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Audio Conference Training Series

Child Custody and Domestic Violence: Addressing Safety and Accountability

January 22 and 25, 2007

Part 1, Mon. Jan. 22

**DV and its Relevance to Child Custody and Visitation
Disputes**

Part 2, Thurs. Jan. 25

Child Custody and DV: Strategies to Affect Change

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The Office on Violence Against Women in partnership with Praxis International



***Child Custody and Domestic Violence:
Addressing Safety and Accountability***

Audio Conference Training Binder

Part 1

Monday, January 22, 2007

DV and Its Relevance to Child Custody and Visitation Disputes

Peter Jaffe

Technical assistance provided by Praxis International in partnership with the Office on Violence Against Women, U.S. Department of Justice, for recipients of grants under the Rural Domestic Violence and Child Victimization Enforcement Grant Program

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Peter received his undergraduate training from McGill University in Montreal (1970) and his Ph.D. in Clinical Psychology from the University of Western Ontario (1974). For over 30 years, most of his research and clinical work involves women and children who have been victims of abuse and involved with the criminal, family and civil court systems.

He has co-authored nine books, 25 chapters and over 75 articles related to children, families and the justice system including Children of Battered Women, Working Together to End Domestic Violence and Child Custody & Domestic Violence: A Call for Safety & Accountability. He has presented workshops across the United States and Canada, as well as Australia, New Zealand, Costa Rica and Europe to various groups including judges, lawyers, mental health professionals and educators. Since 1997, Peter has been a faculty member for the US National Council of Juvenile and Family Court Judges' program on "enhancing judicial skills in domestic violence cases".



Audio Conference Training series

DV and Its Relevance to Child Custody and Visitation Disputes

Part 1 Outline

- 2:00* Welcome and introduction
- 2:05 Batterers as parents
DV custody considerations
- 2:15 Question and comment
- 2:20 Effects on Children
Characteristics of battering parent
Effects on non-offending parent
Dynamics between parents
- 2:40 Question and comment
- 2:50 Custody dispute dilemmas
- Assessing lethality
 - Danger assessment risk factors
- Differentiated custody responses
- 3:05 Question and comment
- 3:15 Wrap-up and adjourn

* Time markers are in posted in Central time

Child Custody & Domestic Violence

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January 22, 2007
Praxis Audio Conference Training

Can a perpetrator of
domestic violence be a
good parent?

National Council of Juvenile and Family Court Judges:

A Model State Code

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that domestic violence or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. (Sec. 401)

Common Stages of Responses to DV in Child Custody and Visitation Disputes

- It didn't happen
- It happened but it wasn't that bad
- It happened and it was bad, but is it relevant?
- It happened, it was bad, it is relevant; but get on with your life

Why is Domestic Violence Relevant in Custody Disputes?

- Abuse Does Not End With Separation
- Overlap Between Child Abuse and Domestic Violence
- Children's Exposure to an Inappropriate Role Model
- Undermining of Non-Abusive Parent
- New Relationships Potentially Violent
- Perpetual Litigation as Form of On-Going Control
- Extreme Cases - Homicides and Abductions

Jaffe, P.G., Lemon, N. & Poisson, S.E. (2002)
Child Custody Disputes and Domestic Violence:
Clinical and Legal Issues, Sage, Thousand Oaks.

Children Exposed to Domestic Violence

- the meaning of exposure
- overlap with other forms of child maltreatment
- impact on infants, children & adolescents
- risk & protective factors
- potential long-term effects

The Potential Impact of DV on Infants, Children & Adolescents

- Effects may be direct or indirect (e.g. disrupt parent – child relationship)
- Effects may vary by severity of DV, age, gender, siblings, role in family, presence of other risk/protective factors
- Effects may be immediate and visible or delayed and subtle
- Healing facilitated by safety, stability and access to informal and/or formal supports

The Perpetrator of DV as Parent

- Rigid, Authoritarian, Bullying
- Engendering Fear
- Lack of Empathy – child's needs not recognized
- Sense of Entitlement
- Lack of Respect {boundaries}
- Control over child, parent & family relationships – even after separation
- Child as pawn or vehicle to control/punish/communicate

The Impact of DV on Victim's Parenting

- Impact may be short or long-term
- Physical & emotional pain/suffering
- Feeling demeaned, belittled and/or undermined as a parent
- Credibility & authority as parent compromised
- Compensating parenting style (pronounced compared to usual couple)
- True potential as parent may be compromised by abuse, disruptions, litigation and poverty (situational or enduring problem?)

Nicholson v. Scoppetta 181 F Supp2d 182 (ED NY 2002)
Nicholson v. Scoppetta, 3 N.Y.3d 357, 366 (2004)

Dynamics Between Victim & Perpetrator

- Role model for unhealthy relationships
- Gender roles
- Constrained sense of community – limited access to support (problems undermine access to potential resources)
- Siblings may be protective or abusive
- Loyalty conflicts (betrayal in disclosure)

Custody Dispute Dilemmas

- Accurately assessing perpetrator, victim, & children
- Domestic violence but no visible/measurable impact on children
- Children aligned with victim/primary caretaker {alienation allegations?}
- Children aligned with batterer {wishes vs. best interests}
- Role of extended family {helpful or harmful?}

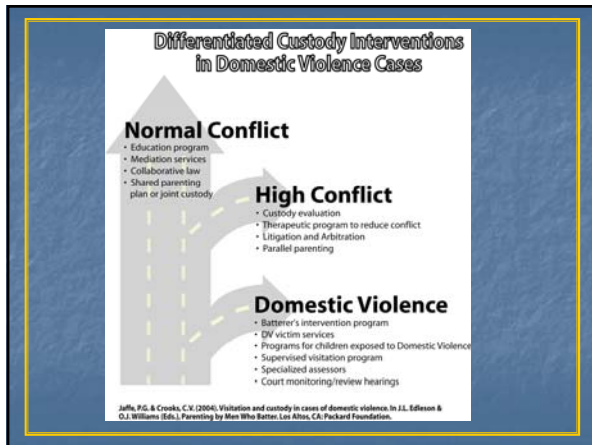
Assessing Lethality

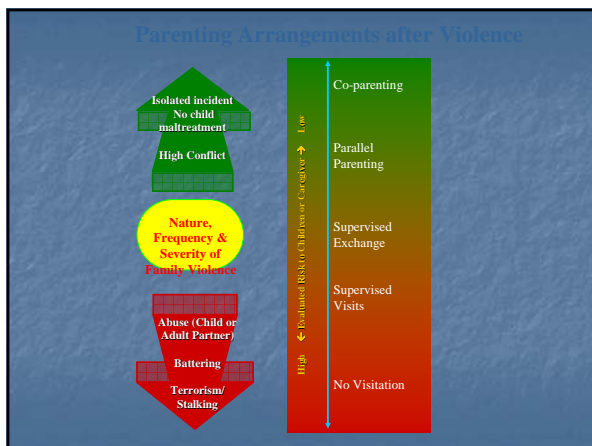
- Separation is the most dangerous period for abused women
- Threats of homicide or suicide
- Fantasies of homicide or suicide
- Depression
- Access to weapons
- Obsessiveness about partner or family
- Centrality of battered partner to batterers' view of life
- Drug or alcohol consumption
- Escalation of violent behaviour
- Hostage - taking

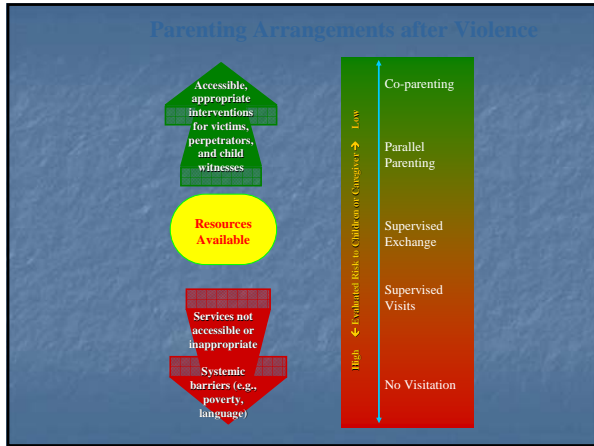
Danger Assessment Risk Factors

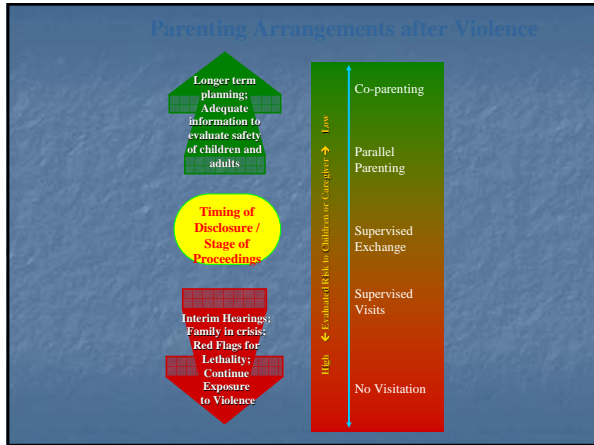
- Partner used or threatened with a weapon (20.2)
- Partner threatened to kill woman (14.9)
- Partner tried to choke/strangle woman (9.9)
- Partner violently and constantly jealous (9.2)
- Woman forced to have sex when not wanted (7.6)
- Gun in the house (6.1)
- Partner controls most/all of woman's activities (5.1)
- Drunk every day (or almost) or illicit drugs (4.1)

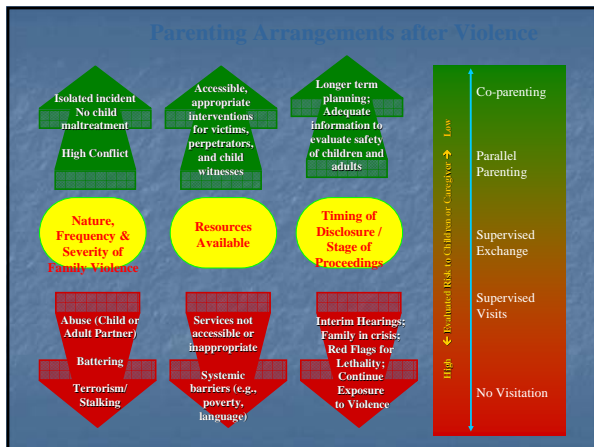
Campbell (2003)











Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices

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September 7, 2005

The views expressed in this report are those of the author and do not necessarily represent the views of the Department of Justice Canada.

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Most of all, we are indebted to the families we have worked with over the years. In particular, the plight of abuse victims and their children have educated us on the shortcomings of our existing systems to deal consistently and effectively with the issue of family violence in the context of child custody disputes. Furthermore, the valued input of judges, lawyers and custody assessors that we have gained through conducting training has helped us formulate the frameworks presented in this paper.

Funding of this project by the Federal Government is gratefully acknowledged.

Executive Summary

This paper was written to assist policy makers and practitioners in dealing with the difficult issues that arise in making appropriate post-separation parenting arrangements in cases where there are family violence issues. There has been a movement in Canada and elsewhere to cease using the traditional legal concepts of “custody” and “access,” which tend to promote a “winner” and “loser” mentality, and to start using concepts such as “co-parenting” and “parenting time” and such tools as “parenting plans” to facilitate the making of cooperative arrangements. However, cases in which there are family violence issues demand a different approach, one that recognizes the need to promote safety and accountability.

In the majority of cases involving separating parents, cooperative co-parenting arrangements are the ideal because these arrangements maximize children’s ability to have the best of what both parents offer. At the same time, there is an extensive literature on “high-conflict” divorces, which focuses on couples that are unable to resolve their disputes without extensive court involvement. Within this high-conflict group, family violence allegations are present in the vast majority of cases (Jaffe, Austin, & Poisson, 1995; Johnston, 1994). Assessing the validity and context of these allegations provides a critical basis for appropriate post-separation parenting arrangements. In cases where there are findings of family violence, it may be appropriate for one parent to have more limited, supervised, or no contact with the children because of the potential harm they present to the children and the non-offending parent.

This document is based primarily on a literature review of the areas of family violence, child custody and access disputes, and high conflict divorce. In addition, several leading researchers in the area were contacted with the request for copies of articles that are in press, in order to benefit from the most up-to-date materials. The family violence literature was applied to the area of child custody and access within the context of the first author’s extensive experience as an assessor, mediator, researcher and educator in the area. Finally, a draft of this document was circulated to several leading social science and legal researchers for feedback and input to increase its utility.

Six main findings emerged from this literature review and analysis. These findings are:

1. Family violence has the potential to affect every domain of the functioning of children.
2. The impact of family violence on any particular child varies greatly and may be related to a host of risk and protective factors.
3. Parental separation can heighten or reduce the impact of family violence on children, depending on the nature of the case and whether appropriate assessment and intervention strategies are used.
4. There is a critical need to move from a one-size-fits-all focus on co-parenting to a differential response focus in cases of family violence, including a comprehensive assessment by a social worker, psychologist or other mental health professional.

5. Assessment findings must be matched to appropriate interventions that take into account the timing of family violence disclosures, the investigative process, and the availability of resources.
6. High conflict separations often involve conflicting allegations and pose special challenges for family courts and professionals, especially when there are family violence issues.

These findings suggest the need for a range of parenting arrangements, including co-parenting, parallel parenting, supervised exchange, supervised access, and no contact. The descriptions, indicators, contra-indicators and considerations for each of these are covered at length in this paper together with case examples. The highlights of the indications and contra-indications are as follows:

Co-parenting. Co-parenting arrangements consist of both parents working cooperatively to make collective decisions, typically within a joint custody framework. Co-parenting requires two parents who are able to maintain a civil and child-focused relationship post-separation. Co-parenting is contra-indicated by high conflict and/or a history of family violence, before, during or after the separation, or lack of a foundation of any relationship between the parents. These contra-indications are usually demonstrated by a clear history of poor communication, coercive interactions, inability to problem-solve, and a lack of child-centred focus by one or both parents. A serious mental health problem or substance abuse suffered by one or both parents would also contraindicate a co-parenting arrangement.

Parallel Parenting. In contrast to the cooperative nature of a co-parenting arrangement, parallel parenting describes an arrangement where each parent is involved in the children's lives, but the arrangement is structured to minimize contact between the parents and protect the children from exposure to ongoing parental conflict. A joint custody or sole custody framework may provide the context for parallel parenting. Parallel parenting assumes that each parent has a positive contribution to make in his or her time with the children, but any direct parent-parent contact may be harmful to the children due to ongoing acrimony. This acrimony may be based on mutual mistrust, personality conflict, or inability of one or both parents to move past the separation and focus on the future. Any clinical or legal finding that one parent poses a physical, sexual, or emotional threat to the children, or that there are concerns of violence towards the other parent, would contraindicate a parallel parenting arrangement.

Supervised Exchange. Supervised exchange involves transferring children from one parent to the other under the supervision of a third party. The supervision can be informal, for example by a family member, neighbour, or volunteer, or through the utilization of a public venue for the exchange, such as the parking lot of a police station. Supervised exchange provides a buffer in cases where the ongoing conflict cannot be contained by the parents at transitions, exposing the children to high levels of conflict. It is also useful when there is an historical pattern of spousal violence and the victim may experience distress /or trauma coming into contact with the other parent. However, supervised exchanges do not minimize the risk of violence to a spouse if there are ongoing concerns about safety of children and their primary caretaker.

Supervised Access. Supervised access is a parenting arrangement designed to promote safe contact with a parent who is deemed to be a risk due to a range of behaviour from physical abuse to abduction of the child. It may also be appropriate where a child fears a parent, for example because of having witnessed that parent perpetrate abuse or because of having been abused by that parent. Supervised access should only be undertaken if it is believed that a child stands to gain some benefit from a parent maintaining an ongoing role in the child's life. Supervision is usually only considered for what is expected to be a transition period while the parent proves that the supervision may not be required. Serious concerns demand more specialized centres and well-trained staff as opposed to volunteers. There are more extreme cases where the safety offered by the supervisor is not appropriate for the degree of risk and no contact may be a more appropriate plan.

No Contact. In extreme cases where a parent presents an ongoing risk of violence to the child or other parent, emotional abuse to the child, or abduction, no meaningful parent-child relationship is possible. When a parent has engaged in a pattern of abusive behaviour and has indicated no remorse or real willingness to change, termination of the parental relationship may be indicated. There are also cases where the abusive parent/spouse has changed over time but the level of trauma engendered historically in their family precludes a fresh start. No contact would be contraindicated when there is a solid foundation of a parent-child relationship and there is a demonstrated commitment to re-establish this relationship.

Three other factors are identified in this paper to provide critical context for considering these various parenting arrangements. First, the context of the violence is an important factor. For example, violence that was more severe, accompanied by a pattern of power and control, engendered fear, and was part of an ongoing pattern indicates the need for more restrictive access than historical, minor, isolated incidents of violence that were out of character for the perpetrator. Second, decisions about parenting plans are predicated on the resources available to the family within their community. For example, safe access to the parent that has perpetrated family violence may depend on successful therapeutic interventions and access to a specialized access centre. Third, the stage of the court proceeding has implications for evaluating allegations of family violence. For example, interim decisions based on minimal information may underscore the importance of initial safeguards pending a more thorough analysis of possible findings or court ordered assessments.

On the basis of our analysis, several policy and resource development implications emerge. These include the need for *legislation* to find the necessary balance between promoting co-parenting arrangements and recognizing family violence cases where more limited or no access by the perpetrator to the children may be appropriate. A second implication is that *resource and policy development* is needed to support a more sophisticated analysis and response to family violence cases.

Specific protocols are required to guide practitioners in managing cases with family violence allegations that fall into the area between public safety for children (i.e. triggering criminal or child protection proceedings) and private family law matters. Family courts rarely have the resources beyond parenting education and mediation services, and these more complex cases require a more sophisticated set of resources. These resources include: timely access to specially

trained assessors with expertise in family violence; supervised access centres; treatment resources for individual family members (including perpetrators, victims, and children); and ongoing court monitoring which may be needed in cases of child-related disputes with histories of family violence. There must also be better coordination between the family court system, and police, prosecutors and the criminal justice system. A special challenge for the justice system and community social services occurs in cases when there are simultaneous family law, child protection, and criminal proceedings.

Building systemic capacity also requires *education and training for court-related professionals* (e.g., mediators, child custody assessors). Training programs have to be available to help court-related professionals recognize family violence in all its forms, and to permit them to provide differential service responses to meet the level of need in an individual family. When spousal violence is recognized, there needs to be a distinction between minor, isolated acts, and acts that occur as part of a pattern of abuse which engenders fear and poses a risk of future harm for family members.

Finally, there are significant *gaps in the existing research* that limit our ability to fully understand the dynamics of these cases and identify best practices. Specifically, there is a lack of long-term follow-up studies to match children's adjustment with specific arrangements post-separation within the context of family violence. In addition, most research has been conducted with families in the formal judicial system, and less is known about the future outcomes of those who are unwilling or unable to engage this system. Research in the divorce area has been criticized for looking at the outcome of biased samples. For example, deciding that joint custody is good for everybody because research shows children do best after divorce with cooperative parents, belies the fact that most of the research is based on a biased sample of couples who were able to readily resolve conflict and did not involve serious allegations of domestic violence.

A starting point for an enhanced understanding is a better integration of the divorce literature and the family violence literature; these two literatures have largely developed independently of each other, reflecting the separate professional lives of practitioners and researchers in these two related fields (Jaffe, Poisson, & Cunningham, 2001). The high conflict cases involving family violence represent a minority of all separating parents. Leading experts in the field have pointed out that these cases should not be guided by the literature and policies that are applicable to those parents not involved in cases with family violence issues (Johnston, 1994). Our goal in this document is to assist policy makers and practitioners to apply the appropriate literature and policies to these difficult cases.

1.0 Introduction

Interest in legislation and practice in resolving post-separation parenting disputes has never been higher in Canada. While the divorce rate has increased dramatically compared to previous generations, parental desire to be part of their children's lives has not changed. Traditional gender roles have evolved as more individuals seek equality in their relationships. In fact, current generations of fathers have been more actively involved in the day to day care of children (Fthenakis & Kalicki, 1999) and current generations of mothers have been more actively involved in the workforce compared to previous generations of parents (Zimmerman, 2000). Old presumptions and stereotypes about the role of mothers and fathers during marriage and after separation are gradually disappearing. Based on recent Canadian Parliamentary hearings and a zeitgeist that exists all over the Western world, separating parents are being encouraged to put their differences behind them and focus on the best interests of their children as co-parents. There appears to be a widespread movement to abandon the concepts of "custody" and "access."

At the same time, Canadian society is more aware of child abuse and spousal violence (together these terms are referred to as "family violence"). There is widespread acknowledgement that family violence is a serious social problem that demands effective intervention by the court and community services. Recent inquests across Canada and notably the work of the Ontario's Domestic Violence Death Review Committee provide reminders that tragedies often appear predictable, and preventable with better training, more resources and closer professional collaboration. Many of these tragedies involve separating parents who place both their victimized children and former spouse in danger of significant harm and death. These cases are reflective of a broader population of parents for whom co-parenting is not only inappropriate, but also potentially lethal.

The two realities outlined above – growing support for co-parenting and growing awareness of family violence - are on a collision course when it is time for courts and court-related professionals such as lawyers, mediators and custody assessors to assist parents in settling their differences about post-separation parenting arrangements. While the majority of separating parents may be able to work out a co-parenting (joint custody¹) plan, those parents with a history of family violence may need different resolutions. These resolutions may involve limited, supervised or no contact with children, depending on safety concerns for children as well as the non-offending parent. Some advocates of co-parenting argue that most of the parents who raise concerns about family violence are making false or exaggerated claims of abuse to further their desire to not share their children. There are legitimate issues related to proof of claims, but it should be appreciated that denial and minimization of abuse by genuine abusers are more common than false or exaggerated claims of spousal abuse by alleged victims. The need for

¹ The terms co-parenting and joint custody refer to a broad array of parenting arrangements that may vary with respect to the amount of time spent with each parent and the actual process for decision-making. In general, this range of arrangements shares the common feature of significant involvement from each parent and cooperation, or at the very least the absence of conflict, between parents. Although joint custody is often misunderstood as a 50/50 residential split, in many cases the term is utilized to capture the spirit of parental cooperation or the avoidance of a winner-loser mentality, and in reality one parent may have the vast share of both residential time and day-to-day decision-making.

proper assessment and investigation into all claims is essential to ensure that appropriate parenting arrangements are matched to each family system.

The search for ideal co-parenting arrangements after separation and the search for child and parent safety and accountability after family violence represent two solitudes. The purpose of this report is to start to bridge the gap between these two solitudes. This discussion paper represents an important starting point in addressing this gap. The paper offers a review of the current literature on the impact of family violence on children's adjustment and the implication for parenting arrangements in these circumstances. The paper offers a model of how to consider findings of family violence in child custody and access disputes, and how to appropriately match post-separation parenting arrangements to needs of children and their caregivers. The critical role of court-related resources, training and collaboration amongst professionals in the field is addressed.

1.1 Methodology

This document is based primarily on an extensive literature review of the areas of family violence and post-separation child-related proceedings. In addition, several leading researchers in the area were contacted with a request for copies of articles that are in press, to obtain the most up-to-date materials (see Acknowledgements for list of experts). The family violence literature was applied to the area of child-related disputes within the context of the extensive experience of the first author (Peter Jaffe) as an assessor, educator, and researcher in the area. Finally, a draft of this document was circulated to several leading social science and legal and researchers for feedback and input to increase its utility. Although many of their comments were integrated into this report, the final product reflects the views of the authors and may not capture particular perspectives raised by some of the experts.

1.2 A Guide to the Report

This report is divided into sections that provide an overview of the literature on family violence followed by sections on post-separation parenting arrangements in cases involving family violence. The reader is provided with a model for a paradigm shift in regards to assessment and intervention strategies in cases of family violence and child-related parental disputes. A model for best practice is outlined in the text together with a summary diagram to illustrate the host of factors to consider in matching parenting arrangements to families in which violence is a factor. The implications for policy, legislation and practice in the family court and court-related services are outlined in the concluding section.

2.0 Literature Review on Impact of Family Violence

2.1 Impact of Family Violence

Family violence is considered to be any form of physical, sexual, emotional, or psychological abuse that occurs in the context of family relationships. The term family violence encompasses child abuse and neglect, spousal violence (intimate partner violence), and elder abuse.

Throughout this document the term family violence is intended to be inclusive of all forms of abuse in the family and the term spousal violence signifies abuse within the context of an intimate adult relationship. In the divorce literature, high-conflict couples are identified as those that require extensive and lengthy court involvement to resolve disputes post-separation. Family violence issues are present in a majority (but not all) of high conflict separations (Jaffe, Austin, & Poisson, 1995; Johnston, 1994). This distinction is important because not all conflict can be deemed violence, but conversely, violence should not be euphemized as conflict.

Family violence continues to negatively impact the healthy development of children and families across the country. In Canada, 27% of reported violent crime victims are victims of family violence, and similar rates have been documented in the US. In both countries the number of female victims outnumber the male victims by at least 300% in the context of intimate violence (Statistics Canada, 2004a; Bureau of Justice Statistics, 2000). These rates are comparable to those found in Europe, although the reports of estimated prevalence of family violence vary due to differences in definition, data sources and sampling (Hagemann-White, 2001; Kury, Obergfell-Fuchs, & Woessner, 2004). For example, the British Crime Survey estimates 26% of women and 17% of men are physically assaulted and/or threatened with violence by an intimate partner (Byron & Mirlees-Black, 1999). Similarly, estimates from the Australian Women's Safety Survey, which strictly focused on the prevalence of physical and sexual violence experienced by women and the nature of this violence, reported that 8% of women have experienced at least one incidence of violence, perpetrated by an intimate partner. These cross-national estimates capture the reported (actual or threatened) violent incidents from crime victim surveys.

There continues to be debate within the research literature, and among practitioners and other members of the violence prevention community, about using official crime statistics versus random surveys as tools for determining the incidence and prevalence of family violence. (Johnson & Bunge, 2001; Tjanden & Theonnes, 2000). There is general agreement that family violence is an underreported crime. There continues to be a lack of information nationally and cross-nationally regarding the likely number of unreported incidents, as well as the extent and trajectory of family violence. However, Canada has been a forerunner in collecting these data through methods other than crime surveys. Statistics Canada has completed several comprehensive telephone surveys on the topic of family violence (Statistics Canada 2001; 2004a, 2005). While these surveys suggest that rates of victimization of intimate partners is similar to other cross-national samples, there is particularly rich additional information that is captured in these surveys including trends, context, sentencing implications, family violence against children and youth, violence against older adults, and homicide risk. At one level, rates of victimization for females and males look very similar (7% of women vs. 6% of men reported being victims of an act of spousal violence in the previous five years); however, the additional contextual

information identified important gender patterns in severity, impact and lethality of violence. Notably, these findings revealed that:

- Female victims of spousal violence were twice as likely to suffer ten or more incidents of violence in comparison to male victims (Statistics Canada, 2005).
- Female victims of spousal violence were significantly more likely than male victims to suffer injuries, require medical attention, lose time from work, live in fear, and worry about the safety of their children (Statistics Canada, 2005).
- Data from the Homicide Survey (Dauvergne, 2003) indicate that between 1993 and 2002, women were four times more likely to be killed by their spouse (8 female homicide victims per million couples compared to 2 male homicide victims per million couples).
- Cases of spousal homicide-suicide involve female spouses as the target in 97% of these cases (Statistics Canada, 2005).

The most recent survey completed looked at violence after separation and the association with child contact. Twenty-seven percent of estranged spouses with children until 18 years of age reported physical or sexual assault in the previous five years. More than twice as many abused spouses in comparison to non-abused spouses reported that their ex-spouse had no contact with the children (14% vs. 6%, Statistics Canada, 2005). Family violence has an impact on children in both direct child abuse and the indirect impact of exposure to spousal violence. This impact on children has garnered heightened awareness as scholars and those in the broader spousal violence network continue to call for better answers about how to accurately measure the incidence, impact and prevalence of family violence, its impact on family dynamics, and how to create meaningful interventions (Mears & Visher, 2005). While there has been considerable progress in the identification of cases and coordination of community responses to family violence, there is still much to achieve. In particular, the complexity of family violence and its impact on all facets of family functioning and child development is the source of ongoing efforts to improve intervention and prevention. There is a growing awareness of the need for longitudinal research on the impact of family violence on children. Challenging but important issues to study include research into what happens to children after parental separation, and what are the effects of different post-separation parenting arrangements on children who have experienced family violence.

While there have been numerous studies related to all forms of childhood victimization and its short term and long term effects on social, emotional, physical and psychological development, this research tends to be compartmentalized. That is, “a relatively small proportion of studies concerned with childhood violence has assessed participants for exposure to multiple forms of violence, multiple incidents of the same type of violence, or exposure to potentially stressful or traumatic events other than violence” (Saunders, 2003, p.359). This lack of research speaks to the complexity of family violence and how the effects of violence can vary greatly based on an array of variables. Cunningham & Baker’s (2004) recent exhaustive review of family violence and child maltreatment literature proposed a model that examines the variables hypothetically associated with the impact of family violence (See Figure 1). This illustration captures the

complexity and the substantial number of variables that must be taken into consideration when examining the impact of family violence.

2.2 Child abuse²

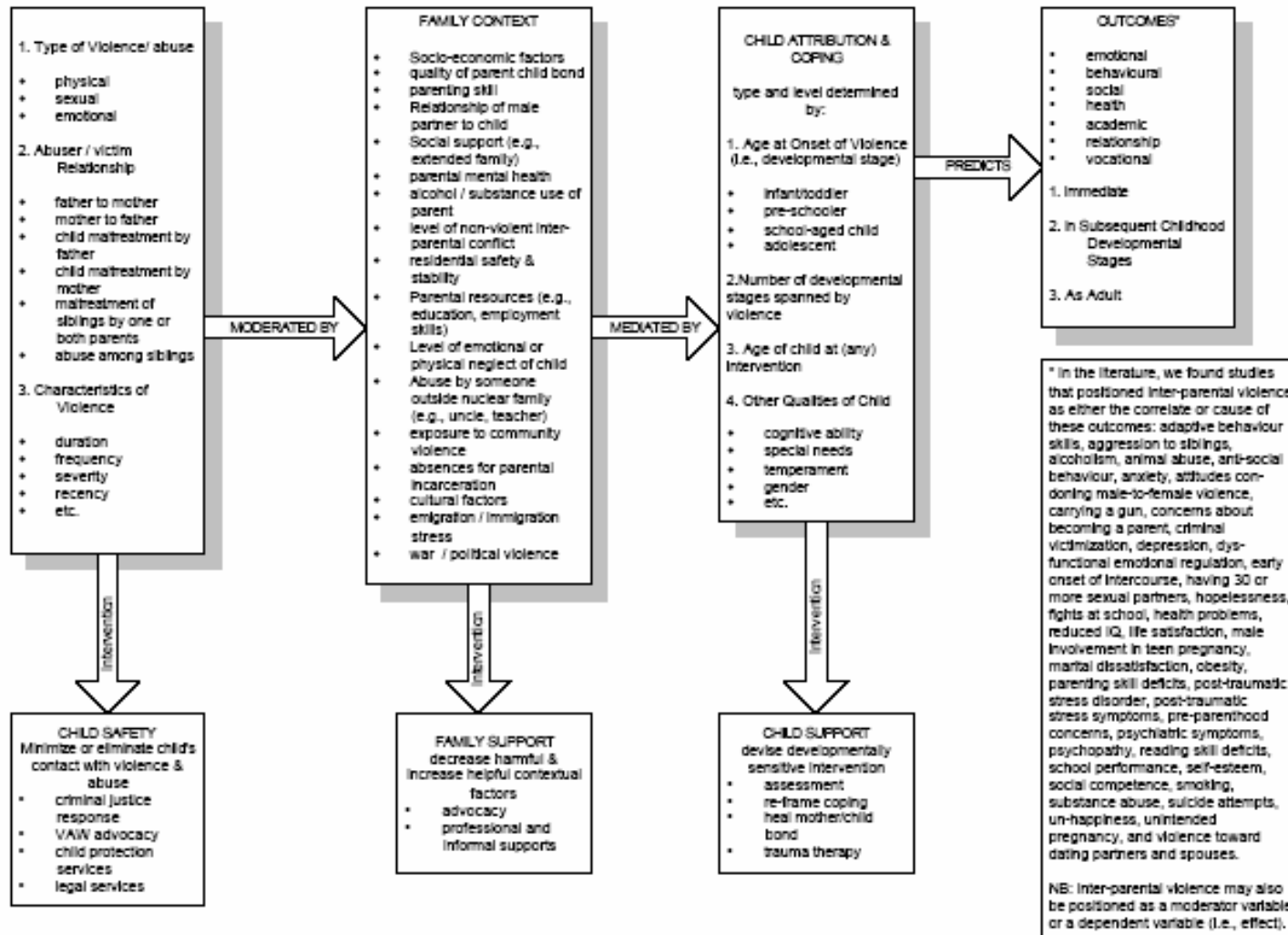
The literature related to child abuse is dominated by empirical studies that examine the characteristics, behavioural and emotional impact (immediate and long-term implications), developmental considerations, and societal consequences of child maltreatment. The majority of studies have shown that maltreated children, when compared to children who have not experienced maltreatment, are more likely to display major behaviour problems and emotional difficulties (Egeland, Yates, Appleyard, & van Dulmen, 2002; Jungmeen & Cicchetti, 2003; Maughan & Cicchetti, 2001; Hildyard & Wolfe, 2002), demonstrate more discipline problems at school (Kendall-Tackett & Eckenrode, 1996), are more aggressive towards their peers or more socially withdrawn (Shields & Cicchetti, 2001), have fewer social skills (Levendosky, Okun, & Parker, 1995) and are more likely to be rejected by their peers (Shields & Cicchetti, 2001). The serious long-term effects of child maltreatment have also been noted, including adverse mental health, physical health impairments and societal consequences (National Clearinghouse on Child Abuse and Neglect, 2004a; Higgins & McCabe, 2003; Johnson et al., 2002). While there have been a number of studies that document the characteristics and behavioural impact of child maltreatment, there has not yet been enough research conducted on the relationship between the characteristics of maltreatment and the development of behavioural or emotional problems over time (Ethier, Lemelin, & Lacharit, 2004).

It is generally acknowledged in the literature that child abuse and its fundamental causes can be traced to various systems including the family, the community and larger society (Belsky, 1993; National Clearinghouse on Child Abuse and Neglect, 2004b). It is the family system and its impact on child maltreatment that is most important and pertinent to this discussion. In Canada, it is estimated that biological parents are responsible for the majority of child maltreatment, with approximately 90% of all instances of child abuse being committed by at least one biological parent (Trocme, MacLaurin, Fallon, Dciuk, Billingsley, Tourigny, et al., 2001)³. In addition, extensive research indicates perpetrators of spousal violence are significantly more likely than non-perpetrators to physically abuse their children (review in Bancroft & Silverman, 2002). However, separation of the maternal caregiver from her abusive partner significantly reduces the risk for child maltreatment when spousal violence is reported (Cox, Kotch, & Everson, 2003). In these cases, the identification of these families as high risk may facilitate appropriate intervention and safety planning for the caregivers and their children.

² The term child abuse has been criticized for focusing exclusively on acts that meet a particular legal definition of abuse. In contrast, the term child maltreatment includes a wider array of abusive and neglectful behaviours that may not reach the legal threshold, but may have negative consequences for child development. Furthermore, abuse tends to be incident-specific, whereas maltreatment refers to a pattern of behaviour over time. Both terms are used in this paper.

³ Findings from the Canadian Incidence Study suggest that mothers are more frequently the perpetrator of child abuse, but this proportion is largely related to the disproportionate number of single parent mother-headed households. In families where there are two parents, fathers are more likely to be identified as a perpetrator in all types of child abuse, except for neglect.

Figure 1: Variables Hypothetically Associated with Impact of Family Violence



Source: Cunningham, A. & Baker, L. (2004). What about Me! Seeking to Understand the Child's View of Violence in the Family. Available at http://www.lfcc.on.ca/what_about_me.pdf

2.3 Exposure to spousal violence

There has been much research and policy focus on children exposed to spousal violence. The term “exposure” covers such a wide range of circumstances which include hearing a violent event, visually witnessing the event, intervening, being used as a part of a violent event (e.g., being used as a shield against abusive actions), and experiencing the aftermath of a violent event (Edleson, 1999c). The negative effects of childhood exposure to spousal violence have been presented in numerous studies and meta-analysis (Edleson, 1999a; Kitzmann, Gaylord, Holt, & Kenny, 2003; Wolfe, Crooks, Lee, McIntyre-Smith, & Jaffe, 2003). Most notably, research indicates that children exposed to spousal violence are more likely than other children to be aggressive and have behavioural problems (Graham-Bermann, 1998), have different physiological presentations (Saltzman, Holden, & Holahan, 2005), exhibit higher rates of Post-Traumatic Stress Disorder⁴ symptomatology (Kilpatrick, Litt, & Williams, 1997), are likely to try to intervene on behalf of the victimized parent (Peled, 1998), and may also develop a ‘traumatic bond’ (a longing for kindness, leading to confusion between love and abuse) with the perpetrator (Bancroft & Silverman, 2002). In some cases, children express preference to live with the abusive parent, who is perceived as more powerful.

We are only beginning to understand the broader picture as it relates to children’s exposure to spousal violence. Research related to the effects of being exposed to spousal violence has evolved over the past decade, but has largely relied on the reporting of victims or other adults (teachers, service providers, etc.) to identify the problematic effects using standardized measures (Ornduff & Monahan, 1999; Morrel, Dubowitz, Kerr, & Black, 2003). A recent review of available studies estimated that less than 20% (of 220 empirical studies) directly asked children for information (Cunningham & Baker, 2004). Recently, researchers have begun turning their attention to capturing children’s voices and their experience of being exposed to violence. This research has shown that children usually are aware of the spousal violence that occurs in their family and also freely disclose incidents of their own abuse (Cunningham & Baker, 2004; Ornduff & Monahan, 1999; Holden, 2003). These first-person accounts from children that describe multiple forms of violence in the home converge with other research that indicates child maltreatment occurs most frequently in families where there is also spousal violence present (Edleson, 1999b; Hartley, 2002).

2.4 Overlap among child abuse, spousal violence and sibling abuse

Spousal violence and child abuse often occur in the same family and until recently very few interventions were targeted at addressing this duality in families (Straus & Gelles, 1990; Schechter & Edleson, 1999). The majority of studies reveal that in families where there is spousal violence or child maltreatment present, in 30% to 60% of the cases both forms of abuse exist (Edleson, 1999b; Appel & Holden, 1998). The impact on children in these families varies based

⁴ Post Traumatic Stress Disorder (PTSD) is a psychological disorder that may arise in response to experiencing or witnessing a traumatic event that was accompanied by feelings of intense fear, hopelessness, or horror. Symptoms include re-experiencing the event (e.g., nightmares, flashbacks); persistent avoidance of reminders of the event (e.g., efforts to avoid thoughts, feelings, or conversations associated with the trauma, inability to recall an important aspect of the trauma), and persistent symptoms of increased arousal (e.g., difficulty falling or staying asleep, irritability or outbursts of anger). For a diagnosis of PTSD the symptoms must last more than one month and cause impairment in important areas of functioning.

on the degree and frequency of violence, how much is witnessed and how much is directly experienced, as well as risk and protective factors (Edleson, 2004). Risk factors such as young caregiver age, low education, and low income, and lack of the social support network compound the risk for child abuse associated with spousal violence (Cox et al., 2003). Emerging Canadian interventions, such as the *Caring Dads* program, recognize this overlap by providing intervention for fathers who have maltreated their partners and children. This program addresses both spousal violence and child abuse (Scott & Crooks, 2004; Crooks, Scott, Francis, Kelly, & Reid, in press)⁵.

The presence of spousal violence also increases the likelihood of the presence of violence and abuse between siblings (Hoffman & Edwards, 2004). There are few studies that document the incidence and prevalence of sibling abuse, with some researchers suggesting that there are no systematic studies that address the incidence and prevalence of sibling abuse and its impact on future adult functioning (Graham-Bermann, Cutler, Litzenberger, & Schwartz, 1994). One of the most reliable studies, conducted well over a decade ago, reported that sibling abuse is the most common form of violence in the family, with 8 out of 10 children reporting physical violence against a sibling (Gelles & Straus, 1988). In addition, parents may view the violence between siblings as mutual and therefore never really consider the possible perpetrator and victim roles that exist in sibling violence (Graham-Bermann et al., 1994).

While some degree of intersibling aggression is normal, more severe sibling abuse is a cause of concern, especially in families where there are other family violence issues. Recently, Wiehe's (1997) study on severe sibling abuse described a cascading effect, with the oldest sibling targeting the second child, and this sibling attacking the next youngest child. In this same study, victims of severe sibling abuse reported that their self-esteem and their ability to trust others were negatively impacted, resulting in future problems such as depression, substance abuse, and poor intimate relationships. For siblings who have unresolved abusive relationships throughout childhood, their opportunity to develop a mutually supportive and healthy adult intimate relationships may be compromised (Brody, 1998).

Beyond abuse by a sibling, children can be affected by witnessing a parent abuse a sibling, regardless of whether they themselves are targeted for abuse. Although few studies have been done in this area, it seems likely that witnessing a sibling being abused by a parent figure threatens the emotional security a child experiences (Cummings & Davies, 1996; Davies, Harold, Goeke-Morey, Cummings, Shelton, & Tasi, 2002). That is, the child may have a secure relationship with the parent, but the experience of seeing a sibling victimized by that parent may profoundly shape a child's view of the world and relationships. In this case, the child may be physically safe, but may suffer from anxiety related to the possibility that he or she might be a future victim. Furthermore, the observer child may feel guilty about being safe, or conversely, come to see the victimized child as deserving of the abuse, to make sense of the violence.

⁵ The *Caring Dads* program is currently offered in London, Toronto, and Thunder Bay, Ontario, as well as in Boston, Massachusetts. Expansion to other communities is currently underway. More information about the program or manual is available at www.caringdadsprogram.com.

2.5 Variability of the Impact on Children

The serious implications for children who are maltreated or exposed to spousal abuse have been well documented. There are a number of studies which indicate that not all children who directly and indirectly experience family violence later develop severe emotional and behavioural problems (National Clearinghouse for Child Abuse and Neglect Information, 2004b). Cunningham & Baker (2004) caution against making assumptions that (1) all children are negatively affected by spousal violence, (2) all children are affected in the same way and (3) that spousal violence should be the sole focus of interventions. Outcomes of individual cases vary widely and are affected by a combination of factors, including the child's age and developmental status when the abuse or neglect occurred, the type of abuse (physical abuse, neglect, sexual abuse, etc.), frequency, duration, and severity of abuse, and the relationship between the victim and the abuser (Chalk, Gibbons, & Scarupa, 2002). These varying outcomes can be seen in families where children have similar risk factors and exposure experiences, but have very different short-term and long-term outcomes.

Researchers have begun to explore why some children experience long-term consequences of abuse and neglect while others emerge relatively unharmed under similar circumstances. The ability to cope effectively following a negative experience is sometimes referred to as "resilience." A number of protective factors may contribute to an abused or neglected child's resilience. These include individual characteristics, such as optimism, self-esteem, intelligence, creativity, humour, and independence; parent or family factors such as extended family support, highly educated parents, household rules and boundaries, and a caring adult in the child's life; and social factors such as community well-being, including neighborhood stability and access to health care (National Clearinghouse for Child Abuse and Neglect Information, 2004b).

2.6 Typologies of Family Violence

In the same way that there is variability among outcomes for children, there is also great variability among the patterns and contexts of violence between adults in a relationship. A thoughtful analysis of the impact of family violence must consider typologies of violence and the various contexts in which spousal violence can occur. A number of helpful typologies have been developed. The different types of spousal violence have different expectations of future dangerousness and require different social and legal interventions.

Johnston and Campbell (1993) were among the first to offer a model for understanding different patterns of spousal violence within high-conflict divorcing families, operating under the assumption that spousal violence arises from multiple sources and follows different patterns in different families. Recognizing that theories from the literature related to family violence are numerous (psychodynamic, biological, family systems, sociopolitical, etc.), these researchers created linkages between these theories to create five categories of spousal violence (with special consideration given to paranoid and psychotic forms of violence). These five types include:

1. Ongoing/Episodic Male Battering

This type of violence most closely resembles the traditional understanding about batterers as it relates to the cycle of violence theory. Men's perpetration of violence is attributed to "their low tolerance for frustration, their problems with impulse control, and their angry, possessive, or jealous reactions to any perceived threat to their potency, masculinity and 'proprietary male rights'." (p. 193). These men generally are a threat to women, and over time their propensity to use violence increases with the threat of separation and long after separation.

2. Female Initiated Violence

Women's use of violence (not in the context of self-defense) is seen as a reaction to their own stress and tension. While women demonstrate physical, emotional and verbal abuse within relationships, these acts did not affect the power differential between partners (in relation to perceived or actual power and control dynamics between partners).

3. Male Controlling Interactive Violence

This type of violence most closely resembles what has come to be known as "mutual violence". This type of violence arises out of a mutual disagreement or verbal altercation and escalates into a physical struggle. It should be noted that the term "mutual violence" is not without controversy, as most advocates and others working in the anti-violence field acknowledge that context and power dynamics are not often recognized in the understanding of this type of violence. Indeed, the name of this category has been identified as problematic due to the seeming paradox of "interactive" and "male controlling" (see Bancroft, 1998 for critique).

4. Separation/Divorce Trauma

This category refers to acts of violence which only occur about the time of separation, but were not present in the relationship prior to separation. Often, after an escalation of outrage, anger and abandonment, physical violence is typically perpetrated by the partner who is being 'left'. The violence does not develop into an ongoing pattern of violence, but stops following a few isolated incidents at the height of the separation.

5. Psychotic / Paranoid

The fifth category addresses violence that is associated with psychotic or paranoid reactions due to mental illness or "drug-induced dementia." Psychiatric treatment is recommended as the preferred intervention. However, Bancroft's critique (1998) notes that a person who batters and also has a mental health problem may have two important issues requiring multiple intervention strategies. Furthermore, treating the mental health problem alone may not eliminate spousal violence. Bancroft further argues that a perpetrator of spousal violence who has co-existing mental health problems may require an approach similar to the one needed for the substance abusing batterer; that is, both problems need to be specifically addressed in intervention.

Frederick and Tilley (2001) contend that “in order to intervene effectively, it is important to understand the (1) intent of the offender, (2) the meaning of the act to the victim and (3) the effect of the violence on the victim.” (p. 1). They describe 5 *contexts* that must be considered when gathering historical information about spousal violence in a family. Thus, any act of physical aggression must be evaluated in the larger context of these factors. These include:

1. *Generally violent (a “fighter”)*

Some people are violent regardless of the context. These are people who use violence in situations inside and outside of the family to resolve conflict or to satisfy aggressive impulses.

2. *Battering*

Battering consists of not only acts of violence and abuse, but is a component of a larger system of intimidation, control and isolation that purposefully puts the victim at a power disadvantage, severely compromising the victim’s independence, self-esteem and safety. While some batterers are also “fighters,” many are violent only in a familial setting.

3. *Isolated act (not a “batterer”)*

The use of violence is highly uncharacteristic and not used in the relationship to exert power or control. The violent incident may occur in a highly stressful situation and the perpetrator normally recognizes the behaviour as inappropriate.

4. *Mental incapacitation*

Mental illness, substance use and dependency, and medications contribute to use of violence. For perpetrators that have some mental health impairment, their use of violence in a relationship may be illegal, but may reflect their mental health issues.

5. *Responsive to battering (self-defensive)*

Self-defensive violence is always in response to a partner’s violence or threat of violence. The use of violence by this person is not part of an attempt to gain control of the relationship, but rather is a response to attempt to protect oneself or gain control in a particular, violent situation.

Depending on the combination of type of violence and the context, each situation can call for a different systems (criminal justice, civil justice including family law and child protection aspects, health care, etc.) response. Also, perpetrators of violence can fit into more than one context (i.e. they can be a batterer and be generally violent).

Another researcher who has argued for delineation of different patterns of spousal violence is Michael Johnson (Johnson, 1995; Johnson & Ferraro, 2000). His early work identified the important distinction between patriarchal terrorism and common couple violence. More recently, LaViolette has extended this framework to develop a continuum of aggression and abuse. This

continuum conceptualizes spousal violence ranging from *common couple aggression* to *terrorism/stalking* (LaViolette, 2005). LaViolette has hypothesized a number of dimensions upon which the five (Johnson) types differ, including the contextual factors identified by Frederick and Tilley (2001). Figure 2 depicts this continuum and the characteristics of each type of aggression / abuse. Understanding the differences among these types of violence provides an important foundation for assessing the appropriateness of a particular post-separation parenting arrangement.

Examination of the various patterns of family violence also highlights gender differences that need to be discussed. A gendered analysis of family violence is a controversial topic that tends to divide both practitioners and researchers. There is no doubt that male perpetrated violence against women is most often reported to police, results in more serious physical injury, is associated with fear and concern about children's well-being, and accounts for the majority of domestic homicides (Statistics Canada, 1999; Tjaden & Thoennes, 2000; Ontario Domestic Violence Death Review Committee, 2004; Washington State Fatality Review Committee, 2004). At the same time, not all female perpetrated violence is in self-defense, and it is generally accepted that males are more hesitant to report victimization experiences to authorities.

Furthermore, although male domestic homicide victims constitute a minority of intimate partner homicide victims, these cases of victimization of male intimate partners present the same challenges for early identification and prevention. Their victimization can have the same profound impact on children and extended family members. Most recognized experts in the field would agree that one death is one too many and there is a paucity of research on violent relationships in which the female partner is the primary perpetrator. A similar gap exists for understanding same-sex intimate partner violence; this violence is underreported due to the need to disclose both intimate violence and sexual orientation to authorities who may be perceived to be homophobic.

Figure 2: Continuum of Aggression and Abuse (LaViolette, 2005)				
<p>Common Couple Aggression</p> <ul style="list-style-type: none"> • Aberrant act • Remorse⁶ • Does not cause fear, oppression or control • No serious injury • Comes from escalating arguments • Could happen in any family 	<p>High Conflict</p> <ul style="list-style-type: none"> • Do not solve problems well • Anger is an issue in family • May have remorse • May have sporadic physical aggression and / or destruction of property • Not emotionally abusive • No fear • Comes from escalating arguments 	<p>Abuse</p> <ul style="list-style-type: none"> • Sporadic physical aggression • Name-calling, but not character assassination • Verbal abuse, but not psychological • Development of apprehension • May be remorseful • Threats of abandonment • Threats of getting custody • Aggression takes place without witnesses 	<p>Battering</p> <ul style="list-style-type: none"> • Monopolization of perception • Generally more regular physical abuse, but may occur without any physical abuse • Threats to victim's support system • Isolation • Name-calling that attacks character • Threats to kill self or others • Jealousy • Putting down of family and friends • Destruction of property • Self-absorbed • Sexual abuse • Change in victim's personality • More generally violent 	<p>Terrorism / Stalking</p> <ul style="list-style-type: none"> • Monopolization of perception • Insidious psychological abuse • Well-thought out threats to kill – very specific • Torturing pets • Extreme isolation of victim by perpetrator • Generally more regular physical abuse, but may occur without any physical abuse • Sexual humiliation and degradation
← More likely to see gender equivalence			Male dominant violence →	

⁶ It has been noted that the concept of displaying remorse may have cultural connotations. In this area, as with all aspects of assessment, professionals require cultural competence for providing service to a diverse group of clients. In some cultures, expressing remorse may be easily done, but not reflect genuine responsibility taking; in other cultures, there may be genuine remorse, but the socialization of men may preclude an outward expression of this responsibility taking (Zorza, personal communication).

3.0 Parenting Arrangements in Cases Involving Spousal Violence

3.1 Why is Spousal Violence Relevant to Post-Separation Parenting Arrangements?

A finding of child maltreatment has long been recognized as a critical factor to consider in determining post-separation parenting arrangements and possible child protection intervention. The child protection movement has a long history of debating the role and threshold for state intervention and promoting safe contact with formerly abusive parents whenever possible. In contrast, it has largely been only within the last decade that legal and mental health professionals have acknowledged that spousal violence is relevant to the determination of child custody and access. Prior to this time, spousal violence was seen as an adult issue not relevant to the best interests of children, and it was believed that a man could be a violent spouse but could still be a “good father.” Many groups have challenged this notion and encouraged legislative reform to recognize spousal violence as a critical factor to consider in these cases (e.g. National Council of Juvenile and Family Court Judges, 1994; American Psychological Association, 1998; Bala et al., 1998).

There have been very significant legislative changes in the USA, Australia and New Zealand to reflect spousal abuse concerns in post-separation parenting (and the accompanying challenges) (Jaffe & Crooks, 2004). Major program initiatives have been undertaken such as the US Department of Justice’s Safe Havens Project, which provides funding and technical assistance for supervised visitation in cases of spousal violence, and new guidelines for judges in utilizing custody evaluations in cases that involve spousal violence (Dalton, Drozd & Wong, 2004). In Canada, with the exceptions of Newfoundland and Labrador, the Northwest Territories and Nunavut, there have not yet been changes in post-separation legislation to deal adequately with spousal violence; however, there have been changes in programs and policies in Canada that reflect a growing awareness of this issue (Bala et al., 1998; Jaffe & Crooks, 2004).

The rationale for legal, policy and program changes that include spousal violence as a relevant factor in determining the appropriate post-separation parenting arrangement is the following:

- *Spousal abuse often does not end with separation.* Research has shown that physical abuse, stalking and harassment continue at significant rates post-separation, and may become more severe (Hotton, 2001; Statistics Canada, 2001; Liss & Stahly, 1993). In fact, promoting contact between children and a violent ex-spouse may create an opportunity for renewed spousal violence through visitation and exchanges of children (Leighton, 1989; Sheeran & Hampton, 1999; Jaffe, Crooks, & Poisson, 2003). While in a majority of cases (e.g., common partner / interactive violence) the incidence and risk of violence decreases after separation, in a significant minority of cases the intensity and lethality of spousal violence increase after separation.

- *High overlap between spousal violence and child abuse.* The presence of spousal violence is a red flag for the co-existence of child maltreatment. In a review of studies investigating this overlap, results suggested that between 30% and 60% of children whose mothers had been assaulted by their male partners were themselves likely to be abused (Edleson, 1999).
- *Perpetrators of spousal violence are poor role models.* Children's socialization with respect to relationships and conflict-resolution is negatively affected by exposure to a perpetrator of spousal violence. For example, when children witness one parent assaulting the other, or using threats of violence to maintain control within a relationship, their own expectations about relationships may come to parallel these observations (Bancroft & Silverman, 2002). The potential for violence in the subsequent intimate relationships of a spousal violence perpetrator represents a threat that children's exposure to poor modelling will continue.
- *Victims of spousal violence may be undermined in their parenting role.* Perpetrators of spousal violence may undermine their (ex)-partners parenting in a range of obvious and more insidious ways (Jaffe & Crooks, 2005). For example, male perpetrators may blame the children's mother for the dissolution of the family, or even explicitly instruct the children not to listen to her directions (Bancroft & Silverman, 2002). Intervention with these fathers requires that this facet of their parenting be addressed; fathers need to both recognize the ways in which they undermine their children's mothers and commit to stopping these behaviours (Scott & Crooks, 2004).
- *Perpetrators may use litigation as a form of ongoing control and harassment.* The family court litigation process can become a tool for batterers to continue their abusive behaviour in a new forum (Jaffe et al., 2003a). Litigation exacts a high emotional and financial price for abused women already overwhelmed with the aftermath of a violent relationship. Some authors have suggested that some batterers have the presentation and social skills to present themselves positively in court and convince assessors and judges to award them custody (Bowermaster & Johnson, 1998; Zorza, 1995). In many cases, perpetrators are self-represented, heightening the possibilities for abuse through berating a former partner in cross-examination.
- *In extreme cases spousal violence following separation is lethal.* Spousal violence and homicides are inextricably linked. National figures from the Canada and the US suggest that women are at a greater risk of homicide from estranged partners with a prior history of spousal violence than while they remain in an intimate abusive relationship (Fox & Zawitz, 1999; Statistics Canada, 2001; Websdale, 2003). The growing literature linking spousal violence, separation and homicide has raised awareness of the need for prompt police reaction and careful investigation of post-separation violence and stalking. To assist with this work, risk assessment tools have been developed (Campbell, 1995; Campbell, Sharps, & Glass, 2001). There have been many advances in Canadian research and practice in this area, including the work of Kropp and his colleagues in British Columbia, who developed the Spousal Assault Risk Assessment (SARA; Kropp, Hart, Webster, & Eaves, 1994; Kropp, Hart, Webster, & Eaves, 2000) and the ODARA

(Ontario Domestic Abuse Risk Assessment) developed by researchers in Ontario (Hilton, Harris, Rice, Lang, Cormier, & Lines, 2004). In these extreme cases, children may become involved as witnesses to homicides or become homicide victims themselves (Websdale, Town, & Johnson, 1999). Child abduction represents another traumatic outcome in these cases, which represents a batterer's ultimate desire for control after separation and punishment of his ex-partner.

- *Spousal violence may negatively affect the victim's parenting capacity.* Victims of spousal domestic may experience depression, low self-esteem and substance use difficulties, all of which can compromise their parenting. However, for many of these parents, separation from the perpetrator of spousal violence may lead to improvement in both general functioning and parenting. During the court process, these parents may present more negatively than they will in the future, once the stress of the proceedings and life change has attenuated (see Jaffe & Crooks, 2005 for review).

In summary, spousal violence is an important area of inquiry in addressing post separation parenting arrangements. A history of spousal violence demands a unique analysis. Legal and mental health professionals need a paradigm shift to view the information and competing allegations in the determination of a child's best interest. In the face a real threat, a mother who lives in fear of her ex-partner is not paranoid, nor may it be appropriate for her to promote a paternal relationship.

Although the vast majority of separating parents do not need many legal resources to make their post-separation parenting arrangements, parents who have experienced spousal violence require greater resources and more support. When parents express concerns about their safety and their children's safety, the issue must be closely examined.

4.0 The Need for a Paradigm Shift for Family Violence Cases

Trying to understand the dynamics that led to a marital breakdown and sorting through allegations of mistreatment and fault is a highly complex undertaking. When children are involved and their future care is at stake, intense emotions may cloud parents' portrayal of the marriage to an independent third party, such as a police officer, assessor or judge. There are strong psychological tendencies to deny or minimize abuse, as well as tendencies to colour one's perceptions of responsibility for breakdown of the relationship.

The resolution of disagreements about post-separation arrangements for children may take a number of different pathways. Many parents are able to develop amicable co-parenting arrangements without court intervention, but others require an assessment of the nature of the conflict and the potential existence of spousal violence.

Even in spousal violence cases, there is a range of methods of resolving disagreements that need not include the formal court system. For some abuse victims, their abuser leaves the jurisdiction and may move on to other relationships, showing no interest in maintaining an ongoing relationship with their former partner or children. In other cases, a spousal abuse victim may flee for her safety and the perpetrator takes no action to pursue her and their children. In some cases, the perpetrator may reappear years after separation when ordered to provide child support and try to re-establish a relationship with the children and some custodial rights in order to avoid this financial commitment. In one survey of abuse victims, some avoided any engagement with their perpetrator over financial or child related issues by ignoring their legal rights and entitlement (e.g., living in poverty was seen as preferable to living with ongoing violence and harassment) (Jaffe et al., 2003a).

In some cases, there have been police and criminal justice system involvement, and there is ample evidence of a pattern of spousal violence and child abuse. With the growing awareness of spouse abuse concerns, the criminal and family courts will generally terminate or suspend contact rights between the abuser and his children in these cases, though the protection of victims and their children can be very difficult to effect. Perhaps the cases that pose the most significant challenges to legal and mental health professionals in the family court system are ones in which the parties present diametrically opposed versions of reality with respect to their relationship, post-separation events and abuse issues.

4.1 Assessing Family Violence Allegations

The ultimate decision about what happens to disputes before the court rests with a judge who hears the evidence and determines the validity of the allegations. Judges and lawyers may give significant weight to independent third party mental health professionals who prepare assessments or custody evaluations based on interviews with all of the parties, and collateral information from community professionals and psychological testing. All court-related professionals are involved in an assessment process whether it is a formal or informal exercise in gathering and weighing relevant information about the individual parents and children in the

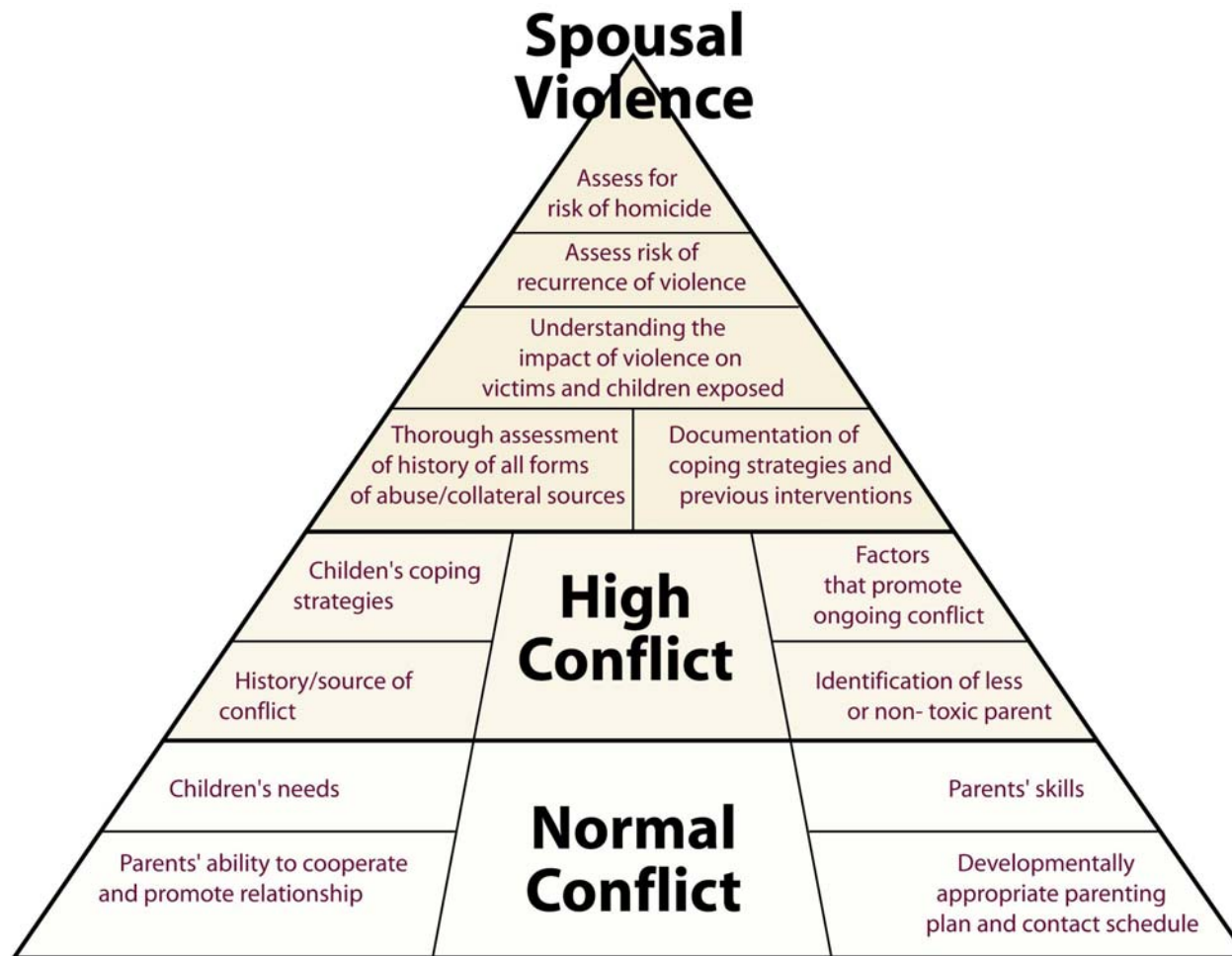
dispute. To understand the context for these assessments, it is important to be cognizant of the current climate in family courts in North America and elsewhere (Jaffe & Crooks, 2004). Family court judges generally want cases settled in a cost-efficient and timely manner by pre-court interventions, such as mediation and settlement conferences. Judges and lawyers often encourage parents to co-operate with each other, suggesting that this is synonymous with the promotion of their children's best interests. It is true that *in cases in which family violence is not at issue*, children generally benefit from having their parents resolve their differences in a co-operative and non-adversarial fashion. Common wisdom in the divorce field suggests that the "friendly parent", i.e., the parent who is best able to promote a relationship between the child(ren) and the other parent, is more appropriate for a custodial role, and this is reflected in provisions like section 16(10) of Canada's *Divorce Act*. Unfortunately, the "friendly parent" concept can be misleading in cases where the lack of friendliness is based on abusive and violent behaviour (Dore, 2004).

Family violence allegations raised in the context of parental separation are often met with skepticism and a concern that the allegation is being utilized to limit the involvement of the other parent, especially if there has *not* been significant police and criminal justice system involvement. The making of abuse allegations can be a double-edged sword for abuse victims. If the allegations are proven on the preponderance of evidence, the victim and her children may find a degree of safety, with recent legal reforms and improvements in community resources providing a greater degree of safety than in the past. However, if the allegations appear unfounded and are considered by the judge to have been made "maliciously", the abuse victim may lose custody. In some of these cases, mothers are accused of willful alienation of the children against their father. This alienation has even been labeled as a "syndrome", although there is no research to support the reliability and validity of this diagnosis (e.g., Ragland & Fields, 2003). Sometimes abuse allegations appear suspect because perpetrators of violence arrive in court with new partners who they describe in positive terms, reserving their negative statements for their previous partners. This contrast may lead observers to discount a general hostility or bias, and attribute more credibility to their claims about their ex-partners (Schuldberg & Guisinger, 1991). Clearly, a thorough assessment of abuse allegations is warranted as part of a family court decision-making process, given the high stakes of a finding of spousal violence.

A psychologist or social worker who is assessing a case involving allegations of family violence should identify whether there are patterns of behaviour as opposed to isolated incidents. Incidents of abuse that may, in isolation, seem less severe, may give rise to greater concerns if they fit within a larger pattern of abuse and domination. A multi-method, multi-informant approach is required. Figure 3 identifies the additional elements of assessment for cases where either party has made allegations of violence. The first layer of the pyramid identifies the principal elements of a custody and access assessment in a typical case, including understanding the children's individual needs, parents' skills, the ability of the parents to cooperate, and the developmental considerations of any parenting plan. In a high conflict case, these initial assessment domains are still pertinent; however, the second layer of the pyramid identifies additional concerns, such as the history of the parental conflict, children's coping strategies, and the identification of the less toxic parent. In high conflict cases involving family violence, the assessment challenges are significantly increased, as it is also necessary to consider such issues as: the risk of recurrence of

violence, including homicide risk assessment, and an understanding of the impact of violence on the children.

To competently complete this final layer of assessment, practitioners require an awareness of indicators of dangerousness and / or lethality. These risk factors have emerged from research and domestic violence death review committees, which have identified characteristics most closely associated with lethal violence (see Campbell, 1995; Campbell et al., 2001; Kropp et al., 1994; Kropp et al. 2000; Hilton et al., 2004). Commonly reported factors include separation within the context of a history of spousal violence, access to firearms, substance abuse, controlling and stalking behaviour, threats of homicide or suicide, and violations of previous court orders. The 2004 Ontario Domestic Violence Death Review Committee contains a more detailed review of this literature (Ontario Domestic Violence Death Review Committees, 2004).



Child Custody: Specialized Assessment Needs in Spousal Violence Cases

Adapted from Jaffe, P.G. & Crooks, C.V. (in press). Visitation and custody in cases of domestic violence. In J.L. Edleson & O.J. Williams (Eds.), *Parenting by Men Who Batter*.

In conducting an assessment where spousal violence has been alleged, collecting all of the information is a complex process. Every assessment should include individual interviews with both parents on more than one occasion. While perpetrators may present as very reasonable individuals on one or two occasions, interviewing them over time, and beginning to challenge their perspective on the basis of other information that has been gathered, may provide the assessor with the opportunity to see past the veneer. Another important element in an assessment is the administration of a structured inventory instrument of abusive behaviour that includes frequency and severity of physically, sexually, verbally, and psychologically abusive behaviour experienced by each partner, as well as injuries suffered (e.g., Abusive Behaviour Observation Checklist; Dutton, 1992). A follow-up interview to the abuse inventory is helpful for ascertaining the context of the abuse. For example, assessors should gain a better understanding of the impact of the abuse, coping styles, disclosures to friends, family, and professionals, and effects of the violence on the children.

Given that the credibility of claims, counterclaims and denials is an important determinant of custody and access decisions, collateral information is critical. Therefore, the assessor should include interviews with informal and formal support systems, as well as review of records (police, child protection, emergency room physicians, etc.). Emphasis on this documentation is not meant to imply that allegations of spousal violence are credible only if there is third party evidence; indeed, many spousal abuse victims do not disclose to other professionals or involve the police. Rather, it is important to review this documentation in cases where it does exist, while remaining mindful that lack of such evidence does not imply fabrication.

It is also important to keep the needs of the children front and foremost while assessing these relationship dynamics. In assessing families where family violence has been alleged, it is essential to include interviews with the children to assess their understandings and observations of events and the impact of exposure to violence. Collateral sources for children should also be reviewed (e.g., teachers, doctors, counselors) to gain an understanding of the children's reaction to the events they may have witnessed or experienced.

Analyzing the information gathered requires an understanding of spousal violence. For example, although a prevailing belief of some professionals may be that women may lie or exaggerate claims of abuse to gain custody, our experience is more that abuse victims minimize or are reluctant to disclose the extent of abuse that they endured. For example, in one study based on interviews with abused women, they reported that they rarely volunteered information about sexual abuse by their partner. Their reluctance stemmed from feelings of personal embarrassment, lack of trust or rapport with the professional, and the concern that the professional could not handle the information (Jaffe et al., 2003a). This finding stresses the importance of asking direct questions about a range of abusive behaviours, as victims may be reluctant to volunteer sensitive information. Perpetrators of spousal violence often deny or minimize the abuse as part of their skill in avoiding responsibility for their behaviour and externalizing blame for any difficulties (Bancroft & Silverman, 2003). Without a careful spousal violence analysis, these allegations may be misunderstood as more of "he said / she said" perspectives on a relationship, found in high-conflict divorce. Once spousal violence has been identified, this analysis should provide the context for assessing other information, such as communication patterns between the partners. For example, a mother who avoids

phone contact with an abusive former partner might be seen to be neglecting her duties for information sharing about the children's activities; however, within the context of spousal violence, this same behaviour can be understood as an attempt to protect herself and her children from further harassment and abuse.

4.2 Strategies for Intervention

Intervening in child-related disputes with parental histories of spousal violence is a complex undertaking. In dealing with abusive parents there may be a range of responses over time that depend on access to appropriate services and documented changes in the abuser's behaviour. Within the family court system, judges have to consider a range of options in dealing with a violent spouse. These options include no contact, supervised visitation, supervised exchanges, exchanges in a public place, unsupervised visitation, liberal and regular visitation, and joint custody / co-parenting (many jurisdictions have dropped the term "custody" in favor of "parenting arrangement" and "residential parent", and similar changes have been proposed in Canada –under the former Bill C-22. However these changes have not been enacted and the Bill died on the Order Paper in November 2003. Alberta did proceed to amend provincial legislation to make it broadly consistent with the proposed federal changes ; the new *Alberta Family Law Act* is scheduled for implementation October 1, 2005. Independent of legal terminology, the court still has to decide a multitude of parameters for parenting arrangements, such as the length of a visit, advisability of overnight access, determination of suitable supervisors and safe locations for exchanges.

As noted, all of these options exist within a culture that promotes parental cooperation and involvement of both parents as much as possible. The number of separating parents who enter into some form of joint custody has been steadily increasing, with about 42% of parents who divorced in 2002 having this type of arrangement (Statistics Canada, 2004b). In our experience, most of these cases are a result of situations in which parents have chosen this arrangement in a process of negotiation or mediation, with only a relatively small number having been imposed by a court. Joint custody is often the best arrangement for children, but it can be very problematic in high-conflict cases, and will most likely be inappropriate (if not dangerous) in high-conflict cases where there are family violence concerns.

Figure 4 tries to capture this reality by the analogy of a highway leading to co-parenting in which spousal violence cases need an off-ramp to avoid being carried along with the traffic. It is a schematic diagram portraying the broad picture. A more fine-grained analysis of specific considerations within a history of family violence is discussed later in this paper. At the broad level, a history of spousal violence contraindicates co-parenting. Whereas the majority of families benefit from educational programs and mediation, in cases where there are spousal violence concerns, there is a need for specialized intervention, including supervised visitation, batterer's intervention, and support services for children. Dispute resolution processes that require victims and perpetrators to be together in mediation or settlement conferences have the potential to endanger victims or intimidate them into accepting parenting arrangements, such as co-parenting, which may pose a risk to their safety or the safety of their children.

High conflict cases involving couples without a history of spousal violence also require specialized intervention. Although the physical safety concerns are diminished, children's exposure to ongoing conflict is clearly harmful. Parallel parenting may be an option in high conflict cases without family violence issues or in a limited number of family violence cases where the abuse is minor, historical and does not represent a pattern of behaviour. Parallel parenting recognizes that each parent is capable of meeting their children's needs by themselves. Parents function relatively exclusively from each other but do no harm to the child. Each parent is a beneficial influence for the child, but any expectation of collaboration between the parents is futile and potentially harmful for the children. Parallel parenting arrangements usually include specific guidelines to minimize contact and communication between the parents. It should be appreciated that some high conflict couples can, with appropriate therapeutic intervention and the passage of time, be helped to achieve more amicable parenting arrangements. Thus, for some families, parallel parenting may be a transition phase to bridge the troubled waters of a high conflict separation, and for other families parallel parenting may be all that is possible on a long-term basis.

Differentiated Custody Interventions in Spousal Violence Cases

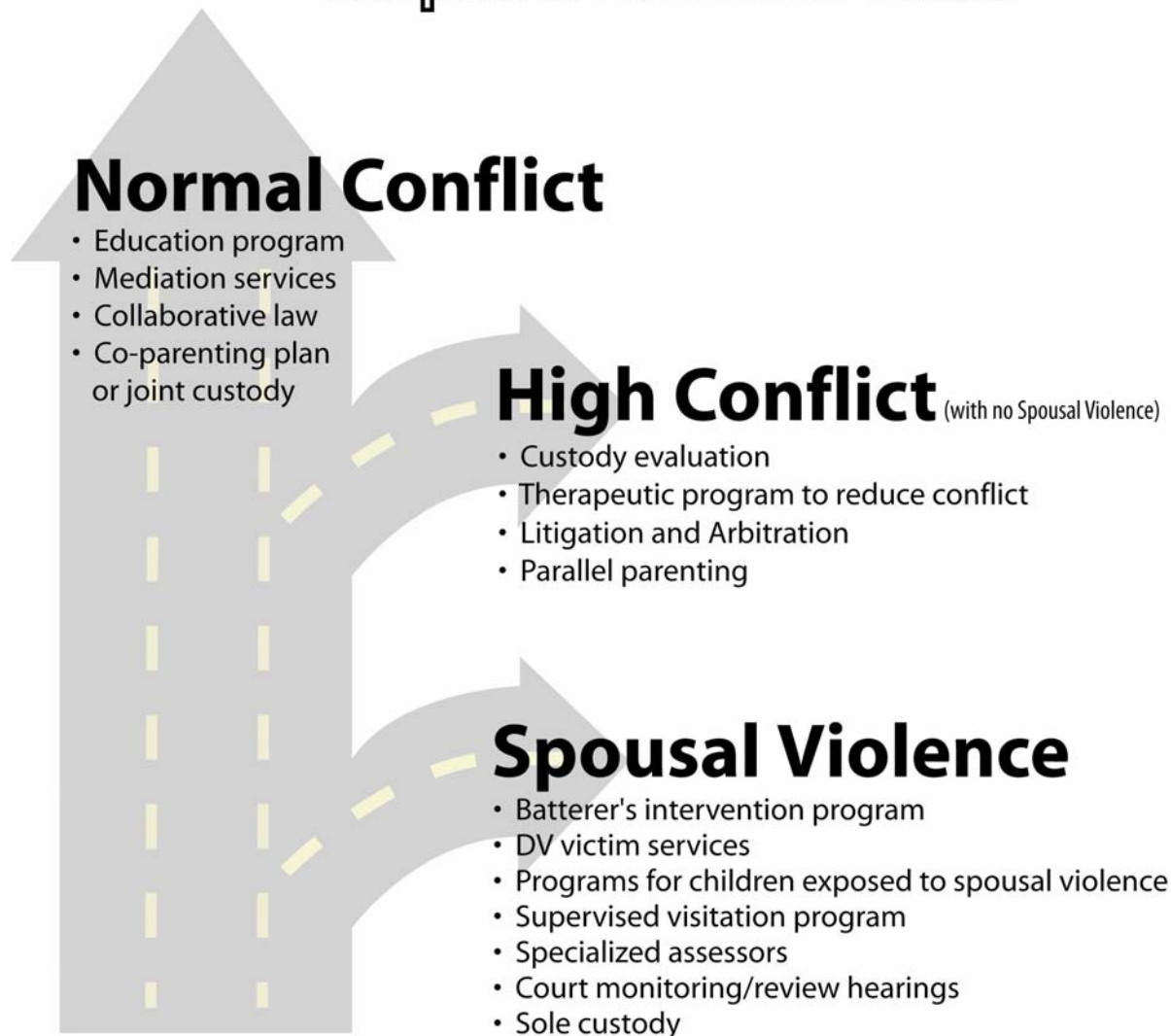


Figure 4

Adapted from Jaffe, P.G. & Crooks, C.V. (in press). Visitation and custody in cases of domestic violence. In J.L. Edleson & O.J. Williams (Eds.), *Parenting by Men Who Batter*.

4.3 Barriers and Challenges to Making Parenting Arrangement Decisions

Before taking a closer look at the paradigm shift that is required to properly relate the growing emphasis on post-separation shared parenting with family violence issues, the current culture within the family courts deserves closer attention. There are several systemic barriers that have an impact on the reporting and analysis of family violence: the involvement of multiple systems (i.e., family court, child protection services, and criminal proceedings), the increasing number of unrepresented litigants, concerns about parental alienation, children's wishes, proving abuse and false allegations, and the gap between theory and practice.

4.3.1 Multiple Systems

Some confusion exists among mental health and social work professionals as well as parents in regards to the role and responsibilities of different parts of the justice system in dealing with children in the context of family violence. There are clear implications for enhanced efforts to coordinate services, share information and develop expertise in all parts of the multiple systems involved. A promising practice in Canada that illustrates the complexity of these issues is the work being done in Durham Region, Ontario where there are interdisciplinary committees trying to promote safety and accountability in the family court when there are custody or access disputes involving family violence (Violence Prevention Council of Durham Region, 2000).

The courts in which criminal matters are heard ("criminal courts") properly presume innocence unless allegations are proved beyond a reasonable doubt. Responsibility for investigation of cases and presentation of evidence rests with the police and crown prosecutor respectively. The process of preliminary hearings and trial may take many months and in some cases, years, to resolve. However, the victim and children may need an immediate safety plan that either suspends contact with the perpetrator or supervises visits with the children or exchanges between the parents. The challenge to the justice system and community services is how to manage such a plan while respecting the presumption of innocence. In some cases, protection may be provided by detention of the alleged perpetrator pending trial, but this is only possible and appropriate if detention is necessary to assure the court attendance of the perpetrator at criminal proceedings; to assure the protection and safety of the public, including victims; or to maintain confidence in the administration of justice (*Criminal Code*, s. 515(10)). Where there is a prior history of offending or evidence of a significant risk of further offending before the case can be resolved detention is often ordered to assure the protection of the victim. More commonly, the criminal justice system will impose some conditions on release pending trial, which may afford some limited protection to victims and children.

The courts hearing family matters ("family courts") can make findings on the balance of probabilities if proper evidence is presented, and may, for example, conclude that abuse has occurred even if this is not proved in criminal court. A party is responsible for gathering evidence and presenting it in family court, either with the assistance of a lawyer or on his or her own. There are often conflicting allegations and claims in high conflict cases in family court. There is an onus on parties to prove their cases, and in the absence of corroborating evidence from independent witnesses like doctors or police officers, there may be a degree of scepticism about

abuse allegations in family court. There is some emphasis in the family court on promotion of settlements and cooperation between separated parents, and allegations of family violence are sometimes improperly dismissed.

The agencies providing “child protective services” (CPS) may also be sceptical or reluctant to be drawn into cases where there are allegations of family violence and there is already a legal dispute between separating parents. The CPS worker has to decide whether a particular case triggers the agency’s protection and/or counselling mandate, or whether the case can be managed by the parents in Family Court using resources such as family law specialists, supervised access centres, mediators and assessors. In some cases the CPS may decide that the primary victim of spousal abuse may be unwilling or unable to protect the children, and may decide to apprehend the children.

The CPS decision is made in a context of having a legal mandate to protect children, and of not wanting an abused spouse feeling re-victimized by the intervention (i.e. “You’re an abuse victim but also a bad parent for letting your child live with this violence”). This balance can be very difficult, and not always successfully achieved. The Ontario Domestic Violence Death Review Committee noted in their second annual report: “Without assigning blame in the cases we reviewed, it appeared that the [CPS] workers were well intentioned in their contact with the abuse victim, but failed to assess the perpetrator, support safety planning or risk reduction or coordinate their efforts with other professionals” (Ontario Domestic Violence Death Review Committee, 2004, pg. 40).

4.3.2 Self-represented Litigants

A further complication in the resolution of high conflict cases, especially those involving family violence, is the increasing number of self-represented litigants, who may not be aware of the available legal remedies and community services (Thompson 2002, Trussler 2002). If a victim of spousal abuse does not have counsel, she may be well be easily intimidated into accepting a settlement that is unfair and does not provide adequate protection to herself or her children. Legal aid plans in Canada now give some priority to ensuring that low income victims of alleged spousal abuse have access to legal services, but this only helps victims who are prepared to self-identify to legal aid officials, and the income thresholds for eligibility are at or close to welfare levels, so many women are not eligible.

It is not uncommon for one or both parties in a high conflict case to be unrepresented. Some abusive men have difficulty in accepting advice from lawyers, and may actually prefer not to have a lawyer so that they can have an opportunity to directly confront their former partners, including through cross-examination. Cases involving one or both parties as self-represented litigants are more emotionally charged, and less informative and more challenging for judges. Competent family lawyers provide an important buffer between antagonistic parents, will gather and present evidence, and can facilitate communication between the parents and with the judge.

4.3.3. Children’s Wishes

In making post-separation plans for children, judges, assessors and parents generally give significant weight to the wishes of children, especially those who are close to or have reached adolescence. Indeed, the children's wishes are specifically listed as a criterion for consideration of best interests of the child in most provincial legislation. However, children's wishes can be a very problematic factor in spousal abuse situations. In some cases the abusive parent may coerce or intimidate the children to express views favourable to himself, and in others the abused parent may be seen by the child to be weak and "ineffectual," and the children may wish to align themselves with the "stronger," more powerful, abusive parent. An abusive spouse can be very manipulative and the denigration of the other parent may influence a child's relationship with a victim of abuse.

Judges and assessors must have appropriate education about family violence, including an understanding of its effects on the stated wishes of children. While a child's views should always be considered, a child's stated desire to live with an abusive spouse should have less weight in cases where there has been spousal abuse than in other contexts (Bala, 2004). Furthermore, the child's purported reasons for wanting to live with a parent who has perpetrated spousal violence may shed important insight to underlying dynamics of one parent undermining another or exposing the children to inappropriate information.

In cases where there has been a history of family violence, the victim and children may have continuing fears of the abusive partner, even if there appears to be no immediate threat of further violence. If a child expresses fears and negative attitudes towards a parent based on a prior history of abuse, this factor should be given very significant weight in making any arrangements for the care of the child.

In all high conflict cases, parents should be strongly discouraged from directly asking their children about their preferences for living arrangements, as children may feel intense loyalty conflicts, guilt or fear in expressing their preferences to their parents. In high conflict cases, interviewing of a child about preferences should be done by an appropriately trained assessor, or by a lawyer appointed for the child. The professional must ensure that the child's views are shared with the parents and the court in a sensitive, contextual fashion. This undertaking requires appropriate training for assessors and lawyers for children, which must include education about the complexity of cases in which there are family violence allegations.

4.3.4 Parental Alienation

One of the thorniest issues in the making of post-separation plans for children is parental alienation; that is, when a child actively and ardently rejects one of the parents. The late Richard Gardner (1998a; 1998b), an American psychiatrist, initially conceptualized this as "Parental Alienation Syndrome" and proposed a pathology framework where a parent (typically considered by Gardner to be mothers) would coach and "brainwash" the children to reject the other parent (typically considered by Gardner to be the father). There is no empirical evidence for "Parental Alienation Syndrome" as a diagnostic category (Garber, 2004). At the same time, there is no question that some separating parents actively undermine children's relationships with the other parent. However, children may actively reject a parent post-separation for a host of reasons.

More recently, increasingly sophisticated frameworks have been proposed to understand this rejection process and to develop appropriate interventions (Bala & Bailey, 2004; Drozd & Olesen, 2004; Johnston & Kelly, 2005; Johnston, 2005). In high conflict cases it is quite common for both parents to make hostile and derogatory comments about the other to the children, and attempt to enmesh the children in their disputes. While children emotionally suffer in these cases, it would seem that most children struggle to maintain a relationship with both parents, despite the parental conduct. When children do reject one parent, it is necessary to consider the role that both parents are playing in the lives of their children, and the specific circumstances of the child. In some cases, a child will become aligned with the warmer and more effective parent and reject the other as a way of resolving conflicting feelings of loyalty.

An alienation analysis is especially inappropriate in cases of family violence, where children's reticence about contact with a parent is better understood as hypervigilance or fear (Drozd & Olesen, 2004). A decision tree framework has been proposed by Drozd and Olesen to assist judges, lawyers and assessors in dealing with the difficult issues surrounding perceived alienation. Other advances in the area include a framework that looks at multiple contributors to parental rejection, including the stage of children's development, events surrounding separation, primary caregiver's behaviour, and the rejected parent's behaviour (Johnston & Kelly, 2004).

In contrast to the empirically unsupported notion of Parental Alienation Syndrome, these more complex multidimensional models have received preliminary research support. A comprehensive assessment identifying reasons for rejection is critical, because it provides the basis for appropriate intervention. If a parent is being rejected primarily for reasons such as moralistic thinking by the children (e.g., tied to developmental stage), lack of resources (e.g., not as many toys as the other parent's house), and negative comments by the custodial parent, then therapeutic intervention to rebuild the relationship between the rejected parent and children would be indicated. In contrast, if a careful assessment found that rejection was more closely tied to the non-custodial parent's history of violence and continued attempts to monitor and harass the children and primary caregiver, then interventions to create safety for the children and caregiver would be more important than treating the "alienation."

4.3.5 Gap Between Theory and Practice

There are conflicting claims about the progress of legal and mental health professionals in understanding spousal violence. Clearly, there has been an increase in the number of training programs available to assist various professionals in becoming more sensitive to the dynamics of spousal violence and more skilled in intervention strategies. The debate focuses on the rate of change in actual practices among professionals. It is clear that until about a decade ago most professionals working in the justice system did not adequately appreciate the effects of spousal abuse on children who witnessed violence or lived in the homes where it occurred, but since then there has been more research and education about this issue. Nonetheless, the evidence for widespread systemic change remains inconclusive at best.

In a study of family law cases in New Brunswick between 1998 and 2001, Neilson (2004) found that many mediators, family lawyers and judges still did not appreciate the effects of spousal abuse on children. In the absence of clear evidence of physical abuse of children, mothers who

were victims of spousal abuse were regularly pressured by mediators, lawyers, and judges at settlement conferences to accept arrangements that gave their abusive former partners significant contact with their children and to accept joint custody. Concerns about the safety of mothers were given relatively little attention in the resolution of family proceedings even if there was a clear history of spousal abuse.

In the field of child custody and access assessments, two recent studies present very different pictures of the extent to which practices have changed. Bow and Boxer (2003) surveyed custody assessors across the USA and found the vast majority reported that they now recognize spousal violence as a critical factor in their work. These practitioners indicated that they considered utilizing specialized assessment resources and made differential custody and visitation recommendations when spousal violence was identified. In contrast, recent studies in the Louisville, Kentucky courts found that spousal violence was often overlooked in court assessments. Analysis of custody assessment reports suggested that spousal violence was not a factor in recommendations, even when it was mentioned in a report (Horvath, Logan, & Walker, 2002). Furthermore, an analysis of court records found that court settlement methods (e.g., mediation, adjudication) did not vary for families with and without spousal violence histories. Parents with a spousal violence history were as likely to be steered into mediation as those without, despite the inappropriateness of mediation in these cases. In addition, custody outcomes did not differ between families with and without this history (Logan, Walker, Horvath & Leukefeld, 2003).

The extent to which these findings can be generalized is not clear; nonetheless, we would hypothesize that similar audits in many other courts would result in similar findings. Consistent with this posited gap between theory and practice, a recent California study found that mediators held joint sessions in nearly half of the cases in which an independent screening interview had identified allegations of spousal violence, in direct violation of state regulations for separate sessions in these cases (Hirst, 2002). Furthermore, other research has indicated that mediators were more likely to effect settlements with batterers having custody than men who did not abuse their partners (Johnson & Saccuzzo, 2005). Some perpetrators of spousal violence make a good impression on others

4.4 The Need for a New Paradigm

To summarize, we have made the argument for a different approach to the resolution of post-separation cases involving children when there is a history of family violence. Even within this broad category of cases, there is a wide range of considerations to meet the heterogeneity of the families. In the next section we identify the range of parenting arrangements and the general considerations that should be taken into account when determining which arrangement is appropriate. We then move to a discussion of three of the most critical factors in determining the most appropriate arrangement: the type of violence, timing of disclosure, and access to resources.

5.0 Emerging Best Practices: Parenting Arrangements in Family Violence Cases

5.1 Parenting Arrangements

There has been very little research evaluating the application of specific types of parenting arrangements to different patterns of family violence. Obviously, ethical considerations preclude randomly assigning parenting arrangements. Too often, research has compared child adjustment outcomes for different parenting arrangements (e.g., joint versus sole custody) without including family violence (and other critical factors) as moderators. In this section we outline a range of parenting arrangements, and the definition, indications, and special considerations of each, with respect to family violence. We have applied the family violence literature to these arrangements within the context of our experience as custody assessors, trainers, and researchers, but acknowledge there is only a limited scientific foundation to build on.

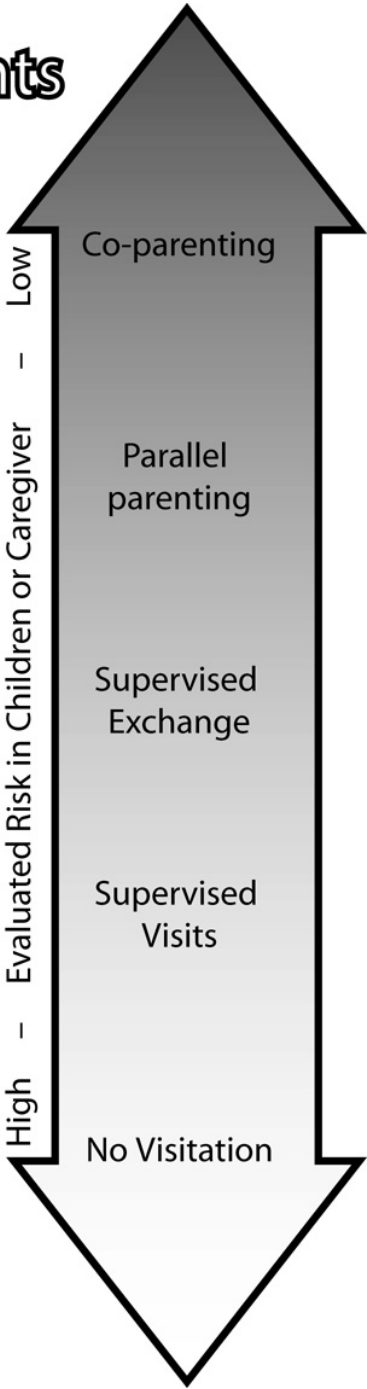
The range of parenting arrangements discussed in this section includes co-parenting, parallel parenting, supervised exchanges, supervised access, and no access, as depicted in Figure 5. The legal frameworks of joint and sole custody are also discussed. In an ideal world, judges, lawyers, mediators and assessors would attempt to match a parenting arrangement with the unique needs and characteristics of individual children, parents and family systems.

The cases at the extreme ends of the family violence spectrum are most straightforward. At one end of the continuum, there is probably agreement that a perpetrator of chronic family violence who has demonstrated a pattern of abusive behaviour over time, with little remorse or investment in treatment, and whose main focus is on punishing an ex-partner rather than fulfilling a parenting role should have either no access or very limited access supervised by highly trained professional staff. At the other end of the continuum, an isolated incident of minor family violence (e.g., a shove), which is out of character, accompanied by genuine remorse⁷, responsibility taking, and did not induce fear or trauma in the other parent, would not in and of itself preclude the possibility of a co-parenting arrangement. In between these extremes is a canyon of gray in which matching parenting arrangements to families is challenging, and dependent on analyzing a host of factors. Some of these factors relate to historical relationships and characteristics of individuals, some relate to available resources in a particular community, and others relate to the stage of proceedings and available information. In this section we will review each parenting arrangement and the factors under consideration.

We recognize that the dynamic nature of individuals and families compounds the complexity of this matching process. A family in crisis at the point of separation may present in a different fashion a year later, especially in the context of benefiting from available counseling resources. For other families, the state of crisis becomes chronic and litigation seems never-ending with professionals becoming enmeshed in the dispute. This reality means that complex cases require ongoing assessment and monitoring by the court with the assistance of court-related services.

⁷ See footnote on page 16 about cultural context of expressing remorse.

Parenting Arrangements after Family Violence



5.1.1 Co-parenting

The Smiths separated 4 years ago. At the time of the separation there was an incident of violence when Mr. Smith grabbed Mrs. Smith by the shoulders, shook her and threw her to the ground upon discovering she was leaving him for another man. He was charged with assault and because there was no prior history of violence and no injuries, he was fast-tracked into a batterers' intervention program as part of a conditional discharge plea bargain. There have been no incidents of threats or harassment post-separation. Both parents have remarried and have developed a cooperative relationship with each other by necessity of the demands of their three children (7, 11 and 14), who require help with school assignments and transportation to sports events on the same days at different locations. Although the children reside primarily with Ms. Smith, each parent is involved in day-to-day decisions, as well as more important issues regarding health care and education. There is flexibility in changing the alternate weekend and one evening mid-week schedule based on the children's needs.

Definition and Description

Co-parenting refers to an arrangement in which parents cooperate closely post-separation in all aspects of raising their children. This arrangement approximates the pre-separation ideal for the children, where both parents are actively involved in the lives of their children, share information, and problem-solve the normal challenges of parenting as they arise. Within the broad definition of co-parenting, there may be a range of divisions of time spent in each parent's home, and an assumption of flexibility in scheduling, according to the distance between homes, children's needs and stage of development, and parents' schedules. From a legal perspective, the term "joint custody" is the typical legal framework for a co-parenting arrangement. The terms "co-parenting" and "joint custody" are often used interchangeably, especially as the word "custody" is being increasingly replaced with concepts like parenting time and contact. As we have noted previously, joint custody does not indicate a particular time split, but rather a non-conflictual parental relationship that accommodates the ongoing possibility of joint decision-making.

In appropriate cases, co-parenting is best for children whose parents separate as it helps maintain a positive ongoing relationship with both parents; children's stability and normal development are promoted. In dealing with specific cases, however, it is important for professionals and parents to be realistic in assessing whether co-parenting is appropriate and likely to promote the welfare of the children.

Indicators and Contra-indicators

Co-parenting requires two parents who are able to maintain a civil and child-focused relationship post-separation. Ideally, there should be mutual trust and respect that promotes good communication between parents. In reality, parents may vary along these dimensions from time to time during periods of crisis or major transition (e.g., jealousy over new partners, disputes about relocation, challenges over parenting adolescents), but overall the parents can make this arrangement work.

Co-parenting is contra-indicated by high conflict and/or incidents of family violence, before, during or after the separation, or lack of a foundation of any relationship between the parents. These contra-indications are usually demonstrated by a clear history of poor communication, coercive interactions, inability to problem-solve, and a lack of child-centred focus by one or both parents. A serious mental health problem or substance abuse suffered by one or both parents would also contraindicate a co-parenting arrangement. Co-parenting may be more difficult (but no means impossible to arrange) if the parents have not lived together for any length of time with their children.

Special Considerations

There are circumstances under which parents may overcome difficulties with time and/or counseling and are motivated to make a co-parenting arrangement work. On the other hand, there may be a parent who will frustrate the possibility of co-parenting, in spite of the best efforts of the other parent and third parties, such as mediators.

There is considerable debate about whether or not co-parenting can be imposed on an unwilling parent. These cases require special skills on the part of custody assessors, lawyers, and judges to properly assess the authenticity of the resistance to co-parenting. Understanding the underlying reasons for the resistance is important. For example, a parent who has felt bullied or victimized and experiences considerable anticipatory anxiety in dealings with the other parent may have a legitimate aversion to co-parenting. On the other hand, a parent who has never lived with the other parent may resent having to involve the other parent in her life as a result of co-parenting, but may be helped to develop an effective co-parenting relationship.

5.1.2 Parallel Parenting

The Smiths had an acrimonious marriage and separation. Their twin girls (age 7) are attached to each parent but are frightened by the thought of the two parents being in each other's presence at school events or at recreational events. The children report a history of spousal violence in the marriage where the two parents would yell and throw things at each other. Since the separation the children have alternated weeks at each parent's home with the exchange (changeover) taking place at the end of the school day Fridays (and at their cousins' home during holidays). Each parent has decision-making ability while the children are in their care. There are no disagreements about major issues such as religion, education and health care. In addition, a parent coordinator-social worker has been named to mediate or arbitrate any disputes. The parents are not to be in contact with the children while they are in the care of the other parent except by special agreement with the co-coordinator or in an emergency. Communication between the parents is by email which is monitored by the parenting coordinator.

Definition and Description

In contrast to the cooperative nature of a co-parenting arrangement, parallel parenting describes an arrangement where each parent is involved in the children's lives, but the arrangement is

structured to minimize contact between the parents and protect the children from exposure to ongoing parental conflict, typically by having each parent make day-to-day decisions independently of each other when the children are in his or her care. There is limited flexibility in a parallel parenting arrangement, and the parents typically abide by a very structured and detailed schedule. Parallel parenting developed in recognition of high conflict separations in which both parents appear relatively competent. Rather than encourage co-parenting, the goal of this plan is to disengage the parents from each other and their long-standing hostilities (Federation of Law Societies, 2003). Natural transitions may be used to limit parental contact, such as having one parent drop the children at school and the other parent pick them up to begin their contact time. There must be a careful structuring of communication between the parents, for example by requiring all communication to be by email which can be monitored by a third party; children should not be expected to carry messages back and forth in high conflict cases.

There is controversy about this arrangement because some professionals view it as a compromise plan or a form of imposed joint custody. Some authors have pointed out that it is naïve to believe that parents can raise their children in an effective manner without meaningful communication and suggest that parallel parenting is fraught with more problems than it solves (Epstein and Cole, 2003). In light of the lack of genuine communication and cooperation between parents, the plan may involve active negotiations and arbitration by third parties, including parent coordinators when the parents have the resources to afford these additional supports. Therefore the legal framework for parallel parenting may be joint custody or sole custody depending on the philosophy of the intervener, and the resources available to counsel the family.

Parallel parenting will typically involve a child spending more time in the care of one parent, who will be the primary residential parent, though there can be roughly equal time in the care of each parent. The hope is that over time, parental hostility may decline and parallel parenting may develop towards some form of co-parenting, but this may take years and in some cases will never occur. Therapy for the parents to deal with their feelings of anger and hostility towards each other may help parallel parenting to evolve towards co-parenting, but this is not always a realistic possibility.

Indicators and Contra-indicators

Parallel parenting assumes that each parent has a positive contribution to make in his or her time with the children, but any direct parent-parent contact may be harmful to the children due to ongoing acrimony. This acrimony may be based on mutual mistrust, personality conflict, or inability of one or both parents to move past the separation and focus on the future. Any clinical or legal finding that one parent poses a physical, sexual, or emotional threat to the children, or that there are concerns of violence towards the other parent, would contraindicate a parallel parenting arrangement.

Special Considerations

The extent to which a parallel parenting arrangement might be appropriate in the aftermath of violence towards children or an adult partner requires a comprehensive assessment. Factors critical to this determination include whether or not the perpetrator of the violence has taken

responsibility and successfully completed an intervention; whether or not the children have received any indicated services and are experiencing ongoing symptoms of trauma or distress; and, the developmental stage of the children. A clinical finding of ongoing risk to children and/or the other parent clearly contraindicates a parallel parenting arrangement.

Although sole custody may be the legal framework for parallel parenting, it is definitely the framework for the parenting arrangements outlined in the following sections dealing with supervised exchanges, supervised access and no contact. By sole custody, the court is intending that one parent is clearly in charge of all major decisions and the non-custodial parent generally has more limited child contact but access to important information about the children (e.g., school reports). There may be a sole custody arrangement without supervised exchange or access, but a sole custody arrangement may have these additional restrictions in particular circumstances as discussed in the following sections. For supervised exchange, supervised access and no contact, the framework is one of sole custody with a clear primary parent responsible with whom the child resides with the majority of the time and who makes major decisions about the child.

5.1.2 Supervised Exchange

The Smiths have been separated for 6 months. Ms. Smith has interim custody and moved to her parents' home 45 minutes outside the city. Ms. Smith describes her husband as a bully who has been verbally abusive during the marriage and threatening in his demeanor. He physically assaulted her on one occasion when she told him that she was having an affair with a colleague at her work, and wanted a divorce. There are court findings in this regard. However, she describes her husband as a caring father who uses his background as a teacher to help their only child, a 10 year old son with some mild learning disabilities. She is no longer frightened of her husband but doesn't want to be in his presence to avoid any conflicts over outstanding financial issues, which are in litigation. He sees his son every Saturday afternoon to Sunday evening through an exchange at a supervised access centre. A court review is planned at the end of the school year – 8 months away.

Definition and Description

Supervised exchange involves transferring children from one parent to the other under the supervision of a third party. The supervision can be informal, for example by a family member, neighbour, or volunteer, or through the utilization of a public venue for the exchange, such as the parking lot of a police station. The supervision can also be formalized through a supervised access centre or use of a designated professional, such as a child care worker or a social worker. The underlying premise is that by either staggering arrival and departure times or having third party witnesses, the parents will be on their best behaviour, or will not come into physical contact. These are cases where there is a high level of conflict between the parents, and sufficient concerns about one parent that parallel parenting is inappropriate and there is a need for supervision of the transitions. However, there is an expectation that the child will still benefit from a continuing relationship with both parents, and there is not a sufficient risk to the safety or emotional wellbeing of the children while in the care of the non-custodial parent that access needs to be supervised.

Indicators and Contra-indicators

Supervised exchange provides a buffer in cases where the ongoing conflict cannot be contained by the parents at transitions, exposing the children to high levels of conflict. It is also useful when there is historical pattern of spousal violence and the victim may experience distress /or trauma coming into contact with the other parent. However, supervised exchanges do not mitigate the risk of violence to a spouse if there are ongoing concerns about safety of children and their primary caretaker.

Special Considerations

Supervised exchanges are sometimes inappropriately utilized to create a sense of safety when a more restrictive measure (such as supervised access) is warranted. As well, informal third party exchanges may be well-intended but inadequate; supervision may require a knowledgeable professional to monitor safety and inappropriate behaviours. For example, some parents may be involved in more subtle behaviours that are emotionally abusive, undermine the other parent, or signal threats to the other parent. These more insidious transgressions are difficult for lay people or family members aligned with the perpetrator to identify.

5.1.3 Supervised Access

Ms. Smith is an alcoholic who has endangered her children in the past through drinking and driving. She has assaulted her husband several times while she was drinking, including an incident which resulted in conviction for stabbing him in the shoulder with a kitchen knife. Her two daughters age 5 and 8 years are attached to her but frightened by her behaviour when she has been drinking. They want to see her and their father wants to promote an ongoing relationship if it can be done in a safe fashion. She has completed a residential program related to addictions and is involved in counseling about her violent behavior. She has joined AA and has been sober for six months. The court awards her 3 hours of supervised visits, twice a week at a supervised access centre.

Definition and Description

Supervised access is a parenting arrangement designed to promote safe contact with a parent who is deemed to be a risk due to a range of behaviour from physical abuse to abduction of the child. It may also be appropriate where a child has fears of a parent, for example because of having witnessed that parent perpetrate abuse or because of having been abused by that parent. Although supervised access is a long accepted practice in the child protection field, it has emerged more recently in the parental separation context with parents who pose a risk to the children and/or the other parent. Similar to supervised exchanges, supervised access may vary in formality from extended family or volunteers to a specialized centre with professional staff with expertise in these issues. Related to this plan is the concept of therapeutic supervised access⁸, which involves

⁸ Therapeutic supervised access offers an opportunity for access between a parent and child to occur in a supervised setting with a therapist intervening, promoting healthy parenting, relationship building, and cooperation between the parties. Therapeutic supervised access is a specialized short-term intervention aimed at assisting parents towards non-supervised access while meeting the needs of the children.

a mental health professional who may be involved in healing a troubled parent-child relationship through counseling and support during the access visits.

Indicators and Contra-indicators

Supervised access should only be undertaken if it is believed that a child stands to gain some benefit from a parent maintaining an ongoing role in the child's life but there remain concerns about the parent's risk of physical or emotional abuse to that child. Supervision is usually only considered for what is expected to be a transition period while the parent proves that the supervision may not be required. Serious concerns demand more specialized centres and well-trained staff as opposed to volunteers. There are more extreme cases where the safety offered by the supervisor is not appropriate for the degree of risk and no contact may be a more appropriate plan.

Special Considerations

There is great variability amongst supervised access centres, training of staff and mandate for programs. Some parents may require extensive assistance during access to say and do appropriate things that match their children's needs and stage of development. In some cases, there may be a strained relationship due to historical events, the anxiety of the custodial parent and the lengthy disruption of any meaningful parent-child relationship. In these circumstances parents may require more than a safe place and significant interventions by a trained professional may be required to promote healing and enhance parenting. There are situations where the demands on the supervisor outstrip his or her skills or mandate. There are also special considerations about refusing cases after intake due to the assessment of excess risk or terminating visits in mid-stream due to inappropriate parental behaviour and/or children's refusal to attend.

Supervised visits cannot be a substitute for a comprehensive assessment by a qualified mental health professional, and the court may draw inappropriate conclusions about the meaning of successful and unsuccessful visits out of context of the larger picture an assessment provides. Too often supervision is dropped (i.e., visits are no longer supervised) after a period of time where nothing overly negative has occurred. We would argue that the onus is on a perpetrator of the violence to show that he or she has made significant changes and is taking responsibility for past transgressions, not merely that he or she can contain inappropriate behaviour under close scrutiny (for extensive discussion see Bancroft & Silverman, 2002).

It has long been recognized that it is important for there to be clear expectations and contracts (between supervisor and court, counsel, and parents) for supervision, especially in cases such as where there has been a history of sexual abuse (see Saunders & Meinig 2000; 2001). If there has been a history of sexual or emotional abuse, the supervisor should have appropriate training to recognize subtle forms of abuse. More recently, supervised access centers that work with families who have experienced spousal violence are moving towards similarly articulated guidelines and contracts. These contracts have many benefits. Supervised parties have clear boundaries about acceptable and unacceptable behaviours; supervisors know what behaviours

they are monitoring; court personnel have records and information upon which to base subsequent decisions; and, there is clear agreement among parties of the state of affairs (versus an informal arrangement where the supervisor and supervised party may both see the supervised party as the victim). The Supervised Visitation Network in the USA has excellent standards and guidelines, as well as sample contracts available on their website (Supervised Visitation Network, 2003; available at <http://www.svnetwork.net/StandardsAndGuidelines.html>).

5.1.4 No contact

Mr. Smith has a long history of spousal violence, which has never come to the attention of the police but has been reported to several counselors and the family doctor. He denies any responsibility despite medical evidence in regards to his wife's prior injuries and consistent observations of other family members. After separation the children disclosed to a social worker a history of physical abuse by their father and exposure to spousal violence. The court made a finding of spousal violence and ordered supervised visits and recommended entry into a batterers' treatment program. Mr. Smith refused treatment after attending an initial intake interview where he reported that his wife was his only problem. Mr. Smith goes to the supervised access centre earlier than ordered and confronts his ex-wife in front of the children. He threatens to kill his wife and himself if she doesn't return to the matrimonial home. The staff call police and new charges are brought before the criminal court. The Family Court judge suspends all child contact for six months pending new information from father's counsel on his attendance at treatment and a thorough risk assessment and risk management plan.

Definition and Description

In extreme cases where a parent presents an ongoing risk of violence to the child or parent, emotional abuse to the child, or abduction, no meaningful parent-child relationship is possible. In these cases, the court may be forced to suspend all access for the short or long term parenting arrangement. These cases present a significant challenge for lawyers and mental health professionals to provide thorough and credible information to the court to obtain an order to at least temporarily end the parent-child relationship. While in theory visitation should only occur if it promotes the best interests of the child, in practice judges presume that a child will benefit from a relationship with both parents and require significant evidence of risk of harm to the child before terminating access (Bala, 2004).

Indicators and Contra-indicators

When a parent has engaged in a pattern of abusive behaviour and has indicated no remorse or real willingness to change, termination of the parental relationship may be indicated. There are also cases where the abusive parent/spouse has changed over time but the level of trauma engendered historically in their family precludes a fresh start. For example, in cases of severe violence with potentially life-threatening injuries to a parent or child, the children may continue to experience flashbacks and nightmares triggered by any reminder of the perpetrator. Although the perpetrator may ultimately receive significant consequences in the criminal justice system and demonstrate appropriate change with intervention, the damage done to the parent-child relationship may be beyond repair. In cases such as these, successful parent-child contact

depends on a whole family system undergoing change rather than one individual party successfully completing treatment. No contact would be contraindicated when there is a solid foundation of a parent-child relationship and there is a demonstrated commitment for a reunion in the family system.

Special Considerations

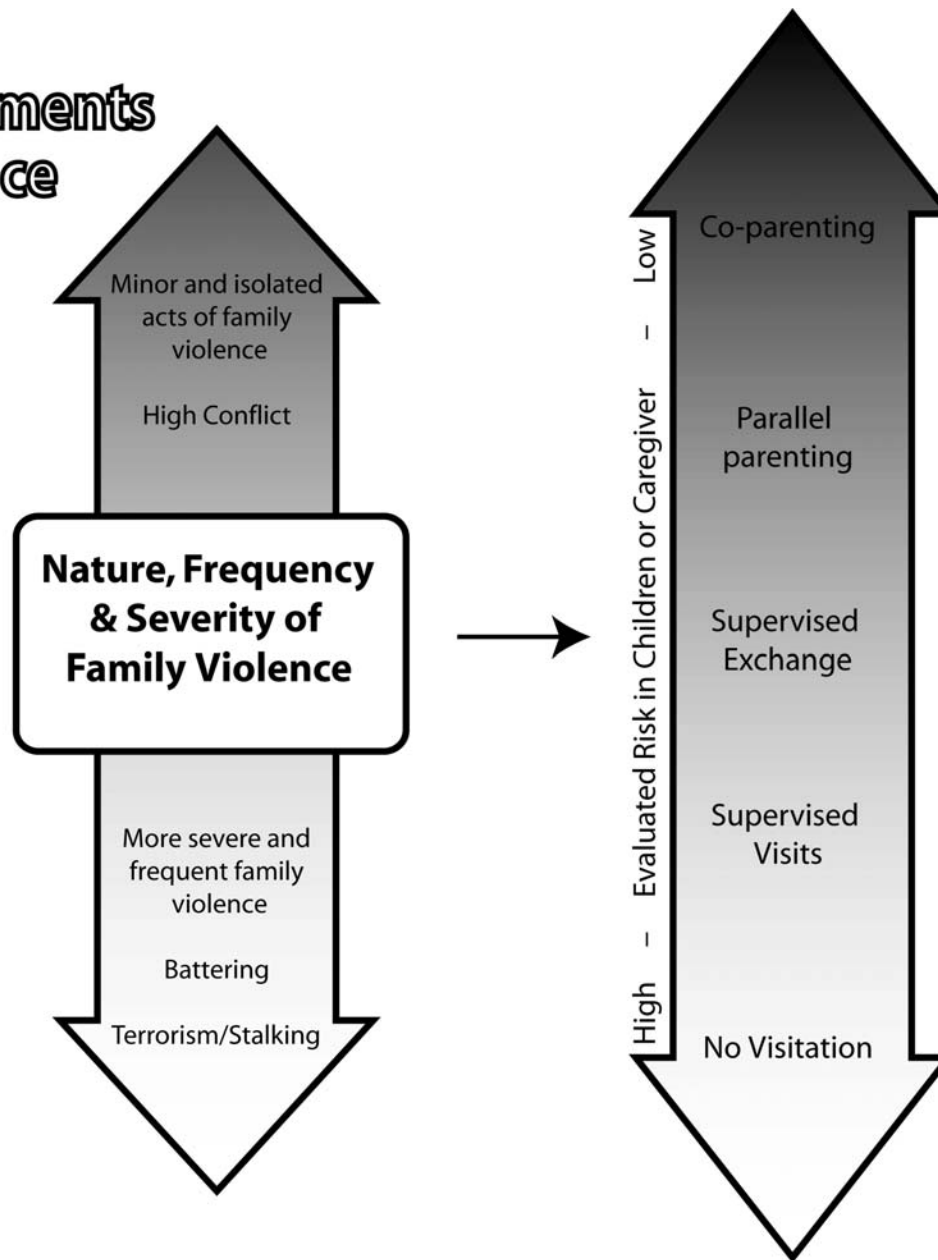
No contact is an extreme measure and should occur only after a careful assessment that documents the need for this type of arrangement. There are cases where perpetrators of spousal violence apply for access to children but are really seeking access to their ex-spouse. Domestic homicides are associated with separation, a history of spousal violence and some cases of stalking. Thorough reviews of risk assessment data may point to perpetrators of spousal violence who are seeking revenge against their ex-spouse by harming the children or planning a more extensive murder-suicide. Although family law makes assumptions about the benefit of maintaining every parent-child relationship, there are cases where any potential benefit is outweighed by the harm and risk to the child. Some clinicians have voiced concern that children prevented from seeing a parent are at risk for idealizing that parent and eventually seeking out this relationship without any preparation (Cunningham & Baker, 2004; Scott & Crooks, 2004). Research is lacking on this topic.

There are some very high conflict cases, even without a history of violence, in which a child may become aligned with one parent in order to avoid a loyalty conflict, and will express a strong desire to have no contact with the other parent. Therapeutic intervention may be useful in these cases, but there may be extreme cases in which a suspension of access may be necessary to promote the child's emotional well-being even if there has been no abusive conduct on the part of the parent from whom the child has become alienated (Johnston, 2005).

5.2 Type of Violence History

As discussed above, there is a wide range of patterns of family violence, and understanding the context and pattern of the violence is more informative than merely focusing on the most serious or most recent incident of aggression. LaViolette's continuum identifies a range of factors in considering the intent, impact and associated characteristics of different forms of abuse. This continuum can be added to the dimension identified of low—high risk interventions as shown in Figure 6. That is, a history of common couple aggression may not preclude co-parenting or parallel parenting, but a history of abuse, battering or terrorism/stalking would certainly contraindicate these interventions. Furthermore, the presence or absence of a child maltreatment history must also be factored into these considerations. In effect, the type and severity of violence and the safety of the victim must be assessed for both child and adult victims.

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5.3 Resources for Children, Victims and Perpetrators

There is often a large gap between the ideal plan that a family requires and the actual resources available in a community. An ideal plan may involve the perpetrator of spousal violence seeking assistance for substance abuse-related problems, and then entering a batterer's intervention program. During this time, the children would receive counseling in a group program for children exposed to spousal violence, and the victimized parent may be in a support group to develop coping strategies for dealing with a history of violence. Access, if appropriate, would be dependent on successful entry into treatment by the perpetrator, the perpetrator's acknowledgement and responsibility taking for the violence, and the use and availability of a supervised access centre. Promising practices in this area include programs for perpetrators that simultaneously address issues of child maltreatment and spousal violence, such as the *Caring Dads* program (Scott & Crooks, 2004; Crooks et al., in press). The dimension of resource availability is an additional factor for consideration, as depicted in Figure 7. As noted in the diagram, lack of availability of resources may warrant a more conservative access plan.

Aside from concerns about the availability of resources, there is also an active debate about the effectiveness of various programs to change perpetrators of family violence. Some researchers have argued that batterer programs are moderately successful, particularly within the context of a responsive criminal justice system (Gondolf, 2002). A more pessimistic outlook has been voiced elsewhere, and contends that batterer intervention has been largely unsuccessful in changing either attitudes or behaviour of men with a significant history of intimate partner abuse (Office of Justice Programs, 2003). The research in this area is moving beyond *whether* intervention works, to a more complex picture of *what works for whom*. For example, some researchers suggest that indicators such as severe psychopathology, continuous drunkenness, and violations of court orders may predict poor outcomes in batterer intervention programs (Gondolf, 2002).

In reality, many courts have to "make do" with limited resources which may involve a community volunteer or grandparent supervising the visits, while parents and children wait for counseling resources that fall short in that they do not specialize in family violence. The timing for the visits is determined by the order, rather than treatment being completed or therapeutic goals being met. In the absence of available and coordinated services, the risk of physical and emotional harm to children and adult victims is substantially raised. In extreme cases, the lack of proper assessment of risk and lack of risk reduction strategies for perpetrators have resulted in spousal violence homicides (Ontario Domestic Violence Death Review Committee, 2004). There are systemic problems in providing services for families where there has been spousal violence. First of all, timely access to services may be impeded by poverty, waiting lists, and a lack of culturally appropriate service providers. Often multiple services need to be accessed, including services for batterers, victims, and children exposed to spousal violence. If these services are in place, there is a critical need to coordinate service delivery and communication of information. Aside from confidentiality concerns, the nature of information required by child assessors, lawyers, and judges may be beyond the mandate, policy, and record-keeping practices of individual agencies involved. To compound these problems, it is often not clear that anybody is in charge of monitoring treatment compliance and progress. Practices vary from having a court officer (e.g., a judge, Master, or Commissioner) hold regular review hearings to monitor

progress, to having no clear accountability for implementation of an intervention strategy or mechanism for court review.

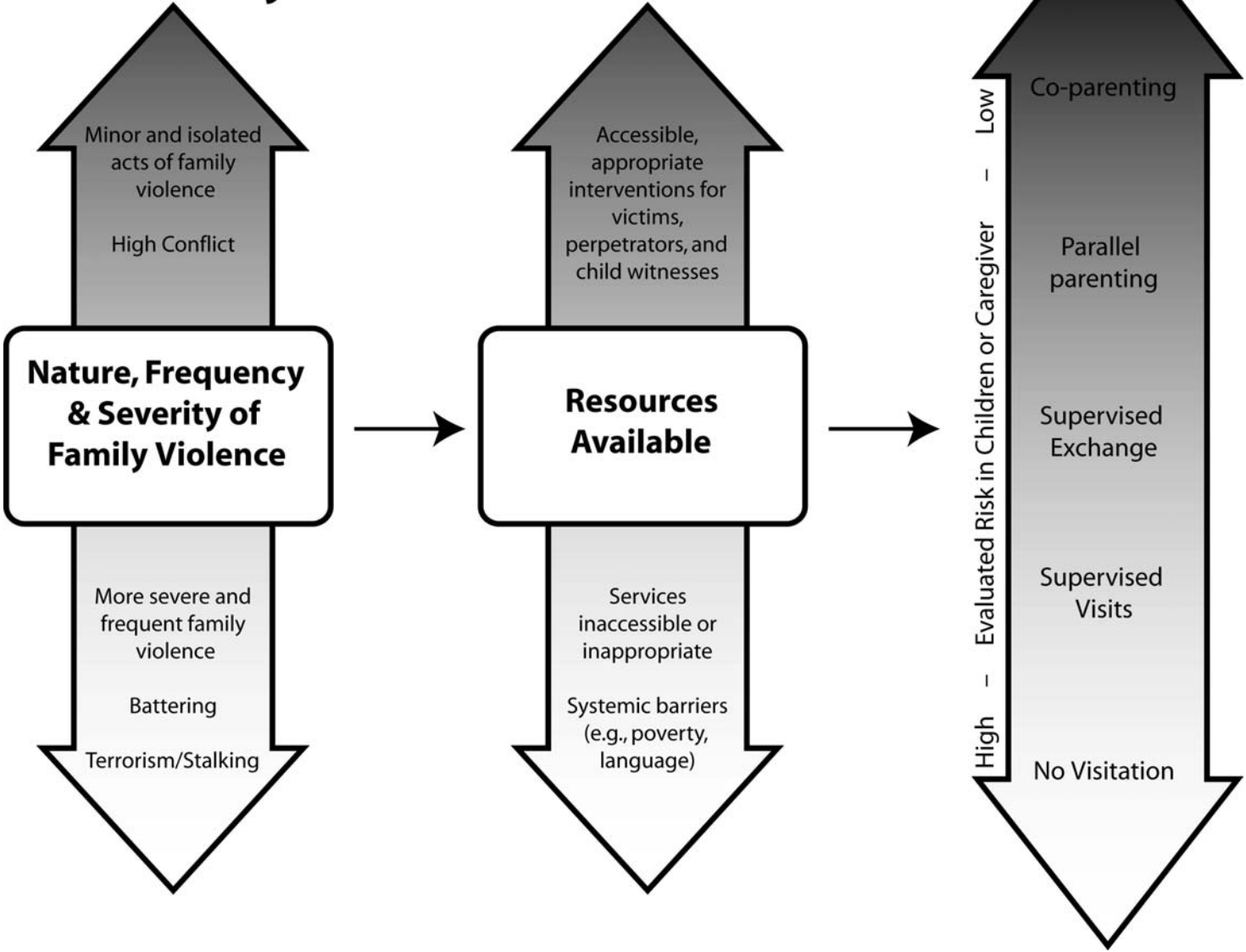
Although monitoring individuals' compliance with intervention may provide useful information to the court, the use of specific behavioural goals may be more illuminating. In a best-case scenario, a parenting arrangement post-family violence would identify specific goals for the perpetrator of violence to achieve before progressing further with the plan. For example, if a particular perpetrator had substance abuse issues, behavioural goals could include completion of substance abuse intervention, as well as clean drug tests for a specified period of time before unsupervised access would be considered. Identifying specific goals provides a more useful framework for parties monitoring progress to make ongoing assessments about family needs, rather than relying simply on the passage of time. Other prerequisites for a change in parenting arrangement may be tied to the victim's or children's functioning. For example, successful completion of therapy for a child victim or witness, as indicated by the child's lack of symptoms, general functioning, therapist report, and the child's ability to articulate who was responsible for the violence, might be an important indicator that a less restricted plan of access could be considered. In our experience however, little ongoing monitoring takes place, and when it does, decisions are based on the passage of time without serious incident and the most superficial of information concerning program attendance, rather than the attainment of specified goals.

5.4 Timing of Disclosure / Stage of Proceedings: Establishing Validity of Family Violence Allegations

Disclosure of family violence usually triggers a crisis for a family system. Disclosures may happen while a couple is still together, at the point of separation, or after the separation. Disclosure of child abuse may be indirect (through a child's behaviour or a journal entry) or be directly made by a child, parent or other adult observer. A disclosure of child abuse to a third party would likely trigger reporting to the child protection services by a parent or other concerned adult (teacher, family physician, neighbour). If the disclosure involves exposure to spousal abuse, rather than direct child abuse, reporting responsibilities are less clear and depend on provincial statutes as well as local practice. For example, in Ontario, exposure to spousal abuse is not in and of itself grounds for child protection intervention; however, police services commonly report all family violence occurrences that involve children to the local child protective service. In some other provinces, exposure to spousal violence may itself be a legal basis for finding a child in need of protection, but this ground for intervention is rarely invoked in the absence of direct child abuse or neglect.

Critical factors in whether a disclosure of family violence leads to more intensive investigation are the nature of the allegations, the credibility of the party raising the allegations, and the professional receiving the allegations. There is a tendency for disclosures made in the context of parental separation to be considered suspect by police, child protection authorities and other justice system professionals. These allegations may be viewed as self-serving and made by the disclosing parent to buttress a claim for custody, or to make a claim for a restriction of access to the other parent. However, it must be recognized that in many cases victims of family violence feel unable to disclose their abuse until after separation, and that many post-separation allegations are valid.

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A critical systemic issue for separating parents is whether allegations of family violence become part of a criminal or child protection process, or whether they are left to be settled as a private matter in family court. If the police or child protective services become involved in a case, and investigate and substantiate family violence concerns, then the family justice system does not have to resolve conflicting allegations. However, if reports of family violence are only made after separation, the public agencies may be reluctant to be involved. Child protection workers with heavy caseloads are often relieved when parents are seeking protection through the private family law system, and may decide not to aggressively pursue an investigation especially, if an allegation is made after separation and a parent's family court application is underway. Child protection workers are more likely to be involved if the allegations of child abuse are more serious, but even in these cases if a custodial parent is responsibly caring for the children, child protection may be inclined to close the file and leave any access arrangements to the family court (for case examples see the Ontario Domestic Violence Death Review Committee, 2004).

In the absence of investigation and clear documentation of family violence by the police or child protection services, the family justice system may be faced with conflicting allegations and denials by the two parents. One California-based study of high conflict separation cases in the family courts found that more than half involved an allegation of spousal or child abuse (Johnston et al, 2005). About half of the abuse allegations were substantiated, and in about one quarter of the cases in the study some form of child or spousal abuse was perpetrated by both parents. The rate of substantiation of spousal abuse was much higher than the rate of substantiation of allegations of child abuse. This finding may reflect the fact that spouses in a high conflict separation are likely to be accurate in reporting their own victimization by a partner. However, in high conflict separation cases, parents may have considerable difficulty in accurately understanding and reporting on how their partner may have treated their children.

In cases where there are spousal abuse allegations but no conclusive police or child protection service investigation, the family court system is left to try to determine what occurred (Bala, 2004). Even in a family law case there is an onus on the party making an allegation to prove it, though the standard of proof is civil standard of "proof on the balance of probabilities," making it less difficult to establish in family court that abuse occurred than in a Criminal Court proceeding, where there must be "proof beyond a reasonable doubt."

In some family court cases, a genuine victim may be unable to establish the fact or significance of spousal abuse because of the lack of effective legal representation. Even a good family lawyer may have considerable difficulty in establishing that abuse occurred if there is a lack of corroborative evidence of the victim's allegations, for example from a doctor, neighbour or baby sitter.

It is increasingly common in contested child-related disputes for the court to appoint a psychologist or social worker to conduct an assessment of the case and report to the parties and the court, usually including recommendations for an arrangement that will promote the best interests of the child involved (Bala & Saunders 2003). The assessor will interview the parents and children involved, and will usually meet other significant adults, like new partners of the

parents, and review records and reports; there may be psychological testing, home visits and contacts with various professionals, like teachers. Often, the parties will settle the case after the completion of the assessment, knowing that the assessor's recommendations are likely to be influential with a judge. While assessors are influential, it is clear that judges are not bound by the views of an assessor, and may, for example, reject an assessment that is premised on erroneous understanding of the facts of the case or if the assessor lacked the educational background to deal with the particular case before the court. An assessment can help a court to determine the validity of an abuse allegation, provided that the social worker or psychologist conducting the assessment has appropriate training, knowledge and skills to deal with these especially challenging cases.

The issue of post-separation reports of child abuse is extremely complex. In some cases the child or parent feels too intimidated or guilty to disclose the abuse until after separation, and in other cases child abuse may not begin until after separation. However, there is a significantly higher incidence of unfounded allegations of child abuse in the post separation context than in other situations (Bala & Schuman 1999, Trocme & Bala 2005). In these studies, only a relatively small number of these unfounded post-separation allegations of child abuse were due to deliberate or malicious fabrication. More common are cases of unfounded post-separation allegations in which the accusing parent has an honestly held (albeit erroneous) belief about abuse, based on children's vague descriptions or symptoms; the parent's own abuse history, their poor view of the other parent, and lack of a trust relationship between parents may well contribute to the unfounded belief that abuse occurred. It is worth noting that many of the unfounded post-separation allegations of child abuse are made by non-custodial fathers against custodial mothers or their new partners (Johnston et al, 2005).

In some cases, the accusing parent holds erroneous beliefs of child abuse so strongly that the accusing parent will reject independent professional opinions refuting the allegations. In these cases, courts and community service providers have to manage their limited resources to ensure repeated assessments and the litigation process are not harming the children. If the accusing parent is the custodial parent, the family court may be faced with the dilemma of whether to accept that parent's reality if the children are strongly bonded to them or risk disrupting the attachment with the primary caregiver in favour of the noncustodial parent. The fact that a parent continues to hold unfounded beliefs about child abuse perpetrated by the other parent in the face of clear refutation by investigating professionals may be symptomatic of serious emotional problems.

5.4.1 Interim hearings / temporary orders

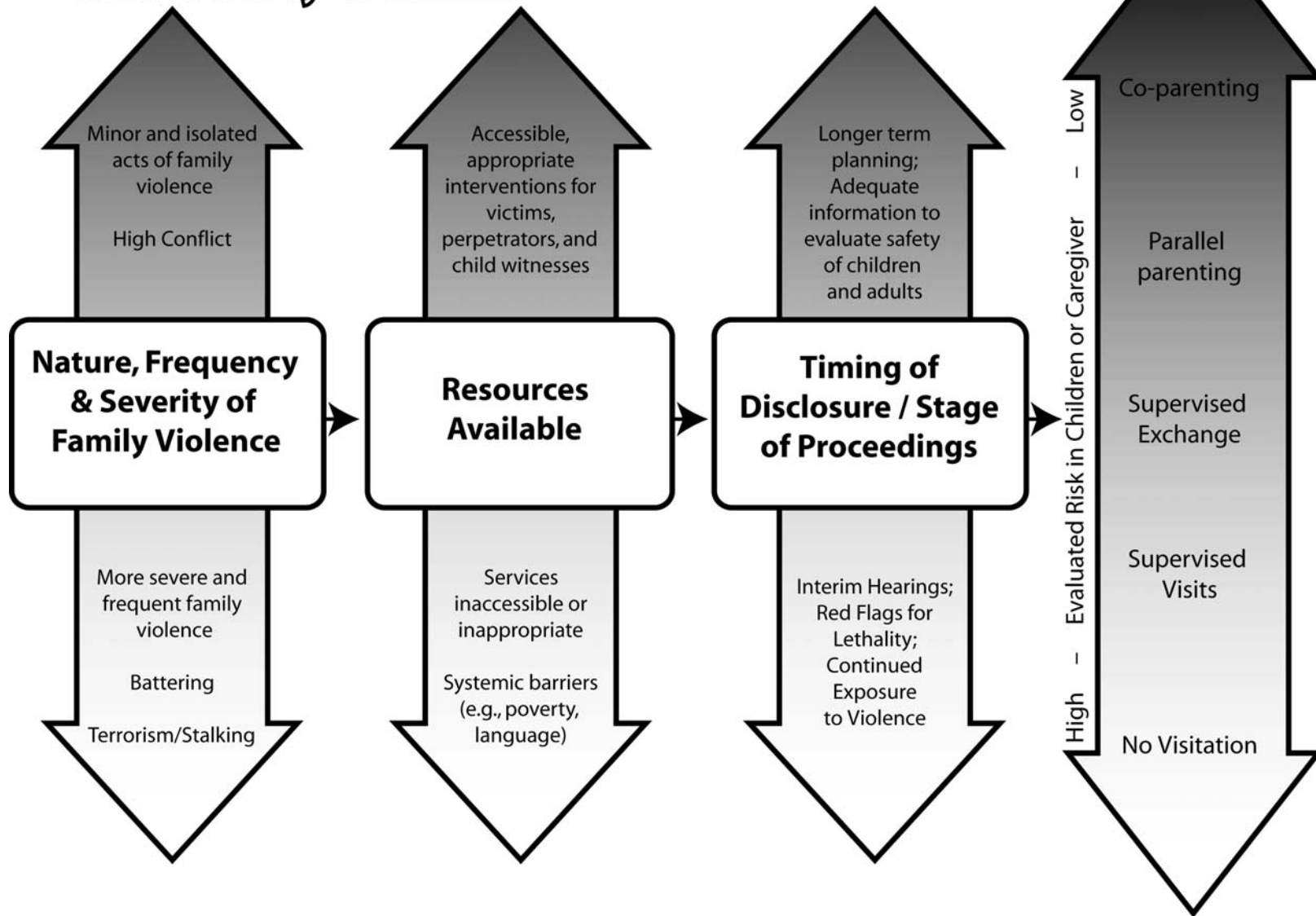
Once credible information is brought to the court's attention, an interim plan or temporary order has to be put in place. This plan is often based on minimal or conflicting information, but should be guided by concern over child and parental safety. The plan has to be time-limited to avoid jeopardizing the children's relationship with the alleged perpetrator in the event that the allegations are unfounded or based on misunderstanding. A complicating factor in family proceedings is that there may be parallel court proceedings in the child protection arena or criminal court. For example, allegations of spousal violence may lead to an arrest and a bail release condition forbidding contact with the partner or children. If there is some evidence about

abuse and a lack of sufficient information to establish whether or not there are legitimate safety concerns, an interim supervised access arrangement may serve a dual purpose of protecting alleged victims from potential threat, and also protecting falsely accused perpetrators from further allegations. A more permanent arrangement could be made after further information is gathered. Figure 8 depicts this dimension of timing of disclosure / stage of proceeding as an additional consideration.

5.4.2 More permanent orders / reviews

If the abuse allegations are proven to be founded the court should require extensive information about the parents and children as well as the resources needed for rehabilitation and safe contact. These court orders are often intended to be indefinite, but there should be provisions for ongoing judicial review or monitoring to deal with changing circumstances, such as children's maturation, parents' compliance with and benefit from treatment regimes, and new adult partners. Although the courts may value settlements and closure as opposed to ongoing litigation, complex cases involving family violence require monitoring and possibly long-term involvement by the court or court-related services

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6.0 Conclusions

6.1 Project Summary

The purpose of this document was to provide a succinct literature review of the impact of family violence on children and the implications of this research on parenting arrangements following separation. The goal in creating this document was to provide a foundation for policy makers and practitioners working in the area of separation and divorce to better recognize the impact of family violence on children. The need for this foundation is based on the fact that *the majority* of separating parents are appropriately encouraged to seek cooperative solutions that promote co-parenting and maximum contact between children and both parents, and as a result some practitioners and policy makers assume that this approach is appropriate for all cases. It is also a sad reality that a significant number of cases of parental separation (though clearly a minority of all cases) involve family violence issues and require a different response, with comprehensive assessment and intervention planning that promote safety, accountability and healing.

6.2 Highlights

Six main findings emerged from this literature review and analysis. These findings are highlighted in the box below, and then discussed briefly in the following section.

- 1 Family violence has the potential to affect every domain of the functioning of children.
- 2 The impact of family violence on any particular child varies greatly and may be related to a host of risk and protective factors.
- 3 Parental separation can heighten or reduce the impact of family violence on children, depending on the nature of the case and whether appropriate assessment and intervention strategies are used.
- 4 There is a critical need to move from a one-size-fits-all focus on shared parenting to a differential response focus in cases of family violence, including a comprehensive assessment by a social worker, psychologist or other mental health professional.
- 5 Assessment findings must be matched to appropriate interventions that take account of the timing of family violence disclosures, the investigative process, and available resources.

6 High conflict separations often involve conflicting allegations and pose special challenges for family courts and professionals, especially when there are family violence issues.

1. The impact of family violence on children may potentially affect every domain of their functioning.

In general, children who experience family violence have higher rates of difficulties in a range of psychological, behavioural, social and academic spheres compared to children who do not experience violence. These negative effects emerge differently depending on children's stage of development, and may continue to exert a negative impact into adulthood.

2. The impact of family violence on any particular child varies greatly and may be related to a host of risk and protective factors.

While many children are profoundly affected by family violence, others seem to fare quite well in similar circumstances. The resilience of some children has been conceptualized as the ability for protective factors to offset negative experiences. On the other hand, some children face multiple risk factors (including severe poverty, familial alcohol abuse and / or mental illness), which serve to exacerbate the impact of the violence that they experience. The characteristics of the violence (e.g., severity, chronicity, relationship of child to the perpetrator) may play a significant role in determining the impact on children, though it is not uncommon for children in the same family to be differentially affected by family violence.

3. Parental separation can heighten or reduce the impact of family violence on children, depending on whether appropriate assessment and intervention strategies are used.

In different families where violence has occurred, separation may offer greater safety or greater danger for children and adult victims. If separation results in ongoing unsupervised contact with a perpetrator of family violence, the risk to children may continue or increase. Separation itself may be a risk factor for dangerous or lethal violence. In other families, separation offers children respite from ongoing violence, especially when safety planning and accountability become part of the process.

4. There is a critical need to move from a one-size-fits-all focus on shared parenting to a differential response focus in cases of family violence, including a comprehensive assessment by a social worker, psychologist or other mental health professional

The prevailing culture in family law is one of promoting settlements that encourage parents to make arrangements premised on some form of post-separation shared

parenting. Within this culture, parent education programs, collaborative law, and mediation are the preferred vehicles for resolving differences between parents. However, in a minority of cases, these approaches are not only inappropriate, but may place victimized parents and children at risk of ongoing harm. This harm is most likely to be associated with severe and frequent abusive behaviours associated with perpetrators who have been identified as “batterers.” A careful multi-informant, multi-method assessment by a trained psychologist or social worker is required in these cases to assess risk and serve as a foundation for appropriate parenting arrangements.

5. *Assessment findings must be matched to appropriate interventions within the context of the timing of family violence disclosures, the investigative process, and available resources.*

Based on the assessment process, strategies to allow for safe contact can be properly considered. These strategies may include no contact with perpetrators of family violence, supervised access, supervised exchange, parallel parenting, and co-parenting. Matching strategies to the assessment findings requires an understanding of systemic issues such as stage of process and availability of community resources. The recommended interventions are only as strong as the community’s ability to provide the indicated resources.

6. *High conflict separations often involve conflicting allegations and pose special challenges for family courts and professionals, especially when there are family violence issues*

High conflict separations take up a disproportionately large amount of time in the family courts, and pose special challenges for judges, lawyers, assessors, mediators and police. Some high conflict cases do not involve family violence and may be attributable in part to parents with major personality disorders or personal hurt and rejection over historical events. One or both parents may stay engaged in litigation until they are emotionally and financially exhausted. In this paper, our concern is with the majority of high conflict separations that are characterized by conflicting allegations and denials of child abuse or spousal violence. While in some cases there is deliberate fabrication, not infrequently conflicting stories reflect differences in perception and understanding, and exaggeration and minimization are more common than outright lying. In cases where the police and criminal courts are involved, there is usually better documentation of abuse. In cases dealt with solely in the family court process there is a significant incidence of unfounded allegations (see pages 51, 52), but even in this context the existing research indicates that a majority of allegations of spousal abuse are valid (Johnston et al, 2005). Although an investigation by a court appointed-assessor can help the court to determine what happened in a family and what arrangements are best for the child, ultimately it is for the judge to resolve factual disputes and determine what plan will best promote the child’s interests.

6.3 Implications

Based on these findings, several policy and resource development implications are evident. These include the need for *legislation* to find the necessary balance between promoting co-parenting arrangements and recognizing family violence cases where more limited or no access to the perpetrator may be appropriate. Other countries have struggled with finding this balance (Jaffe & Crooks, 2004; Bala et al., 1998), and in some cases, the negative and unintended consequences of legislative reform were striking, and highlight the importance of systemic readiness before the adoption of any new legislation (Jaffe, Crooks, & Wolfe, 2003). Review of changing legislation in Australia found that an ill-prepared system asked to make a more sophisticated differential response (in the Australian case balancing a presumption of contact versus spousal violence restrictions) tended to overvalue the presumption of contact (Rhoades, Graycar, & Harrison, 2000). In Australia, interim orders restricting access were greatly reduced (even when there were allegations of violence) for fear of prejudicing future hearings considering parents as equal partners. In our view, the most important legislative reform needed in Canada is codified recognition of family violence as a factor to consider in determining parenting arrangements, while also recognizing the need for judicial discretion in meeting the unique needs of individual families. However, codified recognition alone risks being meaningless without adequate resources, education and training.

A second implication stems from the need for *resource and policy development* to support a more sophisticated analysis and response to family violence cases. A special challenge for the justice system and community social services is the overlap between family law and child protection proceedings. Specific protocols are required to guide practitioners in managing cases with family violence allegations that fall into the area between public safety for children (i.e., triggering criminal or child protection process) and private family law matters. In addition, family courts rarely have access to the resources that they require to handle these more complex cases that go beyond the mandate of parent education and mediation services. These resources include timely access to specially trained child custody and access assessors with expertise in family violence, supervised access centres, and treatment resources for individual family members (including perpetrators, victims, and children). Further, the different components of a full spectrum of services need to be well coordinated in order to monitor family members' progress and make revisions to parenting arrangements as needed. It is not sufficient to assume that no news is good news in these cases. Ongoing court monitoring may be indicated in child custody disputes with histories of family violence.

Building systemic capacity also includes the need for *education and training* for the professionals who work in the family court system including judges and lawyers. Education programs have to be available to help court-related professionals recognize family violence in all its forms, and have the skills to provide differential service responses to meet the level of need for a family. When spousal violence is recognized, there still needs to be a distinction made between minor, isolated acts versus acts that occur as part of a pattern of abuse that engenders fear and harm for victims and children exposed to this behaviour. When the most intensive spousal violence interventions are

misapplied to families who may be better characterized as experiencing transitory high conflict, there is the potential to harm parents' reputations, impede their problem-solving abilities, and undermine parent-child relationships. Furthermore, it is inefficient utilization of scarce resources. Conversely, an abusive husband who engages community members and the court system in a dialogue about his wife making false allegations and being an unfit parent has to be identified early in the process. Failure to identify these cases allows the batterer to manipulate the justice system as a tool to revictimize his ex-partner. In some jurisdictions (e.g., California), mandatory training in family violence is a prerequisite for being a court-appointed child custody assessor.

Finally, there are significant *gaps in the existing research* that limit our ability to understand cases and identify best practices. Specifically, there is a lack of long-term follow-up studies to match children's adjustment with specific post-separation parenting arrangements in cases involving family violence. In addition, most research has been conducted with families in the formal judicial system, and less is known about the long-term experiences of those who choose not to engage this system. Research in the divorce area has been criticized for looking at the outcome of biased samples. For example, the promotion of joint custody as a good outcome is largely based on retrospective studies of cooperative couples. In addition, the outcome may be linked to a simple factor when the reality is more complex; for example, negative outcomes associated with parental relocation may overlook the risk factors of family violence and poverty that triggered the move. There has been little attention to understanding the process of perpetrators changing their behaviour and appropriately healing the relationship with children in a respectful and safe manner. When it comes to individual cases, it is often hard to predict whether terminating contact promotes child healing or conversely, triggers idealization of the perpetrator and anger towards the victim parent. We know little about the restoration process, and the circumstances under which healing the parent-child relationship is possible.

A starting point for an enhanced understanding is a better integration of the divorce literature and the family violence literature, which have largely developed independently of each other (Jaffe et al., 2001). Leading experts in the field have pointed out that high conflict cases involving family violence are often misguided by a divorce literature focusing on parents who were never involved in litigation (Johnston, 1994). Our goal in this document is to assist policy makers and practitioners by bridging the family violence and divorce literatures and outlining a framework for examining situations where these issues may be present.

7.0 References

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Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes

BY PETER G. JAFFE, CLAIRE V. CROOKS, AND SAMANTHA E. POISSON

A B S T R A C T

In the United States and Canada, domestic violence is now clearly recognized as criminal behavior. Assault of intimate partners has gone from being ignored to being a major social issue on the public agenda. With this evolution, we have seen the emergence of specialized police training and interventions, changes in legislation to create easier access to court for protection and restraining orders, heightened awareness and established protocols and procedures for prosecutors, and judicial education. As part of this progress, the criminal justice system and relevant community services, together with researchers, have begun to focus on the needs of children exposed to domestic violence. Some laws and services have begun to address these needs because children are recognized as indirect victims of domestic violence. For example, in some U.S. jurisdictions, exposing children to domestic violence is considered a separate criminal offense, and in other

Domestic violence has been recognized as an important factor to consider in determining the best interests of children in custody and visitation disputes. However, there remain many misconceptions about the extent and impact of domestic violence in child custody proceedings. Several misconceptions are identified and juxtaposed with the reality of emerging knowledge in this field, and implications are outlined. These issues are illustrated by the perspectives of 62 women victims and 95 children exposed to domestic violence who had to navigate the justice system after separation from an abuser. Recommendations are offered for enhancing professional education, resource development, and collaboration among courts and community service providers.

states, exposure to domestic violence can trigger the intervention of the child protection system.

The movement to recognize domestic violence as a crime has now extended to the family court in child custody proceedings. In these proceedings, judges are being asked to consider

domestic violence as a significant factor in determining the appropriateness of a violent spouse becoming a custodial parent, or even whether such a parent should have regular unsupervised contact with children. Almost all U.S. states have changed child custody laws to either include domestic violence as a factor that judges have to consider in determining custody or have created a rebuttable presumption that a batterer will not have sole or joint custody.

In spite of legislative change, there have been resistance and difficulties in developing an integrated legal and service response that would meet the spirit of these legal

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reforms. Changes in legislation are often not matched by changes in actual practice in the field (Jaffe, Crooks, & Wolfe, 2003). Service providers such as staff at shelters for abused women continue to document how domestic violence survivors are re-victimized and even endangered by child custody and visitation arrangements that allow batterers regular opportunities to renew threats and maintain power and control of former spouses.

The relevance of domestic violence in child custody proceedings requires a significant paradigm shift away from prevailing notions of the increasing role of fathers, preference for joint custody and shared parenting plans, emphasis on mediation and conflict resolution, and the saliency of the "friendly parent" construct. In particular, the friendly parent construct is widely adopted by judges, family law lawyers, mediators, and evaluators to reward the parent who is most likely to promote contact and a positive relationship with children to the other parent. In domestic violence cases, an abuse victim who attempts to limit contact with an abuser may be deemed hostile and unfriendly, and punished for her protestations and hypervigilance.

The purpose of this article is to document some of the gaps between the intended vision of legislative reforms and the reality for women and children separating from abusive men. Although we recognize that men can also be victims of domestic violence, the majority of victims who suffer serious harm and live in fear of their partners are women (Statistics Canada, 2001; Tjaden & Thoennes, 2000). Therefore, the focus of this article is on the barriers faced by these women and their children. We identify seven common misconceptions about the existence and relevance of domestic violence in the context of child custody disputes. Furthermore, the salience of these issues is illustrated by the findings from a qualitative study of 62 female victims of domestic violence involved in child custody disputes. These victims of domestic violence do not represent a random sample, but rather women who had accessed family court services after separation from an abusive partner. Participants were recruited through letters sent to women who had accessed legal aid and court assessment (evaluation) services to ascertain their interest in the study. In addition, advertisements and letters were sent to domestic violence service providers seeking participants for the research project. All women were offered transportation and child care costs and an honorarium to compensate them for their time. The women who volunteered consented to complete structured interviews and

questionnaires about their marriages and their children's adjustment. Although this sample was not random, the women's responses serve to illustrate issues that have been identified in the literature. Thus, after each of the following misconceptions are identified and exposed, a summary of the results of this study pertaining to that particular misconception will be provided. The practical implications of each issue will also be highlighted.

Misconception #1: *Domestic violence is rarely a problem for divorcing couples involved in a child custody dispute.*

Reality: *The majority of parents in "high-conflict divorces" involving child custody disputes report a history of domestic violence.*

While most separating parents are able to develop a post-separation parenting plan for their children with minimal or no intervention by the family court system, a small number require more direct guidance from professionals associated with the courts. Approximately 20% of divorcing couples require greater intervention by lawyers, court-related personnel (such as mediators and evaluators), and judges. Although this 20% is typically referred to as "high-conflict," this phrase may not capture major issues related to violence and abuse. Indeed, in the majority of these cases referred to as "high-conflict," domestic violence is a significant issue (Johnston, 1994). Estimates of the proportion of high-conflict cases that involve domestic violence can be drawn from data accessed through different court-related services. For example, in a review of one sample of parents referred for child custody evaluations by the court, domestic violence was raised in 75% of the cases (Jaffe & Austin, 1995).

Even within a sample of families where domestic violence is purportedly an exclusionary criteria (such as those accessing mediation services), domestic violence is common. Of 2,500 families entering mediation in California, approximately 75% of parents indicated that domestic violence had occurred during the relationship (Hirst, 2002). In addition, in an examination of families where mediation failed to resolve child custody issues, a comparable incidence of domestic violence was observed. Between 70% and 75% of these parents who were referred by the family court for counseling because of failed mediation or continuing disputes over the care of their children described marital histories that included physical aggression (Johnston & Campbell, 1988).

Historically, the domestic violence literature has developed in isolation of the divorce literature (and vice versa), and findings from one area have not informed thinking and practice in the other. Researchers who have tried to identify risk markers associated with recidivism, dangerousness, and lethal violence in domestic relationships have consistently identified the process of separation as a critical period. These researchers have noted that domestic violence is more about one person's attempt to control and dominate his partner, rather than about isolated acts of abuse. Thus during separation, when a perpetrator's perceived grasp on his intimate partner is weakening, he may be most dangerous and extreme in his attempts to regain control. Attempts to leave a violent partner, with children, is one of the most significant factors associated with severe domestic violence and death (Websdale, 1999). Inquests into domestic homicides and Domestic Violence Fatality Reviews have consistently pointed to the period of separation as the time of highest risk for victims of domestic violence. In Canada, the rate of spousal homicide for separated women has been identified to be more than 25 times higher compared to married women (Johnson & Bunge, 2001).

Our study: In our study, the majority of women trying to leave abusive partners suffered multiple forms of emotional, psychological, financial, and physical abuse. The extent of the violence ranged in severity from limiting contact with family and friends (80%) to threatening with a knife or a gun (29%). For the majority of women (71%), the first abusive incident occurred during the first six months of their relationship. Most women reported that the abuse was primarily verbal in nature (60%) and involved some type of emotional or psychological abuse. For 35% of the women, their first experience involved physical abuse. About half of the women described an event that involved physical abuse.

More than half of the women had experienced abuse post-separation, and this often took the form of psychological or verbal abuse related to custody proceedings (i.e., their former partners made threatening statements regarding custody or child support issues). The majority of women (78%) reported a physically abusive incident as the worst type of abuse they had experienced with their former partner. Interestingly, several women mentioned a verbally abusive incident as the worst incident of abuse despite previously reporting severe physical abuse. One woman noted: "The bruises go away after a month but the

verbal abuse will stay with me forever."

In an effort to understand more about the abusive environment in which the women lived, participants were asked to describe the abuse they typically experienced. Most women noted that emotional and psychological abuse were typical in their relationships. Forty-four percent of the women in the study reported that their former partners had been abusive toward the family pet. Several women described a high level of sexual abuse. These women noted that marital rape was a common occurrence in their relationships, but one that was rarely disclosed.

Implication: Given the prevalence of domestic violence in divorcing couples that are actively engaging courts and court-related services, the term "high-conflict" may mask serious concerns about violence and abuse. Understanding domestic violence has important implications throughout the court process, from initial intake and screening procedures to more detailed risk assessment and safety planning procedures. Particular issues such as sexual assault in the course of a marriage and severe emotional abuse of family members by harming pets may be overlooked without specific inquiries. Therefore, family courts and court-related services need to assess the nature, extent, and impact of domestic violence on women and children in custody disputes.

Misconception #2: *Domestic violence ends with separation for abused women.*

Reality: *Abused women often face continuing risks from their partner after separation.*

Most laypersons assume that domestic violence ends when an abuse victim finally leaves her partner. In reality, separation may be a signal to the perpetrator to escalate his behavior in an attempt to continue to control or punish his partner for leaving. According to Statistics Canada (2001), 24% of domestic violence victims reported that the violence became more serious after separation. Thirty-nine percent reported that the violence first started after separation. Furthermore, physical abuse, stalking, and harassment may continue at significant rates post-separation (Statistics Canada, 2001).

When children are involved, there may be additional complications and considerations. In a study of abusive men referred to a parenting group, the use of custody proceedings to control or harass former partners was a strategy

commonly identified by the men themselves (Scott, Crooks, Francis, & Kelly, 2002). Indeed, threats to obtain custody are often used by abusers as weapons against the abuse victims to enhance power and control post-separation.

Although we live in an era that recognizes the importance of fathers and encourages more equal partnerships in pre- and post-divorce parenting, batterers need to be distinguished from non-violent fathers. Research has shown that batterers are more likely to apply for custody and equally likely to have it granted in comparison to non-violent fathers (Zorza, 1996). In addition, access to children can be abused by batterers to get access to their former spouses. As part of an access agreement, transitions from one parent to the other entail proximity that provide the opportunity for further abuse. In one study, 25% of the women reported that their lives were threatened during access (Leighton, 1989). Indeed, the ongoing risks to abused women and children are so high at the point of separation that supervised visitation centers have become an essential domestic violence service (Sheeran & Hampton, 1999).

Our study: In our study, most of the women had experienced some type of abuse following separation, and the nature and extent were comparable to the abuse experienced during the marriage. The majority of women reported that their partners had threatened them, often with respect to the potential of physically harming them or taking away custody of the children. A large percentage of women also described various types of financial abuse including financially ruining women (61%), hiding money or quitting a job to reduce support payments (56%), threatening a woman's employment or opportunities to work (43%), and spending money in the joint bank account (41%). Taking all of the money out of the joint account was particularly problematic for a number of women because it was their sole source of savings.

Women experienced abuse through conflicts over custody and visitation arrangements. Some abusive partners who were reported to have little interest in the children during the marriage, applied for custody as a control tactic against their ex-partners. For example, one woman recalled her partner threatening her by saying, "I am going to get what matters to you most." In cases where women wanted to promote access in a safe manner through a supervision center, the abuser refused to cooperate, even on a short-term basis (e.g., "No one is going to tell me when I can see my kid.").

Many women reported that their children had either regular or irregular contact with their fathers and that access was used as an opportunity to continue the domestic violence. In most of the cases where a former partner had access to the children, the children were a conduit for the abuse (78%). The abuse included put-downs, encouraging children to live with their father, and coaching children to make false allegations of abuse by their mother. In addition, 22% of the women within this group reported that their former partners were often verbally abusive and/or harassing during exchanges.

Implication: Clearly, abused women have an ongoing need for safety planning after separation. Furthermore, courts and court-related services need to consider a range of options in cases of domestic violence including no access, limited supervised access, supervised exchanges, and regular visitation, based on a case-by-case assessment. The role of supervised access or supervised exchanges may be essential to the protection of women and children from ongoing abuse. These thoughtful considerations counter the prevailing assumption that all children need frequent contact with both parents after separation.

Misconception #3: *As long as children are not abused directly, they are not harmed by exposure to domestic violence.*

Reality: *Children exposed to domestic violence may suffer from significant emotional and behavioral problems related to this traumatic experience.*

Research on children's exposure to domestic violence has consistently identified a range of negative outcomes for these children (Wolfe, Crooks, Lee, McIntyre-Smith, & Jaffe, 2003). Children who are exposed to domestic violence may show comparable levels of emotional and behavioral problems to children who were the direct victims of physical or sexual abuse (Jaffe, Wolfe, & Wilson, 1990). In addition to emotional and behavioral problems, difficulties experienced by child witnesses can encompass a variety of trauma symptoms, including nightmares, flashbacks, hypervigilance, depression, and regression to earlier stages of development (Graham-Bermann & Levendosky, 1998). Other identified difficulties include compromised social and academic development (Moore, Pepler, Mae, & Kates, 1989).

The effect of domestic violence cuts across all ages and stages of children's development. The impact of vio-

lent environments on very young children suggests that permanent negative changes in the child's brain and neural development can occur, such as altering the development of the central nervous system, predisposing the individual to more impulsive, reactive, and violent behavior (Perry, 1995). Furthermore, the adverse effects of exposure to violence are not restricted to young children. In adolescence, exposure to domestic violence is associated with drug and alcohol abuse, truancy, violent dating relationships, and involvement in the juvenile justice system (Buel, 2002). Exposure to domestic violence in childhood is also associated with significant problems in adult social adjustment (Henning, Leitenberg, Coffey, Turner, & Bennett, 1996).

Our study: In our study, most of the children (91%) had been exposed to domestic violence during their infancy. Almost a third of the children experienced this violence on an ongoing basis through each stage of their development into their adolescence. This exposure took different forms including being an eyewitness to the violence, hearing the violence, or seeing the aftermath (mother's injury or emotional state). Children's immediate reactions included yelling (63%), calling someone for help (19%), or becoming physically involved (29%).

The children were directly threatened but not physically harmed in some circumstances (42%) and in other circumstances, they were harmed, either directly and intentionally (27%) or indirectly and accidentally (45%). In half of the families, the children were victims of physical abuse in incidents totally separate from the abuse of their mothers. This overlap is consistent with estimates from the literature (Edleson, 1999).

Based on maternal reports of children's problems at home and school, many of the children were affected by the exposure to domestic violence. Significant behavior problems related to aggression (35%) or anxiety and depression (21%) were common. One-third of the children were reported to exhibit significant difficulties related to attention and hyperactivity, often resulting in a formal "Attention Deficit Disorder" diagnosis. An interesting finding arising from these data was that children who talked about the violence they witnessed were less likely to have adjustment problems in comparison to children who remained silent about these events.

In addition, children's adjustment was associated with the nature of their relationship to their father. The more the children feared their father, the more significant

anxiety and depression symptoms were present. Time appeared to be a healer for the children in this study when it was associated with an end to the violence. The longer the children had gone without seeing their father, the greater the improvement in their overall adjustment. This finding is contrary to the mainstream divorce literature, which suggests a positive relationship with both parents predicts better child adjustment. However, more recent findings suggest that in "high-conflict" cases, the psychological well-being of the primary caregiver and a cessation of the children's exposure to violence are the best predictors of child adjustment (Neilson, 2001).

Implication: Typically, the court system has focused on the needs of children who are physically or sexually abused by adults. Exposure to domestic violence was assumed to be innocuous and not worthy of careful attention, let alone specialized intervention. However, the emerging research on the potential harm associated with exposure to domestic violence suggests that these children may require comprehensive assessment and intervention services.

Misconception #4: *Since domestic violence is behavior between adults, it is not relevant for the determination of child custody.*

Reality: *Domestic violence is highly relevant to the determination of child custody by courts and court-related services.*

Domestic violence has an impact on victims and their children that is not conducive to an ongoing secure and safe relationship with the batterer. The foundations for a successful shared parenting plan or regular contact—trust, communication, respect, and equality—have been seriously eroded by past abusive behavior. Beyond the relationship dynamics with the victimized parent, perpetrators are poor role models for children in how to moderate emotions, control anger, and engage in healthy and nurturing relationships (Cummings, Iannotti, & Zahn-Waxler, 1985; Bancroft & Silverman, 2002).

Domestic violence perpetrators may have an indirect impact on their children's relationship with the non-offending parent by undermining that parent. Additionally, they may be involved in alienating and blaming behaviors, which lead to loyalty conflicts and compromise the children's ability to cope with the separation (Bancroft & Silverman, 2002). Even if contact between

the perpetrator and the children's mother is ceased, batterers may continue to expose their children to violence in subsequent intimate relationships and thereby may continue to traumatize their children (Woffordt, Mihalic, & Menard, 1994).

Finally, many researchers have identified the overlap between domestic violence and various forms of child maltreatment. Therefore, the identification of domestic violence suggests a 40% to 70% probability that direct abuse of children may be occurring (Edleson, 1999). The above factors demonstrate the importance of domestic violence as a factor in child custody decision making.

Our Study: In our study, issues of children's well-being and custody arrangements were foremost in the victims' minds when deciding whether or not to leave the abusive relationships. The most common reason given by abused women for leaving their partner was fear for their children's safety, as well as their own. An influential factor in staying was the perpetrator's threat to gain custody of the children in the eventuality that the victim decided to terminate the relationship.

Contrary to assumptions that a victim of domestic violence would automatically attempt to prevent access between the batterer and their children, the majority of women wanted the children to have a positive relationship with their father if safety needs could be addressed. Most women recognized positive qualities in the batterers and sought some plan that would keep the children in regular contact with their fathers.

Many of the women in our study expressed frustration that their perceptions of the harm their children experienced from domestic violence was overlooked in the court system. In their view, adjustment problems were often ignored by professionals, including judges and lawyers. In some cases, mothers felt that the harm to these children was seen as secondary to the court in comparison to the pressure to settle the case as quickly as possible.

Implication: Domestic violence and its impact on victims and children has to be a central area of investigation by courts and court-related services. Similarly, interventions with abused women must recognize their concerns about their children's safety and well-being.

Misconception #5: *Family courts, lawyers, and court-related services, such as mediation and custody*

evaluation, can assess the needs of abused women and their children as well as the impact of the batterer.

Reality: *The significance of domestic violence is often overlooked by family courts, lawyers, and court-related services.*

Domestic violence can be overlooked in child custody proceedings for three reasons: first, women may not raise the issue at all, or conversely, raise the issue but have difficulty proving the violence; second, the experience of domestic violence can affect the way in which victimized parents present in an evaluation; and third, even when domestic violence has been raised and validated, it may be overlooked in the decision-making process.

Even though mediation regulations require the identification of domestic violence as a mandatory screening criterion, the majority of victims of domestic violence do not raise concerns about their victimization in mediation. Even when violence is raised, the mediation process is not necessarily responsive. For example, in cases where allegations of violence are made, joint sessions between the perpetrator and the victim are held more than 40% of the time (Hirst, 2002).

Furthermore, domestic violence is notoriously difficult to substantiate. Most abused women have difficulty proving their abuse in family court proceedings because of insufficient corroborating evidence. Since the majority of abuse victims do not contact the police, independent evidence required by the courts is often lacking (Statistics Canada, 2001). This evidence is increasingly critical as courts have become more skeptical about the motivation of parents raising domestic violence allegations in the context of a custody dispute.

The presentation of batterers and victims is such that their competence as parents in child custody proceedings is difficult to accurately assess. Most batterers present with no obvious mental health problems. In comparison, many victims suffer from a variety of trauma symptoms related to their abuse. As a result, the court outcome may overlook the basic issues of safety of the victims and their children, and accountability for the perpetrator's behavior (Gondolf, 2001). Furthermore, abuse survivors may present as angry, distrustful, and suspicious with all professionals related to the court proceedings. This presentation undermines their effectiveness in dealing with the court system and may result in adverse inferences drawn about their attitudes, parenting skills, and ability to promote a relationship with the other parent (Jaffe & Geffner, 1998).

Even when the domestic violence is formally recognized, its relevance in determining child custody and access plans may be missed. Recent research has noted that documentation of domestic violence in a custody and access evaluation is not always reflected in the recommendations of the assessor (Logan, Walker, Jordan, Horvath, & Leukefeld, 2002; Horvath, Logan, & Walker, 2002). Furthermore, even if custody is awarded to the non-offending parent in the case of domestic violence, regular visitation may still be awarded to the perpetrator, providing ongoing opportunities of harassment, threats, and abuse (Shaffer & Bala, in press).

Our Study: The majority of abused women in our study described a high level of dissatisfaction with lawyers, courts, and court-related services such as mediation and custody evaluations. Abused women had the greatest satisfaction with specialized services (shelters, advocacy centers) and least satisfaction with agencies and professionals who appeared insensitive to their abuse histories.

Women's satisfaction with lawyers was split 50/50, depending on the sense of whether or not there was an understanding of the dynamics of domestic violence. Abuse victims perceived a lawyer to be effective when he or she appeared to be a good listener and inquired about issues related to safety and the children's well-being. Abused women's characterizations of ineffective lawyers were ones who minimized the abuse, were ill-prepared,

Further, the results of our study suggested that court-related services were also insensitive to the dynamics of domestic violence. More than 34% of the women were referred to mediation and felt pressured to attend because of the cost of litigation, or on the basis of legal advice to make a good impression by appearing cooperative. Only 25% of those women pressured into mediation felt that the mediator made them feel safe and was cognizant of the dynamics of the abusive relationship.

Similar concerns were raised with child custody assessors. In 25% of the cases, women felt that the history of domestic violence was minimized or ignored. In 50% of the cases where the issues of domestic violence were clearly raised during interviews, the impact of this violence and its relevance for custody/access arrangements were not mentioned in the report, according to the victims' accounts.

The inconsistency in quality and sensitivity of service providers was highlighted by the variability of the judges

who made decisions about child custody. Different judges varied in their knowledge about domestic violence and the weight that this issue should receive. According to victims' reports, the abusive spouses and their lawyers would play on these differences by "judge shopping" through various legal strategies, for example, triggering delays and adjournments until the "right judge" was presiding.

Implication: Family courts, lawyers, and court-related services need training to enhance their skills in responding to domestic violence. Although guidelines that underscore the importance of domestic violence have been developed for most court-related services and endorsed by various professional bodies, the widespread implementation of, and adherence to, these principles has not yet been achieved. For example, guidelines for psychologists completing child custody evaluations include the importance of assessing a history of domestic violence in determining the suitability of a parent for primary custody of children (American Psychological Association, 1996). The gap between these guidelines and professional practice has been confirmed by recent research (Logan et al., 2002; Horvath et al., 2002).

Misconception #6: *Legal and mental health (counseling) services for abused women and their children separating from batterers are readily accessible and well coordinated.*

Reality: *Abused women often experience difficulty accessing appropriate legal and mental health counseling services for themselves and their children.*

Abused women and children involved in child custody proceedings require a host of well-coordinated legal and social services. At a point of crisis, victims are required to navigate complex systems in order to access limited services. This situation can be further exacerbated by barriers such as isolation, poverty, and immigrant status (Vascoe, Jaffer, & Irwin, 2002).

Abused women often feel re-victimized by the court system's response to the violence. Rather than finding safety, protracted disputes may put the women and children at further risk (Sinclair, 2000). Access to legal assistance is limited by poverty, forcing abused women to choose between self-representation or an inadequate counsel hamstrung by minimal hours or lack of experience and specialization in the field (Neilson, 2001). Some research has indicated that limited access to legal repre-

sentation may be a factor for abused women remaining or returning to abusive relationships in as many as half of the cases (Ontario Association for Interval & Transition Houses, 1996).

Our study: In our study, the majority of the women reported that they did not know how to access legal services and were dependent on friends, family, or various community services. Seventy-five percent of the women applied for financial assistance for legal services. Twenty-five percent of these women were denied assistance because of the nature of the family law dispute or because they had savings or a house to use as collateral. Most women were grateful for any legal assistance but felt only minimal service was available. The complexity of child custody disputes with domestic violence required time and expertise beyond what they were offered. Some women had to go heavily into debt to access required services.

Beyond access to the court system, women had contact with multiple agencies and services. A significant number of women described that the stress and fear from the separation seemed to be compounded by the difficulty in accessing ongoing services and support. More often than not, the services were neither consistent in their advice nor coordinated with other agencies. Victims had a high level of satisfaction with specialized domestic violence services.

Implication: Court and community interventions for abused women require collaboration among many service providers. Specialized domestic violence services seem to be an essential component in these interventions.

Misconception #7: *There are no apparent solutions and community strategies to the complex dilemmas posed by abused women and children separating from batterers.*

Reality: *There are many emerging community and court innovations in responding to women and children separating from an abusive parent.*

Although this article has outlined numerous challenges and shortcomings in legal responses to domestic violence in child custody proceedings, the picture is not uniformly bleak. Indeed, there are numerous emerging legislative solutions being drafted that recognize the relevance of domestic violence in child custody disputes and attempt to redress some of the concerns noted here.

These legislative reform efforts have enhanced requirements for courts and court-related services to make safety of abused women and their children a priority (Jaffe, Lemon, & Poisson, 2003; National Council of Juvenile and Family Court Judges, 2002).

Training and education on domestic violence for judges, lawyers, mediators, custody evaluators, supervised access providers, and child welfare workers is an essential component of court reform. For example, in California, custody evaluators must attend 16 hours of training specifically on domestic violence (12 hours classroom and 4 hours networking with domestic violence service providers) before being accepted by the court as a qualified evaluator (Family Violence and Sexual Assault Institute, 2000). Parallel to improved training requirements, new assessment technology is also being advanced. For example, researchers and practitioners in the area of domestic violence are continuously developing new instruments and improving existing ones in an effort to predict future dangerousness of batterers, as well as the consequences to their victims and children (Campbell, Sharps, & Glass, 2000).

Innovative programs for batterers, victims, and children exposed to violence are being implemented and evaluated across the country. For example, effective model programs based on a group psychoeducational approach for children exposed to domestic violence have shown promise as a community strategy to deal with the aftermath of domestic violence (Graham-Bermann, 2001). In the field of batterer intervention, there are some hopeful signs that perpetrators do change when the intervention is embedded in an overall community and court response (Gondolf, 2001). As well, abused women can find meaningful support from knowledgeable agencies, which provide counseling for children and network with other systems and service providers (Vascoe et al., 2002).

Our study: In our study, abused women were asked to reflect on their experiences seeking help for themselves and their children through the court system and various service providers and to identify recommendations for improvements. A major theme in their recommendations focused on the need for training for all professionals in various systems to be better informed about domestic violence, especially the impact on victims and children exposed to this violence. Many victims also wanted enhanced and flexible services to meet the needs of themselves and their children.

Many abused women remember feeling overwhelmed at a crisis point while leaving their abusive partner and confused by the maze of services and choices ahead of them. Reflecting on their experiences, they felt that a more streamlined and centralized system would have led to increased access to appropriate services.

The majority of abused women expressed serious concerns about the safety and well-being of their children, and felt that these concerns were often overlooked by legal, social service, and mental health professionals. Since many of these children exhibit emotional and behavioral problems, access to services is essential. The majority of victims wanted the school system to be an effective partner in this response by training teachers around these issues and providing adequate resources to help these children cope with their difficult circumstances.

Implication: Promising practices have recently emerged in many family courts that capitalize on legislative reform, innovative programs, and collaboration among court and community partners. These ongoing attempts to enhance justice and service delivery in child custody disputes need to be informed by survivors of domestic violence. These survivors should be given an

essential voice in improving court and community responses to the plight of abused women and children. As noted in our introduction, we recognize that men are also victims of domestic violence and require comparable support in the context of their victimization engendering fear and concern over their children.

Conclusion

Throughout this article we have outlined misconceptions with respect to domestic violence and child custody that represent barriers to safety and accountability in these cases. The emerging research in this field that is based on victims' accounts of their experiences in family court demonstrates unique opportunities for improved service and an integrated justice system. Each of these misconceptions was illustrated with examples from a research project based on the interviews with 62 women who had navigated the family court system following separation from a batterer. Despite suffering from years of abuse and great frustrations in accessing appropriate services, the women in our study maintained hope that our courts and community services could dramatically improve the interventions available for future women and children in crisis. Promising practices reviewed here suggest that this hope is well-founded.

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