



# Family Mediation: Exploring the Benefits and Challenges of Publicly Funded Mediation Services in Ontario



Presentation of Research Results - AFCC-O Launch

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- Ministry of the Attorney General (MAG)
- Online Survey Participants
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# The Research Questions

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- ◆ Mediation has a lot of benefits:
  - What's working well? What are the challenges?
  - What are best practices/recommendations 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

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## Online Survey

138 Respondents

Mediators (n=95; 69%)

Referrers to Mediation (n=43; 31% )



## 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 of professionals(n=138)

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- 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 mediators 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 younger mediators (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

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- 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, for some families:
  - Reduce time to resolution
  - Reduce conflict, not escalate
  - Judges/lawyers facilitate negotiations too - mediation another tool in the box
  - Cost effective
  - 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?

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## Clients MORE Receptive to Mediation

- Younger
- Dating/unmarried
- Lower income
- Unrepresented
- Little/No property
- Looking for a parenting plan

## Clients LESS Interested in Mediation

- Case more “complicated” due to divorce
  - Property and financial issues (e.g., spousal support)
- Represented by a lawyer
- IPV

# Entry Points for Access to Mediation Services

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These are ALL FLICs

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# The Information Referral Coordinator (IRC)

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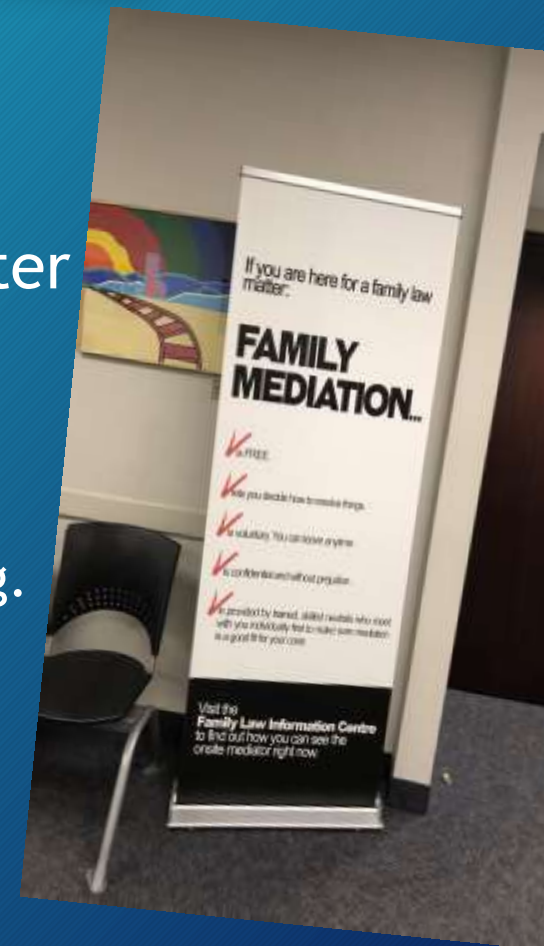
- Role: Front line TRIAGE person
  - Provider of information
  - Direct to services - both court-based and community services (e.g., counseling, shelters)
  - Assist with forms
  - Aid with safety planning if concerns about IPV/A
  - Role misperception: NOT solely to funnel to mediation
- Clientele is 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
- In smaller centres/those without obvious front counter, IRC often “roams” the halls and waiting room reaching out to offer assistance
- Litigants & other professionals may not be aware of IRC role (perceived as a mediator or lawyer)



# FLIC & IRC Recommendations

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- 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 Judiciary: Key entry point for mediation clients

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Overall POSITIVE endorsement of mediation services was shared

But uptake varies from:

- No knowledge/awareness --> No referrals
- Limited knowledge - -> Limited Referrals
- High regard and knowledgeable --> frequent referrals



## Judicial Endorsement:

Key to increasing mediation use starts at “the top”

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“I’m not sure as far as the judiciary is concerned that we’re perhaps promoting it as much as we can or should. Although it’s in our own interest to do so...I think we can do more to promote it.” (J2)

# Best Practices & Recommendations

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- Bidirectional Communication: b/w judiciary and service providers and the mediators
- Where appropriate consider use of
  - Triaging cases to mediation
  - *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)
  - Endorse records when parties ordered to mediation with appropriate return dates that allow for sufficient time to try and provide for judicial follow up
- Daily Reminders/Daily Introductions/Check-ins - consider more sites implementing these practices
- Encouraging counsel to “seriously” consider and helping to coach in this “new/uncertain” role



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

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- 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
- General courthouse staff turnover often creates gap in knowledge about FLIC and mediation services
- Gaps in everyone knowing each other - by name and face

# How to increase mediation use?

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## Relationships, Relationships, Relationships!

- Embrace mediation services as positive and useful - a partnership with ALL - court clerks, court managers, lawyers, Duty Counsel, Advice Counsel
- New staff orientation
- Site oriented (e.g., Lunch 'n Learns, Bench and Bar, Community Liaison)
- Receptivity to meetings with the site providers to discuss what is working well/challenges/changes needed - honest and forthright discussions



# Recommendations for Lawyers

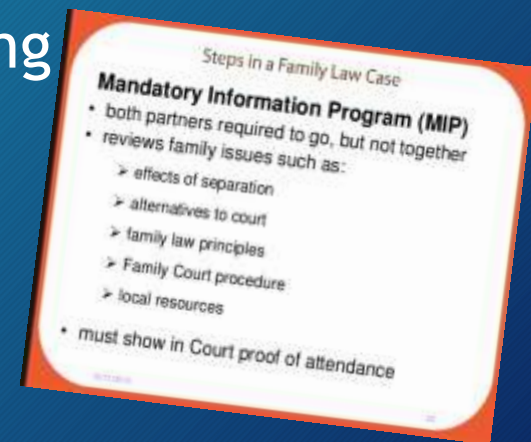
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- Some lawyers need more information/guidance (from Judges/ Continuing Education/Mentoring)
  - What is mediation and how does it work? How is mediation different from negotiation/settlement conference?
  - What is their role? How to support clients through mediation process.
  - 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”)

# Mandatory Information Program (MIP)

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- Viewed positively in on-line survey of professionals
  - - 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

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- Make available much EARLIER in the process (preferably mandatory BEFORE people file [with caveats])
- MIP form should explicitly include options for different court dates/to arrange different day/time
- Beyond the MIP: MAG undertake concerted effort to develop Public Education Campaign -Revise the challenging website - Close the “knowledge gap”
- Pedagogical Revamp: text heavy, dense, script reading is not engaging, goes beyond the 20 minute ideal for attention
  - Mediation discussed - needs more persuasive description (gets lost in the flood of information)
- 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

# MAG: Funding and More

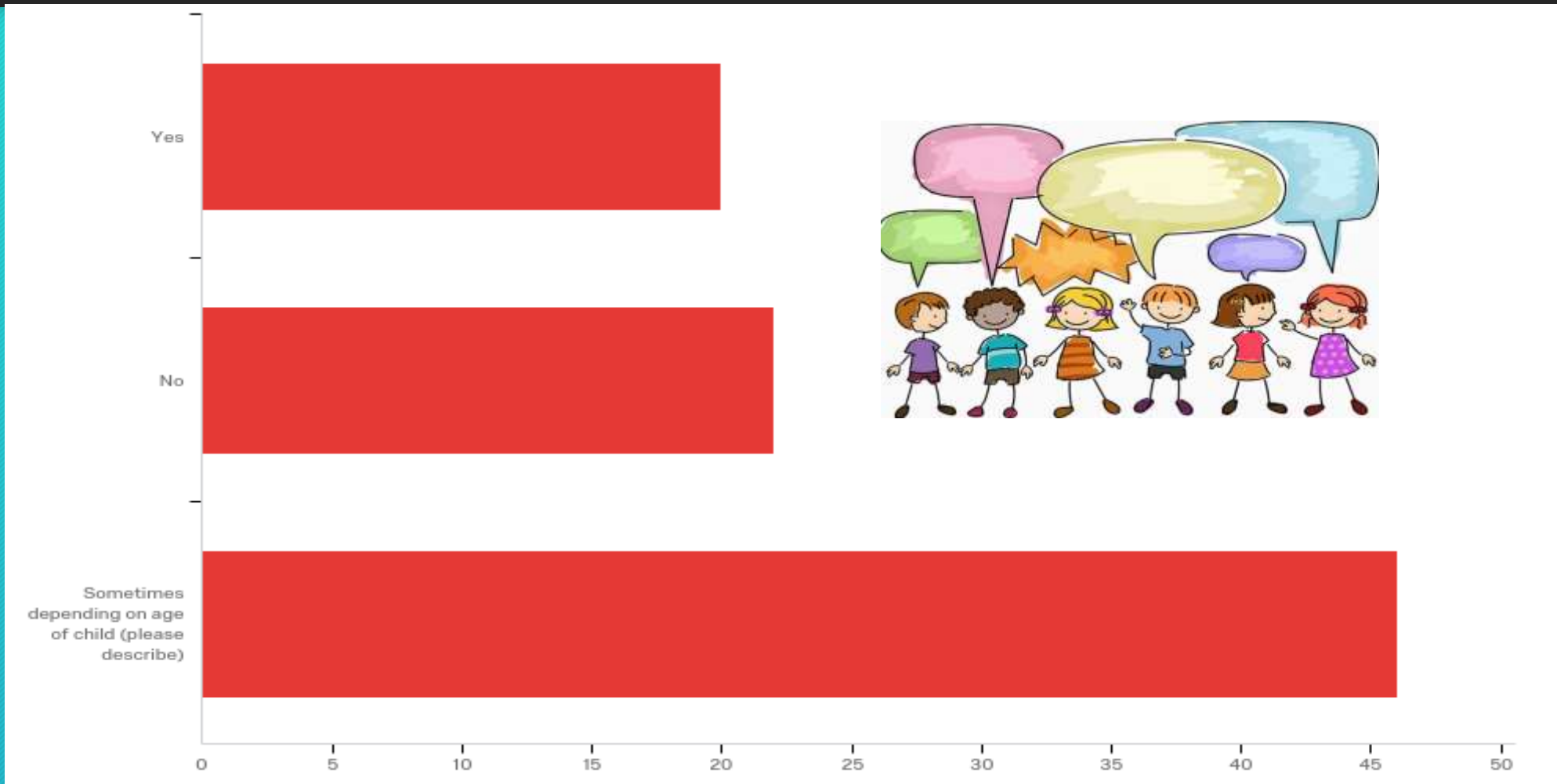
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- Kudos for another 3 (to 5) years of Mediation funding
  - Recognize that service providers have been asked to do more for less \$
- Consider
  - On-site: explicit funding to extend from 2 to 3 hours
  - Extend “on-site” services
- Address funding gap that leaves some sites, particularly some SCJ sites that are separate from OCJ
- Examine file system for tracking cases that are judicially referred to mediation and their outcomes
- First Appearance Court key opportunity for referrals



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

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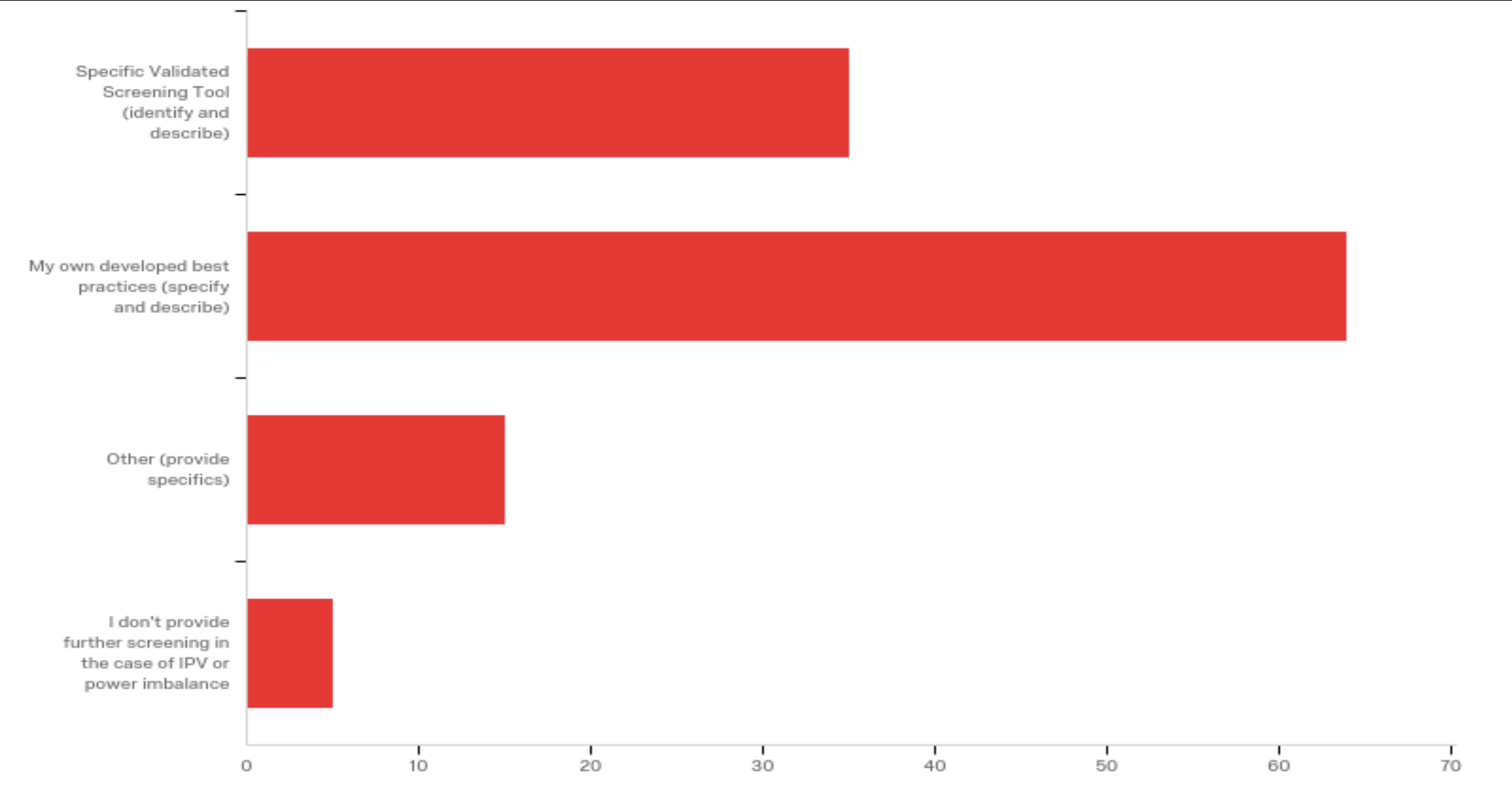
# Inter-partner Violence & Abuse (IPV/A)

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- Contentious topic
- Best viewed as an evolving area of practice
- 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 & power imbalances?



# Types of Screening Tools

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- 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)



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

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| # | 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 Have Mediation if IPV

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- 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)



# Major Findings & Recommendations

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- Mediation is an important part of access to family justice in Ontario
  - Cost-effective way to resolve many cases and improve communication skills
  - Publicly funded mediation used more by those with less resources, no lawyer, younger
  - Judiciary is a key referral source for mediation; many judges understand & appreciate role of mediation, but there is a need for more awareness & information for judges
  - Increase knowledge and relationships to court staff about mediation
  - Improve linkage to First Appearance Courts
  - Increase knowledge & support of lawyers about mediation, and capacity to give ILA
    - Limited scope retainers for ILA ; role for LAO
- Mediators need clearer procedures on IPV cases & involvement of children
- IRC resources & space often inadequate and role not understood
  - Needs space, signage & better integration into court
- MIP needs to be more accessible and better integrated with mediation
- MAG: 3 year contracts appreciated, but needs more support for mediation

# FINAL REPORT: Now on AFCC-O website!

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The screenshot shows the website for the Association of Family and Conciliation Courts Ontario Chapter (AFCC-O). The navigation menu includes: HOME, EVENTS, AWARDS/SCHOLARSHIPS, RESEARCH/POLICY, RESOURCES, and CONTACT/DONATE. The 'RESEARCH/POLICY' menu is circled in red. Below the menu, there is a 'RECENT INITIATIVES' section, also circled in red. The main content area features a section titled 'BILL C-78: REFORMING THE DIVORCE ACT' with a list of bullet points. A blue button at the bottom left of the page is circled in red and contains the text: 'Download "Exploring The Benefits And Challenges Of Mediation Services In Ontario" Research Report'. The browser's address bar shows 'afccontario.ca' and the page has a 'MEMBER LOGIN' link in the top right corner.

