

Viewpoints and actions on the complexity of vulnerable children

5th Community Social Pediatric Symposium

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Overview

1. Legal processes involving vulnerable children and their families can have a major impact on their well-being
2. Legal institutions are facing grave challenges & undergoing self-examination – and (slowly) change
3. New paradigm emerging
 - what does it look like?
 - working with the justice system



Justice challenges & change-drivers

- **Inaccessibility of the justice system**
 - too complicated, expensive and slow
 - unmet legal need
 - not user-friendly - intimidating, overwhelming
- **Ineffective DR processes, poor outcomes**
 - adversarial values and methods
 - isolating the legal problem from social, personal, health problems

The traditional adversarial paradigm

A) adversarial values:

- justice emerges from a clash of rights
- a dispute is a fight to be won
- parties are adversaries
- advocate as “warrior”
- one wins and one loses



B) problem is de-contextualized

- too many important facts are out of scope
- legal issue isolated by eliminating “irrelevant” information
- binary outcomes

High transaction costs of adversarial process

- **Procedural**
 - too complicated, expensive, slow
- **Relationships**
 - exacerbates conflict
 - polarizes parties
 - stressful
- **Outcomes**
 - undermines relationships
 - only addresses part of the problem
 - not durable

- *“... I am not sure that this model is working all that well for lawyers, clients, or society, based on reports of client, societal and lawyer dissatisfaction with the legal profession from 1990 onwards.”*

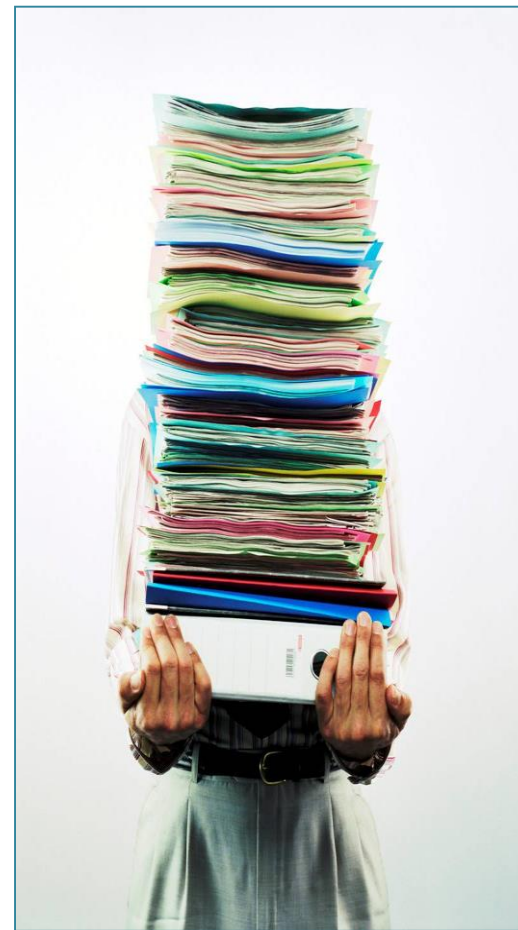
C. Menkel Meadow

- *“The current system is unsustainable”*

NAC 2013

- *“We cannot shy away from the dramatic level of change required”*

CBA 2013



Rethinking “access to justice”

- Do we focus on **access**?
 - more than access to legal processes, lawyers and judges
- Do we focus on **justice**?
 - access to resources that address underlying social + health problems
 - recognises:
 - structural injustice
 - marginalized communities



Rethinking dispute resolution

- The non-adversarial problem solving approach
- *People go to lawyers with problems they want solved, not problems they want litigated.* Roy McMurry
- “Problem solving approach”
 - dispute is a problem to be solved
 - parties are joint problem solvers
 - collaborative - dialogue
 - needs and interests-based
 - outcomes can accommodate mutual needs

Reframing child protection disputes

- **CPM** = example of institutional transition from rights-based adversarial → interests-based non-adversarial DR
- **Q:** how can SW bring their considerable authority to bear to protect the child effectively, without destroying the possibility of a cooperative relationship with the family?
- **A:** reframe the problem from an investigative or authoritarian intervention to a collaborative negotiation
 - de-emphasize tone of blame, proving fault
 - build from common interest in child's welfare

Making it happen

Legislative foundation: Child, Family & Community Service Act [RSBC 1996] c.46

- S. 22: recognises mediation+ other DR mechanisms
- S. 23: court may be adjourned, time limits extended
- S.24: confidentiality
- S.5-12: family support services and agreements

Policy framework:

- “Presumption in favour of collaborative planning and decision making” – 2008

Supportive infrastructure:

- Creation of CP mediator roster + mediation training
- Training and education
- Strategic partnerships

(1) The place of the court

- From court-centered to user-centered
- Solve problems before court, outside of court
- Goal is early, informal, collaborative resolution
- Manage cases to resolution, not to trial
- Enhanced front end (non-legal) services
- Court as a valued but *last* resort

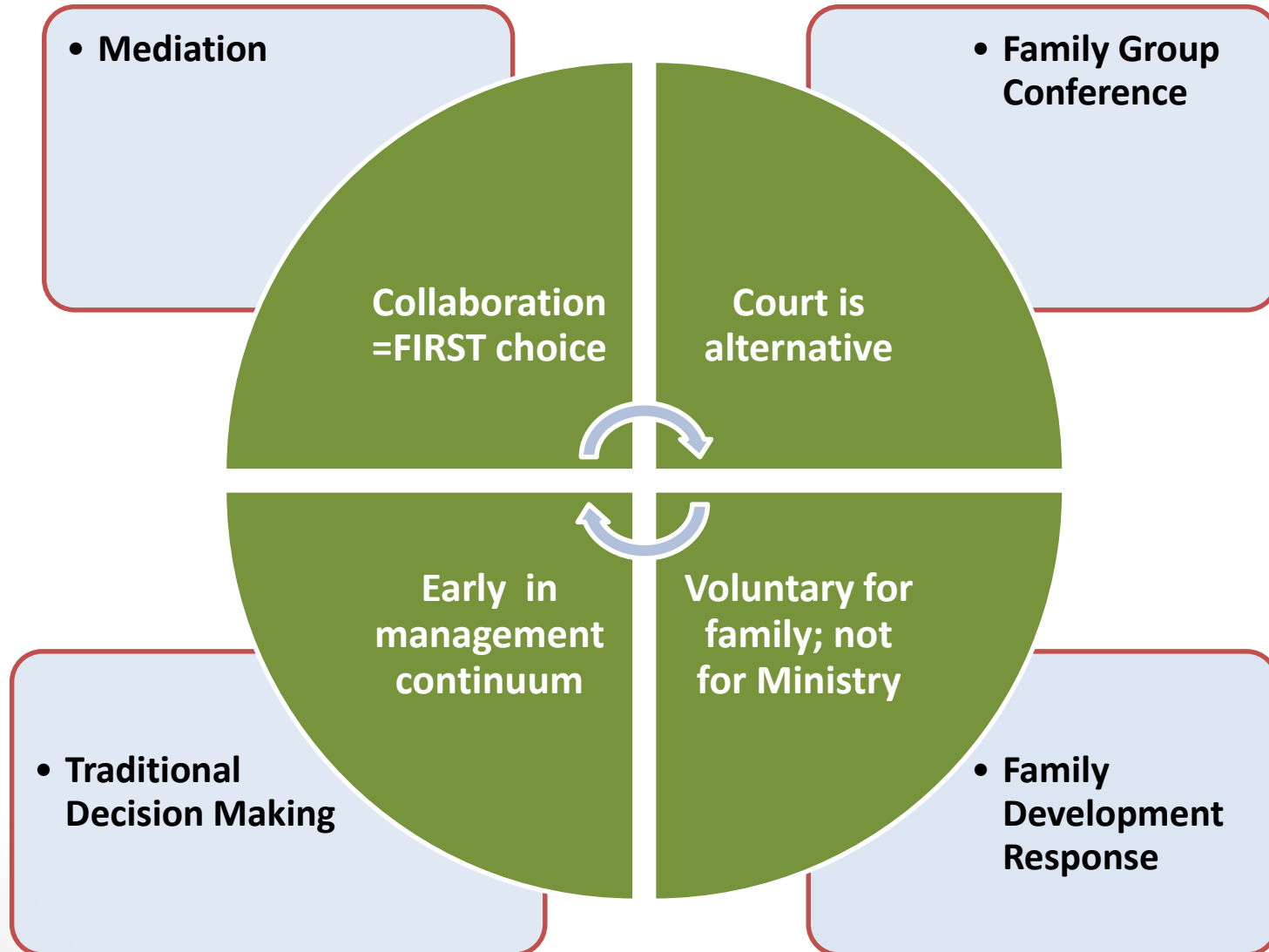
(2) Dispute resolution processes

- Shift to informal, non-adversarial collaborative DR
- Party / child participation
- Dialogue not debate
- Not winning a contest but solving a problem
- Re-contextualize the problem to place it in a larger social / personal / health context

(3) Professional roles

- Individually, acquisition of:
 - new knowledge, roles, skills, language, attitudes, and behaviours (culture)
 - what is “advocacy”?
 - ethic of care
- New relationships:
 - with clients: “rights plus” needs and interests
 - with colleagues: integrate services and share ownership of the file with other disciplines

Forms of collaborative processes



Ministry performance measure #2: Number of families participating in collaborative planning and decision making processes

- 2010/11 Baseline 5,522
- 2011/12 Actual 8,406
- 2012/13 Target 9,800
- 2012/13 Actual 12,626

- Culturally embedded?

Conclusion

- No dichotomies – not either / or, but a rebalancing
- Culture change is slow and incremental but inevitable
- As professionals, require from the legal system:
 - collaborative attitudes / dialogue not dispute
 - client-centered behaviours / ethic of care
 - non-adversarial DR processes
 - inter-disciplinary approaches