

Abused Women in Family Mediation: A Nova Scotia Snapshot
A Report Prepared by The Transition House Association of Nova Scotia
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I. SUMMARY

Beginning in June of 1999, the Transition House Association of Nova Scotia¹ (THANS) conducted extensive province-wide research and consultation concerning mediation and conciliation in settling family law issues. Its goals were to gather abused women's experiences with mediation generally and in the new programs of the Family Division, and to collect culture- and community-specific input from women in groups that face compound discrimination. Thirty-four women participated in individual interviews, and fifty-nine women participated in discussion/focus groups. A narrative research approach encouraged women to share their stories, comments and concerns in their own words.

Far from providing a less adversarial forum in which women had a better chance of making their voices heard, this research indicates that mediation with an abuser instead became revictimization. Nova Scotia women who had gone through conciliation or mediation with an abusive ex-partner shared remarkably similar stories. Consistently, abused women in conciliation and mediation felt intimidated by abusive ex-partners. For the great majority, mediation resulted in what women perceived as unfairness, or in the waste of time and resources (their own and government's) in mediation which they had known was bound to fail. Their rights were sometimes compromised through misleading statements, and/or a lack of legal representation. Their mediators showed limited ability to detect or handle abuse issues. Women frequently reported coercive pressures to mediate in an ostensibly voluntary system. Examples from the research are used throughout this report in illustrating these findings.

Recommendations from THANS are based directly on what participants had to say; none come from theoretical concerns about mediation. These recommendations are organized in this report into the priority areas identified by participants: screening, training, voluntariness and informed consent, and access to legal representation and other support.

THANS' principal recommendation is that if any history of physical, sexual, emotional, psychological or financial abuse comes to the attention of a conciliator, mediator, lawyer or judge, the parties should not be considered candidates for self-representation in less-formal justice processes such as mediation.

At this time, abuse victims' obstacles to truly voluntary, equal bargaining in mediation appear irremediable through mediation techniques in use in Nova Scotia. This is not only because of limited training and use of power-balancing techniques by Nova Scotia mediators. Systemic problems such as access to legal aid, ineffectiveness of protection orders and judicial understanding of abuse issues are major factors in this negative assessment of mediation. These are long term issues that can not be addressed in the short term through the actions of Family Court Services alone. Given this situation, THANS is recommending an immediate moratorium

¹Members include Bryony House, Cape Breton Transition House, Chrysalis House, Citizens Against Spousal Abuse, Cumberland County Transition House, Harbour House, Juniper House, Leaside Society, Mi'kmaw Family Treatment Centre, Naomi Society, Tearmann House, and Third Place.

on conciliators' referrals to mediation assessment for abusers and their former partners, pending more permanent resolution of the issue by policy and legislation.

Community- and culture-specific discussion/focus groups shared many specific recommendations for improved services for women in their communities (These are detailed at sections V and VI). Their concerns mostly rested with the following:

that mediators, conciliators and other justice employees need additional training to handle systemic discrimination, cultural differences or disabilities with proper support;

that women in their communities may face special obstacles that justice employees are not aware of, or may regard as insignificant;

that interpreters, signers and other support people need to be trained professionals, not volunteers;

that women in their group or community may be unlikely to understand their legal rights, or have access to legal representation; and

that people from their groups or communities needed to be trained as conciliators and mediators.

II. INCEPTION AND METHODOLOGY OF THE PROJECT

Across North America, alternative dispute resolution (ADR) programs are being incorporated into family court systems. Since April 6, 1999 conciliation and mediation services have been part of the Nova Scotia Supreme Court, Family Division in Halifax, Port Hawkesbury, and Sydney. Prior to that in Dartmouth, court-connected mediation services have been available. In other Nova Scotia jurisdictions, judges are increasingly referring parties to mediation. Planning is under way to roll out conciliation and mediation services to the rest of the province in a relatively short time frame.

The Transition House Association of Nova Scotia (THANS) met in May 1998 at a Policy Planning conference, where it recognized the overwhelming impact of changes in the family justice system for abused women. THANS undertook a plan to conduct extensive province-wide research and consultation. Its goals were to gather abused women's experiences with mediation generally and in the new programs of the Family Division, and to collect culture- and community-specific input from women in groups that face compound discrimination. Recommendations directly based on women's experiences would then be created through a collaborative review of the research by THANS' directors, front line staff, service users and board members. Work on this project, *Partnering for Social Justice: Mediation*, began in May of 1999, thanks to support from Status of Women Canada's Women's Program. Additional support was provided by a 1999 Canadian Research Institute for the Advancement of Women Research Grant.

Narrative research information was gathered through two methods: individual interviews with women who had gone through conciliation or mediation with an abusive ex-partner, and discussion/focus groups. A narrative approach was chosen for several reasons. Although sparse quantitative data is available on abused women's mediation experiences, THANS was not aware of any detailed qualitative data on women's experiences². Further, quantitative research has been criticized as distorting the understanding of women's actual experience of mediation. Most significantly, it has been the historic approach of the transition house movement to make women's needs heard in women's own voices. THANS continues this in all its work, including this project.

Thirty-four women from across the province shared their individual stories with our researcher. Research participants³ included 12 women who used private mediators, 13 involved in court-connected mediation both before and after April 6, 1999, and 10 involved only in conciliation⁴

²THANS' undertook an extensive literature review before shaping the project's research methodology. This bibliography is included here at Appendix B.

³Participants described as participating in various processes total more than 34 since one participated in both private and court-connected mediation.

⁴Women who participated in conciliation or mediation referral only, were included as part of this research for three reasons: forms of pseudo-mediation occurred during conciliation; treatment in conciliation or referral affected

in the new Family Division, or only in mediation referral⁵ by family court employees. Referrals to the project came through various channels. Outreach support was provided by the THANS member organizations, Women's Centres CONNECT, Family Mediation Nova Scotia, Dalhousie Legal Aid, Nova Scotia Legal Aid, Nova Scotia Association of Women and the Law, the Director of Family Court Services of the Nova Scotia Department of Justice, and many other individuals and organizations.

Women were encouraged to share their experiences in their own words, and to prioritize issues in their own way. If appropriate, women were also offered the opportunity to respond to some questions (based, in part, on suggestions given at a July 20, 1999 meeting with Justice Department staff). (These questions can be reviewed at Appendix A.) Women were given the choice of an in-person or telephone interview. Women were also given their choice of location for in-person interviews.

In addition to individual interviews, discussion/focus groups were held with women living with disabilities, French-speaking women, rural women, Native women, Black women, and immigrant women. Their purpose was to identify culture- and community-specific information of significance to conciliation and mediation services. Fifty-nine women participated in these groups. Facilitators organized and facilitated discussion/focus groups from within their own communities. Generally, these groups were open to all women from the facilitator's community. For details concerning these groups and their input, please see sections V and VI.

voluntariness and decision-making concerning mediation; women wanted to talk about their experiences in conciliation or being referred to mediation by Justice employees.

⁵“Mediation referral” participants refers to women who refused mediation after referral by family court employees outside the conciliation context, in jurisdictions other than Halifax, Sydney and Port Hawkesbury.

III. A SNAPSHOT OF WOMEN'S EXPERIENCE WITH CONCILIATION AND MEDIATION IN NOVA SCOTIA

Nova Scotia women who had gone through conciliation or mediation with an abusive ex-partner shared remarkably similar stories. Consistently, abused women in conciliation and mediation felt intimidated by abusive ex-partners. For the great majority, mediation resulted in what women perceived as unfairness, or in the waste of precious time and resources in mediation which was bound to fail⁶. Their rights were sometimes compromised through misleading statements, and/or a lack of legal representation. Their mediators showed limited ability to detect or handle abuse issues. Women frequently reported coercive pressures to mediate in an ostensibly voluntary system.

Far from providing a less adversarial forum in which women had a better chance of making their voices heard, mediation with an abuser instead became revictimization. Frequently, women reported it as the single most painful aspect of their search for resolution of family issues with an abuser, and reported the subsequent experience in court as a relief.

When asked if they would recommend mediation to other abuse victims, these women overwhelmingly said no.

In fact, abused women from around the province shared comments such as these:

I had a very hard time saying "no" to him. I agreed to things I regret. I was too scared to stand up for myself. (Dartmouth)

No one knows like I do what he's capable of. And I had never crossed him before. He banged his fingers on the table. That brought back too much...I broke down. (Digby area)

My ex. is very overpowering; he beat my daughter. Before the sessions, I would break down. I wouldn't sleep. He was calling me everyday and writing me letters all through the mediation. I told the mediator about the calls, and she said, "Yes, but we have to go on." (Dartmouth)

The conciliator said the judge wouldn't be too pleased to have to deal with my case. She said we should get together up at my house and reach an agreement...my ex. is a diagnosed schizophrenic, and at that time he was stalking me, calling me constantly. (Cape Breton County)

⁶Of 24 abused women participating in some form of mediation, only two reached full agreements and diversion from court. Of these, one was a participant unique in the research who had no custody or access issues to settle. Both used private mediators. Two other participants reached partial agreements. Of these, one used a private mediator, the other went through a mediation-like process led by a conciliator, with a support person from the transition house present. Four other participants reached agreements in mediation that were immediately repudiated, and did not result in diversion from court (two using private mediators, and two court-connected).

I was so manipulated by him I was no longer me. I was a little robot in the family, who acted when he pushed the button. [In the mediation] I don't think I was capable of making agreements that would affect me and my child for the rest of her life. (New Glasgow)

The mediators said there was nothing I could do to stop it [50/50 joint custody]. (Bridgewater)

I have two peace bonds and he has been stalking me since I left him. They should not be approaching me about more mediation. (Kings County)

Abused women reported intimidation and revictimization in mediation regardless of the form of abuse: physical, sexual, emotional, psychological or financial. Women reported that their mediator or conciliator minimized emotional, psychological or financial abuse, or simply did not recognize certain behaviours as abusive. When women brought up the fact that their ex-partner was harassing, stalking, or otherwise continuing to abuse them during the mediation, their mediators did not terminate mediation.

The fact that the abuse took place as long as 14 years prior to mediation did not diminish women's feelings of intimidation and revictimization. Though an assault, for example, may be distant in time, the fear and intimidation created by it can continue over time, with an abused woman avoiding any behaviours that might provoke the abuser over a period of many years. Distance in time from abuse did not mean that women were able to bargain equally with their abuser.

* *

Based on this very direct feedback, THANS' principal recommendation is that if any history of physical, sexual, emotional, psychological or financial abuse comes to the attention of a conciliator, mediator, lawyer or judge, the parties should not be considered candidates for self-representation in less-formal justice processes such as mediation. **They should not have mediation offered, recommended or ordered through the Family Division⁷.** A similar approach should be incorporated into future regulations governing private mediators whose practice is not court connected. Further, mediators or parties should be prohibited from giving evidence on the mediation process or decision, in order to eliminate the fear of appearing uncooperative before judges finally deciding abused women's cases. These approaches should be accomplished through legislative as well as policy changes.

At this time, abused women's obstacles to truly voluntary, equal bargaining in mediation appear irremediable through mediation techniques in use in Nova Scotia. This is not only because of limited training and use of power-balancing techniques by Nova Scotia mediators. Systemic

⁷This should be so regardless of the ex-partner's denial of abuse or seeming reasonableness. This is not so much a matter of standards of proof applied to allegations of abuse. Rather, such opposite views on whether or not abuse is present are inherently indicative of parties ill-suited to mediation.

problems such as access to legal aid, ineffectiveness of protection orders and judicial understanding of abuse issues are major factors in abused women's negative assessment of mediation. These are long term issues that can not be addressed in the short term through the actions of Family Court Services alone. Given this situation, THANS is recommending an immediate moratorium on conciliators' referrals to mediation assessment for abusers and their former partners, pending more permanent resolution of the issue by policy and legislation.

* *

Names and other identifying information have been changed in the following stories which illustrate typical experiences shared by abused women in mediation. These are not composites, but rather actual stories of participants.

Gina P.'s Story

Bedford mother and homemaker Gina P. got away from the man who had been abusing her and controlling her life for five years. She had not been allowed outside the house without his permission, not allowed to buy clothes for herself or the children, and lived in fear of her husband's constant threats. Finally, after another day of the children begging to be taken to the park, with Gina "on orders" to stay in the house, she determined to get out, for her own sake and the sake of her children. Taking very few possessions, she and the children managed to leave and start on the road to a normal life.

After leaving, the threats continued. This time they took a new form: threats to kidnap the children, threats that he would seek and get sole custody of the children. Hoping that her children could still have a relationship with their father, Gina encouraged them to spend time with him. But reports started to come back of the young children wandering alone in the park, and of their not being cared for properly when ill. Between the kidnaping threats and concerns about their care, Gina decided she needed legal help, and an agreement. Her husband decided he wanted to do mediation, and Gina agreed - she wanted the fastest solution possible, and besides, someone at court had told her the judge would want it and it was the best thing for the children.

But Gina wasn't used to saying no to her husband. The mediator didn't ask about what kind of relationship they had, whether her husband used fear and intimidation to get his way, what it did to her to have to face him again after finally having made the courageous effort to get out. The mediator didn't understand the emotional terror Gina still lived under. The mediator couldn't pick up on her ex-husband's look in the mediation - the one that meant, "You better do it or else." And besides, there were the ongoing threats and harassment the other 23 hours of the day outside the mediation meetings.

Gina says, "He can just look at me and scare me; it's hard for someone who's had a really good life to understand that."

“I agreed to joint custody and I have regrets about that. My ex-husband was already using it to keep up the abuse. That is his idea of joint custody, that I continue to do all the work and he controls me. The abuse was never brought up and it should have been, his history should have been brought up.”

Fortunately, Gina has a good lawyer. He understands the effect of abuse on her and the children, and told her that there were other ways her ex-husband could be involved with the children besides joint custody; he let her know her mediated agreement was not yet final. “My lawyer said ‘Don't sign anything!’, and it helped me a lot to know that I had some rights somewhere. I think we are going to court now.”

Linda T.'s Story

Mediation has been urged on Linda T. three times in two years by the courts and lawyers, despite a history of severe emotional and sexual abuse.

Linda says, “The judge was getting tired of my ex's behaviour in court, who was representing himself. He kept dragging me back to court for more and more ridiculous reasons. The judge was tired; my ex. was not agreeable to anything, but the judge still suggested mediation. My lawyer urged me to agree so that I wouldn't look uncooperative. I ended up agreeing since I didn't want to look bad. I told my lawyer, “But if the judge can't deal with him, and the lawyers can't deal with him, how can I? And how can my four-year-old daughter?”

Linda's abusive ex-husband was so difficult to deal with, one judge refused to hear his applications any longer. Now, another judge has to come in from another area. There have been two parenting assessments strongly in Linda's favor, but the judge still won't make a decision. The assessments said Linda should have custody, her severely abusive ex-partner should have counseling, a psychological assessment and supervised access. As time drags on, the lack of a court decision gets harder on Linda and her child: “It is just amazing that they keep urging me to do mediation.”

While the system continues to press for mediation, there have been numerous complaints to the police about Linda's ex-husband, and documented problems with visitation and support. Linda says, “I was a wreck thinking I had to do mediation with him. They're not even using the information they have [about him]. My ex. is using the variations as a way to harass me. The mediation just creates double the amount of work. I wish there was a system in place to help me.”

Barbara B.'s Story

Barbara went into mediation with her emotionally abusive husband because “the judge told us it would be better for communication, and that's what I wanted. But that's not the way it worked out.”

Barbara and her husband entered mediation with two mediators from her part of rural Nova Scotia. What she didn't know was that they were both strong advocates of joint custody regardless of spousal abuse and would ultimately mislead her about her rights.

Neither mediator asked her or her husband about abuse issues in the relationship. "My husband bullied me in the mediation. No one stopped it. The communication was *not* any better. When I tried to say I had concerns about his proposed arrangement of one week with him, one with me for our 7-year-old, I was told there was nothing I could do to stop it. I was devastated."

Barbara quit the mediation. Although she signed nothing, she was given the impression she had to abide by the week on/ week off arrangement. She was concerned this was bad for her child's stability, but thought she was legally bound.

When the issue came to court, the weekly switching was considered a "pattern" the judge was reluctant to disturb. The arrangement Barbara had been bullied into became a court order.

Alicia R.'s story

"Both in mediation and conciliation, I left in tears. When someone's been abusive, why should I have to make an appointment to be abused again?" Alicia was assaulted six months ago by her ex-partner, while separation proceedings were ongoing. Her lawyer told the judge about the assault, which seemed to have no impact on the proceedings. Her lawyer ended up urging her to do mediation because "it would look good in court." Alicia didn't want to face him, especially after the assault, but was afraid of looking uncooperative. After finding the courage to attend a session, her ex-partner belittled her, and abruptly left the session. "It was very intimidating." The mediator never inquired about abuse: "She did not ask, but I told her about the assault. There was no response, no questionnaire. The mediator said nothing." The mediation was unsuccessful and the case went to court.

Months later, Alicia became concerned about her ex-partner's behaviour toward their young child during unsupervised access. Both her doctor and day care center director supported her decision to interrupt access. Her ex-partner became an applicant seeking to restore the access, and Alicia and her ex-partner were scheduled for a conciliation meeting. Alicia did not understand what the conciliation was supposed to be about. Her ex-partner brought his lawyer; Alicia had to show up alone, her legal aid lawyer could not make it. The conciliator offered compromise positions for an agreement. Alicia says, "I was nervous in the room with my back to him. I didn't have a lawyer. I wanted my daughter to see a psychologist. I was intimidated by his lawyer roughly pushing forms in my lap. But I just kept remembering my daughter's voice as she described the abuse; that kept me going." Alicia refused to compromise on seeing a psychologist and getting a psychological assessment for her daughter before making any agreement. She was left afraid of appearing uncooperative because she refused the compromise tendered by the conciliator, or to go to another round of mediation., especially without psychological assessments. A court date is pending.

“I felt nervous and scared. I’m tired of being told to cooperate by people in the court. My partner has no respect for me. All I’ve done is cooperate, but cooperation is not what’s needed.”

Emma N.’s story

Emma N. tried mediation because she thought it was a requirement before going to court. Emma had been subject to many years of mental abuse which would follow her ex-partner’s frequent drinking binges. Emma disclosed that her ex-partner had controlled her in the relationship. Emma’s husband would also threaten to shoot her, and shortly before fleeing, Emma had begun to sleep in her clothes in case she needed to make a quick escape. Emma did not disclose that aspect of the abuse to the mediator. The mediator seemed to have no reaction to Emma’s disclosure of control issues and decided they could proceed to mediation.

During the sessions, Emma felt her ex-partner’s long rants against her to be a repeat of the sort of continual abuse she had recently fled. The mediator did nothing as her ex-partner’s accusations became increasingly bizarre. As Emma put it “I was reliving the abuse. It was as if I had never left.”

Emma found the sessions extremely draining. She had had several close relatives suffering from serious illnesses in the previous year, her fleeing the abuse had resulted in her ex-partner’s retention of the family home, and she was operating in financial crisis caused by the separation. Through the period of mediation, Emma often got only two or three hours of sleep each night.

An agreement that Emma felt was unfair was reached in the mediation. Emma’s ex-partner did not honour it in any case. They were going to court at the time of Emma’s sharing of her story.

* *

Two women out of the 34 participating in the study said that they would in fact recommend mediation to other abuse victims. It is important to discuss their experiences as well. Their stories show the importance of a narrative approach in researching women’s experiences. Both these women were utterly failed by the justice system: their severely abusive partners ended up with significant unsupervised access to or custody of children. In one case, a special needs child was admitted to the IWK-Grace Hospital for failure to thrive in his father’s care. In the other, children were returning from extended unsupervised access traumatized, lice-ridden, and neglected. One of these women was too frightened by her ex-partner’s continued threats of violence to report the situation to child protection services. Both these women saw mediation as their only opportunity to have a third party, any third party, give their ex-partners feedback on parenting skills that the women hoped would improve the lives of their children. In one of these cases, a “mediator” (a physician with no mediation training) was selected who had professional knowledge of the special needs of children with the particular disability of the parties’ child. This child’s mother was in fact

able to reach an agreement resulting in adequate care for her child. In the other case, the neglect continued despite agreement in mediation, and the mother is resorting to court once again. This woman, however, still felt positive about mediation because the mediator was able to introduce to her ex-partner knowledge about basic parenting responsibilities.

IV. SPECIFIC FINDINGS AND RECOMMENDATIONS

Screening

Findings

1. Screening for abuse issues is inconsistent among Nova Scotia mediators and conciliators. Many women do not recall any screening for abuse or control, or being questioned at all about the history of the relationship by mediators or conciliators. Women doing court-connected mediation in the new Family Division recalled such questioning more often than those doing private mediation.

1a. On becoming aware of physical abuse, some conciliators are not referring women on to mediation; others still are.

1b. Mediators who do conduct screening are not interviewing women in a way that reveals the full extent of abuse. Mediators may:

- a. inquire only regarding physical safety concerns
- b. inquire only regarding the impact of abuse on the children, and/or
- c. assume that women understand and can identify different behaviours as abuse (e.g. stalking, controlling, threatening, or sexual abuse).

2. Women frequently are not disclosing abuse to conciliators or mediators. They comment that:

- a. they felt uncomfortable doing so with a stranger; and/or
- b. they thought it was inappropriate to bring up, or
- c. they did not identify their partner's behaviour as abuse at the time of inquiry.

2a. Women who did not disclose abuse later felt that this affected the fairness of the mediation.

3. No mediators screened out women who reported emotional abuse in the absence of physical abuse.

4. Mediators who did not screen out parties where women had reported emotional abuse in the absence of physical assault often ended up terminating the process after one or more joint sessions.

5. Of the women who identified themselves or their partners as suffering from diagnosed mental disorders, none were screened out (3 women).

6. Judges with full knowledge of abuse allegations, protective orders, charges and/or convictions are still referring parties to mediation, or conducting mediation themselves, even after conciliation/mediation screening processes have found these cases inappropriate for mediation.

Recommendations:

THANS' principal recommendation is that if any history of physical, sexual, emotional, psychological or financial abuse comes to the attention of a conciliator, mediator, lawyer or judge, the parties should not be considered candidates for self-representation in less-formal justice processes such as mediation. **They should not have mediation offered, recommended or ordered through the Family Division.** A similar approach should be incorporated into future regulations governing private mediators whose practice is not court connected. Further, mediators or parties should be prohibited from giving evidence on mediation, in order to eliminate the fear of appearing uncooperative to judges finally deciding abused women's cases.

Recommendation: Women and the partners of women who report abuse, including emotional, psychological, sexual, and financial as well as physical abuse, should be screened out of mediation by conciliators and mediators.

Recommendation: Screen-outs based on reported abuse should take place on a zero-tolerance basis by intake workers, conciliators and mediators. Decisions about participation should not be left to the discretion of either legal party.

Recommendation: Since women do not always disclose abuse initially, there should be continuous screening as conciliation or mediation proceed.

Recommendation: Judges must better understand conciliators' and mediators' screening processes, and work more congruently with those processes.

Recommendation: Mediation participants must be screened more thoroughly for mental and physical health problems, grief issues (such as the death of family members) and other situations that (especially in combination with abuse) may strongly affect the ability to negotiate one's interests.

Training and accountability

Findings

1. Nova Scotia mediators serving women in this study had diverse backgrounds and levels of training.

2. Even conciliators and mediators with mediation training often did not appear to understand the dynamics and cycle of abuse, and seemed unfamiliar with the different forms of abuse (physical, emotional, sexual, financial and psychological). Many mediators minimized the impact of forms of non-physical abuse.

3. Mediators infrequently offered or accepted power-balancing techniques for use when women were negotiating with abusive ex-partners.

4. Untrained court officers impressed into service by judges as well as judges themselves may act as mediators during trial or pre-trial hearings. This has occurred where Family Division screening has found parties inappropriate for mediation, and in one jurisdiction where the new Family Division is not yet in place.

5. Mediators are failing to recognize ongoing abuse and harassment during the mediation (both inside and outside of sessions), and are failing to take appropriate action. Women in our study reported harassing phone calls, threats, and stalking during the period of mediation. Women alerted mediators and no action was taken.

6. Many mediators and other justice professionals appear to favor joint custody agreements, regardless of the presence of abuse. There is little understanding of the level of cooperation necessary for joint custody, the impact on children who witness woman abuse, the connection between woman abuse and parenting abilities, and woman abuse as a strong predictor of child abuse. As one woman who was subject to severe emotional abuse put it, “What is this arrangement teaching my daughter? That I can get away, but she can’t?”

7. Conciliators and mediators may present confusing or incorrect information to parties about the law or their legal rights, or compromise lawyers’ ability to advise their clients. A few examples: One mediation team presented a particular joint custody arrangement as a “right” of the abusive ex-partner. Another began to argue with a client about advice she had received from her lawyer, telling her that her lawyer’s interpretation of the law was wrong and that she should immediately agree to increased, unsupervised access for her abusive ex-partner. Another mediator allowed an abusive ex-partner to use bullying tactics in property division, using valuations significantly different from fair market value estimates in several independent assessments. One mediator sought to sidestep legal advice and pressed for agreement when the abused woman’s lawyer was out of the mediation room. Conciliators have given the impression that mediation is a requirement before court.

8. Mediators may not be aware of security risks, especially those involving access to information by the abuser. Two women in this sample had phone numbers revealed to abusive ex-partners, after specific requests to keep the numbers confidential. In one case the number was negligently displayed on a table in the mediation room; in the other, the abuser simply called the conciliator and was given the number, as well as told that the abused woman “wanted to get in touch.” Mediators requested that women phone their abuser to schedule meetings, in spite of histories of verbal emotional abuse by telephone and telephone harassment. One judge acting as a mediator failed to understand why a woman was reluctant to share her new bank account number with her former abuser. One abused woman agreed to mediation but asked that she not be left alone in the room with her abuser; during the first session the mediator left them alone together several times while answering phone calls. One mediator alerted an abuser to a woman’s request for shuttle mediation while both parties were in close proximity, resulting in immediate threatening behaviour by the abuser. Most seriously, one conciliator encouraged a woman to get together with an abusive ex-partner in her home to reach an agreement, in spite of the presence of three predictors associated with a high risk of violence; namely, stalking, a psychiatric diagnosis of schizophrenia, and the increased tension typical during the time of separation and custody resolution.

9. One woman reported being yelled at, and endangered by the mediator in charge of her case, who appeared to lose control of himself and storm out of the room. Several women reported feeling frustrated at mediators' lack of accountability, and the lack of a grievance process.

Recommendation: Legally regulated professional standards should replace voluntary standards for the training and certification of mediators. This is especially important in the area of understanding abuse, because of the grave consequences of failing to do so. Work should begin immediately to develop and implement legally regulated standards for training and certification.

Recommendation: Mediators should have ongoing training regarding abuse issues even after certification, to deepen their understanding, and to assimilate new research and professional practices.

Recommendation: Mediators should be subject to periodic qualitative practice evaluations.

Recommendation: Mediators' training should emphasize the safety of women and children, and an understanding of systemic gender discrimination and power imbalance.

Recommendation: Front line workers serving abuse victims should be directly involved in mediator training.

Recommendation: Presently planned training hours for conciliators and mediators on abuse issues should be increased.

Recommendation: There should be legal mechanisms put in place to assure mediator accountability, including an accessible grievance process, and a discipline process with consequences. Work should begin immediately to develop and implement these mechanisms.

Voluntariness and informed choice

Findings

1. Some conciliators are doing a good job of presenting mediation as one choice among others, without undue pressure to choose mediation. However, others are not. Women are being urged (subtly and not so subtly) to participate in mediation by conciliators, mediators, lawyers, judges, Children's Aid workers and other justice and social services professionals. Especially when the recommendation is coming from a judge or conciliator, women report feeling coerced.

2. Some women agreed to mediation in the hope of saving time and money. Because abusive partners were not good mediation participants, mediation was often terminated without agreement, wasting time and resources. Women of limited means reported being urged into mediation by

private lawyers in order to save money. Because so few came away with agreements, this benefit did not largely materialize, leaving women with added expenses prior to trial.

3. Women agreed to mediation because they were told by justice professionals that it would be a better process for their children than resolving issues in court. (In THANS' extensive literature review, no empirical basis was found for this claim.)

4. Women agreed to mediation because they are afraid to look "uncooperative" before the judge who ultimately will decide the issues. Women were told by lawyers and conciliators that "the judge won't like it" unless they try mediation before going to court. While court-connected mediators and their reports are not allowed to indicate who refused or terminated mediation, judges still became aware of these facts through informal means or by direct inquiry of the parties in court, or because the abusive partner volunteered the information that the woman had declined mediation. Judges also had access to information about termination of private mediation. For example, in one case where the lawyer for an abusive ex-partner had also served as a "mediator," that lawyer was able to examine the parties at trial on the mediation process, which the abused woman had terminated. In another case, an abusive ex-partner yelled out to the judge that "she refused mediation," after which the judge told the abused woman she was "intransigent."

5. Women may choose mediation because they don't want their abusive ex-partner to perceive them as aggressively pursuing issues in court, because they are afraid.

6. Women may choose mediation because they have been told and believe their ex-partners are more likely to honour a mediated agreement. (In THANS' extensive literature review, no empirical basis was found for this view among existing studies. Of the few abusive partners who reached full agreement with women in this research, only two in fact honoured the agreement.)

7. No private mediators and no professionals of the Family Division, including judges, mediators and conciliators, presented any of the possible disadvantages of mediation.

Recommendation: Legislative changes are needed so that information about refusing or terminating mediation from any source is excluded from evidence for any purpose, and specifically is not to be used in considering whether an abused woman is a "friendly parent" under the *Divorce Act*. Judges should not learn which party refused or terminated either court-connected or private mediation.

Recommendation: The Family Division should enable women to make an informed choice about mediation. In plain language, information should be provided on:

confidentiality

advantages and disadvantages of all options

details regarding the importance of and right to legal advice at specific stages

the availability of appropriate advocacy and support

access to mediators' credentials

This information should be developed in collaboration with front line organizations serving abuse victims, lawyers and others serving clients who are involved with the family court system.

Access to legal advice and support persons

Findings

1. Women are concerned about having to negotiate with an abuser without a lawyer present. As well as in mediation, this is of concern in conciliation, where women were often not aware that the ex-partner would be there with his lawyer, and the conciliator and ex-partner's lawyer would be proposing agreements. Further, as described previously, mediators and conciliators have made misleading statements about women's legal position, and women are rightly concerned about being compromised without a lawyer present.
2. The advice of a lawyer prior to and during conciliation and mediation was very important to women. The knowledge that there was a lawyer with whom to review agreements after mediation or conciliation but before they became final, was also important.
3. Women are concerned about negotiating with an abuser without having an advocate or support person there to help them express themselves.
4. Women were not offered the option of a support person being present, by conciliators or mediators. At least one mediator disallowed a woman's request for a support person to be present. One woman also requested her lawyer to be present, and was told "lawyers don't get involved in this."
5. Women feel that in the absence of an advocate, abuse issues will not be put on the table as custody and access decisions are being made in conciliation or mediation.
6. Women reported being treated with more respect by conciliators when accompanied by a support person.
7. Women who were Nova Scotia Legal Aid clients reported problems with access to timely legal advice.

- Recommendation: Women must have access to legal advice before and during any court-connected ADR process where a legally binding agreement may result, (i.e. conciliation and mediation).
- Recommendation: Independent, professional support people who are not court-connected should be available on-site.
- Recommendation: Culturally appropriate supports should be available to all women. (See sections V and VI.)
- Recommendation: Education on the role of a support person in conciliation/mediation should take place with Justice staff.

V. INPUT FROM CULTURE- AND COMMUNITY-SPECIFIC FOCUS GROUPS

Transition House Association of Nova Scotia held focus groups and presentations in various locations across the province that elicited input from women often marginalized in public policy development in Canada. These included:

Women living with disabilities
French-speaking women
rural women
Native women
Black women, and
immigrant women.

These meetings had various formats depending on the background of the women involved. Some had not experienced mediation directly, and some had. Some focus groups were with front line workers, such as those at the Waycobah Family Treatment Centre. The purpose was not to debate the idea of mediation, or discuss theories or claims, but rather for participants themselves to highlight areas of importance to each of their communities or groups.

One group has created its own summary report and that is included here as section VI. Culture- or community-specific input from other groups has been summarized in this section by the THANS researcher.

Group concerns generally echoed those of individual women sharing their stories:

that mediators, conciliators and other justice employees need training to handle systemic discrimination, cultural differences or disabilities with proper support.

that women in their communities may face special obstacles that justice employees are not aware of, or may regard as insignificant. This includes increased incidence of abuse, and unwillingness to disclose abuse.

that interpreters, signers and other support people need to be trained professionals, not volunteers.

that mediation in cases involving abuse is not appropriate.

that women in their group or community may be unlikely to understand their legal rights, or have access to legal representation.

that women were in danger of being labeled “uncooperative” by justice employees due to disability or the effects of discrimination, such as not being able to attend appointments or arrange and afford child care and transportation for appointments.

that people from their groups or communities needed to be trained as conciliators and mediators.

Women living with disabilities

A discussion group was held July 10, 1999, arranged and recorded by Jessica Houtsma of Metro Resource Centre for Independent Living, as part of their "Taking Care of Ourselves" conference for women with disabilities. Ten women attended the group.

Comments on conciliation/mediation and the family law system, specific to women with disabilities, included:

1. Judges and other justice professionals need training on the impact of different disabilities. For example, head injuries are poorly understood, in terms of increased costs and length of recovery impacting support arrangements, and in terms of the abilities of those with such injuries. One woman remarked that "Judges treat us as if we are mentally retarded."
2. There are special needs involved for hidden disabilities such as diabetes, which may make it difficult to attend appointments. Women were concerned about being labelled uncooperative by conciliators/mediators if their health posed an obstacle to attending at appointed times.
3. Some disabilities cause real ups and downs in people's energy, ability to communicate, and overall well being. These may not be predictable. Women were concerned about having to negotiate important issues on "bad days."
4. Disabilities that may involve cognitive problems that can affect the ability to negotiate in mediation, should be screened for. Again, head injury was cited as a hidden and poorly understood disability.
5. Women with disabilities should have the right to have a support person with them in conciliation and mediation.
6. Women with disabilities might need extra spousal or child support. Conciliators and mediators should be familiar with special needs of people living with disabilities.
7. If a woman is deaf, or blind, or has other communication disabilities, she should have access to a support person, interpreter or signer for conciliation and mediation, at no cost.
8. Women with disabilities seldom have equal power in the family situation. Living with a disability can exacerbate already-existing gender power imbalances. Women with disabilities are in

even less of an equal bargaining position than other women, and may be less able to freely negotiate in mediation or refuse mediation.

9. Materials and information distributed by the family court should be available in appropriate form for women with disabilities.

10. Women with disabilities are abused more often than other women. Women with disabilities seeking justice are more likely to have been abused, and to have low-self esteem due to an abusive partner who has all the economic power.

11. People with disabilities often have great financial burdens because of their disability, affecting access to representation, and needs for support.

Rural women

Discussions were held in Pictou County and Richmond County, on Sept. 15, 1999 and Oct. 14, 1999 respectively, involving 14 women. As well, women living in rural areas gave individual interviews and their remarks on the impact of mediation and conciliation in rural communities are represented here.

Concerns specific to living in a rural area included the following:

1. Conciliation and mediation staff brought in from other areas might not be sensitive to issues magnified in small tightly-knit communities, such as ex-partner's relationships with police or court staff, or roles in the community of the parties' respective families.
2. Because of the close-knit nature of some communities, confidentiality and trust are major concerns. It might take 3-4 sessions for an abused woman just to reveal what the real problem is to an intake worker, conciliator or mediator. For example, women reported being judged negatively by their communities, including justice professionals, for reporting abuse or using transition house services. It would take time to build any trust in a mediator.
3. Mediators should know the support people in the community.
4. Transportation to and from mediation is of concern. It can present considerable costs, especially to rural women without a vehicle, and women receiving social assistance. Safety issues arise when travelling to mediation appointments over winter roads. One woman reported having to drive many kilometres in a snowstorm, because she had been cautioned about appearing uncooperative by canceling appointments.

Native women

A focus group was held with staff at the Waycobah Mi'kmaq Family Treatment Centre on Oct. 12, 1999, involving 7 people. As well, a Native woman from Pictou County attended the Sept. 15, 1999 Pictou County focus group, and her comments, insofar as they are specific to Native women, are represented here.

Comments included:

1. Generally, for Mi'kmaq people, there is no faith in the justice system.
2. Most Native women are not using the justice system after separation or abuse. Men do not tend to fight for custody of the children.
3. In the past and presently, government agencies have failed to live up to what they say they were going to provide, in terms of ensuring Native women's safety in and understanding of the justice system.
4. Native mothers will not discuss abuse, unless there is a rapport established by having a Native support person present.
5. The Mi'kmaq family is used to help resolve issues. It doesn't take months. The family may get involved to advocate for the children if abuse is present.
6. Many Native mothers feel the less the system knows, the more control they have, including information about abuse.
7. Many Native women are intimidated by justice authorities. They may not fight for child support because of that.
8. Interpreters and funding for interpreters would be needed, for Native women to be able to negotiate legal issues in their own language in mediation and conciliation.
9. Training for justice professionals on the needs of Mi'kmaq people is necessary.
10. Support persons to attend with Native women are needed.
11. Mi'kmaq people, including social service professionals, are not receiving a lot of information on court services. Front line workers need this information. One woman remarked "They haven't called us since the information session. I feel disempowered, I don't know what it [the new Family Division] is."
12. The Justice Department should be training people from our community to be conciliators and mediators.

Black women

Murleta Williams was community facilitator responsible for outreach to Metro-area Black women. Four discussions took place, Sept. 30, Oct. 20, 27 and Nov. 13 of 1999 involving 22 women. The community-specific comments of 2 Black research participants are included here as well.

Comments included:

1. Sensitive and diverse mediators are needed who can relate to what Black women face, with race and gender combining to multiply the power imbalance caused by racism and sexism individually. Trained people are needed, not just a vague commitment to future training.
2. "Black women have been told down through time that the family is male-controlled, the man is the focal point. The Bible has been used to reinforce that, so if a woman wants to leave abuse, it goes against all that. You are led to let the man have control, and wouldn't think of mediation as right. You may not have community support for leaving him".
3. "Unless the person is someone you can really trust, Black women will not disclose abuse. This trust takes time to build."
4. Lack of money means less choices for Black women. It keeps them in abusive relationships. They may not be able to afford lawyers.
5. "Help" from agencies sometimes turns into bullying. "They can own you." "Legal Aid is too much a part of the system to protect your interests. This could apply to mediation services as well. Any use of justice or social services can snowball into something."
6. Financial abuse can be present for many young Black women. This form of abuse needs to be explicitly recognized.
7. The subtleties of what Black women are saying and experiencing will go over the heads of white mediators.
8. The film "No More Secrets" should be shown as part of mediators' and conciliators' training.
9. There should be Black intake people, conciliators, and mediators. "As soon as a woman is in the system she needs someone on her side. Not that she needs her hand held, but she needs support. Most Black women have been suffering abuse in silence. When a woman, 21 years old, 2 kids, 2 years of abuse, walks in to court she needs to see a Black person. A white person means 'the law'."

Immigrant women

On Nov. 5, 1999 the THANS researcher met with 3 immigrant women who have been leaders in considering abuse issues in their communities. These women were from Iraq, Kuwait and Pakistan, and presented concerns of Islamic immigrant women in the Halifax area.

Their comments included the following:

1. Women and men may feel bound by Islamic marriage contracts entered into in their country of origin.
2. Canadian law may interfere with contract or traditional arrangements.
3. Islamic women will not ordinarily disclose abuse. They are conditioned to remain silent about it, and are from cultures where husbands are allowed to beat their wives. Women are taught not to leave their husbands. In extreme cases they will go to their family for help, but immigrant women may have no family here and no one to talk to. They may also face abuse from their sons.
4. Women are taught culturally to obey their husbands.
5. Newcomers to Canada generally know little about their legal rights.
6. Islamic women generally are not using the court system in Canada to resolve family law issues.
7. Generally, if an Islamic couple separate, children under twelve are supposed to go with the mother, those over twelve with the father, or are asked to speak for themselves. In the Pakistani community, children usually go with the father regardless of the traditional arrangement, if he wants them.
8. In some Islamic cultures, only the man has the right to grant a divorce. He will use this to make the wife agree to no child support if he allows the divorce. This is financial abuse.
9. Mediation would be difficult for Islamic women:
 - Mediators need cultural training.
 - Men and women should speak separately to male and female mediators, respectively.
 - Islamic women would need woman-to-woman support in this process.
 - Islamic women probably would have trouble expressing themselves directly to their husband on issues of importance in mediation.
10. Many people in the immigrant community are suffering economically. There is stress. There are limited resources, especially for women.

On Dec. 14, 1999 the THANS researcher met with 3 immigrant women originally from Latin America. The group was facilitated by Maria Yax, of the YMCA.

Their comments and concerns included the following:

1. There is a long tradition of mediation in South America, but in cases of domestic violence it doesn't work.
2. Conciliation should be in the hands of independent agents, not Justice Department employees who are under pressure to reach agreements between parties. In South America, there is the concept of "family defender" in this position, who places children's interests above rights of either parent.
3. Conciliation and mediation can just be another obstacle for abused women seeking justice, and very psychologically draining before finally going to court. It is an opportunity for abusers to continue abuse and put pressure on their former partner.
4. Family issues especially involving abuse should not be addressed by private mediators. This is a social issue, a justice issue that the justice system is responsible for.
5. Because of language obstacles and lack of knowledge of Canadian law and rights, immigrant women are at a great disadvantage trying to negotiate conciliation and mediation. They often don't know where to go for help or support. Often, their partner's English skills are better. Women often stay at home to care for children while their husband can attend English-as-a-second-language classes, or hold jobs.
6. Conciliation and mediation would be difficult without good support because of lack of language skills or knowledge of the law, or even a way to ask.
7. In South America and in Canada, it seems like the courts don't want to deal with "family problems."
8. One woman had experience as a health interpreter. She was very concerned about women not having trained, paid interpreters available. From her experience, if the interpreter is not familiar with the appropriate terminology and the justice system, worse confusion can result. Volunteers from MISA or family members are not adequate in this important area. If trained interpreters are not available, parties may bring adult children, and this presents obvious problems in conciliation and mediation. There are also confidentiality concerns for women using interpreters from within their own communities.
9. Many immigrant women do not get informed that it is against the law in Canada to assault your spouse. In Latin America, it is taught that it is O.K. to hit your woman because they didn't have your meal on time or your clothes clean.
10. There is the mentality in Latin America that women are the possession of the husband. This is reinforced by the fact that immigrant women come to Canada as dependents of their husband in their immigration application, like the children of the family. It is hard to get rid of this "possession" mentality especially when the husband is the one with the job, the money and the language.

11. Many immigrant women do not go to court to settle family issues in any case. To separate seems impossible; they can't even think about it.

12. If women find the courage to leave an abusive man, they don't want to have to see him again. Just looking in his eyes can bring back that feeling of fear, powerlessness, the mentality of "I belong to this person and he owns me and has the power."

VI. RECOMMENDATIONS OF FRENCH-SPEAKING WOMEN, CHETICAMP FOCUS GROUP

On October 13, 1999, six French-speaking women met in Cheticamp to discuss their perspectives on conciliation and mediation, as described by the THANS researcher. The meeting was facilitated by Laurette Deveau, president for L'Association des Acadiennes, Cheticamp, and by Julie Oliver, Executive Director for L'Association des Acadiennes de la Nouvelle Ecosse. The following summary recommendation were sent to THANS by Laurette Deveau.

RECOMMENDATIONS

1. Women should be clearly informed in advance that they have a choice and that they are not obligated to go through the mediation process.

2. There should be mandatory training for conciliators, mediators and judges, in regards to awareness, sensitivity and efficient screening for different forms of abuse.

A - The training should be done on a regular basis so that these people (conciliators, mediators and judges) whose task it is to work with the victims, treat them with all the respect and dignity that they deserve, which is their basic Right and not a privilege to be granted or not, at someone's whim.

B - The training should be upgraded on a regular basis to reflect the reality of time. Ex. Changes to the system, changes to legislature...

3. The process by which decisions are reached should be uniform and consistent for all women in all regions of the province. Ex. Rural or urban; low, medium or high income etc...

4. Services, whether for conciliation, mediation or other, should be available in French. Women should be able to communicate in the language of their choice. It is particularly important in stressful situations to be able to express oneself with ease. In the case of Acadian women, they should be able to express themselves in French, be understood and feel comfortable.

5. Geography should not be an issue. All steps should be taken to ensure that all women receive equal treatment wherever they reside.

6. Funds should readily be made available to women for transportation and child care. Most women in these situations are rarely capable of supplying these services on their own.

7. There should be no mediation in cases where there is any evidence of abuse, whether it be physical, social, sexual, emotional, financial, etc...This process runs the risk of revictimizing the women going through the process.

8. Some women do not realize that they are in an abusive relationship. There should be a system in place to educate women in recognizing the signs of abuse. Another system should be in place to educate women in recognizing the signs of abuse and to facilitate the disclosure of abuse. In small communities, where people all know each other, it is especially hard for women to come forward for many different reasons. Religious women also find it hard to disclose abuse. Ex: Married for better or worse.

9. Family court terminology, such as “conciliation” and “mediation” should be clearly explained. Victims should not be intimidated by words they don’t understand and should not be pressured into agreeing to something they don’t understand.

VII. APPENDIX A

1. How did you decide to start/not start mediation? Was it voluntary?
2. What was your understanding of what mediation was? What were you told about its advantages/disadvantages?
3. What was the training/professional background of your mediator?
4. What were the issues being mediated?
5. Did the mediator inquire about abuse issues? Meet w/ you individually, in advance?
6. Did the mediator understand your situation (dynamics of abuse?)
7. Did you have legal representation? At what points in the process?
8. Did the mediator offer/use any power balancing techniques?
 - Shuttle mediation?
 - Telephone mediation?
 - Setting ground rules for sessions related to abuse/power imbalance as condition of mediation?
 - Counseling as condition of mediation for abuser?
 - Legal counsel present for abused?
 - Support person offered/accepted?
 - Offer a signal to end a discussion (due to intimidation)
 - Using both a male and female mediator?
9. Did you feel able to terminate it at any/all times?
10. Did you reach an agreement? If so, was it honored? If not, what happened next?
11. Did you feel safe?
12. Would you recommend mediation to other abused women?

VIII. APPENDIX B:

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