

The Exploration of the Effectiveness of Current BC  
Methods of Family Mediation in cases of Violence against  
Women and Lessons to be learned from Other  
Jurisdictions Models  
(BC Family Mediation VAW Project)

**WITH GENEROUS SUPPORT FROM:**



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# ACKNOWLEDGEMENTS

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This resource guide is part of the Exploration of the Effectiveness of Current BC Methods of Family Mediation in cases of Violence against Women and Lessons to be learned from Other Jurisdictions Models (**BC Family Mediation VAW Project**). Funding for the project was provided by the Law Foundation of BC. The project aims to explore current mediation practices as they relate to the *Family Law Act* (FLA) in BC when screening for violence and what mediators are doing when violence against women is present. It is hoped that the information obtained in this project will be of use to those working in this area.

We appreciate and acknowledge all those who provided their time and expertise to this project.

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## Special Thanks

The BC Family Mediation VAW Project interviewed or received feedback from mediators, lawyers, alternative dispute resolution professionals, family justice counsellors and front line workers from across BC, as well as the Executive Director of Family Justice Services in BC, U.S. colleagues Connie J. Beck, Fernanda S. Rossi, Amy G. Applegate, Amy Holtzworth-Munroe and Jeannie M. Adams the Director of the Multi-Door Dispute Resolution Division (Washington, DC).

We would also like to acknowledge the valuable financial contribution of the Law Foundation of BC to this project, as well as the support and assistance of the Family Justice Services of the Ministry of Justice BC and the support of Mediate BC.

## Project Completion

The project was approved for funding in October 2015 and commenced the following year with completion occurring towards the end of 2016. The findings were compiled and summarised over the next few months and submitted in May 2017.

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# **SECTION 1: INTRODUCTION**

# ABOUT BC FAMILY MEDIATION VAW PROJECT

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## Introduction

The Exploration of the Effectiveness of Current BC Methods of Family Mediation in cases of Violence against Women and Lessons to be learned from Other Jurisdictions' Models (**BC Family Mediation VAW Project**) was a one-year project. The purposes of the project were to explore whether family mediation is safe and effective when violence against women is present and to determine what lessons may be learned from alternative dispute resolution models in other jurisdictions.

## Importance of the Project

On March 18, 2013, the *Family Law Act* SBC 2011, c. 25 (FLA) came into effect in BC. The FLA emphasizes the use of alternative dispute resolution as an option to litigation. The FLA requires that all family dispute resolution professionals, including mediation professionals, assess for family violence and be trained in minimum practice standards including 14 hours of family violence training. Dispute resolution professionals must use these assessment results to direct the family dispute resolution processes accordingly.

It is critical to study and analyze the practices that have developed since the passage of the FLA to ensure the safety of women and children. It is important to look at the effectiveness of the current training, what type of pre-mediation screening is occurring, and the steps taken when violence against women is present. It is necessary to examine if mediation, which is promoted under the FLA as a cost effective and less stressful alternative to litigation, is a viable option for women experiencing violence. In short: are female survivors of family violence being served by this alternative; and is the process safe?

The project focused on violence against women acknowledging that, in the majority of cases, it is women who are the victims of violence in intimate partner relationships. The project acknowledges the ongoing research work of the National Institute of Justice (NIJ) study involving the Multi-Door Dispute Resolution Division in Washington DC, which study is looking at whether evidence-based mediation practices are a safe alternative for cases where high risk for interpersonal violence is present. The NIJ study was similarly focused on violence against women.

## Methodology

The project consisted of:

- A comprehensive literature review that explored the techniques and practices used by mediators when assessing for violence as a safe alternative to court-based litigation. The literature review also covered mediation practices in other Canadian provinces and in other jurisdictions.
- An on-line survey of BC family law advocates, family lawyers, mediators and other dispute resolution professionals to determine what screening tools are being used and their effectiveness,

mediation models being used, and challenges or barriers to mediations when violence against women is present.

- Four focus groups in BC (three formal and one informal) of family law advocates, family lawyers, mediators and other dispute resolution professionals to gain insight into what changes mediation professionals have made since the FLA came into force. Specifically, these focus groups looked at: (a) what screening tools are being used, their effectiveness, and any limitations on their use; and (b) in cases where violence was present, what modifications, if any, was made to the mediation process and/or whether mediation continued. Finally, we asked participants to identify gaps and provide their recommendations to improve the process.
- Five key informant interviews of individuals or organizations that regularly deal with mediation in the family context or deal with family violence and violence against women issues.

### **Potential Impact of the Project**

This project is intended to be the start of a discussion. It provides some information about current practices in BC with respect to screening and mediation involving violence against women. We hope the findings will promote coordinated efforts by all parties involved in family dispute resolution to ensure the safety of women before, during and after mediation. We look forward to further conversations, collaborations and research to ensure that women who have experienced intimate partner violence have access to fair and safe mediation of their family disputes.

## **SECTION 2: EXECUTIVE SUMMARIES**



# EXECUTIVE SUMMARY DOCUMENT 1

## LITERATURE REVIEW

This project conducted a review, in 2016, of literature regarding evidence based mediation practices and research pertaining to issues relevant to the safety of women in cases of violence against women. The literature review explored the techniques and practices used by mediators when assessing for violence and alternatives to court-based litigation in those cases. It reviewed research and considered lessons to be learned from practice in BC and beyond, including the United States and Australia. The literature review discusses practices that ensure mediation processes and resulting agreements meet the needs of women who have experienced violence. Our review included electronic and ‘snowballing’ methods inclusive of grey literature referencing 143 articles from 1979 to 2016.

The *Family Law Act*, SBC 2011, c. 25 (FLA) seeks to modernise the previous *Family Relations Act* and intends to protect the interests of women and children experiencing family violence. The FLA took a different approach to family court matters, promoting mandatory alternative dispute resolution processes as options to court resolutions. It focuses on family violence and the resulting impact on decisions relating to future safety, security and well-being of children and other family members in the making of an agreement or court order (see s. 37(2) (g)).

Section 8 of the FLA states that family dispute resolution professionals (including lawyers, and mediators) must assess, in accordance with the regulations, whether family violence may be present and if so, the extent to which the family violence may adversely affect:

- the safety of the party or a family member of that party, and
- the ability of the party to negotiate a fair agreement.

Understanding the mediation process and potential outcomes is critical for women. Limited research has been done since the FLA was promulgated to monitor its progress in the area of mediation in cases of violence against women. It is in this context that the literature review was carried out and a number of key points emerge from this review (outlined below).

### SUMMARY OF KEY POINTS:

#### *Screening*

- There must be consistent use of well-developed screening and assessment tools and protocols.
- Preliminary screening is essential to determine the suitability of the mediation process. Therefore, there is a need for effective screening and assessment tools that accommodate the time constraints of the mediation process.
- A standard screening and assessment tool for mediators to screen for violence against women and a protocol for the use of such tools needs to be developed.
- Culturally and linguistically appropriate screening and assessment tool in cases of violence against immigrant and refugee women also requires development.

- Screening for violence needs to be an ongoing process, not just prior to mediation.

#### *Training on Violence against Women*

- Mediator skills are critical in screening for violence against women cases.
- Training is necessary to understand the signs and complex dynamics of violence against women and the levels and types of violence women may have experienced to ensure their safety.
- Mediators need to be trained and aware of the implications of a history of violence to assist in negotiating agreements that address the risk of future violence by putting in place safety restrictions.
- A comprehensive definition and understanding of the dynamics and impact of violence needs to be developed.
- Mediators need to understand that survivors of violence may be reluctant to disclose abuse, making it more important for screeners to be skilled in asking questions and recognizing the signs throughout the process.
- Mediators should be mindful of the fear and chance of physical harm during mediation and after execution of any agreement.
- Specialized knowledge and understanding of the complexity and effects of domestic violence is required to decide the ability of the person to participate and achieve a fair and safe agreement.
- Appropriate and sufficient continuing professional training for mediators is necessary.
- Use of safety measures in cases where mediation processes are considered is required.

#### *Safety Measures*

- There is a need for safety measures to enhance the safety and to offset power imbalances in cases of violence against women.
- Ensuring safety is an ongoing process and hence measures have to be considered for prior, during and after the mediation process.

#### *Re-Victimization and Post Traumatic Stress Disorder (PTSD)*

- Mediators need to be able to recognize post-traumatic stress symptoms and the potential for re-victimization by re-living the violence during the mediation process.
- PTSD should be considered when screening and in deciding what safety precautions need to be put in place or whether it is safe to proceed with mediation.

#### *Resources and Counselling*

- Mediators ought to make necessary referrals to community support resources and counselling.
- To ensure a fair and equal agreement, beyond the proper ability to screen and identify appropriate safety measures and processes, the mediator needs to be able to refer women to appropriate community resources and support, keeping in mind financial considerations, availability of legal aid and language needs.
- Mediators need to be informed about available referral and support resources.
- Women need access to legal aid.

### *Types of Mediation*

- Mediators need to be more aware of the different types of mediations models available to ensure the safety of the mediation process, including shuttle mediation, co-mediation, caucusing, telephone and video conferencing.

### **FUTURE RESEARCH**

In light of the themes that emerged during the literature review, future research is needed in the following areas and questions in mind:

- a) In-depth BC related empirical research involving women survivors of violence using a large enough sample size.
- b) Whether mediation agreements reached to date:
  - a. Ensures equal participation, without fear, threat or pressure from the abusive partner; and
  - b. Results in appropriate and safe agreements for women and their children.
- c) In what circumstances mediators screen parties in or out of mediation given the existence of violence.
- d) The additional challenges faced by Aboriginal women, immigrant and refugee women, women with disabilities, women in LGBTQ relationships, and women living in isolated or rural communities where there is a lack of mediators and resources.

Research considers the benefits and detriments of mediation in matters where there is violence against women. Studies are theoretical, providing only an understanding of the dynamics of violence against women and suggesting what can be done to respond appropriately. They do not provide clear guidance to mediators, based on sufficient sampling. Attention to power imbalances, abuse dynamics, cultural and linguistic barriers of the parties, the benefits of using standard screening tools, safety measures, appropriate and sufficient training of professionals is required to avoid re-victimization during and after mediation.

The FLA, with its focus on alternative dispute resolution methods, remains a work in progress and should be evaluated, and perhaps revised, to ensure that the needs of women involved in mediation are met fairly, while protecting their interests and safety.

## **EXECUTIVE SUMMARY DOCUMENT 2**

### **ONLINE SURVEY**

As part of the project, we conducted an online survey in 2016. The survey was distributed to BC family law advocates, family lawyers, mediators, family justice counsellors and other dispute resolution professionals to understand how practices have developed over the past 3 years under the *Family Law Act* SBC 2011, c. 25 (FLA).

In summary, the survey results demonstrate that:

- The majority of practitioners are screening for family violence using their own screening tools;
- Most practitioners screen in office settings; and
- Screening interviews range in time from 5 minutes to well over 90 minutes, or, in some cases, screening is ongoing.

The majority of those surveyed indicate they were aware of options for providing advice to clients about resources but wish the information was more accessible. They also commented that they would appreciate having more knowledge about community based resources, especially for the clients that do not want to go to court and deal with the matter in public or engage in a mediated resolution but want services and supports.

When safety risks were identified the practitioners used a variety of practices including shuttle mediation, support persons or lawyers present, and differing start times. When violence was identified, the majority referred cases to court along with referrals to community based victim services, law enforcement and lawyer led negotiations.

### **PARTICIPANT FEEDBACK**

In terms of improving mediation practices when violence against women is present, the majority of respondents listed, by level of priority, the need for:

- Support services for women available at the courts including child care;
- Sufficient funding for dispute resolution professionals;
- More information regarding available community resources for referrals, services and safety planning;
- More training regarding violence against women and relevant screening tools; and
- More resources for interpreters.

The top eight challenges for women accessing mediation that were identified by the majority of respondents and listed by level of priority were:

1. Power imbalance between the parties;
2. Lack of resources to hire mediators, co-mediators or other family dispute resolutions professionals;
3. Inability to qualify for Legal Services Society (LSS – Legal Aid) services;
4. Woman are afraid to face their partners;
5. Confusion regarding dispute resolution processes;
6. No child care during dispute resolution sessions;
7. Language barriers; and
8. Lack of access to independent legal advice.

## EXECUTIVE SUMMARY DOCUMENT 3

### FOCUS GROUPS

The project conducted three focus groups in 2016. While an invitation went out broadly to family lawyers, family law mediators, other dispute resolution professionals and advocates, the focus group participants were primarily all family justice counsellors. As such, unless indicated the points below are from the perspective of family justice counsellors. The purpose of the focus groups was to gain insight into what changes dispute resolution professionals have made since the *Family Law Act* SBC 2011, c. 25 (FLA) came into force. These focus groups looked at: (a) what screening tools are being used, their effectiveness, and any limitations on their use; and (b) in cases where violence was present, what modifications, if any, were made to the mediation process and/or whether mediation continued. Finally, we asked participants to identify gaps in the mediation process and provide their recommendations to improve it.

The focus group participants provided the following information on screening for violence and what steps were taken when violence was assessed to be present:

#### *(a) Screening Tools*

- Family Justice Counsellors (“FJC”) have a prescribed screening tool. It utilizes a numbering system to determine whether mediation is appropriate. The forms are completed prior to individuals being seen by the FJC.
- The screening tool:
  - is mandatory for new FJCs but optional for more senior FJCs.
  - is a good assessment tool as it can give clues to verbal, psychological and sexual abuse.
  - “is embedded in the whole culture of how we provide service. We are given a ton of freedom to take as much time as we want. We balance the screening with relationship building. We can keep screening; have multiple meetings. The longer you do this work the more you have a sense of things.”<sup>1</sup>
  - is a useful starting point and makes work more efficient but is not depended upon exclusively. It alerts FJCs where to dig deeper and may be a basis upon which to build a relationship with the client. It provides a means to talk about things with the client to ensure a safe environment is being created.
- Reliance is placed on the in-person interview with the client because it provides a more comprehensive opportunity to assess and look at body language.

#### *(b) When Violence Is Present*

- Where someone is not ready for mediation, the process is slowed down to allow the woman to access the support and resources she needs to be able to return to mediation.
- If the assessment score is very high then the screener errs on the side of caution and chooses not to mediate and, instead, refers the matter to court, especially where the violence is recent.
- If considering mediation, even when there is violence, the screener looks at whether the violence is episodic or historical. If it is historical then consideration is given to whether the spouse

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<sup>1</sup> July 7, 2016 Focus Group: Afternoon Session

acknowledges the violence. The screener also considers the woman's social supports in the community and whether she is isolated.

- If violence is present and the victim wants to go ahead, mediation will still be attempted using shuttle, over the phone or individual mediation.
- Even if there is a history of violence, some still try mediation if the person feels strong enough to participate, so long as no protection order is present.
- During mediation, mediators often caucus as a means to check in with the victim to make sure she is not feeling coerced or intimidated.
- If there is a power imbalance before or during mediation that cannot be overcome then mediation is not appropriate.
- Another consideration in deciding whether to mediate is the timeframe for matters getting into court.
- Sometimes it may not be safe to send the matter to court, so it may be better to “do nothing” and instead connect the victim with community resources or assist her to obtain benefits from the government...“Get her world in order....It is like a triage, you stop the bleeding and then deal with it.”<sup>2</sup>
- Sometimes court is necessary because “some men need to hear from a judge.”<sup>3</sup>

The focus group participants provided the following observations and feedback regarding gaps in the mediation process and their recommendations to improve it:

#### *Resources:*

- Many clients have no resources and are more at risk of abuse because of poverty issues.
- More funding is needed for services, including childcare, to allow women to access services, or attend mediation or court.
- There is a need for more counselling resources for women and children.

#### *Interpreters:*

- Interpreters need to be trained in family violence; there is a need for specialized training for interpreters who are dealing with women who are abused.
- Caution must be exercised with interpreters who are from the victim's own culture, as women may be reluctant to disclose to them due to concerns with confidentiality within the community.

#### *Training:*

- Annual training for mediators (to include a refresher on family violence) should be mandatory.

#### *Advocates:*

- Sometimes advocates can be overly “advocating.” “The goal is to empower her as a decision maker. Often the advocate is a replacement of the guy she just left.”<sup>4</sup>

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<sup>2</sup> November 2, 2016 Focus Group at Surrey Court House

<sup>3</sup> November 2, 2016 Focus Group: Surrey Court House

- Advocates are not always supportive of mediation when there is violence.
- Mediations should be inclusive – allow advocates and support workers to be present in the room – but structure the mediation process to be balanced and be clear with the advocate what their role is.

#### *Protection Orders:*

- Protection orders impact the role of the FJC. If there is a protection order, their policy prevents them from drafting agreements.

#### *Legal Aid:*

- Court is not a viable option due to legal aid cuts. Women are unable to represent themselves and this increases their risk for continuing abuse.
- Currently legal aid hours get used up quickly and barely get people to a Judicial Case Conference.
- More family law coverage is imperative.

#### *Trauma:*

- Women sometimes experience trauma when they complete the screening forms and may need support services to help them with this trauma.
- There is a major gap in the screening process. When women are going through the process they encounter PTSD and require counselling.

#### *Understanding “domestic violence”:*

- A classification system that has a fair amount of science behind it leading to a definition that is universally accepted should be developed.
- There is a need to publically acknowledge the costs and impact of violence against women. When the discussion is taken out of the family context and related, instead to health care costs, the cost may be better understood.

#### *Coordination*

- Community resources need to refer people to mediation as an option and not just suggest court.
- The Family Maintenance Enforcement Program (“FMEP”) doesn’t look at violence at all. The focus of FMEP is financial support and enforcement and monitoring of court orders. There is a huge gap here. For instance, if issuing a garnishment what situation does that put the woman in if she is in a violent relationship? <sup>5</sup>
- The Advocate expressed that the systems conflict – the court system and mediation are at conflict because of the FLA.

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<sup>4</sup> July 7, 2016 Focus Group: Morning Session

<sup>5</sup> November 2, 2016 Focus Group: Surrey Court House



*Mandatory Mediation:*

- Such a process would require a good definition of violence and resources.
- Mandatory mediation may send the message that something is wrong with the woman and stigmatize her.
- If mandatory mediation is imposed, it should not be overly structured because the intuitive part would be lost.
- Perhaps mandatory “assessment” is a better approach – some kind of “triage is important and making the appropriate referrals to victim service and women’s services.”<sup>6</sup>

The focus groups provided informative insight into some critical gaps in the mediation process and recommendations on how to improve the mediation process to make it safe for women to utilise as a viable option.

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<sup>6</sup> November 2, 2016 Focus Group: Surrey Court House

## EXECUTIVE SUMMARY DOCUMENT 4

### INFORMAL FOCUS GROUP

#### **North Shore Family Dispute Resolution Group.**

The North Shore Family Dispute Resolution Group is an interdisciplinary group of professionals helping families going through separation or divorce. The group includes psychologists, family lawyers, mediators and financial advisors. One of the members, Alyson Jones (a counselor) presented the family violence screening tool she developed and tips for lawyers (developed with Lisa Hamilton, a family lawyer). Six people, a mixed group of professionals, were in attendance.

There was a lively discussion regarding family violence. Some of the major points raised were:

- All the professionals are doing family violence screening and, although they understand their obligations and duties under the *Family Law Act* SBC 2011, c. 25 (FLA), they do not rely on it exclusively.
- Everyone used different tools, methods and their practices varied.
- In cases of trauma, where a mediator determined a certain bar had been met (i.e., mediation was not safe because of family violence), there was no need to ask further questions.
- The amount of time spent screening varied, as each professional wanted enough information to make an informed decision, but not so much as to create challenges for the participant.
- It is unclear what the duty of a mediator or arbitrator is to screen for family violence where parties have lawyers and the lawyers have done their own screening:
  - Can the mediator or arbitrator rely on the lawyer's screening?
  - Do they need to do their own?

It may depend on the circumstances of each case, but, ultimately the mediator/arbitrator is responsible for ongoing screening and checks throughout process.

The participants provided the following observations and feedback with respect to gaps and recommendations to improve the mediation process:

- It would be helpful to continue learning about best practices for family violence screening.
- Referrals are challenging if the mediator decides not to mediate the case. It is not clear where to send parties and/or if court is the best option.
- Finances for dispute resolution processes are an issue.

The observations of the participants regarding gaps and recommendations provided invaluable insights.

## **EXECUTIVE SUMMARY DOCUMENT 5**

### **TELEPHONE CONFERENCE WITH U.S. RESEARCHERS**

**March 8, 2016**

On March 8, 2016 the Project members spoke to U.S. researchers involved in research pertaining to domestic violence screening. The participants from the U.S. were Connie J. Beck, Fernanda S. Rossi and Amy G. Applegate. Absent from the call, but a Principal Investigator on the study, is Amy Holtzworth-Munroe.

Connie J.A. Beck is a professor at the University of Arizona, department of psychology in Tucson. She is a recognized expert in domestic violence and how it impacts families involved in court processes. Amy Applegate is a clinical professor of law at Indiana University-Bloomington and is an expert in domestic violence screening and mediation practice, including substantial experience in mediating cases with domestic violence. Fernanda S. Rossi is a Doctoral Candidate from the Indiana University-Bloomington Department of Psychology and Brain Sciences and is an expert on intimate partner violence screening as well as on studies examining intimate partner violence in the family law context. Amy Holtzworth-Munroe is a professor in the Department of Psychological and Brain Sciences at Indiana University, and is an expert on intimate partner violence and studies of the effectiveness of family law interventions. This group, along with their colleagues at Multi-Door Dispute Resolution Division (“Multi-Door”), including Jeannie Adams, form the core research team.

The discussion pertained to the type of research they have conducted on domestic violence screening in the mediation process, the creation of the Mediator’s Assessment of Safety Issues and Concerns (MASIC) and their current study funded by the National Institute of Justice (NIJ) at the Multi-Door Dispute Resolution Division of the Superior Court of the District of Columbia in Washington DC (Study).

Our American colleagues shared with us the following regarding their experiences/findings on the issue of screening for domestic violence:

#### *Screening*

- There were problems in screening for domestic violence in family mediation. Some staff were not screening at all or using general questions.
- Many people do not self-identify as being abused when asked general questions.
- If the screening tool does not cover a wide range of behaviors (e.g. coercive controlling behaviors, psychological, physical and sexual abuse, injury, fear and stalking) using behaviorally specific questions is then less likely to identify domestic violence.
- Other screening tools, such as DOVE (Domestic Violence Evaluation), were too mathematical.
- Applegate, Beck and Holtzworth-Munroe decided to create their own screening tool; one that would be based on current research concerning lethality factors and include behaviors such as “hit, kick, punched” and behaviors of “threats” and “stalking.” They named this tool the MASIC.

- Validation studies have been conducted of the MASIC in the U.S. and in Australia. The MASIC contains about 45 questions and screening can take anywhere from 15 minutes to an hour with the longer time needed if a party has a substantial history of violence.

#### *Events Leading to the Study*

They explained that the following were considerations in proceeding with the Study currently underway at the Multi-Door Dispute Resolution Division.

- The key question, after identifying domestic violence through screening is: What to do with the case; do you send the matter to court or mediate with accommodations?
- Could cases screened for highly violent couples be considered for shuttle or video conferencing mediation as opposed to sending them back to court? This led to the Study where couples are being randomly assigned to see if there are differences in a number of outcomes.
- The research team started the Study to deal with the common scenario of people being screened out of mediation because of domestic violence, returning to court and being told to go back to mediation.
- The Study includes safety precautions.
- The research team are conducting a one year follow up survey with the parties. Data is also being collected from family court files and other court-based databases, to examine other outcomes such as protective orders and re-litigation of the family's issues.

## EXECUTIVE SUMMARY DOCUMENT 6

### Multi-Door Dispute Resolution Division

On April 2<sup>nd</sup>, 2016, a key informant interview was conducted of Jeannie M. Adams, Director of the Multi-Door Dispute Resolution Division (“Multi-Door”) in the Superior Court of the District of Columbia, Washington DC.

Multi-Door is involved in a collaboration with Indiana University (Amy Holtzworth-Munroe, Amy Applegate, and Fernanda Rossi) and the University of Arizona (Connie Beck) to undertake a four year study (Study), commenced in 2014, designed to determine the safety and effectiveness of mediation options for families with a history of intimate partner violence (IPV) (Holtzworth-Munroe, Beck, Applegate, Rossi, Adams, & Hale, 2014). In the past they referred such cases to the court. However, they recognized that litigation may have the potential to escalate violence. Multi-Door sought out experts in the field for other types of dispute resolution processes to offer to parties with high IPV and who wanted to mediate their dispute.

The Study, which is funded by the National Institute of Justice (NIJ) is comparing three groups, one group proceeding through shuttle mediation, one group in mediation by videoconferencing and one group who are returned to court and do not use mediation. The participants are randomly assigned to one of the three groups after having been screened, identified as high IPV and offered the option to voluntarily participate in the study.

Multi-Door put in place safety planning, staggered arrival and departure, shuttle mediation, video mediation, to make sure the participants who have experienced intimate partner violence feel safe enough to mediate.

#### *Interim Findings of the Study*

- As of March 2016, a total of 112 cases (mother and father) had participated in the Study: 33 in shuttle, 35 in video and 44 back to court. All issues are covered in the disputes.
- As of the end of January 2017 Multi-Door stopped recruiting new cases. The Study currently has approximately 160 cases within it. All the cases will be followed for one year after their last mediation session or court date to see how well families are doing and whether there have been any court actions filed during the one year follow-up. The researchers will conduct the analysis and a report is expected to be written and delivered to the NIJ, during the fall of 2018.
- As of June 2016, the interim findings from their preliminary data revealed no significant differences between parties’ perceptions (e.g., satisfaction) with shuttle mediation and video conferencing mediation. However, they have seen differences between mediation and the court process.
- It is important to note that the Study is ongoing and findings could change as the final study participants end mediation or court processes and their data is added to the data file or as time passes.
- Despite that precaution, Multi-Door does not have any reason to stop providing mediation services for these case types, so it intends to continue using the MASIC screening instrument, keep safety protocols in place and provide either shuttle mediation or video conference mediation on cases that self-report high IPV. They will not offer joint mediation to these cases.

## EXECUTIVE SUMMARY DOCUMENT 7

### Interview with Andrea Vollans and Shanaz Rahman

On November 7, 2016 Andrea Vollans, YWCA Legal Educator, was interviewed, via teleconference, along with Shanaz Rahman, Manager of Community Outreach – Family Law Project with West Coast Legal Education and Action Fund for Women. Each provided her own personal perspectives on the issues pertaining to mediation and domestic violence. Neither spoke in the capacity of their organizations. They provided insight from the perspective of the anti-violence community. They reported that:

#### *Screening*

- Neutral language in screening tools is a problem.
- Women screened to be at high risk for violence are not being considered for mediation, even when the woman wants mediation.

#### *Mediation Process*

- There needs to be a transparent and accountable process to avoid power imbalance.
- Mediated agreements are not given the same effect as court orders.

#### *Training*

- It is unclear if 14 hours is sufficient for training for domestic violence screening.
- Training of mediators needs to avoid gender neutral language.
- Need qualified and trained interpreters trained in domestic violence.

#### *Gender Neutrality*

- Language needs to avoid gender neutrality. The term “Violence against women” is preferred to the term “domestic violence.”
- We need to challenge the argument that women may falsely allege violence.
- The main and starting point should be that the vast majority of women experience violence.

#### *Trauma Informed Practice*

- Violence is distinct from trauma and mediators need to understand trauma.
- S.211 reports need to be scrutinized for mislabelling trauma as bi-polar disorder.

#### *Coordination*

- There needs to be coordination between advocates and mediators and family justice counsellors and provincial organizations. Services workers regularly meet but better coordination beyond front line providers is required.
- Best practices strategy requires front line workers be given an opportunity to share their knowledge to individuals during the domestic violence screening training.

### *Legal Aid and Court*

- There is a lack of legal aid funding for women.
- There are lengthy court delays.

## **EXECUTIVE SUMMARY DOCUMENT 8**

### **Executive Director of Family Justice Service Division**

On November 25, 2016 a key interview was conducted with Dan VanderSluis, then Executive Director of the Family Justice Services Division of the BC Ministry of Justice. Mr. VanderSluis provided insight into the services provided by the division, in particular, as it relates to mediation services provided by Family Justice Counsellors (“FJC”).

He explained the following information about FJCs, mediations by FJCS, screening for violence and what happens in cases of violence:

- All FJCs conduct screening of parties to family mediation.
- All FJCS undergo rigorous training in conflict resolution and family violence.
- FJCs receive regular ongoing training.
- Prior to meeting with an FJC, parties complete an intake questionnaire (a screening assessment tool). This tool is mandatory for new FJCs but not for senior FJCs.
- The assessment tool contains detailed questions about family violence as well as more specific questions about violence.
- FJCs review the form and ask additional probing questions as well as follow up on non-verbal queues.
- Based on the results of the assessment tool and subsequent interview the FJC creates a case plan.
- If there is violence, the FJC decides if it is safe to mediate.
- There used be a policy not to mediate in cases with violence but that was eliminated about 10 years ago. The approach is now more nuanced, looking at the type of violence and its history in the relationship. In general, the practice is still quite conservative and staff screens out more couples than they take into a mediation process.
- For high risk cases the FJC must run the case by a supervisor, but as a general rule they err on the side of caution and screen out.
- Being physically situated in a court house is strategically better as it allows for better coordination.

He provided the following observations and feedback regarding gaps and recommendations for the mediation process:

- There needs to be more resources, including better funding for advocates.
- Better access to legal aid is required.
- Better coordination amongst agencies and workers is essential.
- Improved training is desirable.



## **SECTION 3: LIMITATIONS**

## LIMITATIONS OF BC FAMILY LAW VAW PROJECT

The project as funded focused only on family law cases where violence against women is present and on the practice of dispute resolution professionals. The *Family Law Act* SBC 2011, c. 25 (FLA) created new duties for lawyers and alternate dispute resolution professionals (including mediators and family justice counsellors) to screen whether “family violence” is present and if so to assess the client’s safety and ability to use alternative dispute methods.

The project seeks to understand how, under the FLA, practitioners screen and assess cases when violence against women is present. We recognize the limited scope of this project and encourage further research on related topics. We recognize there are a wide variety of factors to weigh in family law cases. We acknowledge that research into the following areas would provide a more comprehensive look at the issue of violence against women and their participation in mediation:

- The perspective of women with lived experience as to the FLA, family violence screening, assessment and mediation practices. Research using a large enough sample size involving women survivors in BC would be an important tool in understanding the current alternative dispute resolution practice and in determining if safety is maintained in the process and that the final agreement is effective.
- The effects of violence against children where mediation and other alternative dispute resolution practices are used.
- The perspectives of the Judiciary and Court Staff regarding the FLA and family violence screening, assessment and mediation practices.

Although the online survey that provided some of the empirical results in this paper was widely distributed to BC family law advocates, family lawyers, mediators, family justice counsellors and other dispute resolution professionals, the majority of practitioners who responded to the survey were from the Lower Mainland. Thus there is a need to broaden this research by engaging with family dispute resolution professionals in other sections of the Province.

Likewise, in respect of the focus groups, the majority of the participants were from the Lower Mainland and were Family Justice Counsellors. Accordingly, broadening the geographic and professional composition of these Focus Groups would potentially provide additional information.

## **SECTION 4: RECOMMENDATIONS OF BC FAMILY MEDIATION VAW PROJECT**

## **RECOMMENDATIONS OF THE BC FAMILY MEDIATION VAW PROJECT**

In taking into account the information obtained through the different methods - the literature review; on-line survey; focus groups and key informant interviews – a number of common recommendations emerged. Some recommendations for further research can be found in the Executive Summary of the Literature Review section and in the section “Limitations of the BC Family Law VAW Project”. Other key recommendations are:

1. Having a consistent assessment and screening tool that clarify behaviors relating to coercion and lethality factors.
2. Training of mediators regarding the violence and power imbalances that exist in violence against women cases.
3. Ongoing training of mediators that involves coordination and collaboration with front line workers and other agencies or individuals, including training to:
  - a. incorporate a trauma informed practice;
  - b. educate on resources and how to make referrals to those resources;
  - c. teach the different models of mediation – shuttle, video, co-mediation – in cases where women choose to proceed with mediation while safety parameters are in place;
4. Considering re-thinking the approach to mediation in cases of violence against women:
  - a. To move away from gender neutral language to allow for effective steps to be taken before, during and after a mediation.
  - b. To ensure ongoing education to eradicate myths about women who are abused .
  - c. To understand the impact of PTSD on women who have experienced violence; how this can impact their ability to participate in mediation.
5. To ensure that women are provided with resources during pre-mediation screening and during and after mediation.
6. Co-ordination and collaboration between all those involved with assisting or providing services to the woman.
7. Training interpreters on violence against women dynamics, including how to interpret while being sensitive to maintaining professional confidentiality.
8. Providing women with adequate legal aid funding for, not just court processes, but for mediation.
9. Creating an easy mechanism to have mediation agreements better enforceable by the court.
10. Review by BC Courts, Mediate BC and other key stakeholders, of the NIJ funded study on the intimate partner violence cases and mediation, (study to be finalized in 2018), and if deemed an effective model, adequate funding for a pilot project with an evaluation component built in to considered in BC.

## **SECTION 5: LITERATURE REVIEW**

# **Family Mediation in Violence Against Women Cases: A Review of Literature**

LITERATURE REVIEW CONDUCTED BY AND PAPER PREPARED BY: **HARJIT KAUR** (2016)

PAPER REVIEWED BY: AMY FITZGERALD, KAMALJIT LEHAL, SHELINA NEALLANI AND KATHRYN SAINTY

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### A: Introduction

For the purpose of this project, a preliminary literature review was conducted of evidence based mediation practices and research pertaining to issues relevant to the safety of women in cases of violence against women in BC. The literature review explored the techniques and practices used by mediators when assessing for violence. It explored alternatives to court-based litigation used by mediators in cases where violence is present. It reviewed research and lessons to be learned from other jurisdictions. The literature review highlights practices that ensure mediation processes and resulting agreements meet the needs of women who have experienced violence. Over 140 articles and documents were reviewed.

### B: Background

The *Family Law Act* SBC 2011, c. 25 (FLA) was implemented in British Columbia in March 2013 after research and community consultations. It was supported by the Ministry of Justice and was intended to both modernize the former Family Relations Act, and be inclusive of the best interests of women and children and family violence factors. (Martinson et al., 2016). The FLA took a different approach to family court matters and made it mandatory for alternative dispute resolution processes to be promoted as options to court resolutions

The FLA focuses on family violence and its impact on decisions relating to future safety, security and well-being of children and other family members when making an agreement or court order: S. 37(2) (g).

Section 8 of the FLA states that family dispute resolution professionals (including lawyers, mediators) must assess, in accordance with the regulations to the FLA, whether family violence may be present and if so, the extent to which the family violence may adversely affect:

- the safety of the party or a family member of that party,
- and the ability of the party to negotiate a fair agreement.

Effort has been made to ensure that the FLA reflects Canadian values of upholding equality when decisions are made concerning family violence and its impact, while taking into account the values and principles of the Charter of Rights and Freedoms (Martinson et al., 2016), whether it indeed reflects this in



agreements reached and the lives of women prior, during and after mediation sessions remains to be researched.

Limited research has been done since the FLA was enacted to monitor its progress in the area of mediation in cases of violence against women. The concerns of advocates and the legal community in the early stages following the enactment were highlighted by the release of a study by Martinson and Jackson (2016). In it, the authors expressed their concerns about the safety of women and children, focusing on information sharing between Family and Criminal courts in cases of family violence in BC. Specifically they state:

“We have concluded that the responses, overall, show concerns existing in 2015 which are “strikingly similar” to those identified in 2012. These results raise the potential that the aims of the FLA to ensure the safety, security and well-being of victims of family violence, and in particular children, are not, at least in these early days, being met. If this is true, this presents a significant justice concern”.

They pointed out that Section 8 of the FLA guides the practice of mediation in cases of violence against women and focused research was required on whether (a) the FLA provisions ensure the safety of women; and (b) the agreements reached through the process are fair and effective.

Jane Morley (2015), in her report discusses the implementation of a mandatory Consensual Dispute Resolution (CDR) stream in British Columbia. In it Morley notes: “families going through separation and divorce should be encouraged to resolve their own family disputes as early as possible- well before they engage into the court system”. While there is ongoing debate as to whether mediation is cost and time effective, the issue remains: does mediation represent a solution for the safety of women or is it another way to provide a temporary solution for resolving cases where domestic violence is present? According to Morley, questions that remain outstanding include considerations for different situations and diverse clients such as:

- a. What is the policy rationale for excluding from the publicly funded aspect of our system, those who might benefit from an assessment and triage/referral process or using the CDR stream but who do not have children or any adult children?;
- b. If this assessment is going to take into account cultural considerations, are there specialized questions or protocols that will need to be developed?
- c. What questions can be appropriately asked about cultural factors” to promote safety?

The FLA guides the mediator and the process to ensure the safety and protection of women and their children. It is important to monitor and guide the process to ensure the attainment, through mediation, of agreements that are efficient, fair and safe for women and their children (Landrum, 2012).

The advisability of using mediation and alternative dispute resolution in domestic violence cases (and in particular with reference to women) remains a controversial topic of discussion, mostly because of the underlying power imbalance in domestic violence cases. Mediation assumes equal partnership and power. That equality does not often exist in cases where violence against women is present. Despite the debate, cases in which domestic violence exists continue to be filed with BC courts in large numbers and many are settled using mediation and other alternative dispute resolution processes (Neilson, 2014; Martinson et al., 2016).

According to Neilson (2014), a critical question to consider is: How can the mediation process be made ‘effective and safe’? The true measurement of the resulting danger to the safety of women who participate in mediation and their children remains to be researched. Measuring whether the current processes are effective, fair and safe is hampered by our current understanding, the lack of research in this area, and the lack of statistical data in Canada correlating prior violence and actual or attempted homicides (Martinson et al., 2016).

There is limited empirical studies evaluating the effectiveness of mediation in cases where domestic violence is present and where there are studies, those have been with a small sample size. Most research has relied upon anecdotal evidence (Landrum, 2012; Chandler, 1990; Lerman, 1984; Murphy, 2005). To date, no empirical research has been done in British Columbia studying mediation impact and outcomes in cases of violence against women. Three years since the enactment of the FLA, concerns and risks regarding the safety of women and children involved in mediation and the fairness and effectiveness of negotiated agreements remains unevaluated.

According to Susan Landrum, (2012) the problems that arise in cases of domestic violence can be placed into four categories: (1) challenges presented in defining domestic violence to determine the appropriateness of the case for mediation; (Knowlton et al., 1994); (2) can the mediation process be manipulated to ensure both the safety of the parties involved and that it is a fair, voluntary and, neutral process; (3) the safety, equality and fairness of the outcomes; and (4) the public policy implications.

It is in this context and background that the literature review is conducted. There appear to be more questions than answers arising since the enactment of the FLA and more research needs to be done. It is important to understand the nature of the questions and the research that needs to be conducted to ensure the safety of women. To assist in this understanding the literature review has been structured as follows:

- Understanding Mediation and Domestic Violence
- Challenges to mediation in cases of violence against women
- Specific Challenges

- Best Practices

## C: Understanding Mediation and Domestic Violence

### Mediation

Mediation is based on the concept of self-determination and voluntary decision-making which, for women impacted by violence, remains a challenge. According to studies done, in 33% to 98% of mediation cases, there is a report of the presence of domestic violence (Beck, Menke, O'Hara Brewster, & Figueredo, 2009; Tishler, Bartholomae, Katz, & Landry-Meyer, 2004). Research studies conducted on the appropriateness and safety aspect of the use of mediation in cases of violence against women show that the use of mediation in such cases remains controversial (Holtzworth-Munroe, 2011; Ver Steegh & Dalton, 2008).

Having its roots in the 1970s, mediation is currently the most widely used alternative to achieve resolution in family cases (Emery, Sbarra & Grover, 2005; Salem, 2009; Bingham, 2015). Mediation, as a method of alternative dispute resolution has been most commonly used when relationships reach the level of dissolution where decisions are being negotiated pertaining to legal custody of children (Milne, Folberg, & Salem, 2004, Rivera et al., 2014; Rossi et al, 2015). Some studies show that the collaborative nature of mediation allows parents to make decisions and hence increases their satisfaction, decreases litigation rates, and supports better outcomes for children (Cohen, Luxemburg, Dattner, & Matz, 1999; Kelly, 2004). What is not apparent is whether this is also the case where violence is present. Research studies do argue that it is appropriate to use mediation in cases of domestic violence as mediators should be able to square the power imbalances in those relationships (Ellis & Stuckless, 2006a, 2006b). There are also those researchers who see the mediation process as empowering, acting as an effective intervention to end the present violence and prevent any future occurrence (Erickson & McKnight, 1993).

Researchers and feminist advocates, however, remain skeptical about the effectiveness and safety of mediation in cases of past and present violence against women (Beck & Frost, 2006; Dalton, Carbon & Olesen, 2003, Hart, 1990; Imbrogno & Imbrogno, 2000; Jaffe et al., 2003; Johnson, Saccuzzo, & Koen, 2005; Pearson, 1997; Salem & Dunford-Jackson, 2008; Tishler, Bartholomae, & Katz, 2004).

Questions regarding mediation where violence against women is present focus on the potential for harm in situations where the decisions may anger the abusive partner (Beck & Sales, 2000; Campbell et al., 2003)

and contribute to the inequality based on the existing power imbalance between the parties (Rossi et al., 2015).

Particularly concerning are the consequences of women facing abusive partners, leaving women feeling controlled and intimidated into agreements that are inadequate in meeting their needs (Fischer, Vidmar, & Ellis, 1993; Tishler et al., 2004) and without the much needed safety measures in place (Beck, Walsh, & Weston, 2009; Tishler et al., 2004).

Support for the process of mediation includes arguments comparing mediation to litigation wherein the empowering benefits of motivation are noted; where survivors are able to exercise their voice; and agreements can be customized to ensure their safety (Edwards, Baron, & Ferrick, 2008). Studies conducted on the impact of mediation have indicated that mediation has the potential to reduce the conflict between partners (Emery, Laumann-Billings, Waldron, Sbarra, & Dillon, 2001). Whether this holds true where there is a history of violence in the relationship has not been established (Rossi et al., 2015). There is research claiming that mediators are in a better position than the courts to protect survivors during the mediation process while utilizing safety measures available to them (such as limited face-to-face contact with their abusers and the ability to obtain agreements limiting future contact) (Ellis & Stuckless, 2006; Putz, Ballard, Gruber Arany, Applegate, & Holtzworth-Munroe, 2012).

## Violence against women

### Definition

Violence against women has been referred to in a number of different ways including “intimate partner violence”, “domestic violence”, “spousal assault”, and “family violence” among others.

The definition of violence against women goes beyond actual physical violence and its impact, and can include financial and psychological manipulation as well as controlling and coercive behaviors such as intimidation, manipulation and stalking (Pence and Paymar, 1993; Stark, 2007). Research expands the concept of coercive control in specific categories such as “situational couple violence” (resulting from interpersonal conflicts), “separation-instigated violence” and “violent resistance” (resulting from coercive controlling behaviors) (Kelly and Johnson, 2008, 478-79; Bingham et al., 2014).

There are significant differences and effects on mediation of the various types of domestic violence (Beck, Anderson, O’Hara, & Benjamin, 2013; Beck, Walsh, & Weston, 2009; Beck, Walsh, Mechanic, Figueredo, & Chen, 2011; Kelly & Johnson, 2008; Pokman, Rossi, Holtzworth-Munroe, Applegate, Beck,

& D’Onofrio, 2014). Parents also experience a variety of forms of domestic violence and this is reflected in their abilities and needs which should be dealt with appropriately by mediators (Jaffe et al., 2008).

The impact of psychological abuse has been more difficult to document and identify, yet it occurs more frequently and can have longer lasting effects than actual physical violence, including post-traumatic stress (Beeble, Bybee, Sullivan, & Adams, 2009; Follingstad, Rutledge, Berg, Hause, & Polak, 1990; Theran, Sullivan, Bogat, & Sutherland-Stewart, 2006; Coker et al. 2002; Dutton, Goodman, & Bennett, 1999).

### Types of violence

According to researchers, there are four types of domestic violence: (1) coercive controlling violence, (2) violence resistance, (3) situational violence, and (4) violence instigated by separation (Kelly and Johnson, 2008). Kelly and Johnson offer a comprehensive assessment of these definitions. Of significance in this study is the classification of violent resistance also defined as “female resistance” and “reactive violence” (Kelly et al., 2008) 479). Understanding the different types of domestic violence could lead to better recognition of the signs of power imbalance, fear and intimidation and therefore result in improved screening, thus better ensuring the safety of women and children (Kelly et al., 2008; Ver Steegh & Dalton, 2008; Landrum, 2012).

Although there is general agreement that serious cases of domestic violence should not be mediated, it is difficult to define “serious” (Landrum, 2012; Lerman, 1984). The question that arises is: do mediators have the specialized skills to determine the seriousness of the violence and if not, are agreements being reached that could pose further risk to the safety of women and children?

As the debate continues and women are encouraged by the FLA to participate in mediation, it becomes more important and timely to have a comprehensive definition and understanding of the dynamics and impact of violence, clear use of well-developed screening and assessments tools and protocols and to ensure well-trained mediators, who can recognize the complex issues and signs of domestic violence, in order to arrive at safe, effective and equal agreements for women (Landrum, 2012).

## Prevalence of violence

In 2010, in Canada there were almost 103,000 survivors of domestic violence, both spousal and dating violence (Stats can, GSS, 2011).

According to the 2012 BC Coroner's Report, between 2003 and 2011, there were 147 domestic violence related deaths in BC, 72% of which were women. Men were responsible for 83.7% of all intimate partner deaths, including 100% of incidents resulting in more than one death. Of note are the statistics from the United States noting that domestic violence is a primary reason why partners seek relationship resolution (Amato & Previti, 2003; Ayoub, Deutsch & Maraganore, 1999; Putz et al., 2012), and that high numbers of mediation cases involve domestic violence (Beck, Menke, Brewster, & Figueredo, 2009; Ellis & Stuckless, 2006; Mathis & Tanner, 1998; Putz et al., 2012).

## **D: Challenges to Mediation in cases of Violence against Women**

Understanding the challenges facing women in the mediation process requires the use and development of appropriate screening and safety tools. The identification of violence, the screening of cases, screening tools, safety measures (prior, during and after the process) and the attainment of agreements that protect the interests and safety of women and children requires constant and consistent attention and monitoring in order to meet that goal. Also critical is the identification of domestic violence in cases where domestic violence existed in the past, or where it was never disclosed or reported to authorities.

Despite the research findings that caution the use of mediation in cases of domestic violence, using mediation and other dispute resolution processes continues to be encouraged alongside a list of cautions and guidelines (Martinson et al., 2016; Neilson, 2014). The research expresses caution about the power differential between parties, the critical impact of the complexity and dynamics of domestic violence and the importance of guidelines. The literature points to the fact that the key ingredients for any fair and equal agreement must be based on the ability of the mediator to screen, identify, decide on appropriate safety measures or processes, monitor, refer to appropriate resources and support, all coupled with the limitation of time, financial considerations, availability of legal aid, and language needs. All this rests on the skill and training of the mediator who must fulfill that responsibility and role. In addition, deciding what is the next cause of action and referring to the support resources within the communities for safety planning for the woman and her children remains crucial for the mediator.

To achieve a just outcome, Neilson (2014) suggests that preliminary screening is essential to determine the suitability of the process and that specialized knowledge and understanding of the complexity and effects of domestic violence is required to decide the ability of the person to participate and to achieve a fair and safe agreement.

If this preliminary screening is not done properly, the woman may be coerced, feel threatened or fearful and unable to make decisions in her own best interest and, as a result, accept agreements that are unsafe (Beck & Frost, 2006; N. E. Johnson, Saccuzzo, & Koen, 2005; Beck, Walsh, & Weston, 2009; Mathis & Tanner, 1998; Putz, Ballard, Gruber Arany, Applegate, & Holtzworth-Munroe, 2012).

The coercive and controlling behaviours of domestic violence perpetrators has been the focus of research but the effects of this behavior are not easily assessed and often violence persists after the woman has left the relationship and may escalate (Fleury, Sullivan, Bybee, 2000; Hardesty & Chung, 2006; Jaffe, Lemon, & Poisson, 2003; Kurz, 1996; Rivera et al., 2012). Under extreme circumstances, ex-partners have been known to kill and/or murder their ex-spouses and/or children or kidnap them (Jaffe et al., 2003; Saunders, 2009). Mediators and alternate dispute resolution professionals must remain informed and aware of the impact of domestic violence and how this potentially lethal backdrop frames their mediated settlements.

There is documented evidence of the use of power and control by abusive fathers to re-victimize the woman through the children after separation by manipulating, controlling or threatening the children (Beeble, Bybee, & Sullivan, 2007; Bemiller, 2008; Hardesty, 2002; Hardesty & Ganong, 2006; Harrison, 2008; Kurz, 1996; Moe, 2009; Slote et al., 2005).

Studies focusing on the use of mediation in cases where domestic violence is involved have not resulted in substantive or consistent data. The analysis is influenced by several factors such as:

- the variation in settlement processes,
- the definition of domestic violence and the impact it has on the survivor's abilities to participate
- mediator training and skills
- the use of a variety of safety procedures in mediation processes, and
- the definitions and measurements of successful agreements (Neilson, 2014).

The concerns raised include questions that require answers about:

- inadequate screening of unsuitable cases
- lack of specialized knowledge about the impact of domestic violence on survivors and on the settlement processes
- insufficient understanding of the effects on negotiation tactics by the perpetrator's presence

- impact and understanding of coercive domestic violence on parenting patterns
- inability to detect subtle forms of intimidation during settlement processes
- ineffective use of power balancing methods, and
- limited understanding of settlement pressures specific to domestic violence Neilson (2014).

Supporters of mediation point out that, as opposed to litigation, even in cases of violence against women, the benefits include:

- reduced costs
- opportunity for self-determination, and
- increased efficiency in the process (Adkins, 2010; Edwards, Baron, & Ferrick, 2008; Welsh, 2004) by decreasing the conflict experienced by the parties.

It is important to note that the studies used to support mediation did not include data from cases with domestic violence in the relationships (Emery, Laumann-Billings, Waldron, Sbarra, & Dillon, 2001).

What remains unclear and critically important is: whether the potential safety risks outweigh any benefits of mediation (Rossi et al., 2015). Despite the documented benefits, the use of settlement processes in violence against women cases continues to present serious concerns (Neilson, 2014).

Another area of concern identified in research studies is the mediator's inability to detect violence and tendency to, instead, solely focus on settlement agreements that address the safety of women and children (Neilson, 2001, 2014; Bagshaw, et al., 2010; Kaspiw et al., 2009; Saccuzzo and Johnson, 2003, 2004).

Questions that require focus include:

- are all women able to afford mediation services and are sufficient resources offered to the women?
- is there sufficient time, tools, and skills available to the mediator to ensure that mediation produces the best results and agreements for her and her children?

More research is required to address the additional challenges faced by Aboriginal women, immigrant women, women with disabilities and women in LGBTQ2 relationships. Women living in isolated and rural communities face challenges due to the lack of availability of mediators and community based resources.



## E: Specific Challenges

Some specific challenges that emerge in the literature review pertain to:

- Identification and Screening
- Secondary Victimization
- Mediation Process Being Fair
- Agreeing to Mediate
- Mediation Agreements
- Effects/Impact of VAW (Violence against Women)

Each of these challenges is discussed below.

### 1. Identification and screening

There is consistent data from studies suggesting that a significant number of cases involving domestic violence continue to be recommended for mediation (Beck et al., 2011; Tishler et al., 2004; Rossi et al., 2015) and that what is important is both training and the mediators' ability to recognize the signs and understand the complexity of the dynamics involved to ensure the safety of women and children.

Mediation and alternate dispute resolution play a critical role in the lives of women experiencing domestic violence. We need to understand both what may be missing and what can be learned to improve the situations for the women as they proceed through these systems. It is important that mediators understand the complex dynamics of violence against women, the levels and types of violence the women have experienced or may experience (Putz, Ballard, Gruber Arany, Applegate, & Holtzworth-Munroe, 2012; Ellis, 2008; Ver Steegh & Dalton, 2008). Identifying the violence is the most crucial first step in ensuring safety. To accomplish the task of effectively screening in cases of domestic violence, a screening tool to accommodate the time restraints of the process remains important (Pokman et al., 2014).

A study conducted by Pokman et al., (2014) investigated the reliability and validity of the MASIC (Mediator's Assessment of Safety Issues and Concerns), a screening tool developed by Holtzworth-Munroe et al. (2010). This screening tool has been used by various mediation groups in the United States, Australia and Canada. Despite the availability of other screening tools, the MASIC was developed specifically to meet the time constraints of mediators, to screen and keep clients safe, and as an "efficient, easy-to-administer domestic violence screening tool". It has additional benefits in that it is not too lengthy, is cost free, exists in the public domain, and assesses multiple types of abuse (Pokman et al., 2014).

## 2. Secondary victimization

The re-victimization experienced by survivors of violence against women is referred to as secondary victimization (Rivera et al., 2012; Campbell, 2005, 2008; Campbell & Raja, 1999, 2005). Secondary victimization has been associated with the effects of post-traumatic stress and the difficulty of problem-solving and decision-making, produces distrust in the legal system and promotes a disbelief in a just world (Campbell et al., 1999; Orth, 2002). According to one study, the justice system is considered one that contributes to secondary victimization (Orth, 2002; Rivera et al., 2012). Secondary victimization often results in safety concerns for women and their children during the mediation process especially with regard to custody negotiations by survivors of violence against women (Rivera et al., 2012). The study conducted by Rivera et al., (2012) indicated that the mediation process constitutes a re-victimizing experience in most violence against women cases. The study reiterated the need for screening processes and safety measures to enhance the safety and to offset power imbalances in violence against women cases. Rivera et al. also confirmed that, the re-victimization that takes place during sessions and the sense of safety the woman feels, depends on the skills of the mediator and contributes to whether the participants feel secure during and after sessions and whether agreements reached are safe moving forward.

The mediator's skills continues to be highlighted as critical in screening for violence against women cases and the failure to have a skilled mediator potentially results in unfair agreements. Women are known to make decisions out of fear, and based on past and/or present coercive controlling behaviors of their abusive partner (Paranica, 2012). In addition, the study details the impact on the woman and states that the severity, length and type(s) of violence the woman is subjected to influences her ability to problem-solve and make decisions in such pressured situations, such as coming in contact or communicating with her abuser, even if she is not in the same room with him. Recognizing the post-traumatic stress symptoms, and the potential for re-victimization or re-living of the violence experienced by the woman during the mediation process as the abuser exerts his coercive power and control tactics, are imperative for the mediator. The mere appearance of the abuser, his use of facial and hand gestures, and tone of voice influence the post-traumatic stress symptoms are significant for the woman and should also be for the mediator (Paranica, 2012).

### 3. Mediation Process Being Fair

The questions that remain unanswered include:

- Are women on an even playing field and beyond the power and control of their ex-partners as they proceed through mediation and attain resolution?
- Because mediation is the preferred method used in avoiding waiting times for court and hence is it the only cheaper and more time-efficient process?
- Are women participating in the process voluntarily, with equal resources, and free from any form of pressure from the FLA (i.e., alternative dispute resolution processes are preferred over court) the legal system and/or the ex-partner?

Research has stressed that fair agreements may be achieved in mediation provided both parties are capable of proceeding through the process: (a) based on equality of opportunity to participate without fear, threat or any pressure, (b) with self-determination, and (c) with the ability to make appropriate choices and decisions that produce fair results for themselves and their children (Paranica, 2012). It is this concept of equal opportunity, self-determination and decision-making that remains critical and that requires further study as it relates to mediation in cases where violence against women is present.

### 4. Agreeing to Mediate

Women agree to mediate due to suggestions or pressures that mediation will minimize the impact of the breakdown of the family on them and their children. Pressures include those from their ex-partners and from the court system, not being able to totally comprehend the legal landscape, insufficient resources and support, barriers (including language), family pressure, lack of financial resources to pursue a trial, and time constraints. To understand why some women choose to proceed with mediation and why some do not, we must consider their individual situations, including their support systems. Researchers have also suggested that the timing of the past incidents of violence and the context in which they happened remain important foci in women's choices (Landrum, 2012; Zaher, 1998; Chandler 1990). To understand why women choose mediation, consideration must be given to the woman's individual situation (Zaher, 1998; Chandler, 1990). Where a woman chooses mediation, it is important that the mediator understand how effectively she can participate in the mediation process and hence attain safe and equal agreements (Fredrick, 2008; Landrum, 2012).

## 5. Mediation agreements

The need for the content of mediation agreements to address safety factors when violence is present is recognized in case studies. Study results suggest that mediators who were aware of the history of domestic violence assisted in negotiating agreements that included terms to reduce the risk to future violence by putting in place safety restrictions and referrals to resources and counselling (Putz et al., 2012). This is achievable only when the violence is detected through screening and when a mediator is skilled in this area. Further research (Jaffe, Johnson, Crooks, & Bala, 2008) indicates how important it is to understand the nature and severity of the violence experienced and its frequency (Beck et al., 2009). Also important to understand is the coercive controlling behavior of the abuser and its effect on the level of fear of the women.

Concerns regarding the efficacy of mediated agreements have been raised when women may be so fearful and intimidated during the process that the settlement may be neither fair nor safe (Grillo, 1991). Agreements reached may be influenced by the mediator's personal experience or belief system; hence identifying how women can reach a fair agreement and what constitutes a fair agreement could depend on the mediator's interpretation of the given situation based on their beliefs or experience (Grillo, 1991). Areas of future research include: who should determine whether the agreements reached are sufficiently safe and whether the provisions made by mediation are followed by the parties and if not why not. (Holtzworth-Munroe, 2011).

## 6. Effects/impact of VAW (Violence against Women)

The full spectrum of the mediation process and the need to provide safety, equality and to protect the interests of women is more than just completing the process and having the agreements in place; it is understanding the effects of the violence on the lives of women and their children, prior, during and after the mediation sessions.

A multitude of effects have been recorded in research relating to violence against women (Paranica, 2012). Significant is the effect of post-traumatic stress and the cognitive functioning of women as they participate in the mediation process which requires an ability to self-determine and exercise both problem-solving and decision-making skills (Paranica, 2012). The effects of the violence significantly impact female victims causing them to experience mental health effects including depression, post-traumatic stress, emotional distress, low self-esteem and fear (Paranica, 2012).

Yet, some research suggests that mediation can be an empowering process, allowing women to have a voice regarding their interests and safety for the first time (Zaher, 1998). Other researchers have concluded that the process can be traumatizing for a woman as it requires her to confront her abuser and to have to negotiate for her needs and safety (Grillo, 1991).

## **F: Best practices/interventions**

According to the literature review there are number of best practices or interventions that mediators need to pay close attention to when dealing with cases involving violence against women. Those pertain to:

1. Screening and tools used;
2. Screening as an ongoing process;
3. Types of mediation;
4. Mediator training and skills;
5. Mediator's role;
6. Referrals to Support;
7. Ensuring mediation is voluntary; and
8. Being mindful of undisclosed violence

Each of the preceding is discussed below.

### **1. Screening and tools used**

Screening is a critical step in mediation, particularly in cases where there is a history of domestic violence. It allows the mediator to ensure that appropriate safety measures are in place to both monitor the process and address any power imbalance between parties so as to attain appropriate agreements.

Research indicates that almost half of mediation cases involve the presence of domestic violence (Rossi et al., 2015; Ballard, Holtzworth-Munroe, Applegate, & Beck, 2011; Beck, Walsh, Mechanic, Figueredo, & Chen, 2011; Beck, Walsh, & Weston, 2009; Mathis & Tanner, 1998; Tishler, Bartholomae, Katz, & Landry-Meyer, 2004). Women run the further risk of agreeing to agreements that do not meet their needs (Fischer, Vidmar, & Ellis, 1993; Tishler et al., 2004) and do not sufficiently protect and keep them and their children safe from future harm (Holtzworth-Munroe, 2011; Putz, Ballard, Arany, Applegate, &

Holtzworth-Munroe, 2012; Rossi, Holtzworth-Munroe, & Applegate, 2015) because of their fear of their abuser.

There are still concerns that survivors of domestic violence remain reluctant to disclose the abuse, making it more important for screeners to be skilled in asking questions and recognizing the signs throughout the process (Landrum, 2012). Mediation agreements can result in an increased risk of harm to women and children where the process or the agreement reached aggravate the anger of abusive partners (Dalton, 1999; Milne, 2004).

Screening and screening tools remain critical to identifying and consequently determining appropriate safety measures in cases of violence against women. Screening has been identified as the integral initial step in deciding whether to proceed with mediation, making the effectiveness of screening tools critical in detecting domestic violence, including the fear and chance of physical harm during the negotiation of and after execution of the agreement (Ballard et al., 2011; Holtzworth-Munroe, 2011; Van Steegh & Dalton, 2008; Rossi et al., 2015).

Rossi et al., (2015), conducted a randomized controlled trial research study about the importance of screening prior to mediation sessions, comparing a standardized, behaviorally specific screen Mediator's Assessment of Safety Issues and Concerns, (MASIC) to a less specific mediation clinic domestic violence screen (Multi-Door screen) to determine domestic violence detection rates. Of the 741 samples of divorcing or never married parties seeking joint mediation, more parties reported domestic violence using MASIC compared to the Multi-Door screen. The findings further suggested that recommendations for joint mediation were based on, or took into consideration, the following factors:

- the type of violence reported, and
- the level of abuse and timing of it.

Importantly, the study examined domestic violence (defined as physical violence) and noted that the impact of other types of abuse (such as coercive behaviors and patterns of control and psychological abuse) needed to be investigated and included in assessments (Rossi et al., 2015; Beck, Anderson, O'Hara, & Benjamin, 2013; Kelly & Johnson, 2008).

The power imbalance created by the controlling and coercive behaviors of abusers results in survivors being unable to negotiate for their needs and interests (Beck & Frost, 2006). Abusers use intimidation tactics to take advantage of the process and the agreements made and, as a result, further re-victimize the survivor (Fuller, 2007; Murphy, 2005; Saccuzzo, 2003).

Limited studies have been conducted examining decisions by mediators to screen in or out of mediation given the existence of physical violence (Tishler, Bartholomae, Katz and Landy-Meyer, 2004; Beck, Walsh, Mechanic, Figueredo, and Chen, 2011). These studies evidently report recommending mediation for a large number of domestic violence cases but what remains unclear and requires further examination are the reasons for such decisions (Rossi et al., 2015).

The mediator may never know the impact of abuse (whether it is based on past, present or future); nor will they fully assess the safety of the woman prior, during or after the mediation agreement. In mediation, the question is: will the woman be able to use her ability of self-determination free from fear or coercion from the abuser or, in some instances his family or extended family members, during the mediation process? (Paranica, 2012). Yet, a key aspect of mediation is that the parties are participating in the process out of self-determination and choice. (Paranica, 2012).

Feminist advocates and researchers state that it is the woman herself who is the expert in assessing her fear, sense of safety, any power imbalance and the dangers her abusive partner or ex-partner poses. It is this lived experience and the post-traumatic stress and psychological impact that needs to be considered when screening, recognizing signs of abuse, and considering whether the mediation process is appropriate and, if so, what safety precautions need to be put in place (Paranica, 2012). The tools used for screening remain as important as the training and skills of the mediator in recognizing the signs of domestic violence and assessing the potential risks of the mediation.

## 2. Screening is an ongoing process

Screening has to be an ongoing process during mediation sessions instead of a one-time process (Fuller, 2007; Landrum, 2012). Mediators should use various approaches to keep the process safe including shuttle mediation, caucusing, telephone and video conferencing (Landrum, 2012).

Additional questions are: how appropriate are the agreements, and do they keep the woman and her children safe afterwards? Abuse often continues after the relationship ends. Not all women seeking separation or divorce disclose past or present domestic violence, making it even more critical for appropriate screening processes, tool(s) and mediator skills to identify the signs of domestic violence and put in place essential safety measures (Paranica, 2012).

The role of the mediator remains critical in navigating the process for women, ensuring they balance, their professional responsibility to remain neutral, keeping the power balanced between parties, and negotiating fair and safe agreements (Fuller, 2007; Grillo, 1991).

### 3. Types of mediations

Where mediation and alternate dispute resolution is used in cases where there is violence, according to Susan Landrum, (2012), the use of an appropriate mediation process is necessary to direct the mediation, and ensure the safety of the survivor. For example, using caucus, rather than joint sessions, with the survivor has support among researchers with the only variable being how it is used (Landrum, 2012, Lerman, 1984; Ver Steegh, 2003; Pate, 2003). Using shuttle mediation in cases of domestic violence makes sure that survivors are not in the same room during the mediation process, ensuring the safety of the survivor (Pate, 2003). Mediators can use a variety of approaches to keep the process safe during and after the sessions including shuttle mediation, caucusing, telephone and video conferencing mediation (Landrum, 2012).

### 4. Mediator: training, skills

The skills required by mediators to screen and determine the appropriateness of mediation may affect the lives of women and children long after agreements are finalized. Mediation is often used in determining custody and access, visitation and the financial support. According to Landrum, (2012), training needs to cover the following areas:

- recognizing the signs of domestic violence,
- power dynamics of domestic violence relationships,
- screening for domestic violence,
- using different techniques to manage power imbalances,
- planning for safety prior, during the sessions and
- legal issues related to domestic violence and the available community resources.

According to the FLA, mediators, parenting coordinators and arbitrators, are required to complete at least 14 hours of training on how to identify and screen for family violence and to determine whether, or what type of, dispute resolution process is appropriate. The B.C. Law Society strongly encourages all lawyers dealing with family law cases to have this training. But does the current regime of 14 hours of training prepare mediators adequately for the skills they require to meet the needs of women in violence against women cases?



“We suggest that there are core competencies necessary to do this work effectively; both lawyers and judges have professional responsibilities to ensure that they have the skills and specialized knowledge needed to do the work well. Much more is required than just a one-time “course”; there is an ongoing obligation to pursue professional development“(Martinson et al., 2012).

The level of training, skill and experience of the mediator dealing with domestic violence cases has consistently been researched. It is argued that, without a competent mediator, the appropriateness and safety of mediation remains in question (Knowlton and Muhlhauser, 1994). Without specialized knowledge and sufficient skill, researchers question the ability of mediators to recognize the signs of domestic violence, including the complexity of maintaining equality during the sessions or continuously monitoring for signs of threats or coercive behaviors (Hart, 1990; Stark, 2007). Researchers argue that such coercive behaviors tend to be present during mediation, not necessarily physical violence (Dalton et al., 2003; Hart, 1990; Imbrognon & Imbrognon, 2000; Johnson et al., 2005; Pearson, 1997; Salem & Dunford-Jackson, 2008).

Mediators play a critical role in cases where domestic violence is present. The mediator is responsible for remaining neutral, managing the discussion yet remaining aware and alert to violence. One scholar argues that balancing the power during the process has the potential to compromise the mediator’s neutrality as the mediator works to protect the woman’s safety (Fuller, 2007). Other studies conclude that in order to maintain the safety of the women, the mediator cannot be neutral but has to remain responsible for the safety of the woman and work to ensure that the agreement is fair (Lerman, 1984).

## 5. Mediator’s Role

Immigrant women seeking mediation, face an additional challenge highlighted in the research, the ethical question of mediators having dual roles – as mediators and interpreter where the woman does not speak English (Bernal, 2010). It is argued that it is inappropriate and unethical for mediators to play this dual role. Yet interpreter services remain expensive and difficult for many women to access thus the dual role may be more commonplace, even if not recommended.

## 6. Referrals to support

Appropriate and timely referrals assist with risk assessment, emotional and practical support, safety planning and access to counselling for women and their children (Ver Steegh et al., 2012). Women left without resources and referrals for safety planning remain vulnerable. Each community builds on existing community resources and knowledge to understand and support women survivors. Research has observed positive results in the collaboration between mediator and domestic violence professionals (Pearson, 1991; Salem and Dunford-Jackson, 2008; Yellott, 1990). This collaboration is important and can be achieved through training provided by domestic violence advocates (Pearson, 1991).

## 7. Ensuring Mediation is voluntary

Are mediations voluntary for women survivors? Some researchers conclude that participation in mediation can never be voluntary for a survivor of domestic violence (Hart, 1990; Fuller, 2007). This occurs because of the woman's perceived pressure to participate from the justice system or the abuser. Further, agreements reached during a process where there is intimidation, fear, force or manipulation cannot be in the best interests of the women and her children (Landrum, 2012; Fuller, 2007).

## 8. Being mindful of undisclosed violence

A further challenge arises when the woman does not disclose violence at the beginning of the process or chooses to disclose it after trust with the mediator has been established (Jaffe et al., 2008). The danger of non-disclosure or late disclosure is that the mediator may proceed without screening or additional monitoring during the mediation processes (Ver Steegh, Davis, and Frederick, 2012).

## G: Conclusion

Central to any mediation process is the question – whose best interest is this for and whose needs will this meet? (Neilson, 2014; Paronica, 2012) In this inquiry, caution has been urged against using mediation in violence against women cases, pointing to the presence of domestic violence in the relationship as an

indication of power imbalance and the resulting increased vulnerability for the woman and risks to her safety (Paranica, 2012; D. Knowlton et al, 2012).

Under the FLA, the law requires legal counsel and mediators to screen these cases and implement safety measures such as shuttle mediation, co-mediation or video-conferencing to reach fair and appropriate agreements. Research from other jurisdictions recommends screening, comprehensive skills training to identify the complex issues inherent in cases with violence against women. To achieve just outcomes, Dr. Linda Neilson, stresses preliminary screening as critical to determining the suitability of the mediation process. Neilson states that the screening process requires in-depth knowledge of dynamics of domestic violence and its effects to correctly assess the ability of a person to participate and to attain a fair agreement (Neilson, 2014; Martinson et al., 2016).

According to Hart, mediators often do not reach the required skill level to identify and monitor signs of coercive and abusive behavior and the resulting power imbalance in the mediation undermines the effectiveness of the agreement (Hart, 1990). Research has also indicated that such coercive behaviors are, in fact, employed during mediation and, in some instances, abusive partners may manipulate the mediators as well as the survivor. In this context, the resistance by the women to this coercive behavior often tends to be viewed as uncooperative or not collaborative (Dalton et al., 2003; Hart, 1990).

Despite the difference in opinion in the research regarding the applicability of mediation and alternate dispute resolution processes in cases of violence against women, these processes are utilized in the FLA and in BC courts. It continues to be practiced despite research showing that women's safety risks are highest when they try to leave or leave an abusive relationship as they are seventy-five percent more likely to be murdered than if they stay in the relationship (Conner, 2006). Are the current BC screening methods and mediation safety measures sufficient for keeping women safe in the face of such dire safety concerns?

## **H: Recommendation – further research**

Research using a large enough sample size involving women survivors in BC would be an important tool in understanding the current alternative dispute resolution practice and in determining if safety is maintained in the process and that the final agreement is effective. Research shows us both the pros and cons of mediation in matters where there is violence against women. To date, studies provide only a clearer understanding of the dynamics of violence against women. Attention to power imbalances, abuse dynamics, cultural and linguistic barriers of the parties, the benefits of using standard screening tools, safety measures, appropriate and sufficient training of professionals is required to avoid victimization

during mediation and re-victimization of women after the mediation processes and agreements are in place.

The FLA (adopted in 2013), with its focus on alternative dispute resolution methods remains a work in progress and should be revised, if necessary to meet the needs of women to adjudicate their family court cases involving violence in a manner that ensures their safety and access to justice.

## **I: References**

See attached as Appendix A

## **SECTION 6: SURVEY**

## **Online Survey Findings: An Exploration of Current Models of Alternative Dispute Resolution in cases of Violence against Women in BC**

As part of the BC Family Mediation VAW Project, an online survey was conducted in 2016. The survey was distributed to family law advocates and lawyers, mediators, family justice counsellors and other dispute resolution professionals practicing in BC to understand how procedures have developed over the past 3 years under the *Family Law Act* (“FLA”). A summary of the online survey findings are below. A copy of the survey questions are found at Appendix B and the complete answers to the survey questions can be found at [www.lehalalw.com](http://www.lehalalw.com).

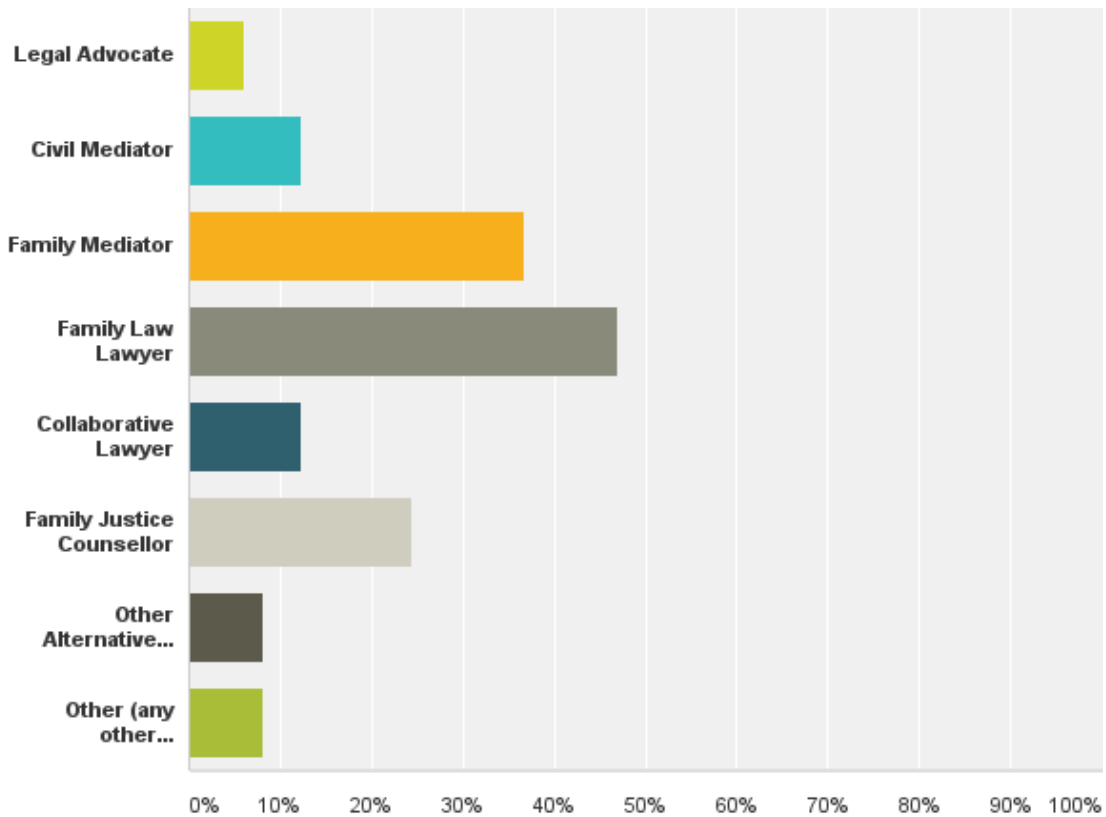
The majority of respondents were practitioners from the lower mainland and screen using their own tools. The majority of screenings are done in an office setting. They range in time from five to well over 90 minutes. Some practitioners conduct ongoing screening. 90% of those surveyed indicated they were aware of options for resources and services. However, many commented that they would appreciate having more knowledge about community based resources and services, especially for clients who do not want to go to court and deal with the matter in public. When safety risks were identified, the practitioners used a variety of methods to protect participants, including shuttle mediation, having support persons or lawyers present, or differing start times. When violence was identified, 75% referred cases to court and in addition made referrals to community based victim services, law enforcement and lawyer led negotiations.

Finally, in terms of improving practice when violence against women is present, 71 % of the respondents indicated the need to have support services for women available at the courts, including a need for childcare; 58% identified a need to provide funding to victims to employ dispute resolution professionals; 54 % responded that it would be useful to have more information regarding available community resources for referrals and safety planning; 52 % advised that more training regarding violence against women and relevant screening tools would be useful; and 50 % identified a need for interpreters for persons with limited English skills.

## Findings:

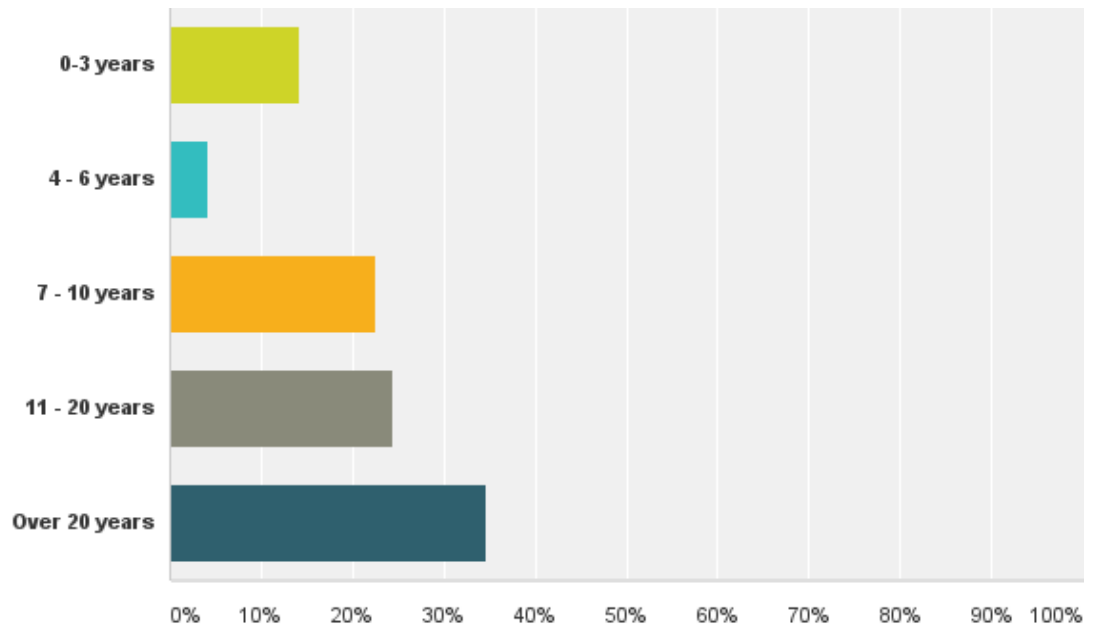
### Participant representation:

We received 49 responses to the survey and had diverse representation of practitioners. The highest representation was from family and collaborative lawyers (59%) and family mediators (37%).



## Experience in their respective roles.

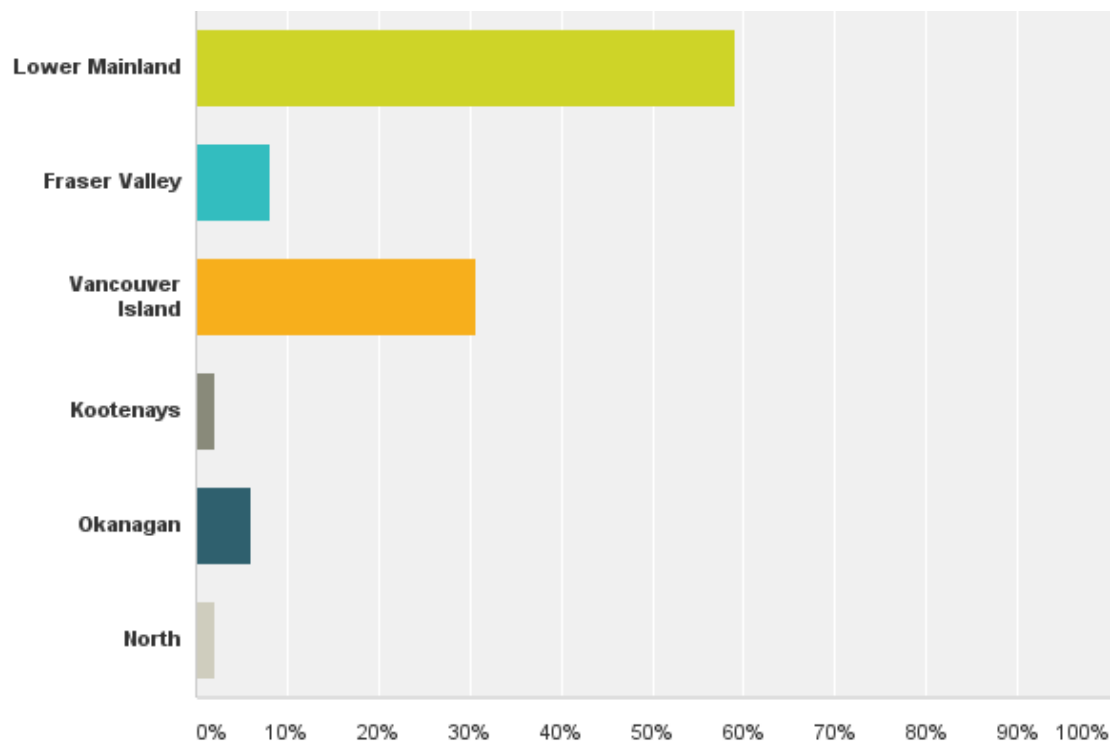
Approximately 35% of the respondents had over 20 years of experience in their respective roles.





## Regional representation of participants

The majority of the professionals practiced in the Lower Mainland (60%).



## Estimated number of cases of violence against women in the last 3 years?

Using the definition of “family violence” (see below) we asked participants to estimate the number of their cases involving violence against women since the implementation of the FLA, three years ago.

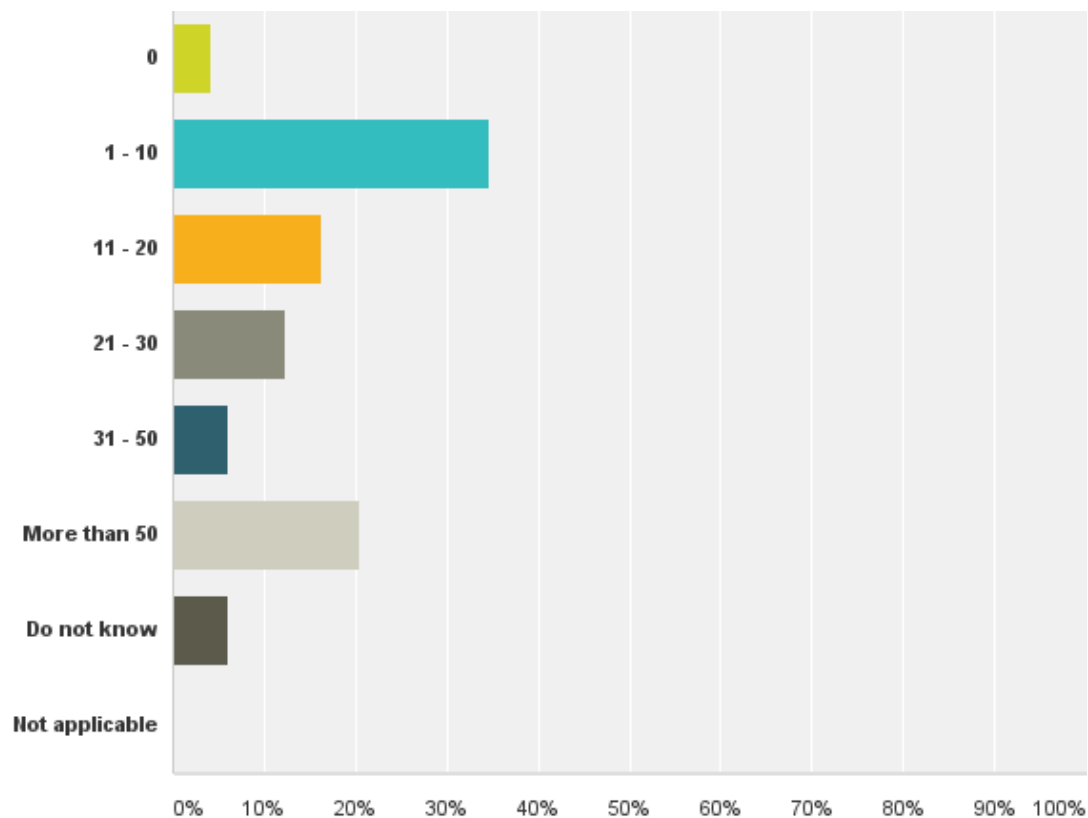
Section 8 of the FLA created new duties for lawyers and family dispute resolution professionals to assess whether “family violence” (as defined in the FLA) may be present and, if present, to assess the impact on their client’s/party’s safety and ability to negotiate.

The FLA defines “family violence” as: (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm, (b) sexual abuse of a family member, (c) attempts to physically or sexually abuse a family member, (d) psychological or emotional abuse of a family member, including: (i) Intimidation, harassment, coercion or threats, including threats respecting other persons, pets or

property,(ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,(iii) stalking or following of the family member, and (iv) intentional damage to property, and (e) in the case of a child, direct or indirect exposure to family violence.

### **Estimated number of cases in the last 3 years involving violence against women**

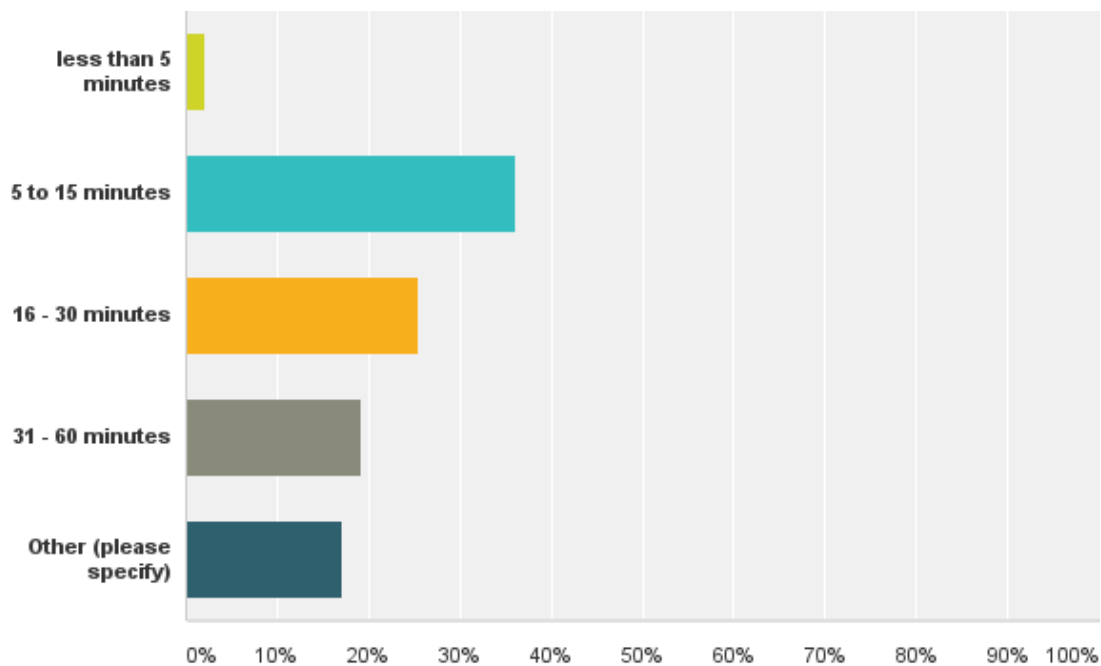
35% of respondents indicated they had personally identified between one and 10 cases with family violence and 21% estimated they had screened more than 50 cases where family violence was present.



## Screening for violence against women

### Estimate time taken to screen each case for violence

35% of respondents (the highest percentage) indicated they took (on average) five to 15 minutes to screen for family violence in each case with the next highest percentage being 26 % who reported a 16 to 30 minute timeframe spent screening.



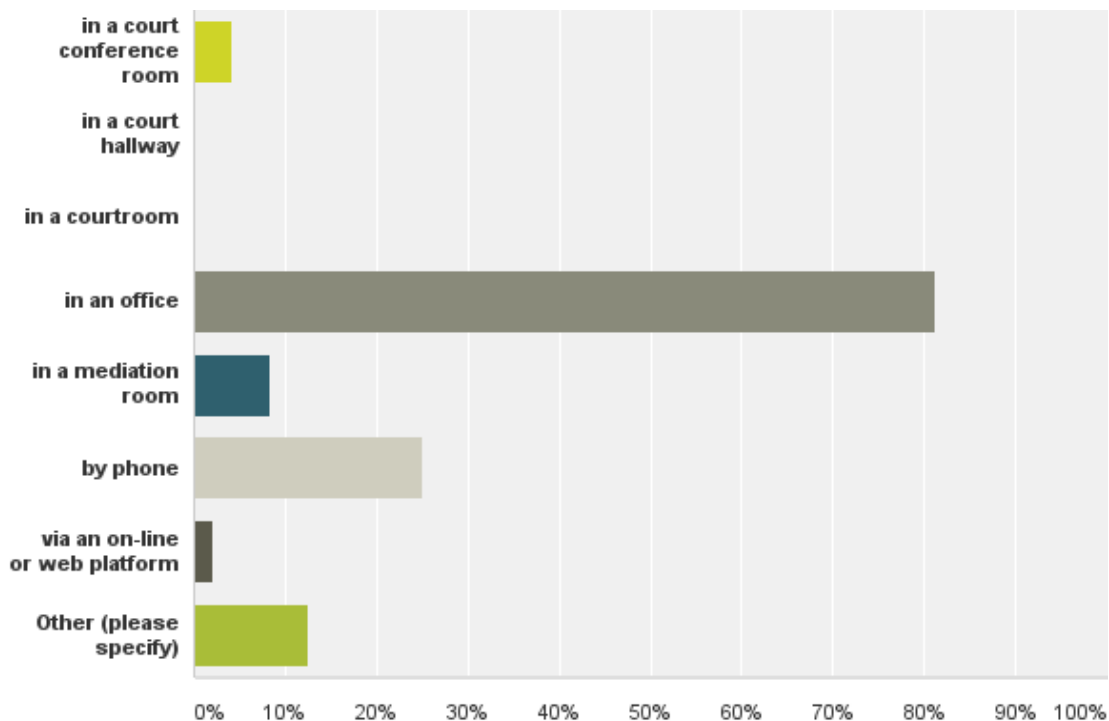
**In the narrative section regarding screening tools respondents noted additional practices/factors such as:**

- On-going screening for family violence throughout the case.
- The intake process, including screening often takes an hour or even up to 90 minutes per client.
- Family violence screening requires a trust relationship and develops as one's relationship with a client progresses.
- Screening is a multi-layered process that starts with the intake process requiring ongoing family violence screening as the relationship develops with the client.
- When violence is present, continual screening occurs.

- Discovering the realities and nuances of the violence could take several sessions.

**In order to understand the safety and sensitivity of screening we asked where screening interviews typically took place:**

81% indicated that screening occurs in an office setting and the second highest (25%) conducted the screening by phone.



**In the narrative section regarding screening tools respondents noted additional practices such as:**

- Always using private face to face meeting with client
- Conducting the screening anywhere the client wishes it to occur

## Screening Tool

At the time of the implementation of the FLA, no standard screening tool was recommended for use by lawyers and others required to screen for violence. We asked respondents about their use of 18 commonly used screening tools as well as their own screening tool. 51% of respondents indicated they use their own

screening tool; 32% (the next closest percentage) use the Family Justice Counselor's Dispute Resolution Tool; and 10% said they use the CLE Toolkit.

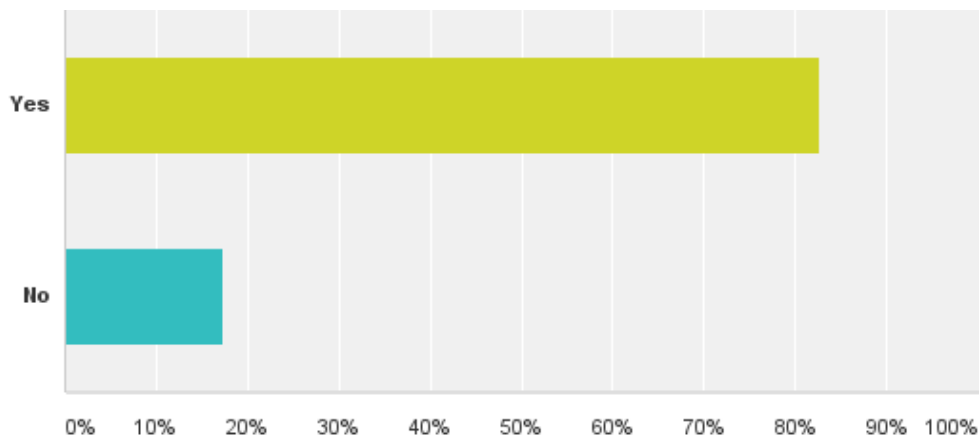
We did ask if respondents would be comfortable forwarding a copy of their own screening tool but no respondents did. In the narrative section of the survey, some respondents noted that they use a combination of tools and resources they have gathered from trainings and conferences. Others interview the client but do not use a specific screening tool. Respondents raised concerns about some of the tools being culturally or geographically focused and seemingly biased. As such they use a conglomeration of questions and are cautious to avoid any seeming bias. Some respondents indicated they draw on their prior professional experience in the anti-violence sector to design their own screening tool.

**Common screening tools used were:**

<b>Answer Choices</b>	<b>Responses</b>
VRAG	<b>0.00%</b>
PCL-R	<b>0.00%</b>
MASIC	<b>0.00%</b>
B-SAFER (Brief Spousal Assault Form for Evaluating Risk)	<b>0.00%</b>
SARA	<b>0.00%</b>
Family justice Counsellor's Dispute Resolution Tool	<b>31.71%</b>
DVAAG (Jocelyn Coupal)	<b>0.00%</b>
DV RAP (Desmond Ellis)	<b>2.44%</b>
Danger Assessment Factors (Jacquelyn Campbell)	<b>0.00%</b>
DOVE	<b>2.44%</b>
ODARA	<b>0.00%</b>
Barbara Schifler Commemorative Clinic Risk Assessment Check List	<b>0.00%</b>
Domestic Violence Risk Summary (19 Risk Factors used by Law Enforcement)	<b>2.44%</b>
HCR-20	<b>0.00%</b>
SAPROF (Structured Assessment of Protective Factors)	<b>0.00%</b>
MCFD Safety Assessment	<b>0.00%</b>
My Own Screening Tool	<b>51.22%</b>
CLE Toolkit	<b>9.76%</b>

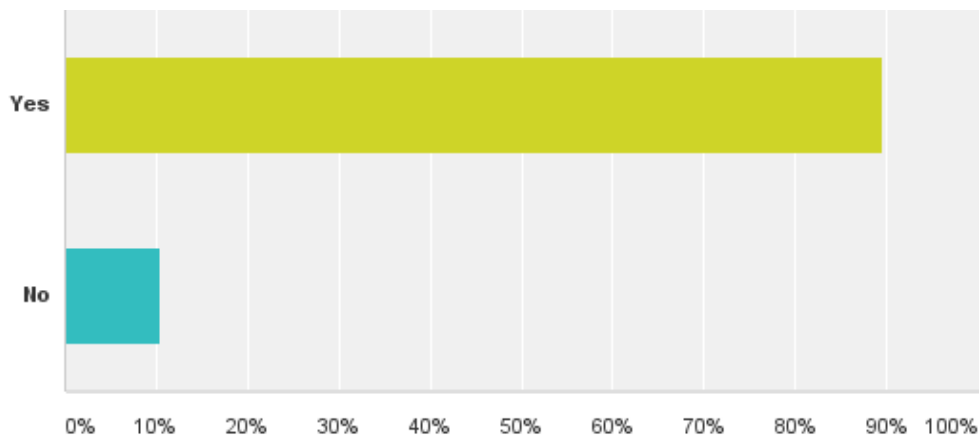
### **When screening identified a safety risk, were women advised of various dispute resolution processes?**

83% indicated that women were advised about differing dispute resolution options.



### **Knowledge of options in cases of violence against women allowing for properly advising them?**

90% of those surveyed indicated they were aware of some options for services and resources. However, in the narrative section, respondents commented that it would be beneficial to have more knowledge about community resources available especially for clients who do not wish to go to court and have to deal with the matter in public. Respondents indicated they provide options, information and discuss available services, but do not give advice about which options might be best in their client's personal circumstances.



**If screening identified a safety risk, the professionals indicated the following modifications in their mediation process:**

77% of the respondents used shuttle mediation (with each party in a different room) in mediations where there was a history of violence. 70% indicated having a support person or a lawyer present for the person who had been abused. 53% will work with the parties on different days and 51% use different start times and end times.

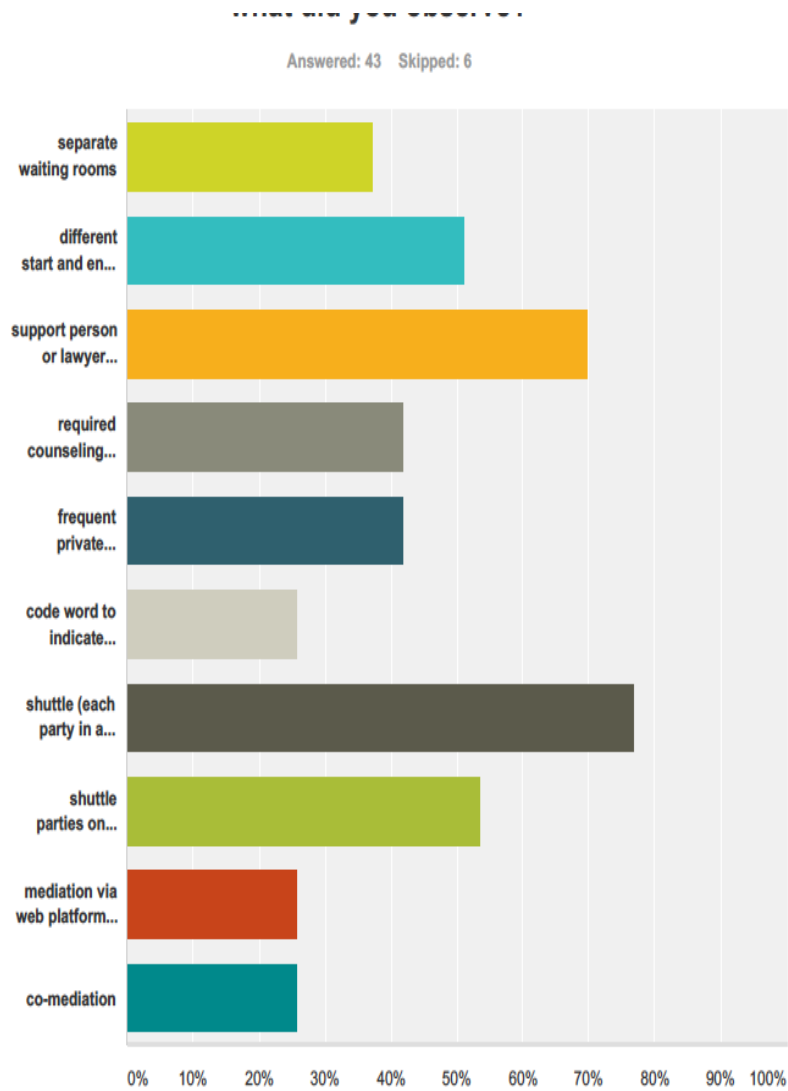
In the narrative responses, practitioners indicated that they sometimes had a sheriff in the room (or outside the room). Some recommend against mediation or other ADR methods until a protection order is in place. Respondents also recommended using the Family Justice Services Division's policies regarding mediation.

**If the screening identified a safety risk the professionals indicated they made the following referrals:**

75% of the respondents referred the cases to court, 61 % made referrals to community based victim services and 60% recommended lawyer-led negotiation. 58% of the respondents had referred cases to law enforcement.

The narrative responses also revealed that respondents often referred clients and children to counseling where available. They also noted that parent co-ordination services are expensive and most of their clients were unable to afford these services.

The table on the next page graphs the options they used to modify their process to ensure safety when screening identified a safety risk.



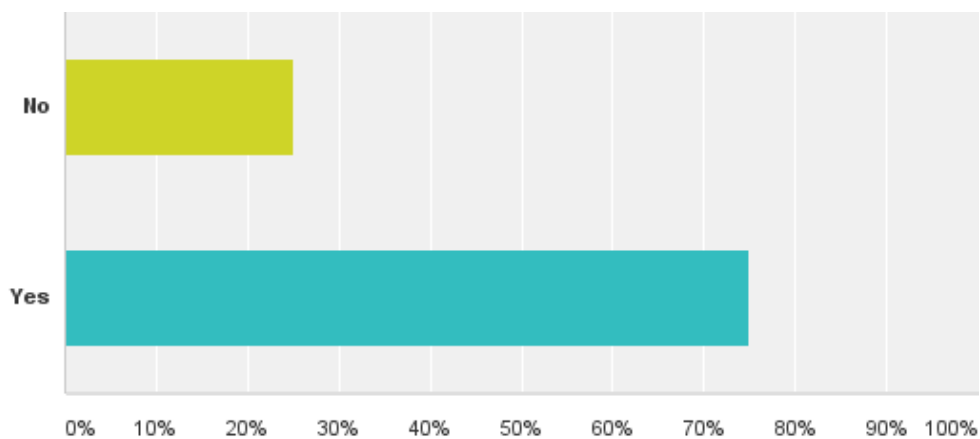


## Family Violence Screening Training

### We asked about the 14 hours of training and whether it was sufficient?

75% of the participants who completed the 14 hours of Family Violence Screening training (required under the FLA for Family Dispute Resolution Professionals), felt that it was enough training to allow for effective screening and assessing for violence, advising and referring appropriately. The other 25% felt it was insufficient.

In the narrative section, practitioners noted that they supplemented the 14 hours with other training and recommended that practitioners take an annual update or refresher course.



### **Challenges faced by women accessing mediation or other Family Dispute Resolution Services.**

**The top 8 challenges listed were:**

Power Imbalance between the parties	83%
Lack of resources to hire mediator, co-mediator or other dispute resolution professionals	68%
Inability to qualify for legal aid	64%
Women are afraid to face their partners	64%
Confusion regarding dispute resolution processes	55%
No child care during dispute resolution sessions	54%
Language barriers	49%
Lack of access to independent legal advice	47%

**Services and resources needed by mediators and other Family Dispute Resolution Professionals to more effectively help resolve disputes where one of the parties is a woman who has experienced violence:**

71 % of respondents indicated the need for support services for women to be available at the courts, including childcare. 58% identified the need for sufficient funding for dispute resolution professionals and 54 % answered there is a lack of easily accessible information about available community resources for referrals and safety planning with litigants. 52 % advised more training regarding violence against women and more relevant screening tools would be useful. 50 % identified a need for interpreters.

Support services for women available at the courts (including child care)	71%
Sufficient funding for dispute resolution professionals to handle violence against women cases	58%
Lack of information on available community resources for purposes of referral and safety planning	54%
More training regarding violence against women and relevant screening tools	52%
Access to Interpreters	50%
Information regarding risk factors for violence specific to women	48%
Development of a mandatory screening tool to be used under the FLA to determine eligibility of cases for mediation and other dispute resolution procedures	46%
More training regarding trauma informed practice	46%
Policy and practice protocols to guide dispute resolution work	35%

**Helpful/useful practices or techniques used in responding to cases where violence against women is present in relation to access to court, mediation or other dispute resolution services. Below we list some of the narrative responses we received:**

Each case is unique given the facts so each case is handled differently depending on the nature, extent, and duration of the family violence.
Where there is a language difference or cultural differences, it is helpful to have a support person from that culture who is very well trained about violence. If we could have a hybrid job of interpreter, women's support female staff available for booked appointments or drop ins.
Continuing education on Intimate Partner Violence is essential.
Incorporating principles of immediacy and momentum is essential. People need help right away. Staff need to understand when to wait and when to move forward. Need "the right help (proportionate) at the right time".
Sometimes women struggle to make decisions for themselves and their children due to the impact of violence over time:
Assessing client's (and their children's) need for support and referring them to resources that will get them to a place of confidence in their decision-making and increase their ability to separate their issues with the other party in order to focus on a parenting agreement made in the best interest of a child is challenging
Counselling programs, such as "Stop the Violence" "Children who have witnessed abuse (CWWA)", "Parenting After Separation" "Caught in the middle", "Building better boundaries", as well as personal counselling are useful and sometimes participation is very necessary if there are to be successful outcomes in any alternative dispute resolution process. Sometimes it is appropriate to refer clients to Ministry of Child and Family Development, the police or agencies offering financial resources.
If alternative dispute resolution processes are not appropriate then the question becomes: "would it be best for this person to seek resolve through the courts in order to have any kind of resolve? (And hopefully) help to normalize the family in the interim. If so then referring the client to legal resources who can use the appropriate legislation and providing her with information on processes and what to expect may be the best way to proceed.
I do co-mediation. I never allow the parties to be together without a professional (co-mediator or counsel) in the room.
I bring a women's shelter person to provide psychological/legal education and/or a lawyer into my office to ensure the woman feels safe.
It is important to recognize that much domestic violence happens without police attendance or involvement.
It must be recognized that, in some cultures, domestic violence is considered part of marriage and extended family may pressure a woman to stay with an abuser, regardless of whether there is domestic violence in the relationship.

**Important information participants wanted us to know:**

<p>Please start including men in these discussions about family violence as victims too and not just the assumed perpetrators. Violence can occur between heterosexual couples and homosexual couples. The more we keep it gendered as a "woman" vs. "man" issue, the less effective we will be in ensuring children are not suffering as a result of family violence.</p>
<p>The project should have some statements about violence to ground the work; examples from my own work are:</p> <p>Acknowledging that the effects of domestic violence and intimate partner violence do not end when the violence stops</p> <p>A unified classification system for violence would allow for more consistent measurement (and therefore management)</p>
<p>I really need to stress that we need an ideological shift in how the family law legal system addresses, conceptualizes and trains people regarding violence against women and family violence concepts. It needs to be gendered. Anti-violence women's advocates should be at the forefront of this area and included in all training material (both creation and education).</p>
<p>Every situation is different and it is difficult to answer questions that are very generalized.</p> <p>There are situations when mediation or shuttle mediation are not appropriate.</p>
<p>You haven't touched on the ways that dynamics of racism, queerness, class etc. work: it may be that the woman feels more in common with her (same racialized-community) husband than with the lawyer/mediator and that reality, unrecognized, and drives her back to him.</p> <p>That kind of cultural competence is essential.</p>
<p>Mediation and dispute resolution should not be used in cases of violence against women. It is completely inappropriate given the power imbalance that exists and the safety risk to the woman and her children.</p>
<p>I find it helpful for my own practice to think of violence in behavioral terms rather than gendered ones. I screen men and women the same way, starting with the broad questions above and narrowing in as needed. I find by doing that I can also identify things my client (male or female) might be doing that could be considered violent and offer assistance with those behaviors. For example, a parent who uses physical punishment on children won't respond well to being told it's wrong but may respond well to being told a judge won't like it and it will help their case to behave differently.</p> <p>I am a woman and I recognize that violence against women is a giant and real problem and that there are overarching societal mechanisms that keep the gendered power imbalances going. I also see a significant amount of behavior towards men that I think amounts to violence within the meaning of the FLA especially around control of children and relationships between men and children.</p>

## **SECTION 7: FOCUS GROUPS**

## **BC Family Mediation VAW Project**

### **FOCUS GROUPS**

Focus groups were conducted of family justice counsellors, advocates, family lawyers, mediators and other dispute resolution professionals to determine what mediation models and practices are working in BC and examine the current challenges or barriers to success. Three formal focus groups occurred and one informal one as follows:

July 7, 2016 Morning	Family Justice Counsellors
July 7, 2016 Afternoon	Family Justice Counsellors
November 2, 2016	Family Justice Counsellors and Family Advocate
2016	North Shore Family Dispute Resolution Group

Each of the focus groups adhered to a similar format to ensure consistency of the information collected. The following questions guided the discussion of the focus groups:

- What screening tools did you use to screen for violence and/or how did you assess for violence?
- If violence was identified what happened next, would you proceed with mediation, if so how would you structure the mediation, if not what happened to the case?
- What gaps or issues have you seen when dealing with mediation and violence against women and what recommendations do you have?

Key points and participant recommendations arising from the focus groups are addressed in the Executive Summary section of this report.

This section contains the compilations of the individual focus groups.

## **FOCUS GROUP**

### **Vancouver Justice Access Centre**

**July 7, 2016**

## **FIRST GROUP**

Focus group participants were Family Justice Counsellors (“FJC”) from across BC, participating in person and by telephone. Other professionals, including family lawyers, family mediators, other dispute resolution professionals and advocates were invited to attend.

Participants were asked a series of questions regarding the screening tools they used; what they did if violence was present; what needs or gaps they saw and recommendations they had to improve the processes. Below are some of the main responses to these questions. Questions were asked in a group setting, with everyone contributing as the questions were asked.

### ***Screening Tools***

- FJC workers have a screening tool. This is a scoring tool. There is a numbering system to determine whether mediation is appropriate or not.
- The screening tool can be given in the waiting room or emailed to clients. (See attached Appendix C the Intake Screening Form)
- Experienced FJC s do not need to rely on this screening tool.
- The tool is not exclusively relied on. Screeners rely on their in-person meeting with the client because it provides a more comprehensive opportunity to assess and look at body language.
- “The screening tool is an excellent tool, it alerts you where to dig deeper. It is not taken at face value; it’s a good tool to check where to explore further.” Also if a person doesn’t answer a question, it prompts the FJC to ask why.
- The screening tool makes work more efficient but “we don’t depend upon it. We use our ‘Spidey senses’ which tell us if mediation will be appropriate or not.”
- The screening tool is just a guideline “a means to talk about certain things with clients to ensure creating a safe environment. It is a starting point” For the first couple of years new FJCs have to use it, there is a numbering system to determine whether mediation is appropriate or not. But as seasoned FJCs we know it is not determinative of whether mediation is going to happen.
- **“It’s a tool, a starting point. Go with your instinct.”**

## *Steps taken if Violence Present*

### Mediation

- FJC will still try to mediate if violence is present. May use shuttle mediation. But if there is a power imbalance that cannot be overcome then will determine that mediation is not appropriate. In such an instance may try a different mediator.
- If there is violence and a victim wants to still go ahead then will try and accommodate them. Will ask them about their ‘gut feeling’ about being in the same room with the other party. Will ask them, if children are involved, if they feel they could present their issues safely.
- Even if there is a history of violence, but as long as no protection order in place, will offer mediation as long as the person feels strong enough to do it. We will review with them what to expect at mediation to make sure they are really ready. **“Bottom line: it’s their choice.”**
- If the victim wants to go ahead the FJC helps them narrow down the issues they want to talk about, i.e. parenting time.
- If mediation is not appropriate will try to make sure the woman is connected to community resources.

### Court

- If the matter goes to court, there is a green form that is filled out which gives some information about the client to the court.
- If cannot mediate then, in Port Coquitlam, a highlight is included on the form for cases it is felt can’t be mediated, this lets the judge know that violence is an issue.

## *Gaps or Needs and Recommendations*

### Resources

- Need to ensure that clients get support services because there is trauma involved when they fill out the screening form. Need more immediate resources.
- There is a major gap in the process, lack of counselling for women when they are going through the process, they encounter PTSD and they need counselling for this. Counselling is a missing link.
- When we discuss available resources with clients, clients sometimes don’t go.
- There is no criminal domestic violence court, perhaps there should be.



### Role of Advocates

- Advocates tend to be against mediation when there is violence. When advocates do attend an intake interview they tend to make it difficult for the woman to open up. The “goal is to empower her as a decision maker. Often the advocate is a replacement of the guy she just left.”
- However, if the mediator sets the guidelines regarding what will happen. It is helpful to ask the victim how they think a support worker or advocate will assist them.
- If a support worker is “advocating too much” then have to let the victim know that in the end they have to tell their story in court not the advocate.

## **TELECONFERENCE FOCUS GROUP**

**JULY 7, 2016**

### **SECOND GROUP**

Focus group participants were Family Justice Counsellors (“FJC”) from across BC, participating in person and by telephone. Other professionals, including family lawyers, family mediators, other dispute resolution professionals and advocates were invited to attend.

Participants were asked a series of questions regarding the screening tools they used; what they did if violence was present and what needs or gaps they saw and recommendations they had to improve the processes. Below are some of the main responses to these questions. Questions were asked in a group setting, with everyone contributing as the questions were asked.

#### ***Screening Tools***

- The screening form is a required form. “It is embedded in the whole culture of how we provide service. We are given a ton of freedom to take as much time as we want. We balance the screening with relationship building. We can keep screening, have multiple meetings. The longer you do this work the more you have a sense of things.”
- The screening tool is the beginning step.
- It is a good assessment tool, can give clues to verbal, psychological and sexual abuse.
- Some people write a lot of information; others provide very little. It gets “flushed out” when FJC meets the client. It may take one or two meetings before they admit violence was present.
- Some people refuse to fill them out so need to remind them it’s confidential. This is not that frequent.
- For some people it’s too painful to fill out so suggest they get counselling, and then revisit in future conversations.
- The forms are filled out prior to seeing the FJC. The form is examined to see what has been answered and it is used as a basis to ask further questions.
- Limitation of the tool is that the participant may not answer truthfully.

#### ***Steps taken if Violence Present***

- Examine the type of violence; determine if it is episodic or historical. If it is historical find out the woman’s perspective on what happens and if she is able to manage conflict, and does he acknowledge the violence? Then will decide whether to mediate. Also look at how engaged she is

in the community; is she isolated? Does she have extended family? How old are the children? “All of those things have to be examined.”

- If considering parenting after separation, if there is violence, “we don’t leave them high and dry.” “We walk the person to legal aid, we can walk there for a warm handed referral.”
- There are interesting programs in Surrey. Being in the court house has been helpful.
- “Have to satisfy myself that mediation will be able to proceed safely. Would get a sense of if violence is current or historical. Specifics. What supports they have and giving them support if they don’t. If children are exposed to it. Women may leave the relationship if there is an impact on children.”
- If there is a current protection order, then prohibited by law so can’t mediate.
- Mediation can be modified by providing shuttle mediation.
- If the woman just isn’t ready for mediation then would slow things down and get the needed advocacy and resources and then maybe come back to mediation. Would perhaps hold off on contacting the other party until the woman gets the resources needed to strengthen and prepare her. Sometimes it’s a matter of referring people back to probation order if ongoing contact despite Protection Order and encouraging a woman to call police if there has been a breach.
- Examine what is historical, what has happened.
- If decide to go ahead with mediation want to make sure parties are able to make decisions without being coerced or intimidated. During the mediation will caucus to check in with them to ask why they are doing something different from what they had wanted.
- There are cases where have had to say no even when parties wanted mediation and have referred them to legal advice or counselling.
- “If it is a request for shuttle mediation by the woman, I will say it’s me asking for shuttle mediation so it takes the pressure off the woman. I say it’s my assessment”.

### ***Gaps or Needs and Recommendations***

#### Resources

- Need a list of interpreters who have done family violence training.
- Need more counselling resources for women and children.
- Extremely important to have more family law legal aid coverage.
- Often women can come in without childcare and that can be a hurdle for them to be able to come in to access services and court.
- Needs to be more supports for women for people to attend court with them.

#### Advocates

- There is a difference with advocates in the City versus locally. There is more cooperation here, (Surrey). There is a domestic violence unit, SCADA (Surrey Coordinates Against Domestic

Violence) where local police are involved on domestic violence quarterly. There is collaboration here as there is always someone on the local committees.

- Sometime advocates can be “quite advocating”.

#### Interpreters

- If using interpreters, it can take a long time for interpreters to help them fill in forms.
- Have to be careful with interpreters from the victim’s own culture, the woman may be reluctant to disclose to them. There are also concerns with confidentiality within the community themselves.
- If people are sponsored they may be less likely to disclose abuse.

#### Training

- For mediators there ought to be some mandatory annual training and refresher for family violence, or a component of it could be a mandatory part.
- There needs to be up to date training for all those in contact with the woman.

#### Mandatory Mediation

- Generally do not support mandatory mediation as the intuitive part will be lost. Also concerns that it would become one more administrative barrier that women would have to deal with.

#### Coordination

- There needs to be outreach to the community about mediation being a viable option as opposed to going to court. Let the community know that there are different faces of mediation.
- Need an environment of disclosure that can happen with the right questions, ensuring there is confidentiality.
- Domestic Violence Court is for “K” files. It’s not busy. There are not a lot of family court files, but those people will eventually go there. Need to work out some kind of process.

#### Private Mediation compared to FJC

- “We get paid even if the mediation doesn’t go ahead, so a question that arises is ‘do private mediators force mediation to go ahead even if violence is present because otherwise they won’t be paid?’”
- Our process while providing short term intervention can be ongoing over the year, the participant can come back. The process can involve **“pause, reflect, grow and learn.”**

## **FOCUS GROUP**

**NOVEMBER 2, 2016 SURREY COURT HOUSE**

### **THIRD GROUP**

Focus group participants were Family Justice Counsellors (“FJC”) from across BC, participating in person and by telephone as well as an anti-violence advocate and government representative of FMEP. Other professionals, including family lawyers, family mediators and other dispute resolution professionals and advocates were invited to attend.

Participants were asked a series of questions regarding the screening tools they used; what they did if violence was present; what needs or gaps they saw and recommendations they had to improve the processes. Below are some of the main responses to these questions. Questions were asked in a group setting, with everyone contributing as the questions were asked. Unless otherwise indicated the responses below are from the FJCs.

#### ***Screening Tools***

- Clients complete an assessment tool – an intake form – which asks progressive questions about violence, from dynamics of the relationship to direct violence questions. It has a scale with a frequency score. The form is completed before being seen by screeners and then there is an interview.
- If they score pretty high on assessment form then there is a scoring tool that the division employs. The scoring tool is optional for more senior FJCs but mandatory for new FJCs. If the assessment yields a high score then the case is not mediated.

#### ***Steps taken if Violence Present***

- “If the assessment score is very high then we would err on the side of caution and if recent violence then would refer court.”
- One consideration in deciding to go ahead or not with mediation is that the length of time it takes in Surrey court. It takes 5-6 months to go through a court process and there are immediate things that people need, financial support, or arrangements for the children. So that is taken into consideration; the kind of stress they will have to go through in waiting. May try to help parties make informal arrangements for support or visits to reduce stress while waiting for court.
- Any decision to proceed has to do with a lot of experience and building a rapport to have candid discussions about safety. “If she wants to do something that my instinct is no for, would walk through what he might do.”
- Situational or episodic violence and time passed is more conducive to mediation.
- “Protection Orders impact our role. If there is a protection order it is unclear whether we can draft agreements; our policy doesn’t allow for drafting of agreements.”

- Huge part of the job is education and referrals. FJCs give a lot of information even if they can't do the mediation. Every client seen is provided with safety planning and information on resources.
- Key to work done by an FJC is building relationships. "Our whole job is not just being mediators as FJCs we are getting a sense of people's family situation and then giving them information and then they come back in six months for mediation. 'Triage' assessment is happening everywhere. People are going all over the place. Different pieces of assessment."
- "If can't mediate or go to court because of safety concerns we choose **'DO NOTHING.'** **Prop her up with community resources. Get her world in order. So either route is not an option then go to government for benefits...go to rent bank and get 2 months of rent; call Service Canada and get new tax benefit...it is like a triage...you stop the bleeding ...then deal with it...**"
- There are safety concerns about something happening if mediation goes ahead when there is violence; that is why there is a very cautious policy.
- If the matter has to be sent to court there is a green sheet that alerts the court about violence.
- The reason why court is not a viable option is due to legal aid cuts; women can't represent themselves and this is increasing their risk of continuing abuse. Currently, the legal aid hours get used up quickly and barely get women to a Judicial Case Conference.
- If mediation can go ahead when there is violence, can do shuttle mediation, over the phone mediation, or individual meetings.
- Ultimately, the big question is whether the woman has the capacity to mediate. If the abuser is positional it's hard to do mediation. Power and control barriers are one aspect; there may also be substance abuse and mental health issues, so it is not just safety that impacts whether mediation can go ahead.
- Sometimes court is the best option because some men "need to hear it from a judge."

### *Gaps or Needs*

#### Resources

- The people FJCs deal with have no resources; they are worried about housing and MCFD getting involved. Because of these issues they are at more risk, there is a different level of vulnerability being dealt with.
- Need funding for services when referring out by FJC.

#### Interpreters

- There is a need for a lot of interpreters for clients in Surrey. Need specialized training for interpreters who are dealing with women who are abused.

#### Advocates

- Can do mediation with third parties such as an advocate or support worker in the room, need to design the mediation process to be balanced and being clear with advocate as to their role.

### Mandatory Mediation

- A mandatory mediation process would require a good definition for violence and resources in place. It's hard to mediate without resources.
- Concerns that mandatory mediation will create another barrier; it may send the message that something is wrong with the woman and stigmatize her. A mandatory assessment is fine, but then **“some kind of triage is important and making the appropriate referrals to victim services and women's services.”**

### Coordination

- FMEP's main focus is financial support and enforcement and monitoring of court orders. But still need to review what FMEP is doing and how that is affecting women. If issuing garnishments: what kind of situation does that put the woman in if she was in a violent relationship? Trying to see if we can meld both of them together (the need to collect money for women and children and ensure FMEP actions don't put their safety at risk). Do have steps in place in terms of a letter that will be sent out to the receiving parents at same time as enforcement taking place. New things in place to look at 'caution.'
- According to the advocate, the systems conflict, the court system and mediation are at conflict because the FLA says one thing and their systems do another.

### Childcare

- It's very hard for people to take the day off or get child care to attend mediations.

### Views of Children

- Need involvement of older children in mediation – their views regarding custody. S.211 reports are too expensive. If FLA says it's important, need to determine how to include it. In Ontario and Australia there are children's lawyers.

### Protection Orders

- Better working orders to allow and enable FJCs to work with the clients.

### Definition of Domestic Violence

- Need a classifications system that has a fair amount of science behind it for a definition that is universally accepted.
- Need public acknowledgment of domestic violence and the cost of its impact. City of Surrey doing a fair amount of that, Colleen Varco, taking it out of the family context and into health context because you can understand the costs associated.

**FOCUS GROUP**  
**INFORMAL FOCUS GROUP**  
**North Shore Family Dispute Resolution Group.**

The North Shore Family Dispute Resolution Group is an interdisciplinary group of professionals helping families going through separation or divorce. The group includes psychologists, family lawyers, mediators and financial advisors. One of the members, Alyson Jones, a counselor presented her family violence screening tool that she developed, including tips for lawyers that she developed with Lisa Hamilton, a family lawyer. There were 6 members in attendance, a mixed group of professionals. (See attached power point presentation)

There was a lively discussion regarding Family Violence. A brief summary of the major points were:

- All the professionals are doing FV screening, they understand their obligations and duties under the FLA, they do not rely on the screening tool exclusively.
- They all used different tools, methods and their practices varied.
- There was a discussion about trauma and, if a mediator determined bar had been met (mediation not safe because of FV), did not need to ask more questions.
- The amount of time varied – want enough info to make decision, but not too much to create challenges for participant
- Not clear what the extent of duty was of a mediator or arbitrator for family violence screening if parties have lawyers and the lawyers have done the screening. Can the mediator or arbitrator rely on that? Do they need to do their own? It would depend on the circumstances of that case, but ultimately responsible and has to be ongoing screening and checks throughout process

The participants provided the following observations and recommendations:

- Would be helpful to continue learning about best practices for family violence screening
- Referrals are challenging. If decide not to mediate a case, it's not clear where to send parties; not clear if court is the best option.
- Finances are an issue for dispute resolution processes.



## **SECTION 8: KEY INFORMANT INTERVIEWS**

## **BC Family Mediation VAW Project**

### **KEY INFORMANT GROUPS**

Key informant interviews were conducted of individuals representing organizations that were involved in family law and mediation matters on a regular basis or were involved with violence against women issues. The following four key informant interviews were conducted:

March 8, 2016	Teleconference with U.S. Researchers
April 2, 2016	Director of the Multi-Door Dispute Resolution Division, Washington DC
November 7, 2016	Andrea Vollans and Shanaz Rahman
November 25, 2016	Executive Director of the Family Justice Centre BC

This section compiles the information obtained from each of the key informant interview. The key points and interviewee recommendations arising from these interviews are summarised in the Executive Summary section.

## TELEPHONE CONFERENCE WITH U.S. RESEARCHERS

**March 8, 2016**

On March 8, 2016 the project members spoke to U.S. researchers involved in research pertaining to domestic violence screening. The participants from the U.S. were Connie J. Beck, Fernanda S. Rossi and Amy G. Applegate. Absent from the call, but a Principal Investigator on the study, is Amy Holtzworth-Munroe.

Connie Beck is a professor at the University of Arizona, department of psychology in Tucson. She is a recognized expert in domestic violence and how it impacts families involved in court processes. Amy Applegate is a clinical professor of law at Indiana University-Bloomington and is an expert in domestic violence screening and mediation practice, including substantial experience in mediating cases with domestic violence. Fernanda Rossi is a Doctoral Candidate from the Indiana University-Bloomington Department of Psychological and Brain Sciences and is an expert on intimate partner violence screening as well as on studies examining intimate partner violence in the family law context. Amy Holtzworth-Munroe is a professor in the Department of Psychological and Brain Sciences at Indiana University, and is an expert on intimate partner violence and studies of the effectiveness of family law interventions. This group, along with their colleagues at Multi-Door (including Jeannie Adams), form the core research team.

The discussion pertained to the type of research they have conducted on domestic violence screening in the mediation process, the creation of the Mediator's Assessment of Safety Issues and Concerns (MASIC; Holtzworth-Munroe, Applegate, and Beck, 2010) and their current study at the Multi-Door Dispute Resolution Division of the Superior Court of Washington, DC (Holtzworth-Munroe, Beck, Applegate, Rossi, Adams, & Hale, 2014).

### *Screening*

- The research team (Connie Beck, Amy Holtzworth-Munroe, Amy Applegate, Jeannie Adams and Fernanda Rossi) found there were problems in screening for domestic violence in family mediation. A major problem was that some staff at mediation clinics were either not screening at all or were using only general questions (i.e., "Have you been abused?").
- Many people do not self-identify as being abused when asked general questions. The research team conducted an empirical study on this issue at Multi-Door (Rossi et al., 2015) and found that parties were more likely to report intimate partner violence (IPV) and IPV-related risk factors (i.e., injury, fear) on a more detailed, behaviorally-specific screen (e.g., have you been hit, kicked, or punched?) compared to a general set of screening questions.
- If the screening tool does not cover a wide range of behaviors (e.g., coercive controlling behaviors, psychological, physical and sexual abuse, injury, fear, and stalking) using behaviorally-specific questions then you will be less likely to identify domestic violence in a relationship.
- In creating the MASIC, Holtzworth-Munroe, Applegate, and Beck (2010) looked at the "DOVE" (Domestic Violence Evaluation) from Canada, an intimate partner violence screening tool, found

it asked general questions such as, “have you been physically assaulted?”; “have you been mentally abused?”, rather than behaviorally specific questions, and then provided scoring, which was difficult to follow. The screening tool didn’t really allow for the mediator to make a reasoned decision based on their clinical experience. Mediators did not like that tool, in which a mathematical calculation, rather than their own assessment, provided the recommendations the mediators were to follow. Also the DOVE required a lot of training and involved expense (e.g., paying for extensive training). Many of the clients in mediation don’t have the money to pay for screening tools.

- Applegate, Beck and Holtzworth-Munroe wanted to provide a screening instrument in the public domain, to allow for access for everyone. They wanted to add items based in current research concerning lethality factors. Studies show that separation is the time when violence escalates and the risk of physical injury or death increases substantially. They also included behaviors such as “threats” and “stalking.” The team, along with colleagues (Pokman et al., 2014) have conducted validation studies on this tool in the U.S. and in Australia. The MASIC contains about 45 behaviorally-specific questions and a series of other questions. While it may be too long for certain situations, the goal of an ongoing study (Rossi et al., in progress) is to determine the most important questions and then to go back and revise the instrument. The current version of the MASIC screening can take anywhere from 15 minutes to an hour, with the longer time needed if a party has a substantial history of IPV. Different sections target different issues (e.g., coercive controlling behaviors, psychological, physical and sexual abuse, injury, fear, and stalking). There are different time periods considered, including asking if a behavior ever happened and then asking if it happened in the past 12 months. (See Appendix D: MASIC Screening Tool).

#### *Study at the Multi-Door Dispute Resolution Division.*

- The key question after identifying domestic violence through screening is: what to do with the case? Do you send the matter to court or mediate with accommodations?
- Can we take highly violent couples to shuttle or video-conferencing mediation as opposed to sending them back to court? This led to the study currently taking place through Multi-Door (Holtzworth-Munroe, Beck, Applegate, Rossi, Adams, & Hale, 2014) where couples are being randomly assigned to see if there are differences in a number of outcomes (Study).
- The research team started the Study to deal with the common scenario of people being screened out of mediation because of domestic violence, returning to court and being told to go back to mediation.
- The Study includes safety precautions, such as security screening (metal detectors), security personnel on site, staggered arrival and departure times, and an escort provided when parties take a break and leave the assigned mediation rooms. The majority of the participants do not have lawyers.
- The research team are conducting a one year follow up survey with the parties. Data is also being collected from family court files and other court-based databases, to examine other outcomes such as protective orders and re-litigation of the family’s issues.

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- Rossi, F. S., Holtzworth-Munroe, A., Applegate, A.G., Beck, C. J. A., Adams, J. M., & Hale, D. F. (2015) Detection of intimate partner violence and recommendation for joint family mediation: A randomized controlled trial of two screening measures. *Psychology, Public Policy, and Law*, 21(3), 239-251.

## **KEY INFORMANT INTERVIEW WITH MULTI DOOR EXECUTIVE IN WASHINGTON DC APRIL 2, 2016**

Jeannie M. Adams Director of the Multi-Door Dispute Resolution Division (“Multi-Door”) in the Superior Court of the District of Columbia in Washington DC met for a key informant interview on April 2<sup>nd</sup>, 2016 with a follow up in January 2017.

### *The Study*

Multi-Door is involved in a collaboration with Indiana University (Amy Holtzworth-Munroe, Amy Applegate, and Fernanda Rossi) and the University of Arizona (Connie Beck) to undertake a four year study (Study) designed to determine the safety and effectiveness of meditation options for families with a history of intimate partner violence (IPV) (Holtzworth-Munroe, Beck, Applegate, Rossi, Adams, & Hale, 2014). In the past they referred such cases to the court. However, they recognized that litigation may have the potential to escalate violence. Multi-Door sought out experts in the field for other types of dispute resolution processes to offer services to parties with high IPV and who wanted to mediate their dispute.

The Study was funded by a National Institute of Justice (NIJ) grant (\$785,000.00) and was supported by the Battered Women’s Justice Project and the Department of Justice’s Office on Violence against Women. The Study was scheduled to commence in 2014 for four years. While active study participant recruitment has now ended, follow-up evaluations are still ongoing and thus, the Study is not yet complete.

The Study was built on a previous study (Rossi et al., 2015) conducted at Multi-Door which compared Multi-Door’s screening questions to a standardized and behaviorally specific violence screen created by researchers called the Mediator’s Assessment of Safety Issues and Concerns (“MASIC”; Holtzworth-Munroe, Beck, and Applegate, 2010) to determine which one was a better indicator of party reported IPV. Multi-Door’s screening questions were general and focused on violence in the last 12 months; Multi-Door was concerned it was not asking enough questions, not getting to coercive behaviors (e.g., who was controlling the money), etc. Their branch chief brought this to Adams’ attention and that is when they connected with the researchers. The MASIC led to higher levels of party reported violence, and more types of violence and coercive behavior, than Multi-Door’s own screening questions; these findings influenced the design of their current study.

The Study is comparing three groups, one group proceeding through shuttle mediation, one group in mediation by videoconferencing and one group who are returned to court and do not use mediation. The participants are randomly assigned to one of the three groups after having been screened, identified as high IPV and offered the option to voluntarily participate in the study. The process is at no cost to the participants and, if going through mediation, they participate in 2-5 sessions.

The Study is looking at immediate outcomes and long-term outcomes through conducting a one year follow up to see what has happened with the participants; for example: were there any further court proceedings required and what happened with the case?

### *Rationale behind the Study*

Family judges wanted Multi-Door to consider if they could offer mediation to families with IPV. In order to do so, Multi-Door staff and the researchers reached out to community stakeholders, including the domestic violence advocacy community. The researchers and Multi-Door staff were interested in informing the advocacy community about the study and obtaining their views and concerns.

Multi-Door was concerned that parties self-reporting intimate partner violence were not being given a choice about whether they wanted to try mediation. A lot of conversation took place with the DC advocacy groups, the Office of Violence Against Women and the NIJ; the research team continues to keep them apprised about the Project.

### *Logistics of the Study*

Multi-Door put in place safety planning, staggered arrival and departure, shuttle mediation, and video mediation, to make sure the participants who have experienced intimate partner violence feel safe enough to mediate. Participation in the Study is voluntary for mediators as well as for parties. Security officers are provided a list of all the cases in the Study.

Amy Applegate from Indiana University trained the mediators and included domestic violence training. The mediators were trained in the use of the MASIC. Screening of each party is 15-45 minutes and then a program officer at Multi-Door makes a decision as to whether the party will be invited to participate in the Study. The party is given a choice about whether they want to participate.

The cases that are identified for the Study are cases that, in the past, would have been referred back to court. During the Study, the research project coordinator approaches such parties individually and independently, goes over the Study, and obtains their consent to participate. Parties are told they may be randomly assigned to one of two mediation processes or they may still be sent back to the court process.

The parties are randomly assigned to one of the three groups. If they are assigned to mediation, the perceived perpetrator arrives first and is placed in a room by security. The perceived victim comes after and is placed in another room further inside the building. The mediator goes over the agreement and the process with them. The parties can both have a support person with them. Then mediation begins. There is a lot of work placed on the mediator in shuttle mediation, as this process takes longer than when parties are in the room together.

At Multi-Door, there is a preference for a facilitative interest based (rather than evaluative) model of mediation.

If agreements are reached, a draft agreement is sometimes written and parties are sent home to test them out and then come back to give feedback. Some parties do not need draft agreements. If need be, they can return for future mediation if issues arise.

If the mediation process is conducted by video conference, it is also done in the court building, and everyone (parties and the mediator) is in different rooms. This approach requires technical support, or IT,

in the building. The parties and mediator can see and hear each other for some or all of the mediation. Pre-mediation screening is 1-1 and all pre-screening is in person. Then everyone continues in the mediation process mostly by video.

### *Current Findings*

As of March 2016, a total of 112 cases (mother and father) had participated in the Study: 33 in shuttle mediation, 35 in video mediation and 44 referred back to court. All issues in the disputes are covered.

As of the end of January 2017, Multi-Door stopped recruiting new cases for the Study, which began in 2014. The Study currently has approximately 160 cases within it. All the cases will be followed for one year after their last mediation session or court date. Multi-Door wants to know how well families are doing and whether there have been any court actions filed during the one year follow-up. This process will require a lot of coding (e.g., of court records and interviews with parties one year after they enter the study) which will start in the following months. The researchers will conduct the analysis and a report will be written and delivered to the NIJ, hopefully during the fall of 2018.

As of June 2016, when the team presented their findings part-way through the Study, what they learned from their preliminary data is that they were seeing no significant differences between parties' perceptions (e.g., satisfaction with) shuttle mediation and video conferencing mediation. However, they have seen differences between mediation and the court process. Parties in mediation were reporting a higher degree of satisfaction in many areas when compared to court. Mediators and participants were reporting few safety concerns about mediation. It is important to note that the Study is ongoing and findings could change as the final study participants end mediation or court processes and their data is added to the data file or as time passes (i.e., the one year follow-up findings could paint a different picture than the immediate outcomes that have been examined to date).

Despite that precaution, based on the currently available study data, Multi-Door does not have any reason to stop providing mediation services for these case types, so it intends to continue using the MASIC screening instrument, keep safety protocols in place and provide either shuttle mediation or video conference mediation on cases that self-report high IPV. They will not offer joint mediation to these cases.

### *Lessons to Learn from the Study*

There is a need to allow more time for mediators to mediate and to encourage them to take the time they need. In their Study there was definitely a learning curve, getting mediators comfortable. Some mediators drop out as the issues and/or process can be difficult. There were several recruitments for mediators until they achieved a core group. The Study chose to purchase malpractice insurance for the mediators.

The family mediators are from all different disciplines (e.g., social workers, etc.) and backgrounds (e.g., some retired; some second careers). They allow mediations to occur on weekday evenings and on weekends, in addition to during weekdays. Flexibility with time is important. They try not to let mediation with a family go beyond five sessions.



The mediations take place close to a domestic violence court and the family court. Multi-Door works closely with the courts if parties agree to participate in mediation to modify restraining orders for the purpose only of allowing mediation, if necessary.

#### *Other Information from Multi-Door*

Aside from the Study, Multi-Door advised that it provides parenting information seminars to families twice a month, on Saturdays, run by staff from Multi-Door and several family psychologists. During these seminars they educate parents on the effects of contentious custody. They have a children's seminar as well, so that children have the opportunity to share their feelings with other children and psychologists. Families in contested custody disputes are required to participate prior to intake and mediation. Facilitators first talk about the effects of divorce and custody. Then, in the section Multi Door conducts, they talk about mediation. They get between 45 to 100 people per session.

Multi-Door has a satellite office available for the Hispanic community, as they were concerned that some immigration issues may prevent parties from coming to their main office to participate in the dispute resolution process.

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## **Key Informant Interview of Shanaz Rahman and Andrea Vollans**

A key informant interview was conducted on November 7, 2016 with Shanaz Rahman and Andrea Vollans.

Shanaz Rahman is the Manager of Community Outreach – Family Law Multi-Door Study with West Coast Legal Education and Action Fund for Women. She has worked for many years with women fleeing violence. Now she is working in doing outreach with organizations to inform on substantive issues that women face in family law. Shanaz was speaking on behalf of herself, and not for LEAF.

Andrea Vollans is the YWCA Legal Educator. She provides legal education for women leaving abuse. The YWCA helps women navigate child protection issues and immigration issues. They currently serve about 400 people. Andrea was speaking on her own behalf and not for YWCA.

Both Shanaz and Andrea are involved with the Jane Doe Legal Network. Their comments, observations and insight into domestic violence and mediation is captured below.

### ***Screening for Domestic Violence: What are your observations about domestic violence screening and when women are screened and violence is found?***

- Not sure whether the 14 hours of training for domestic violence screening is enough time to train on this issue. For example, does the training address immigrant women and being alive to the issues that impact them?
- Neutral language in screening tools is a problem. A gendered lens is necessary in training around violence, which is discussed further below.
- There need to be qualified and trained interpreters.
- There are three distinct groups of women leaving abuse who are accessing mediation services: (a) women who don't want mediation, but are compelled to attend; (b) women who want mediation because going to court as a self-represented litigant is too hard, because they cannot afford to go to trial, or because they feel that there are no other options; and (c) women who want mediation because they want to try to create a peaceful, amicable separation. The first group are often perceived as being non-cooperative. They are worried how they will be impacted if they don't go along. They don't know if they can negotiate because of power imbalance. This first group have lived their lives giving in to their spouse. They are so tired of having to manage their lives around him, they need an accountable process. There is no accountability and transparency in the mediation process. The mediation process is not safe for these women as their partner is abusive and his desire for power does not end with the end of the relationship. Often times, even if mediation proceeds and an agreement is reached, the parties are back in front of a judge anyways and the mediation process has created more acrimony.

- Women learn through their networks of other women who have gone to mediation and had bad experiences; including intimidation and issues relating to the power imbalance. Through their networks they also access information that includes well-documented histories of women who have been involved in unsafe processes or made unsafe agreements because the mediation process didn't appropriately address her needs as a woman who has experienced abuse. When women make these types of agreements they are very hard to undo in court because Judges are reluctant to undo orders made by consent.
- Have seen a lot of women who have mediated and gone to court and the agreements are not given the same effect as a court order. They women end up still being stuck in legal process.
- If women suggest shuttle mediation, they are told it will take three times as long; some report that the mediators do not have a flexible attitude.
- High risk women are being considered for mediation but she is reluctant to report safety concerns as the mediators will often ask questions that lead them on a path to minimize their concerns.

***What are Gaps and Concerns you have seen and what are your recommendations?***

*Training*

- The *Family Law Act* SBC 2011, c. 25 (FLA) has recognized family violence but it is very apparent that the training piece is lacking. Need to look closely at who is providing the training; it would be important to have front line workers involved in developing and delivering training since they are grounded in this issue.
- Training of mediators needs to avoid the use of gender neutral language. (See below).
- There need to be qualified interpreters trained in domestic violence. Sometimes there is language used in the person's language which makes a woman feel attacked again, or the language is not conducive to discussions of abuse. If the interpreters are trained they can be taught how to be more sensitive to this in their interpretation. Interpretation can influence interactions.

*Gender Neutrality*

- There needs to be a mind shift on a large scale.
- We need to steer away from the focus on gender neutrality. There needs to be gendered analysis on violence because it helps us look at things objectively. It's such an unpopular thing, but it needs to be done as it frames the way you conduct yourself.
- Training needs to avoid gender neutral terms. 'Violence against women' versus 'domestic violence', the latter is gender neutral. Violence against women is more than just violence; it can be financial control, religious/spiritual/cultural control, and there are more systemic structures that work against women in abusive relationships.
- We need to challenge the argument that women falsely allege violence to get the upper hand.
- The power of language plays a big part in understanding violence. Using words that have a neutralizing effect is important. This can be part of the training component. Calling things what they are rather than using neutral words is important.

- There is a lack of gendered analysis to violence. The main and starting point should be that the vast majority of women who are entering into the family law system in an adversarial or acrimonious separation/divorce have experienced violence. Most cases where that is present are called “high conflict”, which is a neutral term; these cases are more appropriately called “Violence against Women” cases.

#### *Lack of Trauma Informed Perspective*

- Mediators need to understand trauma and that the woman has stepped out of a very frightening and/or confusing situation.
- Violence is one thing, but trauma is a separate matter.
- It is concerning that in s.211 reports, which assess parenting, women report being labelled with bipolar disorder, borderline personality disorder, depression and anxiety when it is actually trauma they are suffering from. (Reference to a Key Note presentation by Lori Haskell at the BCTH).

#### *Lack of Coordination between advocates and mediators*

- Even when women are told they don't have to agree to the terms of mediation, they often feel compelled to and walk out wishing they didn't. This happens more so at the FJC stage where the women are less likely to have had access to supports before going into the process; they are often less capable of articulating the abuse they experienced; and they are often feeling more confused about what has happened. In contrast, women who are in JCC's/FCC's or mediation with lawyers are often further along in their own processing of what has happened and are more likely to be able to articulate the abuse.
- A lot of time is spent assisting women who are going to FCC's/JCC's & mediation, whereas there is a need to support women after they have already gone to an FJC and are struggling with the results.
- A lot of time is spent preparing women for mediation; discussing safety planning and having someone wait outside the room. But have had instances where, for instance, FJC receptionist kicked a support person out of the waiting room.
- Need to educate everyone involved with the woman to have a nuanced understanding.
- Perhaps during or after training for screening there could be an opportunity for front line workers to share their knowledge. This would be part of a best practices strategy. It's not a deliberate act of ignorance, it's lack of exposure; therefore knowledge, collaboration and ongoing training would be helpful.
- Another place to have collaboration is during mediation conferences, as it will capture everyone – family mediators, collaborative lawyers, family justice counsellors; there is a need to capture all of them.
- Service workers, front line workers regularly get together to address the main issues. But the larger provincial organizations are not getting involved.

### *Legal Aid and Issues in Court*

- In 10 years can count on fingers how many women who had legal aid funding for the full trial.
- When I sit in the courtroom on list day and I see a variety of Protection Order applications, there are times when you can see that the Judge is suspicious of every application. Statistically, it's just not possible for all those women to be likely to be lying about the abuse given that 1 in 3 women experience abuse.
- There are a lot of delays in court that create many problems.
- Concerned about a new family law proposal making it mandatory to meet a family case manager and if the person doesn't meet there will be sanctions for them.

## **Key Informant Interview of Dan VanderSluis**

Dan VanderSluis is the Executive Director of the Family Justice Services Division of the Ministry of Justice. A key interview was conducted with Mr. VanderSluis on November 25, 2016. This is an account of the information provided during the interview.

### **Background**

As Executive Director Mr. VanderSluis oversees the programs in the Family Justice Services Division as well as the overall infrastructure and the staffing of mediators. There are 165 people in the organization.

Prior to this position he has worked in multiple capacities: mediator; court assessor; and policy analyst. He also worked 8 years as regional manager overseeing day to day program managers. In this capacity he dealt with client complaints, quality control issues, hiring and practice

For the last 2.5 years he has been working in his current role of Executive Director.

### **Mediation Services provided by the Family Justice Services Division: Policies and Guidelines Pertaining to those services in particular when screening reveals violence**

#### *Services Provided by Family Justice Services Division*

There are two levels of service delivery:

1. There is an initial intake where interviewers make sure people are phoning the right place. This involves a more limited role and responsibility in terms of screening.
2. The next level involves the Family Justice Counselors (“FJC”) with a focus on mediation.

They have a contract with interpreters/translation services to assist with those that cannot speak English.

#### **1. Initial Intake**

At the first level, during the interview there are key questions that must be asked and the responses have to be noted in the file. Such as “Do you currently feel at risk or threatened by your former spouse/ partner?” If the caller answers “yes” then this would get flagged in the data base and if the client is passed onto the FJC they get the flag. Everything is on the computer.

#### **2. Individual Meeting with FJC**

When a person is referred to an FJC, the FJC holds an individual meeting with each participant. The pre-meeting is an assessment interview where the FJC deploys our assessment tool, a very formal assessment process. This is used for Rule 5 and for all voluntary clients.

The first part of the assessment tool is provided to the clients to go through and complete on their own in the waiting room. They are given about 15 minutes to complete it. The assessment contains detailed

questions about family violence as well as more specific questions regarding sexual violence and strong probing questions. Once the client completes that series of questions they bring it to the actual interview with the FCJ. The FCJ then reviews it and asks additional probing questions as well as institutively following up on non-verbal queues.

Based on results of the assessment tool and interview, the FJC will identify the case plan. If the assessment indicates she is a victim of domestic violence but still wants to proceed with dispute resolution, the FJC has to decide if that's possible. It also depends on what the other party wants. Both have to go through same process and agree to mediation. Even with Rule 5, while there is a mandatory exposure to mediation, mediation itself is still voluntary.

If the matter doesn't proceed through mediation then it could end up in court or in some other dispute resolution procedures. If it does proceed through mediation with the FJC, the FJC must remain neutral and cannot provide legal advice.

### *High Risk Cases*

There used to be a policy that if there is a history of violence then mediation would not be conducted. That flat policy of "violence = no mediation" no longer exists. This policy was eliminated about 10 years ago. The approach taken now is more nuanced; for example, if there is situational violence with no history of violence before or after the incident then mediation may proceed. But if there is a history of ongoing violence then the decision to proceed with mediation has to be more thought out. In such circumstances the FJC may get into a discussion of what type of mediation would be appropriate, such as co-mediation, an FJC can ask a colleague and supervisor to conduct a co-mediation with them.

However, the overall practice when there is violence is still conservative; staff still screen more out than they take on. This results in critiques by other lawyers and judges who say that FJC system (with it's screening) is too conservative. Therefore, while the discretion is there to still do mediation in cases of high risk, the FJC must run the case by the supervisor. As a general trend, if tipping to one side or another, it is more likely to tip towards screening out than in.

### **Training of Interviewers and FJCs and Supervision**

Both interviewers and mediators have baseline training in family violence through the Justice Institute. All of the staff, especially mediators have to take Justice Institute courses, such as family justice counsellor courses or more general courses on topics such as substance abuse.

FJCs are trained on to use the guide pertaining to the assessment tool used during screening.

All of the FJCs have extensive training on conflict resolution and family violence. They all go through recruitment and individualized training. All FJCs undergo a 6 month training course through the Justice Institute and then undergo 80 hours of conflict resolution before they can even start.

If they are successful in competition they are then given another 6 months of training – a combination of further Justice Institute courses, some in class and some online, and also a very thorough practicum program where new FJCs have to work in individual offices and then progressively on tougher cases. The approach is that they first observe, then do mediation with someone observing them, then proceed to doing them on their own.

The FJCs' training culminates with national certification. Family Mediation Canada is a national organization that provides third party arm's length confirmation that says these people have demonstrated success. This organization assesses the skills through video, role play is done on video, and then examinations on domestic violence are conducted. This process takes about 6 months. If they are certified they can then work independently.

FJCs are also trained through quarterly webinars and additional ongoing training.

Supervision of FJCs takes place in the form of clinical supervision, where the FCJ can seek support from their supervisor. On top of that the local manager does file reviews to see what was done when there were flags for violence.

### **Client Feedback**

Client feedback is provided through the FJC. There is no direct client feedback and this may be something that should be required after every mediation.

There was, however, a longitudinal study of over 300 cases tracked over a number of years ago pertaining to Rule 5 clients.

Client satisfaction is a difficult matter to gauge because of confidentiality which creates a hurdle. Perhaps if there was a case management process and the system is working collaboratively then the authority would be there.

### **Working within the Court Structure**

- Family Justice Services in Surrey were recently moved into the same building as the court house. When the Family Justice Division was originally conceptualized its work was thought to be an alternate process to court, to get people away from court and keep a lower profile to the process. But in doing so they “lost that more integrated approach” to justice. Now with FJCs being situated in same building as the court house, things will work better.
- There are time delays in the Surrey courts but there are mechanisms for alerting the court.
- The Family Justice Services are linked with ICATs and the domestic violence court.



### **Overall Gaps or Improvements required in addressing the issue of domestic violence and mediation**

- Higher degree of resources.
- Improved funding for advocates and strengthening the sector for advocates and front line workers.
- Larger opportunity for getting legal support, LSS very limited in terms of what they cover. Need a higher degree of improved legal aid services and more lawyers taking on cases in an unbundled fashion.
- From a systems point of view:
  - Further integration of the court;
  - More varied mediation process such as a mixed model with lawyer assisted mediation, and shuttle mediations.
- Better training sessions.

# **SECTION 9**

# **CONCLUSION**

## CONCLUSION

The Exploration of the Effectiveness of Current BC Methods of Family Mediation in cases of Violence against Women and Lessons to be learned from Other Jurisdictions Models (**BC Family Mediation VAW Study**) was a project funded by the Law Foundation of BC. The purposes of the study were to explore whether family mediation is a safe and effective when violence against women is present and what lessons can be learned from alternative dispute resolution models in other jurisdictions.

On March 28, 2013 the *BC Family Law Act* (the “FLA”) came into effect. The FLA emphasizes the use of alternate dispute resolution as an option to litigation. The FLA requires that all family dispute resolution professionals, including mediation professionals, assess for family violence and be trained in minimum practice standards including 14 hours of family violence training. Dispute resolution professionals must use these assessment results to direct the family dispute resolution processes accordingly.

It was critical to study the practices that have developed since the passage of the FLA to ensure the safety of women when violence is present. This project attempted to get an understanding of whether the type of training for violence currently in place is effective, what type of pre-mediation screening is taking place, and what is happening when violence is present. It also wanted to identify any gaps or recommendations. The project wanted to know if female survivors of violence are being served by mediation, and if the process is safe.

The project was deliberately focused on violence against women to acknowledge that, in the majority of cases, it is women who are the victims of violence in interpersonal relationships. The project examined the National Institute of Justice (NIJ) funded study involving the Multi-Door Dispute Resolution Division in Washington DC, which looked at whether evidence based mediation practices are a safe alternative for cases where high risk for interpersonal violence is present. That study was, similarly, focused on violence against women and provided guidance to this project.

The project consisted of:

- A comprehensive literature review;
- An on-line survey for BC family law advocates, family lawyers, mediators and other dispute resolution professionals;
- Focus groups in BC; and
- Key Informant Interviews

We acknowledge the limitations of our project as set out in earlier in this paper. We further acknowledge that there are more questions than answers that arise from our research. We conclude that empirical research needs to be conducted to get a more accurate sense of what needs to be done to keep women safe if they choose to pursue mediation.

It is hoped, nevertheless, that the findings of this project will provide some insight into the current practices with respect to screening and mediation involving violence against women in BC since the passing of the FLA. With this insight we can forge new collaborations with an aim of ensuring that women who proceed with mediation are ensured their safety through all the critical stages, namely, pre-screening, during mediation and after mediation. In summary, we hope this project will be the beginning of further conversations, collaborations and research to help ensure that women, who have experienced violence, have access to justice whether in mediation or litigation and that the outcomes are effective and fair.

# **SECTION 10**

## **DISSEMINATION OF PROJECT**

## **DISSEMINATION OF BC FAMILY LAW VAW PROJECT FINDINGS AND RECOMMENDATIONS**

One of the objectives of the BC Family Mediation VAW Project was to disseminate the findings and recommendations arising from it. In that regard, preliminary works and findings have already been disseminated in the following manner:

- Power Point Presentation to the CBA Alternate Dispute Resolution Committee on February 21, 2017. Attendees were in person as well as over the phone. In addition to presenting a power point of our preliminary results, we entertained questions from the attendees.
  - See Appendix E the Power Point Presentation
- LSS Conference on May 4, 2017: Legal Aid Bootcamp – Legal Service Society’s free conference for community workers. The attendees were front line workers and advocates. A brief introduction of our project was made to attendees at this conference.

Project members are presenting on the project findings, as a plenary panel, on June 13, 2017 at the 2017 BCAMI (British Columbia Arbitration and Mediation Institute) Symposium.

NEVR (the Network to Eliminate Violence in Relationships) has asked for a presentation of our project findings at their November 2<sup>nd</sup> and 3<sup>rd</sup> 2017 Annual Conference.

Mediate BC has requested that a blog be commenced pertaining to this project.

We are encouraged by the interest being shown in our project and look forward to ongoing discussions and collaborations to ensure that women who have experienced violence and who proceed with mediation as an option to resolve their family disputes remain safe throughout the mediation process and are able to achieve resolutions that are fair.

## APPENDIX A

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## APPENDIX B

**This research project is focused on the effectiveness of current models of family dispute resolution used in British Columbia (BC) when violence against women is present. This research includes surveying BC family law advocates, family lawyers, mediators and other dispute resolution professionals to determine what models and practices are being used and conducting focus groups. Information gathered from this research will inform us on how practices have developed over the past 3 years under the BC Family Law Act (FLA). These findings will be included in a paper. This survey will take approximately 10 minutes to complete.**

**Please complete the survey by June 24, 2016.**

**1. How would you describe yourself? (Please select all that apply)**

- ☐ Legal Advocate
- ☐ Civil Mediator
- ☐ Family Mediator
- ☐ Family Law Lawyer
- ☐ Collaborative Lawyer
- ☐ Family Justice Counsellor
- ☐ Other Alternative Dispute Resolution Professional such as Parent coordinator, Family Law Arbitrator
- ☐ Other (any other professional designation)

Other (please specify)

**2. In what role do you primarily practice ? Please indicate and complete this survey based on that role.**

- ☐ Legal Advocate
- ☐ Civil Mediator
- ☐ Family Mediator
- ☐ Family Law Lawyer
- ☐ Collaborative Lawyer

- ☐ Family Justice Counsellor
- ☐ Other Alternative Dispute Resolution Professional such as Parent coordinator, Family Law Arbitrator
- ☐ Other (any other professional designation)
- Other (please specify)

**3. How long have you practiced in that role?**

- ☐ 0 - 3 years
- ☐ 4 - 6 years
- ☐ 5 - 10 years
- ☐ 11 - 20 years
- ☐ Over 20 years

**4. Where do you practice? (Please select all regions that apply)**

- ☐ Lower Mainland
- ☐ Fraser Valley
- ☐ Vancouver Island
- ☐ Kootenays
- ☐ Okanagan
- ☐ North

Other (please specify)

**5. The FLA defines family violence as:(a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,(b) sexual abuse of a family member,(c) attempts to physically or sexually abuse a family member,(d) psychological or emotional abuse of a family member, including:**

- - (i) Intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
  - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
  - (iii) stalking or following of the family member, and(iv) intentional damage to property, and

**(e) in the case of a child, direct or indirect exposure to family violence;**

**With this “family violence” definition in mind, please estimate how many of your cases in the last 3 years involved violence against women ?**

- ☐ 0
- ☐ 1 - 10
- ☐ 11 - 20
- ☐ 21 - 30
- ☐ 31 - 50
- ☐ More than 50. If so please specify number: \_\_\_\_\_
- ☐ Do not know
- ☐ Not applicable

**6. In these cases, on average how long does it take you to screen for violence in each case?**

- ☐ less than 5 minutes
- ☐ 5 to 15 minutes
- ☐ 16 - 30 minutes
- ☐ 31 -60 minutes
- ☐ Other (please specify)

**8. In these cases, where do your screening interviews typically occur?**

- ☐ in a court conference room
- ☐ in a court hallway
- ☐ in a courtroom
- ☐ in an office
- ☐ in a mediation room
- ☐ by phone
- ☐ via an online or web platform
- ☐ Other (please specify)

**9. In these cases, do you use a screening tool? If so, please check what you use or if you are a legal advocate, what you observed being used.**

**Standard Tools**

- VRAG
- PCL-R
- MASIC
- B-SAFER (Brief Spousal Assault Form for Evaluating Risk)
- SARA
- Family Justice Counsellor's Dispute Resolution Tool
- DVAAG (Jocelyn Coupal)
- DV RAP (Desmond Ellis)
- DOVE
- Danger Assessment Factors (Jacquelyn Campbell)
- ODARA
- Barbara Schifler Commemorative Cline Risk Assessment Check List
- Domestic Violence Risk Summary (19 Risk Factors used by Law Enforcement)
- HCR-20
- SAPROF (Structured Assessment of Protective Factors)
- MCFD Safety Assessment
- 

**My Own Screening tool**

- **If you used another tool, or have created your own tool, would you specify the tool in the box below. If you are willing to forward a copy of your screening tool to the Project the email address is: [kklehal@lehallow.com](mailto:kklehal@lehallow.com)**

**Thank you very much.**



**10. Please select all the factors you consider during your screening for violence:**

- ☐ recent separation
- ☐ nature, length and history of relationship
- ☐ children exposed to violence
- ☐ arguments or threats over parenting responsibilities, contact, custody, access or financial support
- ☐ obsessive, jealous or coercive behavior exhibited by the partner

- ☐ the partner withholding access to phone, transportation or financial resources
- ☐ the woman fears for her personal safety from the partner
- ☐ the woman fears for the personal safety of her children from her partner
- ☐ the woman fears future violence from her partner
- ☐ the partner has a history of violence against persons outside the family
- ☐ the partner has a history of spousal violence
- ☐ the partner has a history of animal abuse
- ☐ the partner stalked the woman
- ☐ the partner threatened the woman
- ☐ the woman has been choked by her partner
- ☐ the woman has been forcibly confined by her partner
- ☐ the partner has coerced or forced sex on the woman
- ☐ the partner has violated a court order
- ☐ the partner is bound by court orders such as protection orders or peace bonds
- ☐ the partner has a history of drug or alcohol abuse
- ☐ the partner is unemployed or experiencing financial difficulties
- ☐ the partner is depressed or has a history of depression
- ☐ the partner has a history of mental illness
- ☐ the partner has threatened or attempted suicide
- ☐ the partner has used or threatened to use a firearm or weapon against the woman, a family member, children or an animal
- ☐ the partner has access to weapons or firearms
- ☐ the partner has intentionally damaged property owned by the woman and/or the partner

**11. Please list below the top 5 screening questions you ask every woman.**



**12. If your screening identifies that there is a safety risk, do you advise the woman of the advisability of various dispute resolution processes?**

Yes

No

**13. Do you feel you know enough about those options to properly advise clients?**

Yes

No.

If no please specify what would assist you to properly advise your client:

**13. If your screening identifies a safety risk, identify which of the following options you use to modifying your own process to ensure safety? If you are a legal advocate, what did you observe?**

- ☐ separate waiting rooms
- ☐ different start and end times
- ☐ support person or lawyer required to be present
- ☐ required counseling before parties could start process, or other referrals
- ☐ frequent private meetings to check in
- ☐ code word to indicate private meeting needed
- ☐ shuttle (each party in a different room)
- ☐ shuttle parties on different days
- ☐ mediation via web platform or by phone
- ☐ co-mediation

Other (please explain )

**14. If your screening identifies a safety risk to the parties, which process(es) are you most likely to make a referral to and if you are a legal advocate, what did you observe:**

- ☐ Mediation
- ☐ Arbitration

- ☐ Mediation followed by Arbitration
- ☐ Parent coordination
- ☐ Lawyer-led negotiation
- ☐ Family Collaborative Law Process
- ☐ Court
  - Law Enforcement
  - Community Based Victim Services
- ☐ Not applicable

Other (please explain)

**15. Did you complete the minimum 14 hours of Family Violence Screening training required by the Family Law Act Regulation for Family Dispute Resolution Professionals? If yes, do you feel that was enough training to allow you to effectively screen and assess for violence and advise and refer appropriately? Please Comment.**

- ☐ no
- ☐ yes

(Please explain)

**16. What challenges do women experiencing violence face when accessing mediation or other Family Dispute Resolution Services? (Please select all that apply)**

- ☐ Inability to qualify for legal aid (Legal Services Society (LSS))
- ☐ Lack of resources to hire Mediator, Co-mediators or Dispute Resolution professionals
- ☐ Inadequate number of sessions with Mediate BC/LSS Mediator(s)
- ( ) Lack of information about Family Justice Services Division (FJSD) services
- ( ) Inability of FJSD to work on cases involving violence
- ☐ Lack of skills, training and experience on the part of the mediator(s) or dispute resolution professionals
- ☐ Lack of attention to women's safety in dispute resolution process

- ☐ Confusion regarding dispute resolution processes
- ☐ Power imbalance between the parties
- ☐ Inadequate social services
- ☐ Women are afraid to face their partner
- ☐ Lack of training on violence against women for dispute resolution professionals
- ☐ No child care during dispute resolution sessions
- ☐ Language barriers
- ☐ Lack of access to independent legal advice
- ☐ none

Other (please explain)

**17. What types of services and resources can assist mediators and other Family Dispute Resolution Professionals to more effectively help resolve disputes where one of the parties is a woman who has experienced violence?**

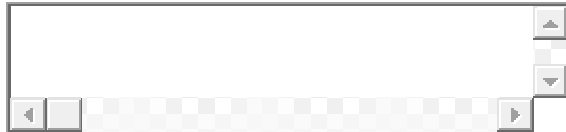
- ☐ More training regarding violence against women and relevant screening tools
- ☐ Support services for women available at the courts (including child care)
- ☐ Access to Interpreters
- ☐ More training regarding trauma informed practice
- ☐ Information regarding the risk indicators for violence specific to women
- ☐ Information on available community resources for purposes of referral and safety planning
- ☐ Sufficient funding for dispute resolution professionals to handle violence against women cases
- ☐ Policy and practice protocols to guide dispute resolution work
- ☐ Development of a screening tool required to be used under the Family Law Act to determine appropriateness of cases for mediation and other dispute resolution procedures

Other (please specify)

**18. Please tell us about any helpful/useful practices or techniques you use in responding to cases where violence against women is present in relation to access to court, mediation or other dispute resolution services.**

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**19 Please tell us anything that we have not asked about but you think the Project should know.**

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**20. The Project will be hosting focus groups (both in person and by conference call), please advise if you would you like to participate in a focus group to provide us additional information and thank you for considering.**

☐

no

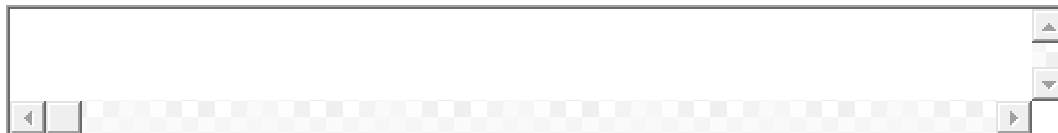
☐

yes

If yes, please provide your email and contact information

Name:

Email:

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Thank you very much for your assistance.

Project Coordinators

Kamaljit K. Lehal

Shelina Neallani


Amy S. FitzGerald

Harjit Kaur

**We are grateful for project funding from the Law Foundation of BC and support from Family Justice Services Division of the BC Ministry of Justice .**

**If you have any questions about the survey or the Project please contact Kamaljit K. Lehal at [kklehal@lehallow.com](mailto:kklehal@lehallow.com)**

## APPENDIX C: FAMILY JUSTICE COUNSELLOR'S SCREENING INTAKE FORM

 <p>BRITISH COLUMBIA</p>	<p align="center"><b>FAMILY JUSTICE SERVICES CENTRE CLIENT INTAKE FORM</b></p>	<p>(For Office Use)</p> <p>DATE: _____</p> <p>SFV: <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Rule 5: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
---	--	--

☐ This form is PRIVATE AND CONFIDENTIAL.<sup>1</sup> The only exception will be if the safety of a child is at risk or if there are threats of imminent harm to another person or property. Otherwise, we will not share any of this information without asking for your permission. This information may be used for research purposes with all identifying information removed.

(For Office Use)

FIS2 Client ID #: \_\_\_\_\_ FIS2 Family D# \_\_\_\_\_

### 1. YOUR INFORMATION

Gender: ☐ Male ☐ Female ☐ Other

Legal Name: \_\_\_\_\_ Birth Date: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Cell phone: \_\_\_\_\_

Are messages OK at this #: ☐ Yes ☐ No      Are messages OK at this #: ☐ Yes ☐ No      Are messages OK at this #: ☐ Yes ☐ No

Confidential: ☐ Yes ☐ No      Confidential: ☐ Yes ☐ No      Confidential: ☐ Yes ☐ No

Email address: \_\_\_\_\_ Occupation: \_\_\_\_\_

Interpreter Required: ☐ Yes ☐ No      Language: \_\_\_\_\_

Lawyer's name: \_\_\_\_\_ Are you of aboriginal ancestry? ☐ Yes ☐ No

If yes, check all that apply: ☐ First Nations ☐ Métis ☐ Inuit ☐ Status ☐ Non-status

Your personal net (after tax) income \$ \_\_\_\_\_ per year. (If you are not sure, give an estimate.)

Income Assistance ☐ Yes ☐ No

### 2. OTHER PARENT / PERSON

Gender: ☐ Male ☐ Female ☐ Other

Legal Name: \_\_\_\_\_ Birth Date: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Cell phone: \_\_\_\_\_

What is your relationship with this parent/person?

- |  |   |
|--|---|
| <input type="checkbox"/> Separating/divorcing, living apart    | <input type="checkbox"/> Never married, used to live together |
| <input type="checkbox"/> Separating/divorcing, living together | <input type="checkbox"/> Dating relationship                  |
| <input type="checkbox"/> Already divorced                      | <input type="checkbox"/> Grandparent of the children          |
| <input type="checkbox"/> Never married, never lived together   | <input type="checkbox"/> Other _____                          |

If a former partner, how long have you lived together? \_\_\_\_\_ Marriage Date: \_\_\_\_\_

Separation Date: \_\_\_\_\_ Divorce Date: \_\_\_\_\_

### 3. CHILDREN

Please include all children involved in this matter.

Legal Names	Birth Date	Gender
_____	_____	<input type="checkbox"/> F <input type="checkbox"/> M
_____	_____	<input type="checkbox"/> F <input type="checkbox"/> M
_____	_____	<input type="checkbox"/> F <input type="checkbox"/> M
_____	_____	<input type="checkbox"/> F <input type="checkbox"/> M

#### Where are the children living now?

- |   |  |
|---|--|
| <input type="checkbox"/> Mainly with you              | <input type="checkbox"/> About equal time with each of you |
| <input type="checkbox"/> Mainly with the other person | <input type="checkbox"/> With a relative or other person   |
| <input type="checkbox"/> Only with you                | <input type="checkbox"/> Living with both of you together  |
| <input type="checkbox"/> Only with the other person   | <input type="checkbox"/> Living with a foster family       |

#### 4. What do you need help with at this time?

- |  |   |
|--|---|
| <input type="checkbox"/> Where the children will live              | <input type="checkbox"/> Decisions about the children               |
| <input type="checkbox"/> Time each parent spends with the children | <input type="checkbox"/> Threatening or violent behaviour           |
| <input type="checkbox"/> Child support/special expenses            | <input type="checkbox"/> Enforcing or changing a court order        |
| <input type="checkbox"/> Spousal support                           | <input type="checkbox"/> Financial issues (property, assets, debts) |
| <input type="checkbox"/> Taking the children out of province       | <input type="checkbox"/> Other _____                                |

#### 5. Have you tried mediation to work out your current differences?

- ☐ Yes ☐ No If so, when did you try mediation? \_\_\_\_\_

#### 6. Do you have a court order or separation agreement?

- ☐ Yes ☐ No ☐ Don't know If so, is it: ☐ Provincial ☐ Supreme ☐ Unknown

In which court registry is it filed? \_\_\_\_\_

#### 7. Do you feel there is an immediate risk of violence in your family? ☐ Yes ☐ No

Has the other person ever caused you to be concerned for your own safety or your children's safety?

- ☐ Yes ☐ No

Notes: \_\_\_\_\_  
\_\_\_\_\_

#### 8. Are there any outstanding civil or criminal protection orders (Family Law Act protection orders, peace bonds, probation or bail orders)?

- ☐ Yes ☐ No ☐ Don't know

#### 9. Have you attended the Parenting After Separation Program?

- ☐ Yes ☐ No Approximate date: \_\_\_\_\_

10. Have you talked with your children about the current situation? (If you have more than one child, please mark your answer for the oldest child)

☐ Yes, quite a lot

☐ Not at all

☐ Yes, to some extent

☐ Not yet

11. How did you learn about us?

☐ The court

☐ Other government service

☐ Parenting After Separation

☐ The other parent

☐ Other agency

☐ A friend/co-worker

☐ Legal services/lawyer

☐ The Internet

☐ Other \_\_\_\_\_

For Office Use: \_\_\_\_\_

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\_\_\_\_\_

<sup>ii</sup> All personal information collected by the Family Justice Services Centre for the purposes of providing services, assessing client needs and referring to services is collected, used, and disclosed under the authority of the *Freedom of Information and Protection Act* of British Columbia and in accordance with the provisions of sections 11 to 13 of the Family Law Act. Contact your nearest Family Justice Centre local manager if you have questions about the use of your personal information.

## ASSESSMENT FORM – SCORING AND REFERRALS (formerly Part III)

### SCORING

1. Add up the scores in each column and place in the appropriate box.
2. Multiply the items in the column 1 by 1, 2 by 2, 3 by 3, and 4 by 4.

	(1)	(2)	(3)	(4)
Items 1 - 22				
X	1	2	3	4
Total				

3. Add up each column for the overall total score: \_\_\_\_\_. (When questions are “N/A”, take the total score x 22/ the number of applicable questions. *Example: 2 questions are scored as non-applicable, and the tallied score is 60:  $60 \times 22 / 20 = 66$* )

Score	Risk Level	Action
Less than 35	Low risk, low level of conflict	Mediation, counselling
36 - 45	Moderate conflict	Mediation, counselling
45 - 60	Moderate-high conflict	Mediation, separate meetings, collaborative law, referral to other special services, lawyer
Over 60	High risk	Court (protection orders, trial), lawyer, section 211 report, parenting coordinators, referral to duty counsel.

4. Review **Questions 13-16**. An affirmative answer to these questions will rule out mediation unless the parties specifically select mediation and have support persons to accompany them.
5. You have the discretion to deviate from the recommendations. Use this space to add additional explanatory notes.

### ACTION TAKEN:

☐ **Referred for Dispute Resolution**

- ☐ Mediation (government)      ☐ Shuttle mediation/separate meetings (government)  
☐ Private mediation      ☐ Collaborative law  
☐ Children in Mediation

- ☐ Referred to court      ☐ Referred to other service agencies      ☐ No interest in any services

Name of FJC: \_\_\_\_\_

Date: \_\_\_\_\_

Assessment completed by: ☐ In-person interview

☐ Telephone interview

Document developed by the Justice Services Branch, Ministry of Justice,  
Province of British Columbia  
April 2013 (FLA Updated)

1



## APPENDIX D: MASIC SCREENING TOOL

### Instructions for Using the MASIC-3

Amy Holtzworth-Munroe (holtzwor@indiana.edu), Connie J. A Beck  
(beck@u.arizona.edu), and Amy G. Applegate (aga@indiana.edu)

Updated as of July 2014

#### 1. Before administering the MASIC-3:

- a. Read Holtzworth-Munroe, Beck, & Applegate, *The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain*, Family Court Review, Vol. 48 No. 4, October 2010, 646-662. This article explains how and why the MASIC was developed and gives some basic information about the MASIC and its administration.
- b. Read over the MASIC-3 and familiarize yourself with it.
- c. Practice using the MASIC-3 before using it on mediation parties – ask the questions of colleagues, family, or friends. The key is to be conversant with the questions on the MASIC-3.

#### 2. Administering the MASIC-3:

- a. *The MASIC-3 is designed to be given as an interview.*
  - i. Separate the parties and keep them separate throughout the MASIC-3 screening process.
  - ii. Administering the MASIC-3: Verbally administer the MASIC-3 to each party individually, in person, before bringing the parties together during the mediation. Be sure to read the introductory paragraph before asking the questions. Based on the screening, you may conclude that it is not appropriate to mediate with the parties in the same room or even to mediate the case at all.
  - iii. Complete a separate copy of the MASIC-3 for each party. Do not share one party's MASIC-3 answers with the other party.
  - iv. The MASIC-3 assesses each parent's report of victimization. The MASIC-3 specifically does not ask questions about the parties' perpetration of these behaviors. This is to avoid asking parties to provide self-incriminating information.
- b. *The MASIC-3 assesses multiple types of IPV/A.*
  - i. psychological abuse;
  - ii. coercive control;
  - iii. threats of severe violence;
  - iv. physical violence and severe physical violence;
  - v. sexual violence;
  - vi. stalking; and
  - vii. fear

- c. *The MASIC-3 includes questions that are relevant for determining levels of IPV/A and potential danger.*
  - i. Section 1 questions (background and assessment of lethality)
  - ii. Section 2 questions (behaviorally specific IPV/A)
  - iii. Section 3 questions (other matters not specifically asked in 1 and 2)
- d. *The MASIC-3 asks a series of behaviorally specific questions about IPV/A and assesses whether or not each of the listed IPV/A behaviors has occurred over two time periods: 1) ever and 2) in the past 12 months.*

When you get to the list of behaviorally specific questions in Section 2:

- i. Make sure the parent understands that the first question is: "Did [the other party] EVER [read the conduct in items 1-45]?" This is a YES or NO question, and it refers to conduct that happened whether or not the parties were living together when it happened.
  - ii. If the answer to the first question is NO, then move on to the next question.
  - iii. If the answer to the first question is YES, then the follow-up question is, "Did that happen in the last 12 months?" Again, this refers to the same kind of conduct, and regardless of whether the parties have been living together. The party should respond using YES or NO.
  - iv. If the answer is YES, then ask, "How many times did it happen in the last 12 months?" Some people will know *exactly* how many times something happened in the last 12 months while others will have a more *general sense* of how many times it happened. Clarify that you are looking for the actual number of times it happened or the party's best estimate of how many times it happened in the last year. If the party is unable to answer, use the Answer Key to help prompt a response – there are 6 options provided (A-F) and the party should select the one that seems correct. You may record the number of times or use one of the letters (A-F) in the space provided.
  - v. Question 39 in Section 2 and Questions 1 through 6 in Section 3 also examine fear, and severe and/or escalating violence.
- e. *The MASIC-3 also includes a Mediator Case Evaluation (in a separate document).*

Private instructions are designed to assist the mediator –

- i. Recognize:
  - i. the type(s) of IPV/A that may be present;
  - ii. the presence of lethality factors; and
  - iii. who should be identified as victim(s) and the primary victim
- ii. Consider, in light of safety, fear, and/or balance of power concerns in the particular case:
  - i. the appropriateness of mediation, and/or
  - ii. possible accommodation(s) to mediation procedures

Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
Circle party being interviewed: Male / Female or Male 1/ Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

**MEDIATOR'S ASSESSMENT OF SAFETY ISSUES AND CONCERNS (MASIC-3)  
as of July 2014<sup>i</sup>**

**(ADMINISTERED VERBALLY BY THE MEDIATOR  
IN FAMILY LAW CASES WITH OR WITHOUT CHILDREN)**

The authors of this instrument recommend that the mediator should (a) if possible, obtain any court or police records that might address parties' violent or abusive conduct before completing this Assessment, (b) complete this Assessment in intake session(s) separate from negotiation session(s), and (c) complete this Assessment with each party privately (i.e., separately from the other party).<sup>ii</sup>

*[Read introduction and questions to each party:]* In mediation, parties work together to try to make good decisions for themselves [and, if applicable, for their children] outside of court. Mediators do not take sides and do not decide for the parties how to settle their case. Rather, mediators assist both parties in exploring ways to resolve any disagreements in this confidential settlement process. Before the parties start negotiations, we do an intake where we explain the mediation process and ask the parties to give us some background information and complete a confidential intake form.<sup>iii</sup> You may wonder about some of the questions, but it is helpful to think of this like a visit to the doctor's office. There, you are often asked questions that may not seem important to you, but are important to the doctor. The questions we ask are important to us in deciding what *process* would work best for you and the other party. So please answer the following questions to the best of your ability, knowing that we will keep your answers to these questions private and confidential from the court and the other party.

**Additional instructions for mediator:** It is generally preferable, when conducting the interview, to refer to the other party by name in each of the questions below (rather than saying "the other party" in each question). However, do not type in any party names when entering responses into the computer.

---

<sup>i</sup> Amy Holtzworth-Munroe, Connie J.A. Beck, and Amy G. Applegate, Mediator's Assessment of Safety Issues and Concerns Demonstration Version (MASIC-3 Demonstration Version) (2014). The MASIC-3 Demonstration Version may be reproduced, distributed, and displayed freely for non-commercial purposes. Any use of the MASIC-3 Demonstration Version that (a) is for commercial purposes; (b) does not acknowledge the authors; and/or (c) modifies the MASIC-3 Demonstration Version without the authors' consent, including the preparation of derivative works, is strictly prohibited. The first version of the MASIC appeared in Amy Holtzworth-Munroe, Connie J. A Beck and Amy G. Applegate, "The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain," *Family Court Review*, Vol. 48, No. 4, 646-662 (October 2010). The authors acknowledge the *Family Court Review*, which is a journal of the Association of Family and Conciliation Courts, and their publisher Blackwell Publishing, Inc. The questions in Section 2 of this assessment have been adapted from Marshall L.L., Development of the Severity of Violence Against Women Scale; Sullivan CM, Parisian JA, Davidson WS, Index of Psychological Abuse; and Tjaden P, Thoennes N, National Violence Against Women Survey. The Marshall, Sullivan, and Tjaden screens, in their entirety, have been validated. In addition, initial reliability and validity data for Section 2 of the MASIC are available and can be obtained from the authors upon request (Holtzworth-Munroe, Pokman, Rossi, Beck, and Applegate, June 2012, Association of Family and Conciliation Courts conference). The authors wish to acknowledge their law and psychology students who assisted, directly and indirectly, in the development of this Assessment.

<sup>ii</sup> The MASIC (including the current version and any and all prior, future, and derivative versions) is intended for screening purposes only and does not provide any formal diagnosis of anyone screened or discussed in screening. The MASIC authors have no legal liability or responsibility for the accuracy and/or completeness of information obtained through screening done with the MASIC, or for evaluations and/or recommendations made based upon information obtained through MASIC screening. Users of the MASIC, or information obtained through MASIC screening, are deemed to have accepted the conditions set forth in this disclaimer.

<sup>iii</sup> To obtain a copy of the Confidential Intake Form used by mediators in the Viola J. Taliaferro Family and Children Mediation Clinic at the IU Maurer School of Law, contact Professor Amy G. Applegate at [aga@indiana.edu](mailto:aga@indiana.edu).

Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
Circle party being interviewed: Male / Female or Male 1/ Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

### Section 1

1. 1a. What is your age: \_\_\_\_\_  
1b. What is the other party's age: \_\_\_\_\_
2. 2a. Which describes your main daily activities and/or responsibilities?  
☐ Working: ☐ Full-Time or ☐ Part-Time  
☐ Retired  
☐ Unemployed or laid off or looking for work  
☐ Disabled or unable to work due to health issues  
☐ Full time home/family responsibilities  
(raising children, caring for family member, keeping house)  
☐ Student: ☐ Full-Time or ☐ Part-Time  
2b. Is the other party employed? ☐ Yes ☐ No
3. 3a. Has the relationship between you and the other party ended?  
☐ Yes, how long ago did it end? In years \_\_\_\_ or months \_\_\_\_  
☐ No  
☐ We never had a relationship  
3b. If yes, which party left the relationship?  
☐ You ☐ The other party ☐ Both parties decided to end relationship  
3c. Why did [you/the other party] leave the relationship/or if both parties decided to end the relationship, why did the relationship end?  
\_\_\_\_\_  
3d. Did you leave the relationship for another relationship? ☐ Yes ☐ No (If the party already answered that s/he left the relationship for another relationship, just mark yes here)  
3e. Does [the other party] believe you left the relationship for another relationship? ☐ Yes ☐ No
4. 4a. Have you and the other party ever lived together?  
☐ Yes, total amount of time in: years \_\_\_\_ or months \_\_\_\_ OR ☐ No  
4b. If yes, are you and the other party still living together?  
☐ Yes OR ☐ No, how long ago did you separate in: years \_\_\_\_ or months \_\_\_\_
5. 5a. How long ago was it that you and the other party last stayed together or spent time together, e.g., have dinner, go to a party or movie, spend the night together? [If parties lived together, clarify you are asking about AFTER they stopped living together.]  
\_\_\_\_\_ Answer should be a number measured in one of the following:  
days \_\_\_\_ or weeks \_\_\_\_ or months \_\_\_\_ or years \_\_\_\_  
5b. What did you do together? \_\_\_\_\_
6. 6a. Do you and the other party have any children together? Yes ☐ No ☐

Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
Circle party being interviewed: Male / Female or Male 1/ Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

6b. If yes, please list them below:

Boy or Girl?	Age?	Arrangements for this child to be discussed in mediation: Yes/No?
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. Do you have any children from another marriage or relationship who live with you? ☐ Yes ☐ No

8. If yes, how does the other party get along with your other child or children? \_\_\_\_\_

9. Are you comfortable mediating with the other party? ☐ Yes ☐ No [If yes, go to question 12.]

10. [If answer to question 9 is NO] What makes you uncomfortable? \_\_\_\_\_

11. [If answer to question 9 is NO] What, if anything, would make you feel more comfortable? \_\_\_\_\_

12. Do you think there is any reason why you should not participate in this mediation? ☐ Yes ☐ No

13. If yes, please explain: \_\_\_\_\_

14. Everyone fights or argues with family members and friends now and then. What happened when you fought or argued with the other party involved in this mediation? \_\_\_\_\_

15. Which of the following statements most correctly describes how you and the other party have made decisions in the past twelve (12) months?

*If the parties are parents and the mediation involves arrangements for their child/ren, ask instead: Which of the following statements most correctly describes how you and the other party have made decisions about the child/ren in the past twelve (12) months? [If the parties ask what kind of decisions, break out question into children's care / finances / other kinds of decisions affecting the child/ren.]*

- ☐ You have made almost all decisions
- ☐ You have made the majority of the decisions
- ☐ You and the other party have shared equally in making decisions
- ☐ The other party has made the majority of the decisions
- ☐ The other party has made almost all of the decisions



Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
Circle party being interviewed: Male / Female or Male 1/ Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

16. How satisfied are you with your role in influencing and making decisions?

*If the parties are parents and the mediation involves arrangements for their child/ren, ask instead: How satisfied are you with your role in influencing and making decisions about your child/ren's care?*

- ☐ Very satisfied
- ☐ Satisfied
- ☐ Neutral / it varies
- ☐ Unsatisfied
- ☐ Very unsatisfied

17. Do you have any of the following concerns about the other party?

- ☐ Overuse of alcohol or prescription medications
- ☐ Illegal drug use
- ☐ Mental health problems
- ☐ Child abuse and/or neglect concerns
- ☐ Any criminal history

If yes, please tell me about your concerns: \_\_\_\_\_

18. Do you think the other party will say that s/he has any of the following concerns about you?

- ☐ Overuse of alcohol or prescription medications
- ☐ Illegal drug use
- ☐ Mental health problems
- ☐ Child abuse and/or neglect concerns
- ☐ Any criminal history

If yes, what will the other party say? \_\_\_\_\_

19. Have either you or the other party ever been involved with the Department of Child Services (Child Protective Services)? ☐ Yes ☐ No

20. If yes, please explain: \_\_\_\_\_

21. During the mediation, would you prefer to sit in the same room with the other party or in a different room?

- ☐ Same room ☐ Different room ☐ No preference

22. If in a different room, why? \_\_\_\_\_

23. If in the same room, why? \_\_\_\_\_

24. Are there any current or past protective orders, restraining orders, or orders of protection issued against the other party in this case? ☐ Yes ☐ No

Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
 Circle party being interviewed: Male / Female or Male 1/ Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

25. If yes, please explain: \_\_\_\_\_

26. Does the other party own or have access to any weapons? ☐ Yes ☐ No

27. If yes, what kind(s) of weapons? \_\_\_\_\_

28. Do you own or have access to any weapons? ☐ Yes ☐ No

29. If yes, what kind(s) of weapons? \_\_\_\_\_

30. 30a. Are you in mediation because:  
☐ you and the other party decided on your own to mediate, or  
☐ the Court referred you and the other party to mediation?

30b. If the Court referred this case to mediation, why do you believe that the Court did that?  
 \_\_\_\_\_

31. [If the parties are parents and the mediation involves arrangements for their child/ren, ask:]  
 What parenting plan or arrangements do you think would work best for your family? If no children, N/A: ☐  
 \_\_\_\_\_  
 \_\_\_\_\_

## Section 2

Now, I am going to ask you a series of questions about your relationship with NAME [the other party]. I am interested in things that [NAME] may have done during a conflict, disagreement, fight, or in anger, or to scare you or hurt you. [Reminder to mediator: Do not type in party names.]

First, I will ask if something ever happened, and you should answer yes or no.

Second, if you answer yes, then I will ask if it happened within the past 12 months. If so, I will ask you how many times it happened in the past 12 months. Some people will know *exactly* how many times something happened in the last 12 months while others will have a more *general sense* of how many times it happened. We are asking you to think about it and **give us the actual number of times it happened if you know it, or give us your best estimate of how many times it happened in the last year.** [Refer back to the bolded language if the party being interviewed needs a prompt in answering how many times in the past 12 months – if the party is unable to answer, use the attached Answer Key to help prompt a response.]

A. Did the other party [NAME] ever (whether living together or not)			B. Did that happen in the past 12 months?	C. How many times in the past 12 months?
1.	Call you names?	Yes No	Yes No	
2.	Insult you or make you feel bad in front of others?	Yes No	Yes No	
3.	Yell or scream at you?	Yes No	Yes No	

Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
 Circle party being interviewed: Male / Female or Male 1/ Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

4.	Forbid you to go out without him/her?	Yes	No	Yes	No	
5.	Try to control how much money you had or spent?	Yes	No	Yes	No	
6.	Try to control your activities in or outside the home?	Yes	No	Yes	No	
7.	Try to control your contact with family and friends?	Yes	No	Yes	No	
8.	Act extremely jealous, or frequently check up on where you've been or who you've been with?	Yes	No	Yes	No	
9.	Demand that you obey him/her?	Yes	No	Yes	No	
10.	Physically abuse or threaten to abuse pets to scare or hurt you, or when angry at you?	Yes	No	Yes	No	
11.	Punish or deprive the children because he/she was angry at you? [If no children, N/A: <input type="checkbox"/>	Yes	No	Yes	No	
12.	Make threatening gestures or faces at you or shake a fist at you?	Yes	No	Yes	No	
13.	Threaten to take or have the children taken away from you? [If no children, N/A: <input type="checkbox"/>	Yes	No	Yes	No	
14.	Destroy property, for example, hit or kick a wall, door, or furniture or throw, smash, or break an object?	Yes	No	Yes	No	
15.	Drive dangerously to scare you, or when angry at you?	Yes	No	Yes	No	
16.	Throw an object at you to scare or hurt you, or when angry at you?	Yes	No	Yes	No	
17.	Destroy or harm something you care about?	Yes	No	Yes	No	
18.	Threaten to hurt someone you care about? (If yes, ask for details and write them here)	Yes	No	Yes	No	
19.	Threaten to hurt you? (If yes, ask for details and write them here)	Yes	No	Yes	No	
20.	Threaten to kill him/herself? (If yes, ask for details and write them here)	Yes	No	Yes	No	
21.	Threaten to kill you? (If yes, ask for details and write them here)	Yes	No	Yes	No	



Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer: \_\_\_\_\_  
 Circle party being interviewed: Male / Female or Male 1 / Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

22.	Threaten you with a weapon or something like a weapon? (If yes, ask for details, including, what kind(s) of weapon(s) or object(s); write details here)	Yes No	Yes No	
<p><i>I want to remind you that all my questions concern things that [NAME] may have done during a conflict, disagreement, or fight, or in anger, or to scare or hurt you.</i></p>				
23.	Hold you down, pinning you in place?	Yes No	Yes No	
24.	Push, shove, shake or grab you?	Yes No	Yes No	
25.	Scratch you, or pull your hair, or twist your arm, or bite you?	Yes No	Yes No	
26.	Slap you?	Yes No	Yes No	
27.	Hit or punch you?	Yes No	Yes No	
28.	Kick or stomp on you?	Yes No	Yes No	
29.	Choke or strangle you?	Yes No	Yes No	
30.	Burn you with something?	Yes No	Yes No	
31.	Use a weapon or something like a weapon against you? If yes, what kind(s) of weapon(s) or object(s)?	Yes No	Yes No	
32.	Demand or insist that you engage in sexual activities against your will?	Yes No	Yes No	
33.	Physically force you to engage in sexual activities against your will?	Yes No	Yes No	
34.	Follow or spy on you in a way that made you feel frightened or harassed?	Yes No	Yes No	
35.	Try to contact you against your will or in a way that made you feel frightened or harassed, for example, by unwanted phone calls, mail, text messages, or Facebook contacts?	Yes No	Yes No	
36.	Stand outside your home, school, workplace, or other places where he/she had no business being, and in a way that made you feel frightened or harassed?	Yes No	Yes No	
37.	Leave items for you to find in a way that made you feel frightened or harassed?	Yes No	Yes No	
38.	Do anything else similar to the kinds of behaviors we've been discussing? If yes, what kind(s) of behavior(s)?	Yes No	Yes No	

Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
 Circle party being interviewed: Male / Female or Male 1/ Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

<i>Now consider the things we've been discussing or similar kinds of things:</i>				
39.	As a result of the other party's behaviors, did you ever feel fearful, scared or afraid of physical harm to yourself or to others?	Yes	No	Yes No
<i>As a result of the other party's behaviors, have you ever received any of the following types of physical injury?</i>				
40.	Scratch, small bruise, swelling, or other mild injury? Optional notes:	Yes	No	Yes No
41.	Fracture, small burn, cut, large bruise, or other moderate injury? Optional notes:	Yes	No	Yes No
42.	Major wound, severe bleeding or burn, being knocked out, or other severe injury? Optional notes:	Yes	No	Yes No
43.	Blindness, loss of hearing, disfigurement, chronic pain, or other permanent damage? Optional notes:	Yes	No	Yes No
44.	Did you seek, or should you have sought medical attention for any injury caused by the other party? Optional notes:	Yes	No	Yes No
45.	As a result of the other party's behaviors, did you or someone else ever call the police? Who called the police? When and what specifically prompted the call?	Yes	No	Yes No

Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
Circle party being interviewed: Male / Female or Male 1 / Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

### Section 3

1. *[If the party endorsed any of items 22-31 and 33 above]:* You said that [NAME] *[insert applicable behaviors, e.g., has slapped you and choked you]* in the past 12 months. Have these types of behaviors been happening more often recently? ☐ Yes ☐ No
2. *[If the party endorsed any of items 22-31 and 33 above]:* Have these types of behaviors been getting worse or more serious recently? ☐ Yes ☐ No

For **ALL** parties, regardless of whether or not they endorsed items 22-31 and 33, ask the following questions:

3. Are you afraid that the other party will harm you during the mediation or after you leave because of what you say or do in mediation? ☐ Yes ☐ No
4. If yes, please explain: \_\_\_\_\_
5. Do you believe that you are in danger at this time? ☐ Yes ☐ No
6. If yes, please explain: \_\_\_\_\_
7. Is there anything else you would like to share with me/us [the mediator(s)]? \_\_\_\_\_
8. Is there anything else you think I/we [the mediator(s)] should know? \_\_\_\_\_

### Section 4 – Optional Demographic Information

1. What is the highest level of education you have completed?
- ☐ 8<sup>th</sup> grade or lower
  - ☐ Some/most of high school
  - ☐ High school degree or GED
  - ☐ Attended some college
  - ☐ Two year college degree (Associates)
  - ☐ Four year college degree (BA/BS)
  - ☐ Some/most graduate school
  - ☐ Master's Degree (MA, MS, MBA, MSW)
  - ☐ Doctoral or Professional Degree (PhD, JD, MD)
2. What is your ethnicity?
- ☐ Hispanic or Latino
  - ☐ Not Hispanic/Latino
  - ☐ Party declined to answer
3. Which of the following best describes your race?
- ☐ American Indian or Alaska Native
  - ☐ Asian
  - ☐ Native Hawaiian or Other Pacific Islander
  - ☐ Black or African American
  - ☐ White
  - ☐ Biracial or Multiracial, please explain: \_\_\_\_\_
  - ☐ Other, please explain: \_\_\_\_\_
  - ☐ Party declined to answer

Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
Circle party being interviewed: Male / Female or Male 1 / Male 2 or Female 1 / Female 2 Date of interview: \_\_\_\_\_

4. Approximately, what is your **own** yearly income that you are paid personally (from all sources), not including the other party's income?
- ☐ Less than \$10,000
  - ☐ Between \$10,000 – \$19,999
  - ☐ Between \$20,000 – \$29,999
  - ☐ Between \$30,000 – \$39,999
  - ☐ Between \$40,000 – \$49,999
  - ☐ Between \$50,000 – \$69,999
  - ☐ Between \$70,000 – \$89,999
  - ☐ Over \$90,000
5. Is this mediation:
- ☐ the first time you and the other party are mediating these issues or
  - ☐ a return to mediation?
6. 6a. Were you and the other party ever married?
- ☐ Yes ☐ No If no, interview is over.
- 6b. If yes, how long have you and the other party been married in:  
measured in years \_\_\_\_\_ and or months \_\_\_\_\_
- 6c. Is this is a divorce case?
- ☐ Yes ☐ No
- If yes, what type of divorce?
- ☐ Original divorce
  - ☐ Modification to a prior divorce [from the other party]
- 6d. If No, what kind of case is this?
- ☐ Abuse or neglect
  - ☐ Guardianship
  - ☐ Paternity
  - ☐ Termination of parental rights

Case Number \_\_\_\_\_ Research Number: \_\_\_\_\_ Name of interviewer \_\_\_\_\_  
 If parties are the same gender, correct labels below to: Male 1/ Male 2 or Female 1 / Female 2 Date form completed: \_\_\_\_\_

### MASIC-3 MEDIATOR CASE EVALUATION as of July 2014

Review the information obtained from each party (with your supervisor, if applicable) to consider whether this case is appropriate for mediation, and if so, whether any accommodations should be made to the process.

*Consider (and check) the different types of intimate partner abuse or violence that may be present:*

	Male's report of Female's behavior	Female's report of Male's behavior
psychological abuse (e.g., Items 1-3 in Section 2)		
coercive control (e.g., Items 4-17 in Section 2)		
threats of severe violence (e.g., Items 18-22 in Section 2)		
physical violence (e.g., Items 23-27 in Section 2)		
severe physical violence (e.g., Items 28-31 and 40-44 in Section 2)		
sexual violence (e.g., Items 32-33 in Section 2)		
stalking (e.g., Items 34-37 in Section 2)		

In some relationships one partner commits all or most of the abuse or violence; in other relationships the abuse or violence may be committed by both partners. Based on the MASICs:

Identify the victim(s): ☐ Male ☐ Female ☐ Both ☐ Neither  
 Do you as the mediator identify one of the parties as the primary victim? ☐ Yes ☐ No  
 If Yes, who: ☐ Male ☐ Female

There are also differing degrees of abuse and violence, and differing degrees of risk from abuse or violence. Some family situations pose serious safety risks to a parent, child, or others, regardless of whether the person at risk recognizes the risk. Although as mediators we need to maintain our impartiality, in order to consider the risk in a given situation, it may be helpful to identify the apparent "victim" and "abuser" in a relationship. The research tells us that a victim of intimate partner abuse or violence is at risk of serious injury or death when some or all of the risk factors below are present.

*Check all risk factors that apply:*

	Male's report of Female's behavior	Female's report of Male's behavior
victim expresses fear of abuser (Questions 9-13 in Section 1; Item 39 in Section 2; and Items 3-6 in Section 3)**		
abuser is highly controlling (Question 15 in Section 1; and Items 4-17 in Section 2)		
abuser uses drugs and/or alcohol (Questions 17-18 in Section 1)		
abuser has access to guns or other weapons (note that guns are of particular concern) (Question 26-29 in Section 1; and Items 22, and 31 in Section 2)		
abuser stalks victim (Items 34-37 in Section 2)		
abuser threatens violence (Items 18-22 in Section 2) (note that threats of violence involving detailed plans are of particular concern)		
abuser is physically violent towards victim, and the violence has been escalating in frequency and/or severity over the past 12 months (Items 22-31, 33, in Section 2; and Items 1 and 2 in Section 3)		

Date: Case or Research Number: \_\_\_\_\_ Name of individual completing this form \_\_\_\_\_  
If parties are the same gender, correct labels below to: Male 1/ Male 2 or Female 1 / Female 2 Date form completed: \_\_\_\_\_

IF THE VICTIM IS A FEMALE, check the following additional risk factors which increase the risk to female victims:

- \_\_\_\_\_ victim is a woman of child-bearing age (up to age 50) (Question 1 in Section 1)
- \_\_\_\_\_ victim has children from another partner/spouse living with her (Questions 7-8 in Section 1)
- \_\_\_\_\_ victim is leaving her abuser for a new relationship (Question 3 in Section 1)
- \_\_\_\_\_ abuser is currently unemployed (Question 2 in Section 1)
- \_\_\_\_\_ victim and the other party are still living or staying together (Questions 3-5 in Section 1)

**\*\*As mediators, we should always accommodate someone who expresses *fear* of the other party (Questions 9-13 in Section 1, Item 39 in Section 2, Items 3-6 in Section 3). Accommodation will vary depending on the circumstances, but a mediator should *not* insist that a party start or continue mediating when that party says that s/he does not want to mediate because of fear of the other party.**

Some victims of intimate partner abuse or violence may not believe that they are at risk. Although we generally want to empower a victim of intimate partner abuse or violence who affirmatively wants to mediate, in making the decision whether or not to mediate we must also consider (a) the risks involved and (b) what accommodations to provide if we decide to mediate. In addition to safety risks, be sure to consider, among any other concerns presented in the specific situation, including balance of power issues, the possibility of coercion, the mediator's ethical duty not to facilitate involuntary and/or unconscionable agreements, and the mediator's ethical duty to remain impartial.

In considering the existence and effect of intimate partner abuse or violence in this case, please consider the questions below:

- 1) Do you believe the case is appropriate for mediation? ☐ Yes ☐ No
- 2) If you think the case is **not** appropriate for mediation, what are your concerns?
- 3) If you determine not to mediate or to terminate mediation<sup>1</sup> because of concerns about intimate partner abuse or violence, are there any ethical constraints and/or any safety concerns in how you should communicate this decision with the parties and/or the court?
- 4) If you think the case may be mediated, should any of the following accommodations be implemented (check the ones you think should be implemented and indicate why)?
  - \_\_\_\_\_ parties to be in separate rooms at all times (shuttle mediation)
  - \_\_\_\_\_ parties to be in separate rooms if mediator not present (joint sessions possible, but only if the mediator is present with the parties)
  - \_\_\_\_\_ staggered arrival and departure times for parties
  - \_\_\_\_\_ support person necessary (for which party(ies)?)
  - \_\_\_\_\_ attorney necessary (for which party(ies)?)
  - \_\_\_\_\_ referral to DV program or shelter (e.g., Middle Way House in Bloomington, IN)
  - \_\_\_\_\_ mediation at secure facility, passing through security, presence of armed guards (e.g., Justice Center in Bloomington, IN)
  - \_\_\_\_\_ party needs escort to/from car

*-list continued on the next page-*

<sup>1</sup> Even with screening, there may be times when a mediator learns belatedly of intimate partner abuse or violence. If during the mediation, you become concerned about the possibility of intimate partner abuse or violence, take a break to consider how to proceed. Be sure to keep the parties separate while you determine the appropriate action to take.



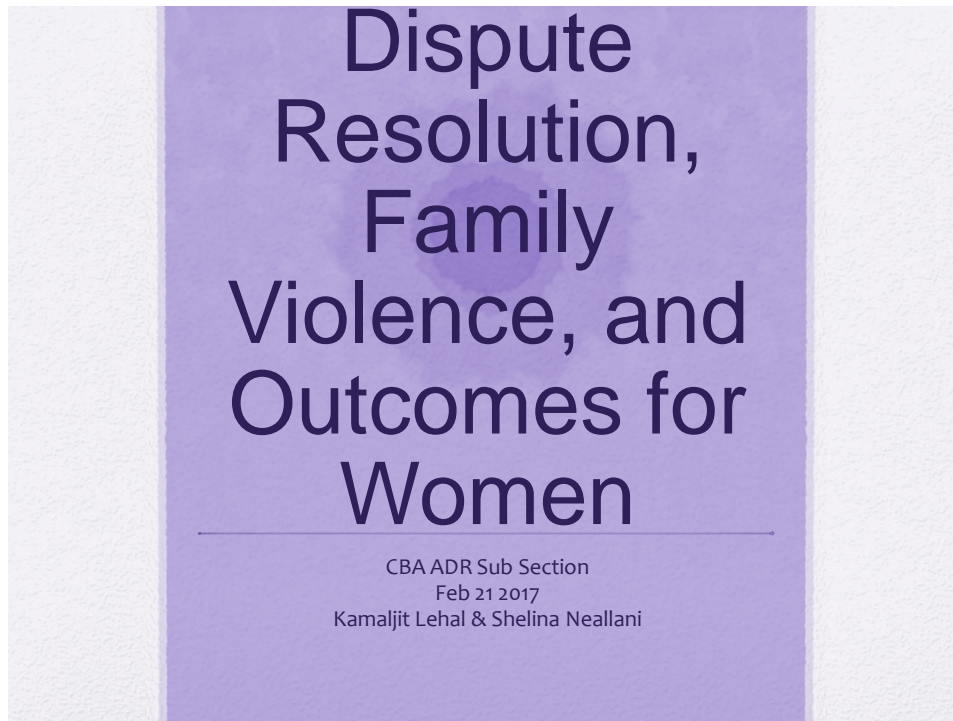
Date: Case or Research Number: \_\_\_\_\_ Name of individual completing this form \_\_\_\_\_  
If parties are the same gender, correct labels below to: Male 1/ Male 2 or Female 1 / Female 2 Date form completed: \_\_\_\_\_

- \_\_\_\_\_ party needs way to leave the building without being seen by the other party
- \_\_\_\_\_ parties to appear for mediation on separate days
- \_\_\_\_\_ telephone or on-line mediation
- \_\_\_\_\_ other accommodation?

**Disclaimer:** The MASIC (including the current version and any and all prior, future, and derivative versions) is intended for screening purposes only and does not provide any formal diagnosis of anyone screened or discussed in screening. The MASIC authors have no legal liability or responsibility for the accuracy and/or completeness of information obtained through screening done with the MASIC, or for evaluations and/or recommendations made based upon information obtained through MASIC screening. Users of the MASIC, or information obtained through MASIC screening, are deemed to have accepted the conditions set forth in this disclaimer.

**APPENDIX E: POWER POINT PRESENTATION**

**PREPARED FOR THE CBA ALTERNATE DISPUTE  
RESOLUTION COMMITTEE**





# Project Team:

Funded by small Law Foundation Grant

Kamaljit Lehal  
Harjit Kaur  
Amy Fitzgerald  
Shelina Neallani

# AGENDA

- i. Introductions
- ii. Background of Project
- iii. Online Survey
- iv. Literature Review
- v. Focus Groups & Key Informant Interviews
- vi. Initial Findings
- vii. Discussion

## Background of Project

- Grass roots concerns
- Increased “pressure” / “encouragement” for everyone, including women in abusive relationships, to mediate with passing of FLA in 2013
- Unclear if mediation (or other DR) safe, if and how women experiencing violence can fully participate and if outcomes appropriate, fair and reasonable

## Duty Under Sec 8 FLA to Identify and Assess Family Violence

8 (1) A family dispute resolution professional consulted by a party to a family law dispute **must assess**, in accordance with the regulations, **whether family violence may be present, and if it appears** to the family dispute resolution professional **that family violence is present, the extent to which the family violence may adversely affect**

- (a) **the safety** of the party or a family member of that party, and
- (b) **the ability of the party to negotiate a fair agreement.**

(2) **Having regard to the assessment** made under subsection (1), a family dispute resolution professional consulted by a party to a family law dispute must

- (a) **discuss with the party the advisability of using various types** of family dispute resolution to resolve the matter, and
- (b) **inform the party of the facilities and other resources**, known to the family dispute resolution professional, **that may be available to assist in resolving the dispute.**

## So many concerns!

- How are mediators identifying and assessing?
- Are women able to fully participate in the process?  
Are they safe? What options are available? Are the outcomes appropriate?
- When violence against a woman has been identified and assessed, how does a mediator inform, discuss, and help decide which DR process is appropriate? How do they adapt their own process?
- How are other jurisdictions grappling with this?



## Scope of Project

- Online Survey
- Focus Group and Key Informant Interviews
- Literature Review

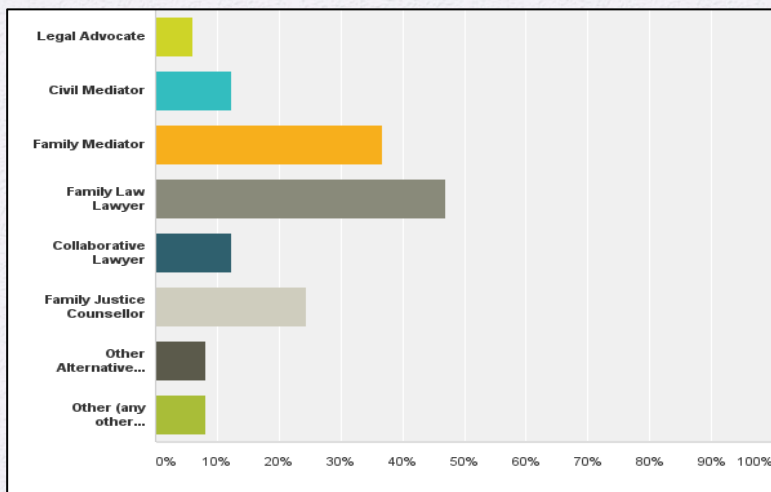
## Online Survey

- To determine in fact how have practices developed under FLA
- Distributed to BC family law advocates, family lawyers, mediators, FJC, and other DR professionals

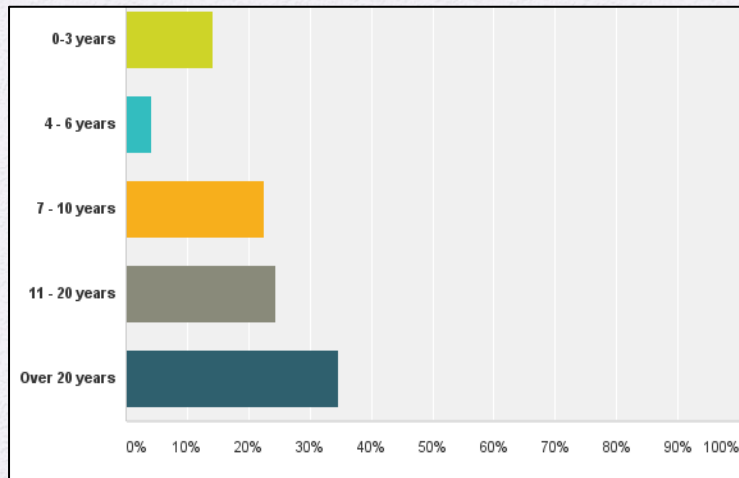
# Online Survey

- Survey monkey
- Answers were multiple choice and comments

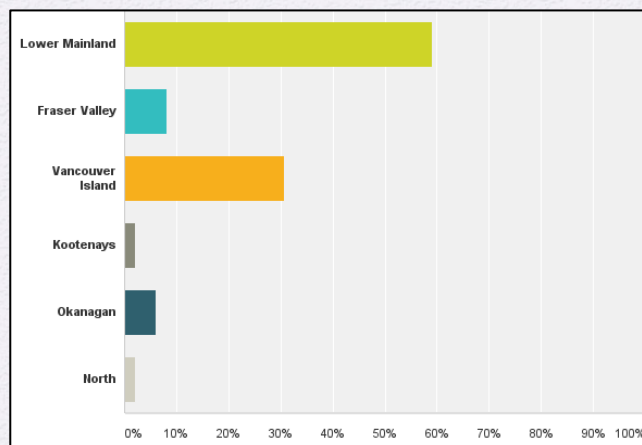
## Participation Representation



## Experience in their respective roles



## Regional representation of participants

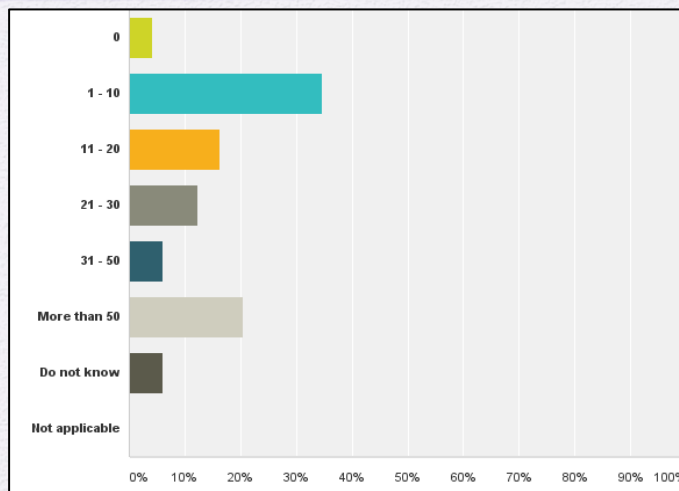


# Family Violence

The FLA defines family violence as:

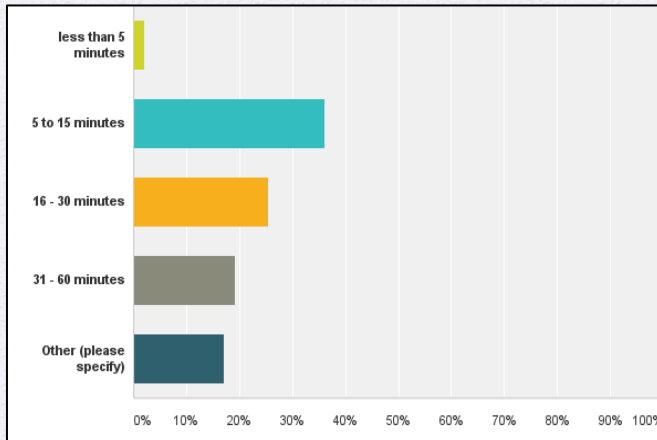
- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm
- (b) sexual abuse of a family member
- (c) attempts to physically or sexually abuse a family member
- (d) psychological or emotional abuse of a family member, including:
  - (i) Intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property
  - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy
  - (iii) stalking or following of the family member, and
  - (iv) intentional damage to property
- (e) in the case of a child, direct or indirect exposure to family violence.

## Cases in last 3 years involving violence against women

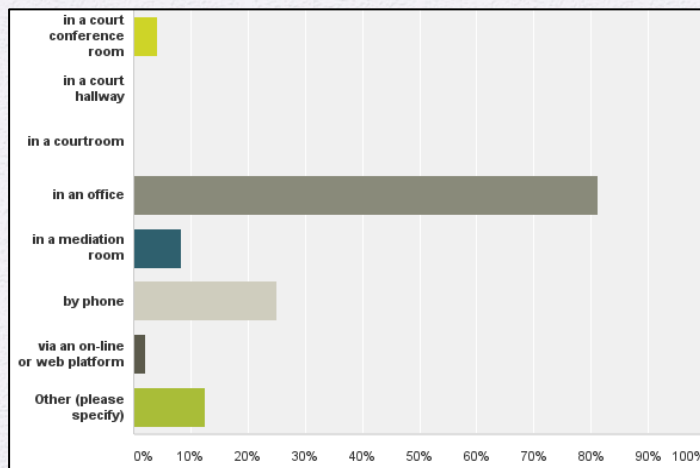




## Time to screen



## Where?

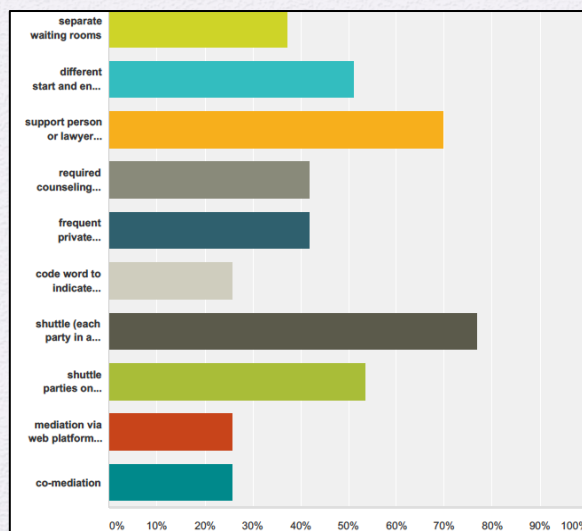




## How did they screen?

- 18 screening tools across Canada
- 51% of the respondents indicated they use their own screening tool.
- 32% for the Family Justice Counselor's Dispute Resolution Tool
- 10% for the CLE Toolkit instrument

## When safety risk identified



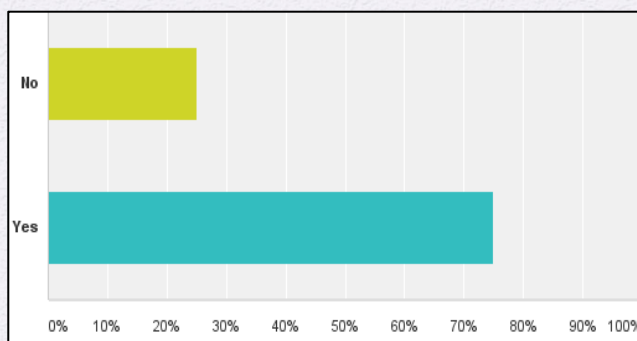
## Other DR options

When screening identified a safety risk:

- 83% advised women of other DR processes
- 90% were aware of options (but in comments said needed more information and resources)
- 75% referred to court, 61% to community based victim services, 60% to lawyer led negotiations, 58% to law enforcement (could check off as many as wanted)

## Family Violence Screening Training

- Is 14 hours enough?



## Focus Groups and Key Informant Interviews

- Conducted 3 focus groups, (2 in Vancouver, 1 in Surrey), 1 informal focus group and 4 interviews
- Participants had option to participate across BC by telephone
- Purpose to obtain rich detail, examples, stories, and qualitative data to supplement online data

## Focus Group Questions

- What sort of screening do you use? Use tool?
- When screening reveals family violence\* how skilled or comfortable are you in determining:
  - How to best adapt own process so it is safe and the outcomes fair?
  - Where to refer parties to resolve their disputes
- What lessons can we learn from you?
- What ideas do you have?
- What do we need to learn more about? What is lacking (research etc. )?
- What stories or examples can you share of challenging situations?



# Literature Review

- What can we learn from other jurisdictions?
- Reviewed over 130 articles, reports

## Preliminary summary of literature

- Appropriate and timely referrals (risk assessment, emotional and practical support, safety planning and counselling)
- Safety measures, screening and adequate skill level of DR practitioners
- Need comprehensive training
- Need skills to identify complex issues

## Encouraging

- All DR participants were doing some sort of screening
- DR Participants respectful of privacy and sensitivity
- DR Participants had 14 hours of training
- Were aware of DR options available

## Not so Encouraging

- Range for screening less than 5 minutes to 90 minutes (some noted ongoing screening throughout the process)
- No consistent practice
- Not enough info or resources to make DR options viable or to choose most appropriate DR option, resource or combination

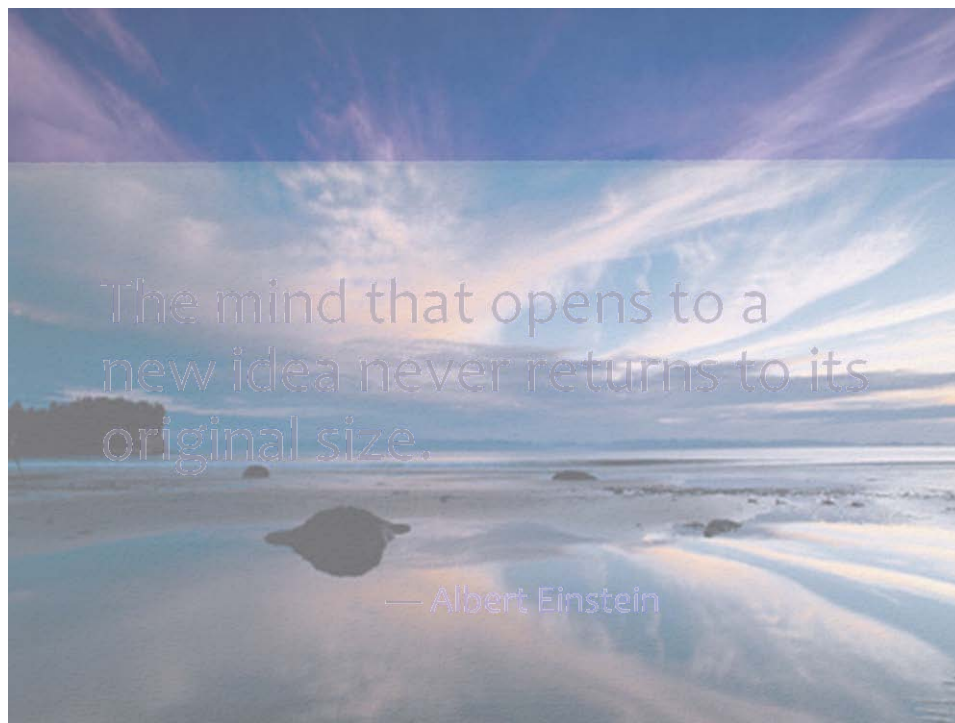
## The top 8 challenges (online survey)

Power Imbalance between the parties	83%
Lack of resources to hire mediator, co mediator or dispute resolution professionals	68%
Inability to qualify for Legal Services Society (LSS)	64%
Women afraid to face their partners	64%
Confusion regarding dispute resolution processes	55%
No child care during dispute resolution sessions	54%
Language barriers	49%
Lack of access to independent legal advice	47%

## Services & Resources needed

Support services for women available at the courts (including child care)	71%
Sufficient funding for dispute resolution professionals to handle violence against women cases	58%
Information on available community resources for purposes of referral and safety planning	54%
More training regarding violence against women and relevant screening tools	52%
Access to Interpreters	50%
Information regarding risk factors for violence specific to women	48%
Development of a mandatory screening tool to be used under the Family Law Act to determine eligibility of cases for mediation and other dispute resolution procedures	46%
More training regarding trauma informed practice	46%
Policy and practice protocols to guide dispute resolution work	35%





## Discussion

Thank you!

