

Win-win is an Attitude, Not an Outcome: Family Mediation in Ontario

Presentation of Preliminary Research Results to AFCC-O AGM

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- Judicial and Family Law Professional Key Informants
- Cooperation & hospitality from staff at the 8 selected court sites
- Hilary Linton and Jennifer Suzor
- Maggie Hall

The Research Questions

- Mediation has a lot of benefits:
- What's working well? What are the challenges?
- What are best practices for service delivery?

- How and when should mediation include the voice of the child?

- Inter-partner violence/abuse: All mediators must screen for IPV/A. What is currently being done? What can mediators do to provide mediation where there is indication of IPV/A?

Research Methods



Online Survey

138 Respondents

Mediators (n=95)

Referrers to Mediation (n=43)



Key Informant Interviews

17 Judicial Interviews

30 Family Law Professionals
(mediators, lawyers, IRCs)



Site Visits (May/June 2018)

Windsor Sudbury Newmarket

Guelph London

Toronto: 393 University,

47 Sheppard, 311 Jarvis

Results: Online Survey (N=138)

- Majority of participants Female (69%) than Male (29%)
- Ages: 20-39 (17%); 40-59 (49%); 60+(30%)
- Half of the participants hold a LLB or JD (49%)
- Majority are Accredited Mediators (62%)
- 43% have over 300 hours of mediation experience
- A higher % of REFERRERS (69%) held LLB compared to 40% of mediators
- A higher % of mediators have been accredited (90%) compared to referrers (21%).
- A significantly higher proportion of participants aged 60+ had more than 10 years of experience as a mediator in family law compared to 43% in age 40-59 and 17% in 20-39 age group.
- On average the participants (ages 20-39 years) spent MORE hours reaching a custody agreement on site than participants in the 40-59 and 60+ age groups.

The Access to Justice Framework

- Typically framed re concern with self-reps/access to lawyers and legal aid
- Need to consciously expand framework to include other options for resolution
- Find more effective ways to educate and support people
- Educate public and those working with and within family law justice that mediation can:
 - Reduce time to resolution
 - Reduce conflict, not escalate
 - Judges facilitate negotiations too
 - Cost effectiveness
 - Winners-Losers/Day-in-court thinking provides short-term remedy to reality of long-term relationships (e.g., co-parents)
 - Conflict/communication skill development

Who is more likely to use mediation?

- Individuals are reported to be more receptive to an overture to try mediation where they are younger, dating/unmarried, lower income, unrepresented, little/no property, looking for a parenting plan
- Individuals appear to be less interested in mediation where their case is more “complicated” due to divorce, property and financial issues (e.g., spousal support), represented by a lawyer, or report IPV

These are ALL FLICs

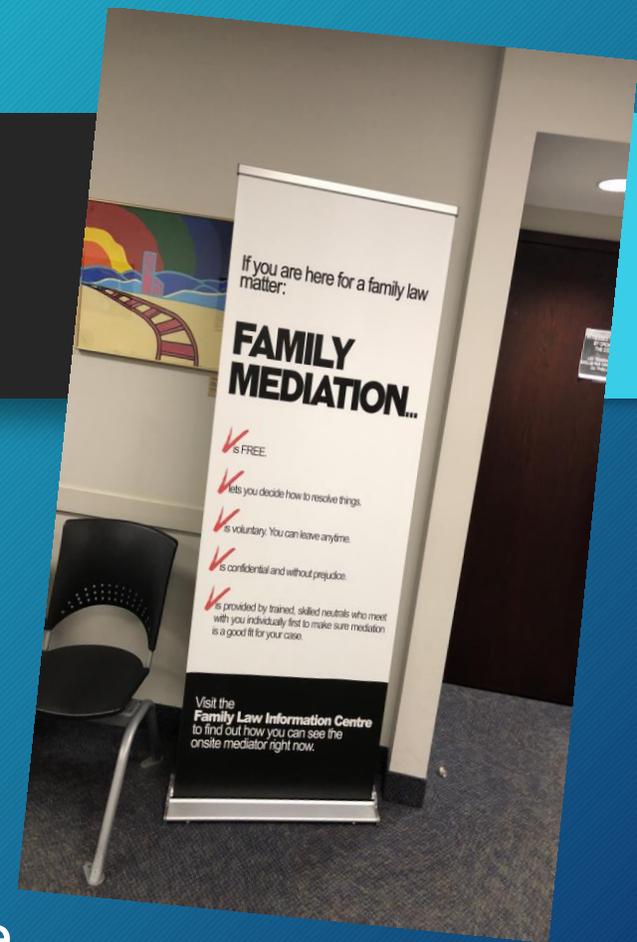


The Information Referral Coordinator (IRC)

- Role: Front line TRIAGE person
 - Provider of information
 - Direct to services - both court-based and community services (e.g., counseling, shelters)
 - Assist with forms
 - Aid with safety planning if concerns about IPV/A
 - Role misperception: not solely to funnel to mediation
- Clientele is often upset, distressed and wanting immediate help - not sure where to turn
- Challenge: When combined with inadequate FLIC space the IRC role can be difficult to execute
- In smaller centres/those without obvious front counter, IRC often “roams” the halls and waiting room reaching out to offer assistance
- IRCs can suffer from mistaken identity (perceived as a mediator or lawyer)

FLIC & IRC Recommendations

- Integrate IRC as front-line professional in courthouses
- Think outside the “office” box and finds ways to construct front counter FLICs
- Signage - make it easier for site contractors/providers to get permission from their local courthouse to place HELPFUL signage
 - Free standing signs about mediation require little space, but are eye catching.
- Cooperation with counter staff - e.g., consider appending a FLIC info/mediation info flyer to family law paperwork that is filed



The Judicial Perspective: Another key entry point for mediation clients

Overall Positive endorsement of mediation services was shared

But uptake varies from:

- **LACK** of knowledge about service/no referrals or Choose **not** to refer
- **Knowledgeable** but **FORGETFUL** about making referrals
- **Knowledgeable** and **ENTHUSIASTIC** in sending litigants and/or counsel to mediation

Mediation: Part of the services, not always viewed as part of the courthouse

- Mediation services “occupy” an awkward space (physically and psychologically)- contracted services by MAG, but not always fully embraced/viewed as core component service provider in the court sites.
- Can be forgotten/overlooked by judges/lawyers/court staff/Legal Aid
- Marginalized in space considerations (FLIC, MIP allotment, Private spaces for conducting mediations)
 - Refused access to lunch rooms/staff communal spaces.
 - Proxy for the lack of team approach to service provision
- Staff turnover often creates gap in knowledge about FLIC and mediation services
- Gaps in everyone knowing each other - by name and face

How to build mediation capacity?

Relationships, Relationships, Relationships!

- Efforts to embrace and encourage mediation as part of the partnership with ALL - court clerks, court managers, lawyers, Duty Counsel, Advice Counsel
- Embrace mediation services as positive and useful

Recommendations

- Increasing mediation capacity starts at the top

Judicial endorsement is critical!

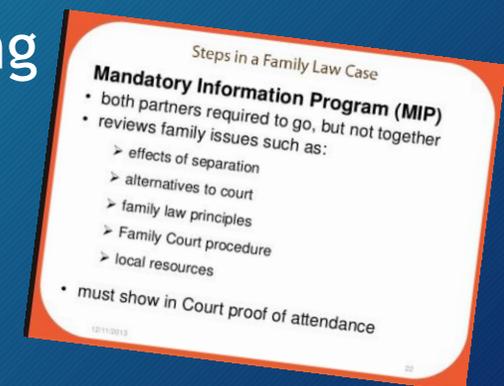
- *Family Law Rule 17(8)(b)(iii)* (ordering litigants to mediation intake) and
 - *Family Law Act*, section 3 (ordering parties to mediation on consent of the parties)
 - Some judges need daily reminders/daily introductions
 - Encouraging counsel to “seriously” consider and helping to coach in this “new/uncertain” role
- Lawyers need more information
 - What is mediation and how does it work? How is mediation different from negotiation/settlement conference?
 - How to support clients through mediation process - what is their role?
 - How to provide ILA/unbundled services when a client presents with a memorandum of mediation settlement and wants a separation agreement/court order (without fearing LSO reprisals!! Or insisting that the client “start over”)

Continuing Education

- Education must be CONTINUOUS and include ALL family law professionals
 - For Judges: Upon appointment; NJI; other continuing education
 - For courthouse staff (at all levels): consider inclusion in new staff orientation
 - Site oriented (e.g., Lunch 'n Learns, Bench and Bar, Community Liaison)
 - Bi-directional/Receptivity to meetings with the site providers to discuss what is working well/challenges/changes needed - honest and forthright discussions

Mandatory Information Program (MIP)

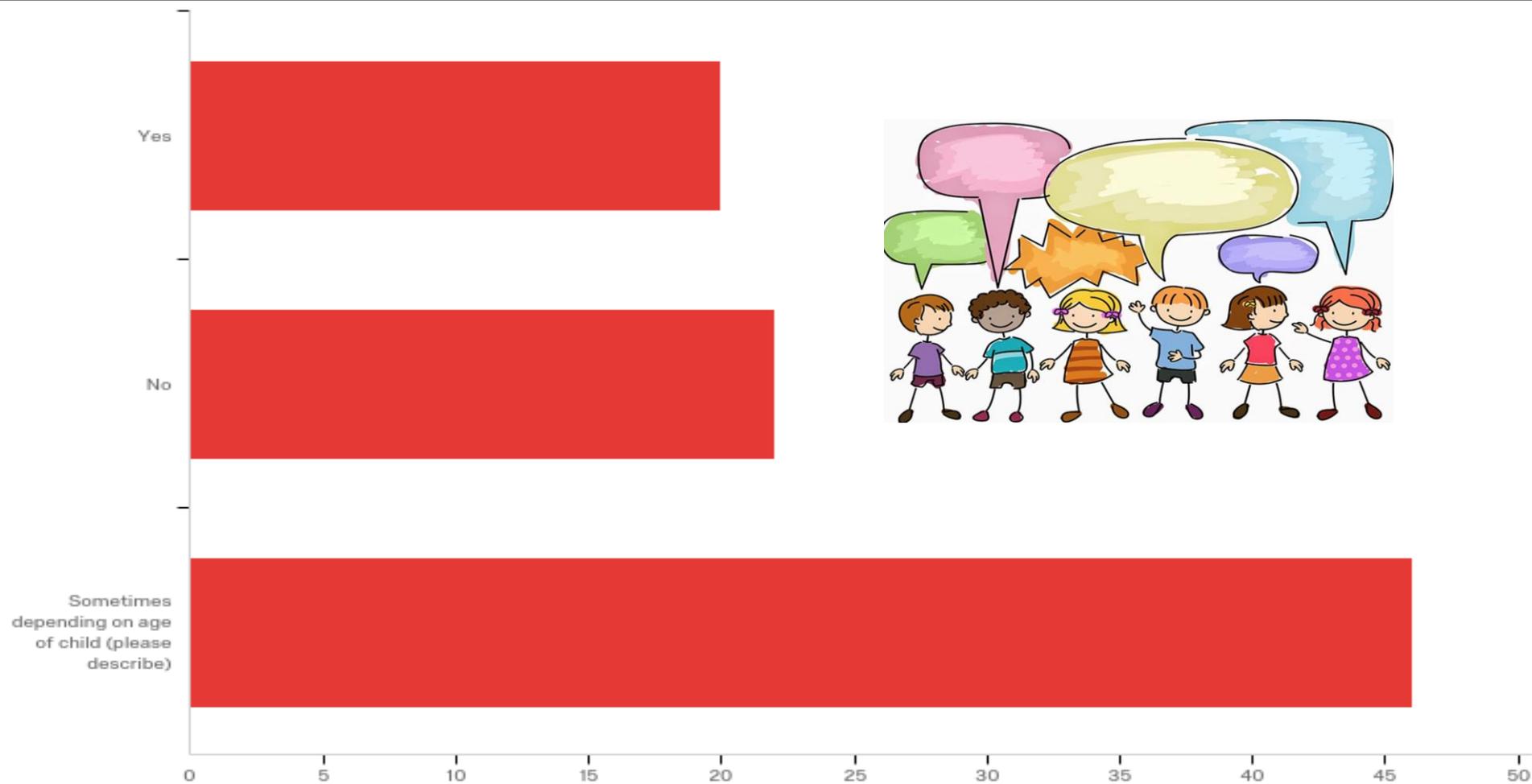
- Viewed positively by on-line respondents/KII - reported to be positively received by attendees
- Noted as one of the primary means to educate about mediation
- Depending on presenters can include questions from attendees
- Opportunity to connect to mediation & other services following presentation



MIP Recommendations

- Make available much EARLIER in the process (preferably mandatory BEFORE people file [with caveats])
- Beyond the MIP: MAG undertake concerted effort to develop Public Education Campaign -Revise the challenging website - Close the “knowledge gap”
- Mediation discussed - needs more persuasive description (gets lost in the flood of information)
- MIP needs a pedagogical revamp (text heavy, dense, script reading is not engaging, goes beyond the 20 minute ideal for attention)
- MIP form should explicitly include options for different court dates/to arrange different day/time
- In-person attendance still viewed as ideal, but additional considerations should be given to modernizing to **interactive online formats**, particularly for those with language translation needs, disability, childcare etc. (and not just with special court order) - and the younger generation

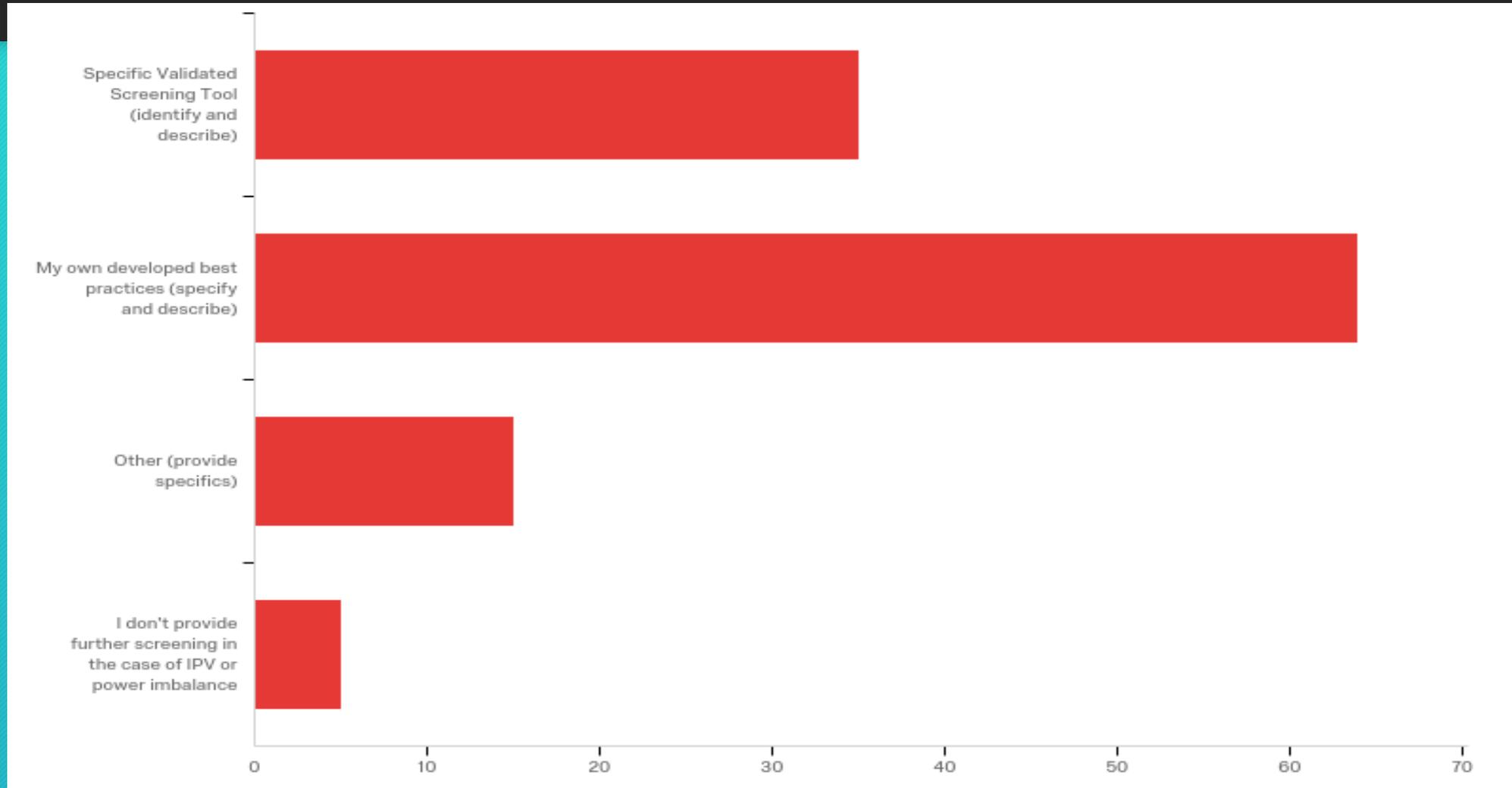
Do you incorporate children's voices/perspectives into the mediation process?



Inter-partner Violence & Abuse (IPV/A)

- Contentious topic
- Should mediation be considered at all when IPV/A is identified/present?
- If IPV/A identified, when is mediation still suitable and how should it be conducted?

How do you screen for domestic violence and power imbalances?



Types of Screening Tools

- MASIC tool (n=16)
- DOVE (n=2)
- Ontario Domestic Assault Risk Assessment (n=1)
- No tool/Ask questions (n=9) - 25% not using a specific tool
- Barbara Landau Screening tools (n=1)
- Antoinette Clarke and Darlene Murphy Tool (n=1)

Please describe specifically the ways that you conduct more detailed screening and assessment of IPV and/or power imbalance?

#	Answer	%	Count
1	Specific Validated Screening Tool (identify and describe)	30.63%	34
2	My own developed best practices (specify and describe)	53.15%	59
3	Other (provide specifics)	12.61%	14
4	I don't provide further screening in the case of IPV or power imbalance	3.60%	4
	Total	100%	111

Modifications to Proceed

- Lack of a court order preventing contact
- Shuttle mediation/Video/Telephone
- Staggered entry and exit
- Safety plans created
- Consent and acknowledgement from both parties as to the mediation safety rules
- Third party/Lawyer/Support Person present
- Shifting to use of lawyers/court system if there appears to be duress (signalled by too many/too great concessions by one party)
- Conducting mediation at the courthouse with its attendant security personnel
- Independent Legal Advice (ILA)



THE FINAL REPORT

Look for it on the AFCC-0 website
January 2019!