



Policy on Intimate Partner Violence and Power Imbalances

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A. Introduction

Mediation is a process choice for separating families which has consistently been recommended in any review of the justice system in Canada and elsewhere because it is efficient and inexpensive and reduces conflict. As mediation began to be used more regularly, the question originally posed was whether it would be safe for survivors of intimate partner violence? Would survivors potentially be placed in harm's way and would they be able to negotiate appropriately? Trina Grillo, in *"The Mediation Alternative: Process Dangers for*

*Women*¹, sounded the alarm on the dangers for women participating in family mediation. She argued that the mediation process had the potential to harm women by diminishing the importance of context, downplaying the importance of rights, undermining the ability to hold a person accountable for his actions, and by focusing on formal, rather than substantive equality. In 1998, a Canadian Status of Women Report entitled, *Family Mediation in Canada: Implications for Women's Equality*², further elaborated concerns about family mediation as a process choice for women at separation. At the same time Richard Delgado, a critical race theorist argued that *"to protect minorities, ADR should be reserved for disputes in which parties of comparable status and power confront each other. When confronting opponents of higher status or power, minorities would be well advised to opt for formal adjudication and should not be forced by the courts into informal proceedings"*.³ As the Honourable Justice Lene Madsen noted in her article, *"A Fine Balance: Domestic Violence, Screening and Family Mediation"*⁴, the study of domestic violence evolved, and a more nuanced analyses of the impact of violence have been articulated. At the same time, significant efforts were made to attempt to address the concerns Grillo and others raised, on the one hand through the development of "screening" tools that attempt to identify mediation clients who have been exposed to domestic violence, and, on the other hand, to adapt the process, if possible, so that mediation may proceed.

The field of mediation advanced over the next decades in Ontario, moving from this place of concern over using mediation to the development of standards, screening tools and protocols to address intimate partner violence which are now acknowledged in government and other sectors as exemplary. The reason for the concern and need for standards for screening was made clear as Ontario's Domestic Violence Death Review Committee has consistently found (2003- 2018) that a history of violence and pending or recent separation are the first and second highest risk factors for lethality in domestic homicides. OAFM Standards of Practice require mediators to do no harm and the organization recognizes that they have a responsibility to the survivors, victims and their families to consistently review these practices and improve them.

¹ Trina Grillo, (1991) 100 *The Yale Law Journal* Volume 100: 1545

² <https://publications.gc.ca/site/eng/9.646916/publication.html>

³ Richard Delgado, Chris Dunn, Pamela Brown & Helena Lee, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 *Wis. L. Rev.* 1359 (1985). Available at: https://scholarship.law.ua.edu/fac_articles/584

⁴ *A Fine Balance: Domestic Violence, Screening and Family Mediation* 30 *CFLQ* 343

As set out in the history section below, this policy was initially adopted at the Ontario Association for Family Mediation (“OAFM”) Annual General Meeting in June, 1994 and amended on October 27, 2013. Many of the concepts and recommendations initially came from the *“Report from the Toronto Forum on Woman Abuse and Mediation, June 1993”*. The policy was extensively reviewed by the Standards Committee of the OAFM in 2020 and 2021 to consider current research and developments in the study of this important factor in the separation of families and seek input and consultation. The OAFM commitment is to ensure that mediators can properly assess for intimate partner violence so that survivors of violence have the right to choose an effective and timely process while ensuring their safety.

It is important to note the evolution of the original term “woman abuse” to “domestic violence” then “intimate partner violence” and now most recently to “family violence” in the Canadian Divorce Act amendments. Accredited Family, Child Protection and Intergenerational Mediators work with people involved in intimate relationships, from those that are brief and may result in the birth of a child to inter-generational families experiencing end of life issues. This policy has been re-named Intimate Partner Violence and Power Imbalances because the use of the word “family” alone may lead to someone misconstruing the risk and danger in any intimate relationship, regardless of duration. This policy may use the terms interchangeably, noting that they are all still commonly in use. The Ontario Coroner’s special committee, for example, is called the “Domestic Violence Death Review Committee.”⁵

No violence is acceptable. Mediation in cases where family violence exists is a high-risk area of work for family mediators, and this policy is meant to ensure mediators are fully aware of this.

The OAFM notes that while the Federal Government and Provincial Government of Ontario adopted new language regarding family violence in 2021, they also recognized in the same legislation the importance of using consensual dispute resolution processes like mediation. Families want the choice and the access to mediation services and therefore this policy clarifies the need for stringent use of screening, including screening tools, and the need for on-going education for every mediator, every year. We take very seriously the obligation to learn from past experiences, studies of violence, and the deaths that have occurred, to protect the living. The requirement for trainings about domestic violence screening to be conducted by Accredited Family Mediators who have applied to teach this course and who

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<https://www.mcscs.jus.gov.on.ca/english/Deathinvestigations/OfficeChiefCoroner/Publicationsandreports/DVDRC2018Report.html>

adhere to this policy, as well as the requirement to ensure that all mediators have on-going and up to date training each year are critical components of our commitment to safety.

B. History

In June of 1991, the Ontario Association for Family Mediation launched a ground-breaking effort to involve North American professional dispute resolution associations in the development of joint policy statements regarding family violence and mediation. This effort was a direct response to the concerns raised by women's and children's advocates. In May of 1992, led by Barbara Landau, an OAFM President's award winner for her pioneering work in the development of this policy, the OAFM joined with organizations including the Academy of Family Mediators, Family Mediation Canada, and the Society of Professionals in Dispute Resolution and met with approximately 50 women's and children's advocates for the purpose of hearing their serious concerns about mediation in cases of abuse. They widely consulted with other community partners and together they prepared joint recommendations for presentation at the 1993 meetings of the mediation associations. It was agreed that these recommendations would address primarily:

1. Education and training of mediators;
2. Skilful screening of candidates for mediation;
3. Safety issues in mediation, and;
4. Alternatives to mediation for abused women.

There were a number of concerns that they were attempting to address⁶. The Toronto Forum concluded that *"violence against women and its impact on children continue to pose serious questions for dispute resolution professionals and the practice of mediation....They are starting, albeit cautiously, to address co-operatively and constructively the benefits and risks associated with mediation and the unique needs of abused women"*.

The concerns at that time centered around the fact that women were most often the victims and they even called this abuse, "women abuse" to reflect this fact. It is clear from the work of the Ontario Domestic Violence Death Review Committee that their concerns have been validated. Violence most often affects women. As stated in the introduction, the term

⁶ The concern behind these recommendations was the alarming police statistics that show that more than 95% of complaints to police about abuse are made by women against male perpetrators.

women abuse became domestic violence and then subsequent to the Wingspread Conference in 2007,⁷ we saw a recognition that not all violence fit the battering model and that there were types and nuances to intimate partner violence. This type of violence affects women more, but it affects men and children too. The use of the term “intimate partner violence” here is to refer to any woman, man or child who experiences the use or threat of physical, psychological, emotional, verbal, sexual, spiritual, or economic intimidation, coercion or force in an intimate relationship, recognizing that it is most often women who are abused and most often women and children who die. The concern in mediation is the impact that abuse has on its victims/survivors and in particular their safety as well as ability to negotiate fairly. Abuse functions to secure power and control for the abuser and to undermine the safety, security, self-esteem, voice, and autonomy of the abused person.

After the Wingspread Conference, research continued to explore the notion that survivors could mediate. OAFM has noted the work of Dr. Desmond Ellis of York University, and Dr. Amy Holtzworth-Monroe, Amy Applegate and Dr. Connie Beck, amongst others, all of which was examining, to some degree, the efficacy of mediation in these cases and in particular whether victims/survivors could manage in a mediation process. Over time the focus of this research clearly supported that a well-designed mediation process with specific protocols could in fact produce results as favourable to participants as a court process, and in a safe way.

Holtzworth-Munroe, Applegate and Beck have also published *The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse*⁸, which is a free screening tool for mediators to use. Most recently, a joint project with the Barbra Schlifer Commemorative Clinic, the Law Foundation of Ontario and United Way Toronto resulted in the publication of another screening tool, called the *Intimate Partner Violence Risk Identification & Assessment Framework*⁹.

⁷ In February 2007 the National Council of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts (AFCC) brought together a working group of thirty-seven experienced practitioners and researchers to identify and explore conceptual and practical tensions that have hampered effective work with families in which domestic violence has been identified or alleged.

<https://www.afccnet.org/Portals/0/PublicDocuments/CEFCP/ReportWingspreadConferenceDomesticViolenceFamilyCourts.pdf>

⁸ <https://onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2010.001339.x>

⁹ <https://www.schliferclinic.com/wp-content/uploads/2020/12/IPV-RIA-User-Guide-Final.pdf>

Organizations, such as the Association of Family and Conciliation Courts¹⁰, have also developed protocols for screening and process adaptations resulting from screening.

The OAFM has carefully considered the research conducted in this field as well as the very clear risk factors identified by the Ontario Domestic Violence Death Review Committee and other findings and recommendations they have made from time to time in their annual reports. The OAFM is committed to following the research and to reviewing this policy regularly.

C. Defining Intimate Partner Violence

As stated in the Introduction, it is important to view Intimate partner violence, family violence and domestic violence as terms describing a type of violence that arises in intimate relationships.

“Family violence has been defined in the Divorce Act to mean conduct that;

- a) is violent, or
- b) is threatening, or
- c) forms a pattern of coercive and controlling behaviour, or
- d) causes a family member to fear for their safety or the safety of another individual.

The Federal Government’s amendments to the Divorce Act used the language from this Policy to define Family Violence as follows:

“Family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes:

¹⁰

<https://www.afccnet.org/Portals/0/Center%20for%20Excellance/Guidelines%20for%20Examining%20Intimate%20Partner%20Violence.pdf>

- a) *physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;*
- b) *sexual abuse;*
- c) *threats to kill or cause bodily harm to any person;*
- d) *harassment, including stalking;*
- e) *the failure to provide the necessities of life;*
- f) *psychological abuse;*
- g) *financial abuse;*
- h) *threats to kill or harm an animal or damage property; and*
- i) *the killing or harming of an animal or the damaging of property; (violence familial)."¹¹*

This definition is broad and encompasses the critical risk factors that every mediator must remain aware of throughout the mediation process.

It is important to recognize the ultimate risk of violence is domestic homicide. The Canadian Domestic Homicide Prevention Initiative¹² has defined that as the killing of a current or former intimate partner, their child(ren), and/or other third parties. They note that an intimate partner can include people who are in a current or former married, common-law, or dating relationship and that other third parties can include new partners, other family members, neighbours, friends, co-workers, helping professionals, bystanders, and others killed as a result of the incident.

D. Guiding Principles

Family mediation cases in which there is or have been family violence are complicated and can be dangerous to the participants and the mediator. As a result, the following are the guiding principles informing this policy.

¹¹ <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/div15.html>

¹² <http://cdhpi.ca/>

1. Mediators must not be neutral regarding violence or safety.
2. There must not be mediation of the actual violence itself, or whether it occurred or did not occur.
3. Mediators accept the self-disclosure of participants as sufficient to put appropriate process modifications in place, and do not attempt to ascertain the truth of those concerns.
4. Parties to mediation must be able to negotiate safely, voluntarily, and competently in order to reach a fair agreement. Mediation cannot be fair if one of the parties is unable to mediate effectively and competently. Abuse in intimate relationships poses serious safety risks and may significantly diminish a person's ability to mediate. For this reason, mediators need to identify and distinguish which cases are inappropriate for mediation, which are appropriate for specialized mediation and which may proceed in the usual way.
5. Mediators must be familiar with the well documented Risk Factors from the Ontario Domestic Violence Death Review committee¹³ and proficient in recognizing the signs and factors that can increase risk and which may call for a modified mediation process or termination.
6. If the level of family violence jeopardizes a person's ability to negotiate without fear of duress, the case may not be suitable for mediation and certainly requires process modifications. Mediators who are new to the practice of mediation should consult with senior mediators on these cases, as the OAFM Standards require that mediators not practice outside their area of expertise and deep knowledge of family violence is something requiring expertise.
7. Mediation invites self-determination and participants may choose it and should be able to do so in a safe environment provided by researched and recognized process design adaptations.

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8. Mediators should never force or unduly encourage or coerce someone to mediate in a joint session if they express any hesitation in doing so.
9. Where necessary, mediators should consult with and refer to other professionals with expertise in family violence.
10. As the Canadian cultural landscape is changing, mediators need to understand diversity and how it impacts domestic violence. In 1989 Kimberle' Crenshaw¹⁴ coined the phrase 'Intersectionality' ¹⁵ while speaking about the impact of domestic violence on black women, confirming there is a need to understand how dimensions such as race, class, gender, ability and sexual orientation shape the oppressions that intersect for these women and others in diverse populations.
11. It is critical for mediators to understand trauma and use processes that are trauma sensitive, and trauma informed. Trauma-informed mediation is an approach that challenges mediators to be aware of potential trauma triggers and to engage in empathetic practices to allow parties to engage within their own individualized window of tolerance to resolve disputes. Looking at mediation through the lens of trauma provides a very different understanding of parties who may be living in a world that feels unsafe. Mediators must be vigilant in their professional obligation to do no harm, and this includes understanding trauma and the impact it has on peoples' lives and the need to ensure not only physical safety but also an emotionally safe process for all participants.

E. Assessing and Screening for Family Violence

Prior to commencing mediation, the mediator must individually screen all participants for the presence or risk of family violence, abuse and/or power imbalance as defined above. in a face to face private and confidential initial interview. The purpose of the screening is

¹⁴ Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color In: Martha Albertson Fineman, Rixanne Mykitiuk, Eds. *The Public Nature of Private Violence*. (New York: Routledge, 1994), p. 93-118.

¹⁵ Phoenix & Pattynama, 2006. Intersectionality is made up of three building blocks; namely, (1) social identities which refer to people's race, class ethnic grouping, social identity and sexual orientation), (2) systems of oppression, a society that creates inequalities and reinforces exclusion which are built around social norms and constructed primarily by the dominant group and (3) the ways in which they intersect. Individuals are shaped by ways in which they intersect and interact with each other and systems of systemic oppression. <https://journals.sagepub.com/doi/pdf/10.1177/1350506806065751>

to determine which modifications may be necessary to ensure a safe, effective process or whether the case is inappropriate for mediation.

1. Screening takes place from the initial contact through to the conclusion of the mediation. The interview should be conducted using open-ended, non-judgemental, and curious questions.
2. Mediators must use a formal process and/or screening tool, such as questionnaires, the MASIC, DOVE¹⁶, RIA or other recognized tools which address risk factors including those identified by the Ontario Domestic Violence Death Review Committee¹⁷.
3. Mediators must inform clients that there are limits to confidentiality as they have an obligation to report past or present child abuse and threats of future abuse to any of the participants.
4. Where the mediator believes the mediation process could not proceed without process modifications they will make those modifications in accordance with Section F herein.
5. Where the mediator believes the mediation cannot proceed without compromising the safety, wellbeing, or ability to negotiate fairly, of a participant, they will terminate the mediation process as set out in Section G herein.
6. Mediators are encouraged to ensure they are sensitive to issues related to post-separation abuse and specifically the concept of legal bullying, using the legal system or the mediation process to inflict delay or trauma on the survivor.

F. Process Design and Modifications

1. When mediators determine that there are risk factors present and that the process cannot proceed without modifications, they will design a process that takes into consideration, amongst other factors, the following:
 - a. The use of shuttle mediation, whether online or in person.

¹⁶ https://www.researchgate.net/publication/227516795_Domestic_violence_DOVE_and_divorce_mediation

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<https://www.mcscs.jus.gov.on.ca/english/Deathinvestigations/OfficeChiefCoroner/Publicationsandreports/DVDR2018Report.html#appendixb>

- b. The appropriateness of the physical space they have available, such as the ability to have separate waiting areas, separate arrival and departure times, etc.
- c. Using a co-mediation model with a composition suited to the circumstances.
- d. The use of support persons for either participant.
- e. The protecting of information regarding meeting times and dates for sessions if required.
- f. Pausing mediation for completion of other steps, such as counselling or to ensure safety planning has occurred.
- g. Safe use of technology in the event that online family mediation is being provided to the participants.

G. Safe Termination

1. If the mediator deems that, even with process design modifications, any of the participants are unable to mediate or continue to mediate safely, competently, and without fear or coercion, they will terminate the process, in accordance with the Standards of Practice, as safety is paramount.
2. Precautions should be taken in terminating to assure the safety of the parties. For example, the mediator should not reveal information to one person or to the court that could create a risk for the other person.
3. If terminating mediation, ensure familiarity with the Standards of Practice¹⁸ and consider referring both participants to community resources, such as crisis hot lines, the police, family law resources, <https://stepstojustice.ca/> and criminal justice procedures for survivors, perpetrators, and children, <https://sheltersafe.ca/ontario/>, <https://211ontario.ca/> and <https://www.awhl.org/>
4. If you are concerned about someone's safety, know and have contact information for the support persons available to help.

¹⁸ <https://www.oafm.on.ca/about/standards/standards-of-practice/>

5. Understand your duty to report and become familiar with the Duty to Report booklet¹⁹.
6. Know and understand the community resources available to help families locally and in the areas you serve clients. Establish connections and communications with your shelter staff and if they have a safety plan booklet have some available for clients.

H. Continuous Screening

It is critical that screening is not considered to be complete after the initial interview and occurs continuously throughout the mediation process.

I. Ongoing Professional Development

1. The OAFM requires all accredited mediators to participate in an initial training, currently three (3) days duration, on intimate partner violence and power imbalances, which includes:
 - a) An understanding of intimate partner violence, including the statistics and prevalence.
 - b) Typologies and risk factors identified by the Ontario Domestic Violence Prevention Committee.
 - c) Impact of violence on children;
 - d) Best practices for screening for intimate partner violence and power imbalances;
 - e) Role play and case study to explore risk factors and in-depth screening;
 - f) The necessity for community referrals for both survivor and perpetrator;
 - g) The necessity for referrals or conducting safety planning;

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http://www.children.gov.on.ca/htdocs/English/documents/childrensaidd/reportingchildabuseandneglect_EN.pdf

- h) Safe Termination best practices, safety measures, safe termination, and alternatives to mediation, when mediation is not appropriate.
- 2. The OAFM requires all accredited mediators to continue their education on Intimate Partner Violence and Power Imbalances as a condition of on-going membership in the organization and on an annual basis with a minimum number of hours as determined by the Board from time to time.

Approved by the Board of Directors, February 11, 2022