

# Dissertation Submission

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COURSE	MA in Dispute Resolution
DISSERTATION TOPIC	MEDIATING FOR THE BEST INTEREST OF THE CHILD
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WORD COUNT	16872
DUE DATE	30/08/2019

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**MASTERS IN DISPUTE RESOLUTION**

**MEDIATING FOR THE BEST INTEREST OF THE CHILD**

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August 2019

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## **Acknowledgements**

I would like to take this opportunity to thank the people who have helped and supported me throughout the course of this Master.

At first, I express my gratitude to my family that even being kilometres across the ocean supported me and also encouraged me to carry on and never give up. Thank you Mom, Jefferson, Rose, Martin and Betina.

Thank you also to my colleagues and friends who encouraged me and have also understood when I have had to break commitments and be away from meetings and parties during this dissertation. Especially to Miriane Motta, who was incredibly supportive and patient, helping me as a colleague and friend, without whom I would be lost.

My most significant appreciation is offered to my friend Thiago Barbosa, without whom this work would not have been achieved. He has been a constant source of encouragement, advice and support through this dissertation.

I would also like to express my gratitude to the Independent Colleges lecturers for all their help and guidance throughout this Master.

Also my acknowledgements to my fellow students in the class who made the learning experience of this Master a little funnier.

Thanks for my supervisor Nadia Bhatti who was able to clarify and guide me on the process of the writing of this dissertation. Thank you also to Gillian Connors, for helping and providing me access to essential materials online.

I wish to thank my Irish families Lisa, Will, Liam, Sean and also Anne, Cian, Isabelle and Dylan for being so patient and supportive over the time of this Master, and also for helping me to improve my English over the last three years.

## **Abstract**

This dissertation examines how mediation can help to diminish the divorce impacts on children, the main effects and also the benefits and differences between including or not children in divorce mediation. For this purpose, it was analysed the literature about Mediation, Divorce, Children in Divorce, children development and the impacts of a divorce in childhood. This dissertation examines the importance of mediation to reduce the divorce impacts on children, and also the benefits and differences between including or not children in the divorce mediation process. For this purpose, the author has used an inductive research methodology, using a qualitative-descriptive-interpretative method for analysing and evaluating the literature about Mediation, Divorce, Children in Divorce, children development and the impacts of a divorce in childhood. The finding of this dissertation is that mediation has, in fact, contributed to better dispute resolutions in divorce for both the children and parents, diminishing the adverse effects for children in all phases of development. Also, it was perceived that even with the regulation of the Mediation process in Ireland still being recent, it has already shown significant improvement for dispute resolutions, and a prominent field for new case-studies about divorced families. This dissertation identified that even having a recent regulation of Mediation in Ireland, Mediation has been used as an important tool to diminish the impacts of the divorce process in courts that, in some cases, do not take in consideration the wishes of the children. Furthermore, this dissertation contributed to the overview of the considerable development potential of Mediation, including children in Ireland, and its range of studies.



## **Chapter 1 Introduction**

All couples, when start a life together, want and expect to have a happy marriage and build a family. Despite this desire, marriage not always ends in a right way, and in most situations, the Mediation is an essential tool in cases of divorce, it is possible to see a strong partnership between the psychological factors that could help in this process and the mediation itself.

The data chosen to support this dissertation is derived from a vast literature about the themes of Divorce, Mediation, Children Behaviour, Irish Family and Children Laws, Dispute Negotiation and Resolution and Children Support. The majority of the sources reviewed in this research are from published articles, books and reports that are relevant for the analysis of the Mediation area regarding children in divorce situations.

About the Literature review, the first section of this dissertation addresses the divorce from historical and local perspectives, with a particular focus on the Family Law (divorce) Act 1996, followed by the conception of the rights of the children.

Secondly, it will then proceed to present the Mediation process, further deepening into Mediation in Divorce and how it can be better used and its implications on the people involved.

The third section of this dissertation examines the specificities of children in divorce and its impacts in children development, behaviour and feelings, being followed by the benefits that mediation brings to the children, diminishing these impacts, and how it can be effectively used in cases of divorce.

This study was designed to provide an overview of the mediation process in cases of divorce and also to identify some of the essential aspects that contribute to psychological damages in children from this process and the best strategies to avoid that. This study will also provide a better understanding of the divorce process in Ireland and the difficulties that the mediators have to deal in with cases where there are children involved.

The analysis of the Studies made by Judith S. Wallerstein in the United States of America with children among a period of 5 years after the divorce process will contribute to a review of the mediation process on these cases and mediation literature (Jr and Vitz, 1983). Wallerstein is also the one who followed the studies for over twenty-five years with the same people after the divorce and analysing the impacts of a divorce in the adult's life (Demo and Acock, 1988), and also describing which skills are required of a mediator to better deal with the children feelings. As stated by Mienkowska-Norkiene (2012), the mediators should have not only mediation knowledge but also Legal and Psychological knowledge, to better deal with all the cases in mediation.

## **Chapter 2 Aims and Objectives**

The main research aim of this dissertation is to consider the representational impacts for children of divorcing parents and what are the benefits of mediation in this process. The central objectives of this dissertation include:

- Analyse what are the impacts of a divorce in childhood;
- Examine what mediation is, and its enhancement in the divorce process;
- Evaluate what had been studies in the United States of America and Australia that could contribute to the Divorce Mediation in Ireland;
- Investigate whether mediation has a positive influence in divorce for the children involved.

## **Chapter 3 Literature Review**

### **3.1 Literature Introduction**

This chapter will analyse the literature from academic articles, books, news, reports and case studies from many professionals, organisations and even websites about divorce and mediation. This literature review will be focused on describing what divorce is, the effects of its process in childhood, followed by the description of mediation, and how mediation is used in divorce. It will be showcased the development of mediation in divorce cases with a focus on a literary review. After reviewing the impact of divorce for children, this review will consider the tool of mediation that could help in this particular field. Taking also in consideration that Mediation has been growing fastly in the United States of America and Canada since twenties (Moore, 2003), this review will be analysing studies made in the United States of America and looking at it from an Irish prospect, and what could be relevant to be implemented in Ireland.

It will, lastly, discuss Mediation and Children, from where this field will be present during the divorce process, to the advantages of mediation to children involved in a divorce process. To later, critically analyse whether the current Irish legal system and current Irish approach in mediation would facilitate for children to benefit from mediation in Ireland in the same way that the research from the other countries has shown them to be beneficial there.

The main themes in this section are:

Theme 1: Divorce in Ireland

The Rights of the Child

Theme 2: Mediation in Ireland

## Mediation in Divorce

### Theme 3: Children in Divorce

#### Benefits of Mediation for the Children

### **3.2 Literature Theme One Divorce in Ireland**

Divorce is a legal admission that the marriage has ended, that the couple is no longer husband and wife, even though the children still have their parents, just not as a couple (Nestor, 2011).

Until the end of the Middle Age, the mutual consent was used as a reason to get a divorce by the couples in failed marriages. Divorce, at that time, was considered a taboo for the great part of the European population, due to the vast influence of Christian religion values across all European countries, including catholic, orthodox and protestant churches (Wood & O'Shea, 2003).

According to Buckley (2019), an absolute ban was made in the Irish constitution in 1937, and as the divorce law required a referendum to change the constitution, in 1986 and 1995, there were campaigns to change it. Up until 1995, Ireland was the only country in the European Union to still forbid civil divorce, and this was a reflection of the majority of catholic people and its beliefs. Although even with this lack of legal access to divorce, some of the unhappy couples came up with different strategies to uncouple, as asking a lawyer to draw a formal legal separation, while the people in the lower ranks of classes came up with agreements made by themselves, resulting in bigamy (Barclay, 2019).

Wood and O'Shea (2003) argue that also in 1995, pro-divorce campaigners could only get the second referendum about divorce to be voted by proposing to replace the article 41.3.2° with the following formula:

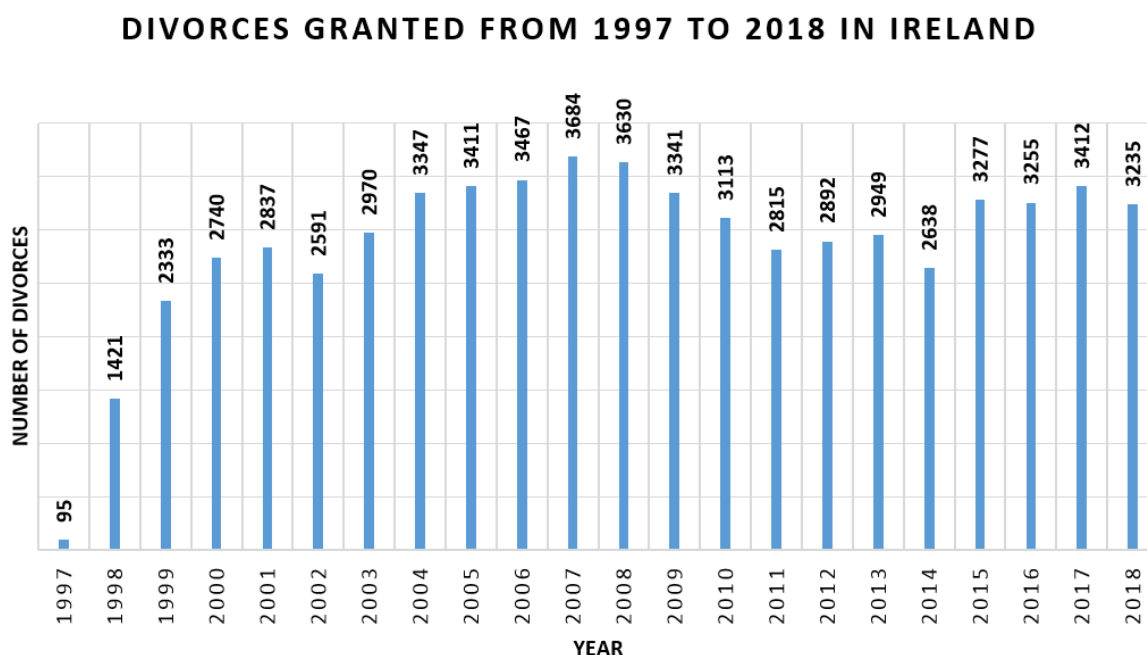
“A court designated by law may grant a dissolution of marriage where, but only where, it is satisfy that:

- (i) At the date of the institution of proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the preceding five years,
- (ii) There is no reasonable prospect of reconciliation between the spouses,
- (iii) Such provision as the court considers proper having regard to the circumstances, exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
- (iv) Any further conditions prescribed by law are complied with.”

This reformulation was made to ensure that any couple would not divorce without at least trying to reconcile first. Wood and O'Shea (2003) argue that no couple should end their relationship without first trying to solve the marriage issues being mindful about the psychological and emotional damages that it may cause to their children.

In Ireland, the referendum on divorce happened on November 1995, and the legislation was put in place in June of the same year. Since then, almost 100,000 people have been divorced (Cox, 2015) as it is possible to see at the chart below.

Figure 1 - Divorces Granted in Ireland



Source: Made by the student with statistics from Courts Service Annual Report

Looking back to the divorces granted by year, it is possible to see a considerable increase in the numbers of couples getting a divorce in the first ten years from 1997 ( when the legislation of divorce started to operate) to 2007 when it reached a maximum of 3.684 divorces. Followed by a decrease until 2011 when it began fluctuating until nowadays.

Moreover, with this data, one question comes in mind: How about the children and the rights of them involved in this process?

### 3.2.1 The rights of the child

This Chapter session is called Rights of the child to evidence that there are many rights, although Child is on the singular form to relate to the child as an individual human being, and not as a part

of a group. Bearing in mind that each case of divorce is singular either each family child and their way to respond to this process.

With that in mind, Partland (2010) argues that each situation of divorce must be dealt with individually, and each child should be taken into consideration when finding solutions.

Taking into account the age of the children, in many cases are the adults that have to make the major decisions, although, they will be able to make a better arrangement if they understand what is the child position about the changes and the divorce (Smith, 1999).

Although children have their own rights to be followed. According to Bracken (2018), the rights of the children in Ireland are protected not just by the United Nations Convention on the Rights of the Child (UNCRC), but also by the European Convention on Human Rights (ECHR) and by the Irish Constitution (Bunreacht na nÉireann). For a better understanding of the rights of children in Ireland, it is essential to understand which are these sources that protect children's rights. The UNCRC is an International Legal Framework created by the world leader to establish guidelines about what are the children rights, so that could be followed all over the world (Bracken, 2018). ECHR, according to Bracken (2018) is “ a treaty of the Council of Europe established after the Second World War” (p.42) which the main goal was to re-establish democratic government in Europe. Moreover, at last, but not less important, there is the Irish Constitution, Bunreacht na nÉireann that, in April 2015 received a new Art 42A recognising the Rights of the Child. (Bracken, 2018)

According to Freeman (2008), under the Children Act 1989, divorcing parents are encouraged to ‘ ... take the initiative and take matters into their own hands, making their own decisions concerning the child's future life after divorce’. Although, with the Convention on the Rights of



the Child in 1989, it was argued that children also have fundamental human rights as the right to survival, to develop their full potential, protection from abuse, exploration and harmful influences, and at last and extremely important, the right to participate fully in family, cultural and social life (Partland, 2010). The United Nations Convention on the Rights of the Child can not be seen only as human rights treaty, but also, a universal agreement made about the rights of the child broader than any other, allowing many governments to change policies and laws to improve children's life. On Article 12 of the United Nations Convention on the Rights of the Child, it is mention that the children may have the right to form their own opinions and views likewise to express these opinions. In the same article, it mentions the right of a child to representation in judicial or administrative proceedings in relation to that child (Partland, 2010).

(i) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(ii) For this purpose, the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. (Alliance, 2010)

Thus the child has the right to be heard and express his/her opinion when it has something to do with his/her life. This is also indicate at the Article 13 of the same Convention Rights, where it is addressed to children the right to freedom of expression, enabling the child to seek, receive and impart ideas and information of all kinds and in all ways the child prefer either orally, in writing, printing, painting or any media (Alliance, 2010).

Seeking to achieve the best outcome in relation to the child in the process of divorce, 'the child must be put at the centre of the decision concerning that particular child.' (Partland, 2010). As established in Convention on the Rights of the Child, the child must be allowed to declare his or her opinion about the choices are being made by their parents in relation to his or her changes and future, and thus allow us to understand that the solutions found now should be reviewed as

the child grow. This review is just addressed in the Mental Health Act 2001 in Ireland (Partland, 2010).

### **3.3 Literature Theme Two Mediation in Ireland**

It has been known that the term mediate derived from the Latin word *mediare*, which means to be in the middle. Although given many different contexts where mediation is used, the Law Reform Commission assume that it can have a considerable amount of meanings depending on whether the emphasis is put on the process or the outcome (Commission, 2010).

Likewise, it is essential not to forget that Mediation is not something new; it has probably “...been practiced since the existence of three or more people on earth.” (Folberg and Taylor, 2009). In other words, Mediation has a long history in many cultures, and it has been used even before it had been named as mediation, for example in the Jewish communities, back in the biblical times, where it was used by the religious and political leaders to solve the religious and civil differences (Moore, 2003). Even Jesus was seen as a Mediator himself, the mediator between man and God, “For there is one God, and one mediator between God and man, the man Christ Jesus; who gave himself as ransom for all, to be testified in due time” (I Timothy 2:5-6 cited in Moore, 2003).

Mediation traditions have been used in Japan, China and many other Asian societies where philosophy and religion are practised together in order for the human being reach the balance and harmony in human relations (Brown cited in Morre, 2003). The leaders of the villages tried to help the community members by settling their disputes (Folberg and Taylor, 2009).

What has been seen before as informal and usually voluntary work, in the twentieth-century Mediation, became a formally institutionalised profession, growing fastly in the United States of America and Canada (Moore, 2003).

For having studied at California, Golberg was probably influenced by this fast growth of Mediation in the USA, describing with three more authors the definition of it. They clearly took the Latin meaning into account, in which they describe Mediation as a negotiation carried out with the assistance of a third party, where the mediator has no power to impose an outcome, he is there just to try to mediate the negotiation between the parties (Golberg *et al.* 2007). This same definition is used by Moore (2003) where he includes that the third party assists the parties involved by trying to reach a mutual and voluntary agreement, thereby, the parties may establish a relationship of trust and respect, or at least may minimise the emotional issues addressed to each other.

Moffitt and Schneider (2008) argue that there is no one universally accepted definition of mediation nor because there are no relevant suggestions being made, but because there is a lack of uniformity in all the meanings of what mediation is in different contexts. Thinking about that it is understandable why Folberg and Taylor (2009) says that the specifics of Mediation will depend on: the parties, what is being mediate, who is the mediator, and it will also depend on the setting in which mediation is present, and could be seen as a goal-directed, problem-solving interaction.

According to Gollop *et al.* cited in Hawthorne et al. (2003), mediation in divorce can be defined as a process where a trained mediator will work with the parents trying to solve any issue regarding financial affairs, arrangements for the children and other issues related to divorce. Also,

nowadays mediation is accepted as part of divorce resolution, and with it, the arguments of including children into mediation have grown each day (Gollop *et al.* cited in Hawthorne *et al.* 2003).

Although it is possible to assure that Mediation is not therapy, taking into account that there are no diagnoses being made, and also that the parties at Mediation do not analyse their past behaviours, they are there to try to reach an agreement with the help of a facilitator that is the Mediator (Milne *et al.* 2004). Mediation provides a personalised approach where both parties have the chance to learn and understand each other's positions, allowing both parties to solve their problems together and find the best outcome for both. All the authority in the mediation process comes from the parties involved, with the help of the mediator as a facilitator (Folberg cited in Milne *et al.* 2004).

There are three characteristics that all mediator should consider: a mediator has no preference for what the parties are going to agree, he has no authority to impose any decision for the parties, and the parties are not going to settle a complete agreement unless they agreed with each part of the settlement term. (Alfini *et al.* 2006). With that, it is possible to say that mediation is a process with a mutually acceptable third party, who is also neutral and impartial. In other words, the parties involved needs to agree on who is going to be the mediator, and he or she will not have affinity or preference for one party over the other, and also will not affect any decision regarding the outcome (McCorkle and Reese, 2015).

For this purpose it is incredibly essential that the mediator establish a good empathy with both parties, to better help and make an agreement possible, considering that the parties must allow the third party to assist the dispute, the empathy is essential to be able to operate as a facilitator

for this issue (Moore, 2003). “Mediation embrace the philosophy of democratic decision-making.” (Alfini *et al.* 2006), in other words, the mediator will try harder to be neutral and impartial, since he is there just to help the parties to see each other positions and understand that.

The mediation process is also confidential and voluntary, enabling the parties to reach an agreement without the need to go to the expensive and most lengthy process of the court system (Emery, 2012). Other of the benefits of Mediation is that the participants formulate their agreement, so there is a bigger chance that they are going to engage emotionally to its success. Thus they are more likely to aid the agreement than if the settlement terms were made by others (Milne *et al.* 2004).

According to Wood and O’ Shea (2003), the mediation process can only be effective if both parties agree to mediate and also to make it work, with some concessions and new strategies.

To better understand the mediation process and how to efficiently use that it is essential to back in time and brief some aspects of its history.

In 1973 there was the presentation of a theory that Morton Deutsch wrote about human conflicts, and how could a third party be constructive in conflict resolutions (Folberg, 2009). With this study about conflict resolution, many Legal scholars helped to develop techniques, applications and procedures for an efficient way to Mediate. Among these scholars, there are some from Harvard Law School that can be highlighted, such as Lon Fuller, Frank Sander and Roger Fisher. (Folberg cited in Milne *et al.* 2004).

In the following year, 1974, there was the establishment of the first private-sector family mediation in Atlanta, Georgia, by O. J. Coogler who helped to popularize the divorce mediation with his book “Structured Mediation in Divorce Settlement” (1978), where he proposes a third-party mediator to help the couples to deal with the financial, property, support and children concerns in divorce (Milne *et al.* 2004).

Even being criticised by his “structured mediation model”, Coogler, after helping the Mediation in Divorce become more popular, established the “Family Mediation Association” (FMA), an interdisciplinary organisation of individuals interested in the development and advancement of divorce mediation.” (Milne *et al.* 2004).

With the encouragement of the judges, the practice of Divorce mediation continued as a vital tool to reduce the cases on the dockets and also to relieve the judges from the need to make hard decisions about the best interests of the children. Also, with some legislative changes as “co-parenting, joint custody, and shared parenting set the stage for the institutionalisation of divorce mediation.”(Milne *et al.* 2004).

Since then, the researches made about the ADR (Alternative Dispute Resolution) process and its efficiency, also based on the Irish experience, has shown that Mediation and Conciliation process often has a speedy resolution to the disputes, and likewise indicates the benefits of a free conflict resolution process (Commission, 2010). With it, the Commission Report from 2010 recommends that the Mediation and Conciliation Act should be enacted to a better understanding and a clear framework for mediation and conciliation. Also, in this report, it was emphasised that voluntariness and confidentiality are the fundamental principles in ADR and that some disputes are better solved by agreement between the parties than with a court decision. With these

characteristics and the problems of delays in the Irish court system, this report was made to show the emergence in Ireland to have an act to officialise the use of Mediation and Conciliation for dispute resolutions (Commission, 2010).

By citing the Article 47 of the Charter of Fundamentals Rights of the European Union, the Commission has a consistent argument for regulating Mediation and Conciliation:

“In promoting access to justice, a modern civil justice system should offer a variety of approaches and option to dispute resolution. Citizens should be empowered to find a satisfactory solution to their problem which includes the option of a court-based litigation but as part of a wider menu of choices.” (Commission, 2010).

After the Commission report, the Mediation Act was regulated in 2017 (S.I. No. 27 of 2017) establishing the scope of Mediation, which became operable on January 1st of 2018. Explained about how to use Mediation and when, and also the main characteristics of it and the rules to be followed such as the Agreement to mediate, the role of mediator, confidentiality, the codes of practice and enforceability of mediation settlements, and many other relevant details about the mediation practice, facilitating the real understanding of the actual role of Mediation.

### 3.3.1 Mediation in Divorce

Family mediation is an essential tool in cases of divorce, to the extent that an adversarial approach has not always been in the best interest of the parties, including the children (Kovach, 2003). Moreover, also, the couples involved will usually be glad if they can make the important decisions about the restructuring of the family in a less combative way, and in a more emotionally and friendly manner (Folberg and Taylor, 2009).

Likewise, for a child, this process will be much less painful if, even not loving each other anymore, the parents keep a good relationship between themselves and the children (Kovach, 2003).

For Lowenstein cited in Nelson (2013), mediation can be seen as a tool that can help to put the parents in control of the decisions making about the divorce itself and also about the future of their children. Also, this is a meaningful way to try to reduce the negative impacts that divorce can have on the children's life.

Nonetheless, there is also mediation designated by a judge, usually in child custody disputes or also in court-based mediation programs (Mayer cited in Nelson, 2013).

Either one or another type of mediation can be really helpful to children in divorce cases, where the harmony and the cooperation among participants are sought (Lowenstein cited in Nelson, 2013). With this strength, mediation has become a more accessible approach when speaking about family issues and has also been described as the 'least intrusive intervention' in regards to divorce (Mienkowska-Norkiene, 2012).

Family and divorce mediation seeks to provide communication between the parents regarding future disputes when involving children. Considering that the attorneys are not usually present during the mediation sessions, they can just advise their clients, draft the settlement agreement and even review it, so the parents need to learn how to deal with the present issues, and it is crucial that they try to deal with it in a friendly way (Milne *et al.* 2004).



Even if the parents do not reach a Mediation Agreement, “there is always a goal to an agreement about a certain issue in mediation...” (Beck *et al.* cited in Nelson, 2013).

One valuable benefit of mediation in divorce is that it can help the parents to reduce conflict, manage feelings and try to work together to think about what is best for the children (Emery, 2012).

According to Kovach (2003), the beginning of family mediation started with the mediator as an information provider about the divorce process, custody, visitation, child support and property division, since the mediator was not a representative in a technical sense (Kovach, 2003).

Family and divorce mediation is one of the oldest fields in the mediation profession (Kovach, 2004). Also, even being the oldest one, there are many areas that still have little research about this topic, or with no qualified professionals to deal with the system.

The custody law system creates problems, this is a fact, but it also creates the opportunity to change things, such as giving the parents the power to decide what is the best for their children, and one of the best ways to do that is negotiating more cooperatively with a mediator (Emery, 2012).

A parenting plan is an essential tool in divorce that should be well made: it will have all specificity about children, schedules, everything about the child life at that present moment (Emery, 2012). The possible future rearrangement is also something to be considered, the decisions made for the children will, probably, change in each stage of the children’s life. So it is essential that the parents start this process in the friendliest way as possible, in order that in the

future it becomes easily to negotiate and make new decisions about the new necessities of the children.

The mediator will help the parents to separate their emotions from the issues of a divorce, and this is needed because the parents will be passing through a difficult moment to deal with their emotions about the other and the thinking of what is the best for their child (Emery, 2012). Mediation is hugely and particularly helpful for emotionally difficulties in divorce, and it is not a tool to be used just in friendly divorces, but also in the ones that the parents are fighting hard, focusing in trying to calm them down and solve the conflict (Emery, 2012). For this aim, it is clear the need of a Mediator to have sufficient background in family and personal development to be able to deal with all the issues brought to mediation in the best possible way, and also to not lose the grip of the mediator role and enter in a therapy ou family counselling (Folberg and Taylor, 2009).

### **3.4 Literature Theme Three Children in Divorce**

According to Emery (2012), during a divorce process, children need to come through some challenges as practical and emotional upheavals. He also argues that the relationship between children and parents are stressed and change as a result of the divorce (Emery, 2012). Not that the relationship between the parents and the children will not be still as strong as before, it's just that in the middle of this stressful process, the kid usually has not as many attention as he had before, even though after the agreement in divorce parents tend to be over-protective in relation to their kids.

As stated by Jr and Vitz (1983) Psychology studies have shown that childhood experiences with their parent's divorce can cause different negative feelings, such as sadness, rejection, fear, anger and even guilty. Although it is possible that the children also experience anxiety of do not know exactly what is coming next, or how is it going to be day by day without one of their parents at home. One of the most harmful effects of divorce on children is that it can cause some antisocial behaviour, where all the above-mentioned feelings will be experienced alone, and since the children do not know how exactly to deal with it and in many cases are feeling guilty, they just prefer not to say anything about how they are feeling (Jr and Vitz, 1983).

Divorce is the cause of, not just behavioural changes in children, but also psychological and emotional, presenting a crisis in a child's life (Amato, Bagshaw, Deutsch, Holtzworth-Munroe, Applegate, D'Onfrio and Bates in Nelson, 2013). This changes can increase the tension and stress for whom is experiencing the divorce of their parents, according to Emery and Raisner "The most common and complicates emotion during a divorce is anger in children and adults, which is a common reaction to grief and loss." (Nelson, 2013). Thinking about it, it is possible to understand why McAuslan and Nicholson (2011) supported the idea that it is essential to separate the conflict from the parenting in divorce, allowing the parents to establish a future plan for the children's life. Another idea that has been currently used to replace the vocabulary usually used by the parents when they came to mediation such as guardianship and custody, and trading the term "access to the child" for: parenting plans, residential and contact parents. This changings in nomenclature offers a meaningful modulation in view for the children involved, that will listen to these terms and not worry so much about it, and also the parents can understand that they can choose the outcome of the issue and it will not always carry an adversarial proceeding as in legal proceedings (Haynes and Charlesworth, 1996).

With this affirmation, it is possible to identify that if the parents are struggling with some emotions during the divorce process, there is a bigger chance that the children involved could be passing through the same feelings and issues or even with deleterious consequences for their well-being. If it is taken in consideration that for the most children the divorce is not only the comprehension of their parents not being together any longer, but it can also be associated with "...income loss, residential mobility, altered friendship networks, reduced contact with the non-resident parent and other kin,..." (Hanson in Galluzzo, 2012). Moreover, for many other children, they do not even understand properly what divorce actually is, and being confused, if they are unable to know "the meaning of 'next Saturday'" (Smith 1999, p.18) it is almost impossible for them to understand the meaning of For Ever (Smith, 1999).

Another big challenge for children is how to balance the relationships with both their parents after the divorce. Children in divorce will have two parents living in, probably, two different houses, and this is a moment where children may get stuck with the feelings among the process (Emery, 2012). If the children are from 2 to 6 years old it is substantially more complicated, taking into account that following the phase of child development (that Margareth Malher named as separation-individualization) the children between these ages are just starting to learn and understand how to separate themselves from their parents (Carpentier, 2010 - 2011).

According to Hawthorne *et al.* (2003) children after the divorce, in the majority of the cases live with their mothers, it is a matter of practicality, as commonly the mothers are seen as the primary caregiver. Although, many of the studies made in the USA and Canada had find out that the majority of the children, if they were allowed to choose, would prefer to spend the same amount of time with each parent. (Hawthorne *et al.* 2003)

Even with the children being desired by one or both parties, divorce often triggers a profound field of turbulence, and it can remain this way as long as the parties decide to cooperate with the other (Alfini *et al.* 2006). Which, in some cases, it does not happen.

It is also mentioned by Nair and Murray in Galluzzo (2012) that the divorce during the infancy and childhood tend to have more adverse effects on children than if it is experienced later on the elementary, middle and high school years. This is evident on founds that children from one-parent families, in the first three years of school, scored lower in some assessments regarding cognitive, behavioural and social aspects when compared with children in intact families. Also, the preschool children were the most distressed in the period of time following the divorce (Nair and Murray in Galluzzo, 2012).

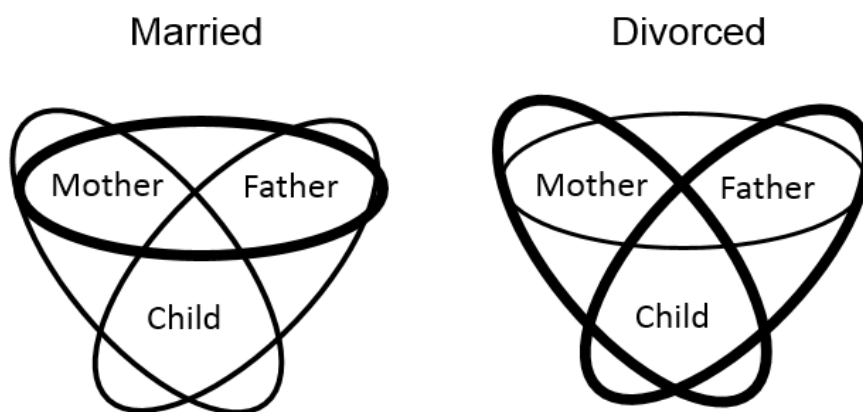
To talk about the effects of divorce on children it is necessary to talk about the study of Judith S. Wallerstein, of the School of Social Welfare of the University of California at Berkeley, and Joan B. Kelly, that made the first study to track systematically the divorce effects on families for a period as long as five years (Jr and Vitz, 1983). In this study, Wallerstein and Kelly found that many of the children were still experiencing great difficulties and were on a downward course even after eighteen months after the separation of their parents. This results made the researchers decide to continue with the research until five years after the separation (Jr and Vitz, 1983). This study also found that 90% of the children felt an intense fear and anxiety after the separation, and one of the most crucial fears experienced by the children was the fear of being abandoned, because, in the children's mind, if their parents could dissolve their marriage, then it could also happen with the parent-child relationship (Jr and Vitz, 1983).

Although the divorce, in some cases, can bring relief from the daily discussions and the tensions at home, the whole breakup process can bring more stress, conflicting loyalties and pressure for the children (Pardeck in Galluzzo, 2012).

These are factors that can also negatively affect the academic achievement at school, the social behaviour being twice more likely to repeat a grade and five times more likely to be suspended or expelled (Zinsmeister, 1996).

The most important thing for the children to know, after the divorce, is that both parents still loving them. Although it can be something tough to achieve, taking into account that the children know that their parents no longer love each other due to the separation, so, talking good things about the other parent for the kids may be difficult and in some cases even painful (Emery, 2012).

Figure 2 - Schematic representation of ideal boundaries in married and divorced families



Source: (Emery, 2012).

The boundaries in this figure represent the strongest relationships in a family, where in a marriage the strongest one is between the parents, while in a divorce the strongest relationship should be between parent and child. Knowing that it is essential to understand some of the other needs that children may have during divorce, they should have a clear explanation of what is happening,

not only to keep a good relationship with both parents, during and after the divorce, but also for not being put in the situation of choosing between the parents (McAuslan and Nicholson, 2011).

According to Wood and O'Shea (2003) if a couple is able to obtain a judicial separation or a divorce, the court will make all orders related to the children, and even in the cases where the children are really young and need to stay with the mother, the father has the right to see the children and is obliged to help frequently. For the children, this is a right that is extremely important for passing through this process. As mentioned by Zinsmeister (1996) the early months after the divorce are the ones where young children are often less imaginative, more dependent, unaffectionate, demanding and disobedient compared with other kids from the same age whose that the parents are still together.

The children after the divorce tend to be more afraid of abandonment, physical harm and loss of love, and they also, in many cases, blame themselves for their parents' divorce (Galluzzo, 2012). All of these feelings are linked with the fact that children in divorce often are in the middle of fighting situations and are the only link between both parents. Some of the other needs that children have during divorce are that they should have a clear idea of what is happening between their parents, and also to keep a good relationship with both of them, during and after the divorce (McAuslan and Nicholson, 2011).

According to Zinsmeister (1996), children in preschool tend to experience high levels of anxiety and aggression during the first year after his parents' divorce. Also, many of them "are found to be in significantly deteriorated psychological condition."

In some cases, the younger children can also present regression in toilet training and crave attention from strangers while the older children tend to become irritable and aggressive (Zinsmeister, 1996).

Although, the way children react to divorce will be related with their age, usually, young children seem to suffer less, while children a little older, around 6 to 8 years old tend to believe that they are the actual cause of the parents' divorce (Pardeck in Galluzzo 2012).

Children understanding about divorce depends in part on their maturity and ages and also the level of trust the kids have in each parent (Smith, 1999).

The stress that a divorce can cause in a family by changing household and changing the family relationship between the members is one of the main threats to children's emotional security. What was seen as the most durable bond in children's life is suddenly broken, followed by residential moves, childcare arrangements, disruption of the daily routines at home and also the weekends that usually were family days, it turns up to be Father's weekend or Mother's weekend (Seltzer, 1994).

As Nair and Murray clarify, most of the reason for the effects of divorce on children is related to the adjustment to a new living situation, absence of a parent, and also the stress and conflicts between the two parents (Galluzzo, 2012).

Another concern about the following year after the divorce is that the parents tend to become more erratic about control and discipline, and this can also threaten the children's emotional security and attachment. The parents feel guilty about the divorce, and what it can cause for the



children, so they neglect the well-being of the child, just because they are afraid of being seen as the “bad” parent (Seltzer, 1994).

Even though the emotional security may be restored when the parents re-stabilise their lives and situation apart, the disruption of parenting techniques and practices can have long-term effects on the children’s socialisation (Seltzer, 1994).

These effects had been studied, and it is in spotlight when considering Children in divorce, for this end, some researchers and organisations develop tools to help the children to pass through this process, as Hawthorne *et al.* (2003) exemplify when describing the card game ‘Celebrating Families’ that was produced by the Dawn Project and the West Midlands Family Court Welfare Service in the UK. This game is based on a happy family format, which means that is designed to children over 4 to show that ‘happy family’ do not mean that there will be consisted by two parents and one house. This and other games and strategies have been used to diminish the impacts of divorce on children, but the one had shown be more effective is the Mediation process during Divorce.

#### 3.4.1 The Benefits of Mediation in Divorce for the Child

As pointed by Haynes and Charlesworth (1996) the Family Mediation can be a useful tool to pass through the divorce, as it is conducted, so should have no losers, and both parents can contribute at the same way.

According to Emery (2012), the parents in the divorce process should work together to diminish the adverse outcomes it can have on children and also try not to let the divorce change anything between parent-child relationship. For this purpose it is highly recommended the Mediation as

an alternative dispute and resolution as it can increase communication and improve the relationship between the parents (Walton *et al.* cited by Nelson 2013). Mediation also can promote more involvement of the family with interventions and arrangements in children's lives following divorce (Amato and Sobolewski, 2001).

As stated by Nelson (2013), there are some mediators that include children in mediation sessions, although, Saposnek advises that the mediator should be qualified to include children and have a knowledge base of the family dynamics and also know about children's development (Nelson, 2013).

The differences between having children into mediation or not is made clear in the study carried by McIntosh *et al.* (2008) with 181 families in Australia, where the researchers reached for families where the parents had separated and split them into two groups, and each of the group had a different type of Mediation for a period of 1 year after the separation. One of the Mediation types used by them was with focus on the child, CF (Child- Focused) mediation, where the mediation was made with the parents but seeking to find what would be the best for the child, while the other kind of Mediation was carried with the child into the Mediation sessions, known as CI (Child-Inclusive). The researchers found that in both analysed groups, mediation caused a reduction in their levels of conflict. Emphasising the fewer conflicts between the parents but also, the lowering of the children distress concerning the parent's conflict, where only 21% of the parents had reported that they were still having high levels of conflict over the year during the study (McIntosh *et al.* 2008).

Another significant discovery made by the McIntosh *et al.* (2008) study was that the CI program had many treatment interactions effects during the one year while the CF group had no significant treatment interactions effects. Some of the outcomes for the CI group were:

- For CI fathers: greater reduction in acrimony with their former spouse and greater improvement in their parental alliance;
- For CI children: more likely to report improved emotional availability of their fathers and greater feeling of closeness to him;
- For CI mothers and children: preservation of or improvement in the mother–child relationship, from both perspectives;
- For CI children and their parents: greater contentment with care and contact arrangements and less inclination to want to change these arrangements; and
- For CI families: greater stability of care and contact patterns over the year. (McIntosh *et al.* 2008, p.111).

For a better understanding of the children's development phases and the implication of divorce in each of these phases, the consideration of the following table developed by Wallerstein and Kelly (1980, p.181) is essential.

Table 1 – Children’s Developmental Stages and Divorce Implications

Children’s Developmental Stages and Divorce Implications			
Age Groups	Basic Issues	Children’s Fears	Where Parents Can Help
Preschool (birth to 5+)	<ul style="list-style-type: none"> <li>• Confusion</li> <li>• Fantasy explanations</li> <li>• Regressive behaviour</li> </ul>	<ul style="list-style-type: none"> <li>• Abandonment</li> <li>• Lack of food, physical care</li> <li>• Parental violence</li> <li>• Going to sleep, going other places</li> <li>• Loss of both parents</li> </ul>	<ul style="list-style-type: none"> <li>• Ensuring understanding of new structures</li> <li>• Telling the child in advance what and when</li> <li>• Ensuring physical closeness and comfort</li> </ul>
Early school (5½ to 8½)	<ul style="list-style-type: none"> <li>• Reactive depression</li> <li>• Intense missing of absent parent</li> <li>• Loss of academic progress</li> <li>• Acting out against friends, support system</li> <li>• Loyalty conflict</li> </ul>	<ul style="list-style-type: none"> <li>• Who is taking care of the absent parent?</li> <li>• Will I be replaced?</li> </ul>	<ul style="list-style-type: none"> <li>• Dealing with anger and loneliness</li> <li>• “You don’t ha to choose between parents”</li> <li>• Reassuring child about the other parent’s care and the permanence of their affection</li> </ul>
Middle (8½ to 12)	<ul style="list-style-type: none"> <li>• Good vs. bad parent</li> <li>• Actions against “bad” parent</li> <li>• Great unabated anger</li> <li>• Reliance on religious or ethical teachings</li> </ul>	<ul style="list-style-type: none"> <li>• Being asked whom they want to live with</li> <li>• Being totally excluded from decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Avoiding a good/bad dichotomy</li> <li>• Listening but remaining in control</li> </ul>
Adolescence (12½ to 18)	<ul style="list-style-type: none"> <li>• Lack of concentration at school</li> <li>• Understanding marriage and divorce cognitively</li> <li>• Inappropriate adult behaviour</li> </ul>	<ul style="list-style-type: none"> <li>• Having to maintain adult responsibilities, caring for parent</li> <li>• Loss of parental control over behaviour</li> <li>• What will happen to me?</li> <li>• How can I ever have a lasting relationship?</li> </ul>	<ul style="list-style-type: none"> <li>• Helping the child stick to its own developmental need to prepare for independence</li> <li>• Not asking age-inappropriate behaviour from the child</li> <li>• Clarifying the child’s own values concerning marriage and divorce in general</li> </ul>

Source: (Wallerstein and Kelly 1980, p.181)

Looking at this table, it is possible to understand that each child will react in a different way to de divorce according to their development stage and that their fears will be related to that as well. One thing that is clearly chosen at this table is that the children fears are related to not knowing precisely what is going to happen to them in the future, after the divorce. That is why some of the benefits of including children in mediation are that they will be able to be part of the decision and have a better understanding of what is coming after, relieving their fears.

Including children in the mediation process can acknowledge the parents of the emotional and psychological state of the children's mind (Hewlett cited in Nelson, 2013). Moreover, it can also promote a better understanding of each feeling being experienced by the children. Knowing more about the children's feelings is one of the biggest reasons why "...some parents appreciate the opportunity to bring children in for a session with the mediator so that the agreements can be explained to them and they can bring up concerns and ideas." (Haynes and Charlesworth, 1996). Although, it is necessary to make clear for the children that even if they have been asked and brought to mediation they are not, in any circumstances, responsible for decisions, clarifying that they are not obliged to be there (Haynes and Charlesworth, 1996).

Nelson (2013) quotes the study conducted by Bagshaw to exemplify the feeling that children have about the divorce process and mediation. The children in this study pointed that they would like to be heard and involved in the decisions making of the divorce of their parents, and they do not want others saying with whom they should live and taking other decisions about them. The children in this study also said that they would like to be asked questions and also be listened to.

As pointed by Folberg and Taylor (2009) it is believed that children should be present in Mediation for, at least, to the agreement sign or memorandum as a symbolic way to be part of the process. Also, this session can be used by the mediator as a moment where the child can add their views and feelings about the arrangements previously made by his/her parents (Haynes and Charlesworth, 1996).

One of the approaches to include children into mediation cited by Hawthorne et al. (2003) is that the mediator could see the children on their own, with the children's consent the mediator is able

to report back the child's view of the divorce and about the agreements that have been already made, to the parents. Although there is also another approach that had been used, as in the McIntosh *et al.* study, the approach where the mediator have no session direct with the children, the mediation is made with the parents, but taking in consideration the needs of the children. And at the end of mediation, after the parents reach an agreement, some mediators include the children to a last session, using it to inform the children about what had been decided and also as a tool to better understand the feelings and opinions of the children about the divorce and the decision made by the parents (Hawthorne *et al.* 2003).

Some Mediation processes have had a positive impact when speaking about the psychological and behavioural adjustment of the child (Walton *et al.* 1999). Likewise, the mediator can use this mediation session to help to clarify any questions and doubts that the children could have about divorce. And for this purpose, one agenda that can be followed with children in mediation is the one made by Haynes and Charlesworth (1996), which covers the development on the following topics as: “-Your parents are separating, -You did not cause it, -Because it was your parents’ decision, you could not prevent it in the past, and you will not be able to change it in the future, -Both parents want you to know that they love you now as they always have.”

### **3.5 Literature Review Conclusion**

Considering that the Family Mediation Service is focused on the child and that the mediator should ensure that the ‘Voice of the Child’ is brought into mediation, it is possible to clearly understand the benefits of Mediation in divorces cases. While in court the judge will be the one who decides about the divorce and child, in mediation it is possible that not just the parents make

an agreement to whom the child will live but also that the child itself has the chance to express their own will (Board,2014).

Moreover, the child opinion can be taken in consideration by the mediator by directly consulting the child - although that is only possible with the parents' and children's permission - or in an indirect way when the mediator assures that the interests and needs of the child are considered the centre of the negotiations during the divorce process (Board, 2014).

In conclusion, Family Mediation in divorce has many benefits for not just the child but for all involved in this process. Some of the main benefits pointed by Haynes and Charlesworth (1996) are:

- Mediation is not a process with opposite sides; it is a process where both sides will be heard and can negotiate directly without winners and losers;
- Separating the problem from the people, mediation allows the parties to identify the main issues and concerns about the process and deal with those thinking what is the best resolution for the child;
- The mediator can also help the parents to build a plan with times, and the main issues about the child;
- To reach an agreement, both parents need to agree on the solutions;
- The parents are in charge of decisions about the children, so, in the future, it can be useful if they need to change or reschedule some new events;
- Also, one of the most important ones, is that the mediation keep the parents as the only accountable for the decision made about their children, so it can show the child that even the parent not been together anymore, they still in charge of the future of the kids and do not step out of their responsibilities as parents.

## Chapter 4 Research Methodology

Research is the primary tool used in virtually all areas of science to expand the frontiers of knowledge. By conducting research, researchers attempt to reduce the complexity of problems, discover the relationship between seemingly unrelated events, and improve the way we live (Marczyk *et al.* 2005). According to the Oxford Dictionary, research is the study to establish facts and get to new conclusions by analysing materials and sources (Oxford, 2012).

Methodology, according to Marczyk *et al.* (2005), refers to the principles, procedures and practices that govern research, while research design stands to the plan used to analyse and examine the question of interest. The methodology should be thought of like a guide to the whole process of conducting the research. Creswell (2014) defines methodology as the theoretical analysis of the method (or methods) that will be used in a specific study in order to achieve the best outcome from the practices of each method used.

There are many forms to conduct researches, and two of the most common types of research are Correlational and Experimental Research. Correlational research deals with the observation of a subject that cannot be experimented, looking at different variables in a specific situation and determining if they have any kind of relationship between them (Marczyk *et al.* 2005).

Experimental research, however, is made by controlling the variables in the experiment that may interfere in the final result and observing the relation between cause and effect.

Another way to look at research is through methodologies. Every research will have a methodology of its own, and the goal will always be to collect relevant data that will contribute



to the research itself. It is a set of research principles and methods that helps researchers obtain valid results from their research studies (Marczyk *et al.* 2005).

According to Neuman (2014), the research can also be approached from two directions. It could begin with abstract thinking and then logically connect the ideas in concrete evidence, which is called "deductive direction", or it could begin from observations of empirical evidence, and then generalise from it toward abstract ideas, which he calls "inductive direction". Yin (2011) states that inductive approaches tend to let the data lead to the emergence of concepts, while deductive ones tend to let the concepts lead to the definition of the relevant data that need to be collected. Most qualitative researches will follow an inductive-based methodology, where the researcher will contemplate about all the assembled data in order to better interpret it (Yin, 2011). As a result of the process of qualitative research, be inductive, the researcher measure, analyses and create new concepts at the same time as the process of gathering the data (Neuman, 2014).

Research data can be collected through Quantitative and Qualitative researches. As stated by Marczyk *et al.* (2005), Quantitative Research involves the use of statistical analysis to obtain findings, using formal and systematic measurements to observe a final result. Qualitative studies involve interviews, researches and observations without formal measurement, such as in case-studies or theoretical investigations, which are in-depth examinations of a specific topic, striving to collect, integrate, and present data from a variety of sources of evidence as part of any given study (Yin, 2011).

Creswell (2014) also says that it is possible to use both qualitative and quantitative methods together, transforming the methodology in a mixed methods research design. Qualitative data is usually open-ended with no predetermined responses, while quantitative data includes closed-

ended responses found in surveys, psychological instruments and questionnaires. Also according to Creswell (2014), the integration of quantitative and qualitative data in on single database can be used to check the validity of databases between each other, or even complement each other, with one of the methods exploring different types of questions than the other.

According to Creswell (2014), proper qualitative research depends on multiple sources of data, and “the researchers review all of the data, make sense of it, and organise it into categories or themes that cut across all of the data sources” (p.234). Qualitative researchers build their patterns of understanding from the bottom-up, organising the collected data and abstracting information regarding their own research, and then applying afterwards a deductive analysis of the collected data in order to reach a final understanding of the topic that was researched about (Creswell, 2014). Qualitative research is a Subjective and systematic approach to describe life experiences and give them meaning (Burns and Grove in Guest *et al.* 2018). One of the main reasons why qualitative data is rich and in-depth is that researchers often capture data through the process of deep attentiveness, of empathetic understanding (Thanh and Thanh, 2015).

Neuman (2014) says that in all social research, in qualitative and quantitative methods of research, it is essential to connect the data to ideas, or concepts. In quantitative research, the researcher measures the variables by converting them into actions for a planning stage before the analysing phase. In qualitative research, though, the data is analysed and measured while it is still being collected. That happens because, instead of numerical data, qualitative methods rely on abstract ideas that need to be deductively interpreted for being transformed into useful data for analysis (Neuman, 2014). These ideas can come in various forms such as numbers as well, but mostly by written or spoken words, actions, sounds, symbols, physical objects or images.

In order to achieve the objectives of this dissertation, a theoretical investigation will be adopted as a methodological strategy, focusing on prior researches about divorce, children development and mediation. The research design should always be the one that suits better to achieve the answers to the research questions. For this purpose, the researcher of this dissertation has chosen the qualitative-descriptive and interpretive research design, in the hopes to explore better the benefits of the mediation process for children in divorce.

About the literature review as the foundation for this methodology, Neuman (2014) states that reviewing the accumulated knowledge of a field of study in the early stages of the research is an essential step. He continues by saying that reading and analysing reliable sources of literature builds on the idea that knowledge accumulates, and the researcher can learn from and build on the work of others. It rests on the principle that all scientific researches are part of a collective effort, where many other researchers contribute and share their results (Neuman, 2014). According to Yin (2011), the method of researching through literature has the purpose of sharpening the preliminary considerations about the central topic of study. The researcher goal is to report, in details, about a clear array of previous studies and researches that are directly related to the topic being studied.

About the descriptive approach to qualitative research, Elliott and Timulak (2005) explain that, simply by looking at the collected data, qualitative methods will always be formatted as verbal accounts or descriptions in words. Moreover, that is the main difference between quantitative and qualitative approaches to research methods since the formulation of the research problem does not differ sharply from one to another. The descriptive nature of a qualitative research data comes from the method itself since it relies on the researcher notes taken from observation, evaluation and interpretation (Elliott and Timulak, 2005). Taking that into account, the

descriptive part of the method refers to the gathering and collecting of information and data, that will happen through the study and analysis of reliable sources reaching the diverse topics that englobe the theme of this dissertation.

After collecting the data through descriptions, the researcher will interpret it, discovering the reality through the research participant's views, their own experiences and background (Thanh and Thanh, 2015). An interpretative paradigm in qualitative research allows a better understanding of the subjects analysed, and to view the collected data through the perceptions and experiences of the participants. Interpretivism seeks to capture the context in which the observations are being made, contemplating that all of them are socially constructed and that the researcher itself is the most essential tool for it to work (Thanh and Thanh, 2015). Thanh and Thanh (2015) also state that it is crucial that the researcher is able to accept and seek multiple perspectives, being open to change, practising different data collection techniques and promoting participatory research in order to be able to interpret the data unbiased.

According to Yin (2011), interpreting is the "craft of giving meaning to your data". It is a phase in the qualitative method that brings the entire analysis together and stands at its pinnacle. Yin (2011) explains that the goal in this phase is to develop a comprehensive interpretation of the gathered data, trying to accomplish Completeness, by asking if the interpretation made follow a logic sequence; Fairness, wondering if other researchers would end up having the same interpretation; Accuracy, by making sure the interpretation represents the actual data; and Credibility, questioning if the interpretation would be accepted by researchers in that particular field of study.

Also, for the reason of having an excellent background to support further researches in the field of how Mediation can impact on children from divorcing parents. Likewise, this data was chosen to give a better overview of the studies made in other countries that could be relevant to Ireland about mediation, divorce and children, and perhaps encourage further studies like the ones that observed and analysed the families many years after the actual divorce made in Australia and United State of America.

The analysis of the data (articles, reports, researches and books) made in a qualitative way can contribute to collect more information about the subjects than in a quantitative way, even more considering that this research is interested in discovering about the children feelings about divorce. In this regard, a qualitative-descriptive method approach will help the author of this dissertation to analyse each literature looking about divorce, mediation and children, helping for a deeper understanding of each author's opinions and enlightenments about mediation in divorce and its impacts on affected children.

The gathered data will be analysed, taking into consideration the theoretical perspective of the development theory of children, mediation and divorce by diverse reliable authors. Also, it will take into consideration the previous studies in law regarding divorce and children. Individually, it was looked into the data and researches made in the USA, UK, Australia and Ireland for providing references to literature used within the field.

## Chapter 5 Research Methods

For the purpose of gathering up relevant and reliable data, the author of this dissertation has chosen to design its research towards a qualitative-descriptive and interpretive method. In this method, the author collects and analyses various forms of literature in order to achieve a better understanding of the actual paradigms about divorce mediation and children involved in the process.

As stated by Merriam (2009),

"one way to identify and establish the theoretical framework of a qualitative study is to review the relevant literature. By literature I mean the theoretical or conceptual writing in an area (the "think" pieces) and the empirical data-based research studies in which someone has gone out and collected and analyzed data." (p.71)

Alternatively, in other words, it is essential for the researcher to know and to understand the existing literature, in order to be able to interpret it and make explicit assumptions about what is being studied.

Investigators who do not take the time to find out what has already been thought or researched may be missing an opportunity to make a significant contribution to their field. Indeed, one function of the literature review is to provide the foundation for contributing to the knowledge base. No problem in one field exists in isolation from other areas of human behavior. Consequently, there is always some research study, some theory, some thinking related to the problem that can be reviewed to inform the study at hand. (Merriam 2009, p.72).

Elliott and Timulak (2005) address the topic of literature review by firstly demystifying the idea that some researchers have about starting a study without first reading the available literature in order to not become biased about it. With that, they wrote the following:

The reason for this position was the belief that becoming familiar with previous knowledge would 'taint' the researcher, predisposing them to impose their preconceptions on the data and raising the danger of not being sensitive enough to allow the data speak for themselves in order to reveal essential features of the phenomenon. (p.148)

For Elliott and Timulak (2005), this approach can be considered somewhat simple. They say that considering that, nowadays, it is known that bias is not something that can be avoided, that “part of the process of coming to know something and that knowledge is impossible without some kind of previous conceptual structure.” (p.148) It is necessary for the researcher to understand and accept that there will be influence from previous knowledge in the researched data collected and analysed, and that it is essential to ensure that the work will be done and guided in the best way as possible. (Elliott and Timulak, 2005)

About the data collection, Merriam (2009) states that it is guided by questions and educated hunches, through a systematic search. The researcher is the primary instrument for collecting the data, and she or he relies on skills and intuition to chase and interpret the findings from literature. For that reason, researchers should be open to new insights, becoming more sensitive to data that can be captured through reading, observing, interviewing, and analyzing documents. Other important role for the researcher as the primary tool, is determining the authenticity and accuracy of the documents in which he is studying.

For the chosen method to work, it is crucial that the literature used as the base for this research is reliable. With that in mind, Merriam (2009) states that the author of the source should be an authority on that particular topic, that has done much of the empirical work in that field. Merriam also continues by saying that if a particular material still appears to be much relevant to the studies, it should be evaluated as a data source even though the “who” and “when” criteria are not met.

About the topic of qualitative-descriptive and interpretive research, Robert K. Yin (2011) states that “knowing about your topic of study requires you to know about the findings from previous

research on that theme” (p.28), and that it is essential for the researcher to get familiarized with the previous works in the field of knowledge before creating its own methodology, in order to avoid inadvertent repetition or reinvention. Moreover, that insights from previous research and literature may help to reduce the possibility of misinterpretation of the collected data.

Also, regarding the method of descriptive research, Creswell (2014) shares that the literature analysis relates a study to a broader and ongoing dialogue, filling in gaps and extending the knowledge from prior studies. Creswell continues by saying that it provides a framework that establishes the relevance of the study, and a solid foundation for comparing the results with other findings.

According to Creswell (2014), the method of reviewing literature for the purpose of research can take several forms. Usually, the method strives to integrate what other researchers have studied, criticise previous works on the field, create connections between related topics and identify the central topics and issues in a field of study. One of the reasons for conducting a qualitative research method is because it is often exploratory, and most of the times it means that not much has been written so far about the subject of study, and that is when literature review really benefits as a method (Creswell, 2014).

For Elliott and Timulak (2005), the analysis of the data requires flexibility from the researcher, as it requires self-reflection and scepticism regarding the analysis of the emerging results. The analysis also needs to be systematic and organised in order for being more accessible to the researcher to locate the information in the data set and trace back to the context of the collected data. The data preparation is the first step on the data analysis phase, and is during that phase that the first insights and understandings begin to emerge to the researcher. Elliott and Timulak (2005)



continue by saying that the collected and prepared data need to be, after prepared, distinguished into "meaning units", which are parts of the data that even if standing out of context, will still be able to provide enough information to have meaning to the reader. The meaning units have the purpose of organizing even further the data, and providing quick access to the researcher through the ideas that were collected. After that, the meaning units are categorized into what Elliott and Timulak (2005) call of "domains", which are critical groups of data that share the same piece of study between each other, creating a meaningful and organized database. The last two steps before reaching the interpretation of the results are abstracting about the findings, analysing and connecting ideas that relate to each other, and checking the validity of the analysis, by using a sceptical and self-reflective auditing of the gathered data (Elliott and Timulak, 2005).

For the purpose of facilitating the understanding of the literature, Creswell (2014) says that it is important for the researcher to create a Literature Map of the Research, which is a way to catalog the literature into groups of interest. For this dissertation, the groups were separated into literature about Mediation, literature about Laws, and Literature about Children Behaviour. This idea that Creswell presents is designed to overview all the literature and help the researcher create the previously mentioned connections between the related topics.

To put this method into practice, some articles, researches and books were chosen to be part of this dissertation research. Some of the relevant work analysed for this research were the following: the study conducted by McIntosh *et al.* over a period of one year in Australia, in which he studied 181 families in two separate groups, analysing the differences between those groups that had Mediation with and without the children involved in the process; Judith S. Wallerstein's study that took place in the United States of America and involved five years of observation of children that had been through a divorce process, and its effects on the children behaviour. It was

also relevant to study the Rights of the child, the right to be heard in cases of divorce, because even with the parents having to take the major decisions about the future of the children, they should also consider the child's desire (Smith, 1999).

The benefits of this study are clear, considering that it will generate comprehensive information about the distress that a divorce process can cause on children around the world. As a result of that, it will be possible to develop new strategies to deal with it and to diminish the damages of divorce in children's life in Ireland. Also, with this dissertation, it will be possible to have an overview of the divorces in Dublin and compare with other cities and countries to better understand the needs and which implements can be made in the mediation process for divorce cases.

## Chapter 6 Presentation of the data

Nowadays many data appear to be solid fact and representing the true, although, according to Walliman (2018) this is not the case. The data may be accurate for a particular time and place, but might be quite different in other times and places, and it can also change depending on the person who is observing and searching for it. What he means is that two person can look at the same example but interpret it differently.

The main factor to be observed about secondary data is to assess quality information as well as the validity of that information. It is also extremely valid to compare more than one source and opinion about the same subject, so with that, the researcher may have fewer chances of its findings being not reliable (Walliman, 2018).

One of the main advantages of using secondary data in a study is that it is possible to use data from teams of expert researchers, with large budgets and extensive resources, which is the case of this dissertation, that used researches from reliable sources that were conducted over a period of one and five years each (Walliman, 2018).

To exemplify, there is the study conducted by McIntosh *et al.* that took place in Australia where 181 families were studied over a period of one year after the divorce, and also the study carried by Wallerstein in United States of America observed the effects of divorce on children during five years after the divorce.

Further to understand what are the real effects of mediation in children from divorce, this dissertation presented a literature review focused on the definition of divorce, the influence of

divorce in childhood in each development stage and also description of mediation and mediation in divorce.

The data chosen for this dissertation was the analysis of academic articles, books, news, reports and case studies from many professionals and organisations and even websites about divorce and mediation in United States of America, Australia, United Kingdom and Ireland.

To define what is divorce and a better overview of this subject in Ireland, this dissertation analyses the literature of many articles, thesis and books. Among those are: Jim Nestor, talking about Irish family law, along with Valerie Cox bringing the reports of Irish Family Law in Court; Kieron Wood and Paul O'Shea, addressing about divorce in Ireland, as well as Sarah-Anne Buckley, while Katie Barclay focused in popular divorce.

It was essential to describe the rights of the children for a better understanding of if they should be included in mediation or not. For the rights, this dissertation presents the studies of Heather Smith who in 1999 had already written about the children in divorce and the feelings that they pass through in this process. Also, Sharon Freeman addressed the rights of the child in her Guide to divorce. Ten years after Smith, in The United Nations Convention on the Rights of the Child, the Children's Rights Alliance (2010) made it clear of which were the real rights of the children. Moreover, Eileen Partland did almost the same by interpreting the Irish legislation of children in the same year.)

Furthermore, to illustrate Mediation in Ireland, this dissertation cites Christopher Moore, Kieron Wood and Paul O'Shea that in 2003 wrote about mediation and alternatives for dealing with divorce. Later on, Milne *et al.* addressed the evolution of the Mediation described and studied by

Golberg *et al.* in 2007. Moffitt and Schneider exemplified and explained about Mediation and the other Alternative Dispute Resolutions, also described by Folberg and Taylor in 2009. With Mediation being used and present by so many authors, the Law Reform Commission saw a necessity of a report indicating that the Mediation and Conciliation Act should be enacted. The field of mediation continued to be studied in the following years, by Emery, McCorkle and Reese, and was finally regulated as an Act in 2017 (S.I. No. 27 of 2017) being operable at the first day of 2018.

The main authors who wrote about Mediation in divorce are: Kimberlee Kovach, 2003; Folberg and Taylor in 2009; Renata Mienkowska-Norkiene, 2012 and Brianna L. Nelson in 2013.

Research carried out about children in divorce had shown all the fears, difficulties, and impacts in behaviour that divorce can cause in Children. For this section, this dissertation presents many studies and researches about kids, from studies made by Mediators, Psychologists and other field-related professionals. Among them are Jr and Vitz who explained in 1983 about the study made by Judith S. Wallerstein in California that lasted for over five years observing the children behaviour after divorce. Judith S. Wallerstein has also carried a study to analyse the impacts of a divorce in adults that had experienced divorce in childhood. Other valuable authors that contributed to this dissertation research are: Seltzer in 1994, Haynes and Charlesworth in 1996, Smith in 1999, followed by Carpentier and McAuslan and Nicholson in 2010 and 2011 respectively. Also, later on with Diana Marie Galluzzo and Robert E. Emery in 2012 and Brianna L. Nelson in 2013.

Research has found that Mediation can diminish the impacts of a divorce in childhood, and to prove this implications this dissertation showed the literature review based on the studies of

diverse authors such as Wallerstein and Kelly, with the view of how to survive the divorce, and also with Haynes and Charlesworth in 1996. One of the most prominent studies was made in Australia with 181 families over a period of one year carried by McIntosh *et al.* in 2008.

## **Chapter 7 Data Analysis / Findings**

According to Walliman (2018), to analyse a Secondary data it is necessary to look for patterns or trends across results through time and places. For this purpose, this dissertation seeks to compare the studies made in Australia and United States of America and to also bring it into a European perspective across the literature about the same topics in Ireland and United Kingdom.

The literature shows that the divorce in Ireland was banned in the constitution of 1937, and it changed only in 1995 when there was a referendum about divorce enabling a new legislation about divorce. The Family Law (Divorce) Act, 1996 (S.I. No.33 of 1996) provides a legal base not just for those who want to end a marriage, but also for those who wish to remarry. Different of what the majority of people were afraid of, there was not a huge number of divorces with the new legislation, being only 95 cases of divorce granted in 1997, just increasing these numbers in the following years.

About Mediation, it was found that it has grown in United States of America since the decade of 1920, while in Ireland Mediation was regulated just after the Commission report in 2010, indicating that the Mediation and Conciliation were being used and that there was a need of regulation, describing 108 detailed recommendations about the alternative dispute resolution. So, Mediation was finally regulated in 2017, and with the proper rules established, the Mediation Act 2017 starting being followed in January 2018. Analysing the Commission Report about Mediation, it is possible to recognise the importance that a report has in the future of the legislation. It had shown all the advantages and the reasons why Mediation should be regulated, leaving no doubt that it should not be.

Moreover, Mediation goes far beyond history, and across the many issues in life, including divorce, especially in cases with children involved in it.

With the studies and researches that this dissertation covered, it was understood the main impacts of the divorce in children's life, and also the benefits of Divorce Mediation. Also, in the literature investigated it was possible to realise that the Divorce Mediation has had been used in Ireland as well as in Australia, United States of America and the United Kingdom, and also that there are some studies being made about including children into Mediation or not. It is a valuable matter to be considered when dealing with families that have children.

The literature is overwhelmingly positive about Divorce Mediation including children in the process, although, it is essential not to forget that the age and the developmental stage of the children need to be taken in consideration as well as the will of the parents and the children about being part of the Mediation. If it is going to take into consideration the rights of the child, he/she should be heard and has the right to take a position regarding their own future.

According to the data presented and gathered, there is a solid basis to affirm that: 1) the Divorce Mediation has broad benefits to the children and everyone involved in the process. For being a process where the third party will be a facilitator, the parties need to collaborate with each other and learn how to work together towards a common goal, and this learning is really helpful when thinking about the future of a child, where there will have many new aspects to be considered and dealt with in the future. 2) Looking at other Countries where Mediation was established earlier can help to have a better overview of the process and different forms to deal with it. 3) Divorce has an impact on every person involved in it, and it is not easy for the children passing through it without properly understanding what is happening and what is going to. 4) In the four



countries analysed in this dissertation, the authors defend the same arguments about Divorce Mediation, the Impact of divorce on children's lives and also about the benefits of Divorce Mediation for children. These findings suggest that the Divorce Mediation has real benefits for the children in this process and that it is possible to diminish the impacts of divorce with Mediation.

Also, this dissertation showed that even Ireland having regulated Mediation only in 2017, it had been used before that, and there are significant Divorce Mediation studies made with and without children. And that it would be a relevant area of study to be researched on by observing families over a period of time after the divorce and to better understand if the reality in Ireland, and United Kingdom - as both are European countries and have significant similarities - is the same of the United States of America and Australia.

## Chapter 8 Discussion

This chapter highlights the implications of the mediation in divorce for the children. It also outlines the limitations of this study and the need for further research into the area of Mediation as a tool to diminish the impacts of a divorce in children. The first research objective was to analyse what are the impacts of divorce for children, and it was made clear by the description of Wallerstein and Kelly (1980) that shows what are the main implications of divorce in each development stage of childhood. Also, Seltzer (1994) explains about the following years after divorce, saying how difficult it is for the parents to deal with the control and the guilt of having caused some adverse impact on the children with the divorce.

Additionally, Smith (1999) exposes that some researches had shown that the way parents tell the children that they are going to separate is essential in view that the majority of children that had been asked about the parents divorce said that they remember clearly when and how they were told about the parent's divorce and that "it was the biggest trauma they had experienced." (Smith 1999, p.17).

The second objective was to examine what is mediation, and its enhancement in the divorce process, and it was possible due to the researches of Coogler about family mediation and divorce emphasising the importance of a third party in a conflict, and his contribution for the further researches in this field. Following for the next objective, that was to evaluate what had been used in the US system that could be implemented in the Irish Mediation system, it was found an essential research about children and family in divorce: a study made by Judith S. Wallerstein, that systematically tracked the divorce effects on families for a period of five years, showing which were the main issues faced by the families, allowing to a better understanding of what was

faced. It made possible for other researchers to continue studying about how to better deal with it and the main aspects of mediation that could help on that. Moreover, also, it was analysed the Irish Mediation and the rights of the children in Ireland for an improved view of what could be used as an inspiration from other countries to improve the process in Ireland, and it was found that even with Ireland having the regulation of Mediation in 2017, there are still plenty of Mediators dealing and studying the Divorce Mediation and the implications of divorce in children.

And trying to understand if there was or not benefits of Divorce Mediation for Children, it was found the study of McIntosh *et al.* (2008) that had shown precisely not just the benefits of Divorce Mediation for children by reducing the levels of conflict amidst the family members, but also the difference between including children in Mediation and just focusing in the best for the child, what clearly showed that when the children were included in Mediation, it was observed a better alliance between the parents and less intention of changing the previous arrangements.

Summarising, this dissertation identified that even having a recent regulation of Mediation in Ireland, Mediation has been used as an essential tool to deal with the amount of process in the courts, but also to diminish the impacts of the divorce process in courts that, in some cases, do not take in consideration the wishes of the children. Furthermore, this dissertation contributed to the overview of the considerable development potential of Mediation including children in Ireland, and its range of studies.

## **Chapter 9 Conclusion**

This chapter will present conclusions and recommendations on the main study findings and the relevance of these findings to Mediation in Ireland and children in divorce. It also outlines the limitations of this study and the need for research into the area of Mediation in Divorce with children. This study focus on the area of post-divorce, and the literature reviewed for this study was based on the beginning of the mediation, what is mediation, what is divorce, children in divorce, the rights of children and also the benefits that mediation can have in divorces cases with children involved.

The major conclusion of this dissertation is that the children cannot be treated as an extension of their parents; they want to be listened and heard. It is known that the parents need to take most of the decisions about the future of the children, but they will also be more able to make the best choices if they know how each child feel about the divorce and the changes that are going to be made (Smith, 1999). Also, for the rights of the child to be enforced it is essential that the mediation process in divorce take into consideration the voice of the child. Also, in some cases, consider to include children into the Mediation process can be helpful for dealing with the children's fears and wishes.

And last, but not less important, is that the way that a divorce process is handled can have significant implications for the children's life, so, if the parents are allowing themselves to deal with the divorce in a better way, trying to negotiate and thinking about the best for the children, one of the best way to do that is with Mediation. Moreover, if the parents decided to go to Mediation and reach an agreement, the chances of they will be able to deal with future issues regarding the children's life will be much higher.

Sintetizing, the main issues to be dealt with about children in divorce is that the children, usually do not have a real explanation of what is happening, also, when it has been made arrangements regarding house and living arrangements, the children are not asked about their wishes. Another thing to consider is that the majority of children would like to continue a relationship with both of their parents.

Another important conclusion with this work is that mediators need to be well prepared and trained to deal with family mediation in divorce, in view that the parents are no longer together, usually is meant that they have some differences that make the marriage not work anymore, and this is something to take into consideration when trying to help the parents decide about the child, and trying to separate the problem from the people. As stated by Fisher and Ury (2012), they support that it is essential to separate the people from the problem while negotiating. This affirmation is made taking in consideration that people after divorce tend to get angry, depressed, hostile, frustrated, and this can have an influence on their perception of reality. These feelings are something that will be evidenced and really delicate as the parents do not want to be together, so the mediator has here the important role of showing them that the children involved in this process has nothing to do with the issues they are passing through with each other.

Also, it is essential to the parents and the mediator to remember that children, depending on their development phase, will have some limits on their understanding about what may happen in the future about it (Smith, 1999).

## **Reflection**

After working on this particular dissertation, and having read several articles, books, news, thesis and reports about mediation and children in divorce, was possible to learn how much of a significant role it plays in divorce and wellbeing of all the parties involved into it. Moreover, it was possible to identify how different is a masters degree course in Ireland from the ones in Brazil and also the huge difference between the supervisor role here and there.

For began this literature review it was searched for materials during the first module of the Master in Dispute Resolution, although, the start of the writing and the clearly understand of the way it should be done was achieved just at the end of the second module, when the class asked for an extra class about research methods, and this was something that really muddled with everyone's dissertation, not knowing exactly how to do that until the last minute before starting it.

The college could give more attention to the dissertation creation process taking in consideration that the majority of the students doing the masters are foreigners, so it would be constructive if the students could have more support on that. Also, the quality and relevance of the dissertation could be higher if this support was given.

Another thing to be considered is that some of the students would like to do a dissertation collecting data from interviews, researches, observation and even experimental studies, although, to develop a valuable and great work, it would be necessary that the dissertation begins at last at the middle of the first module, with it, it is possible to understand the reason why would be great if the college could determine that the research methods module should start with the dissertation

proposal, and all the classes be around that, with explanations of how to do it and helping the students to propose a valuable research to be made.

The first idea for the proposal of this dissertation was to interview families and children about the divorce process. And even searching about how to do that, and it was really hard to find precisely how to get authorisation to interview kids. When asked for support to the researches methods' teacher, the explanation about how to do it, or where to find clarification about the interview with children and families, never came. So, the method for collecting data for this dissertation had to be changed. Instead of going for an interview-based method, it was decided to analyze multiple researches described in the specialised literature about divorce, mediation, children behaviour, and impacts of divorce on children's life.

In order to find articles, books and all material it was, at first, searched online for mediation in divorce and children, after that, it was started searching for specificities inside this subject as the implication of divorce in children, divorce in Ireland, mediation in divorce and also the children's development phases.

After some brainstorm, the topics of this dissertation were decided, and it was searched in libraries, internet, and also about the organisations as TUSLA, CRA, Barnardos and others.

Analysing the actual time to do the dissertation was to some extent short since the clear explanation about it was not given at the Research Methods module as it should be.

This dissertation brought clarifications about the massive importance of mediation in the field of divorce and also showed a wide range of opportunity for future studies in this field.

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## **Appendix A – Letter to the Library of Institute of Public Administration**