

# MEDIATION AND INTIMATE PARTNER VIOLENCE

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## **Mediation and Intimate Partner Violence**

Erinn Michèle Treff

### **ABSTRACT**

The role of mediation in domestic violence cases is vehemently debated.

Inspired by the controversial nature of mediation in cases where partner abuse is present, this paper uses a feminist analytical lens to critically examine the debate surrounding mediation and domestic violence. Considering the high rates of violence against women and the fact that the majority of Canadian family mediators are women, it is possible that many mediators have experienced abuse themselves. This paper explores the dynamics of a mediator who is a survivor of abuse, mediating cases where intimate partner violence is suspected or present. This article begins by examining several arguments pertaining to mediation and intimate abuse and then discusses possible dynamics for a mediator who is an abuse survivor within several stages of mediation. The author argues that abuse and mediation are not incompatible per se, rather, that once ideas regarding abused women are updated and a hybrid model of mediation is considered, mediating cases of domestic violence will no longer be such a controversial topic.



My background in violence against women and working with vulnerable children secured me a position with Interval House of Hamilton, a shelter for abused women and children. Intimate partner abuse<sup>1</sup> occurs when one party uses physical, sexual, psychological/emotional, financial, and/or spiritual abuse to secure power over the other, thereby undermining her or his safety, self-esteem, and autonomy (DVAC, 2009; Goundry, Peters & Currie, 1998). In March 2009, I was invited by Interval House's Executive Director to attend the coroner's inquest, which Interval House was following closely, into the death of eight-year-old Jared Osidacz who had been stabbed to death by his father during an unsupervised, court-ordered visit. For years prior to the murder, Julie Craven, Jared's mother, was mistreated and disserved by our legal system; the family court ignored her reports of domestic violence and child access concerns. Her silencing prevented her from having the same benefit of the law as her ex-husband, Andrew Osidacz, who was awarded unsupervised visits with his son even though he had a history of severe domestic violence. Julie's treatment by both the lawyers and coroner during the inquest was a sight to see; in my opinion, a shameful display from our legal system. When Julie shed tears or expressed any emotion she was admonished to "pull herself together" and "buckle down" by both the coroner and her own lawyer. The validity of abuse she experienced was questioned, and during her time on the witness stand she was faced with the intimidating glare of a dozen lawyers representing various interests.

Not surprisingly, women don't feel supported by family courts in addressing abuse (Dragiewicz & DeKeseredy, 2008; Hart, 1993). Laws have historically been written by men for the benefit of men, and only in the last few decades have they begun to address intimate violence against women.<sup>2</sup> I find the concept of mediation intriguing which led me to wonder how it could work in family disputes, particularly those where violence was present. Instead of surrendering problem-solving capabili-

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1. The terms: 'intimate partner abuse', 'intimate partner violence', 'domestic violence', 'domestic abuse' and 'abuse' will be used interchangeably.
  2. In a discussion of Canadian rape legislation, Tang (1998) recounts that, prior to 1983, women were unable to charge their husbands with rape because a woman's body was considered the property of her husband.

ties to lawyers and judges, as is the case in traditional litigation, mediation is a voluntary conflict resolution process that empowers couples to resolve issues in a non-adversarial manner (Donohue, Burrell & Allen, 1989). Mediation is process-orientated, client-centered, communication-focused, and interest-based. A mediator serves as a neutral and impartial third party who assists disputing parties, which ideally have equal bargaining power, in reaching mutually-satisfying agreements (Barsky, 2007). Mediation has a number of advantages over litigation: it is less expensive and less time-consuming; it promotes women's agency by providing some control over proceedings; it promotes collaboration; it does not reinforce hierarchy and domination; and it has high satisfaction and compliance rates. Additionally, unlike lawyers and judges, a significant number of mediators have abuse training (Dragiewicz & DeKeseredy, 2008; DVAC, 2009; Goundry, Peters & Currie, 1998; Milne, 2004; Schepard, 2004; Yellott, 1990).

Superficially, mediation seems to be an ideal alternative to court for abused women. Intimate partner violence, however, brings new dynamics to mediation, as issues of power and safety concerns complicate the process. The role of mediation in domestic violence cases is vehemently debated. There are a number of proponents who contend that mediation is unfit for cases of abuse, and that it is dangerous and oppressive to the women-victims involved (Gerencser, 1995; Hard, 1990); whereas others have argued that mediation can be successful in cases of intimate partner violence, potentially empowering and satisfying for all parties (Joyce, 1997 as cited in Milne 2004; Swan, 2009; Yellott, 1990).

Inspired by the plight of Julie Craven and the controversial nature of mediation in cases where partner abuse is present, this paper will use a feminist analytical lens to critically examine the debate surrounding mediation and domestic violence. Considering the high rates of violence against women and the fact that the majority of Canadian family mediators are women,<sup>3</sup> it is possible that many mediators have experienced abuse themselves. This paper will, therefore, explore the dynamics of a mediator who is a survivor of abuse, mediating cases where intimate partner violence is suspected or present. I will begin by examining several arguments pertaining to mediation and intimate abuse and then discuss possible dynamics for a mediator who is an abuse survivor within several stages of mediation. I argue that abuse and mediation are not incompatible per se and I believe, rather, that once ideas regarding

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3. 56% of Canadian family mediators are women (Mcfarlane, Manwaning, Zweibel & Hamilton, 2003).