

**Mediation Models for Family Cases Involving Domestic Violence:
A Jurisdictional Scan**

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EXECUTIVE SUMMARY

The BC Ministry of Justice is exploring the option of implementing a mandatory Consensual Dispute Resolution regime for family law disputes in BC. To prepare for this possibility, the Family Justice Service Division of BC's Ministry of Justice is navigating how family law disputes with a history of domestic violence will fit into such a scheme.

The Division has a strong mediation model that it applies, but wants to ensure to adequately support such families by exploring other options to adopt into the Division's mediation model. While accessibility is important, maintaining safety of all participants remains its most important aspect. The purpose of this study was to explore how other jurisdictions are mediating such cases and their best practices.

The study was designed to address the following research question: *What are effective family mediation models and best practices in dealing with differing levels and forms of domestic violence?*

To support these objectives, a literature review and jurisdictional scan for mediation models that mediate such cases was conducted.

Literature Review

The literature review focused on the research on domestic violence, and the best mediation practices for family law cases with a history of domestic violence. The review included articles from the collections and research databases of the University of Victoria, books, the websites of governments, government reports, and domestic violence advocacy groups.

The first section examined the research on domestic violence and differentiated between levels of violence. The second section considered the benefits and risks of mediating such cases. The third section explored best practices for mediating family law cases with a history of domestic violence.

Methodology

The methodology was designed to evaluate the research question. It consisted of three stages. In the first stage, a cross-jurisdictional scan was conducted to collect relevant models. In the second stage, the models collected were measured against an assessment criterion, titled the model assessment tool, to determine whether they were effective mediation models for addressing mediating cases with a history of violence. Models were measured against five baseline requirements, which they had to meet to be assessed

further. Models were subsequently measured against the five asset features, which were progressive practices but are not absolutely necessary. Stage three involved a comparative analysis of the models to match each model to a level of domestic violence. The intention was to conduct a comparative analysis of the models to evaluate each model's potential capacity for mediating cases with different levels of domestic violence.

Findings and Discussion

Forty public and private sector organizations across various countries were contacted. Of those, nine organizations provided information on their mediation model or process for mediating family law cases with a history of domestic violence. Models/processes were provided via email and/or informational discussions took place with program directors.

The models assessed came from the following organizations:

1. The Dispute Resolution Development Branch of Alberta's Ministry of Justice;
2. The Coordinated Family Dispute Resolution (CFDR) model of Australia's Institute of Family Studies;
3. A private organization based in California: the High Conflict Institute;
4. Newfoundland's Family Justice Services Division of the Department of Justice;
5. New Zealand's Fairway Resolution Ltd;
6. The Norwegian Directorate for Children, Youth and Families;
7. Ontario's Family Mediation and Family Law Information Centers of the Ministry of Justice's Court Services Division;
8. Quebec's Affaires families of Quebec's Ministry of Justice; and
9. Saskatchewan's Dispute resolution Office of the Ministry of Justice.

It is clear from each model that mediators play a more active role in cases involving a history of domestic violence and there is reliance on modifying the process to meet families specific needs.

Each model met the five baseline requirements. As a result, they were all deemed to be quality models to apply to cases involving a history of domestic violence. However, no model met all five asset features.

Excluding the Australian CFDR model, jurisdictions follow a similar approach to mediating family law cases with a history of domestic violence. Organizations modify their standard mediation model and ultimately follow a case-by-case approach. The model assessment tool showed that the Australian model is the most comprehensive model to apply to cases with a history of domestic violence.

Recommendations

Options that emerged for the Family Justice Services Division to consider are presented in two components: strategies to adopt into Family Justice Services Division's current model, and long term considerations.

Strategies:

1. Follow up with clients 3 – 6 months post dispute resolution via telephone to ensure that the mediated agreement is suitable for both parties, and that there are no issues that need to be revisited
2. Adopt cultural safety practices and accommodations to make mediation more accessible and comfortable for all families and mandate training on cultural fluency for dispute resolution practitioners
3. Post intake, and in preparation for mediation, have parties attend a group support session facilitated by a domestic violence professional and/or a mediator
4. Create individualized family healing plans to provide a holistic response to conflict resolution initiated by the dispute resolution practitioner during the intake screening process
5. Inclusion of domestic violence professionals in the mediation process

Long Term Considerations:

1. Strengthen the existing legal framework for private mediator centres and private external mediators that includes the requirement to apply a formal screening tool
2. Continued collaboration between jurisdictions as this topic evolves will remain critical and helpful as mediation services become increasingly popular or mandated by jurisdictions
3. Engage with practicing professionals in a research process to develop best practices and/or generate a new mediation model for cases with a history of domestic violence
4. Create a pilot project to develop a model similar to the Australian CFDR model to assess the cost of implementing the model in BC and to measure the benefits

Conclusion

The literature review and jurisdictional scan successfully identified best practices for mediating family law cases with a presence of domestic violence. The jurisdictional scan found that the majority of organizations are approaching cases with a presence of domestic violence on a case-by-case basis. However, as more research on domestic violence and mediation continues, models that are tailored to meet the specific needs of families that have a presence of domestic violence are becoming available, which provides additional benefits. Flowing from the findings of this research, multiple

strategies and long-term considerations were recommended to the Family Justice Service Division.

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1. INTRODUCTION

The Family Justice Services Division (FJSD) of BC's Ministry of Justice is exploring the option of implementing a mandatory Consensual Dispute Resolution (CDR) regime for family law disputes in BC, shifting away from the current voluntary mediation system. Litigants with a child-centered family law issue would attend a CDR session prior to going through a court process unless otherwise deemed exempt. This is in response to access to justice issues in BC and exploratory studies recommending a mandatory CDR regime. If CDR is to become mandatory, mediation models focused on ensuring client safety during dispute resolution must be enacted. FJSD is also exploring how they can tailor their interest-based mediation model to enhance access to mediation for families that have a history of domestic violence, when appropriate. One means of informing this deliberation is to conduct a cross-jurisdictional scan of existing models to develop a continuum of responses.

The purpose of this project is to conduct a cross-jurisdictional scan of mediation models for cases where domestic violence has been identified and highlight relevant models to enhance access to mediation for such cases. Specifically, the project will identify: 1) how other jurisdictions are approaching the topic of mediating family law cases with a history of domestic violence; 2) what types and variations of mediation models are being used for specific typologies of family violence; and 3) whether there is available research or evaluations of these models. Further, the goal of the project is to find additional mediation models for cases where domestic violence is present, without compromising the safety of participants. By doing so, FJSD hopes to enhance access to mediation for cases involving domestic violence so that family law cases with domestic violence can also receive the benefits mediation yields.

The primary question for this evaluation is:

What are effective family mediation models and best practices in dealing with differing levels and forms of domestic violence?

To support the primary question, the project will also seek to answer the following supplementary questions:

- 1. What modifications are made to models by other jurisdictions that mediate family law cases with a history/presence of domestic violence?*
- 2. With domestic violence existing on a continuum, what mediation models correspond most effectively with different levels of violence?*

To support these objectives, this report will provide the following deliverables to the client:

- *Literature review:* Summary and analysis of literature on: (1) mediating cases with instances of domestic violence; (2) best mediation practices for resolving family law cases with a presence of domestic violence; (3) the continuum of domestic violence and mediating family law cases with different levels of domestic violence
- *Recommendations:* Present options to adopt to safely mediate family law cases with a history of domestic violence
- *Present challenges:* Challenges of mediating cases of domestic abuse

This project is divided into seven chapters. The first two chapters consist of the introduction and background. Chapter three provides a review of the literature pertaining to the topic. Chapter four consists of the methodology for this project and chapter five summarizes and analyzes the findings. The last two chapters will consist of conclusions and present options and recommendations for the client.

2. BACKGROUND

Client

The mission of Family Justice Services Division (FJSD) of BC's Ministry of Justice is to deliver services that promote the timely and just resolution of family disputes within a comprehensive family justice system (Family Justice Services Division, 2014, p. 1). FJSD helps families solve parenting related separation or divorce issues and operates Family Justice Centres and Justice Access Centres across the province, which are staffed primarily by family justice counsellors. Family Justice Centres also conduct assessments, and offers dispute resolution without going to court . Family Justice Centres provide the following services and programs: counselling, early holistic needs assessments and referrals, dispute resolution/mediation, parenting after separation, children in mediation, distance mediation, and parenting assessments ordered by the court. Twenty-one Family Justice Centres are located throughout the province. Justice Access Centres expand and enhance the services provided by Family Justice Centres by adding services for individuals with civil law problems and by providing on site self-help services to litigants involved in court and administrative tribunal matters. There are three Justice Access Centers in BC, located in Nanaimo, Vancouver, and Victoria.

Project Rationale

In 2005 a Family Justice Working Group was created to propose changes to the justice system for families and children, by utilizing reports and studies carried out over the previous three decades, as a basis for change (BC Justice Review Task Force, 2005, p. 5). Introducing a mandatory Consensual Dispute Resolution (CDR) model into the province for cases involving support, custody, access, guardianship or property division was a primary recommendation (BC Justice Review Task Force, 2005, p. 44). Families would be required to attend a Consensual Dispute Resolution (CDR) session prior to going through a court process, unless deemed exempt (BC Justice Review Task Force, 2005, p. 45). Usage of the courts would become a last resort.

The overarching theme of the Family Justice Working Group report was that non-adversarial approaches, such as CDR, should be the presumptive starting point in managing and resolving family law disputes in BC. This is reflected in the 2013 *Family Law Act*, which came into effect on 18 March 2013, replacing the *Family Relations Act* (Family Justice Information and Support Website). Part 2-Resolution of Family Law Disputes of the *Family Law Act* promotes the resolution of family law disputes out of court. Although mandatory CDR was not introduced, implementing it is possible under s. 224 of the Act, which allows judges to mandate litigants to attend mediation. Under Rule 5 of the Provincial Court (Family) Rules, most litigants in the designated registries are

required to meet with a Family Justice Counsellor to be assessed and informed of out-of-court resolution options. Additionally, in the Supreme Court of BC as part of the *Law and Equity Act* there is a *Notice to Mediate Family Regulation* that allows a party to compel another party to a *Family Law Act* or *Divorce Act* matter to attend mediation (BC Laws).

Further, as access to justice barriers continue to exist and there is an increase of self-represented litigants, alternative methods are required to cope with court backlogs and the complexity of the justice system (McHale, 2007, p.1). Mediation is a form of CDR that can enhance access to justice, improve process satisfaction for all parties, create better post-dispute relationships, more durable outcomes and solutions, and lead to faster processing in the courts (McHale, 2007, p. 3). Settlement rates are estimated to be 80-85% for all issues (McHale, 2007, p. 5).

In the fall of 2014 and early 2015, the FJSD, with the Civil Policy and Legislative Office, invited a group of family law practitioners, mediators, a self-represented litigant and other stakeholders to a series of meetings to further discuss the option of implementing a mandatory CDR scheme (Ministry of Justice, 2015, p. 1). This exploratory group came to the consensus that the time has come for BC to adopt a mandatory CDR regime. With a mandatory CDR regime in BC becoming a closer reality, the topic of mediating cases with domestic violence needs to be further explored. The intent is, when deemed safe, to not exclude families experiencing domestic violence from mandatory CDR.

The Provincial Office of Domestic Violence, which is part of the Ministry of Children and Family Development, defines domestic violence as physical, emotional, sexual or verbal abuse (Provincial Office of Domestic Violence, 2014, p. 5). Further, Part 1 of the *Family Law Act* broadly defines family violence to include the following:

- 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;
- Sexual abuse of a family member;
- Attempts to physically or sexually abuse a family member;
- Psychological or emotional abuse of a family member; and
- In the case of a child, direct or indirect exposure to family violence.

It is estimated that 7% of Canadian women and men who were in a current or previous marital or common law relationship experienced some form of domestic violence in the last five years (The Vanier Institute of the Family, 2010, p. 164). Report rates of violence for separating couples are as high as 70% (Mediate BC, 2008, p. 4). Statistics on

domestic violence are difficult to generate as many instances are not reported to police or victims may not self-report during data collection (Mediate BC, 2008, p. 3).

Mediating cases with a history of domestic violence is one of the most contentious topics in family law today. Current research shows that not all families that have experienced domestic violence are alike and that these cases exist on a continuum. Violence may range from a single occasion to frequent occurrences, and vary in levels of severity (Steeh & Dalton, 2008, p. 456). Kelly and Johnson (2008) categorize domestic violence into four types: coercive controlling violence, violent resistance, situational couple violence and separation instigated violence (p. 481). Their research has shown that one dispute resolution process does not fit all situations and predetermining that all family cases with domestic violence be screened out of mediation may not be the best for all families. By setting appropriate screening and safeguards, there are some levels or typologies of violence that are appropriate for mediation. In such cases, mediation is shown to provide benefits for victims because there are more opportunities for victims to feel heard and empowered (Madsen, 2012, p. 356). CDR processes, such as mediation, have been shown to prevent further violence from occurring. It is also more affordable and accessible (Madsen, 2012, p. 355). The traditional adversarial approach to resolving family law disputes has shown to increase conflict between parties, thus potentially increasing the risk of re-harm to victims and more harm to families (Putz, Ballard, Arany, Applegate & Munroe, 2012, p. 414).

Current Policies

Family dispute resolution professionals in BC are subject to professional obligations with respect to domestic violence. Section 8 of the *Family Law Act* requires family dispute resolution professionals to assess all cases for family violence. If past violence is identified, family dispute resolution professionals must determine whether it would adversely affect the ability to negotiate a fair agreement.

In BC the primary bodies that support family mediators are Family Justice Services Division and Mediate BC. Each has policies on mediating cases where family violence exists and provides tools to screen for violence. Their policies on mediating cases with domestic violence are provided below.

Family Justice Services Division

The 2014 Family Justice Services Manual of Operations advises family justice counsellors on the services offered and policies surrounding those services. The manual reflects BC's legislation on considering the identification of domestic violence when determining if mediation is appropriate. In addition, family justice counsellors are subject

to Section 10 of the *Family Law Act*, which specifically lists the services family justice counsellors can provide to clients. Upon taking a case, family justice counsellors must screen for domestic violence by using the Family Justice Services Assessment form (Family Justice Services Division, 2014, p. 13). Chapter 2 of the Manual of Operations provides information on safety and protection. As addressed in the *Family Law Act*, family violence is to be identified and responded to (Family Justice Services Division, 2014, p. 10). In addition, family justice counsellors must observe the Ministry of Justice's *Violence Against Women in Relationships* policy (VAWIR) (Family Justice Services Division, 2014, p. 10).

Section 2.5 of Manual of Operations (p. 22) requires family justice counsellors to do the following if the presence of domestic violence is known, and the client wishes to proceed with mediation:

- Determine if the violence is recent or historical;
- Recognize that over time, intimidation can reduce a person's capacity to make independent decisions and recognize preferences and needs;
- Consider whether shuttle mediation, participation of a support person, or using separate sessions (i.e. caucusing) may create a process that supports the clients to participate fully and voluntarily; and
- Counsel the clients, using separate sessions when appropriate, to ensure each party is participating voluntarily and has the ability to negotiate a fair agreement.

The family justice counsellor may terminate the session and refer clients to other resources if they deem that CDR will not be fully voluntary and fair (Family Justice Services Division, 2014, p. 22). This holds true throughout the duration of the mediation.

Mediate BC

In accordance with Section 8 of the *Family Law Act*, section 6.1 of Mediate BC's Standards of Conduct requires its rostered mediators to identify threats to safety of any participant. Further, sections 6.2 and 6.3 of the Standards of Conduct obliges members to look for abuse, and if abuse is disclosed they are to determine what safeguards are to be put in place to ensure a safe and fair mediation (Mediate BC, 2008, p. 1). If this cannot be done, the mediator is to end the mediation and direct parties to the appropriate professional or services (Mediate BC, 2008, p. 1).

The FJSD Manual of Operations and Mediate BC's Standards of Conduct have many commonalities, such as screening for violence. Also, if a history of domestic violence is

revealed or suspected, both organizations require their family dispute resolution professionals to determine whether it is appropriate to proceed. This depends on the level of violence and whether the victim has the capacity to be autonomous. Appropriate measures vary, as there is no one specific strategy to ensure the safety and fairness of the process for participants.

3. LITERATURE REVIEW

As BC moves towards adopting a mandatory Consensual Dispute Resolution scheme, it becomes imperative to address how BC will apply such a scheme to cases with a history of domestic violence. To that effect, the purpose of this literature review is to provide an overview of the literature on domestic violence, and resolving family law cases with a history of domestic violence through CDR. The review will contribute to defining and identifying effective models for cases involving domestic violence. Both substantive and theoretical literature on the topic is reviewed to provide a holistic basis for the utilization of these mediation models.

The review relies on the collections and research databases of the University of Victoria, books, the websites of governments, government reports, and organizations against violence. Since the topic first came into being as a research area in the 1970s, the literature on the topic has evolved considerably. Therefore, to capture the most current and relevant research, the review focuses on articles and reports published from 1990 to 2015.

Domestic Violence

Literature on the topic first appeared in the 1970s when domestic violence became a publicly recognized issue. Prior to, domestic violence was largely perceived as a private matter that did not require the intervention or involvement of the government. However, since then, domestic violence has been a major topic amongst researchers, academics, policy makers, governments and women's advocacy groups (Kelly & Johnson, 2008, p. 476). This is reflected in legislative changes, such as the amendments made to Canada's Criminal Code in 1983 that changed the offence of rape to include sexual assault and made it a crime for a man to sexually assault his wife (Criminal Code of Canada). Domestic violence has always fallen under the Canadian Criminal Code under section 264 – 273.

The literature agrees that domestic violence is a serious and delicate issue that needs to be addressed (Adkins, 2010, 101-102); (Ellis, 2008, 531- 531); (Holtzworth-Munroe, Beck, Applegate, 2010, p. 646); (Putz, Ballard, Arany, Applegate, 2012, p. 414); (Steeh & Dalton, 2008, p. 454); and (Ver Steegh, 2003, p. 152). However, there are a few areas of contention within the literature. Definitions for domestic violence vary slightly but share commonalities. In Western countries domestic violence is understood as behaviour that involves violence within the home, which typically involves an intimate partner, spouse, or common law partner. Violence can be presented in one, or several, of the following forms: physical, sexual, emotional, economical and psychological abuse, and threats or coercion. It can occur once, be part of a pattern, or occur sporadically during a

relationship (European Institute for Gender Equality, 2016; The Government of Canada Department of Justice, 2015; The Government of the United Kingdom, 2016; The United States Department of Justice, 2015).

Vocabulary for Family Violence

Women's advocacy groups in North America coined the term domestic violence in the late 1970s to emphasize the risks for women within their own family and homes (Kelly & Johnson, 2008, p. 476). Steegh & Dalton's (2008) report on the 2007 Wingspread Conference on Domestic Violence and Family Courts found that practitioners, clinicians and the literature, use different terms when referring to domestic violence, demonstrating the need for consistency and a common vocabulary (p. 455). Over the past two decades the following terms are commonly used within the literature: domestic violence, intimate partner violence, partner violence, spousal and family abuse (Adkins, 2010); (Beck, Menke & Figueredo, 2013); (Celements & Gross, 2007); (Ellis & stuckless, 2006); (Friend, Bradley, Thatcher & Gottman, 2011); (Grillo, 1991); (Johnson & Ferraro, 2002); (Johnson, 2006); (Madsen, 2012); (Ver Steegh, 2003). These terms have similar meanings, but can be used to specifically describe the type of relationship shared between the victim and perpetrator. Increasingly, literature over the last decade shows the utilization of the term intimate partner violence (Friend, Bradley, Thatcher & Gottman, 2011, p. 551); (Holtzworth – Munroe, 2011, p. 319); (Kelly & Johnson, 2008, p. 476); (Putz, Ballard, Arany, Applegate & Munroe, 2012, p. 413); (Rossi, Munroe, & Applegate, 2015, p. 134). Intimate partner violence is used in these articles to focus on intimate partner relationships. This report will utilize the term domestic violence because it encompasses all persons that experience familial violence and is the term most commonly used by both federal and provincial governments in Canada.

Gender

When domestic violence came to the forefront as a societal issue the focus was on domestic violence experienced by women. Walker (1979) coined the labels “battered women” and “batterers” to describe female victims and their perpetrators and theorized that violent couples get stuck in a “cycle of violence.” These terms were applied for the next few decades but as research continued it is recognized that men are not always the perpetrators. The 2009 Canada General Social Survey (GSS) conducted by Statistics Canada shows that 6% of the Canadian adult population experienced an incident(s) of spousal violence, within both current and/or previous relationships in the past five years preceding the survey (Statistics Canada, 2011, p. 5). A 2016 Statistics Canada report, *Family Violence in Canada: A Statistical profile*, which utilized self-reported data collected through the 2014 General Society Survey (GSS) on victimization, shows that in

2014 a comparable proportion of men and women (342 000 women and 418 000 men) reported being victims of spousal violence during the last 5 years (p. 3). In addition, the 2014 GSS revealed that men were over three times more likely than women to be the victim of kicking, biting, hitting or being hit with something (Statistics Canada, 2016, p. 7). This data illustrates that men also experience domestic violence.

However, the 2014 GSS on victimization found that women are more vulnerable than men to experience intimate partner violence, with a rate of violence nearly four times higher (Statistics Canada, 2016, p. 7). Women were also identified as being twice as likely as men to experience being sexually assaulted, beaten, choked or threatened with a gun or knife (Statistics Canada, 2016, p. 7). In addition, the GSS revealed that 4 out of 10 women who reported being a victim of violence reported physical injuries (Statistics Canada, 2016, p. 8).

Vulnerable Populations

The literature and research identifies Aboriginal peoples, immigrants and refugees and persons with disabilities as groups that are more vulnerable to experiencing domestic violence (British Columbia's Provincial Domestic Violence Plan, 2016, p. 5); (Harpur & Douglas, 2014); (Platt, 2010).

According to a 2013 Statistics Canada report, 15% of Aboriginal women surveyed who had a current or former spouse reported being a victim of spousal violence, compared to 6% of non – Aboriginal women. Of that 15%, 48% reported the most severe forms of violence, such as being threatened with a gun or knife, sexually assaulted, beaten or choked (p. 1 – 5). The statistics only provide a glimpse into the issue. Further, looking at police reports or at similar organizations does not capture the gravity of this issue, as many incidents are not reported. Through the framework and application of colonization theory, Kwan (2014) argues that colonialism and generations of systemic oppression is the primary reason for the overrepresentation of the Aboriginal population in Canada experiencing domestic violence (p. 5 – 8).

Results from the 2009 GSS found that spousal violence is less prevalent among immigrant women than Canadian born women, with 4.9% of immigrant women self reporting being a victim of spousal violence in the previous five years, compared to 6.8% of non-immigrant women (Statistics Canada, 2013, p. 61). However, the report does not identify nor differentiate between immigration statuses, particularly those that do not hold Canadian citizenship, such as temporary foreign workers, refugees, international students, and sponsored spouses and thus reported rates of violence for such groups are not known. The literature and migrant advocate groups argue that immigrant women, particularly those without Canadian citizenship, are at an elevated risk of experiencing domestic

violence (Ending Violence Association of BC, 2011, p. 1-3; Migrant Mothers Project, 2014, p. 4; The Provincial Office of Domestic Violence, 2016, p. 6). Factors that may isolate immigrant and refugee women from identifying domestic violence, and/or prevent them from leaving their spouse, are that they may rely on their spouse for status in Canada, language barriers, cultural pressures, fear of potential loss of sponsorship, economic dependence, and/or lack of a awareness or rights, options and services available in Canada (Ending Violence Association of BC, MOSAIC & Vancouver & Lower Mainland Multicultural Family Support Services Society, 2011, p. 3).

Additionally, those with immigration statuses such as temporary foreign workers, sponsored spouses, and refugees, often do not have access to many public benefits such as health care or legal aid, and thus accessing the appropriate services for domestic violence becomes an even greater barrier for these women (Migrant Mothers Project, 2014, p. 4).

Persons with disabilities experience domestic violence more often than those without a disability. Women with disabilities experience physical and/or sexual violence by a spouse 4.4% more than women without disabilities (Canadian Human Rights Commission, 2010, p. 101; The Provincial Office of Domestic Violence, 2016, p. 5). Depending on the disability, there can be barriers or limits for persons with a disability in disclosing abuse, such as communication (Harpur & Douglas, 2014, p. 406 – 407). Harpur & Douglas (2014) state that while it is recognized that persons with disabilities are more likely to experience domestic violence, the complexity surrounding disability and domestic violence has been insufficiently addressed by research and policies (p. 406).

In addition to these groups, British Columbia's Provincial Office Of Domestic Violence of the Ministry of Children and Family Development also identifies individuals who self identify as gay, lesbian or bisexual are twice as likely as heterosexuals to report being a victim of domestic violence, and also addresses that transgender people have an elevated risk of experiencing domestic violence (2016, p. 5).

Levels and Typologies of Domestic Violence

The traditional perception of domestic violence is that it consists of coercion and control and is typically exhibited by men's physical violence, intimidation and control of their female partners (Kelly & Johnson, 2008, p. 492). It is thought to be inappropriate to apply CDR in these situations, as power imbalances created by violence cannot be remedied, regardless of the skill of the dispute resolution professional. It is feared that victims are unable to remain autonomous as a result of fear, intimidation, and low self-esteem (Kelly & Johnson, 2008, p. 492). However, since the 1990s, research shows that different levels and typologies of domestic violence exist. Moving away from the late 1970s and 1980s discourse on "batterers" and "battered women", the 1990s saw

tremendous growth in the literature on domestic violence and the need to make distinctions between the levels of violence (Johnson & Ferraro, 2000, p. 963). Domestic violence may range from a single occasion to frequent occurrences and vary in level of severity (Steeh & Dalton, 2008, p. 456). There are multiple levels of severity of violence, and thus different typologies and levels of violence exist (Friend et al., 2011, p. 553).

There are no shared categorizations between how the literature differentiates between levels of domestic violence. Authors identify two to four levels, which may include sub-groups. Generally, the literature discusses two major forms of domestic violence: (1) coercive controlling violence, also referred to in the literature as intimate terrorism, patriarchal terrorism, and characterological violence; and (2) situational couple violence, also referred to as situational violence (Friend et al, 2011, p. 551; Kelly & Johnson, 2008, p. 477; Madsen, 2012, p. 352 – 353; Steegh & Dalton, 2008, p. 458). Differentiating between these two forms of domestic violence is done by considering non-violent controlling behavior, such as threats, economic abuse and motivation to control, versus violence that occurs as a result of a situation (Leone, Johnson, & Cohan, 2007, p. 427). If a perpetrator does not possess controlling behavior, it is likely that the form of violence was a result of a situation, and thus falls into situational violence. Sub-groups consist of violent resistance and separation instigated violence (Steeh & Dalton, 2008, p. 458). The term applied to describe each level and sub-group vary and depend on the authors, however, the organizations of traits/characteristics of violence are similar. To remain consistent, the terms applied for this literature review are from Kelly & Johnson (2008), whose research presents four types of domestic violence: (1) coercive controlling violence, (2) violent resistance, (3) situational couple violence and (4) separation instigated violence (p. 481). This paper uses Kelly & Johnson's (2008) terms as a result of the propensity their work is referenced and applied within the literature, research and textbooks.

Coercive controlling violence constitutes the combinational use of intimidation; physical, emotional, and economic abuse; and coercion and threats (Kelly & Johnson, 2008, p. 481). Research shows that men are the most common perpetrator of this form of violence and demonstrate misogynistic attitudes toward women. Psychological effects on victims of coercive controlling violence are fear, anxiety, and loss of self-esteem, depression, post-traumatic stress and numerous other forms of mental illness (Kelly & Johnson, 2008, p. 483). It is also the form of violence that is most likely to be continued or increase in severity and occurrence, and is generally more dangerous than the other identified levels of violence (Kelly & Johnson, 2008, p. 483) & (Leone, Johnson & Cohan, 2007, p. 436). While it is not the type of domestic violence that is most experienced in society, the literature suggests that the violence is more severe, whether

the abuse is physical, sexual, emotional or economical. It is also more often to injure victims to the point where medical or legal intervention is necessary, or cause death (Leone, Johnson, & Cohan, 2007, p. 436). Using a 1970s dataset and a control tactics scale to differentiate between controlling and non-controlling violence, Johnson (2006) found that only 11% of the violence was coercive controlling violence (p. 1011). This is in stark contrast to society's discourse on the topic, which is the perception that most of domestic violence is coercive controlling violence. This is likely because data collected on domestic violence typically comes from women's shelters, where most victims accessing these shelters have or are experiencing this form of violence (Kelly & Johnson, 2008, p. 484). This is further explained by a Leone, Johnson & Cohan (2007) study that looked at where women victims seek help based on the type of violence they experienced. The study showed that victims who experience coercive controlling violence are more likely to seek formal help, such as social institutions, whereas victims of other levels of violence, such as those that experience situational couple violence, rely more on friends or neighbours (p. 436).

Violent resistance is typically a response to coercive controlling violence, and is the violence that takes place as an immediate reaction to an assault and is intended primarily to protect oneself or others from injury (Kelly & Johnson, 2008, p. 485). The individual is/has been violent but is not controlling (Johnson, 2006, p. 1003). In most cases, this form of violence is perpetrated more by women than men (Muftic, Bouffard & Bouffard, 2007, p. 757).

Situational couple violence results from situations or arguments between partners that escalate on occasion to physical violence because one or both partners have poor conflict management skills and/or anger management techniques (Kelly & Johnson, 2008, p. 485). The violence may be minor, singular or chronic, and typically involves an argument that escalates to violence (minor or severe). The perpetrator is remorseful, apologizes and promises that it will not happen again (Johnson, Leone, Xu, 2014, p. 191). Unlike male perpetrators of coercive controlling violence, male perpetrators of situational couple violence do not differ on measures of misogyny than non-violent men (Kelly & Johnson 2008, p. 485).

Separation instigated violence, a sub-group of situational couple violence, occurs when violence is instigated by separation and there is no prior history of violence – it is unexpected and uncharacteristic (Kelly & Johnson, 2008, p. 487). It is triggered by experiences such as the discovery of a lover in the partner's bed, or an empty home, and represents the loss of psychological control, typically referred to as “losing it”, and is most often perpetrated by the partner that is being left and is shocked by divorce (Kelly & Johnson, 2008, p. 487). Acts include lashing out, throwing objects, destroying property,

and attacking their former partner's new lover. Perpetrators are more likely to acknowledge their violence and be embarrassed and ashamed of their behavior (Kelly & Johnson, 2008, p. 488).

Benefits of Differentiation

Friend et al. (2011) argue that families can receive appropriate treatment methods when practitioners and researchers distinguish between levels of violence (p. 563). Kelly & Johnson (2008) argue that if we want to understand domestic violence, intervene effectively, or make effective policy recommendations, distinctions must be made between levels of violence (p. 494).

Applying Research to Practice

Researchers argue that domestic violence treatment and programs ignore research on differentiating between levels of domestic violence level research (Friend et al, 2011, p. 554). There are different levels and typologies of violence and benefits can be gained from differentiating between them. This is clear in models such as the Duluth model, which is a victim centered domestic violence intervention program that operates under the assumption that all violence is coercive controlling violence and patriarchal in nature (The Duluth Model, 2011). The Duluth model may be effective for cases of coercive controlling violence, however does little to address factors and triggers of situational violence, such as poor anger management skills. In response to research on different levels of violence, clinicians have developed new models that include couples therapy and anger management training (Friend et al, 2011, p. 553). A multidisciplinary approach is still a work in progress as researchers and practitioners have differentiating views (Steeh & Dalton, 2008, p. 455). This became evident at the 2007 Wingspread Conference on Domestic Violence and Family Courts, which brought together a group of thirty-seven practitioners and researchers (Steeh & Dalton, 2008, p. 454). According to Steegh & Dalton (2008) cooperation was difficult, with the primary tensions being about context; characteristics and patterns of violence (i.e. one-size-fits-all approaches, focus on context, characteristics and variables used in differentiating families, characteristics into patterns, gender); screening and triage; process and services (inclusion and exclusion); outcomes for children; and family court resources and roles (p. 456 - 465). The same tensions and disagreements are found within the literature.

CDR and Family Law Cases with Domestic Violence

The Traditional Adversarial Process and Domestic Violence

Research shows that the traditional adversarial approach to resolving family law disputes with instances of domestic violence may not protect victims as originally thought. The traditional adversarial approach to resolving family law disputes has shown to increase conflict between parties (relative to CDR), thus potentially increasing the risk of re-harm to victims and more harm to families (Putz, Ballard, Arany, Applegate, Holtzworth - Munroe, 2012, p. 414). Ellis (2008) argues that separation-instigated violence can be reduced by enhancing access to CDR, providing mandatory risk assessment and mandatory education and training (p. 531). In an assessment of three-year longitudinal data, Ellis (2000) shows that women who experienced violence were as likely to achieve the outcomes they wanted as women who had not experienced violence (p. 1017). The literature reveals that the adversarial system may not have the same benefits that CDR yields for victims of domestic violence, but it is imperative that families and victims still have access to litigation as some cases are inappropriate for CDR. Ultimately, a one-size-fits all approach to the resolution of family disputes with a history of domestic violence is not appropriate as each case and family is different (Madsen, 2012, p. 356).

Benefits of Consensual Dispute Resolution

Madsen (2012) states that CDR provides considerable benefits for victims and families by providing increased opportunities for victims to feel heard and empowered (p. 356), and that violence rarely occurs after a collaborative process such as mediation (p. 354 & 354). A Putz et al. (2012) study compared mediation agreements of families with and without intimate partner violence and found that when mediators are aware of a history of domestic violence, reached mediation agreements may include arrangements that help to reduce the risk of future violence (p. 424). In addition, the Putz et al. (2012) study found that those with a history of domestic violence have more specific details in their arrangements to reduce chances of conflict occurring (p. 423). Ellis (2008) argues that mediation is safer and fairer for separating women as mediation encourages the ability for victims to make choices regarding matters such as parenting agreements (p. 1016 – 1022).

Levels of Domestic Violence and Consensual Dispute Resolution

The literature focuses on determining whether applying CDR to cases with domestic violence is appropriate or inappropriate. Kelly & Johnson (2008, p. 492) and Madsen (2012, p. 354) argue that the majority of couples that have a history of situational couple

violence are capable of mediating safely and effectively, with appropriate safeguards, because the violent altercation did not manifest as a result of a need to control and overpower their partner. Kelly & Johnson (2008) also state that couples who experienced separation instigated violence may also benefit and be capable of participating in CDR, with appropriate safeguards, and services such as counselling, to ensure the person triggered by separation is psychologically stabilized (p. 492). As each case and family varies, levels identified as being more appropriate for CDR are not absolute and it is up to a neutral third party, such as a mediator, to determine whether it is safe for the victim, and whether the principles of CDR can be maintained. Each case should be treated on its own merits, while balancing clients' voices, and maintaining safety (Madsen, 2012, p. 357). Further, the identification of the level of violence helps family dispute resolution professionals identify and apply a CDR process that best fits the family's and victim's needs, which allows families that have experienced domestic violence to receive the same benefits as those families not affected by violence.

Reluctance and Criticism

The literature on the possibility and benefits of using CDR processes to resolve family cases with a history of domestic violence is vast. However, some CDR organizations and professionals are cautious in their involvement. A study by Clemants & Gross (2007), which included 94 community mediation centers in North America, shows that centers are reluctant to mediate cases with a history of domestic violence. Thirty-five percent of the North American centers they assessed responded that they would not accept cases with domestic violence; 12 percent reported that they would accept cases with a history of domestic violence; 11 percent said it was the victim's choice; and 20 percent reported that their policy was case by case dependent (p. 423). Grillo's (1991) report emphasizes process dangers of mediation and argues that mandatory mediation is harmful as it further isolates victims; this report is frequently cited by critics against mediating cases with a history of domestic violence and those against mandatory mediation schemes (p. 1549). Since Grillo's (1991) article, the literature on the subject over the past 10 years has evolved to providing process methods available to mitigate the feared associated risks and concerns. However, many anti-violence and women's organizations still advocate against mediating such cases, with the two primary concerns being power imbalances between parties, and mediators' skills to address it. Further, a study by Ver Steegh (2003) found that concern exists over the privacy and confidentiality of mediation because it is feared that domestic violence is returning back to a private issue within society (p. 180). In addition, Ver Steegh (2003) states that anti-violence organizations are unconfident in mediators' skills and abilities in identifying domestic violence and grave power imbalances (p. 180).

Ellis & Stuckless (2006) divide critics into two groups: (1) Those that completely reject divorce mediation for cases with a history of domestic violence and (2) Those whose criticism include the need for more effective assessment and risk management of domestic violence during and following mediation (p. 659). The first group argues that the fear experienced by victims of their perpetrator leaves victims unable or unwilling to voice their interests, resulting in victims being dominated by the perpetrator and being left with undesirable and unfair agreements. The argument commonly used is that cases affected by domestic violence are inappropriate for CDR as it negates the fundamental principles of CDR: self-determination, and mediator neutrality (Madsen, 2012, p. 347) & (Adkins, 2010, p. 101). The second group argues that dispute resolution practitioners may not be prepared to confront the issues that may arise from such cases, and that more measures need to be taken to protect these families' during mediation.

Best Practices and Challenges for Applying CDR to Cases with a History of Domestic Violence

Much of the literature seeks to discuss when mediation is appropriate, what appropriate safeguards are, and what screening methods should be used (Adkins, 2010); (Clements & Gross, 2007); (Grillo, 1991); (Holtzworth-Munroe, 2011); (Madsen, 2012); (Steeh & Dalton, 2008); (Ver Steegh, 2003). First and foremost, all family dispute resolution professionals should adhere to the key principles of disputant autonomy, procedural fairness and substantive fairness (Waldman, 2011, p. 3). Further, identified best practices within the literature include ensuring client safety, screening, maintaining confidentiality and impartiality, practicing mindfulness and paying attention to cultural considerations. For cases with a history of domestic violence specifically, the literature suggests that family dispute resolution professionals must be mindful and adjust the process to best fit the family. Models differ across jurisdictions, depending on their outlook on the topic. A common mediation model does not exist but the research shows that there are identifiable methods that are paramount to ensuring a safe and successful CDR process, such as screening for violence and assessing the level of violence. For instance, at the Family Justice Centres and Justice Access Centers all clients are to be assessed for violence, power, and control issues (Family Justice Services Division, 2014, p. 99).

Autonomy and Safety Measures

A common fear is that power imbalances can be too grave within families that have experienced violence and that victims' vulnerability may cause them to lose their autonomy. Waldman (2011) identifies six sources of power professionals should pay attention to: (1) resources: money, property, and access to valuable contacts and experts; (2) knowledge, information and accurate data; (3) merit in the eyes of the law; (4) moral conviction and certainty; (5) personal traits advantageous in mediation; and (6) the ability

to inflict pain or irritation (p. 94 – 96). To address such power imbalances the literature suggests that a mediator may conduct persistent screening and check-in`s, and if the dispute resolution professional recognizes that the power imbalance is too extensive or the victim is not autonomous, than the session(s) should be brought to an end. Mediation programs have become increasingly responsive to challenges and questions raised by critics and women`s advocates by applying rigorous screening and various methods to protect the victim. This includes but is not limited to shuttle mediation, which means holding the mediation session at the same time but in separate rooms, different arrival and departure times, metal detectors, triage services, and no-contact except through the mediator (Kelly & Johnson, 2008, p. 492). Waldman (2011) argues it is imperative that CDR professionals ask the right questions and accommodate the needs of families. To address power imbalance Waldman (2011) recommends professionals: (1) Ensure all parties have an equal opportunity to talk; (2) monitor intimidating behavior; and (3) level the informational field (p. 89 & 100 – 101). Creating a safety plan that addresses risk assessment is also beneficial. A safety plan can encompass all accommodations to the mediation process and include agreements made between parties (Ellis, 2015, p. 658). CDR for the other two levels of violence, coercive controlling and violent resistance, is more problematic but is possible (Kelly & Johnson, 2008, p. 492). Intensive measures and precautions must be taken prior to mediation, and during the process the mediator must check-in frequently, and be mindful in observing, monitoring and addressing power dynamics.

Screening

Mediation participants must have the ability to negotiate and speak freely for themselves (Clements & Gross, 2007, p. 419). A 2013 report that measured violence against women, released by Status of Women Canada shows that less than one-third (30%) of female victims report an incident to the police (Statistics Canada, 2013, p. 10). In addition, the report revealed that although rates of spousal violence are going down, rates of violence amongst past relationships remain higher. In 2009 it was estimated that 20% of women who have contact with a previous spouse experienced violence by this spouse (Statistics Canada, 2013, p. 24). As victims of violence may experience challenges to expressing their autonomy, mediators must be made aware of any history of domestic violence so that appropriate accommodations and actions are taken. Participants are not always forthright with this information and as a result screening for violence is a critical component of any family mediation model (Field & Lynch, 2012, p. 553).

Screening is the first step family dispute resolution professionals should take upon accepting a client, and they should be trained in recognizing indicators of domestic violence (Clements & Gross, 2007, p. 418). Kelly & Johnson (2008) state that suitable

screening instruments have questions that identify the intensity of the conflict, time period, frequency, severity, patterns of control, emotional abuse, intimidation, context of violence, injuries, criminal records and assessment of fear (p. 492). Screening should also contain an element of risk assessment, be gender neutral, and include questions of violence that both partners should answer (p. 492). Clemants & Gross state that direct and explicit questions about past and present violence during screening are essential to recognize the dynamics of domestic violence (p. 418). Four domestic violence screening models designed for dispute resolution processes that effectively screen and differentiate between levels of violence include the (1) Domestic Violence Evaluation (DOVE); (2) Mediator's Assessment of Safety Issues and Concerns (MASIC); (3) the Intimate Justice Scale (IJS); and (4) the Family Justice Services Assessment Tool used by Family Justice Services in BC. The significance of all four tools is that rather than asking parties a standard list of questions, they ask parties behavioral based questions that addresses systematic issues, which studies have shown best uncovers domestic violence for mediators (Ballard, Holtzworth-Munroe, & Applegate, p. 256-258); Rossi, Holtzworth-Munroe, Applegate, Beck, Adams, & Hale, 2015, p. 2-3).

DOVE is a two part, 19-item instrument designed to assess and manage the risk of domestic violence during and following participation in divorce mediation (Ellis & Stuckless, 2006, p. 661). It distinguishes between two types of male perpetrated violence, which Ellis & Stuckless (2006) label as control motivated (coercive controlling violence) and conflict- instigated (separation instigated violence) (p. 658 – 659). These 19 items are identified as statistically significant predictors of physical assaults, sexual assaults, and emotional abuse and questions asked pertain to past violence, past abuse, emotional dependency, relationship problems, mental health problems and substance abuse (Ellis & Stuckless, 2006, p. 659). DOVE helps identify the degree and type of violence/abuse with appropriate safety plan measures (Madsen, 2012, p. 359). DOVE links violence prevention interventions with level of risk, the presence of specific types of predictors, and types and levels of violence (Ellis & Stuckless, 2006, p. 659). As this is a rigorous and time consuming tool that requires hours of specialized training, it is less accessible to CDR professionals (Holtzworth-Munroe, Beck & Applegate, 2010, p. 647 & 648). Another limit is that the model is not gender-inclusive, as it is designed to specifically identify male perpetrators. However, aspects of the tool can be modified or adjusted to make it gender inclusive (such as the way questions are asked) and/or can be used in male perpetrated cases to determine whether the violence is coercive controlling violence, which is predominantly perpetrated by men and has shown to be the most harmful and unsafe for CDR.

The Mediator's Assessment of Safety Issues and Concerns (MASIC) is a screening tool designed to identify cases involving domestic violence, and if found, assists in

differentiating between levels of violence (Madsen, 2012, p. 358). It was designed by Holtzworth-Munroe et al. (2010) and is based on features of DOVE, the Relationships Behavior Rating Scale and the Relationship Behavior Rating Scale – Revised, two tools used to measure domestic violence for families disputing custody and parenting time (p. 649) & (Beck et al, 2013, p. 73). MASIC is applied in an interview format and questions include asking parties to provide a background on their relationship, reasons they wish to mediate and to provide details on how conflict was/is handled in their relationship (Holtzworth-Munroe et al., 2010, p. 649 – 650) & (Madsen, 2012, p. 358). MASIC reflects the literature and research on the topic as it differentiates between levels of violence, recognizes that it may be challenging for victims to be forthright with their experiences, makes modifications dependent on the level of violence experienced, and is gender inclusive. Unlike DOVE, there are no copyright measures – anyone can access the tool, and it is easy to understand, making it highly accessible to CDR professionals (Holtzworth – Munroe et al, 2010, p. 649). A Pokman, Rossi, Holtzworth – Munroe, Applegate, Beck & D’Onofrio (2014) study of MASIC found that it adequately detects self-reported domestic violence and uncovers non-reported experiences of domestic violence (p. 540).

Developed by Jory (2004), the Intimate Justice Scale is a questionnaire used in conjunction with other models to determine suitability for conjoined treatment (p. 38 & 42). The questionnaire employs the use of a Likert scale and consists of 15 questions related to how one is treated by their (ex) partner (Jory, 2005, p. 44). It is gender neutral and operates under the assumption that many choose not to disclose violence. Unlike DOVE and MASIC, it does not directly ask participants to self-report on specific instances of domestic violence. A Friend et al. (2011) study found that the instrument was generally successful in differentiating between coercive controlling violence and situational violence and non-violence but it did not show differences between distressed, non-violent and situational violent groups (p. 553 & 561-562).

The Family Justice Services Assessment Form is based on elements of DOVE and involved two renowned scholars of domestic violence, Joan Kelly and Macia Klein-Pruett (Family Justice Services, 2013, p. 6). The assessment consists of three parts: (1) general questions about the client, the other party, and children ;(2) twenty-two questions that progress from less personal to more personal and are grouped by subject matter (level of conflict, financial debt management, substance use and mental health issues, family violence, and child protection and adjustment); and (3) scoring and results of the questions (Family Justice Services, 2013 p. 7). If there is any indication of violence, interviewers are required to ask probing questions.

To better identify the level of violence, risk level and appropriateness for mediation, each

question corresponds to a level of domestic violence. Family justice counselors are also required to watch for other indications, such as clients' body language when responding to questions (p. 8). Responses are scored and categorized into four groups: Low Risk/low level of conflict, moderate conflict, moderate-high conflict, and high conflict. The first two groups, low risk and moderate conflict, are identified as being appropriate for mediation. The latter are considered inappropriate for mediation and require other recourse mechanisms such as separate meetings, collaborative law, lawyers, protection orders and possibly a trial (Family Justice Services, 2013, p. 1). A 2010 evaluation of the tool found that it offers explicit violence screening and opens the door to a conversation about a client's personal experience of abuse (Family Justice Services, 2013, p. 43)

In addition to these screening tools, there are a number of risk factors CDR professionals should be aware of. A Department of Justice Canada report (2012) identified nine common risk factors that range from a history of violent behavior toward family members to misogynistic attitudes, previous criminality, and general anti-social attitudes (p.7).

In BC, section 8 of the *Family Law Act* requires CDR professionals to screen for violence. However, this is not always the case in other jurisdictions. Clemants & Gross (2007) analyzed survey data from North American mediation community centers regarding their policies and practices for cases involving domestic violence and the rate at which they screen for cases with a history of domestic violence. The centres' specializations were not identified and thus it is not known whether the centres surveyed specialized in family law mediation but the results of the study highlight that careful consideration is required if a MCDR regime is to be implemented. Clemants & Gross (2007) found that 69% of centers surveyed had some form of screening for domestic violence and of those 38% reported screening all cases (p. 422). Of those that were screened, 92% did so during the intake process (Clemants & Gross, 2007, p. 422). Their study went further by differentiating screening between formal (utilizing specific procedures for screening, such as a written form or interviews) and informal screening (no tool or process used) and found that of those centers that reported screening (69%), 28% used a written screening tool, 45% interviewed clients using a screening tool and 6% examined case histories for a history of violence (p. 423). In regards to informal screening, 42% spoke to clients without a specific set of questions to identify domestic violence and 3% assumed clients would inform them of a history of domestic violence (p. 423). Studies show that systematic screening of domestic violence for CDR is both beneficial and necessary as without it mediators may under detect violence (Holtzworth-Munroe, et al., 2010, p. 647 & 648).

Accommodations

Accommodations for mediation models vary. Ellis (2015) provides accommodation measures for cases identified as low risk, moderate risk, high risk and extreme risk (p. 657). Ellis' (2015) suggestions range from providing clearly written rules that encourage respectful communication, terminating the process, face to face mediation and referring parties to other interventions to safety warnings in writing, shuttle, telephone, online mediation and refer clients to appropriate treatment interviews (p. 657). Ellis (2015) shows that the ways to accommodate a case involving domestic violence are widespread but ultimately the CDR professional is accountable in determining the accommodation(s) made.

Training for Dispute Resolution Professionals

Multiple professions that work with cases involving domestic violence, such as social workers, require intensive training on domestic violence. The same holds true for mediators. In BC, Section 8 of the *Family Law Act* requires family dispute resolution professionals to screen for domestic violence and power imbalances. To effectively screen, the literature shows that professionals should receive some form of domestic violence training, however, this is not always the case. A Clemants & Gross (2007) study of ninety-four community mediation centers in North America found that 60% of centers offered domestic violence training for their staff, and of those, only 36% had mandatory training (p. 421). Domestic violence training varies across jurisdictions and depends on the availability. For training most relevant for CDR professionals, it is critical CDR professionals receive domestic violence training that includes paying attention to the different levels/types of intimate partner violence and addressing power imbalances (Kelly & Johnson, 2008, p. 492). Mediate BC for instance offers a course titled Family Violence Screening training for Litigators & Dispute Resolution Professionals, which centres on identifying, assessing, and managing domestic violence and power imbalances (Mediate BC, 2016). Additionally, the Continuing Legal Education Society of BC offers a wide range of courses that address difficult issues in mediation, such as domestic violence. Continuous training and refresher courses such as these are also recommended. For instance, a Warrener, Postmus, McMahon (2013) study on the professional effectiveness of social work students working with survivors of domestic violence and sexual assault shows that the more education and training one has on violence, the stronger one's ability is in handling cases with domestic violence (p. 202).

The literature shows that mindfulness training, also referred to as reflective practice training, can be beneficial for CDR professionals. Reflective practice has been shown to increase professional effectiveness by enhancing awareness of implicit factors, such as

the body language of participants, and enhance the ability of responsiveness and flexibility (Macfarlane, 2002, p. 72). It also encourages self-growth as practitioners learn from their experiences. For CDR professionals this can contribute to consistently maintaining neutrality, empowering parties, and adjusting power imbalances. Heightened awareness can also help CDR professional assess the victim's ability to confidently face their partner, identify their own interests, act free of concern or retaliation and helps assess if the perpetrator accepts responsibility for their behavior or if everything remains their former partner's fault (Waldman, 2011, p. 91). These are are factors to consider in determining the appropriateness of continuing with a CDR process (Waldman, 2011, p. 91).

Triage of Services

Family law cases are complex and multi-faceted. To address the complexities involved, many jurisdictions have adopted triage processes for family law cases, which involves matching families' needs to the most appropriate services (Salem, 2009, p. 380). This includes court-connected family services that offer services to parties, such parent education and mediation (Salem, 2009, p. 371). In BC the courts already have a triage and referral processes in place. This is evident through the mandate of the Family Justice Services Division and the programs they oversee, such as Family Justice Centres and the Parenting After Separation Course. Further, as BC already has a well-established system of triaging services, the focus here is on triaging services specifically for family law cases with a history of domestic violence entering CDR processes.

Triage of services operates under the premise that problems are complex and multi-faceted, and thus require a series of responses. For family courts, Ver Steegh, Davis, & Frederick (2012, p. 960) state that triage can be accomplished by (1) identifying issues, such as intimate partner violence, early in the process; (2) referring families to CDR processes that are safe, appropriate and effective; and (3) providing referrals or connections to community services and resources (p. 961). For cases identified as having a history of domestic violence, Ver Steegh et al., (2012) recommend a qualified domestic violence advocate to provide confidential dialogue, as well as referrals, risk assessment, and emotional support (p. 990).

Post CDR Session

The recent literature emphasizes the significance and importance of checking in on victims and families following the completion of CDR. In the Australian Coordinated Family Dispute Resolution process, phase four of the model consists of a formal follow up by domestic violence workers 1 – 3 months, and 9-10 months post conclusion of the

final mediation session(s) (Field & Lynch, 2012, p. 397). The follow up includes an assessment of the mediated agreement, a safety assessment, discussion of ongoing needs, such as referrals, gathering of process feedback for the CFDR process and a discussion about whether the parties need to return to mediation (Field & Lynch, 2012, p. 397). More research needs to be conducted regarding best practices for following up with cases with a history of domestic violence.

Accommodating Persons with Disabilities

In regards to mediation and participant abilities, if a party has a disability that may impact the mediation process, such as a hearing impairment, it is important to seek out accommodation options to prevent discrimination on the grounds of disability and so that persons with disabilities can participate in mediation. In BC there is no specific legislation on this topic, however legislation such as the Canadian Human Rights Act, which prohibits discrimination on the ground of disability, maintains that service providers have an obligation to accommodate persons with disabilities (Canadian Human Rights Commission, 2013). That being said, in terms of privacy, the mediator does not need to know one's diagnosis, but it is important to know the limits or restrictions a party may have so that the process can be accommodated as required.

Adapting Mediation Models to Reflect Cultural Needs

As Lebaron & Pillay (2006) argue, understanding the role culture plays in conflict is a powerful and critical skill for effective conflict resolution (Lebaron & Pillay, 2006, p. 6-7). However cultural fluency training is still not adequately considered in mediation training, mediation process design nor intervention because it is complex or the value of it is not fully appreciated (Lebaron & Zumeta, 2003, p. 463). Lebaron & Zumeta (2003) argue that it is critical that mediators obtain and apply cultural competency to their work (p. 464). This is not to say that mediators need to know all the cultures in the world, but they need to have an understanding that culture shapes expectations and understandings and actions in mediation (Lebaron & Zumeta, 2003, p. 465). Indonesia, a multicultural country that operates with three legal sources that exist independently from one another (Sharia, customary/Indigenous law, and state law), introduced court-annexed mediation in 2003. Sykur & Bagshaw (2013) found that Indonesia could blend the constructive East & West mediation approaches to fulfill needs to Indigenous populations and non-western communities (p. 370). Additionally, as most mediation models applied in Western jurisdictions are designed for individualistic cultures, which promotes direct and confrontational communication styles between individuals in conflict, this may be an inconsistent approach to apply to persons from collectivist cultures that avoid conflict and understand conflict as affecting more than just two parties in a dispute (Lebaron, &

Zumeta, 2003, p. 373). As such, in Canada, services should be adjusted to fit and meet the needs of Aboriginal peoples and communities. Applying westernized methods of dispute resolution need to be adjusted to meet Aboriginal peoples needs and respect Aboriginal cultural practices in dispute resolution (p. 5 – 8).

Ineligible Clients

Even if all best practices are applied, there will still be cases inappropriate for CDR. For such cases CDR professionals may find it difficult to inform the party that they are ineligible for mediation. However, it is critical that parties deemed inappropriate be screened out and that it is done in a way that does not compromise the safety of the victim for disclosing domestic violence to professionals. This becomes more complicated in a mandatory mediation scheme, as the mediator has to report out to court that the case is inappropriate for mediation but still maintain confidentiality. Other than being respectful, informing/referring victims to professional help such as counselling, there is little research on the best way to inform clients that they are deemed inappropriate for mediation. Further, Waldman (2011) argues that although a family's current situation may be found to be inappropriate for a CDR resolution, issues such as power allocation may not remain static, and it is possible that CDR may become a viable option for a family later on (p. 92).

Summary

Over the past three decades the literature on domestic violence has shifted towards understanding domestic violence as a multifaceted issue and acknowledges that different levels of domestic violence exist. With respect to applying a CDR process to cases with a history of domestic violence, what was once deemed inappropriate now serves as a meaningful tool to empower victims, heal families, and to prevent conflict from re-occurring.

As applying CDR processes to families with a history of domestic violence becomes more widely accepted and applied across jurisdictions, the research and literature presents best practices and challenges. Above all, ensuring and maintaining the safety and autonomy of victims and participants remains to be the most fundamental principle mediating family law cases with a history of domestic violence. If the safety and autonomy of participants cannot be maintained CDR is an inappropriate approach. There are multiple methods to apply to make CDR more accessible to families and to ensure the safety of victims. Best practices presented by the literature range from applying formal screening tools, modifying models to fit each case, distinguishing between levels

of violence, training on domestic violence for practitioners, educating clients on what mediation entails and what their rights are, and cultural considerations.

For cases involving a history of domestic violence, it is ideal for mediation models to contain such best practices but also be flexible to better fit each family. As shown by the research, it is beneficial to collaborate with other professionals to holistically resolve family conflict.

4. METHODOLOGY

The methodology was designed to evaluate the research question: *What are effective family mediation models and best practices in dealing with differing levels and forms of domestic violence?* The literature reveals that specific components of a mediation model, such as screening, are fundamental to understanding family dynamics, addressing any form of domestic violence and maintaining the safety and autonomy of participants (Clemants & Gross, 2007; Ellis & Stuckless, 2006; Holzworth-Munroe, Beck & Applegate, 2010; Pokman, Rossi, Holzworth-Munroe, Applegate, Beck & D'Onofrio, 2014). While it is important to evaluate and assess each components of a model, Constantino & Merchant (1996) show that it is critical to assess a conflict resolution system, such as mediation models, from a macro perspective (p. 96). Therefore, for the purposes here, rather than fixating on one component of a mediation model, such as screening, mediation models were collected and assessed as a whole to garner a greater understanding of what is currently being practiced in the field of family mediation to make mediation safe, accessible and successful for family law cases involving a history of domestic violence. To determine whether a model is effective for such cases, the models were assessed against a set of criteria that stemmed from the best practices identified in the literature.

The methodology consisted of three stages. In the first stage, a cross-jurisdictional scan was conducted to collect models. In the second stage, the models collected were measured against assessment criteria to determine whether they are effective mediation models. The models that met the conditions, and thus were found to be effective, proceeded to stage three. Stage three involved a comparative analysis of the models to match each model to a level of domestic violence. The intention was to identify the most effective models in maintaining the safety and autonomy of mediation for each level of domestic violence.

Stage One – The Collection of Models

The purpose of the first stage was to find and collect models for the subsequent stages of this methodology. To do so a cross-jurisdictional scan was conducted. The scan identified jurisdictions and/or organizations that mediate family law cases with a history of domestic violence. Organizations within jurisdictions that have implemented some form of a mandatory consensual dispute resolution (CDR) scheme to resolve family law disputes were primarily searched for as it was assumed that these jurisdictions would have had to address the issue of mediating cases with a history of domestic violence. Additionally, it was thought that any jurisdiction and/or organization mediating such cases would likely have effective mechanisms in place to ensure participant safety, autonomy and effective ways to mitigate power imbalances. As the purpose of this

research was to identify effective mediation models and best practices for mediating cases with a history domestic violence, and to understand how other jurisdictions are approaching the topic, the scan was not limited to jurisdictions with the same legal system.

To prevent inconsistencies and to develop a macro understanding of how jurisdictions and organizations are mediating family law cases with a history of domestic violence, independent mediators' models were not sought out. Models collected were limited to those universally followed by an organization. Further, due to time constraints, the timeline to collect models was limited to the end of January 2017. Forty different organizations in twenty jurisdictions were contacted for their models (See Appendix A).

Of the forty organizations contacted, nine organizations provided their mediation models (See Appendix B). Organizations provided documents on their model or verbally shared information that were of the public domain and freely accessible. Documents provided ranged from process maps to informational discussions on each organizations processes and procedures. Jurisdictions that do not have any formal models provided information verbally. As discussions were solely about each organization's model, and no opinions were collected, it was determined that research ethics approval was not required for this study (See Appendix C). To supplement the models, the legal ground regulating family mediation and mediators in each jurisdiction was analyzed.

Stage Two – The Assessment of Models Collected

Upon receipt of the models and completion of the jurisdictional scan, the nine models collected were assessed against a criterion, the model assessment tool (See Appendix B). The development of the criterion was informed by the literature review, which presented ways to make the process safe and appropriate for such cases. The tool was designed to assess the features of each mediation model (Fadeeva, Makeinko & Avensova, 2016, p.1). First, for models to be deemed safe and appropriate, they must have mechanisms in place to address power imbalances and maintain the autonomy of participants. In the model assessment tool, these mechanisms are reflected as *baseline requirements*, which are essential components for a model to have. As per the baseline requirements of the tool, the models must: (1) be applied to cases with a history of domestic violence; (2) place emphasis on the safety and autonomy of all participants ;(3) screen for domestic violence by applying a mandatory formal screening tool ;(4) recognize the importance of accommodating each families' specific needs by permitting modifications to the model. Modification options available range from shuttle mediation to distance mediation to cultural accommodations; and (5) require practitioners to be trained on domestic violence. As the baseline requirements reflect the guiding principles of mediating such

cases, if a model did not meet one baseline requirement, it was deemed to be inappropriate for cases with a history of domestic violence and was not assessed further.

The literature review also shows mediation practices and processes developed in the last decade that offer additional benefits for cases with a presence of domestic violence and/or best practices that are significant but not yet widespread. As shown in the literature review, these features are not necessary to the success of mediation but offer additional benefits. Within the model assessment tool these factors are labeled as *asset features*. The criterion identifies five features to assess. The model: (1) is specifically designed to mediate cases with a history of domestic violence;(2) differentiates between levels of domestic violence and offers modification options for each level of domestic violence;(3) is designed to collaborate with other professionals during the duration of the mediation process; (4) requires following up with clients post dispute resolution; and (5) the model is modified to fit cultural needs.

Each criterion had a numerical value attached to it. Each baseline requirement accounted for two points, and each asset feature accounted for one point, with a maximum of 15 points. The five baseline requirements accounted for two points, as these were the features each model had to have. Meaning, if a model did not receive a baseline score of 10 it was disqualified. The asset features were treated as bonus points, as they are not necessary for models to have but they offer additional benefits. As such, each asset feature accounted for 1 point. After each model was assessed and scored against the Model Assessment, they received a total score and were ranked from highest to lowest score. The model with the most points was determined to be the most effective model as it met the most criterion of the tool.

Stage Three – Comparative Analysis - Corresponding Models to a Level of Domestic Violence

Upon completion of the assessment tool, the intention was to conduct a comparative analysis of the models to evaluate each models potential capacity for mediating cases with different levels of domestic violence and provide a comprehensive list of models to consider for each level of domestic violence. The comparative analysis was to take into account the score each model received from the model assessment tool. The tool was created with this in mind as it was hypothesized that the model that scored the highest would be more appropriate for higher-level conflict mediations, which requires more risk management. The models were to be ranked from most suitable to less suitable for cases with a history of domestic violence. Additionally, as suggested by Fedeeva et al (2016. p. 1), the positive and negative aspects of each model would also be identified during the comparative model analysis process.

Limitations

Despite how many mediation models exist, there will always be cases inappropriate for mediation. Even a renowned mediation model that meets each requirement of the model assessment tool may not be applicable for some families, particularly when someone's safety and well-being is in imminent danger. However, even in such circumstances, the screening features of the models assist in safely determining which families are inappropriate for mediation, and can instead offer and/or inform families of support services available. In addition, models found may not meet each criteria of the model assessment tool. Despite this, the models still offer useful and beneficial mechanisms that can be adopted into FJSD's model. Lastly, bias towards a model was also possible. The mediation model assessment criterion was applied to mitigate bias.

5. FINDINGS AND DISCUSSION

The jurisdictional scan explored how other jurisdictions address the topic of mediating family law cases with a history of domestic violence. Models collected were measured against a predetermined assessment tool to identify whether mediation reflects best practices identified in the literature review. This chapter is organized in five sections. First, it presents the organizations that shared their models. Second, it provides the results of the application of the model assessment tool. Third, it presents an overview of the legal framework governing family dispute resolution regimes in each jurisdiction to establish whether jurisdictions with mandatory and voluntary family mediation schemes differ. Fourth, it discusses the Coordinated Family Dispute Resolution model that met most requirements of the model assessment tool. Fifth, this chapter addresses the result of the comparative analysis. The chapter concludes with a brief summary.

Participant Organizations

Forty public and private sector organizations across various countries were contacted. These included Australia, Canada, Finland, Hong Kong, Israel, New Zealand, Norway, Singapore, the United Kingdom and the United States. Twenty-two organizations did not respond. Of the 18 organizations that responded two private mediation offices in California do not mediate family law cases with a history of domestic violence and seven organizations said that they were unable to participate. Reasons to participate ranged from information being unavailable to unwillingness to provide the information, or lack of a mediation program. Nine organizations provided information on their mediation model or process for mediating family law cases with a history of domestic violence. Individual approaches applied by mediators were not assessed, as the purpose of the scan was to capture how different organizations are addressing the topic. Individual mediators within each organization may have complex tools/processes they follow, but were out of scope of this jurisdictional scan.

The models assessed were from the following organizations:

1. The Dispute Resolution Development Branch of Alberta's Ministry of Justice;
2. The Coordinated Family Dispute Resolution (CFDR) model - Australia's Institute of Family Studies;
3. A private organization based in California: the High Conflict Institute;
4. Newfoundland's Family Justice Services Division of the Department of Justice;
5. New Zealand's Fairway Resolution Ltd;
6. The Norwegian Directorate for Children, Youth and Families;
7. Ontario's Family Mediation and Family Law Information Centers of the Ministry of Justice's Court Services Division;

8. Quebec's Affaires families of Quebec's Ministry of Justice; and
9. Saskatchewan's Dispute resolution Office of the Ministry of Justice.

Models/processes were provided via email and/or informational discussions took place with program directors. Five out of nine organizations did not have a formal document to provide. Instead, four organizations provided information verbally during the information collection process. This included the models from Alberta, New Zealand, Ontario, and Saskatchewan. Information on Norway's model was provided via email.

While jurisdictions do not apply a universal approach to mediating family law cases with a history of domestic abuse, they are interested in further developing, learning and applying new approaches for mediating family law cases with a history of domestic violence. The topic was one of significant interest for organizations as more jurisdictions consider implementing some form of mandatory mediation, or have already done so and want more methods for mediating such files. Further, as this is a developing topic and one that will continue to exist in future years as family mediation becomes mandated by jurisdictions, continued discussions between jurisdictions will be beneficial to remain current as research continues to develop.

Model Assessment Tool Results

Generally, the findings were consistent with and comparable to the findings of the literature review as all models met the essential requirements identified within the model assessment tool. Each model treats cases with a history of domestic violence on a case-by-case basis and seven models are not specifically designed for this purpose. Instead, each organization applies its standard mediation model to domestic violence cases and adjust it to fit each family's distinct needs. Modification options found within the models include shuttle mediation, transformative mediation, communication plans and phone mediation. The CFDR (Australia) and High Conflict Institute (USA) models were the only specialized models, with the CFDR model solely applied to cases with a history/presence of domestic violence and the High Conflict Institute model being applied to high conflict cases, which include cases with a history of domestic violence.

It is clear from each model that mediators play a more active role in cases involving a history of domestic violence and there is reliance on modification options. However, these options, such as shuttle mediation, may not address the other factors involved in cases with a history of domestic violence, such as the wellness aspects that need to be met for victims' healing journeys. The CFDR model however, does do a good job of bridging this gap as it collaborates with counsellors to not only resolve a family dispute but also focus on holistically healing families.

Baseline Requirements

All models met the five-baseline requirements identified within the assessment model presented in Appendix B. Upon reviewing the models and organizations' websites, it became clear that the baseline requirements are universal best practices. It was unexpected for all models to meet each baseline requirement as the Clements & Gross (2007, p. 422) study found that organizations do not apply best practices such as screening for domestic violence.

1. The model is applied to cases with a history of domestic violence

All models mediate family law cases with a history of domestic violence. This does not mean that all cases with a history of domestic violence are mediated. Instead, it signifies that these organizations do mediate such cases and follow a protocol. Whether or not a case is mediated is decided on a case-by-case basis and is dependent upon the results and findings of the formal screening tool applied.

2. The model places emphasis on safety and autonomy above all

The models place importance on the safety and autonomy of all participants. All organizations clearly indicate that mediating such cases does not proceed if the mediator finds that it would be unsafe and/or the autonomy of participants cannot be upheld.

3. The model screens for domestic violence by applying a mandatory formal screening tool

A formal screening tool is imbedded within the models to assess whether or not domestic violence has been, or is, present. No model relies on clients to provide this information.

4. The model recognizes the importance of accommodating each family's specific needs by making modifications to the model

To make mediation accessible to more families, particularly for those with a history of domestic violence, the models permit and encourage modifications to be made to accommodate for each family's needs. Modification options vary but all serve the purpose of maintaining the safety and autonomy of clients. Each organization cited similar modification options, which included shuttle mediation, distance mediation, telephone mediation, and staggered arrival/departure times. A list of modification

options was not provided as these are considered common practices for mediators. Modifications to apply to mediation are case dependent and are at the discretion of the mediator assigned to the file.

Eight out of nine organizations modified their standard mediation model to accommodate the needs of families with a history of domestic violence. The CFDR model is unique because it was specifically designed for such cases and does not rely on the availability or creativity of modification options as it is a modified mediation model.

5. *The model requires dispute resolution professionals to have received training on domestic violence*

Each organization requires its family dispute resolution professionals to receive training on domestic violence, particularly in domestic violence identification, to mediate any high conflict files.

Asset Features

Although the models collected met the baseline requirements identified in the model assessment tool, none clearly met the five asset features of the assessment tool (See Appendix B, and provided below). No additional information was available from Norway so it is unclear whether they met the asset features. Therefore, this section references eight models, rather than nine.

1. *The model is specifically designed for cases with domestic violence*

The CFDR model is the only specialized model designed for cases with a history of domestic violence. The model reflects the most progressive and current research on mediating family law cases with a history of domestic violence, such as including counsellors, continual check-ins and following up with clients' post-dispute resolution.

The High Conflict Institute is a privately run organization that provides education and training on dealing with high conflict cases, such as family cases involving domestic violence. It coined the *New Ways for Mediation* approach, which is a client-centered approach that provides parties with skills they can apply to the mediation process, such as coaching clients on managing emotions, flexible thinking and moderate behaviours (High Conflict Institute, 2015). The Institute provided overview of their model and no further specifics are available. The other six models are general family mediation models that are adapted to make them accessible for

cases involving domestic violence by adopting modification options such as shuttle mediation.

2. *Distinction between levels of domestic violence and modification options*

The models do not differentiate between levels of domestic violence as identified in the literature review. Therefore, no model met this requirement. For instance, the CFDR model recognizes that cases identified as exhibiting a high level of violence are inappropriate for mediation. This includes signs of threats to harm or to kill, presence or use of weapons and coercive and controlling behaviour by the aggressor. However, the model does not unpack the high conflict file to determine whether the violence it is coercive controlling violence, situational violence, separation-instigated violence or violence resistance violence.

While Kelly & Johnson (2008, p. 481) found that distinctions can be made between levels of domestic violence, there is no evidence to suggest that organizations are making, nor relying on, such specific distinctions. Similarly, Steegh & Dalton's (2008) found that there is no universal understanding of domestic violence. Theoretically, different levels exist, but making such distinctions in practice are complex as there is no consistent or guaranteed approach to do so.

3. *Mediators are required to collaborate with other professionals during mediation*

Excluding the CFDR model, the models do not incorporate other professionals. As a multi-disciplinary model, the CFDR model collaborates with other professions such as social workers, domestic violence advocates, lawyers, counsellors, and psychologists. These professionals assist families and contribute to maintaining the safety and integrity of the process. The other models provide families with information on external resources but the involvement of other professionals is not a standard practice and families are not obligated to meet or interact with other professionals. However, mediators collaborate with other mediators often for a variety of reasons, such as to create gender parity during mediation.

In addition to family dispute resolution practitioners responsible for facilitating and case managing files, the CFDR model requires the involvement of the following professionals:

- a women's legal service to provide legal advice and representation to clients
- a domestic violence service to provide support, counselling, information and advice to women in the process and to conduct specialist risk assessments

participate in case management meetings and support women as they progress through the process.

- a men's service to provide counselling, advice and support to men in the process, and conduct specialist risk assessments, participate in case management and apply a gendered analysis of family violence.
- Where required, the model encourages the involvement of immigrant, Aboriginal and disability support services.

4. *Following up with clients post- dispute resolution*

Of the eight models, only the Australian CFDR model requires mediators to follow up with clients post dispute resolution. The model requires mediators to follow up with clients twice, once at 1-3 months and again between 9-10 months. This is to ensure that agreements are followed and that there have not been any safety concerns.

As considerable precautions are taken by organizations prior to admitting such families to mediation, it was unexpected that only one model would meet this asset. Instead, the onus to maintain one's safety and autonomy falls back onto families post dispute resolution.

5. *The model is modified to fit cultural needs*

Training on cultural awareness and fluency is available in all jurisdictions but the extent to which modifications are made remains unknown. Excluding New Zealand, little importance is placed on culture. This was unexpected as Lebaron & Pillay (2006), Lebaron & Zumeta (2003), & Sykur & Bagshaw (2013) show that cultural training can better equip mediators to determine the suitability of mediation for families with a history of domestic violence by identifying risk behaviours that are different from the dominant cultural group. It also enables mediators to appropriately accommodate family's cultural needs.

Section 7J of the qualification and competency requirements of New Zealand's *Family Dispute Resolution Regulations 2013* states, "the person [mediator] must be culturally aware, in particular of Māori values and concepts." The Maori peoples are the indigenous Polynesian people of New Zealand. While such a statute does not exist in Australia, the CFDR model recommends accommodating mediation to fit each family's cultural needs, particularly for participants that identify as Aboriginal, and/or to other culturally and linguistically diverse groups. Of the professionals that participated in the pilot project, 70% agreed that the CFDR model was sufficiently

flexible to respond to the needs of a diverse range of families (Kaspiew et al, 2012, p. 6).

Within the other seven jurisdictions, there are no laws requiring mediators to understand family’s cultural needs nor accommodate the mediation process because of such needs. This does not mean that such training is not taken by mediators in these jurisdictions or that they do not accommodate their process to meet cultural needs. Instead, it signifies that neither organizations nor jurisdictions have mandated understanding of cultural needs, and that it is an area of continued development.

Scoring Results

Upon completion of the assessment, each model received a total score. The model that met the most requirements received the highest score. No model met the highest possible score of 15. Models received a score of 0.5 if they partially met a requirement (see Appendix B). The models are represented below by the jurisdiction.

Table 1

Scoring Results of the Model Assessment Tool

Level	Jurisdiction	Score
First	Australia	13
Second	California	12
	New Zealand	12
Third	Alberta	11
	Newfoundland	11
	Saskatchewan	11
	Ontario	11
	Quebec	11
Fourth	Norway	10

Based on the model assessment tool, the CFDR (Australia) model is the most comprehensive model to apply to cases with a history of domestic violence. Canadian jurisdictions are following a similar approach to mediating such cases, and are collectively placed into the third level. As additional information was not obtained from Norway to assess their asset features, Norway only met the baseline score of 10. With greater connections and access to Norway’s model the result could change.

The model ranging does not necessarily suggest that the lowest level model is inappropriate or insufficient for cases involving a history of domestic violence. Rather, it highlights the models that are most reflective of the literature findings. As each model met the baseline requirements, all are found to be quality mediation models with viable approaches to consider.

Legal Frameworks Comparison

While serious concern and caution exists on mediating family law cases with a history of domestic violence, jurisdictions have variable qualification and practice standards for mediators. Unlike other professions such as social workers, lawyers, and psychologists, there is no professional regulatory body holding mediators accountable. It is therefore useful to identify differences among jurisdictions with mandatory and voluntary family mediation.

Alberta

While Alberta has no legislation barring mediators from mediating family law cases with a history of domestic violence, laws on process, qualifications or best practices are also non-existent. For instance, it does not legally require mediators to screen for domestic violence. Further, Alberta legislation does not include training requirements as there are no certification requirements regulating mediators. To be recognized by the Alberta Arbitration and Mediation Society, Alberta's most recognized voluntary mediation body, family mediators must receive training in domestic violence. In addition, the Dispute Resolution Development Branch of Alberta's Ministry of Justice has strong in-house policies governing the requirements of their mediators, which encompasses the five-baseline requirements.

Australia

By having a mandatory family mediation scheme, Australia has comprehensive universal standards and regulations for family mediators to meet. Mediating family law cases with a history of domestic violence is legal in Australia if mediators can provide and maintain the safety and autonomy of each participant. This is legislated in Australia's *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*. The Act also requires mediators to take specific courses on domestic violence and to hold a Vocational Graduate Diploma of Family Dispute Resolution, needed to be a practicing mediator in Australia. The three courses include responding to domestic violence, creating a supportive environment for safety of vulnerable parties and operating in a family law environment. Part 2 of the Act provides a detailed accreditation process, which includes training on domestic violence. Part 7 of the Act requires mediators to properly assess parties and

determine whether family dispute resolution is appropriate. Part 7 Section 2 requires mediators to be satisfied that parties can negotiate freely in the dispute would be affected by a history of family violence, safety, power and the emotional, psychological and physical health of parties.

California

California has a court connected mandatory mediation system, requiring all family law cases connected to the court to first attempt resolution through mediation. Section 1815 of California's Family Code requires court connected mediators to have the following qualifications:

1. A master's degree in psychology, social work, marriage, family and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships.
2. At least two years of experience in counseling or psychotherapy, or both, preferably in a setting related to the areas of responsibility of the family conciliation court and with the ethnic population to be served.
3. Knowledge of the court system of California and the procedures used in family law cases.
4. Knowledge of other resources in the community that clients can be referred to for assistance.
5. Knowledge of adult psychopathology and the psychology of families.
6. Knowledge of child development, child abuse, clinical issues relating to children, the effects of divorce on children, the effects of domestic violence on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children.
7. Training in domestic violence issues as described in Section 1816.

With respect to domestic violence, section 1816 of the *Family Code* specifies what sort of training in domestic violence mediators must have. Basic training court connected mediators must have on domestic violence includes the following:

1. The effects of domestic violence on children.
2. The nature and extent of domestic violence.
3. The social and family dynamics of domestic violence.
4. Techniques for identifying and assisting families affected by domestic violence.
5. Interviewing, documentation of, and appropriate recommendations for families affected by domestic violence.
6. The legal rights of, and remedies available to, victims.
7. Availability of community and legal domestic violence resources.

Because these laws only apply to court-connected family mediators there is no clear certification process or agency to hold mediators accountable. It is possible that private mediators/mediation organizations have internal processes that reflect court-connected mediation.

Newfoundland

Newfoundland has no laws or regulations requiring family mediators to meet minimum requirements or that speak to best practices such as screening and training on domestic violence. Like Alberta and Ontario, the Family Justices Service Division of Newfoundland's Ministry of Justice does not require mediators to have any specific certification but does require their mediators to continually screen for domestic violence, and to be trained in identifying domestic violence.

New Zealand

New Zealand has implemented a mandatory mediation scheme and as a result has stringent requirements family mediators must meet. Section 7K of the *Family Dispute Resolution Act 2013* sets qualification and competency requirements of family dispute resolution practitioners in New Zealand. Pursuant to the act, dispute resolution practitioners must be able to:

1. Assess parties to mediation, their circumstances and history for factors (in particular in relation to possible domestic violence), indicating risks that may arise during, or in the context of, mediation sessions; and
2. Manage any risks likely to arise.

This legislation encompasses all the baseline requirements of the model assessment tool.

Norway

Under Section 26 of Norway's Marriage Act, disputing families must attempt mediation before a dispute can be brought to court. Families with children less than 16 years old, cannot get a separation license unless they mediate at a Family Office or together with an authorized mediator. Unmarried parents lose financial support for their children from the state unless they do the same. Parents are required to meet for one hour and are offered six more hours if they do not reach an agreement on parental responsibility and residence for their kids and right of access. It is typically done in court with a lawyer and/or psychologist working for the court. While there are no universal practices for mediators they are lawyers or counselors and are accountable to the professional bodies they belong to.

Ontario

Ontario does not have universal requirements for family mediators. There are voluntary mediation bodies that have their own requirements but mediators do not need to belong to them. For instance, the Ontario Association for Family Mediation requires 14 hours of training for Screening for Family Violence, Abuse and Power Imbalance. Such requirements are set and governed and set by the accreditation bodies. The Family Mediation and Family Law Information Centre of the Court Services Division of Ontario's Ministry of Justice has internal policies and requirements that mediators must meet and follow, which governs all aspects of the baseline requirements identified in the model assessment tool.

Quebec

To be a certified mediator in Quebec one must meet the requirements identified in Chapter C.25.01 Regulation respecting family mediation of Quebec's Code of Civil Procedure. The Act states that mediators must belong to one of the following organizations: Barreau du Québec, the Chambre des notaires du Québec, the Ordre professionnel des conseillers et conseillères d'orientation du Québec, the Ordre des psychologues du Québec, the Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec, or the Ordre professionnel des psychoéducateurs et psychoéducatrices du Québec, or be an employee of an institution operating a child and youth protection centre (Chapter S-4.2). The Act also requires at least six hours of domestic violence awareness training.

Saskatchewan

Saskatchewan has no laws or regulations requiring mediators to screen for domestic violence. There are two voluntary associations, the Conflict Resolution Saskatchewan, and the Alternative Dispute Resolution (ADR) Institute of Saskatchewan, which has standards and training protocols that mediators must meet to be on their roster but mediators are not required to belong to them. These bodies serve as a database to help clients find a mediator. The Saskatchewan Ministry of Justice Dispute Resolution Office offers family mediation services and upholds high standards for their mediators to meet and follow, such as training on domestic violence and requiring mediators to screen for domestic violence.

Based on this review it is evident that jurisdictions with mandatory mediation, such as Australia, California, New Zealand and Norway, have defined requirements for mediators to meet. Jurisdictions with voluntary mediation, such as in Alberta, Newfoundland, Ontario and Quebec, have more variable standards and minimal legal obligations.

Instead, rules and best practices are set out in each jurisdiction's voluntary mediation rosters. Organizations tend to rely on their internal policies to maintain the integrity and safety of their mediation programs. The models from Alberta, New Brunswick, Ontario, and Quebec are from branches of each jurisdiction's Ministry of Justice, where strong internal qualifications, policies and standards exist. The lack of a regulatory body to hold mediators accountable too requires jurisdictions and/or organizations to set out rules and regulations for mediators in laws and policies. While this is effective and less problematic for established mediation organizations, how jurisdictions maintain quality assurance and protect families without a registered database of mediators identified as having met set standards, qualifications, and training, and a body for them to be held accountable to, is unknown.

The Co-ordinated Family Dispute Resolution Model

As shown by the results of the model assessment tool there are minor differences between the models with the exception of the Australian model. Therefore, the Australian CFDR model, which was the only specialized model for cases with a history of domestic violence, deserves further consideration. Like the other models, the CFDR model does not differentiate between different levels of domestic violence. That aside, it meets all other requirements of the model assessment tool.

As a specialized model it includes additional measures to support victims of domestic violence and addresses specific issues that may arise from mediation such as vulnerability, lack of capacity to mediate, and power imbalances (Field & Lynch, 2014, p. 396). It requires a team of multidisciplinary professionals from multiple agencies to cater the mediation process for each family's specific needs (Field & Lynch, 2014, p. 396). Like other models assessed, this model aims to provide a safe, non-adversarial and child-sensitive format for parents to resolve post-separation parenting disputes. However, unlike the other models, it offers a methodical approach to apply to such cases (Kaspiew, Maio, Deblaquiere, & Horsfall, 2012, p. 2).

The model involves four-phases. Phase one includes intake, specialist risk assessment and the development of a safety plan. In phase two parties are educated about the process and are provided legal advice. In phase three parties participate in mediation. Typically, a co-mediation model is applied with other professionals present, such as legal counsel. In the fourth phase, post dispute resolution, the mediator follows up with the parties between one to three months, and again between nine and ten months (Kaspiew, et al, 2012, pp. 2-3).

Challenges of the Co-ordinated Family Dispute Resolution Model

Although the CFDR model is identified here as being the most competent model, it has not been universally adopted in Australia. The two identifiable reasons for this are funding and the challenges of professionals collaborating.

The evaluation of the pilot project by the Australian government did not address the funding considerations or estimated costs of adopting this model. However, it is reasonable to assume that running such a resource rich program would be costly as it involves multiple professionals and extensive pre and post- dispute resolution work.

Ver Steegh et al., (2012) found that support services such as those in the CFDR model can create unintended issues, particularly if services are not communicating and synchronizing. This is reflected in the evaluation of the model conducted by Field & Lynch (2014), who found that an intensive level of effort was required to co-ordinate all the professionals involved in the model as it was difficult to get everyone in the same location (p. 400). As the model depends on professionals working collaboratively, it is unknown whether they had a program coordinator to assist in mitigating such challenges. The Australian government's final report on the CFDR pilot project recommended that the professionals involved have extensive experience, demonstrate a commitment to working in such a field, and develop clear practice guidelines and service standards (Kaspiew, et al, 2012, p. 144).

Applicable Components of the Co-ordinated Family Dispute Resolution Model

While adopting and applying a specialized mediation model such as the CFDR model to cases with a history of domestic violence is ideal, it may be difficult for jurisdictions and/or organizations as budgets and resources remain fiscally stringent. However, to better mediate and safeguard families with a history of domestic violence, there are components of the CFDR model that could be adopted by organizations. Two reasonably applicable features include the following:

1. Follow up with Clients Post Dispute Resolution

Mediators could follow up one to three months post dispute resolution. This may require a short phone call to both parties inquiring about the success of the agreement, whether there are any existing safety concerns, and if they feel they need to re-approach the agreement because it is not working out or it has caused more conflict.

2. *Involvement of domestic violence professionals*

Where possible, incorporating additional professionals into the process is highly beneficial. While it can be challenging to include various professionals into mediation frameworks, providing families with access to domestic violence intervention specialists such as counselors and social workers, is vital when resolving cases involving a history or presence of domestic violence. In Australia, Canada and the California there is a consistent approach that mediators are distinct professionals. While they may come from various backgrounds, such as social work or law, and receive additional training, it would still be beneficial to involve professionals specialized in domestic violence. This may even take the form of co-mediating with persons who have backgrounds in social work or counselling.

The Coordinated Family Dispute Resolution model is a complex and intricate model that appears to sufficiently address the inherent risks and concerns of mediating family law cases with a history of domestic violence. Compared to the other models considered in this report it is the most innovative mediation model found to mediate family law cases with a history of domestic violence.

Corresponding Models to Different Levels of Domestic Violence

Seven of the nine mediation models apply a case-by-case basis model to cases with a history of domestic violence. While the High Conflict Institute (California) model is designed for high conflict cases, which includes domestic violence, it is not a specialized model for cases involving a history of domestic violence. The only model with clear steps and a distinct process to follow for such cases is the CFDR model. As a result, it is not possible to determine which model is most appropriate to apply to each level of domestic violence identified in the literature review (coercive controlling, violence resistance, situational couple violence and separation instigated). To make such distinctions would require a larger variety of mediation models, particularly those specifically designed for cases with a history of domestic violence.

Without case specific exceptions, the CFDR model is the only model that has enough substance to it to make it appropriate to apply to all four levels of domestic violence. It has a set protocol to follow, allows for modification options, and it involves multiple checks and balances as it involves multiple professionals and includes a post dispute resolution follow up. These characteristics contribute to upholding the key mediation principles of autonomy and safety. However, if organizations want access to different mediation models for each level of domestic violence a considerable amount of work still needs to be done, particularly in the development of models.

Summary

Nine mediation models were collected and subsequently assessed against the model assessment tool. The model assessment tool first assessed models based on the following five baseline requirements: (1) the model is applied to cases with a history of domestic violence, (2) the model places an emphasis on the safety and autonomy of all participants, (3) the model screens for domestic violence by applying a mandatory formal screening tool, (4) the model recognizes the importance of accommodating each family's needs by permitting modifications to the model, and (5) the model requires dispute resolution professionals to be trained on domestic violence. For a model to be deemed appropriate for cases with a history of domestic violence it had to meet each requirement. Models received no further assessment if they did not meet the five baseline requirements. Subsequently, models were assessed against five asset features: (1) the model is designed to mediate cases with a history of domestic violence, (2) the model makes a distinction between levels of domestic violence and modification options, (3) the model requires dispute resolution professionals to collaborate with other professions, (4) the model requires practitioners to follow up with clients post resolution, and (5) the model is modified to fit cultural needs. Unlike the baseline requirements, these asset features were not mandatory but were recognized as providing further benefits, such as deescalating future conflict.

Each model met the five baseline requirements, and thus they are safe and quality models to apply to cases with a history of domestic violence. As such, it was concluded that the models collected universally accept and follow the five baseline requirements.

Unlike the baseline requirements, no model met all five-asset features identified in the model assessment tool. First, only the CFDR model was specifically designed to mediate cases with a history of domestic violence. The other seven models approach cases with a history of domestic violence on a case-by-case basis. Secondly, while the research shows that differentiating between levels of domestic violence can better equip mediators to understand and prepare for the unique circumstances and challenges of mediating family law cases with a history of domestic violence, no model collected differentiated between levels of domestic violence. Third, seven of the eight organizations (excluding Norway), involve other professionals, such as counsellors and lawyers, to an extent, but this is typically case dependent and not a common practice. The CFDR model (Australia) is unique because it involves multiple professionals (counsellors, domestic violence professionals, and lawyers) and thus requires family dispute resolution practitioners to collaborate with them. Fourth, the CFDR model was the only model that requires mediators to formally follow up with the families post dispute resolution. The other seven models only follow up with a family if they are re-entering mediation. Fifth, only New

Zealand requires the process to be modified to accommodate the cultural needs of families, specifically for the Indigenous peoples of New Zealand. Modifying the mediation process to accommodate cultural needs is possible with the other seven models, but it is not mandatory for dispute resolution practitioners to be mindful of cultural requirements, nor implement them.

Upon completion of the model assessment tool, each model was scored. Each baseline requirement met counted for two points, and each asset feature counted for one point. Each model was identified by the jurisdiction they belonged to. This is not to suggest that the model is universally adopted nor applied by that jurisdiction. Norway received a baseline score of 10, as its asset features could not be assessed. Alberta, Ontario, Quebec, Newfoundland and Saskatchewan received a score of 11, suggesting that Canadian jurisdictions are following a similar approach to mediating family law cases with a history of domestic violence. New Zealand and the U.S received a score of 12. Lastly, the CFDR model received a score of 13, which suggests it is the most suitable model for domestic violence cases as it met the most requirements of the model assessment tool.

Overall, excluding the CFDR, jurisdictions follow a similar approach to mediating family law cases with a history of domestic violence; organizations modify their standard mediation model and ultimately follow a case-by-case approach. Of the nine models, the CFDR model was the only specialized mediation model for cases involving a history of domestic violence, and was also found to be the most suitable model to apply to such cases. The challenge with such a model is that it is resource rich, and thus requires a larger budget and it can be difficult for professionals to work collaboratively.

The cross-jurisdictional scan and assessment of the mediation models collected was successful in helping to describe the current state of family mediation models for cases with a history of domestic violence. The relatively small sample size and the lack of diversity of the models collected made it impossible to fully address the second component of the methodology, which was to correspond each model to a level of domestic violence, as seven of the nine models approach such files on a case-by-case basis and modify their model as required. Ultimately, the development of mediation models for cases with a history of domestic violence is in the early stages as most organizations continue to utilize their standard mediation model and approach high conflict cases on a case-by-case basis. The CFDR model serves as an example of a model that is dedicated to making mediation accessible and safe for families that have experienced domestic violence. Families that have experienced domestic violence require additional supports and safeguards to effectively, and safely, mediate their disputes, and thus as the research continues on mediation and domestic violence, it is expected that

models such as the CFDR model will be developed and adopted by organizations across various jurisdictions.

6. RECOMMENDATIONS

In response to the province considering the possibility of implementing a mandatory Consensual Dispute Resolution (CDR) regime, this report explores the special considerations that need to be made for families with a history of domestic violence for the Family Justice Services Division (FJSD) of BC's Ministry of Justice.

Through conducting a cross-jurisdictional scan, nine different mediation models were identified. The goal was to identify best practices for mediating family law cases with a history of domestic violence.

To meet this objective the study was designed to address the following research question:

What are effective family mediation models and best practices in dealing with differing levels and forms of domestic violence?

Options flowing from the research are presented in two components: strategies to mitigate safety concerns and long-term considerations.

Strategies

FJSD could implement the following five strategies to mitigate safety concerns, and to better support families with a presence of domestic violence during the mediation process. The strategies are presented in the order of complexity and time it would take to implement them, with the first two strategies being the least complex to adopt.

The first two strategies can be implemented within a two-month time frame because they would not require any significant restructuring to the process. The third strategy would take approximately six months to implement as it involves creating a new course and finding appropriate facilitators to deliver the information.

The last two strategies involve inviting additional professionals into the process requiring more time, planning and resources to make the necessary adjustments to the mediation model. These strategies complement one another and would provide significantly more support and benefits to families.

1. Follow up with clients 3 – 6 months post dispute resolution via telephone to ensure that the mediated agreement is suitable for both parties, and that there are no issues that need to be revisited. To maintain continuity for families and to respect confidentiality, it is suggested that the mediator who mediated the agreement be the one to follow up with parties. The follow up is intended to

address any aggravating circumstances and to mitigate conflict escalation between parties to prevent domestic violence. While more onerous, it provides the same level of care that is taken during the assessment and mediation process.

2. Adopt cultural safety practices and accommodations to make mediation more accessible and comfortable for all families and mandate training on cultural fluency for dispute resolution practitioners. During the assessment/screening process, parties would be asked if there are any cultural accommodation options they feel they need, or want. This should be clearly explained to make it accessible for parties to understand. It can be done by providing examples of what cultural accommodation means, such as holding any ceremonies prior to the mediation process commencing, and/or by explaining what other people have done in the past. It also calls for mediators to reflect on the parties post intake and consider any changes they need to make to the process to make it culturally safe and accessible. To be successful, mediators need to be trained in cultural fluency, which is the ability to understand how culture shapes expectations, understanding and actions. Such training could be contracted out or designed in-house.
3. After assessment, and in preparation for mediation, have parties attend a group support session facilitated by a domestic violence professional and/or a mediator. This can be used as a platform to teach healthy coping and/or communication mechanisms for mediation, and in having difficult conversations. It could be incorporated into the FJSD *Parenting After Separation Program*, which is an information session offered in-person or online to parents and family members who are dealing with family issues, such as parenting arrangements. The facilitator(s) of these sessions could also act as a second set of eyes and report if they identify an individual who may not be prepared, or would be inappropriate, for mediation.
4. Create individualized family healing plans to provide a holistic response to conflict resolution initiated by the dispute resolution practitioner during the assessment screening process. Based on the results of the assessment process and dispute resolution practitioners' professional opinion, this plan could involve external stakeholders, such as additional family members or professionals into the process, or whatever else they identify as being a need. This is in line with the case-by-case basis approach, which involves accommodating each person's individual needs.

5. Inclusion of domestic violence professionals into the mediation process. This would offer families access to additional professionals, such as counsellors and social workers, provides significant benefits. It could also take the form of co-mediating with persons who have backgrounds in social work or counselling, or have extensive training in domestic violence intervention.

Long Term Considerations

1. Strengthen the existing legal framework for private mediator centres and private external mediators that includes the requirement to apply a formal screening tool. This would create a universal approach, and can ensure that mediators are accredited and properly trained to safely mediate such files. This can ensure that the same level of care and attention is applied to all cases with a history of domestic violence.
2. Continued collaboration between jurisdictions as this topic evolves will remain critical and helpful as mediation services become increasingly popular or mandated by jurisdictions. By continuing the dialogue between jurisdictions will allow FJSD to continue to be responsive to the research on the topic and learn of any new practices to adopt.
3. Engage with practicing professionals in a research process to develop best practices and/or generate a new mediation model for cases with a history of domestic violence. The research would take into consideration the challenges of the Australian CFDR model. The research would create a more cost-effective family mediation model and could explore different ways for professionals to collaborate.
4. Create a pilot project to develop a model similar to the Australian CFDR model to assess the cost of implementing the model in Canada and to measure the benefits. The model could be piloted in one of FJSD's office locations.

7. CONCLUSION

As BC's Ministry of Justice explores the option of implementing a mandatory Consensual Dispute Resolution scheme for family law disputes in BC, the Family Justice Services Division is considering how to tailor the mediation model for families with a history of domestic violence. The research and literature reflect the benefits of mediation for such cases over litigation, but concerns regarding power imbalances and safety need to be addressed and mitigated. Therefore best practices need to be in place to better assist families that have experienced domestic violence.

Best practices for mediating family law cases with a presence of domestic violence were identified by conducting a cross-jurisdictional scan for mediation models. While some discrepancies exist between the models, the jurisdictional scan found that most organizations are approaching cases with a presence of domestic violence on a case-by-case basis. This reflects the research that families that have experienced domestic violence are unique requiring different options and accommodations. Models that reflect more recent studies on domestic violence and mediation, such as the Consensual Family Dispute Resolution (CFDR) model designed and piloted in Australia, are emerging. As a model designed to meet the unique needs of families that have experienced domestic violence, it provides family dispute resolution practitioners with a stronger framework to apply to safely resolve such cases.

Currently organizations are not yet differentiating between domestic violence to the same level as reflected in the literature and research. However, this study presented multiple practices that can be adopted into Family Justice Service Division's current mediation model. While these practices require more resources and time, they acknowledge that family law cases with a history of domestic violence are unique and require more attention, time and forethought. This does not mean that all cases with a presence of domestic violence are appropriate for mediation, but adopting consistent and separate practices for cases with a history of domestic violence can better protect, support and heal families. Having distinct practices in place can help to reduce barriers to access mediation, offering more families the opportunity to access the benefits of mediation. The objective is about empowering families to resolve their disputes and this can be achieved by providing the right resources and support, and adapting mediation models to reflect the unique needs of families that have experienced domestic violence is just one way of doing so.

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APPENDIX A: Jurisdictions contacted

Jurisdiction	Mandatory or Voluntary mediation scheme	Organization	Private/ Public	Response	Model/Info on Process Provided	Model assessed against Model Assessment Tool	Method info obtained
Alberta	Voluntary, but can be court ordered and is encouraged	Resolution and Court Administration Services Alberta Justice and Solicitor General	Public	Yes	Yes	Yes	Collected info via phone conversation
Australia	Voluntary, but can be court ordered and is encouraged	Catholic Care	Private	No	No	No	N/A
Australia	Voluntary, but can be court ordered and is encouraged	ISDR Mediation	Private	Yes	No	No	N/A
Australia	Voluntary, but can be court ordered and is encouraged	Australia Mediation Association	Private	No	No	No	N/A
Australia	Voluntary, but can be court ordered and is encouraged	Uniting	Private	Yes	No	No	N/A
Australia	Voluntary, but can be court ordered and is encouraged	Relationships Australia (National)	Public	No	No	No	N/A
Australia	Voluntary, but can be court ordered and is encouraged	Australian Government - Institute of Family Studies	Public	Yes	Yes	Yes	Detailed information on model available via journal articles and government reports
Australia	Voluntary, but can be court ordered and is encouraged	Family Relationship Centre Sydney	Private	No	No	No	N/A
Australia	Voluntary, but can be court ordered and is encouraged	Relationships Australia New South Wales	Private	No	No	No	N/A
Australia	Voluntary, but can be court ordered and is encouraged	Interrelate	Private	No	No	No	N/A
Canada, B.C	Voluntary, but can be court ordered and is encouraged	Mediate BC	Private	No	No	No	N/A
Canada, New Foundland	Voluntary, but can be court ordered and is encouraged	Department of Justice and Public Safety, Family Justice Services Division	Public	Yes	Yes	Yes	Information provided via email
Canada, Ontario	Voluntary, but can be court ordered and is encouraged	Family Mediation and Family Law Information Centres, Court Services Division	Public	Yes	Yes	Yes	Collected info via phone conversation

Canada, Ontario	Voluntary , but can be court ordered and is encouraged	Riverdale Mediation	Private	No	No	No	N/A
Canada, Saskatchewan	Voluntary , but can be court ordered and is encouraged	Dispute Resolution Office, Ministry of Justice	Public	Yes	Yes	Yes	Information provided via email
Canada, Québec	Voluntary , but legally obligated to attend an information session. Can also be court ordered and is encouraged	Affaires familles, Ministère de la Justice du Québec	Public	Yes	Yes	Yes	Information provided via email
Finland	Yes (if children involved)	Finish Forum for Mediation	Private	No	No	No	N/A
Hong Kong	Voluntary , but can be court ordered and is encouraged	Hong Kong Mediation Centre	Private	No	No	No	N/A
Israel	Yes	Former Family Court Judge	Private	Yes	No	No	N/A
New Zealand	Yes	Fairway Resolution Ltd	Private	Yes	Yes	Yes	Collected info via phone conversation
New Zealand	Yes	Family Dispute Resolution Centre	Private	No	No	No	N/A
Norway	Yes - if children involved	The Norwegian Directorate for Children, Youth and Family Affairs	Public	Yes	Yes	Yes	General overview of how mediation in Norway is handled.
Singapore	Voluntary	Family Justice Courts Singapore	Public	Yes	No	No	N/A
Singapore	Voluntary	Ministry of Law	Public	No	No	No	N/A
Singapore	Voluntary	Family Mediation Centre	Private	No	No	No	N/A
United Kingdom	Voluntary , but can be court ordered and is encouraged	ADRg	Private	No	No	No	N/A
United Kingdom	Voluntary , but can be court ordered and is encouraged	Ministry of Justice	Public	Yes	No	No	N/A
United Kingdom	Voluntary , but can be court ordered and is encouraged	Family Mediators Association	Private	No	No	No	N/A
United Kingdom	Voluntary , but can be court ordered and is encouraged	National Family Mediation	Private	No	No	No	N/A
United Kingdom	Voluntary , but can be court ordered and is encouraged	Family Mediation Counsel UK	Private	Yes	No	No	N/A

United States	Voluntary, but can be court ordered and is encouraged	Mediate.com	Private	No	No	No	N/A
United States, Oregon	Voluntary, but can be court ordered and is encouraged	Oregon Mediation Association	Private	No	No	No	N/A
United States, California	Yes - court connected	The Judicial Branch of California	Public	No	No		N/A
United States, California	Yes - court connected	San Diego Family Mediation	Private	Yes	No	No	N/A
United States, California	Yes - court connected	High Conflict Institute	Private	Yes	Yes	Yes	Information provided via email
United States, California	Yes - court connected	High Conflict Diversion Program	Private	No	No	No	N/A
United States, California	Yes - court connected	California Divorce Mediation	Private	Yes	No	No	N/A
United States, Michigan	Voluntary but encouraged	Family Mediation Council	Private	No	No	No	N/A
United States, Texas	Varies across counties, but typically has to be attempted before a dispute is brought to court	Dallas County	Public	No	No	No	N/A

APPENDIX B: Model Assessment Tool

MODEL ASSESSMENT TOOL												
Jurisdiction	Organization	Baseline Requirements for a Mediation Model to contain to Mediate Cases with a History of Domestic Violence					Asset Features of a Mediation Model					Total Score
		1. The model is applied to cases with a history of domestic violence	2. The model places an emphasis on the safety and autonomy of all participants above all	3. The model screens for domestic violence by applying a mandatory formal screening tool	4. The model recognizes the importance of accommodating each family's specific needs by permitting modifications to the model	5. The model requires dispute resolution professionals to have received training on domestic violence	6. The model is specifically designed to mediate cases with a history of domestic violence	7. The model makes a distinction between levels of domestic violence and modification options	8. Dispute resolution professionals are required to collaborate with other professionals during the mediation process	9. The model requires following up with clients post-dispute resolution	10. The model is modified to fit cultural needs	
Alberta	Dispute Resolution Development	Yes (2)	Yes (2)	Yes (2)	Yes. Range from staggered arrival times, shuttle mediation, telephone, email etc. Emphasis placed on safety planning. Only proceed if satisfied that any concerns can be managed. Very case specific. (2)	Yes (2)	No. Approached on a case by case basis. (0)	To an extent. About parties readiness and willingness to participate, but difficult to determine level of DV. For modifications to be made it's case by case dependent, rather than DV level dependent. Each family has unique needs. (0.5)	To an extent. Looks at who else should be involved in the process. Very collaborative. No formal list of people, case dependant (0.5)	No, only if they re-enter mediation (0)	Not mandated (0)	11
Australia	Pilot Project – Australian Institute of Family Studies	Yes (2)	Yes (2)	Yes (2)	Yes. Range from staggered arrival times, shuttle mediation, telephone, email etc. Emphasis placed on safety planning. Only proceed if satisfied that any concerns can be managed. Very case specific. (2)	Yes (2)	Yes. The model is specifically designed for such cases. (1)	To an extent. About parties readiness and willingness to participate, but difficult to determine level of DV. For modifications to be made it's case by case dependent, rather than DV level dependent. Each family has unique needs. (0.5)	The model requires other professionals to be involved in the mediation process (1)	Yes. Integral part of the model.	Not mandated but have modification options available for persons of different cultural backgrounds (0.5)	13
Newfoundland	Direction des orientations et politiques	Yes (2)	Yes (2)	Yes (2)	Yes. Range from staggered arrival times, shuttle mediation, telephone, email etc. Emphasis placed on safety planning. Only proceed if satisfied that any concerns can be managed. Very case specific. (2)	Yes (2)	No. Approached on a case by case basis. (0)	To an extent. About parties readiness and willingness to participate, but difficult to determine level of DV. For modifications to be made it's case by case dependent, rather than DV level dependent. Each family has unique needs. (0.5)	To an extent. Looks at who else should be involved in the process. Very collaborative. No formal list of people, case dependant (0.5)	No, only if they re-enter mediation (0)	Not mandated (0)	11
New Zealand	Fairway Resolution Ltd	Yes (2)	Yes (2)	Yes (2)	Yes. Range from staggered arrival times, shuttle mediation, telephone, email etc. Emphasis placed on safety planning. Only proceed if satisfied that any concerns can be managed. Very case specific. (2)	Yes (2)	No. Approached on a case by case basis. (0)	To an extent. About parties readiness and willingness to participate, but difficult to determine level of DV. For modifications to be made it's case by case dependent, rather than DV level dependent. Each family has unique needs. (0.5)	To an extent. Looks at who else should be involved in the process. Very collaborative. No formal list of people, case dependant (0.5)	No, only if they re-enter mediation (0)	Yes. In New Zealand must partake in training to mediate First Nations families. It don't understand the culture, cannot mediate. Need cultural training (1)	12
Norway	The Norwegian Directorate for Children, Youth and Families	Yes (2)	Yes (2)	Yes (2)	Yes. Range from staggered arrival times, shuttle mediation, telephone, email etc. Emphasis placed on safety planning. Only proceed if satisfied that any concerns can be managed. Very case specific. (2)	Yes (2)	No. Approached on a case by case basis. (0)	Information not provided (0)	Information not provided (0)	Information not provided (0)	Information not provided (0)	10
Ontario	Family Mediation and Family Law Information Centres, Court Services Division	Yes (2)	Yes (2)	Yes (2)	Yes. Range from staggered arrival times, shuttle mediation, telephone, email etc. Emphasis placed on safety planning. Only proceed if satisfied that any concerns can be managed. Very case specific. (2)	Yes (2)	No. Approached on a case by case basis. (0)	To an extent. About parties readiness and willingness to participate, but difficult to determine level of DV. For modifications to be made it's case by case dependent, rather than DV level dependent. Each family has unique needs. (0.5)	To an extent. Looks at who else should be involved in the process. Very collaborative. No formal list of people, case dependant (0.5)	No, only if they re-enter mediation (0)	Not mandated (0)	11

Quebec	Affaires familiales	Yes (2)	Yes (2)	Yes (2)	Yes. Range from staggered arrival times, shuttle mediation, telephone, email etc. Emphasis placed on safety planning. Only proceed if satisfied that any concerns can be managed. Very case specific. (2)	Yes (2)	No. Approached on a case by case basis. (0)	To an extent. About parties readiness and willingness to participate, but difficult to determine level of DV. For modifications to be made it's case by case dependent, rather than DV level dependent. Each family has unique needs. (0.5)	To an extent. Looks at who else should be involved in the process. Very collaborative. No formal list of people, case dependant (0.5)	No, only if they re-enter mediation (0)	Not mandated (0)	11
Saskatchewan	Dispute Resolution Office, Ministry of Justice	Yes (2)	Yes (2)	Yes (2)	Yes. Range from staggered arrival times, shuttle mediation, telephone, email etc. Emphasis placed on safety planning. Only proceed if satisfied that any concerns can be managed. Very case specific. (2)	Yes (2)	No. Approached on a case by case basis. (0)	To an extent. About parties readiness and willingness to participate, but difficult to determine level of DV. For modifications to be made it's case by case dependent, rather than DV level dependent. Each family has unique needs. (0.5)	To an extent. Looks at who else should be involved in the process. Very collaborative. No formal list of people, case dependant (0.5)	No, only if they re-enter mediation (0)	No, only if they re-enter mediation (0)	11
United States: San Diego	High Conflict Institut	Yes (2)	Yes (2)	Yes (2)	Yes. Range from staggered arrival times, shuttle mediation, telephone, email etc. Emphasis placed on safety planning. Only proceed if satisfied that any concerns can be managed. Very case specific. (2)	Yes (2)	Not specifically. Model is used for High Conflict Cases, such as cases with a history of DV (0.5)	Distinguish between coercive controlling violence, violent resistance, situational couple violence and separation instigated violence (1)	To an extent. Looks at who else should be involved in the process. Very collaborative. No formal list of people, case dependant (0.5)	Information not provided (0)	Not mandated (0)	12

APPENDIX C: Confirmation email stating research ethics approval not required



Kenna Miskelly - Human Research Ethics Facilitator <hre@uvic.ca>

Tue 03-07, 9:13 AM

'alichon@uvic.ca'; Human Research Ethics Liaison (ethics@uvic.ca) ✉



↩ Reply | ▾

MA Project

You replied on 2017-03-07 10:38 AM.

Dear Amanda Lichon,

Thank you for your email. Your information was reviewed by the Human Research Ethics Board Vice-Chair, and I, and it has been determined that research ethics approval is not required for this study.

This determination has been based on the fact that your data collection is specific to organizational processes and procedures and you will not be collecting opinions or other information relating to these processes.

This decision is based on the corresponding information from the Application under Article, 2.1 of the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans [TCPS 2 (2014)]: <http://www.pre.ethics.gc.ca/eng/policy-politique/initiatives/tcps2-eptc2/Default/>

In some cases, research may involve interaction with individuals who are not themselves the focus of the research in order to obtain information. For example, one may collect information from authorized personnel to release information or data in the ordinary course of their employment about organizations, policies, procedures, professional practices or statistical reports. Such individuals are not considered participants for the purposes of this Policy. This is distinct from situations where individuals are considered participants because they are themselves the focus of the research. For example, individuals who are asked for their personal opinions about organizations, or who are observed in their work setting for the purposes of research, are considered participants.

When we write these emails we also include the following caveats:

Please note that this decision does not release the researchers from any other applicable legal obligations, ethical oversight, or conforming to professional or occupational codes of ethics where applicable, such as obtaining data sharing agreements when necessary, etc. For instance, if organizations require that the information remain confidential then you may need to work with them to ensure they are satisfied with how this will be achieved.

If your study evolves to include information relating to opinions, attitudes, etc. or any data collection outside of organizational procedures then research ethics approval may be required. Please contact us in this case and we can assist you with determining the requirements.

Please note that this decision has been made without precedent and cannot be applied to other, seemingly similar, situations.

Please keep a copy of this email for your records.

Please contact me if you have any questions or concerns.

Kind regards,

Kenna