MEDIATION OF POST-SEPARATION PARENTING DISPUTES

Family Mediators' Perceptions of Reasons and Remedies for Post-Separation Parenting Disputes

ABSTRACT

The purpose of this study was to survey family mediators' perceptions of clients' reasons for post-separation parenting disputes, and mediators' remedies to solve those disputes. The study was looking for differences in the ways that professional family mediators work with clients, according to the mediators' background training, practice setting, gender and perception of spousal abuse.

It was a descriptive study, with data collected by self-administered survey. A purposive sample of lawyer-mediators and mental-health mediators completed the survey.

Survey results suggested that mediators do differ in their approach to mediating issues according to the selected variables. Mental-health mediators in this sample recalled a larger range of issues causing debates, and were more open to more therapeutic solutions to post-separation parenting disputes, particularly with spousal abuse present in the relationship. Lawyer-mediators in this sample were more cautious when dealing with spousal abuse issues, but overall, this group of mediators seemed to be approaching family separation issues in an increasingly diverse way.

Research areas highlighted were education for service providers in identifying spousal abuse patterns, cause and effect of routine access denial, and the collateral effects of non-consensual co-parenting, including how this issue relates to the child support guidelines.
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"It is one of the ironies of family life that, at the moment of one of a family's greatest crises - namely a marital separation - the family is, by virtue of the nature of that crisis, least able to respond to the combination of danger and opportunity that the crisis constitutes" (McWhinney, 1988, p.33).

This quotation is taken from a background paper prepared by a family mediator for the Canadian Department of Justice in March, 1984, as part of a search for alternatives to litigation in the settlement of family separation issues. Since this paper was commissioned, mediation had become widely researched and accepted as a alternate method of settlement for custody, support, access and property issues for families attempting to restructure their lives post-separation.

The following excerpts from a wide spectrum of other professionals in the field of post-separation parenting disputes and spousal assault paint a picture of a pervasive, recalcitrant problem, family separation and reconstruction.

"When families fracture, it is a sufficient stressor to produce transient instability and disorganization among all members" (Glassman, 1989, p.73).

Psychologist (family function assessment)
"...there appears to be an increasingly cavalier disregard for compliance with custody, property and support agreements [and access] - a family law form of white collar crime, if you will....This state of affairs is spreading an alarming disillusion with the law in general, with legal procedures and with both mediated and litigated agreements. In short...is family law lawless territory?"

(Ricci, 1989, p.54).

Director of the Office of Family Court Services for California.

"[Divorce and post-divorce conflict] disputes are similar to labor-management conflict in that the parties will continue to have an association with one another after the dispute is resolved. These disputes differ, however, in the greater emotional intensity that often accompanies the process of divorce and in the longevity of the conflict, particularly when there are children involved"


Psychiatrist (mediator child-oriented disputes)

"Mediation [in abuse cases] is sometimes criticized as if the alternatives to it, lawyer negotiation, pro se divorce, or permanent separation were without danger to victims."

(Chandler,1990,p.345).

Sociology professor (mediation trainer)

The justice system has failed to protect children of a violent relationship. Unless children have been battered, courts will generally not deny [access] or custody solely on the basis of violence against the other parent even when committed in front of the children" (Corcoran & Melamed, 1990, p.308).

"It is very easy for a female to raise that issue [abuse] and a man goes many many months without access - a female can throw it out on the table and say...there may have been sexual abuse or there may be an alcohol or drug problem...and I still think this is a very real problem that men have to deal with." (Family Law 5-49.)

Lawyer (Family practice).
These voices of service providers clearly reflect the complexity, difficulty and longevity of custody, maintenance, guardianship and access disputes in our society.

**Ideological Overview**

Driving this complexity is the fact that family law and family policy are constantly changing. This ideological shift in societal views on family functioning is having measurable effects on both the process and the outcome of settlement of the parenting issues, ie: custody, access, maintenance and guardianship. All of these issues concern society as a whole and the rights of less powerful, [usually] women and children, in particular (Girdner, 1989).

It is important to note that fathers also report feeling disadvantaged and less powerful than women with respect to the resolution of parenting issues in their favour. McWhinney (1995) describes this feeling as a fear of being "alienated and extinguished from their child's life." (p.303).

One thing is certain; ideas of parenthood and what that entails are in a constant state of flux.

As a society, and as a social work profession, we may be developing new definitions of family, but the ideological beliefs and values attendant on the
traditional view of family life in western society continue to "...exert a compelling social force through the laws, policies and conventional practices in which its assumptions are embedded (Morris, 1988).

This adherence to traditional patriarchal norms and values is being challenged in our justice and welfare institutions, and consequently in the way family dispute resolutions are managed. The gender-based ideology of the idealized mother is beginning to give way to a more person-oriented ideology which emphasizes the continued involvement of both parents with their children.

There is interest in more gender-neutral solutions for parenting issues before the courts, as is evidenced by the very existence of the Special Joint Committee on Custody and Access (Schmidt, 1998). The focus groups held by the Committee (Schmidt, 1998) across Canada were intended to explore, among other things, the presumption of joint custody, or shared parenting as a way to ensure that a child will have the maximum possible contact with both parents (p.7).

Mediation

Mediation as a tool for change and transformation in family disputes is being used and promoted on an increasing level, particularly with respect to the
settlement of parenting issues. Custody, access, maintenance and guardianship issues related to children are being settled through mediation, offered in family courts, public agencies and private practice. Shared parenting is advocated by many mediators of parenting issues as the ideal arrangement for most children, consistent with the principles articulated in several pieces of legislation, including the Childrens Act 1989, enacted in Britain (Kruk, 1993), and in the Washington State Parenting Act (Schmidt, 1998, p.8).

As an alternative conflict resolution strategy, mediation may also be helpful in the sense that parties to the mediation process are engaged and invested in the problem, and are working to develop their own solutions.

Post-Separation Parenting Disputes

Parenting disputes are a serious problem for many post-separation/divorce families, particularly when psychological or physical violence is or has been present in the relationship. Statistics Canada reported that 29% of Canadian women report at least one instance of physical or sexual violence within an intimate relationship over the course of their lives (Jaffe et al, 1998; Rodgers, 1994). Parents who are experiencing difficulties clog the court systems (Pearson & Anhalt, 1993). The repetitive nature of these disputes is
costly in terms of time, effort and resources expended by the conflicted family, the community, the legal system and social services.

Further research is needed to develop and assess the effectiveness of mediation strategies related to parenting disputes, especially when violence is so prevalent in this area of practice (Depner, Cannata & Ricci, 1994). Jaffe and Geffner (1998) report that "in [Johnston's 1995] study of high conflict divorces, 25% of batterers used access as a means of threatening or continuing their abuse of their partner."(p.3).

The long-term success of parenting agreements continues to be problematic, particularly when violence is present in the parental relationship. The rights of children to have access to both parents must be protected where possible, and beneficial to the child, but children need to be protected from exposure to violence (Johnston, 1995; Kruk, 1993).

Research Specifics

The purpose of this study is to survey practicing family mediators both from legal and non-legal backgrounds to establish the reasons most frequently voiced by their separation/divorce clients for post-separation parenting disputes. The study also seeks the
mediators' professional opinions on the effectiveness of specific strategies for assisting conflicted parents to find remedies for parenting disputes, with particular emphasis on the efficiency and appropriateness of these remedies with and without spousal abuse in the parental relationship.

There is a need for further research into reasons for parenting conflicts and remedies, to facilitate the improved parenting of children of separated families. Identification of the most common complaints fuelling parenting disputes, and an assessment of the effectiveness of specific strategies used by family mediators is a precursor to the development of new interventions. This is especially critical when spousal abuse is present. It is expected that the inclusion of spousal abuse in the context of mediation will continue to be divisive and argumentative (Erickson & McKnight, 1990; Kaganas & Piper, 1994). At the same time, spousal abuse is not going to go away, professionals need to develop and test specific strategies, interventions and training techniques to improve service for clients who report abuse in their relationship.

**Different professional backgrounds**

Lawyer-mediators have very different opinions from
social work mediators about the usefulness of specific interventions for custody and access disputes, as well as less comfort in dealing with the clients who report violence in their relationship, than those who do not (Filion, 1986; Kruk, 1998).

The possibility of a differential response from mediators with legal and non-legal backgrounds in relation to reasons and remedies for parenting disputes is an integral part of the research design.

**Choice of Methodology**

Acquiring process data on actual mediations is very difficult, due to a routine refusal of clients to have the process videotaped or otherwise recorded, particularly with violence in the relationship (Irving & Benjamin, 1992). Agencies and institutions are also cautious and circumspect when dealing with issues of domestic violence and mediation, as this is a controversial, sensitive area.

Given these parameters and constraints, a descriptive fixed-method quantitative study is appropriate and feasible. Accessing the expertise of colleagues in the field is a good way to acquire this information.
Research Goals

The purpose for gathering descriptive data on reasons and remedies for parenting disputes is partially to facilitate the development of strategies to assist family mediators, partially to gather data to assist in the development of practice standards and theoretical development in this area. Sharing practical knowledge about what has helped our own clients may be a step toward reducing the number and the severity of breakdowns of mediated agreements.

These reasons and remedies isolated by quantitative data may be differentially appropriate, depending on the type of parenting arrangement in place, or being attempted. For this reason, data will be collected for remedies for disputes in spousal abuse families and co-parenting families, as well as residential and non-residential parenting arrangements.

A strong secondary research area tentatively identified in the pre-test suggestions returned by lawyer-mediators, is the investigation into the belief systems of practising mediators with respect to the existence, prevalence and severity of spousal abuse in their client population, with a view to encouraging the sharing of knowledge in this area, and increasing awareness of this pervasive problem in the field of
alternate dispute resolution for parenting issues.

Research Question

Pulling all of these strands together, the research question asked was "...are there differences in the ways that professional family mediators work with clients, according to the mediators' background training, practice setting, gender and perception of spousal abuse?".

Relevance to Social Work

The issues addressed in this study are relevant for social workers, as they are intimately concerned with the rights of parents and children, family separation and the devastating effects of spousal abuse.

This may be where the social work mediator can have the most impact on the family mediation profession, in our recognition of spousal abuse, and other systemic power balance issues that threaten the integrity of mediated agreements, and our differential tools to address and redress these issues.

Personal Rationale

My interest in alternate methods of resolving family separation issues stems originally from personal experience. The comparative inability of adversarial systems to assist in alleviating or reducing the stress
and anger attendant upon my own post-separation parenting disputes inclined me to look favourably at mediation as an alternative to court. The consequences of high conflict parenting disputes on children are also part of my personal experience.

More than my own experience, however, I have learned from others, professionally and personally, just how difficult and intransigent they have found their own post-separation parenting disputes. This, coupled with academic training and work experiences in the field of family dispute resolution and spousal abuse issues made the choice of topic for this thesis a natural one.

This field of study uses a great deal of what I have learned and experienced in my lifetime.
CHAPTER TWO

POST-SEPARATION PARENTING DISPUTES

"Children are too valuable and too vulnerable to be left as the hidden and unheard victims of their parents inability to live together."

(Lita Schwartz, 1994, p.82)

Regrettably, the children of divorce are still often the "...hidden client[s] in divorce proceedings" (Wallerstein, 1980, p,105), the ones who are not heard, the ones whose needs are met last.

As children of the 'divorce generation' reach adulthood, their testament to the harm engendered by anger and conflict within their parent's post-separation relationship is telling and irrefutable (Bray & Jouriles, 1995; Schwartz, 1994; Sharp, 1992). As a society we need to develop better solutions for separated families.

Part I Overview

In order to frame this research into solutions for the intransigence of post-separation parenting and access disputes in our society, it is necessary to review basic definitions, family statistics and pertinent legislation related to the state of families and family law in Canada.

Definition of Family

Families are the primary social context for the
development and nurturance of individuals in our society, and family structures are fundamentally changing (Adams & Nagnur, 1994; Christensen, 1991; Vanier Institute of the Family, 1979). The traditional nuclear family, defined as a breadwinner father and a full-time homemaker mother is no longer the statistical norm in Canada. Approximately 70% of women between the ages of 25 to 54 are employed outside the home, including married women with children under 6 years of age (Parliament, 1994). Morris (1988) states that "...new family arrangements are challenging popular perceptions and definitions of what constitutes a family [in Canada]." (p.38).

A more inclusive operational definition of family is an absolute requirement for analysis or discussion of family and family separation issues. Therefore, for the purposes of this study, family will be defined as "...two or more persons in intimate relations based on biology, law, custom or choice [and] often economic dependence, related by mutual expectations of emotional and material support, regardless of their living arrangements." (Zimmerman, 1992, p.16). This definition, while not inclusive, reflects the diversity of Canadian family structures today, including birth
families, chosen families, blended, separated and divorced families, inter-generational and cross-cultural families (Family Service Canada Newsletter, 1995).

As well as a workable definition of family, an understanding of the type and extent of family separation issues in our society is required.

**Canadian Family Statistics**

Since 1968, Canadian divorce rates have climbed from approximately 2.5 divorces for every 1,000 married women to a high point of 12 divorces per 1,000 married women in 1982 (Nett, 1988). There are regional variations, with British Columbia having the highest rate of divorce, 38%, compared to the national average of 28% (Parliament, 1994).

While the divorce rate has declined slightly since 1982, the rate of family separation has grown. More importantly, divorce statistics are an inadequate measure of family separation in our society, since they capture only legally married, heterosexual couples.

Statistics Canada reports that the number of common law unions more than doubled between 1981 and 1991, and they are continuing to rise, comprising over 10% of the [current] population (Almey, 1995). Twenty-eight percent of Canadians between the ages of 18 and 64 report having
lived in a common-law relationship at some time in their lives, and common law couples with children have an average of 1.6 children as compared to 1.9 for comparable married couples (Almey, 1995). Clearly the nuclear family with married partners is no longer dominant, and family separation is widespread and inclusive.

Poverty

The poverty of single parent families in Canada has also reached crisis proportions. Female-headed single parent families "comprise 8% of all families in Canada, but 44% of poor families, and single mothers have become a powerful symbol of poverty in our time." (Sarlo, 1996, p.135). It is important to note that male-headed single parent families are also overrepresented in poverty statistics, and "...comprise 1.5% of all families, but 4% of poor families." (Sarlo, 1996, p.135). We are paying the financial price for family separation in Canada. Children in impoverished circumstances are at risk, and the sharing of resources in family disputes is critical to repairing the impoverishment of single parents and children (Whiteside, 1998).

Systemic Contributions

Intransigent, repetitive, post-separation parenting
disputes are also contributed to, and sometimes caused by, societal and legal institutions which are incompatible with the best interests of the service users, and ineffective in individual cases.

There is a continuing systemic disregard for individual compliance with post-separation custody and access agreements (Cohen, 1990; Fenney, 1998). The legal system is routinely unable or unwilling to enforce access agreements, and parents who are experiencing difficulties are clogging the family court system, which has been ineffective for decades (Cohen, 1990; McWhinney, 1988; Pearson & Anhalt, 1993; Ricci, 1989; Schmidt, 1998).

**Legal Reform**

Pilot projects in British Columbia that are aimed at reforming the family justice system specifically target mediation as a primary strategy for improving the case by case success rate in the long-term settlement of family separation issues (Equal Times, 1995).

In fact, on December 1, 1998, new Provincial Court Family Rules were enacted, with a view to streamlining the court process, and introducing alternate dispute resolution early in the separation cycle (Provincial Family Court Rules [PFCR], 1998; Schmidt, 1998). The new rules are also intended to expose potential
litigants in Family Court to parenting after separation education.

In Canada, the federal Divorce Act (1985) already requires lawyers or advocates to inform clients of the option to mediate rather than adjudicate the resolution of the family separation issues of custody and/or maintenance (Schaffer, 1988).

**Legislation of Child Support and Enforcement**

Until recently, Canadian courts adjudicated child support awards which were often inadequate to the needs of children of divorce (Pask, 1989). Not only were awards inadequate when made, but they were frequently not honoured by the non-resident parent. No effective system existed in Canada which was able to address this devastating problem until the enactment of several pieces of legislation intended to standardize and enforce child support awards.

**Bill C-41 and Child Support Guidelines.**

Bill C-41 and the Federal Child Support Guidelines were enacted as at May 1, 1997 (Department of Justice, 1997). Bill C-41 amended the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act, and the Canada Shipping Act to work together in reducing
the poverty of children and single parent families (CSG, Department of Justice, 1997).

The Child Support Package amendments, as this group of legislative changes is termed, were enacted to establish fair, consistent maintenance awards, to simplify tax rules for child support, to create a better enforcement strategy, and to increase assistance to lower income families in particular (CSG, Dep't. of Justice, 1997).

One of the important ways this was accomplished was by changing the tax rules so that, as of May 1, 1997, all Orders made for child maintenance fall under the new tax code, that is, the paying parent pays support in after tax dollars, and the receiving parent does not declare child support as income (Child Support Package, 1997).

At the same time, as stated above, the Federal Child Support guidelines were enacted to standardize child maintenance awards in cases under the Divorce Act. The basic amount of child support is tied to the paying parent's gross income, while special expenses and undue hardship claims are based on a formula using the household standard of means test. (CSG; Department of Justice).

As at April 28, 1998, amendments to the British Columbia Family Relations Act (FRA) and the Family Maintenance Enforcement Act (FMEA) were enacted to conform to Federal legislation regarding child support and enforcement of child support orders. The new tax rules, of course, apply to provincial as well as federal child support orders (CSG, 1997; Schmidt, 1998).

The Provincial courts adopted the Federal Child Support Guidelines in their entirety, and as a result, they now apply to all separated families in British Columbia (CSG, 1997). The B.C. Provincial Court Guidelines apply to all child support orders made after April 28, 1998, and older orders can be brought under the guidelines by request of either party.

The guidelines do not apply in cases of shared custody, interpreted by the BCCSG as well as the federal guidelines as a 40\60 rule. If the children spend more than 40 per cent of the time with one parent, and the remainder with the other parent, the guidelines are not applicable or enforced.

Again, this change is so recent that there is no research available into the long term consequences of
the legislation, although custom and usage patterns are emerging.

Judicial maintenance awards.

Judicial maintenance awards are governed by the Child Support Guidelines, except for shared custody situations, as aforementioned.

Lack of compliance.

Non-compliance with maintenance awards is no longer rampant in our society, thanks to the Family Maintenance Enforcement Act, the Family Maintenance Program and the Family Maintenance Enforcement Program (Department of Justice, 1997, CSG, 1997). All of these legislative changes and programs are intended to establish a more equitable distribution of disposable funds to children of families who may have separated and restructured with different members, multiple times over the course of a child's life (CSG, 1997). These changes are also too recent to have a body of research available to assess their long-term effectiveness.

Summary

Understanding how the legal system works with respect to the family separation issues of custody, access, maintenance and guardianship is essential background information for this study. It is also
necessary to review current research into the reasons and remedies for post separation and access disputes.

Part II Post Separation Parenting and Access Disputes

Research studies continue to establish that agreement between parents is the key to the best outcome for the child (Wallerstein & Kelly, 1980). Post-separation co-operative parenting is associated with children who are buffered against anxiety and depression and who function well socially and cognitively (Kelly & Gigy, 1988; Whiteside, 1998).

Children tend to blame themselves when parental relationships founder (Sharp, 1992). Parents often either overtly blame the other parent, or cease to speak of him/her at all to the child. It is hard work for one parent to support a child's relationship with the other parent, while severing their own relationship as a couple (Sharp, 1992). It is also necessary, because children remain "...the unfinished business of the marriage partnership..." (Brown, 1985, p.116).

This separation of parental responsibilities from previous marital conflicts is considered to be the most desirable and the healthiest post-divorce outcome for parents and children (Kruk, 1993). For many couples, it is also the most difficult to achieve (Serovich et al, 1992).
Parental Conflict

When families separate and divorce, the level of parental conflict and children's exposure to this conflict is proving to be a strong predictor of children's adjustment (Cummings & Davies, 1994; Depner, Leino & Chun, 1992; Johnston & Campbell, 1988). Up to forty percent of children in high conflict families display emotional and behavioral problems, including anxiety, conduct disorders and poor performance, socially and academically (Cummings & Davies, 1994; Johnston & Campbell, 1988).

Conflict in separation and divorce is often emotionally intense, and long-term, especially when children are involved (Zibbell, 1995). This is evident in the number of repetitive access difficulties and custody battles that post-separation parents experience (Kruk, 1993). Children are literally caught in the crossfire when their parents erupt in anger and grief (Sharp, 1992). Parental conflict is arguably most harmful when it reaches the stage of one parent actively alienating the child from the other parent.

Parental Disengagement and Alienation

Hostile relations between ex-spouses, and lack of
communication about parenting are strongly associated with distancing, diminishment and/or loss of contact between non-residential parents and their children (Arditti, 1992; Glassman, 1989; McKinnon & Wallerstein, 1988; Serovich et al, 1992).

Most children feel that the loss of a parent is the worst consequence of family separation (McWhinney, 1995). And yet, it is distressingly common for children in severely conflicted families to ally with one parent simply to escape this conflict (Lund, 1995). In a worst case scenario, the rejected parent retaliates by giving up, and staying away, long after the child has recovered, and desires contact (Lund, 1995).

Usually it is the father who is either excluded by the mother and child in cases of parental alienation (Lund, 1995), or becomes disengaged from the child (Kruk, 1993). This is not a reflection upon fathers, but a practical reality. Mothers continue to be sole custodial parents in approximately 80% of divorce cases in Canada, with 12% ending in [some form of] joint custody (Fenney, 1998).

The Non-Custodial Father

The non-custodial father is receiving more attention in the field of divorce research than ever before (Arditti, 1992; Lamb, 1986; Lund, 1995; Russell &
It is well documented that fathers tend to decrease the frequency and the duration of contact with their children after separation (Arditti, 1992; Furstenburg et al., 1983). The first year after separation especially, often sees a steady reduction of contact between non-custodial father and child (Kruk, 1993).

Fathers who are highly involved with hands-on parenting of their children prior to separation/divorce, may become entirely disengaged from their children to minimize the pain of separation or because access is so unsatisfactory compared to physical custody (Kruk, 1993). On the other hand, fathers who were peripherally involved with their children prior to a divorce, can have that relationship transformed by the divorce. In effect, they become better, more interested, and involved parents than they were before the breakup of the family (Arditti, 1992; Kruk, 1993).

Up to seventy percent (70%) of non-custodial fathers state that they want more frequent, longer contact with their children, and cite access interference by the child's mother as one of the primary reasons for their limited access (Kruk, 1993; Pearson & Anhalt, 1993). Access interruptions, and the
inability of the legal system to enforce access agreements also contribute to a sense of frustration and alienation expressed by the non-residential parent in Canada (Fenney, 1998). Some of these parenting disputes are a direct and damaging result of a lack of cooperative parenting (Kruk, 1993).

**Access Interruptions and Disputes**

As already stated, parental co-operation in developing access or co-parenting schedules appears critical to the healthy functioning of the family over time (Donohue, Drake & Roberto, 1994; Meierding, 1993; Pearson & Anhalt, 1993).

Still, a California state wide report on the content of family mediation sessions reported approximately fifty-seven percent (57%) of these sessions explicitly dealt with the issue of "...hostility and arguments between parents." (Depner et al, 1994, p.95). Many of these arguments are directly related to access interruptions by the residential parent (Arditti, 1992).

Access interruptions affect one third to one half of the children of divorce and separation (Pearson & Anhalt, 1993). Access change and/or denial by the residential parent is particularly common (Bender & Brannon, 1994; Glassman, 1989; Helm & Scott, 1986).
Access disputes and other post-separation parenting conflicts are repetitive, and have a long term, detrimental effect upon the well-being of parent, child, and society (Depner, Cannata & Ricci, 1994; Helm & Scott, 1986; Strauss & Alda, 1994).

Changes in the judicial system, increased complexity in the types of custody and parenting agreements being developed, and the increased number of parents who are conducting divorce and separation issues themselves, all contribute to the overwhelming numbers of access and post-separation parenting disputes that are clogging the legal system (Hysjulien et al, 1994; Straus & Alda, 1994). More importantly, they are not confined to sole custody situations (Fenney, 1998; Kerr & Jaffe, 1998; Johnston, 1995).

Best Interest of the Child

Preferred post-separation parenting arrangements have trends and fashions that alter with time (McWhinney, 1995). Western society first moved from the legal premise that children are the physical property of the father, to the 'tender years doctrine' where children were considered to be the psychological property of the mother, and the healthy development of children was directly related to their emotional
relationship to their mother (McWhinney, 1995).

This inherent right of the mother to have care and custody of infant children resulted in sole maternal custody, with access to the visiting father, which is still the most common custody arrangement (Bailey, 1989; Hodges, 1991; Wolchik et al, 1985). More recently, however, the best interest of the child has become the paramount criterion for deciding on custody determinations (Bailey, 1989; McWhinney, 1995).

The ambivalence of the 'best interest of the child' doctrine has considerably complicated post-separation parenting decisions (Bailey, 1989). McWhinney (1995) states "...from the perspective of parental responsibilities and the best interests of the child, custody is not simply custody, custody is care more than control. It is responsibility, and responsibility is more than possession." (p.302).

This change to the best interest of the child in settling post-separation parenting arrangements has increased the types of custody and parenting agreements available to families (Koopman et al, 1994; Straus & Alda, 1994). It has also increased the number of access and co-parenting disputes and court actions (Bender & Brannon, 1994; McWhinney, 1995; Taylor, 1989).
Custody and Parenting Arrangements

Custody of children has two aspects, both critical to the resolution of family separation issues. Legal custody of children refers to the legal right to day to day care and control of the child, while physical custody refers to the actual day to day care of the child (Girdner, 1989).

Joint Custody with Primary Residence Clause.

Many joint custody orders do not mean joint physical custody (Girdner, 1989; Johnston, 1995). The trend at present is to have a joint custody order, but with a primary residential parent (Girdner, 1989; Johnston, 1995). This often means that one parent remains comparatively uninvolved with the child's life, and in spite of the joint custody designation, does not share the day-to-day responsibilities and joys of child care (Johnston, 1995; Pearson & Thoennes, 1990; Seltzer, 1991; Whiteside, 1998).

It is important to clarify that the joint custody designation is not the same as co-parenting or shared parenting arrangements, although this confusion is rife in divorce literature (Bailey, 1989; McKinnon & Wallerstein, 1988; Ricci, 1989).
Shared and Co-Parenting Agreements.

Unlike joint custody agreements, which often have a residential and a non-residential parent, shared and/or co-parenting arrangements mean that parents, by definition, share the physical custody of children (Taylor, 1989). These arrangements attempt to share the responsibility for daily care equally between parents, and, ideally, to approximate as closely as possible the pre-separation parent-child relationship (Kruk, 1993).

This close co-operation in parenting requires that parents are willing to retain active parenting roles and that they are able to separate their relationship conflicts from their parenting responsibilities (Benjamin & Irving, 1989; Kerr & Jaffe, 1998; Kruk, 1993).

One of the primary advantages of shared co-operative parenting appears to be the relief of children's very natural longing for the absent parent, usually the father (Kruk, 1993). The primary disadvantage appears to be complicated parenting plans, involving complex movement schedules, requiring age-specific changes for the children over time (Benjamin & Irving, 1989; McKinnon & Wallerstein, 1988; Whiteside, 1998).
Residential and Non-Residential Parent.

Changing terminology is part of attempts by professionals who work with issues of family separation and reconstruction to defuse the powerful emotions evoked by such terms as 'custody' and 'access' (Straus & Alda, 1994; Tompkins, 1995). Using the terms residential and non-residential parent, rather than custodial and visiting parent is a step toward clarification as well as neutralization of the terminology of separation (Tompkins, 1995). These terms are finding their way into separation and divorce research with growing regularity (Lee et al, 1995).

The co-mingling of law and the mental health fields, especially social work, in the field of family mediation as an alternate method of dispute resolution is also having a measurable effect upon the changing terminology and patterns of post-separation parenting dispute resolution and research (Kerr & Jaffe, 1998; Schwartz, 1994).

Mediation: Mental Health Professionals and Lawyers

Schwartz (1994) states that lawyers and mental health professionals have a great deal to learn from one another with respect to resolution of family separation issues within the context of mediation and family law.
Social workers, psychologists and other mental health professionals have different perceptions of custody than do lawyers and judges (Elkin, 1991). These different perceptions translate into a discrepancy between practitioner groups as to exactly what is in the best interests of the child (Elkin, 1991; Schwartz, 1994).

There is also a discrepancy in the type of mediation practiced by mental health mediators and lawyer-mediators (Kruk, 1998). Mental health professionals can offer an awareness of children's developmental stages and an insight into family system dynamics (Schwartz, 1994). These insights include an assessment of factors that place children of divorce at risk, especially "...pre-divorce family functioning, post-divorce interparental relationships, parent-child interactions and presence\absence of social support systems (Schwartz, 1994, p. 77).

Lawyers focus on maintaining and protecting the legal rights of parents, resolving issues between them, rather than concentrating on the rights of the child trapped in the conflict (Schwartz, 1994; Zibbell, 1995). This is their primary responsibility.

Some lawyer-mediators voice a fear that mental-health mediators may inadvertently harm their clients by
offering advice that has future legal implications or ramifications under the law (McWhinney, 1988). They are concerned that provision of legal information, or non-legal advice that has unforseen, negative, legal consequences for clients may constitute the unlicensed practice of law by mediators who are not lawyers (McWhinney, 1988).

While mediation is gaining support from the judiciary, there is a substantive body of lawyers in Canada and the USA that are unhappy with the perceived encroachment by non-lawyer mediators upon the traditional field of family law (Medley & Schellenberg, 1994). There is also a substantive body of lawyers who are seeking mediation training as a way to expand their own practice base (Mosten, 1995).

In general, lawyers are increasingly knowledgeable about mediation, are less concerned about mediation being the unauthorized practice of law, and are open-minded about the benefits that can be obtained from the process (Medley & Schellenberg, 1994).

Haynes (1982) states that "...one of mediation's great strengths, and its attractiveness is its interdisciplinary character."(p. 16). Family mediation ideally needs input from both mental health
professionals and legal professionals to continue to develop and improve (Haynes, 1982). This may be the best way to deal with the fact that it is impossible to separate the emotional divorce from the legal divorce (Lund, 1995; Tompkins, 1995).

Summary

The mediation of post-separation parenting and access disputes as an alternative to adjudication is becoming a mainstream choice in British Columbia. Since the advent of the new Family Court Rules, already discussed, mediation is now within the reach of most parents. This new emphasis on mediation as a preferred alternative has also placed additional responsibility on practitioners to understand and effectively deal with the major issue of spousal abuse in the context of mediation.
CHAPTER THREE
SPOUSAL ABUSE AND MEDIATION

Part I Spousal Abuse

In recent years, concerns over the appropriateness of mediation of family separation issues involving spousal abuse have resulted in volumes of research, and in a number of large scale meetings and forums between women's advocacy groups and mediation communities (Thoennes et al, 1995). These include "... the Association of Family and Conciliation courts (AFCC) Symposium on Mediation and Domestic Abuse (1989), the Maine Mediation and Domestic Abuse Project (1990-1992), and the [1993] Toronto Forum on Women Abuse and Mediation." (Thoennes et al, 1995, p.7-8).

In addition to these conferences dedicated to mediation and spousal abuse, there have been concurrent developments with other interdisciplinary groups related to domestic violence, battered women, and the legal system in general (Chandler, 1990; Newmark et al, 1995; Thoennes et al, 1995).

This interest in inter-personal violence, especially as it relates to woman abuse in intimate relationships, is driven by the prevalence of this behaviour in our society.
Prevalence and Incidence

Violence against women in intimate relationships has always been a part of our social fabric, but has been hidden and protected by structural factors. Only in the last decade has the existence of violence against women been consistently brought to the attention of the general public (Bohannon, Dosser & Lindley, 1995).

It is an indication of the recency of this attention that the first Statistics Canada survey specifically related to violence against women was published in 1994. Unlike such statistical gathering techniques as Universal Crime Reports, the survey reached a random population, not just women who had already disclosed.

The results stated an alarming "29% of Canadian women who are married or living in a common law relationship have been assaulted by their [current partner]." (Juristat, 1994; p.4). Lifetime assault rates were even higher, with 48% of women with a previous marriage having been assaulted by a previous partner. The highest reported rates of partner violence in Canada are here, in British Columbia (Juristat, 1994).

Especially pertinent for those attempting to
resolve family separation issues is that approximately one fifth of women reporting violence in this survey reported "...that it occurred during or shortly after separation" (Juristat, 1994; p. 12). These Canadian statistics are similar to those reported in other countries (Duryee, 1995). Corcoran and Melamed (1990) state that women are at greatest risk of injury or death from their intimate partner at the time of separation, and that 46% of battering occurs after separation.

The Statewide Office of Family Court Services in California reports allegations of domestic abuse in up to 49% of family law cases (Duryee, 1995). United States National Crime Statistics state that one in every 250 cases reported to the police is a spousal abuse case (Corcoran & Melamed, 1990).

The National Crime Statistics of 1986 also state that "...only five percent of spousal abuse victims are men." (Corcoran & Melamed, 1990, p.303).

This mention of reported abuse of men by women in intimate relationships introduces another contentious issue, that of the directionality and frequency of abuse in couples.

**Female to Male Partner Assault**

Depending upon the definition of spousal abuse, and the measuring instrument used in the compilation of
data, abuse of men by women in intimate relationships is reported at the same rate as abuse of women by men (Bohannon et al, 1995; Cantrell et al, 1995; Douglas, 1991; Morse, 1995).

These roughly equivalent levels of female-to-male violence are not replicated in universal crime reports, medical records or court actions that relate to spousal assault, (Newmark et al, 1995). Newmark, Harrell and Salem (1995) cite broad definitions of spousal abuse as a factor in the compilation of these statistics, because "...[they] produce a quite varied group of abuse victims, ranging from those who had experienced several incidences of [psychological] intimidation to those who may have suffered frequent and severe beatings." (p.40).

The report of high rates of violence by women against men is stable across both sexes, using couple reports or individual reports, and is not fully explained by gender difference (Morse, 1995).

**Differential Effects of Violence**

There are critical differences however in the type of acts of aggression perpetrated by women and men. According to statistics, women are much more likely to report perpetrating less severe assaults on their partners (Newmark et al, 1995). They report
psychological abuse of their partners, or if the abuse is physical, they report throwing something, slapping, biting, or trying to hit their partners with something (Morse, 1995; Newmark, et al, 1995).

In contrast, men are significantly more likely to engage in severe, repetitive assaults on their partner, 42% greater for severe assaults, and 21% more frequent in overall assaults (Morse, 1995; Straus & Gelles, 1986).

Studies measuring autonomic responses to interpersonal conflicts show significant correlations of arousal and anger are found in male self-reports, whereas female self-reports show significant correlations between arousal and anxiety (Browning & Dutton, 1986). These results also corroborate the differential effects of spousal assault on men and women.

**Retaliation or Self-Defense**

The possibility that women's reported assaultive actions against their partners are actually reactions to violence against them is another possible explanation (Dobash et al, 1992; Saunders, 1986). The key to this entire issue may be not in the prevalence, or the incidence, but in the amount of fear and physical injury that is involved in domestic violence (Morse, 1995).
Women do not engender conditioned fear in men with their acts of violence, as men do in women (FVIP, 1996).

**Physical Consequences of Partner Assault**

The bottom line is that the level of force is not equal; excluding homicides, the physical injuries sustained by women are far more severe that any injuries sustained by men in domestic assaults (Dobash et al, 1992; FVIP, 1996).

Morse (1995) reports that "...female victims of severe violence in the 1985 national family violence survey tended to require more medical care, lose more time from work, and spend more days in bed due to illness than did male victims." (p.265).

In this same survey, 30% of women respondents reported fear of injury and intimidation within the relationship at least once per year, compared to 9.5% of men respondents (Morse, 1995). This is concurrent with the findings by Newmark, Harrell and Salem (1995), already noted.

Browning and Dutton (1986), in their work with assaultive males, collect reports of abusive incidents leading to arrests and/or hospitalizations from the men and their partners, and then, where possible, compare the couples' reports to hospital and police records of
these incidents. The self-reports from the assaultive males consistently underestimate the frequency, severity and amount of violence in each case (Browning & Dutton, 1986).

Consequences of Victimization in Women

Some of the results of victimization through physical and emotional abuse are known. More than 85% of women who reported relationship assault indicated "negative emotional effect, most commonly anger, fear, loss of trust, lowered self-esteem, depression, anxiety, shame and guilt." (Juristat, 1994, p.10).

It is not possible to assess all of the ways that individual women are harmed, but when the spousal abuse is ongoing, the likelihood that the victim will develop maladaptive coping mechanisms is increased (Vitanza, Vogel & Marshall, 1995), and these maladaptive coping strategies have a direct impact on competence during the settlement of family separation issues, through mediation or adjudication.

Maladaptive coping strategies.

Two of these maladaptive coping strategies that are engendering interest, particularly related to the effects of psychological abuse, are cognitive failure and private self-consciousness. Private self-consciousness, or self-focus, is associated with
increased worry and state anxiety in threatening situations (Vitanza et al, 1995). Cognitive failure is defined as "a tendency to have perception and memory failures and engage in misdirected action." (Vitanza et al, 1995; p.25). Cognitive failure happens to everyone, once in a while, but women in spousal abuse situations may be especially prone to these failures (Vitanza et al, 1995).

**Dangerousness and lethality.**

These maladaptive coping strategies may reflect an ingrained spousal abuse pattern that is highly resistant to change, and has elevated dangerousness and lethality, especially during attempted resolution of family separation issues (Vitanza et al, 1995).

Assessments of dangerousness and lethality, and the ability to represent one's own best interests are two key factors in deciding the appropriateness of mediation in individual cases of spousal abuse. An understanding of the culture of battering, the cycle of violence, the violence continuum, and other typologies of domestic violence is also necessary to inform this debate.

**Culture of Battering**

When a culture of battering exists, mediation is inappropriate, and has no hope of assisting the victim
Kaganas and Piper (1994) state that "...three elements need to be present for a culture of battering to be established: actual abuse of whatever type; a systematic pattern of domination; and the victim's denial and minimization of the abuse." (p. 271). This ritual of spousal domination is systematic, intended to engender and support fear, domination and control of the woman, to rob her of her ability to defend herself, and speak out (Fisher et al, 1993; Miller and Porter, 1983).

The victim internalizes the blame for everything that is heaped upon her by the abuser, and develops self-censorship to such a degree that the batterer "...needs to do less and less to structure his families behavior." (Fisher et al, 1993, p. 2129).

Once established, this culture of battering within the family means that the victim is fearful, will consistently modify her behavior to avoid abuse, and is therefore highly unlikely to be able to put forth her needs, to challenge her spouse (Kaganas & Piper, 1994).

Worse, with the probable development of learned helplessness, private self-consciousness, and cognitive failure, she may be unable to make decisions in her own interest, or be so traumatized that she cannot make them at all (Kaganas & Piper, 1994).
Not all victims of domestic abuse are involved in a culture of battering, although this paradigm illuminates some of the effects of ritual, constant abuse. The cycle of abuse is another descriptive model that informs the effects of violence in intimate relationships, and is particularly relevant to family separation issues, and the resolution of these issues through mediation.

**Cycle of Abuse**

Walker's development of the cycle of violence in 1979 was one of the first depictions of the "...patterned nature of violence against women." (Russell et al, 1996, p.29). This battering cycle was described by Walker as having three phases, a tension-building phase, which precedes the abuse, an acute battering incident, also called the explosion phase, followed by a honeymoon phase which provides emotional closeness and relief from the abuse (Douglas, 1991, FVIP, 1996, Russell et al, 1996).

The original cycle of violence model alternated between violence and non-violence. Recently, the cycle of violence is better understood as a cycle of abuse, where the object throughout the cycle, all phases, is for the abuser to retain power and control over the
abused (Russell et al, 1996). This removes the responsibility for the abuse from the relationship, and places it upon the abuser (FVIP, 1996; Russell, 1996).

The danger for women in allowing the responsibility for abuse to be centered in the relationship, rather than the abuser is that the woman is likely to "...describe the abuse as a problem to do with communication, conflict, anger, a power struggle or personal issues that each partner brings to the relationship." (FVIP, 1996, p.35). Women see their partners as either charming, agreeable and controlling, or raging, abusive and controlling. Being able to conceptualize the abuse reduces their confusion within the confines of the relationship (FVIP, 1996).

The impact of this common theme of power and control residing in the male throughout the cycle, is best described by Russell et al (1996):

"An abusive man who places himself in the central, superior and deserving position, typically has the expectation that his partner will accommodate by being peripheral, inferior and servile. Abusive behavior typically follows which is aimed at ensuring that this accommodation takes place.

The consequences of being in a peripheral, inferior and servile position are an erosion of self-confidence, self-esteem and self-regard. As the partner continues to belittle and criticize, the woman eventually begins to adopt his definition of her culpability. Self-blame resultanty increases..."
as do various psychological symptoms. Social isolation may ensue as the woman regards herself as increasingly unworthy." (p.31).

When a relationship has reached this level in the cycle of abuse, it may be indistinguishable from a relationship invested in the culture of battering, and as such is not suitable for mediation of family separation issues (Kaganas & Piper, 1994).

**Continuum of Violence**

The continuum of violence is a measure of differing levels of violence in interpersonal relationships, which extends in a straight line, from verbal conflict to life-threatening violence (Douglas, 1991; Irving & Benjamin, 1995). Locating relationship interactions that contain violence on this continuum allows a more complex view of relationship conflict to be addressed, with a view to assessment of a population that may be assisted by mediation in abuse situations (Irving & Benjamin, 1995; Kaganas & Piper, 1994).

Kaganas and Piper (1994) state that "...some victims of abuse have avoided becoming part of a culture of battering, and may feel sufficiently powerful to engage in mediation."(p. 273). They are referring to those relationships that fit in the lower to middle areas on the continuum, where practitioners may be able to chart the difference between "...expressive violence
that is part of the emotional life of the couple, and instrumental violence that is used to punish or control the partner." (Douglas, 1991, p. 527.).

Variations of relationship conflict and spousal abuse include the duration of violence; severity of injury, both physical and psychological; frequency of assault and time of onset in the relationship (before or after marriage); addition of substance abuse; specific psychoses and general family dysfunction (Irving & Benjamin, 1995).

All of these categories of abuse range on the continuum from none to severe, and for frequency and duration factors, from leaving after one assault to leaving only when dangerousness and lethality is overwhelming, as it is in the culture of battering, or at the explosion phase of the cycle of abuse (Douglas, 1991; Irving & Benjamin, 1995; Koss, 1990).

Here, with couples situated in the moderate to low end of the continuum of violence, there is consensus, particularly among therapeutic mediators, that mediation may have a place in the resolution of family separation issues with spousal abuse present (Corcoran & Melamed, 1990; Erickson & McKnight, 1990; Girdner, 1990)

Interparental Violence
Johnston and Campbell (1993) developed a five part typology of interparental violence, inspired by the number of situations they had encountered in their practice that did not fit the cycle of violence explanation of domestic abuse. This typology is theoretical rather than empirical, but Johnston and Campbell (1993) state that:

"...if the findings are supported by further observation and research [that] the analysis could also suggest the basis for more differentiated, preventive treatment, and mediation interventions with violent divorcing families." (p. 283).

The five basic types of interrelationship violence identified by Johnston & Campbell (1993) are:

**On-going and episodic male battering.**

This profile is closest to the cycle of violence identified by Walker (1984), and as such requires little explanation. Men in this group are always dangerous. Loss of control, perceived or otherwise, can cause them to become extremely volatile and exceptionally dangerous (Johnston & Campbell, 1993). The woman's peril during separation from the on-going and episodic male batterer is extreme, and can remain high for years after the initial split (Johnston & Campbell, 1993). This makes these families ineligible for mediation.

**Female-initiated violence.**

Women are always the initiators in this category,
driven apparently by internal tension, separate from any influence by the male. According to this typology, female-initiated violence results in less damage and fewer severe injuries to the victim, possibly because "...the man usually retained his emotional control and was able to disarm his wife (Johnston & Campbell, 1993, p. 291)." This behavior also escalates during the time of separation, when the man's tolerance for such action is lower.

**Male-controlling interactive violence.**

As the name implies, this violence begins through an escalating pattern of insults and abuse involving both men and women partners as initial interactive participants. The physical violence may be instigated by either partner. Johnston & Campbell (1993) state that the "defining feature [of this category] is the man's overriding response to assert control and prevail by physically dominating and overpowering his [partner]."(p.292). This type of violence is based in the traditional pattern of male authoritarian control within domestic situations, and increases as the relationship declines. In this category there is a good prognosis for the fighting to stop when the relationship is over (Johnston & Campbell, 1993).
Separation-engendered and postdivorce trauma.

Johnston & Campbell (1993) identify this category as one where "...uncharacteristic acts of violence occur around the time of separation or during a difficult divorce process." (p. 293). The violence can be perpetrated by either partner, male or female, and may be a one-time occurrence, or repeat on several occasions. This type of violence, because it is unexpected, creates a great deal of long-lasting fear and distrust, but does not usually continue after the separation or divorce (Johnston & Campbell, 1993).

Psychotic & paranoid reactions.

This category refers to "...drug-induced dementia or paranoid psychosis" (p. 294), where separation and/or divorce can trigger an acutely dangerous kind of violence, including preemptive strikes against the spouse and any person perceived as colluding with or helping them (Johnston & Campbell, 1993).

Conclusions.

Johnston and Campbell's (1993) study is exploratory and theoretical, but the types of violence have face validity at the very least. This study points out that domestic violence is not a set pattern, but a complex behavior with many underlying causes, leaving room for multiple solutions, including mediation, particularly in
cases of episodic or male-female interactive violence (Johnston & Campbell, 1993).

The one inescapable fact that drives the search for more options, and more effective methods of resolving family separation issues in general with spousal abuse situations, is that the judicial system has failed to protect the rights of the abused, usually women and children (Corcoran & Melamed, 1990; Erickson & McKnight, 1990; Kaganas & Piper, 1994). Landau (1995) points out that there are few alternatives that work well for the settlement of family separation issues in spousal abuse cases.

In spite of the VAWIR policies of the British Columbia government (1994), which outlines procedures to be followed in the criminalization of domestic violence, most of these services continue to be invested in "handling a current domestic dispute" as opposed to resolving a crime, and finding a solution that protects the innocent (Gondolf et al, 1994).

Changes in Police Attitudes

Prior to the eighties, in Canada, as elsewhere, police response to spousal assault was rarely punitive, with less than 8% of domestic abuse calls resulting in an arrest, compared to 80% of similar assaults without a
domestic element (Ericson, 1982).

More recently, mandatory arrest procedures are being implemented, but they are still not as effective with repeat abusers as they are with one-time assailters (Ericson, 1992; Rigakos, 1995; Russell, 1988).

Negative police attitudes towards abused women, and beliefs that women use exaggerated or false reports of abuse to entrap partners, to gain sole custody, or property advantages are still alarmingly robust (Rigakos, 1995).

Summary

Aside from the issues of police intervention tactics, and the ability of the judicial system to protect victims of spousal abuse, when families separate, the issues of maintenance, guardianship, access and custody must still be settled.

Kruk (1994) summarizes this need for effective solutions as one of the main categories of the spousal abuse and family separation resolution debate. He also points out that there is a "...lack of effective alternatives to mediation [when] women cannot contemplate directly negotiating with their former partners...." (1994, p.21).

This is the debate - when, if ever, is mediation suitable in family separation cases involving spousal abuse?
assault?

Part II  Divorce Mediation and Spousal Abuse: Key Issues

Balance of Power

The exercise of power by one spouse (usually male) over the other, to control the process and outcome of family separation issues through physical and psychological abuse, is of profound concern to family mediators and women's advocates (Newmark, Harrell & Salem, 1995; Pagelow, 1990; Girdner, 1990).

Power, or more properly, empowerment, is at the core of the debate between and among mediators, adjudicators, feminists and women's advocates as to the most effective way to resolve family separation issues (Chandler, 1990; Corcoran & Melamed, 1990; Davis & Salem, 1984; Thoennes, Salem & Pearson, 1995).

Newmark and Salem (1995) conceptualized two kinds of perceived empowerment, personal empowerment and court system empowerment. They define court-system empowerment through adjudication as:

"...the respondent's expectations that the court will give equal consideration to their rights and wishes, listen to them, treat them fairly, and allow them to reach an equitable settlement"(p. 39).

Personal empowerment through mediation is defined as:

"...how willing and competent respondents feel
in working with their partners to resolve the dispute over children." (1995, p. 39).

The definitions conceptualize and operationalize the two sides of the debate, from the point of view of the abused woman. The results of this study are significant to the issue of perceived power. Abused women scored significantly lower than women who were not abused on both measures of empowerment (Newmark et al, 1995).

This supports the general conclusion that the abused spouse is likely to feel disempowered no matter what method is used to resolve family separation issues (Chandler, 1990; Davis & Salem, 1984; Landau, 1995; Thoennes et al, 1995).

It also speaks to another main issue in the debate, the "...paucity of specialized procedures for dealing with power imbalances...."(Kruk, 1994, p.21).

Re-Alignment of Power

When spousal abuse is present in a relationship, these patterns of power imbalance may be entrenched and recalcitrant (Davis & Salem, 1984). The major issue for the debate is whether it is possible to re-align the power in a situational, structural way, so that the interests of the weaker party can be fairly addressed in mediation, or whether adjudication is a better solution.
Most other issues flow from this central concern.

To develop and implement specialized procedures for attempted re-alignment of power in spousal abuse mediation, may require a different, more therapeutic and interventionist type of mediation, (Depner, Cannata & Ricci, 1994; Kimsey, Fuller, Bell & McKinney, 1994; Tidwell, 1994).

Opponents of mediation in spousal abuse situations feel that deep-rooted conflict is never amenable to convergence in views, a prerequisite for agreement in mediated settlements, (Tidwell, 1994). They perceive mediation as a neutral process, unsuitable and dangerous for this population, as will be discussed shortly (Bailey, 1989; Hart, 1990; Schaffer, 1988).

Neutrality or Intervention

The debate on neutralist vs interventionist techniques to resolve spousal abuse issues in family separation mediation centers around two points:

1. Should mediators remain neutral in their stance or make use of strategies to address the balance of power and control between the parties to the direct benefit of the abused party?

2. Might strategies bold enough to affect power balances be deemed a contravention of the basic tenet of impartiality in mediation?
Neutrality, and its bedfellow, impartiality, has been a cornerstone of mediation practice (Cooks & Hale, 1994). Impartiality is a commitment by the mediator to refrain from acting as an advocate or assuming an adversarial role in negotiations. Neutrality speaks to the relationship between the mediator and the disputants, where the mediator should have no vested interest in either party, or in particular solutions, but remain concerned with assisting the disputants to reduce hostility and reach their own agreement (Cooks & Hale, 1994).

**Deflection of blame**

Women's advocates fear that reduction of hostility in mediation requires deflection of blame for abuse (Erickson & McKnight, 1990). This may act against the interests of women who are exiting from a violent relationship, where the acceptance of fault by the batterer is necessary (Landau, 1995; Russell, 1988; Russell et al, 1996; Stallone, 1984).

Worse, it may prevent the issue of violence from surfacing at all in negotiations, and then no power balancing is possible (Bailey, 1989; Schaffer, 1988; Stallone, 1984).

Other mediators feel that the best answer for
attempting to re-align power in some types of spousal abuse situations lies in developing a more therapeutic, interventionist model when mediating family separation issues (Girdner, 1990; Kruk, 1994; Magana & Taylor, 1993).

**Therapeutic Interventionist Models**

Therapeutic, interventionist models of family mediation (TFM), like the one developed by Irving and Benjamin (1995) address patterns of behavior and domination that may underlie couple interactions, in a positive attempt to discover, change and/or neutralize these dysfunctional behaviors, before and during mediation. TFM models include assessment and pre-mediation conferences, counselling and interventions where required (Irving & Benjamin, 1995).

Proponents of interventionist mediation skills feel that the mediator must be able to "...[find a way to] block or minimize disruptive influences, and intervene to alter dysfunctional patterns of [intimate] relationships likely to be inconsistent with negotiation (Irving & Benjamin, 1995, p. 164.).

**Deflection of blame**

This includes the specific attachment of fault in abuse situations, it must be clear at all times in working with spousal abuse that the blame for the
violence lies directly with the abuser (Hart, 1990; Kaganas & Piper, 1994; Pagelow, 1990; Russell et al, 1996).

The clarification of neutrality and impartiality will be important to the overall debate on the appropriateness of mediation in spousal abuse situations (Landau, 1995). The Toronto Forum (1993) specially calls for this clarification, on the premise that no professional can be neutral about the safety of abuse victims. Protection must be in place for this client population, regardless of the method of family dispute resolution used (Davies, Ralph, Hawton & Craig, 1995; Davis & Salem, 1984; Hart, 1990; Magana & Taylor, 1993).

Again, this speaks to screening and specific interventions to increase safety for the participants, which leads directly to training. The potential advantages of therapeutic interventionist mediation in cases of spousal abuse, should they exist, will be dependent on the skill and training of the individual mediator (Chandler, 1990; Duryee, 1995; Erickson & McKnight, 1990; Kruk, 1994).

Training in Violence Recognition and Screening Techniques

The skill level of practicing mediators is the
critical concern in this aspect of the debate. In other
words, should specific training be offered or mandated
for family mediators, so that screening for violence is
routinized before mediation is attempted?

Battered women's advocates express concern that the
overall quality and diversity of skills used by most
family mediators is inadequate to the task of mediating
or even recognizing abuse cases (Bailey, 1989; Erickson
& McKnight, 1990).

Alternatively, those in favour of mediation in some
cases involving spousal assault, feel that the addition
of this alternate method of dispute resolution expands
the very limited options available to abused spouses,
and should not be denied unilaterally (Davis & Salem,
1984).

Both sides to this debate concur that the key to
the successful use of mediation for some cases of
spousal abuse is in training and the development of
special guidelines for abuse cases. (Duryee, 1995;

Safety Issues

The debate about safety issues and spousal abuse
mediation is multi-layered. Should standardized safety
procedures be developed for family mediation with
violence present, or are the potential risks too great to attempt mediation under any circumstances once violence has been established? What is required from the profession to ensure the optimal safety of all parties to the mediation? Will the existence of safety guidelines for abusive relationships encourage practitioners to assume that mediation is always appropriate for violence enmeshed couples?

This is the point in the debate where individual situations are considered, as well as guidelines for global use. It is also the point where there is sharp disagreement and diversion in the various professions dealing with family separation and spousal abuse issues as to the best specific methods to use.

**Mediation/Adjudication risk.**

Proponents of voluntary divorce mediation for some abused women suggest that the battered parent knows her own limits, and his, and we should accept her statement, if she makes it, that she feels powerful enough, and is willing to take the risks inherent in mediation (Goldner, 1992; Kaganas & Piper, 1994). She is always at risk in the process of settling family separation issues, whether mediated or adjudicated, and mediation may allow her some feeling of control and power (Magana & Taylor, 1993).
Proponents of mediation also suggest that the mediation process is less threatening than adjudication, and that the shortcomings in adjudication are similar to mediation in any case, both are dangerous and difficult (Chandler, 1990). The mediation environment can be structured to improve the safety of participants.

Those opposed to mediation in cases of spousal abuse argue that safety cannot be assured, particularly in this high-risk post-separation window (Chandler, 1990; Hart, 1990). It is also felt that a victim cannot be expected to negotiate in any sense with a batterer, and that mediation will lead to capitulation out of fear (Fisher, Vidmar & Ellis, 1993; Kaganas & Piper, 1994).

Both sides of the debate agree that safety plans are critical, whatever the method of dispute resolution for separation issues.

**Safety plans.**

Safety plans become a critical factor in all attempted mediations with spousal abuse (Girdner, 1990; Landau, 1995; Pagelow, 1990; Thoennes et al, 1995). Many of these plans are included in guidelines developed by family court counsellors, and other judicial or service sectors working in the field.

One set of these guidelines is attached to this
Education of Participants

Proponents suggest that a well trained mediator can assist the abused party to evaluate those options available to the family in the settlement of separation issues, including options peripheral to mediation, such as counselling, support groups, shelters, and legal assistance (Depner, Cannata & Ricci, 1991; 1994; Magana & Taylor, 1995).

The educational and advocacy function of mediators, is particularly helpful to participants who have "... less formal education and fewer financial resource." Depner et al, 1994, p. 316).

Opponents to this education assumption point out that the abuse victim is likely to be too traumatized in the post-separation period to benefit from education (Schaffer, 1988). She needs advocacy, support, and a release from responsibility.

Privatization of Domestic Violence

Privatization of domestic violence when these issues are discussed in closed mediation rather than in open court is perceived by some to be a backward step in the development and enforcement of the rights of women and children (Johnston & Campbell, 1993; Pascall, 1993; Schaffer, 1988).
Alternately, it may be suggested that mediation, because it is private, is less threatening for the abuser, and therefore he may be more amenable to accepting blame and education around his destructive behaviors (Magana & Taylor, 1993).

**Custody Arrangements**

Opponents to mediation feel that batterers may seek custody as a means of control over their partner in mediated settlements, so the adversarial system may be a better protector of the rights of women and children in these circumstances (Johnston & Campbell, 1993).

Pagelow (1990) states that it is unreasonable to expect a woman to mediate the "most important issue of her life, the caretaking and welfare of her children [with her abuser]." (p. 354).

Proponents suggest that joint custody or shared parenting may assist the father in making the transition from partner to parent, thus defusing his anger (Magana & Taylor, 1993). This is especially important since access and parenting plans are frequently used to control the abused spouse (Hart, 1990; Pagelow, 1990).

It is also believed that to leave the family without any parenting or contact plan in place increases the danger of abuse (Magana & Taylor, 1993).
Summary

There are some areas of agreement among the groups involved in the debate about mediation and spousal abuse. Women's advocates, adjudicators and mediators agree that specific training in spousal abuse screening techniques is mandatory for all service providers in the area of family separation.

They agree that safety plans and other structures must be employed to minimize dangerousness and lethality in this population, both for the providers and the users of family disputes resolution services.

They agree that disclosure of violence and acceptance of blame by the abuser is a necessary prerequisite of mediation.

They agree that specialized intervention strategies must be employed in mediation, and that a strictly neutral position is not possible for the mediator in spousal abuse cases.

They do not seem to agree on the prevalence or incidence of spousal assault in their own client population.

The inclusion of a spousal abuse component in this thesis is driven by a desire to gain a snapshot of the feelings of professionals working in this field as to the appropriateness of mediation in these cases; the
parameters they personally use to decide when to mediate, and when to refer to counselling or adjudication; and the strategies they might employ in mediation with these cases.
CHAPTER FOUR

METHODOLOGY

Research Parameters

As stated in the introduction to this thesis, the intent of this research is to survey practicing family mediators for their experiences in working with families involved in post-separation parenting disputes.

Of interest are the mediators' perceptions of reasons given by their clients for requesting mediation of post-separation parenting disputes, and the opinion of the mediators themselves as to the usefulness of specific remedies to address these disputes.

Also of interest are the potentially differential responses from mediators regarding perception of client reasons for disputes, and the effectiveness of specific remedies according to the variables of professional background, gender, practice setting and spousal abuse.

An additional strong area of interest driven by the divorce mediation and spousal abuse debate is the opinion of practicing mediators as to whether they would ever agree to mediate if spousal abuse was acknowledged in a client relationship, and where on the continuum of violence (see Chapter 3) a client family would have to be before they would unilaterally decline to mediate.
Previous research

Research concerning mediation and domestic violence is generally confined to assessment protocols to identify violent relationships at intake, take a snapshot of types of access complaints, assess prevalence of violence related disputes or debate the appropriateness of mediation when violence is known to exist in the parental relationship (Erickson & McKnight, 1990; Johnston & Campbell, 1993; Kaganas & Piper, 1994; Magana & Taylor, 1993; Pagelow, 1990; Yellott, 1990).

Studies regarding mediation of access disputes without specific inclusion of domestic violence as a variable are much more prevalent, but are still generally descriptive or exploratory in nature (Arditti, 1992). They explore factors related to custody, access and co-parenting disputes; measure client satisfaction with mediation services; and evaluate mediation services (Arditti, 1992; Depner, Cannata & Ricci, 1994; Kelly & Gigy, 1988; Meirding, 1993; Serovich et al, 1992).

Reasons and remedies - Prior findings

Reasons for access disputes have been isolated in prior research, chiefly that access schedules are not honoured, or are arbitrarily changed; that children do
not want to visit, or the resident parent is inflexible about justified changes; that there are safety concerns and fights during pickup or dropoff; that there is verbal abuse between parents at pickup and drop off; that there is violence, alcohol abuse or substance abuse in a parental home; and that a new partner is unacceptable to either parent (Erickson & McKnight, 1990; Helm & Scott, 1986; Magana & Taylor, 1992; Pagelow, 1990; Pearson & Anhalt, 1993).

Remedies for these common problems, especially when spousal abuse is present include more structured access plans, clearly defined rules, no-contact parental exchanges of children, protected visits, exchanges only in public places, and crisis safety plans (Erickson & McKnight, 1990; Girdner, 1990; Helm & Scott, 1986; Magana & Taylor, 1993; Pearson & Anhalt, 1990).

These remedies are generally intended to minimize opportunities for abuse and intimidation in spousal abuse relationships, that may otherwise be increased by access schedules (Girdner, 1990; Johnston & Campbell, 1993; Kaganas & Piper, 1994). The ongoing parenting shared by an abused spouse and an abuser is a source of danger that must be minimized, since it often cannot be avoided.
Pretest Instrument Development

California Access Remedy Programs.

Pearson and Anhalt (1993) compiled results of access complaints and remedies for five separate California access remedy programs. This large descriptive study was commissioned by the State Justice Institute of California, and compiled statistics on the top seven reasons given by residential and non-residential parents for access breakdowns across a diverse population (Pearson & Anhalt, 1993).

The success rate of different remedies for these common problems in the population were also included in the data.

Pearson and Anhalt (1993) collected their data in three separate ways. First, they reviewed court and program files for over 600 couples who used the access remedy program and the court, to extract information about the problems, experiences and characteristics of these couples relative to the access program and the court. Second, they conducted interviews over the phone with over two-thirds of these couples, seeking information about the client's reactions to the access programs, and their perceptions of the utility of remedies for their access difficulties. Third, they
visited each of the five program centres, observed the
types of access intervention used at each site, and
interviewed the staff, judges, court administrators and
family lawyers associated with the programs.

Given that the Pearson and Anhalt (1993) study had
such a large sample size, used both quantitative and
qualitative methods of data collection, and accessed
service users and providers across five programs related
to the issue of access breakdown and resolutions, the
findings provided an excellent basis for development of
a survey to explore this issue in Canada.

Therefore, the reasons and remedies identified by
the Pearson and Anhalt study were used as the base for
development of a survey instrument intended to compile
additional information in this area. These reasons are
cited in Table 4.1 and Table 4.2, with mother as
resident parent (usual) and father as resident parent
(unusual), respectively.

Pearson and Anhalt (1993) separated reasons by
gender, with father and mother as both residential
parents and non-residential parents, but the gender
category was not included in the pretest. Including
gender would have increased the length and complexity of
the survey instrument, requiring six categories, rather
than three.
TABLE 4.1: COMPARISON OF TOP SEVEN VISITATION COMPLAINTS CITED BY RESIDENTIAL (RP) AND NONRESIDENTIAL PARENTS (NRP) IN USUAL (mother) CUSTODY CASES

<table>
<thead>
<tr>
<th>RP (Mother Complaints)</th>
<th>NRP (Father Complaints)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NRP does not exercise visitation rights, cancels without notice (39 percent)</td>
<td>RP refuses to permit visitation (71 percent)</td>
</tr>
<tr>
<td>Children do not want to visit (20 percent)</td>
<td>RP is inflexible, does not allow makeup visits for legitimate misses (35 percent)</td>
</tr>
<tr>
<td>NRP changes visitation schedule frequently and arbitrarily (19 percent)</td>
<td>Fights during pickup or drop-off (14 percent)</td>
</tr>
<tr>
<td>Fights during pickup or drop-off (18 percent)</td>
<td>RP bad-mouths NRP in front of child (12 percent)</td>
</tr>
<tr>
<td>NRP bad-mouths RP in front of child (16 percent)</td>
<td>NRP wants specification or modification of visitation order (10 percent)</td>
</tr>
<tr>
<td>Alcohol abuse in NRP home (14 percent)</td>
<td>RP changes visitation schedule frequently and arbitrarily (10 percent)</td>
</tr>
<tr>
<td>Violence in NRP home (12 percent)</td>
<td>Problem involves restriction of telephone contact (10 percent)</td>
</tr>
</tbody>
</table>

For this reason, the top seven visitation complaints given by Pearson and Anhalt (1993) for fathers and mothers as residential and non-residential parents were combined in this instrument.
<table>
<thead>
<tr>
<th>RP (Father Complaints)</th>
<th>NRP (Mother Complaints)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NRP does not exercise visitation rights, cancels without notice (23 percent)</td>
<td>RP refuses to permit visitation (63 percent)</td>
</tr>
<tr>
<td>Children do not want to visit (19 percent)</td>
<td>RP is inflexible, does not allow makeup visits for legitimate misses (21 percent)</td>
</tr>
<tr>
<td>Unsavoury characters in NRP home (18 percent)</td>
<td>RP bad-mouths NRP in front of child (12 percent)</td>
</tr>
<tr>
<td>NRP bad-mouths RP in front of child (18 percent)</td>
<td>Need specification or modification of visitation order (9 percent)</td>
</tr>
<tr>
<td>Alcohol abuse in NRP home (17 percent)</td>
<td>RP's new partner or others are a problem (8 percent)</td>
</tr>
<tr>
<td>Children are not picked up on time or are returned late (15 percent)</td>
<td>Alcohol abuse in RP's home (6 percent)</td>
</tr>
<tr>
<td>Children are not supervised in NRP home. NRP home is unsafe (12 percent)</td>
<td>Violence in RP home (6 percent)</td>
</tr>
</tbody>
</table>

Additional information regarding specific reasons for access and co-parenting disputes in abusive and non-abusive parental relationships was drawn from other research (Arditti, 1993; Depner, Cannata & Ricci, 1994; Donohue, Drake & Roberto, 1994; Helm & Scott,
1986; Magana & Taylor, 1993; Serovich et al, 1992), and from suggestions made by pretest participants.

The possibility of a differential response from mediators with legal and non-legal backgrounds in relation to reasons and remedies for post-separation parenting and access disputes was not explored in the pre-test, as there were too few participants, but is explored in this work.

**Summary**

This study looks at practicing family mediators' perceptions of clients' reasons for requesting mediation of post-separation parenting disputes, and their own opinions of the usefulness of specific remedies for these disputes, with and without spousal abuse in the relationship. The mediators' opinions of the prevalence and incidence of spousal abuse, societally and specifically is also explored.

It is expected that there will be differences in the ways that mediators work with clients, according to the mediators' background, gender, practice setting and perception of spousal abuse.

**Method**

**Research Design**

This is a fixed-method descriptive quantitative
study using a written self-report measure for data collection. A survey format was chosen because of its suitability for self-reported opinions about behavior, its functionality and simplicity in mailing, and its low relative cost. This type of data collection, using Likert scales, requires a smaller investment on the part of the participant as well, and is particularly appropriate for studying a professional group.

There was a qualitative component to the research, in that each section of the survey contained a request for personal reflections and comments from participants.

**Sampling Design**

The sampling design is non-probability and purposive (Anastas & MacDonald, 1994), targeting a body of experts in the field of family separation mediation, as the most effective, representative sources of data for this study.

This is a small scale study, with a limited, homogeneous population in the sampling frame. Access to this sampling frame is feasible and efficient.

**Sampling population.**

The sampling frame is the full membership of the Mediation Development Association of British Columbia (MDABC), as listed in their 1996 Directory. Permission to use the directory as a sampling frame was received
from the MDABC, and the consent letter, signed by their president, Lee Turnbull, is included in Appendix D.

Sample parameters.

The sample consisted of all non-excluded members of the MDABC who are listed in the 1995 Regional Practitioners' Directory of the MDABC, which is embedded within the full membership sampling frame.

Exclusion criteria.

Excluded from the sample were all practicing members of the MDABC listed in their 1995 Regional Practitioners' Directory who do not mediate for family separation issues, and/or who have practiced for less than two years.

This information is included in the Regional Practitioners' Directory, which is divided into members who actively practice mediation, and those who are members, but do not mediate. This allowed these exclusions to be made prior to mailing the survey.

Sample size.

Using the exclusion criteria, 48 of a possible 134 participants were excluded prior to the first mailing, reducing the possible sample to 86.

Of the 86 packages mailed, 11 were returned by the postal service as undeliverable, leaving the final
sample size at 75.

Sample

Thirty-nine (39) participants responded to the survey. Of the 39 participants, 8 did not complete the measure, leaving a total of 31 participants who completed measures for analysis.

Of the eight measures returned unanswered, 1 was returned blank, 6 were returned with notes stating that they did not do parenting or access dispute mediation, did not have enough relevant information, or were retired from the field, and one stated that the measure would take too long to complete. This participant (female lawyer/mediator) did state that she would not mediate in abusive situations.

This represented a return rate of 31/75 or 41%.

Representativeness.

The demographic profile of the 31 participants is representative of the population from which it was drawn, the BCMDA membership list, which profiles its members to provide information on all mentioned variables. Sample percentages and ratios are very close to the overall population percentages and ratios across all measured demographic variables; gender, professional training, years of experience, practice setting and location, and type of issues mediated.
Data collection procedure

Surveys were mailed to participants with a stamped, self-addressed envelope enclosed in the package. Two weeks after the initial mailing, a reminder was faxed to the entire sample (see Appendix E). The same reminder was faxed one week after the first reminder. In each case, if the participant did not have a fax number, the reminder was mailed.

The entire survey was remailed to non-respondents one month after the initial mailing, with a separate cover letter (see Appendix F).

Measure

Pretest

The questionnaire used to generate data was developed specifically for this study, and pre-tested on a sample of eight professional family mediators, 3 male lawyer\mediators, 2 female lawyer\mediators, 2 female social worker\mediators and 1 male social worker\mediator.

The pretest participants were directly approached because of their experience in the field, and an effort was made to access professionals from mental health and legal backgrounds, and from both genders.
Pretest Instrument

The format for the written preamble to the survey, and the "thank you for taking the time..." statement at the conclusion was paraphrased or directly copied from a Sexual Misconduct survey designed as course work by Jennifer Davidson, 1994\5 MSW student.

Demographic Data.

Demographic information was collected on gender, practice setting, professional training and type of family issues mediated. The choice of information to collect and the format for collection was taken from the Membership application of the Mediation Development Association of British Columbia, which provides this detailed information on their membership.

The reason for collecting this particular type of demographic information is that differences of opinion between genders and those with different professional backgrounds were expected.

Section II: Complaints by non-residential parents.

Sixteen of the most common complaints by non-residential parents were identified through research cited in the literature review. Participants were asked to rate how often on average their clients cited each of these reasons for requesting mediation, using a seven
point Likert scale with a range from 1 (never) to 7 (always), and 20% gradations from 2 (1-20%) through 6 (80%).

1 2 3 4 5 6 7
Never (1-20%) (20-40%) (40-60%) (60-80%) (80%+) Always

Each question was formatted in the manner displayed below. This is a method used in many standard measures, to conserve space and give a visual reminder to the participant. With the Likert scale numbers duplicated beside each question, there is less need to remember or refer to the original scale.

eg:

1 2 3 4 5 6 7 q) Non-residential parent does not exercise access rights.

Each question was identified by a letter from the alphabet to minimize possible confusion of scale number and question number.

Pretest participants were then asked to provide any other reasons clients offered that were not included in the sixteen complaints provided.

Section III: Complaints by residential parents.

The same format was used in this section, and the same 7-point Likert scale. The reasons listed were also identified from research cited in the literature review,
but in this category, seventeen reasons for requesting mediation were cited.

**Section IV: Concerns voiced by co-parents**

Co-parents were defined in the preamble to this section as "those [parents] who share physical and psychological custody of their child\children." Other than this addition, the format, Likert scale and preamble were the same as the previous sections.

This standardization of format and scale was felt to be important in keeping the questionnaire as simple as possible for the participants. Minimizing changes minimizes error in response, increasing reliability of the measure.

The 14 reasons for requesting mediation in this category, were derived intuitively, and from discussions with other professionals as well as from research.

**Inclusion of abuse.**

Sections I, II and III all include as reasons for requesting mediation, that children had been physically, psychologically and/or sexually abused in the residential, non-residential or co-parenting home, and that adults had been physically, psychologically and/or sexually abused in the residential, non-residential or co-parenting home.
These reasons were included as a precursor to the later sections on specific interventions, which include a domestic violence component.

Section V: Utility of specific interventions (remedies) for parenting disputes

This section was split into Section IVa, containing access dispute remedies, and Section IVb, containing co-parenting dispute remedies. Both sections use the same 6-point Likert scale, ranging from 1 (strongly disagree) to 6 (strongly agree). This scale also included a category to avoid the forced choice, 9 (don't know).

---
1 2 3 4 5 6 9
(SD) (D) (MD) (MA) (A) (SA) (DK)
---

Throughout the 'remedies' sections, each remedy was formatted in the manner displayed below, to conserve space and give a visual reminder to the participant.

eg:

1) Utility of specification of vague "reasonable access" orders:
   1 2 3 4 5 6 9 (a) with violence in relationship.
   1 2 3 4 5 6 9 (b) without violence in relationship.

It was hoped that thinking about the same remedy in
two different contexts, with and without violence, at the same time would shorten the actual time required to complete the measure, as well as shortening the physical questionnaire. The remedies were numbered rather than identified with letters.

As in the other sections, participants in the pretest were asked to add any additional remedies they had found effective.

**Conclusion.**

The conclusion thanked participants and asked for comments.

**Pretest critique suggestions**

Analysis of suggestions by participants yielded several additions to reasons for disputes and remedies to solve them, as well as general format changes in the instrument.

**Reasons.**

Additional reasons for disputes mentioned by participants were general neglect (1 lawyer), differences in parenting style and priorities, especially related to education (2 lawyers), decline in school performance (1 lawyer), and disputes over how maintenance is spent (2 lawyers).
**Remedies.**

Clarification of the age of children who might be involved in mediation was suggested (2 lawyers). Children meeting separately with the mediator was mentioned (1 social worker/mediator).

**Co-parenting section.**

The inclusion of co-parenting as opposed to residential and non-residential parenting arrangements was queried by 2 lawyer/mediators on the premise that disputes, by definition, prevent co-parenting.

**Violence.**

In the pre-test, violence was operationally defined as "psychological and physical violence, and mediation-relevant attributes of violence, such as current fear and ability to negotiate."

One male lawyer/mediator stated that the definition of violence used in the survey was:

"...forged in gender politics and is a definition unknown to any of my male clients....in the field of gender politics it would be interesting if a movement was struck to cause women, on your definition of violence, to stop being violent to their husbands. Violent and neurotic are not synonyms."

One female lawyer/mediator stated that:

"I think I see more women who say there is some violence when there is not, and generally I see more male victims of gender bias than female victims of the real thing."
One social worker/mediator queried the inclusion of violence as a variable, or the definition of violence. A more specific operational definition of violence was suggested by 1 lawyer.

Summary.
All of the changes suggested by pretest participants were considered in the design of the final measure, and will be discussed, section by section.

Final Test Instrument
In the final instrument, the letter of introduction, and the requirements for UBC's Ethical Review Board were consolidated into a single introduction page to avoid repetitive reading for the participant.

The title of the instrument was changed from "...access and co-parenting disputes" to ...post-separation and access disputes" to be more inclusive.

Section I: Demographic Data
Professional background information was refined, and one category was removed from both the practice setting and professional training sections.

A section asking for percentage of practice devoted to mediation, location of practice, and years of experience was added. This information is helpful for
analysis of data, and ensures that exclusion and inclusion criteria have been met.

Section II: Reasons for Conflict

The foremost change in the final instrument for the "Reasons" sections was the change in the Likert scale. Several pretest participants were unhappy about the gradations of 20% in the existing scale. The scale was changed from never to always, to 0% to 100% in gradations of 10.

COMPLAINTS\CONCERNS VOICED BY NON-RESIDENTIAL PARENTS:

<table>
<thead>
<tr>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
</table>
| (0%)(10%)(20%)(30%)(40%)(50%)(60%)(70%)(80%)(90%)(100%)

The change in the Likert scale necessitated a change in question format seen below:

1. ______ Residential parent denies access.

This format change was also desirable to visually shorten the measure. The deletion of numbers to circle prior to the question saved considerable line space. At the same time, the questions were numbered, rather than identified by letter, which made data easier to identify and code at data entry stage.

These format changes were consistent across all three categories of reasons, those voiced by non-residential parents, residential parents and co-parents. This also allowed a single set of instructions for all
three sections, only repeating the Likert scale at the beginning of each section, considerably shortening the measure, and making it appear less complex.

Non-residential parents' reasons.

Three reasons for non-residential parents to request mediation were removed from the final measure. These questions related to the physical, psychological and/or sexual abuse of adults in the residential parents home. All of the pre-test answers were negative on these questions, as was the feedback from participants, and in the interest of shortening the measure, they were removed. The same three questions relating to children in the home were retained.

Two reasons were added from suggestions made in the pretest, that the residential parent (RP) misuses child maintenance funds, and that the RP does not supervise child's school performance (homework and attendance).

Residential parents' reasons.

The same three questions related to adults being abused physically, psychologically or sexually in the non-residential parent's home were removed from this section, as well as a question stating simply that there is violence in the non-residential parent's home.

Three questions were added to this section; that the non-residential parent (NRP) spends money on
children inappropriately, the NRP is in arrears on maintenance, and that the NRP does not adequately oversee school performance.

Co-parents' complaints.

As in the other sections, the three abuse of adults questions were deleted.

Two questions were added; co-parent does not adequately oversee school performance, and co-parent spends money on children inappropriately.

Section III: Spousal abuse and mediation

The pretest did identify a strong secondary research area, an investigation into the belief systems of practicing mediators regarding the existence, prevalence and severity of spousal abuse in their client population. A whole section addressing this issue was added to the survey, necessitating the use of a measure of violence, and a better definition of spousal abuse.

Operational definition of spousal abuse.

It was very clear in the pretest that the definition of domestic violence used was inadequate on several levels. The operational definition of psychological and physical violence in the pre-test was "...mediation relevant attributes of violence, such as current fear and ability to negotiate." (Kaganas & Piper,
This definition lacked sufficient detail to allow a reasoned application in answering the questions related to effectiveness of remedies with violence in the relationship. It was also insufficiently detailed to be used as a description of spousal abuse.

The operational definition of spousal abuse used in this new section of the revised survey was the definition arrived at by mediators and women's advocates at the Toronto Forum on Woman Abuse and Mediation (1993). They defined spousal abuse as:
"...the use or threat of physical, psychological, emotional or economic intimidation, coercion or force...to secure power and control for the abuser."
(p.3).

Measuring of violence.

One of the controversial areas of the spousal abuse and mediation debate, is at what point on a continuum of abusive behaviors a mediator should unilaterally decline to mediate, even when the abused party requests the service. In order to address this question, a reasonable measure of the continuum of abusive behaviors was required.

The Conflict Tactics Scale (Straus, 1979) is still the primary quantitative measure of abusive behaviors in
the field of domestic violence research (Morse, 1995; Pan, Heidig & O'Leary, 1994). In spite of its acknowledged failings and inadequacies, the CTS provides a quantitative measure with long-term reliability and validity (Schafer, 1996).

Excerpt from CTS.

The CTS is composed of three scales, measuring ways in which couples resolve conflict: reasoning, verbal aggression and physical violence. Using the scales for verbal aggression and physical violence, provided an eight point continuum of abusive behaviors, from 1. insulting, yelling or swearing at other parent, to 8, using a weapon against other parent.

The only changes were in substituting the word "parent" for "partner". The retention of these scales in their entirety allows the proven reliability and validity of the CTS to be attached to the excerpt, even though the use is different.

Participants were asked to circle the point on the continuum of abusive behaviors taken from the CTS, where they would unilaterally decline to mediate parental conflicts.

Prevalence and incidence of spousal abuse.

Using the definition of spousal abuse described
above as a base, participants were asked to answer three questions. They were asked for their opinions on approximately what percentage of couples in the general population requesting family mediation are involved in a spousal abuse situation; what percentage of clients requesting their services for mediation were involved in a spousal abuse situation; and what percentage of their clients acknowledged spousal abuse in their relationship.

Section IV: Remedies for Conflicts

The preamble for this section was considerably refined from the pretest, to clarify and simplify instructions.

The Likert scale was reduced from 6 points to 4 points, with the removal of Disagree and Agree from the pre-test scale. A category for don't know (5) was included in the scale, but coded as blank in the data (see Coding rules, Appendix G).

1. Strongly disagree (SD) 2. Mildly disagree (MD) 3. Mildly Agree (MA) 4. Strongly Agree (A) 5. Don't Know (DK)

| 1 (SD) | 2 (MD) | 3 (MA) | 4 (SA) | 5 (DK) |

The format for the questions was unchanged from the pre-test, allowing the participant to answer for both categories (with and without violence) as shown below.
1. Usefulness of replacing vague "reasonable access" orders with detailed access schedules.
1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.

Following the recommendations made by pretest participants, several changes in language and content were made in this section.

First, Section IVa for residential and non-residential parents, and IVb for co-parents were consolidated to avoid repetition. Consolidation of these sections left a total of 13 remedies. One remedy, "telephone contact between mediator and estranged parent who is resistant to meeting" was dropped from the measure, since it was deemed to be inappropriate in some settings. The remaining twelve were retained, with some wording changes.

In all instances where the word 'violence' was used, the phrase 'spousal abuse' was substituted. In all instances, 'usefulness' was substituted for 'utility', as it more accurately represented the intention of the question.

In remedies 2 and 3 asking about no-contact parental exchanges, using friends and/or relatives (2) or professional agencies (3), a sentence was added explaining the specifics of such exchanges, that parents do not meet, children are left by one parent, retrieved...
later by another. This was in response to requests by pre-test participants for clarification of this remedy.

Referral to specialized counselling for extreme behaviors (11), was changed to requirement of specialized counselling..., a substantive change.

Five new remedies were added; individual meetings between mediator and school age children to address concerns; regularly schedule parenting meetings facilitated by mediator; use of shuttle mediation; regular follow-ups to keep agreement current; and mandatory participation in a parent divorce education program prior to mediation.

Summary.

The conclusion of the survey instrument was unchanged from the pre-test. Qualitative material was collected at the end of each section, and from the summary, where participants were specifically asked for their comments about mediation and spouse abuse.

Analysis

Frequency distributions were used to rank order reasons for requesting mediation.

Cross-tabulations were obtained to generate percentage distributions of raw scores on all item variables for Reasons for Conflict and spousal violence,
by gender, professional background and type of practice. The crosstabs were also obtained to identify and correct errors in the data, and to search for measures of association through the Pearson r and the Eta.

The Eta coefficient was chosen since the dependent variables were measured on an interval scale, and the independent variables were measured on a nominal scale.

Paired sample T-tests were used to obtain mean opinion scores of mediators relative to the usefulness of remedies with and without spousal abuse.

Independent samples T-tests were used to establish the mean of differences on reasons for conflict, spousal violence scores and remedies, by gender, professional background and type of practice. For this test, gender, professional background and type of practice were transformed into dichotomous groups, and tested against individual variables. Where the Levene's Test for Equality of Variance was statistically significant (p=<05), statistics for equal variance were analyzed otherwise unequal results were used.

Paired sample T-Tests were also run on the lawyer\mediators and social work\mediators alone, excluding the nine "other" background mediators.

Qualitative data were not transformed in any way, but were used to enhance and enrich quantitative
results.

Strengths and weaknesses of research

Prior to a discussion of research findings, a synopsis of research strengths and deficiencies is indicated.

Development of an new test instrument for any study has standard risks and benefits. The primary benefits to devising an individual measure are that it can be tailored to a specific topic for a specialized population, and can combine qualitative and quantitative data collection focused on the research topic. The risks of developing a new instrument, however, are considerable.

The researcher automatically sacrifices the reliability that attends an established measure. Reliability of the final instrument cannot be addressed at this point as it has been developed for this study.

This instrument is not measuring a single concept, such as depression, so a test for internal consistency, such as the split-half reliability test is not appropriate (Anastas & MacDonald, 1994).

Generalizability of results, so necessary to the ultimate usefulness of research is also based upon repeatability, or replicability. A measure created for
a single study cannot satisfy these criteria.

Face validity will be affected by flaws in the questions asked, and/or operational definitions chosen which can lead to ambiguous, incomplete, and inaccurate information. Furthermore, flaws and ambiguities are likely to remain, no matter how carefully the instrument is pre-tested. It takes time, repeated use, and careful monitoring to develop an instrument to the point where such flaws are minimized in a reasonable spectrum of the population likely to be sampled.

Content validity, the ability of an entire scale or measure to cover the concepts being measured can also be more confidently assumed if the measure is tested in many different circumstances and studies.

Critique of Measure

Although this measure was developed specifically for this study, large portions of the content and design were adapted in whole or in part from established measures to address the above noted problems. This has been carefully detailed in the previous sections, and will not be repeated here.

The reasons and remedies sections, by and large, have good face validity, and a measure of reliability can be claimed, based on the previous California studies. They certainly appear to measure the concepts...
they were intended to measure, and the gradations on the scale were sufficient to allow reasonable differentiation and sensitivity on these items.

The "parent wants to change the Order" reason for mediation was too ambiguous, and may have obscured more specific data, but other than that there were few problems with the "reasons" section, other than length.

The adaptation of the Conflict Tactics Scale was also successful. Results were consistent, no participants indicated that they were confused by the wording or intent of the scale. The CTS is so well known as a measure of domestic violence, that reliability and validity can be confidently assumed for this portion as well.

Generalizability was adversely affected by the sample size. However, the demographic profile of the respondents to the survey is a close match to the profile of the population from which the sample was drawn. This allows inferences to be drawn from the data with more confidence than would be the case if such a small sample were not demographically representative of the population.

The small sample size also limited the type and sensitivity of statistical tests used.
Definitions

It is clear from the results that the definition used in the final instrument for domestic violence was still too general and inclusive to give really meaningful results. The problems identified in the pretest with the original definition of domestic violence persisted with the definition chosen for the final survey.

This definition, developed by the Toronto Forum on Woman Abuse and Mediation (1993), while a politically appropriate choice, was a poor tool for this research study. Comments made by participants related to the inclusive definition make this problem very clear, and also indicate a problem with the wording of the questions themselves. Taken together, this portion of the data were sufficiently adulterated that statistical analysis was not useful.

In future research, I would confine my definition of abuse strictly to physical abuse, and a clear understanding of the specific types of threatening behaviors that would be counted as psychological abuse. Direct threats of physical harm to self or other, stalking, monetary control and isolation from others, might be an inclusive list of psychological abuse for
similar research goals. It is important to remove the (regrettably) everyday behaviors of people in conflict, however morally unacceptable they may be, to get a measurable answer from professionals.
CHAPTER FIVE
RESULTS

Sample Demographics

Thirty-one professional mediators participated in the survey, 5 male and 7 female lawyer\mediators, 5 female and 2 male social work\mediators, 2 male and 1 female psychologist\ mediators, and 9 mediators who reported 'other' professional backgrounds. This group of 9 mediators included 1 male and 2 female FCC\ mediators, 2 male accountant\mediators, 1 male minister\mediator, 1 male businessman\mediator and 2 female education\mediators.

The entire participant group was initially recoded for analysis into two professional background groups, legal and mental health professionals. The nine mediators reporting "other" backgrounds were divided into these two groups following the rules of coding in Appendix G.

The FCC, minister and education backgrounds were recoded as mental health, while business persons and accountants were recoded into the legal background category. This choice was based on probable background similarities between humanities and mental health,
commerce and law.

In order to further isolate the difference scores between lawyer/mediators and mental/health mediators, data were also analyzed excluding the nine mediators reporting "other backgrounds".

Since professional background plays such an important role in this study, it was ultimately decided, in spite of the small number of participants, to report primarily the results obtained for professional background after excluding the nine "other" background participants, using only the 22 mediators with legal and mental health backgrounds.

Background results using all 31 participants are preserved in Appendix I in Table Form.

Sample profile.

After removing the nine mediators with "other" backgrounds from the sample, lawyer/mediators comprised 54.5% (N=12) and mental health mediators (social workers and psychologists) comprised the other 45.4% (N=10).

Women comprised 54.8% (N=17) of the sample and men comprised 45.2% (N=14).

The most common practice setting was private practice, with 61.3% (N=19) of the participants in this
venue, 16.1% (N=5) of participants reported practicing in a court setting, 16.1% (N=5) practiced in a non-profit agency, and 6.5% (N=2) reported practicing in a government facility. These categories were collapsed for analysis, into private (61.3%) and public (38.7%), following the rules of coding in Appendix G.

Participants' years of experience in family mediation ranged from 4 to 36 years, with a mean of 13.1 years as a practicing family mediator. The percentage of the individual mediator's practice devoted to family mediation of access and parenting disputes ranged from 2% to 100%, with a mean of 32%.

The location of the participant's practices ranged all over the province of British Columbia, with 46.7% (N=14) of participants located in the metropolitan Vancouver area (all cities and municipalities listed in the Vancouver telephone directory); 26.7% (N=8) on Vancouver Island; 13.3% (N=4) in the Fraser Valley and southern B.C., including the south Okanagan; 10% (N=3) in the Interior and Northern B.C., including the North Okanagan; and 3.3% (N=1) from the Gulf Islands and the B.C. coastal towns. One participant did not give a location.
Section II: Reasons for Conflict

Part I Percentage Distributions

Participants identified similar patterns of reasons for conflict identified by their clients in all three categories, non-resident parent (NRP), resident parent (RP) and co-parent (CP). These reasons can be clustered into basic groups.

To facilitate comparison, the following tables list all of the reasons, and their percentage distribution across all three parent groups in the survey.

<table>
<thead>
<tr>
<th>Reason (ranked by Mean %)</th>
<th>question #</th>
<th>percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>RP's new partner is a problem</td>
<td>(13)</td>
<td>38%</td>
</tr>
<tr>
<td>RP misuses child maintenance</td>
<td>(14)</td>
<td>35%</td>
</tr>
<tr>
<td>NRP wants to change access</td>
<td>(06)</td>
<td>34%</td>
</tr>
<tr>
<td>RP starts fights at pickup\dropoff</td>
<td>(03)</td>
<td>30%</td>
</tr>
<tr>
<td>RP denies access</td>
<td>(01)</td>
<td>28%</td>
</tr>
<tr>
<td>Alcohol abuse in RP's home</td>
<td>(09)</td>
<td>28%</td>
</tr>
<tr>
<td>RP badmouths NRP in front of child</td>
<td>(04)</td>
<td>28%</td>
</tr>
<tr>
<td>RP changes access sched. frequently</td>
<td>(07)</td>
<td>27%</td>
</tr>
<tr>
<td>NRP wants more specific schedule</td>
<td>(05)</td>
<td>25%</td>
</tr>
<tr>
<td>RP does not oversee school work</td>
<td>(15)</td>
<td>24%</td>
</tr>
<tr>
<td>RP does not allow make-up visits</td>
<td>(02)</td>
<td>22%</td>
</tr>
<tr>
<td>Child psychol. abused in RP's home</td>
<td>(11)</td>
<td>20%</td>
</tr>
<tr>
<td>RP forbids\restricts phone contact</td>
<td>(08)</td>
<td>17%</td>
</tr>
<tr>
<td>Child physically abused RP's home</td>
<td>(10)</td>
<td>07%</td>
</tr>
<tr>
<td>Child sexually abused in RP's home</td>
<td>(12)</td>
<td>07%</td>
</tr>
</tbody>
</table>

Note: RP = resident parent  NRP = non-resident parent  N= 29\30
### TABLE 5.2 PERCENTAGE DISTRIBUTION OF ITEM RESPONSES
RESIDENTIAL PARENT REASONS FOR CONFLICT

<table>
<thead>
<tr>
<th>Reason (ranked by Mean%)</th>
<th>question #</th>
<th>percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>NRP cancels visit without notice</td>
<td>(17)</td>
<td>49%</td>
</tr>
<tr>
<td>NRP in arrears on child support</td>
<td>(21)</td>
<td>49%</td>
</tr>
<tr>
<td>NRP does not exercise access</td>
<td>(16)</td>
<td>47%</td>
</tr>
<tr>
<td>NRP changes access sched. often</td>
<td>(24)</td>
<td>46%</td>
</tr>
<tr>
<td>NRP badmouths RP before children</td>
<td>(19)</td>
<td>45%</td>
</tr>
<tr>
<td>NRP spends too much on children</td>
<td>(22)</td>
<td>43%</td>
</tr>
<tr>
<td>NRP starts fights at pickup\drop</td>
<td>(20)</td>
<td>43%</td>
</tr>
<tr>
<td>NRP wants change of access order</td>
<td>(23)</td>
<td>42%</td>
</tr>
<tr>
<td>NRP's new partner is a problem</td>
<td>(31)</td>
<td>41%</td>
</tr>
<tr>
<td>NRP does not oversee school work</td>
<td>(26)</td>
<td>37%</td>
</tr>
<tr>
<td>Children do not want to visit NRP</td>
<td>(18)</td>
<td>37%</td>
</tr>
<tr>
<td>Alcohol abuse in NRP's home</td>
<td>(27)</td>
<td>34%</td>
</tr>
<tr>
<td>Child psychol. abused NRP's home</td>
<td>(29)</td>
<td>26%</td>
</tr>
<tr>
<td>NRP restricts RP's tel. contact</td>
<td>(25)</td>
<td>21%</td>
</tr>
<tr>
<td>Child physically abused NRP's home</td>
<td>(28)</td>
<td>16%</td>
</tr>
<tr>
<td>Child sexually abused NRP's home</td>
<td>(30)</td>
<td>07%</td>
</tr>
</tbody>
</table>

Note: RP = resident parent  NRP = non-resident parent  N=29\30

### TABLE 5.3 PERCENTAGE DISTRIBUTION OF ITEM RESPONSES
CO-PARENT'S REASONS FOR CONFLICT

<table>
<thead>
<tr>
<th>Reason (ranked by Mean%)</th>
<th>question #</th>
<th>percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other CP's partner is a problem</td>
<td>(37)</td>
<td>35%</td>
</tr>
<tr>
<td>Child unhappy with CP arrangement</td>
<td>(38)</td>
<td>33%</td>
</tr>
<tr>
<td>CP changes schedule frequently</td>
<td>(34)</td>
<td>28%</td>
</tr>
<tr>
<td>CP wants change of CP agreement</td>
<td>(35)</td>
<td>28%</td>
</tr>
<tr>
<td>CP badmouths OCP in front of child</td>
<td>(33)</td>
<td>26%</td>
</tr>
<tr>
<td>CP does not oversee school work</td>
<td>(43)</td>
<td>25%</td>
</tr>
<tr>
<td>CP spends money inappropriately</td>
<td>(44)</td>
<td>25%</td>
</tr>
<tr>
<td>CP starts fights at pickup\drop</td>
<td>(32)</td>
<td>22%</td>
</tr>
<tr>
<td>CP restricts OCP's tel. access</td>
<td>(36)</td>
<td>19%</td>
</tr>
<tr>
<td>Child psychol. abused in CP's home</td>
<td>(42)</td>
<td>16%</td>
</tr>
<tr>
<td>Alcohol abuse in CP's home</td>
<td>(39)</td>
<td>15%</td>
</tr>
<tr>
<td>Child physically abused CP's home</td>
<td>(40)</td>
<td>08%</td>
</tr>
<tr>
<td>Child sexually abused CP's home</td>
<td>(41)</td>
<td>04%</td>
</tr>
</tbody>
</table>

CP = co-parent  OCP = other co-parent  N=25\26
Mediators' Perceptions

This section explored mediators' perceptions of reasons cited by their resident parent, non-resident parent and co-parent clients for post-separation parenting disputes. It also explored potential differences in mediators' perceptions of their clients' reasons according to the mediators' background and gender. All results reported are from the perception of the mediator, not directly from the client, but in the interest of clarity and brevity, this is not specifically noted in every case.

Money

Money continues to be a common reason for post-separation parenting disputes, across all parenting arrangements. RP clients cited arrears in maintenance, as one of their two primary reasons for needing mediation, an average of 49 percent of the time. In a related area, NRP clients cited the RP's misuse of maintenance funds as their second most common reason for requesting mediation 35 percent of the time.

The issue of money being inappropriately spent on children was listed by both CP and RP clients as their fifth most common reason for requesting mediation (25% and 43%, respectively). Mediators perceived money issues as less of a problem for CP clients than for
RP and NRP clients.

Access Interruptions

Forty-nine percent of RP clients cited cancellation or change of planned visits without sufficient notice by the NRP as their primary reasons for requesting mediation (49% and 46% respectively). RP clients cited a frequent or total failure of the NRP to exercise access rights as the second most common reason for requesting mediation (47%). NRP clients ranked arbitrary changes to access schedules as a reason for requesting mediation sixth in their list of complaints (27%). In a related sense, CP clients ranked arbitrary changes in co-parenting schedules third (28%).

Change of Existing Order

CP and NRP clients both reported a desire for modification of existing co-parenting Agreements/Orders as their third most frequent reason for requesting mediation (28% and 34%, respectively). Need for a more specific Order was cited by NRP clients 25 percent of the time.

Relationship Adjustments

NRP clients and CP clients pointed to problems with the other parent's new partner as their primary reason for requesting mediation (38% and 37% respectively.).
This reason was ranked seventh by RP clients, but was still at a high percentage (41%).

It was perceived by mediators that many reasons for RP clients to request mediation were cited more frequently than for NRP or CP groups, which made rank ordering important and meaningful.

Ranked by mediators as a close second for CP clients was the concern that children were unhappy with the co-parenting arrangement (33%). In a related category, RP clients cited children not wanting to visit their NRP as the eighth most frequent reason for requesting mediation (37%)

Bad-mouthing the other parent was ranked fourth by CP and NRP clients (26% and 30% respectively), and fifth by RP clients (43%). Fights between parents during pick-up and drop-off were cited at a similar rate to bad-mouthing for CP, NRP and RP clients (22%, 30% and 43% respectively).

Other reasons related to relationship tensions, were cited less, notably, telephone contact interference by NRP, RP and CP (17%, 21% and 19%, respectively), and inflexibility of RP in allowing makeup visits (22%)

Direct parenting issues

The other parents' lack of attention to school performance was the primary direct parenting complaint
noted by mediators from CP, NRP and RP clients (25%, 24% and 37% respectively).

Several mediators noted in comments that visiting hours, especially school nights, and discipline differences were cited as reasons by their NRP clients.

**Abuse**

Mediators perceived that alcohol abuse in the home was cited as a reason for requests for mediation by NRP clients 28 percent of the time. RP clients and CP clients cited alcohol abuse as a reason 34 percent and 15 percent of the time, respectively.

CP clients claimed psychological abuse of a child\children as a reason for requesting mediation 16 percent of the time (outlier effect), NRP clients cited it 20 percent of the time, and RP clients cited it 26 percent of the time.

RP clients cited physical abuse as a factor in requesting mediation 16 percent of the time, NRP and RP clients both reported a 7 percent incidence of physical and sexual abuse, on average.

Drug abuse was not mentioned in the survey.

**Part II Comparison of Responses between Different Groups of Mediators for all parent groups.**

**Non-Residential Parents**

**Mediator Background.**
It is interesting to note that mental health mediators perceived a higher percentage of clients who cited every reason listed for seeking mediation for family separation issues, with the exception of clients who asked for a change to an existing Order (item 6).

Lawyer mediators perceived that their clients claimed this reason at a higher percentage than did mental health mediators. It may be that mental health mediators deal with (or notice) a much broader range of issues in dispute, or that lawyer mediators are focused on the legal aspects.

There were no statistically significant differences between the perceptions of lawyer mediators and mental health mediators on any individual reason for conflict, even when the nine participants with "other" backgrounds were removed, but a strong trend was revealed on several scale items, as is shown in Table 5.4.

**Gender differences.**

Analysis of mean difference scores between male and female mediators yielded statistically significant differences on three reasons: RP denies access, child is physically abused in RP's home, and child is sexually abused in RP's home \[t(21)= 2.99, p<.007; t(28)=2.65, p<.013\] and \[t(27)= 2.36, p<.025\].
## TABLE 5.4 MEAN DIFFERENCE SCORES BETWEEN LAWYERS AND M\HLTH MEDIATORS ONLY: NON-RES\PARENTS REASONS FOR CONFLICT

<table>
<thead>
<tr>
<th>Reason</th>
<th>MH\M M</th>
<th>SD</th>
<th>Law\M M</th>
<th>SD</th>
<th>Mean Difference</th>
<th>MDS</th>
<th>SE</th>
<th>df</th>
<th>t</th>
</tr>
</thead>
<tbody>
<tr>
<td>RP denies access</td>
<td>2.8</td>
<td>2.2</td>
<td>2.5</td>
<td>2.7</td>
<td>0.24</td>
<td>1.1</td>
<td>19</td>
<td></td>
<td>0.23</td>
</tr>
<tr>
<td>No makeup visits</td>
<td>2.0</td>
<td>1.7</td>
<td>2.3</td>
<td>2.6</td>
<td>0.25</td>
<td>0.9</td>
<td>19</td>
<td></td>
<td>0.26</td>
</tr>
<tr>
<td>RP starts fights</td>
<td>3.1</td>
<td>1.5</td>
<td>2.3</td>
<td>2.2</td>
<td>0.86</td>
<td>0.8</td>
<td>19</td>
<td></td>
<td>1.06</td>
</tr>
<tr>
<td>Rp badmouths NRP</td>
<td>5.1</td>
<td>2.1</td>
<td>3.3</td>
<td>2.4</td>
<td>1.80</td>
<td>1.0</td>
<td>19</td>
<td></td>
<td>1.82</td>
</tr>
<tr>
<td>NRP wants spec. access order</td>
<td>3.1</td>
<td>3.2</td>
<td>3.5</td>
<td>2.8</td>
<td>0.35</td>
<td>1.2</td>
<td>15</td>
<td></td>
<td>0.28</td>
</tr>
<tr>
<td>NRP wants change to access order</td>
<td>3.9</td>
<td>3.3</td>
<td>5.8</td>
<td>2.0</td>
<td>1.88</td>
<td>1.2</td>
<td>12</td>
<td></td>
<td>1.54</td>
</tr>
<tr>
<td>RP changes access frequently</td>
<td>2.1</td>
<td>2.1</td>
<td>3.7</td>
<td>2.0</td>
<td>1.58</td>
<td>0.9</td>
<td>17</td>
<td></td>
<td>1.74</td>
</tr>
<tr>
<td>RP denies\restrict telephone contact</td>
<td>2.7</td>
<td>1.2</td>
<td>2.3</td>
<td>1.6</td>
<td>0.35</td>
<td>0.6</td>
<td>20</td>
<td></td>
<td>0.58</td>
</tr>
<tr>
<td>Alcohol abuse \RP home</td>
<td>2.1</td>
<td>2.3</td>
<td>1.2</td>
<td>1.3</td>
<td>0.88</td>
<td>0.8</td>
<td>20</td>
<td></td>
<td>1.14</td>
</tr>
<tr>
<td>Child physically abused\RP's home</td>
<td>1.0</td>
<td>1.5</td>
<td>0.5</td>
<td>0.6</td>
<td>0.46</td>
<td>0.5</td>
<td>10</td>
<td></td>
<td>0.83</td>
</tr>
<tr>
<td>Child psychol. abused\RP's home</td>
<td>2.9</td>
<td>1.5</td>
<td>1.5</td>
<td>1.9</td>
<td>1.43</td>
<td>0.7</td>
<td>20</td>
<td></td>
<td>1.95</td>
</tr>
<tr>
<td>Child sexually abused\RP's home</td>
<td>0.4</td>
<td>0.5</td>
<td>0.9</td>
<td>1.7</td>
<td>0.55</td>
<td>0.5</td>
<td>15</td>
<td></td>
<td>1.11</td>
</tr>
<tr>
<td>RP's new partner is a problem</td>
<td>3.9</td>
<td>2.8</td>
<td>2.9</td>
<td>2.4</td>
<td>0.97</td>
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<tr>
<td>RP misuses child maintenance funds</td>
<td>3.4</td>
<td>2.5</td>
<td>3.3</td>
<td>3.3</td>
<td>0.15</td>
<td>1.2</td>
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<td>0.11</td>
</tr>
<tr>
<td>RP does not oversee school</td>
<td>2.4</td>
<td>2.0</td>
<td>2.1</td>
<td>2.0</td>
<td>0.36</td>
<td>0.9</td>
<td>17</td>
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<td>0.41</td>
</tr>
</tbody>
</table>

Note: RP = resident parent  NRP = non-resident parent
all numbers rounded  n=near significance of p=<.05
<table>
<thead>
<tr>
<th>Reason</th>
<th>Male M SD</th>
<th>Female M SD</th>
<th>Mean Difference</th>
<th>MDS</th>
<th>SE</th>
<th>df</th>
<th>t</th>
</tr>
</thead>
<tbody>
<tr>
<td>RP denies access</td>
<td>4.1 2.5</td>
<td>1.7 1.8</td>
<td>2.45 .8</td>
<td>21</td>
<td>2.99*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No makeup visits</td>
<td>2.8 2.3</td>
<td>1.7 2.0</td>
<td>1.09 .8</td>
<td>24</td>
<td>1.35</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RP starts fights</td>
<td>2.9 1.9</td>
<td>3.0 2.2</td>
<td>.08 .8</td>
<td>27</td>
<td>.10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RP badmouths NRP</td>
<td>4.2 1.5</td>
<td>3.9 2.9</td>
<td>.28 .9</td>
<td>28</td>
<td>.33</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NRP wants spec. access order</td>
<td>3.5 2.9</td>
<td>3.4 2.7</td>
<td>.13 1.0</td>
<td>25</td>
<td>.12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NRP wants change to access order</td>
<td>5.4 2.8</td>
<td>4.7 2.5</td>
<td>.68 .9</td>
<td>24</td>
<td>.68</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RP changes access frequently</td>
<td>3.5 1.5</td>
<td>3.2 2.5</td>
<td>.36 .8</td>
<td>28</td>
<td>.46</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RP denies\restrict telephone contact</td>
<td>2.4 1.6</td>
<td>2.7 1.7</td>
<td>.38 .6</td>
<td>27</td>
<td>.64</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alcohol abuse \RP home</td>
<td>2.2 2.0</td>
<td>1.6 1.9</td>
<td>.64 .7</td>
<td>26</td>
<td>.88</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child physically abused\RP's home</td>
<td>1.2 1.4</td>
<td>.3 .5</td>
<td>.93 .3</td>
<td>28</td>
<td>2.65*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child psychol. abused\RP's home</td>
<td>2.3 1.5</td>
<td>1.9 2.0</td>
<td>.42 .6</td>
<td>28</td>
<td>.65</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child sexually abused\RP's home</td>
<td>1.2 1.6</td>
<td>.2 .4</td>
<td>.98 .4</td>
<td>27</td>
<td>2.36*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RP's new partner is a problem</td>
<td>4.1 2.6</td>
<td>3.5 2.9</td>
<td>.68 1.0</td>
<td>28</td>
<td>.67</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RP misuses child maintenance funds</td>
<td>4.5 3.2</td>
<td>2.8 2.6</td>
<td>1.69 1.1</td>
<td>23</td>
<td>1.54</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RP does not oversee school</td>
<td>3.2 1.9</td>
<td>1.7 2.2</td>
<td>1.40 .8</td>
<td>27</td>
<td>1.83n</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: RP = resident parent  NRP = non-resident parent  *=p<.05  **=p<.01  n=near significance of p=.05
In each case, male mediators perceived more clients cited these reasons than did female mediators.

Mean difference scores for each item in the scale for non-residential parents were computed for gender, and are presented in Table 5.5.

**Residential Parents**

**Mediator Background.**

Once the 9 "other" participants were removed, the mean difference scores between lawyer\mediators and mental health\mediators increased on 11 scale items, as shown in Table 5.6, with one statistically significant difference, non-resident parent does not exercise access to child \[t(19)=2.22, p<.039]\.

While the statistical significance of the last item, non-residential parent's new partner is a problem, was reduced to near significance only, overall, the increased strength of mean differences shown in Table 5.6 is notable, by comparison to mean differences revealed when the whole sample was analyzed.

In comparison to the other parent groups, reasons cited by residential parents were perceived by mediators from both backgrounds at a higher rate on the scale.

The abuse reasons, in particular, were mentioned at a higher rate on the scale by mental health\mediators than lawyer\mediators, as can be seen in Table 5.6.
<table>
<thead>
<tr>
<th>Reason</th>
<th>MH\M M</th>
<th>MH\M SD</th>
<th>Law\M M</th>
<th>Law\M SD</th>
<th>Mean Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>NRP does not access</td>
<td>6.1</td>
<td>2.3</td>
<td>3.8</td>
<td>2.6</td>
<td>2.34</td>
</tr>
<tr>
<td>NRP cancels visits</td>
<td>6.0</td>
<td>2.4</td>
<td>4.0</td>
<td>3.0</td>
<td>2.00</td>
</tr>
<tr>
<td>Child resists visit</td>
<td>4.1</td>
<td>1.6</td>
<td>4.2</td>
<td>2.9</td>
<td>0.04</td>
</tr>
<tr>
<td>NRP badmouths RP</td>
<td>5.3</td>
<td>2.1</td>
<td>3.5</td>
<td>2.5</td>
<td>1.79</td>
</tr>
<tr>
<td>NRP starts fights</td>
<td>5.0</td>
<td>2.1</td>
<td>3.1</td>
<td>2.9</td>
<td>1.92</td>
</tr>
<tr>
<td>NRP is in arrears</td>
<td>5.5</td>
<td>2.3</td>
<td>4.5</td>
<td>3.0</td>
<td>1.32</td>
</tr>
<tr>
<td>NRP spends money inappropriately</td>
<td>5.9</td>
<td>2.7</td>
<td>3.5</td>
<td>2.8</td>
<td>2.04</td>
</tr>
<tr>
<td>NRP wants Order change</td>
<td>3.7</td>
<td>2.6</td>
<td>4.2</td>
<td>2.5</td>
<td>0.56</td>
</tr>
<tr>
<td>NRP changes access frequently</td>
<td>5.2</td>
<td>2.3</td>
<td>3.8</td>
<td>3.2</td>
<td>1.45</td>
</tr>
<tr>
<td>NRP restricts tel.</td>
<td>1.7</td>
<td>1.5</td>
<td>1.7</td>
<td>2.1</td>
<td>0.08</td>
</tr>
<tr>
<td>NRP does not oversee school</td>
<td>4.6</td>
<td>2.6</td>
<td>3.7</td>
<td>3.3</td>
<td>0.97</td>
</tr>
<tr>
<td>Alc\abuse\NRP home</td>
<td>4.3</td>
<td>2.5</td>
<td>2.4</td>
<td>2.5</td>
<td>1.94</td>
</tr>
<tr>
<td>Child physically abused\NRP's home</td>
<td>2.0</td>
<td>1.6</td>
<td>0.9</td>
<td>1.5</td>
<td>1.08</td>
</tr>
<tr>
<td>Child psychol. abused\NRP's home</td>
<td>3.7</td>
<td>2.3</td>
<td>2.1</td>
<td>2.5</td>
<td>1.70</td>
</tr>
<tr>
<td>Child sexually abused\NRP's home</td>
<td>0.9</td>
<td>1.3</td>
<td>0.6</td>
<td>1.4</td>
<td>0.27</td>
</tr>
<tr>
<td>NRP's new partner is a problem</td>
<td>4.8</td>
<td>2.4</td>
<td>2.9</td>
<td>2.2</td>
<td>1.85</td>
</tr>
</tbody>
</table>

RP=resident parent NRP=non-resident parent Scale items 16-31, in order *=p<.05 **=p<.01 n=near significance of p=<.05
<table>
<thead>
<tr>
<th>Reason</th>
<th>Male</th>
<th>Female</th>
<th>Mean Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>M</td>
<td>SD</td>
<td>M</td>
</tr>
<tr>
<td>NRP does not access</td>
<td>5.7</td>
<td>2.0</td>
<td>3.8</td>
</tr>
<tr>
<td>NRP cancels visits</td>
<td>5.7</td>
<td>2.0</td>
<td>4.3</td>
</tr>
<tr>
<td>Child resists visit</td>
<td>4.0</td>
<td>2.1</td>
<td>3.5</td>
</tr>
<tr>
<td>NRP badmouths RP</td>
<td>4.8</td>
<td>2.2</td>
<td>4.2</td>
</tr>
<tr>
<td>NRP starts fights</td>
<td>3.8</td>
<td>2.1</td>
<td>4.6</td>
</tr>
<tr>
<td>NRP is in arrears</td>
<td>5.9</td>
<td>2.2</td>
<td>4.2</td>
</tr>
<tr>
<td>NRP spends money inappropriately</td>
<td>4.5</td>
<td>2.8</td>
<td>4.0</td>
</tr>
<tr>
<td>NRP wants Order change</td>
<td>4.1</td>
<td>2.3</td>
<td>4.3</td>
</tr>
<tr>
<td>NRP changes access frequently</td>
<td>4.8</td>
<td>2.5</td>
<td>4.5</td>
</tr>
<tr>
<td>NRP restricts tel.</td>
<td>1.8</td>
<td>1.8</td>
<td>2.2</td>
</tr>
<tr>
<td>NRP does not oversee school</td>
<td>3.7</td>
<td>2.9</td>
<td>3.7</td>
</tr>
<tr>
<td>Alcohol abuse\NRP home</td>
<td>4.1</td>
<td>2.9</td>
<td>2.7</td>
</tr>
<tr>
<td>Child physically abused\NRP's home</td>
<td>1.8</td>
<td>1.6</td>
<td>.8</td>
</tr>
<tr>
<td>Child psychol. abused\NRP's home</td>
<td>2.6</td>
<td>1.8</td>
<td>2.6</td>
</tr>
<tr>
<td>Child sexually abused\NRP's home</td>
<td>1.0</td>
<td>1.4</td>
<td>.4</td>
</tr>
<tr>
<td>NRP's new partner is a problem</td>
<td>4.6</td>
<td>2.6</td>
<td>3.8</td>
</tr>
</tbody>
</table>

Note: RP = resident parent NRP = non-resident parent Scale items 16-31, in order numbers rounded
Gender differences.

There were two statistically significant results in this data, NRP does not exercise access rights, and child is physically abused in NRP's home \([t(27)=2.17, p<.039\) and \(t(28)=2.07, p<.05\)].

In all cases, male mediators noted that more clients cited these reasons than did female mediators.

A significant difference in the failure of the NRP to exercise access rights correlated with the access denial result in the NRP section.

Table 5.7 presents mean difference scores.

Co-parents

Mediator background.

Fewer mediators with legal backgrounds (10) answered the questions in this section than in the other parent group sections. There were no statistically significant differences or near differences when the participants were recoded into the two groups already defined in previous sections. When the 9 participants in the "other" categories were removed, there were still no significant differences. The data is in Appendix I.

Gender differences.

Mean difference scores between genders showed a stronger result overall, with one scale item, child abused in other co-parent's home reaching near
<table>
<thead>
<tr>
<th>Reason</th>
<th>Male</th>
<th>Female</th>
<th>Mean Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>CP starts fights during exchange</td>
<td>2.4</td>
<td>2.0</td>
<td>0.38 0.7 23 0.52</td>
</tr>
<tr>
<td>CP badmouths other co-parent</td>
<td>3.2</td>
<td>2.1</td>
<td>1.07 0.8 23 1.36</td>
</tr>
<tr>
<td>CP changes schedule often</td>
<td>3.5</td>
<td>2.3</td>
<td>1.23 0.8 24 1.48</td>
</tr>
<tr>
<td>CP wants to modify agreement</td>
<td>3.0</td>
<td>2.4</td>
<td>0.31 0.9 24 0.34</td>
</tr>
<tr>
<td>CP restricts telephone contact</td>
<td>2.2</td>
<td>1.7</td>
<td>0.61 0.8 24 0.72</td>
</tr>
<tr>
<td>Other CP's new partner a problem</td>
<td>4.1</td>
<td>2.8</td>
<td>1.15 1.1 24 1.09</td>
</tr>
<tr>
<td>Child unhappy with agreement</td>
<td>2.9</td>
<td>2.3</td>
<td>0.69 1.1 24 0.64</td>
</tr>
<tr>
<td>Alcohol abuse by other CP (OCP)</td>
<td>1.8</td>
<td>2.0</td>
<td>0.46 0.7 24 0.62</td>
</tr>
<tr>
<td>Child physically abused OCP's home</td>
<td>1.2</td>
<td>1.7</td>
<td>0.92 0.5 24 1.89n</td>
</tr>
<tr>
<td>Child sexually abused OCP's home</td>
<td>0.8</td>
<td>1.5</td>
<td>0.76 0.4 23 1.76</td>
</tr>
<tr>
<td>Child psychol. abused OCP's home</td>
<td>1.9</td>
<td>1.7</td>
<td>0.53 0.7 23 0.78</td>
</tr>
<tr>
<td>OCP does not supervise school</td>
<td>3.1</td>
<td>2.7</td>
<td>1.08 1.0 24 1.08</td>
</tr>
<tr>
<td>CP spends money inappropriately</td>
<td>2.5</td>
<td>2.7</td>
<td>0.08 1.0 24 0.08</td>
</tr>
</tbody>
</table>

*Note: CP = co-parent, OCP = other co-parent, scale items 32-44, in order numbers rounded, *=p<.05 n=near significance of p=<.05
significance. Male mediators perceived a higher mean than female mediators in every instance, except "child unhappy with agreement", as is shown in Table 5.9.

Section III Spousal abuse and mediation

A. CTS Excerpt

Results indicate that, on average, the participants would refuse to mediate when abusive behaviors reached a point somewhere between #3, throwing, smashing or hitting inanimate objects, and #4, actually pushing, grabbing or shoving the other (M=3.5, SD=1.7).

Of more interest are the differential responses measured by gender, professional background, and type of practice, illustrated in Graph 5.1.

Differential responses.

Some interesting trends were noted in this data, and are presented in Graph 5.1. Whether measuring gender, professional background or type of practice, there were two scale points at which most participants state they would refuse to mediate. These are: threat of harm (point 2), and actual slapping, kicking or biting (point 5).

Within this small sample, mental health\mediators were prepared to tolerate slightly more overt abuse than lawyer\mediators. Mental health\mediators were also
spread more evenly through the scale than lawyer\mediators, who were more distinctly polarized around threat of harm (2), and actual blows (5).

**GRAPH 5.1:**
SPOUSAL ABUSE: WHEN DO MEDIATORS REFUSE TO MEDIATE abusive behaviors measured on excerpt from the Conflict Tactics Scale

<table>
<thead>
<tr>
<th># WHO REFUSE BY</th>
<th>GENDER</th>
<th>PROFESS</th>
<th>PRACTICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>CTS EXCERPT</td>
<td>M=---</td>
<td>F=-----</td>
<td>M\H=---</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>PU=-----</td>
</tr>
<tr>
<td>1 verbal insult</td>
<td>0 1 2 3 4 5</td>
<td>0 1 2 3 4 5</td>
<td>0 1 2 3 4 5</td>
</tr>
<tr>
<td>2 threaten harm</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 throw things</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 push\shove OP</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 slap\hit OP</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 use fists</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 threat\weapon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 use weapon</td>
<td>0 1 2 3 4 5</td>
<td>0 1 2 3 4 5</td>
<td>0 1 2 3 4 5</td>
</tr>
</tbody>
</table>

**# OF MEDIATORS WHO REFUSED TO CONTINUE AT EACH SCALE POINT**

**FULL SCALE (CTS excerpt)**
1. Insulting, yelling or swearing at other parent.
2. Threatening to hit or throw something at other.
3. Throwing, smashing or hitting inanimate things.
4. Pushing, grabbing or shoving the other parent.
5. Slapping, kicking, biting other parent.
6. Hitting other parent with fists.
7. Threatening other parent with a weapon.
8. Using a weapon against other parent.

Note: Percentages rounded
Private practice mediators were more cautious than those in public practice, showing a preference for 'threat of harm', as the point at which to refuse to mediate, compared to 'slapping or hitting' for mediators in public practice.

This same trend applied to male mediators, who were more cautious than female mediators. Threat of harm was their most popular choice. Female mediators chose 'slapping and hitting' as the place to refuse mediation most often.

Comments.

It was illuminating that several female mental health mediators mentioned variations of the cycle of abuse and culture of battering as opposed to spousal abuse that is recent, and not a pattern of the relationship. No lawyer mediators, or male mediators brought this theme into their comments.

Percentages of Abuse

Definition of spousal abuse.

The definition of spousal abuse chosen for this measure is repeated here for ease of analysis:

"the use or threat of physical, psychological, emotional or economic intimidation, coercion or force...to secure power and control for the abuser."
There were several comments expressing dissatisfaction with the definition of spousal abuse used in this study.

One female lawyer/mediator noted that "...this definition is a bit broad for me - I've never seen a conflicted family breakdown that did not include abuse according to this definition."

A female social work/mediator asked "related to the operational definition of spousal abuse, do you mean wife assault, or abuse by either partner?".

Questions.

B.1: Participants rated the percentage of couples in the general population requesting family mediation who are involved in spousal abuse situations at a mean average of 54.6 percent (SD=27).

B.2: Participants rated the percentage of couples in their own client population requesting family mediation who are involved in spousal abuse situations at a mean average of 49.6 percent (SD=31).

B.3: Participants report the percentage of couples in their own client population requesting family mediation who acknowledge spousal abuse situations at a mean average of 37.5 percent (SD=25).

There were no statistically significant differences
between participants on gender, professional background or practice setting.

Comments.

There were a number of comments regarding the language and behavior of abusive clients. adding up to the general theme that abuse is seldom freely acknowledged, and, when acknowledged, is often couched in more socially acceptable terms (see Appendix H).

Section IV Remedies for Conflicts

As shown in Table 5.10, in almost every instance, the remedies were perceived be significantly more useful in cases of spousal abuse than without spousal abuse.

The exceptions were individual caucusing between mediator and either parent, individual meetings between mediator and school age children, regularly scheduled parenting meetings facilitated by mediator, and mandatory participation in parent education programs.

As shown in Table 5.11, there was a statistically significant mean difference score between male and female mediators on only one reason, breakdown of children's schedules into overnight stays, other leisure time activities and daily task time activities which the child performs (like school days), to assist parents to more equitably divide actual time spent with the child.
<table>
<thead>
<tr>
<th>Variable</th>
<th>With Spousal Abuse</th>
<th>Without Spousal Abuse</th>
<th>DF</th>
<th>t</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>M</td>
<td>SD</td>
<td>M</td>
<td>SD</td>
</tr>
<tr>
<td>specify vague access</td>
<td>4.0</td>
<td>0.0</td>
<td>2.9</td>
<td>0.8</td>
</tr>
<tr>
<td>no contact exchange through friends</td>
<td>3.7</td>
<td>0.6</td>
<td>2.2</td>
<td>1.0</td>
</tr>
<tr>
<td>no contact exchange through agencies</td>
<td>3.3</td>
<td>0.9</td>
<td>2.0</td>
<td>1.0</td>
</tr>
<tr>
<td>detailed hol. calendar</td>
<td>3.8</td>
<td>0.4</td>
<td>2.8</td>
<td>0.8</td>
</tr>
<tr>
<td>breakdown childs time</td>
<td>3.4</td>
<td>1.0</td>
<td>2.5</td>
<td>1.0</td>
</tr>
<tr>
<td>referral to family\ indiv.counselling</td>
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<td>0.6</td>
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**p<.01   *p<.05

-120-
TABLE 5.11 MEAN DIFFERENCE SCORES BETWEEN MALE AND FEMALE MEDIATORS: USEFULNESS OF REMEDIES FOR PARENTING DISPUTES, WITH AND WITHOUT SPOUSE ABUSE PRESENT.

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<th>Female</th>
<th>Mean Difference</th>
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<td>M SD</td>
<td>M SD</td>
<td>MDS SE df t</td>
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<td>without s. abuse</td>
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<td></td>
</tr>
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<td>3.6 0.4</td>
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<td>without s. abuse</td>
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<td></td>
</tr>
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<td>3.9 0.5</td>
<td>0.03 0.2 25 0.19</td>
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<td>2.7 0.3</td>
<td>0.36 0.3 25 0.18</td>
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<td>3.9 0.3</td>
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<td>3.5 0.7</td>
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<td>without s. abuse</td>
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<td>including pre-school children</td>
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### REMEDY (cont.d.)

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<td>Exchanges/Meetings in Public Places</td>
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<tr>
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<tr>
<td>without s. abuse</td>
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<tr>
<td>Specialized Counseling</td>
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<td>with spouse abuse</td>
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<td>without s. abuse</td>
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<tr>
<td>Caucusing</td>
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<tr>
<td>with spouse abuse</td>
</tr>
<tr>
<td>without s. abuse</td>
</tr>
<tr>
<td>Meeting School Age Children Re Issues</td>
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<tr>
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<td>Shuttle Mediation (conciliation)</td>
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<tr>
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<td>Regularly Sched. Follow-Ups</td>
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<td>with spouse abuse</td>
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<td>without s. abuse</td>
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<td>1.2</td>
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<td>Exchanges/Meetings</td>
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<td>in public places</td>
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<td>2.2</td>
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<td>without s. abuse</td>
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<td>Caucusing</td>
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<td>Children Re Issues</td>
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<td>Parent Meetings</td>
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<tr>
<td>with spouse abuse</td>
<td>2.8</td>
<td>0.7</td>
<td>2.8</td>
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<tr>
<td>without s. abuse</td>
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<td>0.7</td>
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<tr>
<td>without s. abuse</td>
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Note: *=p<.05  **=p<.01
This mean difference score was significant with and without spousal abuse in the relationship, \[ t(23)=2.00, p<.05; t(26)=2.15, p<.04, \] respectively. In both cases, male mediators rated the remedy as more useful than did female mediators.

There was also a statistically significant mean difference score between mediators in public and private practice on one reason, exchange of children\parenting meetings held in public places. Mediators in public practice considered this remedy more useful than did mediators in private practice, without abuse in the relationship \[ t(23)=2.05, p<.05 \]. The same remedy approached significance in the same direction, with spousal abuse in the relationship.

Most interestingly, once again there were no significant differences between mental health\mediators and lawyer\mediators on any remedy, until the 9 "other" participants were removed from the analysis.

There were statistically significant differences between lawyer\mediators and mental health\mediators on three remedies, once these 9 participants with "other" backgrounds were removed, as is shown in Table 5.12.
TABLE 5.12 MEAN DIFFERENCE SCORES BETWEEN LAWYER\MEDIATORS AND MH\MEDIATORS: USEFULNESS OF REMEDIES FOR PARENTING DISPUTES, WITH AND WITHOUT SPOUSE ABUSE

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<th>Law\M M SD</th>
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<td>4.0 0.0</td>
<td>4.0 0.0</td>
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<td>3.0 0.3</td>
<td>0.54 0.3 18 1.89n</td>
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<td>2.3 0.9</td>
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<td></td>
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<td>0.10 0.1 16 1.00</td>
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<td>2.6 0.8</td>
<td>0.01 0.3 16 0.03</td>
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<td>1.3 0.9</td>
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-124-
<table>
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<th>Law\M</th>
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<td>MDS  SE  df  t</td>
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<td>co-mediation with male\female team</td>
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<tr>
<td>with spouse abuse</td>
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<td>with spouse abuse</td>
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<td>with spouse abuse</td>
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<td>3.8 0.4 3.4 0.7</td>
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<td>0.33 0.3 16 1.18</td>
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<td>0.23 0.4 17 0.58</td>
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<td>3.2 0.8 2.8 0.7</td>
<td>0.05 0.2 14 0.19</td>
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<td>without s. abuse</td>
<td>3.2 0.8 2.8 0.7</td>
<td>0.40 0.4 18 1.14</td>
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<td>mandatory parent education class</td>
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<td>with spouse abuse</td>
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<td>3.0 1.3 2.9 1.0</td>
<td>0.87 0.4 16 2.02*</td>
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<td>without s. abuse</td>
<td>3.0 1.3 2.9 1.0</td>
<td>0.09 0.5 15 0.17</td>
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</tbody>
</table>

Note: *=p<.05  **=p<.01
Mental health mediators found including school age children in the mediation significantly more useful than lawyer mediators when spousal abuse was not present in the relationship \[t(17)=2.73, p<.01\].

Mental health mediators found mandatory parent education classes more useful than did lawyer mediators with spouse abuse present in the relationship \[t(16)=2.02, p<.06\].

Lawyer mediators found the exchange of children through a friend or family member significantly more useful than mental health mediators without spouse abuse present in the relationship \[t(17)=2.05, p<.05\].

**Comments.**

The remedy that drew the most comment was "use of male\female mediator teams". These comments were polarized along gender lines. Female mediators seemed to have a more negative opinion of team mediation, and commented that loss of control and focus could be a problem.

**Additional Remedies Suggested.**

The use of conciliation rather than mediation, safety plans and advocates were mentioned by several participants for use in abusive situations, as well as frequent reminders of the rules, regulations and guidelines of mediation to keep both clients on track.
Overlooking occasional outbursts of profanity and foul language was also suggested.

Provision of full orientation to the justice system and its range of options for settlement of family separation issues was suggested.

The raw data for this section is included in Appendix H.

General Comments about Questionnaire

General comments made at the end of this instrument were concentrated on two themes: further thoughts on spousal abuse and mediation, and questionnaire critiques.

Spousal Abuse and Mediation.

The dominant theme regarding spousal abuse and whether or not to mediate in these situation was related to the type and degree of abuse. Several female and mental health mediators in particular commented on how important knowing about the continuum of violence, cycle of abuse and other models of spousal abuse, was as a factor in deciding whether or not to mediate in spousal abuse situations.

The full text of comments is available in Appendix H.
Questionnaire Critiques.

The primary critique related to the questionnaire itself was that there are always so many variables in life, so many variations in definitions and behaviors that it would be difficult to generalize from the answers herein.
This study explored family mediators' perceptions of reasons their clients requested mediation of post-separation parenting disputes, as well as the mediators own opinions of the usefulness of specific strategies for resolving those disputes. It also explored the mediators' views of the prevalence and incidence of spousal abuse and the level of spousal abuse at which they would unilaterally refuse to mediate.

The research question was "...are there differences in the way that professional family mediators work with non-resident parents, resident parents and co-parents according to the mediators' background training, gender, practice setting and personal perceptions of spousal abuse."

Since family separation issues are multi-faceted and complex, as are the data generated in this study, to facilitate co-ordination of findings and discussion, this chapter is presented in the same order as the survey.

Reasons for Requesting Mediation

The first section of the survey asked professional family mediators to cite the reasons for requesting mediation of family disputes most frequently voiced by
their clients. While most of this information is contained in Part II, where the potential differences in response between groups are explored, three categories, money problems, access interruptions and new partners, were so pervasive that they deserved separate discussion.

Money.

Money is still the root of most evil when it comes to post-separation parenting and access disputes. Predictably, in spite of the Child Support Guidelines and Family Maintenance Enforcement Program, complaints that child support payments were in arrears, or that money was being inappropriately spent were among the most often cited reasons for discord between separated parents across all categories.

The frequency of complaints about misuse of maintenance funds by the receiving (RP) parent may be best understood as an artifact of the adult relationship, a control factor misplaced. How to overcome the paying parent's resentment of his or her former partner's receipt of maintenance for their children is a challenge for all who work in this area of family law.
The enactment of the Child Support Guidelines under the Divorce Act, and the more recent B.C. Child Support Guidelines has forced public education regarding the financial aspects of separation. The enactment of this legislation has also led to new and creative ways to avoid compliance with the Child Support Guidelines.

In personal practice, increased demands for schedules that approach the 40\60 time share required to eliminate the need for adhering to the Child Support Guidelines are a confirmation of increased client awareness of the money issue.

This trend of planning time with children to avoid the guidelines has been noticed and discussed by court users and committees. There is research being developed and conducted to explore this unintended consequence of the Child Support Guidelines, however, because of the recency of this behavior, there are few completed studies to cite.

It is deeply regrettable that the "40\60" rule was included in the guidelines at all, as it has tainted many requests for changes in access or shared parenting plans that have come before the court, and before family mediators as well.

Access Interruptions.
Given the strength of the current lobby for better enforcement of access agreements, the expectation was that this would be the primary reason cited by non-resident parents. It was not surprising, therefore, that access interruptions were the most frequently cited cause of requests for mediation overall. However, it was surprising that mediators perceived more resident parents than non-resident parents complained about access problems.

In this population, it seems, mediators remembered more parents complaining of their partners' failure to take advantage of access than there were those who were complaining of being refused access to their children.

This does not diminish the severity of access denial. Refusing to allow a parent to spend time with his or her own children is an act of cruelty, not only for the other parent, usually the intended victim, but for the children as well. It would be a grave mistake to equate access denial with failure to exercise access in a manner that satisfies the ex-partner.

The problem is that legal remedies for parents who are routinely denied access are few, weak, and poorly implemented. Parental separation and subsequent restructuring of family patterns contain more emotional
than legal issues, and access enforcement is one of the key areas where law and emotion collide.

Children are the unfinished business of the marriage partnership. They are also, it seems, possessions which parents fight for without due regard for the consequences. The message that children are deeply harmed by the conflict attendant upon the breakdown of their parent's relationship, is getting through on an academic level, but the behavior is not being modified in the trenches.

**New Partners.**

Mediators perceived that problems with the other parent's new partner was the foremost reason for parenting disputes made by their co-parent and non-residential parent clients. While it was only the ninth most common reason cited for residential parents, it was still mentioned at a high percentage rate (Table 5.2).

Co-parents by definition work together fairly closely to raise their children, making it understandable that a new partner sharing time or living with the other parent would cause additional complications in scheduling.

Non-residential parents may feel very stressed by the addition of a stranger into the lives of their children, a stranger who may live with or spend more
time with the children than the non-residential parents themselves.

Overall, for all parent groups, the addition of a new partner usually ends any remnant of hope that their original couple relationship will resuscitate itself. While it may be a stressful time, with concerns about different parenting styles and objectives, it also provides the mediator with an excellent opportunity to work with the expanded group of adults in a child's life, and, ideally, to enlist new partners as parents in the restructuring of families.

In situations where new partners and old partners are unable or unwilling to communicate and compromise, a mediator may be more helpful than any other professional in assisting these individuals to reduce their hostility to one another, and to open new avenues of communication.

Comparison of Responses between Different Groups of Mediators for all Parent Groups

A major interest in this portion of the study was the exploration of potential differences in the perceptions of mediators with a legal background compared to those with a mental health background, as well as differences in perception according to gender.

Non-Residential Parents
Mediator Background.

There were some differences between the groups on the variable of background training. This remained true for the whole sample, as well as the sample that was recoded to include only lawyers and social workers. When the data were recoded to eliminate the nine participants from other backgrounds, there was a stronger difference, not statistically significant, but present on several key variables. Given the small sample size, not a great deal can be inferred from these results, but it is interesting that the expected difference between the groups was more evident in the purer sample. It is also interesting that the strongest differences were related to psychological abuse.

Mental health mediators did tend to cite more reasons overall for clients requesting mediation across all parent groups. This may be because they are more interested in the underlying causes of post-separation difficulties, than lawyers who work within the field. It may be because we are talking about lawyer\mediators, not standard practitioners of adversarial family law.

Gender.

The gender difference is the one that really comes to the fore - as always. It seems the positions are
polarized more on gender lines than any other grouping. This is reflected in most studies that deal with family separation issues, not just in the results of this small study. The Special Joint Committee on Custody and Access (Fenney, 1998), for example, exhibits this continued polarization of interest groups, largely along gender lines.

In this study, the gender split on the issues of access denial, and physical or sexual abuse in resident parents homes was a mirror of life. Many more male mediators remembered clients complaining of these issues than did female mediators. In personal practice, these are the primary issues cited by male non-residential parents for requesting service.

Residential Parents

Mediator Background.

The recoding of the background variable for residential parent showed a considerable difference between the groups, once the nine "other" participants were removed. Until this change in calculations, only the last reason, that the non-resident's new partner is a problem, showed a significant difference between groups.

It is reasonable to infer that if the sample size had been larger, this difference may have been reliably
apparent; nevertheless, it does seem that social work mediators generally deal with clients who disclose a wider range of behaviors around family separation issues, with more emphasis on abuse. Either that, or they are simply more attuned to looking for, and remembering these issues.

This speaks to the usefulness of therapeutic mediation in family separation, and the advantages of having mediators trained in more than the law, particularly for highly conflicted families, those with fewer coping skills and less ability to help themselves. This is where the mental health mediators have a chance to really be effective.

It is encouraging to see this difference in outlook and attention from family mediators in different branches of service. The craft is maturing and evolving away from pure negotiation, it would seem, just as we who practice hoped that it would.

**Gender.**

The gender difference in this category showed a statistical difference in the same areas as the non-residential category, non-access by non-residential parent, and physical abuse of children, with the male mediators reporting more of this behavior. Again, this
may be caused by socialization, empathy or personal experience. There is no effective way to tell. The gulf between causation and correlation is vast, and there is no bridge to cross it here.

Co-Parents

The data collected in the co-parenting section was a little surprising. The first surprise was a lack of participation in this section, the second, that the comments were slightly negative. I expected more enthusiasm for this alternative parenting choice.

Mediator background.

Approximately one-third (10/31) of this sample of professionals failed to complete this section, and most of these were lawyer-mediators.

This differentiation between joint custody with primary residence, and co-operative parenting may well have been less apparent to lawyer mediators than social work mediators because of the inherent differences in philosophy and intent of these two groups.

There may have been confounding reasons for so many participants not completing the co-parenting section of the study (10). This failure may simply have been related to the length of the survey, and the fact that the co-parenting section was the third, rather than first.
It may also have had more to do with fuzzy definitions than unwillingness to engage in the discussion. Participants may have felt that the topics were covered in the previous sections, failing to differentiate sufficiently between types of custody and parenting.

It may simply have been that most mediators in this sample did not have much opportunity to work with co-parent crises. One participant stated "these are rare cases, we don't see many.", another stating that "...none of my clients have total 50\50 time.".

Some mediators may simply have an inherent bias against co-parenting arrangements as a counter to the perception that mediators favour joint custody, a perception that, as mentioned in earlier chapters, is not supported by the facts.

**Gender.**

Whatever the reasons, only the gender variable revealed any differences in the co-parenting section, with male mediators reporting more elevated levels of physical abuse in other co-parents home. This consistent tendency of male mediators to note physical and psychological abuse at higher levels that female mediators may be a reflection of elevated levels of
anxiety about abuse issues in the context of family separation, and custody settlement.

As already stated, there was not a measurable difference between groups in the co-parenting section, but one result was worthy of comment.

**New Partners.**

As already mentioned, mediators in this study perceived that their clients felt the addition of new partners put the most strain on co-parenting arrangements. The data indicated a change in partners preceded a breakdown of co-parenting schedules at the same rate as other types of custody schedules. Co-parenting schedules do require intense levels of communication between partners, so one would intuitively expect that introducing new adults in surrogate parenting roles might cause more of a problem for co-parents than for less involved couples, but the answer may not be that simple and straightforward.

It is possible that the motivation for attempting a full sharing of parental duties is not as simple as sharing in the lives of their children. It is possible that one or both of these adults are not ready to sever their partnership, and are using the need for intense co-operation and frequent meetings as a conduit to the other parent as well as to the children.
This pattern is well understood with respect to domestic abuse situations, where the abuser fights to control the children as the only conduit to the abused partner that remains. This is not a suggestion that there is a similarity in motive, merely a similarity in pattern, one that it may be helpful to explore more fully with potential co-parents during mediation.

**Spousal Abuse and Mediation**

The strains of spousal abuse are woven throughout the results, as they are through many peoples lives, but in this section, questions were specifically formulated to ascertain the level of recognized abuse in the general practice of family mediation, and the manner in which spousal abuse, once recognized, is handled. While the questions, like the definition, were imperfect, the results were worthwhile.

**Definition of Spousal Abuse.**

As discussed in Methodology, the operational definition for spousal abuse used in this study was, in retrospect, too vague and inclusive, and was questioned by many participants (see Appendix H). Notwithstanding these comments, the participants went on to provide some unique insights into spousal abuse and mediation as it is practiced rather than preached.
New Definition of spousal abuse.

A search for clear definitions, that are at the same time inclusive of desired variables is a neverending process for researchers, particularly when it comes to such a concept as "spousal abuse". In future research, creating or modifying an operational definition to match the specific intent of the research might be the preferred course.

In this study, for the spousal abuse component, I would have confined my definition of spousal abuse to physical abuse, and a clear and specific description of included psychological abuses. Those abuses would have been direct threats of physical harm to self or others, stalking, deliberate acts of isolation from others (such as removing the telephones when abuser leaves home, forbidding contact with friends, family), and total monetary control of family and individual finances.

This specificity of offenses may have provided more valid data for these questions, but the results were interesting, nevertheless.

Percentages of Abuse.

As already stated, there were no statistically significant differences between mediators according to background, gender or practice type and level of reported exposure to spousal abuse in relationships.
The estimates of how much abuse is present at any given time in the general population were about 10% higher than the estimates of abusers in individual client populations, even though this question queried an estimate of the total number of client abusers, those who disclose, and those who do not.

It was encouraging to find that mediators reported less outright denial of spousal abuse by their clients than was expected, quite the opposite, in fact. The average of spousal abuse was 50%+ in the general population, and mediators reported 37% of clients actually acknowledged spousal abuse in their relationship. The percentage of clients reported as acknowledging abuse was higher than anticipated, perhaps indicating more normalization of this behavior, and less shame in reporting as a consequence.

The question of which gender reported was not asked, nor was the level of false allegations specifically addressed. These are important issues, but were not a focus in this study.

It is the overwhelming number of cases involving spousal abuse that make continued research into improving service delivery for mediation clients critical in this area.
CTS Levels of Violence

The question asked in this section was: At what level of reported violence in a relationship does the individual mediator unequivocally refuse to mediate? As in the previous section, differences in response according to background and gender were explored, but in this section, differences in practice setting were also considered.

When to Refuse Mediation

Mediator Practice Setting.

Measured by the Conflict Tactics Scale (CTS) excerpt, private practitioners showed a clear preference for refusing to mediate when threats are disclosed (level 2), by comparison to public practitioners, who hit their highest level of refusal to mediate at slapping or hitting (level 5).

It was interesting that mediators in public practice were prepared to tolerate slightly more overt abuse in a relationship than were private mediators before they refused to mediate. Reporting threats alone was not sufficient to refuse mediation.

This may be from simple volume of abuse cases in public practice. It may also be a simple case of different client populations, although the section asking for reasons that clients come to the mediator did
not show a significant difference on measured variables.

Practitioners within the court system may feel they would be declining a useful service for many in the client population, if they refused to mediate or conciliate when requested by the abused party. These clients already have very few options. In personal practice, conciliation (negotiating between clients without having them in the same room) is the most common, and probably the best choice for clients with a history of abuse who request out of court solutions.

This choice depends on the willingness of the mediator to protect, inform and advocate for the abused party as well as informing and assisting the abuser before beginning conciliation or (rarely) mediation. This can be a very lengthy process, which a public servant may be better able to conduct, for purely monetary reasons. In private practice, clients may resent the time this takes with each parent, or simply be unable to afford it.

It is critical that the victim and the perpetrator of spousal abuse first understand the process, and their alternatives, and then the abused party must decide how to proceed, before any steps can be safely taken to resolve family separation issues.

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The legal system has proven inadequate to the task of family reorganization, and the alternative to mediation, adjudication, is historically as dangerous to the family, and in some circumstances, more dangerous.

Most court workers could confirm that in their experience, adjudicated settlements of family separation issues with spousal abuse as a factor are often punitive to the victim, female or male. Judges and lawyers have difficulty, on average, in coping with the emotional outbursts and/or flat affect of the victims, and favour the party who seems calm and in control, usually the abuser.

**Gender Effect.**

Male mediators were also more cautious than female mediators, stopping at threats, where more female mediators went to level 5, hitting, perhaps because males are politically more sensitive, not wishing to appear to condone any level of spousal abuse. The numbers in this study are so small that the statistical analysis is almost useless, but the trend is there.

**Types of Violence.**

Overall, practitioner's individual decisions to mediate or not to mediate seem to depend on whether or not the abuse is reported as cyclical and chronic. This is a very encouraging result, indicating that as a
profession, family mediators from all backgrounds and practice settings are developing a better level of education about spousal abuse. Some participants specifically explained their reasons for choosing a particular scale item as a starting point, based on the circumstances and history of spousal abuse. They cited frequency, duration, circumstances and response of the other party as governing factors when deciding whether to offer mediation, and if offered, where to stop.

Other participants stated that they would really work with each individual situation, and make their decision based on the circumstances and dynamics involved. Almost none would unilaterally refuse to assist clients when there is abuse present in the relationship. Unilateral refusal without really looking at the individuals and circumstances involved was viewed as detrimental to both abused and abuser.

It is important not to be disrespectful to abused spouses attempting to settle family separation issues, to at least discuss service with these clients. There may be an element of increased safety in defusing abusers as well. To encourage them into counselling, to educate them on their rights, they have to be reached.
Evolution of Mediation

It seems, at least with respect to this group of family mediators, that the evolution of mediation with abused clients is proceeding cautiously in the right direction. First and foremost, the abused party, once informed of how mediation and adjudication work, must strongly wish to engage in the process. Then, if the mediator is able to provide a reasonable safety plan and a bail-out scenario with the client's direction and assistance, and if the concurrent assessment of other options such as court (does the abused party have a lawyer?) indicates that the abused party is not overtly disadvantaged, and, finally, the abuser acknowledges his or her abusive behavior, then mediation (or conciliation) may be helpful.

Acknowledgment of abuse by the abuser is a highly desired result, as is counselling before alternate dispute resolution, unfortunately, it is not often forthcoming, and service for the abused party should not be withheld on this basis alone.

Most of all, the entire profession needs to concentrate on continuing and improving education about the different patterns and cycles of violence covered in earlier chapters, and the impact of spousal abuse on all parties, parents and children, to maximize service
to these most conflicted relationships.

**Comparison of Remedies between Different Groups of Mediators**

This last section was intended to explore the difference in practice style, if any, between mediator groups according to background, gender, practice setting, and perceptions of abuse by simply asking the question: What is your opinion of the usefulness of each remedy, with and without spousal abuse present in the relationship?

**Remedies for Conflict with and without Spousal Abuse**

Results using the full sample indicated that almost all remedies were judged more useful in mediation of family separation issues with abuse than without it, with one important exception.

**School-aged Children.**

The exception was including school-aged children in mediation, which was judged significantly more useful without abuse. Overall, remedies involving children had low approval rates by comparison to more conventional tactics, perhaps indicating a professional and societal desire to protect children from the carnage that takes place in the theatre of war that family law has become.

Too many of our children live in that war zone, involving them in peace talks may be of assistance to
all parties, and may have real value for the children, but it seems that, on average, all participants judge this course to be more perilous to child victims of parental warfare than continued silence and non-involvement. That is certainly a less risky choice, and less controversial than publicly supporting this remedy, but it deserves more attention by researchers and practitioners.

With respect to other remedies, breaking the results down into categories for analysis, using gender and professional background provided some interesting contrasts.

**Mediator Gender**

Male mediators found specific breakdowns into leisure time, task time, and so on, to be significantly more useful than did female mediators with and without spousal abuse present in the relationship. This may be an artifact of access difficulties, where the more specific the access, the better it can be enforced under our current system of laws, custom and usage. Alternatively, it could simply be that males in general prefer a more structured approach.

This remedy may also hold more appeal for male mediators than female mediators, as it addresses another
problem that is increasingly prominent in family separation mediation, the allocation of time for the purpose of deciding child support. Child support is still a most contentious issue in family separation, regardless of the Child Support Guidelines, and the breakdown of time between parents is critical to the amount of money paid in support.

Other than this one exception, mediators of both genders were similar in their opinions of the usefulness of targeted remedies. There was more difference, as had been hoped, in the professional background variable.

**Mediator Background**

As stated, until the nine "other" participants were removed from the sample, there were no statistical differences between mental health and legal background categories. Once these nine were removed, statistical differences did appear in three remedies, and a strong trend in a fourth.

**School-aged Children.**

Mental-health mediators in this sample did find the inclusion of children in the mediation significantly more useful than did lawyer- mediators (t(17)=2.73, p<.01), as long as there was no identified abuse in the relationship. This may be an indication of the willingness of mediators from a mental health background
to evolve, and treat the process of mediation as a further opportunity to reach parents and children in a therapeutic and educational way, not simply as a way to arrive at an agreement.

It may also be a reflection of the more inclusive range of identified reasons for requesting mediation that mental-health mediators identified in their client population as compared to reasons identified by lawyer-mediators.

Including children in active mediation is a tool that may assist the child, in very specific circumstances; in the face of parental alienation, protracted access denial and curtailment, during changes in family structure and re-vamping of detailed parenting plans with co-parents, basically on the extreme ends of the spectrum.

Few mediators are comfortable putting children in the middle of a conflict, but it must at times be faced - they live there! Teenagers in particular may benefit from this sort of controlled family conference.

**Parenting after Separation.**

Education of parents involved in family separation is a key element of the new family court integrated program to reach out to struggling families, and mental
health mediators in public practice are an important part of this effort.

Mandatory parenting education was addressed in this survey. Since the design and implementation of this survey instrument, Parenting after Separation courses have become an integral part of the court system, mandatory in some districts, voluntary in others.

All participants in this survey were evenly divided on the appropriateness and usefulness of mandatory parenting education courses without abuse in the relationship. With spousal abuse present in the relationship, mental\health mediators found mandatory education significantly more useful than did lawyer\mediators.

I am not generally in favour of anything mandatory in this field of work. Our struggle is to reach and re-educate, rather than coerce. If a remedy is court ordered, it may be glossed over as yet another bureaucratic hoop, especially in the client population that tends to need this education the most, the less advantaged client who is forced to look to agencies and public servants for assistance in solving family issues.

**Access exchange without abuse.**

The third remedy that showed a statistical difference (t(17)=2.05, p<.05) between mental-health
mediators and lawyer-mediators in relationships without spousal abuse was exchange of children through friends or family members. Lawyer-mediators found this remedy more useful than mental-health mediators, who placed a low priority on this remedy if there was no abuse.

This again may reflect simple experience on the part of the participants in this small sample, who have found that without abuse in the relationship, it is preferable to attempt the education of parents about how it feels to be a child in this situation, and provide tools that can be used by parents to control their own behavior.

One of these is to exchange children in public places, without having to use friends, but rather depending on the social situation to provide a curb on their behavior, and reduce the conflict to which their children are exposed.

Access exchange where there is spousal abuse present is a different story.

**Access exchange with abuse.**

In abuse situations, the use of access exchange and supervised access is considered to be a more useful remedy by mental-health mediators than lawyer-mediators. This, again, may be related to low resources in public
practice, where mental-health mediators concentrate. Private practitioners would seldom be faced with the scenarios that public practice mediators face every day.

This is particularly true at present, as a direct result of the aforementioned cut-backs in service from other government and public agencies working with family separation issues. Nevertheless, the need to facilitate safer access for parents and children in cases of abuse remains a necessary component of family separation in abuse situations.

Unclear Definitions

The last area that deserves mention in this discussion is a tired one, unclear definitions. It was surprising that mediators working in the field of family separation do not share the same vocabulary. They do not have the same understanding of the meaning of core terms and definitions that are used in practice every day. Professional mediators felt it was necessary to clarify these terms, terms that should have been universal and exact within the trade.

Less surprising was the confusion around joint custody, shared custody, co-parenting and parenting plans. Unclear definitions are a pervasive problem everywhere in family separation literature, as has been discussed in preceding chapters.
This problem is reiterated in the work of the Special Joint Committee on Custody and Access (1998), which notes that "...many of the presentations did not make distinctions between shared parenting, joint custody and co-parenting."(p,7). Duryee (1995) also mentions that different semantic origins may affect consensus and discussion in the field of mediation. This is certainly true of participants in this study.

This communication problem needs to be addressed by all professionals working with family separation issues.

**Policy, Practice and Research**

Family law is ailing in this Province. This knowledge is reflected in the perceptions and assessments of the mediators who completed this survey. Reform is desperately needed to improve services and increase options available to families dealing with post-separation parenting disputes.

**Policy**

**Education.**

As a matter of policy, education about parenting skills and the effects of access denial, spousal abuse and conflict in general on all family members needs to be continued and programs improved. Education may be the best way to affect not only personal behavior, but
social policy and the law regarding family separation issues.

**Spousal Abuse.**

We must still find better ways to protect victims of spousal abuse. This paper calls for a differentiated approach to post-separation parenting disputes when spousal abuse is present in the relationship, and stresses the relative lack of real, practical progress within the professions who are called upon to work with this population every day. The special needs of this population group are still not being met.

**Access Denial.**

As a matter of social policy, more attention needs to be paid to the harm done to children and non-residential parents by the denial of access, and to the harm done to children by the failure of non-resident parents to stay involved with their children post-separation. These concerns are clearly reflected in the perceptions and opinions of the mediators who responded to this survey.

**Co-Parenting.**

Co-parenting, when partners are in agreement on sharing, and when the children are able to enjoy the benefits of a close relationship with both parents, is arguably the next best thing to an intact family. There
are many qualifications in this statement, and whether or not we, as professionals, personally agree with this assessment, it is critical as a matter of public policy to continue to stress the exploration of the co-parenting option.

**Practice and Research Recommendations**

Based upon the results herein, three areas are recommended for further investigation. These areas include research on the efficacy of education of service providers and court users about parenting and spousal abuse effects; research into the cause and effect of routine access denial, including the collateral effects in this area of the child support payments; and research on the motivation of parents seeking non-consensual co-parenting, again including the collateral effects of the child support guidelines.

**Education.**

The Provincial Court of British Columbia Family Justice Reform study prepared by Associate Chief Justice Schmidt (1998) already addresses many of the concerns voiced by mediators in this study, and in the population at large, regarding education and other family separation issues.
The new Ministry of Attorney General pilot project, Parenting After Separation (Schmidt, 1998), which may become mandatory in the near future for all persons accessing family court, is specifically aimed at promoting alternate dispute resolution and conflict reduction through education.

It is hoped that better education around the destructive effects of parental conflict on children will collateral reduce the numbers of routine access denial problems and the more severe parental alienation cases.

Sadly, as noted here, and as discussed by Kerr and Jaffe et al (1998), at the National Family Law Program conference, there still appear to be large gaps in philosophy and practice among professional groups working with post-separation parenting disputes about how best to help families who exhibit these intractable behaviors.

More directed, and better education for court users and other professionals dealing with family separation issues may be a more productive focus for training and research than further education of service recipients in this area, and in spousal abuse cases as well.

**Spousal Abuse.**

Conciliation, where the mediator assists parties to
negotiate their settlement through a series of meetings, with one party, then the other, but never both together, is more lengthy than mediation, but it continues to be the most frequent form of alternate dispute resolution in the provincial family court system for families with a history of spousal abuse. When conciliation efforts break down, there is nothing left to offer families in this situation. They are literally at the mercy of the court.

Research and educational development around the handling of spousal abuse cases, particularly related to the demeanor of victims in court would be very useful to practitioners in this area. I would like to see a descriptive survey of reasons why judges in particular make the decisions they do in abuse cases, with a view to developing an educational program that might better reach judges, magistrates and other court users. It is clear that current educational programs are not doing the job.

Aside from problems with remedies for spousal abuse cases, there are consistent problems with remedies for access denial, whether dealt with through mediation or adjudication.
Access Denial.

The accuracy of this concern is reflected in the current focus on effective remedies to enforce access within the court users system. The difficulty has been to find remedies that will not be more harmful to the child\children affected by access interruption than the interruption itself.

The Whiteside (1998) meta-analysis of developmental consequences of post-separation and access disputes in children five years of age and younger highlights the need for consistent, responsive and available caregivers, including both parents and extended family wherever possible. Professional mediators, working within the system, need to ensure that this message gets through to our peers and cohorts, and to parents.

The message is that access interruption and conflict are harmful, and that children thrive within the extended family. The professionals who work with family separation issues have been and will continue to be called upon to design and implement solutions to these concerns. After implementation must come analysis through careful research.

How can we, as a society, inflict punishment upon the perpetrator of access denial in the court system without further damaging the collateral victim, the
child? The answers to this critical question may be better found in the venue of mental health professionals than in the courts. Alternatively, it may be found in the voices of the children themselves. This not very popular choice, involving children in mediation of these recalcitrant issues needs to be explored in research. Having a voice does draw a child into the primary conflict, but hearing the views of the child in a controlled setting may mitigate the terrible pressures that are exerted on children, particularly in parental alienation and access denial cases, to make inappropriate choices, to be manipulated, denied and threatened by parents in an unprotected home situation.

**Co-Parenting.**

As already discussed, co-parenting may be the optimal solution for the healthy outcome of children living with separated parents, provided that both parents wish to work together to raise their children, regardless of the status of their personal relationship.

This may also be an area where the views of the children as to their satisfaction with a shared parenting arrangement could provide very helpful data for researchers in the field of post-separation parenting disputes.
Motivation for co-parenting.

In addition to the positive aspects of co-parenting research, there is a need to explore very carefully the motivation for co-parenting requests when one parent is adamantly opposed to this arrangement. It is especially important to research any correlation between increased demands for shared parenting time and the increased public awareness of the 60\40 rule in the Child Support Guidelines.

It is very discouraging, in practice to find that many parents coming to the table are unduly influenced by the money argument, and quite blatantly refer to "needing 40% at least with the kids". Research conducted on the correlation between the increase in demand for shared parenting and child support disputes would be most helpful to parents and service providers.

This increased demand for more equal time share between parents in a mediated or adjudicated settlement, if it is based largely in a desire to avoid child support, is not necessarily in the best interest of the children. We need research in this area, to either support a change in wording and intent of the child support legislation, or to clarify the state of child support in these cases.

It seems to be a universal misunderstanding that
40% or more time with children equals no child support, and this misunderstanding may be having a severe negative impact on the intent and ideals of true co-parenting situations, undertaken by parents with the best interests of their children in mind.

We need information, not only from families in consenting co-parent situations, but in adjudicated, or coerced situations. To complicate matters, the coerced parent may be a victim of spousal abuse, and control may be the issue, not the best interests of the child.

Conclusion

Family law is based in a desire to serve the best interests of children. The traditional services and methods of family separation settlement are inadequate and ineffective. To improve the system of family law in general, and the range of options available to the service provider and by extension the service user, professionals and academics need to focus policy development and research on problems identified, as the following have been, by service providers working in this field.
REFERENCES


Russell, M. (1988). Wife assault theory, research, and


-177-

15. Summary of methodology and procedures. Note: If your study involves deception, you must also complete page 8, the ‘Deception Form’.

This is a descriptive fixed-method quantitative study, using a self-report survey to compile data. The survey uses Likert scales, and some qualitative questions.

Some of the reasons for access disputes, and remedies suggested are taken from the findings of a study by Pearson & Anhalt (1990), with others compiled from research and personal experience.

The sampling design is purposive. The sampling frame is comprised of the membership list of the Mediation Development Association of British Columbia. A systematic sample with a random starting point in the first ten members will be taken from the membership list on an interval of five after the starting member.

Contact will be by mail, with follow-up two weeks later.

---

**DESCRIPTION OF POPULATION**

<table>
<thead>
<tr>
<th>18. How many subjects will be used?</th>
<th>150</th>
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<tr>
<td>17. Who is being recruited, and what are the criteria for their selection?</td>
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<tr>
<td>Mediators with a minimum of two years experience in family mediation, chosen from the membership list of the Mediation Development Association of British Columbia.</td>
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<td>18. What subjects will be excluded from participation?</td>
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<tr>
<td>Non-practicing members of the Association, those who have practiced for less than two years, or who do not practice family mediation.</td>
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<td>19. How are the subjects being recruited? If the initial contact is by letter or if a recruitment notice is to be posted, attach a copy. NOTE that UBC policy discourages initial contact by telephone. However, surveys which use random digit dialing may be allowed. If your study involves such contact, you must also complete page 8, the 'Telephone Contact' form.</td>
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<tr>
<td>Recruitment will be by mail. A copy of the survey, plus covering letter will comprise the initial contact. A reminder postcard will be sent in two weeks to stimulate return. No telephone contact is expected.</td>
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</table>
20. If a control group is involved, and if their selection and/or recruitment differs from the above, provide details:

n/a

PROJECT DETAILS

21. Where will the project be conducted? (room or area)  
n/a

22. Who will actually conduct the study and what are their qualifications?

Melody B. Saunders, B.A., BSW, MSW candidate.

23. Will the group of subjects have any problems giving informed consent on their own behalf? Consider physical or mental condition, age, language, and other barriers.

The participants are adult professionals, and this is an opinion survey. There are no problems with informed consent.

25. What is known about the risks and benefits of the proposed research? Do you have additional opinions on this issue?

This is a survey of professional opinions, there should be no therapeutic concerns.

The benefits of this study will be in specific intervention development, and hopefully, an extension of the general knowledge base for this topic.

26. What discomfort or incapacity are the subjects likely to endure as a result of the experimental procedures?

Completion of a mailed survey is a voluntary act. There will be no incapacity, and presumably no discomfort.
27. If monetary compensation is to be offered to the subjects, provide details of amounts and payment schedules:

28. How much time will a subject have to dedicate to the project?
   Approximately 20 minutes.

29. How much time will a member of the control group, if any, have to dedicate to the project?

DATA

30. Who will have access to the data?
   Student investigator, faculty advisor(s)

31. How will the confidentiality of the data be maintained?
   Identification numbers will be assigned to the surveys prior to mailing, and lists of names associated with identification numbers will be kept in a separate cabinet, and destroyed with the data upon completion of the study.

32. What are the plans for the future use of the raw data beyond that described in this protocol? How and when will the data be destroyed?
   None. At completion of study in September, 1996, data will be destroyed.

33. Will any data which identifies individuals be available to persons or agencies outside the University?
   No

34. Are there any plans for feedback to the subject?
   Results of the study will be available to participants upon request.

35. Will your project use:
   - [x] Questionnaires (Submit a copy);
   - [ ] Interviews (Submit a sample of questions);
   - [ ] Observations (Submit a brief description);
   - [ ] Tests (Submit a brief description).
INFORMED CONSENT

37. Who will consent?

☒ Subject.

☐ Parent/Guardian. (Written parental consent is always required for research in the schools and an opportunity must be presented either verbally or in writing to the students to refuse to participate or withdraw. A copy of what is written or said to the students should be provided for review by the Committee.)

☐ Agency Official(s).

38. In the case of projects carried out at other institutions, the Committee requires written proof that agency consent has been received. Please specify below:

☐ Research carried out in a hospital - approval of hospital research or ethics committee.

☐ Research carried out in a school - approval of School Board and/or Principal. (Exact requirements depend on individual School Boards; check with Faculty of Education Committee members for details.)

☐ Research carried out in a Provincial Health Agency - approval of Deputy Minister.

☐ Other, specify:

QUESTIONNAIRES (completed by subjects)

39. Questionnaires should contain an introductory paragraph which includes the following information. Please check each item in the following list before submission of this form to ensure that the instruction contains all necessary items:

☒ UBC letterhead.

☒ Title of the project.

☒ Identification of the investigators, including a telephone number.

☒ A brief summary that indicates the purpose of the project.

☒ The benefits to be derived.

☒ A full description of the procedures to be carried out in which the subjects are involved.

☒ A statement of the subject’s right to refuse to participate or withdraw at any time without jeopardizing further treatment, medical care or class standing as applicable. Note: This statement must also appear on explanatory letters involving questionnaires.

☒ The amount of time required of the subject must be stated.

☒ The statement that if the questionnaire is completed it will be assumed that consent has been given.

☒ Assurance that identity of the subject will be kept confidential and description of how this will be accomplished.

☒ For surveys circulated by mail submit a copy of the explanatory letter as well as a copy of the questionnaire.
CONSENT FORMS

40. UBC Policy requires written consent in all cases other than questionnaires which are completed by the subject. (See Item #39 for consent requirements.) Please check each item in the following list before submission of this form to ensure that the written consent form attached contains all necessary items. If your research involves initial contact by telephone, you do not need to fill out this section.

☐ The consent form must be on UBC Letterhead.

☐ Title of project.

☐ Identification of investigators, including a telephone number. Research for a graduate thesis should be identified as such and the name and telephone number of the Faculty Advisor included.

☐ Brief but complete description in lay language of the purpose of the project and of all procedures to be carried out in which the subjects are involved. Indicate if the project involves a new or non-traditional procedure whose efficacy has not been proven in controlled studies.

☐ Assurance that the identity of the subject will be kept confidential and description of how this will be accomplished.

☐ Statement of the total amount of time that will be required of a subject.

☐ Details of monetary compensation, if any, to be offered to subjects.

☐ An offer to answer any inquiries concerning the procedures to ensure that they are fully understood by the subject and to provide debriefing, if appropriate.

☐ A statement of the subject’s right to refuse to participate or withdraw at any time and a statement that withdrawal or refusal to participate will not jeopardize further treatment, medical care or influence class standing as applicable. Note: This statement must also appear on letters of initial contract. For research done in the schools, indicate what happens to children whose parents do not consent. Note: The procedure may be part of classroom work but the collection of data may be pure for research.

☐ A statement acknowledging that the subject has received a copy of the consent form including all attachments for the subject’s own records.

☐ A place for signature of subject consenting to participate in the research project, investigation, or study and a place for the date of the signature.

☐ Parental consent forms must contain a statement of choice providing an option for refusal to participate. (e.g. “I consent / I do not consent to my child’s participation in this study.”) Also, verbal assent must be obtained from the child, if the parent has consented.

☐ If there is more than one page, number the pages of the consent, e.g. page 1 of 3, 2 of 3, 3 of 3.

ATTACHMENTS

41. Check items attached to this submission, if applicable. Incomplete submissions will not be reviewed.

☐ Letter of Initial contact. (Item 19)

☐ Advertisement for volunteer subjects. (Item 19).

☐ Subject consent form. (Item 40).

☐ Control group consent form. (If different from above)

☐ Parent/guardian consent form. (If different from above)

☐ Agency consent. (Item 38)

☐ Questionnaires, tests, interviews, etc. (Item 35)

☐ Explanatory letter with questionnaire. (Item 39)

☐ Deception Form. (Including a copy or transcript of written or verbal debriefing)

☐ Telephone Contact Form.

☐ Other, specify:
DECEPTION FORM

If your study involves deception, complete items 1 to 3. If not, skip to the next page.

1. Deception undermines informed consent. Indicate (a) why you believe deception is necessary to achieve your research objectives, and (b) why you believe that the benefits of the research outweigh the cost to the subjects:

2. Explain why you believe there will be no permanent damage as a result of the deception:

3. Describe how you will debrief subjects at the end of the study:
If your study involves telephone contact, complete items 1 to 3. If not, skip to the next page.

1. Telephone contact makes it impossible for a signed record of consent to be kept. Indicate why you believe that such contact is necessary to achieve your research objectives:

   - Telephone contact makes it impossible for a signed record of consent to be kept. Indicate why you believe that such contact is necessary to achieve your research objectives:

2. Include a copy of the proposed 'front end' script of your telephone interview. Please check each item on the following list before submission of request for review to ensure that the front end covers as much as possible of the normal consent procedures:
   - Identification of fieldwork agency, if applicable.
   - Identification of researcher.
   - Basic purpose of project.
   - Nature of questions to be asked, especially if sensitive questions are to be asked.
   - Guarantee of anonymity and confidentiality.
   - Indication of right of refusal to answer any question.
   - An offer to answer any questions before proceeding. (See below, Item 3)
   - A specific inquiry about willingness to proceed.

3. Indicate how interviewers will be trained to answer respondents' questions. Investigators should prepare and submit 'scripted replies', which may cover, but are not necessarily limited to:
   - Means by which respondent was selected.
   - An indication of the estimated time to be required for the interview.
   - The means by which guarantees of anonymity and confidentiality will be achieved.
   - An offer to provide the name and telephone number of a person who can verify the authenticity of the research project. This person shall not be the Research Administration Officer or any person in the Office of Research Services and Administration. (Note: Investigators should be prepared, should potential respondents request it, to provide the name of a person outside the research group, as required by Section 9 of the SSHRC guidelines.)

4. Sensitive Subject Matter. Respondents should be forewarned of such questions. It is not always practical to do so as part of the interview's front end. Warnings can be placed later in the interview and can take a naturalistic form as long as their content specifically refers to the sensitive matter. Indicate how you propose to deal with sensitive items, if any, in your interview.
Section I: DEMOGRAPHIC INFORMATION

This information provides a context in which to interpret the study's results. Please circle the number beside the appropriate response, or place a check in the appropriate spot.

Gender: Male____ Female____

Professional Background:

Practice setting: (max. 2 responses) Circle number(s).
1. Court based
2. Government
3. Non-profit agency
4. Private practice
5. Other__________
   (please specify)

Professional training: (max 2 responses) Circle number(s).
1. Social worker
2. Psychologist
3. Lawyer
4. Other__________
   (please specify)

Type of Family Issues Mediated:
1. Separation and Divorce
2. Access and custody
3. Financial and property
4. Comprehensive (all of the above)
5. Other__________
   (please specify)

Percentage of practice devoted to family mediation____%

Practice Location: __________________________ City, Town or Area

Years in practice: ___________________________

Section II: REASONS FOR CONFLICT

Below, you will find a list of common access complaints or parenting concerns voiced by parents requesting, or involved in, mediation. The list is divided into three sections: complaints voiced by NON-RESIDENTIAL PARENTS, RESIDENTIAL PARENTS, and CO-PARENTS.

You will also find a scale with choices from 0% (0) to 100% (10). In the blank beside each statement, please place the number from the scale that best represents your OPINION as to what PERCENTAGE of your NON-RESIDENTIAL PARENTS, RESIDENTIAL PARENTS or CO-PARENTS, respectively, cite EACH REASON as a factor in requesting mediation for access complaints or parenting concerns.
COMPLAINTS/CONCERNS VOICED BY NON-RESIDENTIAL PARENTS:

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<td>1.</td>
<td>Residential parent denies access.</td>
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<td>2.</td>
<td>Residential parent does not allow makeup visits for legitimate misses.</td>
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<td>3.</td>
<td>Residential parent instigates fights during pickup or drop-off of children.</td>
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<td>5.</td>
<td>Non-residential parent wants more specific details included in access order.</td>
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<td>6.</td>
<td>Non-residential parent wants modification of existing access order.</td>
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<td>7.</td>
<td>Residential parent changes access schedule frequently and arbitrarily.</td>
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<td>8.</td>
<td>Residential parent does not permit or restricts non-residential parent\child telephone contact.</td>
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<td>9.</td>
<td>There is alcohol abuse in residential parent's home.</td>
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<td>10.</td>
<td>Child\children are physically abused in residential parent's home.</td>
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<td>11.</td>
<td>Child\children are psychologically abused in residential parent's home.</td>
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<td>12.</td>
<td>Child\children are sexually abused in residential parent's home.</td>
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<td>13.</td>
<td>Residential parent's new partner is a problem.</td>
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<td>15.</td>
<td>Residential parent does not adequately oversee child\children's school performance (attendance and homework).</td>
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Other complaints/concerns not listed? Please identify and indicate percentage: ____________________________
COMPLAINTS/CONCERNS VOICED BY RESIDENTIAL PARENTS:

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16. _____ Non-residential parent does not exercise access rights.

17. _____ Non-residential parent cancels planned visits without sufficient notice.

18. _____ Children do not want to visit non-residential parent.


20. _____ Non-residential parent instigates fights during pickup and drop-off of children.

21. _____ Non-residential parent is in arrears on child maintenance payments.

22. _____ Non-residential parent spends money on children inappropriately during visits.

23. _____ Non-residential parent wants modification of existing access order.

24. _____ Non-residential parent changes access schedule frequently and arbitrarily.

25. _____ Non-residential parent restricts residential parent's telephone contact.

26. _____ Non-residential parent does not adequately oversee child/children's school performance (attendance and homework) during visits.

27. _____ There is alcohol abuse in non-residential parent's home.

28. _____ Child/children are physically abused in non-residential parent's home.

29. _____ Child/children are psychologically abused in non-residential parent's home.

30. _____ Child/children are sexually abused in non-residential parent's home.

31. _____ Non-residential parent's new partner is a problem.
Other complaints\concerns not listed? Please identify and indicate percentage:


COMPLAINTS\CONCERNS VOICED BY CO-PARENTS (those who share physical and legal custody):

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<th>0%</th>
<th>10%</th>
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<th>80%</th>
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<tr>
<td>34.</td>
<td>Co-parent changes schedule frequently and arbitrarily.</td>
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<td>35.</td>
<td>Co-parent wants modification of co-parenting agreement.</td>
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<td>36.</td>
<td>Co-parent restricts telephone contact of other co-parent when children are in his\her residence.</td>
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<td>37.</td>
<td>Other co-parent's partner is a problem.</td>
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<td>38.</td>
<td>Child\children are unhappy with co-parenting arrangement.</td>
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<td>39.</td>
<td>There is alcohol abuse in other co-parent's home.</td>
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<td>40.</td>
<td>Child\children are physically abused in other co-parent's home.</td>
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<td>41.</td>
<td>Child\children are sexually abused in other co-parent's home.</td>
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<td>42.</td>
<td>Child\children are psychologically abused in other co-parent's home.</td>
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<td>43.</td>
<td>Co-parent does not adequately oversee child\children's school performance (attendance and homework).</td>
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<td>44.</td>
<td>Co-parent spends money on child\children inappropriately.</td>
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Section III: SPOUSAL ABUSE and MEDIATION

A. Whether or not to mediate when the parties identify spousal abuse in the relationship is a controversial issue in the field of family mediation.

Using the following abusive behaviours taken from the Conflict Tactics Scale (Strauss), at what point on this continuum of abusive behaviours would you unilaterally decline to mediate parental conflicts? (circle the number).

Excerpt from CONFLICT TACTICS SCALE

1. Insulting, yelling or swearing at other parent.
2. Threatening to hit or throw something at other.
3. Throwing, smashing or hitting inanimate things.
4. Pushing, grabbing or shoving the other parent.
5. Slapping, kicking, biting other parent.
6. Hitting other parent with fists.
7. Threatening other parent with a weapon.
8. Using a weapon against other parent.

B. IN THIS SURVEY, spousal abuse is defined as "the use or threat of physical, psychological, emotional or economic intimidation, coercion or force...to secure power and control for the abuser." (Toronto Forum on Woman Abuse and Mediation, 1993, p.3).

1. In your opinion, approximately what percentage of couples in the general population requesting family mediation are involved in a spousal abuse situation? __________%.

2. In your opinion, approximately what percentage of clients requesting your services for family mediation are involved in a spousal abuse situation? __________%.

3. What percentage of your family mediation clients acknowledge spousal abuse in their relationship? __________%.
Section IV: REMEDIES FOR CONFLICTS

This section of the survey is intended to seek your professional opinion of the utility of certain interventions for parents involved in access, custody and parenting disputes, both with and without spousal abuse present in the relationship.

Below you will find a list of interventions for assisting conflicted parents with PARENTING DISPUTES. You are asked to respond by circling one of the following for each intervention:

1. Strongly disagree (SD)  2. Mildly disagree (MD)  3. Mildly Agree (MA)  4. Strongly Agree (A)  5. Don't Know (DK)

Please read each of the statements and then circle the number of the response that best represents how strongly you agree or disagree with the POTENTIAL USEFULNESS of EACH intervention in resolving access or co-parenting disputes, first with spousal abuse in the relationship, second without spousal abuse in the relationship.

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(SD)</td>
<td>(MD)</td>
<td>(MA)</td>
<td>(SA)</td>
<td>(DK)</td>
</tr>
</tbody>
</table>

1. Usefulness of replacing vague "reasonable access" Orders with detailed access schedules.
   1 2 3 4 5 (a) with spousal abuse in relationship.
   1 2 3 4 5 (b) without spousal abuse in relationship.

2. Usefulness of "no contact" parental exchanges of children for access using friends and/or relatives (parents do not meet, children are left with friend/relative by one parent and retrieved by the other parent at a later time).
   1 2 3 4 5 (a) with spousal abuse in relationship.
   1 2 3 4 5 (b) without spousal abuse in relationship.

3. Usefulness of "no contact" parental exchanges of children using independent professional agencies (parents do not meet, children are left at the agency by one parent, retrieved from the agency by the other parent at a later time).
   1 2 3 4 5 (a) with spousal abuse in relationship.
   1 2 3 4 5 (b) without spousal abuse in relationship.

4. Completion of detailed individual calendars for dividing special holidays, birthdays, etc., by both parents for up to two years' duration.
   1 2 3 4 5 (a) with spousal abuse in relationship.
   1 2 3 4 5 (b) without spousal abuse in relationship.
5. Breakdown of children's schedules into overnight stays, weekend stays, other leisure time activities and daily task time activities which the child\children performs (like school days), to assist parents to more equitably divide actual time spent with the child\children.
1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.

6. Referral to individual or family counselling.
1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.

7. Actively including school age children in mediation sessions to facilitate agreement by refocusing on children's needs.
1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.

8. Usefulness of the presence of pre-school children in mediation sessions to facilitate co-operation and refocus on children's needs.
1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.

9. Use of male\female mediator teams.
1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.

10. Exchange of children\parenting meetings held in public places.
1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.

1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.

12. Individual caucusing between mediator and either parent to discuss any concerns.
1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.

13. Individual meetings between mediator and school age child\children to discuss concerns child\children may have.
1 2 3 4 5 (a) with spousal abuse in relationship.
1 2 3 4 5 (b) without spousal abuse in relationship.
   1 2 3 4 5 (a) with spousal abuse in relationship.
   1 2 3 4 5 (b) without spousal abuse in relationship.

15. Use of shuttle mediation.
   1 2 3 4 5 (a) with spousal abuse in relationship.
   1 2 3 4 5 (b) without spousal abuse in relationship.

16. Regularly scheduled follow-up to mediation to keep agreement current.
   1 2 3 4 5 (a) with spousal abuse in relationship.
   1 2 3 4 5 (b) without spousal abuse in relationship.

17. Mandatory participation in a parent divorce education program prior to mediation.
   1 2 3 4 5 (a) with spousal abuse in relationship.
   1 2 3 4 5 (b) without spousal abuse in relationship.

Other strategies? Please describe:

_________________________________________________________
_________________________________________________________
_________________________________________________________
_________________________________________________________
_________________________________________________________

Thank you for taking the time to respond to this survey. Your participation in this research is a valuable and appreciated contribution. I will forward a copy of the completed study upon request. Your comments re mediation and spouse abuse are appreciated:
APPENDIX G

Coding for thesis data

Demographic Codes.

Gender: male = 1
   female = 2

Professional background:

a) Practice Setting: court based = 1
   government = 2
   non-profit agency = 3
   private practice = 4
   other = 5

b) Professional training: social worker = 1
   psychologist = 2
   lawyer = 3
   other = 4

Type of family issues mediated:
   separation and divorce = 1
   access and custody = 2
   financial and property = 3
   comprehensive (all
   of the above) = 4
   other (specify) = 5

Percentage of practice devoted to mediation
(actual)

Practice location:

Metropolitan Vancouver, (includes
all cities and municipalities listed
in Vancouver telephone directory) = 1

Fraser Valley and South B.C. includes
South Okanogan = 2

Vancouver Island = 3

Gulf Islands and BC Coast = 4

Interior and Northern BC (including
North Okanogan) = 5
Years in practice (actual)

**Spouse abuse and Mediation**

CTS 1 column

Questions:
1. (percentage of general pop'n
2. (percentage of client pop'n
3. (percentage of acknowledged clients

**Coding Rules**

a) where two consecutive responses are made, the higher response will be coded.

b) where three consecutive responses are made the middle response will be coded.

c) 0's are meaningful, missed information is left blank in the data.

d) 5 (don't know) in remedies section is left blank in coding, ie. "coded as none-response".

e) where years in practice has a multiple response for different professions (ie: lawyer x years, mediator x years), the time as a mediator is coded.

f) where percentage results are used, the middle response is chosen, eg: 70-80% is coded as 75%.

g) where percentage responses are not rounded to the nearest 5% interval by the participant. the response is raised to the nearest 5% interval. eg: 77% is coded as 80%.

**Recoding rules for data analysis**

g) to collapse practice settings, recode court-based (1), government (2) and non-profit (3) as 1=public practice; recode private (4) as 2=private practice; recode other (5) on an individual basis into 1 or 2.
h) to collapse professional background categories, recode social worker (1) and psychologist (2) as 1=mental health background; recode lawyer (3) as 2=legal background; recode other (4) on an individual basis as follows: mental health background includes family court counsellors, education and ministerial; legal background includes business.
APPENDIX H

Raw data: qualitative

Written comments and responses (ID # of participant precedes comments)

Section II - Reasons for Conflicts

A. Non-residential parents:

(2) - residential parent of 7-12 year olds leaves them unattended, home alone (40%); daily nutrition of child not to non-res parent's satisfaction (20%); supervision/discipline are inadequate (60%); children are not adequately clothed (40%).

(8) - residential parent relocating children (40%).

(9) - residential parent treats other parent as babysitter (70%). Residential parent does not inform other, or include in school, health, religious issues/concerns (90%).

(13) - relative to alcohol abuse, "this is a factor in separation, rather than a reason for request"

(15) - loss of affection between child and non-res parent (4%). Loss of contact between non-res parent's extended family and child (4%).

(16) - notes that with respect to items 10,11 + 12 [physical, psychological + sexual abuse of child\children respectively]: takes this as not to include one-time incidents which don't indicate a pattern of abuse. The answers are zeros here because "I take this question to mean i people come to me for mediation, I refer them to a counselling and\or a lawyer if these issues crop up."

(17) - notes that with respect to items 11 (psychological abuse) that "this is my belief about all children [that they are psychologically abused].
- visitation with extended family (10%)
(18) - in child protection work, interference of Ministry (8%).

(21) - notes that many people have more than one (reason).

(24) - visiting hours, particularly school nights (2%), discipline differences and other parenting issues (3%).

B. Residential parents:

(2) - no discipline and insufficient supervision (80);
indulges child with junk food/candy/pop. (80%);
allow child to watch TV or movies inappropriate to age group 80%); involvement of friends or relations considered a "bad influence" (50%).

(6) - residential parent doesn't know how much to push when a child doesn't want to visit non-residential parent as they get blame for child's decision and feel compelled to follow orders.

(8) - non-residential parent making guardianship decisions during access periods (40%).

(9) - other parent does not equally share parenting responsibility/planning.

(13) - more money spent by non-res parent for "luxuries" (40%).

(14) - non-residential parent threatens to not exercise access.

(15) - notes re: 27 (alcohol abuse) that it declines over time.

(17) - need to vary child support due to non-residential parent not taking children as planned.

(20) - non-residential parent does not share spontaneously in clothing, sports or footwear items child needs and verbally abuses residential parent over these issues (4%).
(24) - non-residential parent does not administer medication (2%), does not follow special diet (1%), gives child too much junk food (1%).

C. Co-parents:

(2) - transportation between co-parent's home is unequal (40%).

(8) - concerns with either parent's failure to support parenting style (70%).

(11) - "these are rare cases, we don't see many."

(15) - notes that re: 31 (bad-mouth during exchanges), that this depends upon the length of the co-parenting relationship after separation (does she mean recency?).

(15) - child\children have increasingly difficult time sustaining a 'family relationship', getting in as part of the family, with father's new family and/or mother's new family - may be seen as an 'outsider' in either home. Never completely, unequivocally belongs.

(17) notes that joint custody usually has one parent in control by primary residence, therefore my responses are contained in the preceding 31 questions. None of my clients have total 50\50 time.

(24) - differences in discipline (2%).

SECTION III - SPOUSAL ABUSE AND MEDIATION

* (11) notes" you need to understand that the definition of mediation varies from person to person. I am differentiating between mediation and conciliation here. Conciliation can be regarded by some as shuttle mediation, but I regard it as seeing couples separately."

CTS excerpt-

(2) - states that 2 on the scale (threatening) is acceptable only if it's an isolated or rare instance; and 3 (throwing inanimate objects) is acceptable only if abuser is inciteful, and wanting or getting counselling.
(6) - states 2 on scale only acceptable if access is in process already, discontinue at 4 regardless.

(11) - states that "it depends on dynamics [where to quit]."

(13) - states that "can't answer question because:
(a) I don't know whether you mean during mediation or outside mediation.
(b) I don't know whether the parents are living apart already.
(c) whether there are new partners.
(d) whether the abused party genuinely wants to mediate, ditto the abuser.
(e) whether the parties feel safe in their environments.
(f) whether there is a restraining order
(g) whether abuse is current or historical, and if later, when?
(h) these [above listed] factors might affect my decision, or how I would design the process.

(16) - gave information re: CTS stages, she would stop mediation at level 1 if part of a pattern of abuse; level 2 or level 3 if repeatedly occurs, level 5 if a one time incident.

(18) - would stop mediation at level 4, depending upon the frequency, circumstances and response of other parent.

(21) - states "I don't unilaterally decline. I work with the victim to see if safety can be created."

(22) - states "need to distinguish between mediation (face to face) and conciliation (separate meetings). I cannot respond to the CTS section given this criteria alone."

(23) - states that level 2 would be a stopping point unless they were in caucus, level 3 is final.

QUESTIONS:

related to operational definition of spousal abuse = (9) asks "do you mean wife assault or abuse by either spouse."
(13) states that questions are answered using the operational definition.
(14) notes that "this definition is a bit broad for me - I've never seen a conflicted family breakdown that did not include abuse according to this definition.

1. (15) states "it is not clear to me what the difference between these two [item B1 and B2] are. In reality, there are signs of various forms of spousal abuse in 9 out of 10 mediation sessions. In about 2% of these, the spousal abuser is the woman. Given this reality, I will most definitely continue to provide mediation services for all clients including spousal abuse cases."
(19) - "no idea".
(20) - "item B[1] is not clear to me so the percentage may not be relevant. Are you asking what percentage of spousal abuse relationships occur in the general population?"
(21) - "If you include level one in the CTS, its 100%, otherwise, its 40% (coded as written - 100%).

2. (18) - states "percentage figures not including child protection work".

3. (2) - states 0% report abuse at the beginning.
(7) - wording of question is not clear to me. call me to clarify at 538-2149.
(9) - states "this question is unclear, - at what stage?"
(13) - states that "clients usually use the word control, rather than abuse."
(15) - notes that abuse cases are referred to lawyer\counsellors.
(17) - states "[my clients] never [acknowledge] in this language...they do acknowledge the behavior.
(21) - "usually only the victims [report]."

SECTION IV - REMEDIES FOR CONFLICT

(9) states in the introduction that "I do not mediate where there is wife assault present or in recent history."

remedy # 2 = usefulness of "no contact" exchanges for access, using friends\relative: (18) - depending upon likelihood of threats, relationship, etc. (19) - I call this the 'parking lot' meeting solution.
remedy # 3 = usefulness of replacing vague "reasonable access orders" with specific schedules: (7) - only if no other options are available. (26) - proper when any abuse re: access has occurred.

remedy # 4 = detailed individual calendars for special holidays: (26) can be useful depending on issues.

remedy # 5 = breakdown of children's schedules into overnight, weekend, leisure and daily task times: (18) - notes "with adequate exploration so that this is not a set-up for failure. (26) - in cases where this is an issue.

remedy # 6 = referral to individual or family counselling: -(7) - only if needed. (9) - only as needed. (26) - not together, useful depending on issues.

remedy # 7 = actively including school age children: (6) states that this depends on too many factors. (13) states that answer assumes both parents are present, and that it depends upon the children, wouldn't if it made it harder for the children at home. (18) - depends. (21) - include only on day of agreement, separately before agreement is reached.

remedy # 8 = usefulness of preschool children: (2) states it depends upon age and circumstances of children, nature of agreement and stage of resolution. (18) - depends.

remedy # 9 = use of male\female mediator teams: (7) - great if you can but not necessary. (13) - states that expense being the main problem in private sector, otherwise would be 4's. (15) - the common practice of using female\male mediation teams begs the question of the competency of the mediator[s]. Techniques such as maintaining focus on issues maintain control of the mediation process and repetition of the guidelines provides the extra security both parties need. (16) - states she "worked with a male mediator - gender parity is good in theory, but not always good in practice with people in conflict, sometimes it confuses people. (26) - mildly useful if they work well as a team.

remedy # 10 = exchange of children\parenting meetings held in public places: (7) - not necessary [for non-abusive relationships].
remedy # 12 = individual caucusing: (2) states "useless unless it is a financial counsellor." (3) states "use of conciliation combined with safety plans, advocates and the legal system is useful in abusive situations." (26) - essential for violent relationships.

remedy # 13 = individual meetings between mediator and school age children: (6) states that safety my be a concern, does not specify whether it is safety of child or mediator. (26) - can be helpful with violence, if necessary use during non-violent.

remedy # 14 = regularly scheduled parenting meetings facilitated by mediator: (7) - only if necessary. (16) - with spousal abuse, these meetings should be facilitated by a lawyer\counsellor or a judge on a periodic basis. (18) - "perhaps during initial term of agreement." (21) - very helpful, usually too expensive. (26) - can be helpful if an issue

remedy # 15 = use of shuttle mediation: (7) asks if this tactic is "for the whole process, or just as one strategy?" (21) - essential with violence, can be very helpful with non-violence. (26) - essential in viol. rel.

remedy # 16 = regularly scheduled follow-up to mediation to keep agreements current: (16) - again with lawyer\counsellor\judge. (21) - essential with violence, very helpful without. (26 - often helpful.

remedy # 17 = mandatory participation in parent divorce education: (16) states "mediator can come into play with abuse after counselling. (18) - depends. (19) - "I'd like to see such a program as the attempt to mediate in the atmosphere of hurt and mistrust is usually slow, painful and marginally successful." (21) - very important for violence, can be helpful without. (26) - I don't like the concept -don't think it's helpful if mandatory.

New Remedies suggested:

(3) - "use of conciliation combined with safety plans, advocates and the legal system is useful in abuse situations."
(8) - "provision of full orientation to family justice system and range of remedies is critical knowledge for both parties."

(14) - "all of these strategies are very useful in some situations and not required in others, but none of them will always be useful or not useful."

(16) - "court appearance (lawyer), scheduled visits, and a program where recognition or ownership of the abuse starts to happen for the offenders, ie, when safety is no longer an issue for victims of abuse, and/or co-spouse or children, abuse of mother to child etc."

(20) - in the case of spousal abuse in the relationship, frequent reminders of the rules or guidelines of mediation to keep both clients on track - overlooking profanity or foul language outbursts occasionally."

GENERAL COMMENTS:

(2) - "the answer to many questions depends on the degree and kind of abuse, the nature and extent of the dispute and the personalities, insights of the participants. Children of all ages can and should be involved at an appropriate time in the process. They can be very insightful and creative of solutions."

(6) - "I am not sure how helpful these answers will be - experience is based more on parent-teen mediation and work mostly with residential parent and children (not court\agreement based)."

(7) - "This questionnaire was difficult to answer or respond to because pg. 3,4,5 . I may not know what is truly happening in the different home(s). I found myself guessing because one parent may complain about the other parent but you never really know what has happened. I try to ensure that the arrangements made for the kids are safe and practical."

(8) - "It is critical to assess each couple individually, prior to any mediation. Power balancing will be a key factor after assessing issues of client safety. Hard and fast rules fail the clients."
(11) - states "some of the questions are problematic for me because we have strong guidelines and my personal views are that caution is mandatory in spousal abuse - we aim for safety and protecting the best interests of the children."

(13) - states "As usual with surveys of this type, it's not really meaningful as the answers all depend on the circumstances of each situation, and the mediator will answer on the basis of imagining a situation (ie. - assumptions). There are no "right" answers in generalities."

(14) - states "In situations where I consider there is "spousal abuse" ie: a very one-sided, continuous power imbalance which results in one party being afraid of the other. I wouldn't mediate unless and until the party in fear was past it."

(17) - states "Keep in mind that there is a continuum of abuse and that, in some marriages, there is also a wide range of abuse, eg. situational, episodic male battering, female initiated violence, male controlling by practice of violence, and psychotic\paranoid."

(18) - states "Because so much of the way we deal with spousal abuse issues in mediation is dependent upon the mediator's values, experiences and perceptions, I found it difficult to answer some of these questions. In many cases, special consideration[s] is\are necessary. I treat each case on its own."

(19) - states "I am reluctant to engage in mediation where there is a history of spousal physical abuse (usual attitude is 'she just won't f..ing listen'), or allegations of child abuse, physical or sexual."

(22) - states "There are too many variations or definitions and behaviors to generalize to the degree that you have requested. I wouldn't want to mislead you by my response."

(24) - states "In situations involving physical violence, my experience is that parents do not want to be involved in mediation, neither the perpetrators or the victims."
(26) - I use many of these strategies where it's necessary, not in all cases. I have used 3 in most answers because I use it where appropriate. The way this survey is set up makes me nervous - I think it would be hard to make generalizations from answers.

I rarely agree to mediate when spousal abuse is an issue - in any case. I usually will 'conciliate' more than mediate where the spousal dynamics are problematic. Most of my cases where I had this allegation present were in my practice as Family Court Counsellor or Conciliation Counsellor - [violence allegations] are rare in private practice, I've found.

(28) - Oddly, I see far more abuse by the female towards the male than the reverse; male caused abuse however is usually more violent.
APPENDIX I

TABLE 5. - MEAN DIFFERENCE SCORES BETWEEN BS\LGL\MEDIATORS AND MH\MEDIATORS: NON-RES\PARENTS REASONS FOR CONFLICT

<table>
<thead>
<tr>
<th>Reason</th>
<th>MH\M</th>
<th>Law\M</th>
<th>Mean Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>M SD</td>
<td>M SD</td>
<td>MDS SE df t</td>
</tr>
<tr>
<td>RP denies access</td>
<td>3.2  2.4</td>
<td>2.2  2.4</td>
<td>1.83 .8 27 1.17</td>
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<tr>
<td>No makeup visits</td>
<td>2.4  2.0</td>
<td>2.1  2.5</td>
<td>.29 .8 22 .35</td>
</tr>
<tr>
<td>RP instigates fights</td>
<td>3.2  1.6</td>
<td>2.6  2.5</td>
<td>.63 .7 20 .79</td>
</tr>
<tr>
<td>Rp badmouths NRP</td>
<td>4.7  2.2</td>
<td>3.3  2.4</td>
<td>1.33 .8 27 1.56</td>
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<tr>
<td>NRP wants spec. access order</td>
<td>3.4  3.2</td>
<td>3.6  2.2</td>
<td>.24 1.0 26 .20</td>
</tr>
<tr>
<td>NRP wants change to access order</td>
<td>4.4  3.0</td>
<td>5.6  1.9</td>
<td>1.20 .9 28 1.26</td>
</tr>
<tr>
<td>RP changes access frequently</td>
<td>3.1  2.2</td>
<td>3.6  1.9</td>
<td>.45 .8 28 .58</td>
</tr>
<tr>
<td>RP denies\restrict telephone contact</td>
<td>3.0  1.6</td>
<td>2.1  1.5</td>
<td>.85 .6 28 1.49</td>
</tr>
<tr>
<td>Alcohol abuse \RP home</td>
<td>2.2  2.3</td>
<td>1.4  1.4</td>
<td>.82 .7 25 1.18</td>
</tr>
<tr>
<td>Child physically abused\RP's home</td>
<td>1.0  1.3</td>
<td>.3  .5</td>
<td>.64 .3 20 1.81</td>
</tr>
<tr>
<td>Child psychol. abused\RP's home</td>
<td>2.4  1.6</td>
<td>1.6  1.9</td>
<td>.79 .7 25 1.19</td>
</tr>
<tr>
<td>Child sexually abused\RP's home</td>
<td>.7   1.1</td>
<td>.6  1.3</td>
<td>.09 .4 25 .20</td>
</tr>
<tr>
<td>RP's new partner is a problem</td>
<td>4.5  2.9</td>
<td>2.8  2.3</td>
<td>1.70 1.0 28 1.75n</td>
</tr>
<tr>
<td>RP misuses child maintenance funds</td>
<td>3.7  2.9</td>
<td>3.2  3.2</td>
<td>.53 1.1 27 .48</td>
</tr>
<tr>
<td>RP does not oversee school</td>
<td>2.6  2.4</td>
<td>2.1  1.9</td>
<td>.41 .8 27 .51</td>
</tr>
</tbody>
</table>

Note: RP = resident parent  NRP = non-resident parent all numbers rounded n=near significance
### TABLE 5. MEAN DIFFERENCE SCORES BETWEEN BS\LGL\MEDIATORS AND MH\MEDIATORS: RESIDENT PARENTS REASONS FOR CONFLICT

<table>
<thead>
<tr>
<th>Reason</th>
<th>MH/M</th>
<th>Law/M</th>
<th>Mean Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>NRP does not access</td>
<td>5.3</td>
<td>4.0</td>
<td>2.5</td>
</tr>
<tr>
<td>NRP cancels visits</td>
<td>5.4</td>
<td>4.5</td>
<td>3.0</td>
</tr>
<tr>
<td>Children resist visit to NRP</td>
<td>3.4</td>
<td>4.1</td>
<td>1.7</td>
</tr>
<tr>
<td>NRP badmouths RP</td>
<td>5.1</td>
<td>3.7</td>
<td>2.7</td>
</tr>
<tr>
<td>NRP starts fights</td>
<td>4.9</td>
<td>3.5</td>
<td>2.8</td>
</tr>
<tr>
<td>NRP is in arrears</td>
<td>5.3</td>
<td>4.5</td>
<td>3.0</td>
</tr>
<tr>
<td>NRP spends money inappropriately</td>
<td>4.6</td>
<td>3.1</td>
<td>3.9</td>
</tr>
<tr>
<td>NRP wants Order change</td>
<td>4.4</td>
<td>2.7</td>
<td>4.0</td>
</tr>
<tr>
<td>NRP changes access frequently</td>
<td>5.0</td>
<td>2.3</td>
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<td>NRP restricts tel.</td>
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<td>NRP does not oversee school</td>
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<td>.5</td>
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<td>NRP's new partner is a problem</td>
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<td>3.1</td>
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Note: RP = resident parent  NRP = non-resident parent  Scale items 16-31, in order
<table>
<thead>
<tr>
<th>Reason</th>
<th>MH\M</th>
<th>Law\M</th>
<th>Mean Difference</th>
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<tr>
<td>CP starts fights during exchange</td>
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<td>1.2</td>
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<tr>
<td>CP badmouths other co-parent</td>
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<td>2.0</td>
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<td>CP changes schedule often</td>
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<td>CP wants to modify agreement</td>
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<td>0.20 1.2 16 0.16</td>
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<td>CP restricts telephone contact</td>
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<td>Other CP's new partner a problem</td>
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<td>3.0</td>
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<td>CP spends money inappropriately</td>
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Note: CP = co-parent  OCP = other co-parent  scale items 32-44, in order numbers rounded
APPENDIX J.

Family Court Counsellors Screening Guidelines

1. Successful mediation depends on balanced and cooperative decision making.

2. Mediation can only be effective as a tool for conflict resolution if:
   a) the mediator is aware of the nature and extent of violence in the relationship
   b) the abuser or violent partner accepts responsibility for the violence, and
   c) the partner who has been the victim of the violence feels capable of making independent decisions, that she can make decisions without feeling coerced or intimidated.

3) Parties must clearly understand what mediation is and what will be required of them during the mediation process.

4) They must clearly understand that there are other options, and what these options are.

5) Entry into mediation must be voluntary, without overt or implied coercion from either party, and this must be ascertained in separate screening interviews.

6) Both parties must [appear to] have the capacity to make decisions not influenced by threat of violence or abusive behavior.

7) Mediation intake interviews must be separate.

8) During mediation continue to screen for power abuses and control issues - if detected, terminate and caucus separately.

9) Begin separate interviews with the at-risk partner, and focus on safety concerns and routines.
   a) Explain that you are concerned about mediating in situations where domestic violence is present. Try to determine why this partner wants to mediate, explain that mediation may not be the
safest or fairest forum for an abused partner to reach an equitable settlement.

b) Explain that mediation is successful only when all of the issues are visible and that violence - if it is present in the relationship - must be openly acknowledged for mediation to work.

c) Repeat screening questions, reassess immediate risk of violence to partner or children. Reassure at-risk partner that discussions are confidential within the available limits.

d) If you are not satisfied that this partner entered into mediation voluntarily, and that it is still the best option for the family, discontinue, explain why, offer safety options, and make what referrals are possible.

e) Take what steps are possible to ensure the partners safe exit from the facility, and notify police if you are concerned about immediate safety of the family.

Interview with abusive partner:

With the abusive partner, discuss what happened in the joint mediation session, explain how the situation, or tension prompted your actions (separate interviews).

Acknowledge the tension the abusive partner probably feels right now, perhaps explain that in your experience, this means that mediation will not go well (purpose is to defuse him if possible).

Explain that safety of all is the primary concern, and that other options for settlement may be preferable. Explain that mediation is successful only when all issues are visible, and that violence, if present must be openly acknowledged for mediation to work.

If the abusive partner acknowledges the abuse, discuss resources that are available to help, make and follow through with appropriate referrals. At this point, weighing both interviews, you must decide whether or not to proceed.

If the abusive partner does not acknowledge the abuse,
but you are satisfied that it exists, terminate the mediation, and refer to other options.

Notify the police if you have concerns about the immediate safety of the at-risk partner and children.