

# **Family Mediation and Conflict Resolution; Facilitating the Development of Co-Parenting Plans After Parental Separation**

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# **Family Mediation and Conflict Resolution; Facilitating the Development of Coparenting Plans After Parental Separation**

## *Agenda*

- **Day 1: Family Mediation and Conflict Resolution**
  - Theoretical foundation
  - Beginning, middle and ending stages of family mediation
  - Skills development
- **Day 2: Facilitating the Development of Coparenting Plans After Parental Separation**
  - Coparenting as the foundation of family law reform
  - Effects of separation on children and families
  - Interventions for parents: Common problems
  - Intervention in cases of family violence and parental alienation

# Family Mediation and Conflict Resolution

## *Objectives*

- Introduction to the field of family mediation and conflict resolution
- Introduction to the core skills of conflict resolution
- Introduction to the process and core skills of family mediation

# Conflict Management

*The key to conflict management is the realization that conflict is a natural and inevitable part of life, and that it is our reaction to the conflict that makes a conflict situation constructive or destructive.*

# Core Skills of Conflict Resolution

- To **articulate all sides** in a conflict situation; to not simply advocate one position
- To **ask open-ended questions** of the adversarial party in a way that s/he feels heard and understood
- To **reflect back the concerns and needs** of the adversarial party in a way that s/he feels heard and understood
- To **seek out and utilize common interests** (underlying concerns about the issues) in the conflict
- To **reframe** the conflict in such a way that new options for conflict resolution become apparent

## **Mediation: Definition**

- A collaborative conflict resolution process in which two or more parties in dispute are assisted in their negotiation by a neutral and impartial third party, and empowered to voluntarily reach their own mutually acceptable settlement of issues in dispute. The mediator structures and facilitates the process by which the parties make their own decisions and determine the outcome, in a way that satisfies their interests in the dispute.

# Mediation: Core Components

- A process or method
- of facilitation or assistance
- involving a dispute
- by a neutral and impartial
- third party
- The parties or participants
- make their own decisions
- that are voluntary
- mutual, fair, cooperative, and collaborative
- agreements
- through an informal
- future-oriented
- alternative process

# Mediation: Summary

- Mediation is negotiation assistance.
- The mediator is a manager of other people's negotiations.
- The mediator controls the process.
- The parties determine the outcome.
- The primary outcome of mediation is an agreement or settlement of the issues in dispute.
- The role of the mediator is to facilitate the parties' negotiations so that they can come to an agreement.

# Behaviour in Conflict Situations

- 2 dimensions of behaviour:
  - Assertiveness
  - Cooperation
- 5 methods of dealing with conflict:
  - Competing
  - Accommodating
  - Avoiding
  - Compromising
  - Collaborating

# Theoretical Foundation of Mediation

- Structured Negotiations Model
- Therapeutic (Family Systems) Model
- Transformative/Humanistic Model

# The Mediation Process: 3 Stages

- Beginning Stage
  - Premediation Orientation/Screening Meeting
  - The First Joint Session with the Parties
  - Planning Phase: Defining/Framing Issues and Setting an Agenda
- Middle Stage
- Ending Stage

# **Family Mediation and the Divorce Process: Distinguishing Features**

- Divorce education as a precursor to family mediation
- Integration of therapeutic models into family mediation
- Family mediation as facilitating the development of post-divorce co-parenting plans
- Child focus

# Family Mediation as Facilitating the Development of Coparenting Plans

## ***A 5-stage model:***

- Pre-negotiation
- Beginning
- Middle
- Ending
- Follow-up

# Family Mediation as Facilitating the Development of Coparenting Plans

## ***Pre-negotiation stage--assessment:***

- Nature of the spousal relationship
- Nature of parent-child relationships
- Decision to separate
- Legal and mental health involvement

# Family Mediation as Facilitating the Development of Coparenting Plans

## ***Beginning Stage:***

- Opening statement by the mediator
- Letting the parties tell their story
- Identifying and framing the issues in dispute for negotiation
- Setting the agenda for negotiation

# Family Mediation as Facilitating the Development of Coparenting Plans

## ***Middle (Negotiation) Stage:***

- Generating options for settlement
- Evaluating options for settlement
- Reaching agreement on each of the issues on the negotiation agenda

# Family Mediation as Facilitating the Development of Coparenting Plans

## ***Middle Stage—Five dimensions of post-divorce parenting:***

- Overnight stays
- Routine time
- Activity time
- Daily decisions
- Major decisions

# Family Mediation as Facilitating the Development of Coparenting Plans

## ***Middle Stage:***

- Generating options for settlement
- **Evaluating options for settlement**
- **Reaching agreement on each of the issues on the negotiation agenda**

# Family Mediation as Facilitating the Development of Coparenting Plans

## *Ending Stage-*

### *Drafting the coparenting plan:*

- General statement to begin the agreement
- Sharing of parental responsibilities
- Specifics of the actual time-sharing and residential arrangement
- Details regarding holidays and special days and observances
- Agreement time period, and amendments to the agreement

# Family Mediation as Facilitating the Development of Coparenting Plans

***Follow-up Stage-***

***Review and modification of coparenting plan***

# Family Mediation, Spousal Abuse, and Power Imbalances

- Concerns of women's advocates
- Definition of family violence and spousal abuse
- Screening
- Proceeding in mediation with special safeguards

# The Future of Mediation and Conflict Resolution

# Facilitating the Development of Coparenting Plans After Parental Separation

## *Agenda:*

- Coparenting as the foundation of family law reform
- Effects of separation on children and families
- Interventions for parents: Common problems
- Intervention in cases of family violence and parental alienation

# Facilitating the Development of Coparenting Plans After Parental Separation: Promoting Coparental Responsibility

## *Why does shared parental responsibility matter to children?*

- The absence of non-custodial parents in children's lives after separation and divorce is a widespread social problem, and has profoundly negative effects on children's well-being.
  - Parental absence after divorce is not well understood, nor are the barriers to non-custodial parent involvement.
  - A focus on parental rights overshadows parental responsibilities to address children's needs.

# The Legal Development of Coparenting Responsibility

- Maternal preference (the “tender years” presumption)
- Best interests of the child standard (a discretionary criterion)
- Coparental Responsibility Framework (an evidence-based standard)

# Flaws of the discretionary “best interests” standard (I)

- (1) The best-interests-of-the-child standard is vague and indeterminate.
- (2) The best-interests-of-the-child standard is subject to judicial error.
- (3) Best-interests-of-the-child-based decisions reflect a sole custody presumption and judicial bias.
- (4) The best-interests-of-the-child standard sustains, intensifies, and creates conflict, and fuels litigation.
- (5) The best-interests-of-the-child standard makes the court dependent on custody evaluations lacking an empirical foundation.

# Flaws of the discretionary “best interests” standard (II)

- (6) The views of children and parents regarding the best interests of the child are radically different to those of the judiciary, which are deficit-based.
- (7) With two adequate parents, the court has no basis for determining who is the “primary” parent: no basis for distinguishing one parent as “primary” over the other.
- (8) The best-interests-of-the-child standard is a smokescreen for the underlying issue of the judiciary and the legal system retaining their decision-making power in the child custody realm.
- (9) Contrary to the UN Convention on the Rights of the Child, Canadian children of divorce are discriminated against on the basis of parental status in regard to the removal of their parents from their lives.
- (10) Children are left unrepresented in the court proceedings.

# The Legal Development of Coparenting Responsibility

*Two core principles of coparenting:*

- “The best interests of the child from the perspective of the child” standard:
  - An evidence-based (rather than discretionary) method of determining the “best interests of the child” from the child’s perspective
- A “responsibility-to-needs” approach:
  - It is the responsibility of social institutions (such as child welfare, legal and judicial systems) to support (rather than undermine) parents in the fulfillment of their responsibilities to their children’s needs

# New Research Findings: 16 Arguments in Support of Coparenting Responsibility (I)

1. Shared parenting preserves children's relationships with both parents.
2. Shared parenting preserves parents' relationships with their children.
3. Shared parenting decreases parental conflict and prevents family violence.
4. Shared parenting reflects children's preferences and views about their needs and best interests.
5. Shared parenting reflects parents' preferences and views about their children's needs and best interests.
6. Shared parenting reflects child caregiving arrangements before divorce.
7. Shared parenting enhances the quality of parent-child relationships.
8. Shared parenting decreases parental focus on "mathematizing time" and reduces litigation.

# New Research Findings: 16 Arguments in Support of Coparenting responsibility (II)

9. Shared parenting provides an incentive for inter-parental negotiation, mediation and the development of parenting plans.
10. Shared parenting provides a clear and consistent guideline for judicial decision-making.
11. Shared parenting reduces the risk and incidence of parental alienation.
12. Shared parenting enables enforcement of parenting orders, as parents are more likely to abide by a shared parenting order.
13. Shared parenting addresses social justice imperatives regarding protection of children's rights.
14. Shared parenting addresses social justice imperatives regarding parental authority, autonomy, equality, rights and responsibilities.
15. The discretionary best interests of the child / sole custody model is not empirically supported.
16. A rebuttable legal presumption of shared parenting responsibility is empirically supported.

# New Research Findings...

## Finding #1:

Children of divorce want equal time with their parents, and consider shared parenting to be in their best interests. Seventy percent of children of divorce believe that equal amounts of time with each parent is the best living arrangement for children; and children who had shared time arrangements have the best relations with each of their parents after divorce.

(Fabricius, *Family Relations*, 2003)

# New Research Findings...

## Finding #2:

Not only do children of divorce want equal time but it is salutary for them. A review of 33 major North American studies comparing sole custody with shared parenting arrangements has shown that children in shared parenting fare significantly better on all adjustment measures (general and divorce-specific) than children who live in sole custody arrangements.

-Bauserman, *J. of Family Psychology*, 2002.

# New Research Findings...

## Finding #3:

Shared parenting reduces conflict and violence.

Interparental conflict decreases over time in shared parenting arrangements, and increases in sole custody arrangements.

Interparental cooperation and peace increases over time with shared parenting, and decreases in sole custody arrangements.

-Bauserman, *J. of Family Psychology*, 2012

# New Research Findings...

## Finding #4:

Working mothers and fathers now share responsibility for the care of children in two-part families, with a gender convergence on regard to child care roles in North American families.

-Higgins & Duxbury, *National Work-Life Conflict Study*, 2002, 2012

# Three new findings

1. Equal Parenting (Baude et al, 2017)
2. Reduced parental conflict (Nielsen, 2017; Baude et al, 2017; Fransson et al, 2017)
3. Parental alienation as a form of domestic violence and emotional child abuse (Biringen & Harman, 2016)

# Legal Presumption of Shared Parental Responsibility: A Four Pillar Framework

- 1. *Harm Reduction:*** Rebuttable Legal Presumption of Shared Parental Responsibility
- 2. *Treatment:*** Accessible Network of Family Support Programs (Divorce Education, Parenting Plans, Mediation, and Parenting Coordination: Support/Intervention in High Conflict Cases)
- 3. *Prevention:*** Shared Parenting Public Education
- 4. *Enforcement:*** Enforcement of Shared Parental Responsibility Orders

# **Rebuttable Legal Presumption of Shared Parental Responsibility: Pillar 1**

## **1. Parenting Plan Requirement (applied to all parents in dispute)**

-Parents are expected to develop a parenting plan before court.

## **2. Approximation Rule (applied to parents who cannot agree on a parenting plan)**

-Parents are encouraged to maintain the care-giving status quo after separation.

## **3. Equal Parenting Time (applied to parents who were both primary caregivers before divorce)**

-Where there no agreement, a presumption of equal shared parenting will apply.

## **4. Presumption Against Shared Parenting (applied when it is established that a child is in need of protection)**

-The exceptions to this rule are: where it is necessary to protect the child from physical, sexual or emotional harm; where it is necessary to protect the safety of a parent or caregiver.

# A Four-Pillar Framework ...

## Pillar 2. *Treatment:*

- Divorce education
- Therapeutic family mediation
- Parenting coordination
- Parallel parenting

# Family Relationship Centres

*A Family Relationship Centre is a place where families can access information and advice on:*

- building and strengthening relationships
- early intervention and prevention services
- child-friendly services for families in conflict
- family dispute resolution services
- parenting plans
- re-partnering and stepfamily arrangements
- information and referral to other services

# Common Problems in Divorced Families

- **Transition Issues**
- **Carrying Messages to the Other Parent**
- **Put Downs of the Other Parent**
- **Quizzing Children About the Other Parent**
- **Loyalty Conflicts**
- **Letting Children Be Children: Avoiding “Parentification”**
- **Discipline and Child Behavior Management**
- **Connecting and communicating with children**

# Connecting and communicating with children

- **It is not their fault.**
- **As parents, you will always be there for them.**
- **Be clear about the reality of the separation.**
- **Reflect your children's feelings, and be a good listener.**
- **Be as clear and specific as you can about your future co-parenting plans.**
- **Provide them with choices.**
- **Just as important as what to say is what not to say.**

# What makes for successful co-parenting

- Be there for your children, both physically and emotionally.
- Talk with your children about the divorce.
- Let children be children.
- Support the other parent's role and relationship with your children.
- Speak about and act in a respectful manner toward the other parent, especially in front of your children.
- Wherever possible, maintain open communication channels with the other parent.
- Maintain your child's community of support.
- Educate yourself about children's needs, co-parenting options, and community resources.
- Seek out formal and informal sources of co-parenting support.
- Maintain your own health and well-being as a priority.

# Family Violence and Child Welfare

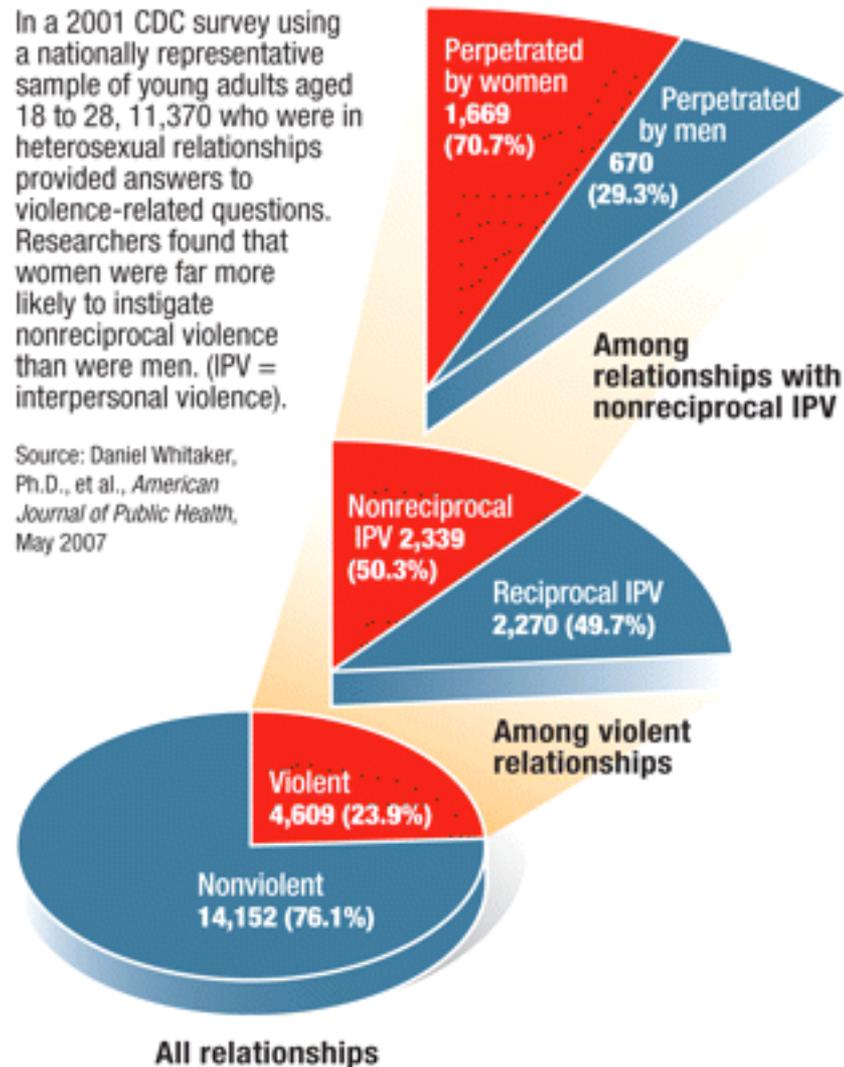
## Partner Abuse State of Knowledge Project (PASK):

1. Prevalence of Physical Violence in Intimate Relationships - Part 1: Rates of Male and Female Victimization
2. Prevalence of Physical Violence in Intimate Relationships - Part 2: Rates of Male and Female Perpetration
3. Rates of Bi-directional versus Uni-directional Intimate Partner Violence Across Samples, Sexual Orientations, and Race/Ethnicities: A Comprehensive Review
4. A Systematic Review of Risk Factors for Intimate Partner Violence
5. Prevalence of Partner Abuse: Rates of Emotional Abuse and Control
6. Partner Abuse in Ethnic Minority and LGBT Populations
7. The Combined and Independent Impact of Witnessed Interparental Violence and Child Maltreatment
8. Impact of Witnessed Parental Conflict/Emotional Abuse on Children and Families
9. The Impact and Consequences of Partner Abuse on Partners
10. Motivations for Men and Women's Intimate Partner Violence Perpetration: A Comprehensive Review
11. The Crime Control Effects of Criminal Justice Sanctions for Intimate Partner Violence
12. Gender and Racial/Ethnic Differences in Criminal Justice Decision Making in Intimate Partner Violence Cases
13. Effectiveness, Victim Safety, Characteristics and Enforcement of Protective Orders
14. Partner Abuse Worldwide
15. Risk Assessment In Intimate Partner Violence: A Review of Contemporary Approaches
16. Effectiveness of Primary Prevention Efforts for Intimate Partner Violence
17. The Effectiveness of Intervention Programs for Perpetrators and Victims of Intimate Partner Violence

# Family Violence and Child Welfare

In a 2001 CDC survey using a nationally representative sample of young adults aged 18 to 28, 11,370 who were in heterosexual relationships provided answers to violence-related questions. Researchers found that women were far more likely to instigate nonreciprocal violence than were men. (IPV = interpersonal violence).

Source: Daniel Whitaker, Ph.D., et al., *American Journal of Public Health*, May 2007



# Family Violence and Child Welfare

## 10 Most Important Findings in Intimate Partner Violence Research over the Past 30 Years (Tonia Nicholls):

1. Men and women are both perpetrators and victims of IPV at similar rates
2. Women perpetrate serious violence
3. Both men and women suffer as a result of IPV
4. The causes of IPV are varied, but similar across the sexes
5. Patriarchal oppression is a relevant but insufficient explanation for IPV
6. General theories of violence are good explanations of IPV
7. Batterer intervention programs are ineffective
8. Male IPV does not always escalate
9. There is little evidence of widespread approval of wife abuse
10. Efforts to reduce IPV have neglected half of all victims and half of all perpetrators

# Parental Alienation



# Parental Alienation as a Form of Emotional Child Abuse and Domestic Violence

- Is parental alienation a form of domestic violence?
- Is parental alienation a form of child abuse?
  - Definition and core elements of child abuse
  - Definition and core elements of parental alienation
- The effects of parental alienation on children
- Parental alienation as individual abuse
  - Implications for child protection practice
- Parental alienation as collective abuse
  - Implications for social policy

# Is parental alienation a form of child abuse?

- Child Abuse/Maltreatment:
  - A **significant** kind of harm to children
  - Its occurrence may be attributed to **human agency**
- Cooper (1993): “A **significant** harm done or anticipated to a child as a **result of human action**. That action may be intentional or reckless, and inflicted by individuals, groups, agencies or the state.”
- Finkelhor & Korbin (1988): “The portion of harm that results from human actions that is proscribed, proximate and preventable.”

# Two Core Elements of Parental Alienation

- Parental alienation involves a set of **abusive strategies** on the part of a parent to foster the child's rejection of the other parent, whereby children are manipulated by one parent to hate the other.
- Parental alienation is the child's unjustified campaign of denigration against a parent, in which children's views of the targeted parent are almost exclusively negative, to the point that the parent is demonized and seen as evil. For the child, parental alienation is **a significant mental disturbance**, based on a false belief that the alienated parent is a dangerous and unworthy parent.”

- Despite the abuse and neglect suffered by the 3000 foster care children who had been under my care, it was extremely uncommon for those children to refuse contact with a parent—even with an overtly abusive parent. Rather, abused children tend to protect and cling to the abusive parent. Moreover, in the rare cases in which that did appear to happen, there was always some evidence of indoctrination or programming (typically by foster parents who had the surreptitious goal of adopting the child). Thus, it is *counter-instinctual* for a child to reject a parent—even an abusive parent. When a professional observes a child strongly reject a parent in the absence of verified abuse, neglect or markedly deficient parenting skills—which should never be assumed based on the child’s self-reporting—one of the first thoughts should be that the other parent is an alienator. Moreover, **one should *never* assume that, because a child has rejected a parent, the parent must have done something to warrant it.** Having observed thousands of genuinely-abused children during a period of 24 years, I have concluded that a child’s innate desire to have a relationship with his or her parents is one of the most powerful of human instincts...among normal children, in the absence of an alienating influence, that instinct is seldom suppressed because a parent exhibits relatively minor flaws, deficiencies, or idiosyncrasies.

-Linda

*Gottlieb*

# 17 Alienation Strategies (Baker & Darnall, 2006)

1. **Badmouthing**
2. **Limiting contact**
3. **Interfering with communication**
4. **Interfering with symbolic communication**
5. **Withdrawal of love**
6. **Telling the child that the targeted parent (TP) is dangerous**
7. **Forcing child to choose**
8. **Telling the child that the TP does not love him or her**
9. **Confiding in the child**
10. **Forcing child to reject the TP**
11. **Asking the child to spy on the TP**
12. **Asking the child to keep secrets from the TP**
13. **Referring to the TP by first name**
14. **Referring to a stepparent as "Mum" or "Dad" and encouraging child to do the same**
15. **Withholding medical, academic, and other important information from TP/keeping TP's name off medical, academic, and other relevant documents**
16. **Changing child's name to remove association with TP**
17. **Cultivating dependency/undermining the authority of the TP**

# Indicators of Parental Alienation (Kruk, 2011)

- 1. Seizing the child by force.**
- 2. Insensitivity to and disregard for the impact of one's behaviour on children; lack of regard for and attunement to children's needs. Willingness to engage in conflict in front of the children. Lack of emotional depth and emotional responsiveness in relationship with one's child. Parentification of the child.**
- 3. Refusal to accept responsibility for one's own contribution to the problem situation or conflict.**
- 4. A belief in one's entitlement as the primary or sole parental figure in the child's life, and lack of validation or recognition of the salience of the other parent as a parent.**
- 5. Overt or covert obsession with the other parent, and with hurting the other parent, to the extent that the obsession prevails over one's parental responsibilities.**
- 6. Willingness and enthusiasm to engage in adversarial combat, and skill in the adversarial arena.**
- 7. Refusal to communicate, or engage in a negotiation process.**
- 8. Readiness to accuse the other party of wrongdoing.**
- 9. Lack of guilt or remorse for one's behavior.**
- 10. Exaggeration and dishonesty; an attitude of, "the end justifies the means."**
- 11. Badmouthing of the other parent in front of the child, or avoiding any mention of the other parent in an attempt to erase that parent from the child's memory.**
- 12. Monitoring and questioning the child in regard to the child's relationship with the other parent.**

# The Effects of Parental Alienation on Children

- **Poor self-esteem, depression and self-hatred**
- **Disrupted social-emotional development: withdrawal, isolation, social anxiety**
- **Low self-sufficiency; lack of autonomy; dependence on parent**
- **Poor impulse control; struggles with addiction and self-harm**

# Emerging Consensus on Parental Alienation

- Growing Body of Research
- Association of Family and Conciliation Courts
- Parental alienation and the DSM-V
- Parental alienation and the ICD-11

# A Framework for Addressing Parental Alienation: A Four-Pillar Approach

- **Harm Reduction:** Addressing parental alienation as a form of individual child abuse, and as a child protection matter
- **Prevention:** Addressing parental alienation as a form of collective child abuse: rebuttable legal presumption of shared parenting responsibility
- **Treatment:** Reunification programs and services for alienated parents and children
- **Enforcement:** Addressing parental alienation as a form of domestic violence, and as a criminal matter