



MEDIATION IN CASES OF FAMILY VIOLENCE

October 20, 2021

AGENDA

- Introductions
- Overview of Webinar
- Comment on Audience Participation
- Role of panelists
- Discussion of mediation generally
- Report: Jurisdictional Scan & Study of Mediation in Cases with a History of Domestic Violence
 - Assessment criteria
 - Asset features
 - Best Practices
 - Dispute Resolution Professional Competencies
- Conclusions
- Q&A Session



What mediation is not?

- It is not a quick fix for hard conflicts
- It is not a lovely happy-go-lucky jig where everyone walks away happy
- It is not a victim's escape from other, equally hard, formal or court procedures
- It is not a perpetrator's escape from justice or opportunity to avoid taking responsibility for actions
- It is not always safe... and may make victims and perpetrators feel even *more* vulnerable
- It is not a tool to be used in every case of disputing families
- It is not meant to replace other forms of dispute resolution, but rather to complement them



What is mediation?

- It is an entire toolbox of options, models, strategies, approaches to conflict (or some part of it)
- It is a spectrum of interventions employed by an appropriately trained, informed, prepared and knowledgeable professional in dispute resolution
- It is a system of assessing circumstances, power imbalances, roots of conflict and designing a process that serves individuals' needs and interests
- It facilitates relational and informational exchanges which allow the parties to focus on options that satisfy their circumstances and promote mutual resolution and respect
- Generally, it is an option for the parties to use voluntarily when other methods also pose significant concerns for victims and perpetrators



Prevailing beliefs about ADR

Mediation is not appropriate in cases with a history of domestic violence because:

- the significant power imbalances that are generally present in such relationships
- a victim should never be forced to participate in the presence of the perpetrator
- the lack of an authority/enforcement figure to ensure the parties follow a mediated agreement
- it takes away a victim's "day in court", and sense of justice of having a Court make a ruling
- it removes a perpetrator's sense of consequence for their objectionable behaviour
- Gives the perpetrator the opportunity to continue the violence and abuse (especially if it is psychological abuse)
- Mediators want an immediate resolution without being around for implementation and maintenance of a mediated agreement



What is the objective of mediation?

- Resolve the roots of conflict?
- Establish a good relationship between the parties?
- Avoid court procedures, trials, testimony?

CONSIDER THESE OBJECTIVES

- Certain and defined scope of mediation – parenting plan, division of assets, etc.
- Establish expectations and ground rules for future relationship in the context of the agreement
- Protocols for seeking amendments to agreements as circumstances change



Report: Jurisdictional Scan

- “Mediation Models for Family Cases Involving Domestic Violence: A Jurisdictional Scan”
- Author: Amanda Lichon, School of Public Administration, University of Victoria
- Published July 2017

- Research question:
- “What are effective family mediation models and best practices in dealing with differing levels and forms of domestic violence?”



Report: 5 Assessment Criteria

- Model has been applied to cases with a history of domestic violence
- Model places emphasis on safety and autonomy above all
- Model screens for domestic violence for by applying a mandatory screening tool
- Model recognizes the importance of accommodating family circumstances by making adjustments to the model itself
- Model requires dispute resolution professionals to have received training on domestic violence



Report: 5 Asset Features

- Model is specifically designed for cases with a history of domestic violence
- Model distinguishes between levels and seriousness of the history of domestic violence
- Mediators are required to collaborate with other professionals during the mediation process
- Model requires follow-up post-dispute resolution
- Model is modified to fit cultural needs



Report: Best Practices

- Autonomy and safety measures
- Screening for domestic violence
- Accommodations/modifications
- Training for dispute resolution professionals
- Triage of services
- Post-mediation follow ups
- Adapting mediation to reflect cultural needs
- Revisiting the option at a later date for presently ineligible clients



Report: Competencies for a dispute resolution professional

- Training on domestic violence generally
- Training on how to identify and classify power imbalances
- Training on how to modify a mediation model to manage power imbalances
- Continuous training, refreshing and competency development
- Mindfulness training
- Training and development in reading/interpreting and using body language
- Practitioner development is favoured over theoretical/academic training
- Awareness and competencies in consistently remaining neutral, empowering parties and adjusting power imbalances as they present themselves in mediation
- Heightened awareness and ability to assess the victim's ability to confidently face the perpetrator, identify and communicate their interests, as well as the perpetrator's level of acceptance of responsibility for the violence



Conclusions

- Mediation is an effective tool for dispute resolution, even in cases with a history of domestic violence
- It requires an approach that recognizes the factors that play into the dispute
- It should not be used as a means of having a perpetrator admit their wrongs, or acquiring forgiveness from the victim
- It requires an experienced dispute resolution professional to assess the appropriateness of mediation, make adjustments to their mediation models to ensure the safety of participants – both psychological and physical!
- It also requires a wrap-around approach from all professionals involved in the clients' lives and circumstances – moreso than for any other type of mediation.





QUESTIONS, ANSWERS & DISCUSSION

Thank you so much for your time, attention and participation!