

**AN EVALUATION
OF
FAMILY CONCILIATION'S
MEDIATION
AND
FAMILY VIOLENCE PROTOCOLS**

BY

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in Partial Fulfillment of the Requirements
for the Degree of**

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ABSTRACT

An evaluation of Family Conciliation's Mediation and Family Violence Protocols was conducted in order to determine if the screening process was effective in screening for family violence and assessing the appropriateness of cases involving family violence for child custody mediation. The evaluation was conducted by utilizing qualitative methods of research and inductive methods of data analysis. The results outlined the actual design and components of the protocols document. It was found that the screening process was effective, as mediation counsellors screened for family violence during the pre-mediation stage and continued to assess the case during the mediation session by using the components of the protocols document. The mediation counsellors would only proceed with a case involving family violence if the abuse had been in the past and the abuse issues had been resolved for both partners. Finally, some recommendations are suggested to enhance the protocols' design as a screening process for the use of mediation counsellors.

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CHAPTER 1

INTRODUCTION

1.0 Overview of court-based divorce mediation in Canada

Although mediation originated centuries ago and was found in the Din of Jewish culture, the African moot, and the traditional systems of justice in China, Burma and Japan, mediation in Canada is a recent phenomenon (Shaffer, 1988). Court-connected mediation programs, for example, did not exist prior to 1972, but have since been implemented in at least half of the Canadian provinces (Shaffer, 1988). Mediation programs have focused mainly on cases of divorce/separation and related issues such as child custody. Through the development of the Unified Family Court Projects in 1978, court-based divorce mediation programs were established in Ontario, Newfoundland and Saskatchewan (Dean, 1995). The emergence of divorce mediation in Canada has been attributed to the liberalization of the divorce law, such as the federal Divorce Act of 1985, which required lawyers to inform clients about the option of mediation (Hilton, 1991).

Currently, most provinces in Canada have a court-based divorce mediation program. In Manitoba, the Court of Queen's Bench Act legislated Manitoba's Unified Family Court in 1984 (Dean, 1995). Family Conciliation, which was established in 1984, is the social service component of the Court of Queen's Bench, Family Division and the primary court-connected child custody mediation program for divorcing/separating couples in Manitoba. Family Conciliation's child custody mediation program is the focus of the evaluation study being presented.

1.2 Practicum setting

Family Conciliation is a program of, and funded by, the Department of Family Services. Family Conciliation is one of four services within the Child and Family Services Division that has been established to fulfil the Department of Family Services' overall mission which is "to strengthen and support Manitoba families, ensuring the provision of financial assistance and social services which protect and assist Manitobans in need, in a manner which fosters self-reliance and reduced dependency" (Manitoba Family Services Annual Report, 1994-1995).

Established in 1984, Family Conciliation and the Court of Queen's Bench, Family Division expanded their catchment area in 1989-1990 in order to include the entire province of Manitoba. Family Conciliation currently provides services at the Westman, Parklands, Thompson, Norman, and Winnipeg regional offices. Only the Family Conciliation branch in Winnipeg was invited to participate in the evaluation study.

The overall objective of the Family Conciliation branch is to "ensure the availability of a range of high-quality dispute resolution services to families disrupted by separation or divorce, and where continued parenting of the children is of primary concern" (Manitoba Family Services Annual Report, 1994-1995, p. 87). This objective is primarily achieved by the provision of social services to the Court of Queen's Bench, Family Division. These services include: 1) information and referral, 2) conciliation counselling, 3) mediation, 4) court-ordered assessment reports, 5) orientation seminars, and 6) children's therapeutic groups. (For a full description of services refer to Appendix A).

During the fiscal year of 1994-1995, the Family Conciliation branch provided information and referrals to 1,109 individuals, conciliation counselling to 19 families, mediation to 450 families, children's therapy group to 50 clients, and 141 court-ordered assessment reports, thereby reaching a total of 1,769 individuals/families (Manitoba Family Services Annual Report 1994-1995, p. 89; Appendix B). It should be noted that the services provided for these participants were free of charge. In 1994-1995 Family Conciliation accepted referrals from the Court (47%), lawyers (16%), self referrals (35%) and others (2%) (Manitoba Family Services Annual Report 1994-1995, p. 89; Appendix B).

Finally, the Family Conciliation branch is primarily staffed by a director, one supervisor, one regional consultant, nine mediation counsellors, one parent education program coordinator, and social work students from the University of Manitoba completing their field placements (B.S.W.) or practica (M.S.W.).

1.3 Description of mediation

The current literature ascribes many different definitions to the concept of mediation. However, in simplest terms, mediation can be conceptualized as "a type of negotiation in which the disputing parties are aided by a third person in making their own joint decisions" (Girdner, 1985, p. 34).

Although various models of mediation exist for the use of practitioners, there are generally four stages involved in the mediation process. The first stage, commonly referred to as the *introduction*, offers the disputants a brief explanation of the mediation

process and the role of the mediator. Ground rules are also established during this stage in order to facilitate a safe, respectful and productive mediation session. After the mediator's brief introduction, each disputant is asked to provide their verbal consent to participate in, and proceed with, the mediation session. During the second stage, the mediator asks each disputant, in turn, to share their perspective of the conflicting situation they want to address within the mediation session. It is during this *storytelling* stage that the mediator summarizes the concerns of each disputant and assists in identifying the issues that need to be addressed in order to resolve the conflict being presented. During the third stage, referred to as the *problem-solving* stage, the mediator assists the disputants in addressing each identified issue separately in order to achieve a mutually agreeable solution. Finally, in the *agreement* stage, the solutions which are formulated by the disputants are typically formalized by a written contract.

Throughout the mediation process, the mediator undertakes three distinctive roles (Mediation Services' Training Manual, 1993). First, the mediator is a *facilitator* of the mediation process. The mediator focuses and moves the discussions along while keeping the mediation process intact. Second, the mediator is a *clarifier* of the issues presented by each disputant. In this role, the mediator assists the disputants in identifying their underlying interests and needs. Third, the mediator acts as a *referee* of the mediation process by ensuring that ground rules are followed in order to create a respectful and safe environment for the disputants.

Finally, the practice of mediation is based on the following principles (Chandler, 1985).

1. Mediation seems most successful when there is some ongoing connection or interaction between disputants.
2. Mediation is most effective when both parties are willing to express personal wants and needs.
3. Mediation stresses mutual agreements in which both sides win.
4. Mediation is most successful when there is a relatively egalitarian relationship between the disputants.
5. People are more likely to adhere to agreements they understand and have an integral part in making.
6. Mediation is a process of joint advocacy which empowers people and enhances their sense of dignity and self-worth while preserving the responsible aspects of self-determination (cited in Kilpatrick & Pippin, 1987, p. 160).

1.4 Child custody mediation

Divorce mediation has been described as a form of "cooperative conflict resolution" and considered to be a humane alternative to the adversarial court system as it allows the spouses to formulate their own child custody arrangements (Koopman & Hunt, 1988). As such, divorce mediation is characterized as "a mutually determined process whereby family members participate in forming functional agreements which will positively influence the family as it enters into a new stage of life" (Nickles & Hedgespeth, 1991, p. 157). Similarly, child custody mediation is defined as a process which assists divorcing couples in moving from a marital relationship to an exclusive parenting relationship, through the use of agreements (Mathis & Yingling, 1990).

As Martha Shaffer (1988) points out, mediation is regarded as being conducive to divorce disputes and child custody agreements because 1) most cases involve issues

related to financial support and child rearing which mediation can restructure positively for the post-divorce arrangement, 2) the flexibility of the mediation process is able to address the emotional and legal issues of the breakdown of a marriage, 3) spouses are given the opportunity to consider the needs of their children and formulate an agreement that underlines the best interests of the child, and 4) spouses are empowered by being actively involved in the resolution of their disputes.

Furthermore, the best interests of the child are also secured by "the implicit ethical and moral responsibility for the mediator to influence a settlement that, in his or her opinion, seems at least in the adequate if not best interests of the child" (Saposnek, 1985, p. 10). In sum, "mediation is heralded as a process that promotes the best interests of the children of divorcing couples" (Shaffer, 1988, p. 163).

1.5 Mediation and family violence

However, despite this support for the mediation of child custody issues, it has been argued that the mediation process is not a suitable method of intervention for resolving family disputes where violence has been, or is currently, present. In other words, cases involving family violence are not suitable for mediation. Consequently, this argument has led to an interesting debate within the field of mediation. As a result, I have found three reoccurring positions in the current literature on the issue of mediating cases involving family violence. Unfortunately, this debate has yet to be resolved and remains inconclusive.

Briefly, the three perspectives on mediating cases involving family violence are as follows. Proponents of the first perspective maintain that mediation should not be used as a form of intervention to resolve the issue of family violence (Lerman, 1984). For example, when a husband is charged with battering his wife, the assault charge should not be resolved through mediation. This argument is primarily based upon the belief that violence creates an extreme imbalance of power between the husband and the wife. The wife, therefore, would be unable to negotiate freely and fairly within the context of a mediation session. Advocates for this position conclude that the primary issue of family violence should be ultimately resolved in a court of law.

The second perspective is also based on the belief that violence creates an extreme power imbalance between the perpetrator and the target of the violence. Its proponents maintain that mediation should not be used to resolve *any* family disputes where violence has been, or is currently, present (Ange, 1985; Astor, 1994; Bailey, 1989; Beer and Stief, 1985; Berg & Pearlman, 1984; Bottomley, 1985; Bruch, 1988; Budd, 1984; Diamond & Simborg, 1983; Folberg & Taylor, 1984; Girdner, 1990; Girdner, 1987a; Girdner, 1987b; Grillo, 1991; Hart, 1990; Keenan, 1985; Leitch, 1986; Lefcourt, 1984; Lemmon, 1985; Lerman, 1984; Lerman, Kilpatrick & Pippin, 1987; Kuehl & Brygger, 1989; Marks, 1988; Majury, 1991; National Center on Women and Family Law, 1982; Shaffer, 1988; Shaw, 1983; Shulman & Woods, 1983; Summers, 1985; Sun & Thomas, 1987; Sun & Woods, 1989; Woods, 1985). For instance, in the situation of a divorcing couple wanting to resolve a child custody issue, but where family violence had occurred in the past, or is currently occurring, mediation would be considered inappropriate. Even though the

primary issue to be mediated is child custody and not the violence itself, mediation would not be recommended because the power imbalance between the perpetrator and the target of the violence is believed to still exist and continues to influence the relationship.

Finally, proponents of the third perspective maintain that mediation can still have a role in resolving family disputes where violence has been, or is currently, present (Barsky, 1995; Benjamin & Irving, 1992; Bethel & Singer, 1982; Chandler, 1990; Charbonneau, 1993; Corcoran & Melamed, 1990; Davis & Salem, 1984; Erickson & McKnight, 1990; Ferrick, 1986; Girdner, 1990; Hamoline, 1992; Johnston & Campbell, 1988; Marthaler, 1989; Neumann, 1992; Orenstein, 1982; Perry, 1992; Rempel, 1986; Rifkin, 1984; Yellott, 1990). Contrary to the second perspective, they would consider mediating a child custody case where violence has been, or is currently present, part of the familial relationship. This argument has been formulated on the belief that the variables of violence vary for the same family and between different families and, consequently, should be assessed on an individual basis. Some supporters of this third perspective also maintain that family disputes involving violence can only be resolved through mediation if there is a screening process in place to assess the appropriateness of the cases and if the mediation process is tailored to fit the needs of the relationship while ensuring the safety of the disputants.

1.6 The screening process

Although the proponents of these three perspectives disagree on the role of mediation in cases involving family violence, they do commonly recognize, at varying

levels, that a power imbalance inevitably exists between the individuals requesting mediation to solve their family disputes.

With this in mind, proponents and critics alike have recommended an expansion of the screening process, which would screen for family violence and determine the appropriateness of cases involving family violence. In consequence, a combination of screening procedures and screening instruments, such as the Conflict Tactics Scale, the Conflict Assessment Protocol, the Feminist Family Therapy Behavioral Checklist, and the Assessment of Patterns of Dangerousness, have been developed to screen for family violence and other elements of power imbalance in mediation cases (Benjamin & Irving, 1992).

However, in reviewing the various screening processes recommended in the current literature, I found little evidence indicating first, the utilization of a screening process in mediation programs, and second, the effectiveness of a screening process in assessing for family violence and determining the appropriateness of cases involving family violence for mediation. On this related topic, Lisa Lerman (1984) found that although screening standards have been developed to assess the appropriateness of mediation cases, many mediators neglect to inquire about the existence or nature of violence in the relationship when such information is not disclosed voluntarily by the disputants. She concludes that "screening standards are often amorphous and are not consistently applied" (p.93). Similarly, Ellis and Stuckless (1992) found that some screening instruments are not tested for individual predictors of abuse.

Given the uncertainty of the adoption, application and consistent use of a screening process by mediation practitioners, it is my position that inappropriate cases involving family violence are at risk of being mediated, thereby ultimately placing the target of the violence in danger by reproducing a set of power relations during the mediation session. The problem of inappropriate cases being mediated is further compounded by the fact that there are no universal standards for mediators in regards to handling issues of family violence and abuse (Charbonneau, 1993). Therefore, I have concluded that a gap exists between the theoretical analysis of the screening and assessment of family violence cases in mediation and its application in theory and practice within mediation programs.

This particular problem first came to my attention as an intake worker and mediator working in a victim-offender mediation program. This program exempted cases of domestic violence and sexual assault as a general rule, but accepted cases of family disputes where a charge of assault, assault causing bodily harm or assault with a weapon had been laid. In terms of screening policy and procedures, no formal guidelines existed for the workers' use when dealing with issues of family violence or power imbalances.

In light of this experience, the differing theoretical perspectives on the mediation of cases involving family violence, the lack of empirical study on the use and effectiveness of a screening process within mediation programs, and the unstandardized practice of mediation in general, it was my intention to evaluate the design, implementation and effectiveness of a screening process dealing with couples and family violence. In short, I was interested in exploring whether practice reflected the existing theories, standardized screening instruments, and research on screening and assessing

cases for family violence from the pre-mediation intake stage to the mediation session(s).

During my time as an intake worker and mediator at the victim-offender mediation program, I became aware that Family Conciliation had a screening process which addressed the issues of family violence within the context of their child custody mediation program. Family Conciliation's screening policy document, entitled Family Conciliation - Mediation and Family Violence Protocols, was formally developed and written by the staff in 1993 and had never been evaluated since its inception (Appendix C). Consequently, it seemed like an opportune time to evaluate it and provide feedback as to its effectiveness as a screening process because the mediation counsellors had worked with the policy and screening process for a reasonable period of time. This degree of practical utilization of the protocols was necessary before an evaluation monitoring the implementation of the screening process could occur. By conducting an evaluation of Family Conciliation's screening policy and procedures, I would be able to examine the process of screening cases for family violence and of assessing the appropriateness of mediating cases involving family violence where the issues to be addressed in mediation were child focused divorce-related issues and not the mediation of the violence itself.

With this in mind, I approached Family Conciliation in January of 1995 about participating in an evaluation of their screening process as part of my M.S.W. practicum. After speaking with the Director and outlining my credentials in the area of mediation, I negotiated a practicum placement contingent upon the mediation counsellors' interest in the evaluation.

1.7 Description of the Mediation and Family Violence Protocols

In meeting with the Director and Supervisor at Family Conciliation, I was able to initially examine the design of the policy and the screening process in order to conduct a partial evaluability assessment during the months of February and March, 1995. An evaluability assessment is defined as "a set of procedures for planning evaluations so that stakeholder's interests are taken into account in order to maximize the utility of the evaluation" (Rossi & Freeman, 1993, p. 104). Thus, I conducted an evaluability assessment in order to ensure the credibility and utility of the evaluation for the agency. The following description of Family Conciliation's Mediation and Family Violence Protocols is based on this evaluability assessment and is derived from the information of the actual protocols document.

In its introductory statement, the Mediation and Family Violence Protocols outline that Family Conciliation considers cases of domestic abuse and of alleged or actual child abuse to be generally inappropriate for mediation.

However, due to an increasing number of cases being referred to Family Conciliation where families experienced abusive spousal relationships and still wanted to resolve child custody issues through a non-adversial approach, guidelines considering the safety needs and integrity of these family members were re-examined and developed into a written policy document. The Family Conciliation's Mediation and Family Violence Protocols document (1993), outlines "screening criteria for cases where there has been spousal abuse and the issues to be addressed in mediation are child focused divorce-related and not mediation of the domestic violence itself" (p.1).

The Protocols' (1993) guidelines address 1) the initial screening and assessment procedure that can assist in determining where mediation is feasible, where it is not appropriate, and identifies where a potential exists for mediation but further assessment is required, 2) the more in-depth assessment criteria for families which have experienced abuse issues, and 3) the structure and requirements necessary should modified mediation proceed.

More specifically, once disputants are referred to Family Conciliation, the intake counsellor begins the screening process. Generally in screening the couple, the intake counsellor is instructed to utilize their discretion when asking the "Draft Intake Questions" listed in the protocols document. This set of questions is categorized into a) service requested, b) background, c) legal, and d) relationship (history of violence, etc). The categories' questions are listed randomly and are not in any order of weighted importance. It is only expected that the mediation counsellor address the general issues of each category during the initial contact with the client.

In cases where family violence has been, or is currently present, the "Initial Screening on Intake" listing of contra-indicators, or red flags for screening abuse, is to be considered by the mediation counsellor. In addition, the "Screening for Maybe" section of the document outlines factors for the mediation counsellors to consider which may result in offering a modified form of mediation to clients for whom domestic violence has been, or is currently, an issue.

After an introduction to the mediation service, usually done during the initial telephone intake, the mediation counsellor meets with each disputant separately. If it

appears that violence has been an issue and the clients may still be possible mediation candidates, the mediation counsellor is instructed to ask the questions in the "Tolman Screening Model" section of the policy document. The clients' response to the Tolman screening questions are intended to act as triage information which will assist the counsellor in categorizing 1) cases which are appropriate for mediation, 2) cases where abuse has occurred in the past but are deemed appropriate for either regular or specialized mediation, and 3) cases where abuse has occurred and mediation should not go forward.

In cases where modified mediation is assessed as appropriate, the mediation counsellor and clients are expected to agree to the processes outlined in the "Tailoring the Mediation Process" and "Other Variant Forms" sections of the document. The "Tailoring the Mediation Process For the Needs of Men and Women Involved in Abusive Relationships" section outlines techniques the mediators can use to modify the mediation session in order to meet the needs of individuals with a background of abuse in the marital relationship.

The "Other Variant Forms of Mediation" section discusses the pros and cons of shuttle mediation for parties who are unable to express their interests in a mediation session because of prior abuse experiences. Shuttle mediation involves the mediation counsellor meeting privately with each party and acting as a liaison by sharing the other party's ideas and proposals until an agreement is reached. Consequently, no direct communication is involved between the two disputants.

In brief, the Family Conciliation Mediation and Family Violence Protocols document consists of practical screening models which are presented as guidelines to

assist the mediation counsellors in screening for family violence and assessing the appropriateness of a case for mediation.

After examining the protocols document and speaking with the Director and Supervisor as part of the evaluability assessment, I met with the mediation counsellors in March of 1995 and presented a preliminary evaluation methodology. The mediation counsellors were interested in the evaluation and provided useful feedback. The practicum proposal was finalized and accepted in January of 1996.

1.8 Learning goals

In choosing Family Conciliation as my practicum setting, my primary goal was to conduct an evaluation of the child custody mediation program's Mediation and Family Violence Protocols document and screening process. This type of study would act as a precedent in the mediation field and literature. At a practical level, the practicum evaluation would provide me with the opportunity to learn how to:

- 1) explore the concept of family violence within the context of mediation;
- 2) conduct a process evaluation;
- 3) conduct a qualitative research study through in-person interviews, participant observation and case studies;
- 4) assess the effectiveness of a mediation program's existing screening policy and procedures based on theoretical and empirical research; and
- 5) if necessary, provide recommendations for change within the current screening protocols' design in order to enhance the effectiveness of screening for family violence and assessing for the appropriateness of cases involving family violence.

In summary, conducting an evaluation of Family Conciliation's Mediation and Family Violence Protocols would ensure that effective criteria were being utilized when

screening for family violence and assessing the appropriateness of cases involving family violence within the context of child custody mediation. Given the high incidence of family violence present in our communities, this form of intervention was crucial in ensuring that participants were not revictimized through the mediation process. The evaluation report would provide Family Conciliation with information outlining the use of the protocols document, its implementation and its effectiveness in screening for family violence and assessing the appropriateness of cases involving family violence for child custody mediation. If necessary, recommendations would be provided to increase the effectiveness of the screening process for staff's use when screening for family violence and assessing the appropriateness of mediation cases involving family violence. Finally, the evaluation report would provide descriptive information of an effective screening process which could be ultimately presented and utilized as a standardized screening policy and process for mediators and mediation programs. In turn, the evaluation of the effectiveness of Family Conciliation's screening protocols and process would work toward ensuring the safety of individuals participating in mediation and, hence, the negotiation of a fair and equitable settlement.

CHAPTER 2

LITERATURE REVIEW

In order to gain a comprehensive understanding of the importance of conducting a practicum study which focused on examining the design, implementation and effectiveness of a screening policy and process within a child custody mediation program, I found it crucial to research further the problem of family violence, its implications for child custody mediation, and the evaluation of policies and procedures.

As such, literature related to the definition, nature and extent of the problem of family violence is presented. In addition, the three perspectives on the debated topic of mediating cases involving family violence is expanded upon by focusing on the central tenets of each argument based on feminist theory of family violence. Literature on the screening processes in mediation is also examined in greater depth in order to underline the importance of implementing an effective screening process within child custody mediation programs. Finally, a review of literature on process evaluations is presented as an introduction to policy evaluation research.

2.1 Family violence defined

The term family violence has often been used interchangeably with wife abuse, spouse abuse, domestic violence and male violence throughout the current literature and by the general public alike. However, in order not to be limited to one type or form of family violence (i.e. spouse abuse), I chose to use, for the purpose of this practicum, a definition of family violence that is broad enough to include the various forms of family

violence in diverse familial structures.

As such, family violence is defined as "any form of violation, abuse or intimidation directed against a member of the household, a blood relative, or a person sharing a familial relationship" (Hutchinson, 1988, p. 3). Accordingly, family violence is the abuse of women, children, elders and men. Violence of family members can include, but is not limited to, physical abuse, emotional abuse, psychological abuse, sexual abuse, financial abuse, spiritual abuse, and neglect.

As I examined family violence within the context of child custody mediation, I focused on violence experienced in marital relationships. It should be noted that I did not review how the experience of family violence would differ depending on culture or within same sex relationships. Consequently, my presentation of the nature and extent of the problem of family violence was limited to wife, child, and husband abuse.

In presenting the nature and extent of the problem of wife, child, and husband abuse in the following sections, it was my intention to only outline and highlight the severity of the problem of family violence in order to provide a context in which the screening of such cases within mediation programs could be examined in an informed manner. For this reason, much of the relevant, but more in-depth, information on family violence was alleviated. Readers interested in becoming more familiar with the phenomena of family violence are invited to refer to the bibliographical references on this topic.

2.1.1 Wife abuse

As three-in-ten Canadian women currently or previously married have experienced at least one incidence of physical or sexual violence at the hands of a marital partner, it is evident that violence against women is a prominent and national problem in Canada (Statistics Canada, 1994). As noted earlier, wife abuse can take the form of physical, psychological, verbal, sexual, financial, and spiritual abuse.

According to Statistics Canada's 1993 National Survey on Violence Against Women, more than 200 000 women were physically or sexually abused by their husbands or common law partners in 1992. It is estimated that 48% of women with a previous marriage were assaulted by a previous marital partner, while another 15% of women currently married have been assaulted by their current partner (Statistics Canada, 1994). It has also been found that 38% of female homicide victims were killed by their husbands (Statistics Canada, 1994). While wives have been found to kill their husbands in six percent of the male homicide cases, they have been usually found acting in self-defense (Statistics Canada, 1994).

Although wife abuse is known to spread across demographic variables including age, race, income, education and residence, the highest rates of wife assault were found among young women and among marital relationships of less than two years (Statistics Canada, 1994). The rate of wife assault among young women 18 to 24 years of age is four times the national average (Statistics Canada, 1994). While women with household incomes of \$15,000 and over experienced wife assault consistent with the national average, women with household incomes less than \$15,000 indicated rates twice the

national average (Statistics Canada, 1994).

In examining the characteristics of violent men, the highest rates of wife assault were among young men 18 to 24 years of age (Statistics Canada, 1994). While men with post-secondary education had lower rates of violence against their female partners, employment status did not appear to have a strong effect on rates of offending (Statistics Canada, 1994). However, it has been found that ten percent of professional men beat their wives (Thorne-Finch, 1992). Finally, the National Clearinghouse on Family Violence (1995, p. 3) found that "men who had witnessed their fathers' violence toward their mothers, inflicted more severe and repeated violence on their own wives than men whose fathers were not violent".

The major sources of conflict within a marital relationship that have led to wife abuse revolve around the issues of possessiveness, jealousy, money and domestic labour (Thorne-Finch, 1992). It has also been noted that the severity and frequency of wife abuse escalates when a change occurs, such as a family death, job loss, or unsatisfactory relocation (Hutchinson, 1988). In addition, it has been found that wife abuse is higher at the time of a separation or divorce. In Canada, the rate of wife abuse is six times higher for separated women (Statistics Canada, 1994). Women were found to be at greatest risk particularly within the first two months after separation (Statistics Canada, 1994).

Severe and widespread, wife abuse is also repeated, enduring and escalates over a period of time. Based on the perceptions of physically abused wives, Lenore Walker (1979) asserts that the cycle of violence has three distinct phases: 1) the tension building

phase, 2) the explosion, and 3) the calm phase.

During the first phase, the husband experiences tension and stress which he expresses through controlling behaviour such as verbal harassment, threats, destruction of property and sometimes physical abuse. Consequently, the wife attempts to predict his next move and tries to calm him down. However, as the tension builds, the male becomes more oppressive.

During the explosion phase, the tension built up in the first phase erupts into severe and destructive violence. It is during this second phase that the victim is more likely to be sexually assaulted, injured or killed. It should be noted that the trigger of the explosion stems from an external event or internal state of the male and not from the female's behaviour.

The calm phase is when the male may regret his violent behaviour, becomes passive and tries to make it up to his wife by showing loving, kind, attentive behaviour while promising that it will never occur again. However, if the male does not seek help, the loving behaviour diminishes and leads to minor violence episodes which, in turn, begin the cycle of violence again. Consequently, the calm phase becomes shorter and may even disappear over time as the violence increases in duration and frequency.

As a result of being in a life-threatening relationship, it has been found that the abused woman's relationship with her male partner resembles that of a hostage and its captor (Yllo & Bograd, 1988). The extreme power imbalances between an abusive male and his female partner can lead to a strong emotional bonding that becomes an integral and established part of the relationship that makes it difficult for women to leave abusive

relationships (Yllo & Bograd, 1988). Consequently, the severity of the problem of wife abuse is extensive for Canadian women, especially at the time of separation or divorce.

2.1.2 Child abuse

Child abuse may take the form of physical injury, emotional abuse, sexual abuse, or neglect. Physical injury occurs, for instance, when bruises, cuts, broken bones and cigarette burns are inflicted on children by adults. As a result of emotional abuse, such as threats, rejection, insults and humiliation, the child's sense of self is diminished and self-esteem lowered. In 1992, it was found that 14% of all physical assaults and 65% of all sexual assaults were against children under 18 years of age (Statistics Canada, 1994). Girls were more often the victims in cases of both physical and sexual assaults. More specifically, 75% of girls were much more likely to be sexually assaulted by a parent (Statistics Canada, 1994). Boys were at risk of sexual assault by a parent or another family member. In 81% of homicides against children, parents were most often the perpetrator (Statistics Canada, 1994). Consequently, the abuse of children is prominent within the context of the family.

In addition, children are witnessing violence in the home. According to Statistics Canada (1994), 39% of women in violent marriages reported that their children witnessed violence. In 52% of violent relationships in which children witnessed the violence, women feared for their lives, and in 61% of violent marriages witnessed by children, the violence was serious enough to result in the women being injured (Statistics Canada, 1994). It has also been reported that as a result of witnessing violence or being abused

themselves, these same children are more likely to later use violence or continue to be abused as adults (Statistics Canada, 1994; National Clearinghouse on Family Violence, 1995).

2.1.3 Husband/Male partner abuse

While most adult victims of violence are women, some men for example are, beaten by their wives and female partners (Dobash & Dobash, 1979). Research indicates that a male is the victim of abuse in fewer than 10 percent of all incidents of partner abuse (National Clearinghouse on Family Violence, 1995). It is apparent that both men and women are capable of inflicting physical, emotional and psychological abuse on each other. However, the physical abuse of husbands generally stems from 1) a marital relationship being mutually violent in which violence can be initiated by the husband, wife or other family members, 2) a woman assaulting her husband after years of being abused by him, and 3) a small minority of the wife as the aggressor and the husband/partner as the victim (Hutchinson, 1988).

Although husband abuse has not been found to be a prominent form of family violence in the current literature, it does exist to some extent, and consequently, should not be ignored when considering family violence within a marital relationship.

2.1.4 Summary

As described above, the problem of family violence within marital relationships is prominent in Canada. Family violence primarily affects the women and children within

these marital relationships. In addition, it has been found that possessiveness and life changes, such as divorce, increase the frequency and intensity of the violence. As such, the divorcing population of Canada experiences more violence at the time of the separation and/or dissolution of their marriage. In addition, it is known that violence does not necessarily end with the separation/divorce as violent husbands often continue to harass their wives (Ellis & Stuckless, 1992).

Given the extent of the problem of family violence and the fact that it heightens at the time of separation/divorce, it is my position that separation/divorce cases requesting child custody mediation would have a high incidence of family violence. With this in mind, I now turn to the three theoretical perspectives on the issue of mediating cases involving family violence.

2.2 Theoretical perspectives on mediating cases involving family violence

As mentioned earlier in the introduction, the current literature presents three theoretical perspectives on the issue of mediating cases involving family violence. The first perspective maintains that mediation is not an appropriate method of intervention if the primary issue to be resolved is the family violence itself. Although my practicum focuses on the screening and assessment of mediation cases where violence has been, or is currently, present and where the primary issue to be resolved is child custody, this first perspective is being presented because the basis of its argument overlaps with the other two perspectives discussed.

The second perspective maintains that family dispute cases presenting past or present family violence, in which the primary issue to be resolved is not the violence itself (such as child custody), should not be mediated.

Finally, the third perspective maintains that there is a role for mediation in cases where family violence has been, or is currently present, and where the primary issue to be resolved is not the violence itself. With these three perspectives in mind, I will now discuss these three debated positions further while focusing on the basis of their arguments.

2.3 The argument against mediating cases involving family violence

While the first and second perspectives have been introduced, thus far, as two separate arguments, they will now be discussed together as one common perspective. I have chosen to collapse these two perspectives into one because they share the same basis for their arguments. They both maintain that mediating any cases involving family violence, regardless of the primary issue to be resolved, should not be mediated.

Lisa Lerman (1984) in particular has argued against the mediation of wife abuse cases, while other proponents have argued against the mediation of cases involving family violence, such as child abuse and spouse abuse, where the issue to be mediated is not the violence itself (Ange, 1985; Astor, 1994; Bailey, 1989; Beer and Stief, 1985; Berg & Pearlman, 1984; Bottomley, 1985; Bruch, 1988; Budd, 1984; Diamond & Simborg, 1983; Folberg & Taylor, 1984; Girdner, 1987a; Girdner, 1987b; Girdner, 1990; Grillo, 1991; Hart, 1990; Keenan, 1985; Leitch, 1986; Lefcourt, 1984; Lemmon, 1985; Lerman, 1984;

Lerman, Kilpatrick & Pippin, 1987; Kuehl & Brygger, 1989; Marks, 1988; Majury, 1991; National Center on Women and Family Law, 1982; Shaffer, 1988; Shaw, 1983; Shulman & Woods, 1983; Summers, 1985; Sun & Thomas, 1987; Sun & Woods, 1989; Woods, 1985).

The argument against the mediation of cases involving family violence is based on the premise that violence creates a power imbalance between the perpetrator and the target of the violence. Given the statistics indicating an overwhelming number of women and children abused by men, it can be said that violence is created by some husbands' abuse of power toward their wife and/or children. As such, child custody cases involving family violence would not be suitable for mediation because the woman might not be able to articulate her needs in front of the abuser due to intimidation, coercion or threats of violence. Martha Shaffer (1988) illustrates the influence of power imbalance within the mediation of cases involving family violence as she writes the following statement:

It is difficult to image a situation in which the power imbalance between the spouses is more pronounced and the potential consequences of mediation more disastrous. It is grossly unrealistic to assume that women who have been subjected to a pattern of repeated abuse will suddenly be able to articulate their needs and defend their positions in a face-to-face confrontation with their abuser (p. 182).

As a result of the imbalance of power and the dynamic of control within the relationship, the woman would not have the capacity to negotiate freely and fairly, and would be unable to advocate for the rights of herself or her children, thereby, resulting in an unequitable agreement. Consequently, the mediation of cases involving family violence would place women and children in danger without any means of protection and would continue to perpetuate the victimization.

In addition to the belief that violence creates unequal power relations between the perpetrator and the target of the violence, it has also been argued that the profile of the abuser does not coincide with the required negotiating skills in mediation (Astor, 1994). While the process of mediation encourages the capacity for consensual decision-making, honesty, a desire to settle the dispute, and compromise, the behaviours of a perpetrator of violence are characterized by coercion and a willingness to control the victim's activities. This, in turn, illustrates once more that cases involving family violence should not be mediated because of the inherent power imbalance within the relationship and the consequent inability to negotiate in good faith.

The mediation of cases involving family violence is also argued against because of some mediators' general lack of understanding of family violence/power imbalance issues (National Center on Women and Family Law, 1982; Benjamin & Irving, 1992; Charbonneau, 1993; Shaffer, 1988; Lerman, 1984).

In critiquing the mediator's role in the mediation of cases involving family violence, it has been found that some mediators fail to protect the interests and the safety of women who are the targets of violence. This point is illustrated by the fact that some mediators 1) have no specialized training in the area of family violence, 2) are unable to identify issues of family violence, 3) are unaware of how to deal with the issue of family violence, 4) are influenced by sexist biases, 5) remain neutral on the issue of family violence, 6) fail to inquire or address the existence or nature of violence during screening, within the mediation session, or as part of the agreement, 7) tend to disregard female reports of family violence, 8) employ no special techniques or procedures with violent,

as opposed to nonviolent, cases, 9) do not give credence to the usefulness of the formal legal system in addressing the issue of family violence, and 10) use screening processes inconsistently. Consequently, some mediators endanger the lives of the women and children involved, increasing the risk of postseparation violence.

The structure of the mediation process itself has also been criticized as a method of intervention for cases involving family violence (Benjamin & Irving, 1992; Lerman, 1984; Shaffer, 1988). Lisa Lerman (1984) clearly summarizes this critique as she discusses the inadequacies of the mediation process in resolving wife abuse cases. Although her critique stems from an examination of wife abuse cases specifically, the following points of concern can also be applied to the argument against the mediation of cases involving family violence where the primary issue to be mediated is not the violence itself.

First, based on the experience of clients, mediation is an ineffective method of stopping the violence. Second, the primary goals of mediation do not include stopping the violence. Instead, mediation's primary goal is to reach an agreement while recognizing a mutual responsibility of the problem at hand. Third, by dealing primarily with present conflicting issues, the mediation process ignores past family dynamics such as patterns of violence, and hence, fail to account for the unequal bargaining power between the abuser and the victim. Fourth, the mediation process, labelled by some critics as the "personal cult", is held in private sessions where the issue of family violence is kept confidential, and therefore, concealed from the general public and public statistics. This, in turn, silences the voices of women and the significance of family violence within

our society. Finally, mediation is seen as inappropriate for cases involving family violence because the agreements do not address the issue of the violence and are not legally binding.

In summary, the argument against the mediation of cases involving family violence is based on the premise that violence creates a power imbalance between the perpetrator and the target of the violence. As such, the violence or any other issue, such as child custody, cannot be mediated due to the permanent unequal relations between the husband and the wife/children. As proponents of this argument agree that the need for protection takes precedence over the need to mediate, cases involving family violence should not be mediated. Instead, mediators should be careful to screen out such cases and refer them to more appropriate resources.

2.3.1 A feminist understanding of family violence

In order for me to clearly understand the argument against the mediation of cases involving family violence, I utilized feminist theory as the basis in approaching this analysis. I chose this approach in particular because the central tenets of this perspective of mediation and family violence parallel feminist theorists' explanation of family violence and power imbalance.

In maintaining that family violence creates a power imbalance within the family, this perspective parallels feminist theorists' view that power imbalance is the basis upon which family violence is built (Bolton & Bolton, 1987; Dobash & Dobash, 1979). Power imbalance is said to be part of all family violence situations because violence gravitates

towards the greater power differential, that being parent versus child or spouse versus spouse (e.g. male versus female). Although perpetrators of violence have power over their targets, they are actually attempting to compensate for perceived powerlessness elsewhere, using the family as a scapegoat and as a means of gaining an area of dominance (Pagelow, 1984). However, this pattern of behaviour, which uses violence as an illegitimate source of power to attain control over someone or a situation, is not simply a dysfunction or reflection of power imbalance within the family. Socialist feminists maintain that violence is also an expression of the imbalance of power which originally stems from, is inherent within, and is reinforced by the structures and institutions of a capitalist and patriarchal society.

2.3.2 Socialist feminist theory of power imbalance

In examining the perspective against the mediation of family disputes involving family violence, I found that this argument not only reflects a feminist approach which maintains that violence is built on power imbalance, but that it also is consistent with the socialist feminists' explanation of power imbalance stemming from a capitalist and patriarchal society. In other words, this perspective asserts that such cases cannot be mediated until the capitalist and patriarchal systems of our society are changed. Consequently, inequalities based on class and gender relations, which set the stage for violence, must be addressed before the mediation of cases involving family violence is

even considered possible.

Based on socialist feminist theory, the capitalist and patriarchal systems of our society — the fundamental roots of power imbalance — would need to be addressed before the possibility of mediating cases involving family violence could be considered. These structures promote the perpetuation of violence by first, oppressing women and assigning them a secondary status of power, and second, encouraging men to act violently.

First, women are oppressed through the productive and reproductive spheres of a capitalist and patriarchal society (Ursel, 1992). Women are oppressed by the productive sphere of capitalism because they are placed in subordinate positions to men in the public labour force, and/or as housewives, are not accorded material value for their labour. Consequently, women are denied access to the high paid labour and status most often associated with men's work. Given the fact that with paid labour comes power and privilege, women, who are either working for low wages and/or are not paid for their essential labour in the home, are robbed of primary self-sufficient resources such as money and education. As a result, women are forced to be dependent on men.

The patriarchal organization of social institutions and the nuclear family oppresses women through the reproductive sphere by expecting them to reproduce and serve as the primary caregiver for the next generation of capitalist labour. Socialist feminists view the traditional nuclear family as the cornerstone of women's oppression because "it sustains women's dependent status (on men), enforces compulsory heterosexuality and perpetuates stereotypes of masculine and feminine gender in members of the next generation" (Code, 1988, p. 39).

Together, the systems of capitalism and patriarchy both benefit from, and reinforce each other, while making certain that women, as a class and gender, do not have equal power, resources and privilege (Cartmill, 1994). By exploiting women in the public workplace and forcing them to be socially dependent on men because of lower wages, less benefits and less opportunities of advancement, while reaping the benefits of women's free labour within the private sphere of the home, capitalism reinforces patriarchy. Similarly, by expecting women to reproduce and nurture each generation of workers, patriarchy reinforces capitalism. The reciprocal nature of capitalism and patriarchy has resulted in the reinforcement of male domination and the maintenance of women's subordination, thereby constructing the basis of power imbalance and, consequently, sanctioning violence against women.

Second, a capitalist and patriarchal society has further perpetuated the imbalance of power and encouraged violence against women by socializing men to expect power and control, to be uncomfortable when feeling powerless or vulnerable, and to respond with aggression and violence in order to regain some power and control (Bolton & Bolton, 1987; Dutton & Browning, 1988; Stets, 1988). This is clearly illustrated by the cultural norms and values encouraging male violence against women, such as 1) defense of male authority, 2) compulsive masculinity, 3) economic constraints and discrimination, 4) burdens of child care, 5) myth of the single female parent unable to raise children alone, 6) wife role for women, 7) negative self images of women, 8) viewing women as children, and 9) male orientation of the criminal justice system. Since men are socialized to be aggressive and expected to have power, men are able to use physical force when

they perceive their control being threatened, and not be punished for it (Stets, 1988).

2.3.3 Summary

In summary, the perspective arguing against the mediation of cases involving family violence is consistent with a feminist explanation of violence and power imbalance. Socialist feminist theory maintains that violence is primarily built upon the power imbalance created by the subordination of women through the productive and reproductive spheres of a capitalist and patriarchal society. Consequently, cases involving family violence cannot be mediated because the power imbalance within the family unit cannot be addressed until the fundamental power imbalances inherent in a capitalist and patriarchal society are changed and will no longer benefit from, or encourage, the subordination of women. Laurie Leitch (1987) clearly summarizes the central tenets of this argument in the following excerpt:

For the idea of balance in mediation to be other than a hypothetical construct, it must reflect the social and economic contexts within which the family system exists. Otherwise, we are responding to a relational system at one point in time as if it had no antecedents in larger social constructs; if one has been systematically subordinated, one must be systematically superordinated in order to achieve balance (p.169-170).

2.4 The argument for mediating cases involving family violence

Contrary to the above argument, the perspective advocating for the mediation of cases involving family violence maintains that there is a role for mediation in family violence cases where the primary issue to be mediated is not the violence itself (Barsky, 1995; Benjamin & Irving, 1992; Bethel & Singer, 1982; Chandler, 1990; Charbonneau,

1993; Corcoran & Melamed, 1990; Davis & Salem, 1984; Erickson & McKnight, 1990; Ferrick, 1986; Girdner, 1990; Hamoline, 1992; Johnston & Campbell, 1988; Marthaler, 1989; Neumann, 1992; Orenstein, 1982; Perry, 1992; Rempel, 1986; Rifkin, 1984; Yellott, 1990). The argument for this perspective is based on the premise that the experience of violence varies for the same family and between different families and, thus should be assessed on an individual basis. Accordingly, cases involving family violence are considered complex and experience the following variables of violence differently: 1) duration of the violence, 2) severity, 3) frequency, 4) outset, 5) abuse of alcohol, 6) psychiatric disorder, and 7) other family dysfunction (Benjamin & Irving, 1992). Proponents of this argument, therefore, conclude that the experience of family violence is distributed along a continuum resulting in a range of outcomes. Consequently, "some (cases involving family violence) will be contraindicated for mediation, while others will be amenable to it, especially entry into premediation" (Benjamin & Irving, 1992, p. 144).

Given the varying degrees of family violence, supporters of this perspective also maintain that cases involving family violence can only be resolved by the mediation process under certain circumstances. Jose Feliciano (1983) asserts that in order for mediation to be a viable option for cases involving family violence, emphasis should be placed on careful intake screening, the empowerment of abused women, improved mediation training, and the increased use of women as mediators.

In the "Report from the Toronto Forum on Woman Abuse and Mediation" Charbonneau (1993) writes that while the existence of family violence contra-indicates the appropriateness of mediation, mediation may be appropriate if the abuse has stopped,

neither party is intimidated, and if measures are put in place to ensure the safety of all parties. Commenting on this report, Barsky (1995) states that the security of the person should be of primary concern. He defines "security" of the person as "freedom from physical or psychological harm and from infringement of one's personal rights" (p.24).

The Advisory Committee on Mediation and Domestic Abuse in Saskatchewan (1993) recommends that mediation should not be used as a tool where there is a history of abuse in the relationship except when the victim of the abuse and the mediator both decide that the victim can participate in the mediation session on an equal footing.

Finally, the New York Unified Court System (1983) has developed its own guidelines for the mediation of cases involving family violence which include the following criteria:

special training for mediators; identification of service programs for abuse victims; development of methods for referring parties to service programs; establishment of working relationships with local prosecutors offices, law enforcement, and courts to assure case flow, enforcement, and victim protections; referral of all actual or potential violent or imminently dangerous situations to a court or appropriate agency; informing parties of their available options; and informing complainants of the limits of mediation (cited in Benjamin & Irving, 1992, p. 22).

In summary, the basis of this perspective, which argues for the mediation of cases involving family violence, centres on the belief that family violence cases vary and, thus are not all inappropriate for mediation. With this in mind, proponents of this perspective have recommended a variety of guidelines to approaching such cases. Although not entirely consistent in their approaches to dealing with cases involving family violence, proponents of this argument still maintain that cases should be assessed individually due to the varying nature and extent of family violence within and between marital

relationships.

2.4.1 A feminist understanding of family violence

In keeping with a feminist analysis of family violence adopted herein, I came to understand that this perspective acknowledges, at some level, that a power imbalance does exist between the perpetrator and target of the violence. This is illustrated by the view of some proponents that certain cases are definitely not suitable for mediation. Given the latter position and the stated need to screen for the extent of violence within a relationship, I found that this perspective can also be said to touch upon the feminist theorists' view that power imbalance is at the foundational root of violence (Bolton & Bolton, 1987; Dobash & Dobash, 1979).

2.4.2 Liberal feminist theory of power imbalance

Contrary to the first perspective, which advocates against the mediation of cases involving family violence, this perspective does not reflect a socialist feminist's view of power imbalance. Instead, the basis of the argument for the mediation of cases involving family violence is consistent with a liberal feminist's view of power imbalance.

Following a liberal feminist approach to power imbalance, this perspective asserts that although power is rooted in the patriarchal structure of our society, "the structures themselves need no modifications beyond those effected by the inclusion of women on an equal basis" (Code, 1988, p. 35). Although liberal feminists regard sex discrimination and inequalities as an injustice, they do not challenge patriarchal relations that sustain

women's sexual and economic dependence. They maintain that power imbalances would no longer exist once women have unlimited opportunities in the public sphere. Lorraine Code (1988) clearly sums up the main premise of feminist liberal theory when she writes, "[L]iberal theory works with a model of society in which feminist change would merely require men to move over within existing social structures to make room for women" (p. 36). The issue of power, therefore, would be addressed when women have access to the same opportunities as men.

I found that the argument for the mediation of cases involving family violence is consistent with liberal feminist theory in two ways. First, in maintaining that mediation is suitable for cases involving family violence, this perspective does not address the historical and traditional roots of power inherent in the political and economic structures of society. Consequently, in mediating cases involving family violence, the structural causes of power imbalance are not addressed. As a result, the power structures and influences continue to operate without being challenged at the private (mediation session) and public (political and economic structures) levels.

Second, by not placing an emphasis on the roots of power imbalance and choosing to mediate cases involving family violence, women are not denied the opportunity to resolve conflicts at an individual level. Power is thus considered relative defined by an individual's or couple's specific situation.

2.4.3 Summary

In reviewing the perspective arguing for the mediation of cases involving family violence, I concluded that the primary goal of mediation is not necessarily to address the violence. Instead, this perspective which reflects liberal feminist theory, aims to free women from their dependent status in a patriarchal society by not denying them any opportunities and, consequently, offering them the option of mediation. Although some proponents do claim the necessity to screen out some cases involving family violence, the extent and level at which violence is considered appropriate/inappropriate for mediation remains unclear.

2.5 Summary of the debate for and against the mediation of cases involving family violence

In conclusion, it was my intent to illustrate the two perspectives on the issue of mediating cases involving family violence. In examining these two perspectives, I have found that the basis of these arguments is consistent with feminist analysis of violence and power imbalance.

Both perspectives maintain, at varying levels, that power imbalance is the basis upon which violence is built. However, on the one hand, the perspective against mediating cases involving family violence asserts that mediation is an inappropriate method of intervention because of the power imbalance created by the violence. This perspective, therefore, adopts socialist feminist theory which states that power imbalance will only be addressed when the patriarchal and capitalist systems change.

On the other hand, the perspective arguing for the mediation of cases involving family violence maintains that power is relative to a specific situation, and grants women access to the option of mediation regardless of the power imbalance inherent in cases involving family violence. This perspective reflects a liberal feminist theory of power imbalance which asserts that women will be equal to men once they are not denied any opportunities.

Finally, by presenting these two perspectives on the subject of mediation and family violence, I did not attempt to resolve the complex debate on this inconclusive issue. Instead, I brought forward the perspectives on this issue in order to illustrate the theoretical context in which I conducted the evaluation of a screening process within a child custody mediation program.

2.6 The screening process

Although they originate from different positions, proponents of these two perspectives do recognize, to a varying extent, that power imbalance inevitably exists between individuals requesting mediation and that some cases involving family violence are unsuitable for mediation. With this in mind, an expansion of screening procedures, including screening instruments and screening process guidelines, have been recommended to screen for and assess the appropriateness of mediating cases involving family violence.

Standardized instruments, which have been utilized for screening and assessment purposes in mediation, include the Conflict Tactics Scale (Straus, 1979), Feminist Family Therapy Behavioral Checklist (Chaney & Piercy, 1988), Assessment of Patterns of

Dangerousness (Stuart & Campbell, 1989), and Linda Girdner's (1990) Conflict Assessment Protocol.

In addition, Nickles & Hedgespeth (1991) have developed a generic model for divorce mediation that includes a screening interview which assesses the positive and negative attributes of the mediating couple. This screening interview is quite comprehensive, as it lists 20 variables for mediators to assess, including power imbalance, use of power, and spouse abuse.

Benjamin & Irving (1992) have also presented their feminist-informed model of therapeutic family mediation which emphasizes the assessment of spousal power balance, the presence of violence and the empowerment of the weaker partner.

Based on their study examining preseparation abuse, marital conflict mediation and postseparation abuse, Ellis and Stuckless (1992) suggest that four variables be included in a screening index. These variables are: 1) hassles prior to separation, 2) fear of one's partner, 3) engagement in violence prevention activities prior to mediation, and 4) completing an affidavit before mediation.

In their document entitled "Mediation and Accountability to Abused Women", the Advisory Committee on Mediation and Domestic Abuse of Saskatchewan (1993) provide step by step instructions for screening interviews during 1) the initial interview, 2) when abuse is disclosed or suspected during the initial screening, and 3) when abuse is disclosed for the first time during the mediation process.

Lisa Lerman's (1984) feminist critique of mediation recommends that mediators ask about violence and that specific criteria be used in screening cases for mediation. The

intake procedure, therefore, should include questions about 1) whether there has been violence between the parties, 2) the most recent incidents of violence, 3) a history of previous violence in the relationship, 4) the duration of the violence, 5) the frequency of the attacks, 6) the severity of the violence, and 7) the types of assistance sought in the past. The mediator should also disclose information about expectations around mediation and other alternative resources.

The screening process itself would include the screening instruments in addition to the methods of conducting the assessment for family violence in mediation cases. Charbonneau (1993), in his draft "Report from the Toronto Forum on Woman Abuse and Mediation", makes the following recommendations: 1) having a two-tiered system of screening, 2) screening for abuse before a case is accepted for mediation, 3) conducting separate interviews with each participant, 4) conducting an assessment of dangerousness to ensure the safety of individuals, 5) the voluntary participation in mediation which is based on informed consent, 6) conducting an assessment of the individual's ability to express and communicate her/his needs, 7) using multiple sources of information to determine the nature and extent of the violence, and 8) using screening instruments as only part of the screening process, thereby, not ignoring high levels of investigative interviewing and assessment.

In their published manual entitled "Resource Manual: Domestic Abuse and Family Mediation" (1995), Family Mediation Canada provides an array of screening instruments and extensive screening process guidelines for the use of family mediators across Canada.

Feminist critics of mediating cases involving family violence have also recommended that mediators practicing divorce mediation receive training in the area of domestic violence. Mediators should be knowledgeable about how the experience of abuse affects the mediation process and about the safety implications for women. Mediators should also be in a position to assist clients in accessing resources (Advisory Committee on Mediation and Domestic Abuse, 1993).

Similarly, Lisa Lerman (1984) confirms the importance of specialized training for mediators. Skills that she considers necessary for the mediator to attain include: 1) techniques for identifying battering cases, 2) techniques for counseling victims and abusers, 3) knowledge of local laws, law enforcement and court practices regarding domestic violence, 4) awareness of resources for people in violent relationships, 5) awareness of social service programs such as treatment programs for alcoholics, and 6) a general understanding of political, psychological, and sociological perspectives on family violence.

In short, in order to screen for the presence of family violence and assess the appropriateness of such cases for mediation, it has been recommended that a screening process involving screening instruments and specific guidelines be developed, adopted and implemented by mediators and mediation programs alike.

However, in reviewing the various screening processes recommended in the current literature, I found little evidence indicating first, the utilization of a screening process in mediation programs, and second, the effectiveness of the screening process in assessing for family violence and determining the appropriateness of cases involving family

violence for mediation. On this related topic, Lisa Lerman (1984) found that although screening standards have been developed to assess the appropriateness of mediation cases, many mediators neglect to inquire about the existence or nature of violence in the relationship when such information is not disclosed voluntarily by the disputants. She therefore concludes that "screening standards are often amorphous and are not consistently applied" (p.93). Similarly, Ellis and Stuckless (1992) found that some screening instruments are not tested for individual predictors of abuse.

Given the uncertainty of the adoption, application and consistent use of a screening process by mediation practitioners, inappropriate cases involving family violence are at risk of being mediated, ultimately placing the target of the violence in danger by reproducing a set of power relations during the mediation session. The problem of inappropriate cases being mediated is further compounded by the fact that there are no universal standards for mediators in regards to handling issues of family violence and abuse. This literally gives mediators the right to practice without the implementation of a standardized screening process. Consequently, I concluded that a gap exists between the theoretical analysis of the screening and assessment of family violence cases in mediation and its application in theory and practice within mediation programs.

2.7 Evaluation

Given the lack of information and evidence indicating the utilization of a screening process in mediation programs and the effectiveness of screening processes in assessing for family violence and determining the appropriateness of such cases for mediation, I

found that evaluation research would be one way of addressing the gap existing between the theoretical analysis and practical application of screening processes within mediation programs.

Evaluation research is defined as "the use of social research methodologies to judge and improve the ways in which human services policies and programs are conducted, from the earliest stages of defining and designing programs through their development and implementation" (Rossi & Freeman, 1993, p. 5). The field of evaluation research is diverse and ranges from conducting need assessments and formative evaluations to summative evaluations, implementation and outcome studies (Herman, Morris, & Fitz-Gibbon, 1987).

A formative evaluation answers the questions: How can the program or policy improve? How can it become more efficient or effective? (Herman, Morris, & Fitz-Gibbon, 1987).

An implementation study explores whether developing and implemented programs/policies are consistent with their intended designs (Rossi & Freeman, 1993; Patton, 1987). An implementation evaluation, therefore, gathers descriptive information about what is being implemented and answers questions such as: What do clients in the program experience? What services are provided to clients? What do staff do? What is it like to be in the program? How is the program organized? (Patton, 1987).

"Monitoring" or, more accurately, a process evaluation brings together the concepts of formative and implementation evaluation. A process evaluation, therefore, is an examination of the implementation of daily activities for the purpose of maximizing a

program/policy's conformity with its design and objectives in order to improve its efficiency and/or effectiveness (Rossi & Freeman, 1993; Herman, Morris, & Fitz-Gibbon, 1987). In conducting a process evaluation, the evaluator assumes a role in the development and refinement of the program by communicating findings to program management and staff on a regular basis throughout the evaluation (King, Morris, & Fitz-Gibbon, 1987).

2.7.1 Monitoring

Monitoring a program/policy design can serve many purposes for many stakeholders (Rossi & Freeman, 1993). First, monitoring a program/policy can help an evaluator better understand outcomes and the utility of services, as well as assist in extending the critical details of an effective and efficient program. Monitoring also can serve funding agents by outlining activities undertaken, problems encountered and the stage of implementation for developing programs. Finally, program monitoring is a means for the program management to modify and improve program operations. As Rossi and Freeman (1993) note, "program monitoring serves management needs by providing information on coverage and process, and hence feedback on whether the program is meeting specifications" (p. 173-174). In short, program monitoring assists in the fine tuning of developing or existing programs and/or policies.

As the evaluation focused on the process and implementation of a policy, monitoring target population, known as coverage, is not presented herein (see Rossi & Freeman, 1993). Instead, the following section deals with monitoring the delivery of an

intervention consisting of either a program or policy.

2.7.2 Monitoring the delivery of interventions

As noted earlier, monitoring the implementation of daily activities helps to determine whether an intervention (program or policy) is delivering what was intended. Rossi and Freeman (1993) outline three reasons why interventions are not delivered as intended. These include, 1) no intervention, or not enough, is delivered, 2) the wrong intervention is delivered, and 3) the intervention is unstandardized, uncontrolled or varies from participant to participant.

2.7.3 Collecting data for monitoring

When choosing techniques to gather data for monitoring purposes, it is important to consider the resources available and the skills of the evaluator. Ethical considerations, such as issues of privacy and confidentiality of participants, must also be addressed. In addition, consideration should be given to using qualitative methods in order to get close to the program personnel and activities. For this reason, it is recommended that the evaluator seek data from: 1) direct observation, 2) service records, 3) service providers and 4) program participants (Rossi & Freeman, 1993). Direct observation and participant observation are the preferred methods in monitoring (Rossi & Freeman, 1993). However, evaluators should be cautious and compensate for interaction effects in the design of the evaluation.

Given that some service records are either complex, incomplete, or inconsistent, Rossi and Freeman (1993) outline three considerations that should govern the design and use of program records. They include: 1) utilizing a few items of data gathered consistently and reliably versus a volume of information recorded inconsistently, 2) using structured record forms and checklists whenever possible rather than having a narrative format, and 3) reviewing completed records for consistency and accuracy as soon as possible.

The evaluator can gather data from service providers by requiring that staff code information, write narrative reports, fill out a questionnaire or participate in an interview. Rossi and Freeman (1993) suggest that the most efficient approach in gathering data from service program staff is to use a highly structured instrument that can be completed by an interview or by a staff person alone.

Interviews or self-administered questionnaires can also be used when gathering data from program participants (Rossi & Freeman, 1993). Securing information from this population is important in order to capture many client perspectives of the delivery of the intervention. As Rossi and Freeman (1993) add, "it is necessary to establish not only that designated services (interventions) have been delivered, but also that they were received, utilized, and understood as intended" (p. 209).

Finally, collecting data from various sources is important in order to fill in gaps of information, support controversial claims and strengthen the validity and credibility of the evaluation design (King, Morris, Fitz-Gibbon, 1987).

2.7.4 Analysis of monitoring data

In analyzing the data, the evaluator is able to provide a full and accurate description of the program. Descriptive statements can usually take the form of narrative accounts when the data have been collected with qualitative methods. By formulating a detailed description of the intervention's implementation activities, the evaluator can compare its conformity/nonconformity to the intended program/policy design. A description of the intervention can also provide program management and staff with information indicating which program features worked and which did not (King, Morris, Fitz-Gibbon, 1987). At the same time, such a description creates a historical record of the program that may be used for other programs which would want to implement a similar program/policy design (King, Morris, Fitz-Gibbon, 1987). In addition, by analyzing the data, a comparison can be made of programs existing at different sites. Finally, in examining the conformity between the implemented program/policy and its original design, it can be decided whether program components need to change (Herman, Morris, Fitz-Gibbon, 1987; Rossi & Freeman, 1993).

2.7.5 Feedback from monitoring

During the process of monitoring, it is the evaluator's responsibility to provide feedback on the findings, patterns, etc., to the program management and staff on a continual basis (Rossi & Freeman, 1993). This allows for fine tuning and redesigning of program components. However, it should be noted that information provided will not necessarily be used. As such, the evaluator should be sensitive to the organizational

arrangements of the program.

2.7.6 Summary

In summary, evaluation research enabled me to examine Family Conciliation's screening policy design, monitor the implementation of the screening process and evaluate its effectiveness for the purpose of improving it for the staff's use. While conducting a process evaluation, I was able to gather data while being part of, and close to, the natural environment in which the screening process was being implemented. This allowed me to obtain and analyze data from the program management and staff, while being able to provide and ask for feedback on an ongoing basis.

2.8 Synthesis of the literature review

The literature reviewed in this section provided a theoretical context in examining the question of screening for, and assessing the appropriateness of, cases involving family violence where the issue to be mediated is not the violence itself within the context of child custody mediation programs.

The perspective against the mediation of cases involving family violence is consistent with socialist feminist theory which maintains that the power imbalance created by the violence cannot be addressed in mediation until the capitalist and patriarchal structures of our society changes. Proponents of this perspective assert that cases involving family violence be screened out and not be accepted for mediation.

Conversely, the perspective for the mediation of cases involving family violence is consistent with liberal feminist theory which maintains that power imbalance will be addressed by offering equal opportunities to women. This perspective argues that the option of mediation should not be denied. Some proponents of this perspective extend their position by recommending that screening instruments and the screening process be utilized in order to assess the severity of the violence and, subsequently, its appropriateness for mediation. It should be noted that the extent and nature of the violence at which proponents of this perspective deem mediation inappropriate remains unclear.

However, based on the lack of evidence and information confirming the use and effectiveness of screening instruments and a screening process by mediators, it became apparent that this question remains outstanding.

Consequently, evaluation research was needed to monitor and evaluate the design, implementation and effectiveness of a screening process within a mediation program. Conducting a process evaluation provided the opportunity to explore whether mediators were actually using a screening process, the design of the screening process, how it is implemented, and how effective it is in screening for, and assessing the appropriateness of, cases involving family violence in child custody mediation programs.

CHAPTER 3

METHODOLOGY

In this chapter the evaluation's purpose and its stakeholders are presented. The research design, along with the sampling and data collection methods are then outlined. Finally, the strategy utilized for the data analysis is reviewed.

3.1 Purpose of the evaluation

Based on Family Conciliation's interest in evaluating their screening protocols and my own specialized interest in the area of mediation and family violence, the general purpose of the evaluation was to determine whether the screening process outlined in the Mediation and Family Violence Protocols document was effective in screening for family violence and assessing the appropriateness of cases involving family violence for child custody mediation.

With the evaluation's purpose in mind, I was interested in answering the following evaluation questions:

- 1) What were the design and screening components of the protocol document?**
- 2) What screening process was being implemented by mediation counsellors? Did the implementation of the screening process reflect the screening protocol document?**
- 3) How was the screening process being implemented by the mediation counsellors? Was it being implemented consistently?**
- 4) Did the screening process utilized by the mediation counsellors screen for family violence? How were cases screened for family violence?**

- 5) **Did the screening process utilized by the mediation counsellors determine the appropriateness of cases involving family violence for child custody mediation? How were cases involving family violence determined appropriate/inappropriate?**
- 6) **If necessary, how could the Mediation and Family Violence Protocols be improved to increase the effectiveness of the screening process for staff's use when screening for family violence and assessing the appropriateness of cases involving family violence for child custody mediation?**

3.2 Stakeholders

The range of stakeholders who directly participated in, or became interested in, this policy evaluation and its results, included the following five groups. The theoretical categories and descriptions of the various stakeholder groups, presented herein, were drawn from Rossi and Freeman's (1993) writings.

First, the primary stakeholder group consisted of the program managers --- the director and the supervisor of Family Conciliation who were responsible for overseeing and coordinating the child custody mediation program. Second, program staff (mediation counsellors), who were responsible for the actual delivery of the mediation service, were another stakeholder group. As the evaluator responsible for designing and conducting the evaluation, I constituted the third stakeholder group. The Practicum Committee and the Ethics Committee of the Faculty of Social Work formed the fourth stakeholder group, which is referred to as the evaluation community. The evaluation community included individuals who ensured that the evaluation's technical design was ethical and appropriate. Finally, the external key informants (other divorce mediation practitioners) involved in the study, were in the immediate environment of the mediation program, and were

considered the contextual stakeholders of the evaluation.

3.3 Research design

As mentioned in the section outlining the purpose of the evaluation, this study attempted to evaluate the effectiveness of Family Conciliation's screening protocols developed three years ago for its child custody mediation program. After reviewing the current literature and finding a definite lack of studies addressing the use and effectiveness of a screening policy and process within any sort of mediation program, I found that an emphasis on the exploration of this specific area of research was required.

It is within the context of examining Family Conciliation's screening protocols for the first time since their creation in 1993, and the need for exploratory research in the area of evaluating mediation programs' screening processes, that I selected an exploratory design for this process evaluation. An exploratory design is "a research design whose purpose is just to gather data or facts" (Grinnell & Williams, 1990, p. 304). An exploratory design was conducive to exploring the nature and process of the protocols' implementation activities by building a foundation of information describing the actual screening process. This information was then utilized to compare its congruence with the designed protocols and to identify the effectiveness of the screening process in screening for family violence and assessing the appropriateness of cases involving family violence for child custody mediation.

However, an exploratory design did have its limitations. First, in selecting an exploratory design, the evaluation did not reflect a true experiment with conclusive

results. Second, because of the nature of the process evaluation, the effectiveness of the screening protocols could not be evaluated because the clients of family violence cases were not directly involved in determining whether their cases were effectively screened out. Hence, the effectiveness of the screening protocols was based on the perceptions of the mediation counsellors and managers at Family Conciliation. Finally, the external validity of the design may be limited in this evaluation study. As the process evaluation was tailored to the specific screening process utilized at Family Conciliation and occurred in the realistic setting of the workplace at the Winnipeg branch, it could be considered not capable of being generalized to the larger population. However, as Maxwell (1996) explains, "qualitative studies often have what Judith Singer has called face generalizability; there is no obvious reason not to believe that the results apply more generally" (p.97). In light of this, implications from this study may have relevance to other mediation programs concerned with the question of screening for the appropriateness of cases involving family violence.

3.4 Sampling methods

In this evaluation study, the methods of purposive sampling, convenience sampling and criterion sampling were respectively utilized to obtain the four distinct sample groups outlined below.

3.4.1 Managers and mediation counsellors

The method of purposive sampling was utilized to select the primary sample group of managers and mediation counsellors at Family Conciliation. Purposive sampling is a method of selecting "certain types of individuals or persons displaying certain attributes" (Berg, 1989, p.110). The most recent staff list served as the sampling frame. Due to the limited size of the population, I included both managers, the program coordinator of the parent education program entitled *For the Sake of the Children*, and all of the nine mediation counsellors as part of my target sample group.

Prior to the commencement of the evaluation, I sent a letter to each manager (Appendix D), each mediation counsellor (Appendix E), and the program coordinator (Appendix F). These letters served the purpose of 1) advising the potential participant of the purpose of the evaluation, 2) asking for the potential participant's cooperation in participating in the evaluation, 3) outlining the nature, time required and extent of their participation in the study, 4) guaranteeing anonymity and confidentiality, 5) ensuring that participation was voluntary, and 6) offering a copy of the summary of the evaluation results.

Informed consent forms for the managers (Appendix G) and the mediation counsellors, including the program coordinator (Appendix H), were attached to each of the letters for consenting individuals to complete and return to me directly at my home address in the pre-paid self-addressed envelope one week before the commencement of the evaluation. In response, I obtained a sample group which included two managers, the program coordinator of the parent education program, and eight mediation counsellors.

3.4.2 Observations of the screening components

Convenience sampling was utilized to select observations of the four components of the screening process which included 1) a telephone intake session, 2) an individual office interview, 3) a *For the Sake of the Children* session, and 4) a mediation session. Convenience samples are identified by Patton (1987) as cases that are convenient and easily found. Convenience sampling was chosen in order to accommodate the scheduling of the observations with my work schedule. It should be noted that the sample of observations was selected from the scheduled cases of the eight participating mediation counsellors during the months of March and April, 1996.

In selecting the sample of observations, informed consent was obtained from the clients of each case being observed. The mediation counsellors were given a script requesting clients' participation in the evaluation's observations (Appendix I). The mediation counsellors reviewed this script with the clients at the time of scheduling their session. At the outset of the session being observed, the counsellor also asked consenting individuals to fill out an informed consent form (Appendix J). This consent form outlined 1) the purpose of the evaluation, 2) a request to participate in the observations, 3) a guarantee of confidentiality and anonymity, 4) a voluntary participation, and 5) a notation that participation in the observations would have no bearing on their current and/or future services at Family Conciliation.

My intended target sample of observations included six half-day observation sessions of telephone intake, six individual office interviews, three observations of the parent education program, and four mediation sessions. However, I only obtained eight

half-day observation sessions of telephone intake, three individual office interviews, one observation of the *For the Sake of the Children* session, and one observation of a mediation session during the months of March and April, 1996.

3.4.3 Case study

Criterion sampling, described as "cases meeting a predetermined criteria" (Patton, 1987), was utilized in selecting the case study. The case study was selected from the sample frame of participating mediation counsellors' caseloads and was based on the following criteria: 1) a referral case initially assessed with no elements of family violence; 2) a referral case initially assessed as a "maybe case" in which family violence had been a part of the relationship but maybe appropriate for mediation, 3) a referral case initially assessed with the presence of current family violence. It was my intention to obtain a total of three cases, including one from each criterion. However, due to conflicting schedules, I was only able to obtain a sample of one case study which was initially assessed as fitting the second criterion, that of a "maybe case".

As in the observation of the screening process components, the clients' consent was obtained by the counsellor utilizing the script requesting clients' participation and the informed consent form.

3.4.4 External key informants

Finally, criterion sampling was also utilized to select the two sample groups of external key informants. First, the Family Mediation of Canada's listing of Manitoba

members served as a sample frame. From this listing of Manitoban mediation practitioners, external key informants were selected on the basis of 1) offering divorce/separation mediation services, and 2) being located in the City of Winnipeg. Second, Family Conciliation's C.O.A.R. Referral Resource List was utilized as a sample frame for out-of-province external key informants, who were selected on the basis of 1) being located in a Canadian province other than Manitoba, and 2) offering a court-connected family mediation service.

In consultation with the director of Family Conciliation, I selected eligible participants and aimed to obtain a target sample of four divorce mediation practitioners in the City of Winnipeg, and 10 out-of-province external key informants.

Suitable external key informants and out-of-province external key informants were then sent letters (Appendix K & L), advising them of the evaluation being conducted at Family Conciliation. This letter served the purpose of 1) advising the potential participant of the purpose of the evaluation, 2) asking for the potential participant's cooperation in participating in the evaluation, 3) outlining the nature, time required and extent of their participation in the study, 4) guaranteeing anonymity and confidentiality, 5) ensuring that participation was voluntary, and 6) offering a copy of the summary of the evaluation results. An informed consent form was utilized for the external key informants in the City of Winnipeg (Appendix M). The out-of-province external key informants' participation was deemed voluntary in the letter of introduction sent to them. In response, I obtained a sample of four external key informants in the City of Winnipeg and only one out-of-province external key informant.

3.5 Data collection

Based on the exploratory nature of the evaluation and its general purpose of evaluating the effectiveness of the screening process by monitoring the implementation of activities within Family Conciliation's actual workplace, I chose qualitative methods of gathering data. As Michael Patton (1987) explains, qualitative methods are well suited for an evaluation that "is process oriented, capable of capturing and monitoring not only anticipated outcomes but also unanticipated consequences, treatment changes, and the larger context of program implementation and development" (p. 19). Qualitative methods of data collection paralleled the exploratory design of this evaluation, and as such, complemented the formative evaluation's focus on interactions and processes and the monitoring of the screening process activities.

A pure qualitative strategy was utilized for this process evaluation (Patton, 1987). More specifically, the evaluation first, consisted of a naturalistic inquiry, thereby, collecting data in the natural work setting at Family Conciliation. Second, qualitative data were collected mainly through in-person interviews, observations and a case study. Finally, the data were inductively analyzed.

In the following subsections, the eight methods of data collection utilized during the months of February, March, and April of 1996 are discussed. It should be noted that the data collection methods have been enumerated for the purpose of presentation clarity only. The numbering of these methods is not meant to represent a sequential order because the collection of data was in fact determined by the scheduling of cases and the sequence of events.

3.5.1 Interview with manager

In order to gain management's perspective on the development, adoption, implementation and effectiveness of the Mediation and Family Violence Protocols policy utilized as a screening process for the child custody mediation program, I conducted an in-person semi-structured interview (Appendix N). The interview, held with each manager separately, was an hour in length and was tape recorded.

The interview questions focused on the following: 1) description of the events surrounding the formulation of the screening policy document, 2) the implementation of the protocols, and 3) the effectiveness of the protocols in screening for, and assessing, the appropriateness of family violence cases requesting child custody mediation. The questions were arranged in a funnel format, ranging from broader to specific questions. I developed the interview guide based upon the partial evaluability assessment and on King, Morris & Fitz-Gibbons' (1987) writing entitled "Questions for an Implementation Evaluation".

3.5.2 Interview with mediation counsellor

A tape recorded semi-structured in-person interview (Appendix O), lasting one hour in length, was conducted with each participating mediation counsellor. The purpose of interviewing the mediation counsellors, and hence the focus of the interview questions, was to explore the mediation counsellors' perspectives on the 1) purpose, objectives and description of the screening protocols, 2) use of and satisfaction with the protocols, 3) operationalized definition of family violence, 4) practical implementation of the screening

process, and 5) effectiveness of the screening process in screening for, and assessing, the appropriateness of family violence cases requesting child custody mediation. I developed the interview guide on the basis of my initial review of the Mediation and Family Violence Protocols document, and the partial evaluability assessment. It should be noted that the interview guide was pre-tested with the supervisor at Family Conciliation.

3.5.3 Observation of telephone intake

The purpose and focus of observing a telephone intake session was to explore the types of questions asked during this component of the screening process. As Patton (1987) explains, the rationale for gathering data through observation is to be placed in the program setting and to obtain observational data which is in-depth and detailed in order to describe the phenomena under observation.

In observing this component of the screening process, I was "sitting in" with the mediation counsellor during the telephone intake call. I therefore adopted the role of an observer participant with the mediation counsellors each aware that I was observing them (Williams & Grinnell, 1990). Consequently, I gathered information by recording the screening questions being asked by the mediation counsellor in a narrative style format.

After each telephone intake call, I conducted an unstructured debriefing interview with the mediation counsellor for two reasons. First, in order to check for interaction effects, I asked the mediation counsellor if my presence affected the way in which the call was screened. Second, I explored the mediation counsellor's initial assessment of the case and the existence of family violence issues. This debriefing interview, which lasted at the

most 10 minutes, assisted me in associating the questions asked during the telephone intake session with the assessment of the type of case. The information from this debriefing interview was recorded through a summarized narrative style format.

3.5.4 Observation of individual office interview

The purpose of observing the individual office interview of a case was to explore the screening questions, techniques, and general screening process utilized by the mediation counsellor. The collection of data through observation lent itself well to this purpose as I was not only able to examine the screening techniques and questions, but I also witnessed the interactions between the mediation counsellor and the client that provoked the type of screening utilized. In short, by observing the individual office interview, I was able to obtain the complete context of this component of the screening process.

During the observation of the typical one hour individual office interview, I sat in the back of the room and adopted a complete observer role during which time I spent observing and recording information (Williams and Grinnell, 1990). As such, I utilized a checklist to record information. I formulated the In-person Observation Checklist (Appendix P) based on the questions and techniques suggested in the screening protocols for the use of mediation counsellors. In addition to quickly checking off items on the checklist, I also recorded relevant questions and interactions that pertained to the screening of the case. After the completion of the individual office interview, I conducted the unstructured debriefing interview with the mediation counsellor.

3.5.5 Observation of parent education program

The Parent Education Program session presents information to potential mediation clients which helps them to decide if mediation is a suitable method of intervention for their situation. In observing the two hou-long session, I adopted the role of a complete participant and gathered information presented to clients in the session through the use of running notes. The purpose of the observation was to monitor this specific component of the screening process while focusing on information relating to family violence within the context of mediation.

3.5.6 Observation of mediation session

Given the fact that the assessment of a case for mediation is ongoing, extending from the telephone intake to the mediation session itself, I focused on the questions and techniques utilized by the mediation counsellor when observing this component of the screening process. Therefore I was able to observe this component of the screening process which involved a mediation counsellor and two clients.

During the observation, I adopted a complete observer role by having no personal interaction with the participants and sitting at the back of the room. To record information, I utilized a checklist. I formulated the Mediation Session Checklist (Appendix Q) based on the techniques suggested in the screening protocols and my literature review. In addition to checking off items on the checklist, I also recorded relevant questions and interactions that pertained to the case. After the completion of the typical one-and-a-half- hour-long mediation session, I also conducted the unstructured

debriefing interview with the mediation counsellor.

3.5.7 Case study

Thus far, I have presented data collection methods that monitored an isolated sample of cases by interviewing and observing mediation counsellors as they implemented the various components of the screening process. In order to monitor the screening and assessment of cases as a continuous process, a case study was utilized. Case studies can be described as "a slice of life", a "depth examination of an instance", or a "bounded system" (Lincoln & Guba, 1985; Stake, 1994). The patterns of the functioning case are the key to understanding the uniqueness of a case (Stake, 1994).

The purpose of using the case study was to monitor the case throughout the four components of the screening process --- from the telephone intake, to the individual office interview, to the parent education program session and to the mediation session(s). However, due to conflicting schedules, I only observed the individual office interview with the male client and two mediation sessions. However, I was able to review the case file notes and discuss the case with the mediation counsellor.

3.5.8 Interview with external key informant

I conducted a semi-structured in-person interview with each external key informant. The interview questions focused on the development, use, and implementation of an effective screening process for cases involving family violence. The purpose of the interview was to obtain additional information of screening components found to be useful

by other mediation practitioners. In short, the interview with external key informants widened the context of the evaluation by examining screening processes in other divorce mediation programs.

The interview guide (Appendix R) was formulated on the basis of my literature review, the Mediation and Family Violence Protocols document, and the interview guides developed for Family Conciliation's mediation counsellors. The interview guide was pre-tested with the director of Family Conciliation. The complete interview guide was utilized to interview the external key informants in the City of Winnipeg. These four interviews lasted one hour and were tape recorded. The one out-of-province external key informant was asked a shorter version of the interview guide through a telephone conversation, which I documented by the use of running notes.

3.5.9 Confidentiality and anonymity of data collected

When conducting an evaluation through the use of qualitative data collection strategies, questions regarding the violation of participants' privacy, the manipulation of the environment, and the violation of human rights must be considered in order to ensure participants' safety, credibility and confidentiality (Rossman & Freeman, 1989). As such, Berg (1989) describes confidentiality as "an active attempt to remove from research records any element that might indicate the subject's identity" (p. 138). One way of attaining confidentiality is ensuring the anonymity of participants, thus keeping the subjects nameless (Berg, 1989).

In order to ensure the confidentiality and anonymity of the data collected, I did not use participants' names during the interviews. The authentic names of participants were only viewed by myself and kept separate from taped interviews and were destroyed upon completion of the evaluation report.

Consequently, I was the only person to have access to the names and occupation titles of the participants from Family Conciliation, and the names of the external divorce mediation practitioners and of the clients. I secured this identifiable data, in addition to the interview tapes and computer disks, in a locked filing cabinet in my home office. Finally, all identifiable information was destroyed upon acceptance of my practicum evaluation report.

3.6 Data analysis

Given the explorative nature of the study and the qualitative methods of data collection mentioned above, I utilized an inductive method of qualitative data analysis. An inductive method of data analysis was chosen because it allowed me, the evaluator, to monitor interactions and processes during the data collection stage without imposing pre-existing expectations or categories on the situation being evaluated (Marshall & Roman, 1989, Lincoln & Guba, 1985). In other words, I was able to gain a thorough understanding of the situation before the data was formally aggregated for analysis. By moving from a specific situation towards establishing general patterns of interpretation, the results of the evaluation emerged from the data collected (Tutty, Rothery & Grinnell, Jr., 1996). As summarized by Patton (1987), an inductive method of qualitative data

analysis enables the results of the evaluation to be grounded in a specific context.

The purpose of the data analysis stage was to organize and bring meaning to the mass of information collected in order for patterns and themes to emerge. By interpreting these themes, the resulting findings were used to draw conclusions and ultimately answer evaluation questions. For this purpose, I referred to the methods of qualitative data analysis based on the readings of Tutty, Rothery, and Grinnell, Jr. (1996), Miles and Huberman (1994), Marshall and Rossman (1989) and Patton (1987). I relied primarily on the step by step approach of qualitative data analysis presented by Tutty, Rothery, and Grinnell, Jr. (1996) in Qualitative Research for Social Workers to analyze the interviews with the managers, counsellors and external key informants. This approach to data analysis, presented in the following pages, includes 1) transcript preparation, 2) first-level coding, 3) second-level coding, 4) data interpretation, and 5) assessing the trustworthiness of results. Although presented in linear fashion, it should be noted that these steps occurred in a cyclical manner by shifting from one step to the next throughout the data analysis stage. In addition, a simplified version of these steps of analysis was used to analyze and interpret the findings of the observations.

3.6.1 Transcript preparation

During the months of February, March and April of 1996, when the data for the evaluation were collected, the transcription of the tape recorded interviews with the managers, counsellors and external key informants was completed by a hired transcriber.

The ethical issues of confidentiality and anonymity were considered in hiring the transcriber. For example, I ensured that the transcriber did not know any mediation practitioners in the City of Winnipeg. In addition, I discussed with the transcriber the confidential nature of the information being transcribed and highlighted the need to safely store the materials (tapes and transcripts) and not discuss the information with anyone. The anonymity of the participant interviewed was safeguarded by using a code name and number on each tape. In addition, I did not refer to any names during the recording of the interviews, and no other potentially identifying information was included on the tape recorded material.

Using a regular word processing program and a double-spaced format, the raw data was transcribed *verbatim* in order to preserve the original context and meaning of the interview as much as possible. The format of the transcript allowed for enough space to write marginal notes during first-level coding. Although nonverbal communication was not transcribed, due to an oversight on my part, I did write memo notes after each interview to capture my initial impressions, thoughts and insights of the interview. Each interview lasted one hour and produced transcripts of 30 - 40 pages in length. Once I had completed interviewing and the final transcripts were submitted to me, I was able to review the transcripts at the end of April 1996.

3.6.2 First-level coding

After briefly reviewing the transcripts of the interviews, I proceeded to the second step of qualitative data analysis - first-level coding. Tutty, Rothery and Grinnell, Jr.

(1996) define first-level coding as "a combination of identifying meaning units, fitting them into categories, and assigning codes to the categories" (p.100). However, before identifying meaning units, I formulated a set of general rules, entitled "Rules of Application", to be applied to the coding process in order to ensure consistency when coding the interview transcripts of the managers, counsellors, and external key informants.

I began first-level coding by identifying meaning units, which are "segments of information that are the building blocks of a classification scheme" (Tutty, Rothery & Grinnell, Jr., 1996, p. 101). For the purpose of my analysis, I considered the sentences and/or paragraphs that most directly answered the interview question as a meaning unit. Thus, the meaning units emerged from the questions asked in the interview. Each meaning unit was identified with a highlighted yellow marker. I also wrote marginal notes alongside the text to identify general remarks or examples that did not directly answer the question but were worth noting.

Once the meaning units were identified, I was then able to identify categories through the use of the constant comparison method. The constant comparison method is described by Tutty, Rothery & Grinnell, Jr. (1996) in the following excerpt:

meaning units of data with the same characteristics are considered as fitting within the same category and are given the same code; meaning units that are different in important ways are put into a different category and given another code (p.100).

The constant comparison method was utilized to reduce the raw data of the transcripts into categories which had classified meaning units with similar characteristics. This procedure continued until all meaning units were classified and no new categories

emerged. In other words, I stopped first-level coding when category saturation had been reached (Tutty, Rothery & Grinnell, Jr., 1996).

Throughout this procedure, I encountered some meaning units that did not exactly fit into the categories. I assigned these meaning units to a miscellaneous category entitled "Side Comments". As Tutty, Rothery and Grinnell Jr. (1996) explain, meaning units of a miscellaneous category are acceptable as long as they make up less than ten percent of the entire data set.

Once all meaning units were allocated to a category with similar characteristics, I assigned a code to each category. A code is an abbreviated method of identifying the category. To facilitate the assigning of codes to each category, I formulated a "Code Book" outlining the code acronym beside each category. In addition, the code and categories were also grouped together based on each interview question. This enabled me to glance over a set of codes and categories pertaining to each interview question. The manner in which the code book was organized set the stage for second-level coding, which involved comparing categories and developing themes.

It should be noted that I did not assign codes for each category of the managers' and external key informants' interviews. I purposely omitted this step because the information from these interviews was quite manageable and I was able to analyze a summarized version of the information directly extracted from the transcripts.

In order to finalize the first-level coding stage, I conducted a review of my analysis to ensure that my categories and codes reflected the data. In addition to my own cross-referencing of the data with the code book, I also asked one of my practicum

committee members, Dr. Brad McKenzie, to code some of the transcripts of the managers' and counsellors' interviews. This reliability check was conducted to ensure that the categories and their codes reflected the information of the interview (Miles & Huberman, 1994). Using more than one coder to assess qualitative data is a well accepted approach to assessing reliability. Reliability was calculated by dividing the number of correct codes by the total number of correct and incorrect codes (Miles & Huberman, 1994). This procedure yielded a reliability ratio of approximately .80.

3.6.3 Second-level coding

By conducting first-level coding, my data was reduced by highlighting meaning units which were then classified into categories and labelled with a code acronym. This initial process of qualitative data analysis allowed me to formulate the code books which contained, in summary form, the data collected in the interviews with the counsellors, managers and external key informants respectively. Through first-level coding, the information became much more manageable to analyze.

Proceeding to second-level coding allowed me to compare and contrast the categories and identify similarities and differences between them in order to establish any themes (Tutty, Rothery and Grinnell, Jr., 1996). Themes are patterns that continually appear in the data. The major conclusions of the evaluation emerged through these themes. In order to compare the categories and establish themes more easily, I decided to display the categories of the counsellors, managers and external key informants' interviews by counting the number of times the codes of the categories appeared

throughout the transcripts (Miles & Huberman, 1994). This procedure of extracting meaning from the data set through a visual display is referred to as constructing a conceptual classification system (Tutty, Rothery, & Grinnell, Jr., 1996). As a result, I was able to formulate a code book which outlined the code, its category description and its total count. This procedure of data display assisted me in organizing my data in a way that I could identify salient themes more easily (Miles & Huberman, 1994). In short, I was able to note regularities in the information collected.

Once I had identified the themes, which reduced the data set by regrouping categories of similar qualities, I labelled them with new code acronyms. The themes of the managers and external key informants code books were not labelled with new code acronyms as codes were not initially assigned to the data set. Instead, I wrote marginal notes on the themes because the information was quite manageable to analyze. Overall, the development of themes assisted me in examining the data in a much broader context. In moving to a broader context, it was important for me not to lose scope of the original context of the information. As such, I kept the initial draft of the code book as a point of reference throughout the data analysis stage.

3.6.4 Interpreting data

Finally, I utilized the code book and marginal notes outlining the themes as the basis of my interpretations. The interpretations were then utilized to formulate the results of the counsellors' and managers' interviews. These results were then compared to the results of the observations of the screening process in order to draw preliminary

conclusions, which would be tested against the data, and ultimately used to address the evaluation questions.

3.6.5 Data analysis of the observations

Similarly, the observations of the telephone intake session, the individual office interview, and the mediation session were analyzed based on the principles of qualitative data analysis. In analyzing the telephone intake sessions, I considered the questions asked by the counsellors as the meaning units. These questions were then classified into categories by identifying the nature of the question. These categories were not coded with an acronym because the information was quite manageable. However, the categories were then used in interpreting broader themes. These themes were then cross-referenced with Family Conciliation's face sheet headings. Some categories were noted and placed in a miscellaneous category of "Side Comments" as they did not directly relate to the face sheet headings. Finally, a frequency count of face sheet headings was displayed and used to interpret the observation results of the telephone intake sessions.

The same procedure was utilized to analyze the observations of the individual office interview and mediation session with the exception of cross-referencing the categories of these observations with the observation checklists. Although checklists were utilized in these two instances, the data was not deductively analyzed because the interactions and questions being asked were observed first, and only subsequently recorded through the checklist. In essence, the qualitative methods of data analysis utilized for the interviews and observations were the same with the exception of assigning

codes to the observation categories. This step was dispensed with due to the manageable size of observing eight telephone intake sessions, four individual office interviews and three mediation sessions.

3.6.6 Assessing the trustworthiness of results

As emphasized in the literature on qualitative data analysis, the reliability, validity and credibility of the results are determined to a great extent by the process and procedures utilized by the researcher (Tutty, Rothery and Grinnell, Jr., 1996; Maxwell, 1996; Miles and Huberman, 1994; Marshall and Rossman, 1989; Patton, 1987). As such, it is important to note the steps taken to ensure the trustworthiness of my results.

First, during the data collection stage, I obtained all of the information through a voluntary and firsthand basis as I was the only person conducting the interviews, observations and case study. As Tutty, Rothery and Grinnell, Jr. (1996) explain, "information obtained firsthand is considered stronger than that reported by a third person. Data provided voluntarily can be assumed to be more trustworthy, as are data collected when the research participant is alone with you" (p. 113).

Second, the validity of the description of the data was ensured by the recording of the interviews and the verbatim transcription of those recordings (Maxwell, 1996). My observations were also noted in a detailed and concrete manner through the use of running notes and cross-referencing with the checklists. These steps produced "rich" data. Maxwell (1996) explains that "rich data are the product of detailed, descriptive note taking about the specific, concrete events that you observe" (p.95).

Third, the validity threat of reactivity defined by Maxwell (1996) as "the influence of the researcher on the setting or individuals studied" (p.91) was primarily controlled by asking open ended questions during the in-person interviews and by asking each observed mediation counsellor if my presence affected the way in which they screened cases.

Fourth, the two types of triangulation utilized in the evaluation included data triangulation and methodological triangulation (Janesick, 1994; Patton, 1987). Data triangulation is the use of a variety of data sources, and data for this evaluation were collected by individuals at the various levels of the organization (i.e. managers and counsellors) and later by external key informants (external divorce mediation programs). Methodological triangulation refers to the use of multiple methods to study a single problem. Three qualitative methods were utilized to collect data in this study: in-person interviews, observations and a case study. Once again, the reliability of the data analysis was verified by a second coder through the procedure of code checking.

Fifth, the interpretation of the data was valid as I utilized the strategy of member checking. Maxwell (1996) defines member checking as:

systematically soliciting feedback about one's data and conclusions from the people you are studying ... It is the single most important way of ruling out the possibility of misinterpretation of the meaning of what they say and the perspective they have on what is going on (p.94).

Member checking was conducted with the mediation counsellors of Family Conciliation when the preliminary results were presented in January and March of 1997. In addition, the case study was verified with the individual mediation counsellor who participated in the sessions. The feedback obtained from the participants was recorded and treated as

new information presented in the discussion chapter of this evaluation report.

Sixth, the method of obtaining feedback from a variety of people familiar and unfamiliar with the study was utilized to identify validity threats and flaws in the methods utilized (Maxwell, 1996). I obtained feedback from each practicum committee member by meeting with them regularly in order to review and discuss each aspect of the methodology, including the interpretation of the results. The validity and reliability of the data analysis stage was ensured by providing readers with a detailed account of the steps taken to analyze the results of the evaluation.

Finally, the conclusions extracted from the interpretation of themes were verified through negative instances of themes (Miles & Huberman, 1994). Maxwell (1996) summarizes this in the following excerpt:

The basic principle here is that you need to rigorously examine both the supporting and discrepant data to assess whether it is more plausible to retain or modify the conclusion, being aware of all of the pressures to ignore data that do not fit your conclusions (p. 93).

In other words, the conclusions derived at the data analysis stage were compared against the data in order to pinpoint any data that was contradictory to the findings, and discrepant evidence was reported in the discussion chapter of the evaluation report.

CHAPTER 4

RESULTS

In this chapter, the results of each of the following will be reviewed: 1) the in-person interviews with the managers and mediation counsellors at Family Conciliation, 2) the observations of the components of the screening process, 3) the case study, and 4) the interviews with the external key informants. These results serve three essential purposes. First, they provide descriptive information of the formulation, utility, implementation and effectiveness of the screening processes utilized by Family Conciliation's mediation counsellors and external mediation practitioners alike. Second, the results set a precedent within the mediation literature by describing an actual protocols document and screening process being utilized by a child custody mediation program. Finally, these results are utilized as a method of triangulation when comparing the results of the various stages of the screening process in order to formulate the evaluation's conclusions and recommendations which are discussed in the final chapter of this report.

It should be noted that the results are presented primarily through the use of a descriptive, narrative format. However, frequencies are also utilized to illustrate significant findings. Unless otherwise stated, the frequencies (total counts) are representative of the number of times the category was mentioned throughout the interviews. The frequencies are not equal to the total number of participants because one participant could have articulated more than one category at the same time. In other words, the frequencies represent at times an overlap in responses.

In order to maintain the confidentiality of the respondents throughout this chapter, the pronouns "he" and "she", "his" and "hers" are used alternately.

In conducting the in-person interviews with the mediation counsellors at Family Conciliation, I encountered technical difficulty in recording one of the interviews. Consequently, some of the results only reflect a response from seven out of the eight counsellors. Similarly, when conducting the in-person interviews with the external key informants, one mediator refused to answer questions in regards to family violence because he felt it was irrelevant to his practice since he had never encountered cases involving family violence. Thus, some results only reflect three out of four responses.

Finally, due to the exploratory nature of the evaluation and its qualitative methods of data collection, the responses from the participants interviewed were not exhaustive. Therefore, the results presented only reflect the responses which were mentioned throughout the interviews.

In the following pages, the results of the interviews with the managers of Family Conciliation are presented first, and the results of the interviews with the mediation counsellors of Family Conciliation second. The observation results of the four components of the screening process are then outlined, followed by the case study. Finally, the results of the interviews with the external key informants are highlighted.

4.1 Management's perspective of the protocols

4.1.1 Formulation of the protocols

At the outset of the interview, the managers of Family Conciliation were asked questions about the protocols document that placed it in its historical context.

According to both managers, there was no written policy or procedures that addressed the issue of family violence prior to the development of the Mediation and Family Violence Protocols. The standardized practice and procedures manual (1988), which was being revised at the time of this evaluation, only addressed the appropriateness of a case for mediation within the context of the initial intake process. However, as both managers were quick to attest, the counsellors were very much aware and understood the issues of family violence within the context of mediation.

The contributing factors that led Family Conciliation to develop the Mediation and Family Violence Protocols were twofold. First, both managers agreed that there was a need to develop safety protocols for participants of mediation and that cases involving family violence should not be mediated. There was also a concern about ensuring that participants were ready for mediation and were able to articulate their needs effectively. One manager added that the safety of the counsellors was also of primary importance and that guidelines needed to be established to deal with violent clients. As such, both managers articulated that there was a need to document and formalize in the practice and procedures manual a standardized practice of dealing with cases involving family violence in order to ensure the safety of all persons (including counsellors) participating in

mediation.

Second, as one manager explained, there were external factors that influenced and contributed to the development of the protocols document. At the time, the Court was not doing any screening and due to a prevalence of violence, counsellors were seeing more and more cases being referred to mediation in which family violence was an issue. There was also mounting community pressure to withdraw the practice of mediating cases involving family violence. As the mediation of cases involving family violence became more of a professional and ethical issue, Family Mediation Canada began to examine the question. Family Conciliation felt that they needed to make a public statement about how they were protecting their mediation participants by developing and instituting a protocols document outlining a standardized practice of screening cases involving family violence.

Both managers explained that an internal committee, consisting of counsellors at Family Conciliation, was struck in order to develop the protocols document. Four to five members of this internal committee were assigned to do the research. One counsellor from the Westman regional office was also involved in the development of the protocols as he brought forward information on caucusing. In addition, the former director gathered information from other jurisdictions and from Family Mediation Canada. Once the draft protocols document was completed, it was sent to the counsellors for feedback. External members were also consulted in reviewing the draft document, namely Daniel Hamoline of Fifth Avenue Counselling, Mediation and Arbitration in Saskatchewan, and Marlene Bertrand, Director of the Family Dispute Service. The final version of the protocols

document was completed in September of 1993. As one manager explained, the development and adoption of the protocols document was based on the general consensus and participation of all the counsellors.

Both managers defined the purpose of the protocols document as a standardized approach to screening cases appropriately in order to assess the potential risk for clients. With community accountability in mind, one manager added that the purpose of the protocols was to address the concern of the community by outlining Family Conciliation's approach to mediation screening. In regards to defining the objectives of the document, one manager mentioned the need for standardized practice, while the other manager mentioned the need to ensure the safety of the persons involved in mediation. These differing responses could be attributed to the interchangeable use of the terms purpose and objective. However, the same theme of ensuring the safety of clients was apparent in both contexts.

4.1.2 Adoption of the protocols

After the formulation of the protocols document in September of 1993, the protocols were formally adopted by the Director who sent a memo to all regions and staff members instructing them to place the document in the practice and procedures manual. According to one manager, the response to the adoption of the protocols document by the counsellors was a positive one. This manager noted that "the counsellors were pleased to have clear direction around the process of screening". In addition, the agency was proud of adopting a policy that was clearly ahead of Family Mediation Canada and the

Association of Family Conciliation. The other manager noted that the adoption of the policy was simply a formality for the counsellors, given the fact that they were involved in its development which was based on a consensual decision-making process.

4.1.3 Implementation of the protocols

In order to explore the implementation of the protocols, the managers were asked to describe the counsellors' general use of the protocols document. Both managers felt that the counsellors were using the screening process outlined in the protocols document. Although the Director knew that the mediation counsellors were using the policy, she wasn't sure to what extent it was being used, due to her indirect contact with the cases. She explained this in the following excerpts:

The way I gauge whether it's being used and how it's being used is through the discussions and the issues that the staff bring forward. ... they're (staff) very sensitive to the issues of violence. In fact sometimes I think they're particularly cautious, okay, which I think is good. Now I'm not saying that that's not because I'd rather see it that way to be very cautious, to ask questions in supervision or if they get a peer consultation than to sort of take things for granted and proceed with some ambivalence about whether they should or not. So I think what the policy has done is really got people's sensitivity levels up and they would be very cautious and very careful. And the other thing is I don't hear from people who actually get cases that the screening isn't effective. What I hear from people is I can't go ahead with mediation because of the violence issues. In my statistics that I gather every year, there's a huge number of mediations that are called "not started" or "don't proceed" and I bet if we were to look at the reasons for that, probably 80% would be because of family violence issues. So I know that people are screening out. I mean otherwise we would have much higher agreements, a lot higher, you know, statistics regarding people going through mediation because our referrals are very high. So those are the ways I see people using it.

I often get calls from clients and primarily the calls that I would get would be complaining about mediation not proceeding are from the partner who wants to proceed where the mediator has said no because of that partner's abusive behaviour. It's not the spouse that's been abused who's phoning and saying "gee I'm being forced into mediation and, this is just not appropriate for me." I don't get those calls. I get the ones who are screened out and are mad because they think that they should - their wife or their partner should be forced into coming in ... So that's another indication to me that it's being used quite frequently.

While agreeing with the general use of the protocols document, the other manager added that the counsellors were continuing to use the screening process because it was part of their practice prior to the development of the protocols document and because it was part of their professional practice. Finally, both managers stated that although the counsellors were using the screening process, they were not referring to the document itself. In their opinion, the protocols document had been integrated into the counsellors' approach to practice instead.

When asked if the implementation of the screening process was consistent with the original design of the policy, one manager reiterated the fact that the protocols document was integrated in the counsellors' approach to screening. This person also noted that new workers and students were more likely to refer to the protocols document. The other manager stated that the screening approach used by the counsellors was consistent with the policy design, which considers cases involving family violence as inappropriate for mediation. This person also noted that the counsellors used their judgement in assessing on a case by case basis.

Finally, both managers described the counsellors as being satisfied with the protocols document. They attributed this satisfaction to the fact that the counsellors were

involved in its development and that it responded to an accepted professional issue.

4.1.4 Effectiveness of the screening process

Both managers agreed that the screening process outlined in the protocols document was effective. One manager explained that the effectiveness of the screening process was based on 1) the counsellors' consensus to screen out cases involving family violence, 2) the consistent application of the policy, and 3) the decision to mediate based solely on the counsellor's judgment. The other manager added that the effectiveness of the screening process also depended a lot on the information given by the participants and the interaction of the participants in the mediation session.

The responses to the question asking if any changes were necessary to enhance the effectiveness of the policy were mixed. One manager stated that the effects on children witnessing violence should be added and examined, in addition to revising the document based on current research. The other manager noted that nothing needed to change, but that it would be important to periodically review what takes place during the intake process.

Finally, both managers agreed that power imbalances should not be incorporated into the protocols document because this was a practice issue. One manager stated that power imbalances should be addressed as part of the model of mediation practised.

4.2 Counsellors' perspective of the protocols

4.2.1 Description of the protocols

In order to provide an historical context, counsellors were asked, at the outset of the interview, when they first became aware of the protocols document. The majority of counsellors (6) could not remember the exact year in which they had become aware of the protocols document, but they estimated that it was approximately three years ago (i.e., 1993). Although uncertain of the exact year they became familiar with the protocols document, all the counsellors (8) mentioned that they did remember, and were certainly aware of, general policies and discussions around the issue of family violence. The counsellors stated that they had been aware of the issues of family violence and mediation through a variety of workshops, seminars, and training that they had attended, some of which were in-house. In addition to being aware of the issues of family violence and mediation prior to the instalment of the protocols document, all eight counsellors stated that they were aware of the policy through its initiation. In fact, three counsellors mentioned that they had been part of the internal committee that wrote the document. Finally, one counsellor noted that she also had become aware of the general policies through her training as a BSW field placement student at Family Conciliation.

In describing the policy, all of the counsellors (8) stated that the purpose of the policy was to ensure the standardized practice of screening for the appropriateness of cases with family violence issues for mediation in order to alleviate placing participants at risk.

Subsequently, counsellors were asked to describe the objectives of the protocols document. Half of the counsellors (4) said the objective of the policy was to ensure the personal safety of the clients. Some counsellors also included the safety of the children and the entire family. The other counsellors (3) stated that the objective of the policy was to determine whether cases with family violence issues were appropriate for mediation. Another counsellor mentioned both stated objectives. Possibly the interchangeable use of the terms purpose and objective may be responsible for the differing response in stated objectives. However, both objectives did centre on the desired outcome of ensuring the personal safety of clients and appropriate selection of cases.

In examining the protocols document, the terms family violence, domestic abuse and child abuse are utilized but not defined. With this in mind, the counsellors were asked what definition of these terms should be used within the protocols document. This question generated quite a variety of responses which could not be grouped by frequencies to yield a common definition. Instead, each term (family violence, domestic abuse, child abuse) produced three subgroups which included the definition of the term, the relationship of the victim and perpetrator, and some indicators of the violence/abuse. The only theme that emerged from the responses pertained to the definition of these terms. The counsellors mentioned that family violence (2), child abuse (3) and abuse (4) had broad definitions. On nine occasions the counsellors noted that they considered the terms to have a broad definition which included elements of emotional, verbal, psychological, mental, physical, and animal abuse, in addition to unmanageable power imbalances and living in a controlling environment. Although not strongly significant, the latter does

indicate that the counsellors viewed abuse/violence on a continuum which was not limited to physical abuse.

When asked if they utilized the definitions they had just described in screening and assessing cases, all counsellors (8) observed that they definitely used these definitions. This seemed to indicate that although as a group the counsellors have not formulated a common definition of each term, each individual counsellor was quite clear on which definition they used in their approach to screening cases.

4.2.2 Utility of the screening policy

Part of the interview with the counsellors was designed to explore how much they utilized the protocols document on a daily basis. Counsellors were asked how often they referred to the Mediation and Family Violence Protocols. In response, six of the eight counsellors stated they never referred to the policy because it was "in their head". Two other counsellors said they referred to it occasionally in order to refresh their memory. Several counsellors also noted that they utilized the protocols document when doing presentations on the topic of family violence and mediation and when training new staff and students.

Other counsellors shared with me examples of what they would do if they were unsure of a situation. One counsellor outlined her approach to screening as it referred to the protocols in the following excerpt:

if I had some question in my mind as to whether or not I should be proceeding then I would refer to the (protocols) document or I would probably discuss it with my supervisor first and then perhaps refer to the document. But I mean, to date I can't say I have honestly come across a situation where I've wondered about that or where I haven't been able to sort of resolve it in my own mind or go to my supervisor to receive help, so I would see it (protocols) as almost a third step.

Along the same lines, one other counsellor said if he was unsure of the appropriateness of a case, he would try one tentative mediation session, while another counsellor mentioned that she would co-mediate.

Although the majority of counsellors answered that they rarely or never referred to the protocols document itself, they did note that instead of using specific components of the policy point by point, they used the policy as a general tool. However, one counsellor did mention that she utilized the "maybe" component of the policy.

When asked about the usefulness of the components, two counsellors mentioned that they incorporated the components of the protocols in their approach to screening, while another counsellor said that the protocols helped to assess the readiness of the client. One counsellor again mentioned that she found the "maybe" component of the policy the most useful.

Finally, counsellors were asked if the Mediation and Family Violence Protocols outlined a satisfactory screening policy and process. Six of eight counsellors responded "yes", while the other two responded "yes and no". This question generated additional comments which included the views that the protocols did help to decide if mediation was appropriate (2), but required regular updating because of new knowledge or research surfacing around the issue of family violence and mediation (1). One counsellor noted

that the policy did not help in identifying if the abuse was a chronic problem or only an isolated, separation issue. Two other counsellors stated that the protocols document was a basic guideline but did not replace the counsellors' experience or judgment when screening and assessing the appropriateness of a case for mediation. Finally, one counsellor noted that the protocols did not help in making a final decision regarding the appropriateness of a case because he continued to consult with his supervisor when he was unsure of a case.

4.2.3 Implementation of the screening process

In order to capture the description of the screening process utilized on a daily basis, counsellors were asked to describe the process they used when screening cases. In response, the counsellors outlined the steps they followed during screening, in addition to factors that they assessed in determining the appropriateness of a case for mediation. The screening process outlined consisted of two primary steps which are presented below.

First, seven of the eight counsellors mentioned that they screened, to some degree, during telephone intake. Four counsellors mentioned that they screened minimally on the telephone as they preferred to conduct more in-depth screening during an individual office interview with each client. Two other counsellors specified that they used the Family Conciliation face sheet when screening on the telephone. The Family Conciliation face sheet (Appendix S) is the standardized intake form. Finally, two other counsellors mentioned they also screened walk-ins.

During the first stage of screening on the telephone, counsellors mentioned that they screened a case by asking specific questions in order to retrieve pertinent information. The factors that helped the counsellors screen a case were quite varied in response and the frequencies alone were not significant. However, by grouping the factors in categories, it became evident that the counsellors asked questions and retrieved information that fell into four distinct categories. In order of highest frequency, counsellors screened for significant factors in relation to family violence (13), other agency involvement (i.e. police, therapist, Child and Family Services) (9), relationship information (9), and client readiness (5).

The following excerpt illustrates an example of questions asked during this stage of the screening process:

It's a general phone call. An intake phone call where I get - if the parents want mediation, I get all the information that is needed on the face sheet, biographical info and stuff like that and there's a space on the face sheet for a genogram as well and that's where I would indicate family violence if there has been any. Generally I ask questions - I usually ask if the parent hasn't already made the statement that there has been an incident of violence or that there has been a pattern of violence. If they haven't already offered me that information as some people do within the first few minutes, then throughout the course of the first phone call I would tell them that there's certain questions that I need to ask them in order to make sure that this case is appropriate for mediation and I tell them that I ask every family. Because I don't want people to feel that they have indicated to me that they're abusive or have been abused necessarily just by what they've said ... I'll just ask them if there has - if there was any violence within the relationship and people will often say no, the definitive no or they'll say well, not really. Or just once. And then I have to ask them further questions - ask them to expand on that, can you tell me about that, when did that incident happen, was that the first time, were you injured, who did you tell about it, were the children present, have you told people since the separation that this has happened, have you gotten any counselling or any support group. It's generally much easier to get information out of the person who's alleging they've been abused. Very very often I find when I'm talking to a partner and I'll say well, were there any incidents of violence and abuse during the marriage, they will say no. Of course she'll say

yes. What was that about, were the children witnesses? Is your partner going to tell me that there were other incidents? Often I will find that I get a little bit more information by asking the parent what would the other parent tell me? And that's where they tell me there had been allegations of abuse. Additionally, if I ask if there's a restraining order and this person is telling me there's been no abuse I'll ask them why is there a restraining order. ... So when we get these questions together - were there any incidents of violence or abuse during the marriage, is there a restraining order, is there any assault convictions and, even if one person says, if one person says they fear the other person but they tell me there are no assaults, I'll ask them what are they afraid will happen. Are they afraid of emotional abuse, financial, are they afraid that child support will be decreased or withheld, are they afraid of abduction? What are they afraid of? And occasionally a parent won't tell me very much on the phone but I will then go over the same questions during the in-person individual interview.

One counsellor mentioned that there was "no precise yardstick" when screening cases - that each case needed to be screened individually. In other words, screening was not necessarily a black or white process that can be generalized to each and every case. Another counsellor mentioned that assessing the comfort level of the client was purely subjective based primarily on what the client chose to disclose.

In outlining the first step of telephone screening, some counsellors also mentioned examples when they would screen out the case. Situations to be screened out on the telephone included: if the conflict between partners was high (1); if the issues were not mediatable, therefore, not involving custody, access or timesharing issues (2); if there was active involvement by Child and Family Services (1); if substance abuse was present (1); if a client was not ready (1), and if a client did not feel safe (1).

Four counsellors identified another step of the screening process as the parent education program entitled *For the Sake of the Children*. These counsellors mentioned that the session provided valuable information to clients considering mediation.

Counsellors explained that some clients would sometimes screen themselves out afterwards, or would just be in a position to take home valuable information that normalized their situation.

The majority of counsellors (7) outlined the second step of the screening process as involving the individual office interview with both clients separately. Two of the eight counsellors underlined the fact that they intentionally met with the female client first. During this stage of the screening process, counsellors again mentioned factors that they were assessing during the interview sessions. In order of highest frequency, the categories included significant factors related to family violence (16), other agency involvement (15), client readiness (13), and relationship information (8). Examples of factors related to each of these four categories included the following: Family violence category - conflict resolution style, safety of client, child abuse, power and control issues, incidents of family violence, substance abuse, mental health issues and power imbalances; Other agency involvement category - police involvement, criminal record, assault charges, counselling, use of safe house, medical treatment, non-molestation order and non-communication order; Client readiness category - comfort of client, intimidation, mediatable issues, fear, and ability to negotiate; and Relationship information category - marital history, relationship/role of parent with child, separation process, new relationships, family history and time sharing arrangements.

While the categories of significant factors related to family violence and other agency involvement remained a top priority during this stage of the screening process, more emphasis was placed on client readiness. It was assumed that relationship

information was not such a high priority during the individual office interviews because most of that information was acquired during the initial telephone intake call.

Once the individual office interviews were conducted with both clients, the counsellors mentioned that there were three main options available for the cases to proceed. One option involved screening out a case before mediation if there were family violence issues. The second option was to proceed with mediation in a "business as usual" fashion. The third option was to proceed with caution during a mediation session.

Finally, one counsellor considered the last step of the screening process to be the mediation session. During the mediation session, the counsellor assessed if one partner was being dictatorial and whether a person was able to negotiate. This counsellor would terminate a case during the mediation session if power imbalances, such as tension and domination, existed and were influencing the mediation process. If the case was terminated on this basis, the counsellor would assist the partners in finding alternative ways to resolve their issues.

In order to explore other aspects of the day to day implementation of the screening process, counsellors were asked where they obtained their referrals and if they used the same screening process for each type of referral. The majority of referrals came from the Court (7), lawyers (7), self-referrals (6), other agencies (4) and friends (3). These were either phone-in, written or in-person referrals. Other agency referrals were obtained, for example, from schools, public health nurses, community workers, Child and Family Services, Child Guidance Clinic or Maintenance Enforcement. One counsellor mentioned that referrals from other agencies were classified as self-referrals, which would mean that

the category of self-referrals (self and agency referred) was the dominant type of referral received by Family Conciliation. In response to the screening process associated with each type of referral, the majority of counsellors (7) said they used the same screening process. One counsellor noted that the screening process varied somewhat depending on how the referral came in, i.e. walk-in, written referral, etc. One other counsellor pointed out that if a client came back for services, the case was referred to the original counsellor who was familiar with the family in which instance, the case would not necessarily have to go through the entire screening process.

In order to determine when screening for family violence began, counsellors were asked at what stage they assessed for family violence. The majority of counsellors indicated that they assessed for family violence during pre-mediation screening. This was done either on the telephone or during the individual office interview. One counsellor mentioned that he used the Mediation Guidelines handout (Appendix T) as part of the screening process during the individual office interviews. The Mediation Guidelines handout outlined the rules which participants in mediation agree to follow. Two counsellors added that they addressed the issue of family violence if it was raised during the mediation session.

When asked how they screened and assessed for child abuse, half of the counsellors (4) mentioned that they did so by using the Family Conciliation face sheet and specifically asking if other professional agencies were involved. If there was an indication of active involvement by Child and Family Services, two counsellors indicated that they would terminate the mediation session and put the case on hold. Two other

counsellors said they assessed for child abuse during the individual office interviews and by using the Mediation Guidelines. Indicators that the counsellors would look for when screening and assessing for child abuse in general included allegations of child abuse (8), inappropriate child behaviour (3), abuse in the family (3), a child who witnessed violence (1), a child abusing parent (1), a child feeling unsafe with a parent (1), a child's performance in school (1), medical treatment of a child (1), the relationship between the child and parent (1), and the presence of substance abuse in the family (1). Five out of the eight counsellors mentioned that if there was suspicion of or actual child abuse, they would involve Child and Family Services. One counsellor noted that once the Child and Family Services' investigation was complete, they would possibly mediate. The types of cases that involved Child and Family Services were assessed on a case by case basis. Finally, two counsellors indicated that they would interview the child when assessing for child abuse. Two other counsellors mentioned that when they screened for child abuse, it was not the same as conducting a child abuse assessment because they were not seeing the parents with the child.

During the mediation sessions, all counsellors noted that they do not screen for family violence by asking probing intake questions. Two counsellors explained that it was not necessary to screen for family violence because it was usually screened out, or they had a handle on it, before the case reached mediation. Instead, the majority of the counsellors (6) mentioned that they assessed for family violence and for power imbalances during the mediation session. One counsellor in particular mentioned that she met with the individuals in caucus if the dynamics between the two partners were inhibiting the

mediation process. Other counsellors (3) noted that they terminated mediation if there was too much tension between the partners or if one person was too domineering, rigid, intimidating or threatening. Termination of mediation for these reasons also occurred in cases where there had not been any family violence.

Similarly, child abuse was not screened by asking probing intake questions during the mediation session because it was usually screened out during the pre-mediation stage. Three counsellors explained that during the mediation sessions parenting practices may surface which may be emotionally damaging to the child but they were not usually abusive. One counsellor explained that child abuse was usually screened out before the mediation session. Three other counsellors noted that they addressed child abuse if it was raised during the mediation session. Finally, the majority of the counsellors (6) indicated that if child abuse surfaced during mediation, the mediation session would be terminated and Child and Family Services would be contacted.

When asked what happened to a case where there had been family violence or allegations of family violence, seven out of eight counsellors stated that the case was not necessarily screened out right away. Instead, the majority of counsellors noted that they determined risk elements. The eighth counsellor mentioned that nothing would happen with the case, no mediation would take place, and the file would be referred back to the lawyer. In determining risk elements, two central themes arose from the counsellors' responses. First, if the abuse was in the past and there had been indicators of some change present, (i.e. counselling, anger management, perpetrator feeling remorseful, victim feeling comfortable in meeting with ex-partner), then the counsellors would proceed with

mediation. Second, if there were elements of current, chronic and unresolved issues around the abuse, then counsellors would not proceed with mediation.

These two central themes were consistent with the counsellors' responses when asked if there were any situations where they would proceed with mediating a case involving family violence. All counsellors (8) answered that in such a situation they would deal on a case by case basis in order to determine the risk elements and comfort of the client in meeting with their ex-partner. Counsellors reiterated that if the case was not dealing with abusive relationships but only past or isolated incidents of abuse, they would proceed with mediation. However, they also mentioned that they would proceed with caution when mediating a case involving family violence. Counsellors explained that proceeding with caution meant the counsellor utilized a variety of techniques to ensure the safety of the clients before and during the mediation session, and when leaving the premises. Examples of proceeding with caution included: 1) one partner arriving early and leaving later; 2) establishing ground rules during the session; 3) checking for and formulating a protection plan; 4) facilitating seating arrangements; 5) utilizing one tentative mediation session; 6) having the partners utilize different elevators when leaving the premises; 7) following office procedures to ensure the safety of counsellors and clients alike; and 8) consulting with the supervisor if they had any doubts about the session.

Through the use of the screening process, counsellors were also responsible for determining the general appropriateness of a case for mediation. With this in mind, counsellors were asked what factors helped to determine if a case was appropriate. Solely the counsellors' perspective was used to operationalize the term appropriateness. Two

themes emerged from the counsellors' responses: 1) the readiness of the client, and 2) the absence of abuse. Counsellors considered a client to be ready for mediation if they were able to be reasonable (4), able to separate emotions from the issues (4), feeling comfortable and safe in meeting with the other partner (3), committed to the process of mediation (3), wanting to resolve mediatable issues such as access, custody and time sharing plans (3), willing to listen to the other person (2), able to negotiate and articulate their needs (1), and if the perpetrator was feeling remorseful and taking responsibility for the violence (1). On the other hand, counsellors noted that a case was not appropriate for mediation if there were mental health issues present (2), the partners wanted to talk about reconciliation (2), active substance abuse (1), presence of power and control issues (1) and signs of "red flags" (1) as identified in the Mediation and Family Violence Protocols document.

Finally, counsellors were asked at what point did they decide to screen out a case. They answered that cases were screened out anytime during the screening process, including telephone intake (3), and after individual office interviews (3). Cases were screened out if the client was not ready or if there were significant factors such as the active involvement of Child and Family Services (2), outstanding charges (2), abuse present (2), patterns of family violence (1) and safety issues (1). Cases were also terminated most often at the end of the first mediation session.

Once a case was screened out or terminated, the majority of counsellors indicated that these cases were sent back to the lawyer (6) and the Court (4). If the case was a self-referral, it would be left up to the client (1). One counsellor described some cases

and clients going into "never never land", meaning they were just in limbo. If appropriate, some counsellors (3) referred the clients for counselling. Two counsellors explained that although a case was screened out today, it did not necessarily mean that the clients could not come back for mediation if, for example, their anger was reduced.

As for the cases that completed mediation, no formal follow-up was conducted by any of the counsellors. However, clients were welcomed back if the agreement needed to be modified (2) and if their needs changed (5). One counsellor mentioned that in the instance where a client was "chaotic", the counsellor would call them or write to them as a means of follow-up.

4.2.4 Effectiveness of the screening process

Finally, counsellors were asked questions about the perceived effectiveness of the protocols. They were asked if the screening process was effective in screening for family violence and assessing the appropriateness of cases for child custody mediation. Six of eight counsellors thought it was effective, while two of the counsellors did not know. Comments about the effectiveness of the screening process included the fact that cases did not proceed to mediation because they were being screened out. One counsellor stated that the screening process was based on the protocols document which was a general tool that needed to be complemented by the experience and judgment of the counsellors. Another felt the policy allowed counsellors to assess cases on an individual basis. Finally, one counsellor stated that the policy could be more effective if the individual office interviews were formally adopted as mandatory for cases involving

family violence.

Counsellors were also asked if any changes were necessary to enhance the effectiveness of the policy. Responses to this question were quite varied and included the following: two counsellors stated that no change was necessary because they were not aware of inappropriate mediations; other counsellors (2) did not know if changes were necessary; two counsellors suggested that the policy should be reviewed by the group of counsellors and updated if necessary; one counsellor felt the terms needed to be specifically defined, and another counsellor thought there should be more questions around the issue of child abuse.

When asked if the protocols document needed to be broader in order to incorporate other types of power imbalances in addition to family violence, five out of seven counsellors said "no". One of these five counsellors stated that the issue of power imbalance was not a policy issue, but instead a practice issue which required mediators with high levels of skill and training to address. Another counsellor explained that power imbalances did not appear during the pre-mediation screening stage. One other counsellor felt that some power imbalances were covered on the Family Conciliation face sheet and that the face sheet should become part of the protocols document.

Two counsellors responded that power imbalances should be part of the policy. These two counsellors felt that variables that contributed to family violence should be incorporated in the protocols. They felt it was a clinical issue that counsellors struggled with and should be outlined for the purpose of new workers and students alike.

4.3 Synthesis

In bridging the results of the counsellors' and managers' interviews, I was able to draw some distinct parallels between both groups' perspectives of the development, adoption, implementation and perceived effectiveness of the Mediation and Family Violence Protocols.

First, both groups acknowledged that a standardized screening process addressing family violence issues did not exist prior to the development and adoption of the current protocols document. However, both managers and counsellors agreed that the counsellors were very much aware of family violence issues within the context of mediation. In addition, both groups noted that an internal committee was struck to develop the protocols document. The internal committee was composed of several counsellors who drafted the protocols document which was then forwarded to the other counsellors for their review and feedback. In essence, the protocols document was developed based on a consensual process which involved all of the counsellors. Finally, both groups noted the adoption of the protocols document in 1993.

Second, the counsellors and the managers stated that the purpose of the protocols document was to ensure the standardized practice of screening for the appropriateness of cases for mediation when dealing with family violence issues in order to alleviate placing mediation participants at risk.

Third, the stated objectives were divided within and between the two groups. Some counsellors and one manager noted the objective of the protocols document was to ensure the safety of mediation participants, including clients and staff alike. Other

counsellors and one manager said the objective was to assess the appropriateness of mediation cases involving family violence. The difference of stated objectives could be attributed to the general interchangeability of the terms purpose and objectives.

Fourth, the managers and counsellors both recognized that the counsellors were following the screening process as outlined in the protocols document even though the counsellors were not referring to it on a daily basis. Instead, it was noted by both groups that counsellors had incorporated the protocols into their approach to screening.

Fifth, the managers and counsellors both agreed that there was a general satisfaction with the protocols document amongst counsellors. Similarly, the managers and the counsellors perceived the protocols to be effective when complemented by the counsellors' use of their judgment and experience when screening a case for mediation.

Sixth, the responses within and between the two groups varied when asked if changes were necessary to enhance the effectiveness of the protocols document. Both groups did feel that the protocols should be reviewed and updated on a regular basis.

Finally, the majority of counsellors and both managers felt that power imbalances should not be incorporated into the protocols document because they considered it a practice issue. However, two counsellors had an opposing perspective and stated that power imbalances should be included in the protocols document in order to outline the variables of power that contributed to family violence.

4.4 Observation of the screening process

In this section, observation results of the four components of the screening process are presented. The four components of the screening process observed included:

- 1) telephone intake, 2) parent education program session - *For the Sake of the Children*,
- 3) individual office interview, and 4) mediation session.

The results presented in this section are primarily descriptive and serve three essential purposes. First, in observing the process of telephone intake, individual office interviews and a mediation session, I was able to explore the actual screening questions and techniques utilized by the mediation counsellor during the screening process. Second, in observing the parent education program session, I was exposed to information pertaining to mediation which assisted a client in deciding if they should resolve their custody/access through mediation. Finally, the results of these observations were also used as a cross-reference when comparing the results of the interviews with counsellors. The synthesis of these two sets of results is presented at the end of this section.

4.4.1 Observation of telephone intake

The type of service requested by each telephone intake call observed included six calls about the registration of the *For the Sake of the Children* session (one of which was a walk-in), one information call, and one call about the registration for the *For the Sake of the Children* and a specific request for mediation.

Upon receiving the intake call and walk-in, all of the counsellors conducted screening by gathering information required on the Family Conciliation face sheet. More

specifically, two out of eight calls were screened by asking questions pertaining to the major sections of the face sheet. It should be noted that one of the two calls requested the *For the Sake of the Children* session and mediation, while the other was an information call involving details regarding criminal charges and the involvement of Child and Family Services. The major sections of the face sheet include: Personal information of person calling (Person A); Personal information of other person (Person B); information on the Children; *For the Sake of the Children* attendance; the Source of Referral; the Services Requested; information on the Relationship between A & B; Other Agency Involvement; a Criminal Record/Restraining Order/Assault Conviction; presence of Significant Factors, and an illustrated Genogram. One call required the recording of information pertaining to Current Blended Family Factors for Person A and B section of the face sheet. In registering the other six callers for the *For the Sake of the Children* session, the counsellors also screened the call based on the Family Conciliation face sheet. For the registration calls, the counsellors asked questions pertaining to all the major sections of the face sheet with the exception of two sections: Other Agency Involvement and Criminal Record/Restraining Order/Assault Conviction.

In addition to asking questions pertaining to the face sheet, the majority of the counsellors asked questions that focused on the reason for the separation, caller's interest/readiness for mediation, and the partner's response regarding information shared by caller (i.e. significant factors).

Also, counsellors explored further issues which were relevant to specific calls such as overnights; problems with the in-laws; issues to be resolved in mediation; patterns of

power imbalances; other parent's parenting style; infidelity; communication style between parents; and the inappropriateness of mediation where there was the presence of family violence, intimidation or unmanageable power imbalances. The process of calling back for mediation after attending the parent education program session was also explained to the callers.

During the debriefing session conducted after each call, the counsellors shared with me their initial assessment of the call and its appropriateness for mediation. Of the six calls registering for the parent education program, three were assessed as being good candidates for mediation. It should be noted that the assessment of these calls was very preliminary based on the counsellors' initial sense of the call. The other three calls were not going to be assessed until mediation was requested by the clients and individual office interviews conducted.

The information call received was assessed as inappropriate for mediation because it involved a non-molestation order, incidents of violence as recent as one and a half years ago, and non-mediatable issues where the non-custodial father wanted the counsellor to tell the custodial mother to take the children to counselling.

Finally, the call requesting to be registered for the parent education program session and a mediation session was not assessed. The counsellor screening this call stated that the case would be formally assessed at the point of the individual office interview with both clients once they each had attended the *For the Sake of the Children* session.

In summary, all of the counsellors screened the telephone intake calls and the walk-in by asking questions relevant to information required on the Family Conciliation face sheet. All major sections were used when a caller requested the parent education program session and mediation session. For registration calls for the parent education program session, *For the Sake of the Children*, it appeared that the counsellors asked questions by going through all the major sections of the face sheet except for two sections: Other Agency Involvement and Criminal Record/Restraining Order/Assault Convictions. The latter may be attributed to the fact that such information was not part of a specific call or that counsellors chose to solicit this information during the individual office interview when a rapport had been more firmly established between the counsellor and the client. Finally, there also seemed to be a general trend where the appropriateness of the call for mediation was not formally assessed at the time of the intake call. Instead, clients were registered for the *For the Sake of the Children* session to gain more information regarding the mediation process and then were asked to participate in an individual office interview where the counsellor was able to gather more information in relation to the case in order to make a determination of the appropriateness of the case for mediation. However, as illustrated in the information call received during observation, if a case involved significant factors such as violence, a non-molestation order and non-mediatable issues, the call was determined to be inappropriate by the counsellor at the point of the intake telephone call and was screened out of mediation.

4.4.2 Observation of the parent education program

On April 9, 1996, I observed one session of the parent education program entitled *For the Sake of the Children*. This information session at Family Conciliation helps parents to learn more about the separation process and the needs of children during separation. In addition, they also learn more about mediation and other services. The purpose of observing this information session was to explore the type of information provided to assist individuals in deciding if mediation was an appropriate intervention for them. More specifically, I was looking for information outlining that mediation was inappropriate for cases involving family violence. With this as my primary focus, I will outline briefly the information presented during this session which related to mediation and significant factors such as family violence and child abuse.

The *For the Sake of the Children* session began with an introduction that normalized the divorce experience by stating that the divorce rate is currently 50% of all marriages and that the parents attending this session, and their children, were not alone. Followed by housekeeping arrangements, the topics covered in the session included: Separation Experience; Reorganizing; Children's Needs; Benefits of Cooperation and Costs; Pain Games; Communication and Conflict Resolution Skills; Parenting Plans; Alternatives to Court; and Self Care.

During the session, I recorded comments pertaining to, and addressing issues of, family violence and mediation, anger/violence management, family violence and the use of a lawyer, sole parenting, and child abuse. These comments are outlined below:

- **If violence is present in the family, the Court is needed to make decisions.**
- **If a child is at risk, mediation is not appropriate. You can get help through the child welfare agency.**
- **Situations where mediation is not recommended include:**
 - **if there is family violence between the parents**
 - **if there is a concern regarding the risk to the child, abuse of the child, or a child welfare concern.**
 - **if there is a concern regarding alcohol and drugs for one or both parents**
 - **if there is a mental health problem for one or both parents**
- **If you are not sure of your situation, and there is some violence, we recommend that you call a mediator at Family Conciliation or a private mediator and talk about the situation and get an assessment from them. Issues of violence really need to be assessed.**
- **A lawyer is needed between the two parents if there is a risk of emotional, physical and sexual abuse for the child.**
- **The advocacy role of the lawyer is required if there is a threat to the child or if family violence is present.**
- **If your anger hurts people, verbally or physically, you need to manage your anger. There are groups for people who are violent, there is also counselling. People who express anger in violent ways mean that there is something underneath. If you are having this problem, get some help.**
- **A dramatic thing to happen to a child is physical abuse and sexual abuse. The most aggravated thing to happen is a false allegation of abuse. It is difficult for the child. (Film shown: Children the Experts on Divorce).**
- **When there is ongoing parenting but there is no direct communication because of violence or you are afraid of being hurt, get another person or lawyer. Do not talk through the child.**

In addition to the information presented, individuals were handed a collection of handouts, pamphlets, and booklets pertaining to the effects of separation and divorce on parents and children. In relation to mediation and family violence and child abuse, the pamphlet entitled Mediation - A co-operative approach for separating parents, outlined that "Mediation is strictly confidential except where information gained during mediation indicates that a child is at risk or has been abused", and "(You can help mediation succeed by) ... accept(ing) each other as equal partners-in-parenting without trying to control or overpower the other through fear or intimidation". Also, a list of "Resources in the Winnipeg Community For Children and Parents of Separation and Divorce" was provided, including community counselling resources for individual and family therapy. Finally, the booklet entitled "Family Law in Manitoba", published by Manitoba Justice contained a section on Violence in the Family. This section contained information on spousal abuse and child abuse and neglect. The information on spousal abuse provided a definition of the term, explained that protection is provided by civil law through restraining orders, non-molestation orders, and probation orders, and that protection is provided by the criminal law system. The number of the provincial crisis line for Winnipeg and Manitoba was provided in addition to a list of shelters and community resources for abused women. Similarly, the Child Abuse and Neglect information defined the term and outlined the protection by civil law and criminal law through the Child and Family Services Act and the Criminal Code of Canada respectively. A listing of child and family services agency offices in Manitoba was also provided.

In summary, the parent education program session entitled *For the Sake of the Children* provided useful information for individuals when making a decision to participate in mediation. The information provided through the facilitator, handouts, pamphlets and booklets outlined the specifics of family violence and child abuse issues and clearly communicated that the presence of either is not appropriate for mediation. The information session also offered individuals alternatives in dealing with family violence and child abuse issues through a listing of community resources, suggestion to consult with a mediator regarding their own specific case, and the use of their lawyer to resolve child custody/access arrangements when family violence or child abuse was a significant factor. In short, the issues of family violence and child abuse and its inappropriateness in mediation were talked about openly and dealt with in this component of the screening process.

4.4.3 Observation of the individual interview

In evaluating this component of the screening process, I was able to observe three in-person interviews being conducted by three different counsellors during the months of March and April 1996. During these sessions, I recorded the questions being asked by the counsellor, which were then tabulated against the In-person Screening Observation Checklist.

In conducting the individual office interview with clients, all three counsellors asked questions derived from the Family Conciliation Draft Intake Questions and the Tolman Screening Questions listed in the protocols document. More specifically, the

questions asked most frequently included: 1) the Tolman Screening Questions, 2) Background questions, 3) Legal and Relationship questions, and 4) Service Requested. It should be noted that in addition to asking questions from the Background section of the Draft Intake Questions, the counsellors reviewed the Family Conciliation face sheet with the clients, focusing on the sections of Other Agency Involvement, Criminal Record/Restraining Order/Assault Conviction, and Significant Factors such as violence/abuse, child abuse, substance abuse, mental health, and new relationships.

Although all sections of the Draft Intake Questions and the Tolman Screening Questions were covered by the questions asked by the counsellors, the following four specific questions were asked by all three counsellors. 1) What problems do you hope Family Conciliation can help you work on? (service requested); 2) Have you ever used or are you still using professional/outside help to assist you? (background); 3) Are "legal" matters before the Courts on property, maintenance, access, custody, legal separation, assault charges, breaches of restraining orders? (legal); 4) Has your spouse ever hit you or used any other type of physical force towards you? (Tolman Model).

In addition to the Draft Intake Questions and the Tolman Screening Questions, counsellors asked other questions in relation to the specific case. Clients were asked about the reason of their separation; parenting skills of the other parent; exploration of reconciliation; performance of children in school; coping patterns of the client; support system of the client; religious issues/problems in the family; exploration of alternative options if mediation was found to be inappropriate; use of voluntary counselling by both parents; female's use of a shelter, and the children's status and ability to cope with the

separation. Other general strategies utilized at this stage of the screening process included describing the mediation process and its voluntary participation, discussion of a protection plan and referral to a lawyer and/or alternative resources. Finally, one counsellor asked the client to review the Mediation Guidelines before conducting the interview.

In the debriefing session, the counsellors discussed with me their initial assessment of the case. The counsellors noted that they could not formally assess the appropriateness of the case for mediation until they had conducted the individual office interview with the other parent. However, one case was initially assessed as being appropriate for mediation because there was no violence and the parent who had a substance abuse problem in the marriage had received counselling and was attending Alcoholics Anonymous. The other case involved a discussion of a client contemplating reconciliation with her partner who had displayed controlling behaviour towards her, with no signs of violence. On this basis, the counsellor was considering conducting only one mediation session in order to assess the extent of the partner's controlling behaviour and the couple's intentions regarding the status of their relationship. Finally, the third case involved a client who had been separated for four and a half years, stating that there had been some emotional, physical and psychological abuse in the family on the part of her partner. This client was requesting supervised visits due to the other parent's past behaviour and because he had not seen the children in two and a half years. Although the counsellor mentioned that the case was inappropriate for mediation, one joint session would be considered at this point until the counsellor met with the other parent.

In summary, all of the counsellors asked questions outlined in the four major sections of the Family Conciliation Draft Intake Questions and the Tolman Screening Questions during the individual office interviews. In addition, background information was obtained by reviewing the information on the Family Conciliation face sheet. The issue of family violence was readily screened by asking the Tolman Screening Questions which ranked highest in frequency and by asking probing questions in relation to significant factors of abuse. The only item that was not consistent in the observation of the interviews was the use of the Mediation Guidelines which were utilized in only one situation. Finally, it seemed apparent that the appropriateness of a case was not fully determined until the counsellor had interviewed both clients separately.

4.4.4 Observation of the mediation session

In observing a first mediation session between a couple at Family Conciliation, I recorded how the session developed and the questions asked of the clients. In addition, I utilized the Mediation Session Observation Checklist in order to record specific techniques used in the session.

At the beginning of the session, the counsellor gave a half hour introduction on the mediation process, the impact of divorce and separation on the parents and children, and the best interests of the child. More specifically, the introduction consisted of the following points:

- mediation is a voluntary process
- the goal of participating in the mediation session is to create solutions for the interest of the children.
- parents are able to reassess agreements in the future
- the impact of divorce on children and their adjustment
- the status of the separation between parents at this time
- parenting relationship versus a marriage relationship and the responsibility of the parents to the child
- the option of utilizing lawyers
- the benefits of mediation
- the role of the mediator
- the differences between service rendered by a lawyer and a mediator
- the divorce stages of adjustment for parents
- the Mediation Guidelines items discussed individually
- the exploration of outstanding legal matters

- counsellor's three assumptions in mediation which include 1) that both parents love their children, 2) that the children love both parents, 3) that there is a natural ebb and flow for children to be independent and to let go.

- situation that is in the best interest of the child occurs when 1) there is low conflict between the parents, 2) there is predictable time sharing, 3) children are protected from anger, 4) respect, trust and communication are anchored.

- explanation that if there is talk of family violence and abuse, or if it exists, then mediation cannot be done with the two parents together.

- ground rules for conversation between the disputants outlined: 1) interruptions to a minimum; 2) no blaming or accusing; 3) need to listen; 4) talk of the present and future; 5) be open to experiment with something new at least once; 5) no spitting, hitting and name calling.

Following the introduction, the clients were asked to assist the counsellor in setting the agenda for the mediation session. As such, the clients were asked to list the issues they wanted to resolve in the session and to outline a wish list as a parent and with the other parent. Clients were also asked to rate themselves as a parent in the past, present and future. Finally, the counsellor asked what were the needs of the children.

In addition to observing the above mentioned content of the mediation session, I was able to observe the process of the mediation session itself. The mediation session was set up with the mediator seated an equal distance from each participant. The female client was not seated closest to the door due to the fact that this case did not involve any issue of family violence. The introduction did include ground rules for conversation between disputants, and the Mediation Guidelines noted on the handout, were discussed point by point. General techniques used in the session included utilizing a regular mediation model of joint sessions being facilitated by one mediator, addressing body language, illustrating tension-rising and a person's inability to articulate needs, utilizing positive, neutral language when addressing either participant, and allowing each person equal time to articulate needs.

Due to the fact that I was able to observe only one mediation session during the data collection stage, I have presented and treated the observation session as a case study. The observation of this particular first mediation session indicated that the introduction of the mediation session was very thorough in introducing the clients to the mediation process, and included the use of the Mediation Guidelines handout, reviewed the impact of divorce and separation on the children and parents, and set the agenda of issues to be resolved in the session. The techniques used during the mediation session also helped in balancing the mediation process between the two participants by providing them an equal opportunity to voice their concerns in a safe environment.

4.4.5 Synthesis

In observing the four components of the screening process and reviewing the results of these observations, I was able to compare this information with the results of the interviews with the counsellors. In doing so, parallels emerged from these two sets of data which helped me to see the implementation of the screening process outlined in the protocols document. These parallels are outlined in the following paragraphs.

First, the observation results confirmed that all of the counsellors screened telephone intake calls or walk-ins by gathering information required on the Family Conciliation face sheet. Although only two of eight counsellors mentioned they used the face sheet in their interviews with me, it was readily apparent in the observations that eight out of eight counsellors utilized all major sections of the face sheet. The observation and interview results also confirmed that counsellors screened for significant factors related to family violence, other agency involvement, client readiness and relationship information during telephone intake. However, through the observations it was discovered that questions surrounding other agency involvement and client readiness were not asked if the call was simply a registration call for the parent education program. Finally, the two sets of data confirmed that calls were screened out of mediation during the telephone intake stage if there was the presence of recent violence, criminal charges and non-mediatable issues.

Second, although the counsellors' interview results revealed that only two of eight counsellors considered the parent education program session as part of the screening process, the observation of the *For the Sake of the Children* session offered information

that was helpful to the client in deciding if mediation was an appropriate intervention for them. More specifically, the parent education program session openly discussed the issues of family violence and child abuse and clearly underlined that they are not appropriate for mediation.

Third, both sets of results confirmed that significant factors related to family violence, information on other agency involvement, client readiness and relationship information including the conflict resolution style of the couple, are screened during the individual office interview through the use of the Family Conciliation Draft Intake Questions, questions outlined in the Tolman Screening Model, and by reviewing the information gathered on the Family Conciliation face sheet. The observation results also confirmed that the appropriateness of cases was not formally assessed until the counsellor had met with each client individually. The observation results demonstrated that counsellors would assess the appropriateness of a case further through the use of one mediation session.

Finally, the observation of one mediation session paralleled the counsellors' interview results which stated that power imbalances were addressed in the mediation session through the use of specific techniques that balanced the mediation process and provided the clients with a safe environment to resolve their child custody/access issues.

4.5 Case study

During the period from March 28, 1996 to April 10th, 1996, I was able to observe the screening process of a sample case from start to finish. A case study is a pattern of

functioning that helps in understanding the uniqueness of a case (Stake, 1994). The purpose of observing a case study was to monitor the screening and assessment of a case through its continuous process. With this in mind, I will present the results of the case study by outlining my observations during the different stages of the screening process.

4.5.1 Telephone intake

In monitoring this case study, I was unable to observe the first stage of the screening process which, thus far, has been defined as telephone intake (or walk-in). This was due to the fact that the counsellor had already received and screened the telephone call prior to determining that this case fit the criteria of the case study because it was labelled as a "maybe case" where family violence had been a part of the relationship but may be appropriate for mediation.

4.5.2 Male client interview

During the individual office interview stage of the screening process, I observed the first interview which was conducted with the male partner who was interested in mediation. At the outset of the interview, the counsellor discussed with the client the confidentiality of the mediation process. The Mediation Guidelines were handed out to the client to review and the counsellor then asked if he had any questions or concerns regarding what was outlined in the Mediation Guidelines and if he felt he could abide by them if mediation was to take place. The counsellor reviewed with the client the custody arrangements outlined on the Family Conciliation face sheet. Finally, the counsellor

explored the dynamics of the people currently involved in the child's life by referring to the genogram.

After this introductory piece, the counsellor asked the client screening questions based on the four main categories of the Draft Intake Questions and the Tolman Screening Questions, while at the same time reviewing background information on the Family Conciliation face sheet. More specifically, the counsellor began the interview by asking if there was conflict between the client and his ex-wife when decisions needed to be made regarding their child. The counsellor then explored with the client his ideal access arrangement. In answering the latter question, the client disclosed that there had been one instance where his son did not want to come out of his room after witnessing the client throw things and verbalize anger towards his ex-wife. On this point, the counsellor asked when this event had occurred. In addition, the counsellor questioned the client for background information of marital issues with his ex-wife. The issue of the client's infidelity and his new relationship with another woman were discussed.

The counsellor continued the interview by screening for substance abuse, including alcohol and drug abuse. The counsellor asked how his ex-wife would describe his drinking if she were present in the room. On the subject of substance abuse, the client disclosed that he had seen a therapist. The counsellor further screened this comment by asking him what kind of issues were discussed in his therapy sessions, how long ago had he seen a therapist, and what had prompted him to seek a therapist. In response to these questions, the client explained that at the time he sought a therapist, he was having problems with anger. In counter response, the counsellor asked what was the pattern of

the arguments he had with his ex-wife when he was drinking, how was he handling stress now, and what has been his pattern of arguments recently. These questions led to another disclosure by the client who explained that he had hit his ex-wife and that his new partner was not accepting such behaviour. In regards to the disclosure of violence, the counsellor asked if the police attended when he hit his wife, if any charges were laid, and the date of this occurrence. Due to the fact that the client had been intoxicated at the time, the counsellor asked if he believed his ex-wife when she told him he hit her. The counsellor also asked what would his ex-wife say about this incident if she were present. Finally, the counsellor asked if the client had ever apologized to his ex-wife for hitting her. When the client responded in the negative, the counsellor suggested that he discuss this with his therapist. In addition to questioning the client about the violence towards his ex-wife, the counsellor asked if his son had ever seen his temper and if the client's anger had ever been directed towards his child. In answering no to the latter question, the counsellor asked if the client ever felt himself getting angry.

Afterwards, the counsellor discussed with the client possible access arrangements. During this time, the counsellor asked how the child was coping with the divorce and explored the general nature of the child (sensitive, mature), his school performance, and ability to make and have friends. In discussing the child, the client mentioned that his son liked to sleep in his father's bed and was so clingy that he was not able to walk to school alone. The client explained that his son's behaviour might have been due to the fact that his ex-wife was not allowing his son to be independent enough. After hearing this, the counsellor asked if the child slept in the mother's bed and if his son cried at all.

During the debriefing session between the counsellor and myself, the case was initially assessed as being appropriate for mediation thus far, but an individual office interview with the ex-wife would need to be conducted. The counsellor explained that there was a common issue of access that could be discussed in mediation. She also mentioned that the client had voluntarily sought counselling and continued to see a therapist while having admitted to hitting his ex-wife. In addition, the client had stopped drinking and was participating in Alcoholics Anonymous. The counsellor initially assessed the violence between the client and his ex-wife as an isolated incident. Finally, the counsellor mentioned that although the client seemed anxious, he appeared able to communicate his needs in a mediation session.

4.5.3 Female client interview

Due to a conflict of schedules, I was unable to observe the individual interview with the female client. However, I was able to review the counsellor's file notes of the individual office interview with the ex-wife and discuss the session with the counsellor afterwards. The file noted that there had been issues of family violence during the marriage. The husband had hit her twice during their marriage when he was drunk. More specifically, he had choked and kicked his wife during her pregnancy with their son and had pulled gold chains off her neck. Their son had witnessed the latter, thereby being exposed to pushing, shoving and threatening on his father's part. However, there had been no incident of violence during the past two years. The divorce was amicable until the female client's new partner moved into her home with her and her son. The

counsellor had noted that the female client felt her ex-husband had anger problems (temper), but felt she was able to disagree with him. Her main concerns for mediation were the scheduling of visitation during holidays and her ex-husband's temper. The female client noted that the son did not want to see his father alone and that the son had refused to go with his father on a recent occasion.

4.5.4 First mediation session

At the beginning of the first joint mediation session, the counsellor presented the Mediation Guidelines to the clients, confirmed their individual attendance at the *For the Sake of the Children* session, and examined any pre-trial dates. In addition, the counsellor indicated that there might be a need for her to interview their son alone. The counsellor also explained that mediation was a voluntary process.

In reviewing each item of the Mediation Guidelines with the clients, the counsellor emphasized certain points that related to their case. For instance, when reading point number three, which states that the mediator would have to be advised of any prior abuse in the family, the counsellor observed that there had been abuse in this family previously but not recently. She stated that in the mediation session the clients were going to talk about difficult things and that they would need to acknowledge the history of anger expressed. The counsellor also indicated that if the clients needed to vent or express anger, then mediation would not be an appropriate intervention. The counsellor told the clients that if things were to get out of hand, she would want to meet with each client individually. In flagging point number seven of the Mediation Guidelines, which states

that mediation is confidential except in the case of a child abuse disclosure, the counsellor explained that she must report such a disclosure to Child and Family Services and that she would let the parents know that this was going to be done in order to give them the opportunity to contact Child and Family Services first. She added that she would check with Child and Family Services to verify that the disclosure had been reported. In regards to point number nine and the issue of not litigating other issues while mediation was in process, the counsellor explained that this point applied to their situation because there was a pre-trial scheduled in the summer. Consequently, the trial would not proceed during the time the parents were participating in mediation. After reviewing all the points of the Mediation Guidelines, the counsellor asked the clients if they were able to agree to these guidelines.

Once this introduction was completed, the counsellor stated that the only item left to negotiate in mediation was the summer access to the child. In light of this, the counsellor asked each client individually what needed to be discussed in mediation. The counsellor explained to the clients that she would begin by hearing the wife's needs because the first individual office interview was conducted with the husband. After hearing the needs of both clients, the counsellor summarized each of their concerns individually and presented a common ground to the issues being presented by both parents. The items highlighted were summer access and the parents' relationship with their son. The counsellor then focused the clients on the agenda of items outlined and began looking at the summer access item. In discussing the issue at hand, the counsellor created a very balanced situation by having the participants speak equally.

In discussing summer access, the parents mentioned that the communication with each other was done through their son. In response to this comment, the counsellor stated that it was unfair to place the son in the middle, and that it was not his responsibility as a child to act as a secretary or mediator for his parents. At this time, the counsellor placed the summer access item aside and pointed out issues that needed to be discussed in the session. The counsellor then proceeded to explore why their son refused to go on a visitation with his father in October of 1995. The counsellor summarized both perspectives given by each client.

The counsellor then returned to the summer access issue and asked why the separation agreement, which was previously agreed upon by both parents, had "derailed". The concern about the parents' communicating through their son resurfaced, and the counsellor asked if the parents were prepared to stop communicating through their son and stop making him responsible. Through this discussion, the following dialogue was exchanged.

Ex-wife: I'm afraid of him (ex-husband) and I have to stick up for myself.

Counsellor: What are you afraid of?

Ex-wife: Threats against me, against my family.

Counsellor: When was this comment made?

Counsellor: (after a moment of silence) ... There are a lot of hurt feelings since the marriage.
(Counsellor does not allow the ex-husband to interrupt.)

Counsellor: (Ex-wife's name), I would like to know where we go from here because if you don't agree with him, you are frightened of him, and the most recent threat was one year ago. I can't mediate with you both if you (ex-wife) can't disagree.

Ex-wife: I am doing it because you (counsellor) are here. I feel better. This is the first time that he has listened to me.

Counsellor: The problem you (parents) have is unresolved anger. You guys go back and forth. There are emotional issues for you (ex-wife) and practical issues for you (ex-husband). The problem here is access and keeping separation issues away from your son and a concern his (ex-husband name) anger management is under control when your son is over on visitation. If you feel you can't disagree, you need to tell me. And are you scared of him doing anything to you when you leave here. ... You are afraid of the chilly climate that might arise.

The counsellor then addressed the ex-husband and suggested that he tell his ex-wife that he had been going to counselling and about the other things that he had been doing on a daily basis to stop drinking. The ex-husband stated that the things his ex-wife was saying were five years old and that she did not need to be concerned about anything happening. The counsellor then asked the ex-husband to articulate in his own words what he heard his ex-wife say. The male client said that he heard his ex-wife say that she was fearful of violence. The counsellor asked the ex-husband if he had ever apologized to his ex-wife for the events during the marriage, for the way he expressed his anger and hurt her. The counsellor then referred the ex-husband to his therapist in order to address the reason he was unable to apologize to his ex-wife.

During this time, the fire alarm of the Woodsworth Building had been ringing and everyone needed to leave the premises. The counsellor underlined what the clients had agreed to talk about in the session and scheduled a second mediation session.

4.5.5 Second mediation session

The second joint mediation session occurred one week after the first session, and the counsellor began the session by outlining that the issue of visitation and parenting needed to be discussed. The ex-husband came into the session with a prepared schedule of visitation.

During the discussion of visitation, the counsellor noticed that the ex-husband seemed a bit angrier this week and asked what happened since the last session. The ex-husband remarked that he was frustrated by how long his case had been tied up in the court system, how much money he had spent on the case already, and how he wanted to resolve the visitation issue quickly. He also adamantly stated that he did not want his son to call his ex-wife's partner "dad". In reply the counsellor stated,

If you come in here with a bottom line, we cannot mediate. So you don't want to deal with the relationship problems? You have a communication problem and negotiation problem which is a hangover from your past relationship. Mediation is here to assist you to learn to communicate. So you (ex-wife) are wanting visitation in stone because you want limited contact with him (ex-husband). What can he (ex-husband) do to be able to communicate?

As the ex-wife stated that she saw her ex-husband when he picked-up and dropped-off their son, the counsellor mentioned that negotiations should be done during business hours and away from the child. She then asked the parents "How do you communicate if something happens to your son?"

After much negotiation and a practical examination of dates and holidays during 1996, an agreement for summer access was reached. The parents agreed to return to Family Conciliation in January of 1997 to negotiate summer access of 1997. The

counsellor notified the parents that she wanted to meet with their son alone.

4.5.6 Interview with the child

Unfortunately, I was unable to observe the in-person interview with the child due to scheduling conflicts. However, I was able to discuss this interview with the counsellor afterwards.

In meeting with the eight-year-old son for an hour-long interview, the counsellor drew a genogram based on the question asked of the son "Who is your family?". In conducting this exercise, the counsellor was able to assess and discover that the child was very familiar with the structure of his family including his stepbrothers and stepsisters. The son was also asked what makes his mom and dad happy, to which the son replied that his mom was much happier because he (son) was with her, while his dad wanted to see him (son) more. The counsellor then asked "What are the best things at dad's house, at mom's house?". The best things at dad's house were jumping on the bed, wrestling, playing Nintendo and going out. The best things at mom's house were playing basketball and hockey with his stepfather. In response to the question "Does your father like (name of stepfather)?", the son replied no. The counsellor then explored the father's anger by asking "Who gets mad the most? Why does he get angry? What happens after he gets angry?" The son responded that his father got angry the most because he (son) was too noisy and was stealing some things. The son underlined that there were too many rules at his father's house. After his father got angry, he would apologize and then get angry again. The son mentioned that his mother did not get angry.

In regards to the incident when he did not want to go to his father's house, the son explained that he didn't want to go over that day because he wanted to stay home with his friends. He explained that he has ten friends to play with and that it was difficult to see them all. He also stated that his mom had told him that when he reached the age of 12, he could stay at home and play with his friends and not feel obligated to see his father.

The counsellor continued the interview by asking the child the following questions: "What are your three wishes? Does your father pay money to your mother? If you had to go on a long trip, who would you want to go with? Who loves you? If you had a magic wand, what would you want to change?". Based on the answers to these questions, the counsellor assessed that the child was feeling powerless and wanted more control in his life. The child was aware of arrangements between his father and mother but was not brought into any adult decision-making or held responsible. The role models in his life were his mother, stepfather and grandmother. Finally, the disagreements between the parents were not viewed as the child's problem to the extent that the child did not want anything to change.

4.5.7 Summary

In observing the continuous screening process of this case study, it became evident that issues of family violence were consistently screened and dealt with during the individual office interviews and the mediation sessions. First, during the individual office interview with the ex-husband, the counsellor screened by utilizing questions outlined in

the Draft Intake Questions and Tolman Screening Model of the protocols document. The counsellor also reviewed with the client the information on the Family Conciliation face sheet. Additionally, the voluntary nature of the mediation process was highlighted, the legal rights of the clients regarding access explained, and the Mediation Guidelines reviewed.

Second, during the two joint mediation sessions, the ex-husband was seated closest to the door, but did not sit opposite to his ex-wife. The mediator was seated at an equal distance from each client at all times. By reviewing the Mediation Guidelines with both clients together, the counsellor underlined the points that related directly to their case and which might affect the mediation session, such as child abuse and anger management. In addition, the counsellor was able to establish ground rules for conversation. The voluntary process of mediation was emphasized, and the possible use of private caucusing explained. General techniques such as addressing destructive communication patterns, utilizing positive, unsided language when addressing either client, and allowing each client equal time to address their concerns were also used during the mediation sessions.

Third, and most importantly, this case study demonstrated that intimidation or fear on the part of the ex-wife, which was instigated by past family violence, was dealt with during the mediation session. Even though the counsellor did not ask direct screening questions during the joint session, the counsellor was responsive and addressed the ex-wife's fear of retaliation on her ex-husband's part. This was done by asking the ex-husband to provide his ex-wife with new information regarding his counselling and participation in Alcoholics Anonymous. The counsellor also dealt with the ex-wife's fear

by outlining the fact that if the ex-wife was unable to voice her needs by disagreeing with her ex-husband, then mediation was not appropriate. In other words, the counsellor explained that if the ex-wife was not able to negotiate her own needs because of intimidation, mediation was an inappropriate intervention.

Finally, in examining this case study, I was able to draw some parallels between it and the observation results of the screening process. Similarly to the observations of each individual stages of the screening process, this case study confirmed that during the individual office interviews, the Draft Intake Questions and questions derived from the Tolman Screening Model were utilized for screening. In addition, information from the Family Conciliation face sheet was reviewed. The counsellor in the case study also utilized the Mediation Guidelines. In regards to the results of the mediation sessions, both counsellors reviewed each item outlined in the Mediation Guidelines with their clients and began their first joint session by asking the clients to list their agenda of items to discuss in mediation. However, because the case study involved some elements of past family violence, this observation highlighted the fact that issues of family violence were dealt with in the mediation session.

4.6 Interviews with external key informants

In this section, the results of the interviews with the external key informants are presented. Four external key informants who practice divorce mediation in the City of Winnipeg were interviewed. In addition to practicing divorce mediation, two out of the four interviewees maintain a law practice. Three of the mediators, including the two

lawyers, primarily conduct financial mediation such as support and property issues. The other mediator solely offers family mediation and counselling services in a private practice setting. All four mediators charge fees for mediation services. Finally, the response from the out-of-province external key informant is also presented in this section.

The purpose of interviewing external key informants was to explore, with other divorce mediators, screening processes found to be useful when screening for, and assessing, the appropriateness of cases involving family violence but where the family violence itself was not the issue to be mediated. In essence, the results of these interviews provided a broader context for the evaluation by examining other existing screening processes being utilized by mediation practitioners. As such, four areas, including the description, utility, implementation and effectiveness of the screening process, were discussed during the interview and are presented below. As noted at the beginning of this chapter, only three out of four mediators answered all of the interview questions.

4.6.1 Description of the screening process

The mediation practitioners were initially asked to describe the screening process they had developed for the purposes of screening for family violence and assessing the appropriateness of such cases for mediation. In describing the screening process they had developed and utilized on a daily basis, all four mediators noted that they initially screened on the telephone. In screening on the telephone, one mediator reported asking questions around marital history, conflict resolution styles, and the presence of family

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violence and abuse issues. Another mediator explained that he talked only with the caller and did not talk to the caller's partner as long as the caller was of the opinion that her partner wanted to mediate. The same mediator mentioned that he did not screen specifically for family violence but instead asked if the caller was comfortable meeting with her partner and was able to communicate effectively. This mediator also asked the caller questions about the separation process. The mediator proceeded with mediation if the caller was willing to give financial disclosure, if the caller trusted the partner would give financial disclosure and if the caller and her partner each had a lawyer. In screening on the telephone, the third mediator explained that she asked the source of the referral, provided the caller with information on the process of mediation, explained that mediation was voluntary, and gave a fee structure. This mediator screened for a history of violence in the family, the recency of the family violence, the safety of the client, the presence of children, the issue to be mediated and its relevance to the mediator's area of expertise. If the caller wanted comprehensive mediation, the mediator referred the caller to some other mediator. Similarly, if the client wanted child custody or access mediation, the mediator would refer them to Family Conciliation. At the end of the call, the mediator would suggest that the caller talk to her partner about the option of mediation and call back when they had decided whether they wanted to participate in mediation. Finally, the fourth mediator noted that he screened minimally on the telephone and preferred to conduct in-depth screening through an in-person interview with each client separately.

In regards to conducting in-person interviews with each client separately, only two out of the four mediators conducted them. One mediator explained that she had tried to

conduct in-person interviews in the past but found the clients were reluctant to participate due to the cost associated with the session. Another mediator noted that he did not conduct individual office interviews. Instead, this mediator conducted a separate in-person interview with both clients, and with the children, only at a client's request. Of the two mediators who utilized in-person interviews with both clients separately, one conducted the interview by providing the client with information on the mediation process, exploring the issue to be mediated and its relevance to the mediator's area of expertise, asking for financial disclosure, assigning the client homework to gather relevant information, and having the client sign an agreement outlining the rules of mediation. The other mediator conducted individual office interviews by screening for the client's willingness to mediate and exploring the issue to be mediated. This mediator noted that he did not utilize formal screening questions but instead used his "gut reactions". This mediator mentioned he had interviewed clients' children in the past.

All four mediators explained that they screened during the mediation session. All the mediators interviewed described the process of screening during mediation as one that included assessing for clues such as tension, anger and power imbalances that might affect the mediation process. In addition, they also addressed dramatic power imbalances and would deal with the issue of family violence if and when it surfaced during the mediation session. Two mediators noted that they had never encountered the issue of family violence in a mediation session, one of whom having only mediated 10 sessions last year. Another mediator could only think of one example where the issue surfaced during a second mediation session. The fourth mediator dealt with issues of family violence at the

forefront with the client through counselling.

Finally, all four mediators noted that their screening process was in an unwritten format. The screening questions they asked were incorporated in their approach to screening.

In order to provide an historical context, the mediators were asked what had instigated the development of their screening processes and when had they been formulated. Of the three mediators who responded to this question, one said the screening process was instigated by the need to gather specific information in order to determine the type of case to be mediated, while another mediator mentioned the need to assess the appropriateness of a case for mediation. The third mediator explained that he had developed the screening process based on the need to service clients requesting mediation which involved spousal abuse. This mediator noted that as part of screening, the issues of family violence were dealt with through counselling before the two clients met in a joint mediation session. The three mediators noted that they had formulated their screening process when they first began practicing mediation which was ten, five and three years ago respectively.

The purpose of the screening process for the three mediators who responded, focused on ensuring the safety of the clients. More specifically, one mediator noted the purpose of the screening process was to ensure the safety of the clients and the mediator. The other noted that the purpose was to assess and to screen out cases where there were issues of family violence. Similarly, the third mediator described the purpose of the screening process as screening for family violence, ensuring that people understood the

process of mediation and, when required, referring the case to other resources.

When asked to define the terms family violence, wife abuse, child abuse and husband abuse, all three mediators who answered provided a broad definition of each term, thereby including forms of physical, psychological, emotional, verbal and sexual abuse. The three mediators considered husband abuse to be the same as spousal abuse. One mediator described child abuse to include questionable child rearing practices. This same mediator also included spiritual blackmail as a form of abuse. Another mediator included dramatic power imbalances as part of family violence, while yet another incorporated the wife's perception as part of the definition for wife abuse.

Finally, in exploring the description of their screening process, the mediators were asked what guided them in developing their screening process. The three mediators who responded, explained that their screening process had been based on their background, experience, and training including attending workshops and courses. One mediator noted that she had set her own standards/limit in deciding when to draw the line when screening for the appropriateness of a case for mediation.

4.6.2 Utility of the screening process

In discussing the mediators' use of their screening processes, the three mediators who answered the question mentioned that their screening process was incorporated through their approach to screening at the various stages of pre-mediation screening and during the mediation session. These three mediators also confirmed that they had been using their screening process since the beginning of their mediation practice. In exploring

the usefulness of the screening process for the three mediators, one mentioned that it was helpful in gathering information in order to determine if a resolution was possible and if she had the expertise required for the specific case. Another mediator explained that the screening process was helpful in screening out cases and referring them to appropriate resources. Finally, the third mediator noted that she found the screening process helpful in determining the readiness of a client for mediation and the possibility of a successful mediation.

4.6.3 Implementation of the screening process

When asked to describe the screening process that they utilized on a daily basis, the mediators detailed the same screening process they described developing.

In their practice, all four mediators received referrals from Family Conciliation. Three out of the four mediators noted that they also received referrals from lawyers. Two mediators received self-referrals. One mediator mentioned getting additional referrals from doctors and the Court, while another mentioned that Mediation Services also referred her cases. Three of the four mediators that responded, noted that they used the same screening process for each type of referral received.

In focusing on family violence and abuse issues, the mediators were asked to explain when they began the process of screening for family violence. Three of the four mediators said they began screening at the front end (i.e. telephone call) and continued screening throughout the pre-mediation stage and during the mediation session. In regards to screening for family violence at the outset, the fourth mediator mentioned the following:

I don't know what I would do if somebody phoned me up and said "Hey, we want to mediate property division but my ex was formally really abusive." I really don't know how I would screen for that. Now I know Daniel Hamoline has a whole bunch of work geared towards that but I've been to one of his workshops but I haven't really paid a whole hell of a lot of attention to it because it's really never come into my practice so it hasn't been something that I've felt very motivated about learning any more about.

In regards to screening and assessing for child abuse, two of the three mediators who responded mentioned that they screened for child abuse concerns during the telephone call and individual office interviews, and contacted Child and Family Services if child abuse, or allegations of, were present. One of these mediators noted that indicators of child abuse included a complaint from a parent and the presence of spousal abuse. The third mediator explained that screening for child abuse was not applicable when mediating financial issues.

All four mediators explained that they assessed for family violence and child abuse during the mediation session by being sensitive to clues such as tension, body language, fear, intimidation and power imbalances, and by addressing the issue of family violence and abuse when it was brought forward by the client. In other words, the mediators did not overtly ask screening questions in relation to family violence or abuse but dealt with it if it ever surfaced during the session.

The four mediators noted the following factors that ultimately determined the appropriateness of a case for mediation: a mediatable issue which was within the mediator's field of expertise (2), the clients' ability to negotiate on an equal footing (2), the clients' readiness and willingness to mediate (2), the client feeling comfortable in

meeting with the other person (1), and no recent history (within five years) of family violence or abuse or fear (1).

In response to the question "What happens to a case where there had been family violence or allegations of family violence?", one mediator said she referred the case to another mediator who was able to handle such cases. Another mediator stated that she referred the case to a lawyer, counsellor or police, depending on the specifics of the case and resources required. The third mediator indicated that he determined risk elements and would caucus with each individual, while videotaping the session as part of an exercise called Interpersonal Process Recall, which helped the clients discover their dysfunctional patterns.

One mediator responded that she proceeded with a case involving family violence only if the abuse was at least five years ago and if the perpetrator had received counselling. This mediator also conducted the mediation with caution by setting up specific parameters. Another mediator mentioned that she proceeded with such a case only if it was not an abusive relationship and if the incident of violence was in the past or an isolated incident. The third mediator said he conducted shuttle mediation with the couple. Finally, the fourth mediator said he proceeded with such a case if, 1) the perpetrator had received counselling and had taken responsibility for his/her actions, 2) the violence had stopped, and 3) the victim had dealt with her own fear and responsibility for the violence and was comfortable meeting with the perpetrator. This mediator mediated with caution and set parameters.

Two of the three mediators who answered, noted that they might decide to screen out a case at anytime during the pre-mediation stages and terminate a case during the mediation session. The other mediator mentioned that cases were terminated most often during the first mediation session.

Once a case had been screened out or terminated, the three mediators who responded, referred the case to other resources such as therapists, mediators practicing in a specialized area (including Family Conciliation), and the police. In addition, the three mediators referred their cases back to the lawyers.

Three out of the four mediators did not follow up any mediated cases. Two mediators sent the agreements to the clients' lawyers. The fourth mediator asked each client to give him a call within three to four months.

4.6.4 Effectiveness of the screening process

The four mediators were asked how effective they found their screening process to be in screening for family violence and assessing the appropriateness of a case for mediation. All four mediators found their screening process to be effective. One mediator added that it was effective for financial mediations.

Finally, mediators responded that their screening process would not be necessarily helpful for Family Conciliation in increasing the effectiveness of their screening process. One mediator mentioned that Family Conciliation had a very good screening process. Another mediator said that her screening process would not be helpful for Family Conciliation because of the different type of mediation practiced. The third mediator

mentioned that his screening process would not be helpful for Family Conciliation because he was of the opinion that everyone should develop their own screening process to fit their personal style and that it should be implemented on a case by case basis. Finally, the fourth mediator said his screening process would not be helpful for Family Conciliation because Family Conciliation mediators already were sensitive to family violence issues.

4.6.5 Out-of-province external key informant

In addition to interviewing four external mediators in the City of Winnipeg, I was able to interview the Head of one out-of-province court-connected family mediation program in order to provide a larger context for the evaluation. The out-of-province mediation program's screening process involved three main steps that were in an unwritten format. First, telephone intake was conducted when voluntary clients were referred primarily by lawyers. Mediation was considered to be semi-mandatory by the Court of Queen's Bench, which meant that the option of mediation had to be explored by participants before the trial stage. Second, if telephone intake calls involved issues of family violence, an in-person interview, lasting half an hour, was conducted with both clients separately. In these cases, it was left to the discretion of the mediator to proceed with mediation or to utilize caucusing. Third, a parenting seminar was also held for clients wanting to resolve child custody and access cases. The purpose of this parenting seminar was to educate people and act as a screening process for mediation. Mediators of this program had received specific mediation and counselling training and had

primarily psychology backgrounds.

4.6.6 Synthesis

In examining the screening process of the four mediators in the City of Winnipeg, the evaluation of Family Conciliation's protocols document was placed in a broader context of divorce mediation programs. Within this context, it became evident that Family Conciliation has developed and implemented a most comprehensive screening process. First, Family Conciliation is the only mediation program that has its screening process in a written format, as outlined in the protocols document. Second, Family Conciliation mediators conduct pre-mediation screening through three stages including telephone intake, the *For the Sake of the Children* session, and the in-person interviews which are conducted with both clients separately. In addition, power imbalances and arising issues of family violence and abuse are assessed and dealt with during the mediation session. Third, factors indicative of family violence are screened during the pre-mediation stages through the use of the Family Conciliation face sheet and the Draft Intake questions and Tolman Screening model questions. In sum, the Family Conciliation screening process offers extensive procedures for screening and associated assessment of factors relevant to family violence issues.

Although Family Conciliation has a more extensive written screening process than those used by external mediators, there are some consistent practices. First, the screening processes are incorporated by all mediators in their approaches to screening and are not utilized necessarily on a point by point basis. This allows the cases to be screened by the

experienced mediators on a case by case basis. Second, screening on the telephone is a vital component for each mediator. Third, information on the process of mediation is provided at the onset of the call for external mediation practitioners or during the *For the Sake of the Children* session. This important step in screening helps clients to decide for themselves if mediation is an appropriate means of intervention for their specific situation. Fourth, assessing for clues of power imbalances and dealing with surfacing issues of family violence during the mediation session is a practice adhered to by all of the mediators interviewed. This is primarily done by being sensitive to clues such as body language, tone of voice, and people's ability to negotiate their own concerns.

CHAPTER 5

DISCUSSION AND CONCLUSION

This final chapter of the evaluation report is divided into six main sections. First, a statement of the problem is outlined. Second, the procedure of the methods utilized to conduct the evaluation is summarized. Third, the evaluation questions are individually answered through the interpretation of the results from the evaluation. Fourth, recommendations are presented. Fifth, future implications of the study are explored. Finally, an examination of my learning goals is discussed.

5.1 Statement of the problem

It was not until the development of the Unified Family Court Projects in 1978, that court-based divorce mediation programs were established in several Canadian provinces. Specifically in the province of Manitoba, the Court of Queen's Bench Act legislated Manitoba's Unified Family Court in 1984. Family Conciliation, which was established in 1984, is the social service component of the Court of Queen's Bench, Family Division and the primary court-connected child custody mediation program for divorcing/separating couples in Manitoba. The Family Conciliation branch located in the City of Winnipeg was the focus of this evaluation study.

Within the field of mediation and throughout the current literature, divorce mediation is considered a humane alternative to the adversarial court system as it allows spouses to formulate their own child custody arrangements and move from a marital relationship to an exclusive parenting relationship. In short, advocates of divorce

mediation have maintained that it is a process that promotes the best interests of the child.

Despite this support for the mediation of child custody issues, it has been argued that the mediation process is not a suitable method of intervention for all divorce/separation cases. More specifically, three reoccurring positions were found in the current literature on the issue of mediating cases involving family violence. Briefly the three positions are as follows. The first position maintains that mediation should not be used as a form of intervention to resolve the issue of family violence. The second position maintains that mediation should not be used to resolve any family disputes (e.g. child custody issues) where violence has been, or is currently, present. Finally, the third position asserts that mediation can still have a role in resolving family disputes (e.g. child custody issues) where violence has been, or is currently, present.

With this issue in mind, a screening process that would screen for family violence and determine the appropriateness of a case for mediation, has been recommended by proponents and critics alike. However, in reviewing the various screening processes recommended in the current literature, and based on my experience working in a victim-offender mediation program, I found little evidence indicating first, the utilization of a screening process in mediation programs, and second, the effectiveness of a screening process in assessing for family violence and determining the appropriateness of cases involving family violence.

This lack of evidence motivated me to evaluate Family Conciliation's screening process outlined in its Mediation and Family Violence Protocols' document. This document was developed by Family Conciliation mediation counsellors and external

mediators and was adopted in September of 1993. The protocols document is a set of guidelines for considering the safety needs and integrity of family members who have experienced abusive spousal relationships and still want to resolve child custody issues through mediation. Consequently, the issues to be addressed in mediation are child-focused, divorce-related and not the mediation of the domestic violence itself.

5.2 Procedure of methods

The general purpose of the evaluation was to determine whether the screening process outlined in Family Conciliation's Mediation and Family Violence Protocols document was effective in screening for family violence and assessing the appropriateness of cases involving family violence for child custody mediation.

As this was the first time the protocols document had been evaluated since its inception in 1993, an exploratory evaluation design was utilized. As such, the effectiveness of the screening process was limited to a "perceived" effectiveness defined by Family Conciliation's managers and mediation counsellors, as clients were not involved in the study and therefore could not indicate if their cases were indeed effectively screened out due to family violence issues.

A process evaluation was conducted in order to monitor and explore the nature and process of the protocols implementation activities by building a foundation of information describing the actual screening process. Qualitative methods of data collection were utilized as they complemented the evaluation's focus on interactions and the monitoring of the screening process activities.

Data were therefore collected through 1) in-person interviews with the managers and mediation counsellors respectively, 2) observations of the four components of the screening process, including: telephone intake sessions; a parent education program session; individual office interview sessions between the counsellor and client; and a mediation session, 3) a case study, and 4) in-person interviews with external key informants who are external divorce mediation practitioners in the City of Winnipeg and in other Canadian provinces. An inductive method of qualitative data analysis was utilized to analyze and interpret the results of the evaluation.

5.3 Results

The purpose of the evaluation was achieved by focusing on six evaluation questions. The interpretation of the results of the study are presented by answering the following five evaluation questions. The sixth evaluation question focusing on the improvement of the screening process is discussed in the recommendations section of this chapter.

5.3.1 Design and components of the protocols document

An introductory statement, which highlights that Family Conciliation "adheres to the belief that domestic abuse cases are generally not mediatable due to safety concerns, treatment needs and issues, and power imbalances" (1993), is at the beginning of the protocols document.

The protocols document, which was developed to address screening criteria where there has been spousal abuse and the issues to be addressed in mediation are child-focused divorce-related issues and not mediation of the domestic violence itself, consists of a set of practical screening components. These components are presented as guidelines to assist the mediation counsellors in screening for family violence and assessing the appropriateness of a case for child custody mediation. The components of the protocols document include: 1) Draft Intake Questions pertaining to the service requested, background and legal information, relationship information and the history of violence; 2) a listing of "red flags" indicating family violence; 3) a "Maybe" section for clients for whom domestic violence has been an issue; 4) a Tailoring for Mediation Process outlining special skills and techniques to use during the mediation session with clients with a background of prior abuse in the marital relationship; 5) Other Variant Forms of Mediation section outlining the pros and cons of shuttle mediation; and 6) the Tolman Screening Model of screening questions which focus on family violence.

The protocols document was designed to address 1) the initial screening and assessment procedure that can assist in determining where mediation is feasible, where it is not appropriate, and identifies where a potential exists for mediation but further assessment is required, 2) the more in-depth assessment criteria for families which have experienced abuse issues, and 3) the structure and requirements necessary should modified mediation proceed. The screening protocols were therefore meant to act as a triage system dividing cases in three main categories: 1) cases which are appropriate for mediation, 2) cases where abuse has occurred in the past but are deemed appropriate for

either regular or specialized mediation, and 3) cases where abuse has occurred and mediation should not go forward.

In reviewing the design and components of the protocols document, it becomes apparent that it reflects two positions in the debate about mediating cases involving family violence. First, the protocols' main premise parallels the position that maintains mediation should not be used as a form of intervention to resolve issues of family violence. Second, the protocols document is somewhat analogous to the third position that asserts there is a role in resolving family disputes where violence *has been* present. However, the protocols document refutes the latter part of the third position that maintains there is a role in mediating cases where there *is* family violence present.

These two positions which form the basis of the protocols document are confirmed by the managers and mediation counsellors' stated purpose and objectives. Although the terms purpose and objective were used interchangeably in the interviews, both groups stated the purpose of the protocols was to ensure the standardized practice of screening for the appropriateness of cases for mediation when dealing with family violence in order to alleviate placing participants at risk. The objective of the protocols document focused on ensuring the personal safety of the clients. Although the stated purpose and objectives were clearly identified by the two groups interviewed, the actual protocols document lacks an identified purpose and objective statement at the outset of the document.

Family Conciliation's policy statement, which maintains that it is generally inappropriate to mediate a case involving family violence, was also not identified at the outset of the protocols document. While presenting preliminary results to the staff during

the month of January 1997, the mediation counsellors and one manager noted that this policy, which was instituted in 1985, was "in essence" understood by all mediation counsellors but was never formalized in a written policy.

Similarly, the terms of family violence, domestic violence, spousal abuse and child abuse used in the protocols document are not specifically defined. When the counsellors were asked to verify the meaning of each term, the responses were quite varied and could not be grouped by frequencies to yield a common definition. Although the counsellors could not consistently define each term, they considered the terms to have a broad definition that included the various forms of abuse. Consequently, the counsellors defined abuse and violence based on a continuum ranging from a controlled environment to physical abuse.

In relation to the utility and usefulness of the protocols document and its components, all counsellors mentioned that they do not refer to it on a daily basis, but instead have incorporated it in their approach to screening.

However, the majority of the counsellors were generally satisfied with the protocols document. Identified limitations of the protocols document included: 1) it was only a guideline and should be complemented by a counsellor's experience and judgement; 2) it did not help to identify whether the abuse was chronic or an isolated separation issue; and 3) it was not necessarily useful in making a final decision regarding the appropriateness of a case. These comments demonstrate that perhaps the protocols document can only function as a guideline because it is nonexhaustive of all types of cases screened. Therefore, the appropriateness of cases would need to be assessed on a

case by case basis and complemented by alternative methods and the counsellor's experience, judgement and training in the area of mediation.

Finally, within the context of the external divorce mediation programs, Family Conciliation possessed the only screening process designed in a written document format that could be used as a point of reference for new and existing mediation counsellors.

5.3.2 Implementation of the screening process

Based on the results of the in-person interviews with the mediation counsellors and the results of the observations and case study, the implementation of the screening process by mediation counsellors consists of the following steps. First, a case requesting mediation is screened during the telephone intake (walk-in) stage. During this stage, the counsellor screens the telephone call by asking pertinent questions relevant to the required information on the Family Conciliation face sheet, which include significant factors related to family violence, other agency involvement, relationship information, and client readiness. The appropriateness of a case for mediation is not generally assessed at the time of the call, unless significant factors are evident that would deem the case inappropriate for mediation.

Second, both clients are required to attend the *For the Sake of the Children* session separately. This session helps clients to understand the impact of divorce/separation on themselves and their children while providing useful information about the mediation process. In this session it is clearly underlined that cases involving family violence, child abuse, substance abuse and mental health issues are not appropriate for mediation.

Third, the majority of counsellors conduct an hour-long in-person office interview with each client separately. During this session, the counsellor primarily utilizes the Draft Intake Questions and the Tolman Screening Questions of the protocols document when screening a case. Counsellors also review the information on the Family Conciliation face sheet with the client. The case is not assessed as appropriate for mediation until the counsellor has met with both clients. Once again, cases with significant factors that deem a case inappropriate for mediation are screened out at this stage.

After the completion of the two individual office interviews, the assessment of the appropriateness of a case for mediation is conducted and the cases are divided into three categories including, 1) proceed with the regular mediation model; 2) proceed with mediation with caution utilizing specialized techniques and modified mediation model; and 3) screen out a case for mediation.

Once a case is accepted for regular mediation or modified mediation, mediation counsellors continue to assess the appropriateness of a case. As the mediation counsellors clarified during the presentation of preliminary results in March of 1997, they do not screen a case during the mediation session by asking probing intake questions pertaining to family violence or child abuse, but do address these issues if and when they surface during the session. Typically, the issues of family violence and child abuse do not surface during the mediation session because the case would have been screened out during the pre-mediation screening stage. However, if issues of family violence and child abuse do surface, the mediation counsellor would terminate the session. It should be noted that during the first joint mediation sessions observed, both mediation counsellors

reviewed each point of the Mediation Guidelines.

In sum, the screening process implemented by the mediation counsellors at Family Conciliation involved three main steps during the pre-mediation stages. Therefore, based on the screening process observed, it can be said that the mediation counsellors utilize and implement the designed screening process reflected in the protocols document by using the majority of the components, including the Draft Intake Questions, Tolman Screening Questions, and the Assessment for Maybe cases, and Other Variant Forms of Mediation. The only component that was not reflected in the observations or description by the counsellors during the interviews is the use of shuttle mediation.

5.3.3 Consistent implementation

The consistent implementation of the screening process by counsellors is difficult to assess due to the exploratory nature of the evaluation and the inability to obtain exhaustive observations from each counsellor during the data collection stage. Thus, the evaluation was unable to determine the implementation of the screening process for each of the eight counsellors. However, a significant sample was obtained and can be said to reflect internal generalizability. "Internal generalizability refers to the generalizability of a conclusion within the setting or group studied" (Maxwell, 1996, p. 97). The implementation of the screening process is based on this premise. Consequently, it can be said that the mediation counsellors utilize and implement consistently the designed screening process reflected in the protocols document.

Two inconsistencies were found in the results and are worth noting. First, by virtue of one counsellor recommending that the individual office interview should be a mandatory part of the screening process, it might be possible that this third step is not being utilized consistently by the mediation counsellors. This pattern also appeared in my memo notes recorded after the in-person interviews with counsellors. Specifically, some counsellors were forthright in saying that *they* used the individual office interview but they were *not quite sure* if all the other counsellors did too. Second, the use of the Mediation Guidelines were not consistently used during the individual office interview sessions. Although not officially part of the protocols document, this handout seemed a vital part of the screening process, a part whose role might need to be more clearly defined for mediation counsellors.

5.3.4 Screening for family violence

The screening process utilized by the mediation counsellors does seem to screen for family violence. Family violence is flagged by conducting pre-mediation screening and assessing mediation cases through the use of the various components of the protocols document. Cases involving family violence, or allegations of, are not screened out right away. Instead, the majority of the counsellors determined risk elements. In determining risk elements, the mediation counsellors would only proceed with a case involving family violence if the abuse was in the past or had been an isolated incident, and there had been indicators of some change present, such as counselling, anger management, the perpetrator taking responsibility, and the victim feeling comfortable meeting with the ex-partner. If

there were elements of current, chronic and unresolved issues around the abuse, then the case would not proceed to mediation. Finally, when proceeding with a case of family violence, the mediation counsellors would mediate with caution by using specialized skills and techniques to ensure the safety of the clients before and during the mediation session, and when leaving the premises.

The screening process and procedures utilized by the mediation counsellors when dealing with cases involving family violence are consistent with the recommendations of critics in the ongoing debate of mediating cases involving family violence. Therefore, Family Conciliation's screening process addresses the prominent variables associated with family violence issues. These variables are the empowerment of the weaker partner through specialized techniques in mediation (Benjamin & Irving, 1992); the fear of one's partner (Ellis & Stuckless, 1992); prior incidents of violence, the most recent incident of violence, the duration of the violence, the types of assistance sought and the severity of the violence (Lerman, 1984). Additionally, this screening process addresses each recommendation in the Charbonneau (1993) document entitled Report from the Toronto Forum on Woman Abuse and Mediation and reflects the guidelines in the Family Mediation Canada (1995) Resource Manual: Domestic Abuse and Family Mediation.

5.3.5 Appropriateness of a case for mediation

Once again, through the use of the screening process, mediation counsellors are able to determine the appropriateness of a case for mediation. As outlined earlier, the term appropriateness was limited to the operational definition declared by the mediation

counsellors in the in-person interviews. As such, a case is generally considered appropriate in the absence of abuse and by the readiness of the client. In other words, if a case involves current abuse or violence and/or if the client does not feel comfortable meeting with the ex-partner, the case is deemed inappropriate.

Although the appropriateness of a case was assessed based on the above mentioned points, it did appear that counsellors were able to use their judgment and experience in the assessment of a case.

5.4 Recommendations

Based on the evaluation results, the following recommendations are suggested in order to enhance Family Conciliation's Mediation and Family Violence Protocols document and its general screening process.

1. As the 1988 version of the Policy and Procedures Manual did not address the issue of family violence in its intake process, it is recommended that the three pre-mediation stages of screening (telephone intake, attendance at *For the Sake of the Children*, individual office interviews) become part of the revised intake process.
2. In addition, it is recommended that the Mediation and Family Violence Protocols document, which offers guidelines in assessing indicators of family violence, be included in the revised version of the manual.

3. **It is recommended that the policy statement on family violence (1985), which was "in essence" understood, be formalized into a written policy statement that is to precede the Mediation and Family Violence Protocols document.**
4. **Following the policy statement on family violence, it is recommended that the stated purpose and objective of the protocols be written in the Mediation and Family Violence Protocols document.**
5. **It is recommended that the terms family violence, domestic violence, spousal abuse, and child abuse be specifically defined by mediation counsellors through a consensual process of decision making.**
6. **It is recommended that the Family Conciliation face sheet and Family Conciliation Mediation Guidelines become part of the Mediation and Family Violence Protocols document as they are an integral part of the screening process.**
7. **It is recommended that the Mediation and Family Violence Protocols be updated on a regular basis in order to reflect current research and the changing needs of the mediation counsellors, the clients and the agency.**
8. **It is recommended that Family Conciliation continue to make a commitment towards the on-going training of the mediation counsellors in the area of family**

violence.

5.5 Future implications

In addition to the recommendations outlined above, Family Conciliation is encouraged to embrace the next logical step of the evaluation. As mentioned throughout this report, the effectiveness of the screening process was limited to, and based on, the perceptions of the mediation counsellors and managers at Family Conciliation because clients of family violence cases were not directly involved in the evaluation. The next phase of the evaluation would focus on the impact/outcome of the screening process by conducting a summative evaluation and including the clients in the study. Consequently, the evaluation would be able to measure how effectively cases were screened in or out based on the feedback from the participating clients. In short, a summative evaluation would expand upon and compliment the results of this exploratory study.

Family Conciliation is also encouraged to consider further the issue of power imbalances as it relates to mediation. During this study, mediation counsellors and managers were asked if indicators of power imbalances needed to be incorporated in the screening protocols. The majority of the counsellors and managers viewed the issue of power imbalances as a practice issue versus a policy issue. However, some counsellors mentioned that the issue of power imbalances was something that they continued to struggle with and felt needed to be identified in order to increase the effectiveness of the screening process. With this in mind, it should be noted that family violence constitutes only the extreme part of the spectrum of power imbalances that affect the mediation

process and the quality of agreements for participants. Consequently, factors such as gender and economic status should be expanded upon and identified as variables influencing the practice of mediation.

5.6 Examination of learning goals

In conducting the practicum evaluation, I was able to achieve each of my learning goals through various methods. First, I was able to explore the concept of family violence within the context of mediation at a theoretical and practical level. In reviewing the current literature, I became aware of how "hot" the issue of mediating cases involving family violence actually was in the mediation field and was able to distinguish and formulate three distinct positions supportive of theoretical perspectives based on feminist theory. In practice, I found the sensitivity of the debated issue of family violence and mediation interfered at times with the process of the evaluation and the manner in which results were presented.

Second, I learned how to conduct a process evaluation. In my opinion this was the most important goal that I reached as it has a very practical value to a potential social work administrator and evaluator. In addition to learning the various steps of a process evaluation as outlined in Fitz-Gibbon & Morris (1987), I also learned the pragmatics of entering a practicum setting and making sure that everyone involved had a genuine investment in the evaluation process.

Third, I learned how to collect information through qualitative methods of research. Most notably, I was able to formulate my own set of checklists and interview

guides based on the protocols document itself and the current literature. Through this experience I was able to enhance my interview skills and realized the importance of having two pens available when recording information during observations. I also learned that although qualitative methods of data collection allowed the counsellors and managers to discuss their answer openly, I found myself needing to justify the results of the evaluation against attitudes that considered the results to be not as representative or significant as results collected by quantitative methods of research.

Finally, I was able to interpret the results and formulate conclusions and recommendations through the use of an inductive method of qualitative data analysis. As part of the analysis stage, I learned how important it is to conduct member checking sessions with the participants of the evaluation. This procedure was consistent with the consultative role that I had ascribed to the participants whom I tried to include as much as possible throughout the entire evaluation process. Without the process of member checking I would have missed some very important feedback from the participants which kept me on the right track and provided a better context for the results being presented.

5.7 Summary

In conducting this evaluation, it was my intention to assure that effective criteria were being utilized when screening for family violence and assessing the appropriateness of cases involving family violence within the context of child custody mediation. Family Conciliation's Mediation and Family Violence Protocols and its screening process has proven to be effective in this area. Through the use of a process evaluation and

qualitative methods of data collection, the description of an effective screening process can be ultimately presented and utilized as a standardized screening policy and process for other mediation practitioners and mediation programs. By having accountable standards in place and recognizing that mediation is not always an appropriate method of intervention especially in cases involving family violence, mediation practitioners would continue to ensure the safety of their participants and, hence, the negotiation of a fair and equitable settlement that is focused on the best interests of the child.

Finally, this evaluation can also contribute to the field of social work administration by emphasizing the need to evaluate periodically the policy and procedures developed and implemented in our social service agencies. This in itself would help to serve our clients better by adapting our services to their changing needs. In conducting this evaluation, I found that adopting a participatory and consultative role with management and mediation counsellors assisted me by providing useful feedback and a vested interest in the evaluation process. Other social work administrators and evaluators can learn from this process by conducting evaluations that are inclusive of all stakeholders and interests.

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APPENDICES

APPENDIX A

Description of Family Conciliation Services

Family Conciliation

The Court of Queen's Bench, Family Division, was officially established in 1984/85. The Family Conciliation Branch is the social service component of that Court Division.

During 1989/90, the Family Division, Court of Queen's Bench, and the Family Conciliation Branch expanded their services throughout the province. Family conciliation services are provided in Winnipeg directly by the Family Conciliation Branch, and in other areas of the province by regional office staff (funded by the Regional Operations Branch of the department in the Westman, Parklands, Norman, and Thompson Regions).

The objective of the Family Conciliation Branch is to ensure the availability of a range of high-quality dispute resolution services to families disrupted by separation or divorce, and where continued parenting of the children is of primary concern.

The objectives of the Family Conciliation Branch are achieved through the following activities:

- administration of family conciliation services (Winnipeg), which provides social service support to the Family Division of the Court of Queen's Bench, including information/referral, court-ordered assessments, mediation, counselling, and group programs;
- development and monitoring of program policies and service standards across the province; and
- provision of training, consultation, and leadership in the development of regional services.

These activities involve the provision of the following services:

- Information and Referral is an intake service. Individuals and families are assisted in identifying problems and possible solutions, are informed of community services which may be appropriate to their situation, and are referred accordingly.
- Conciliation Counselling is brief, separation-related counselling focused on parents' and children's adjustment to family reorganization.
- Mediation is structured, short-term intervention to assist families in developing a parenting plan, to maintain a continuing relationship amongst children, parents, and extended family, and to protect children from parental conflict. This is a preferred intervention for resolving custody/access conflicts.
- Court-Ordered Assessment Reports provide comprehensive family assessments, professional opinions, and recommendations to the Court concerning the best interests of children in custody, access, and guardianship matters.
- Orientation Seminars are held weekly to orient parents to the services of the Family Conciliation Branch. Most importantly, the two-hour seminar educates and focuses parents on the needs of their children in the context of divorce. The seminar is an essential first step to mediation and has improved the outcome of the process.
- Children's Therapeutic Group for children aged ages 8 - 10 and 11 - 13, assists children with the trauma, loss, and reorganization of divorce. This ten-week session is designed for children living in families experiencing severe access conflict.

REFERENCE: Manitoba Family Services Annual Report 1994-1995.

APPENDIX B

Family Conciliation Service Profile and Referral Sources

Family Conciliation Service Profile

Type of Service	1992/93					1993/94					1994/95						
	Wpg	West- man	Park- lands	Thomp- son	Nor- man*	Total	Wpg	West- man	Park- lands	Thomp- son	Nor- man*	Total	Wpg	West- man	Park- lands	Thomp- son	Nor- man*
Information & Referral	1,094	145	-	74	78	1,329	1,072	32	-	30	1,134	1,109	18	2	20	42	1,181
Conciliation Counseling	52	5	-	22	2	81	25	6	-	11	47	19	3	-	1	14	37
Mediation	508	52	-	32	29	651	475	79	-	19	582	450	62	-	9	9	530
Court-Ordered Assessment Report	117	35	-	18	16	178	129	31	-	8	164	141	34	1	7	18	189
Children's Group	-	-	-	-	-	-	-	-	-	-	-	50	-	-	-	-	50
Access Assistance Program	229	-	-	-	-	229	-	-	-	-	-	-	-	-	-	-	-
TOTAL	1,940	267	-	136	123	2,466	1,701	145	-	36	1,957	1,798	117	3	37	81	2,007

* Includes Flin Flon and The Pas.
** Program pilot project complete.

Family Conciliation Referral Sources (by percentage)

Referral Source	1992/ 1993/			1993/ 1994/			1994/ 1995			1992/ 1993/			1993/ 1994/			1994/ 1995		
	93	94	95	94	95	96	95	96	97	94	95	96	95	96	97	94	95	96
Whitby	30%	32%	47%	30%	33%	45%	33%	33%	47%	30%	33%	45%	33%	33%	45%	33%	33%	45%
Westman Region	17%	22%	18%	17%	32%	37%	34%	34%	37%	17%	32%	37%	34%	34%	37%	17%	32%	37%
Portlanda Region	48%	44%	12%	48%	67%	14%	67%	67%	14%	17%	17%	14%	17%	17%	14%	17%	17%	14%
Thompson Region	4%	2%	2%	4%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%
Herman Region	30%	32%	47%	30%	33%	45%	33%	33%	47%	30%	33%	45%	33%	33%	45%	33%	33%	45%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

REFERENCE: Manitoba Family Services Annual Report 1994-1995.

APPENDIX C

Family Conciliation - Mediation and Family Violence Protocols

FAMILY CONCILIATION

Mediation and Family Violence Protocols

Introduction:

Mediating child custody and access disputes where a history of spousal violence exists is a major area of concern for counsellors at Family Conciliation. Mediation, by definition, assumes both parties are negotiating in good faith, and no intimidation or duress is acceptable.

As more families who have experienced abusive spousal relationships are referred to Family Conciliation, it has been necessary to re-examine our guidelines and clarify our thinking on ways to approach these families who still desire a non-adversarial approach to settling child care issues. We continue to adhere to the belief that domestic abuse cases are generally not mediatable due to safety concerns, treatment needs and issues, and power imbalances. We have, therefore, taken a cautious and sensitive approach to developing these guidelines in consideration of both the safety needs and integrity of the family members.

This section addresses screening criteria where there has been spousal abuse and the issues to be addressed in mediation are child focused divorce-related issues and not mediation of the domestic violence itself. Where child abuse has been alleged or indicated, mediation is not appropriate under any circumstances, and the program adheres rigidly to this policy. It is also important to acknowledge that assessing for domestic abuse and determining if mediation is appropriate is an ongoing process and demands that mediators are educated about these issues, know how to terminate, when to co-mediate, etc., and that alternatives are examined where mediation cannot proceed.

The following guidelines represent combined knowledge and experience of other conciliation programs and private practitioners, as well as counsellors at Family Conciliation. What will be addressed is:

- (1) The initial screening and assessment procedure that can assist in determining where mediation is feasible, where it is not appropriate, and identifies where a potential exists for mediation but further assessment is required.
- (2) The more in-depth assessment criteria for families which have experienced abuse issues.
- (3) The structure and requirements necessary should modified mediation proceed.

Contents:

1. Overview flow chart
2. Family Conciliation Draft Intake Questions
3. List of contra-indicators
4. Screening for "Maybe"
5. Tolman Screening Model
6. Tailoring the Mediation Process

The Principle in place here is:

All domestic relations cases being considered for mediation should be screened for abuse.

<p>Clients Referred to Family Conciliation (Any Source)</p>	<p>Initial Intake and Screening</p>	<p>*No</p>	<p>Decision is made early that mediation, in any form, will not be appropriate.</p> <ul style="list-style-type: none"> - Too many contra-indications (see notes on "red flags"). - Other service such as information and referral (client, groups, etc.).
		<p>*Yes</p>	<p>Proceed to Orientation Seminar or other Introduction phase as usual and proceed with conventional mediation:</p> <ul style="list-style-type: none"> - "business as usual" mediation; - no risk to clients is perceived.
		<p>*Maybe</p>	<p>Domestic violence is or was an issue (see notes on "Screening for Maybe"), but factors are present which may make a modified form of mediation possible, i.e. a specialized divorce-specific intervention.</p> <ul style="list-style-type: none"> - both clients want to try to work out an agreement on specific issues. - A decision still may be made to terminate the process at any time if a client or the mediator(s) perceive any degree of risk. (See notes on "Modified Mediation").

FAMILY CONCILIATION

Draft Intake Questions

NOTE BENE: These questions are to be used as guidelines and the intake counsellor will use his/her discretion when using it. The following questions are not to be viewed as a questionnaire which needs to be filled out on every intake call, but rather a list of issues to be addressed during initial contact with the client. There are four separate categories (A,B,C,D). The questions are not in any specific order.

A: SERVICE REQUESTED

1. What problems do you hope Family Conciliation can help you work on?
2. How long have the problems existed?
3. Have you ever been to Family Conciliation before?
4. What is your understanding of mediation?
5. Who referred you to Family Conciliation?

B: BACKGROUND (including information from the face sheet)

1. How many children are involved?
2. When were you married? How long have you been separated?
3. What time sharing arrangements are currently in place?
4. What have you done in the past to resolve your differences?
5. Has a Child and Family Service agency ever been involved?
6. Have you ever used or are you still using professional/ outside help to assist you in resolving your arguments?
7. Are there significant others involved, for example, family members or a new partner?

C: LEGAL

1. Are you currently married, separated, divorced?
2. Is there a Court Order and if so what does it say about custody/access?
3. Are lawyers involved and if so, what are they doing to help you to solve your problems?
4. Is there a maintenance/property dispute?
5. Are "legal" matters before the Courts on property, maintenance, access, custody, legal separation, assault charges, breaches of restraining orders, etc.?
6. Are there restraining or similar orders and if so, against who? Have the orders ever been broken? What has been the result?
7. Are there other relevant charges, convictions, i.e. child assault, spousal assault, etc.?

D: RELATIONSHIP (history of violence, etc.)

1. What happens when the two of you disagree about parenting issues? Do you argue?
2. If so, are the children exposed to your arguments? How do they react?
3. What kind of impact do you think your arguing has on your children?
4. What do you think you and the other parent will need to do differently to improve the situation?
5. If I was speaking with the other parent, what do you think he/she would say about the problems you are having?
6. How do you feel about being in the same room with the other parent?
7. Have you ever been afraid of the other parent? If yes, are you afraid of him/her currently? What do you think might happen?
8. Would the other parent be afraid of you?

9. Are you afraid that in the future the other parent will hurt you, or hurt the children or members of the family, friends, pets? Have threats been made and what were they?
10. Has your partner ever hit you?

Initial Screening (for mediation) On Intake...

In assessing for appropriateness of mediation when family violence/abuse is/has been present, one should assess certain things. We must go on the basis that no mediation case can be considered appropriate until screening for abuse has occurred. Contra-indicators or red flags to be considered include:

- fear of being harmed and/or retribution is present, safety is in question
- the abuser denies any incidents of abuse and does not accept responsibility for any violent behaviour
- high levels of anger
- victim has not used other interventions
- stalking behaviour
- relevant charges, convictions, i.e. child assault, spousal assault, etc.?
- the parent and/or the children are feeling intimidated/threatened, physically and/or emotionally?
- restraining orders and if so, against who? Was it ever violated? What was the outcome?
- police have been called in for protection
- the parent and/or the children have been exposed to physical violence
- pet abuse (mutilation or killed)
- abuser is obsessed with the thought that the family should reunite
- weapons are accessible and there is the possibility of use to harm
- power imbalance, strong need for one parent to control
- a pattern of controlling and manipulative behaviour, with or without physical violence has been identified
- mental health problems, severe depression (psychopathology)
- use and abuse of non-prescription drugs and alcohol
- uttering threats to physically harm the other parent and/or the children (homicide/suicide)
- using coercion to get what the abuser wants
- mutual violence
- a pattern of psychological abuse has been identified
- the abuser is unwilling to accept or comply with the "ground rules" as set out by the mediator. There may be a need for the abuser to want to control the process.
- inability to make appropriate decisions for the children
- inability to articulate
- unable to assert self
- history of violating Court orders
- child and family services involvement

*** Please note: Sources of information include:**

- Draft Intake Questions prepared by Family Conciliation Staff.
- "A Proposed Mediation Referral Guidelines" prepared by the Brandon Family Conciliation Staff.
- Article entitled "Mediation Triage: Criteria for Screening for Likely Benefit or Harm of Mediation", by Linda Girdner, Ph.D.
- "Tolman Screening Model" by Richard M. Tolman, Ph.D. taken from The Final Report of the Domestic Abuse and Mediation Project (January, 1992) entitled "Mediation in Cases of Domestic Abuse". This report was coordinated by the Maine Court Mediation Service (USA).

SCREENING FOR "MAYBE"

(Where Potential Exists To Proceed With Mediation)

"Essential to the ethical practice of mediation is the duty to assess and assure that each party is fully able to participate. The ability to mediate involves a number of factors. The parties must understand the mediation process. They must not be significantly diminished by such varied factors as domestic violence, ignorance of legal rights and available resources, lack of financial data, guilt, anger, stress, fatigue, emotional disorders, or alcohol or drug abuse. If it is determined that a party is not able to mediate, mediation must not go forward."¹

What factors are we looking for which may lead us to still offer a modified form of mediation to clients for whom domestic violence has been an issue? Mediation would proceed with specific ground rules, resources and skilled professionals. Mediation may be indicated when:

- a) both parties acknowledge abuse and that it was wrong;**
- b) neither fears a recurrence of violence;**
- c) there has been attendance at completion of anger management classes or therapy for the abuser offered by a credible agency or therapist; he appears to have taken responsibility for the abuse and no longer engages in physical or psychological abuse or controlling behaviour;**
- d) the physical or psychological abuse appears not to have been a pattern of power and control;**
- e) there has been therapy or group services for the abused spouse;**
- f) a protection plan has been developed and is committed to by both spouses;**
- g) clients are highly motivated to stick to a set of guidelines and ultimately their plan;**

¹Mediation in Cases of Domestic Abuse, The Final Report of the Domestic Abuse and Mediation Project, Maine Court Mediation Services, January 1992, p.29.

- h) enough time has passed that the abused person feels removed enough from the incident.

Separate sessions are conducted by the mediator (or Intake person in some settings) with each parent subsequent to an initial introduction to the service. This may have been done by brochures, etc., attendance at the Orientation Seminar, initial intake. Various questionnaires have been developed to be used as screening tools (Girdner, Tolman and others). We would suggest that the 1991 Draft Intake Questions, Family Conciliation be used at the initial contact with clients. If it appears that violence has been an issue and that the clients still may be possible mediation candidates, then use the Tolman Screening Model in the individual screening interview (refer to appendix A).

If the decision to offer modified mediation is made, then the clients and mediator agree to the process described under the following, "Tailoring the Mediation Process", and "Other Variant Forms of Mediation".

TAILORING THE MEDIATION PROCESS

For The Needs of Men and Women Involved In Abusive Relationships

Special skills are required of mediators who work with couples having a background of domestic violence. It is particularly important that the mediator have a sound knowledge of domestic violence dynamics. As an adjunct to the usual mediation skills, there are techniques appropriate for use with such persons that could be classed with Girdner's "category 2" clients (those likely to benefit if mediation proceeds with special ground rules and skills).

The following are some of the ways in which mediation can be modified to meet the needs of persons with a background of prior abuse in the marital relationship.

1. Although the clients have already been screened at intake for specialized mediation, it is helpful to start with private sessions. The basic purpose is to join with the parties but also to elicit their motivation to mediate and to determine special structural safeguards needed for the process.
2. Safety must remain a priority. The mediator can inform the victim of prior abuse that despite safeguards there may continue to be some risk; that the mediation process does not eliminate all risks. The clients' decision to proceed is a voluntary and informed decision.
3. In the initial session with the clients, the mediator reviews the basic rules for the process such as no interruptions, no blaming or hurtful language, no intimidating behaviour, etc. (In order to assess what intimidating behaviour is the abused spouse should indicate what the clues/signals are for her as these are often too subtle for mediators to determine.) Additionally, mediation may be conditional on establishing or clarifying certain physical boundaries to their relationship. For example, the mediator must set out a special rule that the parties arrive and depart at different times for mediation. There may be restrictions placed on telephone or face-to-face contact between the parties during mediation.

The mediator uses these rules to defuse conflict between the parties. If the mediator intends to use private caucusing during the process, this would be explained to the parties at the outset.

The mediation ground rules and any special rules should be in writing and signed by the parties. The act of signing may help strengthen their commitment to abide by the rules.

4. **Sitting position is important. Try to ensure that the victim is seated closest to the door and that the abusive spouse is seated furthest from the door.**
5. **The selective use of private caucus sessions during mediation may pre-empt or help control for certain client behaviours:**
 - a) **caucus may be used to allow for the safe expression or ventilation or emotion;**
 - b) **the mediator may use the private caucus to help the person to acquire better communication skills by pointing out more adaptive ways of responding in the session;**
 - c) **the mediator must be sensitive to indications of fear or rising tension in the body-language of the clients and call for a private meeting, or a time-out to address these issues.**
6. **Either at the initial private meeting or in caucus, the mediator can determine by asking questions, whether the abused party has a protection plan. What will the abused party do? Who will she call in the event of further trouble? The mediator needs to be able to advise where the person can go for help. For instance, the Crisis Line, Women's Shelter, Police, etc. Pamphlets of women's shelters and other programs should be available.**
7. **During mediation sessions the mediator must be careful in the use of his language, particularly in how feedback is given to the parties. Mediators must develop positive ways of giving feedback and criticism to clients. A common technique is always to preface negative feedback with a positive statement.**
8. **If the mediator cannot find ways to distract the clients and prevent destructive communications from escalating, (through reminders to adhere to the rules, through requests to stop unproductive dialogue) the mediator may elect to call a time-out or may decide to terminate mediation.**
9. **If the mediator makes a decision to terminate mediation, the explanation for the termination must never imply it was the fault or responsibility of the victim. This is necessary to prevent any increased risk to the victim.**
10. **If mediation is terminated because of negative dynamics, the mediator can follow up on the safety of the abused person by calling them one or two days after termination. This action will further demonstrate mediator concern for the safety of the person and his preparedness to assist in the referral for needed help.**

OTHER VARIANT FORMS OF MEDIATION

The characteristic hallmark of mediation is the direct communication which occurs between parties. Although there are variant forms of mediation, joint (also called conjoint) mediation is the most prevalent form of mediation applied to child and family disputes.

Mediation, however, can be seen to be on a continuum ranging from having purely joint sessions, to having selected joint sessions with individual caucus sessions, to having private sessions only with no direct communications occurring between the parties. There is a general view that mediation effectiveness decreases as one progresses away from direct negotiations.

Some mediators contend that abuse cases can be handled effectively via male/female co-mediation teams. The gender balancing helps to empower the victim while offsetting some of the power imbalance between the parties.

Others argue that mediation involving no direct communication between the parties should be an option for those who are otherwise unable to express their interests because of prior abuse experiences. (Menard MQ Vol.7, No.4) (Chandler MQ Vol.9, No.3) (Whitten MQ Vol.9, No.3)

Pros and Cons of Shuttle Mediation

Shuttle mediation involves the mediator meeting privately with each party and moving between rooms, sharing ideas and proposals, until an agreement is reached.

Proponents of shuttle mediation argue that it is disempowering to refuse women (who have been abused) the option to mediate privately. Having private sessions reduces the anxiety and risks that might be engendered in the joint sessions. It is held by some to be the safest option because there is no direct contact with the abusive spouse. Others interested in this procedure are those who are fearful of litigation, worried about excessive legal costs or the stresses associated with a Court Ordered Assessment Report.

Although there can be a rationale for shuttle mediation, at best it should be a seldom used procedure.

1. A strong argument against shuttle mediation stems from the fact that many couples with power imbalances, with high anger or poor communication skills, have been known to benefit from joint mediation.

2. More important is the fact that it is very difficult to formulate a settlement that is perceived as fair, by the parties. This is because mistrust is generated by the private sessions and the prevention of full disclosure to the parties.
3. Others see shuttle mediation as essentially duplicating the time involved in the mediation process by scheduling separate one on one sessions with each parent.

Overall, from the cost-effective or cost-benefit viewpoint, shuttle mediation is not seen as being that practical. For those who are unable to mediate because of prior abuse or obvious power-imbalances, the mediator can still refer them to their lawyers for legal negotiations or to the courts for an Assessment Report.

APPENDIX A

TOLMAN SCREENING MODEL

Screening Questions

1. **Mediation often occurs with both spouses in the same room together. Do you have any concerns about mediating in the same room together with you spouse?**

The rationale for this question is that it may tap reluctance to participate in mediation because of physical abuse without directly asking for it. Thus, it may be effective as a broad screening question, even if abuse victims are reluctant to directly disclose abuse. On the other hand, reasons other than abuse may result in concerns about mediation, and these would have to be sorted out in further screening.

2. **Are you fearful of your spouse for any reason?**

This question taps the subjective perspective of the respondent. It does not assume fear is a result of physical abuse, nor is it limited to fear of physical harm. It may identify fears of various types (taking children away, fear of humiliation, fear of spouse harming himself, etc.)

3. **Has your spouse ever threatened to hurt you in any way?**

This question is similar to question #2 in that it asks about threats in a broad manner, not limited to physical abuse. It adds information about the spouse's behaviour, rather than focusing on the subjective perspective of the respondent.

4. **Has your spouse ever hit you or used any other type of physical force towards you?**

This question directly asks about physical abuse, though it does not use the term abuse. Many women who experience physical abuse may not label it with that term. This question is more neutral in its terminology and may elicit more positive responses. On the other hand, further screening may clarify the physical force used as non-abusive. For example, a spouse's use of physical force may be legitimately self-defensive.

5. **Have you ever called the police, requested a protection from abuse order, or sought help for yourself as a result of abuse by your spouse?**

An affirmative answer to this question would demonstrate that abuse is a significant problem. However, serious abuse might have occurred even if it is answered negatively.

6. **Are you currently afraid that your spouse will physically harm you?**

This repeats #2, except that it more pointedly asks about physical abuse. An affirmative answer to #2 and a negative answer to #6 would point the screening towards a clarification of the nature of the respondent's fears. It also may clarify that while the respondent experienced abuse in the past, she is not currently fearful. This also would indicate a direction for further screening.

7. **Mediation is a process in which divorcing spouses work together with a neutral third person to negotiate details of their divorce. Do you believe you would be able to communicate with your spouse on an equal basis in mediation sessions?**

This question indicates the respondent's subjective perspective about ability to mediate. A negative response would lead to further screening about the reasons for the inequality. If previous questions about abuse were answered negatively, but this question is answered positively, it may indicate that the reason for inequality is not physical abuse, but some other factors, including psychological maltreatment. This could then be clarified further. On the other hand, if abuse questions are answered positively, but this question is answered negatively, it might reflect the respondent's belief that the abuse has not hampered her ability to use mediation effectively.

(If the couple has children, also ask the following questions.)

8. **Has your partner ever threatened to deny you access to your children?**
9. **Do you have any concerns about the children's emotional or physical safety with you or the other parent?**
10. **Has the Department of Children or Family Services ever been involved with you family?**

USING THE RESULTS

The hope is that this questionnaire quickly would add important triage information. The pattern of response would indicate next steps.

If all the answers indicated no abuse, no fear, and an endorsement of equal communication, the case would be referred on for regular mediation.

If the pattern of response indicates abuse has occurred in the past, but the respondent is not fearful and feels able to communicate equally, then she may be an appropriate candidate for face to face mediation. This would be explored further in screening, and would be carefully regulated by the mediator if mediation went forward. Either regular or specialized mediation might be the disposition.

If the pattern of responses indicates abuse has occurred, and the respondent is fearful, and/or does not feel able to communicate equally, then mediation would not go forward. Further screening would clarify concerns, and add information about whether specialized mediation might be possible.

* Tolman, Richard, Ph.D. "Tolman Screening Model" Jane Adams
College of Social Work, University of Illinois, Chicago.

APPENDIX D

Letter to the Managers of Family Conciliation

|

LETTER TO MANAGEMENT STAFF OF FAMILY CONCILIATION

Dear NAME:

I am writing to you today to ask for your cooperation in participating in the evaluation of Family Conciliation's screening policy which I will be conducting as part of my practicum study for my Master's of Social Work. The purpose of the evaluation is to determine the effectiveness of the screening process outlined in the "Mediation and Family Violence Protocols" policy document. My practicum proposal has been reviewed and approved by the Faculty of Social Work, Research Ethics Committee on DATE. My evaluation study is being supervised by a Practicum Committee with Kim Clare, M.S.W., R.S.W. as the committee chairperson.

I am interested in conducting one interview with you for the purpose of exploring Family Conciliation's management staff's perspective on the development, adoption, implementation and effectiveness of the screening policy/process. The interview will last one hour in length and will be tape recorded.

Your anonymity and confidentiality is guaranteed. Your true identity will be protected through the use of a code name and I will replace your name and occupation title with "Family Conciliation staff". The evaluation results will be presented in aggregate form only. In addition, information that you will provide to me in the interview will not be shared with your employer. Finally, I will provide you with a summary of results from the evaluation at your request.

If you are willing to participate, please complete the attached Informed Consent Form and return it to me directly in the pre-paid self-addressed envelope enclosed. If you have any questions about this request for participation or the evaluation in general, please feel free to contact me at 477-8840. Participation in the evaluation study is, of course, voluntary. Upon the receipt of completed consent forms, I will telephone participants to schedule a date and time to conduct the interview.

Your participation is very important, and I thank you in advance for your anticipated cooperation.

Sincerely,

**Gisèle Fontaine, B.S.W., and
M.S.W. Candidate**

**Attach.
Encl.**

|

APPENDIX E

Letter to the Mediation Counsellors of Family Conciliation

|

LETTER TO MEDIATION COUNSELLORS OF FAMILY CONCILIATION

Dear Mediation Counsellor,

I am writing to you today to ask for your cooperation in participating in the evaluation of Family Conciliation's screening policy which I will be conducting as part of my practicum study for my Master's of Social Work. The purpose of the evaluation is to determine the effectiveness of the screening process outlined in the "Mediation and Family Violence Protocols" policy document. The evaluation study has been approved and is being supervised by my Practicum Committee with Kim Clare, M.S.W., R.S.W. as the committee chairperson.

Your participation in this evaluation is very important because it would provide crucial information from those individuals who are most closely involved with the use and implementation of the screening policy. I am aware of the many demands of your time and have designed the evaluation to be as less intrusive as possible. I am interested in conducting one hour long interview (tape recorded) with you to explore your perspective on the design, implementation and effectiveness of the screening policy/process. In addition, I would ask you to participate in some of the following observations if you were randomly selected.

- 1) half day observation of the telephone call screening
- 2) observation of an in-person screening interview
- 3) observation of one mediation session
- 4) observation of a case study

Your anonymity and confidentiality is guaranteed. Your true identity will be protected through the use of a code name and I will replace your name and occupation title with "Family Conciliation staff" in the final evaluation report. The evaluation results will be presented in aggregate form only. Also information provided will not be shared with your employer. I will provide you with a summary of results from the evaluation at your request. Please note that I will make provisions to protect the confidentiality of clients involved in the cases being observed.

If you are willing to participate, please complete the attached Informed Consent Form and return it to me directly in the enclosed pre-paid self-addressed envelope by *February 23, 1996*. If you have any questions about this request for participation or the evaluation in general, please feel free to contact me at 477-8840. Participation in the evaluation study is, of course, voluntary. Upon the receipt of completed consent forms, I will telephone participants to schedule a date and time to conduct the interview and observations.

Your participation is very important, and I thank you in advance for your anticipated cooperation.

Sincerely,

Gisèle Fontaine, B.S.W., and
M.S.W. Candidate

Attach.
Encl.

|

APPENDIX F

Letter to the Parent Education Program Coordinator of Family Conciliation

2-589 Gertrude Avenue
Winnipeg, MB
R3L 0M9

February 14, 1996

NAME
Program Coordinator,
For the Sake of the Children
Family Conciliation
14th Floor, 405 Broadway Avenue
Winnipeg, MB
R3C 3L6

Dear NAME,

I am writing to you today to ask for your cooperation in participating in the evaluation of Family Conciliation's screening policy which I will be conducting as part of my practicum study for my Master's of Social Work. The purpose of the evaluation is to determine the effectiveness of the screening process outlined in the "Mediation and Family Violence Protocols" policy document. The evaluation study has been approved and is being supervised by my Practicum Committee with Kim Clare, M.S.W., R.S.W. as the committee chairperson.

Your participation in this evaluation is very important because it would provide crucial information from those individuals who are most closely involved with the use and implementation of the screening policy. I am aware of the many demands of your time and have designed the evaluation to be as less intrusive as possible. I am interested in conducting one hour long interview (tape recorded) with you to explore your perspective on the design, implementation and effectiveness of the screening policy/process. In addition, I would be interested in observing one randomly selected session of the For the Sake of the Children program. Finally, I would ask you to participate in some of the following observations if you were randomly selected.

- 1) half day observation of the telephone call screening
- 2) observation of an in-person screening interview
- 3) observation of one mediation session
- 4) observation of a case study

Your anonymity and confidentiality is guaranteed. Your true identity will be protected through the use of a code name and I will replace your name and occupation title with "Family Conciliation staff" in the final evaluation report. The evaluation results will be presented in aggregate form only. Also information provided will not be shared with your employer. I will provide you with a summary of results from the evaluation at your request. Please note that I will make provisions to protect the confidentiality of clients involved in the cases being observed.

If you are willing to participate, please complete the attached Informed Consent Form and return it to me directly in the enclosed pre-paid self-addressed envelope by *February 23, 1996*. If you have any questions about this request for participation or the evaluation in general, please feel free to contact me at 477-8840. Participation in the evaluation study is, of course, voluntary. Upon the receipt of completed consent forms, I will telephone participants to schedule a date and time to conduct the interview and observations.

Your participation is very important, and I thank you in advance for your anticipated cooperation.

Sincerely,

Gisèle Fontaine, B.S.W., and
M.S.W. Candidate

Attach.
Encl.

APPENDIX G

Informed Consent Form for the Managers of Family Conciliation

|

**INFORMED CONSENT FORM
FOR MANAGEMENT STAFF OF FAMILY CONCILIATION**

I understand that the goal of the evaluation study is to determine the effectiveness of Family Conciliation's screening process outlined in the "Mediation and Family Violence Protocols" policy document.

I understand that I will be interviewed once for one hour. I further understand the interview will be tape recorded by Ms. Fontaine.

I understand I may refuse to answer any question(s), or stop the interview at any time.

I understand that my participation is voluntary and that I may withdraw my consent and discontinue participation at any time.

I understand that as a participant, my right to privacy will be maintained through the use of a code name for my actual name, in addition to my name and occupational title will be replaced with "Family Conciliation staff" in the final evaluation report. I understand that information provided will remain confidential and will not be shared with my employer. The evaluation results will only be presented in aggregate form.

I understand that my confidentiality as a participating member of the evaluation study is not guaranteed due to the small sample size of possible participants.

I understand that my real name, occupation title and identifiable information will be kept in Ms. Fontaine's locked filing cabinet in her home office.

I understand that all identifiable information will be destroyed after the acceptance of Ms. Fontaine's practicum evaluation report by the Practicum Committee.

I understand that I will be able to receive a summary of the evaluation results if I request.

I understand I can contact Gisèle Fontaine at 477-8840 if I have questions regarding the evaluation.

This confirms that I _____ hereby consent to participate in the evaluation study
(please print)
conducted by Gisèle Fontaine, a graduate student with the Faculty of Social Work, University of Manitoba.

DATE: _____ SIGNATURE: _____

Please note: I would be interested in receiving a summary of the evaluation results. Please send this copy to the following address:

|

APPENDIX H

Informed Consent Form for the Mediation Counsellors of Family Conciliation

**INFORMED CONSENT FORM
FOR MEDIATION COUNSELLORS OF FAMILY CONCILIATION**

I understand that the goal of the evaluation study is to determine the effectiveness of Family Conciliation's screening process outlined in the "Mediation and Family Violence Protocols" policy document.

I understand that I will be interviewed once for one hour. I understand the interview will be tape recorded by Ms. Fontaine. I understand I may refuse to answer any question(s) or stop the interview at any time.

I understand that I may be randomly selected to participate in some observations. I understand that Ms. Fontaine will be recording information while observing through a two-way mirror and/or while present in the room. I further understand that Ms. Fontaine has made provisions to ensure the confidentiality and anonymity of the clients being observed.

I understand that my participation is voluntary and that I may withdraw my consent and discontinue participation at any time.

I understand that as a participant, my right to privacy will be maintained through the use of a code name for my actual name, in addition to my name and occupational title will be replaced with "Family Conciliation staff" in the final evaluation report. I understand that information provided will remain confidential and will not be shared with my employer. The evaluation results will only be presented in aggregate form.

I understand that my confidentiality as a participating member of the evaluation study is not guaranteed due to the small sample size of possible participants.

I understand that my real name, occupation title and identifiable information will be kept in Ms. Fontaine's locked filing cabinet in her home office.

I understand that all identifiable information will be destroyed after the acceptance of Ms. Fontaine's practicum evaluation report by the Practicum Committee.

I understand that I will be able to receive a summary of the evaluation results if I request.

I understand I can contact Gisèle Fontaine at 477-8840 if I have questions regarding the evaluation.

This confirms that I _____ hereby consent to participate in the evaluation study
(please print)
conducted by Gisèle Fontaine, a graduate student with the Faculty of Social Work, University of Manitoba.

DATE: _____ SIGNATURE: _____

Please note: I would be interested in receiving a summary of the evaluation results. Please send this copy to the following address:

APPENDIX I

Script Requesting Clients' Participation in the Evaluation's Observations

TO: All Family Conciliation Counsellors Whose Case has been Selected to be part of the Evaluation's Observations

COPY TO: Practicum Committee Members

DATE: March 11, 1996

FROM: Gisèle Fontaine, M.S.W. Candidate

RE: Requesting Clients' Participation in the Evaluation's Observations

During the Presentation Meeting of January 17th, we discussed the procedure of asking clients to participate in the two observation components of the evaluation (i.e. observation of in-person pre-mediation interview & observation of a mediation session). It was decided that the counsellors would ask clients to participate in the observations, instead of myself.

It was also decided that I provide you with a "script" of items that would be necessary to communicate to the client when asking them to participate in the observations. Please note that this "script" has been formally reviewed and accepted by the Research Ethics Committee of the Faculty of Social Work as of March 6, 1996.

As such, the key points that need to be communicated to the client at the point of requesting their participation in either of the observations are as follows:

- 1) The purpose of the evaluation: To determine the effectiveness of Family Conciliation's screening process outlined in their policy document.**
- 2) The name and status of the evaluator: Gisèle Fontaine, a graduate student from the Faculty of Social Work**
- 3) A request to participate in the observations: Observations will be held either via a two-way mirror or in the room itself (Client to be given choice).**
- 4) A guarantee of confidentiality and anonymity (refer to attached Informed Consent Form).**
- 5) A voluntary participation.**
- 6) Assurance that the client's participation in the observations will have no bearing on their current and/or future services from Family Conciliation.**

Once the client has agreed to participate in the observation, I will ask them to complete the Informed Consent Form prior to the observation.

If you have any questions in regards to this procedure, please feel free to contact me at 474-9356 (Monday, Tuesday, Friday) or 477-8840 (Wednesday, Thursday).

APPENDIX J

Informed Consent Form for Clients Participating in the Observations

|

INFORMED CONSENT FORM

I understand that the purpose of the evaluation study is to determine the effectiveness of Family Conciliation's screening process outlined in their policy document.

I understand that my meeting with the Family Conciliation mediation counsellor will be observed through either a two-way mirror or in the room itself. I further understand that Ms. Fontaine will be recording information during the observation.

I understand that my participation is voluntary and that I may withdraw my consent and discontinue participation at any time.

I understand that as a participant, my right to privacy will be maintained, and that responses will remain personally confidential. I understand that the evaluation results will only be presented in an aggregate form. I further understand that my participation in the observation will not have any bearing on my current and/or future services with Family Conciliation.

I understand that my real name, and identifiable information will be kept in Ms. Fontaine's locked filing cabinet in her home office.

I understand that all identifiable information will be destroyed after the acceptance of Ms. Fontaine's practicum evaluation report by the Practicum Committee.

I understand that I will be able to receive a summary of the evaluation results if I request.

I understand I can contact Gisèle Fontaine at 477-8840 if I have questions regarding the evaluation.

**This confirms that I _____ hereby consent to participate in the evaluation study
(please print)
conducted by Gisèle Fontaine, a graduate student with the Faculty of Social Work, University of Manitoba.**

DATE: _____ SIGNATURE: _____

Please note: I would be interested in receiving a summary of the evaluation results. Please send this copy to the following address:

APPENDIX K

Letter to External Key Informants in the City of Winnipeg

LETTER TO EXTERNAL KEY INFORMANTS

Dear Participant,

I am writing to you today to ask for your cooperation in participating in the evaluation of Family Conciliation's screening policy which I will be conducting as part of my practicum study for my Master's of Social Work. The purpose of the evaluation is to determine the effectiveness of the screening process outlined in their policy document. The evaluation study has been approved and is being supervised by my Practicum Committee with Kim Clare, M.S.W., R.S.W. as the committee chairperson.

I am contacting you through Family Mediation Manitoba's member listing because you may be a possible participant for my evaluation.

I am interesting in conducting an interview with mediation practitioners who offer divorce mediation and whose office is located in the City of Winnipeg. The purpose of this interview is to explore, with other divorce mediators, screening processes that have been found to be useful when screening for, and assessing, the appropriateness of cases involving family violence but where the family violence itself is not to be mediated. This information would be important as Family Conciliation is evaluating how their screening policy and process could be complimented in order to increase its effectiveness.

Your anonymity and confidentiality is guaranteed. Your true identity will be protected through the use of a code name and I will replace your name with "other divorce mediation services" in the final report. The evaluation results will be presented in aggregate form only. In addition, information that you will provide to me in the interview will not be shared with any member of Family Conciliation. Finally, I will provide you with a summary of results from the evaluation at your request.

If you are willing to participate, please complete the attached Informed Consent Form and return it to me directly in the enclosed pre-paid self-addressed envelope by *February 23, 1996*. If you have any questions about this request for participation or the evaluation in general, please feel free to contact me at 477-8840. Participation in the evaluation study is, of course, voluntary. Upon the receipt of completed consent forms, I will telephone participants to schedule a date and time to conduct the interview.

Your participation is very important, and I thank you in advance for your anticipated cooperation.

Sincerely,

Gisèle Fontaine, B.S.W., and
M.S.W. Candidate

Attach.
Encl.

APPENDIX L

Letter to Out of Province External Key Informants

1

March 14, 1996

Dear Sir/Madam:

I am writing to you today to ask for your cooperation in participating in the evaluation of the screening policy regarding mediation within the context of family violence utilized by Manitoba's Family Conciliation Branch. I will be conducting the evaluation as part of my practicum study for my Master's of Social Work. The purpose of the evaluation is to determine the effectiveness of the screening process outlined in their policy document. The evaluation study has been approved and is being supervised by my Practicum Committee with Kim Clare, M.S.W., R.S.W. as the committee chairperson.

I have attained your name, and am contacting you, through consultation with Sandra Dean, Director of Family Conciliation.

I am interested in reviewing the screening policy and/or procedures utilized by out-of-province divorce mediation programs. The purpose of this documentation review is to explore, with other divorce mediators, screening processes that have been found to be useful when screening for, and assessing, the appropriateness of mediating custody/access disputes where family violence has occurred but where the family violence itself is not to be mediated. This information would be important, as Family Conciliation is evaluating how their screening policy and process could be complimented in order to increase its effectiveness.

If you are willing to participate in this evaluation, please forward pertinent information to me before April 30th, 1996. My personal address is as follows: 2-589 Gertrude Avenue, Winnipeg MB, R3L 0M9. If you have any questions about this request for participation or the evaluation in general, please feel free to contact me collect at (204) 477-8840. Participation in the evaluation study is, of course, voluntary.

Your participation is very important, and I thank you in advance for your anticipated cooperation.

Sincerely,

Gisele Fontaine, B.S.W. and
M.S.W. Candidate

GF/pc

1

APPENDIX M

Informed Consent Form for External Key Informants in the City of Winnipeg

INFORMED CONSENT FORM

I understand that the goal of the evaluation study is to determine the effectiveness of Family Conciliation's screening process outlined in their policy document.

I understand that I will be interviewed once for one hour. I further understand the interview will be tape recorded by Ms. Fontaine.

I understand that I may refuse to answer any question(s), or stop the interview at any time.

I understand that my participation is voluntary and that I may withdraw my consent and discontinue participation at any time.

I understand that as a participant, my right to privacy will be maintained through the use of a code name for my actual name, in addition my name will be replaced with "other divorce mediation services" in the final evaluation report. I understand that information provided will remain confidential and will not be shared with any member of Family Conciliation. The evaluation results will only be presented in aggregate form.

I understand that my real name and identifiable information will be kept in Ms. Fontaine's locked filing cabinet in her home office.

I understand that all identifiable information will be destroyed after the acceptance of Ms. Fontaine's practicum evaluation report by the Practicum Committee.

I understand that I will be able to receive a summary of the evaluation results if I request.

I understand I can contact Gisèle Fontaine at 477-8840 if I have questions regarding the evaluation.

This confirms that I _____ hereby consent to participate in the evaluation study
(please print)
conducted by Gisèle Fontaine, a graduate student with the Faculty of Social Work, University of Manitoba.

DATE: _____ SIGNATURE: _____

Please note: I would be interested in receiving a summary of the evaluation results. Please send this copy to the following address:

APPENDIX N

Interview Guide for Managers of Family Conciliation

INTERVIEW GUIDE FOR MANAGEMENT STAFF OF FAMILY CONCILIATION

Introduction

The purpose of this interview is to explore your perspective, as a member of management, on the development, adoption, implementation and effectiveness of the Mediation and Family Violence Protocols screening policy. I have developed some questions for you to answer based on my initial exposure to the policy and screening process. During the interview I might ask you to expand and clarify your responses. At any time during the interview you can refuse to answer any questions or stop the interview. As mentioned in the consent form that you signed, your identity, in terms of your name and occupation title, will remain anonymous. In addition, the information you provide to me will remain confidential and will not be shared with your employer. Finally, the interview will last approximately one hour.

A. Formulation of the Mediation and Family Violence Protocols Document

I will begin with some questions surrounding the formulation of the Mediation and Family Violence Protocols policy document.

1. Before the policy was written, what policy and procedures, if any, were being utilized as a screening and assessment process by mediation counsellors?
2. What instigated the need to formulate another screening policy?
3. In regards to the actual development of the policy document, what process was utilized to formulate it? Who was involved in its development? When was it developed in its actual form?
4. As a policy document, what is the purpose of the Mediation and Family Violence Protocols? What are its objectives?

B. Adoption of the Policy

After the policy document was finally developed in its current written form,

1. How was the policy formally adopted?
2. How did the mediation counsellors respond to the adoption of the policy?
3. In what year was the policy adopted?

C. Implementation of the Policy

It has therefore been ___ years since the adoption of the policy. Focusing on the present situation at Family Conciliation,

1. How would you describe the general use of the Mediation and Family Violence Protocols document by the mediation counsellors?
2. In your opinion, is the implementation of the screening process, outlined in the policy, consistent with its original design?
3. How would you describe the mediation counsellor's satisfaction with the policy as a screening and assessment process?

D. Effectiveness of the Screening Process

Finally, I would like to ask you some questions surrounding the effectiveness of the screening policy and process.

1. How effective would you describe the screening process in screening for family violence and assessing the appropriateness of cases for child custody mediation?
2. What changes, if any, would need to occur surrounding the screening process in order to enhance its effectiveness? In your opinion, does it need to be broader in order to incorporate other types of power imbalances in addition to family violence?

APPENDIX O

Interview Guide for Mediation Counsellors of Family Conciliation

|

PRE TESTED INTERVIEW GUIDE FOR MEDIATION COUNSELLORS OF FAMILY CONCILIATION

Introduction

The purpose of this interview is to explore your perspective of the Mediation and Family Violence Protocols policy design, implementation and effectiveness as a screening process. I have developed some questions for you to answer based on my initial exposure to the policy and screening process. During the interview I might ask you to expand and clarify your responses. At any time during the interview you can refuse to answer any questions or stop the interview. As mentioned in the consent form that you signed, your identity, in terms of your name and occupation title, will remain anonymous. In addition, the information you provide to me will remain confidential and will not be shared with your employer. Finally, the interview will last approximately one hour.

A. Description of the Mediation and Family Violence Protocols

I would like to begin asking you some general questions about the Mediation and Family Violence Protocols policy document.

1. When did you first become aware of the Mediation and Family Violence Protocols policy document?
2. What is the purpose of this policy document? What are its objectives?
3. The protocols document uses the terms family violence, domestic abuse, and child abuse throughout its text but does not define them. What definition of these terms do you think should be used within the policy document? Are these definitions the ones you personally use when screening and assessing cases?

B. Utility of the Screening Policy

I would now like to ask some questions about your use of the policy document.

1. How often, if at all, do you refer to the Mediation and Family Violence Protocols document?
 2. What components of the screening policy, if any, do you utilize? If so, which components do you find the most useful? Why?
 3. Would you describe the Mediation and Family Violence Protocols document as a satisfactory screening policy and process for mediation counsellor's use?
- |

C. Implementation of the Screening Process

I would now like to ask you to think of the screening process that you utilize on a regular basis.

1. Could you describe to me the process you use for screening cases?
2. From where do you attain your referrals? Do you use the same screening process for each type of referral? If not, what screening process do you use for each type of referral?
3. At what stages of the screening process do you assess for family violence?
4. How do you screen and assess for child abuse? What primary indicators, if any, do you look for?
5. How do you assess for family violence and, specifically, child abuse, in the mediation session?
6. What happens to a case where there has been family violence or allegations of family violence? Are there any situations where you would proceed with mediating such a case?
7. What factors ultimately determine the appropriateness of a case for mediation?
8. At what point in the mediation process, including the pre-mediation screening, do you determine to screen out a case?
9. What happens to a case when it is screened out?
10. What type of follow-up, if any, is conducted for mediated cases?

D. Effectiveness of the Policy Document

Finally, I would like to ask you some questions surrounding the effectiveness of the screening policy and process.

1. How effective would you describe the screening process in screening for family violence and assessing the appropriateness of cases for child custody mediation?
2. What changes, if any, would need to occur surrounding the screening process in order to enhance its effectiveness? In your opinion, does it need to be broader in order to incorporate other types of power imbalances in addition to family violence?

APPENDIX P

In-person Observation Checklist

IN-PERSON SCREENING OBSERVATION CHECKLIST

Directions: This checklist has been developed based on the Mediation and Family Violence Protocols policy document's listing of screening tools and processes to be utilized by the mediation counsellors when screening and assessing potential mediation cases during individual screening sessions. This checklist is to be used by the evaluator to record observations of such sessions.

Please check off the items (i.e. questions/strategies) utilized by the mediation counsellor during the screening session. As the exact question listed might not be asked directly, please check the question that is closest in content to the question asked in the session. Writing space has been added at the end of the checklist for comments.

Checklist: **A. Draft Intake Questions**

Service requested:

- _____ 1. What problems do you hope Family Conciliation can help you work on?
- _____ 2. How long have the problems existed?
- _____ 3. Have you ever been to Family Conciliation before?
- _____ 4. What is your understanding of mediation?
- _____ 5. Who referred you to Family Conciliation?

Background:

- _____ 1. How many children are involved?
- _____ 2. When were you married? How long have you been separated?
- _____ 3. What time sharing arrangements are currently in place?
- _____ 4. What have you done in the past to resolve your differences?
- _____ 5. Have you ever used or are you still using professional/outside help to assist you in resolving your arguments?
- _____ 6. Are there significant others involved, for example, family members or a new partner?

Legal:

- _____ 1. Are you currently married, separated, divorced?
- _____ 2. Is there a Court Order and if so what does it say about custody/access?
- _____ 3. Are lawyers involved? What are they doing to help solve your problems?
- _____ 4. Are "legal" matters before the Courts on property, maintenance, access, custody, legal separation, assault charges, breaches of restraining orders?

Checklist

Relationship:

- _____ 1. What happens when the two of you disagree about parenting issues? Do you argue?
- _____ 2. If so, are the children exposed to your arguments? How do they react?
- _____ 3. What kind of impact do you think your arguing has on your children?
- _____ 4. What do you think you and the other parent will need to do differently to improve the situation?
- _____ 5. If I was speaking with the other parent, what do you think he/she would say about the problems you are having?
- _____ 6. Would the other parent be afraid of you?

B. Tolman Screening Questions

- _____ 1. Do you have any concerns about mediating in the same room together with your spouse?
- _____ 2. Are you fearful of your spouse for any reason?
- _____ 3. Has your spouse ever threatened to hurt you in any way?
- _____ 4. Has your spouse ever hit you or used any other type of physical force towards you?
- _____ 5. Have you ever called the police, requested a protection form abuse order, or sought help for yourself as a result of abuse by your spouse?
- _____ 6. Are you currently afraid that your spouse will physically harm you?
- _____ 7. Do you believe you would be able to communicate with your spouse on an equal basis in mediation sessions?
- _____ 8. Has your partner ever threatened to deny you access to your children?
- _____ 9. Do you have any concerns about the children's emotional or physical safety with you or the other parent?
- _____ 10. Has the Department of Children and Family Services ever been involved in your family?

C. Other Strategies

- _____ 1. Mediation process and risks described
- _____ 2. Models of mediation described:
 - _____ - regular mediation (joint sessions and one mediator)
 - _____ - co-mediation model (joint sessions and male/female co-mediators)
 - _____ - modified model (joint sessions with caucus sessions)
 - _____ - shuttle mediation (no direct communication between disputants)
- _____ 3. Voluntary participation based on an informed basis outlined
- _____ 4. Legal rights explained
- _____ 5. Referred to lawyer and/or alternative resources
- _____ 6. Protection plan discussed

APPENDIX Q

Mediation Session Observation Checklist

MEDIATION SESSION OBSERVATION CHECKLIST

Directions: This checklist has been developed based on the Mediation and Family Violence Protocols policy document's listing of screening tools and processes to be utilized by the mediator(s) during mediation sessions and the current literature on this topic. This checklist is to be used by the evaluator to record observations of such sessions.

Please check off the items utilized by the mediator during the mediation session. Writing space has been added at the end of the checklist for comments.

Checklist

A. Mediation Session Setting

- _____ 1. Seated closest to the door: _____ Female _____ Male
- _____ 2. Did not seat the parties opposite each other
- _____ 3. Mediator(s) was seated from equal distance from each disputant

B. Introduction of the Mediation Session

- _____ 1. Established ground rules for conversation between the disputants
- _____ 2. Established special rules such as having telephone or face to face interactions restricted between disputants during mediation
- _____ 3. Mediation ground rules and special rules were in writing and signed by the disputants
- _____ 4. Established and clarified signals to communicate intimidation or wanting to stop or terminate session
- _____ 5. Use of private caucusing explained
- _____ 6. Explained that either party could voluntarily leave the session at any time

C. General Techniques Used during the Session

- _____ 1. Mediation model utilized:
 - _____ - regular mediation (joint sessions and one mediator)
 - _____ - co-mediation model (joint sessions and male/female co-mediators)
 - _____ - modified model (joint sessions with caucus sessions)
 - _____ - shuttle mediation (no direct communication between disputants)
- _____ 2. Began mediation session with individual private sessions
- _____ 3. Addressed destructive communications/patterns
- _____ 4. Addressed body language illustrating tension-rising/imbalance of power
- _____ 5. Utilized time-outs
- _____ 6. Addressed a disputant's inability to articulate needs
- _____ 7. Utilized positive, unsided language when addressing either disputants
- _____ 8. Allowed each disputant equal time to articulate needs/concerns/solutions
- _____ 9. Addressed wife abuse _____; child abuse _____; husband abuse _____
- _____ 10. Terminated the session

APPENDIX R

Interview Guide for External Key Informants in the City of Winnipeg

PRE-TESTED INTERVIEW GUIDE FOR EXTERNAL KEY INFORMANTS

Introduction

The purpose of this interview is to explore, with other divorce mediators, screening processes that have been found to be useful when screening for, and assessing, the appropriateness of cases involving family violence but where the family violence itself is not to be mediated. During the interview I might ask you to expand and clarify your responses. At any time during the interview you can refuse to answer any questions or stop the interview. As mentioned in the consent form that you signed, your identity, in terms of your name and mediation program, will remain anonymous. In addition, the information you provide to me will 1) remain confidential, 2) will not be shared with any member of Family Conciliation, and 3) will be used for reporting purposes in aggregate form only. Finally, the interview will last approximately one hour.

A. Description of the Screening Process

I would like to begin by asking you general questions about your screening process.

1. What screening process have you developed for the purposes of screening for family violence and assessing the appropriateness of such cases for mediation? Is this screening process in a written or unwritten format? If written, do you consider it to be a policy? Who is accountable to this written policy?
2. When was this screening process formulated? What instigated the development of such a screening process?
3. What is the main purpose of the screening process?
4. How do you define family violence for the purpose of screening and assessing the appropriateness of a case for mediation? Specifically, how do you define wife abuse, child abuse and husband abuse?
5. What has guided you in developing your screening process?

B. Utility of the Screening Process

I would now like to ask some questions about your use of the screening process.

1. How often, if at all, do you refer to your screening process?
2. How long have you been using this screening process?
3. How is the screening process useful to you?

C. Implementation of the Screening Process

I would now like to ask you to think of the screening process that you utilize on a regular basis.

1. Could you describe to me the process you use for screening cases?
2. From where do you attain your referrals? Do you use the same screening process for each type of referral? If not, what screening process do you use for each type of referral?
3. Could you describe to me when you begin the process of screening for family violence?
4. How do you specifically screen and assess for child abuse? What are the primary indicators, if any, do you look for?
5. How do you assess for family violence and, specifically, child abuse in the mediation session?
6. What factors ultimately determine the appropriateness of a case for mediation?
7. What happens to a case where there has been family violence or allegations of family violence? Are there any situations where you would proceed with mediating such a case?
8. At what point in the mediation process, including the pre-mediation screening, do you determine to screen out a case?
9. What happens to a case when it is screened out?
10. What type of follow-up, if any, is conducted for mediated cases?

D. Effectiveness of the Screening Process

Finally, I would like to ask you some questions surrounding the effectiveness of the screening process.

1. How effective would you describe your screening process in screening for family violence and assessing the appropriateness of cases for mediation?
2. How would your screening process be helpful in increasing the effectiveness of other mediation programs' screening processes?

APPENDIX S

Family Conciliation Face Sheet

FAMILY CONCILIATION

Client Name: _____ Court File No: _____

Family Conciliation File No. _____ Date COAR ordered: _____

Intake/Received Date: _____ Worker Initials: _____ Date of 1st interview: _____

Assigned Date: _____ Worker: _____

Date Closed: _____ Number of sessions: Joint _____ Individual _____ Children _____ Total Time: _____

(A) Personal Information: Relationship to child(ren): Mother _____ Father _____ Other _____
(specify)

SURNAME	GIVEN	DATE OF BIRTH	PLACE OF BIRTH
ADDRESS	CONFIDENTIAL (YES NO)	CONFIDENTIAL (YES NO)	TEL.(HOME) TEL.(BUS.)
COUNSEL	FIRM & ADDRESS	TEL. #	FAX #

(B) Personal Information: Relationship to child(ren): Mother _____ Father _____ Other _____
(specify)

SURNAME	GIVEN	DATE OF BIRTH	PLACE OF BIRTH
ADDRESS	CONFIDENTIAL (YES NO)	CONFIDENTIAL (YES NO)	TEL.(HOME) TEL.(BUS.)
COUNSEL	FIRM & ADDRESS	TEL. #	FAX #

(C) Personal Information: _____ Please see next page for information pertaining to this third party.

CHILDREN:

SURNAME	GIVEN	DATE OF BIRTH	AGE AT REFERRAL	RESIDING WITH		
				A	B	A & B

FOR THE SAKE OF THE CHILDREN:

A) Date: _____ Attended: Yes _____ No _____

B) Date: _____ Attended: Yes _____ No _____

SOURCE OF REFERRAL:

Judge Master Name: _____ QB Provincial Court _____
 Lawyer Self Other: (specify) _____

REASON FOR REFERRAL: _____

SERVICES REQUESTED	SERVICES RECEIVED	COMMENTS (Additional comments over)
<input type="checkbox"/> COAR <input type="checkbox"/> Custody and Access <input type="checkbox"/> Access <input type="checkbox"/> Guardianship <small>Consented Unconsented</small> <input type="checkbox"/> Psych. Assessment	<input type="checkbox"/> COMPLETED (specify) <hr/> <input type="checkbox"/> RECEIVED (if from outside of jurisdiction) <hr/> <input type="checkbox"/> WITHDRAWN - SETTLED <hr/> <input type="checkbox"/> WITHDRAWN - NOT KNOWN	<input type="checkbox"/> Sole A <input type="checkbox"/> Sole B <input type="checkbox"/> Joint <input type="checkbox"/> Split <input type="checkbox"/> Access <input type="checkbox"/> Supervised <input type="checkbox"/> No Access <input type="checkbox"/> Other
<input type="checkbox"/> MEDIATION <input type="checkbox"/> Custody and Access <input type="checkbox"/> Access	<input type="checkbox"/> INTAKE / ASSESSMENT <hr/> <input type="checkbox"/> PRE-MEDIATION COUNSELLING <hr/> <input type="checkbox"/> PARTIALLY SETTLED <hr/> <input type="checkbox"/> AGREEMENT (specify)	<input type="checkbox"/> Sole A <input type="checkbox"/> Sole B <input type="checkbox"/> Joint <input type="checkbox"/> Split <input type="checkbox"/> Supervised Access
<input type="checkbox"/> CONCILIATION COUNSELLING	<input type="checkbox"/> CONCILIATION COUNSELLING	
<input type="checkbox"/> INFORMATION AND REFERRAL	<input type="checkbox"/> INFORMATION AND REFERRAL	
<input type="checkbox"/> FOR THE SAKE OF THE CHILDREN	<input type="checkbox"/> FOR THE SAKE OF THE CHILDREN	
<input type="checkbox"/> CHILDREN'S GROUP	<input type="checkbox"/> CHILDREN'S GROUP	

A & B RELATIONSHIP INFORMATION:

MARRIED: Date _____ COHABITATION: Date _____

NON-COHABITATIVE RELATIONSHIP: Date _____ OTHER (specify) _____

DATE OF LAST SEPARATION: _____ DECISION TO SEPARATE: A B JOINT

DATE OF SEPARATION AGREEMENT / ORDER: _____ DATE OF DIVORCE ORDER: _____

CUSTODY PROVISIONS: SOLE A SOLE B JOINT SPLIT SUPERVISED ACCESS

DECISION BY: CONSENT COURT PRIMARY CARE: A B SHARED

CURRENT TIME SHARING PROVISIONS: _____

OTHER AGENCY INVOLVEMENT: (at intake or as a result of a referral from Family Conciliation)

Counselling: FAMILY / MARRIAGE / INDIVIDUAL (specify) _____
 AA / AFM / ALANON / ALATEEN (specify) _____
 Child and Family Services _____
 Other (specify) _____
 Additional comments on other side (eg. professional consultation with lawyers, judges, etc.) _____

CRIMINAL RECORD: YES NO AGAINST: A B Date: _____ Reason: _____

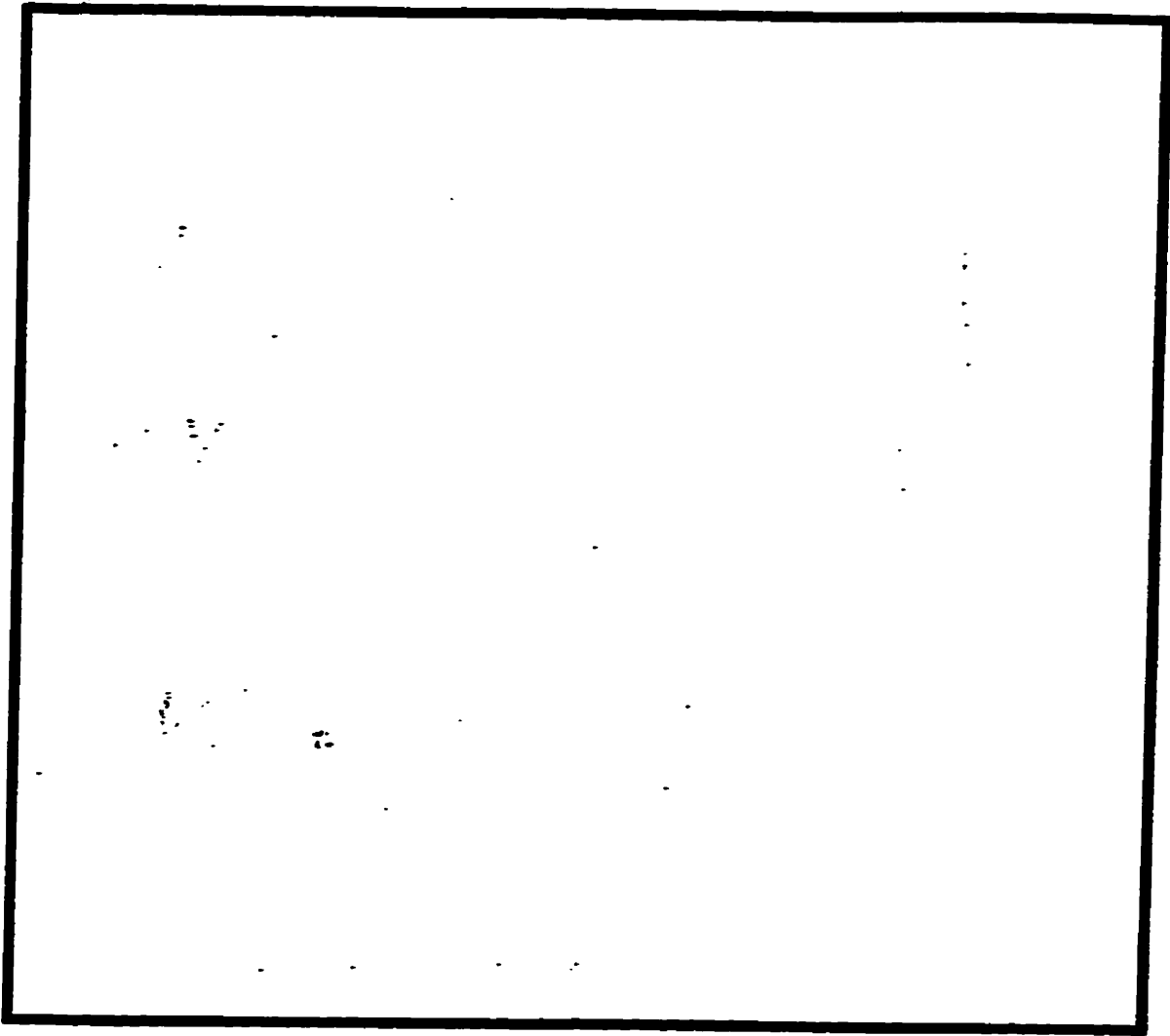
RESTRAINING ORDER: YES NO AGAINST: A B Date: _____

ASSAULT CONVICTION: YES NO AGAINST: A B Date: _____

SIGNIFICANT FACTORS:

FACTORS	SEPARATION		A	SPECIFY (including history)	B
	PRE	POST			
VIOLENCE/ABUSE					
CHILD ABUSE					
ALCOHOL/DRUGS					
MENTAL HEALTH					
FINANCIAL/ PROPERTY					
INVOLVEMENT IN OTHER RELATIONSHIP					
RELIGION/ CROSS CULTURAL					
DECLINE OF RELATIONSHIP					
MENTAL/ PHYSICAL DISABILITY					
WISHES OF CHILDREN:					
<input type="checkbox"/> OTHER e.g. homosexual, aids parenting (specify)					

GEOGRAM



LEGEND:

PRIOR HISTORY FOR A: Not Applicable (Additional comments over)

NAME OF PARTNER	DATES OF RELATIONSHIP	TYPE OF RELATIONSHIP			NUMBER OF CHILDREN	IN CARE OF		ACCESS BY A	
		MARR.	COHAB.	NONCOHAB.		A	PARTNER	YES	NO

PRIOR HISTORY FOR B: Not Applicable (Additional comments over)

NAME OF PARTNER	DATES OF RELATIONSHIP	TYPE OF RELATIONSHIP			NUMBER OF CHILDREN	IN CARE OF		ACCESS BY B	
		MARR.	COHAB.	NONCOHAB.		B	PARTNER	YES	NO

CURRENT BLENDED FAMILY FACTORS FOR (A) Not Applicable (Additional comments over)

NAME of Partner: _____

Remarried Cohabiting Non Cohabitive Relationship DATE: _____

Children of Relationship: Not Applicable

AGE AND DATE OF BIRTH

AGE AND DATE OF BIRTH

Partner's children: Not Applicable

Number _____ In care of Partner: Yes _____ No _____ Access by Partner: Yes _____ No _____

CURRENT BLENDED FAMILY FACTORS FOR (B) Not Applicable (Additional comments over)

NAME of Partner: _____

Remarried Cohabiting Non Cohabitive Relationship DATE: _____

Children of Relationship: Not Applicable

AGE AND DATE OF BIRTH

AGE AND DATE OF BIRTH

Partner's child(ren): Not Applicable

Number _____ In care of Partner: Yes _____ No _____ Access by Partner: Yes _____ No _____

APPENDIX T

Family Mediation Guidelines

FAMILY CONCILIATION

FAMILY MEDIATION GUIDELINES

Mediation is a voluntary process by which separating parents work out their own agreement regarding the care of their children, with the help of an impartial mediator. The role of the mediator is to reduce obstacles to communication, explore alternatives and address the needs and best interests of family members, particularly the children. In order for mediation to work well for all parties involved, certain basic rules and guidelines must be followed. Listed are some of the rules which participants in mediation generally follow:

1. It is usually assumed that the participants are proceeding with separation or divorce. If one or both of the participants wish to consider reconciliation, this must be made clear to the mediator at the beginning.
2. It is in the best interests of children that parents work out their own plans for their children's care, rather than to carry the dispute to court.
3. For this to happen, participants must be open, honest, and fair in sharing all information regarding the issues that affect their children. This would include advising the mediator of any prior abuse in the family.
4. Individuals' feelings toward each other affect how they make decisions. It is important that mediating parents put aside their anger and place the needs of their children before their own.
5. Participants must communicate with each other in good faith, with respect, and without intimidation or use of offensive language.
6. Under certain circumstances it is helpful to the mediation process to have the children, and other persons directly involved in the dispute take part. This is, of course, done with the consent of both parents.
7. Mediation is a confidential process. This means that the mediator will not be called to testify in court proceedings involving the participants. The mediator is required by law to report allegations or suspicions of child abuse.
8. Participants in mediation are free to consult with their lawyers or with other professionals in order to obtain information or explanations that will assist them in the mediation process.

9. Participants must refrain from acts or statements outside the mediator's office that will undermine the mediation process. Similarly, it is important that they agree to instruct their lawyers not to act or communicate in a way that would undermine the mediation process. For example, not to litigate other issues while mediation is in progress.
10. The Parenting Agreement that comes at the end of the mediation process, is the result of your good will and cooperative efforts. It is important that you review the final agreement to be satisfied with the content and wording before it is forwarded to your lawyers.

Even if a formal Parenting Agreement is not reached, mediation may still benefit a family in different ways. For example, by enhancing communication between participants and/or by increasing their problem-solving skills.

11. If you have mediated in good faith, and have arrived at a Mediated Parenting Agreement, it is expected that you will abide by its terms. However, it is not legally binding until it becomes part of a Court Order.
12. A Mediated Parenting Agreement should only be changed by the agreement of the participants. In considering a change, you should consult the other party to the agreement.

THE BASIC MEDIATION SEQUENCE

(A) PRE-MEDIATION PHASE

Initial telephone contact, individual meetings with participants, orientation to mediation process. Decision made on whether to proceed with mediation.

(B) NEGOTIATION PHASE

Normally a number of joint sessions with participants to generate options to specific issues.

(C) RESOLUTION PHASE

Preparation of the draft Parenting Agreement