 8.

⁵⁰ This practice has a longstanding history, influenced in large part by feminist critiques of mediation arguing that women were at a disadvantage in the private mediation setting in which formal equality measures were absent, and in which informal social norms were reproduced. It must also be acknowledged that there are many mediators and mediation programs that use the mediation process when abuse has occurred. Presence of violence may not prevent judges from referring to mediation.

⁵¹ Health Canada, *Services for Abused Older Canadians* by E Dow et al (Ottawa: Health Canada, Family Violence Prevention Division, 1995) at 66-67.

⁵² Carole Després, "Retrofitting postwar suburbs: A collaborative design process" in Gertrude H Hadorn et al, eds. *Handbook of Transdisciplinary Research* (Dordrecht: Springer, 2008) at 327-341.

purposes of service provision was Citizen Advocacy, with the EARPC acting as community advisors. Social workers, employed by Citizen Advocacy, acted as Advocates and support persons for the older adult.

Citizen Advocacy and Mediation Services operated using a strengths-based approach, drawing on social work literature.⁵³ A strengths-based model, which also focuses on resilience, capacity building and social capital, is premised on the dignity of each individual. As Bonnie Benard writes:

[P]eople in professions, such as social work, known for studying and ameliorating human problems, are increasingly attracted to what has become a new paradigm, a new way of thinking about and working with human beings across the lifespan that focuses on assets instead of deficits and on working in partnership “with” instead of doing “to.”⁵⁴

In practice, a strengths-based approach to elder mediation involved assessing the strengths of the older adult and the other parties to the mediation, and facilitating the use of these strengths throughout the intake, preparation for mediation, and the mediation itself. Although the older adult was assisted in this process by the Social Work Advocate, mediators also employed this approach when completing intakes with other parties to the dispute.

The project was also informed by Bernie Mayer’s work on power.⁵⁵ Mayer deconstructs the term ‘power imbalance’ by defining the myriad forms of power at work in our lives, from institutional to personal. A zero sum perspective on power

⁵³ See Charles D Cowger, Kim M Anderson & Carol A Snively, “Assessing Strengths: The Political Context of Individual, Family, and Community Empowerment” reprinted in Dennis Saleebey, ed, *The Strengths Perspective in Social Work Practice*, 4th ed (Toronto: Allyn and Bacon, 2006) 93; Clay Graybeal, “Strengths-Based Social Work Assessment: Transforming the Dominant Paradigm” (2001) 82:3 *Families in Society* 223; Judith AB Lee, *The Empowerment Approach to Social Work Practice*, 2d ed (New York: Columbia University Press, 2001); Dennis Saleebey, “Introduction: Power in the People” reprinted in Dennis Saleebey, ed, *The Strengths Perspective in Social Work Practice* 4th ed (Toronto: Allyn and Bacon, 2006) 1; Dennis Saleebey, “Community Development, Neighborhood Empowerment, and Individual Resilience” reprinted in Dennis Saleebey, ed, *The Strengths Perspective in Social Work Practice* 4th ed (Toronto: Allyn and Bacon, 2006) 241; Barbara Simon Levy, *The Empowerment Tradition in Social Work: A History* (New York: Columbia University Press, 1994); Susan Crawford et al, “From Determining Capacity to Facilitating Competencies: A New Mediation Framework” (2003) 20:4 *Conflict Resolution Quarterly* 385.

⁵⁴ Bonnie Benard, “Using Strengths-Based Practice to Tap into the Resilience of Families” in Dennis Saleebey, ed, *The Strengths Perspective in Social Work Practice*, 4th ed (Toronto: Allyn and Bacon, 2006) at 197.

⁵⁵ See especially, Bernard Mayer, *The Dynamics of Conflict Resolution: A Practitioner’s Guide* (San Francisco: Jossey-Bass, 2000).

leads to a narrow view on the role of power in interpersonal relationships. This perspective, for example, was refuted by older adult clients who argued that they were entirely capable of full participation in mediation, despite a history of abuse. As one Social Work Advocate wrote in assessing the project:

I believe that the mediation approach to dealing with elder mistreatment is one more intervention method which can be used ... Providing seniors with options regarding their situations allows them to regain control and decide which approach will work best for them. Considering each individual is unique, we cannot assume to offer one "cookie-cutter" approach and expect it to work for everyone (this is how people fall through the gaps in service). Mediation for elder mistreatment empowers seniors to take control of their situation, with the support of an advocate/social worker.⁵⁶

TRAINING

In structuring training, the program partners balanced the nature and depth of subject matter expertise. Since the project took place within the context of a community mediation clinic already working in residential tenancies, family, and neighbourhood conflicts; there were resource limitations, particularly in terms of time. The project also balanced the theory of community mediation with the concerns of advocates. Many community mediators rely on lived experience, along with conflict resolution training, to guide their work.⁵⁷

However, unique needs of older adults and the work of elder advocates led us to require additional training. As there are no formal requirements to practice elder mediation, training was established through research on best practices and the experience of community partners. All mediators had a minimum of 20 hours of mediation training and had already completed intakes and mediations in other areas.⁵⁸

Using the interdisciplinary model, Citizen Advocacy was able to train Mediation Services staff in advocacy for older adults and community resources. A gerontology expert from the School of Social Work provided a series of training sessions on

⁵⁶ Quotation from one of the Social Work Advocates who prepared her clients for mediation and attended several mediations with Mediation Services. Feedback was gathered after two years of the project (Document on file with the author).

⁵⁷ See Sally Engle Merry & Neil Milner, *The Possibility of Popular Justice: A Case Study of Community Mediation in the United States* (Michigan: University of Michigan Press, 1995) at 10.

⁵⁸ For example, the 'lead' mediator was the Director of Mediation Services, who had extensive training and experience in mediation, is accredited by other ADR groups, and who teaches and researches in the area of dispute resolution. The students acted as co-mediators. Their involvement in the process increased with their training, comfort level, and number of mediations previously completed.

ageism, elder abuse, and gerontology. The Windsor-Essex Alzheimer's Society provided training on characteristics of, and responses to, Alzheimer's and dementia. A local lawyer provided training on wills and estates, consent and capacity, and Powers of Attorney. This program relied on the work of multiple professions with different approaches and ethical guidelines. Thus, the mediators and Social Work Advocates met to discuss issues of ethics, professional identity and roles in the mediation process.

From this training, Mediation Services developed an older adult-friendly setting including the provision of pocket talkers⁵⁹, more accessible space, creative seating arrangements, better lighting, and written materials in larger print. Pre-mediation meetings and mediations took place in various comfortable locations, including favourite restaurants, community halls, social service agencies, and private homes.

In most cases, the older adult attended pre-mediation meetings with their Citizen Advocacy advocate. The Intake Guide, discussed further below, included a consent to disclose (release of information) that allowed Citizen Advocacy and Mediation Services to discuss relevant aspects of the case, preventing the older adult from having to repeat her story to many parties. If older adults wished to tell their stories directly to Mediation Services (or to Citizen Advocacy, if the older adult contacted Mediation Services first) this was also possible. Although Citizen Advocacy occasionally had contact with the other parties in the dispute (the abuser, the children, spouse, grandchildren, service providers, etc.), Mediation Services was charged with conducting pre-mediation meetings with other parties.

The Social Work Advocate was instrumental in several ways. First, she interviewed the older adult and created a relationship of trust, sometimes over many meetings. Second, she determined whether the older adult might be interested in discussing the option of mediation. The older adult or the Social Work Advocate would approach Mediation Services to conduct an intake that included gathering information about other parties involved in the dispute. The Social Work Advocate then prepared the older adult for mediation. Issues discussed included: to what degree does the older adult feel comfortable speaking for herself? What 'safety signals' will be used if the older adult is uneasy? What are the primary issues the older adult wants resolved? What 'blue sky' solution does the older adult envisage? The older adult often attended mediation with a list of issues and an introductory statement. In some cases, the older adult would speak for themselves for the majority of the mediation. Most commonly, older adults required some support at the beginning, during very emotional situations, and in the crafting of solutions. The Social Work Advocate always carefully reviewed solutions with the older adult to confirm they were voluntary and in the best interests of the older adult.

One of the most important roles of the Social Work Advocate was follow-up. The screening tool included mandated follow-up at 3 months, 6 months and one year.

⁵⁹ Pocket talkers are a type of assistive listening device which amplifies sounds closest to the listener. The devices are about the size of a cellular phone. They are often used for their ability to significantly amplify sound and their affordability.

after the mediation or mediations. The Social Work Advocate would also follow up soon after the mediation to check whether the agreement was working or additional support might be required. Occasionally, this resulted in additional mediation sessions.

TYPES OF CASES AND SCREENING TOOL/INTAKE GUIDE

The EMMP chose not to engage in all possible forms of mediation that affected older adults. In all cases, the Intake Guide (Appendix A) was employed. The Project used the term “Intake Guide” rather than “Screening Tool” to reflect that the document gathers both traditional mediation-related information and older adult-specific information. Citizen Advocacy and Mediation Services used similar Intake Guides to canvas the possibility for mediation. As is the case with much of the literature on elder abuse screening, the tool was heavily influenced by tools that screen for domestic violence.⁶⁰ This particular Intake Guide does not assume that the presence of abuse, particularly historical, vitiates consent, particularly given the definitions and evidence described earlier. Instead, a more flexible and nuanced analysis was used.

The Intake Guide requires the intake worker to gather information on: health status/medical conditions, the living arrangements of the parties, powers of attorney, and history of mistreatment or abuse. If the older adult stated she does not wish to have an advocate present at the mediation, three key questions must be answered:

1. Is the client able to talk about their interests, needs and concerns if the abuser is present?
2. Is the client able to disagree with the abuser and talk about the disagreement?
3. Does the client feel safe saying no to things that they do not agree with?⁶¹

These questions, written in plain language, are intended to elicit important information about the older adult’s level of fear and intimidation, and whether she would be able to negotiate effectively. In addition to initial questions about Powers of Attorney, the Intake Guide also tests for capacity with the question: “Is the client

⁶⁰ See Karla Fischer, Neil Vidman & Rene Ellis, “Procedural Justice Implications of ADR in Specialized Contexts: The Culture of Battering and the Role of Mediation in Domestic Violence Cases” (1993) 46 SMU L Rev 2117; Alexandria Zylstra, “Mediation and Domestic Violence: A Practical Screening Method for Mediators and Mediation Program Administrators” (2001) J Disp Resol 253; Nancy Ver Steegh, “Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence” (2003) 9 Wm & Mary J Women & L 145; Jane C Murphy & Robert Rubinson, “Domestic Violence and Mediation: Responding to the Challenges of Crafting Effective Screens” (2005) 39 Fam LQ 53; Silvia Perel-Levin, *Discussing Screening for Elder Abuse at Primary Health Care Level* (Switzerland: World Health Organization Press, 2008).

⁶¹ See Appendix A - Intake Guide at 3.

capable to make and understand decisions in response to new information, express opinions, and negotiate?"⁶² The Intake Guide then leads the interviewer through questions regarding six forms of mistreatment: physical, psychological/ emotional, material (financial exploitation), neglect, spiritual, and sexual.⁶³ Referral-related questions are also peppered throughout the Intake Guide, including referrals to the Ontario Public Guardian and Trustee, the police, and Victim Services. Step 5 ensured the older adult was informed of multiple options she could pursue, including the courts/ lawyers, direct negotiation, police, or no action whatsoever.⁶⁴ Step 6 of the Intake Guide investigated any physical, behaviour or developmental accommodations required, as well as any specific cultural constructs that might support or undermine the client's or family's willingness to attend or participate in mediation.⁶⁵

As with any screening tool or intake guide, the number of questions must be balanced with the potential length of an interview. A screening tool must also be supported by training on client interviewing and counseling, as well as in the substantive areas of law or social work that might be encountered by the interviewer.

TYPICAL ASPECTS OF ELDER ABUSE MEDIATION AT MEDIATION SERVICES

All mediations used a co-mediation model, and occurred face-to-face, although there were many pre-mediation meetings with one or more parties, depending on how many parties were involved. The Social Work Advocate and the older adult always met with the mediators at least once before the mediation. Typically, more than one meeting was required and some older adults took the opportunity to speak privately with the mediators before the sessions. Although the older adult usually had a close trust relationship with the social work advocate, there were occasions when the older adult formed a relationship with the mediator that allowed for further information sharing.

The mediators also became more flexible with time. A scheduled mediation did not take place if the older adult suffering from dementia was having a 'bad day', and mediations were generally scheduled for shorter periods of time. Lawyers or other support persons were permitted – and in some cases actively encouraged - to attend. In cases to date, lawyers did not attend with their clients, but gave advice before and/or after the process, depending on whether the client required legal advice.

Some clients had pre-existing, formal capacity assessments. If the assessment found the client incapable for personal care or property, this did not automatically bar the older adult from participating in the process. However, it did mean that the older adult had to have an advocate present. Capacity assessments often became the subject of much controversy amongst various parties to the dispute, particularly if one or more parties benefitted from the older adult being deemed capable or incapable. While the capacity assessment itself was not an issue that could be mediated, fear or

⁶² *Ibid.*

⁶³ *Ibid* at 4.

⁶⁴ *Ibid* at 5.

⁶⁵ *Ibid* at 6.

manipulation of a finding gave significant insight into the abuse. The assessment sometimes acted as a 'reality check' for the purposes of planning for future care.

The EMMP Project took place in the context of a community mediation clinic.⁶⁶ One of the primary benefits of a community mediation model is its financial accessibility. Parties paid no fees to either their social work advocate or to the mediators. The model is also voluntary, rather than court-ordered, which is extremely important in elder abuse cases. As one of the Social Work Advocates noted:

From a Social Work perspective, I believe the option to mediate these cases is client centered and non-intrusive. Other benefits include that it is a free service (which is beneficial to our low income seniors) and allows the parties to meet in a neutral, comfortable location, which is less intimidating and definitely less costly, than the court process.⁶⁷

CHALLENGES

There were also significant challenges throughout the Program. One of the primary concerns of the other parties to the dispute was neutrality and impartiality. Many parties expressed concern, or even anger, that the older adult was provided with social work support while they were not. The mediators were at pains to explain that other social workers, advocates or support persons could attend, but that the project did not automatically provide them. Some clients did choose to bring additional support persons. In debriefing cases, the Social Work Advocates often expressed the ethical challenges involved in either stepping in to support the older adult, or allowing the older adult to express her own concerns.

As there were sometimes many parties involved in the older adult's life, it was difficult to ascertain who should be present at the mediation and what role each party should take. This involved a significant number of interviews and pre-mediation planning sessions. Flexibility was a hallmark of this model. The traditional "one-intake-one-mediation" model was usually inapplicable. The number of meetings, length of mediation, location, and the occasional last-minute cancellations were important to effective service, but posed significant administrative challenges. Further, the extensive amount of training required of the mediators meant significant, ongoing commitment from all trainers.

In most cases, parties did not go to a full-scale, 'traditional' mediation. The cases that did proceed usually involved many people. Anticipated issues regarding participation of other parties proved unfounded. In fact, the family members and

⁶⁶ Strictly speaking, Mediation Services is a modified community clinic. The mediators are law students, whereas most true community mediation clinics draw their mediators from the entire community. The students also acted more like employees, engaged in the full case management process.

⁶⁷ Quotation from one of the Social Work Advocates involved in the EMMP (on file with the author).

other parties tended to come forward themselves, or had already been identified by partner agencies. In addition, the mediations generally involved many issues and complex interpersonal relationships spanning several generations. This made practice in the area challenging, but also rewarding.

V. CONCLUSION

There is no ideal ‘cookie cutter’ approach to the resolution of conflicts involving older adults. While mediation can be a valuable tool in some cases, in others it is inappropriate. Several aspects of the program suggest promising best practices. First, the strengths-based, “do no harm” model balances participation with safety. This approach, informed by feedback from elder advocates and mediation theory, was essential both in structuring the interventions and responding to power-based critiques. Several elements supported the potential of older adults to participate meaningfully, including: providing multiple chances during intake to tell their story, but the option to tell it only once; the option of using a Social Work Advocate during some or all of the mediation process; extensive preparation of the older adult for mediation; use of a screening tool/ Intake Guide; multiple points of follow-up; and a voluntary model of mediation. An interdisciplinary approach to mediation is essential to the success of a community-based program. Mediators often act both as process and subject-matter experts. This model can be employed in elder mediation; however, the presence of an advocate ensured the protection of the older adult’s interests, facilitated participation, and allowed for an older adult-centred preparation and follow-up mechanisms. A facilitative mediation approach was also critical to the program. The model encourages participation (essential in a strengths-based model) while minimizing the potential pitfalls of an evaluative mediation process.

An elder mediation program also requires a thorough screening tool. The tool developed through the program encouraged in-depth exploration of the nature of potential abuse or mistreatment, supported examination of multiple paths to resolution, and encouraged referral and collaboration. Agencies engaging in elder mediation with more serious cases of abuse, or those engaged in court-connected processes might amend the Guide to fit their specific needs.

The EMMP also relied on community support, particularly from interdisciplinary partnerships with many elder abuse prevention advocates. This may not be possible for some agencies or private mediators wishing to engage with the process. For a community-based project starting in a community with strong elder advocate voices, engaging partnerships is essential both for program design and referrals. The most challenging part of the program, from a community mediation perspective, is the sustainability of ongoing training. For programs with a high rate of mediator turn-over, it is difficult to maintain the amount of training necessary for these cases. As discussed earlier, the program was premised on thorough but accessible training in ageism, elder abuse, Power of Attorney, wills and estates, consent and capacity, gerontology, negotiation and mediation training, as well as

inter-professional dialogue. Although the facilitative mediation model does not necessarily require subject matter expertise, familiarity with these concepts – particularly concepts in gerontology and elder abuse – shaped the mediators' understanding of the "facts" of the dispute as well as the perspectives and lived experiences of older adults. Because of this training and the unique subject area, community mediation centres would do well to specialize in the provision of this type of mediation, rather than include it in a more generalist approach. Undoubtedly, social and economic imperatives will make this area of mediation practice essential to the sustainability of family support systems. With thoughtful program design and ongoing community input, elder mediation can be a meaningful option to resolving disputes for older adults, families, and caregivers.