

DECISION-MAKING AND CONFLICT RESOLUTION IN CHILD WELFARE: THINK TANK II SUMMARY

THE WESTIN BAYSHORE
VANCOUVER, BRITISH COLUMBIA
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INTRODUCTION

On May 28, 2008, Think Tank II was conducted at The Westin Bayshore in Vancouver, British Columbia, immediately prior to the commencement of the annual conference of the Association of Family and Conciliation Courts (AFCC). Think Tank II is a continued effort by a group of organizations and individuals engaged in sharing their knowledge, expertise, and wisdom on child welfare mediation and family group decision-making processes.

Think Tank I was conducted over a two day period on September 25-26, 2007 in Columbus, Ohio, immediately prior to the regional AFCC conference in order to discuss the results of a survey that was conducted on child protection decision-making programs and supplemented by a series of in depth interviews. This first meeting resulted in the group's commitment to creating an ongoing structure to discuss, consolidate, and disseminate the lessons learned from over 25 years of experience in child welfare conflict resolution and decision-making. A number of committees were formed to accomplish this including a steering committee, a fund raising committee, a group to look at coordination of different approaches, and a group to coordinate proposals for the AFCC in May.

Think Tank II was comprised of some of the same attendees from Think Tank I, as well as some new attendees, all of whom are experienced judicial officers, practitioners, administrators, researchers, and policy makers from around the globe. Attendees came from all parts of the United States, Canada, and New Zealand. The names of all attendees are listed at the end of this Report.

EXECUTIVE SUMMARY

This process was intended to begin a dialogue on the mission and goals of the group and how best to accomplish these. Additionally, the group engaged in both large and small group work sessions that focused on creating a formal organizational framework, including specific consideration of institutional/organizational affiliations, partnerships, location, and internal/external support and resource mechanisms; membership and participation; leadership and decision-making process; strategic, financial, marketing and event planning; and research/information sharing. There were two guest presenters at Think Tank II. Jerry McHale, the Assistant Deputy Minister of Attorney General, key leader in dispute resolution and justice transformation gave a presentation. Natasha Mallal, a Graduate Co-op Student of the Dispute Resolution Office, BC Ministry of the Attorney General, gave a research presentation on youth involvement and participation in child protection mediation. The group also collaborated with Howard Davidson of the ABA Center on Children and the Law and Andrew Schepard, Professor of Law at Hofstra

University School of Law, on how to empower and involve youth in mediation. Finally, the group discussed its next steps.

Attendees discussed various partnerships, affiliations, and sponsors that could further the work of the Think Tank. They include university programs, governmental entities in both Canada and the United States, organizations of judges and attorneys, agencies for social welfare, and national and international initiatives for child protection. Several participants committed to making contact with a number of organizations. Some were concerned that accomplishments and decisions must be made before approaching potential partners. Accomplishments and decisions include the desire to define a clear set of goals and objectives, identify the primary organization and supporting organizations, and complete more research. By doing this, child protection conflict resolution be seen as a legitimate and viable option.

Since the last meeting, Think Tank leaders formed a mission statement. Attendees made recommendations for an updated version at Think Tank II. They wanted the mission statement to “speak to” all stakeholders and not just one or a few, utilize wording that does not vary too much from one jurisdiction to another, and be clear about a firm sense of cultural sensitivity. The updated mission statement reads as follows,

MISSION AND PURPOSE

The mission of the child welfare collaborative decision making network is to promote safety, permanency and the well-being of children, through the development of decision making and conflict resolution processes that engage and empower families and youth; that are culturally appropriate; and that enable families and youth to fully participate in decisions that impact their future.

The Child Welfare Collaborative Decision Making Network:

- Convenes interdisciplinary professionals to advance and refine practices related to decision-making and conflict resolution in child welfare cases.
- Encourages a collaborative approach to problem solving among professionals.
- Identifies best practices and innovative approaches.
- Promotes professional education and networking.

Another topic of discussion at the Think Tank was strategic and events planning. The group is looking to meet annually, either independently or in conjunction with other meetings. Participants want the annual meeting to allow time for discussion on the current state of the field, best practices, gaining legislative support and funding, and moving the field into the future. People want to establish the larger goals and objectives during these face-to-face opportunities also. This will enable Think Tank participants to speak with a common voice. Without this legwork, partners and sponsors may be less likely to work with and support the Think Tank. Attendees expressed interest in having solid leadership for future encounters and establishing a committee structure. More dialogue can take place using this method.

Two ways that participants see the Think Tank moving forward are through small group dialogues and a useful website. Small groups can dialogue on topics such as confidentiality, research, model service integration programs, and collaboration among professionals. By conversing via telephone, web, or face-to-face meeting, they can make gains on the overall goals and objectives of the Think Tank. Developing a website for the Child Welfare Collaborative Decision Making Network is key to gaining exposure and sharing important information and resources. The website could include web casts, case studies, an application for membership, and a directory of programs and members. A university or other “neutral” entity could host the website, lending credibility to its resources and membership.

The two guest speakers, Jerry McHale and Natasha Mallal, shared their experiences and research with the attendees. Mr. McHale stressed the importance of collaboration on all levels of a conflict resolution program, change through legislation, and evaluating and reevaluating to guarantee success. His ideas were motivating, and reminded the group of the potential impact of sharing stories related to the successes of mediation. Ms. Mallal’s presentation focused on youth involvement in child protection mediation. Her focus groups, conversations, and other research strongly support the effective incorporation of youth into the process. According to Ms. Mallal, children should participate in the process and the professionals in the room should be well equipped to talk to young people. Both Mr. McHale and Ms. Mallal shared information that helped attendees think about their work in another light or support what they are already doing. Andrew Schepard and Howard Davidson reinforced the comments made by Ms. Mallal in regards to child protection cases and youth involvement in juvenile cases. According to these experts, an important step in any of these processes is providing an opportunity for the youth to share their perspectives. Mr. Davidson added that more research is necessary to understand the role of youth in mediation and how to incorporate them into public policy and practice.

After the presentations, attendees broke into small groups and discussed specific topics of interest. The following are highlights from each discussion:

- *Quality assurances/standards/program evaluation*: This group set goals for their future work. They want to divide and conquer the research the needs to be done. There was a clear message that this group wants to overcome problems related to “reinventing the wheel” by sharing templates and program designs. In hopes to improve quality and standards, this group needs to obtain funds. Research and evaluation can help to raise funds.
- *Intersection between mediation and family group conferences*: Similar to the findings of the first Think Tank, these attendees are confident that these two processes can work together quite well. While they typically “live” within different entities, there are models that can be studied so that other programs can develop both processes in the same organization. Attendees would like to see people trained in both disciplines, a longitudinal study of these processes, and more research on both. Additionally, they want more dialogue on the subject.

- *Youth Involvement*: Attendees focused on the importance of involving the children’s perspective, whether they were physically present or not. The conversation had many parallels to the presentations by Mallal, Schepard, and Davidson. The group also brainstormed “other” ways to include a child’s perspective, such as youth forums and guardians ad litem. To involve youth more effectively this small group wants to explore new ways to empower children, produce standards for child protection mediation trainings, and initiate legislation to guarantee the child’s voice at the mediation table.
- *Financial/membership*: This group has had a fair amount of success obtaining money. Most of the money has been spent, so additional work needs to be done. Fundraising and partnering with various organizations can be an important step in continuing the Think Tank process. This group held firm that a strategic plan needs to be developed before additional funds are solicited. This way, potential partners can see the alignment with the Think Tank and their endeavors.

Think Tank II attendees walked away with various action steps to move the work forward. They need to share information (resources, contact information, etc) and expand the scope to gain new members from various stakeholder groups. Additionally, attendees walked away with a renewed sense of purpose and desire to meet in the future. Overall, this second gathering of the Think Tank prompted further discussion on how this group can organize themselves for a better chance at success in promoting the field of child protection collaborative decision making.

THINK TANK II PROCEEDINGS

Julie Macfarlane, Ph.D., LL.M., was the facilitator for this process. Dr. Macfarlane is a law professor at the University of Windsor in Ontario, Canada, but has been on research leave studying collaborative family law, Islamic marriage, and mediation processes. She also has a mediation practice and is author of a new book, The New Lawyer: How Settlement is Transforming the Practice of Law.

After welcoming comments and introductions, Dr. Macfarlane provided an overview of the agenda items. They included:

- PARTNERSHIPS, AFFILIATIONS & SPONSORS
- MISSION STATEMENT
- STRATEGIC & EVENT PLANNING
- RESEARCH PRESENTATIONS
- SMALL GROUP SESSIONS AND DEBRIEF
- NEXT STEPS

PARTNERSHIPS, AFFILIATIONS, AND SPONSORS

*The following is a summary of possible partners, affiliations, and sponsors discussed in Think Tank II. A * denotes the group member responsible for contacting a prospective partner/affiliate/sponsor.*

- Association of Family and Conciliation Courts (AFCC)

- Werner Institute for Negotiation and Dispute Resolution
- National Council of Juvenile Court & Family Judges (National Council)
- National Center for State Courts (NCSC)
- American Bar Association
- American Humane
- United States Department of Human Services/Humane Association [*Howard]
- Child Welfare Protection League [*Bernie]
- Canadian Child Welfare Association [*Jerry]
- Association for Conflict Resolution [*Greg]
- Department of Justice CFS
- International Congress on the Right of the Child [*Peter]
- Child Welfare League of America
- Child Welfare League of Canada
- Child Protective Services
- Council of the State Court Administrators
- Council of the State Court Chief Justices
- Additional partnerships within the federal judicial systems in both Canada and the United States
- Additional partnerships on the provincial (Canada) or state (United States) level

Comments about the partnerships, affiliations, and sponsors:

- Limit the number of partners, so that we don't become too overwhelmed
- Find some way to legitimize this process within the court system
- Need collaborative partnerships with diverse representation
- Have an administrative entity that is neutral, such as a university

Recommendations regarding Infrastructure:

- Establish clear goals for the next three-year period
- Designate a primary administrative site, while other organizations serve other roles
- Visit a Canadian program (if you are from the U.S.) and visit a United States program (if you are Canadian)
- Decide if we want one or multiple universities actively involved
- Research
- Review the National Center's model and adapt it to our needs
- Build lobbying capacity
- Input this process into federal legislation (there are federal laws up for reorganization such as US Child Abuse Prevention Act)
- Determine what entity or entities will collect information, research, and contacts
- Decide the two major questions being posed: 1) Where does the money go? and 2) Where is the database?

- Use the AFCC because it is the only international group for our purposes. We might have some segmenting if we don't go through them
- Create our own identity by distinguishing ourselves from AFCC and give ourselves an Institute name for funding, but work in cooperation with and through AFCC

MISSION STATEMENT

MISSION AND PURPOSE (DRAFT)

The mission of the Child Welfare Decision-making Collaborative is to promote safety, permanency, and the well being of children. The Collaborative supports the development of decision-making and conflict resolution processes that engages and empower families involved in the child welfare system, and that enable families to fully participate in decisions that impact their future.

The Child Welfare Decision-making Collaborative:

- Convenes interdisciplinary professionals to advance and refine practices related to decision-making and conflict resolution in child welfare cases.
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- Identifies best practices and innovative approaches.
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Comments/Recommendations about the Draft of the Mission Statement:

- Unite it with a strategic plan so that people make a connection between the two
- The first sentence is too broad. One recommendation for the opening sentence: The mission of the Child Welfare Decision Collaborative, through the development of decision-making and conflict resolution processes that engage and empower families involved in the child welfare system, is to enable families to fully participate in decisions that impact their future.
- What about “Collaborative Decision Making Network”?
- Add “promote safety, permanency, and the well being of the children through the development of decision making and conflict resolution”
- We need to change the wording, in terms of mediation, conflict resolution, or collaborative decision-making.
- The word “Child Welfare System” doesn’t necessarily speak to the judicial legal system. Maybe add the word “less adversarial”... and I like the “voice of the child” and “safety,” “empowering families,” “family justice systems”
- One concept is “non-adversarial”. It’s a process that from its onset until the ending is non-adversarial. Is it non-adversarial or less adversarial?
- From a government perspective the current mission statement made sense. And providing that the child welfare people are audience to this, the words like “child welfare” are important.
- Maybe we should use the “voice of the child”
- I would not take out conflict resolution
- There is some dissention around “children and families”. An alternative is “family and youth”

- What about culture? I am sensitive to processes that include cultural components.

REVISED MISSION AND PURPOSE

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STRATEGIC AND EVENT PLANNING

Think Tank participants discussed several components of strategic and event planning including: 1) annual meetings, 2) guidelines and best practices project, 3) small group meetings, 4) website production, and 5) leadership and membership.

1) Annual Meetings

Scheduling:

Attendees suggested that the meetings be held: 1) in conjunction with either AFCC or American Humane meetings, and/or 2) independently. Additionally, it was mentioned that a two-day session is necessary.

Purpose:

One attendee mentioned the importance of establishing the over-arching goals and objectives to help define the purpose of the annual meetings. One person suggested that we decide if we are going to 1) process information, 2) discuss strategy, and/or 3) plan events. Is the purpose to design a national or international agenda item? Are we working to lobby for federal legislation? Knowing the answer to these questions could help to define the purpose for the group. Attendees suggested the following as how time should be spent at the annual meetings:

- Progress updates and time to share experiences
- Formulate action plans
- Discuss balancing internal test practices and managing best practices externally
- 1) To promote best practices in collaborative decision making, child welfare, and family group conferencing; and 2) To promote collaborative best practices.
- Discuss how to move the state of the art forward
- Discuss the structures to promote legislative and policy changes

- Share ideas and make decisions about: 1) Organizational maintenance, leadership; 2) an action plan; and 3) people sharing experiences of how things are done (getting a mediation session started, discussing excellent programs around the country, communication around the state of the art, a subset as to when new programs are started)
- Identify the different programs and what different states and countries do

Meeting Leadership:

- It was recommended that a leadership group be established to organize and plan the annual meeting(s).

2) Guidelines and Best Practices Project

Recommendations and Comments:

- We need to figure out this group's goals and then those goals will drive the best practices and a common policy that we can present to various organizations. It could backfire if we bring it to them later. It should be inclusive and mindful that we have them at the table at the start of the process. We really need a document that has a calling card for this group
- Be ambitious and inspiring
- We need to talk about overall policies and the individual ways to achieve those policies. We don't want to lose those individual pieces
- This group documents their best practices, assembles research and data, and then bring it to the meetings
- Education and policy change is the key, so that we find a way to impact policy decision making
- Improve what is already going on

3) Small Group Meetings

The group is looking to have meetings for smaller groups who can dialogue on more specific topics. These groups could be building blocks to the larger guidelines of the project. The vehicle (face-to-face meetings, conference calls, etc) for these meetings was not set and needs to be developed.

Possible small groups include:

- Confidentiality
- Child, youth, and family participation
- Technology
- Quality assurance
- Training and qualifications for mediators
- Working with stakeholders
- Research
- Program evaluation
- Starting a new program

- Benefits of programs
- Maximizing the value of a program.
- Model service integration programs (for example, North Carolina)
- The impact of culture
- Collaboration among professionals

4) Website Production

It was recommended that the website be housed within a university or some other “neutral” organization. What would the website offer? There are a lot of websites out there, so attendees expressed interest in including comprehensive and “meaty” information. Ideas include:

- Pertinent information
- Helpful links
- Program and member directory
- Research and resources
- Application for membership
- Web casts, mini-teleconference presentations
- Stories/blogs/journaling/case studies
- Wiki that could provide a platform for generating best practices
- A moderator who updates and monitors the information

5) Leadership and Membership

The individuals who spearheaded the Think Tank process that were in the room were: Bernie Mayer, Karen Largent, Andrea Clark, Marilou Giovannucci, and Kelly Browe Olson. Attendees discussed ideas for how to structure the leadership and membership of the organization moving into the future.

Suggestions for the structure of the leadership and membership:

- Hold a roundtable and form a committee structure. The committee has conference calls, and holds discussions on the website. A tentative list of committees was introduced including: 1) Financial; 2) Intersection of mediation and family group conferences; 3) Resource depository; 4) Liaisons; 5) Think Tank planning; 6) Annual meeting planning; 7) Best practices project; 7) Children and youth; 8) Small group dialogues; 9) Website production; and 10) Research and data gathering
- Members can choose groups and then leadership can be selected for each group
- We still need an overarching leader that calls a network meeting to integrate the work of the committees
- If someone is interested in joining a committee, they should contact Marilou Giovannucci

PRESENTATIONS

Jerry McHale, Natasha Mallal, and Howard Davidson and Andrew Schepard gave three presentations at Think Tank II. The following are key portions of the presentations.

1) Jerry McHale

Jerry McHale is a lawyer, mediator and Director of the Dispute Resolution Office, British Columbia Ministry of Attorney General. He is responsible for the development of dispute resolution programs in the court system and government. He also acts as a liaison among the bench, the Bar, the community and the government on dispute resolution matters. In 2000, he received the John Tait Award for Excellence from the Canadian Bar Association Public Sector Lawyer's Conference.

- I'm absolutely convinced of the impact of collaboration. The work you are doing is important. The value of cross-jurisdictional discussion is always productive. Although I learned that legislative terms and programs do not translate 100%, they still tend to take hold and that can work here as well.
- It is important to get everyone on board who has an interest in the process from the start. I made my first big mistake within 2 or 3 minutes of the program. There will be a lot of resistance from the social workers, the people who work inside the system.
- *Lessons on ground level partnerships:* We made sure everyone in the environment and everyone who has a significant role in the child welfare environment had a role in the program. We tried to bring collaborative mediation strategies in as a motto of "design with, not for us." Do not do the "D.A.D." approach (decide what the approach is going to be, announce, and defend your approach). Instead, work with the people of the program. It really slowed down the front-end development. If you do this, you will overcome resistance. The upshot is a lot of great free advice, which shaped the program and when we go to the design phase everyone owned it, and that included the court and the Bar. I think there is something in our bigger culture pushing on these common values because it makes sense.
- *Lessons on legislation:* We put mediation into legislation. We thought there would be value in having it in the architecture of the system. Legislation doesn't change behavior or culture. This gave mediation a status in the field and throughout the child welfare arena. People go to court for vindication. What I saw in mediation myself was the power of apology. Someone might be pushing hard for a dollar amount and the defendant says in mediation, "I'm really sorry you got hurt." A sincere, authentic apology alters the remedy. Legislation takes away that fear of the apology in terms of liability. An apology is not evidence of liability and the apology cannot be admitted. Quite a few US states have this legislation. We in BC have designed it with a lot of the mediators who came to the process. Because of the close linkage to the court, we work with the justices, attorneys, and court in development.
- *Lessons on pilot programs:* Another thing we did was implement a pilot program. After we had done one or two, external forces intervened. The court was moving slow and the ombudsmen and chief judge all wrote reports concerned with delay and slow progress. That made us define our process and change the model somewhat. We picked the registry in BC that we felt was the most difficult in terms of child welfare work. The volume of the cases and the registry was difficult and if it works there, it will work anywhere. We trained, educated, and we cherry picked the first cases and mediators. It wouldn't take much failure to outweigh a fair amount of success.
- *Lessons on evaluation:* We also brought in an independent evaluator who looked at the pilot program and gave us feedback as to what worked and what didn't work. In a

bare majority of cases the social worker and mother felt the mediation had improved the relationship. It was 50% of time and that's very good. Parties liked it because they had a say. People were more concerned with the process being fair, than the outcome. We have under-estimated the reason people are coming to the courts. They very often are looking for recognition and empowerment. BC became the first jurisdiction to pass a policy on the same kind of rationale. But then I had to go back to find support and additional funding to make changes.

- *Lessons on training:* We are fortunate in this jurisdiction that we are adept at training quality mediators and have a roster that of good mediators. We had our first pilot and out of 22 cases, 18 cases resolved with everyone happy. It didn't seem to make a difference how successful mediation was, some people still wouldn't use it. I don't believe in compelling people to participate in mediation. We don't compel families but we do compel mediation before going to court. Collaborative choices are the first choices, and litigation is the alternative. Not the other way around.
- The changes we see are occurring on the “ground”. About a year ago I was at an event where this woman was learning about mediations and reviewing what had been done. She shared a story about a cynical lawyer for the ministry who shared his experience in mediation. It made him realize there was an opportunity to create an outward dialogue. A judge in Surrey once told me at the registry where the pilot was being run that for the first time she saw the parents and social worker sitting together in the court room instead of apart. This had an impact, and the court noticed.

2) *Natasha Mallal*

Natasha Mallal is a Graduate Co-op Student of the Dispute Resolution Office, BC Ministry of the Attorney General on youth involvement and participation in child protection mediation.

- I held focus groups on child protection mediations and child advocacy programs, in addition to speaking with people from other jurisdictions. But I didn't conduct a focus group with the child. It's odd to look at child participation but not to include youth I understand. Hopefully they can be included later.
- The UN Convention Article 12 provides that the child is capable of forming his or her views, has the right to express those views in all matters, given due weight maturity of the child and opportunity to be heard in judicial or administrative hearings directly affecting the child. We also have a revamped Act in BC that includes mediation and a central piece of legislation, which holds that the child's views shall be taken into account particularly when the child's best interests are at stake.
- The general literature holds that there are benefits for child participation in mediations. It helps them feel like they have a stake and a say in the outcome. Youth feel empowered and recognized when they are heard. There can be over-burdening on the child. It's almost like it is an adult conflict. There is a lack of long-term outcome studies on the subject. So in my consultations with other jurisdictions I found the primary ways children's views are being heard is through representation.
- Most jurisdictions have children over 14 attending mediations, and programs on how to work with children if they attend mediations, and how to help the child express views. In BC, one of the things I looked at is that we only have statistics on direct

attendances. We have had about 10.5% of mediations where children attended and most of the children were between ages 12-15. Regardless of whether they attend or not the mediator may present the child's perspectives and some believe this is a breach. Often children have a natural advocate whether it is family member who appears with them or they participate via text message or letter, etc. Sometimes children only attend for short period of time.

- There shouldn't be too rigid criteria to have children participate in mediation. There is a need for interdisciplinary support to encourage children's participation in mediation. A lot of education and awareness needs to come out of this.
- Terminology needs to be made clear. Participation does not mean simply attendance. You need a space for the child's views to be heard and taken seriously. It needs to be considered and viewed as meaningful. Participation does not mean that children and youth carry the full responsibility of making a full decision. Participation can be protective.
- We need a culture shift of pushing our collaborative minds further. As adults we have a lot of ideas as to what childhood and children are. Just get rid of that and think of children as people less than 18 years old going through a transformation. Children should be given an opportunity to provide input.
- In the child protection field, the child's needs and perspectives need to be at the forefront.
- I heard that a child's voice can be a laser to the heart of the matter, but can polarize the situation too. It differs on how the child's views are incorporated.
- My research will be available sometime this summer. Andrea said the website will publish her report. (The report may also be available in the *Family Court Review*.)

3) Andrew Schepard and Howard Davidson

Andrew Schepard is the Chair of the Family Law Education Reform Project co-sponsored by Hofstra Law School and the Association of Family and Conciliation Courts, the editor of the Family Court Review and the author of Children, Courts and Custody: Interdisciplinary Models for Divorcing Families (Cambridge University Press 2004). He is the Reporter for the Uniform Collaborative Law Act sponsored by the National Conference of Commissioners on Uniform State Laws. He is a member of the American Bar Association's Youth at Risk Commission. He was the Reporter for the Model Standards of Practice for Family and Divorce Mediation approved by the American Bar Association, the Association of Family and Conciliation Courts, and the Association for Conflict Resolution; and the Reporter for the American Bar Association's Leadership Summit on Unified Family Courts. He is a law professor at Hofstra University School of Law, and founded Hofstra Law School's Child and Family Advocacy Fellowship Program that awards full tuition scholarships and paid externships to students pledged to a career in the field. He is also a founder of Parent Education and Custody Effectiveness (P.E.A.C.E), an education program for divorcing and separating parents on how to manage their conflicts over their children responsibly.

Howard Davidson, J.D., ABA Center on Children and the Law, American Bar

Association, Washington, D.C. (Rights of Child Victims). He has been involved with the legal aspects of child protection for over thirty years. He has directed the ABA Center on Children and the Law since its 1978 establishment. He served as chair of the U.S. Advisory Board on Child Abuse and Neglect. He has researched and authored many legal articles on the subject. At the ABA Center he directs and provides training, assistance, consultation, and publications for the child welfare legal rights field and reform, including the monthly ABA Child Law Practice.

Andrew Shepard: Last year I was invited to be on a panel at NYSBAR on youth and empowering youth. One of my foster youth fellowship students wrote a passionate note on why children need to be involved and why they are held for hearings when they should have been in school. I'm the last person on this panel to talk about mediation and families. I encountered a lot of resistance for supporting mediation in child protection. It is an unstructured, unregulated process. But those aren't the mediators I know, and that's not the process I know or support. I learned that child protection mediation is a good thing. Howard [Davidson] and I needed to show up here today to ask you to work with the youth advocacy community. One of the major thrusts was that children are being subjected to bad things, such as the juvenile court process because children have no voice or rights in the juvenile process. These abused and neglected kids are being accused of crimes and have no lawyers. We have been pushing for youth to have true lawyers and for youth to participate in their own hearings and mediations. Protection of youth and their rights and needs in mediation produces better outcomes for youth and families.

Howard Davidson: In California, the youth connection motto is “nothing about us without us.” The fact is that over 50% of children coming into the system are ages 11-19. Increasingly this is an issue about older children. It is mandated that any age-appropriate child in foster care must be consulted about his/her perspective on a transition. This is in family group conferencing, mediation structures, etc. We're not talking about children participating when there are allegations of abuse and neglect, but rather participating in terms of having a say about what is happening to them. These kids in the system may have legitimate claims and sometimes the court is not hearing those issues. Such as, a child may want placement with siblings. The child should have a say in visiting siblings. We need mechanisms, case processes, problem solving, and planning. Debriefing the youth after the process is completed is also important. They need that kind of attention. They need to understand the implications of what just happened. We need to do more research. Also, more needs to be done on youth involvement in both public policy and practice.

DEBRIEF OF SMALL GROUP SESSIONS

Four small groups assembled to discuss: 1) quality assurances/standards/program evaluation, 2) intersection between mediation and family group conferences, 3) youth involvement, and 4) financial/membership.

1) Quality Assurances/Standards/Program Evaluation

Quality assurance is a prominent issue for this group. Formal assessment, training, observations, research, and evaluation are significant tools in the field of child protection decision making and conflict resolution. Members of the group need to jump in and work

together. This group noted that it would also need a research plan, templates, and frameworks since it is not necessary to re-invent the wheel. Some of the ideas promulgated by this group focused on tasks and responsibilities, such as:

- Sharing program designs
- Connecting and collaborating with others on quality assurance
- Sharing research efforts
- Separating out and designating research issues and efforts
- Seeking qualitative help
- Obtaining funds
- Study and evaluate outcome processes

2) Intersection between Mediation and Family Group Conferences

Mediation and family group conferencing are complementary options and can coexist. Family group conferencing usually sits within social work. Mediation is housed in courts usually. So there is a separation. There are quite a few different models and diverse frameworks. Alaska is a good model that delineates definitions and comparisons in between. Also, Nebraska and BC offer good models to study. This group looked at how different programs are nationally and internationally, specifically between the United States and Canada. For example, in Canada the CPM/FGC programs are still new, mostly interest-based conferencing, and there is no child involvement as of yet. Primary purposes are to (1) reduce judicial review and (2) increase compliance. Ontario is not enthused about joining the two processes. The Canadian legislature requires consideration of mediation.

This group observed how a lot of FGC programs are run through agencies because of difficulty starting these programs at court. Pilot programs were discussed such as mediators facilitating between families along with social workers. The group agreed that FGC needed a new name and that trying to get a pure conferencing or decision-making process was the aim, but they also agreed that they would have to ease into this objective.

Additional areas of concerns raised by this group were:

- What are the skill sets of mediators and facilitators? People need to be trained in both disciplines.
- What about hybrid disciplines?
- There are limited resources. Which program should the court be paying for and where should the money be coming from? In order to receive funding to start a program, we need a research program and the outcomes of family group conferencing and the outcomes of mediation.
- What programs are in existence and which are working? Who coordinates and plans putting the program all together?
- It is important to fit the family to the forum vs. fitting the family to the available process.
- How do you deal with ideological commitment? (Noting how sometimes such commitment can become more expensive than going to court.)

- Are the terms of the plan being followed? Who will monitor?
- What does all the research mean? There are no longitudinal studies. We need to see what is going on with the family 5-10 years later.... Are they back in the system or not?
- What about the court's view?
- There is an array of possibilities but what is the most appropriate and effective screening process? Who administers the screening and triage process? Is it the agency or the court?

The group identified their future roles and what they would like to see happen:

- Additional dialogue, including discussion about how to work through barriers, cultural contexts in programs, and whether integration is feasible. In theory these two processes should work, and in practice they don't. Is there some way we can promote these processes working together?
- Study different models, how they work, what's working, what's not working, and the pros and cons of each model
- Finding resources and funding
- Researching, creating templates, and comparing data
- Performing longitudinal studies
- Monitoring and evaluating

3) Youth Involvement Summary

This small group discussed how to engage youth involvement in mediation and guidelines for involvement. They acknowledged that some would not recommend participation by children. Some would argue there is no structure and that they would rather see the child go through the court process. The group addressed the question as to how to involve children in this process and one member said, "When I first heard about this issue, I thought child involvement meant attendance. So first, I had to wrap my head around the child's involvement in terms of all the different ways in which a child can be given a voice in the process. Children, parents, lawyers, and social workers all have a role to play in the process." The remainder of the conversation reflected this notion; members discussed ways to involve youth whether they were present or not.

The group discussed the following ways to improve youth involvement in the processes:

- The group reached a consensus that children have a right and need to have a voice in the process. The group questioned how to define and explore the different ways of doing this, and who should be the voice of the child if they are not present. One member suggested that youth forums are one way to promote effective youth participation in the process.
- The group reached a consensus that developmental age was more important than chronological.
- Each case must be screened so that there is no damage to the child or the process.
- Youth and families should be educated on the process so that the risks and benefits are understood. Children need to know that this process is available to

them and that they have the right to share their perspective. Children should also be involved appropriately in educating legislators about child protection conflict resolution.

- As a “policy” all children in abuse and neglect cases should be represented in some capacity. Not all states have this policy.
- There is an assumption that, if the child’s lawyer is present without the child, the child is being protected. One member of this group commented that children 12 years-old and up are very frustrated because they are not noticed, do not speak to or hear from their lawyers, are not informed, and if they have a hearing or mediation they are either not included or are unprepared. Further, the group recognized that just because a child has a law guardian does not mean the law guardian met with or spoke to the child before engaging in the process. In such instances it may be detrimental to the child’s well being to have incompetent legal representation. This needs to be monitored.
- The group recognized that there is scant research on the effects of child participation in mediation. They agreed that research needs to be done. Two topic areas specifically mentioned were 1) how to promote effective youth involvement and 2) what models work.

The group shared that the following needs to be accomplished to best involve youth:

- Promulgation of clear and understandable guidelines
- Quality mediator training, experience, and practice standards
- Quality child protection training, experience, and practice standards
- Understanding the scope of what is to be mediated
- Maintaining youth advisory councils
- Empowering youth and families on the process and how to gain access to the process
- Jump-starting pilot programs
- Starting court education and training programs
- Underpinning the process with UN Convention Article 12
- Inter-disciplinary collaborative work programs with stakeholders
- Partnering with foundations
- Creating information pamphlets and website
- Legislative enactments and recommendations
- Court Rules
- Collect data; research policy, case studies, long term-effects
- Fundraising

4) Financial/Memberships

This small group focused on short-term discussion. To date, the financial contributions have come from 5 states, including Connecticut, Alaska, New York, New Mexico, and

Maryland. Monetary support from court improvement dollars has been coming in \$5,000.00 from each, but NY came in \$10,000.00. We've been basically running on a shoestring. We used those funds for planning surveys and interviews, skilled facilitators, recording and editing, Think Tank planning, etc. We explored a variety of places to get funding, and in order to seek further funding we really need to be an entity.

This group agreed on the following points:

- Filter revenue through AFCC or another organization
- Design a three-year strategic plan that includes concrete long and short term deliverables
- Plan organization for the Think Tank
- Fundraise
- Give children and families a voice and access to information
- Discuss and implement best practices
- Discuss the role of children in a series of roundtables
- Connect with courts, jurisdictions, entities, etc.
- Assign people to take on roles that are associated with their area of interest

NEXT STEPS

- Leadership from steering committee
- Need for Think Tank II attendees to be responsive
- Share contact information
- Stay connected
- Tap into talents
- Expand scope by gaining new members
- Expect people to help out
- Host (possible Teresa) a roundtable event at the next AFCC event in New Mexico
- Create workshops for other annual conferences
- Complete our most recent evaluation by the end of September, which includes a comparative study component
- Increase awareness

THINK TANK II PARTICIPANTS

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SMALL GROUP PARTICIPANTS

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Group Two – Intersection

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Group Three – Youth at Risk

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Group Four – Financial/Members

Marilou Giovannucci

**Decision-making and Conflict Resolution in Child Welfare:
Think Tank II Agenda**

**The Westin Bayshore
Vancouver, British Columbia
May 28, 2008**

Morning Session: 9:00 – 12:00 Noon

9:00 – 9:15	Welcome Back, Introductions, Purpose of Meeting
9:15- 10:45am	<p><i>Steering Committee Update</i></p> <p>I. Review of what has been done: Summary of “TT I” <i>Discussion:</i></p> <p>II. Mission/Goals of the group and process</p> <ul style="list-style-type: none"> • Our Purpose <p>II. Organizational Framework</p> <ul style="list-style-type: none"> • Institutional/Organizational affiliations, partnerships and support (including location) • Membership and participation • Leadership and decision-making process; • Strategic plan • Event planning • Any other organizational framework issues.
10:45 -11:00	Break
11:00 – 12:00	Continued discussion of Organizational Framework
12:00 – 12:30	<p><i>Fundraising Committee update)</i></p> <p>III. Financial Support</p> <ul style="list-style-type: none"> • Sources for financial resources; • Need and use of financial resources; <p><i>Resource/Repository Committee update)</i></p> <p>IV. Mechanisms for Resource Development and Sharing</p> <ul style="list-style-type: none"> • Subject Areas • Methods <p><i>V. Intersection between Court mediation and CPS family group conferencing Committee Update</i></p> <ul style="list-style-type: none"> • Engaging families • Collaborative efforts between court and child welfare agencies around mediated processes.

Lunch: 12:30 – 1:30 p.m.

Afternoon Session: 1:30 p.m. to 5:00 p.m.

1:30 p.m.	Regrouping the group
	<ul style="list-style-type: none">• Research on Youth Involvement in Mediation Presentation by Natasha Mallal, Graduate Coop Student , Dispute Resolution Office, BC Ministry of Attorney General• Collaboration around Empowering/Involving Youth in Mediation (ABA Youth at Risk Commission) Group Discussion with Howard Davidson, ABA Center on Children and the Law and Andy Schepard, Professor of Law Hofstra University
2:30 Small group Work sessions	<ul style="list-style-type: none">• Collaboration around Empowering/Involving Youth in Mediation (ABA Youth at Risk Commission)• Intersection between FGDM and CP Mediation;• Evaluating Outcomes and Research
3:30 p.m.	Break
3:45	<ul style="list-style-type: none">• Report out by Small Groups• Revisit Mission Statement• Tasks or steps to accomplish identified goals
4:45p.m.	Wrapping up, evaluation, next steps....