

Mediation and domestic violence

By H  l  ne van den Steen (1)

The use of mediation is an increasingly regular practice. Because of obstruction in courts and the limitation of their action, the question is to refer or not to mediation all the couples in rupture situation....Even more important discussion in case of conjugal violence.

First, I shall present some notions inherent to conjugal violence and the process of mediation. Then I shall approach the various trends in the use of mediation in these circumstances before conclusions.

F  .Alarie and L.Leboeuf (Quebec) propose their definition of conjugal violence : “ any attempt of physical, psychological or sexual abuse from a man towards his wife in order to control her behaviour by fear. These abuses are reinforced by the society traditions, laws and attitudes ...”.

According to Y. Alain (mediator , Quebec) “violence is an exercise of control. It is socially built up and chosen by the individual . It is a gap between the assailant power and the attacked one under the form of gesture or lack of gesture .The aim is to have the other person doing something against her will, to prevent her to freely chose her way or merely to frighten her”.

Ex. : to prevent somebody from getting instruction, from learning the language of the living country, to refuse to give the minimum needed money...

Various studies (2) point out some of the characteristics of violent couples :

- Good integration of the sexual stereotypes
- Rigid perception of women and men play parts
- To consider the partner submission as a due
- No to have any will to negotiate or to find out any compromise
- To deny their own violence
- Probably very clever at manipulating
- They often present 2 types of behaviours (at home and outside)
- They can use types of violence detected only by their wife

As this woman explains :

“ Just by looking at me, he reminded me all the bad knocks I had endured”.

(1) H  l  ne van den Steen

- professor –training for mediators (Brussels – Dour – Seraing)
- mediator – Maison de la Famille – 22 rue de Bosnie – 1060 Bruxelles – tel. 32/2/539.34.43-
fax.32/2/538.81.99

- Centre Europ  en de M  diation – 119 rue H.des Monnaies – 1060 Bruxelles
tel.32/2/537.34.15 – fax 32/2/610.98.68 – mediation-europe@hotmail.com

(2) Hart (1990), Yllo & Bograd (1998), Walker (1987), Davidson (1978)...

Separation is a crucial moment !

Women who separate have already suffered lots of aggressions and several former ruptures before to make up their mind to leave their spouse. The injured woman tries to decrease the control her aggressor has on her.

In the separation context, the children care, the visits...can become important targets as well as, on the other hand, the mediation if not properly managed. The spouse may use these elements in order to maintain his control on his wife. If children, the wife vulnerability is increased as well as his husband ascendancy.

Therefore, separation time is when women will suffer most aggressions...Contrary to popular belief..."**violence does not end with separation**". Very often it increases. The spouse justifies aggressions in order to force his partner to come back...

Violence consequences are important for women.

The consequences of violence are important and are to be precisely estimated by the professional.

- Health problems, psychosomatic troubles due to the violence suffered...
- Behaviours created by feelings of fear, shame, guilt...
- The aggressed woman lives constantly under fear of being sued by her aggressor. She is under alarm, she starts with the slightest noise, lacks attentiveness...
- It is hard for her to make up her mind correctly, she lacks self confidence.
- Some women get to understand their aggressor, ex : to be grateful not to be hurt more severely (syndrome of Stockholm)
- They are physically and psychologically isolated.
- They sometimes present auto-destructive behaviours (suicide, drugs, alcohol...).
- They become persons whose environment, life, needs...are managed by another person.

A psychosocial accompaniment is very useful. This help can possibly be led together with mediation and a good knowledge of rights and duties.

The mediation !

Mediation is a process through which a multi-partial person (the mediator) helps partners to solve their conflicts. It is a voluntary process (asked for or accepted). If family violence, the mediator will have to be attentive to indicators expressed in the mediation process, ex : behaviours, veiled expressions... insecurity...

There are some criteria to start up with mediation :

- To believe that amicable and mutually acceptable solutions can be reached.
- The desire to find out such solutions.
- To cooperate, to respect the partner, to listen : basic values for mediation.
- To believe in mediator impartiality and integrity as well as in the mediation aptitude to settle conflicts.

Three conceptions.

There are various points of view concerning the use of mediation in separation/divorce cases with conjugal violence.

The conjugal violence endangers women but also children (risks of abuse, violence, homicides...raptures...).

Development of the legal perspective.

This trend recommends the use of legal procedure which, by criminalizing the spouse violent action, tends to protect the aggressed women , at least partly. The process of mediation is here considered as incompatible with the reality of a situation of conjugal violence (ex : unbalanced powers within the couple relationship, unequal investments, different stakes...)

Mediators : opposite to the first conception.

This conception questions the legal system (courts and police forces) and believes in the mediation process.

Arguments :

- The legal system provides little help to aggressed women.
- The parties are considered as opponents . The judicial system often generates conflicting relationships and therefore exacerbates tensions between partners.
- This method incites the defendant to deny any guilt and propose to ask for attorneys who become “spokesman” and decide both parts fate.
- The legal system enhances the defendant part to the detriment of the victim.
- The judicial system is not always able to have its decisions respected (ex : not to present a child).

Mediation is considered as an interesting alternative in order to reduce violence after separation and to achieve a satisfying agreement for both parties. It enables the victim to recover power and rehabilitates everyone's place.

Mediation enable communication to develop between partners, new social skills to be put into practice and clear frontiers to be set up. These various acquisitions may put an end to violence and enable women to get some power on their life again.

Use of mediation with modification of the process.

Two main principles:

- More complete assistance to the couples suffering from conjugal violence (medico-psycho-social...).
- Modification in the practice of mediation.

Taking part to a mediation does not absolutely require to acknowledge the aggressions neither their responsibilities. Mediation can promote the adoption of legal actions.

- The mediator has to take position against the aggressions
- To track out violence, to provide information, to build up protection scenarios, to refer to appropriate resources.
- To evaluate the violence dynamics.
- The mediator takes in consideration the power unbalance between both partners and encourages the enlargement of the victim's power.
- Eventual individual meeting and/or participation by an assisting person (social assistant, lawyer...)
- Both parties have to agree on respecting some security measures for the victim and the children (ex: to come earlier, to leave earlier, not to meet except during mediation...to decrease control on the ex-spouse life).
- Written agreement ratified later by the court.

Conclusions.

A good knowledge of the problematic of conjugal violence and its tracking are needed. In the context of violence, women are in danger and get feared. Separation increases danger.

Mediation associated with therapeutic assistance, with a good knowledge of rights and duties, makes possible the setting up, in a neutral environment, of meeting clauses for children with their parent. The agreements may be ratified by the court. A meeting place for children/parent could be chosen.

Mediation will carefully avoid one's ascendancy on the other by practically and concretely organising family restructuration (ex: separation clauses, children visits..).

By the » Maison de la Famille », **a bond (3)** is created between Meeting-Space & Mediation. This approach allows confidence again, agreements ...between parties and the child to be kept apart from conjugal conflicts. The child is no longer an hostage and dialogue between parents may go on.

Examples of our professional practice.

(3) See documents : Articulation "Meeting Space & Mediation"
Report of activities "Maison de la Famille » - Mediation/Meeting Space sector.