

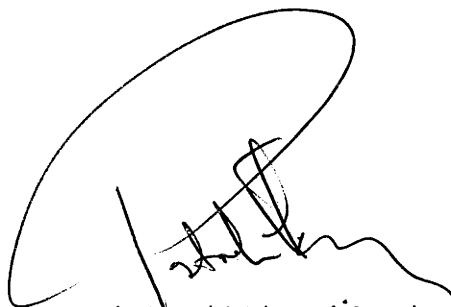
MEN, WOMEN AND DIVORCE MEDIATION

Patrick Fleming

A thesis submitted as partial fulfilment of the requirements for the degree of Master of Clinical Psychology, Department of Psychology, ANU 1997.

STATEMENT

I hereby certify that this sub-thesis is the result of my own research, except where other work has been acknowledged. This thesis (nor any part thereof) has not been submitted for a higher degree to any other institution or university.



Patrick William Fleming

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ABSTRACT

Men and women who attended divorce mediation sessions with the Canberra Resolution Centre (37 women and 24 men) and the Canberra Mediation Service (29 men and 23 women) were compared in terms of their self-reported levels of satisfaction with the mediation process and its outcomes. No evidence was reported from the first study to support the hypothesised greater dissatisfaction of women with any aspect of mediation.

Seven outcome measures including a mediation client satisfaction instrument—the Client Assessment of Mediation Services Scales (CAMS; Kelly & Gigy, 1988)—were used in a second study to examine the possibility of the greater dissatisfaction of women in greater detail. The CAMS scales were first examined for internal consistency in the Australian context and some modifications were made to the original scales. Contrary to the hypothesis, women were found to be more satisfied with certain aspects of the mediation experience. In particular, women were more likely to perceive the mediator as sensitive and effective. No differences were found between men and women on the outcomes of mediation. The circumstances surrounding mediation appear to play an important role in determining

the extent to which mediation benefits men and women differentially.

CHAPTER ONE

Introduction

The 1996 rate of divorce in Australia was 2.8% (Australian Bureau of Statistics). Traditional legal means of divorce dispute resolution are frequently associated with heavy costs, both psychological and financial. Divorce mediation is a process by which a trained third party helps divorced or divorcing couples negotiate issues in dispute between them. The third party mediator has no decision making power but works to impartially guide the divorcing disputants toward agreement (Irving, 1989). Agreements made in mediation may be full and comprehensive and subsequently submitted to the courts and ratified into a legally binding agreement, or partial, incorporating agreement on only some areas of concern.

Despite the increasing acceptance of mediation a slender research basis supports its effectiveness.

Enthusiastic advocacy of mediation and widespread dissatisfaction with traditional legal means of divorce dispute resolution have contributed to perceptions that mediation is the solution to a wide range of divorce resolution problems (Haynes, 1981; Kelly, 1983; Kressel,

Jaffee, Tuchman, Watson & Deutsch, 1980; Mile, 1988). Less supportive have been observations of a lack of methodological rigour in divorce mediation studies, such as failure to assess pre-treatment differences, inadequacies in methods of assignment to comparison groups and an overreliance on retrospective client self report. Such criticisms have contributed to arguments that the claims for mediation in divorce settings are and have little applicability to the wider divorcing population (Roehl & Cook, 1985; Vidmar, 1985). Similarly, findings of high rates of client satisfaction and achieved agreement have been attributed to an artificial inflating effect created by mediator enthusiasm in eliciting positive reactions by clients (Pearson & Thoennes, 1988).

The efficacy of divorce mediation is assessed by estimates of achieved agreement, reports of client satisfaction with achieved agreements and with the process of mediation, and by assessment of increased compliance with divorce agreements. Research in divorce mediation has largely been restricted to surveys of client satisfaction and client reports of achieved agreement either in comparison to litigation divorce groups or in mediation alone (Emery & Wyer, 1987b; Kelly, Gigy, & Hausman, 1988; Irving & Benjamin, 1992; Pearson, Thoennes, & Vanderkooi, 1988).

Most data on divorce mediation are drawn from United States studies which report a wide range of achieved agreement rates and rates of satisfaction (Pearson & Thoennes, 1988; Kelly, Gigy, & Hausman, 1988). One meta-analysis of mediation studies reported a range of achieved agreement and client satisfaction from 20-90%. The median rate of achieved agreement in the study was 60% with a median satisfaction of 70% (Kressel & Pruitt, 1989). Canadian (Irving & Benjamin, 1992), and United Kingdom studies (Hiltrop, 1985) report levels of achieved agreement and client satisfaction of approximately 50%. The small number of studies on divorce mediation that have been conducted in Australia report high levels of achieved agreement and client satisfaction. The average full agreement rate over Australian studies was 58%. The combined full and partial agreement rate was 82% (Bordow & Gibson, 1994; Maloney Love, & Fisher, 1996; Prior, 1992). Australian studies report a client satisfaction rate of 70-80%. In general, earlier divorce mediation studies report higher levels of agreement and client satisfaction. Also of note is the finding that lower levels of agreement and satisfaction are reported from mediations which are centrally concerned with child centred disputes such as custody, access and maintenance.

Although several theoretical arguments supporting the use of mediation in divorce occur in the mediation literature, little is known about the particular aspects of mediation that contribute to client satisfaction. The Client Assessment of Mediation Services Scales (CAMS, Kelly & Gigy, 1988) attempted to establish client responses to various aspects of mediation service. The present study attempts to validate the CAMS scales in the Australian context. The second objective of the present study arises from recognition of individual differences in satisfaction with mediation and attempts to identify those aspects of mediation that are crucial to client satisfaction.

The introduction of mediation into the legally complex area of divorce has aroused concern about the potential for the violation of individual rights in the absence of legal representation. Such equity concerns have been expressed, particularly, about the experiences of women in mediation (Emery & Wyer, 1987b, Emery et al., 1991, 1994; Grillo, 1991; Rifkin, 1984). The issue remains unresolved with empirical evidence supporting both sides of the issue. Some studies report that women are less satisfied with process and outcome aspects of their mediation than are men (Emery & Wyer, 1987b, 1991, 1994; Irving & Benjamin, 1992; Pearson & Thoennes, 1988). Other studies have failed to find this effect (Bordow & Gibson, 1994; Kelly, Gigy, & Hausman, 1988; Kelly & Duryee, 1992; Maloney Love, & Fisher, 1996; Prior,

1992). The findings of the CAMS scales will be examined for evidence pertaining to two areas of concern about the use of mediation in divorce settings. Evidence that women are less satisfied with their mediation experiences than are men would add weight to arguments which question the gender equality assumptions associated with the mediation of divorce.

The third objective of the study examines the importance of timing in the measurement of outcomes in mediation studies. One argument for the greater use of mediation in divorce settings is that mediation leads to a less conflictual post divorce relationship between spouses, with consequent benefit to the divorce adjustment of involved children. Some evidence indicates that the achievement of agreements in mediation and expressions of immediate satisfaction have little impact on the relationship between the conflicting parties over time. Pruitt (1995) found no correlation between measures of short term satisfaction and longer term satisfaction, or between achieved agreement and improvement in the conflicting parties' relationship. Thus, achieved agreement in mediation may not be a valid indicator of ongoing resolution or improved relationship between divorcing spouses. With this finding the basis for much of the advocacy of mediation in divorce settings is eroded. The third aim of the study, therefore, is to compare predictors and correlates of short and long term

satisfaction. This question is examined with particular reference to the experience of women.

Origins of Divorce Mediation

There are four sources of divorce mediation theory and practice. The first is found in the theoretical discussion of constructive and destructive processes of conflict by Deutsch (1973). The second arises from research in the area of negotiation studies (Carnevale & Pegnette, 1985; Carnevale & Pruitt, 1992; Lim & Carnevale 1995; McGillicuddy, Welton, & Pruitt, 1987; Thompson, 1991). A third source of mediation arises from practitioner expertise (Fisher & Ury, 1981; Kressel & Pruitt, 1989; Tillett, 1991; Ury, 1991). In recent times a considerable body of practitioner advice has been published in the area of divorce mediation (Coogler, 1978; Kressel, Jaffee, Tuchman, Watson & Deutsch, 1980; Kressel, 1985; Tillett, 1992). Finally, the development of mediation in divorce has gained considerable momentum from recent developments in the legal system regulating family law and from studies into compliance with the law (Findlay, 1992; Tyler, 1990).

Deutsch's Conflict Model

An early analysis of conflict management was offered by Deutsch (1973) who reviewed the implications of social, experimental and theoretical perspectives on the experience of conflict and described the role of an impartial third party in constructive resolution of conflict. Deutsch (1973) suggests that conflict is potentially of personal and social value and has a variety of positive functions. Firstly, conflict marks the breakdown of existing norms between parties, contributing to the emergence of new norms and is thus central to the revitalisation of relationships. Secondly, conflict demarcates individuals or groups from one another and helps to establish group and personal identities. Finally, Deutsch notes that conflict is the fundamental process of personal and social change.

Deutsch (1973) described constructive and destructive approaches to conflict management. Conflict can be regarded as constructive when the participants are satisfied with the outcome and some measure of positive result has been obtained. Destructive conflict occurs when participants are dissatisfied with the outcome and feel that they have lost as a result of the conflict.

Destructive conflict arises when disputing parties become engaged in a competitive process in which the only acceptable outcome is winning. Strenuous and mutually incompatible striving for victory on the part of both parties results in a destructive process of conflict escalation. As a result of conflict escalation, communication between the parties becomes unreliable and impoverished, each party comes to have less and less confidence in the statements of the other, and possibilities for error and misinformation are maximised. Conflict escalation also stimulates a view that a solution is only possible by force or deception, thus the enhancement of one's own power and the diminishment of the power of the other party become central objectives. Finally, conflict escalation leads to a suspicious and hostile attitude between the parties in which sensitivity to differences and threats is maximised whilst awareness of similarities is minimised. In turn, this leads to a weakening of usually accepted norms of conduct and morality.

Deutsch proposed that increased tensions concomitant with competitive processes of destructive conflict have negative effects on the decision making abilities of involved parties. Deutsch (1973) reviewed experimental evidence on the effects of tension on decision making, and concluded that excessive tension resulting from conflict may: (1) restrict individual's time perspective such that the immediate dominates at the expense of an

appreciation of long term perspectives, (2) polarise thought so that percepts become excessively simplistic, (3) lead to stereotyped responses, or (4) increase the defensiveness of participants.

Deutsch (1973) describes the central characteristic of a constructive conflict management process as a cooperative approach toward resolution. A cooperative approach to conflict is expressed in open and honest communication, mutual sensitivity between the parties toward their similarities rather than their differences, and their recognition and appreciation of the interests of the other party.

Deutsch (1973) describes key psychological elements in constructive conflict as the arousal of motivation to solve the problem rather than to defeat an opponent, the ability of each party to contain their conflict related tensions rather than exacerbate destructive conflict by hostile behaviours, and the party's ability to mobilise sufficient emotional and cognitive flexibility such that diverse ideas and problem formulations can be tolerated.

Deutsch (1973) described eight aspects of the central role of a third party in shaping and maintaining constructive conflict behaviours. They may, (1) provide a neutral supportive and skilled presence to relieve anxieties and facilitate the process of resolution, (2) serve as a continual reminder to the parties to get down

to business, (3) alter the asymmetries in power, motivation or legitimacy between the conflicting parties, (4) help to identify the real issues which may underlie the overt conflict, (5) regulate the degree of tension and monitor restraints to inhibit destructive behaviour, (6) help remove blocks and distortions in the communication process so that mutual understanding may develop, (7) establish such norms for interaction as mutual respect, open communication, the use of persuasion rather than coercion, and the desirability of reaching a mutually satisfying agreement, and (8) propose possible solutions.

Negotiation Models of Conflict Resolution

A second source of mediation theory comes from established research in the area of negotiation (Carnevale & Pruitt, 1992; Neale & Bazerman, 1991; Thompson, 1990b). A well established finding from these negotiation studies is that direct interparty negotiation facilitates the development of mutually acceptable options.

The Dual Concern Model forms the chief theory of negotiator motivation. Whilst traditional cognitive theoretical models of conflict resolution are based on self interest motives leading to win-lose resolutions (Thompson, 1990b), the Dual Concern Model (Carnevale &

Pruitt, 1992) incorporates a disputant's interest in the other parties outcomes as well as interest in their own. The model shown in Fig. 1, views self-concern (concern about own outcomes) and other-concern (concern about other party's outcomes) as dimensions from weak to strong. High concern for self coupled with low other-concern produces contentious tactics. Concession making arises from high other-concern and low self-concern. Low self-concern and low other-concern is seen to produce inaction. Finally, high other-concern and high self-concern is seen to produce problem solving.

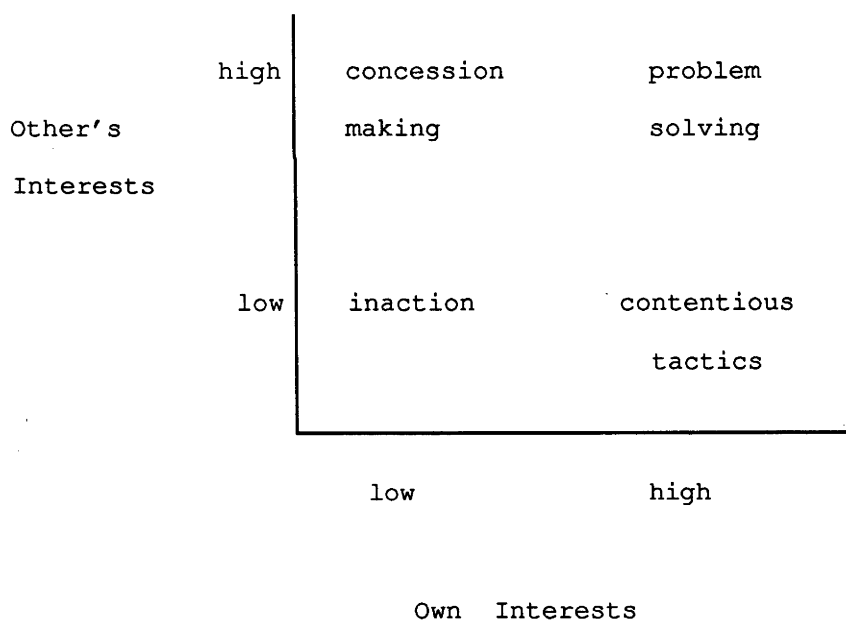


Figure 1. The Dual Concern Model of Negotiator Behaviour

(From Carnevale and Pruitt, 1992)

The Dual Concern Model allows the possibility of solutions in which both sides make gains. Such solutions are termed win-win solutions (Carnevale & Pruitt, 1992). Win-win agreements may be reached in three basic ways. Firstly, by expanding parties' perceptions of available resources so that both sides get what they want. Second, by exchanging concessions on different issues so that each side wins on its issues of highest priority. Third, by assessing the underpinnings of the parties' positions in an effort to find a new approach. Some underpinnings are seen as motivational, involving needs, goals and values. Others are understood as cognitive, involving assumptions about the nature of reality. Data from both psychometric studies, which factor analyse self reports about the use of various strategies in conflict situations (Van de Vliert & Prein, 1989), and laboratory experiments (Carnevale & Keenan, 1990; cited Carnevale and Pruitt, 1992), provide empirical support for the utility of the Dual Concern Model.

Practitioner Influence on Divorce Mediation

Pragmatic practitioner guidance literature has formed the third, and major, shaping influence on divorce mediation (Cahn, 1992; Coolger, 1978, Cornelius & Faire, 1989; Kressel, 1985; Kressel & Pruitt, 1989; Milne, 1988; Moore, 1983). Mediation in divorce settings was first outlined by Coolger (1978), a lawyer and

psychologist, who published a method of obtaining divorce settlement by direct interparty negotiation aided by a third party mediator. His objective was to develop a means of resolving divorce conflict without incurring the significant emotional and physical costs that attended the traditional divorce methods. Practitioner guidance literature has continued to focus on the pragmatic outcomes of reduced financial and emotional burdens to divorcing clients as an alternative to the legal processes of divorce.

The strong influence of practitioners in the field of divorce mediation and the development of mediation skills by apprenticeship has had several consequences on the development of mediation research. The first has been a relative lack of effort to refine an understanding of the central factors in the success of mediation and a neglect of efforts to formulate and investigate appropriate research questions. The second consequence of a preponderance of practitioner studies has been a dearth of methodological rigour in mediation studies until relatively recent times.

Dissatisfaction with the legal processes in relation to divorce provided the impetus for the first theoretical development of divorce mediation (Coogler, 1978) and is frequently cited as a rationale in modern divorce mediation literature (Irving, 1988; Kelly, Gigy, & Hausman, 1988; Kelly, 1996). Much of the impetus for

the increasing acceptance of divorce mediation continues to arise from dissatisfaction with legal process associated with divorce and a perception that western societies are excessively litigious with a consequent negative impact on post divorce family relationships (Cahn, 1992).

Divorce Mediation in Family Law

The continuing development of legal policy and practice in the area of family law provides a major shaping influence in the development of divorce mediation. Under current family law policy responsibility for the settlement of disputes is increasingly being left in the hands of disputing parties. Further, observations that compliance with family law orders is generally unacceptably low has led to the adoption of mediation as a strategy which aims to increase parties' involvement in decision making and, consequently, compliance with those decisions (Findlay, 1992; Tyler, 1990).

A considerable literature describes the deleterious effects of divorce on individuals and families (Amarto & Keith, 1991; Family Court Review, 1992; Emery, 1982; Furstenberg & Cherin, 1991; Hetherington, 1989; Johnston, Kline & Tschann, 1989; Rogers, 1996; Vincent, Harris & Plog, 1991; Wallerstein & Kelly, 1980). In particular, adversarial cross questioning has been described as further exacerbating interparty conflict

with negative effects on the family (Cahn, 1992; Findlay, 1983).

The recognition of divorce mediation in law arises in the context of a world wide trend toward the private ordering of divorce and the adoption of the associated principle of no fault in divorce. Traditionally, divorce has been a public decision based on determining the fault of one party. No fault divorce law is based on the recognition of the wishes of the parties to divorce and dispenses with the necessity to publicly determine fault. Mediation of divorce becomes possible when neither party need prove fault and a marriage may be dissolved with minimal legal intervention (Cahn, 1992; Emery & Wyer, 1987a). Removal of the necessity to establish fault was understood to remove punitive divorce settlements and promote equitable outcomes (Findlay, 1983).

Because the mediation process is not structured to determine fault and the parties in mediation are not subject to destructive institutional court legal processes such as cross questioning and judgement, the application of mediation strategies in divorce settings was proposed as a means of settling divorce disputes which would be less damaging of personal and family relationships than the adversarial adjudication divorce (Coogler, 1978; Elson, 1988; Emery & Wyer 1987a; Findlay, 1992; Milne, 1988).

The central function of the third party mediator in a divorce dispute is to maintain party's adherence to a rule governed procedure which is voluntarily accepted by both parties and which is clear, unambiguous, unbiased, and consistent. The mediator attempts to create a cooperative pattern of communication between the parties by limiting the agenda and enforcing ground rules concerning turn taking, interruptions, and emotional expression. The mediator acts to facilitate full disclosure, direct negotiations involving finding facts and isolating issues, and creating options and alternatives. Adherence to the structured rules of mediation is understood to make it easier for mediators to help divorcing parties, as naive negotiators, to mediate effectively and fairly. It is also believed that third party mediation in divorce settings would enable inexperienced partners to negotiate on a more equal footing (Cahn, 1992; Emery, 1988; Kaslow, 1988; Kressel & Pruitt, 1985).

The acceptance of mediation in the administration of family law has increased rapidly in the last decade. Divorce and family mediation programmes are found in the United States, Canada, the United Kingdom, Australia, and New Zealand (Folberg & Milne, 1988; Irving, 1988; Stuart & Jacobson, 1987; Taylor, 1988; Walker, 1989). Divorce mediation programmes either deal with all issues of dispute between divorcing parties or are limited to

resolving child related disputes. The majority of programmes are limited to child related issues and are administered by court systems. In some jurisdictions the party's attendance at court related mediation is mandatory. California implemented mandatory mediation in all contested divorce cases involving children in 1981, a move since followed by most other American States (Emery, 1987a). Voluntary mediation programmes deal with both custody and property issues and have generally much lower participation rates (Cahn, 1992; Folberg & Taylor, 1990; Pearson & Thoennes, 1988).

Divorce Mediation in Australia

In Australia, family and divorce mediation is carried out privately by lay people or professionals in organisations funded wholly or in part from government sources (either local, state or federal). Publicly funded mediation organisations include Community Justice Centres in New South Wales, Dispute Settlement Centres in Victoria, the Community Justice Program in Queensland, and The Resolution Centre in the Australian Capital Territory. Federally funded non-government organisations that run family mediation programs include Relationships Australia in all states, Centacare in most states, Anglicare in the Northern Territory, and Unifam in New South Wales (Fisher, 1996). Family Court mediation programmes have been recently introduced in

Melbourne and Sydney (*Family Mediation*, Australian Family Law Court, 1992; Bordow & Gibson, 1994). The provision of minimum standards of mediation service provided by federally approved and funded mediation agencies, outside the court services, is ensured by a monitoring programme conducted by the Commonwealth Attorney General's Department (Fisher, 1996).

All mediation programmes offered in Australia are voluntary and comprehensive, dealing with both custody and property disputes. Half of the referrals to the Family Court programmes come from private and legal aid lawyers, about a quarter from court personnel, registrars and counsellors, and the balance from self or spouse, family, friends, or community agencies. The various private mediation agencies in Australia receive 40% of their referrals from counsellors or community workers, 25% from lawyers, and the balance from self or spouse referrals, family or friends (Bordow & Gibson, 1994; Fisher, 1996; Maloney, Love, & Fisher, 1996; Prior, 1992).

Over the nearly twenty years since it was first proposed, mediation has become widely accepted as an alternative conflict resolution process in divorce. Mediation alternatives are increasingly being incorporated into court systems dealing with family and divorce disputes. Informal systems of mediator training are giving way to formal university education post

graduate training programmes. However, despite the potential benefits of mediation, mediation in divorce settings has not proved to be a popular innovation with the private consumer in the United States where most divorce mediation programmes are maintained with family court or government support (Kressel & Pruitt, 1989). In Australia, publically supported private mediation has been offered for only a few years whilst Family Court mediation has only been initiated in the last two years.

In the next section the arguments that form the basis for the use of mediation in divorce disputes will be reviewed.

The arguments for mediation in divorce

Arguments that have been made in support of divorce dispute settlement by mediation include (a) efficiency of family court process (Emery, 1987a), (b) a closer agreement to current policy in family law (Findlay, 1984,1992), (c) greater perceived fairness (Tyler & Belliveau, 1995; Milne, 1988), (d) individual empowerment (Kelly, 1983), (e) a greater consistency with the preservation of post divorce family relationships (Cahn, 1992), and (f) benefits derived from mediation as a quasi-therapeutic process (Kelly, 1983).

(a) Savings and *efficiencies in family court proceedings* accrew both to the court system and individuals who are parties to a dispute (Emery & Wyer, 1987a). Court savings through mediation are claimed in diversion from court hearings by increased rates of pre-court settlement and lower rates of return to court by divorced couples to dispute issues arising from the divorce (Emery, 1987a; Kaslow, 1988; Kressel et al. 1980; Milne, 1988).

A number of studies have reported that mediation clients were less likely to be involved in re-litigation (Irving and Benjamin, 1992; Pearson and Thoennes, 1988). However, a larger number of studies have reported that mediation has no effect on the likelihood of relitigation (Emery, Matthews and Kitzman, 1994; Kressel & Pruitt, 1989). Moreover, in a retrospective study of persons who had used either mediation or adjudication to achieve a divorce, Pearson and Thoennes (1988) found that the differences they had originally found had eroded and there was no differences between the groups in likelihood of relitigation. Emery et al (1994) concluded that returns to court were frequent in both litigation and mediation groups and involved two thirds of all families over a two year period. In conclusion, little available evidence supports the argument that mediation of divorce disputes results in savings and efficiencies for the family courts.

(b) The greater proximity of divorce mediation to *current legal policy* is due to the introduction of no fault divorce (Findlay, 1983; Cahn, 1992).

Mediation takes place in a context in which shared responsibility for the ending of a relationship is assumed. The outcome of the mediation process is to find solutions that are mutually acceptable to the parties.

One consequence of the adoption of the legal principle of no fault in divorce and its associated presumption of shared responsibility, is that the legal principle is frequently at odds with individual experience. Under current Australian law either party can initiate the dissolution of the marriage. The dissolution process proceeds with or without the consent of the other party. Thus, a majority of divorces take place between an initiator party and a respondent party. The initiator of divorce has frequently had some months in which to emotionally and financially prepare. The respondent party often has only a short time of preparation prior to divorce proceedings. The assumption of mutual readiness and willingness to enter mediation, may be questionable under these circumstances.

(c) *Fairness* arguments have been used in favour of mediation and compliance with the law. The incidence of non-compliance with the determinations of the courts in family matters is high (Australian Family Court Review,

1992; Emery & Wyer, 1987a). Research into people's compliance with the law (Tyler, 1990) indicates the importance of consent to legal determinations. Thus, parties' involvement in the shaping of their own settlements is expected to result in a higher level of compliance with agreements and lower incidence of return to court for modification of orders.

Procedural justice refers to the manner in which determinations are made within the legal system. Tyler and Belliveau (1995) found that procedural fairness was equally important to outcome fairness in influencing compliance and satisfaction with the law and judicial decisions. Procedural fairness judgements were not simply based on characteristics of the procedures themselves but on their enactment as well. Thus, individuals attend to the interpersonal treatment they receive from decision makers, and their judgements of procedural fairness flow from their perceptions that they have been treated honestly, openly, and with consideration (Tyler, 1988, 1994). Proponents of mediation in divorce argue that both the philosophical basis of mediation and its dispute management process are more likely to be seen as fair because the mediation process is informal and open.

(d) Mediation offers individuals responsibility for the resolution of their own divorce dispute and, as such, is supposedly *empowering* to those individuals. Successful

management of their dispute, without being subject to coercive and hierarchical judicial powers, has been linked with positive effects on both parties in reaching and maintaining agreement (Emery, 1987a; Kressel et al, 1980).

(e) This point of view is taken further by those who regard mediation as a *quasi-therapeutic process* which combines the functions of conflict resolution with emotional resolution. Mediation is seen to facilitate the process of conflict resolution as disputing parties have an opportunity for emotional expression that is not permitted them in the legal process of divorce. Thus, Rifkin (1984) argues that, as mediation is unencumbered by the traditional processes of law, emotional expression and resolution between parties can more readily occur. Kressel et al. (1980) suggest that, as many of the real issues in divorce settlement negotiations are emotional in nature, mediators may be better equipped than are lawyers for the central tasks of divorce (Kelly, 1983; Milne, 1988; Pearson, Thoennes, & Vanderkooi, 1988). This point of view is rejected by Fineman (1988) who argues that the rhetoric of social workers and others, with its emphasis on emotional expression, obscures the complexities of divorce law and the pursuit of equity.

(f) Finally, mediation in divorce disputes may be seen to be more compatible with a family systems' analysis

which views divorce as one part of an ongoing process of *family restructuring* (Cahn, 1992). A family systems' perspective views the family as a complex private system which is regulated by its own internal rules, patterns and feedback (Minuchin & Fishman, 1981). A divorce dispute resolution process in which decision making power remains within a modified family system is understood to have a greater ability to preserve and maintain that system than does an external legal agency (Cahn, 1992; Findlay, 1992; 1984; Milne, 1988).

In Australia, following an overseas trend, the mediation of divorce disputes is becoming an increasingly accepted alternative to traditional legal methods of achieving a divorce dispute settlement. The strategy of mediation is that the parties agree to negotiate directly with one another in a face to face process which is facilitated by a third party. In so doing the parties agree to the suspension of a traditional legal system in which advocates for each party pursue settlement by a variety of means. The legal system contains a variety of mechanisms for the protection of individual rights. The system of mediation in divorce does not have such mechanisms. Potential inequity in the divorce mediation process is the subject of the next section.

Fairness and Equity in Divorce Mediation

A number of concerns have been expressed about the potential of mediation in divorce to result in inequitable outcomes for clients (Grillo, 1991; Fineman, 1988; Rifkin, 1984). These concerns are expressed in the legal rather than the mediation literature. The first addresses the modification of the mediator's role away from that of an impartial facilitator and toward that of an advocate. The second concerns the role of mediation in family law and justice.

Impartiality has traditionally been seen as central to the role of the mediator (Deutsch, 1973; Kressel et al., 1980). More recently, the role of impartiality in the mediator has been challenged in favour of a role with a greater degree of advocacy (Kressel, 1989; Welton & Pruitt, 1987). Three grounds have been advanced for modifying the impartial mediator concept. The first recognises the unlikelihood of mediators being able to maintain impartiality and be unaffected by such factors as personal preferences, judgements, and urgency to close. By this argument mediator impartiality is a disposable and impracticable ideal.

Second, is a perception amongst mediators of a need to balance the opposing principles of impartiality and power balancing in mediation through the mediators exerting control over interactions between the parties

(Haynes, 1981; Kressel & Pruitt, 1989). Haynes (1981, p.131) asserts; "The mediator does not simply facilitate a divorce. She/he does so within a value context. Real negotiations are only possible if the mediator can deliberately enhance the power of the weaker party....usually the wife."

The third argument for modifying the impartiality concept points to evidence that links a mediator advocacy role to achieved agreement in mediation. Wittmer, Carnevale, & Walker (1991, cited Carnevale & Pruitt, 1992) and Carnevale & Conlon (1990, cited Carnevale & Pruitt, 1992) found that disputants will accept a mediator who they believe to be biased against them when, and only when, the mediator acts in an overtly evenhanded manner. Similarly, Kressel and Pruitt (1989) conclude, from a review of the evidence, that mediator power balancing and assertiveness in pressing for settlement are positively associated with mediation settlement.

The suggested role for the mediator in persuading parties to accept a mediation agreement advocated by the mediator arouses concern about mediator coercion and the infringement of individual rights. The argument that mediator coercion may contribute to inequitable outcomes in mediation is dismissed on the grounds that the mediation process is voluntary and that either party may withdraw at any point in the process (Kressel & Pruitt, 1989). The possibility remains, however, that the

demand characteristics of the mediation situation may induce some people into complying with agreements with which they are unhappy. Thus, Dingwall (1988), writing from a legal perspective, argues that the divorce mediator may function in a quasi-judicial role in the absence of legal representation for the mediation client and suggests that the process of divorce mediation may merely substitute the insidious influence of a mediator for an open decision of a judge (Dingwall, 1988).

A second potential source of inequality in divorce mediation concerns mediator permissiveness. One possible consequence of direct interaction between divorcing spouses in conflict is that the rights of one party may be infringed by unrestrained pressure and abusiveness from the other party. Well established procedure in court settings restricts such behaviour. Equity assumptions about mediation are challenged by the extent to which a mediator inappropriately permits pressure to be applied by one party against another.

Divorce Mediation and Social Justice

Lack of legal protection and the potential for violation of individual rights in divorce mediation settings has concerned some legal authors (Folberg, Sheppard, & Butram, 1995; Grillo 1991; Roehl & Cook, 1985; Rifkin, 1984). Rifkin (1984) questioned why informal systems of justice purport to achieve justice when formal

institutions cannot. She suggested that, just as the image of formal law is enhanced by legal representation and procedural protection, informal processes such as mediation may use other mechanisms to convey the image of equity without achieving substantive equity.

A further social justice argument is that the advocacy of mediation, and the redesignation of divorce into a social work domain, obscures urgent and unaddressed issues in family law. Fineman (1988) argues that the rhetoric of mediation neglects the legal welfare particularly for people who do not have skills of self advocacy. Similarly, Roehl and Cook (1985) argue that moves toward the institutionalising of mediation in divorce may result in a system of second class justice for the poor and disadvantaged (Roehl & Cook, 1985).

Grillo (1991) argues that traditional forms of divorce provide a necessary and structured process for the expression of anger in which advocates protect the rights of their clients - a protection lacking in mediation. Grillo (1991) points out that the law is based not on the assumption of people's fairness and honesty, but rather on maintaining safeguards against unfairness and dishonesty. The theory and practice of mediation is based on an assumption of shared values held in common by the parties. These values form a basis on which conflict is negotiated. When this assumption does not hold in a mediation case the legal

rights of one party may be jeopardised. Grillo (1991) argues that the benefits apparently offered by mediation, as in freedom from legal rules of procedure and the wider scope of admissible testimony, are more than offset by the loss of legal safeguards. Furthermore, a consequence of the adoption of mediation as a widespread means of divorce dispute resolution is that settlement decisions remain private and that continuing social inequalities may, thus, remain unchallenged and unredressed in public court (Grillo 1991).

A major traditional form of inequality is based on gender. In the context of divorce mediation are women placed under unreasonable pressures by their ex-partner or by the mediator? Are women dissatisfied by agreements reached in mediation?

Gender Differences in Divorce Mediation

Expressed concerns for the potential for mediation of divorce to disadvantage women, focus on the traditional economic disadvantage of women, women's greater reluctance to engage in aggressive negotiation tactics, and on the greater psychological investment in relationship and family made by women.

Gender differences in interpersonal behaviour are well established in the psychological literature (Eagly & Crowley, 1986; Eagley & Steffen, 1986). In a meta-analytic review of the literature, Eagley and Crowley (1986) found that when gender role is salient, men tend to be more task oriented and instrumental than women; whilst the female gender role fosters acts of caring for others and tending to their needs, primarily in close relationships. Similarly, in a meta-analytic review of gender role and aggression, Eagley and Steffen (1986) found that men are seen as more aggressive than women and more extreme on related qualities such as assertiveness and competitiveness. Eagley and Steffen (1986) also concluded from their review that men are more approving of aggression than are women, while women demonstrate more guilt and anxiety about behaving aggressively, and have more concern about the danger that aggression may bring to themselves.

The theme of women's greater orientation to caring and responsibility was outlined by Gilligan (1982). She argues that a consequence of the greater salience of this orientation in women, the role of partner assumes a higher priority for women that it does for men. The process of separating and divorce may, thus, have a more negative effect on central aspects of a woman's identity. Wallerstein and Kelly (1980) and Grillo (1991) advance the argument that a woman's sense of self is more greatly imperilled by separation than a man's

and she may, therefore, be more willing to sacrifice her rights in divorce disputes in order to maintain a good relationship, or, at the very least, avoid confrontation as a means of forcing settlement.

Poorer outcomes for women in negotiation tasks may be predicted from the Dual Concern theoretical model of negotiator behaviour (Carnevale & Pruitt, 1992). The Dual Concern Model predicts that high levels of concern with others' welfare in the absence of self concern leads to rapid concession making and failure to find a mutually satisfying (win-win) solution. Fry, Firestone, and Williams (1983) found that stranger dyads performed better than dating couple dyads on a negotiation task, suggesting that emotional attachment detracted from negotiating ability. Other evidence suggests that the outcome for women on negotiation tasks is poorer than outcomes for men. Gerhart and Rynes (1991) found that women graduates who established rates of salary by negotiation with employers, accepted lower starting salaries than did equivalently trained men.

Finally, several authors have suggested that the traditional economic dependence of women on men and women's associated lower levels of familiarity with financial management and skills may impact negatively on a woman's ability to obtain an equitable agreement in mediation (Emery & Wyer, 1987b; Grillo, 1991; Rifkin, 1984; Shaffer, 1988).

Expressed concerns that women in mediation obtain poorer quality outcomes than do men are exacerbated by recent studies into longer term financial outcomes for men and women following the introduction of no fault divorce laws in California. These studies found that women experienced poorer financial outcomes than did men despite the equal distribution intention of the law (Espenshade, 1979; Weitzman, 1985).

Evidence for differences between men and women have been reported in four aspects of divorce mediation;

(a) mediation acceptance, (b) ease and satisfaction with the mediation process, (c) satisfaction with achieved agreement, and (d) post mediation satisfaction.

First, several studies have reported that women accept mediation because it is less impersonal than the courts, whilst men undertook mediation because of the advantage they perceived themselves accruing in the process (Emery & Wyer, 1987a; Emery et al., 1994; Irving & Benjamin, 1992; Pearson, Thoennes, & Vanderkooi, 1988). Moreover men may enter mediation as a means of delaying or contesting the ending of their relationship. Several studies report that men felt they had less control over the decision to divorce and expressed greater interest in reconciliation (Irving & Benjamin, 1992; Kelly & Gigy 1988; Pearson and Thoennes, 1988).

Second, evidence of gender differences in satisfaction with the mediation process is mixed. Most studies failed to find a gender effect (Bardow & Gibson, 1994; Kelly, Gigy, & Hausman, 1988; Kelly & Duryee, 1992; Maloney, Love, & Fisher, 1996; Prior, 1992). Some studies, however, have reported greater satisfaction for men (Emery & Wyer, 1987b; Pearson & Thoennes, 1988).

The United States study of Pearson & Thoennes (1988) found that women were more likely to report that their ex-spouse pressured them into an agreement, more likely to report having trouble expressing themselves, that they were not comfortable, and that the sessions were tense and unpleasant. Women were also more likely to report that the mediator was very directive and essentially gave them the terms of the agreement. In Australia, Maloney, Love, and Fisher (1996) reported that 47% of the women in one sample agreed with the statement ' I often felt that my partner had an advantage over me during our discussion in mediation'. The Australian study of Bordow and Gibson (1994) also reported that women reported feeling more pressure during mediation sessions than did men.

With regard to achieved agreement, evidence for gender differences in satisfaction is also mixed, with some studies reporting greater satisfaction for men (Emery & Wyer, 1987b.; Emery et al. 1991), whilst no gender effects in agreement satisfaction are reported from

other studies (Bardow & Gibson, 1994; Kelly, Gigy, & Hausman, 1988; Kelly & Duryee, 1992; Maloney, Love, & Fisher, 1996; Prior, 1992).

A series of studies by one United States research group found evidence that women experienced greater dissatisfaction with both process and outcome aspects of mediation and that this dissatisfaction increased over time. Emery et al. (1987b; 1991) reported that women in the mediation group were less satisfied with their agreements than were women who litigated. Emery et al. (1994) found that in both litigation and mediation groups women reported that matters grew worse over time. One year later women who mediated were significantly less satisfied with both the process and outcome of dispute resolution than were women who litigated. Women who litigated were found to be more satisfied with both the process and outcome of their dispute resolution and reported that the process was more fair. Women's reports that the dispute resolution process had a good effect on their children declined in the mediation group between the first and the follow up study but remained stable for the litigation group.

Finally, Mathis and Yingling (1992) presented evidence that the post mediation satisfaction of men, specifically fathers, showed greater improvement than that of women. Mathis and Yingling in a non-comparison study, tested 51 divorcing couples before and

after child custody mediation to investigate whether mothers and fathers differed on satisfaction with the impact of mediation on the family. The pre-test family satisfaction scores of husbands were significantly lower than those of the wives, but they significantly improved after mediation. The family satisfaction of wives as a group did not change. They found that within-couple differences in family satisfaction did not change for either spousal group after mediation, indicating that an improvement in the family satisfaction of the husband was not necessarily at the expense of the wife.

Summary of Gender Differences

Two theoretical positions support arguments that women would be less satisfied with mediation of divorce than men. The first is based on observed differences between men and women in moral orientation toward concerns of 'justice' and 'care' respectively. This argument suggests that men are more likely to respond to justice concerns and women are more likely to respond to care concerns. The second is based on the Dual Concern model of negotiator behaviour which predicts poorer negotiation outcomes for disputants in whom other-concern is a stronger focus than self-concern. A woman's stronger orientation to relationship concerns would thus result in her acting in a more conciliatory manner with a greater readiness to make concessions harmful to her own interests.

Short and Long Term Satisfaction.

It is an assumption in divorce mediation literature that achieved agreement in mediation with accompanying consumer satisfaction leads to long term satisfaction. A recent study questions this assumption. Pruitt (1995) found that short term satisfaction bore virtually no relationship to long term satisfaction. He also found that initial satisfaction with agreement failed to predict later compliance or later satisfaction. Pruitt found that separate factors determined short term satisfaction and long term satisfaction. Short term satisfaction was predicted by disputants who had relatively low levels of hostility and by mediators who posed new issues, proposed and controlled the agenda, and called for new ideas and reactions. Long term satisfaction, however, depended on whether parties felt fairly treated and engaged in joint problem solving. Pruitt (1995) found that reaching agreements to solve immediate problems was sometimes followed by a re-establishment of the old problems and conflict.

The study by Pruitt (1995) suggests that the achievement of immediate agreement in mediation may be of little relevance to the party's longer term satisfaction and compliance. Consequently, indices of immediate achieved agreement in mediation may be of little value

in predicting longer term relationship improvement. If women are more dissatisfied with mediation outcomes than are men it would be reasonable to suppose that this greater dissatisfaction would become more evident over time as the failure of the achieved mediation agreement to affect the situation became increasingly apparent.

The Present Study

This work examines clients of two Australian mediation agencies in terms of gender differences in their perception of the process and outcome of divorce mediation. The first study examines gender differences in process and outcome satisfaction in a mediation agency which is non-court related and which makes no charge to the consumer for services provided.

The second study examines process and outcome satisfaction in an agency which is also unrelated to the family court and which charges a fee for mediation services offered. A mediation instrument, The Client Assessment of Mediation Services Scale (CAMS; Kelly & Gigy, 1988) is administered as a more refined measure of process and outcome, although its suitability for use in the Australian context must first be examined. This instrument provides an opportunity to examine gender differences on a variety of dimensions and in more subtle ways than is possible with the overall satisfaction indices in study 1.

Finally, Pruitt (1995) noted that the bulk of mediation studies were conducted with clients immediately after the completion of mediation and discussed the usefulness of a distinction between short and long term satisfaction. Because short term satisfaction may have little impact on longer term satisfaction, gender differences will be examined after mediation and at 12 month follow up. The data in Study 1 were collected a month after mediation. The data in Study 2 were collected 12 months after mediation. Respondents in Study 2 are required to report current satisfaction and satisfaction as they remembered it just after mediation.

Research Goals

The present study examines questionnaire responses of clients from two mediation agencies in Canberra for resolution of their divorce disputes. The purpose of this study is threefold:

1. To determine whether women are less satisfied with either the process of mediation or the outcomes reached in mediation.
2. To determine the validity of a mediation assessment instrument, the Client Assessment Mediation Services Scales, in the Australian context.
3. To determine whether the dissatisfaction of women with mediation is greater twelve months after mediation than immediately after mediation completion.

CHAPTER TWO

Study 1: Global Satisfaction at One Month Followup

The hypothesis of the first study is that women will be less satisfied with the process of mediation and its outcome in the form of the agreement reached and the family relationships post mediation.

Respondents

Individuals and couples who had attended mediation sessions with The Conflict Resolution Centre in the last year for resolution of divorce disputes and who had returned evaluations were included in the study. All participants lived in Canberra, Australia. Participants consisted of 61 people who had completed and returned questionnaires. The sample consisted of thirty one individuals and 30 couples (15 pairs). Thirty-seven participants were female (Mean age=33.78 years, sd=6.72) and 24 were male (Mean age=37.92 years, sd=7.21). Of the participants who attended as a couple, the mean length of their relationships was 13.33 years (sd=7.55). For those who attended as individuals, the mean length of their relationships was 11.45 years (sd=6.45). Occupational data were provided on 48 respondents; 22 respondents described themselves as para-professionals or managers, 19 as Sales/Service workers, or clerks, 2 as tradespeople, and 5 gave their occupation as home duties.

Procedure

The Conflict Resolution Service offers mediation in a wide range of conflict issues including family disputes. Clients of the Conflict Resolution Service are not charged a fee for the service. In response to a contact by one of a disputing couple, the agency undertakes to contact the other and arrange a mediation. Sessions are conducted with a mediation team of two mediators. Each mediator has received an in-house training in mediation and attended a variety of mediation training experiences. Each mediation session was limited to two hours duration and mediation was limited to no more than six sessions. The average number of sessions of the sample group was 2.4 meetings with an minimum of one and a maximum of five sessions. A successful mediation was concluded by an agreement between the parties prepared by the agency with a copy given to each party. Agreements made are not legally binding but may be made so by ratification at the Family Court. Should the mediation sessions be unsuccessful, the mediation attempt is abandoned. Approximately one month after the conclusion of mediation, an evaluation questionnaire is sent out by the service in a self addressed envelope.

Permission was obtained from the Board of Management of the Conflict Resolution Service to examine returned divorce mediation evaluation forms held at the agency. Permission from mediation participants for the use of evaluation

material in research had been previously obtained by the organisation. All of the returned evaluations over the last two years concerning divorce issues were collated for the study. Returned evaluation forms were obtained from 50.4% of all divorce cases.

Measures

The Mediation Assessment Questionnaire comprised seven questions which involved (a) satisfaction with mediators, (b) satisfaction with agreements, and (c) satisfaction with the overall service. Responses were given on a three point scale where 1= very satisfied, 2= partly satisfied, and 3= dissatisfied. Respondents were also asked to describe their dispute type (Property = 1, child only = 2, all = 3), their agreement (1 = written, 2 = verbal 3 = no agreement), how well their agreement had worked (1 = very well, 2 = worked partly, 3 = dissatisfied with agreement), and whether the situation had improved (1 = greatly, 2 =slightly, 3 = not improved, 4 = worsened).

Demographic data was obtained from case files.

Results

Firstly, males and females were compared across the entire sample, regardless of whether their partners attended or

not. Analyses using two tailed independent sample *t* tests and an alpha probability level of .05 showed no significant differences between males and females in agreement satisfaction; assessment of the agreement working; perception of improvement in the conflict situation; satisfaction with mediator and overall satisfaction. Table 1 reports the mean satisfaction scores and standard deviations for males and females on individual items and on satisfaction with mediation overall.

In case the inclusion of singles and couples together in the analysis masked gender differences, these analyses were repeated using only male and female partners. For this subgroup, the nature of the dispute was objectively the same for men and women. All 15 couples were in accord with what their agreement type was: 53% had a written agreement, 40% had a verbal agreement, and 7% had no agreement.

Differences between male and female partners were analysed by two tailed dependent sample *t* tests and an alpha probability of .05 showed no significant differences in agreement satisfaction, assessment of the agreement working, perception of improvement in the conflict situation, satisfaction with the mediator, or overall mediation satisfaction.

Table 2 shows means and standard deviations for male and female partners on the evaluation criteria.

Table 1

Mean Satisfaction Scores and Standard Deviations (in parentheses) for Males and Females on Four Items and Overall

Evaluation Indices	Male (N=24)	Female (N=37)	t statistic
Mediator Satisfaction	1.08 (.28)	1.13 (.42)	-.53
Agreement Satisfaction	1.60 (.50)	1.53 (.66)	.41
Improvement in Situation	2.42 (.83)	2.11 (1.08)	1.19
Working Agreement	1.81 (.73)	1.79 (.73)	.12
Overall Mediation Satisfaction	1.29 (.62)	1.27 (.56)	.14

Table 2

Mean Satisfaction Scores and Standard Deviations (in parentheses) for Male and Female Partners on Evaluation Indices

Evaluations (df)	Males (N=15)	Females (N=15)	t statistic
Mediator Satisfaction (14)	1.20 (.57)	1.06 (.26)	-.81
Agreement Satisfaction (12)	1.46 (.66)	1.50 (.52)	.29
Improvement in Situation (14)	2.07 (.96)	2.33 (.98)	1.00
Working Agreement (14)	1.67 (.72)	1.87 (.74)	1.38
Overall Mediation Satisfaction (14)	1.27 (.70)	1.33 (.62)	.25

The absence of significant differences may have been due to the small sample size and lack of power in the statistical test. In order to reduce measurement error, composite scale items were created to further explore potential gender differences in perceptions of mediation. The Agreement Effectiveness Scale was composed of three individual items with intercorrelations ranging from .59 to

.69 (alpha reliability coefficient = .82): '*did agreement work*', '*satisfaction with agreement*' and '*improvement in situation*'. The Mediation Satisfaction Scale comprised 2 items '*mediator satisfaction*' and '*overall satisfaction*' (alpha reliability coefficient = .79). There were no significant differences between paired males and females on the couples' data using either the composite agreement effectiveness scale ($t(12) = .39$, ns), or the composite mediation satisfaction scale ($t(14) = 1.0$, ns).

One possibility that has not been tested in the above analysis is that the factors that contribute to overall mediation satisfaction are different for men and women. Satisfaction with outcomes, in the form of the agreement and its effectiveness, may predict overall mediation satisfaction more strongly for men while satisfaction with the process, in the form of satisfaction with the mediator, may predict overall mediation satisfaction more strongly for women.

This question was examined in a post hoc analysis that involved regressing satisfaction with mediation overall on the variables representing satisfaction with the mediator and agreement effectiveness (composite comprising satisfaction with the agreement, having a working agreement and having an improved situation).

To answer the question of whether men and women arrived at their overall satisfaction through different criteria, two interaction terms were added to the regression model in a hierarchical fashion. First, satisfaction with the mediator, agreement effectiveness and sex were entered into the equation as shown in Table 3. Subsequently, a 'sex X mediator satisfaction' interaction term was added as was a 'sex X agreement effectiveness' interaction term. The change in R² that accompanied the introduction of the interaction terms was .004 which was not significant. Thus, there was no evidence to support the proposition that agreement effectiveness and mediator satisfaction would contribute differently to overall satisfaction for men and women. For both sexes, the results in Table 3 show that satisfaction with the mediator is more important than agreement effectiveness to overall mediation satisfaction.

Table 3

Multiple Regression Analysis showing the Main Effects of Mediator Satisfaction, Agreement Effectiveness and Sex on Overall Satisfaction with the Mediation Experience (N =37).

Predictor	r	b	beta	t
Mediator Satisfaction	.62**	.90	.61	5.42**
Agreement Effectiveness	.48**	.05	.18	1.61
Sex	-.06	-.02	-.02	-.15
Adjusted R2				.52**
F. stat. for R2				17.79**

* p>.05
 **P> .001

Summary

This study compared male and female clients in terms of their evaluation of the mediation experience one month after their final session. The evaluation items concerned satisfaction with the mediation overall, satisfaction with the mediator, and satisfaction with the agreement and its effectiveness. No significant gender difference emerged when data were analysed using single items, composite item scales, or paired spouses. Furthermore, the degree to which either satisfaction with the mediator or the effectiveness of the agreement contributed to overall mediation satisfaction did not differ for men and women. These findings need to be interpreted with some caution given the small sample size, errors in measurement and statistical power.

CHAPTER THREE

Study 2: Dimensions of Satisfaction at One Year Followup

The hypothesis that women were more dissatisfied with mediation than men was further investigated in Study 2. Although such differences were not discernible in Study 1, a more detailed mediation satisfaction instrument was expected to yield differences, particularly if measures were taken after a significant lapse of time since the last mediation session.

Data were collected using the Client Assessment of Mediation Services Scale (CAMS, Kelly & Gigy, 1988). The CAMS scales have been developed and validated in North America. In order to use the CAMS scales in the study it will be first necessary to assess their suitability in the Australian context. Subsequent to establishing the adequacy of the CAMS scales, in terms of their internal consistency and reliability, analyses will be undertaken to examine gender differences.

In addition, Study 2 asked respondents about their global satisfaction with the outcome of mediation at the time of filling out the questionnaire 12 months after mediation as well as their recollection of their satisfaction just after mediation. These questions provided the basis for testing

the hypothesis that the dissatisfaction of women with mediation would increase over time.

Respondents

Twenty nine men and twenty three women (28.72% of those invited to take part) returned completed questionnaires. Twenty responses were from both individuals of a mediating couple. Thirty two responses were from individuals responding separately. The average age for women in the sample was 42 years (sd = 7.66). The average age for men in the sample was 42 years (sd = 8.1). Seventy six percent of the men and 26 percent of the women worked in managerial or professional occupations. Twelve percent of the males and 8 percent of the females worked in trade, sales or service areas. Forty one percent of the women and no males listed home duties as their primary occupation. Respondents showed a high level of educational achievement. Twenty one respondents held tertiary qualifications higher than a basic degree. Fifteen respondents held a degree. Sixteen respondents were not tertiary educated. The mean length of relationship prior to separation was 12.6 years. (sd = 9.25). The mean number of dependent children from the whole sample was 1.60 (sd = .96, ranging from 0 to four children).

Procedure

The Canberra Mediation Service makes a charge for services offered. Fees charged are adjusted according to income. Individuals who contact the service to attempt a mediated resolution are asked to contact the other party and arrange a combined approach to the agency. Sessions are conducted either with a single mediator or with a mediation team of two. Mediators receive an in-house training in mediation as well as attending a variety of mediation training experiences. Mediation sessions were limited to two hours duration. Twenty (38%) respondents attended one session only, sixteen (30%) two sessions, and sixteen (30%) attended three sessions or more. A successful mediation was concluded by an agreement between the parties prepared by the agency with a copy given to each party. Agreements made are not legally binding but may be made so by ratification at the Family Court. Should the mediation sessions be unsuccessful, the mediation attempt is abandoned.

Permission was obtained from the agency to contact individuals who had completed mediated divorce dispute settlements in the previous year. At the time of mediation, permission was obtained by the agency from individuals who were willing to be involved in research.

Respondents were contacted twelve months after mediation through the mail with a letter explaining the purpose of the research project together with an invitation to be involved, a copy of the Mediation Questionnaire, and a copy of the Client Assessment of Mediation Services Scale (CAMS; Appendices 2, 3, 4).

Measures

Mediation Questionnaire: This questionnaire was designed specifically for the purposes of the present study to collect data on demographic characteristics and the circumstances of the separation. Respondents were asked to indicate who initiated the end of the relationship, whether they had any interest in reconciliation, whether they felt in control of the ending of the relationship, whether they had a new partner at the time of mediation, and whether they felt that the mediation intervention would have been more successful if more time had elapsed between separation and mediation (See Appendix 4).

Respondents were also asked to indicate their satisfaction with the outcome achieved in mediation at the time of filling out the questionnaire (now) and their satisfaction at the end of the mediation process (then). Responses were made on a five point scale where 1= very satisfied, 2= a reasonable solution, 3= satisfied, 4= dissatisfied, 5= very dissatisfied (See Appendix 4).

The Client Assessment of Mediation Services Scale:

This measure was developed by Kelly and Gigy (1988) to assess client attitudes towards various aspects of the mediation process and achieved outcomes. Due to a clerical error, one of the original forty-six items was deleted from the present questionnaire ('I felt that the spousal support agreement we reached was fair to me'). Respondents provided ratings on a five point scale where 1=Strongly Agree, 2= Agree, 3= Neither Agree nor Disagree, 4= Disagree, 5=Strongly Disagree. Kelly and Gigy (1988) had a 7 point scale which was scored so that a high score indicated high satisfaction (See Appendix 4).

Results

Changes in Satisfaction with Time

The first hypothesis tested involved the global satisfaction measures now and then. Specifically, it was expected that satisfaction with the outcomes of mediation after one year would be lower than it was immediately after mediation for women.

Satisfaction with the mediation outcome at the time of questionnaire completion was compared with recollections of

earlier satisfaction using mean scores on the rating scale for the whole sample, and for men and for women separately. These results are presented in Table 4. The mean differences were tested for statistical significance using two tailed dependent t-tests with an alpha probability level of .05.

Table 4

Testing Differences between mean outcome satisfaction recalled after mediation and after 12 months had elapsed for Men, Women and the sample as a whole.

Variable	Total N=52	Men N=23	Women N=29
Outcome satisfaction at 12 months	3.35 (1.17)	3.61 (.99)	3.14 (1.27)
Outcome satisfaction immediately afterward	3.42 (1.18)	3.56 (1.12)	3.31 (1.23)
Dependent t test	-.81 (51)	.05 (22)	-1.15 (28)

In terms of mean scores, men and women moved in opposite directions, with men increasing in their satisfaction over time and women decreasing in theirs. Neither of these changes were statistically significant, however, nor was

the difference between the 'now' and 'then' measures for the whole group.

The data in Table 4 prompted an examination of the differences between men and women in terms of their satisfaction 12 months later and satisfaction recalled immediately after mediation. A two tailed independent t-test (alpha level = .05) was used to test for gender differences. The analyses shows that men and women do not differ significantly at either time point. These results are presented in Table 5.

Table 5

Testing Differences between Men and Women on Mean Scores on Satisfaction with Outcomes Immediately after Mediation and after 12 Months had Elapsed

Variable	Men	Women	t (df)
Outcome satisfaction at 12 months	3.61 (.99)	3.14 (1.27)	1.46 (50)
Outcome satisfaction immediately afterward	3.56 (1.12)	3.31 (1.23)	.77 (50)

This study provided an opportunity to test for gender differences in a more detailed way than was possible in Study 1. The data were examined for evidence that men and women responding to the now and then satisfaction questions differed on other variables that influence satisfaction.

Chi square tests of independence were used to examine the relationship between gender and (a) whether or not an agreement had been reached (Chi Square (df=1) =2.14, ns), (b) whether or not the dispute was concerned with property and assets or other issues as well (including children) (Chi Square (df=1) =1.05, ns), (c) educational level of client (Chi Square (df=2)=1.69 ns), (d) who had made the decision to end the relationship (Chi Square (df=1)= 4.85, $p < .05$), (e) interest in getting back together (Chi Square (df=1)= .01, ns), (f) whether or not the client's lawyer had recommended mediation (Chi Square(df=1)= 14.83, $p < .05$), (g) whether or not the client had a new partner or a prospective new partner (Chi Square (df=1)= 2.42, ns), and (h) how many mediation sessions were attended (Chi Square (df=2) =6.44, $p < .05$).

Significant differences appeared on three of these variables. Women were more likely to say that they had decided to end the relationship, men were more likely to say that their lawyer had suggested mediation to them, and women were more likely to attend more sessions.

To test whether gender was related to mediation satisfaction then and now when these gender differences were controlled partial correlations were calculated. Gender was correlated with the two satisfaction measures first controlling for who ended the relationship, second, whether or not the lawyers suggested mediation, and third, how many sessions were attended. The partial correlations are presented in Table 6. None were significant. Gender was not related to satisfaction then or now even when variables relating to the circumstances surrounding mediation were taken into account.

No evidence could be found in the data to support differences in global outcome satisfaction between men and women nor changes in outcome satisfaction over time.

Table 6

Partial Correlations between Gender and the two Satisfaction Measures Controlling for Three Variables.

Controlling for			
Satisfaction Measures	Client ended Relationship	Lawyer suggested Mediation	No. of Sessions.
Satisfaction then	-.06	.04	-.01
Satisfaction Now	-.21	-.04	-.13

Testing the Internal Consistency of CAMS

Kelly and Gigy (1988) conducted a Principal Components Analysis to derive six factors which were central to client satisfaction in mediation. These were: (a) the effectiveness and sensitivity of the mediator, (b) individual empowerment associated with the mediation experience, (c) the adequacy of information provided by the mediator, (d) the impartiality of the mediator, (e) the ability of the mediator to maintain a focus on relevant issues and, (f) the impact of mediation on the spousal agreement (See Appendix 5).

Table 7 displays mean satisfaction scores, standard deviations and alpha reliability coefficients for the six mediation satisfaction scales reported by Kelly and Gigy.

Table 7

Mean Satisfaction Scores, Standard Deviations and Alpha Reliability Coefficients for the CAMS (from Kelly & Gigy (1988)).

	Mean	SD	Alpha
Effective Sensitive Mediator	5.08	1.09	.91
Empowerment	4.23	1.21	.82
Adequacy of Information	4.62	1.22	.85
Impartiality	4.78	1.19	.82
Focus on Issues	5.04	1.16	.72
Impact on Spousal Relationship	5.05	1.18	.74

When the alpha reliabilities for these scales were calculated using the Australian data, some unexpected finding emerged. From Table 8, Cronbach's alpha

coefficient was moderately low for empowerment and impact on spousal relationship. Of even greater concern was the finding that correlations between the mediation scales were as high, if not higher than the internal consistency coefficients in some cases. This suggested that the six scales did not represent empirically distinguishable constructs. The scales 'Sensitive Effective Mediator' and 'Focus on Issues' are particularly highly correlated with other scales.

Table 8

Australian Mean Satisfaction Scores, Standard Deviations, Alpha Reliability coefficients (Diagonal) and Interscale Correlations for CAMS Scales.

Scales	1	2	3	4	5	6
1 Effective Sensitive Mediator	.88					
2 Empowerment	.38	.44				
3. Adequacy of Information	.57	-.01	.70			
4. Impartiality	.71	.13	.76	.84		
5. Focus on Issues	.73	.56	.43	.50	.77	
6. Impact on Spousal Relationship	.67	.35	.51**	.81**	.65**	.60
No. of Items	9	4	5	5	4	4
M (sd)	32.98 (7.25)	12.23 (2.59)	14.77 (3.62)	17.27 (5.38)	15.36 (3.45)	13.58 (3.21)
Possible range of scores	8-35	4-20	5-25	5-25	4-20	4-20

* p< .05

** p< .001

Revised CAMS Scales

High intercorrelations between scales raised the question of whether the scales needed to be refined to give each scale a more distinctive identity. Principal Components Analysis followed by varimax rotation for each original CAM scale produced unidimensional solutions in only two cases: impartiality and focus on issues. The remaining scales were not unidimensional, each splitting into two dimensions. New scales were formed by taking the items with salient loadings on the primary factor. Empowerment comprised two of the original four items. Of the nine items representing the effective/sensitive mediator scale, six loaded on the first factor and were retained as scale items. Two of the impact on spousal relations items correlated more highly with the effective/sensitive mediator scale than they did with the other spousal relationship items. Therefore, these items were added to the effective sensitive mediator scale and the spousal relationship scale was not pursued any further in this study.

The fusion of the effective/sensitive mediator scale and the impact of spousal relationship scale is consistent with the fact that the correlation between these scales was higher than the internal consistency of impact on spousal relationship scale in Table 8. Other scales with very

high correlations in Table 8 were empowerment and focus on issues and adequacy and impartiality. Attempts were made unsuccessfully to fuse these scales.

Thus, the revised version of the CAMS used in this study comprised two original scales (impartiality and focus on issues) and three modified scales (empowerment, adequacy, and effective/sensitive mediator). The alpha reliability coefficients, interscale correlations, means and standard deviations for these scales appear in Table 9. The reliability coefficients range from .47 for a two item scale to .91 for a seven item scale. Given that the alpha reliability coefficient is sensitive to the number of items in the scale (increasing as the number of items increases) the coefficient of .47 for empowerment is considered marginally acceptable in this study. It is of note that the correlations between the scales remains relatively high in spite of efforts to discriminate maximally between scales in the revision process (For Revised Scales, See Appendix 6).

Table 9

Australian Mean Satisfaction Scores, Standard Deviations, Alpha Reliability Coefficients (Diagonal) and Interscale Correlations for Revised Scales

Scales	1	2	3	4	5
1 Effective Sensitive Mediator (R)	.93				
2 Empowerment (R)	.12	.47			
3 Adequacy (R)	.52**	-.15	.79		
4 Impartiality (O)	.80**	-.02	.77**	.84	
5 Focus on Issues (O)	.63**	.43**	.44**	.50**	.77
No of items	8	2	2	5	4
Possible range of scores	8-40	2-10	2-10	5-25	4-20
Means	29.25	6.56	7.63	17.27	15.36
sd	(7.78)	(1.72)	(1.96)	(5.38)	(3.45)
r with old scale	.95	.83	.92	na	na

** p<.01

O= Original

R= Revised

na= Not applicable

The revised CAMS scales was used to investigate the hypothesis that women would be more dissatisfied with mediation than men and that these differences, although previously not discernible in this thesis, would become evident (a) when measures were used that allowed a more fine grained analysis of the various facets of satisfaction, and (b) after a period of time had elapsed since mediation. Mean scores for men and women on each of the five CAMS scales were compared statistically using two tailed independent t-tests (alpha level = .05). The means, standard deviations, and results of these tests appear in Table 10.

Table 10

Mean Scores for Men and Women with t-test results on the Revised CAMS.

Scales	Male (N= 23)	Female (N= 29)	t (df)
Effective Sensitive Mediator	23.13 (7.17)	27.72 (5.55)	-2.60* (50)
Empowerment	6.22 (1.81)	6.83 (1.63)	-1.28 (50)
Adequacy	7.83 (1.80)	7.48 (2.10)	.62 (50)
Impartiality	16.48 (5.77)	17.90 (5.06)	-.94 (50)
Focus on Issues	14.43 (3.78)	16.10 (3.03)	-1.77 (50)

*p<.05

A significant difference emerged on only one of the five scales and that was in the opposite direction to that predicted. Women were significantly more satisfied on the dimension of perceiving the mediator as effective and sensitive. Previous research would predict this result immediately after mediation. This study anticipated a change in attitude over a twelve month period, but clearly this had not occurred to the point of women having a more negative appraisal of the mediator than men. It is of note that all but one of the differences in Table 10 are in the direction of women being more positive about mediation than men. Men were more satisfied with the informational adequacy of mediation than women, although the difference was not statistically significant.

One possible explanation for the finding reported in Table 10 is that some of the factors were associated with the mediation reported earlier are masking expected gender effects. If statistical controls are introduced for who decided to end the relationship, whether or not the lawyer had advised mediation, and number of sessions attended, the expected gender differences might emerge.

The five CAMS scales were correlated with gender, partialling out the effects of who decided to end the relationship, whether or not the lawyer had advised mediation and the number of sessions attended. The results appear in Table 11.

Table 11

Pearson Correlation Coefficients between Gender and the CAMS Scales Controlling Who Ended the Relationship, Whether or not the Lawyer had Advised Mediation and Number of sessions Attended

	Who Ended Relationship	Lawyer Advised Mediation	No. Sessions Attended
Effective Sensitive Mediator	.34**	.31**	.30*
Empowerment	.12	.32**	.15
Adequacy	-.07	-.11	-.04
Impartiality	.13	.10	.10
Focus	.20	.27**	.15

*p>.05

**p>.01

The correlation between gender and perceiving the mediator as effective and sensitive remained across these analyses. Two new significant relationships emerged. Women were more likely to report feeling empowered when the influence of the lawyer on the decision to seek mediation was controlled. Women were also more likely to appreciate the

way in which mediation focused on issues when the advice of a lawyer to seek mediation was controlled.

Conclusion

Study 2 findings demonstrate basic support for Kelly and Gigy's dimensions of client satisfaction. No evidence was found to support claims of the greater dissatisfaction of women with either the process or outcome of mediation. Instead, evidence suggests that women were more satisfied with mediation than were men. No evidence was found to support the hypothesis that women's dissatisfaction with mediation increased over time.

CHAPTER FOUR

Discussion

No evidence for differences between the reported experience of men and women in divorce mediation was reported in Study 1. Both men and women in Study 1 reported high levels of satisfaction with agreements made and with the mediation process. An examination of the possibility that the factors which contributed to overall mediation satisfaction were different for men and women was conducted, exploring satisfaction with the effectiveness of the agreement compared with satisfaction with the mediator. No differences between men and women were found. Men and women were equally likely to be satisfied with their agreement, with their mediator, and with the mediation overall.

Study 2 provided an opportunity to examine differences in reported satisfaction for 'now' (12 months after mediation), and 'then' (immediately after mediation) for men and women. No evidence was found to support the hypothesised difference between short and long term satisfaction for women or men.

The detailed responses of men and women to a North American mediation satisfaction instrument (CAMS; Kelly & Gigy, 1988) were examined in Study 2 to explore possible gender

differences in a more fine grained way. The first objective was to check the internal consistency of the scales in the Australian context. From an examination of the data derived from Australian clients, modified scales were prepared which had higher levels of internal consistency relative to the interscale correlations. The revised scales represented mediator effectiveness and sensitivity, impartiality, empowerment, adequacy, and focus on issues.

When the data derived from the modified scales were examined, women were found to rate the mediator as more sensitive and effective. On other domains of satisfaction, no evidence was found for differences between males and females. Women and men were just as likely to judge the mediator as impartial, to report feeling empowered, to feel that the information provided was adequate, and that the mediation was well focused on the issues.

Some gender differences were found when circumstances surrounding mediation were taken into account. When the factor of whether or not a lawyer had recommended mediation was statistically controlled, women were more likely to report feeling empowered and to perceive mediation as positive and problem focused. One possible explanation for this finding is that, in principle, women are more satisfied and positive about the mediation alternative than are men. When they feel that the process is being

manipulated by the lawyer, however, their trust in the process wanes and their sense of empowerment is eroded. For example, a woman may perceive that her ex-partner's involvement in mediation is not an honest attempt to resolve their outstanding dispute but is, in fact, an act of bad faith, recommended by a lawyer to gain an advantage later on. In this situation, a woman is more likely to perceive the mediation, not as an opportunity for a fair and equal attempt to settle the issues, but as a situation where the threat associated with the traditional legal process has intruded. Such an interpretation is supported by reported findings that men enter mediation because they perceive a possible strategic advantage (Emery & Weyer, 1997a; Irving & Benjamin, 1992; Pearson, Theonnes, & Vanderkooi, 1988).

Such a possibility notwithstanding, the main result of the present study is that women are no less satisfied with mediation than men. No support was found in the present studies for concerns that women felt more uncomfortable in mediation or more pressured by their ex-partner or by the mediator for resolution. The finding that the women in Study 2 perceived the mediator as more sensitive and effective is at odds with the hypothesis and supports arguments for the acceptability of mediation amongst women.

Limitations of the study

Interpretation of the present results are limited by several factors. These include: (a) the low response rate to the CAMS questionnaire in Study 2, (b) the comparability of the mediation agencies from which samples were drawn, and (c) the self report nature of the data.

The low client response rate of 24% in Study 2 places constraints on the representativeness of the sample. The low response rate reported may reflect the frequently turbulent and rapidly changing life circumstances of the post divorce period. In addition, the lengthy interval between mediation and the receipt of the questionnaire in Study 2 may have contributed to a fading interest by the respondent in the mediation intervention as well as increasing the likelihood of a change of address.

The rationale of the study included the assumption that the two mediation agencies were comparable in the services provided and in the nature of their clients. Examination of agency methods and of the demographic characteristics of the clients of the agencies indicated that considerable differences existed between the two samples. These differences between the agencies were observed in intake procedures, the number of mediators assigned to each mediation case, costs to the consumer, and in certain demographic characteristics of the clients.

In Study 1, the agency contacted by a person wishing to arrange mediation, made contact with the other party to extend an invitation to mediate. In Study 2, the agency proceeded with mediation only if contact was made by both parties. That is, a person contacting the agency would be advised to contact the other party in order to make a joint approach. This may have provided a disincentive for the initiating party and contributed to their ultimate dissatisfaction. Alternatively, the party who is contacted by the mediation initiating party may perceive the mediation as 'belonging' to the initiator, and be motivated to disrupt mediation as a means of continuing a dispute.

Differences were also observed in the number of mediators available to each mediation case. The agency in Study 1 provided a pair of mediators to each mediation. The agency in study two used one or two mediators for each case according to the availability of staff. Two mediators may provide a greater quality of attention to disputing parties, bring more skills to bear on the situation, or provide more available resources for one another during mediation sessions, than a single mediator.

A further difference observed between the agencies was that of fee paying versus community service mediation. The higher levels of satisfaction reported by respondents in the community service mediation agency may reflect a client perception of dedicated enthusiastic mediators.

Conversely, clients in a professional fee paying situation may have perceived a lower level of staff interest in themselves and have felt less satisfied as a consequence.

Closer inspection of the client samples revealed that there were considerable differences between the respondent groups. The mean age of respondents in the second study was ten years older than that of respondents in Study 1. Respondents in Study 2 reported high levels of education, and a higher rate of participation in professional and managerial occupational groupings. Five of the thirty seven female respondents in the first study nominated home duties as their occupation whereas twenty one of the twenty three women in the second study characterised their occupation in that way. The results of the study reported here showed that the older and more highly educated respondents in Study 2 experienced lower levels of resolution than did respondents in Study 1.

Finally, a design limitation was that all of the data from both studies was generated from client self report. The data from the second study, in particular, was based on retrospective memory of events up to twelve months previously. Although practical considerations determined the study design, the influence of distortions due to selective memory cannot be discounted.

Although considerable differences were observed between the groups and on some mediation intake practices, it is noteworthy that the finding that women generally were not less satisfied than men was found across both studies.

Future Directions in Divorce Mediation

The past twenty years of mediation research have been primarily focused on establishing the validity and efficacy of the new conflict resolution modality in divorce as an alternative to the traditional adversarial methods. The growing acceptance of divorce mediation by government and the legal system as an effective alternative brings to an end this era of research (Bordow & Gibson, 1994; 'Family Mediation': Family Law Court, 1992; Maloney, Love & Fisher, 1996).

Efforts to formulate a more precise account of those factors which contribute to the success or failure of a particular mediation must supplant the advocacy orientation implicit in most earlier research efforts. Three consequences with a negative impact on research development have followed the earlier advocacy orientation. Firstly, many studies in mediation have been widely criticised on the grounds of insufficient methodological rigour. Second, these criticisms have led to the argument that the claims made for the efficacy of mediation are overrated (Emery & Wyer, 1987a; Roehl & Cook, 1985; Kressel & Pruitt, 1989). Third, there has been little progress in

determining what factors are responsible for the success or failure of mediation. Irving (1992) commented that little outcome variance in mediation studies has as yet been explained by the various situation and mediator characteristics studied.

A number of areas of investigation offer potential for gaining greater explanatory power in accounting for the outcome of a particular mediation. These include: (1) a more careful examination of individual pathways to mediation and of the individual characteristics and attributes of mediation clients, and (2) a more detailed account of mediation practice. The present findings are relevant to the first of these two directions.

Individual pathways to mediation.

Gaining a greater understanding of the context of particular mediations would enable researchers to achieve greater explanatory power in accounting for the outcomes. Central among these background factors would be (1) knowledge of the circumstances of the divorce which precipitated the mediation, (2) the informal and formal processes by which divorce was initiated, and (3) the levels of anger and acrimony existing between the parties.

The impact of divorce may have a significant impact on the likelihood of subsequent mediation success. Thus, a divorce which is characterised by high levels of anger and acrimony may exert a strongly negative impact on the parties' ability to mediate together. The established legal principle of no fault in divorce does not reflect the interpersonal reality. Many divorces are characterised by interpersonal blaming and fault finding.

More detailed observation of the levels of anger and acrimony between mediating ex-spouses would make it possible to assess evidence for the confirmation or modification of assumptions about the role of these factors in mediation success. For instance, some research suggests that the degree of interspouse anger or conflict is less determinative of mediation outcome than is the individual's ability to contain the expression of anger and to maintain a focus on the endpoint of negotiation. Such an ability was described as a central characteristic of constructive conflict resolution outlined by Deutsch (1973).

Furthermore, the concept of anger may be too broad to have adequate explanatory value. Overt expressions of anger which are followed by a refocussing on the task of negotiation may be less damaging to the likelihood of a mediation's success than a client's stubborn and unrelenting acrimony toward the other, albeit largely unexpressed.

Some research suggests that a central variable in individual acceptance of divorce is that of the individual's perception of fairness in the way they have been treated. One such area of relevant research is that which seeks to understand the perception of justice and fairness in families. Clark and her colleagues have reported empirical evidence in support of the theoretical distinction between communal and exchange modes of interpersonal relationships (Williamson & Clark, 1989). Clark et al. have presented evidence that people respond to others in accordance with certain cognitive expectations. Communal norm assumptions function in response to perceived need in interpersonal relationships and to expectations of appropriate response. Communal exchange relationships are characterised by mutual feelings of responsibility for others' well being. Such communal relationships apply particularly to parent child relationships and to other relationships of intimacy. Conversely, exchange norms refer to interpersonal behaviours that are characterised by balance. Benefits may be given to repay debts created by benefits previously received or in anticipation of receiving specific benefits in the future. Exchange relationships are typified by 'deal' making between business associates or transactions between non-intimates.

Studies using the communal/exchange manipulations as well as studies of naturally occurring communal and exchange relationships provide evidence that certain behaviours are viewed by individuals as differentially appropriate when

different types of relationship exist or are desired. When both parties behaved in ways that reflected shared understandings of appropriate norms, mutual good feelings and perceptions of just treatment were experienced. Conversely, behaviour which was disparate with expected norms led to an experience of violation, unfairness and injustice.

The family is one setting in which the appropriateness of predominantly communal rather than exchange norms is assumed (Williamson & Clark, 1989). Communal/exchange research suggests that exchange behaviours generally will not be important in establishing a sense of justice in family relationships. Indeed, Williamson and Clark (1989) suggest that the expression of exchange behaviours in the family setting may lead to feelings of dissatisfaction and a perception that one is not being treated correctly.

Divorce mediation provides a setting in which the established communal/exchange findings may have considerable explanatory power in determining individual responses to the mediation process. The divorcing pair are in the process of dissolving an intimate family relationship between each other. Communal expectations which, positively or negatively expressed, have characterised their interactions become inappropriate in negotiating a new exchange based relationship. A sense of fairness or just dealing in the interactions between parties may have more to do with cognitive expectations

than with objective principles of justice. Thus one partner may be expecting communal norms of expression between the two and may feel hurt and unfairly treated by the disappointment of these expectations. Conversely, the partner who wishes to proceed with the dissolution may experience the partners' display of communal behaviours as inappropriate, intrusive and 'unfair'. Thus, behaviours may serve different needs. The expression of communal norms may provide the experience of security. The expression of exchange norms may promote the experience of justice.

The mediation experience between a divorcing couple may be seen as a developmental task where ultimately successful resolution is characterised by progress toward a high proportion of exchange based behaviours and a low proportion of communally based behaviours. Such an account would have clear implications for the appropriateness of mediator interventions. Interventions aimed at developing mutual understanding and warmth between the partners would be inconsistent with a goal of developing an exchange based relationship as would interventions which promoted the ventilation of negative and angry feelings toward the ex-spouse. Conversely, mediator interventions which promoted a businesslike exchange between the parties would be associated with success. The parties' expression of feeling and desire to be heard and understood may, by this account, be most usefully expressed in their relationship with the mediator.

Some evidence supports such an analysis. Pruitt (1995) reported from a study of community based mediation that it was the respondent rather than the initiator of a divorce mediation process who had the more decisive influence on the mediation outcome. The initiator of a mediation who unequivocally wishes to end a relationship bond is assumed to be more exchange orientated in their expectations toward the other. Conversely, the respondent is assumed to be more communally oriented toward the other party. An explanatory account of this finding in terms of the communal/exchange distinction is that the communally oriented respondent feels the greater sense of violation and has greater power either to impede the mediation resolution or to facilitate the process by adopting a more exchange oriented perspective.

Of note is the fact that women in the second study were more likely to have been the initiator of the ending of the relationship. By the above account they were also more likely to be exchange oriented toward the other party when they entered mediation. As a consequence of feeling less unfairly treated in the sense of communal/exchange violation, the women of this study may have been expected to express greater satisfaction than the men - as the results of the present study indicated.

Conclusion

The aim of this study was to investigate the hypothesis that women are less satisfied with their outcomes in divorce mediation than are men. No gender related differences in satisfaction with mediation outcomes were reported from either study. In Study 2, women found the mediator more sensitive and effective than did men. A gender effect was found when pathways to mediation were statistically controlled. Men were found to be more likely to attend mediation on a lawyer's recommendation. When this variable was statistically controlled, women were more likely than men to find the mediation experience positive and empowering. Where evidence of gender differences emerged, it tended to indicate the greater satisfaction of women with mediation process and outcome.

The second aim of the study was to test the usefulness of the CAMS scale within the Australian context. Examination of data derived from Australian mediation client responses to the CAMS scale indicated that modifications to the scales were indicated. The modified scales were shown to have adequate internal consistency with Australian mediation clients.

The further hypothesis that the greater dissatisfaction of women with divorce mediation would become evident after the lapse of twelve months received no support in this study,

although a more fine grained longitudinal analysis with the CAMS over time might provide further insights into how the satisfaction of divorcing men and women with mediation unfolds over time.

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Appendix I

Mediation Feedback Questionnaire

1. Please describe your dispute. (Please circle one number)

- 1=property
- 2=child only
- 3=all

2. . Please describe the type of agreement you reached

- 1=written
- 2=verbal
- 3=no agreement

3. How satisfied were you with the mediators?

- 1=very satisfied
- 2=partly satisfied
- 3=dissatisfied

4. Please indicate how satisfied you were with your agreement.

- 1=very satisfied
- 2=partly satisfied
- 3=dissatisfied

5. Please indicate how well your agreement worked.

- 1=very well
- 2=worked partly
- 3=dissatisfied with agreement

6. Has the situation improved?

- 1=greatly
- 2=slightly
- 3=not improved
- 4=worsened

7. Are you satisfied overall with the service?

- 1=very satisfied
- 2=somewhat satisfied
- 3=dissatisfied with the service

Appendix 2

Letter of Invitation To Participate

Dear Sir/Madam

This letter is an invitation to partake in a research project I am completing as part of a Clinical Master's in Psychology degree.

Divorce and separation mediation is a relatively new development in Australia. Your participation in this research would contribute to the available knowledge and enable mediators to provide the best possible service to clients and their children who have need of this service in the future.

Your agreement to be a participant in this research would involve you in completing the accompanying questionnaire. All of these materials will be treated in the strictest confidence. No personal details of any kind would become known to anybody outside the group of mediators. All information used in the research will be coded and numbers substituted for names.

Participation in this research is voluntary. If you agree to participate in the research it is important that you sign the accompanying consent form and return the questionnaire in the enclosed stamped and addressed envelope.

Thank you for considering this request.

Patrick Fleming
Department of Psychology
Australian National University

Appendix 3

Agreement to become a research participant

I consent to Patrick Fleming using information about me, obtained from a questionnaire, for the purpose of collecting research data for a thesis as part of a Master's Degree in Clinical Psychology at the Australian National University.

I understand that every precaution will be taken to protect my confidentiality and that the data collected will not be used for any other purpose.

Signed

Dated

Appendix 4

Mediation Questionnaire

Part One

1. Please indicate your sex 1= Male 2= Female

2. Please indicate your age _____yrs.

3. Please circle your highest educational level achieved
 - 1= Less than year 12 completion (or equivalent)
 - 2= Completed year 12 (or equivalent)
 - 3= Trade Certificate or diploma
 - 4= Undergraduate Degree
 - 5= Postgraduate Degree
 - 6= Further professional qualifications

4. Please indicate your occupation -----

5. Please circle the number of mediation sessions you attended
 1. 2. 3. 4 or more

6. Please indicate the level of agreement that you reached with your ex-partner (Circle your answer).
 - 1= Written agreement
 - 2= Verbal agreement
 - 3= No agreement made but improvement in our ability negotiate with one another
 - 4= No agreement made and no change in the way we negotiate with one another.
 - 5= No agreement made and our ability to negotiate with one another has worsened.
 - 6= No agreement made and some other factor outside of mediation was responsible (i.e. a change in life circumstances, legal proceedings etc.)

7. How satisfied are you now with the outcome achieved in mediation? (Circle your answer).

1	2	3	4	5
very satisfied	a reasonable solution	satisfied	dissatisfied	very dissatisfied

8. How satisfied were you then with the outcome achieved in mediation? (Circle your answer).

1	2	3	4	5
very satisfied	a reasonable solution	satisfied	dissatisfied	very dissatisfied

9. If your mediation was successful/ not successful please indicate the reason as you see it.

(If you would like to take more space please add any further comment on the back of these pages).

10. Please indicate how the decision to enter mediation was taken (Circle your answer).

- 1= My (ex) partner suggested mediation
- 2= My lawyer suggested mediation
- 3= A community agency suggested mediation
- 4= A counsellor or health professional suggested mediation
- 5= Family, friend or acquaintance suggested mediation
- 6= Other

11. Please indicate how the decision to end the relationship was taken (Circle your answer).

- 1= I made the decision
- 2= My (ex) partner made the decision
- 3= The decision was mutual
- 4= Other

12. Please indicate whether at the time of the mediation you were still living in the same house as your ex-partner (Circle your answer).

- 1= Yes
- 2= The situation was unclear
- 3= No (enter number of months apart before mediation)-----

13. Please indicate whether at the time of mediation you had any interest in getting back together with your ex-partner (Circle your answer).

- 1= No, not at all
- 2= At times I did
- 3= Yes I did

14. Please indicate whether at the time of mediation you had a new partner (Circle your answer)

- 1= No
- 2= I was in a relationship
- 3= Yes, I was living with a new partner

15. Please indicate the number of issues that were involved in the mediation (Circle your answer)

- 1= Matters relating to the division of property and marital assests only.
- 2= Matters relating to the care of a child or children only
- 3= The division of marital assests and child related issues
- 4= The division of marital assests, child related issues and other issues.

16. Do you think that the result of your mediation would have been different if more time had elapsed between your separation and your mediation sessions?

- 1= Yes
- 2= Don't know
- 3= No

PART TWO

Please circle your degree of agreement with the following statements. In every case 'my spouse' refers to the person with whom you mediated.

(If the statement is not relevant to your situation circle 3).

1. I felt that our case was handled in a highly skilled manner by the mediator.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

2. I could have used more financial information in making decisions and support agreements.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

3. The mediator kept our discussions focussed on the important issues.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

4. I felt that I would have reached a more favourable agreement in a divorce court.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

5. Too much time was spent during mediation going over old ground with my spouse.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

6. The mediator helped me control my angry feelings when it was necessary.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

7. My spouse and I failed to reach full agreement on all of our issues of importance in mediation.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

8. I often felt that I was on the defensive during mediation.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

9. The mediator showed much warmth and sympathy for our difficulties.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

10. I often felt that our mediation discussions wasted time by not addressing the more important issues.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

11. Mediation only worsened communication problems that had been prominent in our marriage.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

12. The mediator often tried to impose their views on me.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

13. Mediation was too often confusing.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

14. Being in mediation helped me understand my spouse's point of view better.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

15. The mediator showed enough concern for my feelings about the separation and divorce.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

16. Mediation helped identify very important issues and problems.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

17. As a result of mediation I am more confident about my ability to stand up for myself.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

18. I would be totally comfortable with my spouses divorce settlement if I had received it instead of my own.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

19. My spouse and I had just about equal influence over the terms of our divorce agreement.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

20. I wished that the mediator had helped me to understand what I needed to know about the details of my property and financial situation.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

21. By the end of mediation I was just as angry at my spouse as when we started.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

22. I felt that the mediator too often favoured my spouses point of view.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

23. The mediator helped me and my spouse relax during the session.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

24. The mediator helped me stand up for my rights when I disagreed with my spouse.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

25. The mediator was not at all helpful in leading me and my spouse to workable compromises.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

26. The mediator helped me and my spouse to become more reasonable with one another.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

27. I feel that I received enough information to protect my own best interests during the mediation process.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

28. The mediator pressured me into an agreement before I was prepared to make it.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

29. I often felt that my spouse had an advantage over me during our negotiations.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

30. I would highly recommend mediation to a friend if he or she was getting a divorce.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

31. The mediator was often helpful in proposing ways to resolve disagreements with my spouse.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

32. I wish that the mediator had stopped my spouse from acting so destructively.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

33. I was afraid that my spouse would not live up to all aspects of our agreement.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

34. The mediator seemed quite impartial when it came to resolving differences between me and my spouse.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

35. The mediator should have given us more direct and practical advice about what to do and how to decide matters.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

36. I felt that the mediator was rather insensitive to my feelings.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

37. Participation in mediation has helped me to assume greater responsibility in managing my personal affairs.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

38. I am not at all satisfied with the property agreement I reached with my spouse.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

39. I believe that I can now resolve any future disagreements with my spouse without outside help.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

40. I feel that the custody/ visitation agreement we negotiated was best for everyone in our family.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

41. I wish the mediator had focused more on our children's needs.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

42. Mediation helped identify useful ways to arrange custody and visitation.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

43. I feel that the child support agreement we negotiated is not adequate for our children.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

44. The mediation increased my understanding of my children's psychological needs and reactions to divorce.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

45. I often disagreed with the mediator's ideas regarding parenting roles and responsibility after divorce.

1	2	3	4	5
Strongly Disagree	Moderately Disagree	Neither Agree nor Disagree	Moderately Agree	Strongly Agree

THANK YOU FOR FILLING OUT THIS QUESTIONNAIRE

Appendix 5

Scale Items from the CAMS (Kelly & Gigy, 1988)

Scale 1: Effective/ Sensitive Mediator

- 9 The mediator showed much warmth and sympathy for our difficulties.
- 31 The mediator was often helpful in proposing ways to resolve disagreements with my spouse.
- 36 I felt that the mediator was rather insensitive to my feelings.
- 23 The mediator helped me and my spouse relax during the sessions.
- 15 The mediator showed enough concern for my feelings about the separation and divorce.
- 1 I felt that our case was handled in a highly skilled manner by the mediator.
- 24 The mediator helped me stand up for my rights when I disagreed with my spouse.
- 25 The mediator was not at all helpful in leading me and my spouse to workable compromises.
- 6 The mediator helped me control my angry feelings when it was necessary.

Scale 2: Empowerment

- 17 As a result of mediation, I am more confident about my ability to stand up for myself.
- 37 Participation in mediation has helped me to assume greater responsibility in managing my personal affairs.
- 14 Being in mediation helped me understand my spouse's point of view better.
- 16 Mediation helped identify very important issues and problems.

Scale 3: Adequacy of Information

- 2 I could have used more financial information in making decisions about our property divisions and support agreement.
- 20 I wish that the mediator had helped me to understand what I needed to know about the details of my property and financial situation.
- 13 Mediation was too often confusing.
- 27 I felt that I received enough information to protect my own best interests during the mediation process.
- 35 The mediator should have given us more direct and practical advice about what to do and how to decide matters.

Scale 4: Impartiality

- 12 The mediators often tried to impose their views on me.
- 22 I felt that the mediator too often favoured my spouse's point of view.
- 34 The mediator seemed quite impartial when it came to resolving differences between me and my spouse.

29 I often felt that my spouse had an advantage over me during our negotiations.

8 I often felt that I was on the defensive during mediation.

Scale 5: Focus on Issues

10 I often felt that our mediation discussions wasted time by not addressing the most important issues.

3 The mediator kept our discussions focused on the important issues.

5 Too much time was spent during mediation going over old conflicts with my spouse.

30 I would highly recommend mediation to a friend if he or she were getting a divorce.

Scale 6: Impact on Spousal Relationship

32 I wish the mediator had stopped my spouse from acting so destructively.

24 The mediator helped me and my spouse to become more reasonable with each other.

11 Mediation only worsened communication problems that had been prominent in our marriage.

28 The mediator pressured me into an agreement before I was prepared to make it.

Appendix 6

Revised Scale Items from Australian Data

Scale 1: Effective/Sensitive Mediator

- 9 The mediator showed much warmth and sympathy for our difficulties.
- 31 The mediator was often helpful in proposing ways to resolve disagreements with my spouse.
- 36 I felt that the mediator was rather insensitive to my feelings.
- 15 The mediator showed enough concern for my feelings about the separation and divorce.
- 24 The mediator helped me stand up for my rights when I disagreed with my spouse.
- 25 The mediator was not at all helpful in leading me and my spouse to workable compromises.
- 26 The mediator helped me and my spouse to become more reasonable with each other.
- 28 The mediator pressured me into an agreement before I was prepared to make it.

Scale 2: Empowerment

- 37 Participation in mediation has helped me to assume greater responsibility in managing my personal affairs.
- 16 Mediation helped identify very important issues and problems.

Scale 3: Adequacy

20 I wish that the mediator had helped me to understand what I needed to know about the details of my property and financial situation.

13 Mediation was too often confusing.

Scale 3: Impartiality

12 The mediators often tried to impose their views on me.

22 I felt that the mediator too often favoured my spouse's point of view.

34 The mediator seemed quite impartial when it came to resolving differences between me and my spouse.

29 I often felt that my spouse had an advantage over me during our negotiations.

8 I often felt that I was on the defensive during mediation.

Scale 4: Focus on Issues

10 I often felt that our mediation discussions wasted time by not addressing the most important issues.

3 The mediator kept our discussions focused on the important issues.

5 Too much time was spent during mediation going over old conflicts with my spouse.

30 I would highly recommend mediation to a friend if he or she were getting a divorce.