



**RESEARCH REPORT**

**Exploring the Role of Elder Mediation  
in the Prevention of Elder Abuse**

**Final Report**

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# **Exploring the Role of Elder Mediation in the Prevention of Elder Abuse**

## **Final Report**

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## PREAMBLE

Aging of Canada's population will accelerate over the next three decades (Stats Canada 2006). Women are still living longer than men especially in the older age groups. In 2005, women accounted for 75% of the "over 90" age group, and 75% of the elderly poor. Presently, the majority of caregivers are women, as are the majority of people with cognitive impairments and dementias. Health care improvements have led to increased life expectancy and longer survival for the very elderly, often with functional deficits (Stats Canada 2006). It is within this context that the practice of elder mediation holds promise for its potential to reduce the incidence of elder abuse and neglect in our society. Participants in elder mediation often report feeling surprised they can have such candid conversations with family members. A realistic aim in elder mediation is to assist people to become skilled at resolving or preventing conflicts, ultimately creating better futures.

The scope of this preliminary report is to convey information available on the use of elder mediation involving seniors (outside the criminal justice system) and some models used (or proposed) within Canada and internationally. The report shares information gleaned from Canada, United States, Ireland, Switzerland, England and Australia. In particular, the report reviews these varied sources of information in order to determine what information is available on the use of elder mediation in potential situations of family conflict involving a senior.

This preliminary work will demonstrate how elder mediation can be a means to address many age related issues including suspected elder abuse and neglect. It can be a tool to catch aggravated conflict and often reduce the likelihood of the conflict spiraling into abuse. It will identify, within the models currently being used or those suggested, a few of the legal, ethical and professional training issues related to using elder mediation in situations of family conflict involving a senior. Also included is a list of research sources found in the area of elder mediation, and information on existing mediation models including models used in cases of elder abuse and neglect.

As part of the information gathering process with a limited turnaround time, a request was sent out to numerous elder mediators throughout the Elder Mediation International Network. The request was for information, both in Canada and internationally, on the various models used in elder mediation with particular interest in those situations where neglect or abuse is specifically alleged or suspected. Research was undertaken with respect to ideas and articles that might demonstrate how mediation with age related issues is, or potentially could be, a valuable service for families. Comments or knowledge of literature that addresses—within the models identified—legal, ethical and professional training issues related to using elder mediation, were welcomed. The request also looked for comments on the following:

- strengths and weaknesses of any of the models
- terminology—terms that describe the practice of elder mediation/mediation with age related issues
- issues and terms that describe mediation in situations of family conflict involving a senior
- a sense of how prevalent or widespread is the practice of “elder mediation”—by whatever name or term is used to describe it.

## **SECTION 1: WHAT IS ELDER MEDIATION?**

### **A. Definitions and Description**

Over the past two decades there have been many conversations throughout Canada and abroad on the value of elder mediation and the importance of recognizing it as a specialty under the mediation continuum. What is “elder mediation”? What does that term really mean and what is its legitimate claim on impacting a reduction in the incidence of elder abuse and neglect?

In its most basic description many people understand elder mediation to be a process in which a professionally trained elder mediator utilizes a “mediation process model” to address disputes involving an older adult addressing age related issues. In many cases, an older adult who is vulnerable may be at the heart of the mediation but in other cases the mediation might be called to reduce or prevent vulnerability of the older person. The problem with this limited definition of elder mediation is that it fails to address the issue of prevention. If mediators do not understand the necessity and value of the preventative aspect of mediation then due harm, unintentional though it may be, can be caused. Elder mediation will continue to be underutilized if lawyers, stakeholders and the general public do not come to understand this preventative part of mediation.

Medford states that elder mediation—like elder law—is defined by the client to be served (Medford, 2004). Mediation is a voluntary, self-determined process, in which the mediator works with all the parties to assist them in arriving at their own decisions about how best they might discuss/resolve the issues. The mediator does not give advice, does not take sides and does not judge who is right or wrong. Discussions are confidential and held in a private, safe setting. Any agreement reached must be acceptable to all participants. Elder mediation is mediation of any conflict that involves older people, their family members, or others in their lives.

#### **What Is Elder Mediation?**

Elder mediation provides a forum for family decision-making. It is private, confidential and completely voluntary. Mediators facilitate a purposeful and directed conversation in which family members are encouraged to express their interests and concerns. Meetings are informal and are held in locations that meet the family’s needs, including private homes, mediators’ offices and senior living facilities (Kardasis & Trippe, 2010).

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 occur throughout the family life cycle. Elder mediation typically involves larger numbers of participants including older people, family members, friends and others who are willing to give support. Depending on the situation it is not uncommon to include paid caregivers, hospital staff, nursing home and or community care representatives, physicians and other professionals (McCann-Beranger, 2008). The initial process of elder mediation can sometimes identify

suspicions of elder abuse or neglect that had previously gone unrecognized, unnamed and difficult, if not impossible, to prove. When this is the case, the mediator's role is to gently assess for the presence and extent of such abuse. It is not uncommon to witness a family member acting surprised when another family member suggests that their verbal aggression is abusive. The older adult and other family members as well, often report feeling embarrassed and ashamed to tell anyone about the actual or suspected neglect or abuse. They report feeling hopeful that the behavior might change, or in denial, believing that talking will only make it worse. For the most part they refrain from even calling it abuse. The level and type of abuse and neglect, suspected or alleged will determine whether mediation will ever be considered.

Elder mediators should inform all participants that mediators are not neutral in issues of abuse or safety and have a legislative duty to report past and present abuse if a vulnerable person is in need of protection under relevant legislation and there is threat of future abuse or harm. When in doubt, the proper course of action is always to assume mediation will not be appropriate. Alternatives to mediation—such as “shuttle” mediation (Appendix B)—may be offered in serious abuse cases but only by practitioners who have specialized education and training in this area (EMC Code of Professional Conduct, 2010).

Elder mediation is based on a wellness model that promotes a person centered approach for all participants—tapping the collective creativity while exploring the many ways that will best work to enhance the rights of the older person and promote quality of life for all concerned. Often family members with poor communication skills are surprised at how, with the help of the mediator, they actually learn new ways of talking with each other. Participants in the mediation identify topics they wish to discuss or issues they wish to resolve and work towards reaching agreements that attempt to promote their well-being and quality of life. Ideas for ways of helping are generated as people come together and talk about how they can move forward supporting each other, often through some very difficult times. Elder mediation promotes communication and the involvement of more family members and others who wish to help. It is slowly becoming more common for hospitals, nursing homes, or community care homes to participate in and often to promote and initiate the process (McCann-Beranger, 2008). With regard to abuse and neglect, elder mediation can provide a safe, trusting environment where any suspected abuse can be named and plans can be safely put into place to prevent any future abuse or neglect. Sometimes relationships can be rebuilt while other relationships can be renewed or established.

Following is a sampling of the typical issues of aging that can be addressed in mediation. The potential for abuse or neglect is present within each of them.

- Health and medical care (at home, in the community, in the hospital, continuing care and long term care communities)
- Progressive dementias and other memory impairments
- Caregiving
- Financial issues



- Guardianship issues
- Housing issues
- Living arrangements
- Intergenerational relationship issues
- New marriages and step-relative issues
- Religious issues
- Family business issues
- Driving issues
- Abuse, safety issues, self-neglect
- Legal issues (estate, inheritance, living will, power of attorney etc.)
- End-of-life planning and decision-making

There are a steadily growing number of elder mediation practitioners who advertise their services and views on their company websites. A representative example is the following from United States lawyer, Pat Medford's website (<http://www.eldermediationservices.com>):

***Elder mediation practitioners are knowledgeable in the field of aging***

*Elder mediation practitioners are professionals familiar with the aging process and the issues involved. They understand that not all people experience decreased mental capacity as they age. Mediators are connected with the network of local resources and service providers available to elders in the community and have access to the latest updates in the aging field. They are familiar with elder abuse concerns and report new allegations of elder abuse to the authorities for investigation. Mediation would not occur between an elder and another person if elder abuse has been substantiated. Self-neglect does not disqualify a case for mediation.*

***The elder participates in the mediation***

*Mediators have an obligation to implement all accommodations that allow elders to participate to the fullest degree possible. This sometimes requires the elder to be represented by an attorney or other advocate. The Center for Social Gerontology in Ann Arbor, Michigan, has devised and tested a decision-making tool that is helpful in determining when and to what extent an elder can participate. More information is available on its Web site at [www.tcsg.org](http://www.tcsg.org).*

***Elder mediation complements the practice of elder law***

*Elder mediation is not a substitute for legal advice. Rather, it is complementary to the practice of elder law. Only the court can provide findings of fact or determination of legal capacity. Frequently, however, the conflicts that impede the legal work you are doing for your client involve issues the law does not address. Mediation can bring these underlying concerns to the surface as the needs and interests of those involved in the conflict are identified. In this time of state budget cuts and fewer court and judicial resources, elder mediation can be a particularly cost-effective alternative to lengthy litigation or repeated*

*court hearings for ongoing disputes. A decision to refer for elder mediation leaves a law firm more time to perform the legal work it does best.*

### ***Benefits of elder mediation***

*Elder mediation benefits elders, their families, attorneys, and others in a number of unique ways. Elder mediation provides an opportunity to explore, in a confidential and safe environment, creative win-win solutions that address a broad range of decisions and conflicts that affect an elder's life. Agreement is not reached unless it meets the needs of all participants—elders (and/or their representatives), family members, caregivers, and other appropriate support persons. Since the elder is often able to participate in mediation, either directly or with the assistance of an attorney or other representative, the elder's dignity is maintained by having a voice in the life choices that are made.*

Elder mediation provides an opportunity for older people to talk frankly with family members about values they hold and risks they are or are not willing to take. The older person can acknowledge his or her needs for assistance during mediation without fearing that it will lead to a judge's ruling of incapacity. If capacity is in question, elder mediation is particularly effective in exploring the least restrictive forms of, or alternatives to, appointment of a fiduciary. If an elder's defense against a finding of incapacity is questionable, or a client's support for a petition for appointment of a fiduciary is somewhat weak, mediation may provide more options than the usual hearing before a judge.

The mediation process can help improve, preserve, or even restore relationships. It can also provide a non-adversarial model of communication with which to approach future discussions. Mediation can provide elder law lawyers with a resource to deal effectively with underlying issues the legal system does not, e.g., intangible values, family history and dynamics, issues of autonomy and safety, interpersonal conflict, and quality-of-life choices.

### **“Elder Mediation”—What's In a Name?**

Although there has been some discontent concerning the term “elder mediation” it appears that until someone can come up with an alternative name that is acceptable to mediators and users of the service alike, the current name seems to be emerging as the default choice. Criticisms about the term “elder mediation” range from claiming that the term “elder” is derogatory, and serves to isolate older people, to comments that using “elder” in the name suggests the process is not impartial as it is slanted in favor of the older person. Other practitioners have coined terms for their “type” of mediation depending on the subject matter. Examples include “generational mediation”, “mediation with age related issues”, “mediation with seniors”, “family mediation”, “eldercare mediation”, “shared decision making mediation”, “intergenerational mediation”, “adult family mediation”, “guardianship mediation”, “family care mediation”, “probate mediation”, or simply “peacemaking”, all to describe basically the same practice. It has been noted that “elder mediation in connection with elder law is what some lawyers do all the time and that elder mediation—without calling it that—has sometimes been the style of social

workers who tried to get all the members of the family together, calling it a negotiated conversation” (Soden 2010). For the purposes of this paper, it will be called “elder mediation”.

A review of the literature and popular media reveals a steadily increasing amount of attention being paid to the presence and value of elder mediation with increasing mention of its use where elder abuse or neglect is identified or suspected. These situations would include at least one older person who is vulnerable in some capacity. The gradual introduction of elder mediation has provided families with a forum wherein previously taboo subjects can be raised and discussed. Family members feared repercussion if they were to report suspected neglect or abuse of loved ones in community care. Family members who were too embarrassed, ashamed or afraid to voice suspicions that other family or paid caregivers were neglectful or abusive to their older family member, could now express themselves in relative safety. More importantly the family could now begin to work together to deal with the underlying stresses and plan for the improved and focused care of their older loved ones. Often it was in the elder mediation sessions that family members first voiced any concerns with regard to suspicions about abuse and neglect.

### **Elder Mediation Services**

A recent Google web search on elder mediation returned 8,880 hits; a search of elder mediation + elder abuse returned 1,860. Such responses are indicative of the slow, yet steadily increasing spread of awareness of elder mediation services and its growing efficacy in the arena of elder abuse. It is also indicative of the number of people using the term elder mediation. The popular mediation website “[www.Mediate.com](http://www.Mediate.com)” hosts a series of elder mediation articles and names of numerous practitioners, organizations and universities who advertise their elder mediation services and elder mediation training.

Depending on where you are located in Canada, the service of elder mediation may be offered by numerous practitioners ranging from those professionally trained, certified and experienced to those with little or no training, not certified and with little or no experience. Professional organizations have been developed to support practitioners who wish to acquire the necessary skills, knowledge and certification to enable them to provide a quality service. For example, there is now an Elder Mediation Canada, an Elder Mediation British Columbia and an Elder Mediation Atlantic Canada—all who work in partnership with each other, with Family Mediation Canada and with the Elder Mediation International Network. As a result, the roster of professionally trained and accredited elder mediators is steadily growing in numbers across the country. This is particularly true in regions where elder mediation projects are operating and where existing provincial mediation associations have identified elder mediation as a priority (e.g. Ontario, British Columbia and Prince Edward Island). As the list of elder mediators grows, so too will public awareness of mediation services.

## **B. Mediation Process Models**

The literature and feedback from experienced practitioners in the field indicate that there appears to be some diversity in the process models that elder mediators adopt. Most trained elder mediators and users of mediation services tend to agree that the actual competencies of the elder mediator, with respect to sensitivity and knowledge of aging, including elder abuse and neglect, is crucial to the orchestration of any model of mediation. All models work in ensuring that participation is voluntary with informed consent, self-determination and confidentiality. Elder mediation also requires the development of a communication process and commitment to the process, ensuring that issues are identified and clarified. It is also important that there be some preliminary assessment to determine whether elder mediation is appropriate. Once the decision has been made that the case is appropriate for mediation, the mediation can be structured in a way to accommodate and protect all participants—especially if there is any hint of power imbalance. For example, it is not uncommon to include an advocate for the older person in the mediation sessions.

Some experts suggest that mediation models cannot be combined (Bush and Folger, 2005) while other experts suggest the opposite (Kardasis, 2010). What is important is that mediators know what model they are practicing, and why it is best suited for the particular situation and participants involved (McCann-Beranger, 2005). It is important not to predetermine what process will work before assessing a case. Kardasis (2010) maintains that mediators and other alternative dispute resolution professionals have many processes from which to draw upon in their practice. There appears to be no research that suggests that one model is ultimately any better than another. Regardless of the model used, all conflict involves power exchanges of some sort and the goal is to encourage constructive, reciprocal, and sustainable patterns of power exchange (Mayer, 2009) that lead to mutually acceptable solutions.

The following is a review of some of the process models for elder mediation identified through our exploration, concentrating on models that bode well for the practice when abuse or neglect is alleged or suspected.

### **a. Interest-Based Approach**

The interest-based approach is very conducive to mediating issues when elder abuse and neglect is alleged or identified. It is a principled negotiation that focuses on interests or needs with a primary goal to help participants reach mutually acceptable agreements. It offers support to the problem-solving models that view conflict as a problem to be solved. Mediators try to help parties succeed by directing them toward outcomes in which all participants have at least some of their needs met. Collaborative interaction is considered the best way to achieve a good agreement. Moore (1996) supports the idea that the mediator's goal is to reach agreement and settle disputed issues. Moore uses a twelve-stage mediation model. The first five are preliminary stages that aim to "separate the people from the problem". The remaining seven stages of Moore's model follow closely the elements of Fisher and Ury's principled negotiation (1981)

method: begin the mediation session, define issues and set an agenda, uncover hidden interests of the parties, generate options for settlement, assess options for settlement, complete final bargaining, and achieve formal settlement (Moore, 1996). The majority of certified elder mediators to date report using some form of the interest-based approach.

#### **b. Insight Approach**

Canadian mediators, Kenneth Melchin and Cheryl Picard, developed this model using Canadian scholar Bernard Lonergan's work on learning as a theoretical base. The Insight approach views human behavior as fundamentally relational. Conflict is understood as emerging out of an interactive framework by which people make meaning out of their environment, and seek to realize what matters to them—their “cares”. Conflict is viewed as arising from the experience of “threat-to-cares”. This is because it is the actual or perceived threat to our desires, disruptions of expected patterns of cooperation, or judgments that ultimately drive the intensity with which the parties in conflict maintain a position or seek to impose harm on the other. In turn, these defensive responses are more often than not experienced as an “attack” on the others' values. Insights help parties develop new patterns of interaction whereby cares can mutually exist without the generation of threat (Sargent, Picard and Jull, forthcoming).

Cares include more than the pursuit of our individual or collective interests, needs or values. They also include our value-based expectations of other's behavior, our assumptions of how people ought to act, the presumed patterns of co-operation we consider necessary, and our value-based judgments of progress and decline that we perceive in the behaviors and intentions of ourselves and others (Melchin and Picard, 2008). Addressing emotions is an important strategy, insofar as emotions point to the experiences of threat-to-cares that are so central to the defend-attack patterns in conflict. The Insight approach understands that although the values in a conflict are often obscure, the feelings and defensive responses are not (Picard and Jull, forthcoming).

The Insight approach has developed practical strategies that help parties to achieve “insight” into their experiences of threat that have become manifest in defend-attack patterns of interaction. When parties learn about what matters to others, why those things matter, and how what matters is perceived to be threatened, their reasoning about the intent of the other often changes. This newfound uncertainty about the other generates curiosity and a willingness to talk and listen to each other (Picard, 2003). The insights gained through new interpretations and understandings are what diminish the threat response and enable parties to find new possibilities in which their cares can mutually co-exist without generating threat.

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understandings are what diminish the threat response and enable parties to find new possibilities in which their cares can mutually co-exist without generating threat.

To facilitate the insights that are part of learning, insight mediators use specific skills that explore the interpretive process through which the parties make meaning that a threat exists. These insights are achieved through deepening conversations that enable parties to shift the conflict onto new ground and toward new possibilities for change because experiences of threat are reduced or eliminated. The practice of deepening uses skills that are familiar to interest-based, transformative, narrative and other conflict practitioners—skills that include such actions as reflective listening, strategic questioning, and reframing. Deepening in the Insight approach also requires the practitioner to be “intentionally responsive”, and to use specific Insight skills such as linking, de-linking, verifying, bridging, layering, finishing and using (Melchin and Picard, 2008).

### **c. Facilitative Approaches**

Among the many roles the elder mediator plays in mediation when elder abuse/neglect is suspected, the facilitation role is the most common one. Mediation approaches are not tightly contained and there is fluidity within the concepts. (Riskin, 2003) The approach elder mediators use is based on their highly developed facilitation skills, personality, experiences, education, cultural sensitivities and training as well as to when the abuse and neglect occurred. A facilitative mediator assumes that the participants are able to move from “what doesn’t work for them” to developing better solutions that will heighten quality of life. A broad, facilitative approach helps the participants understand and define the issues they wish to address, including a discussion of underlying interests, rather than positions. A facilitative mediator helps parties become “realistic” about their situation, doing some reality testing based on their knowledge and experience. On the facilitative continuum, some elder mediators see their role as helping parties communicate and understand one another. At the other end the mediator, by virtue of his or her expertise, assumes that the parties want guidance in reaching an appropriate settlement. Lawyers, McIvor (2006) and Soden (2010), both report that this seems to happen more with elder mediators who have a legal background.

In most facilitative approaches family members take an “ownership” interest—instead of succumbing to court orders or a hastily adopted mediated decision made in caucus. Multiple short sessions can be set up which go a long way to rebuilding trust, especially where abuse and neglect are implicated, enabling family members to be fully prepared to move forward in each session. The family members work more effectively together as a family on an ongoing basis and both financial and emotional costs are less. Participants will not sign any legal documents without obtaining legal advice (Hoeller, 2010).

#### **d. Transformative Approach**

Transformative mediation invites participants to shape the process. According to this theory, what people find significant about conflict is that it alienates them from the sense of their own strength and their sense of connection to others (Bush & Folger, 2005). The basic tenets of the transformative approach suggest that rather than problems to be solved, disputes are viewed as opportunities for moral growth and transformation (Bush and Folger, 1994). This model of mediation focuses on the here and now, being attentive to the interactions of participants to find opportunities to foster empowerment and recognition. Empowerment involves strengthening individuals' abilities to reflect, make choices, and act in a conflict situation. Recognition means becoming more sympathetic and responsive to the other party's situation. Empowerment is realized when people understand their goals more clearly. Empowerment is independent of any particular outcome of the mediation. The "transformation" is in the consciousness of the individual.

To highlight the differences between an interest-based, problem-solving approach and the transformative model trainers often use the "rock band, next door" scenario. The scenario involves a band practicing their music, resulting in complaints of excessive noise from the neighbour. A problem solving approach would likely seek a compromise to the situation, negotiating days and times for the band to practice that did not interfere with the neighbour's need to relax from the stresses of work. A transformative approach would focus on ensuring that the parties reduce their hostility toward each other by coming to understand the motives behind each person's behaviour, and to relate to one another as individuals. For example, one neighbor could discover the importance that playing in a band has for the neighbour's self-worth, while the other neighbour could discover the importance of performing well at work for a similar reason. It would also focus on allowing the parties to decide for themselves how the issue could be solved, keeping in mind their individual and relational needs. Outcomes reached through the transformative approach may not be all that different from the problem-solving approach; however, it is the process of getting there that is so different and that distinguishes itself from approaches that emphasize problem solving and settlement.

#### **e. Narrative Approach**

Narrative mediation is an approach that encourages parties to tell their personal "conflict" story as a means of producing an "alternate" story that will lead them to a resolution of the dispute. It is based on theory which posits that people organize their experiences in story form as a way to make sense of their lives and relationships, and that "they act both out of and into these stories" (Winslade & Monk, 2000). Narrative mediators do not seek one "factual" story; instead, they find it more useful to accept each person's story as a lived reality and then "seek out the points where the story might incorporate some different approaches". A key task of the mediator is to lessen the rigid and negative motivations that parties attribute to each other's actions. This is accomplished by building party trust in the mediator and the mediation process; developing conversations that externalize, as opposed to internalize, the conflict; mapping the effects of the

problem on the person; deconstructing the dominant story lines; and developing shared meanings about the conflict and its solutions. Important to narrative mediators is the belief that the parties' conflict stories are drawn from the cultural stories of the world around them.

Narrative mediation has three phases: engagement, deconstructing the conflict-saturated story, and constructing an alternate story (Winslade and Monk, 2000). In the engagement phase, the mediator concentrates on establishing a relationship with the conflict parties by attending to the physical setting and the non-verbal behaviour displayed by all parties. Attention is also given to the roles that the mediator and the parties will take on as a result of the mediation. In the next stage, deconstructing the conflict-saturated story, the mediator works actively to separate the parties from their perceptions and understandings of the conflict by “undermining the certainties on which the conflict feeds, and inviting the parties to view the plot of the dispute from a different vantage point”. The assumption is that elements of cooperation, points of agreement, and mutual respect have been left out of the conflict-saturated story, and deconstructing it can lead to creating an alternate story that includes these areas. The final stage of narrative mediation is to construct an alternate story. In this stage, the mediator is “occupied with crafting alternative, more preferred story lines with people who were previously captured by a conflict-saturated relationship”. In narrative mediation the development of a cooperative attitude may be more important than reaching an agreement.

#### **f. Adult Guardianship Mediation Model**

The Centre for Social Gerontology (TCSG) in Ann Arbor, Michigan is a leader in Guardianship Mediation (<http://www.tcsg.org>). The Centre has several publications in the field and promotes a model of elder guardianship mediation that is based on United States guardianship law that is different from laws in other countries. Their recommendations for procedures for case screening criteria, assessing for ability to participate, identifying who will come to the table, assessing when abuse and/or neglect is an issue and procedures for the mediation itself, however, is still relevant to Canadian mediators. TCSG offers comprehensive Guardianship Mediation training to teach the specific knowledge base and skill sets required (TCSG, 2002).

Generally, throughout Canada as well as in other jurisdictions, there is considerable discussion and learning around capacity. This concept is critical in elder mediation. The more mediators understand capacity the more likely it is that they come to understand the crucial importance of the voice of the person at the heart of the conversation to be present in the mediation. Once a court determines that a person is incapable of making sound decisions then this determination is rarely reversed. Consequently, it is critical to ensure that the person is not deemed incapable if indeed s/he has many capabilities (Soden, 2010). It is also generally agreed by specialists in the field that families who participate in the adult guardianship mediation process prior to appointment of a guardian almost always find a less restrictive option than full guardianship (Castner, 2006; Largent 2009).



### **g. Therapeutic Elder Mediation Model**

This model of elder mediation builds on the work of Howard Irving (Irving and Benjamin, 1995). Having trained as professional psychologists or social workers and coming with considerable experience in family mediation, these elder mediators have reported success in using a therapeutic model. Mediators commit the initial session to learning if there are any influential relationship patterns that could have implications for the flow of the elder mediation. This is typically where elder abuse and neglect presents itself. This is also where the subtleties of abuse and neglect are sometimes acknowledged. It is not unusual that these patterns have gone unrecognized by the family, as they have been an entrenched part of the family culture. With some narrative and strategic questions these patterns may be identified in the interactions and stories of family members from the initial contacts and sessions. When the initial interviews and assessments have been done and it is agreed that the elder mediation will happen the elder mediator often moves to an insight or interest based model. At this point, the families have experienced empathy at its best, have invested in the process and feel safe and empowered to continue. This model distinguishes family conflict from conflict in other groups and sets out techniques designed specifically with the family in mind.

The focus of the therapeutic model is on addressing concerns and naming issues while keeping the myriad of existing relationships growing and respectful. The role of the family cannot be replaced, so the key is to bring as many people around the table as possible. This can include a partner, brothers and sisters, adult children, a choir director in the church where the person sings, the bank manager. Members of the family separated by distance can be connected by technology. The elder mediator assists in keeping the situation calm and creates an environment to have a conversation by reframing and explaining things in a more gentle ways. This can bring in formerly ostracized members of the family and relationships are strengthened. A focused ingredient in this model is the wellness component and recognition of strengths and recalling of skills and strategies that worked in the past. Even when elder abuse or neglect is present participants can move to identifying together preventative strategies, roles and plans that will ensure, to whatever extent possible, abuse and neglect will not be repeated (McCann-Beranger, 2010).

### **h. Restorative Justice Approach**

The restorative justice approach starts with intake, referral and screening by a professionally trained facilitator to determine that all parties have a voice and feel safe to proceed, whether the person who caused the harm accepts responsibility for it; whether all parties are willing to participate; and whether the older adult is capable of understanding and participating in the process. In the event that concerns emerge at this stage, a screening committee will review the case before it proceeds. Elder mediator and restorative justice expert Arlene Groh says that it is essential for facilitators and elder mediators to understand and be sensitive to the complex issues of elder abuse. In Groh's model, the two facilitators assigned to the case proceed with the process of listening and moving toward a more in depth understanding of the conflict. The

facilitators invite everyone to a circle where conversation moves to a consensus about why the situation happened, how to repair harm and how to prevent further harm in the future. The circle is then brought to closure and attendees are contacted around three months later for follow up (Arlene Groh, 2008).

Restorative justice mediation has given rise to another model of mediation called “humanistic mediation.” Humanistic mediation is based on beliefs in (1) the connectedness of all things and our common humanity; (2) the importance of the mediator’s presence and connectedness with the involved parties in facilitating effective conflict resolution; (3) the healing power of mediation; (4) the desire of most people to live peacefully; (5) the desire of most people to grow through life experiences; (6) the capacity of all people to draw upon inner reservoirs of strength to overcome adversity, to grow, and to help others in similar circumstances; and (7) the inherent dignity and self-determination that arise from embracing conflict directly (Umbreit, 2001, p. 4).

**i. Mediation Through a Law Firm (one example)**

Ann Soden, a Quebec lawyer and elder mediator, finds elder mediation very helpful when working with families where the subtleties of abuse are present. Soden utilizes elder mediation in cases where there is exploitation and subtle abuse that is primarily psychological—from applying of pressure to exercise control over a person and to overprotect that person; to denying the rights of that person or limiting the access. The more egregious cases are referred to court. The family meeting is typically held in a professionally mediated conference to ensure a balance of power for all parties in the presence of a neutral party facilitator. It is important that all family members be informed that the mediator will not be practicing as a lawyer and will not be offering legal advice.

At the initial meeting the family signs an agreement and is given an agenda that establishes the rules of conduct for the session. The rules will include an undertaking by everyone of full disclosure, an undertaking that all communications in the meetings will be kept confidential and privileged, and a waiver of liability in favor of the mediator. Not all of the family may agree to attend, but nevertheless the meeting is held and any missing members informed of the agreement reached by those present. The meeting and the agreement will bear witness to the client’s capacity and the presence of free and informed consent. According to Soden, the role of the mediator in this solution-based model is one of advocate, facilitator and support for the family and the person served. Understanding capability is paramount, as decisions have to be assessed according to the particular situation. Careful consideration must be taken before determining someone completely incapable.

A preventive component is implemented promoting later life planning. This assists in dispelling issues and complications where there is complexity in plans. It also includes who will represent the person served if s/he becomes incapable. A resource team is utilized as needed and a community of people is built around the person served. While Soden supports the person served to communicate what they want, she explains the limits on the powers of parties and obligations of the party to account for all they do in the presence of many witnesses, including a lawyer.

*Elder mediation helps the family understand and ensures that the wishes of the person at the heart of the whole thing are understood, that person's rights are protected and where there is concern about abuse the appropriate protection is there but no more than is needed, imposing the least restrictions on their autonomy. It is too easy to signal adult protection and have a person removed from the situation. This of course means moving them from their life, as they know it. Often people have lived this dysfunction all their lives. There are ways of changing dependence on the abuser without robbing the person of their whole life. Because a person has diminished capacity is no reason to remove their rights, put them in a nursing home and transfer all their decision making to someone else. Elder mediation helps find the solutions that allow the people to have as much autonomy as possible (Soden, 2010).*

If elements of abuse are present and mediation is offered at the outset, 80% of these cases would be resolved at that level. If elder mediation is early enough misunderstandings get resolved, elements of abuse are lessened and the subtle exploitations are reduced (Soden, 2010).

#### **j. Mediation Advocacy Model**

McIvers suggests that elder mediation, through its voluntary, non-coercive process, has the potential for enhancing elder rights, providing an acceptable form of minimal social intervention, and contributing to the prevention of elder abuse at early stages of relational conflicts between older people and their caregivers while in a nursing home or residential facility (McIvers, 2006).

Features of this approach include:

- orchestrating the mediation in a safe, neutral environment where family members can discuss the issues that have gone unaddressed
- ensuring the voice of the older person is of a paramount concern
- scheduling meetings at the time and place most comfortable to the older person
- working with family members and other caregiver involved to increase awareness and understanding of issues and disputes within the family that are causing stress for the older persons
- educating participants about abuse and neglect and encouraging them to monitor and report potentially abusive situations.

Mediation has made it possible to resolve a high percentage of elder abuse cases, with greater client satisfaction and lower cost. Wisely used, the benefits far outweigh the risks. Attorneys who carefully prepare, and use the full range of their advocacy and inter-personal skills, will reap great rewards for themselves and their clients (McIvers, 2006).

**k. An Ethical Model**

The Elder Mediation Center of New Jersey has developed an Ethical Model of Mediation based upon five principles:

- a) Autonomy—The notion that every participant has a voice in the process and that participants are not coerced (i.e. the notion of free will).
- b) Beneficence—The notion that the participants are working towards a resolution that will be helpful and will ultimately do well.
- c) Do No Harm—The notion that the participants should not be worse off as a result of the mediation process and any resolution that may be achieved. There is no downside to the mediation process.
- d) Fidelity—The notion that the mediator is faithful to his or her clients, to ethical principles and to the mediation process.
- e) Fairness to All—The notion that the participants have an equal opportunity to participate in the process and have an opportunity to be heard.

This model views the Professional Geriatric Care Manager (PGCM) as an integral part of the elder mediation process. Using an Ethical Model for elder mediation, EMC-NJ considers the professional geriatric care manager to be essential when working with parties who are in dispute and are seeking a solution involving frail or vulnerable older adults. This approach differs significantly from other mediations models in that the PGCM is not the mediator. The PGCM supports the mediation by providing a care management assessment and formulating a plan of care that is used in the mediation process. The PGCM brings objective and professional guidance to a situation that is often fraught with emotion and disagreement. In recognizing the importance of the PGCM and the plan of care, the mediator uses the skills and recommendations of the PGCM to assist the participants in generating real options. The service is dedicated to upholding the ethical principles of autonomy, beneficence, avoidance of harm, fidelity and justice.

## SECTION 2: ELDER MEDIATION IN PRACTICE

Research was undertaken to determine if the practice of elder mediation was growing in other countries, its use specific to situations where elder abuse or neglect was involved or suspected, and if the practice of elder mediation was identified as having a preventive effect on such abuse. In most countries, it appears some mediation with age related issues is happening but it is often not yet recognized as a distinct service but rather as variation of community or family mediation. Other countries are still exploring the general practice of mediation. The European Mediation Network Initiative 2010 conference hosted speakers who were still discussing whether or not the general practice of mediation is recognized as a profession.

Some mediators who reported working with age related issues reported having no experience with abuse and neglect while others indicated involvement in elder mediation programs that were determined to be very successful at mediating abuse and neglect issues.

### A. Canadian Examples of Elder Mediation

#### a. Elder and Guardianship Mediation Project (British Columbia)

This project is a two-year (now extended) research study of national and international issues on elder and guardianship mediation in response to elder abuse and neglect. Project Director, Joan Braun maintains that as a result of the modernization of adult guardianship and personal planning statutes in Canada and the increased awareness of elder abuse and neglect, elder mediation will become more prominent (Braun & Watts, 2009). This research is timely for several reasons including the new provisions to the *Adult Guardianship Act* and the limited expertise in the field around aging and guardianship issues. In a workshop hosted by Family Mediation Canada in October 2009, Braun and Watts emphasized the conviction of mediators generally, that the mediator alone cannot ever determine capacity and where capacity of an adult to make certain decisions may be challenged; mediation will now play a role in bringing the parties together to reach a mutually agreeable resolution.

Challenges identified through the Project to date included:

- a shortage of lawyers with elder mediation training
- a lack of therapist mediators with legal training
- a need for more specific training around abuse and neglect dynamics
- a need for additional training and sensitivity around aging.

The project will also review the concept of specialized training to determine what types of trainings and competencies elder mediators need. Laura Watts, National Director for the Canadian Centre for Elder Law, reported there is a broad national and international agreement about the need for specialized elder issues training and training for guardianship, substitute

decisions, elder abuse and neglect. She also talked about the necessity of training for capacity issues.

Unfortunately, project outputs were not available at the writing of this paper. When available, it is anticipated the project will assist in the creation of a body of literature on elder and guardianship mediation, support continuing private and public legal education initiatives, provide model recommendations for practice, provide scholarly research into these subjects and demonstrate the potential need for law reform in the area (Braun, 2009).

**b. Creating a Circle of Care—Respite and Relief Elder Mediation Program (Cornwall Ontario)**

Established in 2008, this is an innovative, pioneering program meant to validate the use of elder mediation, as a viable approach for helping families with respite needs. The Alzheimer Society, the Canadian Mental Health Association, Tri-County Mental Health and the Champlain Community Care Access Centre make up the team. The credibility of the project is enhanced by the successful collaboration and partnerships involved in the project and the expertise of those involved—a certified elder mediator consultant and a full time, elder mediator.

The program is meant to enhance quality of life and empower caregivers by assisting them in the self-direction of their respite needs. Teresa Rivera-Mildenhall, project leader and manager of client services says the fundamental goal of the Program is to create a circle of care for the family that is looking after their loved one at home. The intent of such circles of care is to:

- provide respite/relief for the caregiver(s),
- prevent premature admissions to a long term care facility for the dementia client, and
- prevent hospital visits and/or admission for the caregiver.

For seniors who desire to live at home as long as possible, this program offers an alternative to being placed in long-term care (Rivera-Mildenhall et al, 2010).

**c. Restorative Justice: A Healing Approach to Elder Abuse—(Waterloo, Ontario)**

This project, focused on providing opportunity for change and healing to people affected by elder abuse, was developed and delivered by the community care access centre of the Waterloo Region (Groh, 2009). The Waterloo region has a large ethno-cultural community, boasts the first Victim Offender Reconciliation Program in the world, and has a very active regional Committee on Elder Abuse. The Ontario Trillium Foundation funded the Project.

As the central focus of restorative justice is about repairing harm and rebuilding relationships, established models of restorative justice were sought. According to Arlene Groh, team leader for the project team, following consultation, it was decided that the model for the process needed to be incident driven, allowing the team to select a restorative justice tool that is appropriate to each incident.

As in other projects training was of utmost importance to its success. It was considered essential that facilitators were empathetic, sensitive and knowledgeable about the complex issue of elder abuse. At the same time, they needed to be informed enough to realize that sensitivity would not express itself in an attempt to rescue the older adult. The facilitator cultivates humility, avoids thinking that he or she has all the answers, and avoids imposing solutions on people affected by elder abuse. Solutions that work best are the ones that the participants reach a consensus about in the circle process. The ability to prepare participants for the circle and the ability to trust the circle process are essential skills for circle facilitators and key to an effective circle process.

Facilitators contribute to a sensitive, responsive restorative justice approach when they:

- help the group stay focused and productive by asking the right questions
- ensure everyone present is heard
- make sure the final agreement addresses relevant needs and is workable
- ensure that individuals in the group, while denouncing the offending behavior, show support of the person who offended, balancing an ethic of care and an ethic of justice.

Learning from this project included the belief that both traditional justice and restorative justice are essential to address elder abuse. No single approach or service can meet the complex needs of people affected by elder abuse (Groh, 2009).

## **B. American Examples of Elder Mediation**

### **a. OhioKePro Project—United States**

A unique elder mediation model exists in the United States through the Centers for Medicare and Medicaid Services (CMS) in the State of Ohio. The CMS Mediation Initiative was launched in 2003 for Medicare beneficiaries who have complaints about the quality of their care. It offers the opportunity for beneficiaries, physicians, hospitals and other healthcare services to respond to each other and to resolve concerns about treatment together thus preventing any hints of neglect in any form. The project included training for staff directly involved with beneficiaries. Specific goals identified were: increased satisfaction scores, increased mediation awareness and increased mediation service. Objectives built into the training were defining the common quality service issues, empathic communication techniques, plus identifying how vital mediation is for beneficiaries and providers in conflict. Another goal for the leadership was to increase staff understanding of the mediation skill set; the strong component of neutrality and reflective listening, and then to have staff trained on empathic responses.

Building on The First Impressions Model used at Mayo Clinic Scottsdale, Elder Mediator, Karen Rice, developed the new service. Rice found that identifying the option of mediation for patient dissatisfaction with healthcare services, and specifically the CMS Mediation Initiative for beneficiary dissatisfaction with their quality of care, was shown to positively impact mediation

service awareness, service use, customer relationships, confidence and quality service satisfaction.

**b. Court Connected Pilot Adult Guardianship/Conservatorship Mediation—Alaska**

The Alaska Court System’s Adult Guardianship/Conservatorship Mediation Program, (2005-2009 and continuing), developed and offered an approach to guardianship and conservatorship cases that responded to family and social concerns while preserving the self-determination and dignity of those who were thought to be in need of care due to incapacity, many of whom are elderly. Half of the mediations conducted throughout the project voiced concerns or allegations of abuse and neglect, self-neglect and involved Adult Protective Services (Largent, 2009). The mediators helped to engage the respondent/ward, family, and others closely involved in a constructive problem-solving process to address care, safety, financial management, and capacity concerns.

By establishing a tone of respectfulness and cooperation, mediators set the stage for sharing important information and feelings. Difficult issues were discussed in a manner that promoted mutual understanding and sustained supportive relationships. Creative and least restrictive alternatives for meeting the respondent’s/ward’s needs were explored, resulting in the avoidance of unnecessary appointment of guardians or conservators. The foundational policies and procedures were developed collaboratively with representatives from the courts and related organizations, agencies and groups (Largent, 2009). The family and caregiver support system was enhanced resulting in the prevention of loss of independence and rights, institutionalization, or in financial exploitation, neglect or abuse (Cairns & McKelvie, 2009).

**c. An Elder Abuse Intervention with Tribal Communities**

This elder abuse intervention Family Care Conference (FCC) model is an elder-focused, family-centered, community-based intervention for the prevention and mitigation of elder abuse. It is based on a family conference intervention developed by the Maori people of New Zealand, who determined that Western European ways of working with child welfare issues were undermining such family values as the definition and meaning of family, the importance of spirituality, the use of ritual, and the value of noninterference, (Holkup, 2007). The FCC provides the opportunity for family members to come together to discuss and develop a plan for the well being of their elders.

Using a community-based participatory research approach, investigators piloted and implemented the FCC in one northwestern Native American community. The delivery of the FCC intervention has grown from having been introduced and facilitated by the researchers, to training community members to facilitate the family meetings, to becoming incorporated into a Tribal agency, which will oversee the implementation of the FCC.

The constructive approach of the FCC process helps to bring focus to families’ concerns and aligns their efforts toward positive action. The strength-based FCC provides a culturally

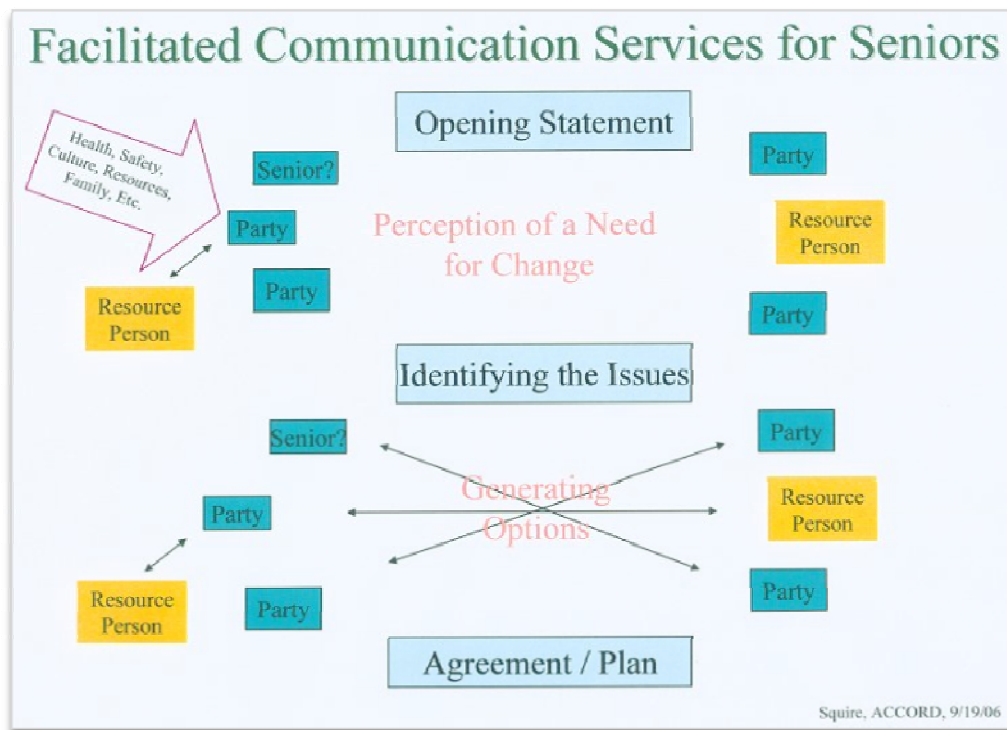


anchored and individualized means of identifying frail Native American elders' needs and finding solutions from family and available community resources.

#### d. Facilitated Communication Program

ACCORD, a Center for Dispute Resolution in Birmingham, New York State has established a new program entitled Assisted Senior Communication (A Program for Seniors, Their Families and Others) (ASC). ASC is a free confidential program that uses a facilitated discussion model to assist seniors and those that care for them. ASC can be used to explore alternatives to a variety of issues such as health care, financial matters, guardianship, caregiving, living arrangements, acute and long-term care and any other issues involving seniors. ASC can:

- Help improve a family's capacity for problem solving needed short-term and/or long-term changes
- Assist caregivers in meeting the changing needs of seniors
- Assist seniors and their families resolve concerns about the senior's care
- Help assure the seniors wishes for the division of belongings and assets are met



ACCORD offers ASC services at various locations that are comfortable and accessible to the older person. Services may be provided at home, a nursing facility or another mutually agreed upon site. The outcome of the discussions conducted by ASC mediators is more frequently a long or short-term plan or decision about future arrangements rather than a formal agreement. ASC mediators will assist the parties in recording the plan or decision. This step clarifies that everyone agrees on the specific language and makes it easier for everyone to be aware of any necessary action they need to carry out.

## **C. European Examples of Elder Mediation**

### **a. Elder Mediation Projects—Berne, Switzerland**

Elder mediator and project leader, Helen Matter, recognized the importance of elder mediators to be committed to a code and standard. As a result she translated the entire “Canadian Code of Professional Conduct for Mediators Specializing in Issues of Aging” into the German language.

Helen Matter is leading an elder mediation pilot project of Pro Senectute Region, Berne, through a group called “Innovage” ([www.innovage.ch](http://www.innovage.ch)). This organization offers mediation to non-profit organizations on a voluntary basis, using the competences of its members to develop and/or coach various projects. This project is in the very early stages and its goal is to introduce Elder Mediation to the social workers in the local regions. Since these social workers often get in touch with their clients and their families before conflicts have escalated, the preventive aspect of elder mediation can be studied as it gives focus and support to this group.

A joint pilot project is being developed with the Swiss Nonpartisan Complaints Office for Older People (the independent ombudsman for older people) and CURAVIVA (Swiss association for long term care homes and organizations) to explore how elder mediation can support quality of care in long term care homes. More information will be forthcoming over the next few months (Lester, 2010).

### **b. Elder Mediation Project—Dublin, Ireland**

A new mediation service focusing on family conflicts that involve or have the potential to affect, an older person living with a progressive dementia was launched in June of 2009 by Áine Brady, Minister of State for Older People. The service is a pilot project involving collaboration between the Alzheimer Society of Ireland and Northside Community Law Foundation. Its launch coincided with an international summit and symposium on elder mediation held in Dublin and featured speakers and delegates from the US, Canada, Europe, the UK and Ireland who highlighted the elder mediation model as a good practice.

The mediation service helps people with Alzheimer’s disease or other dementias and their caregivers and families to make difficult decisions regarding the care of the person served, while dealing with any other family disputes. It involves specially trained volunteer mediators working

with people with dementia and their families, with community and, where necessary with service providers in the Dublin region.

“Changes in people’s needs and roles as they age can impose new stresses on elders and their loved ones. Faced with these challenges, new ways of coping with evolving relationships and changing realities are vital,” says Maurice O’Connell, Chief Executive of the Alzheimer Society of Ireland and President of the Alzheimer’s disease International. “Elder mediation provides an opportunity for the older person and all concerned members of the family to participate in creating a workable plan for the future,” he said. O’Connell added that up to one in three calls to the National Helpline during the first quarter of 2009 were from families dealing with increased stress, family conflict and complex decision-making situations. There is no doubt that concerns of preventing or reducing abuse and neglect is as serious in Ireland as it is in Canada.

### **c. Elder Mediation Project (Great Britain)**

Yvonne Craig, a pioneer of Elder Mediation in Britain, conducted research focused on the theory that mediation could contribute to the prevention of elder abuse at the early stages of conflict. She maintained that life transitions experienced by the elderly often led to stress and conflict. If this conflict was suppressed or exacerbated, their relationships could become painfully poisoned or erupt into threats and violence. She and her team developed the Elder Mediation Project with the belief that older people do well when they develop their natural skills in managing their own conflicts (Craig, 1996, 1997).

The premise of the Elder Mediation Project was that elder mediation had the potential to provide a holistic approach to the prevention of some kinds of elder abuse, where unresolved conflicts were perceived as threatening events. While the Project recognized the valuable contribution of counseling with older people who were vulnerable to elder abuse and intergenerational conflict, it also maintained that mediation was useful, especially where vulnerable older people are involved as mediation promotes empowerment, balancing power relationships with a respected arms length third party. A case study provided by the Project described how the involvement of an objective, respected third party was able to help an elderly couple resolve disagreements over housekeeping money where their son has previously always dominated discussions. In this situation the mediator facilitated the participants’ communicating fairly (Craig, 1998).

Craig examined the contribution that mediation can make to the prevention of abuse of the elderly in families, institutions, and society and examines elder care and mediation services in the United States, Great Britain, and Europe. She researched the theories of elder abuse and mediation using mediation as a minimal form of intervention to empower older people to resolve their conflicts and thereby help prevent elder abuse. Research was undertaken to test the theory that at early stages of relational conflict, mediation can contribute to the prevention of elder abuse (Craig, 1997). Craig examined elder care in the United States, particularly the long-term care ombudsmen (LTCO) who used mediation as well as advocacy and other skills in their work.

She researched the results of participant observation research in large and small institutions and in community-based LTCO services and volunteer services in the United States (Craig, 1997).

Craig also provided examples from the use of mediation in medical ethics cases (Craig, 1996) where older people were confused by conflicts between health and social care professionals with relatives about questions of intensive care or further treatment. She advocated that patients' voices needed to be heard as they worked out how they want to prepare for dying, and for possible Advanced Directives. Craig maintained that elder mediation could be most influential in mediating family conflicts involving issues around moving to residential care. Craig suggests that although mediators never advise or tell people what to do, the way in which they reflect back, or reframe what they have heard from those involved, can highlight the feelings about being burdens, or of fearing institutions, out of which their own alternative solutions may emerge. Problem-solving, constructive choices can then be made. This may involve strategies of face-saving for an overworked and angry caregiver. Mediation can encourage the caregiver to explain how stress makes her unintentionally aggressive, and enables the older person to express forgiveness, after which both are emotionally free to focus on practical remedies such as increased home help (Craig, 1998).

## SECTION 3: REVIEWING THE RESEARCH

Although there are limited studies, and some early reference to research in the area of elder mediation, clearly there is a need for more scholarly research—both quantitative and qualitative—to provide concrete knowledge regarding the effects of elder mediation with families. This can lead to the development of further knowledge and programs driven by evidence-based practice. To date, the positive claims regarding the value and effectiveness of elder mediation are based on a limited number of studies combined with anecdotal evidence gleaned from elder mediators who have a solid practice and are enthusiastic about their experience. The evidence and experience available is suggesting strongly that families who participate in the mediation process are reporting enhanced quality of life, improvement of fragile relationships, and reduction or prevention of incidents of elder abuse and neglect.

Researchers suggest that elder mediation can be used when a family is under stress and that mediation may prevent abuse from occurring. In some cases, where neglect or non-violent forms of abuse have occurred, mediation may be helpful when used in conjunction with other interventions such as protective services. It is critical that the mediator be aware of ethical considerations, reporting laws and obligations (Foxman, Mariani & Mathes, 2009). Family mediation can build support for participation of older people in a variety of ways that are safe and rooted in principles of self-determination (Gary, 1997; Schmitz, 1998; Bagshaw, 2003).

The elder mediation process produces positive outcomes for families on a number of levels. The obvious ones are spelled out in the final agreement. Less obvious but equally important, are the outcomes related to safety, security, dignity and respect which serve to effectively reduce the likelihood of elder abuse and neglect in the future.

Research allows us to explore what happens in elder mediation. It tells us what families say works best for them, why it works and what needs to be implemented and improved. The research that does exist suggests that elder mediation could change the face of healthcare, as we know it. Given the relatively new awareness of this area of expertise, it is crucial to gather information that would inform the development of a mediator model for the specialty of elder mediation. Most older people want to live in their own homes for as long as possible, they wish to be independent and where necessary, have the supports in place to remain independent and, like the rest of the world, to have their needs met and to be treated with dignity and respect. **Information gathering—rooted in the voices of elder mediation users and validated through scholarly research initiatives—is fundamental to the on-going growth of elder mediation.**

### a. **Australia Research—Models of Older Person Centered Mediation**

A team of researchers from the University of Southern Australia (UniSA) led by Dr. Dale Bagshaw have received an Australian Research Council Linkage grant with six industry partners from the field of aging to develop, trial and evaluate models of older-person-centered family

mediation to prevent the financial abuse of older people by their family members (Bagshaw, Wendt & Zannettino, 2009). Their hypothesis is that mediation can assist families to be more resilient and with early intervention can form a buffer for older people who are vulnerable or at risk of financial abuse from a particular family member. Based on evaluations of family mediation in family law cases where there is domestic violence (Bagshaw, 2003 & 2009), their premise is that specialized family mediation models for the prevention of financial abuse of older people by a family member may be effective in some cases. That is, if the mediation is voluntary and older-person-centered, victim safety and protection is assured, power imbalances are addressed and advocates and other supports are used to ensure that the needs of the older person are central and the voices of older people, with or without capacity, are heard.

In its recent press release the University of Southern Australia (2010) reported how the researchers are calling for older people and their family members to share their experiences and opinions in a confidential phone-in, with a view to developing family mediation and other strategies to prevent this kind of abuse. In the press release, head researcher, Dr. Dale Bagshaw, says that financial abuse of the elderly is alarmingly commonplace.

*We found that the most common form of reported or suspected abuse of older people is financial abuse followed by psychological and physical abuse, though it is not uncommon for more than one type of abuse to occur together, she says. Financial abuse can include forgery, stealing, forced changes to a will, transferring money or property to another person or withholding funds from the older person and the failure of others to repay loans. It can also include the misappropriation of enduring powers when a trusted person—usually a family member—is legally appointed to manage the finances of an older person whose frailty is increasing and can no longer manage their own affairs. Increased extra-familial care as a consequence of government ‘ageing-in-place’ policies, the rapidly ageing population, limited resources for extra-familial care-work, and international agreements about human rights demonstrate that understanding and preventing abuse of older people by their family members is a social justice issue that should be given priority.*

The press release further stated that a stage two of the project includes a national phone-in that hopes to gather information that will be used to develop older person centered models of family mediation to prevent such abuse. In the first stage of the project, researchers circulated two on-line national surveys, one for organizations servicing older people and/or their family as well as organizations who provide family dispute resolution services, and one for service providers from different disciplines who are family mediators or who work with older people.

Head researcher, Bagshaw, reports that the study aims to design, pilot and evaluate specialized models of older-person centered family mediation as strategies to prevent the abuse of older people by their family members in situations where the older person has capacity, has diminished capacity, and lacks capacity. The stated objectives are to:

1. critically analyze current national and international research on the financial exploitation or abuse of older people by a family member and identify models of intervention designed to prevent the abuse;

2. identify and analyze individual, structural and ecological factors, in particular gender, culture and rurality, which place older people at risk or make them vulnerable to financial abuse by their family members, and those protective factors which build individual and family resilience;
3. identify existing strengths and gaps in national legislation, organizational policies and service provision currently responding to older people experiencing financial abuse from a family member;
4. design, pilot, and evaluate specialized older-person-centered models of family mediation at primary and secondary levels of intervention, which focus on the best interests and safety of older family members, directly or indirectly include their voices in decision-making, identify and address protective factors, risk factors and vulnerabilities in relation to their property and finances and build resilient and protective family relationships; and
5. actively engage industry partners in the research process to enhance their capacity to respond to older people who are at risk of or vulnerable to financial abuse from family members, develop strategies to protect older people and their property and finances and develop, maintain or strengthen important caring and protective family relationships.

As of late 2010, the final report had not yet been released but preliminary findings have provided some clear guidelines as to what to consider when designing older-person-centered models of family mediation to prevent financial abuse of older people. They highlighted that where abuse occurs, it is often because family members have a strong sense of entitlement to an older person's assets and older people are particularly vulnerable when they need care from a family member, or lose capacity because of dementia, strokes or other illnesses. It appears that some families are more resilient than others and can form a buffer for older people who are vulnerable or at risk of financial abuse.

The findings to date indicate that a significant number of older people in Australia are at risk of financial abuse from at least one family member and the abuse can be discovered too late for others to be able to intervene to protect the older person and his/her assets. Bagshaw reports that early intervention can enhance family resilience by improving the communication skills of family members, their commitment to the well being of their older family members, their problem solving abilities and capacity to be flexible, their links to supportive social networks and their positive working relationships with key professionals. Older-person-centered family mediation, if used as an early form of intervention, is one possible strategy which can enhance these factors and assist some older people and their families to develop strategies and plans in relation to the older person's finances and property to guard against potential risk of exploitation or abuse from a family member (Bagshaw, 2010).

#### **b. The Cornwall Respite and Relief Elder Mediation Project**

Outcome statistics from the earlier reviewed Cornwall project (at page 16) indicate that the introduction of an elder mediation approach could well result in considerable financial savings for the Ontario health care system. From April 2009 to August 2010, there were 99 referrals from the participating partners. Of these referrals 39.5% were from the Alzheimer Society, 54% were from the CCAC Case Managers and 6.5% were from other sources. The activities and

intervention of an elder mediator is directly credited with the dramatic reduction of project participants' visits to the emergency room at local hospitals and subsequent admissions to acute care hospital. The very real implications of this program can be found in the lower admission rates to long-term care by people living with progressive dementias (Rivera-Mildenhall, 2010).

Worthy of note for the period 2009 / 2010, the projected number of emergency room visits was set at sixteen visits, yet there were no visits under the program. The projected number of admissions to acute care hospitals per year was set at eight but no admissions were required under the program. The number of long-term care admissions was projected at twenty-four but only nine were admitted (Rivera-Mildenhall, 2010). Clearly the program has achieved beyond expectations and it may be a model for future projects for health care initiatives not only in Ontario but throughout Canada and internationally.

**c. Alaska Court System's Adult Guardianship/Conservatorship Mediation Program**

The Alaska Study, reviewed earlier in this document on page 18 is another project model that has many implications for future health care and enhanced quality of life. This study reported allegations of abuse and neglect, or self-neglect in one-half of the mediations conducted through the Project. In all of these situations the mediator is *"...responsible to the system of people involved in the decision-making process and for providing the structure and tools to voluntarily make mutually acceptable decisions, often under difficult circumstances. In this sense, the mediator's role is to empower the system so that it does not have to resort to outside parties, such as the courts, to make the decisions"* (Largent, 2009).

Significant outcomes from the project as reported by both Largent (2009) and Carns & McKelvie (2009) include:

- Judges and professionals began referring challenging cases to mediation that previously would have required costly court hearings to resolve.
- Participants reached agreement on some or all of the issues in 87% of the cases mediated.
- Mediations resulted in plans that enhanced the care and safety of high risk adults (those involving Adult Protective Services) 95% of the time.
- Participants were satisfied with the agreements they reached 91% of the time.
- Mediation was believed to be successful in avoiding contested court proceedings in "all but a handful of cases."
- Participants were highly satisfied with their mediation experience.

**d. The Center for Social Gerontology (TCSG)**

Located in Ann Arbor, Michigan, the Center for Social Gerontology has pioneered the use of mediation as an alternative to guardianship since the early 1990s. It promoted mediation as a non-adversarial means of addressing the complex personal, financial and related issues that often



precipitate the filing of petitions for guardianship of older persons by family members, friends or private guardianship organizations. In 2001, they released a four-state study the results of which found that mediation was effective in helping disputing parties in guardianship cases reach agreements in three-quarters of cases (Butterwick, Hommel, Keilitz, 2001).

The aim of this study was to determine the efficiency, effectiveness and replicability of mediation of adult guardianship cases. It sought to answer the following questions:

- How do mediated guardianship programs work?
- What are their structures, processes and procedures?
- Do they work as intended?
- Are they efficient?
- Are they effective?

The study design had two major components: (1) a descriptive analysis of the operation of four guardianship mediation programs in Ohio, Florida, Wisconsin and Oklahoma; and, (2) an assessment of their impact. In their report, *Evaluating Mediation as A Means of Resolving Adult Guardianship Cases* Butterwick, et al. describe the use of mediation in cases in which guardianship over older persons was being pursued. In addition to the 75% success rate, the study determined that older persons, family members, program administrators and mediators were found to believe that mediation in these adult guardianship cases was effective in finding better or more satisfactory resolutions such as fewer guardianships, limited rather than full guardianships, or less restrictive alternatives to guardianship.

With regard to abuse, neglect and exploitation, TCSG maintains that when cases are egregious and there are allegations of physical, financial and/or emotional abuse, elder mediation is contraindicated. TCSG believes that in guardianship cases where abuse allegations are alleged the cases are probably better left in the court setting (Hommel, 2008).

TCSG has produced a publication entitled the “Elder Mediation Annotated Resource Library” (McCreary, 2008) that provides an annotated listing and brief description of some of the existing materials books/manuals/reports, articles, and video/on-line information they researched—on the development, provision, and evaluation of elder mediation.

#### **e. Research to Inform Practice—Atlantic Canada (2009)**

This qualitative research highlights the voices of elder mediation users whose perspectives were used to inform the further development of elder mediation practices (McCann-Beranger & Richards, 2009). Older people want to live in their own homes as long as possible, they wish to be independent and, where necessary, have the supports in place to remain independent. This research explored what happens in elder mediation and what families tell us works best for them, why it works and what needs to be implemented and improved.

The target population who could benefit from this research includes the social networks in which older adults are experiencing memory impairment or a progressive dementia. In this study participants were interviewed from various social networks comprised of older adults and their supporters, including family (e.g., spouses and adult children) and friends, and representatives from community organizations, health care professionals, and long-term care (McCann-Beranger and Richards, 2010).

This study used iterative, thematic analyses to examine and classify the experiences of the elder mediation users who, for the most part, had a family member with Alzheimer's or dementia and were feeling isolated and unable to cope. Several themes emerged related to social participation and inclusion. Overall, the findings indicate that participants reported feeling safe, validated and respected in the elder mediation process, and parents talked about being able to speak with their adult children in new ways. Some caregivers talked about feeling alone for such a long time, about how the stress associated with care was making some of them less patient than they may be normally. Harm was felt, whether intentional, or not. It was reported that elder mediation helped to alleviate the tensions brought on by the family circumstances.

Families shared that elder mediation helped them to have a conversation to decide how their family members and the senior could contribute to managing the care, considering all of the changes they were going through. They also shared that, once the family agreed to a plan to manage the change, and the more involved family members and others were in sharing the care, the less likely for abusive situations and the more likely for a heightened quality of care. Ninety-eight per cent of the participants said that they would recommend elder mediation to others whom they knew were having similar experiences and challenges as themselves. In addition, all participants expressed that the goals of mediation were achieved for the most part, and some stated that the elder mediation process exceeded their expectations.

Themes included:

- feeling safe (participants felt that the mediator understood their concerns, cares and fears related to the challenges they faced)
- having a sense of belonging—the mediators were knowledgeable in dementia and thus were immediately very empathic, making it safe for the parties involved to increase their participation and to share the most challenging things
- increased levels of cooperation and collaboration amongst network members as they assumed new ways of listening to one another moving forward in the same direction
- need for prevention—consistent among participants was a concern for ensuring good quality of life, such as the receipt of appropriate personal care and nutrition for the care receiver, to prevent illness and declines in well-being
- physical abuse and psychological abuse both at home and in care facilities, by staff, as well as aggression by the care receiver toward his/her caregiver, were also identified as potential issues that may arise without an intervention, such as elder mediation.

*My wife was getting very verbally abusive and was not well. I couldn't go through the door but she would become very upset. She even called the police on me one day when she didn't recognize me. It was having an effect on me and the doctor said that it was affecting my health, (McCann-Beranger & Richards, 2009).*

Nevertheless, it was also felt that elder mediation was able to assist family members to find ways to contribute, regardless of the distance of network members. For example, in some networks, while one member is designated as the primary caregiver because of his or her propinquity, other members may contribute financially from afar to help to support a housekeeper who can stay with their older adult. Participants reported an overall improvement in getting care needs met because of the elder mediation process. This, in itself, will work to reinforce a perspective based on prevention.

Participants in the research process were surprised about the degree to which mediation had helped bring focus to their needs, and how it challenged everyone in their circle of family and friends to assist in reducing the stress for all involved. Included in some of these mediations were people living with early stage, progressive dementia. The stories gave witness to the fact that families often identified ways they could support each other, while keeping levels of conflict to a minimum—thereby reducing the likelihood of abuse and neglect.

Study participants reported that the facilitated, focused conversations markedly decreased stress levels. Those dealing with moving a family member to community or nursing care—a much feared and drastic move—reported that an outcome of mediation was an increased likelihood that the person was cared for at home longer. Also sponsoring agencies noted a marked reduction of requests for individual counseling sessions to deal with stress. There was a heightened ability to distinguish from when people needed “counseling” and when they needed “mediation”. When elder mediation was the chosen course, participants were empowered to come to agreements that would find family members offering more support and time than they would have done otherwise. All participants were satisfied with the elder mediation and would use the process again and all participants would recommend the process to others. Participants reported an overall improvement in getting care needs met because of the elder mediation process (McCann-Beranger & Richards, 2010).

#### **f. Elder Mediation Project (Great Britain)**

The British elder mediation project as described on page 21 in this paper is an example of a project that demonstrated that mediation can be a suitable tool to catch aggravated conflict before it becomes a full-blown problem (Craig, 1997).

(It is worthy of note that Craig's doctoral research also focused on the theory that at the early stages of conflict in elder relations, mediation can contribute to the prevention of elder abuse (Craig, 1995)).

With respect to research Craig reported that the experience garnered from the elder mediation project identified that older people should be encouraged to develop their natural skills in managing their own conflicts. It was recommended that aging organizations be encouraged to develop a small core of older people trained in elder mediation to offer help in peer relations and that these organizations be encouraged to develop outreach into institutions where over-worked and under-paid staff, as well as their residents, find it difficult to cope appropriately with conflict. The project demonstrated that conflict resolution workshops were helpful to social groups working with and for elders. Specific training in mediation is important for professional social workers, counselors, and medical, nursing, and caring personnel to supplement their own expertise. Offering peer supportive services to others already working with older people in order to encourage them to develop their own elder mediation projects, was encouraged (Craig, 1995). The Elder Mediation Project also developed and offered the following ten general tips for those coping with conflict:

1. Deal directly and quietly with those involved.
2. Suggest a mutually convenient time to discuss differences.
3. Give thanks and respect people for agreeing to discuss the difficulties.
4. Describe the facts as you see them and tell how you feel about the situation.
5. Listen carefully to other people's accounts without interruption.
6. Check out with each other that you have understood the root causes of the difficulties and your individual needs in peacemaking.
7. Offer to cooperate in finding mutually acceptable solutions to the situation.
8. Discuss all issues, the hard as well as the easy ones, in order to gain successful resolution.
9. Consider writing out and signing any agreement on complex issues.
10. Suggest further discussions if there is a need to check improvements.

**g. Restorative Justice: A Healing Approach to Elder Abuse (Arlene Groh, RN, BA)**

This project, based in Waterloo, Ontario was described earlier in the paper on page 16. An important research finding associated with this project was that there were frequent occurrences of cases that are believed to involve abuse or neglect. There existed a reluctance to report abuse both by seniors and service providers, a consequent failure to intervene in cases of abuse and a shared perception that the retributive justice system had failed to resolve abuse issues.

Although causing physical, financial, or psychological harm to an older adult may be an offence under the *Criminal Code*, very few of these incidents come to the attention of the justice system. There were many reasons seniors avoided disclosing the abuse including: being afraid of losing the relationship with the person who is harming them, ashamed that someone they trust has mistreated them, and believing that police and other agencies cannot help. Professionals and other community members may also hide this crime. Reasons for such a response might include ageist attitudes that disrespect the senior's perspective, disbelieving the older adult's story, lack

of knowledge regarding what constitutes abuse and how to intervene, and a personal discomfort with the issue (Groh 2009).

#### **h. Elder Mediation Project—Dublin, Ireland**

The Irish elder mediation project as described on page 20 in this paper has released initial findings of the pilot project. Their evaluation, still in draft form, points to a number of outcomes:

- In many cases damaged relationships between siblings have been repaired and communication streams opened up.
- Families were supported in developing care plans for their loved ones.
- The Dementia Rights Advocacy Service reported better outcomes for the parent with dementia.
- Those who reached agreement through mediation agreed that the outcome was fair and that they were satisfied with both the process and the results.
- Families stated that they were provided with a safe environment to focus their energy on reaching solutions to their disputes.
- Some participants perceived no changes in the situation itself but the mediation helped them to accept this and to move on (Dooley, 2010).

Conclusions that have been drawn from the pilot project to date indicate that Elder Mediation can be very effective in dealing with issues of aging. The draft evaluation stresses the importance of elder mediators requiring specialist knowledge of aging, dementia, capacity, community services and family dynamics (Dooley, 2010).



## SECTION 4: ETHICAL, LEGAL AND TRAINING ISSUES

### A. Ethical Issues

*As new conditions arise...the law, instead of being fixed and static, becomes a living, changing entity shaped to satisfy the needs of society—Judge Brian Dixon (Soden, 2005).*

Elder mediation is complementary to the practice of elder law and is based on the principles of informed decision-making, autonomy, self-determination and confidentiality. Ethical and legal issues are best addressed by elder mediators who have highly developed competencies, are sensitive and empathic, and have a variety of models and theories in their repertoire (McCann-Beranger, 2005). The duty to be competent, to apply professional knowledge, skills and abilities, and to maintain this competence over time is an ethical responsibility. All who participate in mediation have a right to receive high quality service from a competent provider (Code, Appendix B).

Yet in countries where elder mediation is burgeoning there are few restrictions—if any—that can limit who can call themselves an “elder mediator” and then hang out a shingle advertising their elder mediation practice. A practitioner, who is not qualified to practice as an elder mediator, may risk causing harm in some situations—particularly where abuse and neglect are suspected. It has become evident that the process of elder mediation—particularly the building of trust within a family—serves to gently uncover incidences of abuse and neglect within a family that heretofore would have stayed well below the radar. As the family acknowledges and accepts responsibility for such behavior, it can begin to put into place mutually acceptable remedies. A properly trained elder mediator would be sensitized to deal with such matters. Elder Mediation Canada and Family Mediation Canada appear to be among the world leaders in this regard by ensuring that mediators are trained, certified and adhere to a consistent standard.

Most elder mediation seminars, conferences, summits and workshops dedicate a portion of their training time to ethical considerations and legal issues. World summits on mediation with age related issues held in Ottawa, Dublin and Chicago over the past three years have featured panel discussions on the topic. In 2007 Temple University in Philadelphia hosted a symposium on *Ethical Standards for Elder Mediation*. Ethical principles and issues are a basic part of elder mediation training with the intent to stimulate the elder mediator to think further about the issues identified so that he/she can form a sound basis for ethical decision making. In Canada, certification as an elder mediator requires adherence to the Elder Mediation Code of Professional Conduct (Appendix B to this paper), and sets out ethical standards for the practice of elder mediation.

Mentoring and coaching are popular among elder mediators as they learn and challenge each other in ways that result in heightened service to the participants of elder mediation. Such approaches stimulate discussions and questions about the ethical standards for professional elder mediators. Examples of some of these ethical questions and issues include:

- Is this case appropriate for elder mediation?
- Who needs to be invited to participate? Is everyone included? Will everyone need to attend every session? If not, why not? If so, who decides?
- Should referrals be made? If so, to whom? Why?
- Are there particular screening requirements needed? If so, who does the screening?
- Autonomy and competence of all participants
- Do I have the competencies to undertake this mediation?
- Am I committed to being mindful of the invisible boundaries to my first profession—a lawyer who is acting in the capacity of a mediator; a psychologist who is acting in the capacity of a mediator?
- How do I draw on my primary discipline to enhance my practice of elder mediation?
- Considerations of impartiality and neutrality
- Considerations that arise as a result of abuse, alleged abuse, safety issues, neglect and self-neglect and the importance of continuous screening for abuse and neglect throughout the process.
- Are there any conflicts of interest?
- Ensuring confidentiality and the limits to confidentiality
- Are there any capacity concerns? What is done to ensure all voices are heard? Does an advocate need to participate? Who decides? What is their role?
- Should the lawyer and/or other specialists be involved in the sessions? Who decides?

Nicole Garton-Jones, a practicing lawyer and elder mediator from British Columbia presented a thought provoking workshop entitled, *Elder Mediation and Ethics: An Overview* at the Third International Summit on Elder Mediation in Chicago (May 2010). The presentation highlighted ethics, voluntary/mandatory mediation, capacity and confidentiality as they apply in Canada and is available on the Slideshare Network website (Garton-Jones, 2010).

## **B. Legal Issues**

While there is evidence of continued interest in formalizing elder mediation in legislation as a facilitative, consensual, and confidential process (Rickard-Clarke, 2009), there is currently no such legislation in Canada. As noted earlier, the Canadian Centre for Elder Law through their Elder and Guardianship Mediation Project—is gathering pertinent research and consulting key stakeholders in order to provide information that can serve to facilitate—both the adoption of mandatory mediation in British Columbia and training for elder mediators who work with older clients (Braun 2009).

The Code of Professional Conduct Specializing in Mediation with issues of aging (Appendix B), includes a section on Inter—Professional Relations that notes:



- The elder mediator must respect and invite complementary relationships between mediation, legal, mental health and other social services and care providers and be aware of community resources appropriate for referral.
- The elder mediator should promote co-operation and awareness with other professionals and be aware of their ethical responsibility to encourage clients to use other professional resources when appropriate.

It is recognized that it is crucial that participants who attend elder mediation are aware of their legal rights and responsibilities and that a specific legal opinion from a lawyer may be valuable and often necessary as families negotiate their way to providing quality care and preventing or eliminating any potential for abuse and neglect (McCann-Beranger, 2005). Participants in mediation are often surprised to realize they do not have all their legal documents up to date and are relieved to renew their acquaintance with their lawyer or to hire a lawyer to provide this critical assistance. Powers of attorney, wills, living wills, health care directives, are some of the many documents that the lawyer will need to review with the family. A thorough and thoughtful review by the legal professional with the participants will provide a sense of security and confidence that everything is in order and dramatically reduce the likelihood for potential conflict in the future (Reagh, 2008).

In one instance, a family reported having no need to seek legal advice and did so only because the mediators' protocol included the family seeking legal input. The mother, who had insisted all her legal documents were up to date, realized that one of her daughters was unintentionally missing from the will. The will had been hastily drawn up several years before—the same week she had witnessed the death of her husband. Somehow, only three of her four children were named in the will—a calamitous, unintentional oversight at the time. The forty-year old son lived with his Mother in the family home and concerns around neglect from the other three children had initiated the search for outside supports. The fourth child, who had inadvertently been left out of the will, was the most ardent support for the mother and ironically, the one on whom she most depended. The lawyer who had been hastily sought at that time hadn't known the family previously, had limited elder law experience and had not realized the extent of the mother's grief. As a result, the lawyer asked the mother to sign a will and other documents when she was still in shock and despair at the loss of her husband and had little awareness of what she was signing.

Just as elder mediation has been maturing as a specialty within the general practice of mediation, so too has elder law been maturing as a specialty within the general practice of law. Lawyers who aspire to specialize in elder law will be required to develop knowledge and competency in such fields as estate law, health care law, disability law, public benefits law, real estate law and administrative law (Reagh, 2009).

Increasingly, more elder law lawyers are incorporating elder mediation services into their law practice. Elder mediation can be used throughout the course of a lawyer's work with his or her client and can be used at any stage of conflict. It can precede consultation with a lawyer or can

be interspersed with a client's visits to the lawyer. Lawyers may be consulted during mediation and, if a written agreement is reached, each participant is advised to consult a lawyer before signing. Lawyers often participate in mediation, representing the older person or another participant or serving as legal advisors. Although elder mediation is most effective when it occurs early in a dispute, it is never too late to be considered (Medford, 2004).

The Law Commission of Ontario (LCO) has been working on an extensive project entitled "Development of a Coherent Approach to the Law as it Affects Older Adults (2008)" to develop a framework that can serve as a reference to improve the appropriate application of the law to older adults. Part of the interim report will include case studies of issues in the law as it affects older adults that illustrate particular problems, barriers or best practices in increasing access to justice for older adults. It is anticipated that at least one of these case studies will be on elder mediation. This project will involve multidisciplinary analysis to ensure that the issue is analyzed through critical lenses based on gender, race and similar factors.

According to a preliminary report ([www.lco-cdo.org](http://www.lco-cdo.org)) "*Report on the Preliminary Consultation: Moving the Project Forward*" there have been many suggestions for improving supports to older adults to ensure easier access to legal system, including: expanded legal aid supports for older adults; better education, training and supports for justice system personnel on issues related to older adults; improved accessibility and accommodation for disability-related needs; and education and outreach to all of the diverse communities that make up the older adult population. In addition, many submissions recommended that the LCO consider, not just how older adults could be better supported to access current systems, but how alternative compliance and enforcement systems could be designed to ensure both easier access and better outcomes for older adults in relation to the law.

In their submission to the LCO, the Ontario Bar Association noted that mediation and arbitration are becoming increasingly popular and an effective means of resolving disputes, and can provide speedier and more economical access to justice in many situations. As an example, the University of Windsor Law School's mediation service provides specialized services for older adults who have been the victims of financial abuse.

Recent legislation and private practice experience indicates that elder mediation, including guardianship matters, are important new areas of expansion in Canada. There is a strong mediation community throughout Canada and respect is growing for the practice of elder mediation (Braun, 2009). Many legal, ethical and training issues will be addressed through the project referred to earlier, entitled *Elder and Guardianship Mediation Project*. Issues under exploration include:

- impartiality of mediations
- capacity to mediate or participate in the process
- abuse / neglect / self-neglect
- conflicts of interest
- confidentiality
- mediator accreditation / training

Due in part to the relatively low costs of mediation as compared to litigation, more and more families are turning to mediation as a way of resolving family conflict. Mediation may be well suited for many situations, but the same issues listed above must be taken into account to ensure that the process is fair, supportive, and respectful of the parties' rights. In this project the Canadian Center for Elder Law is gathering pertinent research and consulting key stakeholders in order to provide information essential for both the adoption of mandatory mediation in British Columbia, and for mediators who work with older clients (Braun, 2009).

### **C. Capacity—Ethical and Legal Considerations**

One of the most prominent areas of discussion among elder mediators—an issue that straddles both ethical and legal domains—is that of “capacity” to participate in mediation. Capacity refers to the ability to understand the nature and consequences of a decision, in the context of available choices at the time the decision is to be made. There can be many definitions of capacity including task specific legal definitions, contractual capacity, donative capacity, and the capacity to make health care decisions.

In Canada, “Legal capacity”, substitute decision-making, and adult guardianship are provincial matters governed by statutory schemes that are different from province to province. In Ontario, for example, the definitions and rules for assessing mental capacity appears in the *Substitute Decisions Act* and the *Health Care Consent Act* and can vary depending on the type of decision involved (Bongard, 2010). For purposes of this paper, the discussion of capacity is limited to the issues that arise in the context of elder mediation that involves the mediator assessing the competencies of older adults to understand and participate in the elder mediation process. In this context, Elder Mediation Canada’s *Code of Professional Conduct for Mediators Specializing in Issues of Aging* offers the following guidance:

*When providing mediation services to people who are unable to give voluntary consent, elder mediators must include them or their representatives in decision making as appropriate. Elder mediators must recognize the need to balance the ethical rights of participants to make choices and recognize participants' capacity to give consent or agreement to mediation services (Code of Professional Conduct, Appendix B).*

It is necessary to explore whether the participants are cognitively capable of engaging in the mediation process or if there are family members who are able and appropriate to represent the person's wishes. If the elder mediator believes that any participant is unable to participate meaningfully, and if there is no appointed guardian *ad litem* or there is no agreement on who could be the spokesperson, they must suspend or terminate the mediation and encourage the participants to seek appropriate professional help. The elder mediator ensures that all voices are represented in the mediation process.

If an advocate has been appointed for a participant who is not capable of consent, the elder mediator has a responsibility to that person (the person who is not capable of consent). The elder mediator and the advocate will establish the level of participation in the mediation process. Depending on the jurisdiction concerned, the mediator must inquire as to the provisions of a living will, Power of Attorney or similar legal documents that protect the wishes of the vulnerable person (Code of Professional Conduct, Appendix B).

It has also been noted that the elder mediator decides with the participants which model/process will best fit the situation and ensures that ethical and legal concerns relating to competence and capacity are fully explored and explained. The elder mediator always assumes the participant in question has some level of capacity. Even if capacity is lacking in one area it is often present in another. One cannot assume a person lacks capacity for decision making until certain that explanations have been provided in a way that is relevant and appropriate to the participant's individual circumstances. A person lacks capacity to make a particular decision if s/he is unable to understand the information relevant to the decision, is unable to retain that information, and is unable to use or weigh the necessary information (Rickard-Clarke, 2009).

Where necessary, elder mediators review recent assessments and refer for other necessary or updated assessments to ensure that all participants are able to focus on individual issues. Mediator's ensure the participants can see the interrelationship between and around the issues and that they can understand cause and effect, match events and consequences and take responsibility for their own actions. Mediator's also ensure participants can conceive of and respond to common measures of time in the context of scheduling, can comprehend the nature of a behavioral commitment, can identify desired outcomes and can understand the mediator's role (Coy and Hedeem, 1998). Sometimes decisions about capacity are value judgments, such as when dementia and cognitive impairments are involved. In these circumstances the physician and/or geriatrician or other specialists are best suited for assessing and providing recommendations to the elder mediator. Lawyers often refer to elder mediation and then assist their client in understanding the process and consent to the outcome reached. Self-determination is crucial, as is the important distinction between capacity and competencies.

## **D. Training Issues**

For elder mediation to fully realize its potential to resolve conflicts related to issues of aging and to prevent the abuse and neglect of older family members, it is critical that elder mediators deliver a consistent and credible standard of practice, that they operate under a code of ethics (Appendix B) and that they achieve a level of certification that ensures they are qualified to deliver the professional service of elder mediation.

Based on interviews and literature reviews it would appear that Canada is leading the way with respect to the availability of consistent training standards for elder mediators—peer reviewed or otherwise. Elder Mediation Canada ([www.eldermediation.ca](http://www.eldermediation.ca)), in consultation with Family Mediation Canada and other elder mediators across the country, has developed certification standards, a code of ethics and training standards (see Appendices B & C). Acceptance and adherence to these standards is growing steadily across the country, and being adopted in Ireland and Switzerland as they are beginning to develop their own elder mediation services. Depending on where you are located in Canada elder mediation services may now be available, and increasingly, by elder mediators who are appropriately trained and certified.

The Association for Conflict Resolution in the United States—the largest professional association for mediators, arbitrators, educators and other conflict resolution practitioners in that country—has recently established a section on elder mediation but as yet have not released any specific elder mediation standards or certification. Some elder mediators from the United States are involved in Elder Mediation International Network (EMIN) certification. Other countries surveyed reported no specific training standards for elder mediation. Elder Mediation Canada recognizes that there are currently a number of different certification/accreditation credentials across the world for family and community mediation but none specifically for elder mediation. Thus, any development of a truly national/international standard for elder mediators will need to be set up in an inclusive way while supporting the credibility, and integrity of what currently exists in other national and provincial/state/country organizations.

Elder mediators who are trained in this specialty apply their highly developed people skills to the intricate life issues facing older people with sensitivity, acute listening skills and inclusive language to make sure the mediation flows respectfully. In mediating with age related issues it is generally understood and agreed that elder mediators need more specific and additional training—particularly in regards to sensitivity of issues related to aging—than do family mediators. (Specific and specialized training components and considerations are available in the Code of Professional Conduct—Appendix B).

Elder Mediation Canada, in partnership with Family Mediation Canada, has produced a Certification and Training Standards Guide (Appendix C) that lays out the requirements for certification for Elder Mediators. A certified Elder Mediator (Cert.EM) has at least 100 hours of basic mediation/family mediation training and an additional 100 hours of age related elder family mediation training including the following topic areas: family life cycle and intergenerational

dynamics, elder abuse and neglect, family and elder law, power imbalance, grief and loss, ageism, guardianship, dementia and chronic diseases, financial and ethical issues. Certified elder mediators have current membership in their national/country mediation organization and adhere to the code of professional conduct. They hold liability insurance for the practice of elder mediation.

Alaska's Adult Guardianship/Conservatorship Mediation Program reported that mediators needed considerable substantive knowledge including understanding the system surrounding these cases (agencies, legal proceedings, relevant statutes and court rules, and other resources), family dynamics, and issues related to abuse and exploitation of vulnerable adults. Mediators should understand the impacts of aging, mental health, developmental disabilities, substance abuse, dementias and trauma as they may affect capacity, care-giving needs, and the support and service resources related to them. Mediators should have empathy and compassion for those involved. Their communication skills and manner need to foster rapport and trust building. Understanding of cultural issues is also vital (Largent, 2009).

### **Training in Other Countries**

Elder mediation has not been on the radar as a specialty in most countries thus training is sparse but opportunities are slowly increasing. Elder Mediation International World summits to date have been welcomed in four countries: Canada, United States, Ireland and Switzerland and interest is growing. Three day training opportunities with pre-conference workshops are well attended by motivated mediators who wish to specialize or broaden their practice. One of the outcomes of the World Summits is increased knowledge of the subject areas as well as increased awareness of the importance of standards.

The Code of Professional Standards (Appendix B) is readily adaptable and is being used as a template in Switzerland, United States, Ireland, Australia and Great Britain. Elder mediators, regardless of professional background are challenged to become familiar with the standards as a way of monitoring their progress on adhering to a person centered philosophy.

The only way to find out the credentials of the elder mediation in most countries is to directly ask the mediator. In Canada, both Family Mediation Canada and Elder Mediation Canada can assist in finding a mediator in your area. In the United States such organizations as the newly formed Elder Decision-Making & Conflict Resolution Section of the Association for Conflict Resolution, the National Eldercare Mediator Network, Mediate.com or eldercaremediators.com can all offer access to names of people who are offering elder mediation services.

In the United States, as in most other parts of the world, there is no national credentialing or formal licensing for elder mediators. As a result credentialing standards vary from state to state. Private, for profit companies are forming and are creating services and rosters for elder mediators. The Centre for Social Gerontology has been a leader in guardianship mediation training and resources.

The European Mediation Network Initiative has many organizations working to promote mediation. One of its aims is to serve as a means to exchange information, know-how and results from research toward the diffusion of mediation within our societies. It has held three annual conferences to date and it is anticipated that within the next few years elder mediation will work its way onto the agenda.

The Mediators Institute of Ireland (MII) has taken an in-depth look at both Elder Mediation and Peace Building. They concluded that it was important to have a credible, transparent process of assessment before approving a mediator to practice. Not only is it important to have appropriate qualifications to start but also practicing mediators must engage in continuing professional development. MII now has a professional development program that requires ongoing education, defined practice hours, and reflective practice to ensure skills are kept up to date (Erwin, 2010). A number of Irish elder mediators are working toward their international elder mediation certification—some will receive their certification at the Switzerland summit scheduled for May 2011.

Australia's current research project on the prevention of financial abuse of older people mentioned earlier in this document, will influence training curriculum as it aims to develop and evaluate specialized models of family mediation for primary and secondary levels of prevention that privilege the interests of vulnerable older people and allow for their voices to be heard in safety, directly or indirectly. Specialized aspects of the mediation strategy (such as screening tools and strategies for including the voices of older people) will be implemented, evaluated, modified and documented and no doubt will impact the development of curriculums on this topic.





## **SECTION 5: IMPLICATIONS FOR THE REDUCTION OF ELDER ABUSE**

### **A. The Problem of Elder Abuse and Neglect**

As Canada's population ages, the number of citizens over 65 years of age will outnumber the number of citizens under the age of 15 by 2015. This shift means that an increasing number of people will be put into the position of caregiver for their parents even as they may be caring for their own family. Juggling these responsibilities involves, by necessity, a great deal of stress that potentially can lead to elder abuse. It is widely known and an accepted fact that abuse is underreported and often not identified. It is also believed that psychological abuse is seldom reported. The reality is that abuse and neglect often goes unrecognized. We can, however, gain access to police reported family violence against older adults. The following statistics are provided by Statistics Canada (2009):

- In 2007, 1,938 incidents of family violence against seniors were reported to police, representing more than one-third of all violent incidents committed against older adults.
- The rate of family violence for seniors (48 per 100,000) was much lower than for those in younger age groups. Compared to seniors, the family violence rate was twice as high for adults aged 55 to 64 (104 per 100,000).
- Senior men (163 per 100,000) had a higher overall rate of violent victimization compared to senior women (114 per 100,000). However, senior women had higher rates of violent victimization by a family member (52 per 100,000) compared to senior men (43 per 100,000).
- Spouses and adult children were the most common perpetrators of family violence against senior women, while adult children were most often the accused in family violence against senior men.
- Just over one-half of police-reported family violence incidents against seniors were common assaults.
- Half of police-reported incidents of family violence against seniors did not result in physical injury. When physical injuries were sustained, the vast majority (91%) were minor.

Family homicides against older adults:

- The overall homicide rate was lower among adults aged 65 years and older (9 per million population) compared to persons under 65 years of age (23 per million population). However, rates of family-perpetrated homicide for seniors (3.8 per million population) and non-seniors (4.5 per million population) were comparable.
- Senior female victims killed by a family member were most commonly killed by their spouse (40%) or adult son (36%). In nearly two-thirds of family homicides of senior men, an adult son was the accused killer.

- Most often, frustration, anger or despair was the apparent motive for family-perpetrated homicides against seniors. In contrast, financial gain was the most commonly identified reason behind senior homicides committed by non-family members.

According to the U.S. Bureau of Justice Statistics in the year 2000, 121,000 seniors age 65 and over experienced a violent victimization (Rennison, 2001). Another study determined that two-thirds of the abusers were the victims' children and grandchildren (Davis, 2001). They found that many of these abused elders were trapped in dependent relationships with their abusers because of their total dependence on them emotionally, psychologically, financially, and physically.

As far back as 1994 and earlier a British pioneer in elder mediation was asking whether or not "elder mediation could contribute to the prevention of elder abuse and the protection of the rights of older people and those who care for them" (Craig, 1994). There are many factors that can lead to elder abuse or neglect, often interacting with one another. Many of these factors, if recognized early enough, can be addressed and brought to a standstill before harm is done.

*I'm not sure people understand what elder abuse is. I think things are happening that are elder abuse, but people think they are normal (CHPNA, 2010).*

As the number of older people continues to rise, so too will the number of health issues, and other issues of aging, that will require special supports. Caregiving for mental or physical impairments is highly stressful and families are not trained for the job. Unintentional though it may be, abuse and neglect is sometimes perpetrated by people who had previously acted loving, supportive and caring. Elder mediators are often called in desperation when the caregiver is totally stressed and "burnt out". Caregivers report feeling guilty because they just can't take it anymore and express their concerns with comments like: "I had nothing left in me and didn't feed Dad dinner three times this week"; "My husband yelled at me so I left him to sleep in his "attends" for two days". Even when impairment is not present and there is only minimal dependency, a grieving and guilt-ridden caregiver's patience can still be short, resulting in outbursts of anger and resentment directed at the older person. In addition, caregivers who are financially dependent on an older family member are also more likely to perpetrate abuse (Woolf, 2009).

*Doris is an eighty-year-old widow who lives with her adult son, Dan and his family. A few years back, Doris sold her house, gave her son the money, and moved in with him. Doris has her own room. Dan often tells Doris that she is a burden to him and his family. He jokes that she will probably be dead soon. Doris is not allowed to invite her friends to visit. At the same time, she is discouraged from going out. Her daughter-in-law took down family photographs that were hanging on the walls in Doris' room. Doris has not been able to find them since (CHPNA, 2010).*

In 2008, Cooper and Livingston suggested that around 25% of vulnerable, older adults will report abuse in the previous month, totaling up to 6% of the general older population. Though research is limited there have been some consistent themes beginning to emerge from studies with older people who have been abused. Work undertaken in Canada suggests that

approximately 70% of reported elder abuse is perpetrated against women, and this is also similar in the UK, supported by evidence from the Action on Elder Abuse Helpline that identifies women as victims in 67% of calls. Domestic violence in later life may be a continuation of a long-term partner abuse or may begin with retirement or the onset of a health condition (Abuse and Violence, BC 2001). This is an important point because domestic violence within older couples is often not recognized, and consequently strategies, which have proven effective within the domestic violence arena, have not been routinely transferred into circumstances involving the abuse of older people.

The likelihood of abuse and neglect increases with age. As people get older, and especially for those who become more dependant, the likelihood of being taken advantage of increases. Abuse increases with age, with 78% of victims being over 70 years of age (Hidden Voices, 2005). As men live longer they are also subject to abuse and neglect and the reality is that men are less likely to report being abused. In 2002, 430 Canadians 65 years of age or older (361 men and 69 women) died as a result of “intentional self-harm” (Statistics Canada, 2002). Older men are at especially high risk for suicide. Elder mediation, when utilized to build family and community supports for these abused, neglected and often isolated older adults, shows promise for reducing these tragic numbers.

### **Ageism: A Factor in Elder Abuse and Neglect**

Ageism is rampant and a huge factor underlying the abuse and neglect of older people. Wikipedia defines “ageism” or “age discrimination” as “stereotyping of and discrimination against individuals or groups because of their age. It is a set of beliefs, attitudes, norms, and values used to justify age based prejudice and discrimination.” Ultimately it refers to a power imbalance. Butler (1969) calls it “bigotry”, while Nelson (2005) describes it as “prejudice against our feared future selves”. The stereotypical view of all older people as being frail, sickly, useless and a burden to society is clearly inaccurate yet it is espoused by many younger people from all walks of life including both paid and unpaid caregivers.

The Oxford Canadian Dictionary defines “senior” as an “elderly person, especially a person over 65”. Palmore (1999) maintains that such simple, outdated definitions of what is old have to change. Ageism is ingrained in our society. Many older adults accept judgmental beliefs and negative definitions about themselves thus perpetuating the various stereotypes directed against them (Butler, 1990). Elder mediators believe that during the process of mediation family members very often begin to see the person at the heart of the care in a new light. They often report not considering the older person in ways they did prior to the mediation. Dr. Judy Lynn Richards (Canadian Association for Gerontology Conference, 2009) promotes elder mediation as a strategy to reduce ageist behaviors by helping families to reconnect with their older loved ones on a more caring level. Increasing sensitivity towards the older family members will serve to reduce elder abuse and neglect.

## **B. The Contribution of Elder Mediation**

Elder mediation can assist families to be more resilient and with early intervention can be preventive, forming a buffer for older people who are vulnerable or at risk of abuse from a particular family member. Bagshaw reported on evaluations of family mediation in family law cases where there is domestic violence (Bagshaw, 2003 & 2009). The premise is that specialized family mediation models for the prevention of financial abuse of older people by a family member may be effective in some cases. That is, if the mediation is voluntary and older-person-centered, victim safety and protection is assured, power imbalances are addressed and advocates and other supports are used to ensure that the needs of the older person are central and the voices of older people, with or without capacity, are heard (Bagshaw, 2009).

To determine whether elder mediation is appropriate in suspected abuse cases, most elder mediators agree that a thorough assessment of the type and extent of abuse needs to be considered. It is generally agreed that in egregious cases elder mediation is not appropriate. Certified elder mediators report an openness to consider mediation—even if abuse or neglect issues has been identified—provided that each party involved in the mediation can be interviewed individually in order to conduct a proper assessment of the abuse or neglect. Whatever model(s) the elder mediator chooses to use, there is a stated bias to protect all parties, to look for the least restrictive option, and to address the constant struggle among the many stakeholders. At the same time the mediator needs to have concern for the older person's well-being and autonomy by promoting self-determination and ensuring informed consent (Kardasis & Trippe, 2009). Mediators have reported that by increasing the number of people involved with the older person, as well as the frequency of contact made by those offering service and support, that the likelihood of reducing abuse and neglect is increased (McIvor, 2008 and Soden, 2010). A further impact is that the family's awareness of what constitutes abuse and neglect is heightened. The mediator can then use this new awareness to craft additional agreements with the participants in order to address the identified concerns.

*I think the general population understands the very clear incidents and acts of elder abuse such as assault, but more subtle types of abuse such as financial and emotional are not as easily recognized and accepted. Also, people may tend to minimize elder abuse (CHPNA, 2010).*

Elder mediation has been known to reduce the likelihood of elder abuse and neglect in other circumstances including:

- Involvement of children or grandchildren in the control and decision making of financial affairs
- Family, extended family and colleagues wishing to make decisions around business affairs
- Living arrangements that are creating challenges for a variety of reasons

- Disagreements or misunderstandings of the outcomes of a will and its effects on the surviving partner and adult children
- Pressure to move residences and change plans
- The right to die with dignity
- Palliative care costs and dying at home concerns
- Caregiving and health issues
- Social isolation
- Noncompliance with medical regimens and treatment dropouts
- Increased tolerance to illness and discomfort to which older people have adapted
- Older parents parenting their adult children.

Contributions from the research including the Alaska Study, the Cornwall Project, the Australian Project, the British Project and the Atlantic Canada study all demonstrate how valuable elder mediation is in reducing the likelihood of abuse and neglect. Its effectiveness is heightened when such intervention is introduced sooner rather than later. Families reluctant to seek help—for whatever reasons—unwittingly increase the risk of stress and conflict that may in turn lead to incidents of abuse and neglect of older people. Researchers throughout Canada and abroad are becoming more interested in this area particularly to ascertain the ways in which elder mediation may serve to prevent or reduce such abuse and neglect in the future. Researchers will continue their commitment to learn from families as they utilize the service of elder mediation. It is anticipated that the extent of such research will grow as the population ages.

As awareness and use of elder mediation grows so will recognition that the more people that are involved in the day-to-day care, the less likelihood of the often-unrecognized incidences of abuse and neglect. In situations where some level of support or care is required, focused and individualized care can accommodate continued autonomy and self-determination.

### **Illustrative Vignettes**

*1) In one elder mediation session the issue to be discussed was use of Grandpa's car. In attendance were Grandma, her daughter Laura and her granddaughter, Emily who is aged 19 and has a 2-year-old son. (Laura is Emily's Aunt). Laura has been an ongoing advocate for her parents and discovered that her sister's daughter, Emily, had been borrowing Grandpa's car and taking money from him in a variety of sly ways. In an elder mediation session Laura was able to speak directly and candidly to her niece, Emily: "You drove the hell out of this car, it was Grandpa's baby. He kept it spotless and running smoothly all the time. He spent a lot of time and effort maintaining this car and in six months you manage to ruin it while making Grandpa pay for your gas and Grandma pay for the insurance... They believed you when you threatened to not allow them to see their great—grandchild anymore if they didn't help you out."*

*The grandparents had gone along with various situations created by Emily for more than a year, suffering from both psychological and financial abuse. They didn't call it abuse but their daughter Laura did. Laura decided to take things in hand and reported the situation to Adult Protection Services who recommended mediation as a first step. The mediation was helpful to the family and instrumental in developing a plan for stopping the abuse while maintaining the family relationships. The family went from discussing the likelihood of a restraining order (which the grandparents did not support as they believed it would cut all ties with their granddaughter and great-grandson as well as make them feel ashamed and embarrassed) to a supervised visiting schedule, which would allow the granddaughter and her young son to visit with her grandparents only when her aunt Laura was present. Over time the restriction was lifted, as the granddaughter was able to curb her behaviors and her mistaken belief "that her grandparents didn't need things because they were too old to enjoy them anymore."*

*2) In this elder mediation scenario one sister was slowly managing to take money from her mother at every opportunity. Mother was quite upset and aware of what was happening but did not feel able or willing to confront her daughter and would never agree her experience was "abusive". Meanwhile, Mother and her children had agreed to attend mediation to discuss mother's deteriorating health and emerging needs for care and support. At one of the sessions a discussion was held about the mother's concern that she was running out of money. As the conversation unfolded it was disclosed that the one sister would take mother shopping every week and place numerous items of her own in her mother's cart when she wasn't looking. When they arrived at the checkout Mother realized that these items were not hers but was too embarrassed to start an argument in front of the cashier. Inevitably, the mother would end up paying for everything. This happened repeatedly to the extent that mother is feeling guilty that one family member is getting more help from her than the others and the fact that these extra purchases causes her to run short each month. Mother does worry about her own financial security. The sister justified her behavior by insisting that, "Mother doesn't need all her income. It won't hurt her to spend some of her money on me because I don't make as much as the rest."*

*Through the process of mediation Mother felt safe enough to tell her daughter that sometimes she felt afraid of her. Before the mediation ended, the sister reluctantly identified her behavior was abusive. The mediation supported Mom in finding her voice, becoming more assertive, stronger and wiser about protecting her assets. Agreements were put in place to address any reoccurrences and reducing chances of this happening again. Elder mediation was the catalyst for a future plan to be put in place that would not only assist mother feeling secure about her care needs but it also served to reduce the likelihood of further abuse while maintaining and strengthening family relationships.*

*3) "Mom fell out of her wheelchair and I yelled at her—now stay there!!! I knew I had lost it and this wasn't fair to anyone, least of all to Mom. I had been getting more and more impatient with Mom over the past few months. It was in the mediation I felt safe enough to tell my brothers and sisters I couldn't do it anymore. It almost made me angry how quickly they all stepped up to the plate to help. Even though I was happy they were helping, I was angry that it took my almost cracking up to get them all involved. Even my two aunts started to take turns."*

Elder mediation has been shown to be an effective methodology in resolving elder abuse and has made it possible to resolve many elder abuse cases, with greater client satisfaction (McIvers, 2006; Bagshaw, 2010; Craig, 1998). Through involvement in elder mediation, participants' awareness of what constitutes neglect and abuse is heightened and families are empowered to develop preventative strategies that ensure improved quality of life and commitment to dignity and respect for all concerned. Research in this area continues to be on the rise—in search of verification of the preponderance of anecdotal information and testimonies from both participants of mediation and mediators themselves.





## SECTION 6: THE FUTURE OF ELDER MEDIATION

The findings of this paper lend much support to the significant potential elder mediation has as a method of addressing age related issues including elder abuse and neglect. More particularly the findings disclose that:

- Elder mediation provides a user-friendly, effective means of conflict resolution for families facing the stress associated with age related conflicts. Other methods of conflict resolution—litigation for instance—are generally seen to be ill suited to dealing with these types of conflict;
- The early application of mediation techniques to age related conflicts prevent those conflicts from escalating into abuse;
- Elder mediation offers resolutions that are specifically designed to the situations at hand and does so in a non-judgmental, safe, respectful and confidential fashion. In consequence, the specific solutions achieved tend to be more flexible and comprehensive than those generated by other conflict resolution models. This tends to result in agreements that are more durable;
- Elder mediation has been shown to have health and wellness implications as the process reduces the overall stress in family systems, enhances the functionality of the family support network, heightens interpersonal communications, and delays the utilization of institutional care;
- The appropriate application of elder mediation to age related conflicts appears to result in significant cost savings to families, to organizations and to governments.

A recent report of the Canadian Institute for Health Information concluded that, compared to 20 years ago, older Canadians can now look forward to a longer and better quality of life. The professional practice of elder mediation is well positioned to play an important role in ensuring that such a prediction comes to pass.

Neither the legal profession, nor the public at large, has yet to fully recognize the value of elder mediation—yet it is steadily progressing in stages just as elder law and private geriatric care management has done previously (Medford, 2004). As outcomes of research are published and families tell their compelling stories of how elder mediation positively impacted their quality of life, how it helped them to eliminate elder abuse and neglect, and how it helped to maintain and strengthen relationships, the service of elder mediation will assuredly grow to be utilized on a much larger scale.

*We used elder mediation to get beyond the crisis because we were going in circles for almost three years. We were at a complete stalemate. Decisions were being dragged out and dragged out and painful as could be. It was unbelievable that we could let ourselves get to this point. I was a whiskers hair from a nervous breakdown (Comment from Atlantic Canada Research, 2009).*

We have much to learn from what has already been done. The *British Columbia White Paper on Family Relations Act Reform* provides recommendations for mediation in relation to the prevention of elder abuse. It recommends that alternate dispute resolution processes in family matters be given greater emphasis and not simply to be seen as add-ons to the court process. More and more we will hear success stories from across the world (e.g. the Alaska Guardianship Project, the Cornwall Project, the Australian Project) and further confirmation that elder mediation promotes improved quality of life for all involved.

When participants in elder mediation agree to work together to provide optimal supports, compliance with the plan is higher than with other processes. One success rate for compliance with elder mediation is estimated to be about 80% to 85% (Cooper-Gordon, 2010). As professionals begin to understand the nuances unique to elder mediation, more families and organizations supporting older people will be encouraged to promote elder mediation as an approach in the prevention of abuse and neglect. The Canadian Network for the Prevention of Elder Abuse (CNPEA) for example published Outlook 2007 on “Promising Approaches in the Prevention of Abuse and Neglect of Older Adults in Community Settings in Canada”. Mediation of any kind was not mentioned. Three years later, according to CNPEA Board Member, Judy-Lynn Richards, they have recognized the value of elder mediation and now include it as a viable strategy in their delineation of “promising approaches” (Richards, 2010).

Elder mediation is a growing market for mediators who are working to expand their business practices. In addition, the field in Canada and the United States has been traditionally focused upon legal and financial aspects of changes in older adults’ lives and their transition to greater care and dependency on family, nursing home and other care options. Elder mediation is concerned with helping families resolve other issues that may compromise quality of life, and strives to accomplish this in a manner that best preserves the wishes of the older person as they deal with the myriad of challenges that can arise during later stages of adulthood.

There is a need to develop evidence-based practice on a national and international basis, so that the most broadly-based and up-to-date information can be shared and actioned. Future world summits would be a logical venue where interested and invested parties would be present for a conversation around how to best strengthen the continuum of care by supporting the service of elder mediation. By taking an international approach and reviewing what people have learned, as well as heightening our awareness of what needs to be learned, it is hoped that the profession of elder mediation will come to be understood and utilized on a much larger scale.

As diversity is embraced and it is further recognized that conflict presents opportunities for growth, the future of elder mediation remains promising. Much anticipated developments would include:

1. Increased support and promotion of comprehensive research and pilot projects;
2. Mandatory mediation for guardianship applications in all provinces. (Presently only in British Columbia and Ontario);
3. The development of a centre of excellence, a state of the art elder mediation centre where specialists in elder law and elder mediators come together to offer a program that can be replicated throughout Canada and across the world;
4. The provision of elder mediation training for employees within health care;
5. Canada continues to be recognized as one of the leaders in the elder mediation arena, elder mediation would be included in federal strategies as a crucial service on the continuum of care;
6. Elder mediation to be included as an option in the standards of care for community care, long term care and hospitals;
7. Increased community awareness of the value and importance of elder mediation;
8. Networking opportunities for practitioners, would-be practitioners, advocates and other stakeholders to share information, knowledge and resources;
9. The creation of a database of elder mediation practitioners and resources;
10. Best practices in elder mediation will be integrated into training and education modules;
11. Elder Mediation Canada's certification process will become the standard in Canada and promoted to elder mediators across the country thus ensuring credibility, consistency, and standardized practice for elder mediators;
12. Government policies would be developed to monitor and regulate elder mediation across the country;

Every theory and model of mediation perceives the world through its own subjective lens. Mediators with a psychological, management, community or other perspective tend to focus on issues that mean little to mediators with a legal perspective (Cloke, 2006). Viewing the world differently often makes it difficult for us to learn from each other. Researching for this project has uncovered gems of mediation practice spanning many diverse perspectives. Clearly we have much to learn from the insights and contributions of each other. A realistic vision for the future is the development of stronger and heightened networks with colleagues where collaborative energies are converged and the finest elder mediation practice possible is provided.

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**APPENDIX B: CODE OF PROFESSIONAL CONDUCT FOR  
MEDIATORS SPECIALIZING IN ISSUES OF AGING**

# **Code of Professional Conduct for Mediators Specializing in Issues of Aging**

**Last update: June 2010  
Third Edition**

**Endorsed by:  
Elder Mediation Canada  
Family Mediation Canada  
Mediation PEI Inc.  
Alzheimer Foundation of PEI  
Ontario Association for Family Mediation**

*(People are invited to use this document and asked to please quote the source.  
Ongoing input is encouraged and welcomed.)*

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## **1. Scope of the Code/Definitions**

This Code is a set of standards of professional behaviour. It applies to mediation involving any issues of aging as well as challenges that arise as a result of cognitive and other disabilities.

1. The *Code* enables the mediator to have clarification regarding the nature of ethical responsibilities.
2. The *Code* establishes principles that define ethical behaviour and best practices of mediators.
3. The *Code* serves as an ethical guide designed to assist mediators in constructing a professional course of action that best serves those utilizing mediation services and best promotes the values of the elder mediation profession.
4. The *Code* serves to govern the working relationships of mediators who specialize in issues of aging.
5. The *Code* serves to ensure that all those who engage in the mediation process benefit from evidence based models.
6. It is expected that a mediator will observe the spirit as well as the letter of the provisions of the *Code*.
7. It is expected that a mediator committing to this code will have special training in elder mediation and general issues of aging.
8. The *Code* serves as the basis for processing of ethical complaints and inquiries initiated against a mediator.

### **Definitions**

#### ***Abuse***

Abuse is defined as physical, emotional, psychological, financial or sexual exploitation of a vulnerable person.

#### ***Co-mediation***

Co-Mediation is the harmonious working of two complementary mediators who each have a clear idea of their role and responsibilities within the mediation process. The mediators offer a diversity of skills, experience and personality.

#### ***Culture***

Culture is defined as a set of values, norms, behaviours, and symbols shared by a group of people and influenced by ethnicity, gender, age, socio-economic status, national origin, religion,

immigration status, sexual orientation, disability, physical appearance, occupation or profession, geographic setting and unique family norms.

### ***Elder Mediation***

Elder mediation is a process—usually multi-party, multi-issue and intergenerational—whereby a trained elder mediator ensures, as much as possible, that all who need to be are present in the mediation—that all voices are invited. The mediator guides and assists participants to explore concerns and issues related to their cares and needs. This form of mediation often involves the many people related to the issues, such as family members, caregivers, organizations, agencies and a variety of service providers and networks. A successfully mediated outcome will result in mutually acceptable agreements that, as much as possible, supports everyone’s best interest while maximizing quality of care, quality of relationships and quality of life.

### ***Elder Mediator***

An elder mediator is a person who is professionally trained in elder mediation practices and its preventive and wellness aspects. The elder mediator facilitates communication among multiple participants which assists them toward mutually acceptable agreements.

### ***Elder Mediator Training***

Elder mediator training is defined as a process through which a person acquires the knowledge and skills required for carrying out the best practices of elder mediation.

### ***Family Conflict***

Family conflict is defined as a disputed issue within any family structure which may also involve extended family members, hospitals, care homes, agencies or organizations.

### ***Mediation***

Mediation is defined as a co-operative, problem-solving process in which the mediator assists participants in establishing open communication about the issue/concern and supports efforts for the achievement of voluntary, mutually agreeable and sustainable solutions to the conflict.

### ***Mild Cognitive Impairment (MCI)***

MCI is defined as a level of cognitive and/or memory impairment beyond that expected for normal aging but not sufficiently advanced to be called “dementia” or “Alzheimer’s disease”. It is estimated that 85% of people with MCI will develop Alzheimer’s disease within ten years, making MCI an important risk factor for the disease. Researchers believe that abnormal changes in the brain may begin as early as 5-10 years before there are signs of Alzheimer’s disease.

### ***Participant***

Participant is defined as the person/people involved in the elder mediation process who have equal standing in contributing to the resolution of the issue.

### ***Shuttle Mediation***

Shuttle mediation is a process in which the participants, with the assistance of a mediator, endeavor to reach an agreement without being physically brought together. The mediator may move between parties who are located in different rooms, or meet different parties at different times for all or part of the process.

## **2. Goals of the Elder Mediation Process**

- to be person-centered;
- to have conversations in mediation that result in fair and workable agreements that consider the participants' shared needs while addressing their immediate concerns;
- to be preventive in nature while promoting wellness;
- to recognize the responsibility of all participants to honor their agreements;
- to help the participants to communicate openly and to come to a deeper understanding about the situation being addressed;
- to recognize that not all mediations will lead to mutually agreeable outcomes.

## **3. Guiding Principles**

### ***Person-centered***

Supporting and honoring the people and partnerships amongst all concerned participants (individual, family, family support systems, care providers) while ensuring the preservation of self-determination, dignity and quality of life at all times.

### ***Respect***

Ensuring integrity and fairness and that all participants are respected and valued during the mediation process. Mediators are committed to using respectful, inclusive language.

### ***Responsibility***

Maintaining accountability for the elder mediation process and for a viable outcome.

### ***Equity***

Promoting equity of all participants in the mediation process regardless of gender, age, culture, religion or socio-economic status.

### ***Collaboration***

Working in partnership with others to support the best outcome as determined by the participants.

### ***Quality***

Ensuring the elder mediation process is based on the results of evidence based research.

### *Timeliness*

Ensuring the mediation process is conducted in an efficient and timely manner.

## **4. Professional Responsibility**

### **a) Relationship with Participants**

- Elder Mediators must have an arms-length relationship with all participants.
- Elder Mediators who are close to the participants must declare their interest or a perceived interest.
- Elder Mediators may rarely consider disputes involving close friends, relatives, colleagues or students. (It is recognized in some cultures and situations only an elder mediator of the same or similar culture will be accepted, and in those circumstances an existing familial or collegial relationship is permitted as long as there is full disclosure.)
- At no time should the elder mediator force an agreement among participants or make a decision on behalf of any participant.
- The elder mediator has a responsibility to ensure, as far as possible, that all participants are fully aware of the interests of everyone involved in the mediation and thus enabling them to appreciate separate and individual needs.
- The elder mediator has a responsibility to keep in mind the abilities and capacities of participants to engage in the mediation process.

### **b) Confidentiality**

The elder mediator shall not disclose to anyone who is not a party to the mediation any information obtained through the mediation process except:

- When the information discloses an actual or potential threat to human life or safety;
- When the participants agree to an open mediation process;
- When the information discloses actual or potential abuse;
- When ordered to do so by a judicial authority with jurisdiction to compel such disclosure, or required to do so by legislation or other law;
- When the participants have provided written consent as part of the mediation contract for the release of non-identifying information for research or educational purposes.

Similarly:

- Any information so divulged shall be limited to what is absolutely necessary or agreed.
- The elder mediator shall inform the participants at the outset of mediation of the limitations to confidentiality and under what circumstances confidentiality would be breached.

- The elder mediator must clarify with the participants that confidentiality extends not only to the information disclosed during mediation, but also to documents prepared specifically for or resulting from mediation except where otherwise agreed by all participants and the mediator.
- When appropriate, the elder mediator must ask the participants to sign a release form that allows the mediator to share information with professionals but who may or may not be involved in the process at the outset.
- With the participants' consent, the elder mediator may discuss the mediation with the participants' lawyer, and other expert advisors.
- Where the participants reach an agreement, the substance of the proposed agreement may be disclosed to their respective representatives as requested.
- The elder mediator must ensure that the storage and disposal of client records respects the confidentiality such records require and be in accordance with the mediators professional association standards.

**c) Impartiality**

- The elder mediator has a duty to maintain impartiality with respect to the participants and their issues.
- Notwithstanding the above, the elder mediator's responsibility is to ensure that all participants needs and positions are clearly and fairly presented so that participants appreciate the circumstances of all those involved.
- The elder mediator must ensure that vulnerable persons have an equal voice and a fair hearing of their concerns even if that requires the presence of an advocate for said person.
- Despite an elder mediator's best efforts, there may be a perception of bias by one or more of the participants. The elder mediator must address their concerns about bias and remind all parties of their right to terminate the mediation.
- The elder mediator must disclose to the participants any biases they have relating to the issues to be mediated and any circumstances that may constitute or cause a conflict of interest, real or perceived, to arise. Such disclosure must be made as soon as the mediator recognizes the potential for any bias or conflict of interest arising.
- The elder mediator must always disclose any prior or current professional or personal involvement which they have with any of their associates or with any of the participants.
- The elder mediator must refrain from mediating unless every participant expressly consents to the mediation after there has been full disclosure. In this case, the role of the mediator should be carefully distinguished from the prior relationship.

#### **d) Ability to Participate**

- When providing mediation services to people who are unable to give voluntary consent, elder mediators must include them or their representatives in decision making as appropriate. Elder Mediators must recognize the need to balance the ethical rights of participants to make choices. Elder Mediators need to recognize participants' capacity to give consent or agreement to mediation services.
- The elder mediator must explore whether the participants are cognitively capable of engaging in the mediation process or if there are family members who are able and appropriate to represent the person's wishes. If the elder mediator believes that any participant is unable to participate meaningfully, and if there is no appointed guardian *ad litem* or there is no agreement on who could be the spokesperson, they must suspend or terminate the mediation and encourage the participants to seek appropriate professional help. The elder mediator ensures that all voices are represented in the mediation process.
- The elder mediator must ensure that each participant has an opportunity to understand the implications of available options. Should a participant need additional information or assistance for negotiations to proceed in a fair, orderly and inclusive manner or for an agreement to be reached, the mediator must refer the person to appropriate resources.
- If an advocate has been appointed for a participant who is not capable of consent, the elder mediator has a responsibility to that person (the person who is not capable of consent). The elder mediator and the advocate will establish the level of participation in the mediation process. (Depending on the jurisdiction concerned, the mediator must inquire as to the provisions of a living will, Power of Attorney or similar legal documents that protect the wishes of the vulnerable person.)

#### **e) Fair Negotiations**

- The elder mediator must endeavor to ensure that the participants reach agreements with informed consent, freely, voluntarily, and without undue influence.
- The elder mediator has a duty to ensure procedural fairness—that each participant has an opportunity to speak, to be heard and to articulate their own needs, interests and concerns.
- The elder mediator has a duty to ensure balanced negotiations and must not permit manipulative or intimidating tactics on the part of any participant.
- It is a fundamental principle of mediation that competent and informed participants can reach an agreement that may not correspond to legal guidelines contained in the relevant statutes or case law or that does not correspond with general community expectations and standards. However, the elder mediator has a duty to help the participants assess the feasibility and practicality of any proposed agreement in the long and short term, taking cultural differences into account.

**f) Information and Advice**

- It is the duty of the elder mediator to actively encourage the participants to make decisions based upon full and available information, knowledge and advice.
- Every elder mediator has an ongoing obligation to advise participants of the desirability and availability of independent legal advice. While legal information may be made available to the participants, each should be encouraged, and in appropriate circumstances, obtain independent legal advice.

**g) Agreement to Mediate**

- The elder mediator must explain the mediation process clearly to the participants before agreeing to mediate their issues. In particular, the mediator should:
  - define and explain mediation and distinguish it from reconciliation counseling, conciliation, therapy, assessment, advocacy, adjudication and arbitration;
  - discuss the potential benefits and risks of mediation for the participants in light of their particular circumstances and the alternatives available;
  - discuss the confidentiality of mediation and the limitations on confidentiality;
  - advise the participants that they or the mediator have the right to suspend or terminate the process at any time;
  - make explicit the costs of mediation, and reach an agreement with the participants regarding payment;
  - advise the participants of the role and importance of legal advice;
  - discuss with the participants the mediator's specific procedures and practices, such as caucusing:
    - when and why separate sessions for individual participants may be held, including any rules relating to the confidentiality of such sessions;
    - when and why there are to be separate communications with the participants and their counsel;
    - when and why other persons are to be involved in the mediation;
- Any agreement regarding the confidentiality of the mediation sessions or any waiver of such confidentiality must be acknowledged by all participants.
- If the elder mediator feels, at any point, that a mediation process is beyond the scope of his or her professional abilities, s/he must inform the participants of that fact and discuss on best to proceed.



#### **h) Multi-party mediation**

- The elder mediator has a responsibility to the participants to ensure that all family members who are interested in providing support, or others who are primary caregivers to a dependent person, are invited to partake of the mediation process.
  - The elder mediator must encourage reluctant participants to participate by making them aware of the benefits of participation.
  - The elder mediator must be aware that not all participants need to be part of the whole mediation process: there will be an ebb and flow of participation.
  - The elder mediator must make the appropriate technology available so that participants who cannot attend in person can still contribute to the sessions.

#### **i) Written Summary**

- If requested, a written summary of the agreements will be provided.
- The elder mediator must inform the participants that any written summary of mediation is not intended to represent a legally binding document and therefore need not be signed except in some countries where required by law or court practice.

#### **j) Termination of Mediation**

- It is the duty of the elder mediator to suspend or terminate mediation whenever continuation of the process is likely to harm one or more of the participants, such as when mediation is being misused:
  - to dissipate or conceal assets; or
  - where, in the opinion of the elder mediator, one or more participants are acting in bad faith.
- The elder mediator may withdraw from mediation when they believe that any agreement being reached by the participants is unconscionable.
- The elder mediator recognizes that the participants have the right to terminate mediation. It is the mediator's duty to address concerns about the process with regard to termination, and respect this decision if, having attempted to have this discussion, it is the desired outcome of the participants.

#### **k) Mediation Fees**

- The elder mediator will explain the fees to be charged for mediation, as well as any related costs at the beginning of the contact. The mediator must also obtain agreement from the participants as to how the payment of fees is to be shared and the method of payment.
- No commissions, rebates or similar forms of remuneration shall be given or received for referral of people for mediation services.

- It is inappropriate for the mediator to base fees on the outcome of the mediation process.
- When a retainer has been collected before mediation services were rendered, any unearned fees should be returned promptly to the clients upon termination of mediation.

## **5. Inter-Professional Relations**

- The elder mediator must respect and invite complementary relationships between mediation, legal, mental health and other social services and care providers and be aware of community resources appropriate for referral.
- The elder mediator should promote co-operation and awareness with other professionals and be aware of their ethical responsibility to encourage clients to use other professional resources when appropriate.
- When more than one elder mediator is acting in a particular case, each has the responsibility to keep the other(s) informed of developments in the co-mediation process.

### **a) Cultural Sensitivity**

Elder mediators must communicate information in ways that are both developmentally and culturally appropriate through the use of clear and understandable language. When discussing issues where participants have difficulty understanding the language used by the mediator, the necessary services should be arranged (e.g., a qualified interpreter or translator) to ensure comprehension by participants. In collaboration with participants, mediators must consider cultural implications on the proceedings and, where possible, mediators should adjust their practices accordingly.

- The elder mediator must be sensitive to cultural influences that may affect the mediation process and try to develop a mediation process that is sensitive to their cultural circumstances.
- Elder mediators may withdraw from mediation when participants' cultural values are in conflict with their personal values; and must withdraw when the participants' cultural values are in conflict with this Mediation Code.

### **b) Outreach and Promotional Activities**

- The purpose of outreach concerning elder mediation should be to:
  - educate the public about the mediation process;
  - present the process of mediation objectively as one of several methods of dispute resolution.

- When advertising professional services, publicity should be restricted to describing the mediator and the services offered: name, contact co-ordinates, office hours, relevant academic degree(s), relevant training and experience in mediation, appropriate professional affiliations and membership status, advantages of the mediation process and any additional relevant or important consumer information.

### **c) Advocacy**

Advocacy refers to speaking or acting on behalf of a group or persons to ensure their rights are protected.

- Upon request, an elder mediator may from time to time act as advocate for a vulnerable person if it is apparent that the vulnerable person is being denied a full hearing or voice.
- An elder mediator must not continue with the mediation process until all participants are assured of a fair voice and must advocate for equity regarding input into the mediation process.
- An elder mediator may also act as advocate on behalf of the mediation process when that process is not understood by a group, person or organization.

## **6. Skills Required of the Elder Mediator**

An elder mediator must perform his or her services in a conscientious, diligent and efficient manner in accordance with the Code.

- Elder mediators must ensure that they are competent to deal with age-related and other specific issues involved throughout the process.
- An elder mediator shall have acquired substantive knowledge and procedural skills as demonstrated by the successful completion of a recognized training program.
- An elder mediator must be mindful of the wellness and preventive aspects of the specialty of elder mediation.
- A training program should be affiliated with a professional organization that has expertise and is dedicated to the specialty of elder mediation.
- Elder mediators are encouraged to be certified through a credible process where a consistent, recognized standard is upheld and promoted.

### **a) Communication Skills**

An elder mediator should possess the following communication skills and have the ability to use and apply each effectively. The elder mediator must be able to assess the cultural relevance and appropriateness of each skill, and to choose from and apply only the skills appropriate to the particular mediation and to the particular participants, as well as the particular culture:

- empathic listening and responding appropriately and without judgment to feelings, thoughts and situations;
- speaking in terms of interests, rather than in terms of positions;
- reframing negative comments in neutral terms;
- moving from weaknesses to strengths;
- clarifying information and assumptions;
- summarizing communications and consolidating areas of agreement;
- questioning, when culturally appropriate, to elicit information, feelings, fears and perspectives;
- clarifying participant discrepancies, distortions or inconsistencies;
- displaying empathy and understanding without personal partiality or bias;
- acknowledging the importance and validity of multiple participant perspectives;
- giving constructive feedback;
- working effectively with an interpreter;
- demonstrating and promoting sensitivity to verbal and non-verbal behaviours;
- speaking clearly, simply and effectively at the communication and comprehension level of the participants;
- regulating the pace and the flow of the communication in accordance with participant needs;
- to be able to acknowledge and appreciate that non-verbal communication is as central to the communication as the spoken word.

## **b) Relationship Skills**

An elder mediator should form, support and maintain effective relationships, using a person-centered philosophy with the participants by:

- creating rapport;
- establishing trust;
- demonstrating respect for the participants;
- encouraging mutual respect among all participants;
- being supportive and impartial;
- protecting and affirming all of the participants' rights to self-determination.

### **c) Content Management Skills**

An elder mediator should:

- obtain, identify, organize, analyze, prioritize and evaluate information;
- elicit from participants the meaning for them of their own culture in the context of the particular issue being discussed;
- assess the issues and options and reason logically;
- elicit information from other professionals (such as appraisers, actuaries, accountants, mental health professionals, child protection professionals, lawyers) in the mediation process;
- use and exchange information so that it broadens rather than limits the participants' options;
- Use relevant written materials appropriately;
- write clearly and concisely, using unbiased and neutral language;
- organize records and materials;

### **d) Process Skills**

An elder mediator should demonstrate the following process skills:

- ability to assist the participants in negotiating the process and in setting the ground rules and agenda for mediation sessions;
- ability to ascertain whether, as the elder mediator, s/he is qualified in terms of culture and knowledge of the issues to mediate the dispute;
- ability to help participants to explore interests, values and perspectives;
- ability to acknowledge and manage power imbalance;
- ability to assist the participants in converting positions into interests;
- ability to caucus appropriately;
- ability to assist participants in adhering to the agreed agenda and/or to renegotiate the agenda;
- ability to direct the process without overriding the participants' self determination;
- ability to encourage and guide the participants through the mediation process;
- ability to assist participants in working with other professionals/experts as required;
- ability to use effective co-mediation or conciliation skills when required;
- ability to evaluate self, participants and the process.

## e) Conflict Management Skills

An elder mediator should have the following conflict management skills:

- ability to know how and when it is culturally and personally appropriate to:
  - allow or disallow emotional ventilation;
  - focus attention of the participants on the future rather than the past;
  - focus participant attention on the problem, not on the people;
  - to defuse participant tension and distress;
- ability to manage crises;
- ability to assist the participants to become more integrative and co-operative;
- ability to enable the participants to gain an understanding of the implications of withdrawing from mediation;
- ability to help participants to overcome impasses;
- ability to assist participants to understand the consequences of their decisions;
- ability to assist participants with option-building techniques such as:
  - broadening the number or scope of options;
  - building new solutions by integrating the interests of all participants;
  - trading concessions of lesser importance for concessions of greater importance;
  - bridging the positions and interests of the participants;

## 7. Training Requirements and Components

### a) Pre-requisites

A formal degree in a related discipline is required as a prerequisite to elder mediation training. Specialized training and experience in issues of aging is necessary.

### b) Minimum Training

#### ***Basic Mediation:***

- at least 100 hours of basic conflict resolution and mediation theory education and skills training, including at least 10 hours' training on the cultural dynamics of conflict and conflict resolution processes;

- at least 100 hours of further related education and training, including at least 21 hours of training on abuse and control issues, which may include:
  - safety issues in mediation;
  - abuse and danger indicators;
  - the dynamics and effects of abuse on all family members;
  - assessment tools and techniques to detect abuse;
  - cultural factors that affect disclosure and options in abuse cases;
  - criminal and civil procedures and protection orders (including strengths and limitations of) that may be of assistance to victims of abuse;
  - ethical rules and standards of practice for mediators in abuse cases;
  - adult guardianship
  - processes and methods that can be used to provide additional protection to participants in mediation processes;
  - safety planning and safe referral techniques;
  - referral sources for assistance to abused family members;
- at least 7 hours of training on ethical issues relating to the mediation process;
- at least 7 hours on drafting memoranda of understanding;
- additional training in cultural understanding that promotes awareness, acceptance of, and respect for cultural values and beliefs;
- annual continuing education to ensure that mediation skills are current and effective.

Elder Mediation—examples:

- dynamics of normal aging and family relationships;
- Alzheimer’s Disease and other progressive dementias;
- elder abuse;
- community support services for seniors and their families;
- living arrangements;
- grief and loss issues;
- guardianship;
- legal issues related to health decision making and power of attorney;
- culture and aging.

Sample details to be considered for inclusion in training:

- Dynamics of Normal Aging and Family relationships
  - issues of awareness regarding physiological changes
  - issues of changing family roles
  - issues of ageism
- Dementia and Alzheimer disease
  - referral to screening for dementia and knowledge of assessment tools
  - issues regarding age related memory loss versus dementia and Alzheimer disease
  - issues of family response to the elder with a dementia
  - impact of dementia on quality of life on the person and the family
- Elder Abuse
  - issues on the physical, sexual, and financial variants of elder abuse
  - issues dealing with neglect and mental abuse
  - issues regarding the under reporting of elder abuse
  - issues regarding the criminal code and elder abuse
  - understanding the root causes of abuse
- Grief and Loss
- Community support services
  - awareness of services and service providers
  - issues around communication with service providers
  - issues of family communication re selection and payment of services
  - issues of nursing home placement requirements
- Living Arrangements
  - issues of communication regarding choice of living arrangements
  - issues regarding environmental modifications of the family home and maintenance of the family home
  - issues regarding retirement home, and/or nursing home placement
  - issues around satisfaction with care in a care facility



- Legal Issues: Health Care Decisions and Power of Attorney
  - issues about designation of health care decision maker
  - issues about designation of power of attorney, and financial management
  - end-of-life decisions, living wills
- Culture and Aging
  - understanding influence of culture on response to aging parents
  - appreciating unique ethnic value systems and perspectives
  - issues of traditional versus modern approaches to family life

**c) Training Boundaries and Options**

- While elder mediators may have a diversity of education and training, they must refer to other professionals for services they are competent to provide while acting in the capacity of an elder mediator.
- All potential elder mediators should obtain training in elder mediation from programs that are taught by people clearly knowledgeable in the field and have learning objectives that have received positive and high evaluations from participants.
- Elder mediators may include courses specific to elder mediation taken as part of their professional degree or elder mediation related courses offered by community colleges and universities.
- Elder mediators may consider participation in workshops, training institutes, and conferences that deal specifically with mediation and elder mediation and issues relevant to the practice of mediation.

**d) Core Knowledge**

- An elder mediator should demonstrate knowledge of the literature, research, skills and techniques associated with the following:
  - elder mediation theory and philosophy
  - negotiation, conciliation and conflict management
  - mediation theory and methodology
- Further, an elder mediator should have a good working knowledge of:
  - issues of aging and family dynamics;
  - legal information pertaining to the issues being mediated;
  - the dynamics and effects of abuse, coercion and control in families and institutions;
  - multicultural issues;

- professional, academic, community and educational resources for referral or use within the mediation process.
- participant negotiating styles and mediator/participant interaction;
- the implications and meaning of culture for the mediation participants, with particular attention to issues such as:
  - the appropriateness of direct face to face expression;
  - confrontation and disclosure;
  - norms in relation to the expression of emotion;
  - patterns of linear and non-linear expression and argument;
  - culturally appropriate conflict resolution communication patterns and methodologies;
  - actual and perceived power imbalances produced by perceptions of cultural or socio-economic status and power;
  - cultural misinterpretations between or among participants;
  - the potential for misinterpretations of verbal expression and body language.
- public concerns regarding mediation practice;
- other conflict resolution options;
- ethical and moral issues that may arise during mediation.
- ethical responsibility to refer to appropriate providers

## **8. Knowledge Regarding Elder Abuse**

Elder abuse should be an immediate concern when a mediator is asked to mediate an elder mediation issue that involves older family members. It is important to be particularly diligent when the issues center on a family member who may have a cognitive impairment. Therefore, the elder mediator must have the following skills and awareness regarding elder abuse:

- ability to assess for abuse and evaluate the appropriateness of mediation;
- competence to take steps to ensure that information about dates, times, locations of abuse assessments, residential addresses and telephone numbers are not disclosed, unless abuse is present, to other family members or participants in cases involving abuse;
- an awareness as to when and if to refer the case to another professional, with expertise in abuse matters, for intake screening and assessment to determine whether abuse has affected a participant's ability to participate effectively in mediation;
- an understanding that mediation of the issue of abuse is never appropriate.

## Where Abuse is Identified or Suspected

- When in doubt, the proper course of action is always to assume that face-to-face, facilitated elder mediation will be inappropriate in cases involving past or present abuse. Alternatives to mediation such as shuttle mediation may be offered in serious abuse cases, but only by practitioners who have specialized education and training in this area.
- Elder mediators should inform all participants that mediators are not neutral in issues of abuse or safety and have a legislative duty to report past and present abuse, (if relevant that a vulnerable person is in need of protection under relevant legislation) and threats of future abuse or harm.
- Elder mediators have a duty to step out of a neutral role and to act to protect the vulnerable if a formerly abusive partner engages in intimidation or abuse during a mediation or shuttle negotiation process. Usually such behaviours will result in ending the mediation and referral to a service or process that offers additional protection.
- The elder mediator must take special care to ensure that any agreements reached in a case involving abuse are products of genuine agreement and not merely the product of financial or psychological vulnerability.

## 9. Wellness and Prevention

The specialty of elder mediation has a preventive component. If people know about the service and are referred early enough, conflict is often prevented. Participants and families attending mediation sometimes come to agreements as to how they will share the care before the care is needed. Present care needs are identified and often anticipatory care needs are discussed. Workable plans that include as many as wish to participate are put in place. This in turn, impacts on the quality of life for all who participate in the process. Elder mediation is emerging internationally as an important step in the continuum of care, prevention and quality of life.

Many national organizations are aware of the value of elder mediation and are anxious to include elder mediation as part of a continuum of quality care. However, they first need to be convinced that the elder mediators to whom they are referring are informed and qualified both in mediation practices and processes as well as are knowledgeable of—and sensitized to—age related issues.

*People working in the Alzheimer's Society need to feel confident that if they suggest elder mediation to families, the elder mediators have been trained and sensitized to the unique needs of people living with dementia and the families who support them. Having an easy-to-access list of mediators trained in elder care would be very beneficial.*

—Mary Schulz, Senior Manager, Information, Support Services and Education, Alzheimer Society of Canada

*Elder Mediators are becoming more and more sensitized to the necessity of certification and thus the world now has access to more elder mediators who adhere to a standard. It is an ethical responsibility for all who work with families to inform them about mediation. As referral agents no one has the right to decide for the family whether they would need*

*mediation or not. This is a family decision that can only be made if people understand what mediation is. Then, the family are the ones who decide if they are willing to use the mediation process, pay for the mediation process, and take the time to discover where this might lead them.*

—Lynn Loftus, (Presentation at the ADI 2007 International Congress, Caracas, Venezuela.)

***(People are invited to use this document and asked to please quote the source.  
Ongoing input is encouraged and welcomed—judy@peopleconcepts.ca)***

### ***Thank-you***

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**APPENDIX C: ELDER MEDIATION CANADA  
CERTIFICATION AND TRAINING STANDARDS**

## ELDER MEDIATION CANADA CERTIFICATION AND TRAINING STANDARDS

*(Consultation and collaboration with stakeholders held over several years—with input both nationally and internationally—led to the development of the following document. It is considered a living document and is updated on an annual basis.)*

### Background

In the early 1990's the service of elder mediation was recognized as being very helpful to families and others addressing age related issues. Consistently, evaluations from those who used the service reported how mediation with age related issues had heightened awareness of situations, improved family communication and stimulated more involvement and support from previously uninvolved family members. Puzzled families would lament, "Why haven't we heard of this sooner?" Participants in the process were surprised to the degree that mediation helped bring focus to their needs and how it challenged everyone to assist in reducing stress while heightening quality of life.

Included in many of these mediations were people living with early stage, progressive dementias. Mediators and other stakeholders were concerned as to when it was appropriate to include a person if there was threat of due harm.

*I am so appreciative that dementia in the later to severe stages is highlighted in certification standards with regard to the person diagnosed attending mediation. I believe that to involve persons when they are too impaired is very inappropriate, ineffective and often harmful. We have an ethical responsibility to do no harm. This is so important for elder mediators to understand if they choose to work in this specialized area.*

—Gerontologist, Jena Winterburn

*I will never forget the testimony from the woman, [Pat Mutch] and her family who used mediation. What an inspiration and reminder to us how important it is to be informed mediators.*

—Ernest Tannis, lawyer, mediator, and radio show host

Elder mediation has a strong wellness and prevention component that can often go unnoticed. It assists families in identifying ways they could support each other while keeping levels of conflict to a minimum. The families who agreed to have a mediator assist them with focused conversations reported a marked decrease in stress levels. For those dealing with moving a family member to community or nursing care—a much feared and drastic move—the outcome of mediation was often reported to be an increased likelihood of the person being cared for at home longer. Also significant was there was a heightened ability to distinguish from when people needed "counselling" and when they needed "mediation".

During a workshop in 2007 at the Alzheimer Disease International convention in Caracas, Venezuela participants representing organizations spanning the globe expressed concern about referring to mediators when there was no standard or roster in place for mediators specializing in age related issues. Meanwhile there was considerable excitement at the prospect of elder mediation assisting families and professionals addressing age related issues. The need for professionally trained mediators with sensitivity to these issues was identified along with the need to develop a plan for a certification process. As there was no elder mediation certification process in place, organizations reported being hesitant to refer for fear that the mediators would not be adequately trained or sensitive to the issues that might arise—especially with chronic illnesses and progressive dementias. The first World Summit & Symposium on Elder Mediation (Ottawa, Canada—May 2008) supported this thinking and called for action.

In late 2008 the code was updated, elder mediation and specific training opportunities were hosted, and groundwork that gave considerable support to the development of a pilot certification process began. Family Mediation Canada was supportive through the entire process and several of its Board Members donated time to the project. Family Mediation Canada gave permission to adapt materials as needed and many of their Board members have stayed involved offering expertise along the way.

# **ELDER MEDIATION: CERTIFICATION AND TRAINING STANDARDS**

## **Vision**

To inspire excellence in the practice of Elder Mediation in Canada.

## **Mission**

The mission of *Elder Mediation Canada* is:

- To advance the practice of elder mediation in Canada as a credible, distinct specialty that promotes dignity, respect and optimal health for all people accessing this service.
- To improve the qualifications and effectiveness of mediators through the development of high standards of ethics, conduct, education, and achievement.

## **Goals**

1. To advocate for the profession and specialty of Elder Mediation both nationally and internationally.
2. To raise awareness of Elder Mediation as an important option on the continuum of comprehensive care.
3. To alert professionals working with older adults of the ethical responsibility to promote mediation as a viable option and to promote the prevention of elder abuse.
4. To promote adherence to a code of professional conduct
5. To facilitate the sharing of elder mediation knowledge that exists, through email, webinars, workshops, symposiums, conferences, meetings, professional contacts, papers, discussions, publications, a virtual institute and other media.
6. To promote elder mediation research that evaluates how families using the service experienced mediation and how mediation can influence quality of care, how they found it helpful and how it can be improved.
7. To maintain a certification plan for elder mediators interested in maintaining high standards of education, conduct, ethics and adhering to a consistent, credible, national and international standard.
8. To provide ongoing collaborate and consultation opportunities.



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. Elder mediation typically involves larger numbers of participants including older people, family members, friends and others who are willing to give support. Depending on the situation it is not uncommon to include paid caregivers, hospital staff, nursing home and or community care representatives, physicians and other professionals. Elder mediation is a confidential process unless participants otherwise agree.

Over the past 20 years mediation with age-related issues has been emerging as a distinct specialty in the field. Elder Mediation is now being recognized internationally as an important step in the continuum of care—promoting wellness, developing prevention strategies and enhancing quality of life. The focus is on addressing concerns and issues while maintaining and strengthening the myriad of relationships critical to the well-being of the older person. Typically it involves many players who are concerned or affected by unexpected or unresolved events, or a multitude of other issues including:

- 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
- Estate issues
- Driving
- End of life decisions
- Guardianship

*Elder Mediation is based on a wellness model that promotes a person centered approach for all participants—tapping the collective creativity while exploring the many ways that will best work to enhance continued quality of life for all concerned. Often family members who come to the table with poor communication skills are surprised at how, with the help of a mediator, they actually learn new ways of talking with each other. Participants in the mediation identify topics they wish to discuss or issues they wish to resolve and work towards reaching agreements that attempt to promote well-being and quality of life. Ideas for ways of helping are generated as people come together and talk about how they can move forward together supporting each other, often through some very difficult times. Elder Mediation promotes communication and the involvement of more family members and others who wish to help. It is becoming more common for hospitals, nursing homes, or community care homes to participate in and often to promote and initiate the process.*

*Elder mediators who are trained in this specialty apply their highly developed people skills to the intricate life issues facing older people with sensitivity, acute listening skills and inclusive language to make sure the mediation flows respectfully. Elder Mediation is designed to create a better way to provide for co-operative conversations and conflict resolution strategies relating to issues of aging. Research is underway to explore the benefits experienced and reported by family members. It is well recognized that the level and intensity of family support is a very important factor in the older person's adjustment to changes in their way of life. Family members who may have been uninvolved for years are invited to become involved. It is heart-warming and not surprising how many family members and close friends answer the request to participate in mediation and to provide support. Relationships are strengthened, close bonds are established, and in some situations, bonds are re-established. Family and organizational resilience can be at its best.*

—Judy McCann-Beranger

Elder mediators use a client centered model of mediation where all who are willing to be involved in the process are present, where all interests are considered and any safety, abuse issues, imbalances of power or vulnerabilities are screened, cultural perspectives and implications are considered and addressed before the decision to mediate is made. The elder mediator discloses any perceived or real conflicts of interest and promotes full disclosure of information between and among all the participants. With regard to safety and well being, when apprehension surfaces by any of the parties the elder mediator addresses such before agreeing to mediate. When the mediation proceeds elder mediators stay sensitive to cultural matters that may affect the process. The elder mediator refers to independent legal advice and refers to another mediator if s/he does not have the expertise required to accept the mediation.

Elder Mediators are committed to act in ways that are:

- **Empathic**—The feeling or capacity for awareness, understanding, and sensitivity one experiences when hearing or reading of some event or activity of others.

- **Person-centered**—Supporting and honoring the people and partnerships amongst all concerned participants (individual, family, family support systems, care providers) while ensuring the preservation of self-hood, dignity and quality of life at all times.
- **Respectful**—Ensuring integrity and fairness and that all participants are respected and valued during the mediation process. Mediators are committed to using respectful, inclusive language.
- **Responsible**—Maintaining accountability for the elder mediation process and for a viable outcome.
- **Democratic**—Promoting equity of all participants in the mediation process regardless of gender, age, culture, religion or socio-economic status.
- **Collaborative**—Working in partnership with others to support the best outcome as determined by the participants.
- **Quality** -Ensuring the mediation process is based on evidence-based practice and is accessible and focused on an achievable outcome.
- **Timely**—Ensuring the mediation process is conducted in an efficient and timely manner.

### **Certification Process**

A certified Elder Mediator (Cert.EM) has at least 100 hours of basic mediation/family mediation training and an additional 100 hours of age related elder family mediation training including: Family life cycle, & intergenerational dynamics age-related, elder abuse, family and elder law, power imbalance, grief and loss, ageism, guardianship, dementia and chronic diseases, financial and state issues, ethical issues.

Certified elder mediators have current membership in their national/country mediation organization and adhere to the code of professional conduct. They hold insurance for the practice of mediation.

To enter the certification process the Candidate will submit a completed application along with curriculum vitae, proof of insurance and three letters of reference. The candidate is expected to hold a university degree in a related discipline unless the equivalent in work and life experience can be supported, validated and agreed upon. A previous mediation certification from another body would be considered an asset as well as an approved practicum or supervision term or proof of a minimum of ten elder mediation cases that each averaged not less than ten hours.

Elder mediation certification candidates will have opportunities to demonstrate their empathic qualities, values, mediation skills, ability, and knowledge. They will demonstrate their commitment to self-empowerment and self-determination and demonstrate learning in the general area of age related issues and the family life cycle.

The applicant will be required to present a role play or live demonstration that will be evaluated by at least two approved assessors. This can be done by submitting a role play video of an elder mediation for evaluation. A self evaluation of the segment will be requested.

(When the applicant does not meet minimum requirements an interview will be held and the role play may be repeated upon request and within ten months of the original demonstration.)

After the skills assessment has been successfully completed a written, three hour exam will be required.

Recertification and proof of annual training and practice is required every four years. Knowledge of evidence based research and its implications to the practice of elder mediation will be expected. At least 17 hours of training and professional development is necessary as well as an average of ten elder mediations/co-mediations/coaching opportunities a year.

Assessment records will be held in confidence by the certifying administrator for a period of two years and a cover file will be maintained indefinitely for historical records.

The Certifying administrator will ensure all documents are received in a timely fashion and will notify the co-chairs of the certification committee when all documentation are in order and completed for endorsement from the certification committee. Notification of successful completion is done by the certifying administrator or either of the co-chairs of the certification committee.

Any concerns or reports of inappropriate ethical conduct will be investigated, time lines will be considered, and the certification committee will bring a recommendation to the Executive Committee for an in camera decision.

Elder Mediators must ensure that they have the specialized education, training and skills necessary to undertake specialties within the specialty—for example guardianship.

The certifying administrator will be a resource to the certification committee. The certification committee will oversee the development of policy and updating of policy to recommend to the Board of Directors. They will review and recommend updating on an annual basis with regard to suggestions for the code of conduct, the exam and any other part of the certification and evaluation process. The committee will address any issues that are presented by the certifying administrator that arise with regard to the certification of candidates and provide a recommendation to the executive of the Board when appropriate.

The certifying administrator will be a certified family mediator and either a certified elder mediator or elder mediator candidate with demonstrated interpersonal skills and ethical responsibility. S/he will manage the certification process, maintain the certification records, update the certification roster, and be the initial point of contact with regard to the candidates. The administrator will work directly with the certification committee, keeping a current roster of

certifying assessors and trouble shoot as needed. The administrator will ensure that the certifying assessors hold current certification in elder mediation, are current in their practice, committed to continuous learning and willing to take training as necessary to update their skills.

Concerns regarding certification will be addressed by the Certifying Administrator who will consult with the Co-Chairs of the Certification Committee.