

The newly introduced public mediation service in the maintenance court environment: Does it make a difference in the short term?*

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OPSOMMING

Die nuutingestelde publieke bemiddeling in onderhoudshofverrigtinge: Maak dit 'n verskil op die kort termyn?

In 'n poging om die nadelige gevolge van die adversatiewe stelsel van litigasie te verminder, het die Departement van Justisie, as 'n loodsprojek, opleiding in bemiddeling aan alle hofbeamptes in die onderhoudshowe in Pretoria en Johannesburg verskaf. Hierdie artikel behels 'n opsomming van 'n impakstudie wat oor hierdie opleidingsprogram gedoen is. Deur middel van twee vraelyste is ondersoek ingestel na die impak van die opleidingsprogram op (1) die hofbeamptes wat die opleiding deurloop het; en (2) die partye betrokke in onderhoudshofverrigtinge. Vir doeleindes van 'n vergelyking is die tweede vraelys ook voltooi deur partye in twee ander onderhoudshowe waar die hofbeamptes nie enige opleiding in bemiddeling gehad het nie. Bykans alle hofbeamptes was baie positief oor die opleiding wat hulle ontvang het en van mening dat hofbeamptes in ander onderhoudshowe ook die opleiding behoort te ondergaan. Verder was partye in die eksperimentele howe beduidend meer tevrede met verrigtinge in die onderhoudshof, die vaardighede van hofbeamptes, ooreenkomste wat in die proses bereik is, die nakoming van ooreenkomste en die kwaliteit van verhoudings by die afhandeling van verrigtinge as partye in die kontrolegroep. Alhoewel die resultate van die eksperimentele howe beduidend beter was, is daar nietemin ruimte vir verbetering. Die vernaamste aanbevelings van die impakstudie is dat die loodsprojek uitgebrei moet word na alle onderhoudshowe en dat gevorderde en voortdurende opleidingsprogramme in bemiddeling hofbeamptes se vaardighede sal verskerp tot voordeel van die partye en kinders betrokke by onderhoudshofverrigtinge.

1 INTRODUCTION

Maintenance disputes often have a negative impact on the relationship of the parties involved. One party, for example, may honestly feel that the other party is seriously neglecting his or her duty of support towards children from a previous marriage, while the other party may genuinely not have enough money to properly maintain all his or her children from previous marriages and/or new relationships. When disputes of this nature are taken to the maintenance court to be

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resolved, the adversarial system which applies in the maintenance court¹ does very little to resolve them. In fact, the adversarial system heightens contentiousness and conflict, perpetuates problems and often functions much like pouring petrol on a fire.² The end result is often greater misunderstanding, increased animosity and bitterness, exorbitant legal fees, overcrowded courts and crammed court rolls.³ The adversarial settlement of maintenance disputes therefore creates problems for the administration of justice and the well-being of the parties involved, especially children.⁴ Children are too often the innocent victims of the fierce disputes between their parents on maintenance issues. Furthermore, the children's relationship with the maintenance debtor is often seriously damaged and they may well end up with less than their fair share of the family's income and necessary creature comforts.

To alleviate these problems and, it is assumed, to fulfil their legal duty of building a more dedicated and experienced pool of trained and specialised maintenance officers,⁵ the Directorate for Child Justice and Family Law within the Chief Directorate: Promotion of the Rights of Vulnerable Groups decided to pilot the utilisation of mediation services in maintenance matters. In this regard, the Pretoria and Johannesburg maintenance courts were identified for the pilot project⁶ and mediation training was offered to 56 court officials during March and April 2008. The training, which was offered in four separate three-day sessions, was aimed at building knowledge of dispute resolution techniques and, in particular, mediation skills. The learning outcomes of the training programme were to:⁷

- (a) describe the main sources of conflict;
- (b) explain appropriate techniques in conflict management;
- (c) teach the application of appropriate strategies to manage conflict;
- (d) explain the mediation problem-solving model; and
- (e) inculcate the attributes of an effective mediator.

Because mediation is generally perceived as being more equitable, satisfying, and empowering than the traditional adversarial process,⁸ the premise was that mediation training for all officials in the maintenance court could be instrumental in addressing the negative impact of the adversarial process on the parties and their children and in alleviating the courts' increasing caseload.

¹ S 10 of the Maintenance Act 99 of 1998.

² Hoenig "Divorce mediation basics" 1997 *The Practical Lawyer* 39; Kass "Attorneys make matters worse" 1990 *American J of Family L* 30; Walker "Family mediation" in Macfarlane (ed) *Rethinking disputes: The mediation alternative* (1997) 58.

³ Pearson and Thoennes "Mediating and litigating custody disputes: A longitudinal evaluation" 1983-1984 *Family LQ* 498; Sacuzzo "Controversies in divorce mediation" 2003 *North Dakota LR* 425-426.

⁴ Emery *et al* "Child custody mediation and litigation: custody, contact, and coparenting 12 years after initial dispute resolution" 2001 *J of Consulting and Clinical Psychology* 323.

⁵ Ito s 4(1)(ii) of the Maintenance Act 99 of 1998.

⁶ Dept of Justice and Constitutional Development document *Invitation to mediation training* Feb 2008.

⁷ Farisanani Management Services Learner Workbook *Mediation as a tool in ensuring restorative justice in maintenance disputes* (2008) 3.

⁸ Sullivan "Parties' evaluations of their relationships with their mediators and accomplishments in a court-connected mediation programme" 1997 *Family and Conciliation Courts R* 406.

Although it was acknowledged that not all court personnel would be able to utilise conflict management and mediation skills in their working environment, the training was nonetheless offered to all maintenance officers, maintenance clerks, maintenance investigators as well as stenographers and domestic violence clerks. It was hoped that by learning how to deal with conflict in general even those officials who do not ordinarily resolve disputes between parties⁹ would still benefit from the training.

Since the Department of Justice and Constitutional Development is eager to expand the pilot mediation training programme to all maintenance courts in the country, I was requested to conduct an impact assessment of the utilisation of mediation in maintenance matters. It would, of course, be senseless to roll out a costly mediation training programme to the rest of the country if there were no empirical evidence that it would have a positive effect on the current problems being experienced by the judicial system and the users of the court as a result of the adversarial system of litigation.

I have subsequently started the impact assessment of the pilot mediation training programme and obtained the permission of the Department of Justice and Constitutional Development to publish a summary of my working plan and initial findings in this article. Quasi-experimental in design,¹⁰ the pilot mediation training programme provides an excellent opportunity to examine the consequences of mediating maintenance disputes, and to compare this process with traditional maintenance proceedings, which are rooted in the adversarial system of litigation. The primary purpose of this impact assessment is, however, to determine whether the mediation training programme has been instrumental in aiding court personnel to more effectively resolve maintenance disputes than the traditional procedures.

2 NATURE OF PROCEEDINGS IN THE MAINTENANCE COURT VERSUS MEDIATION AS AN ALTERNATIVE

Before the method and results of the current impact assessment are discussed, it is necessary first to provide a brief overview of the traditional practices and procedures of the maintenance court, and secondly, to outline what the alternative in the form of mediation entails.

2.1 Nature of proceedings in the maintenance court

Whenever a complaint is made and is lodged in the prescribed manner with a maintenance officer to the effect that any person legally liable to maintain any other person is not doing so, or that good cause exists to vary or discharge a maintenance order, the maintenance officer must first investigate the complaint and may then institute an enquiry in a maintenance court in the area of jurisdiction

⁹ I.e. maintenance clerks, domestic violence clerks, maintenance investigators and stenographers.

¹⁰ Quasi-experimental design is a form of experimental research used extensively in the social sciences and psychology. Whilst regarded as unscientific and unreliable by physical and biological scientists, the method is, nevertheless, a very useful method for measuring social variables. In this kind of research variables are usually identified that could be put forward to two or more different groups in order to detect differences between the groups. See <http://www.experiment-resources.com/quasi-experimental-design.html> (accessed 22 October 2008) in this regard.

in which the person to be maintained resides or in which the person in whose care that person is resides.¹¹ Usually, when a party lays a complaint on the prescribed form¹² with a maintenance clerk, the complainant and the maintenance debtor are subpoenaed to appear before the investigating maintenance officer at a specific time and on a specific date.¹³ The time-frame between this date and the date on which the complaint was laid depends on where the subpoena had to be served, in other words, on where the maintenance debtor resides. This could be anything from three to six weeks. If the whereabouts of the maintenance debtor is unknown, a maintenance investigator may be requested to locate him or her.¹⁴

On this first appearance of the parties before the investigating maintenance officer, the maintenance officer conducts the initial informal enquiry. The parties have to produce information relating to the complaint and provide documentary proof of the information¹⁵ and the maintenance officer then endeavours to negotiate a settlement between the parties by recording their income and expenses and by establishing a reasonable balance between the offer and the demand. If the parties reach an agreement the maintenance officer records it and requests the magistrate to confirm the agreement and issue a consent maintenance order in terms of section 16(2) of the Maintenance Act. If no agreement is reached at the initial informal enquiry, the case is set down for a court hearing, which is referred to as the formal maintenance enquiry. The time-frame between the initial informal enquiry and the formal maintenance enquiry in court could be anything from about two to four months, depending on the caseload of the court. In the interim a maintenance investigator may be requested to assist the maintenance officer to gather information concerning the financial position of the parties.¹⁶

On the day the case is supposed to go to court for the formal maintenance enquiry, the parties will have another meeting with the investigating maintenance officer in his or her office to informally discuss the possibility of a settlement between them. If the parties still cannot reach an agreement on the amount of maintenance to be paid, the case will proceed to court.

The proceedings at the formal maintenance enquiry in the maintenance court are akin to the procedure in ordinary civil cases, as is determined from section 10(5) of the Maintenance Act. This section provides that the law of evidence, including the law relating to the competency, compellability, examination and cross-examination of witnesses, as applicable in respect of civil proceedings in a magistrate's court, applies in respect of a maintenance enquiry. Although the proceedings in the maintenance court are more inquisitorial in nature in the sense that both the maintenance officer and the presiding magistrate are obliged to play an active role in the proceedings,¹⁷ it is nonetheless clear that many elements of

11 S 6 of the Maintenance Act 99 of 1998 and reg 2 under the Act.

12 Form A where the maintenance debtor failed to maintain the complainant or persons who are in the care of the complainant and Form B where the substitution or discharge of a maintenance order is sought.

13 Reg 3(1)(a).

14 S 7(2)(a).

15 Reg 3(1)(b).

16 S 7(2)(e).

17 *Pieterse v Pieterse* 1965 4 SA 344 (T); *Kruger v Ferreira* 1979 1 SA 915 (NC); *Johnson v Tiger* 1979 1 SA 920 (NC); *Beukes v Beukes* 1995 4 SA 429 (O).

the adversarial system of litigation apply in the maintenance court. There is a strong adherence to rules of evidence and procedure, facts are found through the testing of evidence in open court and there is a reliance upon legal representation and oral evidence.

The limitations of the legal system when dealing with family conflict and dispute resolution between separated spouses are well documented. The traditional adversarial system has been accused of escalating conflict, thereby causing the parties to incur substantial costs in legal fees and the use of courts.¹⁸ One often also reads that some spouses or family members use the courtroom as a battleground.¹⁹ This is so because the adversarial nature of the legal system plays right into the self-righteous, blaming, punishing and ego-centric attitudes of high-conflict litigants.²⁰ It is therefore not wrong to say that traditional judicial proceedings typically end with bitterness and unresolved feelings, which are particularly detrimental to any children involved in the matter. Furthermore, family members often find the formal complexity and adversarial nature of the legal process very daunting, confusing and misleading.²¹ The chances of parties reaching amicably negotiated settlements in the normal course of events in the maintenance court are therefore very slim.

2.2 The mediation alternative

While mediation has the same goal as the adversarial system, namely, to effect the settlement of matters in dispute, the way in which this is achieved is fundamentally different.²² Mediation is said to be a way of helping parties to negotiate agreements and renegotiate relationships in a more adaptive way than adversarial procedures,²³ since the mediation process attempts to unite the parties in seeking solutions and in recognising that the responsibility of parenting children may require them to have years more of ongoing contact.²⁴

One of the basic principles of mediation is that parties are assisted in their negotiations with each other by a neutral and impartial third party, the mediator.²⁵ Because of their intimate knowledge of the relevant circumstances, it is accepted that the parties themselves are best equipped to make decisions about the issues that directly affect them.²⁶ However, when families break up and parties go their separate ways, they are psychologically and emotionally unable to deal with the negotiations on maintenance and other separation issues on their

¹⁸ Walker in MacFarlane (1997) 58.

¹⁹ Payne "Family conflict management and family dispute resolution on marriage breakdown and divorce: Diverse options" 1999/2000 *Revue Generale de Droit* 666; Saccuzzo 426.

²⁰ Bricklin and Elliot "Qualifications of and techniques to be used by judges, attorneys, and mental health professionals who deal with children in high conflict divorce cases" 2000 *Univ of Arkansas at Little Rock LR* 508.

²¹ Payne 676; Walker in MacFarlane (1997) 81.

²² Walker in MacFarlane (1997) 71.

²³ Emery *et al* 323.

²⁴ Hoenig 40.

²⁵ Jessani "A step-by-step approach to the divorce mediation process: From soup to nuts" 2002 *American J of Family Law* 118; Goldberg, Sander, Rogers and Cole *Dispute resolution* (2003) 111.

²⁶ Mnookin and Kornhauser "Bargaining in the shadow of the law: The case of divorce" 1979 *Yale LJ* 957-958; Hoffman "Divorce mediation: An approach to family conflict resolution" 1987 *Social Work Practice* 10; Jessani 119.

own and they need a mediator to facilitate the negotiations between them.²⁷ By using specific techniques and strategies, such as empathic listening, power balancing or equalising, rephrasing or reframing, refocusing, summarising, identifying, clarifying, mutualising, neutralising, normalising, role reversal, hypothesising, option generation, option identification, prioritising and reality testing,²⁸ the mediator takes the parties through the different stages of the mediation process. Although mediation is practised in many different ways, it usually includes the following five stages:²⁹

- the orientation and introductory phase where the parties are introduced to the mediation process, certain ground rules are laid down, and each party gets an opportunity to put his or her case to the mediator;
- the information-analysis phase where all relevant information is put on the negotiating table, the parties systematically isolate the issues in dispute and an agenda on all issues in dispute is drawn up;
- the negotiation phase where the parties, with the assistance of the mediator, generate different options for the resolution of all the issues on the agenda;
- the settlement phase where all proposals are summarised and clarified, all options are evaluated and reviewed and both parties are expected to make compromises; and
- the contracting phase where the results of the negotiation and settlement phases are put in writing and the parties sign an agreement which satisfies the unique needs of each party.

Another feature of mediation is that it is a private process where all disclosures by the parties are confidential.³⁰ Parties can therefore candidly disclose all facts and information without being afraid that any statements or concessions made in the mediation process could later be used against them in litigation that might follow an unsuccessful mediation attempt.³¹

Another important feature of mediation is its informal and unstructured nature. The process is simple and unthreatening.³² It can be adapted according to the context of the dispute and the needs of the parties concerned.³³ The process is also capable of being adapted to different cultural value systems and/or religious convictions.³⁴ Because of this flexibility, mediation can achieve a desirable solution that is not necessarily within the competence of a court to order. Consequently, mediation is far more suited than formal court proceedings to the sensitive and emotional issues surrounding maintenance and other family matters.³⁵

27 Walker in MacFarlane (1997) 57.

28 Charlton and Dewdney *The mediator's handbook: Skills and strategies for practitioners* (1995) 123–126.

29 Goldberg "Practical and ethical concerns in alternative dispute resolution in general and family and divorce mediation in particular" 1998 *TSAR* 748; Rogers and Palmer "A speaking analysis of ADR legislation for the divorce neutral" 2000 *St Mary's LJ* 893; Jessani 119; Walker in MacFarlane (1997) 67–70.

30 Levy and Mowatt "Mediation in the legal environment" 1991 *De Jure* 73; Cohen "Mediation: Terminology is important" 1993 *De Rebus* 222.

31 Faris *An analysis of the theory and principles of alternative dispute resolution* (LLD thesis Unisa 1995) 183.

32 Pearson and Thoennes 499; Payne 676.

33 Faris (1995 thesis) 168–170; Jessani 118.

34 Goldberg 755.

35 Walker in MacFarlane (1997) 57.

Lastly, it is important to note that mediation is future-oriented.³⁶ As it focuses on the future rather than the past and as it establishes principles of future behaviour rather than trying to assess blame or focusing on past conduct, the mediation process aids disputing parties in resuming workable relationships with each other and enhances the adjustment of their children.³⁷ It is apparent that a process of this nature, which assists the parties to reach a mutually-satisfying agreement and provides them with a framework for resolving future maintenance disputes on their own,³⁸ cannot fail but to cut litigation and court costs for both the parties and the judicial system.³⁹

3 METHOD

The current analysis of the short-term outcomes of the pilot mediation training programme is based on two questionnaires which were designed for:

- court officials who attended the pilot mediation training programme, and
- users of the two pilot maintenance courts where court officials had undergone mediation training.

The second questionnaire was also administered to a sample of users of two other maintenance courts where the court officials had no mediation training in order to allow a quasi-experimental comparison of the effect of the mediation training as perceived by the users of the court. To minimise the costs of the impact assessment, it was decided that the other two courts⁴⁰ should be in relatively close proximity to the two pilot courts – Pretoria and Johannesburg. The maintenance courts in Witbank and Polokwane were identified for this purpose. The users of these two maintenance courts constituted the control group for the purposes of the impact assessment.

3.1 Questionnaire for trainees

The aim of the questionnaire for those court officials who attended the pilot mediation training programme, the Trainee Skills Utilisation Questionnaire, was to determine both the extent to which the skills acquired in the training programme benefited the maintenance court process and the impact of the skills acquired within the specific working environment of each category of court official who attended the training.

The trainee questionnaire consisted of four sections. The trainees were first asked to indicate their specific function in the maintenance court. Thereafter they were required to rate the importance of the training programme,⁴¹ they had to

36 McIsaac "Focus on family and divorce mediation" 2001 *Family Court R* 406.

37 Pearson and Thoennes 499; Sullivan 406.

38 Hoenig 40; Jessani 119; Emery *et al* 323; McIsaac 405.

39 McIsaac 406.

40 Where court officials would not have had any mediation training.

41 On the following 3 statements contained in Section A of the questionnaire:

A1 The information I learnt in the mediation training programme will help me to be a better maintenance officer/maintenance clerk/maintenance investigator/stenographer/domestic violence clerk.

A2 The mediation training programme helped me to better understand the negative impact of traditional court proceedings on parties involved in a maintenance case.

reflect on the skills that they had acquired,⁴² they had to make a value judgment on the impact of their training on the future course of maintenance court cases,⁴³ and they had to rate their satisfaction with the mediation training programme.⁴⁴ All statements were answered on a four-point ordinal scale.⁴⁵ To augment the information obtained from the trainee questionnaire, individual consultations were also conducted in the two pilot maintenance courts with several court officials.

The Trainee Skills Utilisation Questionnaire was handed out to all trainees approximately six weeks after they had attended the pilot mediation training. In total, 44 questionnaires were completed by 18 trainees from Pretoria and 26 from Johannesburg.

The hypothesis was that the pilot mediation training would have had a positive impact on all categories of court officials who received mediation training.

3.2 Questionnaire for users of the maintenance court

The aim of the Questionnaire for Users of the Maintenance Court was to determine the impact of the mediation training programme on the users of the two pilot courts⁴⁶ and on court processes in general. In this regard, the observations of the users of the two pilot courts, the mediation or experimental group, were compared with the observations of the users of the two adversarial or

A3 The mediation training programme helped me to better understand the negative impact of traditional court proceedings on the judicial system.

42 On the following 10 statements contained in Section B of the questionnaire:

B1 I learnt new skills for helping parties to resolve their maintenance disputes more amicably.

B2 I learnt new skills for helping parties to resolve their maintenance disputes more effectively.

B3 I learnt new skills for helping parties to resolve their maintenance disputes more expeditiously.

B4 As a result of the mediation training, I am ready to make adjustments in the way in which I used to deal with parties.

B5 In future, I shall use a problem-solving approach whenever confronted with a conflict situation.

B6 I intend to use the new mediation skills at maintenance enquiries / whenever the opportunity arises.

B7 I will listen attentively to the parties.

B8 I will restate and paraphrase each party's position/needs.

B9 I will maintain good communication with both parties.

B10 I will facilitate only the process and let the parties make their own decisions.

43 On the following statement in Section C of the questionnaire:

C1 As a result of the mediation training, I think cases are more likely to be settled at the informal enquiry instead of going to court.

44 On the following 4 statements contained in Section D of the questionnaire:

D1 I feel that the mediation training programme was worthwhile.

D2 I would recommend that maintenance officers/maintenance clerks/maintenance investigators/stenographers/domestic violence clerks in other jurisdictions of the maintenance court also undergo the mediation training programme.

D3 I think I need additional/more time for mediation training and skills acquisition, before I will be able to apply the new skills.

D4 I resented having to attend the mediation training programme.

45 Where 1 = definitely not, 2 = not really, 3 = yes, I think so, and 4 = definitely yes.

46 Ie Pretoria and Johannesburg.

control-group courts.⁴⁷ Questions were carefully formulated so that identical items could be used for the mediation or experimental group and the adversarial or control group.

The questionnaire consisted of seven sections in which users of the four maintenance courts first had to supply important demographic details about themselves and background characteristics of their maintenance dispute.⁴⁸ This information was necessary to ensure that the experimental or mediation group and the control or adversarial group shared similar demographic backgrounds and were comparable as such.

Users were further requested to rate their satisfaction with the process in the maintenance court,⁴⁹ the maintenance court officials,⁵⁰ and any agreement reached.⁵¹ They also had to provide an opinion on the likelihood of compliance

47 Ie Witbank and Polokwane.

48 They had to answer the following 9 questions contained in Section A of the questionnaire:

- A1 What is your gender?
- A2 What is your race?
- A3 What is your age in years?
- A4 What is your relationship with the other party?
- A5 What is your monthly income level?
- A6 What is your primary employment situation?
- A7 For whom is the claim in this case?
- A8 Who is the maintenance debtor?
- A9 What was the nature of your relationship with the other party when this maintenance case was started at first?

49 On the following 9 statements contained in Section B of the questionnaire:

- B1 I was satisfied with the process at the maintenance enquiry.
- B2 The process made me feel more confident of my ability to stand up for myself.
- B3 I feel that I had control over the proceedings at the maintenance enquiry.
- B4 The process helped me to identify very important issues and problems.
- B5 The process helped me to assume greater responsibility in managing my financial affairs.
- B6 The process helped me to have more realistic expectations concerning the means of the other party.
- B7 The process helped me to understand the other party's point of view.
- B8 The maintenance enquiry had a good effect on me.
- B9 The other party had an advantage over me in the process.

50 On the following 10 statements contained in Section C of the questionnaire:

- C1 When I lodged my complaint, the maintenance clerk told me exactly what to do.
- C2 When I lodged my complaint, the maintenance clerk explained to me how the matter would proceed.
- C3 The maintenance investigator, who was appointed to gather information, was helpful in reducing the conflict between me and the other party.
- C4 The maintenance officer dealing with the case ensured that my interests, needs and viewpoints were heard.
- C5 The maintenance officer understood my feelings at the maintenance enquiry.
- C6 The maintenance officer handled the case skilfully.
- C7 The maintenance officer was helpful in identifying ways to resolve the dispute(s).
- C8 The maintenance officer helped me to control angry feelings when necessary.
- C9 The maintenance officer tried to impose his/her viewpoint on me.
- C10 The maintenance officer took sides with one of the parties.

51 On the following 5 statements contained in Section D of the questionnaire:

- D1 I am satisfied with the agreement reached at the maintenance enquiry.

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or re-litigation in the matter.⁵² Although these are matters that can only be accurately assessed from a long-term follow-up study,⁵³ I thought it would be interesting to note the parties' initial perceptions about these matters. The questionnaire also attempted to establish if there were any real savings in time and money for the mediation group as compared to the adversarial group.⁵⁴ Lastly, parties were required to indicate if and how proceedings in the maintenance court affected their relationship with each other and with their children.⁵⁵

In total, 603 usable questionnaires were received – 343 from the users of the two experimental or mediation courts in Pretoria and Johannesburg,⁵⁶ and 260 by the users of the two control or adversarial courts in Witbank and Polokwane.⁵⁷ Maintenance officers were requested to assist both parties⁵⁸ to complete the questionnaires at the end of an informal maintenance enquiry. They were instructed, however, not to let parties complete questionnaires at the end of a completely unproductive maintenance enquiry, such as where a case was merely postponed in order to give one party the opportunity to obtain legal representation.

It was hypothesised that mediation would be the preferred and more effective method of solving maintenance issues between family members or others obliged to maintain one another.

4 RESEARCH RESULTS FROM THE SAMPLE OF TRAINEES

4.1 Results of the Trainee Skills Utilisation Questionnaire

The Trainee Skills Utilisation Questionnaire was completed by 44 trainees.⁵⁹ The results from Section A of the trainee questionnaire⁶⁰ showed that a very high

D2 The agreement that we have reached is fair.

D3 The agreement is pretty complete and does not neglect important issues.

D4 The amount of the support agreed upon is adequate.

D5 I had as much influence as the other party over the terms of the agreement.

52 On the following 4 statements contained in Section E of the questionnaire:

E1 I think we have reached a lasting agreement.

E2 I think we have reached a workable agreement.

E3 I think our agreement will be honoured.

E4 The other party and I would be able to resolve future maintenance disputes on our own.

53 Pearson and Thoennes 509.

54 Parties had to answer the following 4 questions of Section F of the questionnaire:

F1 Has the case been completed or is it still pending?

F2 How long did it take to complete this maintenance case?

F3 For how long has this maintenance case been going unresolved?

F4 How much did you spend on attorney's costs to assist you with this matter?

55 They had to rate the following 7 statements contained in Section G of the questionnaire:

G1 After the maintenance enquiry my relationship with the other party has improved.

G2 The maintenance enquiry helped me to become more reasonable in dealings with the other party.

G3 The maintenance enquiry improved the cooperation between me and the other party.

G4 The maintenance enquiry improved communication problems between me and the other party.

G5 The maintenance officer helped me to better understand the rand costs associated with raising our children.

G6 At present the children have a meaningful relationship with me.

G7 At present the children have a meaningful relationship with the other party.

56 193 from Johannesburg and 150 from Pretoria.

57 194 from Witbank and 66 from Polokwane.

58 Ie the complainant and the maintenance debtor.

59 9 maintenance officers, 22 maintenance clerks, 3 maintenance investigators, 4 stenographers and 6 domestic violence clerks.

percentage of court officials felt that the mediation training helped them to be better court officials and gave them some insight into the adverse effects of the traditional processes in the maintenance court. The positive responses varied between 93% and 98%. With regard to Section B,⁶¹ an extremely high percentage of court officials were of the opinion that they acquired new and useful skills in the mediation training and that they would be able to apply these skills fruitfully in their working environment by enhancing the chances for parties to settle their disputes in a more amicable, effective and expeditious manner. The positive responses varied between 93% and 100%. From their responses to statements B5 to B10 it is also clear that the trainees have a sound grasp of some of the fundamental aspects of mediation. From responses to Section C⁶² it appeared that 89% of court officials believed that, as a result of the training, cases would be more likely be settled at the informal enquiry stage, rather than going to court. As far as Section D is concerned,⁶³ 98% of the court officials were of the opinion that the mediation training programme was worthwhile and that court officials in other jurisdictions should also undergo the training. It is lastly interesting to note that 77% of the trainees felt that they required more time for training in order for them to acquire the necessary skills.

4.2 Results from qualitative consultation with trainees

In addition to the data obtained from the questionnaire administered to the trainees, it also appeared from the individual consultations conducted with various court officials in Pretoria and Johannesburg that the mediation training was of great benefit to everybody who attended it, both in the workplace and in their personal lives. It was particularly insightful to discover that it was not only the maintenance officers who indicated that they found the mediation training very valuable and useful in their working environment. Surprisingly, this was also the overwhelming sentiment of most maintenance clerks. Although they are primarily involved in the dissemination of information and the registration and capturing of applications and they usually only have contact with one of the two disputing parties, it appears that maintenance clerks often encounter situations where they have the opportunity to mediate between two opposing parties.⁶⁴ It also emerged from these consultations with court officials that, although there are clearly demarcated functions to be performed by the various categories of court officials, it often happens that one court official has to perform the function of another owing to staff shortages.⁶⁵ It can therefore be accepted that,

60 See fn 41 above.

61 See fn 42 above.

62 See fn 43 above.

63 See fn 44 above.

64 One maintenance clerk in Pretoria told me about such a situation. After the death of her daughter, a grandmother came to the maintenance court to lodge a complaint against the father of her daughter's children. The maintenance clerk immediately contacted the father by telephone, informed him of the grandmother's intended claim and tried to negotiate an agreement between the complainant and the maintenance debtor there and then. The father was apparently so relieved to find that the children were being taken good care of after their mother's death that he immediately agreed to pay an appropriate sum of maintenance in respect of the children to the grandmother. The maintenance clerk subsequently approached the maintenance officer and the magistrate to confirm the agreement and to issue a consent maintenance order.

65 In this regard, one maintenance clerk informed me that she once had to stand in for a sick maintenance officer and handle all his informal maintenance enquiries for the day.

although officially only maintenance officers should deal with informal maintenance enquiries, other court officials are also from time to time involved in these enquiries.

Another matter that caught the attention during these consultations relates to the large number of cases that maintenance officers handle on a daily basis. Each maintenance officer in Pretoria and Johannesburg deals with approximately 30 to 40 cases each day. On average, maintenance officers may therefore spend about ten minutes on a case, which is unfortunately not sufficient.

5 RESEARCH RESULTS FROM THE SAMPLE OF COURT USERS

5.1 Results of the Questionnaire for Users of the Maintenance Court: Introduction

The findings of this study, which involves the results from the Questionnaire for Users of the Maintenance Court as obtained in the experimental or mediation group and the control or adversarial group, are broadly consistent with the body of empirical research that compares mediation with traditional court processes.⁶⁶

In paragraph 5.2, the extent to which the users of the experimental or mediation courts and the users of the control or adversarial courts are comparable with regard to certain demographic details and background characteristics is explored. Thereafter, paragraphs 5.3 to 5.8 cover the variables that test the perceived effectiveness of the mediation training programme as applied in the experimental courts against the perceived effectiveness of the control courts from the perspective of the users of these courts.

5.2 Demographic details and background characteristics of the parties

Since the data were obtained from a field experiment, I had only limited control over the selection of the participants in the study.⁶⁷ To ascertain, however, whether a valid comparison could be drawn between the experimental courts in Pretoria and Johannesburg on the one hand, and the control courts in Witbank and Polokwane on the other, it was necessary to do a step-by-step comparison of the demographic profiles and certain background characteristics of all the participants in the study. In this regard, data obtained from Section A of the Questionnaire for Users of the Maintenance Court⁶⁸ were used to establish whether the experimental group and the control group were comparable with respect to key demographic profiles, such as gender, race, age, income level and employment situation, and to some issues regarding the relationship between parties.

The analysis conducted for this section⁶⁹ revealed that with regard to most demographic variables, in particular gender,⁷⁰ age⁷¹ and nature of employment,⁷²

⁶⁶ Emery *et al* 323.

⁶⁷ Cooper and Schindler *Business research methods* (2003) 443.

⁶⁸ See fn 48 above.

⁶⁹ The Chi-square test of independence was utilised. See Steyn, Smit, Du Toit and Strasheim *Modern statistics in practice* (1994) 560 in this regard.

⁷⁰ 53% of the court users in the experimental group were female, whereas males and females were almost perfectly balanced in the control group.

⁷¹ There were only some minor differences between the two groups that could be attributed to the higher incidence of older court users (51–60 years) and fewer middle-aged court users (31–40) in the control group.

the differences between the experimental group and the control group were not significant. There were significant differences between the two groups with respect to race⁷³ and income,⁷⁴ but these could be expected in view of the geographical location of the experimental courts, which are based in Johannesburg and Pretoria,⁷⁵ and the control courts which are based in Polokwane and Witbank.⁷⁶

With respect to variables relating to the background characteristics of the case, there were no significant differences between the experimental courts and the control courts as far as the relationship with the other party⁷⁷ and the identity of the complainant⁷⁸ were concerned. There were differences between the groups with regard to the maintenance debtor in the case,⁷⁹ but this difference is not expected to have a serious effect on the overall results of the impact assessment. With respect to the perceived quality of the relationship before the case was initiated,⁸⁰ significantly more court users in the experimental group reported a strained relationship. If a significantly higher percentage of strained or very strained relationships had been reported in the control or adversarial group, this could have affected the overall combined perceptions of the maintenance court procedure seriously, and the results of the impact assessment could have been contaminated by the fact that the control or adversarial group was worse off before their claims were heard. The ideal situation would be a finding that there was no significant difference between the two groups regarding the perceived quality of the relationship before the claim was instituted. However, as indicated above, there was a significantly higher percentage of court users in the experimental or mediation group who reported that they perceived the quality of the relationship as strained. Although this is not ideal, it is far better than if the

72 There were a few insignificant differences between the two groups, with slightly more unemployed court users in the control group, and slightly more self-employed court users in the experimental group.

73 There were only 6 Indian court users, and they were all in the experimental group. Approximately three-quarters of all Whites and Coloureds were also to be found in the experimental group. The presentation of black court users was, however, well-balanced across the experimental and the control groups, and fortunately they formed the majority (77%) of all the court users in the sample.

74 In the experimental group, there were significantly fewer court users in the lowest income bracket (R0–R1 000) and significantly more court users in the highest income bracket (more than R15 000 per month).

75 Highly urban environments.

76 More sub-urban environments.

77 Parties were asked to indicate whether the relationship between them is that of spouse or ex-spouse, partner or ex-partner, or a relationship of another kind. Partners or ex-partners accounted for the majority of the relationships between the parties in both groups.

78 Parties were asked to indicate if the claim was for a spouse or an ex-spouse, a partner or an ex-partner or a child. In both groups the vast majority of claims were instituted for children.

79 Parties had to indicate whether the maintenance debtor was the father, mother, husband or ex-husband, wife or ex-wife, partner or ex-partner or another person. The maintenance debtor was more frequently the husband or father in the experimental group than in the control group.

80 The parties were requested to indicate what their relationship with the other party was when the maintenance case was initiated. They had to choose one of the following options: extremely strained; somewhat strained; a little bit strained; easy-going/friendly; or extremely easy-going/friendly.

control or adversarial group had reported more strained relationships than the experimental or mediation group. This state of affairs could only mean that the results of the impact study had been deflated and that the impact assessment provided an over-conservative view of any differences observed between the experimental or mediation group and the control or adversarial group.

Despite the few minor differences referred to above, it was nonetheless concluded that the users of the experimental or mediation courts in Pretoria and Johannesburg and the users of the control or adversarial courts in Witbank and Polokwane shared comparatively similar demographic profiles and background characteristics. A comparison between the two groups, therefore, seemed to be in order.

5.3 Parties' satisfaction with the process in the maintenance courts

Section B of the Questionnaire for Users of the Maintenance Court had nine statements referring to different aspects of the parties' satisfaction with the maintenance enquiry process.⁸¹ All the statements were measured on a 7-point Likert scale, ranging from 1=very strongly disagree to 7=very strongly agree.⁸²

Means or averages were calculated for both groups on each statement, and the t-test for two independent large samples⁸³ was conducted to determine whether the mean of the experimental or mediation group was significantly higher than the mean of the control or adversarial group for all positively-phrased statements and, of course, significantly lower than the mean of the control or adversarial group for all negatively-phrased statements.

For all the positively-phrased statements, namely B1 to B8, the mean for the experimental group did prove to be significantly higher than the mean for the control group. It can therefore be concluded that the users in the experimental or mediation group were, on average, significantly more satisfied with the process in the maintenance court. They were more confident of their ability to stand up for themselves, they assumed greater control over the proceedings at the maintenance enquiry, the process was more instrumental in helping them to identify the important issues and problems, to assume greater responsibility in managing their financial affairs, to have more realistic expectations concerning the means of the other party, and to understand the other party's point of view.

For the only negatively-phrased statement, B9, a significantly lower mean was obtained in the experimental group. B9 stated: "The other party had an advantage over me in the process." The significantly lower mean in the experimental group consequently indicates that the parties in this group were significantly more convinced than parties in the control or adversarial group that opposing parties participated in the process on an equal footing.

Although the mean of the positively-phrased statements for the experimental group was higher than the mean for the control group in each case, these means were still relatively low. They ranged between 4.6 and 5.1, indicating that there is scope for improvement on all these scores. The ideal would be to obtain a

81 The statements are set out in fn 49 above.

82 The 7-point Likert scale consisted of 1 = disagree strongly, 2 = disagree moderately, 3 = disagree a little, 4 = neither agree nor disagree, 5 = agree a little, 6 = agree moderately, and 7 = agree strongly.

83 Steyn, Smit, Du Toit and Strasheim (1994) 428.

mean closer to six, for example, keeping in mind that the scale that was used had seven as a maximum.

5.4 Parties' satisfaction with the court officials of the maintenance courts

Section C of the Questionnaire for Users of the Maintenance Court had ten statements referring to different aspects of their satisfaction with the various categories of maintenance court officials who dealt with their case.⁸⁴ The statements were also measured on the 7-point Likert scale.⁸⁵

Once again, the means or averages were calculated for both groups on each statement, and the t-test⁸⁶ was conducted to do a comparison between the mean of the experimental or mediation group and the mean of the control or adversarial group for each statement in Section C.

For all the positively-phrased statements of Section C, namely, C1 to C8, the mean for the experimental group was, once again, significantly higher than the mean for the control group. This indicated a greater satisfaction with the preparedness and case management skills of the maintenance court officials among the experimental group.

Of the two negatively-phrased statements of Section C, C9 and C10, it was only for C10 that a significantly lower mean in the experimental group was obtained. However, for statement C9: "The maintenance officer tried to impose his/her viewpoint on me", the experimental group had a higher mean than the control group, indicating that they did not perceive the maintenance office to be unbiased. This result is, however, not consistent with the result of fairly similar statements in B9: "The other party had an advantage over me in the process"⁸⁷ and C10: "The maintenance officer took sides with one of the parties". This inconsistency may perhaps be attributed to the fact that the word "imposed" may not have been a familiar term for several court users whose first language is not English.⁸⁸

The highest means in the experimental group were obtained for the following positively-phrased statements: C6: "The maintenance officer handled the case skilfully",⁸⁹ C7: "The maintenance officer was helpful in identifying ways to resolve the dispute(s)"⁹⁰ and C8: "The maintenance officer helped me to control angry feelings when necessary."⁹¹ On the other hand, the lowest mean was obtained on the negatively-phrased statement, C10: "The maintenance officer took sides with one of the parties".⁹² From these results it can be concluded that the maintenance officers in the mediation courts have begun implementing their newly-acquired mediation skills during informal maintenance enquiries with some success.

⁸⁴ The statements are set out in fn 50 above.

⁸⁵ See fn 82 above.

⁸⁶ Steyn, Smit, Du Toit and Strasheim (1994) 428.

⁸⁷ See para 5.3 above.

⁸⁸ Further investigation across the 4 courts revealed that the highest mean was in Pretoria, where parties are generally less familiar with English, and the lowest score was in Johannesburg with a mean of 3.9, where users are more familiar with English. The mean scores in the Witbank and Polokwane courts both came to 4.1.

⁸⁹ A mean score of 5.5 was obtained.

⁹⁰ A mean score of 5.3 was obtained.

⁹¹ A mean score of 5.1 was obtained.

⁹² A mean score of 3 was obtained.

Nevertheless, it was again evident that there is room for improvement on the mean scores for all the positively-phrased statements of Section C within the experimental group.⁹³ Although the mean scores of the experimental group are higher than those of the control group, the fact that these scores are still relatively low is a clear indication that there is definitely a need for further reinforcement of the new mediation skills learnt by the maintenance court officials.

5.5 Outcome of the process and the parties' satisfaction with any agreement reached

In Section D of the Questionnaire for Users of the Maintenance Court parties were first asked to state whether or not they had reached an agreement during the maintenance court proceedings and, thereafter, different aspects concerning the agreement were probed by statements D1 to D5.⁹⁴ For the first part of this section the Chi-square test of independence⁹⁵ was used, and the t-test for independent large samples⁹⁶ was used to analyse statements D1 to D5.

With regard to the first part of Section D, there were significantly more parties in the experimental or mediation group who indicated that they had reached an agreement on all aspects during the maintenance court proceedings than in the control or adversarial group. By comparison, more than half of the court users in the experimental group were satisfied that they had reached an agreement on all aspects, whereas only a third in the control group indicated that they had reached a satisfactory agreement. Similarly, only 13% or about one in eight of the experimental group indicated that they had not reached an agreement at all, whereas about one-third of the control group felt that they had not reached an agreement at all. Since mediation has as its goal the settlement of disputes,⁹⁷ it is abundantly clear from these results that the introduction of mediation in maintenance courts in Pretoria and Johannesburg was very successful from the perspective of court users and that it was already having the desired effect at an early stage.

With regard to the second part of Section D of the Questionnaire for Users of the Maintenance Court, which tested the parties' satisfaction with any agreement reached during the maintenance court proceedings, the mean of the experimental or mediation group was consistently higher than the mean of the control or adversarial group on all five statements. In the experimental group the highest level of satisfaction was reported for statement D2: "The agreement that we have reached is fair",⁹⁸ and the lowest level of satisfaction was reported for statement D5: "I had as much influence as the other party over the terms of the agreement".⁹⁹ This indicates that there may be room for improvement in the mediation training on specifically the issue that the users of the court should have equal power over the terms of the agreement.

It should, however, again be noted that, although the mean of the experimental group was consistently above the mean of the control group, the overall level of the mean was nevertheless relatively low. Although it can therefore be said that

⁹³ As indicated with regard to the statements in Section B of the questionnaire, the ideal would be to obtain a mean score closer to 6.

⁹⁴ These statements are set out in fn 51 above.

⁹⁵ Steyn, Smit, Du Toit and Strasheim (1994) 560.

⁹⁶ *Idem* 428.

⁹⁷ See para 2.2 above.

⁹⁸ A mean score of 5.1 was obtained.

⁹⁹ A mean score of 4.7 was obtained.

the users of the experimental or mediation courts were more satisfied than users of the control or adversarial courts with agreements reached, their levels of satisfaction could have been higher still.

5.6 Parties' ratings of compliance and repeat litigation in the matter

In Section E of the Questionnaire for Users of the Maintenance Court, parties had to indicate on the 7-point Likert scale¹⁰⁰ whether they believed that the agreement reached in the maintenance court proceedings would be complied with by both parties in future. The likelihood of repeat litigation would, of course, depend on the parties' responses to the four statements in this section.¹⁰¹

The mean was again calculated for both groups on each statement.¹⁰² A comparison of the mean across the two groups revealed that the mean of the experimental group was significantly higher than the mean of the control group on all four statements. The highest mean was obtained by the experimental group on statement E3: "I think our agreement will be honoured".¹⁰³ If these predictions of the parties are correct, it is self-evident that the chances of any repeat litigation in these matters are low. Since it is one of the claims of mediation that parties are more committed to mediated settlements in which they had a chance to voice their opinion than to court orders in which they had no say,¹⁰⁴ it would appear that the incorporation of mediation into maintenance court proceedings did indeed have the desired effect. It is also encouraging to note that parties in the mediation or experimental group, on average, agreed "a little" with statement E4: "The other party and I would be able to resolve future maintenance disputes on our own", while parties in the control or adversarial group, on average, disagreed "a little" with this statement. There is, however, much scope for improvement in the parties' responses to statement E4 and, as a matter of fact, to all the other statements in this section. As in all the previous sections of the questionnaire, the mean scores of the experimental group are still relatively low, although they are higher than those of the control group.

5.7 Savings in time and money for the parties

Section F of the Questionnaire for Users of the Maintenance Court dealt with time and money issues, and the Chi-square test of independence¹⁰⁵ was applied for all questions in this section.

Question F1 requested parties to indicate whether the case has been concluded or not. An equal percentage of 85% of cases had been concluded in both the experimental or mediation and the control or adversarial groups. This may be perceived as a disappointing result, but it should be noted that this impact assessment was a cross-sectional study, and a longer time frame is needed in order to obtain a more reliable indication of the percentage of cases that have been completed in each group.

¹⁰⁰ See fn 82 above.

¹⁰¹ The statements of Section E are set out in fn 52 above.

¹⁰² The t-test was conducted to test if the mean of the experimental group was significantly higher than the mean of the control group for each statement.

¹⁰³ A mean score of 5.3 was obtained.

¹⁰⁴ De Jong "Judicial stamp of approval for divorce and family mediation in South Africa" 2005 *THRHR* 98.

¹⁰⁵ Steyn, Smit, Du Toit and Strasheim (1994) 560.

Question F2 asked those parties who indicated that their cases had been resolved to give an estimation of how long it took to conclude their cases. It appeared that 27% of the cases in the experimental or mediation courts were resolved within one to two months, compared to 15% of the cases in the control or adversarial courts that were resolved in such a short period of time. Although mediation has only recently been introduced in the informal enquiry process in the experimental courts, there is, therefore, already an indication that the effects of mediation are starting to show – one of the claims of mediation is that it enables parties to work out and resolve disputes as quickly as possible.¹⁰⁶

In question F3, those parties whose cases were still unresolved were asked how long their cases had been dragging on. It appeared that in both groups there were a substantial number of parties who had been engaged in disputes for long periods of time. Once again, it should be noted that a longer time frame is necessary to ascertain the true effect of the introduction of mediation into the experimental courts in Pretoria and Johannesburg.

Question F4 concerned legal costs. It is clear from the results of this question that parties in the experimental or mediation group have spent much more than parties in the control or adversarial group on attorneys' costs.¹⁰⁷ In my opinion this result has nothing to do with the introduction of mediation in the experimental courts, but can be ascribed to the fact that parties in these courts are, on average, more affluent than parties in the control courts.¹⁰⁸ It was interesting to note, however, that the majority of parties in both groups spent nothing on attorneys' costs.¹⁰⁹

5.8 Quality of the relationship between the parties after the process has run its course

In Section G of the Questionnaire for Users of the Maintenance Court parties were asked to reflect on the various aspects of the relationship between them and the other party in the matter and on the relationship of both parties with any children involved.¹¹⁰ The section consisted of seven statements¹¹¹ that were all measured on the 7-point Likert scale.¹¹²

As in previous sections, the mean or averages for both groups were calculated on each statement, and the t-test was performed to test whether the mean of the experimental or mediation group was significantly higher than the mean of the control or adversarial group. For most statements the mean for the experimental group was significantly higher than the mean for the control group, which is undoubtedly a very good result for this impact assessment. For the statement that dealt with the relationship of the parties with their children,¹¹³ the mean for the experimental group was only slightly higher than the mean for the control group.

¹⁰⁶ De Jong 97.

¹⁰⁷ 16 parties in the experimental group indicated that they had spent more than R5 000 on attorney's costs, whereas only 3 parties in the control group gave such an indication.

¹⁰⁸ As appeared from Section A of the questionnaire which dealt with the demographic details and background characteristics of the parties.

¹⁰⁹ 252 parties in the experimental group and 216 parties in the control group indicated that they had spent nothing on attorney's costs.

¹¹⁰ See Schedule 2 at the end of this article.

¹¹¹ The statements are set out in fn 55 above.

¹¹² See fn 82 above.

¹¹³ Statement G6.

The highest mean in the experimental group was obtained on the following statements: G5: "The maintenance officer helped me to better understand the rand costs associated with raising our children;"¹¹⁴ G6: "At present the children have a meaningful relationship with me;"¹¹⁵ and G7: "At present the children have a meaningful relationship with the other party."¹¹⁶ It is therefore quite clear that the courts in which the court officials had mediation training had a somewhat better influence on children.¹¹⁷ As the point was made earlier that children are too often the innocent victims of maintenance disputes between their parents,¹¹⁸ this result is to be welcomed as evidence of the fact that the introduction of mediation into the maintenance courts may have a positive effect on children in the long run.

Although the mean scores of the experimental group are higher than those of the control group, these scores are still relatively low and it is clear that there is still a lot of room for improvement.

6 RECOMMENDATIONS

6.1 Trainee perceptions

The research hypothesis that the pilot mediation training would have a positive impact on all categories of court officials who received mediation training¹¹⁹ was supported by the findings in this study.

It is abundantly clear from the data obtained from both the Trainee Skills Utilisation Questionnaire and the consultations with various maintenance court officials in the two experimental courts that all the categories of court officials, and not only the maintenance officers, found the mediation training very valuable and useful in their different working environments. Furthermore, opportunities may well arise for maintenance court officials other than maintenance officers to endeavour to mediate maintenance disputes between parties. It would therefore be very unwise to restrict any future mediation training to maintenance officers. Almost all the court officials are further of the opinion that court officials in other jurisdictions should also undergo the mediation training. It is therefore my considered opinion that in future mediation training should be given to all maintenance court officials in the country.

The mediation training should, however, not only be focused on a once-off basic mediation training programme. It is simply impossible to cover all the important facets of mediation in a basic three-day training programme. It is therefore not surprising that the vast majority of the court officials indicated that they required more time for training to acquire all the necessary mediation skills.¹²⁰ Consequently, it is essential that provision be made for more advanced mediation training programmes and for annual ongoing mediation training for all maintenance court officials. Thorough training in mediation is believed to be

114 A mean score of 5.4 was obtained.

115 A mean score of 5.3 was obtained.

116 A mean score of 4.9 was obtained.

117 The mean scores for statements G5 to G7 in the control group were only slightly lower at 4.2, 5.0 and 4.4 respectively.

118 See para 1 above.

119 See para 3.1 above.

120 See para 4.1 above.

essential for the protection of the consumers of mediation,¹²¹ namely the users of the maintenance courts.

6.2 User perceptions

Once again, the hypothesis that mediation would be the preferred and more effective method of solving maintenance issues between family members or others obliged to maintain one another¹²² proved to be highly supported.

From the analyses of all sections of the Questionnaire for Users of the Maintenance Court that covered the perceptions of parties concerning their satisfaction with proceedings in the maintenance court,¹²³ it appeared that on the whole the results of this impact study indicated that parties in the experimental or mediation group were significantly more satisfied than parties in the control or adversarial group with

- the process in the maintenance court;¹²⁴
- the preparedness of maintenance court officials and their case management skills;¹²⁵ and
- the outcome of agreements reached in the maintenance court process.¹²⁶

It further appeared that the parties in the experimental group also more commonly believed that

- the agreements reached in the maintenance court process would probably be complied with by both parties; and
- they would be able to resolve issues that may arise in future independently, without the intervention of the courts.¹²⁷

In addition, it appeared that the quality of the relationships between parties at the conclusion of maintenance court proceedings was also a bit better in the experimental group than in the control group.¹²⁸ Lastly, the Chi-square test of independence that was utilised for the first part of Section D and for Section F¹²⁹ of the Questionnaire for Users of the Maintenance Court revealed that

- significantly more agreements were reached between parties in maintenance court proceedings in the experimental group than in the control group; and
- a significantly higher percentage of cases in the experimental courts than in the control courts was resolved in just one to two months.

It is therefore abundantly clear that the introduction of mediation training in the experimental or mediation courts, namely in Pretoria and Johannesburg, undoubtedly had a positive effect on the users of these courts and appears to be a highly constructive initiative on the part of the Directorate for Child Justice and Family Law within the Department of Justice and Constitutional Development.

121 Rogers and Palmer 943.

122 See para 3.2 above.

123 I.e. Sections B–E and G.

124 See para 5.3 above.

125 See para 5.4 above.

126 See para 5.5 above.

127 See para 5.6 above.

128 See para 5.8 above.

129 See paras 5.5 and 5.7 above.

Of particular importance, in my opinion, are the results that indicate that more agreements were reached between parties in the experimental or mediation group; that these parties were more satisfied with the agreements reached;¹³⁰ that they more commonly believed that these agreements would be complied with by both parties and, furthermore, that these parties have more faith in their ability to resolve future maintenance disputes on their own without the intervention of the court.¹³¹ These results have very important and far-reaching implications for the judicial system – they hold out the prospect that there will be a far lower chance of any repeat litigation in these maintenance matters and that the heavy burden on our maintenance courts will become considerably lighter. If maintenance courts were to be kept less busy by disputing parties, it would save them a lot of time and administrative work and would allow maintenance court officials to use their expertise and time to work on more complex cases.

Another hopeful sign is the positive effect that the introduction of mediation services into maintenance court proceedings had on children involved in maintenance matters. Results¹³² indicate that maintenance officers in experimental courts helped parties to gain a better understanding of the rand costs associated with raising their children and further that children affected by cases processed in the experimental courts had a more meaningful relationship with the maintenance debtor, mostly the father, than children affected by cases processed in the control courts. The chance that children will become the innocent victims of the maintenance dispute between their parents will therefore be lowered or diminished.

However, in the analyses of most sections of the Questionnaire for Users of the Maintenance Court it was indicated that, although the average mean scores for most statements were higher in the experimental or mediation group than in the control or adversarial group, these scores were unfortunately still relatively low on a scale ranging from one to seven.¹³³ There are three possible reasons for this state of affairs. First, this situation might be an indication that not enough time has elapsed since the introduction of mediation into maintenance court proceedings to detect the true effect of the pilot mediation training programme. The Questionnaire for Users of the Maintenance Court was handed out for completion by parties only about six to eight weeks after the court officials attended the pilot mediation training. The plea for another impact assessment over the long term, as set out below,¹³⁴ might therefore seem to be a very good idea. Secondly, this state of affairs might be a warning signal that the three-day basic mediation training programme offered to maintenance court officials was insufficient and that more in-depth training is necessary to properly reinforce court officials' newly-acquired skills. Thirdly, the reason for the relatively low mean scores for most statements in the experimental group might be that there is just not enough time for maintenance court officials to apply their newly-acquired mediation skills when dealing with parties. From individual consultations conducted with maintenance court officials¹³⁵ it appears that maintenance officers, for example, can spend only about ten minutes on a case. They, therefore,

130 See para 5 5 above.

131 See para 5 6 above.

132 See para 5 8 above.

133 Mean scores on the 7-point Likert scale varied between 4.0 and 5.4.

134 See point (ii) below.

135 See para 4 2 above.

definitely do not have the time to take the parties through the five stages of the mediation process.¹³⁶

Whatever the reasons for the low level of mean scores might be, the point is that there is still scope for improvement in the average mean scores obtained for most statements in the Questionnaire for Users of the Maintenance Court by the users of the experimental or mediation courts. In my opinion, the situation could be addressed by:

- (a) the reinforcement of new mediation skills learnt by maintenance court officials through the introduction of more advanced mediation training programmes and annual ongoing mediation training for all maintenance court officials;¹³⁷
- (b) another impact assessment study in two to three years' time to establish the long-term effects of the introduction of mediation services in the maintenance court environment;
- (c) the continuous monitoring of experimental courts where mediation training has been offered to maintenance court officials; and
- (d) an increase in the number of court officials attached to the maintenance courts.

In conclusion, the main findings of this impact assessment are

- that the pilot mediation training programme offered to maintenance court officials in Pretoria and Johannesburg has indeed been instrumental in more effectively resolving maintenance disputes than the traditional procedures; and
- that the mediation training programme should definitely be rolled out country-wide as soon as possible for the benefit of the judicial system, parties involved in maintenance disputes and their children.

¹³⁶ See para 2.2 above.

¹³⁷ See also para 6.1 above.