

# **EVALUATION OF THE DISTANCE MEDIATION PROJECT:**

Report on Phase II of the Technology-Assisted  
Family Mediation Project

Volume I: Report

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Family Mediation Project

*Prepared for:*

*The British Columbia Mediator Roster Society*

*May 2010*

*Prepared by:*

*Colleen Getz*  
*c a walker* & associates  
*1649 Brousson Drive*  
*Victoria, B.C.*  
*V8N 5N2*

*Tel: (250) 721-6999*

*Fax: (250) 721-5376*

## **Acknowledgements**

An evaluation always involves the time and effort of a lot of people. Many thanks to the Distance Mediation Project's extraordinary team members, including (in alphabetical order):

John Campbell  
Jane Henderson, Q.C.  
Laura Luz  
Carole McKnight  
Ayne Meiklem  
Wendy Morash  
Bobbi Noble  
Eugene Raponi  
Colleen Shaw  
Ronald Smith  
Ben Ziegler

Deserving of special thanks is the Project's Coordinator, Susanna Jani, who gave so much of her time to the Project and the evaluation. Susanna's dedication and keen attention to detail was apparent every step of the way.

Thank you, also, to the parties who took part in a distance mediation process. Those who took the time to pass on their thoughts in the client survey communicated a real sense of what distance mediation "feels" like.

Lastly, the contribution of the Law Foundation of British Columbia in funding both the Distance Mediation Project and this evaluation cannot be overstated. Neither would have been possible without their very generous support.

*Thank you everyone!*

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## EVALUATION HIGHLIGHTS

### A. Introduction and Background

The population in British Columbia is sparsely distributed, with about 67% of the communities in the province having 10,000 or fewer residents. At the same time, these communities have less than 10% of the total population. People in many of these small communities, particularly those isolated by geography or distance, do not have good access to family mediation or other family justice services. The *Distance Mediation Project* — also known as the Technology-Assisted Family Mediation Project — sought to provide these people with access to qualified family mediators with the help of information and communication technologies. The overall goal of the Project was:

To explore the feasibility of providing British Columbians in remote, non-urban areas with access to competent, qualified family mediators through the use of information and communication technologies (ICTs).

To assess achievement of the Project's goal and objectives, an evaluation was initiated at the start of the pilot project in the spring of 2009. For the period during which the Distance Mediation Project was underway from May 2009 to February 2010, information was gathered from a variety of different sources in the context of five main study components:

- a review of all relevant program documentation and draft guidelines prepared by the project team over the pilot period
- a profile of the events and outcomes of cases accepted into the Distance Mediation Project
- a written survey of parties who took part in a technology-assisted family mediation process
- telephone or personal interviews with the Project's mediators, Project Coordinator, and various stakeholders with an interest in this field, and
- a determination of the distances, and associated fuel and carbon emissions avoided, because a distance mediation process was utilized.

### B. Evaluation Findings

#### *Objective 1. To facilitate access ...*

To use a variety of ICTs to facilitate access to quality family mediation services for British Columbians, with a particular focus on providing these services to families residing in remote, non-urban areas.

- While the mandatory case criteria required that at least one party must reside in a location of 10,000 or fewer people, the results show that both parties tended to live in such communities. Overall, four-fifths (83.4%) of the Project's clients came from communities of under 10,000; about a third (30.4%) of them came from communities of under 3,000.
- Most of the parties came from the Kootenay and Vancouver Island economic development regions. No parties came from the Northeast region, and just one came

from each of the Nechako and Thompson Okanagan regions. It is not known whether digital divide factors may have played a role in preventing some people in remote, non-urban locations from accessing the service offered through the Distance Mediation Project.

- The number of inquiries from potential clients (103) and the subsequent rate of uptake (22.3% of inquiries) for the Project is sufficient to show that there was both demand from and services delivered to people from non-urban communities, as defined by the Project.
- The respondents in a client survey indicated they were largely satisfied with the distance mediation process. Many expressed their satisfaction even if they were unsatisfied with the mediation outcome in their case.
- Affordability may be an important consideration in providing distance mediation service to non-urban populations. Although twelve (48.0%) of the survey respondents indicated that they would recommend the service even if it were not free of charge, nine (36.0%) indicated they didn't know, and four (16%) that they would not recommend it if the service was not free of charge.
- In role plays and practice sessions, the mediators preferred platforms that had a multipoint video capacity (where more than one person can be seen on-screen), and provided for document sharing and editing. In a "real life" mediation setting, the more common and readily available tools (telephone, teleconferencing, e-mail, and document sharing by e-mail attachment) were the technologies chosen for use by the parties in all but one of the 23 cases that proceeded to mediation.
- While they still felt the need of more practice, the pilot's mediators were unanimously pleased with their distance mediation experience. All indicated they would like to continue to use these methods in their own practices.
- The design elements reviewed were found to be clearly consistent with, and supportive of, important family justice access goals as articulated in the mandates of the Mediator Roster Society and the Law Foundation, and in the *Notice to Mediate (Family) Regulation*.
- Although there are some hurdles to overcome in serving remote, non-urban populations, the results of the evaluation show that family distance mediation is clearly feasible — that is, family mediation can be carried out safely, competently, and appropriately with the help of ICTs, and it can be accomplished even when large distances separate the parties and their mediator.

Overall, the results of the evaluation suggest that family distance mediation — as it was delivered in the Distance Mediation Project — was largely *accessible* to families in remote, non-urban areas of the province. There remain some challenges in delivering services to people in these areas, however. There is, as well, more to learn about distance mediation practice as it applies in a family setting. Nevertheless, both the parties who responded in a survey about the Project and their mediators expressed broad satisfaction with their distance mediation experience. These results suggest that it is feasible to undertake family distance mediation on a large scale basis throughout British Columbia.

*Objective 2. To learn ...*

To increase knowledge about using ICTs in a competent, safe and appropriate manner to deliver family mediation services.

- The policy and procedural tools developed for the Project were found to both support and promote competent, safe and appropriate methods in distance mediation. They clearly addressed screening for violence, assessing mediation capacity and suitability for ICT use in family mediation, and a range of other subjects important to the delivery of distance mediation services.
- All the ICTs used during the pilot period were assessed initially by the Project Coordinator and/or the Project's IT Consultant and, if found appropriate, they were used in a meeting or role play setting with the mediators. The team saw the most potential for distance mediation with platforms that had a multipoint video capacity (where more than one person can be seen on-screen), and provided for document sharing and editing.
- In the actual mediation sessions, most parties either did not have access to, or did not feel sufficiently comfortable with, some of the more innovative conferencing platforms available to the project team. Telephone, teleconference, and e-mail received high approval ratings by both the mediators and parties in the Project, and were found to be well-suited to distance mediation overall.
- The mediators had mixed views about the types of cases or issues to which distance mediation might be best suited. Some felt that any kind of family mediation could be managed in a distance mediation format. Others felt that it is best suited to less complex cases — involving just two rather than multiple parties, and those in which the issues or fact patterns are more straightforward.
- While most of the mediators suggested more concrete cases were suited for distance mediation, the mediators nonetheless felt that the physical distance between the parties in distance mediation promoted a more businesslike climate in emotionally-charged cases.
- The advantages and disadvantages of distance mediation identified by the mediators disclose that there may be something of a trade-off when engaging in distance mediation — trading the benefits of physical proximity for the benefits of virtual proximity. Nevertheless, the mediation team in the Distance Mediation Project felt that this was an entirely suitable way to deliver family mediation services to people in isolated or distant regions of the province.
- Distance mediation compares favourably to shuttle mediation, as joint rather than separate mediation sessions can be conducted with the parties. Additionally, although it is difficult to compare settlement rates between programs, it appears that the results of the Project are roughly similar to or better than those observed in other mediation programs.
- Project participants believed that some of the broader benefits of mediation — such as facilitating communication, building common ground, and developing conflict resolution skills — can be achieved when using ICTs in mediation. It appears that acquisition of these benefits is dependent on the mediation process, and not on the medium or milieu in which it takes place.
- Distance mediation employs different skills, and involves a different mediation “style” rather than simply new tools in the mediation tool box. Most of the mediators believed that additional skills or training is needed to do this work, including additional training in: appropriate web or other technology platforms; proper cyber

“netiquette”; reading the nuances of non-visual or verbal cues and written communication; and the implications of timing and other impacts of distance mediation approaches, as they affect both the process and outcomes of mediation. The suggested guidelines prepared during the Project could form the basis of any training in this area.

- The mediators in the Project generally felt that family distance mediation ought not to be undertaken without first having a considerable amount of experience in conventional mediation. Having interactive, hands-on learning support in place after a mediator begins to use these techniques in their practice was also seen as important.

The Distance Mediation Project has been truly *informative* in having contributed to a growing body of knowledge about ICT use in mediation. The policy and procedural tools used by the project team were found to have supported competent, safe, and appropriate methods during the pilot period. As well, to the extent that it was possible to reflect on them, the mediation outcomes achieved in the pilot appeared to be similar to the outcomes experienced in other forms of mediation that are used when distance is a factor. Reflecting also on the training needs for distance mediation in a family setting, it was recognized that this work utilizes unique skills. Some specialized training in this area would benefit any mediator intending to adopt these methods for their family mediation practice.

*Objective 3. To collaborate ...*

To work collaboratively with stakeholders in the family justice system to develop knowledge about using ICTs to deliver family mediation services.

- Collaboration with stakeholders in the family justice system was seen as a key element in the success of the Distance Mediation Project. A shared interest in this effort was assured, in part, by the make up of the board of directors of the organization overseeing the Project.
- A broad range of family justice and community organizations were contacted, both for the purpose of informing them of the existence of the Project and to solicit aid in “getting the word out” to potential clients through their various constituencies.
- The eagerness with which these organizations shared information about the Project with their client groups suggests that the ground was well prepared for a strong working relationship.
- Collaboration became full participation with one of the stakeholders — the Family Justice Services Division of the Ministry of Attorney General — as two of their Family Justice Counsellors were mediators on the project team. A unique set of intake and service delivery procedures were developed for Project cases managed through the Division.
- Potential clients named many of the organizations with whom the Project Coordinator had early conversations and who had agreed to circulate information about the Project amongst their own clients.
- Other stakeholders in the family justice system directed clientele to the Project during the pilot period. There is also evidence that word had spread further than expected, as some referrals and expressions of support came from sources not on the original list of stakeholders contacted.

The Distance Mediation Project was expressly *collaborative* in its efforts to develop knowledge about using ICTs to deliver family mediation services. Collaboration with other stakeholders in the family justice system was a very important element in the Project's success. The extent of the interest of other players in the family justice system, and the degree of collaboration with and between these different players during the pilot period, was demonstrated by the number of referrals and expressions of interest the Project received from a broad range of sources. In particular, the commitment to collaboration was shown in the form of full participation by one of the stakeholders — the Family Justice Services Division of the B.C. Ministry of Attorney General — with the inclusion of two Family Justice Counsellors as mediators with the Project.

*Objective 4. To reduce fossil fuels ...*

To explore the extent to which the use of ICTs might reduce the reliance on fossil fuels when delivering and accessing family mediation services.

- The distances between the participants in distance mediation during the pilot period were considerable. For illustration purposes, if both parties had travelled to the mediator who conducted sessions with them in the Distance Mediation Project, the median distance they would have travelled would have been almost 1,400 kms per case. Cumulatively, the distances they might have travelled for a single mediation session was almost 32,000 kms, round trip.
- Had they travelled to the nearest qualified mediator, the cumulative distances they might have travelled and fuel they might have used would be as much as approximately 43,740 kms and 9,948 litres of gasoline (one return trip to the nearest qualified mediator). It is estimated that the carbon emissions associated with this travel would have been approximately 12.6 tonnes.
- According to the estimates calculated, the distances that might have been travelled to the nearest qualified mediator for mediation services — had the Distance Mediation Project not been available — would have contributed from 2.5 to 7.5 times what an average person would have contributed in carbon emissions over the course of an entire year.
- The carbon emissions avoided because of this small project are substantial. Conceivably, the volumes associated with a province-wide, long-running program would be that much more substantial.

Distance mediation makes a contribution to more environmentally *sustainable* methods of delivering family mediation services to remote, non-urban regions of the province. Mediation services delivered and accessed in a manner similar to the Distance Mediation Project would, indeed, be helpful in reducing reliance on fossil fuels. This Project is unique in having not only applied a “green lens” to its operations, but in having actually built the lens into one of its objectives. In this way, the Distance Mediation Project may serve as an example to other initiatives that seek to showcase environmentally sustainable methods.

### **C. Conclusion**

The evaluation findings suggest that distance mediation as delivered in the Distance Mediation Project was largely *accessible* to families in remote, non-urban areas of the province. Information and communication technologies can, indeed, be used to deliver family mediation services in a competent, safe, and appropriate manner. The Project has been highly *informative* in demonstrating this, and in having laid a solid foundation for distance mediation practice in a family setting. Additionally, the extent of the interest shown by other players in the family justice system, and the degree of collaboration with and between them during the pilot period, indicate that the Distance Mediation Project was *collaborative* in its efforts to develop knowledge about using ICTs to deliver family mediation services. Lastly, the results show that distance mediation is *sustainable* — that it can contribute, in a significant way, to the larger effort to reduce reliance on fossil fuels.

In conclusion, therefore, the Distance Mediation Project was successful. Distance mediation, as conceived in this pilot project, is an *accessible* and *sustainable* means of delivering family mediation services, and the methods used were *informative* and *collaborative*. Having achieved its objectives, the Project has successfully achieved its goal, which was: to explore the feasibility of providing British Columbians in remote, non-urban areas with access to competent, qualified family mediators through the use of ICTs. To be sure, this project has provided much food for thought for any future explorations into distance mediation. □

## I. INTRODUCTION

### A. This Report

Stories of Canada's early days are full of accounts of the nation's struggles to connect its citizens with one another — through feats of transportation and communication, over vast distances and difficult terrain. British Columbia, the country's western-most province, is a microcosm of the geographical challenges that are at the root of these struggles. Rugged coastline, rock, ice fields, and forests characterize much of the province's land. Its population is therefore sparsely distributed, with roughly 67% of communities in the province having 10,000 or fewer residents, but, at the same time, having less than 10% of the total population. People in many of these small communities — particularly those isolated by geography or distance — do not have good access to family mediation or other family justice services.

This report presents the findings of an evaluation of the *Distance Mediation Project* — a project born, in large part, of the nation's historical experiences in “closing the distance” by technological means. The Project — also known as the Technology-Assisted Family Mediation Project — sought to provide people in small, often remote communities with access to qualified family mediators with the help of information and communication technologies. The overall goal of the Project was:

To explore the feasibility of providing British Columbians in remote, non-urban areas with access to competent, qualified family mediators through the use of information and communication technologies (ICTs).

The Project was conducted in two phases: the first involving research into the applicability of current technologies to long-distance family mediation<sup>1</sup>; the second involving the delivery of a pilot project providing family mediation services to remote, non-urban communities using these technologies. To assess achievement of the Project's goal, an evaluation was initiated at the start of the pilot project in the spring of 2009. The Project received new cases for a period of nine months, from May 2009 to January 2010, and concluded its last mediation in February 2010. During this time, observations were made in connection with a series of evaluation questions developed to assess the achievement of the Project's goal and objectives (see details in the evaluation framework tables in Appendix A).

Beyond observations about distance mediation practice, part of this evaluation attended to the contribution this Project makes to something even more global in nature. Policy makers concerned with climate change have promoted the idea of examining program performance through a “green lens” — that is, by measuring performance against certain standards of environmental sustainability. The Distance Mediation Project is unique in this respect as well, since a specific project objective was articulated to address this issue. This report, therefore, also reflects on this more direct application of the green lens to program design and performance measurement.

Finally, in addition to the evaluation results, this report includes an effort to document the learning of the project team in their application of distance mediation practice in the family arena. Their lessons are presented in summary form, in Appendix D, as guidelines for long-distance family mediation. The

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<sup>1</sup> The results of this research can be found in: *Closing the Distance with Technology: Report on Phase 1 of the Technology-Assisted Family Mediation Project*. Victoria: British Columbia Mediator Roster Society, December 2007. [http://www.mediator-roster.bc.ca/public/pdf/Closing\\_Distance.pdf](http://www.mediator-roster.bc.ca/public/pdf/Closing_Distance.pdf).

guidelines are titled “suggested guidelines”, since the project team presented them only as their preliminary musings about how to go about conducting a long-distance, technology-assisted family mediation. They are, nevertheless, an important starting point. Ultimately, the discussion these guidelines generate may be the Project’s most important contribution. □

## **B. Background Notes and Scope of Evaluation**

The evaluation of the Distance Mediation Project was conducted in a manner consistent with what is known as a “formative” or process evaluation. Formative evaluations are common in pilot projects, since this kind of evaluation examines as much the design and delivery systems that contribute to the achievement of a project’s objectives as it does the actual achievement of those objectives. It is, therefore, as much focussed on what works, and what doesn’t, as it is on project outcomes. As well, the evaluation of this project was concerned with understanding whether these elements and processes might be successful if a technology-assisted family mediation process were to be implemented on a larger scale across the province.

The evaluation of this project also borrowed from concepts associated with a new and very creative approach to program evaluation called “developmental evaluation”. Developmental evaluation is particularly appropriate in highly innovative fields where the goal posts are always moving, and especially in an environment of constantly changing products or technologies. Michael Quinn Patton, a prominent practitioner and theorist in program evaluation<sup>2</sup>, describes developmental evaluation as:

Evaluation processes, including asking evaluative questions and applying evaluation logic, to support program, product, staff and/or organizational *development*. The evaluator is part of a team whose members collaborate to conceptualize, design and test new approaches in a long-term, on-going process of continuous improvement, adaptation and intentional change.<sup>3</sup>

The evaluation of the Distance Mediation Project was not entirely consistent with a developmental evaluation approach, however. For instance, this was a pilot project rather than part of an ongoing process, there was a defined start and finish to the pilot period, and the goal and objectives remained unchanged throughout. Aspects of a developmental evaluation approach are, nevertheless, applicable, not only because of the rapid-change nature of the ICTs examined within the context of the Project, but also because the Project clearly had a “try-and-see” character to it. The effort was very much about the learning.

"In times of rapid change, experience may just be your worst enemy."

— Jean Paul Getty

Lastly, it is important to note that this evaluation is prefaced on a “case study method” of analysis. This is so primarily because, given the short duration of the project, the overall number of mediation cases that were accepted into a distance mediation process was not large — just 31 cases in all, of which only 23 ultimately proceeded. Additionally, although the participation rate of 54% in the client survey was unusually good for surveys of this type, it still represents just 25 individuals who gave feedback on their experience in long-distance, technology-assisted mediation — not, unfortunately, a statistically significant number from which to draw

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<sup>2</sup> Michael Quinn Patton first articulated the theoretical underpinnings to this approach to evaluation with co-authors Frances Westley and Brenda Zimmerman in: *Getting to Maybe: How the World is Changed*. Toronto: Random House of Canada Limited, 2006.

<sup>3</sup> Michael Quinn Patton, *Developmental Evaluation*. Presentation to the Canadian Evaluation Society Conference, May 2009. [http://www.evaluationcanada.ca/distribution/20090601\\_quinn\\_patton\\_michael\\_a.pdf](http://www.evaluationcanada.ca/distribution/20090601_quinn_patton_michael_a.pdf).

conclusions about a larger population of distance mediation users. Particularly in connection with this study component, then, no claims are made beyond what was observed in the cases studied. The observations made in these cases were, nevertheless, very informative, and they form the basis of the suggested practice guidelines that summarize the project team’s collective wisdom during the pilot period. □

**C. Methodology**

The data-collection period for the evaluation began with the first inquiry for the Project’s services in mid-May, 2009, and ended with the receipt of the last survey returned by one of the parties to a mediation case at the end of April, 2010. The specific data elements and considerations that were the focus of attention during the evaluation are detailed in the evaluation framework tables in Appendix A. For overview purposes, however, the various data sources and methods of data collection are summarized in the chart below and described briefly in the discussion to follow.

<b>DATA SOURCES</b>	<b>METHODS OF DATA COLLECTION</b>
1. research/evaluation/descriptive information about digital divide factors, and about technology-assisted mediation	<ul style="list-style-type: none"> <li>▪ literature review</li> <li>▪ key respondent interviews (telephone/ in-person)</li> </ul>
2. project design documentation and applicable practice checklists, guidelines, information materials, and other practice aids	<ul style="list-style-type: none"> <li>▪ content review (accessing qualitative data)</li> <li>▪ key respondent interviews (telephone/ in-person)</li> </ul>
3. Project Coordinator and other subject matter experts	<ul style="list-style-type: none"> <li>▪ key respondent interviews (telephone/ in-person)</li> </ul>
4. project mediators	<ul style="list-style-type: none"> <li>▪ key respondent interviews (telephone/ in-person)</li> </ul>
5. mediation clients/parties in technology-assisted mediation	<ul style="list-style-type: none"> <li>▪ written surveys</li> </ul>
6. administrative files, case notes, case tracking notes	<ul style="list-style-type: none"> <li>▪ content review (accessing qualitative &amp; quantitative data)</li> </ul>
7. on-line distance and carbon calculators	<ul style="list-style-type: none"> <li>▪ distance/carbon calculations (quantitative data)</li> </ul>

**Chart 1. Summary of data sources and collection methods**

For the period during which the Distance Mediation Project was underway, information about it was gathered from a variety of different sources in the context of five main study components:

- a review of all relevant program documentation and draft guidelines prepared by the project team over the pilot period
- a profile of the events and outcomes of cases accepted into the Distance Mediation Project
- a written survey of parties who took part in a technology-assisted family mediation process
- telephone or personal interviews with the Project's mediators, the Project Coordinator, and with various stakeholders with an interest in this field, and
- a determination of the distances, and associated fuel and carbon emissions avoided, because a distance mediation process was utilized.

An appreciation of the working dimensions of any program begins, certainly, with what is set down in writing as the direction underlying its efforts. As this was largely uncharted waters for family mediation in British Columbia, there was little in the way of specific policy and procedural direction for the project team at the outset. Therefore, in addition to the background research (undertaken in Phase 1 of the Project) and the original proposal, the "Project Map" detailing its design features was reviewed as the key document articulating the intentions for the Project's work. Other documentation reviewed included: early documentation guiding the application process for mediators; the pilot mediator contract; documentation and reference material prepared for the initial workshop, and subsequently provided as recommended reading for the mediators; and, the Agreement to Mediate adapted for use by the mediators and parties in each case. Additionally, of course, the checklists and suggested guidelines that were produced were a major source of information about the project team's observations and about how they conducted themselves.

As each case was concluded during the pilot period, the mediators completed a set of "case notes". These case notes were the main repositories for feedback about each of the 23 cases that ultimately proceeded through a full distance mediation process. Specifically, the case notes provided information about: basic demographic characteristics of the clients, the technologies used at different stages in the mediation process, the outcome of the case, and observations about how the mediator felt the use of an ICT affected their management of the case. This information was then used to develop an overall profile of the mediations that were conducted during the pilot period.

This profile of cases was further enhanced by the observations of some of the parties themselves. Reference to an evaluation survey was included as part of the commitments made in the Agreement to Mediate signed by the parties. Completion of the survey questionnaire was, as well, encouraged by the parties' mediators at the close of their case. In most instances, within approximately two weeks of concluding their mediation sessions, the parties were asked to participate in the written survey. The survey was accompanied by a personalized letter and, where e-mail addresses were available, an introductory e-mail was also sent in advance to advise of the package soon to arrive in the mail. A reminder e-mail or follow up letter was sent if the surveys were not received within a reasonable time after the expected returned date. These efforts met with success, as 25 (54%) of the 46 parties ultimately returned a completed survey questionnaire. This is, indeed, an unusually high response rate for surveys of this type, as they generally yield a response rate of only 10% to 25%. Unfortunately, however, this sample is still not sufficiently large as to permit conclusions to be drawn about the larger population of distance mediation clients.

Certainly, it is the observations and reflections of the people involved in an initiative that puts the "flesh on the bones" of any evaluation. In addition to the survey feedback provided by the parties, telephone or personal interviews were conducted to collect the views of the mediators, the Project

Coordinator, and selected stakeholders in the mediation community and family justice system who have an interest in this field. The Project's resources were not, unfortunately, sufficient to engage a large number of stakeholders or subject experts in discussions about the Project. Nevertheless, an effort was made to interview those for whom distance mediation holds the greatest interest. The range of stakeholder interest was further assessed by an analysis of the sources of referral to the Project at the time inquiries were first made by prospective clients.

Finally, in the same way that the hidden costs of air and water pollution can be determined in connection with a given industry — that is, those costs that go uncalculated or are not factored into production — so also can fuel use and associated carbon emissions be determined in connection with distance mediation. In this instance, however, rather than determining the *actual* cost of this activity, the exercise involved determining the costs that were *avoided*. Of course, distances not travelled, and therefore carbons not emitted, are among the key benefits of distance mediation. The task to assess these *non*-activities involved, therefore, an estimate of the distances that might otherwise have been travelled to access qualified family mediation services. With the help of an on-line carbon calculator, these distances were then used to estimate the volume of carbons or greenhouse gases that were avoided because these services were accessed with the help of ICTs.

Each of the above study components delves into different aspects of the Project's operations. When taken together, the evaluation findings disclosed through these studies paint a very complete picture of how well the Distance Mediation Project achieved its goal. This goal is centred on the degree to which it has been possible to provide people in remote, non-urban areas of the province with family mediation services. But, as mentioned earlier, it is also centred on the learning or the exploratory character of ICT use in mediation. The results of this evaluation, therefore, reflect on both these dimensions of the Project's goal. □

#### ***D. A Note about the Term "Distance Mediation"***

In the research phase of this project, the terminology surrounding ICTs in dispute resolution was found to be quite confusing. Much of this confusion related to the use of the term "on-line dispute resolution" or ODR. Although ODR was used initially to refer to dispute resolution that is facilitated by some form of computer application, it has broadened over time to include tools that do not use computer technology — such as telephone or video conferencing. The semantic difficulties continue, however, as ODR still seems to conjure up images of web-based applications. On the other hand, a longer term, such as "technology-assisted-family-mediation", is just too much of a mouthful.

The discussion around these semantics will not be replicated here. Rather, it is sufficient to say that, for the purposes of this report, the term "distance mediation" has largely been settled on as the preferred term. In the client survey, distance mediation was explained simply as "a mediation using information/communication technologies". The other important element of this term is, of course, that the mediator and one or both parties are not present in the same room as the mediator. The term is not entirely satisfactory in that respect, as it could as easily refer to "shuttle mediation" where both of the parties are not present in a room together. It was chosen, however, as it formed part of the name of the initiative — the Distance Mediation Project — and because its focus is more on the element of "distance" than on the specific technology used in bridging that distance for the parties. □

## **II. PROJECT OVERVIEW**

### ***A. Project Description***

The Distance Mediation Project had a number of key features that exemplified its approach to distance mediation. First of all, it was based on a “client-centred” rather than a “location-centred” delivery model. This meant that these services were delivered to parties located in any remote, non-urban area. It also meant that the ICTs used in mediation were determined, ultimately, by the needs, circumstances, skills and preferences of the clients participating in the pilot. Additionally, the Project employed a “multi-media approach”. This involved testing a variety of ICTs for their broad suitability in distance mediation, and it gave mediators and parties the option of using more than one ICT in any particular case.

Another important feature was that the Project focused on the principles of ICT use, rather than on the ICTs themselves. Because of the rapid-change nature of electronic technologies, it was recognized that the specific ICTs used to deliver family mediation services in the pilot might become obsolete. Therefore, the emphasis was on a broad characterization of the advantages and disadvantages of ICTs, and on the skills and strategies required by mediators to use them, rather than on the ICTs themselves.

Before going on to describe the flow of events that took place in the cases that came into the Project (as illustrated in chart 2 at the end of this section), it is important to note that there were two different means by which clients could access the Project’s services. Intake into the Project was either by way of an inquiry to the Project Coordinator or an inquiry to a Family Justice Counsellor in a Family Justice Centre. Mediations initiated by an inquiry to the Project Coordinator were referred to the seven private practice mediators on the project team, while mediations initiated through an inquiry at a Family Justice Centre were usually conducted by the two Family Justice Counsellors on the project team.

For mediations facilitated by the private practice mediators, the parties received up to six hours of mediation services, at no charge. For mediations facilitated by Family Justice Counsellors, regular Division policy applied. Typically, mediation services offered at a Family Justice Centre include up to three sessions of approximately two hours each, and any dispute resolution service — once initiated — is normally open for a period of three months. Mediation is offered at the Centres as a public service for which people are not asked to pay. Therefore, whether a mediation file was taken by a private practice mediator or a Family Justice Counsellor, the operating conditions applied were roughly similar.

There were some slight differences in types of cases assumed by the Family Justice Counsellors, however. They could not, for example, take cases involving financial matters valued at more than \$25,000. Additionally, because of strict confidentiality rules and system requirements in place to protect the users of government services, the cases mediated by Family Justice Counsellors were more limited in the types of ICTs they could use during the Project

In all cases accepted by the Project, certain mandatory criteria had to be met, as follows:

- The issues requiring resolution were consistent with the pilot’s definition of “family mediation” (issues relating to the reorganization of the family after separation or divorce, parenting, financial support and property matters connected to separation or divorce).

- The mediation concerned British Columbian issues.
- The clients had access to at least one type of ICT being used by the pilot.
- At least one of the parties was in a remote, “non-urban” area (population 10,000 or less).
- At least one of the parties would participate in the mediation using an ICT; and
- An interpreter was not required by either party.

As shown on the flow chart of the distance mediation process on the next page, the process began with a query or a request for mediation. A prospective client would first be provided with information about the pilot. If the party was interested in participating, a preliminary screening was undertaken to determine whether the pilot’s mandatory case criteria was met. If so, in the case of an inquiry with the Project Coordinator, the party was then referred to the pilot’s list of private practice mediators in order to select a mediator. In the case of an inquiry with a Family Justice Counsellor working with the Project, however, no referral was necessary. In both scenarios, once contacted, the mediator would follow his/her usual practice in terms of determining whether the other party was ready to participate in mediation.

If accepted as a mediation file, the pilot mediator assessed the participants’ skills, needs, preferences and circumstances to determine whether the use of ICTs was appropriate and which ICTs appeared to be most suitable for use. If ICT use was found to be appropriate, and a particular ICT was identified as suitable, separate pre-mediation meetings and a mediation session were then scheduled.

During the separate pre-mediation meetings, the mediator would screen for safety and capacity to mediate. Additionally, the mediator would continually assess for the appropriateness of the ICT(s) selected for use. If the mediator determined the case was suitable, mediation sessions were then conducted. Once again, assessing the appropriateness of the ICT(s) being used, and screening for safety and mediation capacity, continued throughout the sessions. At the conclusion of the mediation, if the issues were either not resolved or the mediator had ended the mediation, the mediator referred parties to another suitable resource. If the mediation had not concluded within the time provided under the pilot, and the parties wished to continue mediating, they were able to make arrangements with the pilot mediator to do so outside of the pilot project.

There was, of course, much more to the pilot project than just managing the cases that came forward for mediation. The Project was launched with a training workshop, at which team members explored some of the ICTs used during the Project and began work on a series of checklists that were later used to guide the mediators in their distance mediation practice. These checklists, and the suggested guidelines on distance mediation which grew from them, became the focal point of many of the team meetings that were initially held weekly, and later on a biweekly basis throughout the pilot period. In addition to managing these team meetings and fielding inquiries from potential clients, the Project Coordinator also spent much of her time researching applicable ICTs, advertising the Project, and speaking with people in the many family justice and community organizations who have an interest in this work. The knowledge acquired through these efforts, together with that acquired through actually conducting distance mediations, combined to make the Distance Mediation Project a very rich learning environment. □

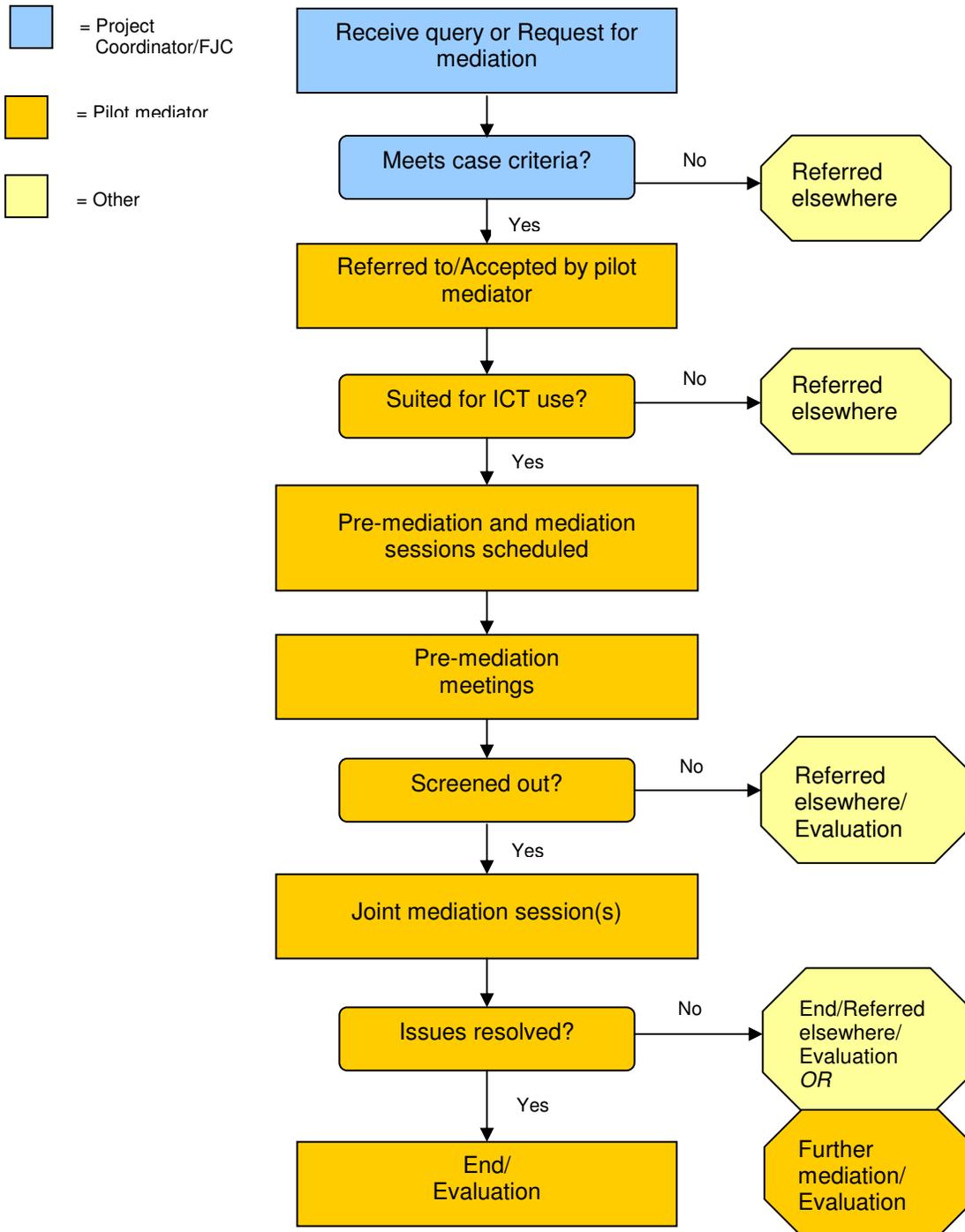


Chart 2. Flow chart of the Project's distance mediation process.<sup>4</sup>

<sup>4</sup> Source: B.C. Mediator Roster Society Distance Mediation Project: Project Map.

## B. Program Foundations

A more complete appreciation of the design and delivery of a service can be acquired through an understanding of both the larger context in which it works, and the underlying rationale on which it is based. The Distance Mediation Project was guided in its efforts by the project goal and four accompanying objectives (see chart 3, below). These foundational statements form the basis of how the Project's achievements were assessed in the evaluation.

<p><b>Project Goal:</b> <i>Overall, to explore technology-assisted family mediation for rural B.C. ...</i></p> <p>To explore the feasibility of providing British Columbians in remote, non-urban areas with access to competent, qualified family mediators through the use of information and communication technologies (ICTs).</p>
<p><b>Objective 1:</b> <i>To facilitate access ...</i></p> <p>To use a variety of ICTs to facilitate access to quality family mediation services for British Columbians, with a particular focus on providing these services to families residing in remote, non-urban areas.</p>
<p><b>Objective 2:</b> <i>To learn ...</i></p> <p>To increase knowledge about using ICTs in a competent, safe and appropriate manner to deliver family mediation services.</p>
<p><b>Objective 3:</b> <i>To collaborate ...</i></p> <p>To work collaboratively with stakeholders in the family justice system to develop knowledge about using ICTs to deliver family mediation services.</p>
<p><b>Objective 4:</b> <i>To reduce reliance on fossil fuels ...</i></p> <p>To explore the extent to which the use of ICTs might reduce reliance on fossil fuels when delivering and accessing family mediation services.</p>

Chart 3. Project Goal and Objectives

Although pilot projects generally have something of an experimental feel about them, few are so bold as to write the word “explore” into their goal statements as was done for this project. The Distance Mediation Project’s “try-and-see” character has already been mentioned — there was plainly a sense that the knowledge acquired through this exercise would be important. The main focus of the goal statement is, however, on the larger question of access to family mediation services. Finding a way to better serve people in those areas of the province in which access to these services is hampered, either by geography or by a community’s small population, was at the root of this initiative. The Project’s goal captures these two broad purposes within in its sphere of intent.

In planning the design and orientation of the Project, it was determined that the achievement of this goal would be measured by the achievement of its four underlying objectives. The first two of these objectives clearly embody the direction of the goal statement, with the aim “to facilitate access” and “to learn” written in as their overall purpose. In the first objective, additional emphasis is given to the issue of access as it affects people who are not only distant from family mediation services, but who also reside in remote, non-urban locations. In the second objective, the emphasis is on gathering knowledge specifically about competent, safe, and appropriate methods in distance mediation.

The third and fourth objectives are somewhat less direct in their connection with the project goal — disclosing, as they do, their intent “to collaborate” and “to reduce reliance on fossil fuels”. Generally, program objectives are about the ends rather than the means of overall goal achievement. For this Project, however, the objectives relate to both the *ends* and the *means*. Here, the importance of collaboration with other stakeholders in the family justice system, and of showcasing distance mediation as an environmentally sustainable method of service delivery, is highlighted. Indeed, these aspects of the service delivery were thought to be sufficiently central to the orientation of the Project that specific objectives were articulated to ensure that the project team was mindful of them as they went about the day-to-day work of the Project.

The Project’s goal and objectives can also be better understood in light of the broader rationale or logic of its efforts as they might be expected to play out over the short and long term. On the next page (chart 4), a logic model for the Distance Mediation Project further illustrates these objectives in terms of the way its activities, outputs, and outcomes relate to each other. As this is a pilot project, running for a period of just nine months, the results of the distance mediation process are only observable or measurable over the short term. The outcomes expected and measured in this evaluation are, therefore, only at the level shown on the logic model as “immediate outcomes”. At this level, we expect to see: stakeholders collaborating in pursuit of their common interest in distance mediation; knowledge accruing about ICT applications in family mediation; distance mediations successfully provided to families in remote areas of B.C.; and, remote and/or rural locations being served without the necessity of travel.

The rationale of a particular service or type of endeavour can be viewed in light of what the expectations might be if it were to continue over a longer time period as well. For example, in the mid-term, it might be expected that family mediation services would be largely accessible to people in remote, non-urban locations throughout the province, and a range of more collaborative dispute resolution options would also be available. The increased access to these justice services would all have been achieved without increased travel and the corresponding fuel used. Over an even longer term, it might be expected that the full range of dispute resolution services that are available in urban B.C. would be available in all parts of the province. Furthermore, at that time, it might be expected that distance mediation will have contributed in a significant way to the larger global effort to deliver services in an environmentally sustainable manner. □

Evaluation of The Distance Mediation Project

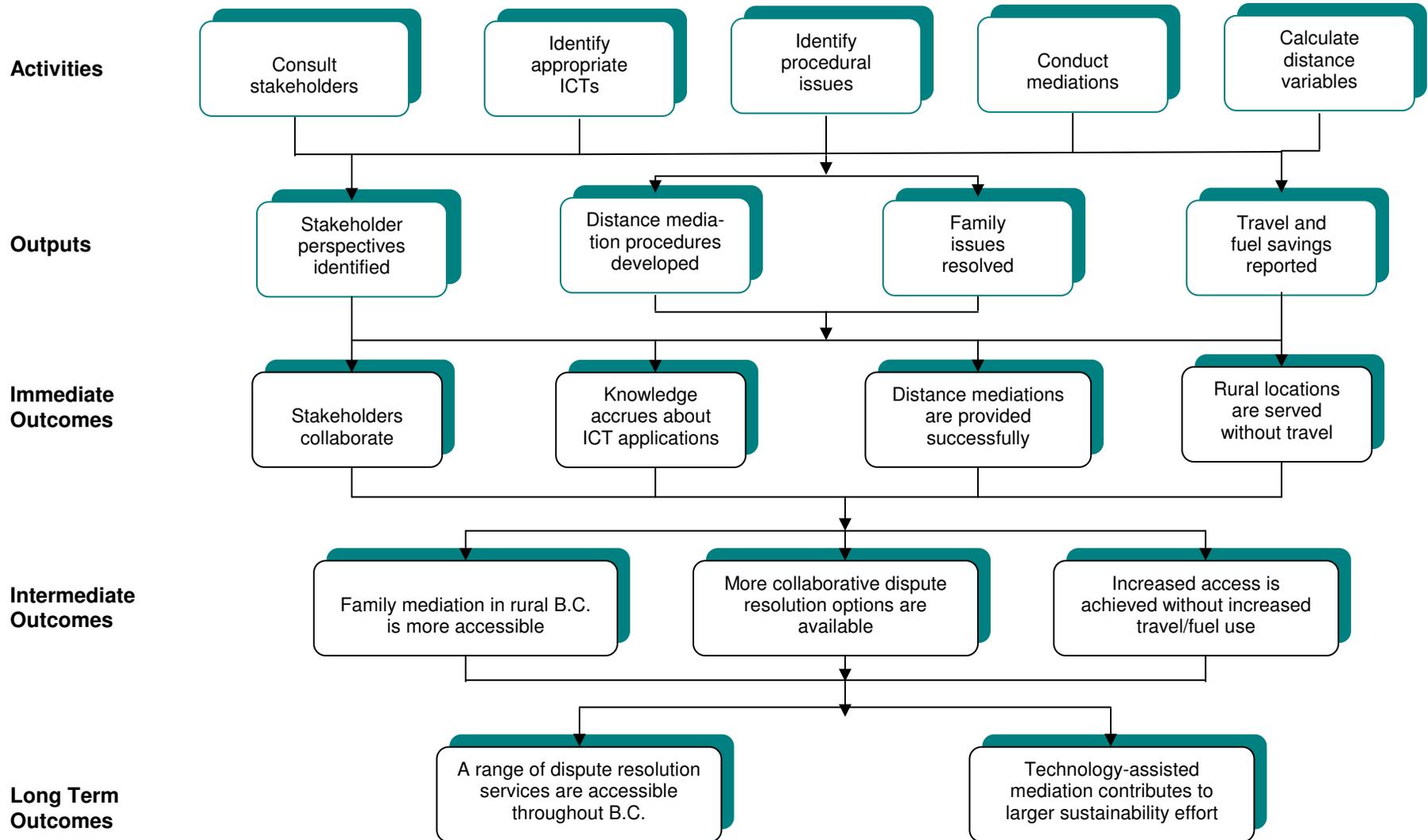


Chart 4. A logic model of the Distance Mediation Project.

### C. Concepts of Objective Achievement

In planning an evaluation, the primary task is to isolate measures or indicators of “program success” — the successful achievement of program objectives which translates, ultimately, into the successful achievement of the program goal. Although the indicators selected and detailed in the evaluation framework tables quite specifically address each of the four project objectives and the evaluation questions that each poses (see Appendix A), four key concept categories can be used to summarize them: accessible, informative, collaborative, and sustainable. These are, in a sense, the adjectives that describe what is expected for overall project success.

The first of these concepts, *accessible*, captures the sentiment that, for the Distance Mediation Project to be a success, family distance mediation services must have been made available to — and have been successfully used by — the target group. The Project’s target group is, of course, families living in remote, non-urban locations around the province. As has been mentioned, access is the primary objective of the Project. It is the effort to promote access to mediation services and, in a broader sense, to promote access to justice, which forms the direct appeal of this project to the mandates of the (former) B.C. Mediator Roster Society and the Law Foundation of B.C. who funded it. “Accessibility” is, therefore, displayed “front and centre” amongst the concepts as they are illustrated in chart 5 (next page).

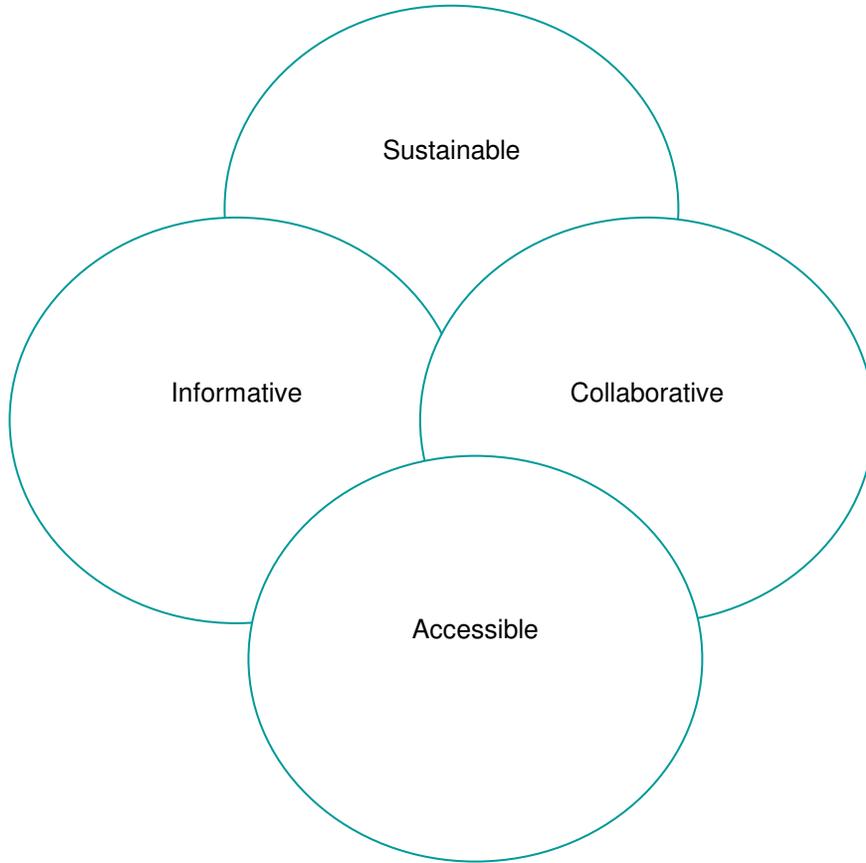
The second concept, *informative*, is also of key importance in how success is conceived for the Project. It was recognized from the start that this work was to be an exploration. If something is learned about how — and how *not* — to incorporate distance mediation into a family mediator’s practice, the effort will have been worthwhile. On the other hand, it was also recognized that, given the size and duration of the Project, this learning is really only a beginning. Additionally, it was clear that the emphasis must, in all cases, be on the professional’s caveat to “do no harm”. Success would only be achieved, therefore, if something was learned about competent, safe, and appropriate distance mediation practices.

The third concept, *collaborative*, is that element of success that speaks to involving colleagues and communities in the distance mediation initiative. Knowledge flourishes best when it is shared with others, and this is particularly true in this field. Family mediation is a process that takes place within the context of a larger family justice system. Unfortunately, that system is loosely organized, and really not contained within any defined structure. It involves many individuals and organizations working together, but often with very little orchestration. While this lack of orchestration or cohesiveness made the job more difficult, it was nevertheless felt that, to be successful, the Project should involve other players in the community and family justice system as much as possible.

Finally, the last concept of success, *sustainable*, exemplifies the idea that one should “act locally, but think globally”. At the moment, “e-business” is very much being sold on the basis of its contribution to environmental sustainability. Similarly, this fortunate by-product of distance mediation could well be a feature that makes it attractive to the broader public. As working out the carbon savings associated with these services is a new and challenging exercise, however, finding a comprehensible way of doing this was an important part of the Project. In the end, to be successful, distance mediation should be an environmentally sustainable practice.

Chart 5 on the next page shows successful goal achievement as four overlapping “bubbles”. It is a simple way of depicting that these four concepts for understanding success for this project are interdependent, and that they have certain characteristics in common. Each has, however, a different

emphasis — and each is more or less prominently highlighted in each of the four project objectives. Taken together, they form an appreciation of how achievement of the larger project goal was perceived for evaluation purposes. □



**Chart 5. Concepts of successful goal achievement in the Distance Mediation Project**

### III. PROJECT SUCCESS

#### A. Accessible

##### Objective 1. To facilitate access ...

To use a variety of ICTs to facilitate access to quality family mediation services for British Columbians, with a particular focus on providing these services to families residing in remote, non-urban areas.

The evaluation questions examined in connection with this first objective have three broad themes. First of all, they ask whether the Distance Mediation Project was successful in reaching the intended target group: families in remote or non-urban areas of the province. Second, since a successful service requires that both the “recipients” and the “providers” of that service be satisfied, they ask whether both mediation parties and their mediators were satisfied with the long-distance mediation process. Lastly, these questions ask whether the project delivery and outcomes were compatible with specific organizational mandates regarding access to justice, and whether — in a broad sense, and mindful of those mandates — it is feasible to deliver technology-assisted mediation services on a large scale to remote, non-urban areas of British Columbia.

Overall, then, these questions relate largely to the concept of *accessibility* as the indicator of success in the Project.

#### i. Reaching the Target Group

- Do families residing in remote, non-urban areas of the province access the Project’s services?

At first glance, this question appears to be quite clear: did the targeted group of clients actually access the Project’s services? The answer is, on the other hand, not so clear. At the outset, the definition of “remote, non-urban” posed some difficulties for the Project. Smaller, more isolated communities in the province still do not have reliable Internet access (particularly to broadband service). Additionally, due to their small size, few family mediation cases are likely to originate from these communities. Prior to the start date, therefore, it was concluded that, in order to attract a sufficient volume of cases for an effective trial of technology-assisted family mediation, a non-urban community would be defined as one with 10,000 or fewer residents.

It happens that two thirds of the communities in the province are about this size, and yet they contribute to less than 10% of the province’s total population (see *British Columbia Facts*, at right<sup>5</sup>). The definition used by the Project would seem, then, to be a reasonable characterization of the province’s non-urban experience. Although it

#### British Columbia Facts:

- Has 25,725-kilometres of coastline.
- Approximately 21% of the land is rock, ice fields and glaciers.
- Approximately 62% is forest land.
- Approximately 5% is arable and grazing land.
- About 67% of communities have 10,000 or fewer residents, but less than 10% of the province’s total population.

<sup>5</sup> Sources: “Information on B.C.: Geography of B.C.”, *British Columbia.com*; BC Stats, “British Columbia Municipal Census Populations, 1921 - 2006”

was attempted, the term “remote” was not specifically defined for project purposes as it was difficult to apply in a practical and objective fashion. It was recognized, nevertheless, that remote locations would be captured within the 10,000 and under population criteria. The participation of families in geographically remote areas was also made more likely by including the telephone as an applicable piece of technology in the Project. While many such remote areas of the province still do not have reliable Internet access, most do receive telephone service.

Overall, four-fifths (83.4%) of the Project’s clients came from communities of under 10,000. About a third (30.4%) of them came from communities of under 3,000. Therefore, while the mandatory case criteria required that at least one party must reside in a location of 10,000 or fewer people, the results show that both parties tended to live in such communities. Three parties came from small, non-urban communities located outside the province, while all other clients came from within the province of British Columbia. Unfortunately, as chart 6 below shows, the parties were not evenly distributed around the province. Most of the parties came from the Kootenay and Vancouver Island economic development regions. No parties came from the Northeast region, and just one came from each of the Nechako and Thompson Okanagan regions. It is not clear why more parties came from some regions and only a few from others — and none at all from the Northeast region. The method of advertising the Project should have reached the communities in all regions in an equal fashion, and no particular patterns emerged after examining where survey respondents said they had heard about the service.

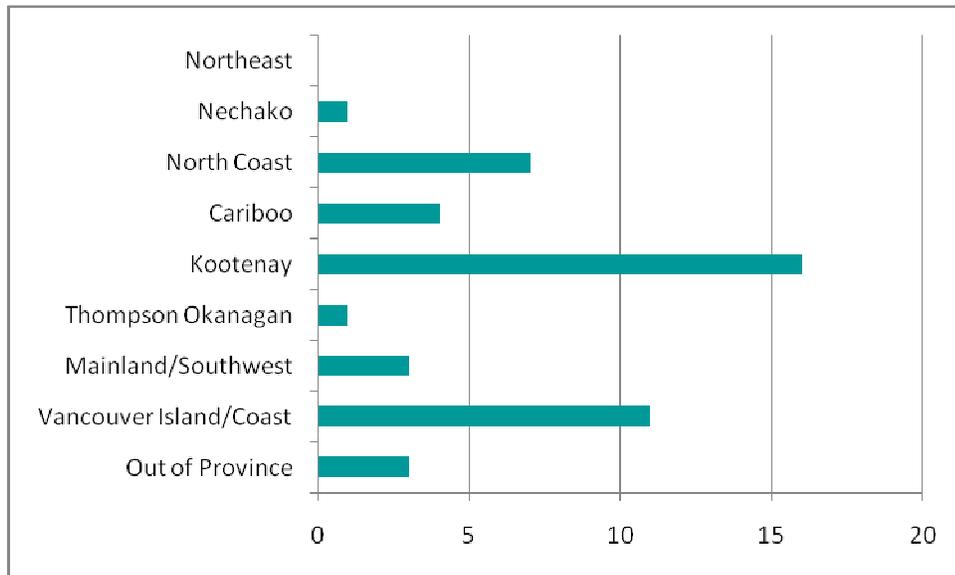


Chart 6. Number of parties by economic development region.

	<b>Project Office</b>	<b>Family Justice Counsellors</b>	<b>Total</b>	<b>% of Total</b>
Inquiries	78	25	103	100.0%
Cases where Project criteria were met	46	18	64	62.1%
<ul style="list-style-type: none"> <li>• Criteria met but cases did not proceed</li> </ul>	31	2	33	32.0%
<ul style="list-style-type: none"> <li>• Criteria met and cases proceeded (i.e., Case # assigned)</li> </ul>	15	16	31	30.1%
<ul style="list-style-type: none"> <li>• Cases proceeded and completed</li> </ul>	15	8	23	22.3%
<ul style="list-style-type: none"> <li>• Cases proceeded but did not complete</li> </ul>	0	8	8	7.8%
Cases where Project criteria were not met	19	7	26	25.2%
Cases where it is unknown or unclear whether criteria were met	13	0	13	12.6%

**Chart 7. Inquiry and Case Statistics**

As shown on chart 7, above, there were 103 contacts officially logged as an inquiry by a prospective client for the Project. Of these, 26 (25.2%) were found not to fit the Project’s mandatory case criteria; 15 (14.6%) because one of the parties did not live in a community of 10,000 or fewer people. Of the total number of inquiries received, a case number was assigned in 31 (30.1%). Twenty three (22.3%) cases proceeded to at least one mediation session by a Project mediator.

It is not known why many of those who made the initial inquiry did not subsequently avail themselves of the service. The temporary nature of the project may have discouraged some. During preliminary intake conversations, many parties indicated to the Project Coordinator that they did not think the other party would voluntarily go to mediation. The unwillingness of the other party to proceed with mediation may, therefore, have been a significant factor. As well, timing may have been an issue. Mediators report that a considerable amount of time can sometimes pass before both parties are ready for mediation. The short duration of the Project, however, required that there be a quick turn around.

A low rate of uptake after an initial inquiry for dispute resolution services is not unusual.<sup>6</sup> For example, a recent longitudinal study on dispute resolution undertaken by the Family Justice Services Division found that 46% of clients originally screened for the study were ultimately screened out

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<sup>6</sup> The rate of uptake may have been affected by a variety of factors which it was not feasible to examine in the context of the evaluation, including: the reach and impact of Project advertising in rural communities, the degree of familiarity with mediation generally in these communities, and the degree to which the demographic profile in the communities fits that of users of traditional family mediation services (e.g., whether the population is similar to one which normally uses family mediation services).

because they did not subsequently become involved in a dispute resolution service offered by the Division.<sup>7</sup> The circumstances of this study are not entirely comparable with the Distance Mediation Project. Nevertheless, the rate of uptake for the Project is seen as being within a normal range for services of this type.

The answer to the question about whether families in remote, non-urban areas of the province accessed the Project's services can, then, be summarized by saying "largely, but with some qualifications". Most of the parties who used the Project's services were from situations in which both were residents of non-urban locations of 10,000 or fewer people. Unfortunately, however, parties located in small, non-urban communities in the North East, Nechako, and Thompson-Okanagan regions did not access the Project's services. The number of inquiries and subsequent rate of uptake for the Project from other parts of the province is, nevertheless, sufficient to show that there was both demand from and services delivered to people from non-urban communities, as defined by the Project.

- What is the demographic profile of the Project's clientele, and does this profile generally match the profile of B.C.'s non-urban residents?

Other than the location of the clientele, determining whether the target group has been reached also involves understanding the characteristics of the people attracted to the Project's services. It is important to know whether, roughly speaking, the Project's clientele were comparable to the people who live in the targeted communities. Some of the main demographic characteristics of the people taking part in the Project are provided below:

- The clients of the Distance Mediation Project tended to be middle-aged, with three quarters (75.7%) falling in the 35 and over age range; just under half (43.2%) of them were over 45 years of age (n = 37).
- Only one party (5.6%) was identified as having a First Nations background. Two more (5.6%) were known to have come from a First Nations community, but their ethnicity was not specifically revealed to their mediators (n = 36).
- Four (10.0%) of the parties were identified as having a disability (n = 40).
- Two thirds (66.7%) had an income of under \$50,000 annually (n = 39).
- About two fifths (42.5%) had at least a grade 12 education, and about a third (30.0%) had a college or university education (n = 40).

A full statistical assessment of the degree to which the Project's clientele matched the rural population of B.C. was not undertaken. Nevertheless, a few general observations can be made about the above profile of the Project's clientele as compared with the general demographics of rural B.C.

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<sup>7</sup> Focus Consultants, *Dispute Resolution Longitudinal Study: Phase 3 Final Report* (Family Justice Services Division, B.C. Ministry of Attorney General, March 2008), p. 12.

(see insert at right<sup>8</sup>). First of all, it appears that the parties who participated in distance mediation tended to be somewhat older than the general population of adults in rural communities. Likely, they were also better educated. Additionally, as First Nations populations are generally larger in rural communities than in urban ones, a smaller proportion of the parties had a First Nations background than might have been expected. Similarly, fewer than expected were identified as having a disability (although a lack of clarity around the definition of “disability” may have contributed to a degree of under-reporting in this category). With respect to economic background, however, the Project’s clients seem to have been fairly consistent with the broader non-urban population.

It is, however, somewhat difficult to draw a clear comparison between the Project’s clientele and the general population of rural community-dwellers. For example, little is known about the users of traditional family mediation services in these communities. Perhaps the users of face-to-face mediation services would not be dissimilar to the Project’s clientele. There was, as well, quite a lot of missing data respecting the demographic details of the Project’s clientele. This information is uniformly collected by Family Justice Counsellors during their regular intake process. For private mediators, however, this kind of information may not be collected unless it has some significance to the conduct of the mediation, and they tended not to collect it for evaluation purposes either.

While disappointing from the point of view of building a more complete picture of the Project’s clientele, the missing data may, in fact, be significant in another sense. On-line dispute resolution has been observed to be a great “equalizer” — in other words, that it is blind to characteristics such as ethnicity, disability, and socio-economic background. In family mediation, however, where relationships are at the core, being sensitive to the parties’ cultural backgrounds and living circumstances may be important to helping the parties achieve the best mediation outcomes. The missing data may, therefore, be problematic in ways other than just inattention to an evaluation detail. Rather, in family distance mediation, mediators may well need to develop additional strategies to be sure they are appropriately interpreting the nuances of a party’s situation.

- What barriers — commonly referred to as “digital divide” issues — might prevent parties in remote, non-urban areas from accessing technology-assisted mediation services?

After looking at the profile of the distance mediation clients, the question arises whether the barriers often reported in connection with access to information and communication technologies had a role to play for potential clients *not* accessing the service. Common “digital divide” factors discussed in the literature on this topic include:

**Rural BC Population Demographics**

- Rural and small town populations tend to be the most youthful, with the highest proportion of children (23.7%) and the lowest proportion of seniors (10.6%) in the province.
- In 2006, 11.3% of rural populations (under 1,000 people) and 3.7% of urban populations were aboriginal.
- 12.8% of the working age population in BC indicated they had a disability.
- Communities under 1,000 had the highest proportion of children (23.7%) and the lowest proportion of seniors (10.6%) in the province.
- In 2005, urban incomes were 116% higher than rural incomes.
- During the 2004/2005 school year, the rural dropout rate (16.4%) was nearly twice as high as the urban dropout rate (9.2%).

<sup>8</sup> Sources: B.C. Stats, *Labour Participation of Persons With Disabilities*; Statistics Canada, “Canada’s Population by Age and Sex”; Diane Looker, *Regional Differences in Canadian Rural-Urban Participation Rates in Post-Secondary Education*; Rural Secretariat, *Rural British Columbia Profile: A Ten-year Census Analysis (1991 – 2001)*; Alan Seychuk, *Measuring the urban-rural income gap in Canada*; and, Canadian Council on Learning, *The rural-urban gap in education*”.

- cultural background
- broadband availability
- age
- disability
- income
- geography, and
- education.

To properly examine these digital divide factors, it would have been necessary to craft a more elaborate experimental research design. An in-depth analysis of these factors would also have consumed a significant amount of the Project's resources. Examination of these issues was not, however, the main purpose of the effort. Nevertheless, some observations can be made about digital divide issues in general as they apply to the particular design of this project.

The underlying premise of the Distance Mediation Project — providing access to family mediation services to remote, non-urban British Columbians — is really an embodiment of digital divide concerns. These are very much the factors that prevent people in remote, non-urban locations from accessing an on-line service. The Project was, then, essentially designed with those concerns in mind. The very fact that any clients accessed the service at all suggests that digital divide barriers were overcome to some extent.

Conceivably, some digital divide factors — specifically broadband availability, age, income, and education — may have been mitigated in this project by including the telephone among the ICTs by which mediation services could be delivered. The telephone was, certainly, the technology of choice for the parties, suggesting that the Project may well not have been viable without it. Because the telephone is an old technology, not really a product of the information age, it has not typically been characterized as a tool for on-line dispute resolution. But, as the line between computer and telephone technologies become more blurred — for example, with hand-held devices capable of taking pictures, connecting with the Internet, and carrying voice communications — telephone and other hand-held devices are likely to take on a new focus. In British Columbia, in any case, the age of this technology means that there is at least the infrastructure to support this kind of communication in most remote, non-urban locations in the province.<sup>9</sup>

“... [as with] most of the DMP clients, the telephone is really the only available communication tool.”

“Parties very comfortable on telephone. Husband said felt good about being able to do this from his home. Wife said felt good about not being in same room as husband.”

“Actually, the telephone works well — people are used to talking with each other by phone, and the lack of body language to key off can help the process.”

— Project mediators

Income factors may also have been mitigated in the Project by offering the service free of charge. On the other hand, income as a digital divide factor is generally discussed in relation to the degree of access low income people have to the necessary equipment, and not necessarily to their ability to pay for a service (see related discussion regarding ability to pay, later under A.ii. *Satisfaction*). For this

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<sup>9</sup> The lack of infrastructure for high speed Internet access in rural communities, and the subsequent “digital divide” that is experienced in these communities, has been the subject of recent hearings of the CRTC. (See related *Globe and Mail* articles by Iain Marlow and Jacquie McNish: “Canada’s digital divide”, published Friday, Apr. 02, 2010 7:42PM EDT. <http://www.theglobeandmail.com/report-on-business/canadas-digital-divide/article1521631/>; and “CRTC may require Internet providers to improve rural access”, Published on Wednesday, Feb. 03, 2010 9:15PM EST. <http://www.theglobeandmail.com/news/technology/crtc-may-require-internet-providers-to-improve-rural-access/article1455476/>.)

project, in any event, it may have provided an added incentive for people to have become involved in the pilot project.

Cultural background and disability barriers were two commonly-noted digital divide factors that were not specifically addressed by the design characteristics of the Distance Mediation Project. Only two clients — one German and one French-speaking — did not speak English as their first language. And, although people with a disability might conceivably be better able to access a mediation service from the comfort of their own homes, just two of the parties were identified as having a disability.

Digital divide remains a large area of concern for the field of on-line dispute resolution. More research needs to be done in order to fully understand its implications. It is not clear, at least, whether digital divide factors may have played a role in preventing some people in remote, non-urban locations from accessing the service offered through the Distance Mediation Project. The Project was, however, tailored to access the very people who experience digital divide more than any others in the province. To the extent, then, that this project drew the number of inquiries it did, and ultimately acquired the number of cases it set out to acquire, these factors apparently did not prevent this Project from being a suitable trial for technology-assisted mediation services.

## **ii. Satisfaction**

- Are the parties generally satisfied with their experience with ICTs in mediation, and do they believe that their use has been helpful as an aid in dispute resolution?

Surely the most important people to satisfy in any project are its clientele. Success for distance mediation really depends on whether the parties are pleased with the process, and whether they view the process as helpful in resolving their disputes. To gauge this, distance mediation parties were asked a number of questions about their experiences in a written survey. Twenty five of the 46 parties returned a completed survey. Their responses were as follows:

- Most respondents (80.0%) indicated that they were fully able to express their thoughts, feelings, and concerns during mediation.
- Just over half (52.0%) indicated they were satisfied or very satisfied with the outcome or end result of their mediation. Three quarters (76.0%) were satisfied or very satisfied with the mediation process they experienced, regardless of the mediation outcome.
- Overall, most respondents (80.0%) had a favourable or very favourable impression of mediation, apart from the information/communication technologies they used. Most (88.0%) were also satisfied or very satisfied with the information/communication technologies they used, apart from their feelings about the mediation process or the outcome of their mediation.
- Although almost half (44.0%) indicated they had no safety concerns, most of the remainder (48%) felt that ICT use either increased or did not influence their mediator's effectiveness in managing any safety concerns they had.
- Three fifths (60.0%) also indicated that ICT use either increased or did not influence their mediators effectiveness in managing the discussion between people in their mediation

"I am thankful for the service ... and the promotion of ... a confidential service in a small community (poor available services). It was timely, unrushed but comprehensive — compiling and clarifying issues without conflict. Subsequent visit with a lawyer to finalize the paper — she was very impressed with the document and process."

— a client survey respondent

session.

- Most (80.0%) said they would choose a distance mediation process for help in resolving another issue if it arose.
- Most (84.0%) said they would recommend the process to others, and almost half (48.0%) said they would do so even if they had to pay for the services.

According to these results, most of the twenty five people who returned the survey questionnaire expressed an overall satisfaction with the process. They were thoughtful about their responses, with some indicating their satisfaction with the process even though they were unsatisfied with the mediation outcome in their case. This is significant, as family issues are emotionally absorbing, and similar surveys have shown that it is difficult for people to disentangle their thoughts about those issues in order to reflect on the process in which they are participating. Nevertheless, the respondents did seem to have a more favourable impression of the process they experienced when viewed in relation to the ICTs they used, than they did when viewed in relation to the mediation outcome.

“It was helpful due to the objectivity of the interaction. No misreading of body lang./face to face interactions.”

“[The mediator] did a great job with a tough situation.”

— client survey respondents

Amongst those listed above, there is one result which should be examined a little further. Although twelve (48.0%) of the survey respondents indicated that they would recommend the service even if it were not free of charge, nine (36.0%) indicated they didn’t know and four (16%) outright would *not* recommend it if the service was not free of charge. At the time of the Distance Mediation Project, the effects of an economic downturn were being felt throughout the province. Even in good times, however, the cost of a distance mediation service may be a factor in whether or not people would access it. In July 2005, an RBC Financial Group report found that the incomes of urban-dwellers were 116% higher than that of rural-dwellers.<sup>10</sup> It appears, then, that affordability may well be a very important consideration in providing distance mediation service to non-urban populations.

The results are not, unfortunately, very illuminating in terms of whether or not the parties felt that the use of ICTs in mediation was, in itself, helpful as an aid in dispute resolution. Just one person indicated that they had participated in mediation before, and this person was neutral — saying their Project mediation experience compared neither favourably nor unfavourably. It is not known, therefore, whether people might have perceived the use of ICTs any differently had they been able to compare it with traditional face-to-face mediation methods.

On the other hand, the mere fact that virtual proximity and physical distance can co-exist together in a technology-assisted process may, in itself, be a key feature that sets it apart from face-to-face methods. Both the parties and mediators perceived the benefits of this, for example saying: “It was better that my spouse and I were not in the same room” and “I believe that being physically separated during the mediation was helpful to my well being”, or “This couple could not have been in the same room together”. Indeed, the same observations were made during early attempts by the University of Maryland to conduct a similar project in the in the mid-1990’s — distance mediation worked well for people who simply didn’t want to be in the same room together.

“Technology is finding new ways to create intimacy.”

— a commentator on Digital Nation: Life on the Virtual Frontier, a presentation by Frontline, PBS

<sup>10</sup> Alan Seychuk, “Measuring the urban-rural income gap in Canada”, *Current Analysis*. RBC Financial Group, July 2005. <http://www.rbc.com/economics/market/pdf/incomegap.pdf>, searched 8 January 2010.

- Are Project mediators generally satisfied with their experience with ICTs in mediation, and do they believe that their use has been helpful as an aid to dispute resolution?

With one exception, the nine mediators on the project team came with little or no experience with some of the more sophisticated text-based, audio-based, or integrated audio-visual platforms applicable to family mediation.<sup>11</sup> Few had even had experience with teleconferencing in a mediation context. This was, therefore, very much a learning exercise for all concerned. While enthusiastic about the Project, and enthusiastic about the potential ICT use might hold for them in their mediation practice, none really had any preconceived notions about it.

Not unexpectedly, the project team's level of satisfaction with individual technology options varied, depending on the particular product they considered. As discussed in greater detail later on (see B.ii. *Application of Distance Mediation Methods*), the project team reviewed a range of different ICT platforms during the pilot period. They also held team meetings, initially on a weekly and more latterly on a bi-weekly basis, using either web or telephone conferencing platforms. Audio problems, and sometimes video and screen/text management issues, frequently plagued them, but these sessions nevertheless provided a valuable hands-on learning experience for the team. In particular, the issues that arose during these meetings underscored the need to be fully conversant with the features of both the software and hardware being used in a mediation context.

Overall, the team sensed the most potential for platforms that had a multipoint video capacity (where more than one person can be seen on-screen), and provided for document sharing and editing. Their satisfaction was highest, in any case, when there was a visual component to the platform.

It is vital, I believe, to have video enabled. We couldn't do that here as [the] wife was in a "safe house".

— a Project mediator

The mediators had reservations about platforms that were entirely text based, or those for which there was neither an audio or video component. Their misgivings included concerns that some of their clients may not have the literacy skills to work on these platforms. Additionally, they felt the platforms were somewhat cumbersome, time consuming, or not particularly user-friendly. Of particular note, they also observed that some entirely text-based platforms might not afford a mediator sufficient control over the process, especially for managing the challenging party dynamics that often arise in a family mediation setting.

In a "real life" mediation setting, however, the more common and readily available tools (telephone, teleconferencing, e-mail, and document sharing by e-mail attachment) were the norm in all but one of the 23 cases that proceeded to mediation. A high degree of satisfaction with these methods was reported by all the mediators that used them. In the one case that was an exception, a variety of different platform options were used: Skype Video, Skype 3-way conferencing, WebEx Meeting Centre, Windows Live Video, Windows Live chatting, telephone, and e-mail. This case involved, however, a particularly unusual mixture of circumstances, in which the mediator and both parties not only had access to, but were also conversant with, these different platforms. The case circumstance involved some mediation challenges, and the mediator observed a few problematic behaviours that may have been exacerbated because the mediator wasn't physically present. Dissatisfaction with the features of the platforms used was not, however, one of the disadvantages noted.

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<sup>11</sup> Text-based mediums, audio-based mediums, and audio-visual or integrated mediums that use audio, visual, and sometimes text are the three categories by which the various technologies applicable to long-distance family mediation were divided in the Phase I report for the Project. For ease of reference, a similar categorization is used here. (See *Closing the Distance with Technology*, page 5, at [http://www.mediator-roster.bc.ca/public/pdf/Closing\\_Distance.pdf](http://www.mediator-roster.bc.ca/public/pdf/Closing_Distance.pdf)).

It was difficult for the mediators to comment on whether they saw ICT use as an actual aid to dispute resolution, or as just having different implications for the management of a case. Some of the advantages noted — such as a calming effect, or simply enabling discussion between people who can't otherwise be in the same room together — are in the category of aids. On the other hand, some aspects of the process, such as screening, can be more difficult, as properly gauging a person's character or capacities in mediation may be more complex. Technology can be, then, sometimes an aid, and sometimes a hindrance.

In fact, an important facet of all this was what the project team members learned about themselves, and about whether these distance mediation methods suited their own mediation styles. At the close of the Project, the mediators unanimously indicated they were pleased with their distance mediation experience and said that they would like to continue to use these methods in their own practices. This is not to say, however, that they did not feel the need of more practice. While the Project afforded them a taste of what distance mediation is all about, all recognized the need to learn more both about the different platforms that are available to support them in their work and about the methods they might use if they employed them in their mediation practice.

### **iii. Broader Implications**

- Is the Project design consistent with, and does it support, the B.C. Mediator Roster Society and Law Foundation of B.C. mandates regarding access, and the *Notice to Mediate (Family) Regulation* regarding the use of alternate communication mediums?

At the outset, a commitment was made to conduct the Distance Mediation Project in a manner which furthered a number of key objectives respecting access to family justice in the province. These included:

- the (former) B.C. Mediator Roster Society's mission "to serve the public interest in British Columbia by promoting the use of mediation through an accessible roster of competent mediators"<sup>12</sup>
- the Law Foundation of British Columbia's efforts to promote access to justice for British Columbian families, in particular through its vision for "a society where access to justice is protected and advanced"; and
- the goal to broaden mediation access through regulation 21 of the *Notice to Mediate (Family) Regulation* [B.C. Reg. 296/2007], which provides that "a person required or entitled to attend a pre-mediation meeting or a mediation session may attend that meeting or mediation session by telephone or other communications medium if authorized to do so by the mediator".

Assessing the degree to which the Project furthered these goals involved an examination of the design elements of the Project. These included, in particular, the project plan or "map" that was prepared to guide the implementation of the pilot project, the objectives articulated for the Project, and the policy and procedural guidance on which the mediation team operated.

The Project Map, first of all, specifically identified these goals, and discussed how the Project would promote the family justice access principles underlying them. As well, the overall program goal

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<sup>12</sup> During the pilot period, the B.C. Mediator Roster Society joined with the Dispute Resolution Innovation Society to form a new organization with a common mission and goals.

formulated for the Project emphasises that, in fact, the main focus of the Project is improved access to family justice, especially for British Columbians in remote, non-urban areas of the province. Finally the policy and procedural guidance provided to the mediation team during the Project — as well as those that were developed as a product of the Project’s efforts — focused on competent, safe and appropriate family mediation as delivered “by telephone or other communication mediums”. The design elements reviewed were, therefore, found to be clearly consistent with, and supportive of, these important family justice access goals.

- What is the feasibility of delivering technology-assisted family mediation services on a large scale in remote, non-urban areas of B.C.?

When asked about the feasibility of distance mediation on a large scale basis, the Project Coordinator’s comment was: “Not only is it feasible, it’s inevitable”. Another remark was that “It’s a matter of getting on the train — and the train is already leaving the station”. To be sure, ICTs have crept steadily into every household and every business, probably to a degree that was unimaginable just a decade ago. This project can be seen, therefore, as simply laying the foundations for what is likely to become an accepted practice in the not-too-distant future.

Yet, feasibility on a large scale — and particularly in remote, non-urban areas of the province — is a little more involved than just “getting on the train”. It is dependent on a number of different factors, some of which have already been noted. For example, it is likely that the Distance Mediation Project was viable largely because of the inclusion of the telephone as an applicable piece of technology. The continued absence of broadband capability in many small, non-urban communities — even those that are not considered geographically remote — means that accessing some of the web conferencing or other web-based meeting tools for mediation purposes does not seem immediately possible. Additionally, affordability appears to be a very important consideration in providing distance mediation service to non-urban populations (see comments under A.ii. *Satisfaction*).

There is, as well, much more to learn about distance mediation. The full impact of the “digital divide”, particularly in remote, non-urban locations, remains a question not fully answered by the Distance Mediation Project. There are also more mediation best practices to be documented when ICT use is stirred into the mix. The conditions that restricted the application of distance mediation in this particular project — imposed by limiting the service to small, non-urban populations — meant that some of the web platforms that might otherwise have had some potential were not tried in a real mediation setting. Indeed, the number of cases accepted into the Distance Mediation Project — while laudable in such a short period — was, in the end, quite small as a basis on which to draw broad conclusions about ICT use in family mediation.

In spite of these concerns, however, distance mediation is surely here to stay. The issues raised above have to do with the challenges of serving remote populations — not distant populations — and with the desire to learn more and hone skills. The results of the evaluation show that family distance mediation is clearly feasible — that is, family mediation can be carried out safely, competently, and appropriately with the help of ICTs, and that it can be accomplished even when large distances separate the parties and their mediator.

Family distance mediation serving remote, non-urban populations does, however, have some hurdles to overcome. Until the suitable infrastructure to support them is in place, some of the more elaborate web-based tools for communication will remain out of reach for these communities. In the meantime,

however, the simpler tools primarily used by the parties in this project — telephone and e-mail — can suffice. There are, essentially, two key operating conditions that stay constant in distance mediation, regardless of the communication mechanism employed — virtual proximity and physical distance. The skills used to manage these two aspects of the mediation climate are broadly portable, whether the vehicle for communication is a telephone or an audio-video feed.

Overall then, in reflecting on objective 1, the observations discussed in this section suggest that family distance mediation — as it was delivered in the Distance Mediation Project — was largely *accessible* to families in remote, non-urban areas of the province. There remain some challenges in reaching people in these areas. But for those parties who participated — at least, those who responded in a survey about the Project — there was broad satisfaction with the distance mediation experience, as indeed there was for the mediators who helped them resolve their disputes. There is a good deal more to learn about distance mediation practice as it applies in a family setting — particularly when using web conferencing or other web-based meeting tools. Nevertheless, taken together, the Project’s results suggest that it is certainly feasible to deliver family distance mediation services throughout B.C. on a large scale basis. □

## **B. Informative**

### **Objective 2.** *To learn ...*

To increase knowledge about using ICTs in a competent, safe and appropriate manner to deliver family mediation services.

Certainly, “knowledge” is a very broad construct. In order to make the discussion in connection with this objective manageable, the questions associated with it have been grouped into four major themes: competent, safe and appropriate mediation practice; issues of application, or the circumstances under which distance mediation might be recommended; the comparative benefits of using distance mediation approaches; and lastly, some reflections both on how to go about acquiring skills and on the key lessons learned in this mediation context. As has been said before, this project really is “all about the learning”. While ICT use is not uncommon in areas such as commercial and workplace mediation, it is almost unknown in family mediation. Therefore, there is no comprehensive body of research or experience by which to determine its application in this particular field of mediation.

The degree to which the Project is *informative* is, then, the concept of success associated with this objective.

#### **i. Competent, Safe and Appropriate Mediation Practice**

- Do the policy/procedural tools developed for the Project support and promote competent, safe and appropriate methods in respect of technology-assisted family mediation?
- Do the policy/procedural tools developed for the Project address screening for violence and assessing mediation capacity when ICTs are used in family mediation?
- Do the policy/procedural tools developed for the Project address screening/assessing for the suitability of ICT use in family mediation?

- Are competent, safe, and appropriate methods in respect of technology-assisted family mediation utilized over the course of the Project?

These questions have been grouped together here, as they are inter-related — all having to do with competent, safe, and appropriate methods in distance mediation. Essentially, there are two parts to this assessment. First, for the sake of the parties who brought their disputes to be mediated, it is important that competent, safe, and appropriate methods were contemplated even before distance mediation cases were conducted. Second, as the mediation team acquired experience and thought about the broader implications of what they had learned, it is important that this knowledge was shared and adopted into practice as the Project progressed.

At the outset, a mediator was required to meet a rigorous set of qualifications in order to join the Project's team of mediators. Likely the most demanding of these was, simply, being either a member in good standing of the Mediator Roster Society's Family Roster or a Family Justice Counsellor with the Family Justice Services Division. Family Roster members are obliged to, among other requirements, be certified as family mediators with Family Mediation Canada (FMC) or to meet particular education, training, and experience standards as accepted by the Society<sup>13</sup>. For mediators who are not trained as lawyers, they must also have at least 40 hours of training in family law and procedures. Similarly, Family Justice Counsellors must be certified with FMC and have a specified level of training and experience before they are permitted to undertake family mediation work.

As well as the training and experience requirements, private practice mediators with the Project were subject to the Mediator Roster Society's Standards of Conduct. For the Family Justice Counsellors, the Standards of Conduct set by the Division applied, as well as the conditions articulated in the *Family Relations Act* and the Division's Manual of Operations. These requirements in themselves went some way to ensuring that competent, safe, and appropriate methods would be employed.

To launch the Project, a workshop was held at which particular attention was given to screening for safety, assessing mediation capacity, and screening or assessing parties for ICT use. Work began on a series of checklists on these topics for later use by the mediation team. The agenda for this workshop also included: managing emotions, managing power differences, managing cultural differences, caucusing, dealing with agreements/memoranda of understanding, and ensuring confidentiality and security of information. While these subjects were already familiar to the mediators, they were explored within the specific context of distance mediation. Time was short, and only an introduction to these complex subjects could be accommodated in the time available. Nevertheless, the workshop was instrumental in setting the necessary groundwork in these areas. Subsequently, the checklists which saw their beginnings during this workshop were the focus of many of the team meetings. These, and the guidelines developed over the course of the pilot period, became the means by which the team's insights on these topics were documented and communicated.

The Agreement to Mediate is another important mechanism by which professional standards were reinforced. During the Project, the mediators were required to enter into a written Agreement to Mediate with participants in distance mediation. Specific clauses for the Project were developed to suit the conditions anticipated during the pilot period. Agreements of this type are the norm in the practice of mediation, as they form a contract which sets out the basic requirements by which all participants — the parties and the mediator — will conduct themselves during the mediation. In this

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<sup>13</sup> The criteria for admission onto the Family Roster is detailed on the BC Mediator Society website at: [www.mediator-roster.bc.ca](http://www.mediator-roster.bc.ca).

Project, therefore, it constituted the mediator's commitment that competent, safe and appropriate methods would be employed in distance mediation.

Lastly, the practice checklists and draft guidelines developed by the project team during the pilot period also ensured that suitable methods were employed. Most mediators reported that they didn't use the checklists as an in-session tool during their interactions with the parties. They were, rather, a "back of mind" reference tool for some, or a post-session checklist for others to ensure no stones were left unturned. The mediators nevertheless found these checklists were useful, even if they used them more for reference than as checklists. They did, as well, provide a framework for the team in subsequently developing the suggested practice guidelines that fleshed out their thinking on the issues in greater detail.

Overall, the assessment of the policy and procedural tools developed for the Project disclosed that these tools both supported and promoted competent, safe and appropriate methods in distance mediation. They clearly addressed screening for violence, assessing mediation capacity and suitability for ICT use in family mediation, and a range of other subjects important to the delivery of distance mediation services. There was no evidence that any of the mediators diverged from these expectations in any way. Collectively, therefore, these tools helped to ensure that competent, safe, and appropriate methods in respect of family-based distance mediation were utilized over the course of the Project.

## **ii. Application of Distance Mediation Methods**

- Of the ICTs utilized by the Project, which appear to be best suited for distance mediation purposes, and which are better suited to different parts of the distance mediation process?
- Are there particular types of family cases that lend themselves more to the application of technology-assisted mediation methods than others?
- What are observed to be the advantages and disadvantages of the ICTs used in mediation during the pilot period?

As shown in chart 8, on the next page, a range of different ICTs were explored during the pilot period. Some of these were found to be better suited to project management, or as an administrative support to the mediation function, but were nevertheless assessed for their appropriateness as a tool for distance mediation. The focus was, however, primarily on those tools that supported communication and document sharing/text management within the mediation process itself.

All the ICTs used during the pilot period were assessed initially by the Project Coordinator and/or the Project's IT Consultant and, if found appropriate, they were used in a meeting or role play setting with the mediators. In conducting actual mediation sessions, on the other hand, there were disappointingly few ICTs ultimately tested with parties living in small, non-urban communities in the province. The parties either did not have access to, or did not feel sufficiently comfortable with, some of the more innovative conferencing platforms available to the project team. It may be that, with parties who have the necessary hardware and are located in an area that receives high speed Internet service, a certain amount of coaxing on the part of the mediator is necessary to encourage people to try a new communication tool.

Explored by the Project Team	Explored by the Project Coordinator <sup>14</sup>
<ul style="list-style-type: none"> <li>▪ Cisco Webex Meeting Centre</li> <li>▪ E-mail</li> <li>▪ Facebook</li> <li>▪ GoToMeeting</li> <li>▪ IM</li> <li>▪ Juripax (3 team members and Project Coordinator only)</li> <li>▪ LinkedIn</li> <li>▪ Microsoft Office Groove (Evaluator and Project Coordinator only)</li> <li>▪ Microsoft Office Live Meeting</li> <li>▪ Netviewer</li> <li>▪ PBworks (formerly PBwiki)</li> <li>▪ Skype</li> <li>▪ Telephone/Teleconferencing</li> <li>▪ The Mediation Room (3 team members and Project Coordinator only)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Cisco Webex Training Centre</li> <li>▪ Dimdim</li> <li>▪ Elluminate</li> <li>▪ Lightspeed</li> <li>▪ magicJack</li> <li>▪ MeetingMade</li> <li>▪ ooVoo</li> <li>▪ Paltalk</li> <li>▪ Shaw Video Mail</li> <li>▪ Smartsettle</li> <li>▪ WebTrain</li> <li>▪ YouTube</li> <li>▪ Zoho (document sharing)</li> </ul>

**Chart 8. ICTs explored in the Distance Mediation Project.**

The table on the next page shows that telephone and e-mail were the most common technologies at the initial contact and pre- mediation stages of the mediation process during the project period. The telephone was also the primary instrument used during mediation sessions, as these sessions were largely conducted either by teleconference or 3-way telephone calling. Besides e-mail and scanning/faxing to exchange documents, other conferencing and text management tools were used during the pre-mediation and mediation stages of the process in just one case (see earlier description of this case and the ICTs used on page 22). At the post mediation stage, telephone and e-mail were once again the more popular choices.

Since the clients in all but the one case chose not to use any audio-video or integrated audio-video-text platforms, the Project’s mediation team could only speculate about how these might work in a mediation setting. As was noted earlier (see A.i. *Reaching the Target Group*), the team saw the most potential for distance mediation with platforms that had a multipoint video capacity (where more than one person can be seen on-screen), and provided for document sharing and editing. A visual component to the platform was certainly seen as most desirable, even in spite of the technical glitches experienced with these platforms during their team meetings. In the end, however, it was primarily the less glamorous, but ultimately more familiar and readily accessible tools — telephone, teleconference, and e-mail — that were tried in actual mediation settings. These received high approval ratings by both the mediators and parties in the Project. All these methods were, therefore, found to be well-suited to distance mediation overall.

<sup>14</sup> Some of these applications were also explored by the Project’s IT consultant.

ICT Type	Initial Contact	Pre-Mediation	Mediation	Post-Mediation
Telephone	19 63.3%	21 63.6%	9 25.0%	12 41.4%
Teleconference	2 6.7%	2 6.1%	14 38.9%	1 3.4%
E-mail	8 26.7%	6 18.2%	8 22.2%	12 41.4%
Text/Instant Messaging	0 0.0%	0 0.0%	1 2.8%	0 0.0%
Audio-Text Conference	0 0.0%	0 0.0%	0 0.0%	0 0.0%
Audio-Video Conference	0 0.0%	1 3.0%	1 2.8%	1 3.4%
Audio-Video-Text Conference	0 0.0%	0 0.0%	1 2.8%	0 0.0%
Scanning/faxing of documents	0 0.0%	2 6.1%	2 5.6%	0 0.0%
None (in-person meeting)	1 3.3%	1 3.0%	0 0.0%	0 0%
N/A (did not proceed to this stage)	0 0.0%	0 0.0%	0 0.0%	3 10.3%
<b>Number of cases (Base)</b>	23	23	23	23

**Chart 9. ICTs used at different stages in the distance mediation process.**

In interviews at the conclusion of the Project, mediators were also asked which ICTs were best to use at different stages of the mediation process. During the initial contact stage, telephone and e-mail were thought to be quite suitable in making the necessary introductions and exchanging preliminary details. At the pre-mediation stage, however, most of the mediators on the team would have preferred a more multi-dimensional/multi-sensory communication tool. While they felt they could — and did — conduct screening interviews competently by telephone, without the aid of visual cues, most mediators found the task difficult and expressed a preference for in-person meetings for this task. Conferencing technologies, whether they involved audio only, audio-text, or audio-video features, were thought to have most practical application in a full joint mediation session. Lastly, telephone and e-mail, including sharing documents by e-mail attachment, were tools that were considered to be well suited to the post-mediation phase of the process.

The mediators had mixed views about the types of cases or issues to which distance mediation might be best suited. Some felt that any kind of family mediation could be managed in a distance mediation format. Others felt that it is best suited to less complex cases; that is, those involving just two rather than multiple parties, and those in which the issues or fact patterns are more straightforward. They

also felt that more concrete or less emotional cases — perhaps involving financial issues rather than co-parenting concerns — would be a better fit. At the same time, they observed that ICT use, and simply not having people in the same room together, seemed to “take the tone down” in mediation. Therefore, while there was still a preference for more concrete cases in this milieu, the mediators nonetheless felt that distance mediation holds some real promise for cases in which there is emotional or “atmospheric interference”. They felt that the physical distance between the parties promoted a more businesslike climate.

The advantages, disadvantages, and practice notes as observed by the mediators have largely been incorporated into Appendix D as suggested distance mediation guidelines. To summarize, however, the following advantages and disadvantages were observed by the mediators in the cases they dealt with during the pilot period:

“... The emotional climate was very intense and having distance through technology was helpful. What was difficult was that both parties lived in the same town and had ongoing conversations in person and by phone in the interim and this required catching up from time to time. In some instances there was very mischievous and vindictive actions over which I had no control due to their conversations.”

— a Project mediator

### Advantages

- improved access to mediation services, without the need for travel
- more timely
- more economical
- more efficient
- promoted a less emotional, and more professional/businesslike atmosphere
- more logistically convenient, for both parties and mediators
- enabled participation in the comfort of home or familiar surroundings
- greater appeal of physical separation (e.g., some parties either preferred or could not be in the same room together)
- modeled or enabled distant communications outside of mediation, either between the parties or between the parties and their children
- text communications provided a record or a statement of positions/interests

“At one point, one of the parties became emotional and teary — I was unable to see that, and so had to deal with it later than I might have in a technology where I could see the parties.”

“It was hard to gauge the level of commitment over the phone. When emotions took off, the only available tool to intervene was my voice. Usually I would also use my hands and other body language to communicate with the parties and to step in earlier if need be.”

— Project mediators

### Disadvantages

- reduced/absence of non-verbal cues
- more difficult to elicit a response from passive participant
- technology-enabled harassment (e.g., harassing phone calls or e-mail)
- slower to build rapport/trust
- facilitated “drifting away”, or made it easier to avoid contact
- less direct knowledge of local resources/supports for distant parties
- limited ability to caucus with some platforms
- in audio-only medium, no ability to note down figures or use illustrations
- more difficult to handle emotional climate
- less buy-in or commitment to process/solutions
- more difficult to read personality characteristics and address power imbalances
- more challenging to apportion equal time to parties
- in some mediums, difficult and more time consuming to share required documentation

These advantages and disadvantages disclose that there may be something of a trade-off when engaging in distance mediation. Certainly, it is important to be aware of the disadvantages, and take steps to compensate for or avoid them if at all possible. The disadvantages are not, however, “show stoppers”, as the mediation team in the Distance Mediation Project felt that this was an entirely suitable way to deliver family mediation services to people in isolated or distant regions of the province. They felt assured that competent, safe, and appropriate methods could be used in delivering family mediation services by this means.

### **iii. Comparative Benefits**

- How does ICT use compare with existing dispute resolution approaches (e.g. shuttle mediation) when distance is a factor?

The Distance Mediation Project was not specifically designed to compare ICT use with other dispute resolution approaches. As a result, there are no direct measures of how well distance mediation “stacks up” against other approaches within the context of the Project. Some reflections on the topic may, nevertheless, provide some useful contextual information.

Essentially, there are only two other approaches that can be used when parties are distant from each other or from the mediator: shuttle mediation, or in-person mediation involving travel. Taking mediation “on the road” does not, essentially, change the character of the mediation itself, as the conventional, face-to-face mediation environment remains the same. It is conceivable that, because of the inconvenience and expense of travel, there is a greater incentive to settle a dispute quickly. Otherwise, however, one or more parties having to travel to convene a session does not alter the basic features of the in-person mediation process. The advantages and disadvantages listed in the previous section are, essentially, the comparison between these two types of mediation. In some cases, it is simply not possible to meet together physically. In these cases, therefore, a distance mediation process is clearly optimal. In other cases, it may be a matter of weighing the benefits of virtual proximity against the benefits of physical proximity.

In shuttle mediation, however, the characteristics of the mediation process do differ from those in an in-person mediation process. In this form of mediation, joint meetings between the parties are not held, but rather meetings are conducted with each party individually — frequently by phone, but sometimes through in-person meetings with each party. The mediator is in the position of going back and forth, or “shuttling”, between the parties to communicate the issues raised.

Only the mediators with the Family Justice Services Division (and one other who was previously a Family Justice Counsellor) could really compare their experiences in the Project with their experience doing shuttle mediation, as the others do not include this form of mediation in their practice. Those who could comment, however, felt that ICT use was largely an improvement over shuttle mediation. They indicated that the benefits derived, mainly, from being able to conduct joint rather than separate sessions with the parties. As mediation involves a facilitated rather than an imposed solution to a dispute, the steps taken to help people arrive at their own solution can be more easily and directly applied when the parties are together — in this case, in a virtual rather than a physical sense.

“This is a case that likely would not have survived the DR process if it was “in-person” due to the emotional charge. The use of IT for both mediation and access between parent and child has facilitated a continuing bond between child and both parents.”

— a Project mediator

It may also be useful to look at the Project's settlement rate or rate of agreement as it compares to those of other programs in the province. Under the Distance Mediation Project, an "agreement" was loosely defined as concurrence on some or all issues by the time mediation had either concluded or the allotted mediation time under the Project had expired. A fully completed Memorandum of Understanding between the parties was not required. Using this definition, an agreement was reached respecting all or some issues in 16 or 69.6% of the cases mediated.

This is not far from the rate of agreement experienced by Family Justice Counsellors in the Family Justice Services Division. In a small outcome study recently conducted in Family Justice Centres around the province, mediation was found to have achieved an agreement (or the appearance of an agreement) in roughly 75% of cases.<sup>15</sup> Shuttle mediation was undertaken in 48% of these cases; however, the settlement rate of these cases as separate from the conventional mediation cases was not reported in the final results of the study.

Another family mediation program in British Columbia for which information about settlement rates is available is the Family Mediation Practicum Program. In this program, mediators are provided with practical experience in family mediation under the supervision of senior family mediators. Families seeking assistance in resolving their disputes receive mediation services through the program at no charge. In 2005, an evaluation of the program (then a pilot project that had been running about a year) disclosed a settlement rate of 45.6%. A "fast track" process introduced near the end of the pilot period was showing an improved rate of 71% settled. More recent reports suggest that this rate has continued to improve, and the program is presently enjoying even higher rates of settlement.

Lastly, although it is not a family mediation program, the Project might also be compared with the Court Mediation Program which involves the mediation of disputes filed in B.C.'s Small Claims Court. Under this program, one or both parties are permitted to participate in mediation by teleconference. Between April 2009 and March 2010, the settlement rate in mediations involving at least one teleconference attendee was 42%. This compared to a settlement rate with in-person attendees of 46% during the same period. Two years previously, there was a considerably higher rate of settlement: 58% for teleconference attendees, and 57% for in-person attendees.

The drop in the settlement rates for the Court Mediation Program are explained by a change in the nature of the cases directed to the Program for mediation in one location (Robson Square in Vancouver) as part of a Small Claims Court pilot project, and the introduction of different referral and management processes in the court registry there.<sup>16</sup> Additionally, these settlement rates are based on a definition of full settlement (with a completed mediation agreement) within the limited two hour mediation session that is permitted through the Program. Their statistics suggest that, if agreements concluded sometime following the allowable mediation period are included, these rates would be significantly higher.

As can be seen by this short commentary, comparisons of settlement rates in mediation are fraught with difficulty. Differences in the nature of the program, the types of cases being compared, the definitions used to count a "settlement", and the size of the sample populations makes comparing

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<sup>15</sup> Focus Consultants, *Assessment of Dispute Resolution Prevalence and Case Outcomes: Final Report*. Victoria: Family Justice Services Division, B.C. Ministry of Attorney General (unpublished report), March 31, 2008.

<sup>16</sup> The settlement rates of the Court Mediation Program have been affected by a decision to remove claims valued between \$0 and \$5000 from mediation, and stream them to a simplified trial process. These cases previously exhibited the highest rates of settlement. At the same time, previously-exempted ICBC personal injury cases were directed to the program for the first time. These cases exhibit lower rates of settlement.

settlement rates in different programs an apples-to-oranges exercise. Nevertheless, it can be said that nothing troublesome stands out when examining the rate of settlement for cases in the Project as compared to others in the field of mediation. The results of the Project are roughly similar to or better than those observed in other programs.

- Can some of the broader benefits of mediation be realized when ICTs are utilized in the mediation process?

Whether or not some of the broader benefits of mediation can be realized — benefits such as facilitating communication, building common ground, and developing conflict resolution skills — is also difficult to fully grasp in the evaluation of a project like this. These benefits are hard to measure, particularly in the short timeframe during which distance mediation methods were being piloted.

Impressions that some of these broader benefits were realized are, however, evident in the comments made by the mediators. In one case, the mediator commented that the process had “spurred on the use of technology to facilitate the maintenance of a bond between child and parent”. In another case, it was observed that distance mediation “generated interest in employing “technology” for ongoing and routine visiting that wasn’t happening prior to [dispute resolution]”. And, in another: “participation in the project sparked the continued use of technologies for relationship building between parties as [the] preferred mode, e.g., Facebook, e-mail.”

“... interesting comment by one of the parties that this venue permitted them to deal with the awkward stuff so that they could preserve their face-to-face time for upbeat and friendly communication when they start exchanging their child.”

— a Project mediator

In the client survey, people were asked whether they were fully able to express their thoughts, feelings, and concerns during their mediation. Most (20 or 83.3%) indicated “yes. However, when asked whether the mediation process had helped to improve the way they communicate with the other party, a little more than half (13 or 54.2%) of the respondents answered that it had helped “somewhat”. Only two (8.3%) said “yes”, and about a third (8 or 33.3%) said that it had not helped. Therefore, while they were able to communicate well during the mediation itself, improved communication between the parties was not particularly noted by the respondents — at least not in the short time between concluding their mediation and participating in the survey.

“Both [the other party] and myself had plenty of time to talk and express our feelings individually.”

“[The mediator] was friendly, open and sensitive to personal expression and skilled in encouraging communication with both of us.”

— client survey respondents

On the other hand, the mediators with the Project had a different perspective on this topic. In interviews at the conclusion of the pilot period, mediators were asked whether they believe mediation’s broader benefits can also be achieved when using ICTs. All believed that they can be, at least in theory. These benefits are thought to accrue from the process of mediation itself, to the extent that the experience of mediation helps people learn the necessary interpersonal skills. Acquisition of these benefits is, then, dependent on the mediation process, and not on the medium or milieu in which it takes place.

### iii. Learning and Lessons

- What additional skills or training should mediators acquire to employ competent, safe and appropriate methods in technology-assisted family mediation?
- Do Project mediators believe that their own knowledge of ICT use in mediation has increased as a result of their participation in the Project?
- What are the primary lessons learned in respect of competent, safe and appropriate ICT use in family mediation?

Distance mediation employs different skills — or perhaps, as one mediator with the Project remarked, it involves a different mediation “style” rather than simply new tools in the mediation tool box. Just one of the nine mediators in the Project believed that no additional skills or training needed to be acquired to do this work. Certainly, some skills can’t be taught; for example, one mediator observed that a lot of “patience” is the necessary element. In any case, nearly all felt that, to ensure competent, safe and appropriate methods are used in this setting, mediators needed something more than standard mediation training to do this work.

Most felt that additional training in appropriate web or other technology platforms was necessary. As well as the more technical training about technology, some coverage of proper cyber “netiquette” was thought to be useful. In the practice of mediation, the mediators suggested a range of different subjects as training content. In particular, learning to read the nuances of non-visual, verbal cues and sometimes written communication was seen as very important. The implications of timing and other impacts of distance mediation approaches, as they affect both the process and outcomes of mediation, were also thought to be important. Several felt that, indeed, the suggested guidelines prepared during the Project could form the basis of any training in this area.

The mediators felt this training could be done either on a continuing education basis, or as part of the core body of knowledge acquired by new mediation professionals. For continuing education, a one-day course — or better yet, an on-line course — was thought to be appropriate. As part of the core training for new mediators, it could be developed as a separate course component along with the standard elements of good mediation practice in a traditional setting. The mediators in the Project generally felt, however, that distance mediation ought not to be undertaken without first having a considerable amount of experience in conventional mediation. Additionally, having a support in place afterwards was seen as significant. This post-implementation support was suggested not only in the form of continuing education, but also in the form of a more interactive, hands-on learning support. In the Distance Mediation Project, the mediators were given the opportunity to try new ICTs in a role play or team meeting setting. They also learned a great deal from each other in these meetings by discussing their experiences and brainstorming solutions to problems as they arose.

“... on the telephone, you need to be more “dynamic” to come across sufficiently engaged.”

— a Project mediator

All the mediators felt their own knowledge of ICT use in mediation had increased as a result of their participation in the Project. Several felt that they had even learned a lot about using the more familiar tools such as telephone and e-mail more effectively, and could see this as advantageous even with more traditional mediation approaches. At the close of the Project, all were encouraged to forge ahead, and continue

“The technology was not a problem — just the mediator seemed not very engaged.”

— a client survey respondent

using what they had learned about ICT use in their mediation practices.

When asked what “pearls of wisdom” or primary lessons they had learned about competent, safe and appropriate ICT use in family mediation, the Project mediators had a number of top-of-mind tips for guidance:

- *The walls have ears* — ensure that the parties are alone, and that they aren’t recording a session.
- *Take time to build trust* — building rapport and trust can take more time when using an ICT, but it is worth the effort; some level of trust must be present, not only between the mediator and the parties, but also between the parties.
- *Keep it real* — the power of authenticity, and the necessity of it, is magnified when using an ICT; remember that the parties may have a more difficult time correctly understanding and interpreting what you say when they’ve never met you.
- *Plan alone time* — as caucusing can be more difficult in distance mediation, think through how to conduct a caucus meeting and discuss your methods with the parties in advance.
- *Always have a plan B* — in case the technology fails, always have a back up modality that will suffice in its place; ensure that the parties know what “plan B” is.
- *Pitch to the lowest common denominator* — choose the technology with which the least technically-oriented person is most comfortable.
- *Mediator, know thy equipment!* — don’t let an ICT detract too much from the issues; if not totally up to speed on the technology, a mediator’s focus can get divided or taken away; as one mediator commented, “technology has its own interests, and it can be a very demanding party!”; and
- *Mediator, know thyself!* — as a mediator, it’s important to know what you’re comfortable with in using different techniques and technologies; reflect on who you are as a mediator, and what you bring to the distance mediation process.

In spite of its being only a small and cautious step into family distance mediation, a great deal was learned through this pilot project. To summarize the observations in connection with objective 2, the policy and procedural tools used by the project team were found to have supported competent, safe, and appropriate methods during the pilot period. The design of the Project unfortunately did not allow a direct comparison between distance mediation and other approaches, such as shuttle mediation. Nevertheless, to the extent that it was possible to reflect on them, the mediation outcomes achieved in the pilot appeared to be similar to the outcomes experienced in other forms of mediation that are used when distance is a factor. Reflecting also on the training needs for distance mediation in a family setting, it was recognized that this work utilizes unique skills. Some specialized training in this area would benefit any mediator intending to adopt these methods for their family mediation practice.

There is, of course, much more to learn about distance mediation in general. Nevertheless, the steps taken during this project have laid a solid foundation. Overall, the Distance Mediation Project has been truly *informative* in having contributed to a growing body of knowledge about ICT use in mediation. □

## C. Collaborative

### Objective 3. To collaborate ...

To work collaboratively with stakeholders in the family justice system to develop knowledge about using ICTs to deliver family mediation services.

There are just four evaluation questions associated with this objective. They ask about the extent to which other players in the family justice system shared in both the fruits and the labours of the Distance Mediation Project. During the research phase that preceded the pilot project, considerable interest was expressed by people working in a variety of areas in family justice. Many could see its application in their own work, or simply lauded the effort to increase access to justice services in the more remote areas of the province. Others would clearly be instrumental in spreading the word to the Project's potential clientele. It was important, then, for all these different players to be appropriately involved in or informed of the Project's endeavours.

Overall, therefore, these questions relate to a concept of *collaboration* as an indicator of success in the project.

#### i. Collaboration by Design

- What methods are used to promote collaboration with stakeholders in the family justice system in developing knowledge about ICT use in family mediation?
- Is the Project designed to explore the delivery of family mediation services using ICTs that may be of interest and potential utility to other stakeholders in the family justice system?

Collaboration with stakeholders in the family justice system was seen as a key element in the success of the Distance Mediation Project. A shared interest in this effort was assured, in part, by the makeup of the board of directors of the organization overseeing the Project. The board of the B.C. Mediator Roster Society — and later the combined board made up of members of the B.C. Mediator Roster Society and the Dispute Resolution Innovation Society — included family mediation professionals with varying backgrounds, as well as representatives from the bar, the judiciary, and the B.C. Ministry of Attorney General. In having a good cross section of the family justice system represented on the board, the Project was fortunate in having a link with a range of family justice interests from the beginning.

More direct efforts to collaborate on behalf of the Project were, however, taken by the Project Coordinator in its very early stages. A broad range of family justice and community organizations were contacted, both for the purpose of informing them of the existence of the Project and to solicit aid in “getting the word out” to potential clients through their various constituencies. Of particular importance in reaching the Project's clientele in small communities, information about the Project was made available through government agent offices, public libraries, and courthouse libraries. Numerous other community and family service agencies in non-urban communities were also contacted. Additionally, information was included in electronic newsletters such as the Rural

Secretariat for Agriculture and Agri-Food Canada newsletter for rural service providers, and a newsletter published by the Canadian Bar Association for the legal community.

Many of these organizations, as well as being a conduit for information about the Project, are very interested in its findings since they too seek ways to serve clients from a distance. Although the Distance Mediation Project did not continue long enough to build working relationships much beyond these early contacts, the eagerness with which these organizations shared information about the Project with their client groups suggests that the ground was surely prepared for this.

Collaboration went one step further into full participation with one of the stakeholders — the Family Justice Services Division of the Ministry of Attorney General. Two of their Family Justice Counsellors were, of course, mediators on the project team, and a unique set of intake and service delivery procedures were developed for Project cases managed through the Division (see description and flow chart in II.A. *Project Description*). The project design was, therefore, specially tailored to address the interests they had in using ICTs in the delivery of family mediation services. At its conclusion, representatives of the Division expressed their satisfaction with the design, delivery, and results of the Project.

## **ii. Collaboration by Effort**

- Do stakeholders in the family justice system direct clientele to the Project during the pilot period?
- Are steps taken to encourage communication amongst the stakeholders in the family justice system, as it relates to the delivery of family mediation services using ICTs?

At the time of a first inquiry or intake into the Project, clients were asked where they had heard about the Distance Mediation Project. As shown in chart 10, on the next page, the referral or advertising sources for client inquiries were many and varied. Potential clients named many of the organizations with whom the Project Coordinator had early conversations, and those who had agreed to circulate information about the Project amongst their own clients. Not unexpectedly, given that two members of the mediation team were Family Justice Counsellors — and given their service commitment to small communities in the province — the largest number of referrals came from the Family Justice Services Division. Small agencies, such as the Advocacy Centre in Nelson, the Family and Individual Resource Society in Trail, and First Nations band offices and friendship centers, were very helpful in linking clients up with the service. Referrals also came from larger organizations such as the Legal Services Society, either through their LawLine or from members of their staff acting in various capacities.

Clearly, therefore, other stakeholders in the family justice system did direct clientele to the Project during the pilot period. There is also evidence that word had spread further than expected, as some referrals came from sources not on the original list of stakeholders contacted. As well as referrals, other expressions of support came from sources not on the original list. Surprisingly, a few people had even heard about the Project from a previous client. To have referrals from other “satisfied customers” is particularly encouraging, and unusual given the short time this project was running.

Referral/Advertising Source	Number of Inquiries	% of Inquiries
Family counselling professional	4	3.9%
Family Justice Services Division	31	30.1%
Federal department or newsletter	1	1.0%
First Nations newsletter, band office, or friendship centre	4	3.9%
Internet - unspecified source	7	6.8%
Lawyer, law office, or legal professional organization	4	3.9%
Legal Services Society – LawLine or legal aid staff	7	6.8%
Local family or community support organization	10	9.7%
Mediator Roster Society – board member, office, or website	10	9.7%
MP's office	1	1.0%
Organization offering dispute resolution services	2	1.9%
Project advertisement or team member	2	1.9%
Project client	3	2.9%
Provincial government ministry or program	2	1.9%
Women's/victim assistance organization	3	2.9%
Word of mouth	1	1.0%
Unknown	11	10.7%
<b>Total</b>	<b>103</b>	<b>100.0%</b>

**Chart 10. Referral/advertising sources of client inquiries.**

Given the short duration of the Project, a concerted effort was not made to encourage greater communication about the Project's goals amongst the stakeholders other than the promotional activities described above. Nevertheless, it is notable that a few members of the mediation team gave presentations about the Project or disseminated information to organizations with which they had dealings. A variety of organizations also sent information on to yet other organizations, on an unsolicited basis. Also unsolicited were at least eight different instances of posts about the Project, or links to the Project's website over the pilot period. This unsolicited information-sharing is further evidence of the range of interest and support for distance mediation, and it is, certainly, one of the most flattering indicators of collaborative effort occurring between the Project and its stakeholders in the family justice system.

In reflecting, then, on the achievement of the third objective, collaboration with other stakeholders in the family justice system was very important. Increasing access to family justice is, of course, a shared goal, and the involvement of other players in the family justice system meant that they also could share in the lessons learned about ICT use in mediation. The extent of their interest, and the degree of collaboration with and between these different players during the pilot period, was demonstrated by the number of referrals and expressions of interest the Project received from a broad range of sources. Indeed, the commitment to collaboration was shown in the form of full participation by one of the stakeholders — the Family Justice Services Division of the B.C. Ministry of Attorney General — with the inclusion of two Family Justice Counsellors as mediators with the Project. The Distance Mediation Project was, therefore, expressly *collaborative* in its efforts to develop knowledge about using ICTs to deliver family mediation services. □

## **D. Sustainable**

### **Objective 4. To reduce fossil fuels ...**

To explore the extent to which the use of ICTs might reduce the reliance on fossil fuels when delivering and accessing family mediation services.

The fourth and last objective is one that goes beyond mediation and family justice goals to reflect on a more universal concern: that of climate change and the extent to which delivering distance mediation services might help in the global effort to reduce carbon emissions. A key word in this objective is “explore” — a word that is also in the overall goal of the Project about examining the feasibility of this approach to delivering services in remote regions of the province. The Project did not set out to achieve particular targeted results in emissions reduction. Rather, it intended to gauge whether a key by-product of distance mediation services — a reduction in the reliance on fossil fuels — is measurable.

The concept of success associated with this objective is, therefore, the degree to which a “green lens” or environmental *sustainability* test can be applied to its activities.

#### **i. Roads Less Travelled**

- Are remote, non-urban areas of the province served without the necessity of travel?
- What are the distances between the participants who choose to participate in technology-assisted mediation during the project period?

As shown in chart 11, on the next page, and in greater detail in Appendix C, the distances between the participants during the pilot period were considerable. In nine of the cases, both parties lived in the same community; but in three cases, one of the parties lived outside the province. Therefore, the parties ranged in distance from 0 to 3,867 kms apart from each other<sup>17</sup>. Since a considerable

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<sup>17</sup> Although the parties that live in the same community are not living in the same residence, they are nevertheless identified as living a nominal or ‘0’ distance apart from one another for the purposes of making distance calculations.

Case Statistics	Distances Between Parties (Kms)	Distances From Parties to Their Mediator (Kms)
Total	10,825	31,762
Range	0 – 3,867	242 – 3,867
Mean	470.7	1,381.0
Median	41.0	1,241.0

**Chart 11. Distances between participants in distance mediation cases.**

proportion of these parties lived in the same community, however, the median distance between the parties in the Project was only about 41 kms. Cumulatively, the distances between them totalled to about 10,825 kms. For illustration purposes, if both parties had travelled to the mediator who conducted sessions with them in the Distance Mediation Project, the median distance they would have travelled, per case, would have been almost 1,400 kms. Cumulatively, the distances they might have travelled for a single mediation session is almost 32,000 kms, round trip.

In fact, these distances could well be underestimated, as they assume travel for only one joint session. It is not, of course, uncommon for mediations to conclude after just one joint session. Certainly, when one or both parties or the mediator has to travel, many mediators and parties make every effort to resolve matters during one joint session. Nevertheless, some of these could, conceivably, have gone on for more than one session. Whether one or three sessions, however, these distances are substantial, and would have resulted in a considerable quantity of hydro carbons being emitted into the atmosphere if they had been travelled.

## ii. Consequences Avoided

- What distances might the participants have travelled for family mediation services if ICTs had not been utilized?
- What is the savings in fuel associated with the distances not travelled, and how might these savings be expressed in terms of carbon emissions avoided?

In reality, it is unlikely that people would have travelled the above distances to meet personally with the mediator who took their cases during the pilot project. If ICTs had not been utilized, it is more likely they would have travelled to the family mediation services nearest them. To address this, therefore, an effort was made to determine where a qualified family mediator nearest to the parties might be located and the distances to reach them calculated. A further calculation was then made to determine the savings in fuel and the associated carbon emissions avoided because these distances were not travelled (see Appendix C).

Before discussing the results of these calculations, a note of caution: estimating fuel use and carbon emissions is a relatively new science, and the available “carbon calculators” apply different conditions as the basis on which to make these calculations. There are sound scientific principles that underpin these calculators. The conditions applied, however, and the processes by which the volumes of carbon emissions or greenhouse gases (GHGs) are determined, are not well standardized between them. A readily available “made in B.C.” calculator was used to make the necessary calculations, as provincial data is used in the factors applied. Nevertheless, as this calculator is intended for personal rather than scientific or statistical use, the figures offered here are for illustration purposes only.<sup>18</sup> A summary of the resulting calculations is shown in chart 12, below.

Case Statistics	Estimated Distance		Estimated Litres of Fuel Unused if 1 Mediation Session (2 parties, return)	Estimated Tonnes of GHG Avoided if 1 Mediation Session
	Kms to Nearest Qualified Family Mediator (2 parties, 1-way)	Kms Avoided if 1 Mediation Session (2 parties, return)		
<b>Total</b>	21,870	43,740	9,948.44	12.60
<b>Range</b>	89 – 3,867	178 – 7,734	19.58 – 454.96	.05 – 2.76
<b>Mean</b>	950.9	1901.7	171.67	0.50
<b>Median</b>	646.0	1,292.0	132.88	0.30

**Chart 12. Estimated distances to the nearest qualified mediator, and associated fuel and carbon emissions avoided because these distances are not travelled.**

According to these figures, the median distance to the nearest qualified mediator is approximately 646 kms. If both parties had travelled to these mediators for just one mediation session, the median distance they would have travelled, per case, would have been almost 1,300 kms. Cumulatively, for all 23 cases in Project, the distances they might have travelled and fuel they might have used would be as much as approximately 43,740 kms and 9,948 litres of gasoline if there had been one return trip to the nearest qualified mediator. It is estimated that the carbon emissions associated with this travel would have been approximately 12.6 tonnes.

Once again, however, these figures may be underestimated, as cases very often go on for more than one mediation session. If, for example, there had been three joint mediation sessions — and both parties had travelled to their mediator in each case — it is estimated that the cumulative distance they would have travelled, and the associated fuel they would have used to get there, would be

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<sup>18</sup> Estimates of fuel use and carbon emissions for distances travelled were made using the carbon calculator on the *LiveSmart BC* website, at <http://www.livesmartbc.ca/calc/>. A notation at the bottom of the calculator page states: “The information from this tool is intended for personal use only and the conversion factors for carbon emissions are based on provincial averages only and not intended for statistical reporting or medical purposes.”

approximately 131,220 kms and 11,845 litres of fuel. The estimated carbon emissions associated with this travel would have been approximately 37.7 tonnes.

In fact, the distances travelled and fuel used would likely have been somewhere in between, as some cases would likely have been concluded after only one joint mediation session. In any case, to put this in some perspective, it is thought that individual British Columbians are responsible for approximately 5 tonnes of greenhouse gas emissions per person per year (see insert, right<sup>19</sup>). Therefore, according to these estimates, the distances that might have been travelled to the nearest qualified mediator for mediation services — had the Distance Mediation Project not been available — would have contributed from 2.5 to 7.5 times what an average person would have contributed in carbon emissions over the space of an entire year.

**Greenhouse Gases (GHGs) in BC**

- In 2007, B.C. emitted approximately 8.6 per cent (67.3 million tonnes) of Canada's total GHG emissions.
- Individual British Columbians are directly responsible for about 30 per cent of provincial GHG emissions, amounting to about 5 tonnes per person per year.
- Cars and trucks emit about 45.3% of the per household GHG emissions in British Columbia.

— LiveSmart BC

The carbon emissions avoided because of this small project are, therefore, substantial. Conceivably, the volumes associated with a province-wide, long-running program would be that much more substantial. As a result, in reference to the fourth and last objective, it can be concluded that mediation services delivered and accessed in a manner similar to the Distance Mediation Project would indeed be helpful in reducing reliance on fossil fuels. In this way, distance mediation makes a contribution to more environmentally *sustainable* methods of delivering family mediation services to remote, non-urban regions of the province.

This Project has been a ground breaker even beyond mediation and access to family justice — it is unique in the world of public policy in having not only applied a “green lens” to its operations, but in having actually built the lens into one of its objectives. The goal, in this instance, was not to achieve particular targeted results in emissions reduction. Rather, it was simply to determine whether a reduction in the reliance on fossil fuels — as a key by-product of distance mediation services — is possible, and whether it is measurable. In this way, the Distance Mediation Project may serve as an example to other initiatives that seek to show case environmentally sustainable methods as part of their operational *raison d’être*. □

<sup>19</sup> “B.C.’s Greenhouse Gas Emissions: Household Emissions”, *LiveSmart BC*. Government of British Columbia, Copyright 2007. <http://www.livesmartbc.ca/learn/emissions.html#Household>.

#### IV. IN CLOSING

The *Distance Mediation Project* was, both in conception and design, truly exploratory in character. It was crafted around questions of “what if” and “is it possible to”. This is a rare thing in the social sciences, and very difficult to bring about in the real world of delivering services to people. It was, on the other hand, an effort whose time had simply come. The capacity to communicate and carry out complex human transactions across oceans and continents, with the help of technology, is increasing. Perhaps it was only a matter of time before family mediation was also undertaken from afar.

Yet there are some serious questions about whether and how distance mediation should be done when it involves family relationships. Can the safety of the parties be assured? How do family mediators become competent in the techniques that set distance mediation apart from conventional mediation? What are the appropriate methods to use in managing the family mediation process when the parties are distant from one another? These are some of the questions this project set out to answer. In addition, because family mediation is part of a larger system of family justice — made up of numerous, sometimes loosely connected players in a variety of different organizations — the Project planned to engage those other players in its explorations along the way. Lastly, placing it in a more global context, the Project planned to showcase distance mediation as an environmentally sustainable method of service delivery.

In initiating this project, the primary intention was to determine whether technology could be used to improve access to family mediation services — in particular, for people living in remote, non-urban locations around British Columbia. It remains uncertain whether “digital divide” factors may have played a role in preventing some people in remote locations from participating in the Project. For example, while the project team found a range of ICTs to be potentially suitable for distance mediation, telephone and e-mail were almost exclusively the instruments of choice for the parties in the cases that went to mediation. It is not known the extent to which a lack of access to broadband service and related technologies may have contributed to their preferences in this regard. Therefore, while there is demand for distance mediation services from families in remote, non-urban locations in the province, the magnitude of that demand is difficult to gauge.

Overall, however, the observations gathered suggest that distance mediation as delivered in the Distance Mediation Project was largely *accessible* to families in remote, non-urban areas of the province. Some of the parties who participated in distance mediation would simply not have been able to acquire family mediation services any other way. While there remain some challenges in reaching people in remote, non-urban areas, those parties who participated — at least, those who responded in a survey about the Project — showed broad satisfaction with the distance mediation processes they experienced. Similarly, their mediators also expressed broad satisfaction with these processes. Although they mourned the loss of visual and other cues that are available in face-to-face mediation, the mediators nevertheless saw huge potential in being able to provide mediation to people who are too distant or geographically isolated to avail themselves of that service. The Project’s results suggest that it is certainly feasible to undertake family distance mediation throughout B.C. on a large scale basis.

“I believe we would not have had any mediation without the accessibility of the technology.”

— a client survey respondent

It is recognized, of course, that there is much more to learn about distance mediation practice as it applies in a family setting. For example, with the exception of one case, there was not an opportunity to practice using web conferencing or other web-based meeting tools in a real mediation setting.

Nevertheless, the findings otherwise show that ICTs can be used to deliver family mediation services in a competent, safe, and appropriate manner. Although it was not possible to directly compare them, the mediation outcomes achieved in the pilot appeared to be roughly similar to the outcomes experienced in other forms of mediation that are used when distance is a factor. Overall, the Distance Mediation Project has been highly *informative* in having laid a solid foundation for distance mediation practice in a family setting.

Just as the experience of each member of the project team was enhanced by sharing their observations and working with others on the team, collaboration with other stakeholders in the family justice system enhanced the knowledge acquired about distance mediation in this project. Indeed, one of the stakeholders, the Family Justice Services Division of the B.C. Ministry of Attorney General, went beyond collaboration to full participation in the Project — by allowing two of their Family Justice Counsellors to act as mediators with the Project. The extent of the interest, and the degree of collaboration with and between other players in the family justice system during the pilot period, was demonstrated by the number of referrals and expressions of interest the Project received from a broad range of sources. Clearly, the Distance Mediation Project was *collaborative* in its efforts to develop knowledge about using ICTs to deliver family mediation services.

Finally, this Project was unique in having taken a very different perspective on the implications of distance mediation — by showcasing it as an environmentally sustainable method of service delivery. The Project chose not only to apply a “green lens” to its operations, but also to incorporate this lens into its objectives. The results show that, in the same way that economists can calculate “opportunity costs”, by placing a value on the next best choice or an alternative foregone, it is possible to make reasonable assumptions about fuel not used and carbons not emitted because distance mediation was used. The results show that distance mediation is *sustainable* — that it can indeed contribute, in a significant way, to the larger effort to reduce reliance on fossil fuels.

In conclusion, the Distance Mediation Project was successful in achieving its overall goal and objectives: distance mediation, as conceived in this pilot project, is an *accessible* and *sustainable* means of delivering family mediation services, and the methods used were *informative* and *collaborative*. Distance mediation can be provided in a competent, safe, and appropriate way to people in areas where access to family mediation is hampered by geography or low population.

This was a small project, and one that really only touched the surface of some of the more in-depth questions about how best to undertake distance mediation in a family setting. There is a great deal still to learn about best practices in this area. Yet this foray into the unknown was entirely constructive and illuminating. Perhaps the experience can be summed up in the Project Coordinator’s statement: “It’s not about technology — it’s about distance”. Distance is, then, the element that needs to be better understood; not the many mysteries and vagaries of information and communication technologies. Certainly, the Distance Mediation Project has provided much food for thought for any future explorations into distance mediation. □

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