

Rapid evidence review: The impact of mediation on outcomes, experience and bias

Comparing the impact of mediated versus court based processes on outcomes, experience and bias.

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Background

On 3 August 2021, the Ministry of Justice published a [Call for Evidence](#) requesting the views of all interested parties on the proposed judicial reforms to mainstream non-adversarial dispute resolution mechanisms in the civil, family and administrative jurisdictions. The proposed policy reforms for dispute resolution in England and Wales are not new. Lord Woolf's 1996 Report on Access to Justice and the subsequent Civil Procedure Rules 2000 and the Mediation Information and Assessment Meetings (2014) in the family jurisdiction have all aimed to promote the early settlement of disputes and reduce the number of cases resolved through court-based litigation. The proposed reforms, for which the Ministry of Justice has called for evidence, represent an advancement because they seek not only to increase the uptake of less adversarial options, but also to mainstream those options within online processes. In other words, the government aims to integrate mediation and other forms of alternative dispute resolution (ADR) mechanisms into online dispute resolution (ODR) within the civil, family and administrative jurisdictions.

Purpose of the review

This review has been undertaken for the Legal Education Foundation. We understand that this review will inform the foundation's ongoing work strengthening the evidence base of what ensures fairness and rights protection in civil and administrative justice. In particular, the main purpose of this review is as follows.

- To assess the impact of mediation on outcomes and experiences of parties in the United States, Canada and Australia, compared with outcomes secured through court-based processes.
- To determine whether specific groups are particularly disadvantaged by mediated as opposed to court-based processes. The review particularly looks at the experiences of women, those on low incomes and individuals from minority ethnic groups.

Out of scope

- This review explores the evidence base in the United States, Canada and Australia only. The wider evidence base on mediation from other jurisdictions was excluded.
- This review focuses on mediation in civil, family and administrative jurisdictions only. Criminal jurisdiction is out of scope.
- This review is exclusively centred on mediation, rather than any other type of alternative dispute resolution (ADR) method, such as, but not limited to, negotiation, conciliation or arbitration.
- Although the Call for Evidence extends to the integration of mediation and online dispute resolution, this review focuses on the impact of mediation in general on the understanding that it is crucial to begin by determining the impact of mediation on outcomes and experiences before scaling these ADR mechanisms through digital technology and innovation.

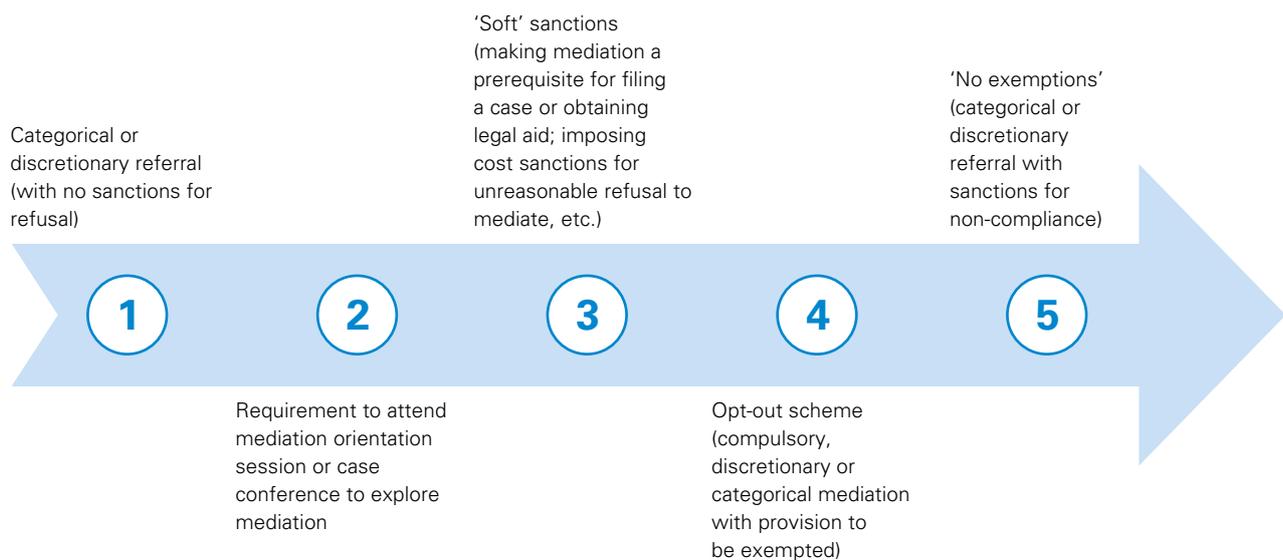
1 Introduction

Across the globe, judges are under immense pressure to resolve an ever-increasing number of disputes expeditiously and efficiently. Advocates of ADR and ODR argue that the pressure on the judicial system is unsustainable, undesirable and inhibits timely access to justice. They further contend that court-based litigation should be a last resort and propose that the widespread, and even mandatory, use of non-adversarial processes, facilitated by technology and innovation, would lead to higher-quality, timely, cost-effective, proportionate and enforceable resolution of most disputes.

There are various ADR mechanisms, including arbitration and conciliation, but this study focuses specifically on mediation. There are varying definitions of mediation and, in practice, mediation will vary slightly from practitioner to practitioner or from setting to setting. However, in this review, the following comprehensive definition by the Advisory, Conciliation and Arbitration Service (ACAS) has been used to guide the search and select the relevant studies:

Mediation, like conciliation, is where an impartial third party, the mediator, helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome. (AVAS/TUC 2010: p. 3)

ADR policy also varies from country to country. This means that court-annexed mediation operates on a voluntary basis in some jurisdictions and is mandatory in others. The terms 'mandatory' and 'voluntary' can be misleading because, in practice, the mediation programmes in different jurisdictions do not operate in such black-and-white terms. Instead, jurisdictions seem to fall somewhere along a scale, with some closer to the voluntary end, some closer to the mandatory end and others in the middle. Anderson (2010) describes this scale as a 'continuum of mandatoriness' (p. 479) with five levels, flowing gradually from very voluntary schemes on the left towards the most mandatory schemes on the right.



1.1 Australia

Australia has had 14 years of experience with mandatory mediation since the enactment of the Law and Justice Legislation Amendment Act 1997 (Cth), s. 18, which gave the Federal Court of Australia the power to refer matters to mediation without the consent of the disputing parties. Later, the Civil Dispute Resolution Act 2011 was enacted to encourage parties to genuinely attempt to resolve their disputes before turning to the courts for litigation. Thus, the majority of the states in Australia, including New South Wales, Queensland and Victoria, operate a mandatory or quasi-mandatory (opt-out scheme) mediation scheme. The policy goal behind the 1997 legislation was to improve access to and ensure the efficient delivery of justice in the civil justice system (Waye 2016: p. 214, 215; Noone and Ojelabi 2020: p. 108, 113). Despite its widespread and near-default use in the resolution of disputes in the Australian civil justice system, including administrative and regulatory tribunals (Waye 2016: p. 217), questions remain about mandatory mediation's suitability and effectiveness. On the one hand, there is some evidence that pre-action requirements do assist parties to narrow down issues or conclude a dispute and participants in a Retail Lease Mediation Scheme in Victoria reported satisfaction with the fairness of the process and outcomes of the mediation (Sourdin 2012: p. 99 and chapter 4). On the other hand, the experiences and outcomes of mediation in the franchising sector and farm debt mediation are much less positive, specifically in respect of the imbalance of financial power between parties in these sorts of disputes (Waye 2016: p. 217).

Further, it is arguably difficult to reconcile the fact that the policy aim of mandatory mediation is 'to achieve quantitative efficiencies and cost savings ... and the traditional rationale for consensual settlements based on more qualitative considerations, such as facilitating self-determination, autonomy and empowerment' (MacDermott and Meyerson 2018: pp. 443, 446). Nonetheless, despite concerns that mandatory ADR schemes may struggle to deliver impartial and effective dispute resolution, Australia scores highly in this regard (World Justice Project 2016: p. 51).

1.2 Canada

In Ontario, the mandatory mediation scheme has applied in Toronto and Ottawa since 1999 and in Windsor since 2002. Not all civil actions are included in the scheme; for instance, bankruptcy, family law and mortgage actions are exempted (see Rule 24.1.05 of the [Rules of Civil Procedure](#)). Parties can also opt out of mediation by applying to the court for a discretionary exemption order (see Rule 24.1.05 of the [Rules of Civil Procedure](#)).

In British Columbia, either party can issue a Notice to Mediate, calling the other party to a settlement conference; it is thereafter mandatory for the other party to participate in the settlement conference (see Supreme Court Civil Rules, BC Reg 168/2009). Judges also have discretionary power to order parties to mediate. In Alberta, mandatory mediation was suspended in 2013, but in July 2019, [it was announced](#) that the court would be commencing a one-year mandatory mediation pilot project ('Judicial Dispute Resolution') for all civil and family law actions with effect from 1 September 2019.

As in the case of Australia, the views on and evidence relating to the success of mandatory mediation in Canada are mixed (Hahn and Barr 2001). While some Canadian commentators suggest that forcing mandatory mediation upon unwilling parties would be unsuccessful and defeat the very objectives and philosophy behind mediation (Smith 1998: p. 847), data from a qualitative study on a court-connected mediation programme in Saskatchewan suggested that parties, lawyers and judges were largely satisfied with and welcomed the programme (MacFarlane and Keet 2004: p. 677).

1.3 The United States

While the United States has federal-level legislation on mediation (the Uniform Mediation Act 2003), each state, and each county within each state, has the freedom to take a localised approach. It is therefore difficult to make generalised statements about mediation in the United States. However, many states, such as Florida and Ohio, have adopted mandatory mediation programmes. ‘Mandatory mediation’ looks different in different states. Welsh explains that:

Some courts order all cases into mediation. Others use a substantive screen for their mandatory programmes, identifying only particular types of lawsuits—usually those that seem most likely to include important non-legal issues—to go to mediation. In contrast, other courts may require all civil lawsuits to go to mediation, but then will exempt particular types of cases. All of these represent ‘categorical’ referrals to mediation. Other courts provide their judges or court administrators with the discretion to order mediation on an ad hoc basis. (2011: p. 110)

Again, the views on and evidence relating to the success of mandatory mediation are mixed. For instance, while there is some evidence of satisfaction with the procedural fairness of the mediation process in Ohio and Maryland (Wissler 2002: p. 641; Charkoudian, Eisenberg and Walter 2017: p. 7), the results of the Ohio study also suggest that a smaller percentage of parties were satisfied with the outcome of the mediation and it is not clear how they compared the fairness of the process to the fairness of litigation.

1.4 Impact of mediation in specific cases

The preceding summary on mandatory mediation in the countries under consideration, which only covers the views on and evidence relating to the general experience with mandatory mediation, illustrates that parties' views on the impact of mediation on their experiences and outcomes are mixed. It is therefore even more crucial, in light of the proposed expansion of court-annexed mediation across the justice system in England and Wales, to explore the existing evidence of the impact of mediation on experiences and outcomes in more specific cases to understand how it impacts minority groups who are often overlooked in the implementation and monitoring of policy interventions.

Concerns regarding the potential of ADR mechanisms to facilitate prejudice and bias against specific classes of individuals, particularly those who are most likely to be targeted by policy interventions that promote ADR, are not new. In 1985, Delgado et al. (1985) published a seminal article on this topic and subsequent commentaries and researchers have tested their hypothesis and developed their arguments. The primary concern with informal processes of dispute resolution like mediation is that the formality of court-based processes, legal doctrines such as the doctrine of stare decisis and the possibility of disqualifying a biased judge all protect minority groups, while the informality in ADR tends to increase the risk of bias.

The findings in an old study in New Mexico showed that ethnic minority plaintiffs received less financial compensation than white plaintiffs in mediation in a small claims court in Albuquerque (Hermann 1994: p. 10). It was found that there was a similar disparity between the treatment of minority male and all female claimants and that of Anglo male claimants (LaFree and Rack 1996: p. 767).

In relation to women's experiences in mediation, an Australian study suggests that women report satisfaction with the mediation process in family disputes; their satisfaction seemed to stem from being given the opportunity to express their opinions and values in a way that positively shaped the outcome of the process (Field 2006). However, Field (2006) notes, in the same study, that women are likely to feel less empowered in mediation where the other party has significantly greater financial power. Further, questions have been raised regarding the suitability of mediation between couples with a history of domestic violence, an issue that would apply to both men and women.

An imbalance in financial power can also affect outcomes in mediation. For instance, Waye (2016) explains that a review of farm debt mediation in Australia indicates 'that it has done little to level the playing field between farmers and banks, and has principally served the interests of banks by enabling them to restructure farm debt or exit poor-performing farmers in a confidential setting without risking public opprobrium' (p. 217).

2 Objectives

The aim of this review is to explore the impact of non-adjudicative processes on outcomes and experiences for parties generally, as well as the experiences of women, individuals with low incomes and individuals from minority ethnic groups, by attempting to answer the following questions.

- What is the impact of mediation on outcomes for parties, compared with outcomes secured through court-based processes?
- What is the impact of mediation on the experience of parties when compared with court-based processes?
- Are particular groups—for example, women, parties from minority ethnic groups and those on low incomes—disadvantaged by moving from court-based to mediated processes?
- Are particular types of disputes more or less suited to resolution through mediation? For instance, family, civil money claims, etc., and/or disputes between parties where disparities of resources and power are minimised.
- What models of mediation are effective in delivering a) parity of outcome with court-based processes and b) parity of experience or improved experience when compared with court-based processes?

3 Methods

3.1 An overview of the study eligibility criteria

To guide the selection process of papers for inclusion and exclusion, the following framework was used.

- Only studies conducted in the United States, Canada and Australia were eligible on the basis that these jurisdictions have a tradition of employing quantitative methods in legal research. Further, they follow the common law system and are therefore comparable to England and Wales.
- Studies were eligible if they focused on non-commercial mediation between parties in civil, family and administrative disputes. Mediation was broadly defined. The focus was on non-commercial mediation on the basis that both parties in commercial mediation are likely to have similar levels of autonomy, financial power and access to high-quality legal advice.
- The research questions are centred on the impact of mediation on experiences and outcomes rather than on cost-saving or other administrative considerations. Thus, studies were eligible if they focused on the impact of mediation on outcomes and experiences, rather than on the court system or costs. Mediation impact studies on minority ethnic groups, individuals on low incomes and women were also eligible.
- Studies that adopted robust quantitative, experimental or mixed methods approaches were eligible. Due to the rapid nature of the review and the need for robust and generalisable evidence, studies employing only qualitative methods were excluded and therefore this review does not fully benefit from the nuances and rich details that qualitative methods provide.

3.2 Description of the search strategy

This review was conducted over a seven-week period between 2 August and 17 September 2021. In the interest of time, considering the brief period allowed for responses to the Call for Evidence, grey literature was omitted. The following five databases were searched:

- HeinOnline;
- LexisNexis;
- Westlaw;
- Wiley.

An example of the search conducted on HeinOnline is provided in Appendix A. The following search terms, or various combinations of them, were used and adapted to the different databases: ‘mediation and perceptions of fairness’; ‘mediation and minority groups’; ‘mediation and autonomy and control’; ‘models of mediation’; ‘mediation and women’s experiences’; ‘mediation and low incomes’; ‘mediation and quantitative methods’; ‘mediation and experimental methods’; ‘mediation and mixed methods’; ‘mediation and fair outcomes’; ‘mandatory mediation’; ‘court-annexed mediation’; ‘compulsory mediation’; ‘mediation and power disparity’.

All the search results were exported to EndNote for deduplication. After deduplication in EndNote, the results were exported to the Rayyan platform (<https://rayyan.qcri.org>) for title and abstract screening. Unfortunately, the vast majority of the records were behind paywalls; consequently, the Rayyan screening largely involved title screening and was much more manual and less efficient than it would otherwise have been. An independent second reviewer similarly reviewed 50% of the titles and available abstracts on Rayyan to address bias concerns and disagreements were resolved through discussion.

3.3 Study selection

The review includes only peer-reviewed studies written in English and conducted in the United States, Canada or Australia. Studies were excluded if they were conducted or published before 2000. Studies that only observe the number of cases settled in mediation without looking at outcomes and experiences were also excluded. Empirical studies employing quantitative, experimental, quasi-experimental or mixed methods were included.

Studies were excluded if they focused on mediation in commercial disputes. Studies investigating other forms of ADR were excluded. Purely theoretical articles, conference papers, dissertations, book reviews, background articles, meta-analyses and systematic reviews were excluded.

3.4 Study design categorisation

The studies were categorised as either descriptive studies (involving the description of collected data) or analytical studies. The analytical studies were further categorised as either randomised controlled trials, prospective studies, or experimental or quasi-experimental studies, depending on the study design. The data analysis methods were also noted and categorised as quantitative or mixed methods.

3.5 Risk of bias (quality) and certainty of evidence assessment

The review did not focus on the validity of the results of the included studies. Further, considering the small number of studies included in the synthesis, the heterogeneity of events studied and the heterogeneity of outcomes, GRADE was deemed unsuitable for assessing the quality of evidence. Therefore, the quality of the studies was examined only with respect to the statistical analysis and methodology. The included studies were reviewed for the suitability of the sample size, the method of analysis used and how the results were reported. In studies with controls or comparison of groups, the studies were reviewed to check whether the controls were selected from the same population from which the cases had arisen and whether the cases and controls were comparable. Thus, studies were labelled low, moderate or high risk, using the following template as a guide.

- Sample: studies with 50 or fewer participants or cases were labelled high risk; studies with 51–100 participants or cases were labelled moderate risk; studies with more than 100 participants were labelled low risk. Studies in major cities or diverse urban areas were labelled moderate risk, while studies in homogenous or small rural communities were labelled high risk.
- Methods: randomised controlled trials were labelled low risk; quasi-experimental/prospective studies were labelled moderate risk; the observational studies were labelled moderate/high risk, depending on their sample size and statistical analysis.
- Studies that included an element of self-reporting carry a risk of bias and were labelled high risk unless the study findings were triangulated with mixed methods, in which case they were labelled low risk.

4 Results

4.1 Search results

A total of 561 articles were considered possibly relevant after the title and abstract screening on Rayyan. The screening conducted via Rayyan included real-time annotations and the recording of reasons for inclusion and exclusion. A further manual abstract screening of these 561 articles excluded 531 articles, leaving 30 articles for full text assessment for eligibility. Sixteen studies were then excluded with reasons, leaving 14 studies for synthesis. A PRISMA diagram was used to track the flow of literature and data through each stage of the review (see Appendix B).

4.2 Characteristics of included studies

See Appendix C

4.3 Risk of bias (quality) and certainty of evidence assessment within studies

MODERATE RISK

- I McIntosh, J. E., Wells, Y. D., Smyth, B. M., and Long, C. M. (2008). Child-focused and child-inclusive divorce mediation: Comparative outcomes from a prospective study of postseparation adjustment. *Family Court Review* 46, pp. 105–124.

This prospective study involved 181 families from three major cities: Adelaide, Melbourne and Canberra. Although most of the parents in the study were Australian-born, Melbourne, a more ethnically diverse city, drew a more diverse group of participants.

The two treatment groups in the study were comparable with no significant demographic differences. The data was collected through surveys; the added use of well-designed, in-depth interviews strengthens the data. However, one intervention was more closely monitored by the research team and the findings of this study are limited to mediation models developed for the study and are not generalisable to other models of mediation.

HIGH RISK

- II Putz, J. W., Ballard, R. H., Arany, J. G., Applegate, A. G., and Holtzworth-Munroe, A. (2012). Comparing the mediation agreements of families with and without a history of intimate partner violence. *Family Court Review*, 50, pp. 413–428.

This descriptive study involved the analysis of 205 mediation agreements and therefore has a good sample size. In terms of methodology, the only measure of violence available to the researchers was whether the mediator had detected a history of intimate partner violence. They did not know who the perpetrator of violence was and so could provide gender comparisons and they did not know the nature or level of the intimate partner violence. As there was no comparison or control group, the findings cannot tell us whether families with a history of violence would do better in adversarial litigation or not. Finally, the extent to which this data from Indiana is generalisable to other populations is unclear.

MODERATE RISK

- III Ballard, Robin H., Holtzworth-Munroe, A., Applegate, A. G., and Beck, C. J. A. (2011). Detecting intimate partner violence in family and divorce mediation: A randomized trial of intimate partner violence screening. *Psychology, Public Policy, and Law* 17(2), May, pp. 241–263.

This study is a randomised controlled trial, which is the gold standard in research. However, with only 61 cases, the sample size is small. Further, all cases were recruited from two mediation clinics in southern Indiana and it is not clear whether these results would generalise to other populations or other mediation programmes. However, the violence prevalence rates in the study are similar to those found in other similar studies, which enhances the credibility of the findings. The intimate partner violence screening measure was not a comprehensive assessment of all behaviours that could encompass intimate partner violence, only covered 12 months, instead of the duration of the relationship, and did not identify the primary perpetrator.

MODERATE RISK

IV Rossi, F. S., Holtzworth-Munroe, A., and Applegate, A. G. (2015). Does level of intimate partner violence and abuse predict the content of family mediation agreements. *Family Court Review* 53, pp. 134–161.

This descriptive study involved the analysis of 210 participants (105 couples) and therefore has a good sample size. Although the researchers' findings demonstrated meaningful effect sizes, only a few of the findings were of statistical significance, perhaps because of the sample size. The data was collected from one mediation clinic in one location, where the mediators receive significant training in issues regarding violence and abuse; thus, the results may not generalise to other populations and mediation programmes.

MODERATE RISK

V Ballard, R. H., Holtzworth-Munroe, A., Applegate, A. G., and D'Onofrio, B. (2011). Factors affecting the outcome of divorce and paternity mediations. *Family Court Review* 49, pp. 16–33.

This descriptive study involved the analysis of 241 cases and therefore has a good sample size. However, some of the case files used in the research were missing data, which may have affected the results of the study. Moreover, reliable information on the severity, type and duration of violence was not available, so the variable was dichotomised into the presence or absence of intimate partner violence. In addition, the clinic from which these data were collected operates with student mediators, uses a facilitative approach to mediation and predominantly works with low-income individuals in southern Indiana. It is not clear whether the results of this study can be generalised to court-based programmes or private mediation programmes with other mediation styles and in other geographical areas, outside Indiana or the United States, with more diverse populations. Finally, agreement rates are a relatively crude and simplistic measure of success in mediation.

HIGH RISK

VI Charkoudian, L., and Kabcenell Wayne, E. (2010). Fairness, understanding, and satisfaction: Impact of mediator and participant race and gender on participants' perception of mediation. *Conflict Resolution Quarterly* 28, pp. 23–52.

The sample size in this non-experimental observational study is relatively small (n=70), which limits options for analysis. It is possible that the regression analysis performed on this small sample size failed to identify significant relationships that exist in the underlying population. The small dataset also limits the possibility of dividing the dataset into subsets and testing for differences.

HIGH RISK

VII Raines, S. S., and Indovina, V. (2020). How does domestic violence influence the likelihood of settlement in mediation? New data answers old questions. *Conflict Resolution Quarterly* 37, pp. 195–205.

This study involved a survey of a small number of participants (n=54) from 10 urban, suburban and rural counties in Georgia. It is not clear whether the results of this study can be generalised to other populations outside Georgia or the United States. The data shared is largely descriptive and it is possible that the regression analysis performed on this small sample size failed to find significant relationships that exist in the underlying population.

LOW
RISK

VIII Holtzworth-Munroe, A., Beck, C. J., Applegate, A. G., Adams, J. M., Rossi, F. S., Jiang, L. J., Tomlinson, C. S., and Hale, D. F. (2021). Intimate partner violence (IPV) and family dispute resolution: A randomized controlled trial comparing shuttle mediation, videoconferencing mediation, and litigation. *Psychology, Public Policy, and Law* 27(1), pp. 45–64.

This study is a randomised controlled trial, which is the gold standard in research. The sample size of 67 is modest, which is a limitation of the study, but many of the findings were of statistical significance. The study lacks follow-up data. The researchers were unable to conduct a more extensive assessment of immediate outcomes using standardised measures because they were expected to minimise the length of research assessments. However, the findings were triangulated with objective documentary records.

MODERATE
RISK

IX Howieson, J. (2002). Perceptions of procedural justice and legitimacy in local court mediation. *eLaw Journal: Murdoch University Electronic Journal of Law* 9(2), pp. 1–44.

The sample size in this study is moderate (n=86). Further, it is not clear whether the findings of this study, conducted in the Local Court of Western Australia, are generalisable to other populations. The use of data from both questionnaires and a survey in the statistical analysis adds to the credibility of the findings.

HIGH
RISK

X Pettersen, M. M., Ballard, R. H., Putz, J. W., and Holtzworth-Munroe, A. (2010). Representation disparities and impartiality: An empirical analysis of party perception of fear, preparation, and satisfaction in divorce mediation when only one party has counsel. *Family Court Review* 48, pp. 663–671.

A total of 118 cases were analysed, which is a good sample size. However, the sample predominantly consisted of low-income and white couples and therefore it is not clear whether the results of this study can be generalised to court-based programmes or private mediation programmes with other mediation styles and in other geographical areas, outside Indiana or the United States, with more diverse populations.

In addition, the researchers had only a small number of cases in the mixed representation group and the fully represented group, thus limiting their analysis and the generalisability of their findings. Finally, the data analysed in this study was not originally collected to address the research questions in the study and therefore did not fully address the questions.

HIGH RISK

XI Raines, S., Choi, Y., Johnson, J., and Coker, K. (2016). Safety, satisfaction, and settlement in domestic relations mediations: New findings. *Family Court Review* 54, pp. 603–619.

The sample size in this study is moderate (n=54). A larger and nationwide sample (the participants were from Georgia) would allow for greater generalisation. The statistical method of analysis employed is basic and data is presented descriptively.

HIGH RISK

XII Rivera, E. A., Sullivan, C. M., and Zeoli, A. M. (2012). Secondary victimization of abused mothers by family court mediators. *Feminist Criminology* 7(3), pp. 234–252.

Although the qualitative data was triangulated with quantitative data, the small sample size of 19 highly educated white women in a Midwestern county in the United States means that the results are not generalisable. Further, the sample selection leaves room for significant bias; only women in cases in which there was an objection to the mediator's decisions were included, meaning that the sample is skewed towards women with a negative experience and cannot accurately indicate the prevalence of such experiences. The method of recruitment also led to the elimination of women whose telephone records were not publicly available and some of the women in the sample reported experiences with more than one mediator, which makes it difficult to compare them with the other participants.

LOW RISK

XIII Charkoudian, L., Eisenberg, D. T., and Walter, J. L. (2017). What difference does ADR make? Comparison of ADR and trial outcomes in small claims court. *Conflict Resolution Quarterly* 35, pp. 7–45.

This non-observational experimental study comparing ADR and court outcomes had 402 participants and 166 participants were reached for the follow-up. The sample size was good and the researchers report outcomes that are statistically significant. In instances where ADR was not found to be statistically significant, it appeared to be close to a reportable level of significance; it is possible that an even larger sample size might have yielded more positive results.

MODERATE RISK

XIV Charkoudian, L., Eisenberg, D. T., and Walter, J. L. (2019). What works in alternative dispute resolution? The impact of third-party neutral strategies in small claims cases. *Conflict Resolution Quarterly* 37, pp. 101–121.

This study makes use of a comprehensive, quasi-experimental design and has a moderate sample size of 116 cases. The data collection was thorough and a larger sample size may have revealed other statistically significant relationships. The selection of participants was well done and the researchers controlled for selection bias; therefore, the groups are comparable. Since this study investigates small claims day-of-trial ADR and was exploratory in nature, the extent to which the findings can be generalised to other forms mediation is unknown.

4.4 Results

What is the impact of mediation on outcomes for parties, compared with outcomes secured through court-based processes?

Key Findings: In small claims, mediation has both a short-term and a long-term positive impact on outcomes for parties compared to court-based processes. Moreover, ADR participants are more likely than trial participants to report that outcomes have resolved the issues completely.

In cases with reported intimate partner violence, outcomes for parties in mediation were perceived to be similar to outcomes for parties in court. Further, court-based processes were more likely to reach a final resolution than mediation, but took three times longer than mediation.

Only two studies investigated the impact of mediation on outcomes for parties and compared those outcomes with those secured through court-based processes (Charkoudian et al. 2017; Holtzworth-Munroe et al. 2021). The Charkoudian study focused on small civil claims while the Holtzworth-Munroe study focused on cases with reported intimate partner violence. The findings are therefore not easily comparable as they involve different areas of law and different issues. Both studies were conducted in the United States, but in different populations (Maryland and Washington, DC). One study was a randomised controlled trial (Holtzworth-Munroe et al. 2021) and the other a non-experimental observational study with a good sample size (Charkoudian et al. 2017).

It is important to note that the treatment group in the Charkoudian study attended a day-of-trial ADR programme and did not know that they would be attending this until they arrived at the court. The findings may therefore not be generalisable to other mediation programmes. The comparison group proceeded to trial. Further, this study was included because the ADR methods used for the treatment group included mediation for 88% of the participants, but it is important to note that the analysis includes the 12% of participants who attended a settlement conference instead. In practice, however, the techniques used by the ADR practitioners are likely to be the same. A total of 402 participants were interviewed prior to and immediately after the ADR session or trial. Of these, 41% (166) were successfully reached for a follow-up interview approximately three months after the intervention. The analysis includes data from court records that show whether parties returned to court for any type of enforcement action within 12 months. The findings suggest that mediation had significant positive, immediate impacts on the parties who attended the day-of-trial ADR programme, as compared to those who went on to trial. The parties who went through ADR were more likely to report that the issues between them had been resolved and had been completely resolved, rather than partially resolved, than those who went to trial. Further, parties who reached agreement in ADR were more likely to be satisfied with the judicial system than all others. Even those who went to ADR and did not reach a settlement were more satisfied with the judicial system than those who negotiated an agreement on their own without any ADR.

This finding suggests that parties value the process of reaching an agreement through the ADR process more than simply reaching a settlement. In the long term, parties who went through ADR reported long-term relational benefits, were more satisfied with the judiciary in the long term (at the follow-up interview) and reported that the outcome was still working three to six months after the intervention. Further, reaching an agreement in ADR decreased the predicted probability of returning to court within 12 months of the intervention by 21%. The findings suggest that study parties who settle in ADR are less likely to return to court in the future, as compared to cases with a trial verdict and cases settled with no ADR.

The Holtzworth-Munroe study was a randomised controlled trial comparing traditional litigation to two mediation approaches in cases involving intimate partner violence. It was conducted in a court-annexed mediation division and is therefore a useful point of comparison for similar programmes. The cases in the study were randomly assigned to 'return-to-court study condition', shuttle mediation or videoconferencing mediation. The parties were placed in two separate rooms. In shuttle mediation, the mediator met with each parent separately, in person, shuttling back and forth between their rooms; while in videoconferencing mediation, the mediator was in a third room and all parties could see and hear each other via video and audio technology. All fourteen mediators were trained in both types of mediation to avoid confounding of individual mediators with type of mediation. Each parent completed a questionnaire at the end of mediation (whether or not there had been a settlement) or when the court case closed (whether the case was settled at a hearing or through negotiation).

In terms of findings, there were no statistically significant differences between perceptions of case outcomes between mediation and return-to-court. Further, cases in the return-to-court condition were the most likely to reach a final resolution, but reaching that resolution took almost three times longer than in the mediation conditions. The study findings regarding the content of the final document resolving specific issues generally did not favour mediation over traditional litigation, with some exceptions associated with communication. For instance, cases in mediation were more likely than return-to-court cases to agree to exchange children at the parents' houses, which is worrisome in cases where there is a history of intimate partner violence.

What is the impact of mediation on the experience of parties when compared with court-based processes?

Key Findings: While more high-quality empirical evidence comparing mediated and court-based processes is required, the evidence that exists consistently shows that parties' experience in mediation is comparable and, in some instances, better than their experience in court-based processes.

Four studies among the included articles have investigated the impact of mediation on the experience of parties (Howieson 2002; Pettersen et al. 2010; Raines et al. 2016; Holtzworth-Munroe et al. 2021). The Howieson study was conducted in Australia, while the other three were conducted in the United States (Washington, DC, Indiana and Georgia). Only the randomised controlled trial by Holtzworth-Munroe specifically compares the impact of mediation on experience to that of court-based processes. The rest investigate the impact of mediation on the experiences of parties. Three studies focus on family mediation and the Australian study focuses on a court-annexed mediation programme in the Local Court of Western Australia.

Howieson's study investigates views on procedural and distributive justice and not perceptions of overall fairness. She finds that, overall, parties and their lawyers rated the procedural justice of the mediation highly and were generally satisfied with their experience of the pre-trial conference. The Pettersen study investigates parties' perception of the divorce mediation process when only one party is represented by an attorney and their findings suggest that mixed-representation cases, especially where a woman is represented and the man is not, may be the least appropriate for mediation. However, this finding does not necessarily prove causation because the observation may have been the result of other factors. More research is required to replicate these results. The Raines study, discussed in greater detail below, found that intimate partner violence had no significant impacts on parties' satisfaction with the mediation process and most parties felt safe in the mediation process. The Holtzworth-Munroe study, discussed in detail above, suggests that parents felt safer in mediation than in traditional litigation. None of its findings favoured the court process. Parents who went through mediation also reported feeling more satisfied with the process than parents in traditional litigation.

Are particular groups—for example, women, parties from minority ethnic groups and those on low incomes—disadvantaged by moving from court-based to mediated processes?

Key Findings: There is insufficient evidence to compare mediated and court-based processes. However, there is some evidence that women can face some disadvantages in mediation. There is limited evidence of the negative effects of parties being racially outnumbered by the mediator and the other party. None of the studies look at the experience of individuals with low incomes.

The empirical research on this question is scant. The studies on this topic are either old (conducted before 2000), anecdotal, theoretical in nature or employ qualitative methods. Among the included studies, two articles provide some insight (Charkoudian and Wayne 2010; Rivera et al. 2012). The Charkoudian and Wayne study is a non-experimental observational study of 70 cases in the United States (Maryland, Pennsylvania, Delaware, New York, Washington, DC, and Northern Virginia) examining the impact of the race and gender of mediators and participants on participants' perception of the mediation process. The Rivera study is a very small study with 19 participants conducted in a Midwestern county in the United States and considers the experience of abused mothers in court-annexed family mediation. None of the studies interrogate the experiences of individuals on low incomes. It is important to note that neither study compares experiences in mediation with experiences in court-based processes and so these studies cannot address that aspect of the question.

In the Rivera study, the researchers collected retrospective qualitative data from the 19 women through semi-structured interviews; the women had all gone through divorce cases within three years of the interview, had at least one minor child and had experienced physical, psychological or sexual violence at the hands of their ex-husbands. All the women spoke English and the majority (89.5%) were highly educated white women. The sample size is therefore small and not diverse. The author piloted a 'Court Mediator Experiences Survey' to triangulate and validate the qualitative data. Eighteen women completed this survey after the interview. Despite the use of mixed methods, the study is weak in terms of quantitative analysis. It does not compare the experiences of abused mothers in mediation with their experiences in court-based processes. It only looks at the experience of abused mothers in mediation and concludes that there is initial evidence that both secondary and revictimisation of mothers occurs during mediation. The women reported feeling unheard, dismissed and disempowered, and even when they were believed, they did not feel that the result was a positive one. The study also provides some initial evidence that a negative experience in mediation affects the women's perception of the family justice system, as well as affecting their willingness to return to court when concerns regarding their children's welfare arise in the long term. Finally, the study provides some evidence that fathers' belligerent or charming behaviour in mediation had a negative impact on women's experiences and led women to feel revictimised, afraid, dismissed or unheard.

The Charkoudian and Wayne study explores the effects of matching mediators and participants by gender and by racial or ethnic identity group. The researchers examine both the effect on a party of being present in a mediation session where there is no mediator of the same gender or racial/ethnicity and the effect of being present when there is a mediator who matches the gender or race/ethnicity of the other party. The data collection was conducted by way of interviews immediately before and immediately after their mediation sessions, using a survey questionnaire. The parties were asked questions regarding their experience of the conflict, their beliefs about conflict, their experiences of the mediation and demographics. The mediators also completed a brief questionnaire before the mediation to determine their demographic information and their philosophy and approach to mediation.

The researchers attended all mediation sessions. The cases mainly involved interpersonal conflict, family disputes and small business disputes.

The findings link the absence of a participant-mediator gender match with perceived bias and lower satisfaction; this finding is significant because it contradicts findings from previous studies. There was inconsistent evidence for the hypothesis that differences in communication and conflict styles make it difficult for a party to have a voice in the mediation and feel understood by a mediator of the opposite gender. The study concludes that participants' mediation experience is negatively affected in some respects when they engage in mediation with mediators of the opposite gender.

With respect to race and ethnicity, the Charkoudian and Wayne study concludes that participants have a negative perception of the mediation when they are racially outnumbered in the mediation.¹ Thus, when a participant was dealing with a mediator and another participant of the opposite race, they were less likely to perceive the mediator as listening without judgement and less likely to feel a sense of control over the conflict situation. However, apart from parties being outnumbered in terms of gender or race, in the other six of the seven areas considered, failing to create a mediator–participant match did not have a significant effect on the unmatched participant’s mediation experience.

Are particular types of disputes more or less suited to resolution through mediation? For instance, family, civil money claims, etc., and/or disputes between parties where disparities of resource and power are minimised.

Key Findings: All the studies in the review focus on the suitability of divorce or family mediation for families with a history of intimate partner violence. There is some evidence that such families can benefit from mediation, depending on the nature of the violence, but more evidence is required to arrive at a conclusive answer.

Strong empirical evidence relating to this question is scant and all the cases included in the review focus on the suitability of mediation in family disputes where intimate partner violence has been reported. Among the included cases, six provide some insight into this question: Ballard et al. 2011; Ballard et al. 2011(b); Putz et al. 2012; Rossi et al. 2015; Raines et al. 2016; and Raines and Indovina 2020. All six studies were conducted in the United States. Four were conducted in Indiana, in the same mediation clinic (and therefore on the same population); the clinic operates with student mediators, who receive intense training on intimate partner violence and abuse, takes a facilitative approach to mediation and works with predominantly white low-income individuals in southern Indiana. Two of the six studies were conducted in Georgia and although the participants were drawn from all of the metro Atlanta counties, the suburbs of Atlanta and some rural counties in north Georgia, the studies have a small sample size of 54 and both studies investigate the same population. Generalising from these studies is therefore difficult and dangerous.

The Georgia studies (Raines et al. 2016; Raines and Indovina 2020) found that, generally, there were lower settlement rates in mediation cases where one or more indicators of domestic violence were present; however, not all domestic violence behaviours and risk factors had the same impact on settlement rates. For instance, many coercive-controlling behaviours resulted in higher impasse rates than incidents of physical violence. Finally, the majority of the parties reported feeling safe in mediation, but those who did not had a relatively low chance of settlement.

1 Another study, not investigating the impact of race directly, also ‘found that a racial match between a neutral and the responding participant positively affected participants’ sense of self-efficacy, belief that the court cares about resolving disputes, and hearing and understanding of each other, even after holding constant for other factors and strategies used by the neutral’ (Charkoudian, Eisenberg and Walter 2019: p. 101).

The Indiana studies (Ballard et al. 2011; Ballard et al. 2011(b); Putz et al. 2012; Rossi et al. 2015) found that in half the cases of reported intimate partner violence, mediators had not accurately screened the cases for intimate partner violence in order to label or report them as such. They also found that families with and without a history of intimate partner violence did not make significantly different legal, physical custody or parenting-time arrangements, supervised visitation arrangements or other arrangements that could lead to future conflict. Agreements between couples with a history of violence were more likely to include safety restrictions. Thus, although the findings indicate that mediation may help families with a history of intimate partner violence reach agreement, the studies also conclude that more research is needed to determine whether divorce mediation is an effective and safe process for parties with such a history.

What models of mediation are effective in delivering a) parity of outcome with court-based processes and b) parity of experience or improved experience when compared with court-based processes?

Key Findings: Only one study in the review specifically compares different models of mediation (broadly construed) to court-based processes. It finds that some forms of mediation in family mediation result in an improved experience when compared with court-based processes where there is a history of intimate partner violence. There were no statistically significant differences between perceptions of case outcomes.

The term ‘model’ was construed broadly in this review and simply includes different strategies, practices and approaches in mediation.

Among the included studies, four discuss different models of mediation and their outcomes (McIntosh et al. 2008; Charkoudian et al. 2019; Holtzworth-Munroe et al. 2021). However, only one study (Holtzworth-Munroe et al. 2021, discussed above) specifically compares those models of mediation with outcomes in a court-based process.

In the Holtzworth-Munroe et al. study, the researchers found that two models of family mediation that prioritised the safety of parties who reported intimate partner violence—shuttle mediation and videoconferencing mediation—resulted in better experiences than court-based processes. The parents reporting high levels of intimate partner violence expressed a preference for mediation over return-to-court based on feelings of safety and satisfaction with the process overall, as well as specific aspects of the process. With respect to outcomes, lower levels of agreement were reached through videoconferencing mediation than shuttle mediation, but there are no statistically significant differences between perceptions of case outcomes in mediation and return-to-court.

The McIntosh study is a prospective study comparing outcomes over one year for two groups of separated parents who attended two different forms of brief therapeutic mediation for entrenched parenting disputes: the child-focused (CF) intervention actively supported parents in considering the needs of their children, but without any direct involvement of the children, while the child-inclusive (CI) intervention involved the children with the help of a specialist. This study compares two therapeutic models of mediation but does not compare them to court-based processes and therefore cannot answer that aspect of the question. The researchers found that parties in both models reported an enduring reduction in levels of conflict and improved management of disputes in the year after mediation. The CI intervention had several impacts related to relationship improvements and psychological well-being that were not witnessed in the CF group. These effects were strongest for fathers and children. Agreements reached by the CI group were significantly more durable; parents in the CI group were 50% less likely to instigate new litigation over parenting matters in the year after mediation than parents in the CF group.

The Charkoudian et al. (2019) study is a quasi-experimental study combining real-time behavioural observation of authentic small claims court ADR sessions with pre- and post-intervention questionnaires to measure the immediate and long-term impact of various strategies by third part neutrals on party attitudes and case outcome. The sample of 269 individuals (116 cases) was drawn from four geographically diverse jurisdictions: one urban, one urban-suburban and two suburban-rural. The sample was ethnically and gender diverse. The data collection methods were comprehensive: questionnaires administered to participants immediately before and after the ADR session and again four months later; pre-session surveys of the neutrals; live observation and coding of the behaviours of both participants and neutrals during the ADR session; and case file reviews 12 months after the ADR sessions. The ADR methods examined in this study are mediation and settlement conferences; 88% of the neutrals self-identified as mediators. In practice, mediators and settlement conference attorneys use similar methods and may not use the methods they self-identify as using. In this study, self-reported practice frameworks included evaluative, facilitative, transformative, analytical, inclusive, no specific style, and other style, not specified. The study does not compare mediation models and court-based processes, but it does find that of all behaviours studied, only the neutral strategy of eliciting participant solutions was positively associated with parties reaching a settlement during the ADR session and parties being less likely to return to court within 12 months. The findings also suggest that in the context of small claims ADR, this model may promote more durable outcomes than the strategy of neutrally offering opinions and solutions. Finally, while the practice of reflecting or empathetic listening was associated with a positive experience and positive feelings towards the court and the other party, a greater amount of time spent in caucus was associated with negative short- and long-term outcomes and negative feelings towards the process.

5 Discussion

5.1 Discussion of the findings

Fourteen studies were eventually included in the review. Of these studies, 12 relate to the United States and two to Australia. Two of the included studies were published prior to 2010, eight were published between 2010 and 2015, and four were published after 2015. Many studies are descriptive and only a small number employ experimental or quasi-experimental designs. Only two were randomised controlled trials. Four were conducted on the same population in Indiana. Six studies had fewer than 100 participants. These factors make the generalisation of findings difficult; therefore, a limited and cautious interpretation of the findings is appropriate.

The evidence available suggests that, generally, mediation has a positive impact on the experience of parties. Parties report satisfaction with procedural fairness in mediation in both small claims mediation and family mediation. Most of the studies did not specifically compare these experiences with experiences in court-based processes, but one randomised controlled trial suggests that parents who went through mediation reported feeling more satisfied with the process than parents in traditional litigation. It appears that despite concerns in the literature that informal processes may introduce procedural unfairness and bias, parties report satisfaction in this regard.

The evidence relating to outcomes is more mixed than the evidence associated with experiences. In small claims, the evidence suggests that mediation has both a short- and long-term positive impact on outcomes for parties compared to court-based processes and that parties who went through mediation were more likely than parties who went to trial to report that the outcomes of the process resolved the issues and, further, resolved the issues completely. Parties involved in mediation were also less likely to return to court. In family mediation, however, the outcomes for mediation and court-based processes are comparable and, in some instances, court-based processes were more likely to reach a final resolution, but reaching a resolution through the court took three times longer than in mediation and it may be that some families value a faster resolution and would therefore prefer mediation or vice versa.

With respect to the question of whether particular groups are disadvantaged by moving from court-based to mediated processes, the evidence is not robust enough to offer a conclusive answer. The available evidence is insufficient for a comparison between mediated and court-based processes, but the studies reviewed suggest that women can face some disadvantages in the experience of mediation when there is no gender match; this finding contradicts previous studies and needs further research. There is also evidence that women can face disadvantages in family mediation when there is a history of intimate partner violence. There is some limited evidence regarding the negative effects of parties being racially outnumbered by the mediator and the other party, but not enough empirical evidence to make any other generalisable conclusions on race and mediation. None of the studies examine the experience of individuals with low incomes and therefore the available evidence cannot answer that part of the question.

The evidence relating to the suitability of mediation for different types of cases is weak. All the studies in the review focused on the suitability of divorce or family mediation for families with a history of intimate partner violence. In this respect, the studies suggest that, in general, such families can benefit from mediation, depending on the nature of the violence and other risk factors, but more evidence is required before a conclusive answer can be reached. The evidence of parties' positive reports on the procedural fairness and outcomes in mediation in civil claims suggests that these small claims cases may be suitable for mediation as well. The review did not find adequate evidence of the suitability of mediation in disputes between parties with disparities of resources and power.

With respect to the question of models of mediation, only one study in the review specifically compared different models of mediation to court-based processes. The evidence from that study suggests that specific forms of family mediation that prioritise the safety of participants, such as shuttle mediation and videoconferencing mediation, result in an improved experience when compared with court-based processes, where there is a history of intimate partner violence. However, there were no statistically significant differences between perceptions of case outcomes in mediation and court-based processes. The other studies compared specific models of mediation to each other and not court-based processes; unsurprisingly, the findings suggest that models of family mediation that promote the inclusion of children in the process and models of mediation in civil disputes in which the mediator elicits proposals and solutions from the parties and engages in empathetic listening were associated with better experiences and outcomes.

5.2 Strengths and limitations of the review methods

The comprehensive data search, with multiple key search words, together with the use of Endnote for the collation of all identified records and deduplication, as well as Rayyan, a helpful tool for intelligent systematic review, is a key strength of this review. The search covered all major legal databases with records from the countries of interest—the United States, Australia and Canada—evidenced by the fact that the review began with a significant number of records (3,897 after deduplication). The input of an independent second reviewer on 50% of the titles and abstracts on Rayyan reduced the risk of bias.

However, due to the rapid nature of this review (seven weeks), this study has several limitations.

- Useful studies conducted outside North America and Australia were not considered.
- Grey literature was not considered and it is possible that such literature would provide useful and credible evidence.
- The majority of the records were not open-source records and therefore the title and abstract review on Rayyan was much more manual and time-consuming than it would otherwise have been. It is possible that this limitation introduced a small amount of bias or error into the screening process.
- The independent second reviewer could only blind-review 50% of the abstracts and titles on Rayyan. However, this review did not pick up any concerning omissions or conflicts.
- The quantitative studies could not be triangulated with qualitative research and therefore the analysis lack the rich and nuanced detail that qualitative research provides.
- As the review was conducted by one reviewer (save for the blind review by a second reviewer on Rayyan), the extent of sampling bias and bias in the choice of studies is unknown.

5.3 Strengths and limitations of available evidence

The available evidence largely confirms findings and commentary in previous studies and qualitative studies that did not meet the inclusion criteria. The evidence also provides some nuances and new insights; for instance, on the suitability of family mediation in cases with a history of violence.

The available empirical evidence pertaining to the research questions is not as robust and generalisable as it ought to be. Only two randomised controlled trials, the gold standard in research, met the inclusion criteria. The majority of the studies had small sample sizes. Four studies investigated the same population in Indiana, with very niche characteristics, and it is therefore difficult to generalise the findings. Ten studies in the review focused specifically on family mediation, with a majority researching mediation in families with a history of family violence. This means that the evidence associated with other areas on law, outside family mediation, is limited.

Finally, much of the evidence available focuses on the impact of mediation on outcomes and experiences without comparing those findings to court-based processes. This represents a significant gap in the evidence base and limits the extent to which the evidence has been able to answer the research questions.

6 Conclusion and recommendations for practice, policy and research

In summary, it seems that the answer to the research questions is simply that we do not know enough to make conclusive, generalisable conclusions. The available evidence provides some limited insights into the potential benefits and risks of the move to mainstream, and perhaps mandatory, mediation in England and Wales. Much more robust evidence would be required to unequivocally state that the move would enhance access to justice and fairness in the judicial system.

Recommendations for research

There is an obvious lack of robust empirical research comparing court-based and mediated processes across the board. More experimental and quasi-experimental studies with larger sample sizes would provide credible and reassuring evidence of the impact of mediation on experiences and outcomes, as compared to court-based processes. There is a particular need for such research on the experience of women, minority racial and ethnic groups, and individuals with low incomes. Further, the majority of the empirical research on mediation has been conducted in the field of family law. In view of the government's plans to mainstream mediation across the whole civil jurisdiction, much more research is required in other areas of law. It may be useful to begin by piloting mediation programmes for particular types of disputes for 12–24 months and conducting experimental or quasi-experimental studies to monitor the impact of the mediation programmes on experiences and outcomes and for specific groups. It may not be possible to identify certain benefits or risks without well-funded pilot projects and follow-up research.

Recommendations for policy

The mainstreaming of mediation ought to be accompanied by clear monitoring mechanisms, particularly in the initial stages, perhaps by way of pre- and post-mediation questionnaires measuring parties' satisfaction with the procedures and outcomes. Such monitoring would serve as an early warning system in case of serious problems with the mediation programme and allow for remedial action to be taken before distrust accumulated in the justice system.

In light of the evidence that mediators' gender and ethnicity or race can impact the parties' experiences, there is a need for specific policy to encourage and ensure diversity in the pool of mediators available nationally before the widespread roll-out of mediation in the courts. A delay in effecting such a policy may create problems with bias and negative experiences and may affect parties' long-term view of and relationship with the justice system.

The evidence regarding the suitability of mediation for families with a history of intimate partner violence is still unclear. It may be necessary to allow parties the flexibility to determine the forum for dispute resolution while further research is being conducted in this area. Parties may wish to attempt mediation even in cases involving intimate partner violence, but clear policy guidance would be required to ensure the safety of all parties.

Recommendations for practice

In view of the evidence that mediator gender and ethnicity or race can impact the parties' experiences, the development of practice rules should incorporate rules that allow for mediator and party matching where possible and suitable. It may also be necessary to ensure that mediators are well trained and have sufficient practice guidance to screen cases for suitability, particularly where disputes involve specific parties, including women, minority ethnic groups and individuals with low incomes.

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Appendix A

Search example: HeinOnline database

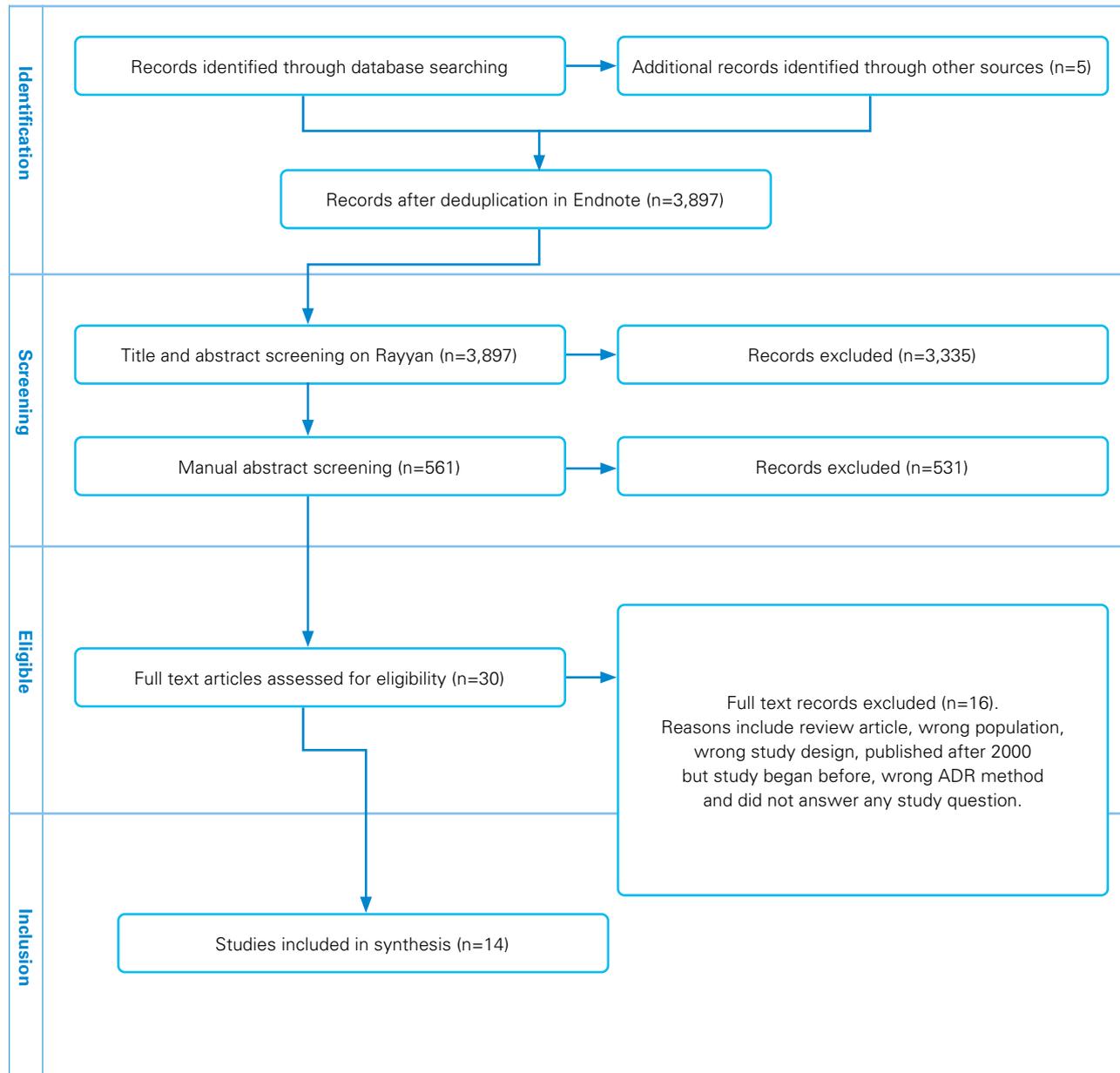
The search terms were typed into the search box and the results filtered as follows:

- Date: 2000–2021
- Section type: Articles
- Location: United States, Canada and Australia

The search terms yielded the following results:

Search terms	Results
'Mediation' AND 'Minority Groups'	620
'Mediation' AND 'perceptions of fairness'	204
'Mediation' AND 'autonomy and control'	43
'Models of mediation'	100
'Mediation' AND 'women's experiences'	155
'Mediation' AND 'low incomes'	96
'Mediation' AND 'quantitative method'	4
'Mediation' AND 'quantitative methods' (additional filter by topic: dispute resolution)	6
'Mediation' AND 'mixed methods'	72
'Mediation' AND 'experimental methods'	15
'Mandatory mediation'	606
'Mediation' AND 'fair outcomes'	105
'Court-annexed mediation'	225
'Compulsory mediation'	107
'Women' AND 'mediation' (additional filter by topic: dispute resolution)	997
'Mediation' AND 'power disparity'/'disparity of power'	72

Appendix B

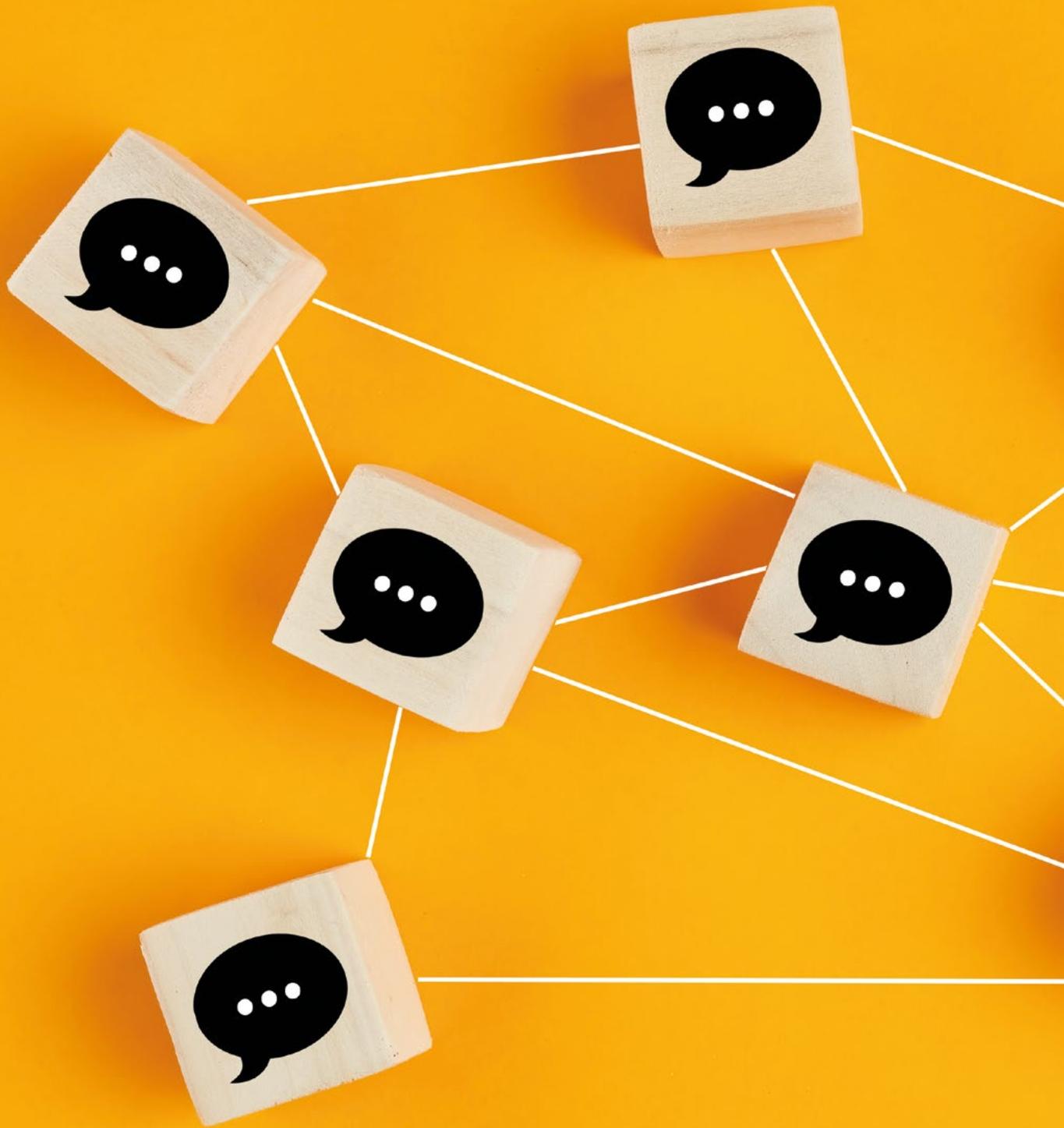


Appendix C

Study Characteristics

	Study	Authors & year	Location	Method (s)	No of participants/ mediation cases	No of comparison or control cases (if applicable)
1	Child Focused Child-Focused and Child-Inclusive Divorce Mediation: Comparative Outcomes from a Prospective Study of Postseparation Adjustment	Jennifer E. McIntosh, Yvonne D. Wells, Bruce M. Smyth, and Caroline M. Long; 2008	Australia (Adelaide, Melbourne and Canberra)	Prospective study. Mixed methods.	181 families	181 (comparison not control)
2	Comparing the Mediation Agreements of Families With and Without a History of Intimate Partner Violence	John W. Putz, Robin H. Ballard, Julia Gruber Arany, Amy G. Applegate, and Amy Holtzworth-Munroe; 2012.	USA (Indiana)	Descriptive study. Quantitative analysis.	205 families/ mediation agreements	
3	Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening	Robin H. Ballard, Amy Holtzworth-Munroe, Amy G. Applegate, Connie J. A. Beck; 2011.	USA (Indiana)	Randomised trial.	61 cases/ 122 parents	
4	Does Level of Intimate Partner Violence and Abuse Predict the Content of Family Mediation Agreements	Fernanda S. Rossi, Amy Holtzworth-Munroe, and Amy G. Applegate; 2015.	USA (Indiana)	Descriptive study. Quantitative analysis.	210 participants or 105 dyads	
5	Factors Affecting the Outcome of Divorce and Paternity Mediations	Robin H. Ballard, Amy Holtzworth-Munroe, Amy G. Applegate, and Brian D'Onofrio; 2011.	USA (Indiana)	Descriptive study. Quantitative analysis.	241 cases	
6	Fairness, Understanding, and Satisfaction: Impact of Mediator and Participant Race and Gender on Participants' Perception of Mediation	Lorig Charkoudian & Ellen Kabcenell Wayne; 2010.	USA (Maryland, Pennsylvania, Delaware, New York, Washington, D.C., and Northern Virginia)	Non-experimental observational study. Quantitative analysis.	70 cases	
7	How does domestic violence influence the likelihood of settlement in mediation? New data answers old questions	Susan S. Raines & Vittorio Indovina; 2020.	USA (Georgia)	Survey. Mixed methods.	54 participants	

Study	Authors & year	Location	Method (s)	No of participants/mediation cases	No of comparison or control cases (if applicable)	
8	Intimate Partner Violence (IPV) and Family Dispute Resolution: A Randomized Controlled Trial Comparing Shuttle Mediation, Videoconferencing Mediation, and Litigation	Amy Holtzworth-Munroe, Amy G. Applegate, Fernanda S. Rossi, Connie J. Beck, Jeannie M. Adams, Lily J. Jiang, Claire S. Tomlinson, and Darrell F. Hale; 2021.	USA (Washington D.C.)	Randomised controlled trial.	n=67 traditional litigation	shuttle, n = 64 cases; video conferencing, n = 65 cases
9	Perceptions of Procedural Justice and Legitimacy in Local Court Mediation	Jill Howieson; 2002.	Australia (Local Court of Western Australia)	Survey and questionnaire. Mixed methods.	86 participants	
10	Representation Disparities and Impartiality: An Empirical Analysis of Party Perception of Fear, Preparation, and Satisfaction in Divorce Mediation When Only One Party Has Counsel	Michael M. Pettersen, Robin H. Ballard, John W. Putz, and Amy Holtzworth-Munro; 2010.	USA (Indiana)	Questionnaire. Quantitative analysis.	118 cases/237 individuals	
11	Safety, Satisfaction, and Settlement in Domestic Relations Mediations: New Findings	Susan Raines, Yeju Choi, Joshua Johnson, and Katrina Coker; 2016.	USA (Georgia)	Survey. Quantitative analysis.	54 participants	
12	Secondary Victimization of Abused Mothers by Family Court Mediators	Rivera, E. A., Sullivan, C. M., & Zeoli, A. M.; 2012.	USA (Midwestern County)	Interviews and survey. Mixed methods.	19 women	
13	What Difference Does ADR Make? Comparison of ADR and Trial Outcomes in Small Claims Court	Lorig Charkoudian, Deborah Thompson Eisenberg, Jamie L. Walter; 2017.	USA (Maryland)	Non-experimental observational study. Survey, questionnaires. Quantitative analysis.	402 participants and 166 reached for follow up.	
14	What works in alternative dispute resolution? The impact of third-party neutral strategies in small claims cases	Lorig Charkoudian, Deborah T. Eisenberg, Jamie L. Walter; 2019.	USA	Quasi-experimental design.	269 individuals in 116 cases	



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