MEDIATORS' PERSPECTIVES ON THE ONTARIO FAMILY MEDIATION PROCESS AND ITS POTENTIAL IMPACT ON ABUSED WOMEN AND CHILDREN'S EDUCATION

FOR

MASTERS OF EDUCATION

by

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A Thesis

submitted in partial fulfillment of the requirements

for the degree of

Masters of Education

FACULTY OF EDUCATION

LAKEHEAD UNIVERSITY

THUNDER BAY, ONTARIO

August, 2013

Abstract

This research focused on the perspectives of seven mediators in Thunder Bay on what will happen to abused women if the mandatory mediation information program is actually implemented into the divorce process in Northwestern Ontario as well as speculation on the potential effects of mediation on children's educational achievement. Utilizing a qualitative and feminist methodology, the study revealed that Ontario family law rules are not universally implemented because attendance at the new mandatory information session is not legally required in Thunder Bay. Furthermore, the study revealed that mediators and the mediation process are under regulated with no government-created political body monitoring how mediators run their practice. Mediators in this study revealed that they would conduct mediation with high-risk couples using shuttle mediation or involving external experts, but high-risk couples, such as an abuser and victim, should not mediate given power imbalances. Children involved directly or indirectly in the mediation process may be affected in various ways, including their ability to concentrate on schoolwork. Mediators need training on how to mediate divorces of high-risk couples safely and effectively, including specific procedures for children's participation. Further, policymakers in the province of Ontario need to consider how the failure to oversee mediation is a problem with potentially devastating consequences.

Acknowledgements

Throughout this writing journey, I had the opportunity to work with someone who inspires me. Dr. Lori Chambers, I am deeply indebted to you. I thank you for the endless hours you gave in helping me complete my thesis. If it were not for your guidance during my undergraduate studies as well as graduate studies, who knows where I would be today? You have inspired me to continue in academia. You are a tremendous professor who truly cares about student learning and success. Thank you for being patient with me and for sharing your knowledge and expertise. It was a pleasure working with you.

To my committee member, Dr. Constance Russell, my internal examiner, Dr. Gerald Walton, and my external examiner, Dr. Thomas McMorrow at the University of Ontario Institute of Technology, thank you for your time, effort and suggestions. I thank you for your guidance in assisting with this project.

I would also like to thank the seven participants for sharing their knowledge and professional experience. Thank you for taking the time out of your busy schedules to meet with me. Your contributions to my thesis and the wider scope of this topic are greatly appreciated.

Next, I would like to acknowledge the individuals and agencies who provided me with financial support for graduate studies. Thank you to Drs. Jenny Roth and Monica Flegel for providing me with the opportunity to work as a Research Assistant for two years (2011-2013). It is through this research that my thesis topic came to light. I would also like to thank the Social Sciences and Humanities Research Council of Canada for providing me with a Joseph-Armand Bombardier Canada Graduate Scholarship (2012-2013). As well, thank you to the Canadian Federation of University Women for choosing

my research topic as the winner of the Canadian Home Economics Association Fellowship (2012-2013). I am extremely grateful for the financial support I received for my thesis research.

To my loving spouse Adam: thank you for being patient and providing your endless love and support. Thank you for encouraging my continued success in academia and for motivating me when I needed it. You always believe in me. I will love you always. To my newborn daughter Jasper Payton Josephina, you are my little angel. I cannot wait to see what lies ahead of us. To my mother Linda, father Jerry, grandmother Ann, mother-in-law Christina and father-in-law Phil: thank you for your continuous support throughout this writing process and throughout my academic career.

To my friends – you know who you all are – thank you for the multiple coffee and tea dates where my thesis was the topic of discussion. I thank you for your suggestions and encouragement. Finally, to the nurses, nurse practitioners, neonatalogists, high-risk pregnancy unit, neonatal intensive care unit and to any others who were part of the Women's and Babies Program who took care of my daughter and I at Sunnybrook Health Sciences Centre in Toronto, Ontario, thank you for your support and care during the scariest time of my life. It was because of your amazing care that Jasper is here today and I completed this project on time.

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Chapter One: Introduction

Description of Researcher

I identify as a White person and as a woman. I am a Canadian from Thunder Bay, Ontario, where I have spent most of my life with my parents, Linda and Jerry, brother Richard and spouse Adam. I have worked and studied in the legal field for over eight years. I have worked at three local law firms and completed the Legal Assistant Program and the Institute of Law Clerks of Ontario Diploma Program through Confederation College. My honours undergraduate degree is from Lakehead University in Gerontology and Women's Studies. In courses in Women's Studies focusing on law, I developed an interest in how legal frameworks constrain women and their children. Additionally, since May 2011, I have been employed at Lakehead University as a Research Assistant in the Women's Studies Department. In this position, I became aware of the recent changes to the *Ontario Courts of Justice Act.* The first step in the divorce process is now to attend a mandatory information session outlining the benefits of mediation in family matters *(Courts of Justice Act,* 2011*).* My questions about this change led to this thesis.

Description of Research Study

In Ontario, on September 1, 2011, the Family Law Rules were amended to include the mandatory information program, increasing the likelihood that divorcing couples will employ mediation in lieu of going to court (*Courts of Justice Act, 2011*). Mediation is defined as "the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power, but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute" (Smith, 1998, ¶ 13). Mediators are usually professionals who hold bachelors or

masters degrees and have relevant work experience (MOAG, 2012a), but no formal qualifications are required.

Mediation can be positive because it can reduce stress for parents (and children) by not having to attend a public court hearing (Bush, 1989/1990), it can help to lead to better financial outcomes since mediation is cheaper (Mandhane, 1999) and can lead to co-operative parenting of any children in the home (especially when divorcing spouses voluntarily agree to mediate) (Bryner, 2001). All of these issues are specifically helpful regarding children's educational achievement, which can be at risk during divorce; however, in abusive situations, none of these factors are relevant.

Mediation for abused parties is potentially problematic because the victim may agree to an unfair settlement out of fear, allow the abuser access to the children and share in childcare decisions. Women who try to leave abusive relationships can become trapped in a cycle of abuse, whether emotional, physical, or psychological. When abuse is repetitive, divorce from the abuser becomes very difficult. Thus, I wondered at the onset of my research: If mediation is attended, will the outcome be fair? How is an abused woman supposed to divorce an abusive spouse if Ontario family law persuades her to mediate? How will the mediation process affect children in the relationship? Thinking about how children are affected led me to question how their academic success could potentially suffer. Will children's educational achievement suffer if mothers elect to mediate conflicts because of the influence of the mandatory mediation information session?

The change to Ontario divorce law in September 2011, enforcing the mandatory information program, was supposed to speed up the process by highlighting the benefits

of mediation in hopes that more people would choose it and reduce waste of court resources, but I wondered if these changes disadvantaged women and put children at risk? Given my concerns about the potential problems of mediation, I wanted to see what mediators do and know. My research explored how mediation is conducted and asked mediators in Thunder Bay, Ontario what will happen to abused women if the mandatory information program is actually enforced in Northwestern Ontario and those women end up attending mediation. What information is given to women about mediation? How do mediators screen couples for abuse? What do they do when high conflict couples attempt to mediate? What impact do they see on children's emotional well-being? I also asked mediators if there would be any effects on children's educational achievement. In particular, I was interested in children's ability to learn and interact with others in school when home life is troubled by abuse (Rosnes, 1997). Would the benefits of mediation for children be apparent in such cases?

Osofsky (1995) states that "school-aged children who witness domestic violence often show a greater frequency of externalizing and internalizing behaviour problems in comparison to children from nonviolent families" (p. 4). The divorce process can also be very traumatic for children. Children might end up suffering from depression and anti-social behaviour, affecting their progress in the classroom (Statistics Canada, 2005). When divorce is complicated by violence in the home, children are at an even greater risk of low educational achievement. This research was thus conducted to determine how mediators deal with power imbalances and abusive relationships in mediation in Thunder Bay, and whether or not mediators believe that their work in mediation has an impact on children in abusive, divorcing families.

I used a critical qualitative methodology, adopting insights from feminist research. This methodology helped me to develop a deeper understanding of the mediation process and possible effects on children's educational achievement. Through semi-structured interviews, mediators were asked to describe the mediation process and to consider whether the mediation process has any effects on children.

Thesis Overview

The purpose of this study was to analyze if the new Ontario divorce process introducing mediation affects abused women, while reflecting on the effects, if any, on children's educational achievement. Chapter two is a review of literature on the Ontario judicial process, paying particular attention to the gaps between criminal proceedings and family law proceedings when abuse is a factor. The requirements of the Ontario mandatory information program are also described and critiqued. Moreover, children's educational achievement when in a divorcing family or a family where violence occurs is discussed. I found that there is a gap in the research where there is no distinction made between divorced mothers and divorced abused mothers. This is problematic because divorce and violence cannot be lumped together. Further, the zoning of schools and how the employment of teachers at these schools influences educational achievement is discussed. The ways in which educational achievement is at risk when there are multiple issues present in a child's life that compound each other is also explored.

In chapter three, the methodologies and method that I use in my research are explained. I used qualitative and feminist methodologies and the interview method for my research. Chapter four presents the research findings. In this chapter, I discuss the data from my interviews with mediators, including how they screen potential parties for

abuse, whether mediators believe the shift from voluntary mediation to the new mandatory information program is helpful or disadvantageous for abused women, and whether or not mediators recognize any connections between abuse in the home, the conduct of divorce/mediation proceedings and children's educational achievement. In chapter five, an analysis of the findings is provided. Finally, chapter six offers a summary and conclusion to this study.

Chapter Two: Literature Review – The Ontario Judicial Process and the Effects of Divorce and Violence on Children's Educational Achievement

While many legislators in the Ontario Government believe that mediation is appropriate in the divorce process, many feminists, lawyers, academics, and numerous professionals acknowledge that mediation may be harmful for women and their children who are, or were, in abusive homes (Roberts, 2007; Cappelletti, 1993; Menkel-Meadow, 1995; Landrum, 2010/2011; Adler, 2013). In order to understand the Ontario court system and the current amendments that have been made to the Family Law Rules, under the *Ontario Courts of Justice Act*, the implementation of family law in Ontario needs to be analyzed. It is also important to note that attendance at the mediation information program is not yet mandatory in Northwestern Ontario.

In this chapter, mediation is defined and critiqued in the context of the history and implementation of Canada's *Divorce Act*, as well as the history of woman abuse in Canada. Two reports based on the Thunder Bay Women's Court Watch Program are analyzed. These reports are from criminal proceedings in Thunder Bay, Ontario and are important because they illustrate the interrelated nature of criminal and family law proceedings. Even though an abuser may be known as a criminal, the family law and criminal law systems do not intersect and women and children are not protected (Adler, 2013). Also, abuse is very difficult to prove (Adler, 2013). Adler reveals that when trying to prove abuse, "fact finding cannot depend on legalisms alone; nor can adjudications be effectively arrived at without procedural safeguards" (p. 725). Political issues in Ontario are also discussed. I argue that it is important to analyze changes in law to show the flaws in the Ontario family law system. These flaws need to be revealed because they impact

the way mediation is practiced in Ontario. If the family law rules are not consistent, how are mediators supposed to be?

To understand how and when mediation may be detrimental to children's educational achievement by potentially prolonging divorce proceedings or deterring women from leaving abusive spouses, we must not only look at laws that frame divorce, but also those that consider the emotional impact of divorce and violence on children. The challenges faced by single mothers and the potential impact of having to move to a low socio-economic neighbourhood are discussed. The social effects of school districts and the employability of teachers are also important factors to consider because children's educational achievement may be at risk when living in a new, perhaps poorer, environment. Children's educational achievement is important to examine in the context of violence and divorce because there are many factors that may or may not help children adjust, such as support from siblings and extended families. Finally, standardized testing in Ontario and the state of education of Aboriginal children are analyzed to provide further educational context.

The Legal Framework

Criminal and divorce proceedings in the current state of the Ontario Courts are unpleasant for those individuals who have both criminal and family matters being heard. The Ontario Government is attempting to eradicate the high volume of court case backlog through new legislation. The passage of "Rule 8.1 Mandatory Information Program" in the *Courts of Justice Act* mandates that all individuals, whether in a same-sex, common-law or legal marriage, who are in the process of a divorce claiming support, property and/or custody of children, must attend a mediation information session (Lay, 2011).

Alas, mediation as a form of dispute resolution may harm women and children in abusive relationships.

Johnston and Ver Steegh (2013) argue that modern family law does not consider cases of domestic abuse:

> The architects of the modern family courts were preoccupied with instituting reforms designed for the general divorcing population that inadvertently may have accomplished much the opposite effect. These architects sought divorce and child custody laws that destigmatize and normalize family disruption and dispute resolution procedures that are more collaborative and respectful of family autonomy and privacy. Consequently, there have been unintended negative consequences for victims of IPV [intimate partner violence] stemming from disjointed policies and practices. (p. 65)

Mediation in family law gives the impression that courts want to "help separating or divorcing couples … by [persuading them to] use non-adversarial, private dispute resolution procedures" (p. 66). But many judges and lawyers believe that high-conflict family law cases should not be mediated, but rather argued in court because "financial issues are inextricably entwined with custody and visitation issues" (Perry, Marcum, & Stoner, 2011, p. 444). Mediation may, in fact, worsen the divorce process for abused women because these women may not be able to afford a lawyer and thus may not be able to have their lawyers attend on their behalf. The inability to afford a lawyer indicates that these women may then be re-victimized because they are forced to sit across from their abusers without representation (Aquilina, 2002; Cappelletti, 1993; Krieger, 2002; Chewter, 2003; Johnston & Ver Steegh, 2013; Menkel-Meadow, 1995; Geffner, 1990);

"the potentially tragic irony is apparent: a woman who has been unable to protect herself from physical assault and abuse … [may now be persuaded] to engage in face-to-face, honest, direct, open discussion and negotiation with her abuser to reach a 'mutually acceptable agreement'" (Geffner, 1990, p. 156). This can harm their children. Professionals who are assisting divorcing couples "must understand the ramifications of joint custody and mediation in abusive relationships" (p. 151).

If women are discouraged from leaving an abusive environment, or accept unfair settlements in mediation, children may be at risk of being harmed. Children may also be harmed when they see their mothers suffer further trauma through the events that take place before, during, or after mediation, which impact their ability to parent; the mediation process "may subject an abused adult or child to psychologically harmful confrontation with the abuser during mediation" (p. 156). Even though there is much literature on the negative effects of mediation in high-conflict cases, the mandatory information program discussing the benefits of mediation was still implemented in Ontario; however, not all jurisdictions follow this procedure.

A number of reports, legal commentaries, and recommendations have been published by legal scholars, women's rights advocates, children's rights advocates, and government agencies outlining the negative implications of abuse in the home, and also of mediation when an abusive relationship has dissolved. Abuse in the home is defined as a power imbalance where control and fear are instilled in a relationship through violence, manipulation and coercion (Krieger, 2002; Chewter, 2003; Landrum, 2010/2011; Geffner, 1990; Adler, 2013). When violence does occur, a woman may analyze what *she* did wrong, rather than recognize that *his* abusive behaviour is the problem.

Reports recommend that a judge in court, rather than a private mediator, should hear cases involving abused women and children. Court is preferred over mediation because mediation "causes the 're-privatization of family law'[1] resulting in a setback to the political and legislative progress" (Krieger, 2002, p. 235) women's rights advocates have lobbied for since the 18th century. Furthermore, mediation does not punish abusers. Mediators do not impose legal sanctions on either party, and it is highly unlikely that mediators would report accusations of abuse to the police because mediators are not qualified to charge individuals with abusive behaviour and are only speculating that abuse took place in the home (Mandhane, 1999). Given this, abuse may be disregarded in mediation.

History and Implementation of Canada's *Divorce Act*

Mediation was introduced in an attempt to reduce wait times for divorce proceedings. Demand for divorce is very high and, apart from the wait and the cost, it is not difficult to qualify for a divorce in Canada. However, this has not always been the case. Prior to Canada's passage of the *Divorce Act* in 1968, different divorce laws, passed down from England, remained in effect (Abernathy & Arcus, 1977). The Dominion of Canada was created in 1867 with the passage of the *British North America Act* (Abernathy & Arcus, 1977). Section 29 of the *Act* "granted the provinces of Canada *de facto* jurisdiction over divorce, which meant that laws already in force at Confederation and courts of civil and criminal jurisdiction would continue" (Arnup, 2001, p. 18). This

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[1] By introducing mediation into family law, "the courts are [essentially] being pushed out" (Krieger, 2002, p. 240), especially when those couples that attend the Mandatory Information Program are successfully persuaded into the mediation process. This new divorce mediation process might not be beneficial for those involved in abusive relationships; "mediation removes the legal penalty for beating one's spouse, further deterring the small percentage of victims who seek help in the legal system" (p. 240).

Act granted the Canadian Federal Parliament exclusive authority over marriage and divorce, but provided the provinces with legislative power over the divorce process (Abernathy & Arcus, 1977). This meant that the "grounds for divorce were made a federal responsibility, while procedures in divorce actions were left to the provinces" (p. 410). Although the Canadian Federal Parliament had the right to control marriage laws, it did not do so (Abernathy & Arcus, 1977). Rather, Parliament "enacted statutes which affected divorce laws in the provinces that had divorce laws in effect at that time" (p. 410).

In 1930, Ontario passed the *Divorce Act*, which made "the *Matrimonial Causes Act of 1857* the basis for divorce law" (p. 411). The *Matrimonial Causes Act of 1857* was England's first divorce legislation. This *Act* provided the courts with the authority to determine the grounds for divorce (Bloy, 2006). There was a double standard in place that distinguished between husbands' access to divorce and wives' access to divorce (Arnup, 2001). Husbands were able to divorce their wives on the mere accusation of adultery, whereas women were given limited access to divorce, and adultery could not be the only reason for divorce although adultery and cruelty, together, were satisfactory (Bloy, 2006). When women were successful in the divorce process, "the right of access to children was extended and women were able to repossess their property" (¶ 23).

The Federal Parliament also passed the *Divorce Jurisdiction Act of 1930* (Abernathy & Arcus, 1977). This *Act* allowed a "married woman who was deserted and living apart from her husband to commence divorce proceedings" (p. 411). The *Act* also created a provincial divorce court so that proceedings were cheaper and women no longer had to apply for divorce through private members' bills in the House of Commons

("Parliament of Canada", 2009). Since some provinces still did not have provincial divorce mechanisms, the *Dissolution and Annulment of Marriages Act 1963* was passed and it provided a new way of obtaining a Parliamentary divorce (Abernathy & Arcus, 1977). This *Act* stated that a divorce could not be recommended unless the reasons for it were satisfactory under the laws of England (Abernathy & Arcus, 1977). Prior to 1968, divorce laws in Canada were very confusing.

With the passage of the 1968 *Divorce Act*, divorce legislation became clearer. The *Divorce Act* was based on fault, meaning one spouse could blame the other for marriage dissolution, such as adultery (Allen, 1998). Wives who were proven adulterous "were not entitled to spousal support, and husbands [who were proven adulterous] had no right to apply for support in any circumstances" (Douglas, 2001, ¶ A1). Grounds for divorce under this *Act* included, but were not limited to, "adultery, sodomy, bestiality, rape or homosexual acts" (Allen, 1998, p. 139). Although on the surface the provisions for fault-based divorce were gender-neutral, fault-based divorce was problematic because property was most likely in the husband's name and wives could be left with few or no assets (Allen, 1998). This was unfortunate because "title did not reflect spousal contributions in a marriage" (p. 139). Recognizing the problems inherent in the *Divorce Act*, many divorce and matrimonial property cases in the 1970s recognized the "indirect contributions to matrimonial homes" (Knetsch, 1984, p. 267) and awarded women some support.

In 1980, the *Ontario Family Law Reform Act* was passed (Baxter, 1987). The *Family Law Reform Act* recognized domestic labour in the home and provided a 50/50 split of matrimonial property if the marriage was terminated. To acknowledge these

changes, the *Divorce Act* was amended in 1986 to recognize the difficulty in proving grounds for divorce other than marriage breakdown (Baxter, 1987). The grounds for divorce were reduced to only marital breakdown, with either spouse able to apply for divorce (Baxter, 1987). Furthermore, the *Family Law Reform Act* was replaced by the new *Family Law Act, 1986* (Baxter, 1987). The new Ontario *Family Law Act* dealt with various aspects of family law "which were within the scope of provincial legislative powers, such as family property, the matrimonial home, support obligations, domestic contracts, dependents' claim for damages and amendments to the common law" (¶ 2). The new vision of the 50/50 split of matrimonial property was supposed to be based on a fundamental recognition of the equality of both members of the married couple. Left unanswered, however, was what happens in cases in which there is a power differential enforced through violence.

Legal Aid in Ontario

In homes where violence occurs, the family finances are most likely in the control of the abuser (Watson & Ancis, 2013). When the abuser, usually the man, controls the finances, sometimes women are unaware of their financial situation, which might make divorce very difficult since it is very expensive (Chewter, 2003). In Ontario, legal aid has been available to those of low socio-economic status since 1972 (CBA, 2013). Legal aid has always placed a priority not on providing divorce services to women, but on defending men at risk of incarceration (CBA, 2013).

Creating further barriers for women, the Ontario government is encouraging individuals who want a divorce and who can access legal aid to use alternative dispute resolution services. This is discussed in the Home Court Advantage Report where it was

recommended "legal aid certificates be issued prior to filing an application and [allow] access to certificates for alternative dispute resolution processes" (Dart, Landau, Swartz & Young, 2009, p. 7). For example, the recommendations proposed enable "16 hour certificates for mediation … encourage lawyers to offer … [legal advice off the record], provide independent legal advice and use law school clinics with students and paralegals … to assist in completing forms and offering legal information" (pp. 13-14). The changes to legal aid clearly encourage mediation, which may be problematic.

Furthermore, legal aid's financial requirements are unrealistic because, as it currently stands, legal aid is unobtainable for many individuals who need it (Teplitsky, 2000). The Home Court Advantage Report also recommended that the government "adjust the financial eligibility criteria for legal aid to increase access to independent legal advice" (Dart et al., 2009, p. 14), but there remain flaws in the legal aid qualification criteria. For example, individuals who are able to obtain legal aid where there is no obligation to pay back the debt ranges from $10,800 for a single individual to $26,714 for a family of five (LAO, 2012a). Individuals whose incomes are within the range will not necessarily qualify. Individuals are required to take a financial test to determine eligibility for legal aid certificates, but no details of the test or the deciding factors other than the income table are provided without contacting a legal aid representative (LAO, 2012a). Also, these income amounts are very low. Individuals with a slightly higher income would probably be unable to afford an uncontested divorce, let alone mediation or litigation. For example, the average cost of an uncontested divorce in Ontario is approximately $1,500 (J.N. Mukongolo & Associates, 2008). This amount might seem small to many individuals, however, an uncontested divorce means that

divorcing spouses are claiming no relief, with the possibility of support already determined outside of court, such as in mediation, which also costs approximately $1,000 or more (Take2Mediation, 2012).

The legal aid income table posted online is confusing. Ultimately, a representative of Legal Aid Ontario determines if an individual qualifies (LAO, 2012b). Because most people cannot obtain legal aid, many disputes are never brought forward (Teplitsky, 2000). Since many disputes are never brought forward, many women and children are left in legal limbo, separated but without the finality or support of a divorce settlement. The individuals who owe support, but have not been taken to court, are prospering because they are not obligated to provide support. Unfortunately, this denies women the finality of removing themselves from their abusers and widens the gap between individuals who deserve support and those who do not pay support. This is unfortunate because the judicial system is supposed to assist individuals who are entitled to support, not disregard this obligation. These problems and inequalities are exacerbated in the context of abuse.

Woman Abuse in Canada

Woman abuse has been recognized as a problem in Canada. When leaving an abusive relationship, it is often difficult for women and children to find and/or stay in a safe space while obtaining assistance and proceeding with divorce because abusers are good at manipulating their spouses and a cycle of violence recurs (Roberts, 2007; Chewter, 2003; Krieger, 2002; Mandhane, 1999; Johnston & Ver Steegh, 2013). For example, during the early stages of separation/divorce, many women are frightened. Abusers can recognize opportunities to get their partners back by showing remorse and declaring their love for them. Because abuse is recognized as a cycle of recurring events,

many women will believe 'this time he will change.' Ultimately, many women are manipulated and walk back into a home with 'a ticking time bomb.' These problems can be reinforced, not mitigated, when abused women are forced to attend an information program, with the potential of agreeing to attend divorce mediation. Thus, if some abused women choose to attend mediation in lieu of court, they have no choice but to sit across from their abusers who then have the opportunity to manipulate their spouses, thereby continuing the cycle of abuse.

Walker (1977/1978) states that understanding the complexities in domestic violence[2] cases is important. Walker (1977/1978) describes a model of the cycle of violence as having three separate and distinct phases: (1) tension-building, where the tension builds until there is an abusive incident; (2) acute battering incident, where the woman is abused and possibly leaves or calls the police; and (3) loving contrition by the abuser, where the batterer is remorseful, apologizes and may send flowers or 'court' his partner. Domestic violence affects many people. It does not matter what culture, class, race, or religion individuals are from. Poverty creates stress that makes abuse more likely and more common, but any woman, from any social class, ethnic or racial group, can find herself in an abusive situation.

Abuse is recognized by most people as wrong and as a global problem, yet the divorce process, particularly for those individuals divorcing in Ontario, is difficult for victims of abuse. The Canadian federal government and provincial governments do not recognize that "work to end violence against women requires not only a clear

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[2] Domestic violence has multiple meanings and interpretations, depending on a victim's perception, and others' beliefs about what domestic violence is. There is not one clear way to define it. It is important to assess every family matter involving domestic violence on a case-by-case basis.

demonstration of political commitment, but also systemic and sustained action, backed by strong, dedicated and permanent institutional mechanisms" (United Nations, 2006, ¶ 28). Intersecting systems such as justice, health, housing and education need to be accessible for women who survive abuse so they have opportunities to improve their lives and the lives of their children (United Nations, 2006).

Although abused women and their children use shelters, health services, and housing services, their safety remains at risk (Dugan, Nagin & Rosenfeld, 2001). Police protection services are depended on both when women are in relationships and after they and their children leave abusive homes; however, police officers use their discretionary power to determine whether or not the abusive spouse needs to be arrested (Dugan et al., 2001). This is problematic because women's requests for assistance can be ignored, thereby allowing abuse to continue (Dugan et al., 2001). Lack of sympathetic response from police can both discourage women from leaving abusers to begin with, and put them at risk for further violence when they do try to leave.

Women who report violence are not always believed by protection services when they accuse their partners of domestic abuse. Further, 28% of women who have experienced spousal violence have not reported it (Brzozowski & Brazeau, 2008). Reasons for not reporting spousal violence include the belief that abuse is a private issue, the fear that they would not be believed, and that there was not adequate proof of abuse and/or reluctance to get involved with the judicial system (Statistics Canada, 2006). Out of those who have reported violence, 23% of female victims reported being beaten, choked, or threatened by having a gun or knife used against them (Statistics Canada, 2006). Thirty-eight percent of women who reported abuse sought restraining orders

(Statistics Canada, 2006). Furthermore, 11% or 1.4 million women 15 and older stated "that they were stalked in a way that caused them to fear for their safety or the safety of someone close to them" (¶ 5). Nine percent of these women reported "that they had been stalked by a current or previous spouse, or common-law partner" (¶ 5).

Between 1994 and 2004, approximately 182 females were murdered in Canada (Statistics Canada, 2006). In 2004 alone, 62 females were victims of spousal homicide and of these, "27 were killed by their legally married husband, 20 by a common-law partner and 15 by a separated or divorced husband" (¶ 5). It was and is known that among solved homicides, 50% of women who were killed were killed by someone they knew intimately (Statistics Canada, 2006).

In the light of these disturbing statistics, some jurisdictions have implemented 'pro-arrest, pro-charge' policies whereby both the victim and abuser are arrested when police are involved (Chewter, 2003). These policies were designed to remove any burden on police officers in determining who started the violence and to have charges proceed regardless of whether or not the parties reconciled (Chewter, 2003). This was intended to prevent women from recanting charges when men entered the apologetic phase of the abuse cycle. Unfortunately, this policy did not provide the protection it promised. In domestic violence cases, the victim of domestic violence is often re-victimized by the criminal justice system (Chewter, 2003). Because police no longer have to determine who started the violence, often both parties are arrested and the history of abuse is hidden (Chewter, 2003; O'Reilly, Root & Zweep, 2009). The abusive partner is also empowered when his victim is arrested because he knows that the experience of being arrested traps her in a double bind: she is abused, yet she is arrested. Because of this possibility, "a

victim who calls the police only to be arrested herself will avoid the criminal justice system the next time she is abused" (Chewter, 2003, ¶ 6). This is not a beneficial policy for victims who try to obtain assistance from the police.

Also, some women in abusive relationships do not see quick results. Some women who are physically and sexually assaulted by their partners are not treated the same as if the assault were by strangers (Chewter, 2003). This is recognized in the "lack of resources available to monitor compliance with conditions imposed by the Court" (¶ 15). Further, masking abusive behaviour is a tactic used by many abusers. In court, abusers may appear remorseful. There is also the possibility that during the time that has elapsed since the parties last saw each other, feelings of guilt may have developed in the abuser who may also realize that he is really going to lose his spouse. He may also feel the need to regain control over her. In the cycle of domestic violence, this stage is called loving contrition, which allows men to appear remorseful, regain the trust of their ex-spouses, and continue the cycle of abuse.

When the relationship moves into the phase of loving contrition, women may request that any restraining mechanisms in place be removed so that contact with the abuser can continue (Chewter, 2003). Some women may do this "out of pressure, fear, or a desire to resume a relationship with their spouse" (¶ 17). Unfortunately, the deletion of these provisions causes problems. Under the Criminal Code, 'no contact' conditions that are placed on abusers are "the most enforceable and carry the most immediate and severe consequences for breach" (¶ 18). Still, even when the 'no contact' orders are maintained, there are exceptions where contact can be made (Chewter, 2003). For example, abusive fathers are often able to gain access to children even though it is clear that an abuser

should not have that right (Chewter, 2003), and access to the children means access to the mother, putting her in danger yet again. This shows the need for criminal courts and family courts to share information about crimes committed by abusers. This is one of the many reasons why programs have been implemented to monitor the Ontario judicial system, such as the Thunder Bay Women's Court Watch Program.

Thunder Bay Women's Court Watch Program

Thunder Bay Women's Court Watch program was implemented in May 2007 by the Northwestern Ontario Women's Centre and Faye Peterson Transition House (O'Reilly et al., 2009). Cases involving woman abuse/intimate partner violence and sexual assault were followed through the Ontario Court of Justice (O'Reilly et al., 2009). The findings gathered through the program since 2007 make it clear that dangerous stereotypes are reproduced in court decisions. For example, in 2000, an Early Intervention Program and a Partner Assault Response Program were created by the Ministry of the Attorney General as part of the Ontario Domestic Violence Court Program (O'Reilly et al., 2009). The Early Intervention Program "facilitates the prosecution of domestic assault cases, domestic abuse situations, provides better support to victims and increases offender accountability" (MOAG, 2010, ¶ 1) "by relying on the admission of guilt" (O'Reilly et al., 2009, p. 10) from the abuser. The Partner Assault Response Program is "where the community agency monitors the on-going risk to the partner while offering education to the perpetrator" (p. 10).

In 2008, when the first Thunder Bay Court Watch Report was released, it was found that there were inconsistencies in judicial decisions. For example, a consideration

of the impact of violence on children in the home was absent during bail hearings (Ball, Gollat & O'Reilly, 2008). It was found that:

> 12 of 50 cases referred to children living with the couple at the time of the incident [but] 0 of 50 cases referred to children being present at the time of the incident and 0 of 50 cases referred to the safety of the children during the sentencing process. (pp. 15-16)

Only one case discussed the well-being of the children; however, the safety of children or the victim was not considered as the judge "allowed the accused third party access [to the children] through sentencing" (p. 16). The inconsistencies in decisions carried on into 2009, even though justices and court personnel were provided with the 2008 Thunder Bay Women's Court Watch Report. For example, in both the 2008 and 2009 Thunder Bay Women's Court Watch Reports, the Early Intervention Program was not utilized and the Partner Assault Response Program was used only five times (O'Reilly et al., 2009). By not enforcing the use of these programs, judges, lawyers and court personnel are giving the impression that abuse will be tolerated. Simply put, the Ontario Court of Justice should not be tolerating abuse. It is no surprise that many women felt let down by the Ontario Court system (Ball et al., 2008). For example, one victim stated that she was branded a liar, and all her abuser received was a $100 fine, probation and a "proverbial slap on the hand, until he does it to the next victim" (p. 21).

It was reported that 89% of the accused were male, while 87% of the victims were female, and data reveal that the accused and victim were in some form of relationship (O'Reilly et al., 2009). Further, Thunder Bay Women's Court Watch recognized that "almost one-third of the accused were violating an already existing bail and/or probation

condition" (p. 7). The histories of the individuals breaching their conditions show previous charges of physical violence (O'Reilly et al., 2009). This suggests that even 'no contact' orders are not that successful. The judicial system thus maintains women's oppression by allowing abusers to breach conditions without severe penalties (O'Reilly et al., 2009).

Court personnel need to be aware of the risks faced by women and children in the event that an accused is released. This is a major problem because a history of domestic violence is the top risk factor associated with familial homicide (O'Reilly et al., 2009). If judges took information about the accused's history of violence into perspective, regardless of the offence, high-risk offenders would be held in custody and lenient conditions, such as curfews, would be eliminated with stronger conditions to help ensure abusers are not re-offending (O'Reilly et al., 2009). Safety mechanisms in the criminal justice system need to be clear, with particular focus on the safety of women and their children instead of the rights and freedoms of the abuser (O'Reilly et al., 2009).

It is unclear why the discussion of safety for women and children is missing in criminal cases when the Ontario Domestic Violence Death Review Committee recognizes that a child of a mother in an abusive relationship is at risk because the abuser may use his children to manipulate his spouse (O'Reilly et al., 2009). Furthermore, Statistics Canada recognizes that "fathers are more likely than mothers to be the perpetrators of child homicide" (p. 39). Children are innocent victims where "their very presence, especially in the common context of a custody or access issue, suggests an increased level of risk for all concerned" (p. 39). Issues of risk are not considered in family law

cases within the Ontario family court system, and any criminal proceedings are separate from family law proceedings.

Abusers as Parents

Beyond the issue of the immediate danger faced by women and children, "there is a link between spousal abuse and an abuser's ability to parent" (Chewter, 2003, ¶ 45). Despite significant evidence of the harm caused to children by violence in the home, many family judges still operate under the assumption that wife abuse is not relevant to parenting. It is believed by many judges that that: (1) wife abuse is only between the husband and wife and does not influence the abuser's relations with other intimate family members, including his children; (2) wife abuse is not harmful to children; and (3) wife abuse ends when the relationship breaks down (Chewter, 2003). All three of these assumptions are false. A man who abuses his spouse may dominate, control and coerce his children, rather than be a positive father figure (Chewter, 2003; Krieger, 2002; Johnston & Ver Steegh, 2013; Geffner, 1990; Murphy & Rubinson, 2005). A spouse who controls the other spouse through "manipulation, violence, threats and verbal or other types of abuse so as to undermine the mental and physical health of the children's primary caregiver should be seen as acting knowingly contrary to the best interests of the children" (Chewter, 2003, ¶ 51). Research shows that boys who grow up in homes where their mothers are abused are more likely to become batterers themselves and girls are also more likely to be abused in their adult relationships (Cherlin & Morrison, 1995). This reveals that men and women maintain power imbalances in their relationships if they were exposed to abuse as children.

Moreover, these beliefs are evident in Section 16 of the *Divorce Act* itself, which disregards violence (*Divorce Act,* 1985). Disregarding violence in the home keeps women and children in those situations. Abused women and children are vulnerable in abusive instances where they will not leave a relationship out of fear (Rosnes, 1997). To make matters worse, some women who do seek divorce are strictly advised by their lawyers not to mention abuse in court because it will complicate the case. This might be an issue with lawyers because their clients might not have enough money to pay for their legal bills in the first place, let alone prolong a case and make more work for the lawyer. Also, if women mention wife abuse, "historical ideologies of women provoking or being responsible for the violence, or deserving it, are reproduced through legal discourse, and thus women are often blamed for their own oppression" (Rosnes, 1997, ¶ 15). Moreover divorce cases involving abuse are complicated to begin with because of the problems with the language in the *Divorce Act*.

Sections 16(9) and 16(10) of the *Divorce Act* oppress women (Rosnes, 1997). Section 16(9) states that "in making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child" (*Divorce Act*, 1985). Section 16(10) states:

> In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact. (*Divorce Act*, 1985)

Together, these sections legitimize male violence (Rosnes, 1997). Section 16(9) allows judges to ignore past violence if it is believed to be irrelevant to parenting (Rosnes, 1997). Violence is not irrelevant to parenting, but many judges still act as though it is. Additionally, Section 16(10) is extremely problematic because it states that, "the custodial parent must facilitate contact regardless of past conduct (including violence)" (¶ 15). In itself, the fact that women will have to continue to see their abuser during transfers of children may deter women from leaving abusive relationships. Remaining in an abusive relationship provides the opportunity for abuse to escalate.

Other Obstacles to Divorce

Although many women still seek separation or divorce, they face significant systemic and economic barriers. The belief that women should rely on men for money and support remains dominant in Canada (Chewter, 2003). Social conditions that deny women equal opportunity with men ensure economic dependence for many women and make divorce daunting. Women do not want to live in poverty; however, if women have no other choice but to stay with their abusive spouses, they are taking the chance of being severely injured, or worse, being killed. Thus, "women's economic status and dependence on men for economic security are strong barriers" (Circle of Prevention, 2002, p. 15) to leaving an abusive relationship.

Moreover, husbands can deliberately place property outside the reach of their wives and families and ensure women's poverty. On July 14, 2011, the Supreme Court of Canada acknowledged that a legal loophole exists whereby if the would-be paying spouse claims bankruptcy, the requirement to pay spousal support is wiped clean because it is deemed a debt (*Schreyer v. Schreyer*, 2011). This legal loophole "could see spouses get

out of paying divorce settlements with a strategic claim of bankruptcy" (The Canadian Press, 2011, ¶ 1). Although the requirement to pay child support would still be in place, the amount would be minimal based on the lack of income the father would have after claiming bankruptcy. This issue of bankruptcy is exacerbated in abusive relationships. Many women who are entitled to support, regardless of the amount, will not contact their ex-spouse for payment out of fear. It should be acknowledged that bankruptcy is a limitation that has haunted the legal system from the time of reform, but is only now really being recognized (The Canadian Press, 2011). The problem, however, while recognized, has not been rectified. Threats of such consequences can prevent women from leaving abusive spouses.

Some women are also discouraged from leaving their abusers because they do not have adequate education. Most women who do not have an education do not have the skills to maintain suitable employment, where they have regular hours with regular pay. Abused women are rarely candidates for steady jobs (Delaney & Mulvale, 2006). An unfavourable job could have low wages, be classified as a student job where advancement is minimal, or labourious, filled with repetitive actions, long shifts, multiple hours on one's feet without breaks, and heavy lifting (Delaney & Mulvale, 2006). Many abused women suffer from "post-traumatic stress disorder and are unable to meet the demands of the workforce, particularly the demands of unfavourable jobs where employers typically do not provide paid sick leave or allow flexible hours of work" (p. 8). Women are thus often "set up for failure in the labour market" (p. 10). Therefore, women in low-paying occupations are less likely to terminate their marriages because

they rely on their spouses and because of the multiple issues they face in the *Divorce Act* (Bornstein, 2006).

In addition to the issues with *the Divorce Act,* Aquilina (2002) found that "there are a rising number of unrepresented litigants in court" (p. 57). This is a problem because "abused women can be in situations where the husband who assaulted her also cross-examines her" (p. 57). This is problematic because when abused women with children get to custody proceedings, often there is no 'proof' of abuse. Having no evidence of abuse in addition to being cross-examined by the abuser is enough to intimidate an abused woman into staying quiet.

Laws that ignore violence in the home contradict the notion that the law protects victims of abuse. The *Divorce Act* discourages women from bringing these issues forward in court. This shows that old attitudes and beliefs are reiterated in law (Rosnes, 1997). Abused women are ultimately trapped by the Canadian legal system, regardless of the route taken. At least these incidents, when reported, are on the public record to be challenged as a social problem. The Mediation Information Program, mandated since September 1, 2011, is an information session where parties are persuaded to attend mediation. Most mediation sessions are private and leave no public record for review or critique. It is unfortunate that the Canadian legal system "fails to protect the safety of abused partners during legal proceedings" (Aquilina, 2002, p. 57). This is particularly true with regard to Aboriginal women.

Aboriginal Women and Canadian Law

Aboriginal women were and remain controlled by the Canadian legal system (Arnup, 2001). Historically, the Church and State enforced Eurocentric patriarchal values

on Aboriginal peoples. These values were forced on Aboriginal peoples through violence. The laws forced on Aboriginal peoples emphasized "Protestant or Roman Catholic marriage rites, attempting to stamp out [what were believed to be] 'barbaric' and 'pagan' practices, and to force monogamous, patriarchal marriages upon Aboriginal peoples" (p. 12). Prior to the Europeans colonizing Aboriginal peoples, many societies were "matrilineal or matrilocal, where equality between the sexes was prevalent" (Blair, 2005, ¶ 3). Blair (2005) reveals that Aboriginal women held power in the family and were involved in politics and in decision-making. However, in 1869, Aboriginal women lost their rights when the first *Indian Act* was passed. The *Indian Act* was "patrilineal, and defined 'Indians' by lineage" (¶ 3). Under Section 12(1)(b) of the *Act*, an Indian woman who married a non-Indian man lost her Indian status (Blair, 2005). The effect of this regulation was that the wife and her children were no longer entitled to "land, housing, and all other benefits that Indian status provided, even if the marriage ended in desertion or divorce" (¶ 18). Consequently, Aboriginal women were stuck in a double bind because they were Aboriginal and women (Blair, 2005).

Unfortunately, these discriminatory practices were in place until 1985, when Aboriginal women finally re-gained their status with the passage of Bill C-31 (Blair, 2005). The passage of Bill C-31 forced the Federal Government to review the *Indian Act*, removing the discriminatory clauses (Blair, 2005). Although the *Indian Act* was amended, reinstated women were not guaranteed their rights (Blair, 2005). The Federal Government has a complicated framework in place that determines who may and may not apply for registration under the new provisions (Blair, 2005). Additionally, Native bands can maintain their own membership lists, and while reinstated individuals are guaranteed

Indian status, bands can choose whether or not to allow a reinstated person to return to her home community. Furthermore, the reinstatement procedure is "often mired with confusion, costly documentation and arbitrary decision making at the level of the 'Registrar Enforcement Unit'" (Huntley, 2000, ¶ 3). Huntley (2000) asserts that women usually apply for reinstatement on their own and are subject to the Registrar's acceptance or denial of an application.

Even if an Aboriginal woman is reinstated, she continues to be vulnerable. Huntley (2000) states:

> newly reinstated women, as 'outsiders' are vulnerable, and again, outside of the decision-making process. Band councils control the allocation of such limited resources as housing, educational funding, health and other benefits. The primary issue is the lack of advocacy and educational services for Aboriginal women, at both the reinstatement stage and for post-reinstatement follow-up. (¶ 4)

If band councils were provided with additional funding, politics within band councils might subside and perhaps those women who were reinstated might have an opportunity to legally embrace their heritage.

Moreover, married or common-law couples living on reserve have fewer rights than those living off reserve (NWAC, 2006). Those individuals who live on reserve cannot own land; rather the band owns the land and provides residents with certificates of possession that cannot be sold (AANDC, 2012). For example, in the case *Derrickson v. Derrickson,* the couple had acquired multiple properties on reserve over the time of the marriage, which were acknowledged by Certificates of Possession (AANDC, 2012). Certificates of Possession are issued under the *Indian Act,* and such certificates give "a

band member the right to use and occupy a specific parcel of reserve land" (¶ 5). Mrs. Derrickson claimed property rights as a spouse; however, provincial matrimonial law could not be applied to the property interest because it was vested under the *Indian Act.* The Supreme Court of Canada found that:

> when a conjugal relationship breaks down, courts cannot apply provincial or territorial family law to deal with the family home or other real property on reserve held by one or both spouses or partners because reserve lands fall under federal jurisdiction. (¶ 4)

In response to this problem, on July 6, 2010, the *Family Homes on Reserves and Matrimonial Interests or Rights Act* was passed which "provides basic rights and protections to individuals on reserves during the relationship, in the event of a relationship breakdown, and on the death of a spouse or common-law partner regarding the family home and other matrimonial interests or rights" (Duncan, 2011, ¶ 4). Although the *Family Homes on Reserves and Matrimonial Interests or Rights Act* was passed to benefit women in obtaining matrimonial property on reserves, it still remains problematic because provincial law does not have jurisdiction to interfere with property on reserve. The courts do not have the power to divide land on reserve or "order the sale of the family home" (FLEW, n.d., ¶ 6), thereby leaving Aboriginal women and their children impoverished. This harms Aboriginal women and children who are already disproportionately poor.

Aboriginal women also continue to suffer from the effects of colonization. The challenges Aboriginal women face include the lack of services provided in child welfare, social services, health, education and economic policies (Elizabeth Fry Society, n.d).

These services are underfunded. The Canadian Government regulates Aboriginal peoples in almost every aspect of their lives (Elizabeth Fry Society, n.d.). The justice system and the regulation of Aboriginal peoples contribute to the creation of poor social conditions in Aboriginal communities (Elizabeth Fry Society, n.d.). The Canadian Government not only fails to provide Aboriginal peoples with protection against oppression, but actually oppresses them (Elizabeth Fry Society, n.d.).

Aboriginal women who are exposed to poverty and lack of available resources in the communities are more likely to suffer from violence and abuse in the home (Elizabeth Fry Society, n.d.). Aboriginal women are eight times more likely to be victims of spousal homicide than non-Aboriginal women (Elizabeth Fry Society, n.d.). Further, any children living in an abusive environment have a greater chance of being removed from the home by Children's Aid or another social service (AJIC, 2012a). These rates of violence in Aboriginal communities are linked to systemic discrimination, economic and social deprivation, substance abuse, and a cycle of violence across generations (AJIC, 2012a). In 2000, 36% of Aboriginal women living on reserve were living below the poverty line (Anderson, 2010). This leaves Aboriginal women with no choice but to stay with their abusers for support (Anderson, 2010).

The *Indian Act*, as well as all other acts designed to regulate Aboriginal peoples, go against matriarchal beliefs as patriarchal beliefs dominate (Union of BC Chiefs, 2010). Aboriginal peoples were treated very poorly by Europeans and unfortunately continue to be controlled by the Canadian government today. It is important to look specifically at Aboriginal women because those women living on reserve in abusive relationships who try to divorce their spouses might be persuaded by the mandatory mediation information

program to attend mediation, but are subject to different laws than women living off reserve.

Furthermore, Ontario's adversarial legal system conflicts with the Aboriginal justice system. In the Aboriginal justice system, Elders are very influential people. Elders are approached when there are issues or disputes that need to be resolved (AJIC, 2012b). The Aboriginal Justice Implementation Commission (2012b) states:

> Elders – both men and women – are the 'teachers' and, in some cases, are the 'healers' – that is, the 'medicine people' – of the tribe. The role of Elders within Aboriginal communities sometimes varied, but generally consisted of helping the people, individually and collectively, to gain knowledge of the history, traditions, customs, values and beliefs of the tribe, and to assist them to maintain their well-being and good health. They were respected for their wisdom and for their experience, and for the fact that, having lived a long life, they were able to advise the people on what to do in difficult situations, as a result of that experience. In some tribal authorities today, councils of Elders exist, with the right to advise tribal officials and tribal governments on various matters of interest to the tribe. (¶ 11)

This reveals that Elders provide important guidance to help individuals live harmoniously. Moreover, in almost all Aboriginal belief systems "three aspects make up a person – body, mind and spirit" (¶ 15). All three areas need to be treated when an Aboriginal person asks to be healed (AJIC, 2012b).

Although attendance at the mandatory information session has not yet been implemented in Northwestern Ontario, it is important to recognize that if and when this

shift occurs, Aboriginal women who want to divorce will have to attend this session. The information provided during the session might persuade her to attend mediation, in which the mediator might or might not be sensitive to cultural differences. The mediation information program itself might also disregard cultural differences and the legal problems specific to Aboriginal women. For those Aboriginal women who disclose abuse or need support services regarding divorce, there are resources available to them. In Thunder Bay, resources include the Ontario Native Women's Association, Nishnawbe-Aski Nation, Métis Nation of Ontario, Dilico Anishnabek Family Care, Tikinagan Child and Family Services, Northwestern Ontario Women's Centre, Faye Peterson Transition House and Beendigen, Inc. (ONWA, 2012; NAN, 2012; Métis Nation of Ontario, 2012; Dilico Anishnabek Family Care, 2012; Tikinagan Child and Family Services, 2012; NOWC, n.d.; FPTH, 2012; and Beendigen, Inc., 2006). It is important that those providing the mandatory mediation information program, mediators and other social and legal service providers be aware of such resources so they can refer those women to them when needed. Mediators and legal personnel are supposed to be sensitive to cultural differences, but are they provided with the training necessary to develop such sensitivity?

Some Cultures Refrain from Disclosing Abuse

Sensitivity training is important when relating to people of diverse cultural backgrounds who take part in mediation. Other cultures, in addition to Aboriginal cultures, may also refrain from disclosing instances of domestic violence. This is important to acknowledge because every participant in mediation is different and cultural backgrounds play an important role. For instance, cultural norms affect trauma-related disclosure (Taft, Bryan-Davis, Woodward, Tillman & Torres, 2009; Bedard-Gilligan,

Jaeger, Echiverri-Cohen & Zoellner, 2010; Vidales, 2010). There is not a one-size-fits-all approach when it comes to understanding why some cultures refrain from disclosing instances of domestic abuse (Taft et al., 2009; Bedard-Gilligan et al., 2012; Vidales, 2010). However, in general, Bedard-Gilligan et al. (2012) assert that "cultural norms may impact not only the amount, but also the benefit of disclosure, with ethnic minorities more likely to receive negative reactions to trauma disclosure" (p. 717).

There are also multiple institutions that "discriminate against and fail to protect women [and their children]" (Vidales, 2010, p. 534). Ansara and Hindin (2010) point out that some women "may be reluctant to disclose the abuse out of fear for themselves, fear of losing the children, feelings of shame, denial or fear of being negatively judged by others" (p. 1012). In some cultures, domestic violence is normalized. Vidales (2010) reveals that "domestic violence occurs within the context of cultural norms and family systems, whereby Latino males and Latina females are socialized into rigid gender roles and hierarchies" (p. 534). Taft et al. (2009) also found that cultural norms and family systems influenced intimate partner violence in African American culture. It is important, however, to acknowledge that Latin and African American cultures are not the only ones with these problems, and that these problems are prevalent in many other cultures.

Every culture is different in how instances of violence and abuse are dealt with, but systems of oppression operate in every one. Systems of oppression include cultural barriers, structural barriers and institutional barriers (Vidales, 2010). Cultural barriers include languages spoken, family beliefs and religion. Structural barriers include income, poverty, and educational attainment. Institutional barriers include the legal system, law enforcement and immigrant status. Bedard-Gilligan et al. (2012), Vidales (2010), and

Taft et al. (2009) reveal that every individual evaluates his or her situation differently. Some might not understand abuse and some might not disclose it because it might be "associated with negative social reactions, resulting in lack of social support" (Bedard-Gilligan et al., 2012, p. 722). This literature affirms the problems with assuming that victims will disclose instances of domestic abuse. This is important because those who do not disclose abuse at the beginning of the divorce process, or during the mandatory information session, may be pushed into mediation.

Recent Changes and Political Issues in the Province of Ontario

Provinces could be doing more to improve access to divorce for abused women through other mechanisms, but this has not happened. Rather, the province of Ontario has been attempting to deal with court case backlog. Pilot projects were implemented to deal with the excessive costs and delay of court cases based on committee recommendations. For example, the Ontario Mandatory Mediation Program was introduced on January 4, 1999 for "non-family civil case-managed cases in the Ontario Superior Court of Justice in Ottawa and Toronto, Ontario, Canada" (Axon, Barr, Binnie, Hann & Zemans, 2001, p. 1). This project was tested and deemed useful for non-family civil cases as it eased up the workload in Ontario courts (Axon et al., 2001).

The Courts of Ontario consist of three tiers: the Ontario Court of Justice, the Ontario Superior Court of Justice and the Family Court of the Superior Court of Justice (Ontario Courts, 2008/2009). Out of the three, the Ontario Court of Justice is "the largest court in Canada" (p. 1). There are approximately 25,000 new family proceedings each year in Ontario (Ontario Courts, 2008/2009). Family law matters that are brought forward to the Ontario Court of Justice consist of "child protection, adoption, custody, access,

child support, and spousal support proceedings" (p. 49), while the Ontario Superior Court of Justice and Family Courts of the Superior Court of Justice are involved in divorce and the division of marital property (Ontario Courts, 2008/2009).

The physical separation of the family court reinforces the notion that it is strictly separate from criminal proceedings. If the two courts operated simultaneously, then perhaps case overload would not be an issue. An example: if family and criminal courts amalgamated cases involving criminal charges against abusers and the family cases where the victim and any children wanted to separate from them, the court could get a larger view of the family lifestyle and evaluate the case properly. Instead, when the courts are separate and mediation is also considered, multiple issues that could be revealed via criminal proceedings are now missing.

In 2008, the Annual Report of the Office of the Auditor General of Ontario stated "the success of the judicial system is measured by its ability to resolve disputes in a fair and timely manner" (MOAG, 2008, p. 206). It also recognized that the system was failing. For example, a Family Courts Steering Committee was created to discuss issues with Ontario family law and how to change the system; however the committee members were judges, lawyers, Legal Aid Ontario personnel, Ministry of the Attorney General personnel, and the police (Ontario Courts, 2008/2009, p. 54). Problems arise when upper class individuals who are accustomed to family law proceedings are the only members of such committees.

To address the backlog issue in family disputes, "six additional family law judges were appointed to the Ontario Court of Justice" (MOAG, 2008, p. 213) in 2005, and in 2008 "eight more Superior Court of Justice judges were appointed, six of which were

assigned to family cases" (p. 213). Even though additional judges were hired, more cases continued to be filed, with longer wait times. Wait times, however, are not new in the judicial system. In 1906, dissatisfaction in the judicial system was observed as:

> Uncertainty, delay and expense … [are] direct results of the … backwardness of our procedure. The effect of our exaggerated contentious procedure is not only to irritate parties, witnesses and jurors in particular cases, but to give the whole community a false notion of the purpose and end of law. (Teplitsky, 2000, p. 1)

Over a century later, the Ontario Bar Association, the Ontario Association for Family Mediation and the Alternative Dispute Resolution Institute of Ontario produced a report with a goal to "shift the way family law is practiced in Ontario" (Dart et al., 2009, p. 5). It was believed that "family law was too adversarial, too expensive, took far too long and exacerbated conflict between parents – which was harmful to children" (p. 5). During the deliberations at the Home Court Advantage Summit, the focus was on providing information about cooperative resolutions rather than court, accessibility of legal advice, and triage so that parties were referred to appropriate resources (p. 5).

There are problems with this report, however. It was developed without consultation with those using the court system. Moreover, there is an assumption that all families will cooperate during this difficult transition. This is not the case for abused women who may not disclose violence (Rosnes, 1997). Individuals who manage to escape from abusive relationships are not free from their abusers.

The Shift to Include Mediation in Ontario Family Law

Mediation is practiced Canada-wide; however, "Ontario has the most comprehensive court-connected mediation program in the country" (Linton, 2011, p. 3).

The debate over mediation in family law has been on-going for over 25 years (Bush, 1989/1990). Bush (1989/1990) created an excellent theoretical social justice argument for mediation. He stated:

> Social justice is important because it protects the individual's autonomous choice against other possibly more powerful individuals or groups. Maximizing social welfare is intimately connected with autonomy, because it equates individual autonomous choice with the public good. … the equation of self-interest with the public good that occurs through the operation of private markets. (p. 13)

Bush (1989/1990) also argues that mediation has the potential to be used "as a transformative instrument, a means of civic education" (p. 17). In comparing his ideas to cases involving domestic violence (which are not discussed by Bush), it is revealed that domestic violence cases would be unacceptable to mediate. They would be unacceptable to mediate because it would most likely be very difficult to voluntarily educate an abuser. Nevertheless, Ontario law still amended the Family Law Rules, where individuals wanting to divorce, regardless of the case history, are legally required to attend the mandatory information session. Thus, Ontario law may persuade abused women to face their abusers in mediation if they were not screened out properly.

Generally, it is believed that it is "better to pay one mediator instead of two lawyers" (Dennison, 2010, p. 169). Mediation is believed to be "good for families, good for children, and good for the court system, which is overburdened by litigated cases" (Dennison, 2010, p. 169; Bush, 1989/1990). There are benefits to mediation, such as private settings, because family courts are open to the public (Dennison, 2010; Bush, 1989/1990). The question remains, however, whether it is beneficial in families

experiencing abuse? Family mediation does not appear to be a good option for cases involving domestic abuse because mediation requires all parties to be equal (Lee & Lakhani, 2012; Krieger, 2002; Landrum, 2010/2011; Geffner, 1990; Murphy & Rubinson, 2005). As soon as one party has an advantage, mediation is no longer beneficial (Lee & Lakhani, 2012; Krieger, 2002; Landrum, 2010/2011). Johnston and Ver Steegh (2013) recognize that there are concerns regarding:

> the adequacy of protection afforded to victims, the extent to which perpetrators are held accountable, the appropriateness of the dispute-resolution processes and other services available to families, and the effects of custody decisions and parenting plans that are ordered by family courts. (p. 65)

They also argue that family court professionals, regardless of whether they are judges, lawyers, or mediators prefer "not to focus on the past, find fault or assign blame, interfere with parents' civil liberties, make restrictive court orders, or exclude one parent from the child's life" (p. 66). Although there is a large amount of research that outlines these issues, the Ontario Family Law Rules were still amended on September 1, 2011 to include mandatory information sessions highlighting the benefits of mediation in the divorce process.

The Potential Implementation of Mediation in Family Law

In theory, mediation may appear beneficial for divorcing couples (Bush, 1989/1990); however, not all divorcing couples are able to mediate, in particular, couples where abuse was or is present (Geffner, 1990; Murphy & Rubinson, 2005). Divorce from a non-abusive partner is difficult; divorce from an abusive partner can be traumatic, especially with children involved.

Dennison (2010) argues that "involving children in family mediation exposes them to too much risk" (p. 181). It can be seen as posing too much risk because there is no binding regulation in mediation. Without regulation in mediation:

> The absence of legislation (and to introduce such a thing would be to strike at the very heart of mediation), a heavy burden of responsibility lies at the door of the mediator. Mediators are bound by their professional training, ethos and rules. It is up to them to ensure that the child's rights are promoted and protected. It is up to the mediator to tread the tightrope that lies between best interests and participating. It is then up to the mediator to persuade the parents to take the path that promotes the child's rights – with no help from the legislation. (Dennison, 2010, p. 181)

What is missing from this literature, however, is the fact that children's rights may not be protected in cases of abuse.

Today, women who realize they need to separate from their abusive partners can be 'stuck' when applying for divorce. Implementing mandatory information sessions on mediation and attempting to persuade divorcing couples into mediation may make this worse. The information session is mandatory in cases involving children or division of property, so women are often left in a lose-lose situation; "sometimes an abused woman is so concerned with the custody of her children that she may not adequately assert her financial and property needs" (Geffner, 1990, p. 157). If they want to avoid mediation, have little money and no children, they are essentially required to claim a cheaper no-fault divorce. By this route, they cannot request any rights to net family property or the matrimonial home under the *Family Law Act* or support under the *Divorce Act* or *Family*

Law Act (*Courts of Justice Act*, 2011). If women do not claim any alimony or monies from assets, abusers are not obligated to provide any support. This reveals that the 50/50 split of matrimonial property becomes, in practice, null and void. No-fault divorce is not an option for women with children. These women are forced to undergo the mandatory information session, and potentially may agree to mediation even when there is no property to divide. The mediation process may not be beneficial for abused women because it ignores the psychological and safety issues abused women face when they try to remove themselves and their children from abusive relationships.

Although the fact that mediation may be harmful to abused women and their children has been acknowledged publicly by Ontario Chief Justice Warren Winkler, the Ontario Government still chose to implement mediation as part of the judicial process. For example, one year prior to the implementation of mediation in Ontario family law, Winkler acknowledged that "every case can't be mediated … there are some cases that involve spousal abuse" (Schmitz, 2010, ¶ 4). The mandatory information program nonetheless was implemented because divorce was thought of as a lengthy time-consuming process that took up provincial judges' time. Without examining the full effects of mediation on abused women and children, the Family Law Rules were amended (Kauth, 2011). This amendment does not acknowledge or facilitate a safe divorce process in the event of an abusive relationship (Krieger, 2002).

Mandatory Information Program Session

If children are involved in the relationship, women are forced to attend the family information session on mediation (*Courts of Justice Act*, 2011). The contents of the Ontario Mandatory Information Program include topics on: (a) alternatives to court; (b)

how divorce will affect children; and (c) additional resources in the event problems arise post-separation (*Courts of Justice Act*, 2011). In Thunder Bay, the mandatory information program sessions are conducted twice a month, but contrary to the title, they are not actually mandatory. One session is held for applicants and the other for respondents. The sessions are:

> conducted by a lawyer and a mental health professional, who provides information about alternatives to litigation, legal issues, the court process and available community resources. The lawyer is not permitted to provide legal advice to the participants. For specific legal advice, you will need to meet with your own lawyer. The mental health worker will address the impacts of the process on families, and resources available to assist. (Pottinger, 2011, ¶ 6)

This program is "designed to help families understand the effects of separation on children and adults and to discuss the options that are available to help the parties resolve their disputes" (¶ 5). However, there is no clear definition as to whether or not the information provided discusses the potential impacts of violence on children.

The content of the family information session can be problematic. Women who have endured abuse for a long period of time and have young children with their abusers may question why they are proceeding with a divorce. They may question their actions when they hear the effects of divorce on children in the mediation program. Women may start to question whether or not the abuse was that bad and wonder whether or not they could live the rest of their lives in an abusive environment 'for the sake of the children'.

Based on the cycle of violence described by Walker (1977/1978), women are forced to listen to the Government of Ontario's plea for reconciliation just as their abuser

may be in the loving contrition phase. The mandatory information program is considered a plea for reconciliation because the program is based around having a smooth divorce by conducting mediation, yet teaches parents the effects that divorce can potentially have on children. This program contains a hidden curriculum that states children will potentially suffer if their parents divorce. What about living in a home where abuse occurs? How is this more beneficial? How does abuse affect children? To advise an audience of individuals that children will suffer because of divorce without knowing the various backgrounds of the attendees is problematic. The mandatory information program is the first step in the divorce process, but the information providers may not talk about violence or abuse witnessed by children or committed against children unless specifically asked. Would an abused woman feel comfortable asking questions regarding an abusive spouse in public? Is the attendance of the participants confidential? If not, what happens if the issues discussed publicly become misconstrued and repeated to the ex-spouse? It is important to have safety protocols in place during the mandatory information program session.

Mandatory Information Program Session Safety Protocols

The mandatory information program session "must be sensitive to the presence of [victims of] domestic violence" (Brown, 2009, p. 469). The time period between separation and divorce is the most dangerous time for a victim (Brown, 2009; Krieger, 2002; Cherlin & Morrison, 1995; Chewter, 2003; Geffner, 1990; Murphy & Rubinson, 2005). In Thunder Bay, the information program sessions are held on different days, which is one of the recommendations provided in order to keep the divorcing parties separate. There should be safety plans and security personnel on site, before, during and

after the session, in order to provide assistance (Brown, 2009). The areas where the sessions are conducted "should be held in well lit, public places with easily accessible parking" (p. 470). Also, attendance lists must be kept confidential so that victims cannot be located (Brown, 2009).

The content of the education session and its "delivery must also be sensitive to issues of domestic violence" (p. 470). Legal scholar and children's advocate, Cassandra Brown (2009) provides the following suggestions for those individuals who conduct the education sessions:

> First, all educators should be trained in the dynamics of domestic violence. Second, every class should educate parents about the definition of domestic violence and its dynamics. Handouts about domestic violence and resources for victims should be available for all parents. Parents should also be advised at the beginning of class that some information is not appropriate when domestic violence is present in the parental relationship. (p. 470)

Also, information provided during the education session that "is inappropriate for those who experienced domestic violence" (p. 471) should be pointed out. For example, cooperative parenting is inappropriate (Brown, 2009). However, including this information in the mandatory sessions, while desirable, is not legislatively required.

Rebuilding trust is also discussed in the education session. The idea that "divorced parents must rebuild trust is potentially harmful" (p. 471). If violence is a factor and sole custody is not an option for the mother, "families where violence has occurred should conduct a businesslike relationship through a neutral third party" (p.

471). Although this seems like a viable option, it is problematic. When domestic violence is present, children should not spend time with the abuser.

A confidante should attend the education session with the applicant. The confidante might recognize information provided during the session that is not relevant to the applicant. Also, the confidante might hear things differently than the applicant, thereby giving a different perspective on what is being discussed during the education session. For example, any information that is not sensitive to domestic abuse might normalize instances of violence and be confusing, potentially influencing the applicant to drop the divorce proceedings. Having a confidante might help the applicant continue with the divorce, but change the course of action from divorce mediation to court proceedings so that the applicant does not have to mediate with an abuser.

The Issues of Mediation with Abusers

There is not much research on mediation when abuse is a factor (Rivera, Zeoli, & Sullivan, 2012; Murphy & Rubinson, 2005; Geffner, 1990; Epstein, 1999). Rivera et al. (2012) argue that "mediation is neither effective, nor safe when intimate partner abuse exists" (p. 322). The theory of mediation recognizes that it is voluntary and cooperative, where parties can discuss their needs without feeling intimidated (Rivera et al., 2012; Lee & Lakhani, 2012; Landrum, 2010/2011). Lee and Lakhani (2012) argue:

> Mediation is unlikely to be effective if it is imposed on unwilling participants. In addition, mediation only yields fruitful outcomes in low-conflict cases where parties are [on equal ground and are] willing to mediate. If mediation [appears to be] forced on the parties, it is unlikely that mutual agreements can be reached,

> which leads to the parties ending up in litigation and unnecessarily prolonging the divorce process. (p. 343)

Mediation sessions with abusers raise concerns about women's safety, intimidation prior to, during and after a mediation session, re-victimization and the inability to negotiate fairly with the abuser (Johnston & Ver Steegh, 2013; Landrum, 2010/2011; Geffner, 1990; Epstein, 1999; Murphy & Rubinson, 2005; Watson & Ancis, 2013). Most abused women "internalize their abusers' exceedingly rigid rules and expectations and/or comply with their demands in an effort to avoid experiencing abuse" (Watson & Ancis, 2013, p. 167). This demonstrates that abused women, when persuaded to mediate with their abusers, will most likely give in to abusers' demands rather than negotiate their own needs.

Abusive experiences can be traumatic and affect an individual's ability to negotiate (Watson & Ancis, 2013; Landrum, 2010/2011; Geffner, 1990; Epstein, 1999; Murphy & Rubinson, 2005). Sitting across from an abuser can be traumatic. Hidden emotional abuse tactics, such as a look, or a word that seems harmless, can be a threat of future abuse (Rivera et al., 2012; Landrum, 2010/2011; Geffner, 1990). Rivera et al. (2012) reveal that emotional abuse tactics will occur more often than physical violence in mediation. Since emotional abuse tactics can go undetected, abuse can be masked. This is one of the ways abusers are capable of manipulating the mediator and re-victimizing the ex-spouse. Furthermore, abusers are believed to "perform well under observation" (p. 323), thus further masking their abusive behaviour.

When mediation is conducted with abusers, and parties attend without legal representatives, "they are unlikely to be aware of their rights" (Lee & Lakhani, 2012, p.

343). The removal of lawyers from family law disputes "creates unrealistic expectations by parties due to lack of legal knowledge" (p. 384). Further, the mediator is unable to "fully assess the situation through usual litigation procedures, like discovery of evidence" (p. 343). Discovery of evidence is when parties gather information to help build their case to prove the likelihood that an event did or did not happen. This is especially true when the abuser is capable of manipulating the mediator.

A mediator is also supposed to be an impartial third party (Izumi, 2010; Madsen, 2011; Geffner, 1990; Murphy & Rubinson, 2005). There are doubts whether mediators can be unbiased (Lee & Lakhani, 2012), particularly in cases with a history of domestic violence (Landrum, 2010/2011). Also, it might appear beneficial for mediators to mediate all cases referred to them, even if it is not in the best interest of the parties involved. This is a problem. Lee and Lakhani (2012) argue:

> Mediators may be affected by the unsubstantiated belief that any family dispute should be settled immediately because mediation is promoted as a quicker means of resolving disputes to ease the workload of the courts. Influenced by this belief, mediators may not accurately assess the appropriateness of using mediation for each case, which poses a great danger for separating couples, especially those who have experienced family violence. (p. 344)

They further argue:

> During mediation, the mediator is presented with both sides of the story and it is only human nature to draw a conclusion or unconsciously be biased when one is evaluating the facts. This causes a chain reaction that, in turn, influences the mediator's suggestions and proposals to the parties. [Most] mediators are not

> legally trained, and thus, cannot fully inform separating couples of their legal rights. … Mediators, who are supposed to be impartial, may be tainted with bias, thus possibly skewing the trust the parties have in the mediator. (p. 344)

Divorcing parties are placing their trust in the mediator they are referred to. Divorce mediation that continues when domestic abuse is a factor may be problematic and puts not only the victim and any children in danger, but also the mediator. Safety for all should be top priority.

Cooperation is most likely unattainable when intimate partner abuse is present (Watson & Ancis, 2013; Lee & Lakhani, 2012; Rivera et al., 2012; Krieger, 2002; Aquilina, 2002; Landrum, 2010/2011; Geffner, 1990; Murphy & Rubinson, 2005). Mediation would only add an extra step in the legal process for abused women. This extra step may cause stress levels to increase, which could potentially cause other ailments and delays in the court process (Lee & Lakhani, 2012; Chewter, 2003). The delays of this process can be catastrophic for a family facing the inability to withdraw from the abuser (Dennison, 2010; Chewter, 2003). As mentioned earlier, forcing a victim to negotiate with her abuser is potentially problematic because it gives the abuser an opportunity to manipulate the victim (Aquilina, 2002; Chewter, 2003; Krieger, 2002; Lee & Lakhani, 2012; Landrum, 2010/2011; Geffner, 1990; Murphy & Rubinson, 2005). The ex-spouse may mask his abusive behaviour by appearing co-operative with the mediator (Aquilina, 2002; Chewter, 2003; Krieger, 2002; Lee & Lakhani, 2012; Landrum, 2010/2011). Mediators may then not recognize the power imbalances that are present. Furthermore, if women end up cooperating with their ex-spouses, they most likely will do so out of fear, not because they believe they deserve to be treated fairly (Small & Wilkinson-Ryan,

2008; Landrum, 2010/2011). Additionally, as mentioned earlier, continued contact with their abuser is problematic.

Abused Women's Perspectives of the Court Mediation Process

A recent study by Rivera et al. (2012) was conducted to understand the court mediation process from 19 abused women's perspectives. The women in this study were concerned with fathers' past and ongoing abuse, potential kidnapping of children and fathers' "inability to provide a sanitary or stable environment for the children" (p. 329) in the event the child(ren) were placed in his custody.

The study revealed that mediators might be inconsistent when screening for abuse. When women were not asked about abuse, they would sometimes volunteer the information (Rivera et al., 2012). For some women, when asked to provide proof of abuse, "the issue of not having 'enough' or the 'right' kind of evidence was a problem" (p. 327). Eight women did not experience ongoing physical abuse, but rather ongoing emotional abuse, "types of abuse that are extremely difficult, if not impossible, to document" (p. 327). These forms of abuse are not illegal (Rivera et al., 2012). It was found that:

> Without evidence, mediators will be dismissive of abuse allegations, as though they are (a) she said/he said, (b) mutual violence, and/or (c) irrelevant. Independent evidence includes restraining orders or evidence of child abuse (attempts to turn child against the mother, threatening the mother to the child). However, even with independent evidence, mediators will be dismissive of abuse allegations toward the mother as (a) irrelevant, and/or (b) too difficult/complex. (p. 327)

Furthermore, one mother in the study described how "she left her child with the father because he had a gun in the home, and due to his previous behaviours, she was scared that he would harm the child, her and her family if she took the child at that point in time" (p. 327). The mother viewed her choice as reasonable, but the mediator responded negatively and criticized her for leaving a child in that situation (Rivera et al., 2012).

When custody and visitation were discussed, most mediators did not take the mothers seriously when they disclosed abusive behaviour or restraining orders (p. 328). However, when fathers lashed out during mediation, it helped women obtain sole custody (Rivera et al., 2012). Rivera et al. (2012) argue that the mediators discussed in the study were "following the rule for criminal justice systems – proof beyond a reasonable doubt" (p. 330). However, mediators should follow "the rule of preponderance of evidence – whether it is more likely than not that the alleged action/s occurred because family court is a division of civil court" (p. 330). The results of this study suggest that "intimate partner abuse is not a deciding, or even important, factor in some mediators' custody recommendations, even if there is a current restraining order" (pp. 328-329).

Recommendations for the New Family Law System

The literature is clear that mediation in abusive relationships may be problematic (Kreiger, 2002; Chewter, 2003; Rivera et al., 2012; Lee & Lakhani, 2012; Johnston & Ver Steegh, 2013; Dennison, 2010; Aquilina, 2002; Amato, 2001; Geffner, 1990; Murphy & Rubinson, 2005), but the Home Court Advantage Summit continued to provide recommendations in its final report. There were four recommendations provided: (1) provide information for separating spouses; (2) assess parties and refer them to appropriate resolution services, leaving court services as the last resort; (3) provide

access to legal information and types of alternative dispute resolution; and (4) "develop a focused family court process" (Dart et al., 2009, p. 7).

These recommendations are beneficial for individuals looking for information on family law (Dart et al., 2009), but the mandatory information session is potentially problematic because the province holds discretionary power to inform individuals about certain information and to withhold other information. The Ontario Court of Justice hired Case Assessment Coordinators who "provide intake, screening and referral services to potential litigants prior to commencing an action" (p. 7). A coordinator and supernumerary judge assess each individual to determine "the level of conflict and risk and to provide families with the information they need to make a choice of non-adversarial alternatives to court" (p. 19). Within the Final Report, there are no criteria listed to determine what constitutes a high-risk case. This is problematic because each individual case is open for interpretation. Although cases with domestic violence should be assessed on a case-by-case basis, there should be some guidelines that assist in the case assessment. What type of information is provided to the Case Assessment Coordinator and supernumerary judge? How do they determine who is high-risk if there are no clear standards to follow?

Furthermore, a report titled *Family Law Process Reform: Supporting Families to Support Their Children* was submitted by the Ontario Bar Association Family Law Section, Alternative Dispute Resolution Institute of Ontario and the Ontario Association of Family Mediation in April 2009 (Dart et al., 2009). This report stated that Case Assessment Coordinators would obtain training to acquire the skills to screen for domestic violence; however, there are no further details regarding training (Dart et al.,

2009). Alas, the training mediators receive is very minimal. The Ontario Association for Family Mediation only requires its accredited members to "participate in a minimum of 14 hours training on domestic violence including screening, safety measures, safe termination and alternatives to mediation, when mediation is not appropriate" (OAFM, 2007, p. 9). How can 14 hours of training allow mediators to break down high-conflict cases involving abuse?

The province of Ontario is encouraging that cooperative resolutions be utilized prior to addressing the court; however, when abuse is a factor, litigation is the default. A major problem with this default is that the only way to litigate is by advising the court registrar and counter staff that abuse has taken place in the home (Dart et al., 2009). Many abused women are intimidated and frightened to commence divorce proceedings on their own, let alone to tell a stranger about their intimate problems, even if the stranger is there to provide assistance (Rosnes, 1997). This suggests that many abused women may be persuaded to mediate their familial issues, where they would continue to be oppressed by the judicial system that is supposed to help them.

Prior to the recommendations listed in the home Court Advantage Summit Report, mediators were able to charge their own hourly rate (Dart et al., 2009), but the report advocated making mediation services available to all people. To make mediation accessible, there must be:

> a roster of family mediators and collaborative lawyers who are willing to provide services on a sliding fee scale through a government subsidized program in order to achieve an early out-of-court resolution. This could be done through the

> Ministry of the Attorney General or through a transfer payment agency such as the ADR Institute of Ontario. (p. 14)

Mediation is supposed to be a cheaper route for individuals wanting a separation/ divorce. Mediators are only bound by equalization, spousal support and child support legislation; however they cannot impose settlements on parties (MOAG, 2012). Equalization legislation ensures that when a marriage ends, "the equal contribution of each person to the marriage is recognized" (MOAG, 2008/2010a, ¶ 1). Spousal support legislation in Ontario comes into effect when one person makes more money than the other (MOAG, 2008/2010b). Accordingly, upon marriage dissolution, the "person with more income or assets may have to pay support to the other" (¶ 1). Child support legislation outlines when and how much child support is paid (MOAG, 2008/2010c). It is lawfully recognized that "both parents have the responsibility to financially support their children [and if one parent does not have custody] the amount of child support paid is based on income and the number of children [from that marriage]" (¶ 1). Some cases require experts to assist with equalization, such as finance specialists or psychologists. More money is required to pay for these experts. The fact that a mediation report is not binding on the parties begs the question of why would mediation go ahead if additional resources are needed? Why not start proceedings in court from the beginning?

The Regulation of Mediators and the Mediation Process

In Ontario, there are a few institutes that mandate and hold guidelines for family mediation. The institutes that monitor family mediation consist of Family Mediation Canada, the Alternative Dispute Resolution Institute of Ontario, Inc., and the Ontario Association for Family Mediation, Inc. Family Mediation Canada defines mediation as:

> a facilitative, non-adversarial conflict-resolution process in which one or more family mediators intervene in family issues in order to help the family develop and design its own solution to issues; and to help the family change its communication and negotiation styles from adversarial and confrontational to co-operative and integrative. (FMC, 2003, p. 8)

The Alternative Dispute Resolution Institute of Canada, Inc., simply defines mediation as "the use of an impartial third party to assist the parties to resolve a dispute" (ADR Canada, 2011, p. 3), and the Ontario Association for Family Mediation, Inc., defines mediation as "a voluntary, consensual process in which a neutral person helps clients discuss and resolve family relationship issues" (OAFM, 2013, ¶ 1).

According to the Alternative Dispute Resolution Institute of Ontario (2012), there are guidelines that outline the quality of mediation. For example, the ADR Code of Conduct states that mediators must explain the mediation process thoroughly; mediators must conduct the mediation in a way that allows participation of all parties; and "the mediator shall acquire and maintain professional skills and abilities required to uphold the quality of the mediation process" (p. 19). But what constitutes a method that allows participation by all parties, particularly in the case of an entrenched power imbalance? Further, although mediators are required to maintain professionalism in their mediation practice, the code does not define exactly what 'professional' means.

There are certification programs, such as certified family relations mediator, certified comprehensive family mediator, and accredited family mediator, through Family Mediation Canada, the Alternative Dispute Resolution Institute of Ontario and the Ontario Association for Family Mediation available for those who wish to train as

mediators (FMC, 2003; ADR Ontario, 2012; OAFM, 2012; Madsen, 2011). However, mediators are not required to complete any of these programs and the government has not created any standards for mediation training. To complete the certification process, there are no formal requirements in place. Rather, it is up to these three institutions to decide what criteria are needed. For instance, all three institutions hold the same criteria for mediation training: bachelors or masters degree, knowledge of family theories/literature, professional experience, compliance with the institution's code of professional conduct, professional liability insurance and continuous education in the area of expertise (FMC, 2004; ADR Ontario, 2012; OAFM, 2012; Madsen, 2011). Usually mediators are professionals, such as lawyers and social workers, who have years of work experience in which mediating issues might already be part of their job (MOAG, 2013).

The individuals who are certified through these institutions are required to continuously educate themselves in their area of expertise. Family Mediation Canada requires 20 hours of family mediation training each year, recognized as "mediation skills training ... teaching and coaching, writing, reading, taking relevant courses, doing relevant volunteer work or attending relevant conferences" (FMC, 2004, p. 27). The Alternative Dispute Resolution Institute of Ontario and the Ontario Association for Family Mediation require only 10 hours per year (OAFM, 2012a; ADR Ontario, 2012). The type of education that is required could include "attending courses and workshops, and reading about new developments in the field" (OAFM, 2012a, ¶ 7c). In terms of domestic violence training, only 14 hours is required to become accredited to conduct family mediations where domestic violence is present (OAFM, 2012b, ¶ 4). This is

completed once. Mediators who do not belong to any of these accrediting bodies are not regulated and do not have any required training.

In instances where certified mediators do not provide a quality service, complaints may be made. Complaint policies are in place through Family Mediation Canada and the Alternative Dispute Resolution Institute of Ontario. Family Mediation Canada conducts written investigations between the Responsible Director (a chosen individual from the Board of Directors), the complainant and the member involved (FMC, 2003). The determination of the complaint is up to the Responsible Director. If a complaint is made through the Alternative Dispute Resolution Institute of Ontario, it needs to be in writing and is then "investigated by three members who are independent of the complainant, respondent, and issues in the complaint" (ADR Ontario, 2011, p. 2). The determination of the merit of the complaint is up to the Board of Directors (ADR Ontario, 2011). It is unclear whether or not the complaint policy is provided to parties prior to mediation or if the parties have to search for this information on their own. Moreover, there is no complaint policy for the Ontario Association of Family Mediation. If a complaint is to be made, the complainant has to contact their main office. The website does not explain the complaint process or how long it takes.

There is no explanation provided by the Ministry of the Attorney General as to why they do not require all mediators to be accredited or as to why no formal complaint procedure is possible through the province. The fact that mediation is unregulated by a Government-created body in Ontario is disturbing. 'Market regulation' by other mediator-related associations, as stated earlier, is not sufficient to ensure that mediation is conducted appropriately, especially when practicing mediators are not required to join.

Boyle and Zutter (2006), and Dennison (2010), are also critical of this state of affairs. In 2005, concerns were raised about regulating mediation in Ontario (Boyle & Zutter, 2006). Bill 14, *Access to Justice Act 2005* was introduced with:

> amendments to the *Law Society Act,* intended to provide a framework … which moved from a 'membership' model to a 'licensing' model, authorizing the Law Society to license persons by class to practise law or to provide legal services … which included activities that could be associated with mediation. (¶ 2)

It was argued by Ontario alternative dispute resolution service providers that "Bill 14 'over-reached' … and mediators should be exempt from the Act" (¶ 2). How did this slip through the cracks? Regulating mediators "protects the public … ensures the competency of the mediators and, thereby, the integrity of the court process" (¶ 5). Why are these provisions not in place, particularly since the government and courts are trying to persuade divorcing parties to mediate? Instead, mediation accreditation and mediation guidelines are not required for mediation to commence (ADR Ontario, 2012; Madsen, 2011). Rather, it is up to the mediator and the parties to determine what type of guidelines, if any, will be used during mediation (ADR Ontario, 2012; Madsen, 2011). How can the parties, in the midst of a divorce and perhaps abused or disadvantaged in other ways, be expected to make such decisions and to be knowledgeable about mediation?

Overall, there is no clear reason why mediation guidelines are in place if they are not adopted into a mediator's practice. Not all mediators are part of an organization such as Family Mediation Canada, the Alternative Dispute Resolution Institute of Ontario or the Ontario Association for Family Mediation. Mediators are not required to abide by

guidelines because they are only meant as a supportive tool to help the mediator maintain a positive environment where the parties can possibly come to an agreement (ADR Ontario, 2012; Madsen, 2011). If mediators do use guidelines, they are required to name the specific guideline used in the mediation report (ADR Ontario, 2012). Non-enforcement of guidelines disregards their purpose and provides the mediators freedom to conduct mediations however they feel necessary, as long as they remain impartial (ADR Ontario, 2012). Remaining impartial is something that would probably be very difficult to do when you have full control over how the mediation is conducted. This is a problem that needs to be addressed immediately.

Mediators are flexible, allowing parties to come to an agreement on their own without legal intervention; however if and when the agreement is brought to a lawyer for formation into a legal document, questions might arise from the lawyer around spousal support or child support if they are not already in the agreement. Regardless of whether or not an agreement is made in mediation, any children involved in the divorce process are affected.

The Legal Process and Children

Abused mothers, regardless of cultural or ethnic backgrounds, may suffer from the stresses of feeling safe and keeping the children from harm both while in abusive relationships and when trying to leave such relationships (Rosnes, 1997). Although the legal system is ostensibly in place for their assistance, its role is not always positive. In 1986, Saayman and Saayman revealed “that the adversarial legal system escalates conflict and hostility between spouses in the crisis of the divorce process” (p. 330). This is because some family courts believe that “frequent and prolonged contact with both

parents is always in the children's best interests" (Rivera et al., 2012, p. 322) and therefore do not consider the impact of an abusive father. Saayman and Saayman (1986) acknowledge two important issues that the legal process imposes on divorcing families: "divorce is necessarily deleterious to the adjustment of parents and children and that the adversarial system compounds these effects" (p. 330). Adler (2013) also reveals "differing professional perspectives and practices contribute to confusing measures of how abuse impact children" (p. 719).

In the Ontario family court system, many judges do not acknowledge "men who batter wives as unfit parents, despite the fact that research has found that witnessing spousal abuse has many harmful effects on children" (Rosnes, 1997, ¶ 13). The family court system gives fathers with a history of abuse "regular, unrestricted visits or shared parenting time simply because there is a lack of evidence showing they have been directly abusive to their children" (Johnston & Ver Steegh, 2013, p. 68). Furthermore, abused mothers going through a divorce most often do not attend counseling right away, if at all, out of fear of judgment (Rosnes, 1997; Geffner, 1990; Murphy & Rubinson, 2005). Therefore, their feelings of isolation and abuse are not disclosed to counselors and other support personnel.

Children may want to express their feelings towards the abusive spouse in counseling or in court. Bala and Birnbaum (2009) state that "children and adolescents are increasingly indicating that they want their 'voices' to be heard in the legal processes that fundamentally affect their lives" (¶ 3). The Office of the Children's Lawyer represents children (Tippett-Leary, 2009). Nonetheless, although having children heard in court can be positive, it also can be problematic if lawyers and judges misunderstand their wishes

in court (Bala & Birnbaum, 2009). The ability to be represented fairly may be a problem in the Ontario family law system. This is the case because children are "relying on adults to decide whether and how they will be involved or to make the decisions on their behalf" (¶ 12). Birnbaum conducted a study in Toronto, Ontario, whereby "she interviewed 29 lawyers who represented children on behalf of the Office of the Children's Lawyer" (¶ 23). It was found that many of the lawyers felt uncomfortable speaking on behalf of the child's interests, instead of "adopting a traditional advocate role" (¶ 24). Henaghan, Tapp, and Taylor (2007) interviewed children between eight and 15 about their experiences of a lawyer representing them in a court proceeding in New Zealand and found that most children suggested that lawyers need to listen to them, talk to them in a way that they will understand, be friendly, show respect and uphold confidentiality agreements.

The Department of Justice Report titled *The Voice of the Child* asserts that children who are included in the decision-making process can strengthen their sense of self and control over their well-being (Birnbaum, 2009). Although not all mediators directly allow children to talk in mediation proceedings, hearing children in divorce mediation can be positive, but it can also be seen as negative. For example, some have expressed concern "that children may be manipulated by one parent or the other to take sides during a disputed custody and access matter, thereby creating anxiety and loyalty conflicts for children" (p. 13). Also, not all children necessarily want to be heard in legal proceedings that involve their parents (Birnbaum, 2009). Children might feel stuck between their parents in divorce mediation, especially if violence occurred in the home; "children who witness violence between adults are at risk of physical harm when they are caught in the crossfire, either accidentally or (particularly with adolescent boys) while

trying to intervene to protect their mothers" (Epstein, 1999, p. 8). Children who do speak out against their abusive parent might feel scared that once the safe space of the courtroom/mediation room is removed, they will be harmed. This is important for mediators to recognize.

The Effects of Divorce and Violence on Children's Education

If parents are not fully screened for violence, and children are not consulted in the divorce or mediation process, how will families needing extra resources or court proceedings be identified and how will children be protected? Both divorce and violence present enormous challenges for children and for the primary parents who care for them. In Canada, many believe the home to be safe, but children may be adversely affected when stuck in an abusive environment. Family abuse in Canada occurs more often than is actually admitted (Sinha, 2012). Frameworks for the recognition of children's rights have been developed, such as *the Children's Law Reform Act*. Although legal rights for children were implemented in Canada, it was believed that "rights for children … undercut many traditional beliefs about the good family and healthy society" (Ayim, 1986, p. 339). Furthermore, Canadian judges and society accepted "many levels of violence within the family that would put an assailant behind bars if committed against a stranger in the street" (p. 339). Unfortunately, this approach can still be seen in Ontario courts today.

When parents are in the process of divorce, whether from an abusive spouse or not, their focus might be elsewhere rather than on the children. As Potter (2010) argues, "divorce comprises several processes, such as elevated parental conflict and diminished economic resources, parenting practices, parent-child relations, and child's psychosocial

well-being" (p. 935). Unfortunately, if parents neglect their children, academic success can be compromised (Amato, 2010; Potter, 2010; Sigal, Wolchik, Tein & Sandler, 2012; Jeynes, 2000a; Jeynes, 2000b). Since multiple factors mediate a child's reaction to divorce, it is best to consider "*how* and *under what circumstances* are children affected positively or negatively" (Amato, 2010, p. 658).

Children who are part of a divorcing family are at risk of failing in school (Ayim, 1986; Dube & Orpinas, 2009). Children from violent homes are also at risk of failing in school (Ayim, 1986; Dube & Orpinas, 2009; McCloskey, Figueredo, & Koss, 1995; Veltman & Browne, 2001). After divorce, some children might actually show "improvement in well-being, other children showing little or no change, some children showing decrements that gradually improve, and yet other children developing problems that persist well into adulthood" (Amato, 2010, p. 658). Sigal et al. (2012) reinforce the importance of parents in this process: they are the "providers of behavioural reinforcement, resources, and educational opportunities as children embark on their path to career success" (p. 151).

While there are problems associated with divorce for children that lead to lowered academic achievement, there is in fact little literature on the impact of divorce on children that distinguishes between children who have and have not experienced violence in the home, and that considers the multiplicity of life changes associated with divorce that can impact children both positively (an escape from violence, for example) and negatively (such as divorce-induced poverty).

Children and Divorced Parents

There continues to be discussion among legal academics around whether "divorce has a causal effect on children, partly because of the impossibility of doing experimental research on this topic" (Amato, 2010, p. 657). Parent-child relationships in early childhood are very important (Amato, 2010; Potter, 2010; Scaramella & Leve, 2004; Jeynes, 2000a; Jeynes, 2000b; McCloskey et al., 1995) because during this time children learn skills and "strategies for interacting with others that affect future behaviour and relationships" (Scaramella & Leve, 2004, p. 89). If a child's biological parents divorce during early childhood, the dissolution can have devastating impacts. Amato (2010) recognizes that "the legal divorce itself has few direct effects on children" (p. 656), but rather it is the marital dissolution process that impacts children, "increasing the risk of a variety of behavioural, emotional, interpersonal, and academic problems" (p. 656).

The impact of divorce on children often depends upon their age. Young children, such as infants and toddlers, are unable to understand the divorce of their parents; however, they do recognize when their daily routine is altered (Warshak, 2000). It was found that "in infancy, from birth to approximately 18 months, any change in routine leads to food refusals, digestive upsets, sleeping difficulties and crying" (p. 427). It is believed that infants between 6 to 18 months fare okay when visitation between parents is split up during the day, but in the evenings, children at that age should be with their custodial parent, which is, more often than not, the mother (Warshak, 2000).

As children grow older, they may be better able to adapt to two living environments. Children usually become accustomed to visitation between parents (Warshak, 2000). Many children between the ages of 9 and 12 years are "embarrassed,

angry and hostile" (Bryner, 2001, p. 206) when their parents divorce. Elementary school children's psychosocial well-being may also decline (Potter, 2010). Because many children are unaware of the reasons for divorce, they may end up siding with one parent over the other (Bryner, 2001). Contradictory behaviour may occur, such as "being difficult with one parent and perfectly behaved with the other" (p. 206). Scaramella and Leve (2004) found that when child-parent interactions involve negative and high-intensity emotions, "the risk for problem behaviour intensifies" (p. 93). They describe a process of mutual reinforcement, where "parent behaviour inadvertently reinforces difficult child behaviour; difficult child behaviour similarly amplifies parental negativity" (p. 93). If a child reacts to a parent's request with anger, the negative reaction reflects on the parent who then becomes angry at the child (Scaramella & Leve, 2004; Adler, 2013).

Unfortunately, negative emotions and reactions by children create an environment where "harsh parenting and subsequent coercive interactional cycles increase" (p. 93), which might make educational success difficult because children are focusing their attention on their negative home life rather than on schoolwork.

Educational achievement often drops during or following divorce because children are no longer in their comfortable environment and are exposed to their parents' feelings of hurt and anger (Bryner, 2001; Amato, 2010; Waldfogel, Craigie and Brooks-Gunn, 2010; Potter, 2010), especially if divorced parents do not invest time and money into their children's well-being (Waldfogel et al., 2010). These childhood experiences may persist into adulthood. Bryner (2001) reveals that "adult children of divorce are less likely to attend or complete college, more likely to be unemployed or on welfare and more likely to have problematic relationships with family and friends" (p. 206).

Behavioural problems may also cause some children to 'lash out,' especially if they were traumatized (Bryner, 2001). Psychosocial well-being is important when considering the connection between divorce and academic success because of "the role socio-emotional health in academic success" (p. 935). Despite these negative impacts of divorce, it may be the best alternative in cases of domestic violence. Children who live in violent homes and witness their mothers being abused, whether emotionally or physically, will always remember it. The images are extremely difficult to disregard and this needs to be recognized as a form of trauma.

Unfortunately, much of the literature does not link violence with trauma. Repetti, Roesch, and Wood (2004) conducted a study whereby "linkages between divorce, depressive/withdrawn parenting and child adjustment problems at home and school were examined over a three-year period" (p. 121). Teachers and parents completed questionnaires and children were interviewed once each year. The results of the study found that "divorced mothers had more both depressive and withdrawal symptoms than non-divorced mothers at each yearly assessment" (p. 131). It was further found that there were links between the depressive and withdrawn symptoms and "externalizing and internalizing behaviour that the children exhibited at home and in school" (p. 136). Children who act out may be attempting to bond with their mothers who "are preoccupied with their own stressors and negative mood, or to gain attention from teachers or other adult caregivers" (p. 136). Although this study recognizes links between divorce and depression in mothers, it also seems to blame them for their depression.

These studies help demonstrate the potential impacts on children post-divorce, but the problem remains that the research does not distinguish between divorced mothers and

abused divorced mothers. Furthermore, researchers have not linked how self-esteem can be particularly undermined by violence (Rosnes, 1997). Without research that acknowledges and investigates the multiple impacts of abuse, mediators may be unaware of important issues, such as a woman's inability to contest an unfair settlement because of low self-esteem or fear for themselves and for their children.

Violence Affects Children

Allen, Bybee, Sullivan, and Wolf (2003) investigated children's immediate coping responses to witnessing domestic violence. It was found that even "when children are not direct victims of physical assault, witnessing abuse against their mothers constitutes a form of emotional trauma that warrants further attention" (p. 124). Adler (2013) agrees with Allen et al. (2003): "the prevention of child abuse and the protection of children requires widespread community understanding and support [from professionals but it is important to acknowledge that] the abused child has already been traumatized" (p. 719).

The Law Commission of Ontario asked children to discuss the problems they saw in their families and how the issues were handled in the family justice system (Lassonde, Hageman, Goldberg, & Letourneau, 2010). Many children shared their experiences with problems in the home, including fighting parents who woke them up and witnessing fathers abusing their mothers. Some called the police "for fear that their father would choke or badly hurt their moms" (p. 4). The children also shared their coping mechanisms for "dealing with the anger, frustration, and sadness brought on by family conflict" (p. 5), including biking, writing in a journal, or confiding in a trustworthy individual. Based on the fact that some children do cope with abuse in the home, it is critical, as Allen et al.

(2003) point out, that we "better understand children's immediate responses to witnessing domestic violence and how these varied responses might relate to their well-being" (p. 124).

Children's well-being needs to remain front and centre; Onyskiw (2003) revealed that children "rated witnessing conflict between parents as … [a major] life stressor" (p. 13). Children's anxiety is greatest when they are involved in violence in the home (Kerig, 2003; Toth & Gravener, 2012). For example, if parents argue over children or if children witness violence, they become anxious and scared to be in their environment (Kerig, 2003). Furthermore, it was also found that children who were exposed to violence had difficulty with social interaction (Onyskiw, 2003; Toth & Gravener, 2012; Jeynes, 2000a; Jeynes, 2000b; Veltman & Browne, 2001; McCloskey et al., 1995). Kerig (2003) found that children who experience:

> unregulated distress often exhibit avoidant behaviours that can interfere with the development of autonomy [and that] avoidant coping with stress can foreclose opportunities for growth, such as by inhibiting the development of relationships with multiple caregivers in pre-school, academic mastery in the school-age years and pro-social peer relations in adolescence. (p. 160)

Onyskiw (2003) and Kerig (2003) both recognize that often children from violent homes have poor behaviour and have more difficulty regulating their emotions when interacting with others. Moreover, some children exposed to violence do not have "effective problem-solving skills and conflict resolution strategies, often misinterpreting ambiguous interpersonal situations as potentially threatening and attributing hostile intent to the other person" (Onyskiw, 2003, p. 29). When these skills are lacking, children are more

likely to take out their frustration on others, mimicking the violent actions seen in the home (Onyskiw, 2003).

Scaramella and Leve (2004) believe that children who come from violent homes have parents who are either over-involved or too relaxed: "harsh parents sometimes demonstrate over-involvement by reacting to children's behaviours with anger or by using power-assertive discipline to control or restrict children's activities" (p. 99) and in other cases, children's behaviour is ignored. Parents who show over-involvement or inadequate involvement may leave their children feeling confused and helpless (Scaramella & Leve, 2004). Harsh disciplinary behaviours, also known as "tough love," do not increase a child's well-being, but rather promote inappropriate behaviours (Scaramella & Leve, 2004; Onyskiw, 2003; Kerig, 2003; Toth & Gravener, 2012; Amato, 2010; Potter, 2010; Roberts, 2007; Evans & Kim, 2013).

Instead of shifting the focus from the distressing event, "parents who use harsh disciplinary strategies will sometimes increase children's focus on the distressing event and at other times fail to intervene to reduce children's distress" (Scaramella & Leve, 2004, p. 99). Over-involvement does not allow children to be autonomous and no involvement at all creates a negative atmosphere for children (Scaramella & Leve, 2004; Onyskiw, 2003; Kerig, 2003; Toth & Gravener, 2012; Amato, 2010; Roberts, 2007; Evans & Kim, 2013). Over-aggressive or non-involvement may prevent adolescents from learning effectively (Sigal et al., 2012).

This type of parenting may be more common in abusive homes. Haskett, Neupert, and Okado (2013) asserted that "abusive parents tend to be less positive, sensitive, and supportive; more critical, hostile, and irritable; and more withdrawn/ less involved with

their children" (p. 1). Also, the parenting quality of abused mothers is low because they "tend to experience more depressive symptoms" (p. 2). Kelly and Emery (2003) further noted that "mothers in high-conflict marriages are reported to be less warm, more rejecting, and use harsher discipline, and fathers withdraw more from and engage in intrusive interactions with their children compared with parents in low-conflict marriages" (p. 354).

Mothers who are recovering from abuse are also more likely to be harsh parents. Alhalal, Ford-Gilboe, Kerr and Davies (2012) assert that abused women are vulnerable post-separation and that this time is "when women often face health issues, and continuing abuse from ex-partners, combined with a sometimes desperate need for basic resources" (p. 838). It was also noted that these women are most likely socially isolated and "may also make hasty connections with others before they know who they can trust, leading women to unknowingly enter into relationships with new abusive partners [which is problematic for them and their children]" (p. 839). Children who witness violence in the home can be "under such extreme stress that a crisis is created" (Roberts, 2007, p. 182). Again, the mediation information program fails to discuss violence or abuse against children. Are mediators aware of these issues? Do they have the skills to recognize high conflict cases? Does their training, or lack thereof, prepare them for high conflict cases? How are children protected from further abuse?

Single Mothers and Low Socio-Economic Status

A child in crisis may suffer further when his or her family separates and becomes impoverished (Roberts, 2007). However, it is difficult to distinguish behavioural problems that are caused by divorce, violence, or post-divorce poverty. Certainly,

children who live with their mothers after divorce are at a greater risk of poverty because divorced mothers may "have to work outside the home [in low-paid, female dominated spheres], employ childcare, move to less desirable neighbourhoods, and change their children's schools" (De Garmo, Forgatch & Martinez Jr., 1999, pp. 1231-1232). Some men also do not pay their spousal or child support payments, or have claimed bankruptcy, making some single mother families poor.

Evans and Kim (2013) argue that many poor children "live in impoverished language environments where fewer words are spoken and parents read less often" (p. 43). Sun and Li (2009) reveal that the poorer schools are most likely academically non-competitive because they lack resources to help children succeed. Children in these areas often do not receive as much attention, such as help with schoolwork from their parents (Evans & Kim, 2013). Further, these neighbourhoods have less "social capital" and children living there often are more often exposed to "crime, street traffic, have fewer places to engage in physical activity and less access to healthy foods" (p. 44).

Children might be left alone if a single mother must work long hours to help address the loss of income when a dual income may no longer exist (Bryner, 2001; Waldfogel et al., 2010), especially given that "only 50% of single-parent households headed by the mother have child support agreements from the father, and only 50% of those receive the full amounts due" (Bryner, 2001, p. 203). When single parents are unable to spend quality time with their children, especially if their children are grieving the loss of a two-parent family, children might feel abandoned and lash out (Bryner, 2001). As well, Amato (2010) found that many children "were forced to take on adult responsibilities, felt lonely, and experienced family events and holidays as stressful" (p.

656). Single parents are also stuck in a double bind where they have to deal with their own feelings and also their children's emotional or behaviour problems (Waldfogel et al., 2010).

As well, the economic stress that single mothers often have to deal with reinforces low self-esteem (Rosnes, 1997), which may influence them to return to their abusers, trapping them and their children in the vicious cycle of abuse. Connecting problems children are having to the abuse witnessed in the home also causes stress for women; indeed, women who are abused and see their children suffering will most likely have low self-esteem (Rosnes, 1997). Such women are also under constant stress fearing repetitive acts of abuse, which can cause illness (Rosnes, 1997). For women who are able to separate from their abusers, the economic hardships they face are also linked to stress. For instance, some women may suffer from stress-borne illnesses which can affect their ability to work on a regular basis. These factors might also impact the quality of care children receive during and after an abusive relationship (Rosnes, 1997).

Poverty thus can have powerful negative impacts on families and thus children (Evans & Kim, 2013; Waldfogel et al., 2010; Dix, Slee, Lawson, & Keeves, 2012). Evans and Kim (2013) argue that poverty can "alter developmental trajectories, including cognitive development, socio-emotional development and physical health throughout life" (p. 43). Poverty can directly affect children because they would most likely have "less money for books, clothes, and extra-curricular activities" (Waldfogel et al., 2010, p. 89) and "less cognitively stimulating environments, with less available print media, fewer age-appropriate toys, fewer informal learning venues, fewer educational digital materials and more exposure to television" (Evans & Kim, 2013, p. 43). Waldfogel et al. (2010),

Amato (2010) and Sun and Li (2009) note that children often move to poorer school districts and neighbourhoods post-divorce.

Zoning and Employment of Teachers Influences Educational Achievement

As socio-economic status drops after separation or divorce from a spouse, it is likely that the new home where the mother and children live will be in a low income neighbourhood (Gonsalves & Morris, n.d., Amato, 2010; Wagmiller, Gershoff, Veliz & Clements, 2010; Evans & Kim, 2013; Waldfogel et al., 2012). It is also likely that children will have to move to a new school. This is important because the schools children attend also influence educational achievement. Thrupp (2008) found that "where teachers and principals choose to work [impacts children's academic achievement and the lowest rated schools were those] with the greatest turnover of teachers" (p. 55) Further, children from lower classes often get left behind academically because many teachers leave lower to working class areas to teach in the suburbs, where they then stay.

In Ontario, students in grades 3, 6 and 9 are given standardized tests in which they are "assessed on … their performance in reading, writing and mathematics" (Johnson, 2005, p. 1). The results of the tests are released province-wide, often causing controversy. Johnson (2005) asks an important, eye-opening, question: "Are schools that contain students with higher average test results actually better schools" (p. 2)? Two teachers' associations in Ontario, the Elementary Teachers' Federation of Ontario and the Ontario English Catholic Teachers' Association, oppose these standardized tests (Johnson, 2005). The Elementary Teachers' Federation of Ontario firmly believes that in order to accurately assess academic achievement, actual schools, students and teachers should be observed for "evidence of learning and an interest in learning" (p. 2). Otherwise, other

factors that impact children's interest in learning, such as a previous history of violence in the home, divorce or low socio-economic status, are disregarded (Johnson, 2005).

Instead of acknowledging that low achievement in education can be associated with child poverty, "politicians and policy makers prefer to talk about how schools can pull up [achievement levels] through better teaching and leadership" (p. 57). Class, ethnicity and any other underlying factors, such as abuse in the home, are often ignored (Thrupp, 2008). Because Ontario schools are believed to be universally high quality, following the same teaching curriculum, all children are expected to maintain appropriate academic standing. When children's educational standardized testing scores are lower, schools are blamed, but standardized tests disregard underlying factors, such as the school's location, retention of teachers, class and ethnic contexts (Thrupp, 2008). Simply by a change in socio-economic status, children of abused, divorced women are placed at greater risk of lowered academic achievement.

As well, given the financial situation of many single mothers, some older children may end up spending more time working, earning money to help the family survive rather than maintaining adequate grades in school (HRDC, 2000). Amato (2001) reveals other post-divorce factors that account for low educational achievement: "a decrease in children's standard of living, moving to neighbourhoods with poorer schools and declines in parental monitoring and school involvement" (pp. 902-903).

Re-Marriage and Social Supports

Some mothers who escape from an abusive environment and obtain a divorce remarry. Wagmiller et al. (2010) pose the question: "does children's academic achievement improve when single mothers marry" (p. 201)? Parental marriage might

affect children, depending on how their roles in the family change (Wagmiller et al., 2010; Kelly & Emery, 2003; Jeynes, 2000a). Children from a divorced family might still be coping with that divorce. Adding a new individual to the family unit "often entails a severe disruption of habit, which can undermine and disrupt family roles and routines and create stress and conflict" (p. 203). Although Wagmiller et al. (2010) believe that the stressor of a new stepparent/stepsiblings is likely to "recede over time as family members adapt to new roles and routines" (p. 203), children's academic achievement might suffer because of the new family unit.

Children's behaviour sometimes impacts their parent's potential to remarry post-divorce. Adolescent children may internalize or externalize behaviour. Wagmiller et al. (2010) hypothesize that those children who have behaviour problems will not benefit from their mothers' marriage, rather "conflict and stress will be present and these children will have trouble adapting to the new family" (p. 204). Yet, many mothers may feel compelled to marry not only because of societal stereotypes about women needing men, but also because of the pure economic need for a male wage. More positively, children who have fewer behavioural problems are likely to improve developmentally in a positive, two-parent environment (Wagmiller et al., 2010; Jeynes, 2000a). For those children, two-parent families are most likely better off financially and able to "provide children with the resources and environment they need to develop properly" (Wagmiller et al., 2010, p. 204).

Sometimes the new relationships abused mothers enter into post-separation may not be better. Alhalal et al. (2012) reveal that "women may become exhausted and depleted in the post-separation period from managing multiple, intrusive challenges to

stay safe and access basic resources" (p. 838). It is for these reasons that women may return to their ex-spouses or become involved in new abusive relationships (Alhalal et al., 2012). The new instances of abuse may be minimized by those individuals who might be expected to be more supportive given some may blame the victim for yet again finding herself in an abusive situation (Alhalal et al., 2012). Women who are trapped in a vicious cycle of abuse "may lack the physical and emotional energy needed to withstand the stress of leaving and creating a new life … making it more challenging to leave permanently" (p. 846).

There is no question that divorce and violent homes can "alter the lives of children" (Potter, 2010, p. 944). Both divorce and violence in the family have the potential to diminish children's well-being (Jeynes, 2000a). Children's attention may be focused on their negative environment, rather than on schoolwork, which helps to explain their often poor academic achievement (Potter, 2010; Jeynes, 2000a). School absenteeism is a factor that also relates to educational success (Ingul, Klockner, Silverman & Nordahl, 2012).

Sun and Li (2009) remind us that family support does not always come only from parents and that children can develop well by learning from siblings, cousins, aunts, uncles and grandparents. During a family crisis, such as a divorce, positive "supplementary support provided by relatives and extended family members can be valuable to children" (p. 623). Also, if siblings are present, they might be able to provide emotional support and protection during and after a parental divorce. Siblings might act as "stress buffers and confidants with whom [other siblings] can share their frustrations"

(p. 623). It is proposed that siblings "may reduce the negative effect of divorce on children's educational outcomes" (p. 623).

Valiente, Swanson, and Eisenberg (2012) complement Sun and Li's (2009) assertion that positive family support during a crisis may help impact the degree of success in school. Children who show negative emotions have a harder time succeeding in school because "they negatively affect higher order cognitive processes, such as problem solving, memory and strategic thinking and focus attention on a narrow set of behaviours [like anger]" (p. 132). Negative emotions can emerge in the context of abuse or divorce. Negative emotions may hinder a child's ability to remember material learned in class. Valiente et al. (2012) found "emotional responses do not call for reflective planning and problem solving, so these skills are underused and underdeveloped" (p. 131). Negative emotions divert attention away from schoolwork onto the event that is causing the negativity in the first place (Valiente et al., 2012; Jeynes, 2000a; Jeynes, 2000b). Positive emotions, however, bring academic success. Positive emotions "promote successful academic functioning because they broaden one's cognitive awareness and consciousness of potential solutions to problems" (p. 132).

A further connection to emotional stability and educational attainment is the relationships students have in class (Valiente et al., 2012). A student who is negative can have a harder time maintaining friendships compared to a student who is positive (Valiente et al., 2012). Do mediators ask parents about their child's friendships or the potential role of wider family members in supporting children? The mediator's training is also a factor because parents may or may not be told how to work on positive emotions or be provided resources to help with this process.

Aboriginal Children and Ontario's Education Curriculum

All of these issues that may be present in divorce may be exacerbated in the context of Aboriginal children. In Canada, Aboriginal children's educational achievement can be affected by violence in the home and divorce. Even before divorce or family dissolution, Aboriginal children are disproportionately likely to be disadvantaged by poverty and by violence in the home (Preston, Cottrell, Pelletier & Pearce, 2012; Greenwood, de Leeuw & Ngaroimata Fraser, 2007). It can be assumed that Aboriginal children's educational achievement will also suffer if their parents are divorcing or if violence occurred in the home. If parents are divorcing, regardless of whether or not violence was a factor, Aboriginal peoples are forced to abide by laws created under Eurocentric ideals (Preston et al., 2012; Greenwood et al., 2007). Aboriginal children enrolled in school on reserve are expected to reach the same educational standards as non-Aboriginal children, but it is recognized that the education of Aboriginal children in Ontario "is in crisis resulting from the significant increases in school-aged populations, chronic underfunding, decaying infrastructures, shortages of qualified/knowledgeable Aboriginal and non-Aboriginal teachers, community disconnectedness, and a curriculum that is culturally irrelevant" (Cherubini, Hodson, Manley-Casimir, & Muir, 2010, p. 333; Preston, et al., 2012). There are twice as many Aboriginal students dropping out of school compared to non-Aboriginal students (Cherubini et al., 2010).

Moreover, Cherubini et al. (2010) state that the education of Aboriginal children "remains significantly influenced not only by the discontinuity of provincial and federal politics, but by the profound implications of the European invasion that exploited and oppressed Aboriginal culture and language traditions" (p. 334). It was further found that

"more than 12% of Aboriginal peoples in Canada between 15 and 29 years of age leave school after only grade eight" (p. 335). This is an astonishing statistic that needs to be addressed. In Canadian education, there is a "lack of awareness concerning the particularized pedagogy and learning styles of Aboriginal students" (Preston et al., 2012, p. 7). It remains that in many educational programs "learning is epitomized as an experience attentive to individuality, competitiveness, objectivity, outcomes, status projection, and judgment" (p. 7). In contrast, however, Aboriginal pedagogy endorses "learning as a lived experience best absorbed through activities such as storytelling, group discussions, cooperative learning, demonstrations, role modeling, personal reflection, peer tutoring, learning circles, talking circles and hands-on experiences" (p. 8). Moreover, when Aboriginal students, leaders, Elders, instructors and staff manage and develop their own curriculum, overall satisfaction with education increases (Preston et al., 2012; Parent, 2011; Greenwood et al., 2007).

Aboriginal communities should be responsible for quality education, be entitled to funding for programs and have an education curriculum that is "flexible enough to reflect diverse community needs" (Preston et al., 2012, p. 11). Aboriginal children should have the same opportunities to obtain a culturally relevant education as students enrolled in the Catholic and public school boards in Ontario. This is important to discuss in the context of changes to the divorce process in Ontario family law because the issues that affect Aboriginal families have the potential to drastically affect any children's educational success in school.

Conclusion

How are abused women and children supposed to feel safe if they are systematically encouraged through the mandatory mediation information session to participate in negotiations about the future, especially if the future many abused women and children want does not include the abuser? How are abused women and their children supposed to move from abuse-victim to abuse-survivor if the Ontario government fails to provide them with safe resources? The new legal system is problematic because the court is only used as a referral service for mediators. What do mediators tell people who attend the family information sessions? Do cases of domestic violence get fast-tracked to court? What signs of abuse do mediators look for? How do mediators deal with abused women? What happens to children when their parents attend divorce mediation? Do information sessions and mediators acknowledge that violence causes equal or greater trauma for children than divorce? Are the effects of mediation on children in the home even considered? Is a child's educational achievement at risk? How does divorce impact children? Do mediators involve children from the relationship? Does the mediation process impact children?

It is important to note that I have been unsuccessful in locating research that brings these issues together and investigates the educational impacts of divorce mediation in cases of abuse. Although there is research on the impacts of divorce on children's educational achievement, we need research on the effects of mediation in cases of abuse, including in Aboriginal contexts.

How are children supposed to succeed if their parents' legal issues are ignored as factors that might affect their educational achievement? Why is violence in the home

ignored in school when children's educational achievement suffers? Do mediators recognize any links between the mediation process and children's educational achievement? Do they address these concerns and help parents to plan to meet the needs of their children? My research is important because if mediation is believed to be the best process in divorce, and if more couples are going to choose mediation because of the mandatory mediation information sessions, mediators must be aware of the issues and problems discussed in this chapter and must be thoroughly trained to deal with these concerns.

Chapter Three: Methodology and Methods

The questions posed in chapter two are partially answered in this study. By interviewing mediators in Thunder Bay, Ontario, I obtained their professional opinions about the shift from voluntary mediation to the new mediation process in Ontario family law, and gleaned information on how mediators handle cases involving abuse. I also asked what roles, if any, mediators allow children in mediation and how the new changes to the Family Law Rules affect Indigenous women and children living on reserve. I asked them to describe what connections, if any, they saw between abuse in the home, abuse throughout divorce/mediation proceedings and children's educational achievement.

It is important to know what mediators think because they have a large role in the new way family law is practiced. The mandatory information program, although not implemented in Thunder Bay, is supposed to be a new step in the divorce process when children or property are involved in the marriage. The explicit purpose of these sessions is to encourage more couples to undertake mediation and to thereby reduce court backlog. Gaining insight into the mediation process provides an opportunity for flaws and potential weaknesses in the new family law system to be revealed. In order to explore my research questions, I used qualitative and feminist methodologies to frame my thesis. Each is described below.

Qualitative Approach

Cresswell (2009) defines qualitative research as a way to explore and understand individual experiences that connect to larger social issues, complexities and many underlying factors influencing individuals and society. Lichtman (2010) identifies description, understanding and interpretation as critical elements of qualitative research

that are important because qualitative researchers "ask 'why' questions and questions that lead to a particular meaning" (p. 12). As a qualitative feminist researcher, I was interested in obtaining a deeper understanding of the mediation process, while critically analyzing the social consequences of the new Family Law Rules for abused women and their children (Case, Iuzzini, & Hopkins, 2012).

Qualitative Feminist Methodology

My research is feminist because it "challenges the basic structures and ideologies that oppress women" (Brooks & Hesse-Biber, 2007, p. 4). Maynard (1994) argues that "feminism provides a theoretical framework concerned with gender divisions, women's oppression or patriarchal control which informs our understanding of the social world" (p. 23). It also "promotes social justice and works to initiate social change in women's lives" (Hesse-Biber, 2008, p. 339). As such, this research is "engaged in an intellectual and political struggle" (Landman, 2006, p. 430) because it analyzes the new legal changes that are advertised as beneficial to all divorcing couples. If abused women are treated unfairly in mediation, this needs to be exposed. It is also necessary to discuss with mediators the potential consequences mediation can have on children in the home and at school. By utilizing a feminist lens for this research, I explicitly acknowledge and understand that women and children are affected by legal changes.

As a feminist, it is also important to acknowledge that I am also deeply implicated in this research because my "personal history is part of the process through which 'understanding' and 'conclusions' are reached" (Maynard, 1994, p. 16). My interpretation is by necessity my own and it can never be neutral because it aims to look critically at the dominant perspective. Maynard (1994) argues that "no feminist study can be politically

neutral, completely inductive or solely based in grounded theory" (p. 23). Positionality in feminist research is important. Harding (1987) states:

> the inquirer her/himself [must] be placed in the same critical plane as the overt subject matter, thereby recovering the entire research process for scrutiny in the results of research. That is, the class, race, culture, and gender assumptions, beliefs, and behaviours of the researcher her/himself must be placed within the frame of the picture that she/he attempts to paint. (p. 9)

Acknowledging my position in this research allows readers to see me "as a real, historical individual with concrete, specific desires and interests" (p. 9). This is why I started the thesis with a discussion of my own social location and interests.

Methods

Interviews

Interviewing is a "conversational practice where knowledge is produced through the interaction between an interviewer and an interviewee" (Brinkmann, 2008, p. 471). It is short-term interaction between two strangers (or more) with "the explicit purpose of one person obtaining specific information from the other" (Neuman, 2010, p. 342). As a feminist researcher, I wanted to obtain an in-depth understanding of the mediation process and whether the mediation process might affect children's educational achievement, and thus I chose to interview seven mediators. I chose to conduct semi-structured interviews, for which I developed a written interview guide (see Appendix A). I provided the mediators with the questions in advance to allow them a chance to reflect upon the issues in preparation for our upcoming discussion. The end result was "a collaboration of investigator and informant" (Ayres, 2008, p. 812). This framework

minimized the power differential in the interview process, which is consistent with feminist research practices (Armstead, 1995).

Interviews took place at a location chosen by the participants: five interviews were held in professional offices, while the remaining two interviews were conducted at Lakehead University. As an incentive to participate, each participant received a $50 gift card to a local restaurant. I began the interviews with background questions to determine how long each mediator had been practicing and about specific training he/she had undertaken and guidelines he/she did or did not adopt in his/her practice. I also inquired as to the approximate number of family cases he/she had mediated in Thunder Bay or on reserve. I do not know if the cases mediated by the participants were referrals from parties who were recommended by a judge to attend the mandatory information session. I asked the mediators their opinion as to whether the move from voluntary mediation to the new mandatory information sessions, where divorce mediation was strongly encouraged, might disadvantage or be helpful for abused women and how this change might affect Indigenous women living on reserve. I also asked if there are ways that the mediation process is handled differently if there is a history of spousal abuse.

Further, I asked mediators what roles they allow children to have in mediation, if there are children involved. I also asked if they recognize any connections between abuse in the home, the mediation process and children's educational achievement. I wanted to understand whether, given the literature on violence and abuse in divorce and lack of literature on violence and abuse in divorce mediation, mediators have the knowledge necessary to do their jobs.

Interviews were audio digitally recorded and approximately 45 to 90 minutes in length. The interviews for this study were completed between August 21, 2012 and November 14, 2012.

Sample

I selected the research participants through convenience sampling, which is when "the sample is made up of the individuals who are the easiest to recruit" (Brown, Clark, Kelley & Sitzia, 2003, p. 264). I approached 17 potential participants in Thunder Bay, Ontario who were listed on websites that provide direction to those looking for legal assistance or for mediators. The seven participants interviewed were the only ones who were interested in participating. One individual turned down participation because she felt she was not qualified to discuss the new amendments in family law. I did not hear from the remaining nine potential participants. Six of the participants are practicing mediators and one is a lawyer. I chose to interview the lawyer because he is involved in legal aid family mediations, thus his knowledge was relevant.

Three of the participants are lawyer-mediators, one is a legal aid lawyer, one is a private mediator and two are social workers. Two are involved with mediations through the Thunder Bay Superior Court of Justice where they are court mediators (i.e. conduct mediations as part of court cases). A lawyer-mediator is an individual who is a practicing lawyer and also acts as a mediator; the mediations conducted by a lawyer-mediator may occur in or out of court (i.e. mediation as part of a court case or private mediation, not part of a court case). A private mediator is an individual who is self-employed and does not conduct mediations in court.

Four of the participants interviewed were male and three were female. All are white, highly educated, middle to upper-class Canadian citizens. They all have more than 10 years of professional work experience outside of their mediator role, such as lawyer, social worker and educator. The mediation experience among the participants ranged from 2 to 20 or more years. “Shirley” has been a mediator for 2 years, “Annie” has been a private mediator for 2.5 years, “Hank” has been a lawyer-mediator for approximately 5-6 years, “Britta” has been a mediator for 7 years, “Julian” has been a court-connected mediator for 10 years, “Randy” has been a lawyer mediator for over 20 years and “Troy” has been a court-connected mediator for over 20 years.

Troy, Britta, Annie, and Shirley are accredited through the Ontario Association for Family Mediation (OAFM). To become accredited through the Ontario Association for Family Mediation, it is recommended that an individual have a bachelors or masters degree, have knowledge of family theories and literature, remain updated on new literature, have professional experience, comply with the code of professional conduct and hold professional liability insurance (OAFM, 2012a). Hank, Julian and Randy are not accredited mediators, but are lawyer-mediators.

Prior to becoming an accredited mediator, Troy attended law school and he has practical legal experience; Britta and Shirley have social work experience; and Annie has teaching experience. Hank also attended law school, was provided additional training through the Office of the Children’s Lawyer through seminars and workshops, and has practical legal experience; Randy and Julian also attended law school and have practical legal experience. Julian, Troy and Britta received cultural sensitivity training through their employer. They each participate in training seminars, workshops and attend

conferences every year, but the amount of time at these events varies. These three do not have to pay for training because their employers cover the costs. Unfortunately, for most mediators in Northwestern Ontario, training and travel costs are paid out of pocket because the seminars are not available via webcast, but only in person in Toronto.

Table 1: Participant Credentials as Mediators

Pseudonym	Education	Experience	Position/Accreditation	Gender
Hank	BA, LLB	5-6 years	lawyer-mediator	Male
Julian	BA, LLB, LLM	10+ years	court-connected mediator	Male
Randy	BA, LLB	20+ years	lawyer-mediator	Male
Troy	BA, LLB	20+ years	court-connected mediator, OAFM	Male
Britta	HBSW	7 years	social worker, court-connected mediator, OAFM	Female
Annie	BA, Bed	2.5 years	private mediator, OAFM	Female
Shirley	HBSW	2 years	social worker, OAFM	Female

Transcription

After conducting interviews with mediators, I transcribed the audio recordings. Transcribing interviews is "an interpretive process that demands prolonged practice and sensitivity to many differences between oral speech and written texts" (Brinkmann, 2008, p. 472). Each transcription took approximately 3 hours to complete.

Themes

After transcribing, I analyzed the data for themes. I created a list, with each question from the interview as an initial heading. From there, I inserted each answer from the participants under the appropriate heading. Once all of the questions and answers were organized, I proceeded to read each response and look for similarities and differences. For example, I wanted to see if there were similarities between mediation experiences and how and to what extent mediators believe the mediation process affects

abused women and children's educational achievement. What do mediators do in cases when abuse is present or comes to light? Does the mediation process affect abused women negatively or positively? How do the mediators deal with children in the mediation process? Do mediators see connections between divorce, mediation and children's educational achievement? Do mediators discuss children's well-being, in particular, the children's behaviour at home and their educational achievement, with divorcing parents? The mediators' answers to these questions are detailed in the next chapter.

Ethics

Formal approval for this research was obtained through the Lakehead University Research Ethics Board (see Appendix B). Potential participants were approached via mail with an introduction to the study (see Appendix C). Upon expression of interest in participation, they received the appropriate consent form (see Appendix D). These forms were exchanged in person or via mail or email and informed potential participants that participation in this study was entirely voluntary and that they did not have to answer any questions they did not wish to answer and that they were able to withdraw at any time. Once consent was established, interview details were finalized.

All data collected remains confidential and the anonymity of the research participants has been and will be strictly maintained. Identifiable data is stored securely in a password protected computer account as per the requirements of the Lakehead University policy. All data from individual participants was coded, so their anonymity is protected in any reports, research papers, thesis documents, and presentations that result

from this work. However, based on the participant qualifications listed throughout this research and in Table 1, the mediators interviewed might be recognizable to one another.

Chapter Four: Research Findings

In this chapter, I draw on the interview data provided by the lawyer-mediators, private mediators, and court-connected mediators to explore the shift from voluntary mediation to the new mandatory information sessions, in which mediation is strongly endorsed. Mediators first explained how they approached mediation in general. I also asked them whether they believed that mediation was preferable to litigation, and if so, why? I then explored with them how they screen clients for abuse, and asked what they do to either shut down mediation, or adapt procedures, if they believe that a power imbalance is apparent in a relationship. They then offered their opinions as to why mediation could, or could not, work for abused women and their children. Mediators were also asked about their specific experience with Aboriginal women in the mediation process. They then described if and how they include children in the mediation process, and discussed their beliefs with regard to the impact of mediation on children's educational achievement. I also asked them to describe how the new process might affect Aboriginal children. Finally, I asked what impact they believed the transition to mediation would have on case law and precedent.

The Mediation Process

Randy stated that the first step in the mediation process is attendance at the information program session. Divorcing parties attend this session when the judge hearing their case strongly urges mediation. Attendance is not mandatory in Thunder Bay. During this session, which is held twice a month at the Thunder Bay Superior Court of Justice, he revealed that there is "a duplication of effort [in providing educational information to parents on the effect of their divorce on their children where] there is a

social worker [as well as a lawyer] to explain this to people". One session is held for applicants and the other is for respondents to help in deciding if mediation is the appropriate route to take.

Hank, Julian, Randy, Troy, Britta and Annie each described the following process: Mediators conduct mediations, with or without counsel and/or external experts, all of which costs money. In mediation, the parties and mediator sign an Agreement to Mediate. At that time, the mediation is either open or closed. If the mediation is open, the Mediation Report is admissible in court; if the mediation is closed, it is not. If a settlement is reached, a Mediation Report is created and signed by the mediator. A Mediation Report is a summary of the mediation outcome. Minutes of Settlement can then be drafted. The Minutes of Settlement is a formal contract that outlines the settlement in mediation.

A lawyer or a judge, but not a mediator, can create the Minutes of Settlement. If created by a lawyer, the lawyer can only represent one of the parties. A lawyer-mediator can conduct the mediation and later draft the Minutes of Settlement, but cannot provide legal advice to either party. Rather, each party would be required to obtain independent legal advice. They can decline independent legal advice and sign a waiver stating that independent legal advice has been suggested and declined.

A lawyer reviews the Mediation Report prior to creating the Minutes of Settlement. If there are changes to be made, the lawyer consults with the mediator and parties to adjust the settlement agreement. If the lawyer has to contact the mediator and parties in this way, more costs are added to the mediation process. If a party does not

agree to make changes, the changes can be argued in court – this process too costs money.

Mandatory Information Program Sessions are Not "Mandatory" in Thunder Bay

As of September 1, 2011, the Family Law Rules were amended: however, the mandatory mediation information sessions have not been implemented in Thunder Bay. Troy stated:

> What's happening up here is the judges are strongly recommending this [mediation] because often when a person who is in an abusive relationship, if they're separated from that person, they have a little more freedom about following the process of mediation. So, what they do up here is they have this preliminary step and it's go to the mediator for the intake interview and the other side, maybe the abuser, also has to go for the intake interview.

Britta suggested that the only reason attendance at the information sessions is not mandatory in Thunder Bay since September 2011 is because the new courthouse is not open yet. This recognition is surprising since family law rules are supposed to be universal across Ontario.

Hank further elaborated on whether or not the requirement to attend the information sessions will be implemented in Thunder Bay. He believes it is at its trial stage:

> I think that they have to have the opportunity to run … trial programs in order to … have a sense of how it will work broader. … And that's how they roll these things out, that's how they rolled out the family law rules, and the sort of voluntary court … Mediation has only just come to Thunder Bay [where it is

> highly recommended by judges that parties attend, but it is not mandatory]… which is geared to income and is a good thing, I think. I don't think there's a problem, per se. I don't think it is the best thing, but I think it is always going to be that way because we're constantly finding problems in family law that we're trying to combat …

The question as to whether mandatory information sessions will be implemented in Northwestern Ontario remains open.

Mediation Training in Northwestern Ontario

Just as the mediation information sessions are not fully implemented in Thunder Bay, mediators in this city do not have full access to training. Two participants, Troy and Shirley, were the only ones to acknowledge that mediation training is minimal in Thunder Bay. Troy stated:

> [Mediation training] is out there … but it doesn't come to Thunder Bay … I think they should make those [mediation] seminars available … through webcasts. … You have to spend [a large amount] of money to get down there to Toronto to get it. … As a lawyer … [training] is available, but as a mediator [it isn't].

Troy reveals that unless a mediator is also a lawyer, mediators will have some difficulty receiving training in Thunder Bay. Many mediators have to pay for any training out of pocket.

Shirley noted that she has an employer who provides a training budget. She stated, "I'm not independent, [so] I don't have to foot the bill myself … it kind of comes into my training budget". She also revealed that when she can benefit from her other

training as a social worker, she does so: “I roll … some of the other tasks that I do [into mediation training]”.

These two anecdotes indicate that there are problems ensuring mediators are properly trained. Private mediators are not required to have training and some may therefore be inadequately trained. Even mediators who are accredited may face significant costs in maintaining on-going professional training.

Mediation Screening

Most, if not all, mediators screen the parties prior to mediation. Each participant was asked how he or she screens potential parties for mediation. All participants acknowledged that they interview each party prior to mediation and that there are multiple techniques used in these interviews. Shirley stated:

> I have a real strong social work background, and I’ve done a lot of work with women, and a lot of work in domestic violence, so I’m kind of pulling from all of my experiences in that way, so I don’t use one particular tool.

Questions she includes regularly in the screening process are: “Did you and your partner argue a lot? Was physical violence or verbal abuse a factor in the relationship”?

Annie provided an extensive list of questions that she asks parties during the screening process:

> Do you have concerns about engaging in mediation? [If so,] what are those concerns? We would talk about intimidation, that your partner might not like participating in mediation … has the other party ever acted in ways that would frighten you? Are the two of you able to talk to each other without arguing? Are you fearful about being in the same room with the other party? Are you able to

> speak your mind and express your point of view to the other party? When you speak your mind and express your point of view, does the other party feel angry, threatened or intimidating in any way?

These two mediators acknowledged that the answers provided gave them insight into the relationship and whether or not further questions were needed.

All remaining participants said that they interviewed potential parties by asking questions based on their previous mediation experiences. For example, Hank stated that he has a questionnaire that he continually updates when something new is discussed that he thinks he should ask others: "I have a questionnaire that's always evolving, so when I get the answers to those questions … it can evolve into a conversation that's outside of the questionnaire". Interviewing potential parties separately allows mediators to gather details of the relationship and determine whether or not mediation is the best route.

Troy was the only participant to recognize that abused women might fall under the radar if they fail to disclose instances of abuse during the initial mediation screening because:

> their version of normal has been skewed … [and] depending on how prolonged the domestic violence is going on… Some of the questions are designed … if they are separated … do you feel you have a better ability to communicate with your partner now that you are separated and get into that sort of distinction if you are prepared to answer honestly … but I always get worried about their perception about what is normal now.

Annie elaborated that if, after screening, mediation goes ahead and abuse in the relationship was not initially an issue, other power imbalances are still sometimes recognizable:

> The way they speak … you can see that there's been that control in the marriage, and sometimes in marriage one person controls more than the other, not necessarily considered or called domestic violence … and that, as a mediator, when you see that it starts to become unbalanced … you shift that back and balance it out [by politely reinforcing that what you are hearing is correct. The realization sometimes makes people shift their attitude in mediation.]

Julian stated that you have to "observe their behaviour and body language to determine whether or not there is more to it than meets the eye".

Participants were asked if criminal records were reviewed prior to commencing mediation. All participants revealed that the only time criminal records are required is if there is suspicion during the initial interview process. Julian stated:

> There's not always access to criminal records, so really it is just part of self-disclosure … for parties to inform us of the fact that there has been some criminal charges that have been laid in the past. But we're always particularly interested in whether or not there is crimes of violence that were involved between the couple themselves, whether there were any conditions attached, whether they were amidst in the process, as we're attempting to do a mediation, because obviously that affects not only the approach that's adopted, but … you've got to be mindful of whether or not there is the after or lingering effects of the actual incident, depending on how close it was in time to when you try the mediation.

Annie commented, “I think judges … have a responsibility to identify any cases where they feel there is domestic abuse”. Her comment shows confusion because under the new Family Law Rules, judges would not have the opportunity to identify cases with domestic abuse if cases are referred straight to the mediation information sessions.

Why Mediation Works Well Absent Abuse

All participants thought mediation was useful in cases not involving abuse. Randy stated:

> If the dispute is resolved within the range of what’s reasonable, then mediation is far better, because people are much more willing to live up to agreements that they’ve come to themselves, rather than agreements that are shoved down their throats.

Julian saw these advantages:

> The advantages of family mediation is that parties basically develop their own plan – their own settlement that sometimes goes beyond what a judge is permitted to do because a judge is constrained by the legislation. So, mediation allows people to be far more creative in areas where there’s sort of the opportunity to do that in relation to care arrangements for children, in particular. … Another advantage is that you’re not subjected to decisions by a judge that may not necessarily be objectively fair. Sometimes judges, because of the presentation of the case, because of the nature of the evidence … doesn’t hear it all or perceive everything that is there, [and therefore] may not make a decision that is the best decision for the family. Mediation allows for much more time and opportunity to sort of explore a variety of different opinions and come up with something that

> doesn't involve the frailties of time. … In the event that there is a decision by a judge that is considered to be not in accord with the law, an appeal is possible, but it's expensive, it's cumbersome, it's time-consuming and it's not … a direction that you would necessarily want to go in.

In this instance, Julian indicates that mediation can help parties develop their own settlement agreement, which could be outside of what the law allows. This might seem plausible because judges do not know every detail of a relationship, thus a judge's decision might damage the potential parental relationship post-separation. Britta, Annie, Hank, Troy and Shirley also agreed that mediation is a way for issues to be resolved privately, with the possibility of creative decisions. Troy stated: "the advantages are that parents and any of the service providers that are invited to be part of the mediation can come up with a solution that is going to be good for those parents and good for those children".

Shirley agreed that mediation allows people to share their personal stories. She stated:

> Family mediation allows people to really be able to share their story and say what's on their mind and be really creative about decisions that are going to work for them and their family. [Mediation] can be fast, it can be cheaper, and it can kind of give the nuts and bolts of a plan … that is meaningful for them.

Annie agreed that an advantage is that:

> they are able to resolve their own issues if they can speak with each other and talk, and I think that when they can resolve their own issues, it is very empowering to the family and also communication is better for them ongoing.

Hank further asserted:

> The fact that people are structuring their own resolution to issues is a huge advantage. … It allows for people who actually know their own lives, as opposed to a judge, who has a short period of time with people, to sort of think outside the box and find ways to create value for each other. If they're really able to do it, they can maximize value better that way than with the traditional approach … and it can create, and this is a big deal, a more harmonious parenting relationship between parents than litigation.

These responses by Shirley, Annie and Hank indicate that mediation in instances where abuse is not a factor may be a good option compared to court. Britta revealed that the parents in family mediation "have the absolute control of how they are going to manage the agreement in terms of custody access, property, all of that, so it doesn't leave it to a stranger who doesn't have any clue about who these people are".

Troy was the only participant to discuss follow-up after mediation. He said that follow-up is crucial, especially for those mediations that included child protection. He stated:

> I think [follow up] is pretty important. …when we have a client, we have a client right through the final end. The Office of the Children's Lawyer … often encourages a follow-up after the court order has been done. …part of knowing whether or not the resolution was one that would work or not work is to have some follow-up … it is just like counseling. [Also,] … if there's some built-in follow-up and you're getting paid for it, then business-wise it would make sense

> to ask how this is going on and there might be some tweaking that would be valuable.

When discussing time management in mediation for follow-up, Troy stated:

> You can make the time [to sort through issues]. You can make your mediations last longer – the mediator has to … be educated enough to be able to give the information because it is an education process – those people think they understand why they are where they're at, not even knowing what hit them and the other one's already looking for a new spouse or partner, so… if you can, depending on how many months the mediation carries on for, they may catch up emotionally, … and so they may be at a stage where the education you are trying to provide to them about how they care for their children may sink in. Furthermore, the mediator themselves probably needs to be kept fairly current on the new research about impact of behaviour of the parents fighting [and] domestic violence on the children, so they can educate them about that.

The remaining participants did not discuss following up with parties, nor did they discuss their knowledge of new research about children.

Although the responses above outline the benefits of mediation, Randy and Julian also shared their opinions on mediation in high-conflict cases. Both believe that a judge hearing a high-conflict case could be beneficial. For example, parties who show controlling characteristics would be better dealt with in a court of law. Randy stated: "there is going to be those cases that just don't fit the [mediation] process or … where there's power imbalances and if there are power imbalances, then the mediation process contains a certain amount of risk for the less powerful party".

Also, a judge might be better able to influence parties' decision-making processes because, as Randy further noted, "people are more willing to take advice from a judge". Also noted were disadvantages to a judge hearing a case. For example, as Julian stated, the likelihood of a judge knowing the context of the relationship is very minimal. Knowing the context of the relationships is important, especially in instances of domestic abuse where children are involved.

Mediation Involving Abusers

Participants were asked to provide their definition of domestic abuse. No one had a clear definition of it. Rather, they all considered the relationship background to determine if abuse was present. Annie noted:

> Domestic abuse covers such a wide range of things. A lot of people see domestic abuse as just hitting somebody, but it's not; it can be hitting, slapping, spitting, pushing … it can be verbal abuse, it can be just eye-looking [staring down the other person].

Britta used a guide provided for court-connected mediators that listed four areas of domestic abuse to be aware of, namely situational violence, coercive control, violent restraint and separation-instigated violence. Although she did not define each category of violence, it was clear that she understood these terms.

Troy did not define domestic abuse, but rather stated that he uses his screening process to decide if domestic abuse is present. Julian stated that domestic abuse is "either emotional [manipulation] or physical [violence that was] perpetrated in the course of an intimate relationship". Randy elaborated that "quite often, in family situations, there's a

power imbalance, and where there's a power imbalance, the mediation can cause more harm than good".

Hank said that he did not find it necessary to define domestic abuse in his mediation practice because he makes it a priority to watch the parties' interaction with each other for an imbalance of power. He asserted:

> I think that what I'm looking for is an imbalance of power, for whatever reason. It doesn't have to be as a result of 'domestic abuse'. I mean, domestic abuse is … a subjective term that carries with it a definition for each person.

He further elaborated: "the concern for me is the amount and type of conflict. ... and the power imbalance is the big deal".

Hank also advised that in his role as a mediator he has intervened when he feels one party is disadvantaged. He provided an example:

> The parties … seemed capable of mediation, but [it all] became clear in the second or third session … the woman was … not at all ready to … start her rights or entitlements. … I would stop and say, "Okay, can you leave us?" and I would talk to her and say, "Look …" There's a fine line between a mediator trying to give legal advice … [trying] to fill that role and also trying to be … objective … and I think I tend a little more towards the "Here's the way the law would treat you, what do you want to do?" … I put her in a room with just me and said, "This is where I think the law would put you."

These anecdotes suggest that he recognizes when parties are disadvantaged.

Every participant thus provided differing views of domestic abuse, which may reveal a problem given that some of the mediators overlooked some characteristics of

abuse. Although all participants believed that any relationship with an imbalance of power was unable to mediate, it might not be easily recognized.

External Experts and Safety Planning

Participants were asked how they dealt with mediation when an imbalance of power became clear after speaking with clients. They were also asked to describe the type of external experts they included in mediation to assist in cases involving an imbalance of power or abuse. Hank and Julian stated that external experts, such as counselors, social workers, and property or financial experts would be contacted for additional support. The next question followed: who incurs the fees for the expert reports?

Hank advised that the clients would pay for either a joint or individual expert report and further stated that if experts are involved, then the matter is probably more complex:

> If they're going to be involved in mediation, they would likely be involved in litigation and they would be involved at a more adversarial level, which means each party would have their own expert as opposed to just having one. There's really a rare circumstance where mediation could be more expensive than litigation …if it's a complex mediation, it's going to be a complex litigation as well – there's a parallel.

He also stated that he would:

> refer people to counselors; there are a few counselors that I have some relationships with … And as well lawyers, having your own lawyer is absolutely essential because when you get into a mediation, and you have a result that comes out of that mediation, it can't be binding until you've reviewed it with your own

> lawyer … and that's as a measure against someone who's got unperceived problems with … decision-making vis-à-vis somebody else. It's a way of protecting against that.

Hank and Troy were the only mediators to discuss external experts who support children during divorce, such as the Children's Aid Society and the Office of the Children's Lawyer.

Although the Children's Aid Society and the Office of the Children's Lawyer are important agencies that protect children, Shirley did not agree with bringing in unnecessary external experts. She advised that she is more concerned with safety planning than bringing in external experts:

> I'm not a service provider in that way [to mediate with external experts present]; however, I may say I'm not comfortable proceeding with this, unless I know that you have either a safe place to go after this, or you've really thought about what your safety is like for yourself, your child.

Shirley's response shows that she is concerned for everyone's safety during the divorce process.

Besides the comment from Shirley regarding safety plans, the only other mediator to discuss safety planning was Hank. He advised that he does not consider safety plans, because in his experience, "he hasn't had anyone lunge over a table yet [but that when it happens, then] he will review his policies". It is unclear whether other mediators in this study consider their own safety when conducting mediation as I did not ask about it and no one discussed his or her safety in the interviews.

Shuttle Mediation

When there is an imbalance of power, six of the participants, Britta, Shirley, Troy, Randy and Julian suggested that they would consider conducting the mediation using shuttle mediation, a technique used when parties cannot mediate face-to-face.

Britta defined shuttle mediation:

> When there are staggered arrivals … with two offices available [in the same building], so one parent is in one, and one's in the other and they have no idea where the other office is … and the mediator goes back and forth between the offices.

She elaborated that when shuttle mediation is used, she is very careful:

> We're really, really careful about making sure that the abuse isn't continuing in the mediation process … so, if Mom and Dad walk out of my office after I've done a shuttle … we're watching to make sure that person has left before the other person goes, or we have Mom go out the back stairwell and Dad goes out the front 10 minutes later. So we're making sure they don't bump into each other. … [T]hat's the only control we have … what they do outside of that, I mean, if Dad decides he's going to drive over to Mom's and stalk her, then Mom's already been advised with what she needs to do in terms of her safety plan, right.

Britta did not discuss what such a safety plan might entail.

Shirley stated that if the violence is situational, she would consider conducting shuttle mediation:

> If the violence occurred, let's say both parties were drinking, and both say, you know, I feel okay coming together and sitting and talking with this person as long

> as … they're clean, and we can figure this out together … I would consider it. And, we don't necessarily have to sit in the same room, of course, we can shuttle … where one person sits in one room and the other is in another [room].

Randy explained that a domestic abuse protocol is in place during Legal Aid settlement conferences, which are similar to mediation: "What will happen is that the parties will be separated, so that they'll each be in separate rooms and then the mediation is sort of a shuttle process". Hank stated:

> There are ways to … reduce the impact of abuse in mediation … if you're alive to them, and you still have to keep your eyes open for the potential imbalances that come out of that, but mainly the things that you can do, the structures that you can put in place, in my experience, that can help manage the imbalance are to have parties in separate rooms. There are mediations where people shuttle back and forth so that there's not that face to face potential for intimidation.

Hearing all of the potential issues around mediation in high-conflict cases brings the question: is the shift from voluntary mediation to a forced mediation information session, where mediation is promoted as a good divorce option beneficial or problematic?

Shift from the Voluntary Mediation Process to the Mandatory Information Sessions on Mediation in Ontario Divorce Proceedings

Participants were asked whether the move from voluntary mediation to mandating information sessions on mediation, potentially persuading parties to conduct divorce mediation helps or disadvantages abused women. They had differing opinions. Three participants, Britta, Shirley and Julian, were not sure if divorce mediation was good or bad for abused women. Britta stated, "I don't know that it necessarily disadvantages

abused women. What it does is open the doors so more people are able to have mediation". Shirley said, "I'm not sure that it does either because we have such an extensive screening process … we do screen things out that may be inappropriate … because we don't want to provide another opportunity for women to be … exposed to violence". Julian stated:

> I don't think that it is necessarily helpful or disadvantageous. It is a requirement in the process that people must go through, but mediation requires that people voluntarily participate and in the absence of that participation, or that willingness to negotiate, there can be no resolution possible, so just the fact that they have to do it doesn't necessarily mean anything negative because the mediation can be conducted in a safe manner that isn't going to cause anyone undue stress.

Julian further expressed that the entire divorce process, regardless of whether it commenced through divorce mediation or litigation, is stressful from start to finish:

> Litigation is stressful and the fact that there are court-mandated conferences where parties have to sit across from each other … can be far more stressful than a mediation that's conducted in a way … with the implementation of … the abuse protocol where the parties are in separate rooms, and so the mediation can be a lot more helpful and less stressful.

His response outlines why it is necessary to understand the context of the relationship prior to commencing divorce mediation. Screening for divorce mediation is a difficult, but an extremely important, task.

Britta stated that mediation allows women the opportunity to avoid going to court. She further stated that the court system is abusive:

> When people go into court, they're set on winning … so they have these affidavits where they put all kinds of horrific things about each other … they can put anything they want in an affidavit, and so they accuse the parent of … doing all kinds of horrendous things … so that goes back and forth … and judges don't want to hear it, but there it is.

The disadvantages listed thus far appear to be rather extensive, but Hank also warned that being persuaded into mediation may create an 'artificial mediation':

> Mediation is only as good as the parties participating in it are willing to make concessions … and to empathize with the other party and those types of things are prejudiced when it is a forced thing. I think it is … too blunt of an approach to a problem.

Randy agreed with Hank. He stated:

> Mediation requires that each of the parties attend with a view towards resolving the dispute and in abuse situations I'm not confident that that's the case. And, if it is not the case, then it is simply another hurdle that's being placed in front of the abused woman in resolving the dispute and receiving that to which she is legally entitled. It creates a problem because if the guy approaches it from the point of view of the heck with this, I'm not going to give her a dime, that sort of thing, it is just another chance for him to put pressure on her.

Hank further asserted that mediation "can disadvantage abused anybody, abused women, absolutely, because it can create a drastic imbalance in power, which is one of the things as a mediator, you are always looking to dismantle or manage".

Mediation and Aboriginal Women

Participants were asked to describe how they believe Aboriginal women would be affected by these changes to the Family Law Rules. One mediator completely excused himself from answering this question because he had never been involved in mediation with Aboriginal families. Two participants did answer and asserted that cultural differences need to be respected. For example, Britta stated that she mediated a case whereby an Elder was involved and an Aboriginal prayer was conducted: "We've had one where one of the Elders wanted to be involved, and he came in and did the … prayer with the feather … We couldn't do the smudging because one of the people involved had a respiratory illness".

Randy stated that he has been part of family cases with Aboriginal women and families. In terms of whether or not mediation affects them, he stated:

> I don't know what the overall statistics are, but my experience with Aboriginal women has been that they are generally poor, and hence on Legal Aid. And that their spouses or partners are generally uninterested in agreeing to anything. In the experience that I have in my practice, the partners of the women tend to have alcohol or drug problems or both. There tends to be a lot more family violence and again, rather than be a positive step to require mediation in these circumstances, it would more than likely be counterproductive.

Annie further stated: "I have worked with a number of Aboriginal women; however … I think their ability to talk about domestic violence or domestic abuse is something that they would … be less likely to talk about the specifics [of it]". She further elaborated:

> I would say where it might be more difficult for women up on a reserve is that their culture is not to be outspoken or tell everything and they can be rather quiet and so there may be domestic abuse or violence going on that they might not want to disclose … unless you developed a trust with them that they would be able to divulge that.

Annie's response acknowledges the importance of respecting individual cultural practices and beliefs, especially those of Aboriginal peoples, because their beliefs might not necessarily coincide with the beliefs of the mediator.

Julian has not conducted mediations with Aboriginal women who live on reserve; however, he has conducted circle mediations: "I've certainly done circles … you have to utilize that Aboriginal traditional process to work out resolutions of disputes and custody access disputes and child protection proceedings". Troy has also conducted a circle mediation, but only as part of mediation training:

> Part of our mediation training, we took a segment where there was a circle procedure or technique that was explained to us by some Aboriginal people … the comparable Caucasian process is something called family group decision-making … And I've been through the family group decision-making process and … I thought it was a pretty good technique … I was always on for the child, but as a parent … there's a lot of … I guess influence from the outer family, who may have given up on this person and [is] sickened by what they have seen/occurred to these children and the relationship that that son or daughter insisted on remaining in. So, if the son or daughter remains in that relationship, which has caused CAS

> [Children's Aid Society] to step in, then the dynamics between the support family was more critical.

In circumstances where a dysfunctional family is present, input from any children in the home who are at an appropriate age to provide their opinion might be beneficial.

Roles of Children in Mediation

I asked the participants what roles, if any, they provide to children. Julian does not give roles to children in mediation. He stated that this was because he has never had the request to include children, but he noted that in court proceedings, sometimes the voices of children are heard:

> I never had the request made that I can recall. Certainly parents have wanted children to be involved in the court process to give evidence about their wishes, sometimes, depending on the ages. Also, in the event that there's credibility issues or issues in dispute about what took place on a particular day … then they have sometimes wanted children to sort of testify because they were the only ones around who actually witnessed or observed the particular incident in question. …but participate in the mediation, I can't remember the request ever being made, and certainly, it hasn't happened in my experience.

Randy stated that it is mostly paper he sees, not children:

> Generally, what you see is paper. So, you'll get the child's report cards and frequently there's a decline in marks, at or about the time of separation. And, that usually is directly, or the amount of the decline is usually directly correlated to the amount of acrimony between the parents. Anecdotally, parents will tell you that the child will act out, the child will appear stressed, the child won't sleep, those

> sorts of things. But, I mean, the child is under a tremendous amount of stress anyway, even if it's a reasonably amicable separation. And what the literature tells us, is that… the child's whole world is coming apart… All the child wants is for Mommy and Daddy to be back together and everything to be happy and that's not happening and the child doesn't understand, so … the children have a difficult time with the whole process anyway.

Since Randy generally does not meet children, they are not involved in the mediation processes of which he is part.

The remaining five participants stated that they sometimes allow children into the mediation process, but it generally does not happen. Shirley stated:

> My practice is generally not to, unless they are over at least the age of 12. And even then I am really reluctant to do it with a child under the age of 14 for a couple of reasons. One, developmentally, I think you are putting them right in the middle of the fire and that's not an appropriate place for a child to be. Although, over the age of 12, judges really do want to hear what kids have to say. I'm not in a position to make that judgment though… But I really see that as the role of the Office of the Children's Lawyer, right. That's their job, to solicit that information from the child. So, I don't bring kids in unless, of course, there's something really specific. So, for example, I did have a teenage boy I met with once because Mom and Dad are going through separation, lots of conflict between them, but the son was refusing to see Dad. Mom wanted the son to see Dad, Dad wanted to see son, but it was kind of an issue between the two, so it was kind of a mini-mediation to

> figure out their conflict to see if they could get back on board outside of what was going on with Mom and Dad.

Annie stated that she only involves children if the parents specifically ask. She asserted:

> If there have been issues that the parents have identified, because sometimes one kid will play one against the other when they are separated … they might want me to just bring that up…. [and ask] is there anything you'd like me to share with your parents that they might not know that would help with this process? … I had one kid say, you know, my Mother is always on me since my Dad's left – I gotta do this, I gotta do that … she is on my case too much. … The Mother wanted her up every morning at 8:30am and out looking for a job, but it's her holidays, she went to school, a very good student … most teenagers sleep in during the summertime and get a job in the afternoon or the evening, that's okay.

In this instance, Annie's involvement with the child helped the mother see the distress she was causing her child.

Children Struggling with Their Parents' Divorce

The next section of the interviews revolved around divorce mediation and its impact on children. Mediators were asked to explain what they tell parents in divorce mediation about the impact of divorce on children. All mediators stated that they provide such information to their participants. Julian asserted that he tries to make parties aware of the potential harm a high-conflict divorce has on children by discussing:

> how one of the greatest indicators of future failure for children is a high-conflict divorce between their parents. I also talk to them about the fact that they may think they have protected the children from the negativity and the anger

> associated with it, but they haven't … the kids are aware of it through body language, by hearing – overhearing phone calls in the other room, seeing the conduct of the parents when access exchanges occur at the door and on and on and so that does seem to have an impact on people when they recognize that their behaviour might actually be impacting on the children in a negative way.

Hank believes:

> Mediation and its processes are probably the least damaging processes for children, but still, it's there, and there is a social impact on kids. … I think it is unique to the child. I think some kids are in a good separation, whatever that means, there's some kids who are fine and there are some kids who stress themselves right out … It's very specific to kids.

These responses reveal that, in their experience, each child is affected differently and that each parent should take proper precautions not to overburden children involved in the divorce process.

Britta was the only participant to discuss formally educating parents on the impact their divorce would have on the children. In abusive instances, she refers parties to the High-Conflict Separation Divorce Group, where parents are given information "about what happens to children in those situations – imagine living in that constant state of fear". She stated that by educating couples, she has had many realize their negativity affected their children:

> I had one [mediation] I just did where they [the divorcing parents] had a history of just unbelievable turmoil … and we did the educational piece with them [where they attended seminars or were provided with informational pamphlets] and both

> Mom and Dad said, "No, we need to change this, we need to do it differently." And they managed to come to an agreement and they managed to change the way they interacted with each other.

She further emphasized how important it is for parents to understand the effects of their relationship breakdown on their children; for example, "we talk about the impact emotionally … if the kids are going to school while all of this trauma is happening, how do they manage to get through school"? She also said "information is provided about child development, about what happens to children's development when they are in that constant state of angst and turmoil". She asserted that "the child's brain isn't developing as it would with a peer who lives in a supportive environment … that's going to impact his or her learning ability".

Shirley stated:

> Any time a parent is going through separation, they [the kids] are going to be impacted. … if it comes right out of the blue, sometimes kids are shocked, and that's actually harder for them then if they know their parents have been arguing and fighting and finally there's some resolution and there's peace in the house because Mom and Dad aren't fighting anymore.

Hank also emphasized that there is an impact on children and it must be pointed out to their divorcing parents. He advises clients:

> to leave a legacy to their child – if they can find a way to make decisions for their child or children together, that's a much more effective legacy to give their kids, and if they have to remit it to a judge, then it's unfortunately probably going to have a significantly greater impact. I tell them that the kids are typically more

> perceptive than you give them credit for and are picking up on cues, whether verbal or non-verbal, and that this is having an impact on them as well.

Annie also suggested that "children from a home where domestic violence or substance abuse, or alcoholism, might suffer academically, or they might do well. Also, their behaviour might change whereby a child might become quiet or might become aggressive". A child's social development can be affected on multiple levels by abuse in the home and seeing their mother going through a stressful situation.

Annie further suggested that these same circumstances could affect children in mediation. She stated:

> Abuse in the family and any type of abuse, at all, affects kids. They may not be verbal about it … but you can see it down the road; you can see signs of it … but it is not something that is talked about – [it is kept quiet].

Moreover, Julian asserted:

> One thing that occurs over the course of time … is that if this is the behaviour that they have been brought up on, this is the way that they think intimate partners interact with each other and this is the way they behave toward each other, it can't be good because often children will model the behaviour they've witnessed over the course of their developmental years and so to that extent … they probably are not going to do much better when it comes to their own relationships. So in effect, it's important that parents recognize that the children are going to learn that this is the way men and women, or partners, in a broader sense, interact with each other and this is the way that it's done. Unfortunately, it's not going to be a particular healthy thing to pass on.

This recognition that children's development can be negatively affected by abuse is welcome. If parents are able to recognize how they impact their children, perhaps positive change is possible, including reversing the belief that abusive behaviour is normal.

> Troy stated that these connections depend on multiple factors because:
>
> If the children are at a very young age, they may not understand what is going on. If they are a little bit older, I can see certain parents who are being abused to act as the punching bag and they will say to the child, you know, don't do that because Dad will get mad, don't do that because Mom will get mad, and then you know what, we'll have all of this again, so they witness what is going on to Mom and then they learn that it might be acceptable obviously for one parent to beat up the other, they learn that they should be scared of that parent who is being the abuser, sometimes if the child is really young … 3, 4, 5, 6 months old, all they are learning is that there is all this noise going on, but no one is trying to coddle them, nobody is trying to nurture them with words, and communication, as a result [suffers] – they don't learn how to talk.

Troy further elaborated with an example in his practice:

> There's a case I'm involved in right now – the child is 8 months old – she's not saying anything and it's because [she] may be making a connection between [her] two older brothers who are always told to shut up … So then they learn that and then they just hear silence, so I don't know what is going on in those children's minds, but what you see on the ground floor is that they aren't developing the same as the other children.

Annie revealed that she discusses the impact that separation and divorce can have on young and older children. For example, she stated:

> A 5 year old who's being told that their parents are separating might not understand the concept that they are going to be living in different houses, that they are going to be traveling back and forth. They just want to know that they are going to be with someone … who are they going to be with and who is going to take care of them? Whereas a 12 year old might be thinking about who he/she is going to be living with most of the time, where he/she will be living, what type of accommodations and how this change will affect their life with their friends and how they are going to tell people at school … and possibly some thoughts that maybe it could be their fault of why this is happening and maybe place some blame on themselves, whereas a 4 or 5 year old wouldn't necessarily think that. I also talk to them about parenting plans when … one might say, I want one week on, one week off with the children … and I explain to them that for really young children, that is really difficult because time is different for a 12 year old than a 2 year old who is used to seeing Mommy or Daddy every day, and a week apart seems like a year apart … where a 12 year old is busy with their activities, busy with school, busy with friends … a week goes by fairly quickly.

Troy also discussed the consequence that children who are bullies in school may be from dysfunctional families:

> It's at the ground level where children who are bullies … They spend a lot of time seeking acceptance and other kids don't want to work with them in group projects and so they spend so much time focused on trying to gain acceptance and not

> enough time focused on trying to learn the fundamentals … So that's part of it … [Some kids] may have been exposed to a lot of dysfunction and violence in the home. … So, it gets back to how do we educate the parents? … The other thing is that parents who are fighting and CAS [Children's Aid Society] isn't involved, and it's those high-conflict families, they, out of spite, [might] keep different schedules for their kids … and what I like to do [is] … a parenting plan with the parents … and I try to get them to buy into the consistency that a child needs and thrives under, and that's something that you can't dictate – you can mediate, and you hope that the parents in honesty will follow through with that in both houses, but if somebody wants to undermine things, they will.

Recognition that dysfunctional families are also negative influences for children is important.

Although some participants described mediating with external agencies, such as the Children's Aid Society, Annie did not agree with this approach. Rather than mediating a high-conflict case, she shuts it down: "I have stopped mediation in cases where I thought there was … domestic violence … and when a person might be threatened or have consequences after the mediation". Recognizing the potential for further harm is imperative for mediators.

Children's Educational Achievement

All participants recognize that children's educational achievement can be affected because of the impact of divorce. Shirley acknowledged that a child's academic development suffers in an abusive environment. She stated:

> Clearly abuse in the home is going to have an impact on a child's academic development. There is a lot of research [to show] that kids have a hard time being able to learn if they are not feeling safe at home or if they feel somebody else at home isn't safe either.

Although this response reveals that Shirley recognizes abuse in the home impacts children, she did not specify the type of research she was referring to. Annie also thinks children's academic development would be affected:

> I've known children who have come from homes with probably domestic violence, substance abuse, who turn out to be very exceptional students. … And that's their way to escape, to do really well, but if there is something going on at home, you can usually see it in a child academically.

Shirley elaborated:

> It's pretty hard to pay attention to what's going on in the classroom if you are worried about what's going on at home. If you have a parent who doesn't appear to be coping well … then you see a child struggle at school, their grades go down, they act out, there's … behaviours that come out of that.

Recognizing that children may suffer academically when involved in divorce is important because it allows parents to take precautions in how they act during divorce proceedings or divorce mediation.

Julian asserted that a key component during divorce mediation when children are involved is how they are doing in school:

> One of the things that we are always interested in is how the children are doing academically. Particularly when it relates to a parent seeking change. … So, in the

> event that one parent is saying that there should be a change, we look at the academic success of the child because that's a good indicator of how the child is doing … that's not to say that's the be all and end all 'cause sometimes a child can be doing well and still be suffering emotionally, but it's just one of those things you look at because they spend so much time in school.

Julian further asserted:

> Report cards, discussions with teachers or principals can reveal … behavioural issues, if children are acting out, if they're aggressive, if they're coming to school upset or tired, and so it can be an indication in a custody access dispute as to what the child is going through.

A child's ability to concentrate in school lowers when stressful events occur at home.

These responses show that these mediators recognize that a child suffers academically during a stressful time, such as divorce. The child's stress levels would potentially increase when in an abusive environment.

Links Between Abuse in the Home, the Mediation Process and Educational Success

Participants held differing opinions as to whether or not they think mediation can lessen the impacts of divorce on children, or if it is going to make it worse if abuse is present. Hank was the only participant to acknowledge that there was a concrete connection between abuse in the home, the mediation process and children's academic development. He stated that these connections are obvious, but also specific to the child:

> Some of them can come from the most horrific conditions and thrive and some of them can come from conditions that are not that bad and fall apart, but I think there's a pretty clear line that you can draw between abuse in the home and the

> dynamic that shows up at mediation … [It] is often tempered for a while and then emerges if you have enough time with them [the parties], you can see it [abusive behaviour] come out, because the first meeting is typically everybody on their best behaviour, and as people become more comfortable in a mediated situation, by the third or fourth session, it can become a little more true. So, I think there's a line between abuse in the home and abuse in mediation, it's just … muted in the mediation situation almost all of the time and I think that abuse in the home clearly affects a kid's academic development.

Although Hank acknowledged that there is a connection between abuse in the home and the atmosphere in mediation, there is a gap that exists in the literature that needs to be addressed: a distinction needs to be made between the effects of an abusive home on children's educational achievement and the effects of divorce and mediation on children's educational achievement. These issues, while often interconnected, must also be understood separately.

Aboriginal Children's Educational Achievement

Three participants, Britta, Troy and Hank, did not feel comfortable discussing how Aboriginal children's academic achievement suffers when their families are separating. These participants excused themselves from answering this question because they could not specifically answer how Aboriginal children would suffer, nor did they want to speculate. For the remaining four who provided responses, they did not feel comfortable specifying exactly how Aboriginal children are affected. Shirley stated:

> Again, across the board, kids who are struggling at home or there are struggles at home, will struggle at school … sometimes you see the distance children move

> because one parent may have gone home to their home reserve, which is a fly-in community, and then trying to negotiate and juggle that.

Annie further stated that Aboriginal children would be affected:

> [If] there was some domestic abuse there [in an Aboriginal family's home with children present], there could be more intimidation on the other partner at home, which would definitely affect the children because they would see that, but I think that any type of domestic violence or domestic abuse in the home, whether they are going through mediation, court, or a lawyer, would have an impact on children.

Julian agreed with Annie, although he did not feel comfortable discussing Aboriginal children because he does not have experience with them:

> I can't comment specifically on that subset. … there is an impact that children experience sometimes that's manifested in their academic achievement, but I can't specifically say that it's more likely to happen for an Aboriginal child as opposed to a non-Aboriginal child.

Randy also stated that it would not be fair of him to comment on Aboriginal children given his lack of experience.

The Impact on Law

The final component of the interview was a discussion of how these changes impact the law. Participants were asked if mediation privatize court proceedings? Annie and Shirley were not sure how to answer this question specifically whereas Julian agreed that, by definition, mediation privatizes court proceedings. Randy asserts that this system:

> Moves matters out of the judicial system into an alternative dispute resolution system, and that's obvious because that's what they're trying to do. But the issue then becomes are you selling the participants or one of the participants short by … requiring that they attend mediation …and, particularly without counsel.

He provided an example of why he believes this is a problem:

> In a family situation, lawyers look at the concept of custody much differently than laypeople. Laypeople tend to look at custody in terms of who gets the child. … The reality is that when lawyers talk about custody, what we talk about is the right to make decisions in relation to the child … so joint custody then means joint decision-making. …. [So,] if you have two reasonable people show up at mediation knowing what their rights and obligations are – fine, but very often, I don't mean any disrespect by this, but very often, particularly with parents of lower socio-economic status … Mom wants custody, so all Dad has to is say, well, I want joint custody and Mom panics and figures Dad is going to try to take baby away for half the time and Mom will give up the farm. Not so much child support, but property issues, maybe less spousal support. So … I'm not a fan of mediation in those circumstances, and I'm not a fan of mediation without counsel involved.

Randy feels that individuals who do not have counsel will be unaware of their legal rights and will be at a disadvantage; this obviously includes many abused women. Mediations and litigated cases without counsel are essentially private cases.

Julian acknowledged that the system has, for the most part, been private all along:

> All of the cases that the courts deal with, very, very few are actually litigated to the very end; even fewer have published decisions that sort of assist with the development of the law. And so from that standpoint, it does keep situations private, but parties dealing with private issues oftentimes would like these issues to remain private. …The fact that parties keep their settlements to themselves through whatever process, whether its mediation, arbitration or just simply negotiation between the parties themselves, or with lawyers, really doesn't change much.

Hank stated that he thinks mediation in family law, if pushed onto people, is not a good idea because "mediation is only as good as the parties participating in it [but that mediation] would not privatize court proceedings, [rather] it would create another layer between you and court proceedings … there would always be the opportunity to litigate".

Case Law

When asked about case law, three participants, Britta, Annie, and Shirley, stated that no case law is used in their mediation practice. However, Julian stated that case law would always be created:

> The cases that are fought to the end in court are the high-conflict cases; case law may lose some of the nuances, but not significantly so. There are still dozens of decisions that are produced every day across the country and there will continue to be. There are some people who still litigate cases and there are people who are still in a position to be able to afford it and there's still enough legal aid to be able to entitle people to have their day in court.

Hank discussed the possibility of mediation agreements being argued in court post-mediation. If this is the case, there might be an increase in case law pertaining to the enforceability of agreements. He stated:

> I think there's going to be a lot more … precedent case law in family cases … I think there's a lot more argument about the applicability about an agreement … like enforceability of an agreement that's been come to, where parties are doing it themselves, especially in a closed mediation process, where lawyers aren't present, you're going to find a greater percentage of people regretting what they did. It may not be appreciably greater, but it will be a little greater and so that means that you're going to have a lot more challenges to existing agreements through mediated settlements than you would through litigation where there's not.

These responses show that case law will continue to be created. The type of case law that is created might shift to include enforceability of agreements. This is an important aspect of mediation because it is supposed to be cheaper than litigation; however, if the agreement ends up being argued in court, more costs are added.

Conclusion

In summary, the mediation process, as understood by these participants, was discussed, along with the information program in Thunder Bay. Participants discussed their mediation screening techniques as well as their understanding of domestic abuse. For the most part, participants believed that they understood and recognized signs of domestic abuse. Participants also discussed whether and when they involve external experts or conduct shuttle mediations when they think there is risk of conflict. Participants did not feel comfortable discussing how the mediation process affects

Aboriginal women and their children. All participants acknowledged that children's academic achievement is affected in divorce mediation, regardless of whether or not abuse was a factor in the relationship. Finally, because of the implementation of the mandatory information program, where mediation is highlighted as a benefit to divorcing couples, the caseload is shifting from courts to mediators. This reveals that the type of cases now 'fought to the end' may consist of those parties arguing the enforceability of the agreement discussed in mediation and created by a lawyer.

Chapter Five – Discussion

In this chapter, I discuss the multiple themes that became apparent through analysis of the interview data and relevant literature. What became clear is that neither mediators nor the mediation process are regulated and that training in Northwestern Ontario is lacking. This needs to be addressed immediately. Although mediation has the potential to work well absent abuse, the failure to fully regulate the mediation process and the lack of training for all mediators can create dangerous conditions for women in abusive relationships and their children. In the end, this study reveals problems created by the failure of the government to regulate mediation, including possible pre-mediation screening bias, inadequate screening mechanisms that allow victims of domestic violence to slip through the cracks and end up in mediation when it is not appropriate, the fear that the safety of everyone involved may be at risk if the mediator does not take proper precautions, and a concern that mediators are not trained sufficiently with regard to cultural diversity. Ultimately, these problems may impact children negatively. The mediators who participated in this study were aware that divorce and violence can have devastating impacts on children and some tried to use the mediation process to educate parents about the needs of their children. I will argue that such efforts alone are likely to be inadequate in the face of the problems that these children face.

Failure to Regulate Mediators and the Mediation Process

The study reveals that Thunder Bay is not provided with the same resources as other regions of the province and, despite legislation that makes the information sessions on mediation mandatory, attendance is not mandatory in Thunder Bay. Further, the study raises significant questions as to why the mediation process is unregulated by the

government, thereby undermining consistency across the province. Mediators are not required to belong to an accrediting body, and the accrediting bodies engage only in market-based self-regulation. This is inadequate. Additionally, most mediators come from other professions and are trained on the job, leading to inconsistency in, and often inadequacy of, training; thus the quality of mediators varies (Menkel-Meadows, 1995; Leathes, 2010).

The failure to regulate the mediation process is evident in the amount of training participants in my study received and the answers they provided. Menkel-Meadow (1995) asserts that the failure to regulate also allows mediators complete control over how mediation is conducted. On a related note, Cappelletti (1993) argues that the mediation process:

> will provide only a *second class justice* because almost inevitably, the adjudicators in these alternative courts and procedures would lack, in part at least, those safeguards of independence and training that are present in respect of ordinary judges. And the procedures themselves might often lack, in part at least, those formal guarantees of procedural fairness, which are typical of ordinary litigation. (p. 288)

Also, lack of mediation training resulted in at least one mediator having difficultly remaining a neutral figure in the mediation. As Menkel-Meadow (1995) notes, "it is rare for mediators not to intrude somewhat in the process" (p. 228). Every participant has different educational backgrounds and professional experience, which thus reveals that their mediation service also varies.

The Mandatory Information Program is Not Entirely Implemented in Thunder Bay

Whether the new divorce mediation process should, in fact, be implemented in Thunder Bay is not clear. In terms of consistency across the province, if mediation is heavily relied on, mediators and the mediation process should be regulated. However, if the requirement to attend the mandatory information sessions on mediation in Thunder Bay is not legally implemented, but just 'highly recommended', mediators are potentially given more flexibility to avoid problem cases, such as those involving abuse. Ultimately, whatever happens, the inability to implement what is theoretically mandatory legislation reveals funding inequalities in northern Ontario that must be addressed.

As noted earlier, the failure to implement the mandatory information sessions on mediation Ontario-wide also has implications for the training mediators can undertake. Six participants were aware of the new legislation and knew that attendance was not legally required in Thunder Bay, but one was not aware of the changes. It is surprising that some mediators were unaware of the changes given they conduct mediations involving divorcing couples and children. This is even more so for those who are members of the Ontario Association for Family Mediation. Besides initial training, what is the point in being involved with an association if the association does not provide its members with crucial information? All mediators need to be aware of the changes taking place that affect how the mediation process is conducted.

Unavailability of Training in Northwestern Ontario

In Thunder Bay, the availability of mediation training is minimal unless the mediators are also lawyers. Lawyers, for the most part, are provided with a training budget that covers webcasts, seminars, conferences and other educational materials. For

those who have to pay for ongoing training, will they still do so if it is not required? If a Government-created body regulated mediators, perhaps there would be regular mediation training seminars provided across the province.

Mediation Absent Abuse

All participants agreed that in cases not involving a power differential, mediation was preferable to court proceedings. Some participants argued that mediation is a way for issues to be resolved privately, with the possibility of creative decisions. Others suggested that mediation allows parties to share their stories. Recognizing that mediation generally works in cases not involving abuse is important. However, many activists and academics argue that mediation does not work in high-conflict cases.

High-Conflict Cases: Mediation or Litigation?

Researchers argue that in cases of domestic abuse, litigation should be the route taken rather than mediation (Alhalal et al., 2012; Lee & Lakhani, 2012; Aquilina, 2002; Amato, 2010; Krieger, 2002; Gagnon, 1992). In litigation, the standard of proof is "the preponderance of the evidence" (Zamir & Ritov, 2012, p. 165), which refers to the likelihood of an incident occurring. In mediation, the mediator has full control over whether or not to believe allegations made by the parties and to consider additional evidence, which is a problem because the mediator can dismiss violence that occurred in the relationship. Gagnon (1992) argues that by insisting on attending mediation "the batterer is told he has not committed a crime and the battered woman is told that she has not been the victim of a crime" (p. 276). The risk of dismissing violence in mediation is a direct result of the minimal training some mediators receive.

Litigation can also be problematic because it can cost more money, there can be longer delays, and lawyers can potentially abuse the system (i.e. over-charge clients, or advise a client to not disclose domestic abuse) (Shipley, 2011). Court procedures can also be harsh "reinforcing the abusive parent's proclivity toward punitive behaviour … if the [divorce] process is unrelentingly severe and the parent immediately or eventually re-assumes a parenting role without benefit of treatment, their children remain at risk" (Adler, 2013, p. 731).

Legal aid, although supportive of both mediation and litigation, can also be a barrier to litigation for victims of abuse because Legal Aid Ontario wants alternative dispute resolution to be the first avenue before litigation (LAO, 2012c). Furthermore, if parties are involved with Legal Aid and are litigating, they may be required to attend a settlement conference (LAO, 2012c) although in certain circumstances, such as an abusive relationship, a victim's lawyer can attend on their own to safeguard his or her client from re-victimization.

Only two of the mediators felt that high-conflict cases should not be mediated. I found this disturbing because it appeared that the remaining five participants were confident that they could manage high-conflict couples. I was also concerned that none of the mediators have developed protocols for screening for situations involving power differentials and abuse. This reiterates the fact that the mediation process needs government regulation.

Pre-Mediation Screening is Not Foolproof

Parties wishing to divorce must be screened at the time of application (Brown, 2009). In this study, mediators had different ways of conducting pre-mediation screening,

although all asserted that interviewing parties individually is beneficial. All had interview protocols and questions in place and some continually refined their interview questions based on previous mediation experiences. One participant who was confident in her screening questions wrongly assumed judges have a duty to identify cases of domestic abuse. This is not technically possible because if mandatory information sessions were implemented in Thunder Bay, the cases would potentially be referred to a mediator first rather than to a judge.

All participants agreed that understanding relationship context is important before mediation begins because it will give some insight into whether domestic abuse is present, but recognizing abuse is not always easy. The literature reveals that sometimes mediators dismiss domestic abuse as merely inter-parental conflict (Semple, 2012). In this study, some mediators overlooked characteristics of abuse, such as emotional abuse, financial abuse or verbal abuse.

All participants revealed that criminal records are not required in mediation, unless there is suspicion during pre-mediation screening. Of course, not all abusive instances are documented, particularly forms of abuse that are not physical. Indeed, physical abuse is often seen as the only form of 'real' abuse (Lee & Lakhani, 2012; Johnston & Ver Steegh, 2013; Dennison, 2010; Rivera et al., 2012), but acknowledging emotional abuse, for example, is important because it carries tragic implications in the everyday lives of abused women that could be ignored in mediation.

While literature reveals that if there is no abuse present, mediation has the potential to work, there is still the possibility for an imbalance of power to surface (Semple, 2012; Madsen, 2011). An imbalance of power creates unfairness in the

mediation process (Semple, 2012; Madsen, 2011), especially for those mediators relying on "first impressions" or gut instincts alone.

The inconsistencies revealed in these participants' pre-mediation screenings show that no techniques are foolproof. And I would argue that pre-mediation screening, although beneficial for many individuals, might be problematic in cases of domestic abuse if mediators are expecting the potential parties to be open and honest. Many strangers do not discuss all relevant information unless there is a basis of trust and gaining trust is not possible in the first meeting. Women who are victims of abuse may not disclose this information until later, if at all.

It was clear that there is inconsistency in pre-mediation screening between participants. This is a cause for concern because this means there is plenty of room for error when mediators do not follow the same screening routine and when training with regard to domestic violence is minimal. A mediator may miss important information if good questions are not asked, which provides an opportunity for couples who should not mediate to slip through the cracks.

Additional Evidence and Safety Precautions

The guidelines posted on the Ministry of the Attorney General's website state that "mediation is not right for everyone, particularly in cases where there has been violence or abuse" (MOAG, 2013, ¶ 8). Unfortunately, most participants did not seem to recognize this and a number recommended making use of additional resources, such as social workers and counseling services, to allow mediation to continue even when relationships were abusive. Requesting that external experts be part of the mediation process can be

problematic because more time and money is invested in mediation. The additional expertise might be a waste of time if the mediator does not even consider this evidence.

Another issue that came up in this study concerns safety planning for participants in mediation and for the mediators themselves. The majority of the mediators did recognize the importance of protecting an abused woman's safety during mediation and all asserted that they had protocols for separating parties and ensuring that mediation was fair, even in a context of fear and/or imbalance of power. None, however, discussed any safety planning they had done for themselves.

Mediators are required to make the mediating environment safe for everyone involved, but what happens when they cannot do this? Mediators need to consider their own safety in the mediation process too. For example, if an abuser happens to make it through pre-mediation screening and the mediator makes the abuser angry, the mediator's safety might also be at risk.

Shuttle Mediation in High-Conflict Cases

As noted, shuttle mediation is where each party is placed in a separate room unknown to the other party and the mediator shuttles between the rooms discussing the issue(s) being mediated (Hedeen, 2012). Shuttle mediation is not beneficial in every case because sometimes the mediator may not know all of the facts of the case (Ambrozic, 2012). Further, the shuttle mediation process is often believed to "allow participants to be more open and direct about their 'bottom lines' knowing that the discussion with the mediator will not be disclosed to the other side" (¶ 2), but this can be problematic in cases where abuse has occurred. Even if the parties are separated, victims of abuse are most likely frightened and might find it hard to discuss what they want or what they can get.

As well, there may be many other issues distracting a victim of abuse at that time, such as whether the mediator has taken proper safety precautions, whether she will be seen by her abuser and whether she will be re-victimized once the mediation is over if the abuser thinks she has asked for too much.

If there are children involved, shuttle mediation becomes even more difficult because both parties might be providing conflicting information to the mediator about what they think is in the children's best interests and parental responsibilities, such as sole custody, or moving a child to a new location. To discuss these issues during shuttle mediation might be very difficult because it is up to the mediator to disclose what was said to him or her by the other party and information that appears irrelevant to the mediator, but considered important by the parties, may be ignored during the mediation (Brandon, 2005).

When choosing to mediate a high-conflict case using shuttle mediation, the first question that should be considered by the mediator is: Am I confident that I have the negotiation skills to facilitate this process (Brandon, 2005)? If the mediator believes that he or she has the required level of skill, additional factors need to be considered, such as:

> Is it too early or too late in the conflict or dispute [to conduct shuttle mediation]? This is important because the mediator might have to deal with an amount of unresolved emotional issues that perhaps need to be dealt with in a counseling setting or additional issues are raised, adding to the complexity [of the mediation]. (p. 45)

All of the mediators in this study recognized that there might be emotional turmoil, but this did not stop them from continuing with shuttle mediation.

Also, the cost of shuttle mediation needs to be considered because it is "more expensive and more time-consuming" (p. 45). None of the participants considered the cost of shuttle mediation. There are also other issues to assess in mediation. Brandon (2005) states:

> The mediator is more likely to be involved in the content of the issues and could influence decision-making due to poor or lack of preparation by the parties; non-literal and non-verbal meanings tend to get lost in translation as there is no access to body language or tone of voice; the mediator is more likely to try to smooth things over, which may not help the parties in their future dealings with each other; [and/or] the parties want the mediator to pass on messages that may be deemed not useful to the discussions. (p. 45)

All of these issues need to be carefully considered, but none of these concerns were mentioned by the participants.

Another problem with conducting shuttle mediation with high-conflict cases is that the mediator is only responsible up until the point that the mediation session is complete (Zhao & Koo, 2011). They are not responsible for what happens afterwards. Participants in this study did discuss safety mechanisms, but it appears that women, in general, are held responsible for anything that happens to them after mediation. This reinforces the belief that women are at fault for any recurring abuse which is problematic (Baker, 2012; Chewter, 2003; Rosnes, 1997).

Shuttle mediation needs to be carefully considered on a case-by-case basis rather than just assuming that it is a good mediating technique, even in cases of domestic abuse. While it may still be used in instances where there are no power imbalances and parties

want to mediate but not want to see the other (Hedeen, 2012), I would recommend not allowing high-conflict cases to be mediated, regardless of the mediator's expertise.

Mediation Involving Aboriginal Women and their Families

Mediation involving Aboriginal women might also be problematic if mediators are unaware of issues that affect Aboriginal peoples. Most participants in this study had not conducted mediation with Aboriginal women and thus most excused themselves from answering this question. I found this to be quite surprising because of the high Aboriginal population within and surrounding Thunder Bay.

The two participants who have worked with Aboriginal women noted how challenging it can be for these women to discuss domestic abuse. Indeed, many Aboriginal women do not disclose instances of domestic abuse to mediators, or to any personnel within the adversarial legal system, perhaps because this system disregards traditional Aboriginal justice practices. For example, in 1987, the city of Whitehorse discussed mediation techniques for Aboriginal peoples to determine "if they might be more appropriate than adversarial courts" (AJIC, 2012b, ¶ 60). A mock mediation was conducted with three mediators; one mediator was "Elder Charlie Fisher from the Islington Reserve at Whitedog, and Ontario's first Native Justice of the Peace" (¶ 60). Fisher removed the barriers between the mediators and parties and "everyone sat in a circle, as equals" (¶ 60). Two more participants acted as Elders for the parties (AJIC, 2012b). The two parties did not speak, and there was no mention of the issue to be mediated nor would "restitution, punishment or any consequence be mentioned" (¶ 60). The purpose of the traditional forum was to "diminish bad feelings, obtain counseling from the Elder until the individual's spirit was 'cleansed' and made whole again" (¶ 60).

This example reveals that mediation might be better for some Aboriginal people given its resonance with Aboriginal cultural traditions.

Only two participants discussed Aboriginal mediation techniques: Aboriginal prayers and circle mediations. Other mediation techniques that Aboriginal cultures practice include "smudging, the talking circle, and the sweat lodge" (Shea, Nahwegahbow & Andersson, 2010, p. 38). These techniques fit with traditional cultural views as they consist of "systems thinking" where the community is involved (Shea et al., 2010). Since only two participants discussed traditional practices, I am left with the impression that the remaining five participants are either unaware of issues that affect Aboriginal people or were uncomfortable speaking about Aboriginal mediation techniques.

The Voices of Children in Mediation

There is not much literature on the participation of children in mediation thus it is hard to answer the question that Dennison (2010) asks: "does mediation fail in its attempt to protect children" (p. 169)? What is considered the best interests of the children and who gets to decide? Dennison (2010) argues that the concept of 'best interests' needs to coincide with the age of the child, maturity level and family circumstances and needs to be kept front and centre because children can be affected socially, psychologically, and educationally when their parents divorce (Amato, 2010; Potter, 2010). Sometimes the best thing for children whose parents are divorcing is providing them with the opportunity to speak in the mediation as it might help them to cope better overall with the divorce process. Also, if children have grown up in an abusive household, they may be traumatized (Dennison, 2010; Cherlin & Morrison, 1995; Bryne & Taylor, 2007;

Chewter, 2003; Bryner, 2001; Onyskiw, 2003; Osofsky, 1995; Krieger, 2002; Kerig, 2003; Evans & Kim, 2013; Adler, 2013; Gagnon, 1992; Veltman & Browne, 2001; Geffner, 1990; McCloskey et al., 1995).

The participants in this study, for the most part, do not include children in mediation but instead look at paperwork, such as report cards, or rely on the parents to discuss how the children are behaving. Relying on the divorcing parents is problematic because they might provide false information about the child to manipulate the mediator. Thus I suspect that mediators should in fact include the voices of children in the process, when appropriate. Those children who are included might be able to explain how the entire divorce process affects them, particularly how they are doing academically.

Hearing a child's point of view, however, might be difficult given mediators are not required to hear it. Rather, it is up to the parents whether the child is involved at all (Dennison, 2010). Children 12 and older may be permitted to give their opinion in mediation, but generally they are not involved. This is another problem of the failure to regulate the mediation process because currently it is only up to the mediator whether or not children are involved.

If children are required to provide their input in mediation or speak to a judge, how can they be protected? Children might be frightened to meet with their divorcing parents in mediation and "there is no suggestion that a court welfare officer [or the Office of the Children's Lawyer will be advised and requested] to interview the child and present its views, fears, and concerns to the parties" (Dennison, 2010, p. 172). There is also no guarantee that what the child says will actually be considered.

Certainly, the participants understand that parents need to be educated with regard to how children cope with divorce. Only one participant, however, discussed formally educating parents. When parents understand how children are affected before, during, and after the divorce process, it also has the potential to impact their future contact with their ex-spouse. When couples attend the mandatory information sessions on mediation, they are provided with information on the divorce process (Pottinger, 2011; Dennison, 2010).

It is also important to acknowledge, like Amato (2010), that some parents neglect their children. Children who are cared for during the divorce process may have better coping skills (Potter, 2010; Sigal et al., 2012). It is also argued that the parents' level of education can impact their understanding of divorce, the divorce process and how children cope (Hovde Lyngstad, 2004). This is a crucial point because some parents may be unaware of the ways their behaviour impacts their children, especially in high-conflict divorce. Thus, allowing children to participate in the mediation process might provide an opportunity for parents to reflect on the information learned from mediators about the divorce process and its impact on their children.

Consequences for Educational Achievement

The responses provided in this study by mediators reveal that they understand children's success in school is partially determined by home life. Abuse going on in the home can affect children's educational achievement, no matter who is involved (Cherlin & Morrison, 1995; Bryne & Taylor, 2007; Chewter, 2003; Bryner, 2001; Onyskiw, 2003; Osofsky, 1995; Krieger, 2002; Kerig, 2003; Evans & Kim, 2013; Sun & Li, 2009; Veltman & Browne, 2001; McCloskey, et al., 1995; Jeynes, 2000a; Jeynes, 2000b). Amato (2010) reveals that the divorce process is different for everyone. The impact on

children's educational achievement depends on how the divorce process started, the amount and type of communication and/or conflict involved during the divorce process and the end result (Amato, 2010).

The literature clearly demonstrates that children can be affected by violence in the home (Levendosky, Bogat, & Martinez-Torteya, 2013; Cherlin & Morrison, 1995; Bryne & Taylor, 2007; Chewter, 2003; Bryner, 2001; Onyskiw, 2003; Osofsky, 1995; Krieger, 2002; Kerig, 2003; Evans & Kim, 2013; Veltman & Browne, 2001; McCloskey, et al., 1995; Jeynes, 2000a; Jeynes, 2000b). Levendosky et al. (2013) argue "the likelihood of traumatic symptoms increases as children age; this is consistent with the trajectory of other anxiety disorders and internalizing disorders generally" (p. 195). Amato (2010) reveals that socio-emotional health is important for educational success. Children who are involved in a positive environment have a greater chance of academic success, but it is difficult for children who have faced violence in the home to concentrate and succeed in school (Levendosky et al., 2013; Amato, 2010; Cherlin & Morrison, 1995; Bryne & Taylor, 2007; Chewter, 2003; Bryner, 2001; Onyskiw, 2003; Osofsky, 1995; Krieger, 2002; Kerig, 2003; Evans & Kim, 2013; Veltman & Browne, 2001; McCloskey, et al., 1995; Jeynes, 2000a; Jeynes, 2000b).

Generally, children are at risk for long-term effects following parental divorce (Brown, 2009; Cherlin & Morrison, 1995; Bryne & Taylor, 2007; Chewter, 2003; Bryner, 2001; Onyskiw, 2003; Osofsky, 1995; Krieger, 2002; Kerig, 2003; Evans & Kim, 2013; Veltman & Browne, 2001; McCloskey, et al., 1995; Jeynes, 2000a; Jeynes, 2000b). Brown (2009) argues that parental conflict "prior, during, and after the legal process of divorce" (p. 462) is a large factor in a child's adjustment post-divorce. Brown (2009)

further states that children who experienced a negative parental divorce are more likely to suffer from "higher levels of depression, more learning disabilities, poorer psychological adjustment, more physical health problems, lower academic performance, and greater likelihood to engage in antisocial or delinquent behaviour" (pp. 462-463). The mandatory mediation information sessions inform parents about the impact of divorce on children, but do not ask questions about violence. Yet the impact of violence may be more damaging than divorce. This problem may be perpetuated and deepened if mediation deters abused women from divorce or leads to them being in a disadvantaged position for negotiation.

Mediators who continue to mediate need to be aware of the needs of any children involved in the relationship. This is important because their interactions in mediation may be reflected at home. When a mother arrives home after a bad day in a mediation session, the mother could be fearful that her abuser will hurt her. Any children present in the home are more likely to also be fearful. Levendosky et al. (2013) state that "young children who are likely to be in close physical and emotional proximity to their mothers are likely to influence and be influenced by her traumatic response to the IPV [intimate partner violence]" (p. 196). Violence in the home affects many children.

Educational Success of Aboriginal Children

I also wanted to know how mediators understand the impact of domestic abuse on Aboriginal children's educational achievement. Three participants did not feel comfortable discussing this impact because they did not want to assume or speak on behalf of Aboriginal peoples and three discussed how children's education is generally impacted by divorce. As with my discussion of the impacts of mediation on Aboriginal

women, this appears problematic given the Aboriginal population in and around Thunder Bay.

Conclusion

Overall, the results of this study reveal that the failure to regulate mediators and the mediation process is a serious problem. A Government-created body regulating mediators needs to be in place, rather than allowing 'market regulation' by the Ontario Association of Family Mediation, the Alternative Dispute Resolution Institute of Ontario, and Family Mediation Canada, of which not all mediators are a part (it is not mandatory that mediators be part of any such association). While mediation can potentially work, cases involving abuse should not be mediated yet these cases can slip through pre-screening especially if some cultural groups do not disclose abuse. Pre-mediation screening, the involvement of external experts, creating and implementing safety plans, shuttle mediation and including children in the process are all up to the discretion of the mediator. Mediators thus have a huge amount of control and I would argue that this is inappropriate given the lack of government regulation of mediators and the potentially inadequate training of many mediators. All participants did, however, recognize that children's academic achievement can be affected by divorce, including mediation, but without improved universal training and regulation of mediators, the needs of children in mediation are clearly still not being met with consistency.

Chapter Six: Conclusion

Since I was young, I have been interested in law. This thesis provided my first opportunity to critically evaluate a legal process and conduct real research. During the literature review process, I became frustrated with the way legal amendments are created. I ended up confused between the *Family Law Act* and Family Law Rules. The amendment to the *Ontario Courts of Justice Act,* introducing the Mandatory Information Program sessions on mediation, added information that affected the *Family Law Act,* the *Divorce Act*, and the *Children's Law Reform Act*, yet none of those Acts were actually amended. The editing process was also challenging. Overall this research project was much larger than anticipated. I feel that it is two theses merged into one since I am discussing two topics – the new divorce mediation process on abused women and how it has the potential to affect children's education. If I had to do this project again, I would choose one topic, and leave the other for future research. I felt overwhelmed at times, especially when I had my daughter pre-mature at six months gestation. Instead of continuing to write, I would have taken a year off on maternity leave. One thing I would not change is my supervisor. It is because of the endless support from my supervisor, Dr. Lori Chambers, that I continued to write, despite the bumps endured along the road.

Abuse is a major issue that needs to be recognized in divorce mediation. When divorce mediation continues in high-conflict cases, abuse is privatized. My literature review and the interviews provide a deeper understanding of the experiences potentially faced in mediation (Goulding, 2005). This research is timely in light of the increasing public dialogue around divorce mediation in Ontario, but the small sample size and geographical location of the participants does not allow the data to be generalized.

Nonetheless, this study reveals some key problems with divorce mediation for abused women that need to be considered.

Overview of Results

The results of this study reveal that Ontario family law rules are not universal in Ontario because the mandatory information program on mediation is not fully implemented in Thunder Bay (and presumably other areas in the province as well). It is also unclear whether attendance at these sessions by every divorcing couple will ever be mandatory in Thunder Bay. The inability to implement mandatory legislation displays funding inequalities in northern Ontario. Whether divorce mediation is in fact a desired outcome is doubtful in the case of abuse. Currently, this void in implementation gives mediators and judges in areas like Thunder Bay authority over how rules are interpreted. This could be either positive or negative and, as it stands, there still is much potential for re-victimization of abused women.

My research reveals that mediators are unregulated by government and may lack the training and skills necessary to screen individuals who are referred to mediation. While accrediting bodies self-regulate members, there is no Government-created body overseeing how mediators conduct screening or other parts of the mediation process, including shuttle mediation. Abusive couples may slip through the cracks of pre-mediation screening. Are mediators blamed when abusive parties slip through the cracks and problems for women and children escalate? Some mediators can be disciplined, but only those members of Family Mediation Canada, the Alternative Dispute Resolution Institute of Ontario, and the Ontario Association of Family Mediation. All other

mediators are free to practice mediation as they wish, regardless of the consequences of the divorce mediation process on the parties, family members or children in the home.

I was particularly surprised to find that the mediators involved in this study did not have much training in Aboriginal cultural practices, nor did they understand the impacts the divorce mediation process might have on Aboriginal women and children. It is important for mediators, especially those in Northwestern Ontario, to be aware of Aboriginal practices, such as the circle mediation technique. Indeed, I would argue that knowledge of Aboriginal cultural practices should be a requirement of the mediation process given the significant Aboriginal population in and around Thunder Bay.

Mediators also need to remain conscious of the fact that children are directly or indirectly involved in the divorce process. Sometimes children are allowed to speak in the mediation session, which may or may not influence the mediation agreement between the parents. However, children are only involved in the mediation when, and if, the mediator allows it. Even if children are involved in the process, it does not guarantee that their opinions will be considered. Some children might cope better when they are involved, depending on the relationship between the parents, while other children might not cope well at all.

This study also found that participants had some concerns about how the new divorce mediation process might affect children's educational achievement. Because there is no way to generalize how the divorce process affects children, every child needs to be assessed on a case-by-case basis to determine how their education is impacted (Amato, 2010). Still, it has been found that if children are exposed to violence in the home at an early age, their chances of success in school can be impacted (Evans & Kim,

2013; Cherlin & Morrison, 1995; Chewter, 2003; Bryne & Taylor, 2007; Bryner, 2001; Kelly & Emery, 2003; Veltman & Browne, 2001; McCloskey, et al., 1995; Jeynes, 2000a; Jeynes, 2000b).

As well, I found a gap in the literature. Distinction needs to be made between the effects of an abusive home on children's educational achievement and the effects of divorce mediation on children's educational achievement. This area of research deserves more attention with the implementation of mediation in courthouses.

Overall, the results of this study suggest that the implementation of the new divorce mediation process province-wide was premature. I thus recommend the following: A Government-run body needs to be created to oversee mediators and the mediation process. One requirement of mediators must be initial and ongoing mediation training and it should be up to the overseeing body to ensure that training is accessible across the province, not just in large cities in southern Ontario. Mediation training should include providing mediators with the tools to recognize power imbalances during pre-mediation screening. If a power imbalance is suspected in pre-mediation screening, mediation should not continue. Cases that do not show power imbalances have the potential to work, but procedures should be created that regulate how children participate in mediation. Some children may cope well if they participate, while others may need to refrain. The amount and type of impact on children must be considered because children can suffer psychologically and emotionally, which in turn can affect their educational success. As this project reaches its conclusion, there are many avenues that can be followed to conduct further research. Some suggestions for further research include: how many divorcing couples agree to mediate after attending the mandatory information

sessions? It would be interesting to conduct this research at various courthouses across the province. Another research question that stems from this project: can mediation training be implemented across Ontario in a cost-effective way to ensure mediators receive regular training? Lastly, in conjunction with children and their educational achievement, I think it is very important to conduct case studies with Aboriginal families and children to assess how the new divorce mediation process affects them.

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Appendix A – Semi-Structured Interview Questions

1. (a) How long have you been a Mediator?
   (b) How long have you been a Family Mediator?

2. (a) Approximately how many cases have you mediated?
   (b) Approximately how many of those cases were family matters?

3. Is the move from voluntary mediation to mandatory mediation in Ontario helpful or does it disadvantage abused women?

4. How do these changes affect Indigenous women living on reserve?

5. What are the advantages and disadvantages of family mediation, compared to having cases heard by family judges?

6. According to your mediation policy, what is domestic abuse?

7. How do you screen potential parties for abuse?

8. If you continue to mediate when abuse is a factor, please explain the type of external resources you provide.

9. What do you tell parents in divorce mediation about the impact of divorce on children?

10. Abuse has occurred in the home and children recognize the stress their mother is going through in the mediation process.
    (a) How is children's social development affected?
    (b) How is children's academic development affected?

11. What, if any, connections do you see between abuse in the home, abuse throughout divorce/mediation proceedings and children's academic development?
    (a) Did you ever think of these connections before? Why or why not?

12. What are the effects, if any, of mediation in abusive cases on children's educational achievement?

13. What are the effects, if any, on Indigenous children's educational achievement if they live on reserve when their parents are going through divorce mediation?

14. Do you believe the implementation of mandatory mediation privatizes court proceedings?
    (a) Why or why not?

15. What does this mean for precedent case law in family cases?

Appendix B – Letter dated July 25, 2012, from Lakehead University Office of Research Services re: ethical approval

Lakehead
UNIVERSITY

Office of Research Services

July 25, 2012

Tel 807-343-8934
Fax 807-346-7749

Principal Investigator: Dr. A. Lori Chambers
Student Investigator: Robyn A. O'Loughlin-Pepin
Education/Women's Studies
Lakehead University
955 Oliver Road
Thunder Bay, ON P7B 5E1

Dear Dr. Chambers:

Re: REB Project #: 030 12-13 / Romeo File No: 1462728
Granting Agency: SSHRC, Canadian Federation of University Women – Canadian Home Economics Association Fellowship (Graduate Level Scholarships)
Granting Agency Project #: SSHRC Award # 766-2012-0188

On behalf of the Research Ethics Board, I am pleased to grant ethical approval to your research project titled, "The Ontario Family Mediation Process and Its Potential Influence on Children's Academic Achievement".

Ethics approval is valid until July 25, 2013. Please submit a Request for Renewal form to the Office of Research Services by June 25, 2013 if your research involving human subjects will continue for longer than one year. A Final Report must be submitted promptly upon completion of the project. Research Ethics Board forms are available at:

http://research.lakeheadu.ca/ethics_resources.html

During the course of the study, any modifications to the protocol or forms must not be initiated without prior written approval from the REB. You must promptly notify the REB of any adverse events that may occur.

Completed reports and correspondence may be directed to:

Research Ethics Board
c/o Office of Research Services
Lakehead University
955 Oliver Road
Thunder Bay, ON P7B 5E1
Fax: (807) 346-7749

Best wishes for a successful research project.

Sincerely,

Dr. Richard Maundrell
Chair, Research Ethics Board

/scw

Lakehead Research...CREATING THE FUTURE NOW

Appendix C – Letter to Potential Participants

Address of Potential Participant

Date, 2012

Dear Potential Participant:

RE: Graduate Student Thesis Research
The Ontario family mediation process and its potential influence on children's educational achievement
Lakehead University Ethics Approval #030-12-13

I am conducting a research project designed to investigate the accessibility of divorce in abusive relationships in Ontario through the new mandatory mediation process. I am interested in the effects spousal abuse may have on children in the home, particularly in terms of children's ability to learn and interact with others in school when home life is troubled by abuse.

The purpose of this research project is to gather information to examine Ontario family mediators' responses to determine if mediation can continue when abuse is a factor. You are being asked to be a potential participant and participate in an interview to assist this project in that regard. I expect the interview will take approximately 60 minutes.

Confidentiality

The identities of all people who participate will remain anonymous and will be kept confidential. Identifiable data will be stored securely in a locked metal filing cabinet or in a password protected computer account. Furthermore, the interview transcripts will be securely stored for five (5) years following completion of this project, as per Lakehead University policy. All data from individual participants will be coded so that their anonymity will be protected in any reports, research papers, thesis documents, and presentations that result from this work. Moreover, the raw data collected for this research will only be accessible by my supervisor, Dr. Lori Chambers and myself.

Remuneration/Compensation

I am very grateful for your participation. In the event you participate in an interview, I will gladly provide you with a $50.00 gift card to the Prospector Steakhouse.

Consent

I intend for your participation in this project to be pleasant and stress-free. Your participation is entirely voluntary and you may refuse to participate or withdraw from the study at any time. Furthermore, if you agree to participate, you can refuse to answer any questions.

I do require consent forms to be executed. If you agree to participate in this study, I will forward you the consent form.

Harm and/or Potential Risks to Participants

Participation is voluntary. You are being asked to participate based upon your professional position as a family mediator. No harm is anticipated. There is a low probability of risk to you because I am obtaining your professional opinion. However, there are a small number of potential participants, so you may ultimately recognize another participant or be recognizable to others in the field. This is a minor form of risk that needs to be acknowledged.

Follow-up

Upon completion of the interview, there may be answers that require follow-up or clarification. If so, I will be in contact with you.

Availability of Research Findings

Upon completion of the thesis, an electronic copy will be provided to you.

Publication

Although publication of the results of the study is desired, the primary purpose of this research is to complete my thesis, a partial requirement for the M.Ed. Program at Lakehead University.

Contact Information About the Project

Thesis Supervisor: Dr. Lori Chambers, Chair/Professor, Department of Women's Studies, Lakehead University, (807) 343-8218

Lakehead University Research Ethics Board Contact Information

This study has been approved by the Lakehead University Research Ethics Board. If you have any questions related to the ethics of the research and would like to speak to someone outside of the research team, please contact Sue Wright at the Research Ethics Board at (807) 343-8283 or swright@lakeheadu.ca.

Location: 1294 Balmoral Street, Lower Level 0001
Hours of Operation: Monday to Friday, 8:30am-4:30pm
General Phone: (807) 343-8934
Fax: (807) 346-7749
Mailing Address: Office of Research Services, Lakehead University, 955 Oliver Road, Thunder Bay, Ontario, P7B 5E1

Thank you for your time and I hope you consider participating in this project. If you choose to participate in this project, please contact me at (807) 620-2616 or raolough@lakeheadu.ca.

Yours truly,

Robyn A. O'Loughlin-Pepin,
Lakehead University M.Ed. Graduate Student

Appendix D – Consent Form

RE: Graduate Student Thesis Research
The Ontario family mediation process and its potential influence on children's educational achievement
Lakehead University Ethics Approval #030-12-13

CONSENT

I, _____, have read and understood the information letter for the above-mentioned study and as such, consent to participate in the above-mentioned research project being conducted by Robyn A. O'Loughlin-Pepin, a M.Ed. with Specialization in Women's Studies candidate at Lakehead University.

I hereby understand that no harm is intended and that the risks are minimal because I am providing my professional opinions for this research project.

I hereby understand that I will remain anonymous in any publication/public presentation of research findings.

I hereby understand that my participation in the above-mentioned research project is entirely voluntary and I am able to withdraw at any time.

I hereby understand that the research findings will be made available to me through electronic mail.

I hereby understand that the data collected will be securely stored for five (5) years per Lakehead University policy.

Date: _____

Name (Print): _____

Signature: _____