

MEDIATION AND INTIMATE PARTNER VIOLENCE

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ABSTRACT

The role of mediation in domestic violence cases is vehemently debated.

Inspired by the controversial nature of mediation in cases where partner abuse is present, this paper uses a feminist analytical lens to critically examine the debate surrounding mediation and domestic violence. Considering the high rates of violence against women and the fact that the majority of Canadian family mediators are women, it is possible that many mediators have experienced abuse themselves. This paper explores the dynamics of a mediator who is a survivor of abuse, mediating cases where intimate partner violence is suspected or present. This article begins by examining several arguments pertaining to mediation and intimate abuse and then discusses possible dynamics for a mediator who is an abuse survivor within several stages of mediation. The author argues that abuse and mediation are not incompatible per se, rather, that once ideas regarding abused women are updated and a hybrid model of mediation is considered, mediating cases of domestic violence will no longer be such a controversial topic.

My background in violence against women and working with vulnerable children secured me a position with Interval House of Hamilton, a shelter for abused women and children. Intimate partner abuse¹ occurs when one party uses physical, sexual, psychological/emotional, financial, and/or spiritual abuse to secure power over the other, thereby undermining her or his safety, self-esteem, and autonomy (DVAC, 2009; Goundry, Peters & Currie, 1998). In March 2009, I was invited by Interval House's Executive Director to attend the coroner's inquest, which Interval House was following closely, into the death of eight-year-old Jared Osidacz who had been stabbed to death by his father during an unsupervised, court-ordered visit. For years prior to the murder, Julie Craven, Jared's mother, was mistreated and disserved by our legal system; the family court ignored her reports of domestic violence and child access concerns. Her silencing prevented her from having the same benefit of the law as her ex-husband, Andrew Osidacz, who was awarded unsupervised visits with his son even though he had a history of severe domestic violence. Julie's treatment by both the lawyers and coroner during the inquest was a sight to see; in my opinion, a shameful display from our legal system. When Julie shed tears or expressed any emotion she was admonished to "pull herself together" and "buckle down" by both the coroner and her own lawyer. The validity of abuse she experienced was questioned, and during her time on the witness stand she was faced with the intimidating glare of a dozen lawyers representing various interests.

Not surprisingly, women don't feel supported by family courts in addressing abuse (Dragiewicz & DeKeseredy, 2008; Hart, 1993). Laws have historically been written by men for the benefit of men, and only in the last few decades have they begun to address intimate violence against women.² I find the concept of mediation intriguing which led me to wonder how it could work in family disputes, particularly those where violence was present. Instead of surrendering problem-solving capabili-

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1. The terms: 'intimate partner abuse', 'intimate partner violence', 'domestic violence', 'domestic abuse' and 'abuse' will be used interchangeably.
 2. In a discussion of Canadian rape legislation, Tang (1998) recounts that, prior to 1983, women were unable to charge their husbands with rape because a woman's body was considered the property of her husband.

ties to lawyers and judges, as is the case in traditional litigation, mediation is a voluntary conflict resolution process that empowers couples to resolve issues in a non-adversarial manner (Donohue, Burrell & Allen, 1989). Mediation is process-orientated, client-centered, communication-focused, and interest-based. A mediator serves as a neutral and impartial third party who assists disputing parties, which ideally have equal bargaining power, in reaching mutually-satisfying agreements (Barsky, 2007). Mediation has a number of advantages over litigation: it is less expensive and less time-consuming; it promotes women's agency by providing some control over proceedings; it promotes collaboration; it does not reinforce hierarchy and domination; and it has high satisfaction and compliance rates. Additionally, unlike lawyers and judges, a significant number of mediators have abuse training (Dragiewicz & DeKeseredy, 2008; DVAC, 2009; Goundry, Peters & Currie, 1998; Milne, 2004; Schepard, 2004; Yellott, 1990).

Superficially, mediation seems to be an ideal alternative to court for abused women. Intimate partner violence, however, brings new dynamics to mediation, as issues of power and safety concerns complicate the process. The role of mediation in domestic violence cases is vehemently debated. There are a number of proponents who contend that mediation is unfit for cases of abuse, and that it is dangerous and oppressive to the women-victims involved (Gerencser, 1995; Hard, 1990); whereas others have argued that mediation can be successful in cases of intimate partner violence, potentially empowering and satisfying for all parties (Joyce, 1997 as cited in Milne 2004; Swan, 2009; Yellott, 1990).

Inspired by the plight of Julie Craven and the controversial nature of mediation in cases where partner abuse is present, this paper will use a feminist analytical lens to critically examine the debate surrounding mediation and domestic violence. Considering the high rates of violence against women and the fact that the majority of Canadian family mediators are women,³ it is possible that many mediators have experienced abuse themselves. This paper will, therefore, explore the dynamics of a mediator who is a survivor of abuse, mediating cases where intimate partner violence is suspected or present. I will begin by examining several arguments pertaining to mediation and intimate abuse and then discuss possible dynamics for a mediator who is an abuse survivor within several stages of mediation. I argue that abuse and mediation are not incompatible per se and I believe, rather, that once ideas regarding

3. 56% of Canadian family mediators are women (McFarlane, Manwaning, Zweibel & Hamilton, 2003).

abused women are updated and a hybrid model of mediation is considered, mediating cases of domestic violence will no longer be such a controversial topic.

Explaining Abuse Language

Persons of any sex/gender/sexuality may be victims of intimate abuse, however, in accordance with the common understanding of heterosexual women as the predominant victim of domestic violence (Jackson, 2007), this essay will use men-abuser and woman-victim as standard when discussing abuse. It is not my intention to negate the existence of heterosexual men or lesbian/gay/bisexual/transgendered/transsexual/two-spirited/intersexed/queer (LGBTTTIQ) victims.

Analytical Framework

It is necessary to first introduce the critical feminist analytical framework of this paper. The overarching goal of this perspective and framework is the promotion of social justice and equity, which involves the empowerment of marginalized and oppressed persons. Actions are value-laden, thus all work must be done in a self-reflective manner. In mediation, the mediator must situate herself – her identity, knowledge, values, history, and emotional experiences – in her work. Likewise, I must be cognisant of how my cognitive lens shapes the way I address the topic of mediation and partner abuse. I am a heterosexual, white, Wiccan, middle-class (low-income), woman with an invisible disability.⁴ I have an interdisciplinary honours degree in Women's Studies with a strong academic background in violence against women. I am presently completing my master's degree in critical social work, with a focus on anti-oppression service delivery; and will be conducting my doctoral studies on intimate partner violence intervention.

Having volunteered for several years at the Toronto Rape Crisis Centre/Multicultural Women Against Rape and having worked briefly at Interval House, I have developed a professional background in partner abuse. My personal experience of psychological and emotional intimate partner violence and rape not only shapes much of my approach, but will also help provide insight into the perspective of the mediator-abuse survivor throughout this paper.

4. I have Attention Deficit Hyperactivity Disorder and Obsessive Compulsive Disorder.

The Debate

Balanced Power

Couples mediation requires that parties participate voluntarily and collaboratively, and have equal power, or, with mediator assistance, achieve a satisfactory power rebalancing. A popular contention by feminists and women's advocates is that, since effective mediation requires roughly equal power between both parties and since women as a gender are not equal to men, particularly women in abusive intimate relationships, abused women should be excluded from mediation (Milne, 2004). The idea that men would necessarily wield power over women in mediation is unsophisticated. While I identify as a feminist, my critical feminist perspective recognizes persons as having a complex weave of different axes of identity that consist of different social classifications – sex, gender, sexuality, race, class, ability, and etcetera – which intersect and shift in emphasis according to context, thereby altering our subject position and social location.

To illustrate this point, I will use an abusive relationship I am familiar with as an example: Ben has a high school education and earns about \$100,000 annually, much more than Judy.⁵ He is abrasive in social situations, but his 'alpha male' social characteristics are valued by his peers. According to Neumann (1992), there are several identity variables that contribute to Ben's expression of power, including: gender, income, force, and personality. It is important, however, to examine Ben's power in relation to Judy's power when assessing power dynamics between parties (Shapira, 2009) and, in the case of mediation, the scale of power would likely tip in Judy's favour. Judy is a university educated woman – an articulate, personable, professional with systems knowledge. Judy's belief system, personality, knowledge, and education are variables that would likely contribute to her expressions of power, which comes from a variety of places, including three sources of power listed by Barsky (2007): associational power, moral power, and personal power. Sharing similar education and practice roots, coupled with being personable, it is not implausible that Judy would achieve referent power –

A party who is successful in making the mediator feel that they both share similar values, beliefs, activities, or other similarities can establish referent power... In these cases the mediator's feelings might serve as a basis for the use of referent power by the party to affect the mediator's [behaviour] in [favour] of that party (Shapira, 2009 at p. 585).

5. "Ben" and "Judy" are pseudonyms.

Cooperation

Advocates point out that the required cooperative nature of mediation is incompatible with abusive relationships, which are characterized by an imbalance of power in non-collaborative relationships (as cited in Goundry, Peters, & Currie, 1998). According to Hart (1990):

Cooperation by a batterer with his wife/partner is an oxymoron. Cooperation... means to act or work together for mutual benefit... [but he] understands mutual benefit as synonymous with his exclusive self-interest.

Activists have argued that mediation in cases of abuse is not compatible because abusers desire control and will not cooperate with the mediative process. However, since abusers desire control, mediation is likely to be more attractive than litigation where abusers relinquish all control. Drawing on Hart's above statement, an abuser who is predominantly self-interested, can in fact cooperate and collaborate because it is the only way to maintain some level of control. This requires the presence of an informed and skilled mediator to facilitate.

Screening Tools

During intake it is important to assess for readiness and appropriateness. Advocates' concerns regarding the appropriateness of mediating cases of abuse prompted the intake process to include a screening component to ensure that mediation does not serve as a medium where abuse continues (McGillis, 1997). Milne (2004) lists the roles for screening as follows: screen each person alone; define abusive behaviour; transition from general to specific questions; and explain limits of confidentiality. According to Clarke and Murphy (2007), a screening tool should include the following headings: general information; decision making; distribution of financial resources; how anger is used and the impact; interdependence and isolation issues; fear and dread; use of violence; violence/danger assessment; safety concerns; intersectionality; children's issues; mental health; and substance abuse. There is a general consensus among those who support mediation in cases of violence that some cases of intimate partner abuse are not appropriate for mediation and screening must therefore sort cases into three groups: 1) standard mediation cases; 2) specialized mediation cases; and 3) mediation alternative cases (Girdner, 1990).

Standard mediation cases are those which can begin with mediation as usual; this is for couples who meet all the requirements for mediation in good faith. Specialized mediation cases, on the other hand, are for

couples who are eligible for mediation but require that the process be modified to suit particular dynamics of their relationship. Specialized mediation can include any combination of components, such as: frequent caucuses; separate sessions; shuttle mediation; telephone mediation; closed-circuit TV mediation; co-mediation; third party support person(s); security measures; having the abuser and the victim participate in a therapeutic or rehabilitative program while in mediation; and requiring the parties to take pre-mediation program(s) (Landau, 1995; Milne, 2004). Lastly, those cases deemed not appropriate for mediation are recommended for alternative supports and/or services.

Screening tools have not diminished advocates' critiques of mediation. For example, Vogt (2009) argues that "even the most model mediation programs appear to have weak or inadequate screening mechanisms" (p. 420), inhibiting the identification of cases inappropriate for mediation and thereby putting victims at risk. Another critique is that screening tools are unable to properly assess the degree of risk, preventing mediators from providing proper safety measures (Gerencser, 1995). However, it is important to keep in mind that abused women are in fact good assessors of their own risk (see Campbell, Webster & Glass, 2009), and a valuable resource in such matters. Critics also note that the complex nature of abuse makes it challenging to identify abuse in the one or two hour intake, requiring more time than the initial assessment allows (as cited in Goundry, Peters, & Currie, 1998). In response, screening could continue throughout the mediation process, rather than only once. This paper recognizes that no matter how intricate the screening tool is, the success of screening depends largely on the mediator's knowledge of intimate abuse.

Participation

Goundry, Peters, and Currie (1998) point out that, because of the many ways power imbalances manifest themselves, all potential mediation clients would exhibit power imbalances in their relationships and none would be considered entirely appropriate for mediation. Their statement illustrates that balanced power between parties is not likely to exist because of the complex and fluid nature of power. Rather than ensure equal bargaining power between disputants, a mediator's job involves more of a negotiation of power between disputants so that each has the ability to participate relatively equally. This facilitation of power requires a mediator to enter the process with the tailored skills, techniques and tools specifically required for intervening in each case. Such preparation is made possible by the screening process, enabling the mediator to be "in charge of the process" and the parties "in charge of the

outcome” (Zumeta, 2000, as cited in Mayer, 2004 at p. 32). However, some critics contend that there exist core fundamental issues prohibiting women from effectively participating in the process and from being ‘in charge’ of the outcome.

As Hart (1990) expresses, an abused woman is “not free to identify and advocate for components essential for her autonomy and safety and that of her children” (p. 321). There appear to be two frequently discussed factors that hinder women’s effective participation in mediation. Firstly, it is argued that women can’t adequately advocate for their needs and, secondly, fear and safety concerns prevent women’s full participation in mediation. Advocates argue that abused women’s *learned helplessness* makes it very difficult for them to face their abuser and negotiate (Hart, 1990; Milne, 2004; Perry, 1994). Women have also been socialized through gender norms and their relationships to be the *peace-keeper*, and conditioned to put the abuser’s needs before her needs and the needs of her children (Hilton, 1991; Perry, 1994).

I believe these arguments generalize abused women and do not recognize women’s resiliency and strength. According to a critical feminist strength-based perspective, women have unique skills and resources to draw on depending on their social location, subject position and experiences. Further, Hardesty and Campbell (2004) note that abused women are often very good mothers and protectors of their children. In fact, a woman’s decision to leave her abusive partner is frequently motivated by the desire to protect her children. Once women leave “they want to make decisions in the best interests of their children” (Hardesty & Campbell, 2004 at p. 90).

Milne (2004) indicates that “victims are likely to be fearful, compliant, and acquiescent in mediation, unable to participate effectively” (p. 310). For example, research by the Domestic Violence Advisory Committee (2009), found that 40% of abused women felt it difficult to speak honestly in front of their abusive ex-partner. Jackson (2007) reports that meeting face to face with the abuser may inflict psychological harm. Further, research indicates that 30% – 70% of women victims had either separated or were in the process of doing so when they were murdered by their partner (Centre for Research and Education on Violence Against Women and Children).

Advocates argue that mediation provides the abuser with access to the victim and that the court system is perhaps more appropriate for protection. However, it is questionable as to whether court is safe for abused women. For example, in 2002, Vicki Sue Keller-Wendt was shot to death

by her ex-husband in the parking lot of the Michigan Isabella County courthouse (Franklin, 2002), and Carolyn Provencal was murdered by her estranged husband just outside the Sarasota County courthouse in Florida in 2009, following a very emotional divorce case that played out over several years (Anderson, 2009). The aforementioned fear and safety concerns are easily addressed through specialized mediation. Separate sessions, telephone mediation, shuttle mediation, and closed-circuit television mediation would prevent the abuser from accessing the victim. Mediators that have experience with cases where abuse is present may have tailored their services accordingly, providing separate entrances and a system for separate arrival and exit times.

Legitimizes Woman Abuse

Mediation is perceived by some feminists and advocates to legitimize spousal abuse by keeping intimate partner violence in the private sphere, after advocates have worked tirelessly to make it a public and political issue (as cited in Goundry, Peters, & Currie, 1998). The focus on present and future is argued to minimize past abuse and not hold the abuser accountable (as cited in Perry, 1994). By defining abuse as wrong from the beginning of the process and during negotiations, however, the abuser is held accountable for his past behaviour and actions.

According to the United States Commission on Civil Rights (1982):

Mediation and arbitration place the parties on equal footing and ask them to negotiate an agreement for future [behaviour]. Beyond failing to punish assailants for their crimes, this process implies that victims share responsibility for the illegal conduct (as cited in Milne, 2004 at p. 310).

It is important to note, however, that many women don't want to lay charges against their abuser or end contact, but want a non-abusive relationship of some kind (DVAC, 2009; Schepard, 2004). The mediation process can serve as a safe way for women to address abuse with their abuser, while in a safe and supportive space to establish a healthier communication style and a relationship base (Joyce, 1997, as cited in Milne, 2004).

The adversarial process can work to encourage abusers to deny abuse, but mediation and education encourage abusers to acknowledge abuse and start a journey of healthy behavioural change (Schepard, 2004). The relationship between incarceration and abuse rehabilitation is precarious – an arrest creates a “short-term reduction in violence while in the long-term it produces an offender with lower self-esteem, a deviant

identity, and, therefore, a raised potential for violence” (Mederer & Gelles, 1989, as cited in O’Connell Corcoran & Melamed, 1990 at p. 14). In contrast, mediation has been found to have rehabilitating capabilities for abusers (O’Connell Corcoran & Melamed, 1990; Schepard, 2004). In fact, research by Ellis and Stuckless (1996) found that there were reduced rates of abuse for Ontario couples who had undergone mediation, compared to those who had opted for lawyer-assistance settlements (as cited in Milne, 2004).

Mediator

Identity

According to critical feminist theory, our identities are interrelated and we have many selves, the performance of which is contextually-specific. Butler (2004) theorises that not only are women interconnected, but women in particular are affected by the occurrence of violence, or threat of violence, against another woman. Therefore, a woman mediator, particularly one who has experienced intimate partner abuse herself, would likely be impacted by abuse experienced by a woman client, if only on an intuitive level. This poses a problem for mediator neutrality; however, Mayer (2004) says that mediators are motivated to establish an empowering mediative framework, which is neither neutral nor impartial.

Countertransference exists in mediation (Grillo, 1991), occurring when the mediator responds to her client in reaction to her own past abuse. A mediator who has experienced abuse is likely to be motivated by her experiences and by a desire to empower women, which is harmonious with the critical feminist value of social justice and congruous with the general goal of providing an empowering space and process. If the abuser reminded her of her past partner, she might recreate her abuser-victim relationship with the man. On the other hand, she may desire revenge, thereby impacting his inclusion and participation in mediation. In particular, if the mediator is a survivor of abuse, she must reflect and uncover the underlying lens guiding her work because mediators have a significant amount of power (Shapira, 2009).

The mediator...can set the rules regarding who talks, when they may speak, and what may be said. The power of the mediator is not always openly acknowledged but is hidden beneath protestations that the process belongs to the parties (Grillo, 1991 at p. 1585).

A mediator who has experienced abuse must be self-reflective in order to provide the best service.

Men & LGBTTTIQ Victims of Abuse

Although domestic abuse is predominantly associated with a man-woman dichotomy, it is estimated that the prevalence of both man-victim and LGBTTTIQ domestic violence is similar to heterosexual woman-victim rates and is similarly underreported (Burke & Follingstad, 1999; Fontes, 2007; Gillis & Diamond, 2006), with some research suggesting that rates of transgendered domestic violence are higher (Risser, Shelton, McCurdy, Atkinson, Padgett, Useche, Thomas & Williams, 2006). Domestic violence awareness and training predominantly focuses on man-abusers and woman-victims and the heteronormative feminist power and control wheel. In response to heterosexist theory of domestic violence, activists developed a LGBTTTIQ power and control wheel to help educate. While many facets of domestic violence are the same for all couples, some significant differences exist. For example, one particularly distinct element of LGBTTTIQ abuse is the practice of 'forced outing' and persons may stay with their partner or hide abuse in order to avoid the repercussions of being 'outed'; often, LGBTTTIQ victims may deny abuse and instead refer to depression or anxiety issues (Murray & Mobley, 2009).

It is possible that men who have been abused by their women partners may not feel comfortable disclosing abuse to a woman mediator. On the other hand, gender norms may cause a man-victim to be less inclined to disclose to a man mediator out of fear of being judged as weak or effeminate, making a woman mediator more suitable. It is also possible that a mediator's experience with a man-abuser and mediator domestic violence training may result in the mediator failing to recognize the abuse of men-victims and LGBTTTIQ victims in screening, or not believing these victims when they disclose abuse. Her gender, sexuality, and personal experience with abuse may serve as either a hindrance or benefit for working with man-victim or LGBTTTIQ domestic violence couples. When woman-man or LGBTTTIQ abuse is disclosed the mediator should assess and/or ask the man-victim if it would be beneficial to have a man co-mediate. The presence of a co-mediator could help enhance mediator impartiality and help keep any obstructive biases at bay (Robert, 2008).

Stages of Mediation

To assist in the discussion of possible dynamics of a mediator-abuse survivor working on a case involving domestic violence, a look at the five stages of mediation will ensue. These stages are: pre-mediation:

screening and orientation; issue definition; exploring interests and needs; and negotiating and problem solving (as listed in Barsky, 2007).

Pre-mediation: Screening & Orientation

Since many mediators do not possess expert knowledge on domestic violence, it is theorized that they will have a difficult time screening for abuse, particularly in seeing past the pleasant facades that often hide abuse (as cited in Goundry, Peters, & Currie, 1998; Milne, 2004). A mediator with experience of partner violence is, arguably, more likely to be equipped to recognize abuse and see through performances attempting to hide abuse.

Agnew (1998) notes that abused women are more likely to respond and work better with those who they identify as having similar experiences. This means that a woman, who does not openly identify as abused, perhaps because of feelings of shame or embarrassment, may be more inclined to do so with a mediator who has a similar experience. This would not only be useful in prompting women to open up during the screening process, but also for establishing a connection, building rapport, and maintaining trust.

Considering that “the self-narrative of both client and worker together create the context in which... work occurs” (Kondrat, 1999 at p. 459), there may be some challenges in building a rapport between the mediator and man-abuser. Intrinsic feelings of opposition or dislike may be present, posing a problem because “liking the parties and being liked by the parties seem to be underpinnings of the rapport building that is the typical foundation of the mediation process” (Milne, 2004 at p. 329).

Issue Definition

The stage of issue definition begins with storytelling by each party, concluding with an agreement about which issues are to be addressed in mediation (Barsky, 2007). While it has been argued to be empowering for women to share their story in mediation, when juxtaposed to the victim, the “abuser will often appear dominant, charming, agreeable”, overall more dynamic and persuasive than her (Grillo, 1991 at p. 1585). Shapira (2009) explains how story-telling can be a problem:

Mediation, as opposed to litigation, enables the parties to tell their stories expansively, without rules on impermissible evidence... and mediators routinely encourage parties to clarify their views and feelings and to supply additional information as they see fit. In that respect, mediation gives an

advantage and power to parties who know how to tell a story in a lively, interesting, and convincing manner. As a result, the better story teller has a greater influence potential on the mediator and on the process and outcome of mediation (p. 586).

A mediator who is intimately aware of this dynamic has a better chance of recognizing the truth behind stories told during this stage.

It is during this stage that parties develop a deeper understanding and feel for the mediation process, advocating and collaborating with each other. Roberts (2008) cites four factors as frequent indicators of successful mediation: 1) trust in the mediator; 2) trust in the mediation process; 3) trust in one's own ability to negotiate; and 4) trust in the other party. In this stage, the mediator begins the active work of facilitative mediation, doing her best to effectively manage story sharing in order to gain the parties' trust in her abilities and the process, trust in each disputant's ability to negotiate, and trust (or a belief) in the opposing party to participate properly.

Exploring Interests & Needs

During the process of exploring interests and needs, the mediator encourages the disputing party to identify individual and joint interests (Barksy, 2007). Milne (2004) points out that, in cases of domestic violence, the process is more facilitative than collaborative and individual interests and solutions are the focus, not so much shared interests. Critics have argued that women may find identifying and advocating for their interests difficult, and it is not necessarily a problem if this is the case. The mediation process is interest-based, which means mediators strive to "help the parties understand their own needs and concerns more clearly" (Mayer, 2004 at p. 33). For abused women, the mediator may be successful in drawing on her experiences to guide a process of questions and narrative-exploring in hopes that the woman will identify her interests and needs. Also, the "private and confidential nature of mediation and the knowledge that the mediator is not a fact finder or judge" provides a safe forum and increased likelihood of abuse disclosure (Milne, 2004 at p. 313), which can be an important issue the couple or individual parties may hope to work on (O'Connell Corcoran & Melamed, 1990).

Negotiating & Problem Solving

At this stage of mediation, a solid relationship has been developed in mediation, and the parties "have committed themselves to dealing with particular issues and they have identified their underlying interests. This

phase moves them from interests to solutions” (Barsky, 2007 at p. 144). The mediator will help parties think laterally, brainstorm solutions, offer “substantive suggestions and proposals (without losing neutrality)” and deal with impasse (Barsky, 2007 at p. 172).

Advocates note that resolutions that give both parents access to children are often developed in mediation and these arrangements promote continued contact between the parties (Milne, 2004). While this can indeed be a risk for abused women, an informed mediator can recommend an alternative solution that respects the desire to divide access as well as the woman’s desire for anonymity and/or less/no direct contact. Drawing on my personal and professional abuse knowledge to inform this recommendation, I suggest that a mediator could refer parties to the Supervised Access Program for child exchanges; this service is not well-known by the general population, social service providers, or the legal community.⁶

Abused women are said to be at a heightened risk of being coerced into an agreement or pressured into settling when they are not satisfied, when compared to non-abused parties (see Goundry, Peters, & Currie, 1998; O’Connor Corcoran & Melamed, 1990; Perry, 1994). A mediator with a history of intimate partner abuse would likely be inclined to ensure, as much as possible, that women are reaching mutually-satisfying resolutions. Interestingly, recent work by Schepard (2004) found that more abused women felt pressure to settle and felt less satisfaction with resolutions in non-mediative services, when compared to abused women in mediation. Thus, the argument that abused women are not able to participate effectively is perhaps outdated.

Recommendations

1. We need to stop engaging in two-dimensional debates about mediation and intimate abuse. There exists a need to replace the dated body of literature critiquing the appropriateness of mediation, which generalizes abused women as powerless victims; we need to replace notions of mediation as an intimate and collaborative process with new hybrid models.

6. In my research “Work, Health, and Happiness: Examining the Well-Being of Supervised Access Program Coordinators” (2010), I was told by several Supervised Access Program Coordinators across the province that their services were not well-known, and both misunderstood and under-referred by lawyers and some judges.

2. Intimate partner abuse training must be standardized and include a thorough study of the dynamics of both woman-man and LBGTTTIQ abuse.
3. Screening should be continual, even after abuse is identified.

As Haynes (1989) expressed:

Just because she has been abused, a wife does not lose her right to mediate... The mediator should be constantly aware of the parties' negotiating ability and power relationships. As the mediation progresses, it may indeed appear that spouses cannot bargain effectively unless clear boundaries to their relationship are agreed upon. It may also turn out that those boundaries need to be enshrined in a court order, which may be a protection-from-abuse order. And the couple will be encouraged to agree to do that so that mediation may go forward. But those steps need not be arbitrarily imposed in all cases of abused spouses, only when the symptoms suggest there is a problem (as cited in O'Connell Corcoran & Melamed, 1990 at p. 313).

4. Co-mediation should be more actively promoted and offered as an option during orientation. Co-mediation provides an example of how to negotiate, which is especially useful for couples where abuse is present. Further, Roberts (2008) explains that "co-mediators can share the demanding task of mediation... They can monitor each other's contributions, offsetting weaknesses, reinforcing messages and providing complementary skills, information and approaches" (p. 135). Working with cases of domestic violence, it is suggested that a woman mediator co-mediate with a man; when woman-man abuse is present, co-mediation can occur with a man, men's intimate abuse advocate or counsellor; and in cases of LBGTTTIQ violence, an advocate or LBGTTTIQ mediator could co-mediate.
5. Mediators who are survivors of abuse should be welcome to mediate as they are likely able to enhance certain components of mediation; however, mediators must be cognisant of their limits, any downsides, and be self-reflective in their practice.

Conclusion

This paper has discussed the dynamics of mediating cases of domestic violence, including issues that may exist for a mediator who has experienced abuse herself. In this paper, I have shown that abuse and mediation are not incompatible per se but, rather, many ideas pertaining to abused women and the traditional models of mediation that dominate the combative discourse are arguably outdated and unsophisticated.

References

- Agnew, V. (1998). *In search of a safe space: Abused women and culturally sensitive services*. Toronto: University of Toronto Press.
- Anderson, Z. (2009, November 24). Woman shot dead at Venice courthouse. *Herald Tribune*, A1.
- Barsky, A.E. (2004). Mediating separation of same-sex couples. In J. Folberg, A. Milne & P.
- Burke, L.K. & D.R. Follingstad (1999). Violence in lesbian and gay relationships: Theory, prevalence, and correlational factors. *Clinical Psychology Review*, 19(5), 487-512.
- Butler, J. (2004). *Precarious Life*. Brooklyn: Verso.
- Clarke, A. & D. Murphy (2007). Outline of an effective screening tool. Class handout.
- Fontes, D.K. (2007). Male victims of domestic violence. In J. Hamel & T.K. Nicholls (Eds.), *Family interventions in domestic violence: A handbook of gender-inclusive theory and treatment* (pp. 303-318). New York: Springer Publishing Co.
- Franklin, A. (2002, March 06). Years of accusations end with three dead outside courthouse. *Ludington Daily News*.
- Gillis, D. (1997). *Community mediation programs: Development and challenges*. Washington: United States Department of Justice.
- Gillis, J.R. & S. Diamond (2006). Same-sex partner abuse: Challenges to the existing paradigm of intimate violence theory. In C. Vine & P. Alaggia (Eds.), *Cruel but not unusual: Violence in Canadian families* (pp. 127-144). Waterloo: Wilfrid Laurier University Press.
- Girdner, L. (1990). Mediation triage: Screening for spousal abuse. *Mediation Quarterly* 7(4), 365-376.
- Goundry, S.A., Y. Peters & R. Currie (1998). *Family mediation in Canada: implications for women's equality*. Report for the Status of Women Canada.
- Grillo, T. (1991). The mediation alternative: Process dangers for women. *The Yale Law Journal*, 6, 1545-1610.
- Hardesty, J.L. & J.C. Campbell (2004). Safety planning for abused women and their children. In P.G. Jaffe, C.C. Baker & A.J. Cunning-

- ham. *Protecting children from domestic violence: strategies for community intervention*. New York: Guilford Press.
- Hart, B.J. (1990). Gentle jeopardy: The further endangerment of battered women and children in custody mediation. *Mediation Quarterly*, 7(4), 317-330.
- Hart, B.J. (1993). Battered women in criminal justice system. *American Behavioral Scientist*, 36(5), 624-638.
- Hilton, Z. (1991). Mediating wife assault: Battered women and the "New Family". *Canadian Journal of Family Law*, 9(2), 29-53.
- Irving, H.H. & M. Benjamin (1995). *Family mediation: Contemporary issues*. Thousand Oaks: Sage Publications.
- Mackinnon, C.A. (1983). Feminism, Marxism, method, and the state: Toward feminist jurisprudence. *Signs*, 8(4), 635-658.
- Mackinnon, C.A. (1991). Reflections on sex equality under law. *The Yale Law Journal*, 100(5), 1281-1328.
- Neumann, D. (1992). How mediators can effectively address the male-female power imbalance in divorce. *Mediation Quarterly*, 9(3), 227-239.
- O'Connell, Corcoran & J.C. Melamed (1990). From coercion to empowerment: Spousal abuse and mediation. *Mediation Quarterly* 7(4), 303-316.
- Risser, J.M.H., A. Shelton, S. McCurdy, J. Atkinson, P. Padgett, B. Useche, B. Thomas & M. Williams (2006). Sex, drugs, violence, and HIV status among male-to-female transgendered persons in Houston, Texas. In W.D. Bockting & E. Avery (Eds.), *Transgender health and HIV protection: Needs assessment studies from transgender communities across the United States*. Binghamton: Haworth Medical Press.
- Roberts, M. (2008). *Mediation in family disputes: Principles of practice*, 3rd ed. Burlington: Ashgate.
- Salem (Eds.), *Divorce and family mediation: models, techniques, and applications* (pp. 351-377). New York: Guilford Press.
- Schepard, A. (2004). Family violence. *Children, courts and custody: Interdisciplinary models for divorcing families*. Cambridge: Cambridge University Press.

- Shapira, O. (2009). Exploring the concept of power in mediation: Mediators' sources of power and influence tactics. *Ohio State Journal on Dispute Resolution*, 24(3), 535-571.
- Swain, P. (2009). *In the shadow of the law: The legal context of social work practice*. Annandale: Federation Press.
- Tang, K. (1998). Rape law reform in Canada: The success and limits of legislation. *International Journal of Offender Therapy and Comparative Criminology*, 42(3), 258-270.
- Tong, R. (2008). *Feminist thought*. Charlotte: Westview Press.
- Vogt, V.V. (2009). Mediation and domestic violence: Legislative responses. In N. K. D. Lemon (Ed.), *Domestic violence law* (pp. 417-420). St. Paul: West Group.