



Examining Domestic Violence Screening Practices of Mediators and Lawyers

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Introduction

The Calgary Domestic Violence Collective has identified screening for domestic violence as a protective factor for domestic violence. In 2017 a small research project was conducted in Calgary to understand the prevalence of screening and its impact in certain sectors including family law. It found that there was a low prevalence of screening with a low prevalence of disclosure of domestic violence, despite the fact there is a high prevalence of individuals experience domestic violence and high conflict access the family law legal system. This report was developed to better understand and address this discrepancy.

Screening, according to Neilson (2012), “refers to processes used to detect and identify the presence, type, frequency, pattern, timing, and severity of domestic and family violence” (p. 8). Screening for domestic violence can be conducted by family law lawyers, arbitrators and mediators to ensure that clients are being adequately protected and represented. Anecdotal evidence from Calgary’s community of domestic violence service providers showed that despite the opportunities and benefits of screening, most professionals working within the family law sector are not screening for domestic violence.

In order to understand the barriers and implications of screening and to develop suggestions to improve this process, a comprehensive review of the literature and 29 interviews and surveys with professionals working within family law were conducted. Findings suggest that there are several barriers to screening including inconsistent policy and legislation, a lack of awareness of DV, a lack of training, ineffective tools and cost and time constraints. The benefits however include improved safety, representation and referrals and opportunities for cross-sector collaboration. We conclude with recommendations to better meet the needs of both clients and legal professionals.

Methods

Literature Review

The review of the literature included both grey literature and academic articles. Any articles that examined screening practices outside law and mediation settings were excluded to ensure that only relevant tools and practices were reviewed. The search terms included “domestic violence,” “intimate partner violence,” “law,” “lawyer,” “mediator,” “mediation,” “screening,” “tools,” “screening practices,” and “screening tools.” A total of 51 articles and reports were reviewed, 39 of which are included in this report. Further, 11 available screening tools were reviewed to examine the measures, questions, and components included.

Interviews

Twenty-eight lawyers, mediators and arbitrators from community-based organizations and private family law practices and one judge participated in interviews either in person, over the phone or through an online survey platform.

The questions asked to participants were:

1. Tell us what you do when you suspect domestic violence (DV).
2. Do you use particular tools or consistent practices/processes when you suspect domestic violence?
3. We know some mediators/lawyers are reluctant to screen for or take cases that involve DV. Do you have any thoughts on why that is?
4. In your experience, what would make the process for screening easier or better for you?
5. Would you be interested in exploring the development/implementation of a tool?

The results from the literature review and interviews were compiled and analysed for common themes.

1. Literature Review Findings

The various articles that address screening practices and tools used by mediators and lawyers identify successes, shortcomings, and recommendations for improvement. Each of the following themes provides insight into current practices and ways in which these can be modified to better meet the needs of individuals who have experienced domestic violence.

The importance of screening

The literature highlights several consequences of failing to screen for domestic violence. For instance, Hoffman (2013) emphasizes that failing to identify the presence of domestic violence may lead to dangerous power dynamics that do not allow the victim of violence to act in their own best interests. Further, Bingham, Beldin, and Dendinger (2014) suggest that failing to screen appropriately for domestic violence “might be contributing to harm in addition to missing opportunities to plan for safety and provide appropriate referrals” (p. 307).

Screening for domestic violence has important implications for both professionals and clients, including ensuring the safety of clients, the appropriateness of mediation, and the services provided by lawyers. Further, screening has an essential role to play in preventing the reoccurrence of violence in intimate partner relationships (Ellis, 2008). Screening tools act as a checkpoint to identify the presence of domestic violence and if necessary, can facilitate access to supports and resources for victims. This, in turn, can prevent victims from experiencing further violence by providing them with appropriate supports.

Detection of domestic violence and safety of participants

There was consensus that screening for domestic violence is an essential part of the legal process. Burman (2003) emphasizes the importance of screening processes as the only way to properly identify if clients are experiencing domestic violence. Further, Holtzworth-Munroe, Beck, and Applegate (2010) suggest screening is a crucial element of mediation, particularly for clients who are self-representing, as this may be the only time they are asked about violence and provided with support. The implementation of screening processes has diverse benefits to clients as Tan (1991) suggests that clients’ individual needs can be met, while Ver Steegh and Dalton

(2008) advise that this allows both risks and protective factors within relationships to be identified.

The literature suggests that screening is an essential element of ensuring the safety of clients and all other parties involved (Frederick, 2008; Getz, 2008). For instance, Ver Steegh (2014) identifies that lawyers are legally and professionally obligated to screen for domestic violence as failing to do so puts both clients and their family members at risk. Similarly, Frederick (2008) suggests that screening is crucial as violence impacts not only the parent involved, but the children and other family members. By implementing mandatory screening for domestic violence, the Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence (2013) identifies that legal processes like mediation can be adapted to ensure the safety of participants. Safety of participants can also be improved through incorporating risk assessment and planning as this will “inform the victim’s decision-making and survival strategies” (Frederick, 2008, p. 529).

Appropriateness of mediation

Within the literature, it is suggested that domestic violence screening is necessary to determine the appropriateness of mediation (Clemants & Gross, 2007; Lehal, FitzGerald, Kaur, Neallani, & Sainty, 2017; Murphy & Rubinson, 2005). However, the extent to which domestic violence impacts mediation is less clear. For instance, Lichon (2017) suggests that “by setting appropriate screening and safeguards, there are some levels or typologies of violence that are appropriate for mediation” (p. 5). Additionally, Girdner (1990) emphasizes that by understanding the power dynamics of couples’ relationships, mediators can navigate negotiation accordingly. In contrast, Clemants and Gross (2007) identify that many practitioners and advocates have expressed that domestic violence creates a power imbalance within relationships that may prevent the fundamental principles of mediation from occurring (i.e. allowing participants to freely negotiate for themselves). Finally, Hoffman (2013) suggests that through identifying the severity and time frame of violence, mediators can assess whether or not mediation is a safe choice. While there may not be consensus regarding when mediation is appropriate, it is evident that screening is critical to identifying the presence of violence, thus enabling mediators to evaluate the situation.

Appropriate legal representation

Screening for domestic violence is also an essential part of ensuring proper legal representation is provided (Burman, 2003; Sussman & Carter, n.d.). Burman (2003) suggests that screening for domestic violence allows lawyers to identify if they can provide adequate representation and if not, allows them to refer clients to other lawyers. Murphy and Rubinson (2005) advocate that lawyers’ relationships with their clients uniquely position them to screen for domestic violence and by doing so, this enables them to identify whether or not mediation is suitable. Ver Steegh (2014) echoes this, suggesting that as lawyers have privileged relationships with clients, they are “uniquely positioned to detect intimate partner violence, understand its implications, counsel and advocate for parents, and promote positive outcomes for children” (pp. 1056-1057).

Consistency

Ver Steegh (2014) suggests that due to the “prevalence of intimate partner violence and the profound impact it may have on children, parenting, and legal representation,” consistent screening protocols should be universally adopted by lawyers (p. 1057). Rossi et al. (2015) suggest that developing standardized criteria for mediators would increase reliability and reduce variance across professionals.

However, Holtzworth-Munroe et al. (2010) identify that mediators have expressed reluctance regarding the implementation of universal screening as many mediators believe that intimate partner violence “is not a frequently occurring problem among the couples they see in mediation” (p. 646). If universal screening processes are to be implemented, mediators must be educated on the prevalence of domestic violence and the benefits of universal screening.

Ongoing screening

There is also a consensus in the literature that screening should be conducted on an ongoing basis throughout the legal process (Capulong, 2013; Lehal et al., 2017; Neilson, 2012 ; Ontario Association for Family Mediation, 2013; Ver Steegh, 2014). For instance, Frederick (2008) suggests that screening could occur each time legal services such as mediation sessions are provided. Ongoing screening is also supported by Getz (2008), who suggests that mediation must be conducted by both mediators and lawyers as mediators should not assume that screening has already taken place. Murphy and Rubinson (2005) argue that screening should be conducted both prior to and during mediation as domestic violence is not always identified by those screening prior to mediation.

Ver Steegh (2014) and Wathen, MacGregor, and MacMillan (2016) suggest that professionals must watch for potential signs of domestic violence and if evident, they should inquire about clients’ exposure to abuse. Continually being watchful for signs of abuse is beneficial to the screening process as Ver Steegh (2014) suggests that “clients are more inclined to disclose intimate partner violence after a trusting professional relationship has been built” (p. 1055).

Collaboration across professions

Collaboration across professions is important to developing effective screening processes. For instance, Neilson (2012) suggests that lawyers and cultural experts can collaborate to create and modify screening tools to suit diverse social and cultural needs. Capulong (2013) advocates that screening itself is the responsibility of all professionals in the legal system and only through collaboration can domestic violence be properly identified and addressed. Further, by ensuring that screening is being conducted by several sources, Murphy and Rubinson (2005) indicate that this “will enable battered women and the judicial system to confer the benefits of mediation on some, [and] avoid its potential for harm on others” (p. 70).

Barriers to screening

Comfort zones

There are several barriers that prevent effective and consistent domestic violence screening by mediators and lawyers. For instance, Burman (2003) suggests that lawyers often believe that screening for domestic violence will be an uncomfortable process. However, Burman (2003) also identifies that while it may be challenging at first, clients who have been exposed to violence are often relieved to have it brought up, particularly when they are aware that the relationship with their lawyer is confidential.

Time and money

Capulong (2013) identifies that cost is a significant barrier as screening processes require additional staff and training, while also increasing judicial involvement and monitoring. This is further supported by Clemants and Gross (2007), who believe that additional expenses may create hesitancy to begin screening programs. Pokman et al. (2014) suggest that time is a barrier to domestic violence screening, they suggest that screening tools take no more than 15 or 20 minutes to complete. Pokman et al. (2014) also identifies that clients are “unwilling, and often unable, to spend significant amounts of time filling out questionnaires” (p. 530). Additionally, Ballard et al. (2011) found that mediators may be “conservative in labeling a case as violent” as this may lengthen the mediation process (p. 259). Although there are several barriers to screening identified in the literature, Burman (2003) suggests that as lawyers already screen for several other purposes, integrating a domestic violence screening tool into the process should not be difficult.

Current policies and legislation

The Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence (2013) identifies that generally, “family law lawyers in Canada are not required to screen their clients for family violence” and Canada’s laws and policies on screening vary from province to province. In Alberta, mediators are not legally obligated to screen for abuse. Across Alberta, Saskatchewan, and Ontario, mediation bodies have training and screening requirements; however, membership is voluntary (Lichon, 2017). Further, in Saskatchewan, Newfoundland, and Ontario, each Ministry of Justice identifies criteria that their mediators must fulfil, in both Saskatchewan and Newfoundland, mediators must screen for abuse and must have taken domestic violence training.

In British Columbia, the Family Law Act requires that both lawyers and mediators screen for domestic violence (Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence, 2013). Family Justice Services and Mediate BC, both of which support family mediators, each have “policies on mediating cases where family violence exists and [each] provides tools to screen for violence” (Lichon, 2017, p. 5). Murphy and Rubinson (2005) identify that in the United States, screening is only referenced in a few state laws and “those that do say little or nothing about who should do it or how it is to be done” (p. 64). While legislation varies across North America, there is little legislation ensuring consistency across screening practices and tools.

Barriers to detecting domestic violence

Fear and mistrust

Lawyers and mediators often face barriers to detecting domestic violence, even with screening tools in place. For instance, some clients may downplay or be reluctant or fearful to disclose their experiences because they are embarrassed, afraid, or distrustful (Bingham et al., 2014; Vaccaro & Medhekar, 2013; Ver Steegh & Dalton, 2008). As suggested by Lehal et al. (2017) this is indicative of the need for mediators to be aware of signs of abuse and to effectively ask questions in an appropriate manner. Additionally, as suggested by Bingham et al. (2014) it is essential that mediators are aware of “the emotional and physical risks of discussing the abuse” (p. 325). Vaccaro and Medhekar (2013) advise that some clients may not identify as having experienced domestic violence.

Ineffective tools

Poor screening tools and ineffective practices are also a barrier. This is identified by Ballard et al. (2011), who suggest that questions that are not specific enough may fail to identify clients’ experiences of abuse and “mediators did not report the presence of IPV in more than half the cases in which the parties themselves reported physical violence on a short, behaviorally specific screening questionnaire” (p. 256). Screening questions must also be wide-spanning in scope as Lehal et al. (2017) suggest that failing to inquire about different types of abusive behaviours decreases the likelihood that professionals will successfully screen for domestic violence. In other words, screening tools are a critical component of domestic violence screening and must be carefully developed to ensure that the questions being asked are effective and evidence-based, while also sensitive to clients’ needs.

Current screening practices

Across the literature, there is noticeable variance in the frequency with which professionals’ screen for domestic violence. While Ballard et al. (2011) identified that many mediation programs report screening for domestic violence, Clemants and Gross (2007) identified that only 37% of centers that reported some type of screening “actually employed any kind of formal process to screen clients for domestic violence” (p. 427). Further, the Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence (2013) identified that far more mediators screen for family violence than lawyers, 93% of mediators identified that they screen, while 83% of lawyers expressed that they rarely or never use a screening tool. This suggests that the employment of screening tools varies greatly across professions and jurisdictions.

The Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence (2013) identifies that all family justice centers in British Columbia screen for domestic violence at clients’ first point of contact. Further screening occurs if clients are referred to mediation services or a family justice counsellor. A report published by British Columbia’s Ministry of Justice (2014) states that when domestic violence is identified, further questions are asked to make referrals to appropriate services. Similarly, screening is conducted by various entities in the legal system in

Manitoba, including mediators and teams of lawyers and social workers who provide co-mediation (Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence, 2013).

While some of the literature suggests that screening is occurring on a regular basis, Lehal et al. (2017) identify that “the majority of practitioners are screening for family violence using their own screening tools” (p. 11). Further, they identified that screening takes between 5 minutes to more than an hour and a half, suggesting that there is great variance in tools and practices. Thus, along with ensuring that screening occurs in the first place, consistency across current screening practices must be further examined. Another consideration, as highlighted by Ver Steegh and Dalton (2008) is the inclusion of cultural factors within screening tools to better inform risk assessments and legal outcomes.

Screening recommendations

Privacy

Across the literature, it is suggested that screening must occur in privacy with clients, without spouses or children present (Burman, 2003; Frederick, 2008; Murphy & Rubinson, 2005). The Ontario Association for Family Mediation (2013) identifies that failing to ensure privacy may jeopardize the client’s safety and victims may be less willing to disclose. Further, Sussman and Carter (n.d.) identify that attorney’s must respect whether or not clients choose to disclose their experiences of abuse. They indicate that “if the client does not want to discuss the issue, the attorney should clearly communicate that the door is always open for further discussion and assistance, on that or any other topic” (Sussman & Carter, n.d., p. 2).

Documents and processes

In addition to asking domestic violence screening questions, Ver Steegh (2014) suggests that “documents such as arrest records, protective orders, and medical records may yield valuable information concerning a possible history of intimate partner violence” (p. 1055).

Culturally specific

Cultural context is important when considering screening processes and tools for domestic violence. Lehal et al. (2017) recommend that culturally appropriate screening tools must be developed. Similarly, Lichon (2017) argues that clients being screened must “be asked if there are any cultural accommodation options that they feel they need, or want” (p. 49). Furthermore, Neilson (2012) suggests that screening tools should be developed with the assistance of cultural specialists. By developing screening practices that are responsive to each jurisdiction’s cultural context, this will facilitate more meaningful and appropriate screening processes.

Person-centered

Across the literature, it is suggested that screening for domestic violence must be driven by a person-centered approach. For instance, Wathen et al. (2016) advises that women must be screened for violence “in sensitive, safe and appropriate ways that lead to discussion to

determine their needs, safety concerns, etc.” (p. 3). Further, as echoed by the cultural recommendations above, Frederick (2008) emphasizes the importance of addressing language and cultural barriers to communication in order to ensure that screening is effective for all clients.

Vaccaro and Medhekar (2013) suggest that professionals conducting the screening must act in such a way that ensures clients are at ease around them. This is further echoed by Bingham et al. (2014), who indicate that clients must feel safe and must trust the professional they are working with in order to feel comfortable enough to disclose abuse. Person-centered approaches as argued by, Ver Steegh and Dalton (2008) ensure that clients are provided with more tailored services and processes that would better meet their needs.

Follow-up to screening

Clients who have been exposed to domestic violence should be referred to appropriate resources (Frederick, 2008; Murphy & Rubinson, 2005). Wathen et al. (2016) argue that protocols must be created and implemented to ensure that clients are referred to services that will meet their unique needs. Burman (2003) suggests that if a lawyer identifies that their client has been exposed to domestic violence, they should either “assist the individual in assessing the possibility of future domestic violence (a lethality assessment) or refer her to someone who will perform that assessment” (p. 258). However, Jaffe et al. (2003) suggest that even when domestic violence becomes evident in the mediation process, the mediation process “is not necessarily responsive” (p. 62). In other words, the actions taken after screening are equally as important as the screening itself.

Training practices

Current training practices differ across jurisdictions as the Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence (2013) identifies that “many regulating bodies are providing a flexible approach to screening that can evolve with the field and be adapted to the needs of the various professions, while ensuring the professionals have the training needed to appropriately address the issue of family violence” (p. 42). Ellis (2008) highlights that in Ontario, mediators and arbitrators who address divorce and separation conflicts are required to participate in domestic violence assessment training and workshops. However, Clemants and Gross (2007) identify that only 17% of centers required that their intake screeners have training specifically focused on domestic violence.

Zylstra (2001) advocates that while screening tools are not perfect, “training and experience can increase the likelihood that the mediation process is beneficial, voluntary, and safe” (p. 269) By engaging in training, mediators and lawyers can identify common signs of violence, learn more about clients’ experiences of violence, better support individuals and learn how to implement trauma-informed practices (Bingham et al., 2014; Sussman & Carter, n.d.). Further, domestic violence training ensures that the appropriateness of mediation can be better assessed based on clients’ circumstances (Landrum, 2011; Zylstra, 2001).

If mediators have not received domestic violence training, the Ontario Association for Family Mediation (2013) suggests that they either be accompanied by a co-mediator with more experience or they refer the client to another professional or resource that is better suited to their needs. Further, Hickman et al. (2012) recommend that lawyers should be required to receive at least 14 hours of training that includes “skills for identifying, evaluating and managing family violence and issues of power dynamics in particular relation to the dispute resolution process” (p. 8). To summarize the literature, domestic violence training is an important element of improving consistency across screening and the implementation of such training will help ensure that family law professionals are equipped to respond appropriately.

Need for policies and legislation

Murphy and Rubinson (2005) advocate that by instituting legislation that requires mediators to screen for domestic violence, “this shifts the burden of raising domestic violence issues from the victim to the court and lays the groundwork for courts to lobby for appropriate resources for effective screening” (p. 67). Further, Lichon (2017) recommends that by requiring mediators to formally screen for domestic violence, “this would create a universal approach, and can ensure that mediators are accredited and properly trained to safely mediate such files” (p. 50). Clemants and Gross (2007) recommend that at an agency-level, mediation centers should create policies outlining their stance on domestic violence, identifying whether or not they will mediate cases in which the clients have a history of domestic violence. Across each of these recommendations, consistency is emphasized, which suggests that stronger policies and legislation can serve to better support screening practices and tools.

2. Types of Screening Tools

Conflict Assessment Protocol (CAP)

The CAP was created by Girdner (1990) to screen for abuse and to determine whether or not cases are suitable for mediation. Hoffman (2013) identifies that this tool enquires about “patterns of decision making, conflict management, and anger expression; and then questions about specific abusive behaviors” (p. 10). Girdner's (1990) tool is to be administered to both parties separately and allows the professional administering the tool to identify whether or not mediation will benefit or harm the clients. While the length of time required to complete the tool is not identified, Zylstra (2001) suggests that the CAP has a lengthier initial interview than the Tolman Model (discussed in later detail below).

Domestic Violence Evaluation (DOVE)

According to Holtzworth-Munroe et al. (2010), DOVE asks broad questions to assess whether or not domestic violence has ever been present in the client’s relationship. Further, Ellis and Stuckless (2006) identify that the tool aims to identify “the risk of domestic violence during and following participation in divorce mediation” (p. 660). However, it is important to note that

Holtzworth-Munroe et al. (2010) identify that DOVE requires “hours of specialized training to use” (p. 648). The questionnaire contains 19 questions and further sub-questions that are then applied to the associated scoring sheet (Hoffman, 2013). Through inquiring about experiences related to different types of abuse, risk is categorized as either low, moderately high, high, or very high which “are linked with Safety Plan interventions aimed at managing risk” (Ellis & Stuckless, 2006, p. 662).

The following also outlines DOVE’s workshop contents, thus highlighting possible content that can be included in other domestic violence training courses. First, Ellis (2008) identifies that “definitions of violence and abuse are discussed,” followed by a discussion of the dynamics of each (p. 534). Finally, “violence and abuse associated with ending intimate relationships are discussed generally, [...] particularly with dysphoric/borderline personality partners and treatment modalities in mind” (Ellis, 2008, p. 534).

Divorce Mediation Assessment Instrument (DMAI)

Tan (1991) identifies that the DMAI is “a rapid assessment instrument that will assist [mediators] in determining appropriate intervention strategies with their clients” (p. 38). The tool incorporates six interrelated dimensions that are measured using a Likert scale. These dimensions are “commitment, social-psychological factors, values, understanding, skills, and conflict,” each of which are interrelated (Tan, 1991, p. 26). The DMAI, according to Tan (1991), was brought about to identify whether or not clients should engage in divorce mediation. However, Tan (1991) also suggests that this tool can be used to identify the specific issues that can be addressed through mediation.

Detection of Overall Risk Screen (DOORS)

The Family Law DOORS was “developed as a three-part framework to support professionals in screening, evaluating, and responding to safety and well-being risks for all family members, including infants and children, after separation” (McIntosh, Wells, & Lee, 2016, p. 1520). The tool and its contents were informed by a review of the literature, consultation, examination of other tools, and piloting the tool. Various factors are examined, including conflict, safety, stress, and coping levels of the client and their children (McIntosh et al., 2016). Following an examination of existing tools, DOORS was created partially because no other screening tools identify the developmental risks that children may be facing (McIntosh et al., 2016).

Domestic Violence Screen for Mediators (DVSM)

The DVSM, as identified by the Western Interstate Child Support Enforcement Council (n.d.) contains two sections that were based on two pre-existing screening tools. The first of these is the Lethality Assessment Protocol, which is used to identify the danger that clients may be in if they are experiencing domestic violence. The second incorporates elements of MASIC (discussed below) that identify coercive control in a relationship. Following completion of the

questionnaire, the DVSM also comprises a mediation plan that identifies “best practice options for mediation in situations in which domestic violence or coercive control are present” (p. 3). When administering the DVSM, the Western Interstate Child Support Enforcement Council (n.d.) identifies that it must be administered verbally and in privacy with a client,. Furthermore, they emphasize that the completed questionnaire must remain anonymous, must not be labeled with a client’s name and cannot be included in the mediation paperwork. The administration guidelines provide insight into the context that can be provided with a screening tool to ensure that clients’ safety and privacy remain protected.

Family Civil Intake Screen

The Family Civil Intake Screen, according to Salem, Kulak, and Deutsch (2007), intended to increase consistency and to ensure that clients were directed to services that best meet their needs. Questions are asked regarding general information, conflict level, clients’ ability to communicate and cooperate, the complexity of issues, the level of dangerousness, and the disparity of facts and the need for further information (Salem et al., 2007). A single screening questionnaire is completed for each family. If adults provide answers that differ from one another, “the lowest functioning answer (i.e., that which typically correlates with the higher level of conflict) is the one recorded” to ensure that any indication of abuse is closely examined (Salem et al., 2007, p. 123). Further, Salem et al. (2007) identify that the Family Civil Intake Screen requires “significant training,” but suggest that the screen can be completed efficiently as professionals can incorporate “many of the questions into the information-gathering stage of the negotiation, thereby reducing the amount of time needed to complete the screen” (p. 122).

Mediator’s Assessment of Safety Issues and Concerns (MASIC)

MASIC is a behaviorally specific screening tool that can be used to better identify whether or not mediation is appropriate for clients (Rossi et al., 2015). Holtzworth-Munroe et al. (2010) identify that the tool was created to assess risk factors and “possible predictors of lethality” (p. 650). Diverse forms of abuse are assessed, including “psychological abuse, coercive control, physical violence and extreme physical violence, sexual assault/abuse, stalking, and fear” (Holtzworth-Munroe et al., 2010, p. 649). Pokman et al. (2014) identify that the tool “does not require extensive training to use” and “was designed to take an average of 15 to 20 minutes to administer to each mediating party,” thus reducing the burden placed on professionals. While questions are closed-ended, enough detail is collected to “elicit information about coercive behavior and domestic violence” (Hoffman, 2013, p. 10).

Model Mediation Screening tool

Hoffman (2013) identifies that in 2013, the Women’s Law Project published the Model Mediation Screening Tool. This tool has 24 closed-ended questions and also contains useful guidelines for interpreting and acting on the results (Hoffman, 2013, p. 10).

Multi-Door Screen

The Multi-Door screen, according to Rossi et al. (2015), is “a less specific IPV screen comprised of general questions about IPV victimization” (p. 9).

Nova Scotia Screening Tool

Chewter (2003) identifies that the Family Division of Nova Scotia Supreme Court created a screening tool that is comprised of 16 dichotomous questions. If either party responds affirmatively to any of the questions, the case does not proceed to mediation. However, this tool has been criticized as being too broad and “there is concern that too many cases are being screened out of mediation” (Chewter, 2003, p. 127).

Tolman Model

The Tolman Model has ten questions (Hoffman, 2013). While this is suggested to be appealing because it is straightforward, the screening tool is “less likely to elicit a nuanced answer” as the questions are dichotomous and closed-ended (Hoffman, 2013, p. 10).

Zylstra (2001) identifies that questions are to be asked verbally to each party independently.

Relationship Behaviour Rating Scale (RBRS-R)

As identified by Holtzworth-Munroe et al. (2010), the RBRS-R is a questionnaire that employs behaviorally specific questions to assess whether or not abuse has been present in a relationship in the past year. Additionally, Beck, Menke, Brewster, and Figueredo (2009) identify that this tool “measures a wider range of abusive tactics [than previous measures], including several questions addressing sexual intimidation, assault, and coercion and coercive control” (p. 297). There are 47 different items in the scale that identify clients’ experiences of victimization (Beck, Menke, & Figueredo, 2013).

Limitations of screening tools

Ver Steegh, Davis, and Frederick (2012) identify that while screening tools successfully identify many clients’ experiences of domestic violence, there will always be some cases that cannot be identified through screening practices. Further, they suggest that “screening efforts have met with varying success” (Ver Steegh et al., 2012, p. 972). Thus, it is important to recognize the limitations that different tools possess to ensure that these are addressed as effectively as possible.

Content for/components of screening tools

There are many recommendations regarding the content that should be included in screening tools. Neilson (2012) suggests that screening tools should include questions about violence towards the client, children, pets, and others, substance use, experiences of sexual abuse, mental health concerns, criminal activities, whether or not each partner has had other experiences of abuse as children or adults. Further, it is suggested that screening tools should inquire about control, particularly that which is coercive (Beck & Raghavan, 2010; Burman, 2003; Frederick, 2008; Pokman et al., 2014). By doing so, Beck and Raghavan (2010) advocate that this “may be a more accurate measure of conflict, distress, and danger to victims than is the presence of physical abuse” (p. 556).

Further, Vaccaro and Medhekar (2013) suggest that clients should be asked about the different types of abuse that they or their children may have experienced. Further, Frederick (2008) suggests that the “nature, frequency, severity and injurious nature of the acts” must be examined to identify the “extent of violent behaviour” (p. 525). Frederick (2008) also suggests that court files could be included in the screening process to identify any other relevant information that should be considered.

Focusing on clients’ well-being, Lehal et al. (2017) identify that post-traumatic stress disorder should also be part of screening to identify whether or not mediation is appropriate and what safeguards need to be established. Further, Getz (2008) suggests that in order to identify whether mediation is a safe procedure for clients to engage in, information collected can include how frequently the client is in contact with their partner, involvement with the courts and/or police, and clients’ “safety plans and physical security within the environment” (pp. 5-6). Through considering the existing tools and the suggested content summarized above, screening tools can be developed to best meet the needs of clients within diverse cultural and social contexts.

3. Interview Results

Most of the 29 participants who volunteered are aware of and concerned about domestic violence and its implications on legal proceedings. This is important to note as our sample is therefore biased. Most participants acknowledged however that the majority of family law lawyers, particularly in private practice, are not screening for domestic violence. We asked why family lawyers are not screening and the results mirror the barriers identified in our literature review. We also discussed important considerations for developing and implementing a tool and conclude with a discussion and recommendations.

Barriers to Screening

Complex legal system

The legal system itself is complex and hard to navigate. There are two distinct courts with access to different levels of supports, The Court of Queen’s Bench and the Alberta Family and Youth Court. Clients will have a different experience depending on which court system they go through. Some lawyers only practice in the Court of Queen’s Bench and not in the provincial family court. In the family court questions are asked about domestic violence and referrals to

supports occur, according to our participants, issues of domestic violence are rarely discussed in the court of Queen's Bench.

“In the Queen's Bench they would say the father has access every second weekend... in the family court they would define the weekend, pick up times etc... they leave no wiggle room... if they need other supports we can refer them for those”.

One participant identified that there is no requirement to screen for domestic violence in Alberta. The legislation does not mandate that lawyers work any differently if there is domestic violence present. Another mentioned that while lawyers are protected by attorney client privilege, mediators do not have the same protection; they felt that this is further complicated by a duty to report when there is a risk of harm. The legal system was described by participants as being adversarial and emphasizing the systemic barriers that are present when dealing with domestic violence. The 'system' is not set up to be proactive or preventative; rather, it is set up to cut costs and reduce strain within the court system.

It's not mandated by legislation

“Lawyers don't ask because the result does not impact the legal proceedings/property settlement. The court does not use that information to make a decision.”

“There is an assumption there is no need to ask because it won't have an impact on the proceedings... it doesn't matter... but by not asking you are keeping stuff out of the courts, but even if you do the court might not pay attention.”

“The Divorce Act says nothing about domestic violence...provincial family law legislation says violence is factor and we must act in the best interest of the child but families are treated differently in the two courts.”

“There are lawyers who are naive and think domestic violence doesn't make a difference. DV clients are the same as everyone... the legal issues are the same so I will manage it the same... you don't split assets spousal support differently if violence is part of it.”

Domestic violence is messy and responding is complex

Many participants expressed that there is reluctance to screen for or take cases that involve domestic violence because it is “messy” and because some feel that it is not the role of a lawyer or is not their area of expertise. For instance, a few individuals expressed that lawyers prefer to deal with legal issues and would rather avoid the more complicated, emotional challenges associated with violence. Lawyers prefer to only deal with the legal transactions as they are trained to act objectively and to deal with objective issues. Further, some suggested that judges can lack awareness and/or education and can sometimes have doubts that the violence occurred.

“Judges are generalists, unless they have practiced family law before judging they don't have a clue”.

Domestic violence was described as being complex and creating challenges with clients. For instance, one individual expressed that they feel that victims' actions and decisions are often governed by the perpetrator. Another suggested that domestic violence can inhibit clients' ability to make decisions that address their own concerns. There was concern that they may make the situation worse if they become involved. Time constraints and extra work involved in screening were also discussed.

“We have to be sensitive to trauma... We need safety training. Many lawyers discount the impact of violence or deny that it happens. Clients often discount it as well so it can be tricky to get them to reveal the truth. People are in denial and dealing with trauma. So we have to be careful that we don't make it worse. People are also vindictive; there are false claims or fake files. Judges are jaded because of this and do not take it seriously.”

Conflicting mandates

Most participants talked about the role that lawyers play and what they are trained to do as a barrier to understanding and screening for domestic violence.

“Lawyers are skilled and trained to guide people through the legal process. We get paid by the hour, do we charge clients for screening?”

“There may be liability issues if they reveal DV to us and then something happens to them”

“Lawyers are afraid of not knowing what to do if the survey says high risk... lawyers hate not knowing what to do”

“Getting involved violates professional boundaries.”

“Lawyers are trained to be objective and dispassionate and are trained to be the opposite of empathetic and caring.”

“We are not social workers and our clients don't want us to be. They hired us for a very specific reason, to navigate the legal process.”

Lack of awareness

“I don't typically do anything – it is not my area of expertise.”

“Lawyers are not aware of how to identify domestic violence or what to do about it. Those that do have found ways to educate themselves and make referrals to shelters.”

“Domestic violence does not appear in law school curriculum except sometimes as examples of case law – often in human rights or family law examples.”

“There are no standardized and validated tools that are simple to use.”

Actions Taken When Domestic Violence is Suspected

For those that do screen, when participants were asked about what they do when they suspect domestic violence, several identified that they make referrals and connect clients with resources. Some of those mentioned include referrals to shelters, HomeFront, helplines, and counsellors. Additionally, some participants indicated that they tailor legal supports to better suit clients' needs. Participants specifically mentioned discussing emergency protection orders (EPOs) and restraining orders with clients, as well as evaluating the suitability of mediation.

“We use the Danger Assessment from the John Hopkins nursing school. You are supposed to administer it a particular way but we don't have the time to do that so we generally do the 20 question scan over the phone... the score is used to assess the level of danger. We use it with emergency protection order clients we don't use with other clients. It is limited in that if you have intergenerational abuse and child abuse we don't have standardized assessment for those cases. John Hopkins also has a same sex tool but we don't have that yet.”

Some participants mentioned that when they suspect domestic violence, they engage in safety planning with the client. Others discuss the situation with their client or ask further questions to develop a better understanding of the situation. A few individuals identified that they report the suspected domestic violence to the police. Further, one participant mentioned that it is standard practice in their organization to engage in a risk assessment to evaluate the risk for homicide.

There is awareness that domestic violence is complex and needs to be treated carefully; however, responses to domestic violence are shaped by the limitations that exist within the legal system and the lack of standardization within organizations. Thus, people who are moving through the legal system are not receiving consistent and uniform supports.

Consistent tools and practices

Participants were also asked if there are particular tools or consistent practices and processes they use when domestic violence is suspected. More than half expressed that they do. However, one of the limitations mentioned was that many tools are proprietary and/or not available due to liability concerns. Further, many individuals identified that screening tools are time consuming and are not always easily accessible or available for use, this prevents consistent practices/processes from developing. Another issue surrounding the use of screening tools is that there is no 'proven' consistently used or standardized tool. Rather, tools must be developed that are culturally or gender appropriate and that address specific situations like same sex relationships and child abuse.

Training and Partnerships

A major theme that was woven throughout the interviews was the importance of training. Some individuals suggested that this could be done through online courses, seminars, and improvements to pre-existing presentations. Some of the topics that participants felt could be covered were screening, the dynamics of domestic violence, impact of domestic violence on negotiations, referrals, poverty, mental health, and trauma. Training can be introduced in many different capacities, including during law school and as part of continuing education courses. Additionally, further consideration would have to be given to whether or not the training would be mandatory or voluntary, thus impacting the ways in which it could be introduced. Several suggested that it should be mandatory for family law lawyers and voluntary for those working outside of family law.

Most participants felt that engaging existing groups like the Bar Association, Legal Education Society, Alberta Family Mediation Society and the Law Society would be important in order to leverage existing resources and expertise. There are some tools and training modules being offered that could be expanded and/or adapted. Many also felt that formalized partnerships with community-based agencies who support people experiencing violence would be key to ensuring seamless referrals for support and community capacity to respond.

Development and Implementation of a Tool

Participants mentioned that having a tool would be beneficial, particularly one that would be easily administrable and accessible. In order to address diverse needs and differences, many factors such as gender, culture, and type of abuse would have to be considered. Others mentioned implementing a framework or protocol that would provide more consistency in addressing domestic violence. For instance, by ensuring that some privacy protocols are in place, this might help individuals feel more comfortable disclosing their experiences. However, a few identified conditions that they felt would be necessary. For instance, one individual felt that it was important to ensure that the tool did not feel artificial or “forced” to the client. Another was concerned that a tool may re-victimize clients who have experienced violence.

With regards to framing the tool, it was suggested that a tool should be tested by both lawyers and mediators and must be tailored to suit different legal contexts. Additionally, participants suggested that it is important to ensure that a tool is only part of the process; rather, that this “is part of a larger approach for long term support,” and that lawyers can then direct people to appropriate supports. Having referral lists and outreach services available to better support clients was thought to be helpful.

One of the challenges identified regarding the implementation of a new tool is the potential hesitancy of lawyers. Another is that some individuals experiencing violence do not disclose when asked initially. In order for the tool to be effective, it was suggested that there should be more than one opportunity to discuss clients’ experiences with them. Rather than asking a simple yes or no question that requires clients to verbally disclose experiences of abuse, it was suggested that abuse should be screened for in many different ways. This would identify subtle signs of abuse that may not be openly disclosed.

4. Discussion and Recommendations

In many ways our interviews substantiated the information in the literature review. In particular, barriers to screening that included feelings of discomfort and/or lack of awareness of DV and its impacts. Policy and legislative barriers also emerged as did cost and time constraints. There was consensus that there is a lack of consistency in practice and in the tools themselves.

However, for screening to be effective, several considerations are important. First, the tool itself should be easy to use yet adaptive to different social and cultural contexts. Second, training on the impacts of DV and how to screen and refer emerged as critical for ‘success’. Third, privacy and confidentiality are essential to establishing a trusting relationship. Finally, cross-sector partnerships are essential to ensure existing expertise and resources can be leveraged and referrals to community-based agencies and/or counseling supports are formally embedded in practice.

1. Formalize partnerships with groups like the Canadian Bar Association, Legal Education Society of Alberta, Alberta Family Mediation Society and the Alberta Law Society.

There are existing initiatives and networking opportunities that can be leveraged to develop or adapt a screening tool. These partnerships can also be leveraged to develop and facilitate training. Ver Steegh and Dalton (2008) suggest that “additional work is necessary to create, test, and refine effective and culturally sensitive screening and assessment protocols” (p. 468). This suggests that there is value in developing the tools in conjunction with those who will be using them. Testing will ensure that these tools are implementable and can be used to best support clients.

“There is a new wrap around group starting that includes a social worker and psychologist, a lawyer for each party, a financial planner and child specialist to bring in the child’s voice to get people settled... this could be leveraged.”

2. Develop a tool that will ensure consistency in screening practices.

This recommendation is echoed by Neilson (2012), who argues that “given the high rates of domestic and family violence documented among those who separate and divorce, as well as problems associated with the transmission of information to lawyers and courts [...], the use of tools to screen for the presence and particulars of domestic violence is recommended in all family law, including child protection, matters” (p. 9).

3. Integrate mandatory training for family law lawyers and mediators into professional development sessions.

By providing training to lawyers and mediators, it is possible to develop consistent practices. This will ensure that all clients are screened for domestic violence and if it is detected, that clients receive appropriate supports and referrals. Referral lists of available resources could also be developed and distributed.

4. Evaluate the impact.

Assessing the strengths and areas for further development will ensure continuous learning. The ‘evidence’ that is generated can also be used to influence practices in other jurisdictions as well potentially identify whether changes to policy and legislation (e.g. mandatory training and screening and/or the Divorce Act), training for judges and adaptations to law school curriculum are necessary.

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