

# Family Violence And Family Mediation

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**This article is based on a presentation given at the 'Families Matter', 9th Australian Institute of Family Studies Conference in Melbourne, February 2005 by Allie Bailey, trainer at DVIRC, and Andrew Bickerdyke, PDR (Primary Dispute Resolution) Practice Leader at Relationships Australia (Vic). It summarises the purpose of the partnership formed between DVIRC and Relationships Australia (RAV), outlines their concerns about the use of mediation where family violence is present; and the common ground between these agencies and their current practice methods. It also explores initial findings from a research project conducted by DVIRC and RAV to look at the experiences for women of mediation where there has been family violence.**

## CHANGES ARE AFOOT

Recent Federal Government proposals to reform the Family Law System will have profound effects on families separating. There is pressure from policy makers to encourage separating parents to utilise mediation and other Primary Dispute Resolution (PDR) services. In fact, there appears to be a push towards a *compulsion* to mediate. This pressure will inevitably lead to a significant increase in PDR services that will stretch the clinical competencies within the sector. It will also mean that separating couples that have experienced family violence will be more likely to have to use some form of PDR before accessing the Family Court.

## Purpose of the Partnership

DVIRC and RAV are exploring how agencies working with separating families can ensure that victims of family violence are not disadvantaged or put at risk by mediation, while at the same time allowing them to benefit from some of the opportunities that PDR can potentially deliver. Both agencies highlight a number of concerns in relation to mediation in circumstances of family violence.

RAV concerns include:

- Relationships Australia has had a relatively small, highly skilled team of practitioners working in family mediation. There will be increasing demand for PDR practitioners.
- It is time to articulate much of the expertise already used by RAV mediators into a clear (or clearer) model of practice.

- Compulsory mediation will see an increase in quantity and complexity of cases, including families where violence has been present.
  - There will need to be a corresponding increase in specialised training of service providers about family violence and PDR.
  - A need to develop a model of practice for mediators when working with mandated clients where family violence exists.
  - It is always time to explore ways of improving practice, in particular, learning from the experiences of clients.
- DVIRC's concerns arise from a history of research and experience from direct service delivery that demonstrate that where there is significant power inequalities, such as in cases of family violence, mediation may not be appropriate.
- Screening tools are not effective in excluding such couples; in particular, screening tools often highlight physical violence at the expense of emotional abuse.
  - As a result of limitations of screening, and factors that discourage women from disclosing abuse, many more victims of abuse will be required to mediate following separation.
  - This requires us to think pragmatically about the ways in which we can best support and resource women to safely participate in mediation.

- PDR expansion needs to be supported by specialized training in identifying, responding to and working with families where violence is present.

Common ground shared by DVIRC and RAV includes understanding that:

- more family violence affected clients will present for mediation,
- specialist family violence training is required,
- effective practice models need to be articulated (and developed), and
- there is a need to screen out inappropriate cases (ie: improve screening) and work better with those who are included.

While our respective sectors could and have argued about the inherent problems in mediating where violence is present, both RAV and DVIRC recognize that there are also valid reasons why women may prefer to use mediation or other alternative dispute resolution processes than the Family Court.

#### **RESEARCH PARTNERSHIP**

RAV and DVIRC have formed a research and practice partnership to evaluate the experiences of women victims of violence who have undertaken mediation, with a view to:

- Identifying and developing good practice
- Developing training for practitioners
- Developing resources and supports for women clients affected by family violence

#### **Current Practices: RAV**

RAV has undertaken research to establish criteria for inclusion in mediation and conclude that the main criteria should verify the willingness, safety and capacity of parties to a mediation process.

#### **Willingness**

In its historical and “purest” form mediation required that all clients be voluntary. The difficulty of participating voluntarily meant many family violence affected clients did not present or were not referred to mediation. This can no longer be relied upon as a “natural” filter.

PDR has never been fully voluntary and is even less so now. Pressure is being exerted by lawyers, the other party, and by financial constraints. Now pressure is also coming from reforms to the legal system.

#### **Safety**

Clients must feel and be safe from physical and emotional harm prior to, during and after mediation. This is assessed initially at intake, but also throughout the mediation process.

#### **Capacity**

In assessing capacity it is necessary to establish:

How the experience of family violence (physical & emotional) has affected the capacity of the victim to participate effectively in mediation, and what is the impact of trauma, intimidation, fear, and threat.

In addition, can a (modified) mediation process alleviate, overcome or compensate the effects of trauma, intimidation, fear, and threat?

#### **Modified Mediation Processes**

Any modified mediation process must take into account safety concerns (before, during and after) by such means as providing separate waiting rooms and exit points from the building. Further measures that could be employed include continuous assessment, shuttle mediation, non-neutral mediator, co-mediation, third party support for the victim (coach, support worker, friend, lawyer), and frequent individual sessions with the mediator.

Research into mediation and family violence in 1996 by Keys Young confirms that the incidence of physical and other forms of abuse is high. Agencies reported that approximately 30% of clients had experienced family violence, while almost three quarters reported they had experienced some type of violence or abuse. Many clients that reported violence during interviews by Keys Young, had not disclosed the abuse during screening or mediation.

Keys Young found that positive mediation experiences do occur. The research indicated that women



experienced less anxiety, a generally more positive experience, and a higher level of satisfaction with agreements where mediators:

- asked specific questions about violence or abuse, including non-physical types of abuse or harassment;
- offered women specific guidance in considering the possible impact of violence or abuse on the mediation process;
- offered women separate time with the mediator to disclose or discuss any concerns before, during and after mediation sessions;
- worked as a gender-balanced co-mediation team;
- demonstrated that they understood the woman's concerns both within and outside the mediation session by implementing specific strategies to deal with those concerns;
- demonstrated that they could control abusive behaviour in the session and/or assist the woman to deal with it; and
- assisted the woman to deal with any harassment or intimidation that occurred outside the actual mediation session itself.

#### **DVIRC/RAV STUDY SYNOPSIS: ASKING WOMEN VICTIMS OF ABUSE ABOUT THEIR EXPERIENCES OF MEDIATION.**

Our particular areas of interest reflect our services: RAV is keen to build a comprehensive model of service delivery, while DVIRC would like to develop resources for victims attending mediation. DVIRC recruited clients through our website and email lists, while RAV contacted past and current clients who have been assessed as affected by family violence. Some of these clients were screened out of mediation, some proceeded with mediation. The interviews expanded the Keys Young instrument to include detailed exploration of supports and resources that might assist women.

#### **RESPONSES AND THEMES SO FAR**

##### **What was not helpful about the mediation process?**

A number of women noted that the whole idea of mediation was a difficult process when they were still traumatized by or recovering from abuse. They had a strong sense that mediators and mediation was forward focused, and did not leave scope for accommodating or really acknowledging their abuse.

Violence and abuse does impact on women's capacity to mediate: As one woman said:

*the violence was like a shadow in the room, so I could never talk about my wishes.*

Many went ahead with mediation to try and find resolution with a man of whom they were fearful, rather than out of a desire to mediate for their own outcomes – a case of the best of few options.

*I wasn't emotionally strong enough.*

All women found the process of mediation extremely difficult. They felt unprepared for just how hard it was to mediate with their ex-partners.

*Neutrality is like saying your story doesn't exist.*

While they understood that mediators had to be impartial, they felt that this prevented them from being responded to sympathetically. In some cases the mediators were dismissive of their experiences, with one woman reporting:

*If I tried to talk about the violence she (mediator) would put up her hand and stop me, and move on to the next question.*

Validation of the trauma of women's experiences of violence would have been very helpful.

Screening did occur, but focused on physical violence. Some women felt unable to discuss other forms of abuse, including emotional abuse, intimidation, etc.

Many of these women felt that they weren't well prepared for what mediation would be like. They didn't know about their options and choices, and didn't have the chance to rehearse some strategies such as time out and taking breaks.

*I didn't appreciate how difficult it would be.*

In all cases mediation did not produce successful outcomes. The fathers involved have rarely followed agreements made. In some cases the father walked out of the process, and for some court cases are still going on, sometimes a decade later. Mediation, like other processes, has sometimes been used to continue to harass.

### What helped (or would have).

- A better explanation of the process, not just written information (ie: preparation)
- Mediators were, good at picking up physical violence (not so good at discussing and taking into account emotional violence and control)

*I felt that my disclosure was dismissed. ... there were questions about physical violence, and violence towards children. There weren't questions about the control, like control of freedom and control of money.*

- Being believed. Having the mediator acknowledge and sympathize with their experience.

*I think that the mediation centre was like a department store. They only strictly dealt in mediation and I just wasn't in the right department to go talking about my stuff.*

and:

*I would have liked some compassion. I would have liked her to validate and actually believe the truth*

Recognition that they and their partner weren't equal – it was very frustrating to hear their partners lying in the sessions (many noted how charming their ex-partners were in public, then when mediator left the room they changed).

*I was easily dominated.*

- Separate waiting and entry/exit points in the physical mediation space.

*She had us in separate rooms but I could hear him talking. I could hear his voice. We had to sneak past his waiting area to go to the toilet.*

There was a perception that because a mediator has to hear both sides, and does not comment on veracity of the stories, that it feels like they are failing to acknowledge their abuse. One woman recalled:

*Mediators have to have some level of neutrality, but they need to also know what that costs the person. I think for mediators to actually understand some of the effects of abuse on women, how incredibly difficult it is just to even talk about it, to name it: that to be visible is so dangerous. To even understand the triggering process, that can take you back into an emotional timeless abused state is not a very easy place to be when you're trying to answer questions.*

- Strategies to manage ex-partners behaviour.

For example, one woman said she suggested during mediation that after learning her ex was a heroin addict, she'd like him to have urine tests before contact with their daughters. Her ex-partner threw up his hands menacingly and the mediator just moved on to another point. This mediator didn't even write up the issues the woman wanted to discuss (that a parenting plan be court registered) on the whiteboard.

- Information would be invaluable. All commented that the information asked about in our survey would have been very useful. It would also have been good to review the mediation process with the mediator before taking part.
- All the techniques suggested in the survey would also have been helpful: time out, help with working out strategies, managing ex-partner, checking in, awareness/appreciation and management of the triggers (“*it just took that look*”), and extra support, counseling, coaching prior to mediation.
- A support person - some suggested a legal support person

## The Learning So Far

Mediators need to validate the experiences of



victims of violence –  
acknowledge/believe  
and yet remain neutral.

An assessment of a  
victim's capacity to  
participate in  
mediation must be made in  
light of her experience and  
should provide external  
support, including  
counselling prior to,  
during and after

mediation. Mediators need to continuously check in with the woman, provide time out during mediation sessions, understand the impact of non-physical abuse, understand trauma and how it affects capacity, and screen out inappropriate cases.

## FUTURE PLANS

This research suggests a number of strategies to address some of the issues facing women experiencing family violence who may be mandated to participate in mediation with their violent partner.

- Consultation within the family violence and mediation sector
- Consult with family violence affected clients (pro and retrospective research project)
- Design a modified practice model to cope with mandated clients
- Evaluate, learn, modify, evaluate.

Relationships Australia (Vic) is currently planning to extend this research, in partnership with La Trobe University and DVIRC, into a three year study of clients' experiences. DVIRC would like to develop resources that women who have experienced mediation identified as useful. With the recent Federal Government announcement of plans to create 65 Family Relationship Centres, this research is all the more important to improve mediation practice and support women and children moving away from family violence post-separation.

## ***What a Waste: The Case for an Integrated Violence Against Women Strategy***

*Liz Kelly and Jo Lovett*

*January 2005*

This document proposes that there are substantial benefits for Government, for victims/survivors and for the entire community, of an integrated strategy/approach to violence against women (VAW). The argument is based on five fundamental premises.

- There are connections across all forms of VAW, which are currently being ignored or missed.
- The costs – to women and children, especially girls, and the public purse – of ineffective responses represent a waste of potential in both individual lives and for the community as a whole.
- Not only is the prevalence of violence and abuse serious – affecting at least half of all women over their lifetime – but it shows no sign of decreasing. (Whilst men and boys are also subjected to some, although not all, of the forms of violence, the scale of victimization is far lower than for women. The vast majority of perpetrators in all cases are male).
- The demand for support and services will remain at the current level or increase over the next five to ten years.
- Simply extending current forms of provision will have little, if any, impact on prevalence; to decrease and prevent violence and abuse requires a more strategic approach.

This UK report headlines some of the areas that a proposed national strategy should include – commitment to prevention/a long-term approach, clear goals/priorities, coordinated measures addressing various forms of abuse, and monitoring of the impact of interventions on the prevalence and seriousness of abuse.

**You can find the full report at:**

<http://www.thewnc.org.uk/pubs/whatawaste.pdf>