



Practice Notes

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Emerging Practice Issues in Child-Inclusive Divorce Mediation

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Child-inclusive divorce mediation is growing rapidly throughout Australia, and its practice now affords a critical mass of experience upon which to reflect. The notes in this section outline some current concerns, together with advances in the clinical application of child inclusive mediation processes that are emerging through the second author's extensive experiences in training and supervision. A recent case conducted by the first author in the role of child consultant is described and commented upon. It illustrates the application of a highly responsive approach to the process of mediation, including the handling of violence disclosure by the child.

Key Words: Children; Divorce; Mediation

Dangers and Developments in Child-Inclusive Work

A groundswell of anecdotal evidence continues to indicate that this method has strong potential to transcend seemingly entrenched parenting disputes. It is succeeding (across a wide range of cases) in moving parents to a position from which they can gain helpful distance from their spousal conflict and personal distress, and give clearer thought to the needs of their children postseparation.

One dimensional practice. Since the original pilot of the child-inclusive model seven years ago, the complexity of the work has become increasingly evident. Among the (enthusiastic) responses come some cautionary notes. Of particular concern, McIntosh has observed that child-inclusive practices of the sort described elsewhere in this edition (Moloney & McIntosh, 2004) run the

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risk of over-simplistic interpretation when they are not developed within a comprehensive child-focused framework, and particularly when they are not conducted by suitably experienced practitioners. These circumstances can lead to one-dimensional practices, where “talking to the kids” in order to let the parents know “what they want” becomes an acceptable goal. Some practitioners have also begun to speak of “writing a report” after seeing the children, betraying a naïve assumption that information delivered to parents in this way will assist them to resolve their dispute in ways that serve the interests of the child. As clarified in the above paper, child-inclusive mediation that fails to protect the child from the burden of decision making, and fails to create a highly supportive and sensitive feedback forum with parents, falls far short of what is intended.

The skills required in the child consultant. This work is not about “finding out what kids want.” Neither are professionals adequately equipped by a simple importing of “technique” from child psychology and family therapy into the mediation arena. The art and skill of this work lies in mindful, sensitive translation and adaptation. In this respect, the experience and qualifications required of the child consultant have become clearer. The current research study into the efficacy of child-inclusive mediation (described in McIntosh, Long, & Moloney, 2004) is informed by the view that child consultants require:

- a sound knowledge of developmental processes in children;
- a sound knowledge of the impact of family trauma;
- comfort and ease in communicating with children of all ages through projective techniques, drawing, and play;
- a strong ability to track and shape therapeutic process;
- experience and skill in working with high conflict couples;
- experience and skill in understanding and responding to personality disturbance (such as borderline and narcissistic personality processes) and certain mental illnesses in parents;
- strong skills in formulating complex material from children for the purpose of feedback to parents;
- the ability to build a child-focused, therapeutic conversation with parents, to know what to say to parents, when to say it, together with what *not* to say, and why not.

Services that nurture the growth of these skills in their workers make careful selection of child consultants, employ a graded training process, including regular supervision with a developmental specialist, and support ongoing professional development.

The role of the mediator and the process of feedback. For largely economic reasons, the initial pilot model of child-inclusive mediation (McIntosh, 2000) employed a “bare bones” approach, involving one interview with children by the child consultant, and feedback of this material to the parents in a mediation

session, with the mediator/s present. Feedback tended to be “delivered” by the child consultant, and “received” by the parents and their mediator/s. The child consultant then left the session.

For the mediator and the parents, it may at times be difficult to proceed once the child consultant had left the feedback session. Some mediators report a feeling that the children’s “agenda” tends to slip away again. In response to this, a number of practices now encourage a different posture in both the child consultant and the mediator involved. Through positioning themselves as facilitator of the dialogue during feedback, and moving into an advocacy position re the children’s agenda, the mediator can more readily support an ongoing child focus (see, e.g., McIntosh & Moloney, 2002). In building a firm alliance around the child focus, mediator and child consultant can respond adaptively to the needs of each case. For example, they can move into separate sessions with individual parents as needed, or negotiate for the child consultant to stay on through further mediation sessions concerning children’s issues.

It has become increasingly clear that the power of feedback to parents is enabled or disabled through the skills of *both* the child consultant and the mediator. Feedback is a highly sensitive process, where, as noted, the skills lie in knowing what not to say as much as what to say: Less is usually more with high-conflict parents. Skilful attention needs to be given to the process of building a child-focused conversation with parents, where the posture of the child consultant is not one of “expert telling parent”, but one of respectful and highly supportive conversation. The anxieties of both mediator and child consultant need to be understood, and are best contained within a collaborative partnership that has a shared goal of enabling parents to achieve a reflective child focus that shows itself in the mediation outcomes. To this end, it is vital for mediators and child consultants to share core training, supervision, and professional development around child inclusive practice.

A Case Illustration¹

Child Consultant Stays on Throughout the Mediation: A Strategy for Maintaining the Child’s Voice in Certain High-Conflict Separations

Child-Inclusive Practice in family law mediation and conciliation (children’s matters) is a regular part of the work at the Family Mediation Centre (FMC). It started as a pilot some seven years ago, and has become an integral component of family-law work where children aged 4 years and above are in dispute. It is a voluntary process, currently offered to all families who access the service.

This case was conducted by Anthony Grimes of the FMC, and supervised by Dr. Jenn McIntosh.

The practice consists of a child consultant, especially trained for the tasks, being requested by the mediators or conciliators working with the family to conduct face-to-face interviews with the children involved. The adult parties have to be currently attending joint sessions (either mediation or conciliation). They jointly agree that the children may attend, and they jointly agree to attend a further session to hear from the child consultant. Each child's attendance is voluntary. Should a child indicate great reluctance to attend, the parties are reminded that this is just as voluntary a process for the children as it is for the adult parties.

*The Thomas Family*²

Four children, Billy (13 years old), Timothy (11 years old), and twins Lindy and Suzy (10 years old), were referred after their parents' (David and Sharon) first mediation session. Standard intake procedures had indicated that the parents' marriage was not characterised by violence. The separation had been initiated by Sharon, 10 months earlier, after a twenty-year relationship. David remained hopeful of a reconciliation.

Care was shared with each parent taking it in turns to reside one week at a time with the children in the family home while the other resided in a unit rented for that purpose.

A month before mediation, when she first contacted the Centre, Sharon stopped this arrangement by refusing to leave the family home when her turn came. She told the mediator she was concerned that the children were unhappy with their father, commenting that he was too severe with them. It later emerged in subsequent mediations that around this time she had made it clear to David that the separation was permanent. On the night she refused to go, a violent incident occurred in the children's presence with David becoming very angry, police being called, and an intervention order being obtained.

New contact arrangements with David occurred at the first mediation session where the children stayed overnight or alternate weekends (Friday to Tuesday) and alternate Thursdays. The mediators learned that Billy has Fragile X Syndrome with medium intellectual impairment. Timothy had been refusing to go to school. Lindy and Suzy were quiet, but were reportedly able to express their feelings to a teacher.

The children's interview. The children arrived with their maternal grandmother with whom they seemed to have a close relationship. The child consultant invited all four into the interview. Billy declined initially (although he later changed his mind), so the consultant outlined the purpose of the meeting in two separate groups (assisted by the grandmother in Billy's case). After some time

² For privacy reasons, all names are fictitious.

in the sibling group, half an hour was then spent individually with each child, during which discussion, drawings, story stems, and “bear cards” (conveying a range of emotions) were employed. Each child displayed high levels of distress over the parental conflict, and great confusion over the reasons behind it and behind the separation itself.

The day after this session, the children’s mother called the child consultant. She explained that, following the session, Timothy had disclosed to his mother an alarming incident during his last visit with his father, when father had thrown a skateboard (when “tidying up”) at him, badly hurting his neck and back. According to Timothy, his father had been unsympathetic to his sadness and anger at the incident. Timothy was seeking to create an opportunity (via the child consultant and feedback) to talk and heal privately with his Dad. He had not disclosed it the day before for fear of legal recriminations upon David, but felt enough trust following the interview to take this step by telephone with the consultant. The conversation with Timothy helped to confirm his experience, and to make clearer the priorities for the parental feedback.

Sharon reported the matter to Child Protection. The child consultant was asked by the Child Protection worker how he saw the risk to Timothy after his discussions with him. The consultant reported his belief that it was a “one-off” with minimal ongoing physical risk, but that the potential emotional damage to Timothy was significant, and would be addressed in his feedback to the parents.

Clinical supervision. In this instance, group supervision³ enabled the team to develop a strategy for dealing with a potentially divisive and explosive issue in a way that promoted a child-centered focus between the parents. At the same time, neither the seriousness of the issues, nor the integrity of the process was lost.

The feedback session. Prior to the session commencing, the child consultant briefed the mediator. Both agreed that the consultant would not simply give feedback to the parents, but would, if helpful, stay on in subsequent sessions to ensure that the children’s voices remained, especially while the objective of dealing with the conflict was still extant. This represents a departure from usual practice in the agency’s child consultancy, where the consultant generally attends only one feedback session. The decision to stay on was reached for several reasons. The mediator working with the family was working solo, and was a less experienced mediator. Coupled with the extremely high conflict, the protective concerns, and the potential for the content of the feedback to inflame an already volatile situation, this presented an unacceptable containment challenge and risk. A particularly significant risk was that the children’s feelings and needs could be swamped by negative parental reactions to the feedback, no matter how sensitively it was delivered. The mediator and child consultant agreed that the children’s voices had to remain in the room for as long as it took to resolve the parenting dispute.

³ This was provided by Jenn McIntosh of Family Transitions, as part of the usual group supervision program for the Child Consultants Team at FMC.

The consultant explained that while the core message to each parent was the same, he would appreciate separate time with both, to elaborate on the children's needs in relation to each of them.

While consultant, mediator, and both parents were together, three key themes were gently identified from the children's information:

- Their parents' conflict and its effect upon them;
- The children's feelings and parental availability to hear these;
- The children's lack of understanding about the separation.

The consultant explained to the parents that he had an overall impression of their children being caught up in a lack of emotional safety, and discussed with them the issues that each child had in common, for example:

- Exactly who is angry with whom and why?;
- Who is disappointed with whom?;
- To what extent each of the children felt permitted to "be themselves";
- Emphasis was given to Bill's particular needs and his questions to his father, which included, "Are you angry with me?; Disappointed with me?; Are you there for me?".

In a separate session with David, the consultant broached the telephone call and incident regarding Timothy. He discussed the seriousness of it, Child Protection's concern and involvement, and the absolute timeliness (so soon afterwards) of a chance to discuss the emotional impact upon Timothy. The consultant and David considered the proposition that the biggest damage to Timothy was psychological. He had felt "dropped". Already vulnerable because of the parental fighting, this incident had filled him to overflowing.

The discussion with David, delivered by a male child consultant (who also happened to be a father), permitted him to take on board Timothy's needs without feeling humiliated and without the almost inevitable defensive posture that would have taken place in front of Sharon. Returning to the joint feedback, David was able to discuss with Sharon an understanding of his aggression toward Timothy, and Timothy's need to recover from this, and be protected from any further violence.

The feedback then strategically returned to both parents, drawing together some threads and challenges along the following lines, which took the form of a therapeutic conversation:

The whole family feels unsafe and vulnerable: the children don't understand why the conflict levels are so high, nor how to deal with the feelings it generates in themselves. Things feel dangerous.

Specific challenges included:

- It would seem that the priority of this mediation process is first to address the children's feelings of safety: how can they, as parents, agree to do this?

- What is your “game plan”? How long do you plan to continue this conflict?
- What, as parents, are you prepared to do to better manage your feelings and the adult conflict?
- What behaviours do you expect of each other: what are you willing to agree upon?
- What opportunities are there for the children to talk through their feelings with each parent and have those feelings validated?
- Although the children know the fighting was connected to the separation, they have no idea what the fighting was all about. They need age-appropriate explanations: is there one that you can agree upon?
- Moreover, all children were entertaining varying levels of hope for a reconciliation. How can you agree upon an explanation of your separation, which affords them a realistic view of the future?
- When they are adults, how will your children look back on this time, and how you handled it?

Subsequent sessions. The child consultant attended two further mediation sessions. At these, the children’s observations, perspectives, and feelings around each of the key issues continued to be brought out from the initial interview to inform and guide discussions between the parents. More detail, as required, than was delivered in the initial feedback, helped maintain the child focus. The children’s voices remained palpably present through their quotes, drawings, and detailed observations.

This “other” joint focus, which the parents held in common, enabled the exploration of the parents’ divergent perspectives and feelings around the separation, the fighting, and parental availability. It facilitated each acknowledging and validating the other’s experiences and emotions – a critical step towards being able to validate the children’s feelings.

Having navigated through such painful moments, the parties were next able to affirm the other as good people and good parents. This led to some healing of the damage caused by the conflict. A greater energy and enthusiasm for tackling the children’s needs emerged. From opposing parties who initially could not look at each other in the feedback session, they transformed themselves to the point of referring to each other directly by old nicknames. Sharon’s fear of David dissipated. So too, as he felt validated, did David’s anger at Sharon.

Closing Reflections

As a child consultant, this experience of continuing to support the mediation process provided new dimensions to the work of divorce mediation. First, the consultant was able to ensure that the children’s voice was not overtaken by the parents’ responses in later sessions. Contemporaneously, a notion of accountability to the child

consultant for the resolution of the children's stress seemed to have been taken on by the parents. Finally, all indicators, including feedback from the parties, indicated that the parents' conflict (and the children's distress) was diminishing, and that the healing that was occurring in the parental and parent-children relationships, was associated with the intervention described.

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