



Making appropriate parenting arrangements in family violence cases: Applying the literature to identify promising practices, 2023

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

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Executive summary

This paper is a revision of the 2005 Justice Canada publication entitled *Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices* (Jaffe et al., 2005). The original paper was written to assist lawyers, judges and other practitioners in dealing with the difficult issues that arise in making appropriate post-separation parenting arrangements in cases where there are family violence issues. This updated paper captures the significant changes in the field including major legislative reforms. Amendments to the *Divorce Act* that came into force in March 2021 include a comprehensive definition of family violence and recognize the importance of coercive control. These amendments made the federal statute more consistent with provincial and territorial laws that govern parental separation and that already recognized the importance of family violence.

The field has also changed by better recognizing diverse realities in Canada. This paper uses a gender-based intersectional framework as a lens to analyze the complex human experience of family violence, requiring consideration of such factors as gender, sex, gender expression, sexual orientation, race, ethnicity, immigration status, cultural background, life experiences, nationality, language, spiritual beliefs, disability, economic status and education. There have been changes in the composition of the Canadian population, with an increasingly large number of racialized and immigrant families, many of whom have family traditions and cultural understandings that differ from the Eurocentric traditions that have been dominant in Canada. Understanding the unique context of individuals' lives helps family justice professionals to better understand the barriers in the justice system and make it more inclusive and transparent.

Legislation, policies and professional practices have also changed to better recognize and respond to the impact of trauma on survivors of family violence and their children. Trauma has a direct impact on parenting and children's adjustment post-separation. Family court judges, lawyers and court-related professionals need to have trauma- and violence-informed practices to better meet the needs of parents and children.

Most parents work out their parenting responsibilities with minimal court intervention. Many lawyers, mediators, and counsellors encourage parents to work together to develop parenting arrangements that are best for their children. Even prior to the recent legislative changes, there was a trend to stop using the archaic legal terminology of "custody" and "access," which have proprietary connotations and tend to promote a "winner" and "loser" mentality. Courts have now adopted concepts such as "parenting time" and "parenting plans" to facilitate making cooperative post-separation arrangements.

In cases where family violence has been identified, attention must be given to parenting arrangements to ensure safety for the child and the victim of the abuse. Assessing the validity and context of family violence allegations is critical for making appropriate post-separation parenting arrangements. In cases where there are ongoing family violence concerns, court involvement is usually necessary to support the safety of the victim and children. This safety may be achieved through shorter visits, supervised parenting time or the exchange of care, or even a suspension of contact between the perpetrator and their children. The responses need to take account of the potential harm that perpetrators present to the children and the other parent.

Overview of conclusions

1. Family violence is a serious problem across Canada that impacts adult victims and children in terms of their physical and psychological well-being. Living with family violence can have lifelong effects. Women in heterosexual relationships are most at risk of this violence in terms of incidence and consequences such as living in fear, injury and death. Family violence is also a significant concern in same-sex and transgender relationships.
2. Coercive control has become a critical concept in law, research and professional practice. Coercive control refers to a pattern of abuse over time that maintains the power of one intimate partner over another through a variety of means such as threats, intimidation, and emotional, sexual and financial abuse. Patterns of coercive control may be more difficult to recognize than physical abuse, which is more readily understood and identified. The identities of individuals in families influence the ways in which coercive control may be exerted and the opportunities for victims to seek and receive help. Coercive control can have a profound impact on both adult victims and children exposed to this behaviour.
3. Intersectional considerations are required to determine the most appropriate parenting plan in the context of family violence. One needs to consider an individual's life circumstances across diverse cultural contexts. Consideration of such factors as economic class and resources, immigration status, race, ethnicity and Indigeneity, religion and disability is critical. A one-size-fits-all focus on post-separation parenting is not appropriate for family violence cases. A differentiated assessment and intervention strategy are required in separation cases involving family violence. Responses to family violence cases must take into account the nature of the family violence, the timing of disclosures, and the availability of resources to promote safety, healing and accountability, as well as the intersectional contexts of victims and perpetrators.
4. Although parental separation is often essential for the long-term protection of victims and children, separation can increase the immediate risks of serious harm or death from family violence for adult victims and children. Intervening in family violence cases requires a recognition of the harm to children in these circumstances. Children may be traumatized by direct and indirect exposure to family violence.
5. All cases of divorce and separation need to have an initial screening for family violence by family justice professionals, as well as ongoing assessment of evolving family violence issues. Where there are family violence concerns, it is important that courts and professionals identify the risks for ongoing abuse and assess power imbalances, including the safety of abuse victims in any negotiation process. Professionals must not pressure victims into a dispute resolution process and settlements that may place them at further risk of harm.
6. Specific considerations for decision-making about post-separation parenting when there are findings of family violence include the following:
 - a) The parenting of the abusive parent needs to be addressed. There may be an ongoing impact of a parent who has perpetrated family violence on the victim and children, even after separation and a cessation of any acts of abuse. Ongoing use of coercive control must be recognized and considered in post-separation parenting arrangements.
 - b) Findings of family violence are critical to understanding the parenting decisions of the victim parent. Family violence can impact the parenting confidence and autonomy of the victim parent for many years after separation. In situations where there are ongoing or serious family violence concerns,

there should be a presumption that parental decision-making responsibility will be given to the victimized parent.

- c) Findings of family violence are usually a contra-indication of a co-parenting arrangement after separation. Co-parenting cannot take place in the context of continuing fear and trauma from a history of family violence.
 - d) Supervised exchanges or supervised parenting time may be essential for adult and child victim safety. Such safety measures should continue when there is an ongoing risk of family violence and coercive control. Ending these arrangements should be conditional on ending patterns of abuse or control towards the victim parent.
7. Significant caution should be used when assessing claims of parental alienation when made against parents who may be victims of family violence. Parents who raise concerns about family violence may be seen as 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 of family violence, but denial and minimization of abuse by genuine abusers is more common than false or exaggerated claims of intimate partner abuse by alleged victims. There is a need for proper assessment, and investigation into all reports of family violence is essential to ensure that appropriate parenting arrangements are made.
 8. Family courts may fail to recognize or misinterpret survivors' ways of responding to violence and the influence of systemic and structural violence on families, including the influence of violence on decisions that parents make in caring for their children and in acting to protect them from family violence. The use of family violence experts, assessment tools, and trauma-informed practices are essential for navigating these complex systems and should be relied on by family courts and practitioners.
 9. Raising concerns about family violence can be misused against a victim parent as evidence of poor parenting capacity or unwillingness to engage in "friendly" parenting. Significant caution should be used in making negative inferences about a parent as a result of alleging family violence by the other parent, communicating fear for the children as a result of family violence, or taking measures to protect the child from an abusive parent. Seeking help for family violence may well increase a victim's financial and emotional costs in the court process, but may be essential to protect their children. Lawyers, judges and family justice professionals need to be aware that abusers may misuse the court process to continue patterns of coercive control in their intimate relationship in court proceedings. In some cases, this behaviour may be tantamount to litigation abuse and an attempt to exhaust the victim, financially and emotionally.
 10. Findings of family violence should lead to a differentiated approach to parenting arrangements depending on the severity and history of family violence and coercive control, the timing of the disclosures (e.g., temporary versus more stable plan) and the resources available to address safety for the adult victim and children. These arrangements may vary according to the potential need for restrictive parenting time. These arrangements may include co-parenting, parallel parenting, supervised exchanges, supervised parenting, or no parenting time.

There is no doubt that there is a heightened focus on family violence issues in family courts across Canada. There are ongoing efforts by many, including governments, law societies, professional organizations, and the National Judicial Institute to ensure educational opportunities for lawyers and judges to increase awareness and understanding of family violence and the legislative reforms aimed to address it. Similar professional education

programs are being offered for other family justice professionals including mediators, assessors, and mental health professionals. There are also ongoing efforts to educate members of the public, in particular victims and perpetrators of family violence, and to improve access to services. The focus on family violence will have to be matched by growing resources needed to provide legal, social and mental health services to support family members as well as ongoing research to better guide family justice professionals on the best interventions and parenting plans for these challenging circumstances.

A guide to the report

This report is divided into six sections. The first section introduces some key concepts related to the analysis in the report, including intersectionality and the importance and limitations of a gender-based analysis. The next section provides an overview of the literature on family violence, followed by a third section discussing post-separation parenting arrangements in cases involving family violence. In the fourth section, the reader is provided with a model for assessment and intervention strategies in cases of family violence and child-related parenting disputes. In the fifth section, a differentiated 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 concluding section outlines the implications of adoption of this model for policy, legislation and practice in the family court and court-related services.

1.0 Introduction

Legislation and practices for resolving post-separation parenting disputes in Canada have evolved greatly since the *Divorce Act* was enacted in 1985. Traditional gender roles have evolved as more individuals seek equality in their relationships. Fathers are more actively involved in the day-to-day care of children than in the past, while mothers have been more actively involved in the paid workforce (Raley et al., 2012). Although patterns in families and gender roles vary greatly, on average, mothers still carry a larger responsibility in parenting and household management. This difference was highlighted during the COVID-19 pandemic as mothers, who generally continue to be paid less than fathers, were more likely to give up employment and have childcare and home-schooling obligations (Petts et al., 2021).

There has been a broad trend to encourage separating parents to seek to resolve their disagreements outside of the court process, to put their differences behind them, and to focus on the best interests of their children as co-parents. The legal concepts of “custody” and “access,” with their winner and loser connotations, were abandoned in the 2021 amendments to the *Divorce Act* and in similar provincial legislative reforms. There is now a focus on encouraging the use of individually tailored parenting plans (Bala & Himel, 2021). At the same time, there is greater awareness in Canada of child abuse and domestic or intimate partner violence (IPV) (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 courts. Family violence is now recognized in statutes like the *Divorce Act* as an important concern. Judges now have to consider the impact of family violence when determining the best interests of children in post-separation proceedings.

There is increasing research on the impact of family violence on the health and well-being of family violence victims, including children exposed to this violence. Family violence is defined broadly to go beyond physical abuse and includes multiple forms of abuse including patterns of coercive control. The extreme end of the continuum of family violence includes domestic homicides. An actual or pending separation and a prior history of IPV are the most common risk factors for domestic homicides. These cases are reflective of a broader population of parents for whom co-parenting is clearly not only inappropriate, but also potentially dangerous. There have been repeated calls for better professional training on family violence, more resources, and enhanced collaboration between the justice system and community service providers to better address abuse.

The two realities outlined above—growing support for co-parenting and growing awareness of family violence—are often on a collision course when courts and lawyers, mediators and parenting assessors are assisting parents in making post-separation parenting arrangements.

While most separating parents may be able to work out a co-parenting plan without significant court involvement, those parents with a history of family violence need different approaches to making safe and appropriate arrangements for parenting and dispute resolution. Cases involving family violence are more likely to require the protections afforded through using the court process, and the plans may need to involve supervised visits or exchanges, or even no contact with children, perhaps just for a limited period, depending on safety concerns for children as well as the non-abusive parent. While non-litigation processes like mediation may have role for some cases involving family violence, there needs to be special screening and protections if such processes are used in cases where there has been a history of family violence.

The promotion of non-adversarial co-parenting arrangements after separation and the efforts to promote child and parent safety and accountability for family violence often involve different professional groups and agencies, and result in different professional perspectives on making post-separation parenting plans.

Incompatibility and a lack of dialogue across these systems create real dangers for family violence survivors. This discussion paper aims to bridge the gap between these perspectives. The paper offers a model of how to consider findings of family violence in parenting disputes, and how to appropriately match post-separation parenting arrangements to the needs of children and their caregivers. The critical role of court-related resources, training, and collaboration among professionals in the field is also addressed.

1.1 Methodology

This document is based primarily on a literature review of the areas of family violence and post-separation child-related proceedings. The family violence literature was applied to the area of child-related disputes within the context of the extensive experience of the authors from both legal and psychological perspectives. Throughout the paper, a gender-based and intersectional lens and approach is applied. A draft of this document was circulated to several leading Canadian professionals and researchers for comments. The final paper reflects the views of the authors and may not capture perspectives raised by each of the experts who were consulted.

Limitation - Lack of Indigenous families' perspectives: Although we include references to the special challenges faced by Indigenous parents and children, this paper does not fully address these issues. None of the authors are Indigenous and we were unable to bring the needed Indigenous voices to properly address these concerns. Indigenous women are at risk for a significantly higher level of domestic violence and domestic homicide than other Canadians (Richardson et al., 2020). This level of violence needs to be considered within the history of colonization and oppression that has been documented as a form of cultural genocide (Truth and Reconciliation Commission of Canada, 2015). There are many distinct issues which need to be analyzed from an Indigenous perspective that are beyond the scope of this paper.

1.1.1 A gender-based analysis

A gender-based analysis (GBA) is used to understand issues where the impact of policies and programs differ for women, men, and gender-diverse individuals. Responses to family violence require a GBA for several reasons. Men, women, and gender diverse individuals experience violence at different rates and with different impacts. Women's ongoing economic and social inequality are important contributors to risk of abuse and barriers to leaving their relationship. The roles that parents may play in a family are also influenced by gender. Women continue to take on more parenting responsibilities and there are often higher expectations for women in providing care for children. All these factors mean that there will inevitably be different gender impacts for men and women of changes in public policy around involvement in family court.

The Government of Canada (2023) now uses a "Gender-based Analysis Plus" to recognize that GBA is not just about differences between biological (sexes) and socio-cultural (genders). There are multiple characteristics that intersect and contribute to individuals' identities, including race, ethnicity, religion, age, and mental or physical disability. The interaction between these factors influences the way individuals may experience family violence and government policies and programs.

1.1.2 An intersectional approach

An intersectional approach is used in this paper as a tool to help understand the complex human experience of family violence. The terms intersectional approach or analysis simply refer to an appreciation of the unique context of an individual's life based on how they define themselves by factors such as gender, race and culture. This analysis considers how these factors may combine to impact on an individual's safety and risk factors. This analysis can help family justice professionals break down the barriers faced by families and individual's involved in the justice system and make it more inclusive and transparent.

People's lives and identities are shaped by many factors in diverse and mutually influencing ways. There are systemic, social, legal and cultural issues that specifically impact diverse populations. Canada is a multicultural society; Indigenous peoples have diverse cultures, histories, languages, family traditions and dispute resolution processes. There have also been major changes in the ethnic composition of newcomers to Canada (Statistics Canada, 2018), and immigrant and racialized families may have distinct family traditions and cultural understandings of parenting that differ from those of many justice system professionals.

The intersectionality framework is helpful in plotting a unique subject–location of each individual in society in order to analyze the impact of systems and social structures on the individuals (Collins, 2015; Crenshaw, 1990). Although rooted in Black feminist thought, the intersectional approach has been used to acknowledge systemic discrimination due to various aspects of an individual's identity and its impact on their access to justice (Collins, 2015). Intersectionality can be used as a problem-solving analytical tool, focused on solutions informed by the experiences of the diverse population (Gill, 2018).

Family violence is a complicated problem that needs a complex analysis. Intersectionality provides an understanding of inequalities within the family unit that are informed by multiple factors such as complex power-control dynamics, gender and cultural issues, immigration status, socio-economic factors, and other barriers such as language, mental health diagnosis and addiction (Etherington & Baker, 2018; Lockhart & Mitchell, 2010). The intersectional lens reminds us that it is critical to apply an equality-based analysis of family violence to effectively problem-solve (Creek & Dunn, 2011; Lockhart & Mitchell, 2010). It requires a change in attitudes and practices, in addition to legal reform and implementation (Creek & Dunn, 2011).

A concept that reflects our understanding of intersectionality is cultural safety. Cultural safety is the ability of family justice professionals to develop insightful awareness of diverse cultural dimensions and identities involved in disputes and factor in clients' lived experiences in the dispute resolution process. Cases involving multi-cultural parties require a culturally competent family justice professional with skills to effectively communicate with clients through curious questioning, knowledge building, and an open mind. To build cultural safety in legal processes, family justice professionals have to build their cultural competence and humility which will allow them to break down the cultural barriers, offer an environment free from racism and discrimination, understand the context of colonization and systemic racism, address power imbalances and make legal processes more inclusive and transparent.

1.1.3 A trauma- and violence-informed lens

This paper also takes a trauma- and violence-informed approach to understanding the needs of survivors and appreciating their experiences in the family justice process. A trauma- and violence-informed lens requires an understanding of the life-long impacts of trauma on survivors and their children involved in parenting disputes. Trauma has a direct impact on parenting and children's adjustment post-separation, and the presentation of victims and their children to family court and court-related professionals. These realities must be identified as, otherwise, assessments of needs and interventions by the court can become misguided (Deutsch et al., 2020; Nonomura et al., 2021b; O'Regan et al., 2021).

2.0 Literature review on the impacts of family violence

2.1 Definitions

2.1.1 Family violence

Section 2 of the *Divorce Act* now provides the following definition of family violence:

family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes:

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
 - (b) sexual abuse;
 - (c) threats to kill or cause bodily harm to any person;
 - (d) harassment, including stalking;
 - (e) the failure to provide the necessities of life;
 - (f) psychological abuse;
 - (g) financial abuse;
 - (h) threats to kill or harm an animal or damage property; and
 - (i) the killing or harming of an animal or the damaging of property
-

The *Divorce Act* defines a “family member” for the purposes of considering the effects of family violence including a member of the household of a child of the marriage or of a spouse or former spouse as well as a dating partner of a spouse or former spouse who participates in the activities of the household (s.2). As such, the term family violence encompasses child abuse and neglect, domestic violence (IPV or spousal violence), as well as abuse perpetrated by a person such as a father-in-law or a brother-in-law.

2.1.2 Domestic violence or violence against women

The term family violence is increasingly found in legislation like the *Divorce Act* as a broad term for violence in the family, and includes abuse of children, parents and partners. The term domestic violence is often used to identify situations of family violence involving adult intimate partners who live together. IPV refers to violence that occurs in the context of an intimate adult relationship, which may include dating relationships as well as co-habitation or marriage. These terms are all used for abuse in same-sex and heterosexual relationships.

Although domestic violence may be either an isolated incident or bi-directional, the research in this field mainly focuses on repeated abuse and patterns of abuse and control that may endanger victims and create significant physical and psychological consequences. Some authors are critical of terms like family violence and IPV as they do not capture the disproportionate nature of the violence which impacts women and children to a greater extent than men (Jaffe et al., 2020). Many agencies that serve abused women use the terms violence against women (VAW) and the broader term gender-based violence (GBV) to reflect the gendered nature of domestic violence.

Throughout this document, the term family violence is intended to be inclusive of all forms of abuse in the family, while the terms spousal, domestic or intimate partner violence signify abuse within the context of the

intimate adult relationship. This document focuses primarily on violence between adult intimate partners (domestic violence) and child exposure to partner violence, though other forms of family violence such as child sexual abuse are discussed more briefly.

2.1.3 Children exposed to domestic violence

Children exposed to domestic violence refers to a child seeing, hearing, being told about, or seeing the aftermath of abuse and coercive control against an intimate partner who is their parent. Exposure to domestic violence has been recognized as a form of emotional child abuse (Jaffe et al., 2011). When children live in a home in which one parent is abusing the other, they are very often aware of the abuse and profoundly affected by it, even if they have not directly observed acts of violence. Parents may not be aware that their children can see, hear or experience the IPV that is occurring.

2.2 Domestic violence: A gendered and intersectional issue

Domestic violence is a prevalent and gender-based concern in Canada. Police data show that 30% of all victims of police-reported violence are victimized by an intimate partner (including spouses and dating partners) (Conroy, 2021a). Child exposure to domestic violence is among the most common forms of child maltreatment substantiated by Canadian child protection services (e.g., Fallon et al., 2020, 2021).

Canadian police-reported data indicates that women are identified as victims in 79% of domestic violence cases (Conroy, 2021a). Moreover, domestic violence is the most common type of violence experienced by women, according to Statistics Canada (Conroy, 2021a). Similar patterns exist in other countries, although reports of the estimated prevalence of domestic violence vary due to differences in definition, data sources, and sampling, as well as differences in cultural, social and economic conditions (World Health Organization [WHO], 2013). In studies from across the globe, men perpetrate more physical and sexual violence than women for every form of violence. Most of this violence happens at home (WHO, 2021).

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 self-reported surveys as tools for determining the incidence and prevalence of family violence. Family violence is an underreported crime (Burczykca, 2016) and not all family violence constitutes a criminal offence. To gain a better understanding of experiences of gender-based family violence, since 1999 Statistics Canada has regularly undertaken a large telephone survey of spousal violence, the most recent one being conducted in 2019 (Conroy, 2021b). Data from the most recent General Social Survey, in 2019, show that 80% of domestic violence victims say that the violence they experienced was **not** reported to the police (Conroy, 2021b). At one level, rates of victimization for women and men look similar (4.2% of women vs. 2.7% of men reported being victims of an act of IPV in 2019: Conroy, 2021b). However, the additional contextual information identified important gender patterns in the severity, impact, and lethality of violence. Notably, these findings revealed that:

- Women victims are twice as likely as men victims to report that spousal violence negatively affected their mental health. Women are 3.5 times more likely to report being fearful and more likely to fear for their lives.
- Women victims are 2.2 times more likely than men victims to experience spousal violence or stalking from a former partner, often after a separation was initiated by the victim because of violence.
- Women victims of spousal violence are significantly more likely than men victims to suffer injuries, require medical care, lose time engaging in daily activities of living, live in fear, and worry about the safety of their children (Conroy, 2021b).

Intersectional analysis recognizes that individuals experience many forms of inequity, and that multiple, intersecting and reinforcing factors need to be considered in family violence cases. For example, language barriers, fears of deportation, and cultural differences may make it difficult for women of colour to disclose spousal violence (Dasgupta, 2007). Data from Canada’s Survey of Safety in Public and Private Spaces document that Indigenous women are considerably more likely to experience family violence than their non-Indigenous counterparts (Statistics Canada, 2022). Differences in rates of victimization can be understood as a product of colonialism (Rizkalla et al., 2020). Sexual minority women and sexual minority men (Jaffray, 2021), women with disabilities (Savage, 2021), and ethno-cultural minority women (Cotter, 2021) also all experience family violence at higher rates than non-minority populations.

Domestic violence often does not end with separation. Instead, the post-separation period is one of heightened risk for continued and/or increasing violence (Brown et al., 2014). Multiple studies bear out the challenges of post-separation violence, with interviews of mothers and children (generally between the ages of 8 and 14) documenting fathers’ continued physical and verbal abuse and denigration of mothers, high levels of distress and fear in children over ongoing exposure to partner abuse, and fathers’ use of contact with children as a pathway to continue to try to control mothers (Hardesty & Chung, 2006; Harrison, 2008; Holt, 2015; McInnes, 2004; Morrison, 2015; Thiara & Humphreys, 2017).

At the extreme end of the continuum, victims experience death at the hands of their intimate partners, which is termed domestic homicide. Cases of domestic homicide may involve the killing of family members as well as partners, including children. There are extensive studies on children killed in the context of domestic violence (Adhia et al., 2019). The killing of children is often motivated by a father seeking revenge against their mother for leaving him (Scott et al., 2020). Apart from being killed themselves, children can also be victimized by losing parents to domestic homicide (e.g., homicide, suicide, incarceration), witnessing an attack, or being exposed to the aftermath (Alisic et al., 2017; Jaffe et al., 2012; Jaffe et al., 2017; Jenney & Alaggia, 2018). Children can suffer from extreme traumatic stress from these incidents, and often do not receive the necessary supports to address their trauma (Alisic et al., 2017; Mertin, 2019). For that reason, children are often referred to as the hidden victims of domestic homicide (Reif & Jaffe, 2019).

2.3 Definitional complexities and nuances

Having set out basic information about the prevalence of domestic violence, it is useful to return to considering some of the complexities of understanding domestic violence and assessing its severity. There are several aspects of the definition of family violence that are likely to be of considerable interest to lawyers, judges, and other family justice professionals. In this section, we consider these nuances. First, we consider behaviours that may constitute a “pattern of coercive or controlling behaviour.” Second, we consider research and theory that help establish a nuanced understanding of acts of physical aggression and typologies of domestic violence. We then describe two forms of domestic abuse that are receiving increasing attention in the literature and among practitioners: technology-facilitated abuse and litigation abuse. Next, we consider indicators of severity and risk for domestic homicide. Finally, we reflect on differentiating domestic violence from high conflict.

2.3.1 Pattern of coercive and controlling behaviour

One particularly important issue for proper implementation of the 2021 amendments to the *Divorce Act* is understanding what constitutes a **pattern of coercive and controlling behaviour** often referred to as “coercive control”. Coercive control is a pattern of abusive behaviours used to control or dominate a family member or intimate partner.

Coercive control is less a separate or single type of abuse and more a way to understand the effect of a range of abusive behaviours and their impacts (Stark & Hester, 2019; Walby & Towers, 2018). The Power and Control Wheel (Pence et al., 1993; see Figure 1), which has been a critical guide for the field for many years, illustrates this understanding. The Wheel identifies a pattern of actions used by an abuser to control or dominate an intimate partner, which is why the words “power and control” are in the center of the Wheel. The behaviours that are the spokes and rims of the wheel, such as economic abuse, intimidation, minimizing, denying, blaming and physical and sexual abuse, are used by the abusive person to maintain the pattern of coercive control. Understanding patterns of abuse is also an important counter to “gaslighting” (extended psychological manipulation of a victim that leads them to question the validity of their own thoughts and reality) by perpetrators of abuse, who often embrace an incident-based definition of domestic violence to disconnect their actions from one another in time and space, thereby allowing them to minimize their violence as “not that bad” and to support victim-blaming (Morrison et al., 2021).

Figure 1: Power and Control Wheel¹



Understanding and interpreting behaviours that may constitute coercive control requires consideration of context: What is the significance of the action to both the perpetrator and victim? What is the effect of the action? Understanding this context also requires consideration of the power of each person in the relationship: What social, economic, and/or physical power does one partner have over the other? The context) of coercive controlling behaviours is one in which the abuser creates, attempts to create, or behaves in ways that result in the disempowerment of victims and restrictions on their space for action. The repeated nature of coercive

¹ Adapted from Pence, E., Paymar, M., & Ritmeester, T. (1993). Education groups for men who batter: The Duluth model. Springer Publishing Company. For more information see: <https://www.theduluthmodel.org/wheels/understanding-power-control-wheel/>

control has ongoing impacts in terms of removing a victim's autonomy, often entrapping them in the relationship, and causing distinct emotional, psychological, economic and physical harms (Chambers, 2021; Katz, 2016; Stark & Hester, 2019).

Patterns of coercive control in abusive relationships can be highly individualized. This is because with coercive control a perpetrator exploits a victim based on privileged access to use of force, resources, information and/or sources of influence and power over a victim. For example, an abuser who is partnered with someone who lacks immigration status in a country may use disclosure of status as a threat to create fear and gain control over a victim. Other coercive tactics that might be used in a similar way include: threatening or engaging in acts of violence; threatening to reveal a secret the victim deems shameful; threatening or engaging in behaviours that "trigger" a victim's trauma; or behaving in ways that highlight, or take advantage of, a victim's disability, mental health challenges, history of childhood abuse or other prior victimization.

A consideration of intersectionality is essential for understanding coercive control, as individuals' identities strongly influence the ways in which a victim may be coerced and controlled. In immigrant and refugee communities, widely noted modes of control of the victim include: forced marriages; isolating the victim; refusal to allow attendance at English or French as Second Language (ESL or FSL) classes; denying permission to drive a car or work; retaining travel documents such as a passport or permanent resident card; and threats to have the individual deported to the country of origin (Chaze et al., 2020). In families from collectivist cultures, it is crucial to understand the role of extended family members living either in a joint residence with the parties or elsewhere who may participate in or endorse the coercion and control (e.g., Ragavan & Iyengar, 2020).

Common patterns of coercive and controlling behaviours are outlined below. These may be present individually or in combination (Chambers, 2021; Crossman & Hardesty, 2018; Crossman et al., 2016; Hamberger et al., 2017; Lee et al., 2020; Myhill & Hohl, 2019; Sowter, 2020; Stark, 2012; Stark & Hester, 2019). Forms of harm may be perpetrated in person, virtually or through interactions with third parties and institutions (Douglas, 2018; Nonomura et al., 2022). Coercive control may also be extended to children (see section 3.3 on co-occurring abuse).

Violating a sense of physical safety, or creating a sense of fear for self or loved ones

Coercively controlling behaviours include those which undermine a victim's sense of physical safety for self, children, other family members, friends or work colleagues. Examples are physical abuse, stalking (including online stalking, such as monitoring a victim's location), physical intimidation, threats, destroying things belonging to the victim or children, and making "off-hand" comments about harm. These behaviours can be perpetrated during a relationship or following separation. Ways to violate a victim's sense of physical safety following separation, and especially in the context of prior domestic violence, include breaking no-contact orders (including using children as a justification) and using third parties to threaten ex-partners. In the context of collectivist cultures, extended family members may be recruited by the abuser to threaten the victim.

Violating sense of emotional safety or creating a sense of serious distress for the emotional safety of self or loved ones

Coercive control does not necessarily involve fear for physical safety. Coercively controlling behaviours include those which cause a victim to be constantly (and justifiably) anxious about their emotional safety, or the emotional safety of their children. Examples include: continually humiliating, degrading or belittling a victim; threatening to share a victim's personal information in ways that embarrass or harm them; hacking a victim's

online accounts, impersonating a victim online and threatening repercussions for leaving the relationship. Since the *Divorce Act* amendments, courts have increasingly considered the role of online harassment within the context of family violence and coercive control.² Although most coercive control involves threats to the safety of the victim and/or children, abusers also use threats of suicidality as a means of coercive control, and in particular, to try to keep the victim in the relationship.³

In the context of separation, a victim's emotional safety can be violated with the use of legal tactics that create high levels of distress at important moments. An example is an abuser initiating legal actions that may require an immediate response at a time when a victim begins a holiday period with the children. Violations of emotional safety often cause victims to be emotionally and physically exhausted, often to the point of "giving up" or being unable to continue to act with autonomy.

Creating conditions of subordination, dependency or entrapment in a relationship

Coercive control may involve behaving in ways that create or intensify power imbalances in the relationship, making an intimate partner dependent on and subordinate to the perpetrator. Coercively controlling actions could include creating economic dependency, reputational dependency, and dependency in social relations.

Coercive control may also involve creating conditions that entrap a victim in the relationship. Associated behaviours may include isolating a victim from sources of support by using behaviours such as controlling or directing communications with a partner's friends and family, taking or breaking cell phones, surveilling or disabling social media accounts, destroying relationships with potential supports, or cutting off phone service.

An intersectional lens is critical in assessment since dependencies are often based on a victim's social identity, which may create additional barriers when seeking access services or resources. For example, dependency and isolation may be heightened by a victim's geographic location (e.g., rural), social class (e.g., homeless), race (e.g., Indigenous, Black, racialized), status in Canada (e.g., immigrant status, refugee status or non-status can result in changed power relations in the couple, loss of social support, and lower socio-economic status after migration), or language skills (e.g., lack of English or French language fluency to interact with the police, social workers, courts and shelters or other interveners, or dependency on the availability and effectiveness of the interpreters who represent them and their experiences to these authorities). Individuals with diverse sexual orientations or genders may be vulnerable to being outed. For Indigenous people, there may be added barriers associated with living on reserve or in smaller and more remote communities where it is difficult for a victim to come forward and maintain their privacy (i.e., because police and other service providers are known to the abuser) and where disclosure of abuse might require moving away (resulting in possible loss of connections with community and culture). For new immigrants, other behaviours that may create conditions of subordination may include refusing access to ESL or FSL classes, isolating a victim from their faith or cultural community, or preventing a victim from seeking and maintaining employment.

Following a separation, attempts to make a partner subordinate and dependent may include convincing a partner that they lack credibility or competency as a parent, making false claims that the other parent kidnapped or abused the children, reporting or threatening to report the other parent to Child Protective Services (CPS), or creating fear that any actions taken to assert rights will be punished with actions that harm the relationship between the victim parent and their children.

² M.N.F. v M.B.F., 2022 ABCA 42

³ See: *McLellan v Birbilis*, 2021 ONSC 7084.

Violating the autonomy of another person by controlling their daily activities

Coercive control may involve actions that restrict the activities of the other person. Examples include when a perpetrator micromanages the daily activities of a victim with behaviours such as dictating the clothing a partner wears, limiting access to household utilities or food, or restricting access to a cell phone or to transportation. Coercive control may also involve withholding, or severely limiting and controlling access to money or credit, or creating dependence by denying access to information.

Following a separation, coercive control may include blocking access to money, continuing to delay settling finances in court, or failing to pay agreed upon or ordered child support. Coercive control may also involve stalking and unwanted intrusion into a victim's activities, the effect of which is to disrupt the victim's daily activities and put them constantly on edge.

Decision-making control can also focus on parenting and restricting the ability of a partner to make their own parenting decisions. When coercive control is focused on parenting, a perpetrator may act strategically to continually undermine a victim's parenting or make threats against the child or parent-child connection in ways that disrupt that person's ability to parent. These actions are coercively controlling as they create fear in the victim parent for the physical or emotional safety of children. The perpetrator also may threaten to have CPS remove the children from their victim parent's care.

Making a victim doubt the reality of their experiences or undermining their credibility

A particularly pernicious form of coercive control involves convincing a victim, and others around them, that their experiences and reactions are not based in reality; this may make a victim doubt their experiences of having been abused and their impact. Such behaviour is sometimes referred to as "gaslighting." Examples include constantly calling or making a victim out to be "crazy," constantly blaming a victim for their abuse, making light of the abusive behaviour, or denying the impact of abusive behaviour.

Following separation, a perpetrator may minimize the impact of abuse by continually insisting that the "past is in the past" and that it is "time to move on," or that any failure to do so is "crazy" or a sign of mental illness rather than an understandable reaction to past abuse. In some cases, a perpetrating parent may turn to religion or to extended family to blame the victim for creating "conflict" or "problems" in the relationship, or for failing to be sufficiently supportive of the marriage.

Coercive and controlling tactics are often used in combination to amplify each other

For example, fear of an abuser taking away access to necessary financial resources may make it easier for that abuser to demand sexual compliance. As another example, an abuser might be able to stalk a partner or gather information about a partner more easily as a result of destroying a victim's social credibility by making that victim out to be overly emotional, overly dramatic, or "crazy" (sometimes misusing clinical terms such as "personality disorder"). The nature of coercive control has victims constantly "walking on eggshells." Victims are often worn down and exhausted. They often feel that their abuse is all-encompassing, and their partner is omnipresent (Hayes & Kopp, 2020; Stark, 2009).

Not seen as abusive by most perpetrators

It is important to appreciate that in most cases, the perpetrator of coercive and controlling behaviour does not see their behaviours as being motivated by power and control motives or as abusive. Rather, abusers often perceive themselves as victims of their partner or a biased justice system. They may feel that certain things are "due" to them or that the only way to achieve their goals is to ensure that everyone is "doing their part" (i.e.,

what is desired by the person using coercive control). In their re-interpretation of events, a person who is behaving in a coercively controlling way often disregards obvious indicators that their behaviour is causing distress, blames the victim for their distress, or sees a victim's distress as a "tactic." Recognizing patterns of coercive control often requires consideration of a series of events over time by someone who can take a more objective view and consider the pattern of behaviours, the differences in each partner's power and "space for action," the effect of the behaviours, and the impact of these actions over time.

2.3.2 Targeting of unique vulnerabilities in immigrant families

The category "immigrant" is not a homogenous one due to differences in factors such as country of origin, age, ethnicity, creed, language ability, educational levels, and the category of admission to the country. Religion is central in the lives of many immigrants, and faith-based leaders and organizations may play an important role in many immigrant families (Statistics Canada, 2018).

The perpetrator's threats to have a sponsored spouse deported to the country of origin, or withholding of the victims' passport or legal documents are forms of abuse and control of women in immigrant communities. These women may be afraid to report abuse in Canada as that would upset their families "back home," or may cause retribution to relatives in their countries of origin (Chaze et al., 2020; West Coast Legal Education and Action Fund, 2012). Immigrant women may be concerned about the negative impacts on their children if they report abuse to the police (Tam et al., 2016). They may not be aware of the role played by CPS and their mandate and power, or alternatively, fear its power to take their children away. Canadian police, immigration, and CPS are becoming more sensitive to the vulnerability of women to family violence. For example, Canada Border Services Agency might not actually deport an abused woman and her children. However, a victim's isolation and lack of knowledge may make such threats seem very credible.

It is important to understand the impact of harmful cultural practices as a form of coercive control that amounts to abuse. Some practices could also be indicative of child abuse. Certain gender norms common within some immigrant families, for example, disclosure of instances of "son preference" in the family, should lead to further probing of its implications for the status of a girl child or wife in the family (Postulart & Srinivasan, 2018). A family justice professional needs to contextualize the practice of son preference and how it amounts to abuse or neglect by denying a female child health, education, recreation and/or economic opportunities. Son preference, in extreme cases, may lead to the birth of a girl being seen as a liability by certain ethnicities (Postulart & Srinivasan, 2018). A family justice professional should recognize that harmful practices such as forced marriages, female genital mutilation, and demands of dowry are forms of abuse.

2.3.3 Patterns of physical violence

Understanding physical aggression

While the definition of family violence in the *Divorce Act* includes coercive control, financial abuse, threats, and psychological abuse, instances and patterns of physical violence continue to be very important concerns for the family courts.

While each case is unique and there are limitations to models or typologies of domestic violence, it is helpful to be aware that many cases can be understood as reflective of common patterns that may share certain characteristics. Frederick and Tilley (2001) identified the following five patterns of physical violence in intimate partner relationships. However, the authors emphasized that any act of physical aggression and victimization must be evaluated in the larger context of multiple factors.

Physical abuse as part of a pattern of coercive control

Frederick and Tilley (2001) recognized that physical violence and threats can be a recurrent aspect of a relationship and part of a larger pattern of intimidation, control and isolation that puts the victim at a power disadvantage, severely compromising the victim's independence, self-esteem and safety. While the violence may be an ongoing aspect of the relationship, it may also be more episodic. What is significant is that there is one partner, most often the male in a heterosexual relationship, who is the perpetrator, and the violence results in the perpetrator having emotional control over the victim. In this type of case, the propensity to use violence often increases with the threat of separation and may continue long after separation. These types of cases are often characterized as coercive controlling violence, though it is important to recognize that there may be coercive controlling behaviour with little or even no physical assaults.

Perpetrators of this type of violence tend to deny their acts or minimize the effects of their behaviour on victims and their children. Coercive controlling violence is more frequently represented in the experience of victims who access police, criminal court, and shelter services compared with those victims who do not access these services. These couples often eventually separate. Often, the perpetrators of this type of violence also abuse their children.

Violence within and outside of an intimate relationship

Some people, most often men, are violent in a range of situations, both within the family and elsewhere. These are people who use violence in situations inside and outside of the family to resolve conflict or to satisfy aggressive impulses. They may, for example, assault their associates or the police, as well as their intimate partners. Intimate partners of individuals who are generally violent most often fear their partner and experience the physical abuse perpetrated by their partner as part of a pattern of coercive control.

It should be appreciated that many cases of family violence, including coercive controlling violence, involve perpetrators who are not violent elsewhere. These perpetrators may present outside the home as deceptively calm.

Acts of physical violence, with no pattern of coercive control

Frederick and Tilley (2001) recognize that there are cases where the violence is not part of a pattern of power or control. In these cases, the perpetrator normally recognizes the behaviour as inappropriate and expresses remorse.

Some of these cases may be characterized as "situational couple violence," where the violence is a result of an escalation of conflicts or verbal argument, without one partner being the dominant or a primary aggressor (Johnson, 1995; Johnson & Ferraro, 2000). The violence in these cases is less severe and generally less frequent than in situations of coercive controlling violence.

Johnson and others (1995; 2000) report that this is the most common type of IPV, and that in many of these cases, the couple does not separate, though when they do, violence usually ends with separation. Although women may be injured in cases of situational couple violence, and children harmed from being exposed to the conflict, women are not psychologically controlled as a result of this type of violence. Another term that is used for this type of situation is "common couple violence."

This category includes acts of violence which only occurred around the time of separation, such as after discovery of an act of infidelity but where violence was not present in the relationship prior to separation and did not continue after separation (sometimes called "separation engendered violence"). Often, after an

escalation of outrage and anger, physical violence is typically perpetrated by the partner who is being “left.” The violence may not develop into an ongoing pattern of violence but stops after one or a few isolated incidents at the height of the separation. Such isolated acts of violence may be very disturbing to victims and are criminal offences, but their context needs to be taken into account when assessing its significance for post-separation parenting. These comments are not intended to minimize separation violence as separation is considered a risk factor for lethal violence.

Physical violence and mental incapacitation

Mental illness may contribute to use of violence. For perpetrators who have some mental health impairment, their use of violence in a relationship may be linked to their mental health issues and may be treatable. This includes violence that is associated with psychotic or paranoid reactions due to mental illness or “drug-induced dementia.”

Many perpetrators of family violence have histories that include childhood trauma or intergenerational abuse, for example, from Indian Residential Schools. An understanding of the life history of a perpetrator may help in the development of a treatment plan to reduce the likelihood of recurrence of abuse, if treatment is available and the perpetrator is willing to engage.

However, Bancroft (1998) notes that an abusive partner who has a mental health problem may have issues requiring multiple intervention strategies. Further, treating the mental health problems alone may not eliminate IPV. Bancroft argues that a perpetrator of IPV who has co-existing mental health problems may require an approach like the one needed for the substance abusing batterer; that is, both problems need to be specifically addressed in interventions.

Use of physical violence in self-defence or as an act of resistance

Self-defensive violence is physical aggression used in response to an abusive partner’s violence or threat of violence. The use of violence by this person is not part of an attempt to gain control in the relationship, but rather is a response to attempt to protect oneself or one’s children, or gain control in a particular, violent situation. Although men sometimes act in a restrained, defensive way in a violent situation with a female partner, it is more often the female partner who acts in self-defence. In some cases, victims of coercive violence may be traumatized and their response to an act of violence may seem disproportionate to a specific assault, but is understandable in the context of the whole abusive relationship.

As discussed above, there are also cases of situational couple violence, where both partners may initiate physical violence at different times, or use of violence in self-defence may alternate, depending on the conflict. In such cases, asking about who initiates violence tends to be less helpful than asking about which member of the couple uses violence to end the conflict (i.e., which partner can force the other into submission). There is increasing recognition of some women’s violence as self-defence in the context of a history of domestic violence and coercive control (Lysova & Salas, 2020; Tyson, 2020).

2.3.4 Technology-facilitated abuse as an increasingly common concern

Lawyers, judges, and other professionals should also be aware that an increasingly widespread form of violence is harassing, controlling and denigrating victims through the use of technology (Douglas et al., 2019; Harris & Woodlock, 2019; Henry et al., 2020). Perpetrators can disrupt the lives of victims through phones, computers and gaming platforms, in a variety of settings including at home and in the workplace (Douglas et al., 2019; Harris & Woodlock, 2019; Henry et al., 2020). The ability to constantly communicate with their victim allows a perpetrator to take away a victim’s sense of safety as the violence goes beyond geographical and spatial

boundaries. Perpetrators may employ tactics like hacking, surveilling, tracking, impersonating, harassing, spamming, distributing images and false information against their victims, and controlling their physical environment through hacking of household control devices (Douglas et al., 2019; Harris & Woodlock, 2019; Henry et al., 2020). Similar to other forms of domestic abuse, these tactics affect the psychological well-being of victims (Henry et al., 2020; Hoffart & Kardeshevskaya, 2022).

Technology-facilitated abuse might be part of any form of coercive control. For example, a perpetrator may cause a victim to fear for their physical or emotional safety by stalking them online or by posting or threatening to post embarrassing or harmful material. Conditions of subordination may be created by refusing to allow access to online banking or by controlling access to the Internet. A perpetrator may, for example, cause a victim to doubt the reality of their experience by using the Smart Home function to arbitrarily raise or lower heat or turn lights on and off or by making small changes to a victim's online accounts. A perpetrator may also violate the privacy and emotional well-being of a victim by hacking into their personal accounts, or using drone surveillance.

2.3.5 Litigation abuse

Separation often does not lead to the end of family violence, especially if there is coercive controlling behaviour. Separation opens opportunities to continue control and abuse through the family court process, even if the physical violence ends. Researchers have described the inappropriate use of family court proceedings as "litigation abuse," or legal bullying. Litigation abuse has been defined as "a malevolent course of conduct involving the use or threatened use of legal and other bureaucratic proceedings by fathers to obtain, or attempt to obtain, care time with their children far more than their involvement with them prior to separation" would warrant (Elizabeth, 2017, p. 187).

If there has been coercive control during the relationship, litigation abuse is likely to be a post-separation pattern of coercive control more commonly perpetrated by men. This conduct may involve actions such as bringing frivolous motions, timing legal processes to cause maximum disruption, not providing financial information, refusing to follow court orders, or seeking review soon after an order is made. The family court process can be used to prolong contact and extend coercive control over survivors after separation (Douglas, 2018; Elizabeth, 2015; Laing, 2017; Nonomura et al., 2021a, 2022; Watson & Ancis, 2013). Constant litigation exacts a high emotional and financial cost for victimized parents.

Perpetrators may choose to be self-represented despite having the resources to afford a lawyer, which can heighten opportunities for abuse by berating the other parent in court and through cross-examination (Zeoli et al, 2013). Men are, for example, more likely than women to decide to self-represent because they want to have the opportunity to cross-examine their former partners (Birnbaum et al., 2018).

One common form of ongoing abuse by those who have perpetrated domestic violence is withholding financial resources despite having the means to pay support; perpetrators may do this by avoiding taking the steps necessary to resolve financial issues, by being deceptive about their assets or income, by providing confusing and contradictory financial information or by refusing to make reasonable interim financial arrangements. Paying support means giving up control of how the funds will be spent, which may have been an aspect of control in the relationship. There may be other motives such as using finances as a way to try to get victims to return to the relationship. Many victims ultimately walk away from the conflict or negotiate a safer parenting agreement in exchange for giving up proper support (*Colucci v Colucci*, SCC, 2021). A fight over support may be an avenue for litigation abuse, forcing the case to drag on without resolution or enforcement (Douglas & Nagesh, 2021; Natalier, 2018; Ward, 2015).

It may be challenging to determine whether litigation abuse has occurred, but courts may take account of this form of family violence in making parenting decisions. For example, in *Barendregt v Grebliunas* (2022), the Supreme Court of Canada upheld a trial decision that allowed a mother to relocate with her children in light of the father’s perpetration of domestic violence, which included abusive litigation conduct, such as filing an affidavit that included a nude “selfie” of the mother, which served no legal purpose but was intended to embarrass her.

Single judge case management of proceedings may help the court to identify and address litigation abuse (Martinson, 2010). Consequences of a finding that there has been litigation abuse may include a financial award to cover part or all the victim’s costs in family litigation. It is also possible to apply to the court to have the perpetrator of litigation abuse be named a “vexatious litigant,” and have further access to the court process restricted. Judicial officers and lawyers should be educated to be able to both identify and address litigation abuse (Douglas, 2018; Nonomura et al., 2022).

2.3.6 Severity of domestic violence and risk factors for lethal domestic violence

In considering incidents and patterns of domestic violence, judges, lawyers and other professionals cannot stop at the question of whether family violence occurred, but instead, must consider multiple dimensions of severity, impact, and the likelihood of recurrence and escalation.

Some violence is severe, injurious and controlling with pervasive impacts on the lives of victims. It is important to recognize that, in some cases, domestic violence is a “life and death” matter. Domestic Violence Death Review Committees allow for better understanding of the most severe cases of domestic violence through investigating contextual factors that may have led to the homicide. Some of the most commonly identified risk factors for domestic homicide include the following:

- the separation of partners;
- previous incidents of domestic violence;
- perpetrator depression;
- perpetrator prior threats or attempts to commit suicide;
- perpetrator obsessive behaviour;
- escalation of violence after separation; and
- victims’ sense of fear (Ontario Domestic Violence Death Review Committee, 2016).

These risk factors increase not only the likelihood of intimate partner death, but also the risk of death of children in the family, since children are at risk for violence if their mother is also at risk for violence (Hamilton et al., 2013; Scott et al., 2020). The potential harm of family violence places an increasing demand on family court professionals to engage in screening cases for family violence as well as seeking more comprehensive risk assessments. Rather than relying on experience and intuition, there is the need for more structured interviews, and use of risk assessment tools. Risk assessment tools allow service providers to better identify the level of risk for future domestic violence, which generally includes the likelihood and severity of this violence (Campbell et al., 2016). Lawyers may conduct their own risk screening and assessment or refer out to other court-related professionals or community partners with this expertise.

In addition to conducting risk assessments, it is critical to consider whether and how such assessments are shared. A recent study of a coordinated family violence court in New Brunswick highlighted that, even in this specialized court context, more than half of the cases where the offender could be classified as “high to extreme risk” (using assessment tools) resulted in peace bonds, conditional discharges, or withdrawn charges. Without

the implementation and **sharing** of these assessments across the “silo divide”, the level of danger these abusers pose to their victims remains unknown to Crown prosecutors and judges (Neilson et al., 2022).

A victim’s perception of risk is also an important consideration when conducting these assessments (Campbell et al., 2016). Although not always an accurate prediction of future violence, their perceptions, when used in conjunction with the results of a risk assessment tool, can increase predictive accuracy (Messing & Thaller, 2013).

2.3.7 Differentiating high conflict from family violence

In the family justice literature, “high-conflict” couples are identified as those who have high levels of hostility and often require lengthy family court involvement to resolve disputes post-separation. Family violence issues are present in many high-conflict separations, though certainly not all (Birnbaum & Bala, 2022). This distinction is important because not all conflict can be considered violence, and conversely, violence should not be euphemized as conflict. When analyzing high conflict separations, it is important to consider whether both parties are significantly contributing to or escalating the conflict, or whether one is more child-focused while the other is driving the conflict to maintain power and control in the relationship. It is also important to recognize that there are family violence cases in which there appears to be no conflict as victims will often accede to an abuser’s demands to protect their or their children’s safety or due to the impacts of trauma.

Unlike family violence, which is defined in the *Divorce Act* s.2(1), high conflict does not have a legal definition, but it is a helpful concept that is used by judges, lawyers, mediators and mental health professionals involved in the family justice process. The use of the term reflects the reality that most separations are not high conflict. Most separating parents can make and adapt parenting plans and resolve economic issues outside the court system, though perhaps involving professionals like mediators, counsellors or lawyers. The parents in these lower-conflict cases may experience stress, dislocation, and feelings of anger because of the separation, and often have disagreements about parenting, but they are able to communicate effectively and jointly problem solve. They can keep their children out of their disputes and support their children’s relationship with the other parent.

It is important to appreciate both the distinctions and the overlap between cases that may be characterized as “high conflict” and cases where family violence is the central concern (Archer-Kuhn, 2018; Birnbaum & Bala, 2022). All the considerations discussed above about IPV need to be considered (i.e., coercive control, nuance in understanding physical violence, technology-facilitated abuse, litigation abuse, and severity). While the contexts of both high conflict and family violence raise significant concerns for children, there can be important differences in the nature and most appropriate approaches to these cases.

An increasing number of high-conflict cases in Canadian family courts involve claims of parental alienation, claims by one parent that the other is manipulating or influencing a child to reject the other parent (Bala et al., 2010; Fidler & Bala, 2020; Paquin-Boudreau et al., 2022). Although it is important not to minimize the seriousness of genuine alienation, there are some who argue that many parents, especially mothers, who raise concerns about family violence are making false or exaggerated claims of abuse to allow them to alienate their children and exclude the other parent from their children’s lives. There are challenging issues related to proof of claims of both alienation and family violence, but it should be appreciated that denial and minimization of IPV by genuine abusers are more common than false or exaggerated claims of IPV by alleged victims. While alienation is increasingly being raised in Canadian family courts, courts only validate these claims in a minority of cases where they are raised, and recognize that the desire to limit contact with the other parent is often an appropriate protective response (Bala et al., 2010; Paquin-Boudreau et al., 2022). The need for proper

assessment and investigation into claims of both alienation and abuse is essential to ensure that appropriate parenting arrangements are aligned with the unique dynamics and needs of each family.

Cases of high conflict may involve pre-separation acts of relatively infrequent and minor physical aggression such as slapping, throwing items, or pushing that does not cause injury to or create fear in the other partner, and these may be cases where there is a roughly equal balance of power (Fidler & Epstein, 2008). If there are continuing family violence concerns, power is very likely to be unequal.

If there are family violence concerns, especially if there has been coercive control or violence is continuing after separation, the primary response must focus on the family violence and safety concerns. In high-conflict situations, the types of parenting arrangement may vary, but in family violence cases, violence must be considered in making parenting arrangements (Fidler & Epstein, 2008). In many high-conflict cases, safety planning does not need to be the focus of courts and other professionals in making parenting plans, whereas safety planning and risk management must be a priority in families where there are ongoing concerns about violence (Fidler & Epstein, 2008; Jaffe et al, 2008). This focus on family violence aspects of a case is consistent with the need to protect the safety of victims of family violence and their children, and with the *Divorce Act* s.16(2), which now provides that in making decisions about a child's best interests, a court "shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being."

As will be discussed further, often the major challenge facing professionals and the courts is determining the credibility and reliability of the parents. What is the history of the relationship and what is presently occurring? In cases of family violence, victims may also be suffering the effects of trauma and may present as poor witnesses, even if they are honestly and reliably describing what they and their children experienced (Epstein & Goodman, 2018).

3.0 Family violence and post-separation parenting

In this section, we discuss why family violence is a critical factor in making decisions about parenting and the assessment of children’s safety and best interests. We begin with a discussion of the impacts of child exposure to IPV, and then consider the multiple forms of family violence that may impact the parenting of perpetrator and victim parents.

3.1 Impacts of child exposure to intimate partner violence

The term “exposure” of a child to family violence covers a wide range of circumstances including hearing a violent event, visually witnessing a violent event, intervening and being a part of a violent event, and experiencing the aftermath of a violent event (MacMillan & Wathen, 2014). A Statistics Canada study found that half of victims who had children in the home during an incident of domestic violence report that the children witnessed the violence (Conroy, 2021b); this very likely under reports the extent to which children may be aware of violence in the home. The impact of child exposure to parental IPV has been well established. Even when children are not present or do not hear the abuse occurring, they are still impacted by the effect on their caregivers and through knowing about the abuse.

Researchers who have interviewed children who have lived in homes with family violence have found that they are very often aware of the IPV that occurs and often also disclose incidents of their own abuse (Noble-Carr et al., 2020). Middle school-aged and teenaged children are finely attuned to issues of fairness and “see through” abusers’ justifications of the use of power to gain unfair advantage. Callaghan et al. (2018) found children recognized that subtle controlling behaviours, such as a perpetrator’s desire to know all aspects of family activity, were used to restrict both the actions of both the victimized and the children themselves. Children were also aware of and able to explain how perpetrators continue to control the family following separation, and the continuing impact that it has on them.

The negative effects of childhood exposure to IPV have been documented in numerous studies, systematic reviews and meta-analyses (e.g., Artz et al., 2014; Emery, 2011; Fong et al., 2019; Gonzalez et al., 2014; Graham-Bermann & Perkins, 2010; Holmes, 2013; Levendosky et al., 2013; McDonald et al., 2016; Vu et al., 2016). Most notably, research indicates that children exposed to IPV are more likely than other children to be aggressive and have behavioural problems (Emery, 2011; Gonzalez et al., 2014; Holmes, 2013; Vu et al., 2016); have different physiological presentations (Hibel et al., 2011); and exhibit higher rates of Post-Traumatic Stress Disorder⁴ symptoms (Levendosky et al., 2013; McDonald et al., 2016).

Although attention to IPV incidents is important, for many children, exposure to IPV is better understood as a condition relevant to all aspects of children’s lives (Cunningham & Baker, 2007). Katz (2016) suggests that while coercive control may seem “invisible” (p.49), it has profound negative impacts on children, including in limiting their social interaction with peers, preventing engagement in extra-curricular activities, and restricting access to their mother (Jouriles & McDonald, 2015).

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.

It is also critical to recognize that children are not “passive victims, but rather active participants in trying to make sense of their experiences. Children often take autonomous action to try to understand and address violence in their home. These actions may provide children with feelings of pride and efficacy, which challenges discourses that see protective behaviours of children as inherently damaging, though children may be at risk when intervening between parents (Buchanan et al., 2015; Katz, 2016; Lapierre et al., 2018).

Although the serious effects for children who are maltreated or exposed to IPV have been well documented, not all children who directly and indirectly experience family violence later develop severe emotional and behavioural problems (Bowen, 2015; Howell, 2011; Howell et al., 2010). Outcomes of individual cases vary 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 (e.g., physical abuse, neglect, sexual abuse), the frequency, duration, and severity of abuse; and the relationship between the victim and the abuser (Vu et al., 2016), as well as the family’s cultural and social context. 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.

The potential consequences of family violence for children are summarized in Table 1.

Table 1: Overview of potential consequences of harm for children as a result of family violence⁵

Infants, toddlers, and preschoolers (ages 0-3)	School-age children (ages 4–12)	Adolescents (ages 13-19)	Impact into Adulthood
<ul style="list-style-type: none"> • preterm birth, infant mortality, and low birth weight • adverse neonatal outcomes from mother’s abuse of substances to cope with violence • parent experiencing violence forms unhealthy attachment with child due to heightened state of stress/anxiety • behavioural issues • social difficulties including difficulty in regulating emotions • Post-Traumatic Stress Disorder (PTSD) symptoms • difficulty with empathy and verbal abilities • excessive irritability, aggression, temper tantrums, 	<ul style="list-style-type: none"> • develop anti-social rationales for abusive behaviour • self-blame • internalizing behaviours (e.g., humiliation, shame, guilt, mistrust, low self-esteem) • anxiety and fear • difficulty with social skills • difficulties with emotional regulation • negative peer relations • depression • bullying • academic abilities compromised • physical injuries 	<ul style="list-style-type: none"> • depression • suicidal ideation • anxiety • aggression • social withdrawal • unhealthy attachments leading to difficulties forming healthy intimate relationships • distorted views of intimate relationships • lack of trust • heightened risk for violent behaviours toward peers or intimate partners • substance use • anger issues • long-term emotional distress 	<ul style="list-style-type: none"> • risk of perpetrating violence in own families • decrease in quality of parenting • depression • anxiety • dissociation • PTSD • difficulties with emotional regulation • low educational achievement • chronic diseases (e.g., liver disease, sexually transmitted diseases) • sleep disorders • substance abuse

⁵ Adapted from Jaffe, P., Scott, K., Jenney, A., Dawson, M., Straatman, A. L., & Campbell, M. (2014). *Risk factors for children in situations of family violence in the context of separation and divorce*. Department of Justice. <https://www.justice.gc.ca/eng/rp-pr/cj-ip/fv-vf/rfcsfv-freevf/p4.html>

<ul style="list-style-type: none"> sleep disturbances, and emotional distress • resistance to comfort • adverse psychosomatic effects • impacted neurocognitive development • physical injuries 		<ul style="list-style-type: none"> • physical injuries • difficulties with emotional regulation 	
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3.2 Multiple forms of family violence: Overlap of child abuse and IPV

There are several critical factors that need to be considered when there is evidence of IPV. One is the possibility of the co-occurrence of violence perpetrated directly against the child. IPV and child abuse often occur in the same family (Bidarra et al., 2016). It has been estimated that in homes where children have been exposed to IPV, more direct forms of child maltreatment are four times more likely than in homes without such violence (Hamby et al., 2010).

Most of the research on the co-occurrence of IPV and direct forms of child maltreatment has focused on fathers and on physical abuse of children. Meta-analytic research has confirmed that men who have been violent in their intimate relationships have higher levels of general anger and hostility than men without such a history (Birkley & Eckhardt, 2015; Norlander & Eckhardt, 2005; Spencer et al., 2022). Many studies confirm that such traits translate to greater over-reactivity and more rejection in parenting (Francis & Wolfe, 2008; Scott & Lishak, 2012; Stover & Kiselica, 2015). High rates of anger and hostility are also likely contributors to the co-occurrence between perpetration of IPV and child physical abuse (Herrenkohl et al., 2008; Stith et al., 2009). Perpetrators of family violence have been described as “parenting differently from other parents in that they often mirror the coercion and domination of their spouse in their parenting practices” (Nielsen, 2017).

As discussed above, children who live in a home with a parent who is abusive to the other parent may be harmed even if they are not direct victims. Children can also be affected by witnessing a parent abuse a sibling, regardless of whether they themselves are targeted for abuse (Teicher & Vitaliano, 2011; Tucker et al., 2021). That is, the child who witnesses the abuse of a sibling 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. 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.

3.3 Special considerations about post-separation parenting by perpetrators of family violence

When making post-separation parenting plans to protect the parent victim, in addition to the overwhelming evidence of the need to consider the history of IPV and coercive control as well as ongoing IPV issues, significant concerns about the parenting capacities of IPV perpetrators should be taken into account.

3.3.1 Perpetrating parents often draw children into abuse

Children are often brought into the abuse of a parent by an abuser. Children may be brought into abuse as “pawns” in a competition with the non-abusive parent. They may be asked directly, or indirectly, to report on the activities of the other parent. The abusive parent may consistently attempt to present themselves to children as the “better” parent and attempt to enlist children in efforts to isolate the other parent. Children may be blamed for failing to side with an abuser, and the abuser may distort their reality by telling false and

sometimes frightening stories about the other parent (Jaffe et al., 2008). Such alienating behaviour, usually perpetrated by men who have abused their female partners, is a significant concern in some cases (Fidler & Bala, 2020).

Another way that an abuser can bring children into patterns of abuse is by “aggressively inserting” themselves into children’s everyday lives. Separation is a time when parenting activities and responsibilities often change. Perpetrating parents who have had little involvement in the day-to-day lives of children prior to separation may, after separation, suddenly want to become involved with their children in ways that are not appropriate for the child’s stage of development and needs. A parent who is attuned to their child’s needs and focused on the best interests of the child will generally attempt to follow a child’s schedule and the rhythm of their day-to-day activities, especially when the child is experiencing the stress of parental separation. An abusive parent, in contrast, tends to see their involvement with the child as a “right,” often reinterpreting their past lack of involvement as a tactic of the other parent. The abusive parent often then tries to insert themselves into children’s routines and activities without consultation and cooperation. Children, regardless of their wishes, may be coerced into complying with these changes.

3.3.2 Parenting of the victimized parent is often a focus of abusive behaviour

An additional factor for consideration of the court is the extent to which the victimized partner’s parenting is a focus of a perpetrator’s abusive and coercively controlling behaviour and how a perpetrating partner exerts control. A perpetrating parent may disparage the other’s parenting and blame them for difficult child behaviour (Hardesty et al., 2008; Holt, 2015). Perpetrating parents may also deliberately undermine the other parent, or attempt to corrupt children’s views of the other parent, or directly or indirectly insist that children understand or take “their side” in their view of the other parent. They may abuse children in front of the victimized parent to control both, make the victimized parent watch or take part in the abuse of their children, threaten to report the victimized parent to child protection, or blame the victimized parent for problems in the family (Bancroft & Silverman, 2002; Bancroft et al., 2012). This form of violence is a distinct tactic of coercive control that can occur alongside other forms of physical, psychological, sexual and financial abuse (Heward-Belle, 2017). Abuse focused on the parent-child relationship undermines the victimized parent’s confidence in their ability to protect their children, affects the relationship between the victimized parent and their children, and may send children the message that their victimized parent is not able to protect them. Further, in situations where criticism of parenting is the focus of coercive controlling behaviour, children cannot help but feel involved and even responsible for problems.

Although these patterns of abuse may be present in abusive parents of both genders, societal differences in expectations for mothers and fathers give men more leverage for use of abusive tactics focused on parenting (Guppy et al., 2019; Shafer et al., 2020). Because of these broader social patterns, disparagement of mothers and mothering is easier (due to the higher benchmarks to which mothers are held) and more effective (due to the strong ties to mothers’ self-worth), creating especially fertile ground for domestically abusive fathers to exploit (Heward-Belle, 2017).

In addition, the parenting practices in racialized and immigrant families are often different than the dominant population (Chaze, 2015; Yax-Fraser, 2011). The impact of immigrant women’s settlement experiences on their mothering practices needs to be recognized. Multiple challenges such as social isolation, poor English or French language proficiency, lack of support networks, financial stressors, and the role of culture, traditions and religion create different power relations within the family unit and result in unique vulnerabilities for these women post-separation, especially if their partners are abusive.

3.3.3 Additional concerns about parenting in perpetrators of domestic violence

There are several additional concerns about parenting that occur at greater rates in parents who perpetrate domestic violence. This paper has already outlined concerns about the co-occurrence of domestic violence perpetration with hostility, over-reactivity and physically abusive behaviours towards children (Herrenkohl et al., 2008; Stith et al., 2009).

Lack of emotional responsivity and positive involvement of a domestically violent parent with their children has also been the focus of research (Bancroft et al., 2012; Scott & Crooks, 2004). Research has focused mostly on fathers, finding that fathers who perpetrate IPV often have limited capacity to think about the thoughts and feelings of their children, and generally have less emotionally close relationships (Francis & Wolfe, 2008; Smith Stover & Spink, 2012).

It is also important to recognize that substance use, criminality and depression all occur considerably more often in the context of domestic violence perpetration than in families without violence (Trevillion et al., 2015). The problematic co-occurrence of these issues exacerbates negative outcomes for children (Coley et al., 2011; Stover et al., 2013). Fathers with co-occurring substance abuse and IPV have less positive co-parenting, more negative parenting, and children with more emotional and behavioural problems.

3.3.4 Children's view of their abusive parent

Recognizing the value of children's perspectives, researchers have studied children's perceptions of their relationships with a parent who has perpetrated family violence. These studies have largely focused on children's views of fathers who have engaged in IPV. Children often describe their fathers as overreactive to small annoyances and instances of perceived misbehaviour, and frequently rejecting of their perspectives, experiences and emotions (Holt, 2015; Øverlien, 2013, 2014). Children may justifiably fear their father and express anxiety about contact (McDonald, 2016). Additionally, children who have been exposed to IPV commonly describe their fathers as being emotionally and psychologically absent, and express feelings of estrangement and wanting to have their fathers "know" them (Holt, 2015). Less is known about the impact of mothers who are perpetrators of family violence, as there is a scarcity of research assessing children's perspectives on how their mother's perpetration of family violence impacts them and their relationships (Ross & Babcock, 2010).

Children living with family violence may sometimes identify with the victim parent and become protective. In other cases, children may identify with the abusive parent, viewing them as a "role model," and be influenced by the abusers into rejecting their victimized mothers, which is a form of parental alienation (Fidler & Bala, 2020). Adolescents who have lived with family violence may model the behaviour of their father and start to treat their mothers in an abusive fashion as well (Heise, 2011). Children may become ambivalent about the abuser because they see both the good qualities and the indefensible abuse. Some children may be challenged to make sense of what happened and may fluctuate in their views and even turn on the victim later for not leaving the marriage earlier (Jaffe et al., 2011; Katz, 2019; Lapierre et al., 2018). Minimization or denial of abuse by parents or by the court can further compound harms by leading children to question the validity of their distress, fear and anger, or to learn to attribute these reactions to a flaw in themselves rather than as an understandable reaction to their situation (Cicchetti & Rogosch, 1994; Meier, 2021).

3.4 Relevance of IPV to post-separation parenting of the victim parent

Being a victim of family violence creates significant challenges and complexities for victimized parents, both before and following separation. Assumptions and expectations held of mothers and motherhood amplify these

challenges and constrain reactions for women victims, in particular (Heward-Belle, 2017; Lapierre, 2008, 2020). Several considerations around the parenting of victimized parents are reviewed here.

3.4.1 Children exposed to family violence may have greater needs

As already discussed, children living in homes where they are exposed to family violence are themselves affected, and as a result, they often need support and protection (Katz, 2019; Lapierre et al., 2018). Children exposed to family violence are more likely than other children to experience internalizing disorders (e.g., depression, anxiety, fears) and externalizing behaviours (e.g., oppositional, aggressive behaviours). They are also more likely to have problems in school; and to struggle with peer relationships and they may experience trauma associated with family violence exposure. Children may also have other emotional, behavioural, cognitive or developmental challenges with different origins (e.g., Attention Deficit and Hyperactivity Disorder, Autism Spectrum Disorder) that are amplified by the uncertainty, unpredictability and anxiety children experience in the context of family violence. Parenting a child who is struggling with emotional, behavioural, cognitive or developmental challenges is stressful and challenging for parents (Stone et al., 2016). It is also typical for parents to have different views about the severity of the challenges their children are experiencing and about involving various helping professionals (Wahlin & Deane, 2012). In the context of family violence victimization, these conversations and decisions are even more difficult, and may result in abusive parents taking positions in family court litigation that do not promote their children's best interests.

3.4.2 Parenting choices are often constrained by the abuser

As already noted, the victimized parent's parenting can often be limited and constrained by the abuser as a deliberate tactic of abuse and control. In the context of family violence, a person's choices are also often limited, which means that their scope of actions as parents is limited as well (Lapierre, 2010; Radford & Hester, 2006). This may mean that victim parents cannot access social groups, family members or friends as part of parenting (coercive control), or that they may have to constantly negotiate and justify financial support needed to buy items necessary for children (financial abuse). Perpetrators may also present as "jealous" of the relationship of the other parent with the children and may limit or attempt to control the amount of time, interaction or communication the other parent has with their children (Katz, 2019; Lapierre et al., 2018). Constraints on the victimized parent do not end with separation. Thiara and Humphreys (2017) used the term "absent presence" to reflect the ways in which perpetrators can continue to constrain and limit the victimized mothers' parenting through harassing behaviours during contact and in the context of litigation. Litigation abuse may be part of this pattern.

3.4.3 Decisions not to report and not to leave are often misunderstood or reinterpreted

There are many reasons that victims of domestic violence do not report their abuse to the police, or even disclose it to friends or relatives. They have often been told by the perpetrator that they have no legal rights, will not be believed, will have the children taken away, or are entitled to no money. While the victim may well have been misinformed about their rights and the consequences of reporting, they may believe the threats of repercussions from reporting to the police.

Victims want the violence to stop, but for many reasons including experiences of discrimination and racism, they may not want to involve the police. Other potential reasons for non-reporting may include: concern about the economic consequences of the abuser being arrested; social judgments; cultural norms; fear of the involvement of the child protection system; a concern about the effects on their children of police involvement with their family; and desire to avoid increasing tension in their relationship with the other parent.

There are also many reasons that victims remain in abusive relationships. It is sometimes the case that, while in the situation, victims blame themselves, minimize the abuse happening to them, remain hopeful for change, and may underestimate the danger they are in. These women have developed a coping strategy over the years to normalize the abuse and they really do not see the abuse they were subject to. In other cases, victims' decisions not to leave are based on concerns about the safety of their children. Some women believe that there is absolutely no way their abuser will not get significant parenting time if they leave, so they choose to stay to protect their children.

Victim's choices and responses to family violence may be raised to challenge their credibility in later court proceedings. For example, in *R v Brame*, 2003 YKTC 76, a man was charged with several offences arising from the abuse of the mother of his young child. He argued that the fact that she did not report the offences to the police until after their separation was the basis for discounting her credibility. He was convicted, with the trial judge rejecting this challenge to her credibility, and observing:

There is no evidence before the Court, expert or otherwise, that suggests that such conduct makes it less likely that the complainant was a victim of domestic violence. To the contrary, the experience of this court with domestic violence cases indicates that such conduct is often the norm, rather than the exception. This court's experience is that:

- Victims of domestic violence are often very willing to forgive their perpetrators;
 - The great majority of domestic violence victims return to live with their perpetrators;
 - Most victims seldom involve the police until they have been assaulted numerous times;
 - Victims honestly believe the violence will stop and do not appreciate the extent to which they are placing themselves and their children at risk; and
 - Education and financial independence do not immunize women against remaining in abusive or violent relationships. (*R v Brame*, 2003, YKTC 76)
-

The conviction was upheld by the Yukon Court of Appeal (2004 YKCA 13), with Donald JA quoting this statement of the trial Judge and observing, "We now question formerly held assumptions about human behaviour in the context of domestic abuse."

3.4.4 Protective strategies of victimized parents are often misunderstood

As has been well documented in research, parents who have experienced violence develop a range of strategies to protect and care for their children, even in the context of the abuser's constraints (Nixon et al., 2017; Radford & Hester, 2001, 2006; Wendt et al., 2015). Such strategies may include keeping children away from the perpetrating parent, and parenting in ways that anticipate and try to avoid triggering the perpetrating parent's abusive behaviours (Lapierre, 2010; Wendt et al., 2015). Many victims report that they faced significant obstacles to getting their stories of abuse understood by lawyers and judges, who may not understand their protective strategies (Gutowski & Goodman, 2020). One critical and common example concerns a mother's allowing a perpetrator to have parenting time being interpreted as indicative of a lack of fear that he would harm the children. Once agreed to, these actions tend to be reinterpreted without reference to the protective motivation that led to the behaviours in the first place. Such interpretation does not reflect the reality of victims and their concerns (Harrison, 2008). Victimized mothers, in an effort to prevent further harm, often want to resolve disagreements as quickly as possible. This may lead victimized mothers to agree to proposals for father-child contact arrangements despite concerns for their children's safety and for their own safety, due to fears that failing to agree would increase the anger and hostility of the abuser (Harrison, 2008).

3.4.5 Victimized parents often have fewer resources

Family violence impacts the victimized parents' physical and mental health, resulting in higher rates of symptoms and disorders of trauma, anxiety, depression, and a range of other problems. These impacts on victimized parents' health are likely to make it more challenging for them to perform the often difficult, time-consuming, and exhausting work of caring for children (Katz, 2019). The fact the perpetrators often directly target the mother-child relationship makes these difficulties even more acute. The result is an erosion of self-esteem and the undermining of mother-child relationships, which continue to create a shadow across the parent-child relationship even after separation from their abusive partner (Thiara & Humphreys, 2017). These issues put a strain on mother-child relationships that add to the challenges mothers experience (Katz, 2019; Lapierre et al., 2018).

3.4.6 No win situation: Victim parents "fail to protect" or "alienate"

In contexts where allegations of family violence are not externally verified as severe or ongoing, mothers are generally expected to support and facilitate the relationship between children and their fathers. When it comes to facilitating parenting time, a victimized parent may be in a particularly fraught "no win" situation. Children may not want to have contact with a parent who has perpetrated IPV for reasons that are independent of anything that the victimized parent, most often the mother, may or may not have said or done. Victimized mothers, expressing realistic concerns about father-child parenting time, or even presenting their children's concerns about parenting time with their fathers to professionals or the courts, may be viewed as "unreasonable" or "alienating" (Barnett, 2020; Harrison, 2006; Lapierre et al., 2020; Neilson, 2018; Rathus, 2020). This creates a situation for victimized parents where, rather than being able to offer emotional and practical support to their children, they must instead focus on ensuring that children meet with their abusive parent. Efforts to support children in dealing with their reluctance, even expressing empathy and understanding, runs a high risk of being viewed as alienating.

3.4.7 Victim parents often struggle with self-blame

Parents who are victims of family violence use a range of strategies to protect their children from abuse and its impacts. They also often feel that they have failed in this protective role. Mothers especially are likely to have internalized high societal expectations with regards to being a mother and to see themselves as not being either "good" or "good enough" parents to their children (Lapierre, 2010; Moulding et al., 2015; Stewart, 2020). Mothers who have been abused often feel that, although they may have been able to protect their children and meet their basic needs, they have been less successful about caring for their children's emotional needs, particularly fears, anxieties and impacts resulting from exposure to abuse (Lapierre, 2010). Such fears are often reinforced by abusive parents' direct undermining of the parent-child relationship and continued reframing of the mother being a "bad parent."

Child Protective Services (CPS) sometimes (unfairly) place the responsibility for protecting children from exposure to abuse on the victimized parent, rather than on the parent who is causing harm (Humphreys & Absler, 2011). Such blame is particularly likely for mothers who are poor, racialized, Indigenous, immigrants, refugees, or other marginalized populations. Based on a review of 13 research studies conducted in four different countries over several decades, Humphreys and Absler (2011) examined how domestic violence had been addressed by child protection services and identified "mother-blaming" as a dominant response. Their work revealed that too often abused women have been seen by child protection workers as "inadequate" mothers who "fail to protect" their children, while their abusive male partners are ignored. Because of societal expectations of mothers and the associated greater involvement of mothers in the day-to-day care of children's

needs, these patterns can also be played out in more general health, mental health, and social services (Moulding et al., 2015).

In some cases, CPS will learn that a mother has taken her children and left her abusive partner and will close its file without recognizing her continuing vulnerability and need for ongoing support.

3.4.8 Children's views of their victimized parent

Often in cases of family violence, mothers are both the primary caregiver and the victim of violence. In these contexts, research has found that children generally have a close relationship with their mother and see her as their main source of protection and support (Buchanan et al., 2015; Lapierre et al., 2018; Mullender et al., 2002; Øverlien, 2014). However, family violence often puts strain on the mother-child relationship, with greater levels of strain associated with more frequent and severe victimization and greater undermining of the mother-child relationship by the father (Katz, 2019; Lapierre, 2010; Radford & Hester, 2006). When interviewed, children often describe difficult relationships with mothers victimized by domestic violence, even though they saw their mothers as the significant figure in their lives with whom they had the closest relationships (Lapierre et al., 2018). Children's relationships with their mothers also tend to be poorer when there are higher levels of coercive control (Katz, 2019).

4.0 The need for a paradigm shift for family violence cases

4.1 The challenge for victims

It is often very challenging for victims of family violence to leave an abusive relationship, try to understand or their situation, seek assistance, and develop an appropriate plan for post-separation care of their children. When trying to describe their situation to an independent third party, such as a police officer, parenting assessor, judge, or even their own lawyer, intense emotions and trauma may inhibit communications. Family justice professionals sometimes have an expectation that parents who have been victims of family violence will put these experiences in the past and be able to “move on,” focusing on the future (Jaffe, 2014). Parents may be instructed or expected to facilitate contact, convince reluctant children to consistently comply with orders or agreements for parenting time with the other parent, and speak positively about the other parent, even if there has been abuse. This expectation is often unrealistic and, in some cases, can result in situations where a parent who has experienced family violence may be terrified at the prospect of having to cooperate with a violent parent, despite their ongoing (and often realistic) fears (Sheehy & Boyd, 2020).

In the absence of any change by the perpetrator, or even an acknowledgment of past abuse that might allow a victim to gradually rebuild trust in the perpetrating parent, it may be traumatizing for a victim to support their child’s relationship with the other parent. When the perpetrator continues to deny or minimize abuse, disregard court orders, commence repeated proceedings or excessively delay resolution, it may be harmful to expect a victimized parent to “get over it,” and “move on”. Adding to this challenge, the victimized parent (most often mothers) generally has fewer financial resources and less ability to litigate and seek protection in the family courts.

4.2 Resolution of parenting issues

The resolution of disagreements about post-separation arrangements for children may take several different pathways. Many parents can safely develop amicable co-parenting arrangements without court intervention on their own or through counsellors, collaborative lawyers, or mediators. As many as a quarter of separating parents, however, may require court intervention, sometimes involving assessments by mental health professionals of the interests of the children, the nature of the potential conflict, and the potential existence of IPV (Jaffe et al, 2008).

Court intervention is especially likely to be needed if there are family violence concerns. There are, however, also some cases involving family violence that may not require court intervention. In some cases, the abuser may leave the jurisdiction or may move on to other relationships, showing no real interest in maintaining an ongoing relationship with their former partner or children. In other cases, an IPV victim may flee for her safety and the perpetrator takes no action to pursue her and their children. Some abuse victims may avoid any engagement with their perpetrator over financial issues by abandoning their legal claims (i.e., living in poverty is seen as preferable to living with ongoing violence and harassment; Cross, 2016).

In most cases where there has been family violence, it will be important for victims to have enforceable orders made by a family court, which requires proof that there has been violence. When there has been police and criminal justice system involvement, there may be ample evidence of a pattern of IPV or child abuse. With the growing awareness of family violence concerns, the criminal and family courts may temporarily suspend or terminate parenting time between the abuser and his children in these cases. Many victims, however, especially from immigrant, racialized and Indigenous communities, are reluctant to involve the police as they do not trust

them. Victims may also be reluctant to involve police as they are concerned about the economic consequences for themselves and their children of criminal court involvement and fear the loss of control that results from the involvement of state agencies in their lives. In some cases, victims have had prior poor experiences with insensitivity of the police, which also affects their willingness to report their abuse (Saxton et al., 2021).

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 descriptions of their relationship, post-separation events and abuse issues, and there is a lack of independent evidence, for example, from the police or child protection services. All court-related professionals are to some extent involved in the formal or informal exercises in receiving, reviewing and weighing relevant information about the parents and children in a case. To understand the context for this process, it is important to be cognizant of the current climate in family courts in North America (Cross, 2016; Jeffries, 2016; McDonald, 2016). Family court judges generally encourage parents to resolve their disagreements in a cost-efficient manner without a trial, whether by mediation, negotiation or judicially facilitated settlement meetings.

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 an issue**, children generally benefit from having their parents resolve their differences in a co-operative and non-adversarial fashion. Common wisdom in the field as well as legislation guiding judges, lawyers and parents in separation and divorce proceedings focuses on the role of the "friendly parent." This is reflected in provisions like s.16(3)(c) of Canada's *Divorce Act*, which states that a factor that a court shall consider in deciding on a parenting arrangement that promotes the child's best interests, is each spouse's "willingness to support the development and maintenance of the child's relationship with the other spouse." Unfortunately, the use of the "friendly parent" concept can be harmful in cases where the lack of "friendliness" is a result of abusive or violent behaviour (Cross, 2016; Sheehy & Boyd, 2020).

Family violence allegations raised in the context of parental separation are often met with skepticism and a concern that the allegations are being made to limit the involvement of the other parent, especially if there has **not** been significant police and criminal justice system involvement.

Raising abuse allegations in family court without prior criminal justice involvement can be a double-edged sword for abuse victims. If the allegations are proven on the civil standard of proof, the balance of probabilities, 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 or manipulatively, the abuse victim may lose parenting time or decision-making responsibility. In some of these cases, mothers are accused of willful alienation of the children against their father. Trying to differentiate between abuse and alienation claims is a major challenge for family justice professionals and the family courts (Fidler & Bala, 2020; Neilson, 2018). Children may be resisting contact with one parent for a variety of reasons including some where children are justified because of what they experienced or witnessed at the hands of an abusive parent. 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 family violence, but the burden is on parties to introduce evidence for the court.

4.3 Best interests of the child and the primacy of child safety

At one time in Canadian history, the courts followed the "tender years doctrine," a presumption that children, especially younger children, would be in the custody of their mothers in the event of parental separation. The

1985 *Divorce Act* made clear that decisions about what was then called custody and access would be based on an individualized determination of the “best interests” of the child, without presumptions based on the gender of the parents. However, the 1985 Act also included s.16(10), providing that in making orders “the court shall give effect to the principle that a child should have as much contact with each spouse as is consistent with the best interests of the child.” This provision had the title “Maximum Contact,” and in the 1990s, in *Young v Young* ([1993] 4 SCR 3) and *Gordon v Goertz* ([1996] 2 SCR 27), the Supreme Court of Canada cited this provision as establishing the “maximum contact principle.” The maximum contact principle was often cited as the basis of an argument by one parent, usually the father, that there should be equal time after separation.

The words “Maximum Contact” or “Maximum Parenting Time” do not appear in the reformed *Divorce Act*. The 2021 amendments clearly give primacy to child safety and well-being as a factor in making parenting decisions. The Act presently provides:

Primary consideration

16(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child’s physical, emotional and psychological safety, security and well-being.

Factors to be considered

16(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including

(...)

(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

(...)

Parenting time consistent with the best interests of child

16(6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

In determining the best interests of a child, s.16(6) of the *Divorce Act* now provides that the courts will give effect to the principle that each child should have as much time with each spouse as is consistent with the best interests of the child. In determining the best interests of a child when making a parenting order, the court must also consider the ability and willingness of each parent to communicate and cooperate with one another on matters affecting the child under the *Divorce Act* s.16(3)(i); this provision may support making a co-parenting order, though it is clearly limited by the primary safety consideration of s.16(2) of the *Divorce Act* (Martinson & Jackson, 2017; Bala, 2022).

The decision of the Supreme Court of Canada in *Barendregt v. Grebliunas* (2022 SCC 22) reconsidered the “maximum contact principle” in light of the 2021 amendments. In *Barendregt*, the Supreme Court emphasized the importance of family violence as a factor in parenting cases, and in particular as a basis for not having a joint decision-making or co-parenting regime. Justice Karakatsanis wrote (emphasis of the Court):

133 What is known as the maximum contact principle has traditionally emphasized that children shall have as much contact with each parent as is consistent with their best interests. A corollary to this is sometimes referred to as the “friendly parent rule”, which instructs courts to consider the willingness of a parent to foster and support the child’s relationship with the other parent, where appropriate...

134 Although [the Supreme Court in] *Gordon* placed emphasis on the “maximum contact principle”, it was clear that the best interests of the child are the sole consideration in relocation cases... some courts have interpreted what is known as the “maximum contact principle” as effectively creating a presumption in favour of shared parenting arrangements, equal parenting time, or regular access....

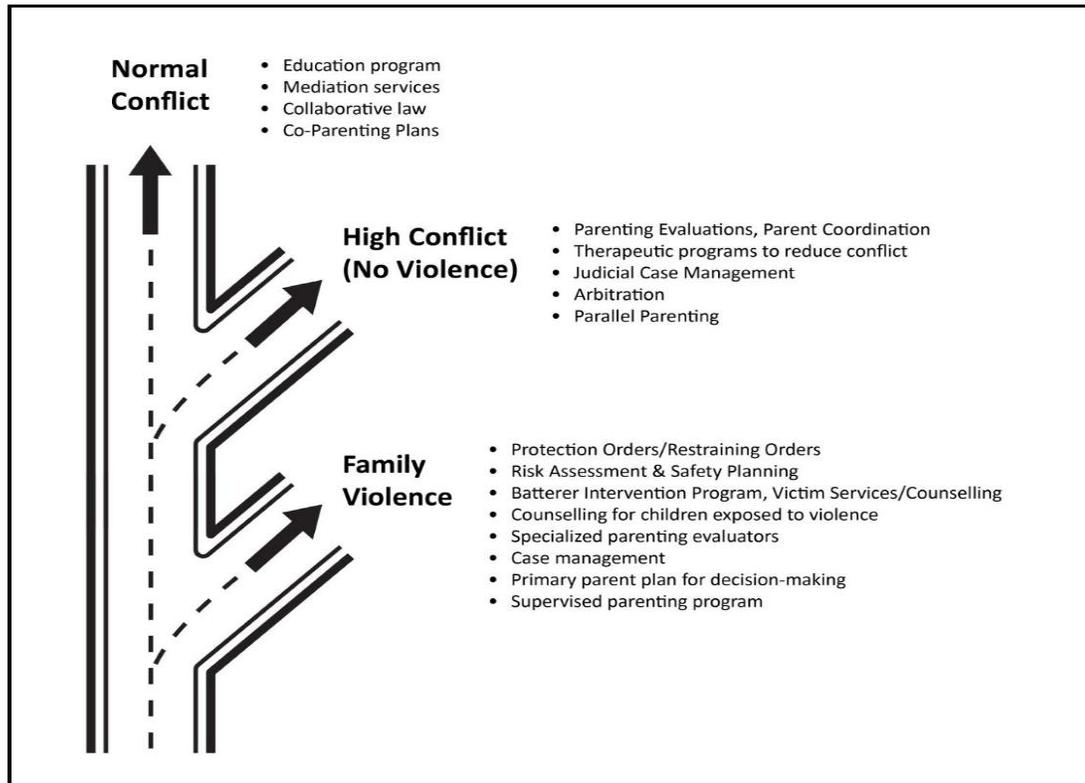
135 These interpretations overreach. It is worth repeating that what is known as the maximum contact principle is **only** significant to the extent that it is in the child’s best interests; it must not be used to detract from this inquiry. It is notable that the amended Divorce Act recasts the “maximum contact principle” as “[p]arenting time **consistent with best interests of child**”: s. 16(6). This shift in language is more neutral and affirms the child-centric nature of the inquiry. Indeed, going forward, the “maximum contact principle” is better referred to as the “parenting time factor.”

The decision in *Barendregt* and the words of s. 16(6) of the *Divorce Act* permit arguments that it is in the best interests of children involved in a specific case to have as much parenting time as possible with each of their parents, which may or may not involve an allocation of roughly equal time for each parent. The statute and decision, however, make clear that where concerns about family violence or ongoing conflict are raised, they must be taken seriously, and that there is no presumption of equal parenting time (Bala, 2022).

4.4 Family violence and the family court process

It is important that family justice professionals not adopt a “one size fits all” approach to making parenting plans, and in particular, they should avoid pressuring parents who are victims of abuse to settle their differences and adopt a co-parenting plan. A better approach requires differential responses. An analogy that can be used is a busy highway at rush hour when everyone is going in the same direction at top speed. Getting to an off-ramp can be difficult. Figure 2 tries to capture this reality using the analogy of a highway leading to co-parenting in which family violence cases need an off-ramp to avoid being carried along with the traffic. It is a simple schematic diagram portraying an often complex reality.

Figure 2: Differentiated interventions in family violence cases



Adapted from Jaffe, P.G. & Crooks, C.V. (2004). Visitation and custody in cases of domestic violence. In J.L. Edleson & O.J. Williams (Eds.), *Parenting by Men Who Batter*. Los Altos, CA: Packard Foundation.

There are recently developed resources which may assist family lawyers, judges and court-connected professionals to make parenting plans with an awareness of the risks of family violence. A toolkit for lawyers and legal advisers to address these complex issues is available from Justice Canada (see Justice Canada, 2021).

The Barbra Schlifer Commemorative Clinic in Toronto has a comprehensive list of risk factors to recognize the needs of Indigenous women and diverse communities in family court (see Barbra Schlifer Commemorative Clinic, 2020). The American Anti-Violence Project (2017) has a family violence toolkit that assists in assessment for LGBTQ2+ families.

There remains considerable variability in different professionals' comfort, skills, and knowledge in using these tools. One important distinction is understanding the difference between screening and assessment. Professionals who do screening recognize that the case they are involved with deals with domestic violence concerns, as well as potential risk factors. Assessment goes beyond screening and provides a more detailed analysis of the risks and the impact on victims, children, and abusers, as well as considerations for parenting plans (see Cross et al., 2018).

4.5 Parenting plans and family violence

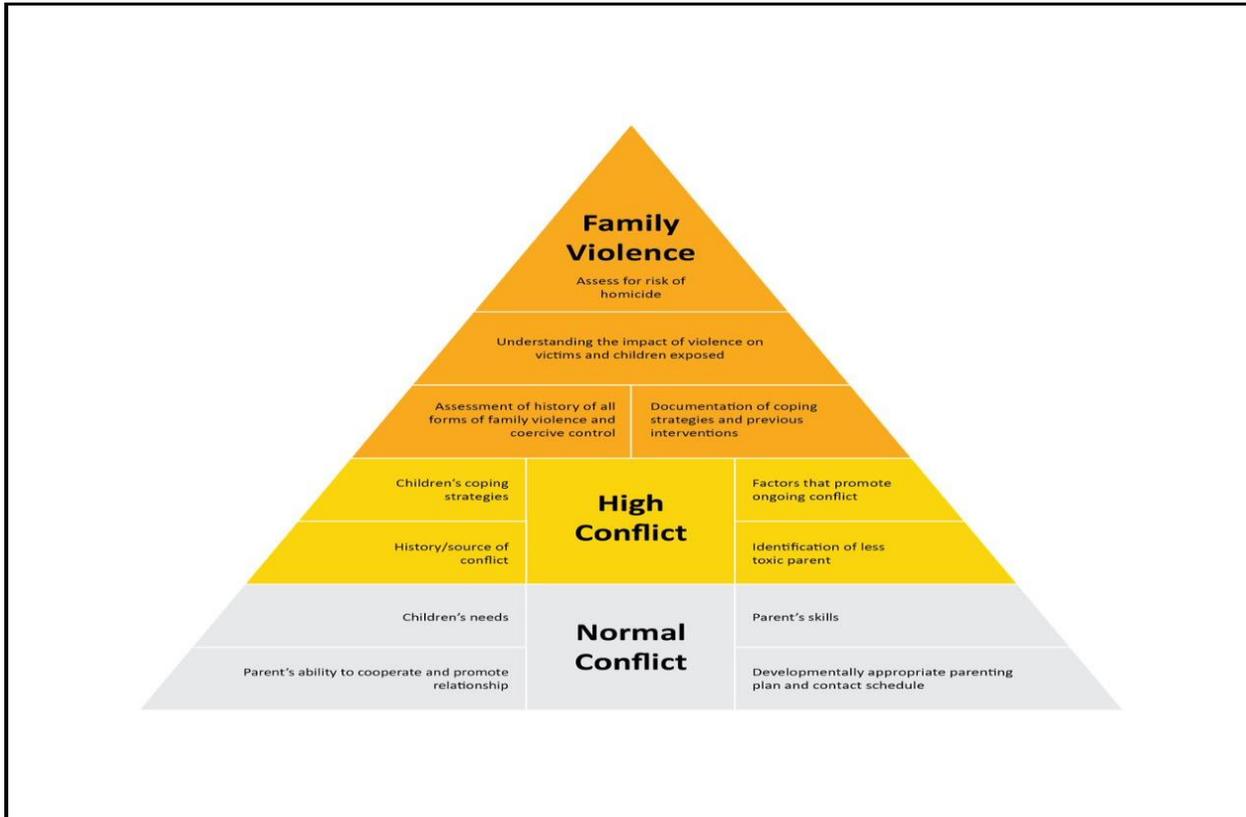
Parenting plans deal with such issues as the parenting time schedule, the allocation or sharing of decision-making responsibilities, and communication between parents. Parenting plans are often made voluntarily, with many parents wanting the flexibility to vary their plans as circumstances change, and not expecting courts to enforce their plans. When there are family violence concerns, however, it becomes more important to have the courts involved in making parenting plans, to resolve disputes and to provide for enforcement to protect victims and their children. In cases where there are family violence concerns, these plans should not provide for shared decision-making, and may have provisions for safe locations for exchanges of care or supervision of parenting time.

The number of separating parents who enter some form of co-parenting plan has been steadily increasing (Bala et al., 2017), with over half of divorced or separated parents who responded to a Canada-wide survey in 2017 reporting that they had “shared custody” of their children (Statistics Canada, 2021), with roughly equal parenting time and joint decision-making. Most of these cases are a result of situations in which this arrangement was made through a process of informal discussions, lawyer-led negotiations, or mediation, with only a relatively small number having been imposed by a court. There are very useful guides for parents and court-related professionals on parenting arrangements that may be most suitable for different families depending on children’s ages and unique circumstances (Bala & Himel, 2021; Justice Canada, 2021). In cases with ongoing family violence concerns, co-parenting and shared decision-making will most likely be inappropriate (if not dangerous).

Responding to child-related disputes in cases with histories of family violence is a complex undertaking. In dealing with abusive parents, there may be a varying 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 consider a range of options in dealing with a perpetrator of family violence. These options may include: no contact; supervised parenting; supervised exchanges; exchanges in a public place; parallel parenting; or a co-parenting plan. Therapeutic interventions or supports may be considered to facilitate successful planning and implementation of these parenting plans.

Figure 3 identifies the additional factors for consideration for cases where either party has made allegations of violence. The first layer of the pyramid identifies the principal factors for making a parenting plan in a typical case, including understanding the children’s individual needs, the parents’ skills, the ability of the parents to cooperate, and the developmental considerations regarding any parenting arrangements. In a high-conflict case, these initial 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 cases involving family violence, the challenges of making an appropriate plan are significantly increased, as it is also necessary to consider such issues as: the risk of recurrence or escalation of violence and an understanding of the impact of violence on the adult victim and the children.

Figure 3: Parenting plans: Issues in family violence cases



Adapted from Jaffe, P.G. & Crooks, C.V. (2004). Visitation and custody in cases of domestic violence. In J.L. Edleson & O.J. Williams (Eds.), *Parenting by Men Who Batter*. Los Altos, CA: Packard Foundation.

4.6 Family violence allegations: Role of court-appointed assessors

Most parenting disputes settle through negotiations between parents, their lawyers, or a mediator. Often, a settlement is appropriate, but some may happen for the wrong reasons (e.g., fear, threats intimidation). When cases do not settle and go to court, the ultimate decision about what happens rests with a judge who hears the evidence, determines the validity of competing claims and decides what arrangement is in the child's best interests. Judges and lawyers often give significant weight to the assessment report of an independent court-appointed mental health professional regarding parenting arrangements. These assessors may be social workers, psychologists or psychiatrists.

Assessments or parenting evaluations are based on interviews with the parents and children and observations of the parents with the children, as well as collateral information from community professionals and possibly psychological testing (Bala et al., 2017). In some jurisdictions in Canada, the family courts may have access to government-funded assessments, such as through the Office of the Children's Lawyer in Ontario. Private, more comprehensive assessments are only available if parents have the resources to pay for them. Parenting evaluations are expensive and often not available due to a lack of government funding and parental resources. (Ackerman et al., 2021). However, when available, the recommendation of an assessor often results in a settlement, either because the parents consider it a helpful, well-informed approach to the formation of a

parenting plan, or parents don't think they would be successful in challenging the recommendations in court. If a case goes to trial, the recommendations of an independent assessor often have significant weight, though they are certainly not binding and may be challenged, especially if the assessor has ignored important facts or is not properly informed by current social science knowledge.

There is a concern about the extent to which parenting assessments sometimes fail to properly consider family violence issues (Stark et al., 2019). 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 or coercive control. Structured screening and tools dealing with family violence are critical in these cases. There are now detailed guidelines available on standards for parenting assessments (Association of Family and Conciliation Courts [AFCC], 2022), as well as specific standards for cases involving family violence (also see AFCC, 2022). These standards require specialized training on family violence for a professional to undertake an assessment in a case involving allegations of family violence. When appointing or retaining an assessor for a case that involves family violence, judges and lawyers should consider whether the professional has developed experience in this area. Assessors must be aware of indicators of dangerousness and lethality.

4.7 Barriers and challenges to making appropriate parenting plans

Before taking a closer look at the approach that is required to properly balance the growing emphasis on post-separation co-parenting with family violence issues, the current family court context deserves closer attention. There are several systemic barriers that have an impact on the reporting and response to 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 unfounded allegations of parental alienation; insufficient attention to children's views; challenges to credibility of parents' reports; and the gap between theory and practice.

4.7.1 Multiple systems and concurrent proceedings

Family violence cases can come into the legal process through the criminal justice or child protection process, as well as in family proceedings. The role and responsibilities of different parts of the justice system in dealing with children in the context of family violence are confusing for many professionals, and even more so for parents (Birnbaum & Bala, 2022).

There is a need for enhanced efforts to coordinate services, share information and develop expertise in all parts of the multiple systems potentially involved in family violence cases (Martinson & Jackson, 2012). For example, Neilson et al. (2022) reports on a study of concurrent family and criminal proceedings which revealed that family court files contained no information from the criminal process in 20% of cases. The lack of coordination and communication between different courts, agencies and professionals can exacerbate harms for victims and their children. This highlights the necessity of holistic supports for victims (George et al., 2022).

Responsibility for investigation of cases reported to the police rests with that agency, while the Crown Prosecutor is responsible for deciding whether to proceed with charges, presenting evidence, and making submissions about appropriate bail terms and sentences. The process of bail hearings, preliminary hearings and trial may take many months to resolve. However, the victim of family violence and the children, whether or not direct victims, may need an immediate safety plan that either suspends contact with the perpetrator or supervises parenting time with the children or exchanges between the parents. The challenge for the criminal justice system and community services is how to manage such a plan while respecting the presumption of innocence.

In family court, each party is responsible for marshalling evidence and proving its case. In the absence of corroborating evidence from independent witnesses like assessors, child protection workers, doctors or police officers, there may be a degree of skepticism about abuse allegations in family court. There is generally an emphasis in the family court on promotion of settlements, and allegations of family violence are sometimes improperly discouraged or dismissed. Some victims may find themselves in limbo between the criminal court and family court. It may be difficult to resolve a family court case while the criminal case is ongoing. Developments in the family case (for example, an agreement regarding supervised parenting time) may require steps in the criminal case (a bail variation request).

The agencies providing CPS may also be skeptical or reluctant to be drawn into cases where there are allegations of family violence and there is already a high-conflict legal dispute between separating parents (Birnbaum & Bala, 2022). The CPS worker must decide whether a particular case meets the agency's protection mandate, or whether the child's interests can be adequately protected in the family court process. In some cases, CPS may decide that the primary victim of family violence may be unwilling or unable to protect the children, and may decide to apprehend the children. Abuse victims can be resistant to accessing CPS for this very reason (Jaffe et al., 2014).

CPS workers also express concern at being used by one parent against the other in parenting disputes (Birnbaum & Bala, 2022; Jaffe, Scott, et al., 2014). Hence, they may be hesitant to enter situations where there are family court proceedings. In some jurisdictions, CPS have been improving their ability to deal with family violence concerns by including domestic violence experts in their agencies and doing a better job of providing evidence for use in family court proceedings (Birnbaum & Bala, 2022; Olszowy et al., 2020).

A promising practice in Canada that illustrates a possible response to address the complexity of these cases is the establishment of interdisciplinary committees trying to promote safety and accountability in the family court when there are parenting disputes involving family violence (Pang, 2021). Another development has been the establishment of a pilot Integrated Domestic Violence Court in Toronto that deals with both family and criminal proceedings involving families where there is family violence (Birnbaum et al., 2014; Birnbaum et al., 2017).

4.7.2 Self-represented litigants

A further complication in the resolution of high-conflict cases and cases involving family violence is the increasing number of self-represented litigants, who may not be aware of the available legal remedies and community services (Birnbaum & Bala, 2012; Macfarlane & Sullivan, 2021; Wangmann et al., 2020). If a victim of family violence does not have counsel, they may well be easily intimidated into accepting a settlement that is unfair and does not provide adequate protection to themselves or their children (Kaye et al, 2021). Legal aid plans in Canada now give some priority to offering low-income victims of alleged IPV access to some legal services (although not necessarily full representation), but this only helps victims with low incomes. As thresholds for legal aid eligibility are low, many women (who are often the victims) are not eligible despite having limited resources.

Competent family lawyers provide an important buffer between antagonistic parents, and can facilitate communication between the parents and with the judge, as well as seeking legal protections for victims of family violence. It is, however, not uncommon for one or both parties in a high-conflict case involving allegations of family violence to be unrepresented (Macfarlane & Sullivan, 2021; Wangmann et al., 2020). Some abusive men have difficulty in accepting advice from lawyers and may prefer not to have a lawyer so that they can have an opportunity to directly confront their former partners, including through cross-examining them. Cases involving one or both parties as self-represented litigants are more emotionally charged and more challenging

for judges, and often result in the court having to make a decision with less information than might be available if the parties had lawyers.

4.7.3 Children's perspectives and preferences

In making post-separation plans for children, judges, lawyers, assessors and parents generally give significant weight to the perspectives and preferences of children, especially those who are close to or have reached adolescence. Indeed, children's views and preferences are specifically identified as a factor for consideration of in the making of best interests' decisions in the *Divorce Act* s. 16(3)(e). Recognition of the importance of hearing from children when decisions are being made about their futures is reinforced by the *Convention on the Rights of the Child* (Martinson & Raven, 2021a, 2021b; United Nations, 1989). However, ascertaining children's views and preferences in cases involving family violence can be challenging for various reasons, including: intimidation of children by the abusive parent to express favourable views about that parent; children may view the victim parent to be weak and may wish to align themselves with the "stronger" abusive parent; and the denigration of one parent by an abuser may influence a child's relationship with a victim of abuse. On the other hand, a victim of family violence who is accused of alienation may find that her children's voices are dismissed as simply an echo of her voice and not as independent views of the children.

While a child's views should always be considered, a child's stated desire to live with an abusive parent should have less weight in cases where there has been family violence than in other contexts (McDonald, 2016). The child's purported reasons for wanting to live with a parent who has perpetrated family violence may shed important insight into 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 children express negative attitudes towards a parent based on a prior history of abuse, this factor should be given very significant weight in making any parenting arrangements.

In all high-conflict cases, whether or not there are family violence issues, parents should be strongly discouraged from directly asking their children about their preferences for living arrangements or visitation, as children may feel intense loyalty conflicts, guilt or fear in expressing their preferences to their parents. In high-conflict cases, the interviewing of a child about preferences should be done by an appropriately trained independent mental health professional or by a lawyer appointed for the child. The professional must ultimately ensure that the child's views are shared with the parents and the court in a sensitive, contextual fashion, emphasizing to parents that they should avoid recriminations for views that children have expressed. There may also be a role for judges meeting with children to help give the court an understanding of the child's perspectives and context, though judges should have appropriate education about family violence so that they properly appreciate how children are affected by family violence (Bala et al., 2013).

4.7.4 Parental alienation and domestic violence allegations

Alienating parental behaviour can be defined as "an ongoing pattern of observable negative attitudes, beliefs, and behaviours of one parent that denigrate, demean, vilify, malign, ridicule, or dismiss the child's other parent" (Johnston & Sullivan, 2020). However, the term "parental alienation" is now often misused by parents and professionals in cases where children are resisting contact with a parent, or one parent is seen as not sufficiently supportive of parenting time with the other parent. Actual alienation only occurs if a parent is manipulating or influencing a child to reject the other parent. The term should not be used to characterize situations where a child is resisting contact because of their own experiences with the parent, or a child just wants to spend less

time with a parent due to changing developmental needs or a desire to be more engaged in extra-curricular or peer activities. When there is a history of family violence or other reasons why children may be anxious about contact with a parent, the protective actions of a parent should not be characterized as “alienation.”

In high-conflict cases, it is not uncommon for one or both parents to make hostile and derogatory comments about the other to the children and to attempt to draw the children into their disputes. The longer that parental conflict persists, the more likely that children are to respond to stress and pressure by siding with one parent. In some cases, a child will align with a parent who is an abuser but may be seen by the child as the more powerful parent. This may result in a child being alienated from the parent who has been the victim of IPV.

“Alienation” is accepted as a serious problem by Canadian courts. However, the term has become highly charged due to its misuse and claims by some mental health professionals that it is a clinical diagnosis. Over the past 25 years, alienation has become a common accusation made against victims of domestic violence by abusive partners (Lapierre et al, 2020; Sheehy & Boyd, 2020). Often, if one parent raises concerns about domestic violence or child abuse, the other parent alleges these are lies or exaggerated, and that parent claims that the allegations are unfounded and part of a strategy to alienate the children. Where there has been a clinical finding or a court finding of domestic violence, the term alienation is clearly not appropriate to describe a child’s resistance to have contact with an abusive parent, and “realistic estrangement,” or “justified rejection” are appropriate. A major challenge of these cases is that there are no reliable tests or measures that distinguish between children who are alienated, as opposed to children who were abused or exposed to violence or other destructive parental behaviours that may cause resistance to contact (Saini et al., 2016).

Simply applying the label “alienation” to cases where children are resistant to spending time with one parent ignores the many factors that may be connected to children’s resistance to visits with one parent, and the complex interactions of children’s unique needs, the parents’ abilities, and the impact of litigation (Fidler & Bala, 2020). These factors may include: the child’s age, temperament, and special needs; sibling relationships; the parenting style and capacity of each parent; and the level and nature of contact with extended family. The premature use of alienation as a label for a case denies the complex reality of many parenting disputes. Many professionals and authors commonly use wider and more descriptive terms, such as “parent-child contact problems” or “child resistance or refusal to visitation.”

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 more caring and effective parent and reject the other as a way of resolving conflicting feelings of loyalty. If an assessment or judicial determination finds that rejection is tied to the rejected 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 are much more important than interventions to address the perceived “alienation.” More fulsome discussions about alienation can be found elsewhere (see Fidler & Bala, 2020). Our focus in this paper is on abusers turning children against the other parent or a victim parent being falsely accused of “alienation” with the misuse of the concept (Lapierre et al, 2020; Sheehy & Boyd, 2020).

Allegations of alienation may silence women and children and deter them from presenting evidence of family violence and of abusive parenting (Meier, 2020). These allegations may discount the perspectives of children and fail to protect children from parental abuse. The allegations may lead to a single reductionist view of why a child resists contact, rather than an objective, nuanced look at the resisted parent’s contribution to the problem.

It must, however, also be appreciated that there are cases where allegations of family violence are exaggerated or totally unfounded. For example, there are cases where parents may question their children in highly

suggestive ways about possible abuse perpetrated by the other parent that results in unfounded reports of child abuse (Birnbaum & Bala, 2022). Further complicating the situation, some unfounded reports of child abuse have been honestly made by mothers who have themselves clearly been victims of violence or abuse but misunderstood or influenced their children's statements. Cases of unfounded allegations of family violence represent the minority of all cases and family violence that is experienced but never reported remains a significant problem (Trocmé & Bala, 2005).

4.8 From legislative reform to action

With the amended *Divorce Act* and the Supreme Court of Canada recognizing that multiple forms of family violence are important factors for the courts to consider in making parenting arrangements in the best interests of Canadian children, the family justice field is entering a new era. The legislative change is one step in a longer process that will include enhanced training programs for professionals involved with the family court and a review of the impact in practice and court decision-making. Business as usual is not an option. Part of the change to come has been highlighted in the literature discussed in this section that speaks to the need for a differentiated assessment and interventions in these cases. There remains a wide range of considerations to meet the needs of very heterogeneous families, including cultural, racial and gender diversity and the impact of the parents' lack of access to justice services and appropriate resources on a timely basis.

5.0 Emerging best practices: Parenting arrangements in family violence cases

In this section, we identify a range of possible parenting arrangements and the considerations that should be taken into account when determining which parenting arrangement is most appropriate for cases where there are family violence issues. We begin by reviewing the 2021 amendments to the *Divorce Act* that are most relevant to family violence and some of the case law interpreting these new provisions. These reforms provide an important context and helpful directions for responding to these challenging cases. We then discuss some of the most critical factors in determining the most appropriate arrangement: the type of violence; timing of disclosure and stage of separation; and access to resources.

5.1 Family violence and the 2021 *Divorce Act* reforms

5.1.1 The significance of the reforms

Jurisprudence under the 1985 *Divorce Act* generally recognized family violence issues and restricted or suspended contact with parents with a proven history of serious IPV or child abuse, but the absence of specific reference to family violence in the legislation led some judges and family justice professionals as well as parents to fail to recognize the importance of family violence for parenting decisions. The reforms to the *Divorce Act* include a number of specific provisions emphasizing the salience of family violence for parenting decisions, adding to the statutory recognition of the significance of family violence (Bala, 2020; Justice Canada, 2019). The significance of these reforms was clearly recognized in the 2022 Supreme Court of Canada decision in *Barendregt v. Grebliunas*, where the amendments were characterized as a response “to issues identified in the case law over the past few decades,” including widespread recognition “that findings of family violence are a critical consideration in the best interests analysis” (paras. 146 & 150).

The reforms provide a broad definition of “family violence” in s.2 of the *Divorce Act* stating that it:

means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct...

The definition goes on to provide examples, including physical or sexual abuse; threats, harassment, or psychological abuse; and threats to kill animals or damage property. Notably the definition is broader than criminal offences involving family violence and includes a “pattern of coercive and controlling behaviour.”

Under s.7.8 of the *Divorce Act*, a court making a parenting order must consider any available information about other child protection, criminal or civil protection proceedings or orders involving the parties. Section 16(3)(j)(i) of the *Divorce Act* requires the courts to consider the impact of family violence on (among other things) the ability of a parent to meet the needs of a child and the appropriateness of making an order that would require parents to cooperate on issues affecting the child. This is reinforced by s. 16(2) which provides that the “primary consideration” in parenting cases is the “child’s physical, emotional and psychological safety, security and well-being.”

While the 2021 reforms clearly require courts to consider family violence, s.16(4) provides that courts consider its nature and recency, the impact on the child and how to promote safety moving forward. If family violence

has continued or escalated since separation, the courts are very unlikely to order co-parenting, although there may be a provision for supervised parenting time by a parent with history of abuse. Evidence of post-separation stalking, financial abuse, or abusive communication will be very relevant. It is also important for courts to recognize that the psychological effects of family violence on the victim may continue after separation. A victim of family violence may be unable to effectively co-parent due to a prior history of having been dominated or traumatized by the perpetrator, or due to a fear of future violence.

In *Barendregt v. Grebliunas* (2022) the Supreme Court of Canada upheld the decision of the trial judge to allow a mother to relocate with her children some 10 hours' drive from the father, in significant measure because she had been a victim of his abuse and violence. Justice Karakatsanis held that "because family violence may be a reason for the relocation and given the grave implications that any form of family violence poses for the positive development of children, this is an important factor in mobility cases" (at para. 147). The Court accepted that being a perpetrator of domestic violence is relevant to "parenting ability" and recognized that harm to children "can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it" (at para. 143). While *Barendregt* was a relocation case, the approach of the Court is clearly relevant to all parenting cases, with Karakatsanis J. observing that the amendments to the *Divorce Act* recognize that "findings of family violence are a critical consideration in the best interests analysis." She also observed that:

[d]omestic violence allegations are notoriously difficult to prove [as] family violence often takes place behind closed doors and may lack corroborating evidence...Thus, proof of even one incident may raise safety concerns for the victim or may overlap with and enhance the significance of other factors, such as the need for limited contact or support. (at para. 144)

Barendregt clearly recognizes the importance of a "finding" of family violence, though it is necessary to keep the factual context of the decision in mind. The Court observed that this was not just a case of post-separation "friction," but one "featuring abusive conduct during the marriage, at separation, and at trial" (at para 141). Despite the father's denials, the trial judge found that he was abusive, and concluded that one of his assaults on the mother resulted in her calling the police, seeking medical attention, obtaining protection from her parents and immediately moving with the children to live with her parents, some 10 hours' drive from the family's home. Further, the trial judge emphasized that the abusive conduct continued after separation and into the trial itself, including "most notably" the father including "a nude 'selfie' of the mother" in an affidavit, which the trial judge found served "no purpose but to humiliate her" (at para. 179). Consistent with s.16(4) of the amended *Divorce Act*, the trial and Supreme Court decisions in *Barendregt* require that judges take a broad approach to the consideration of family violence in parenting cases.

An example of the approach to family violence required by s.16(4) was provided in *McBennett v Danis* (2021 ONSC 3610), where Justice Chappel found that it was in the best interests of the child for both parents to have an equal role with respect to parental decision-making and equal parenting time, despite her finding that the father had been emotionally abusive to the mother during their relationship. Justice Chappel found that there were no issues at the time of trial that could impact the father's quality of care to his daughter. Importantly, she recognized the "monumental" changes in the father's behaviour since separation, including his acknowledgement of his prior inadequacies, and undertaking of a mental health evaluation and enrolment in programs to improve his parenting and communication with the mother.

5.1.2 Coercive controlling behaviour as family violence

The courts are recognizing that coercive controlling behaviour may exacerbate physical abuse, or, consistent with the legislative amendments, may be a concern even in the absence of physical violence. The family violence provisions in Ontario's *Children's Law Reform Act*, mirror those in the *Divorce Act* so it is interesting to explore some of these decisions as well.

In *M.H.S. v. M.R.* (2021 ONCJ 665), the mother of two young children was seeking temporary parenting care and decision-making, with only supervised visits for the father. The mother was born in Iran and immigrated to Canada with her family when she was nine years old. The parties had an arranged marriage, and the mother then sponsored the father's immigration to Canada. The father arrived in Canada in 2015, and the parties began to live together, with the couple's first and second pregnancies occurring shortly thereafter. The parties separated, and the children resided with the mother after the separation, with the father having limited involvement and only daytime visits. Two years after their separation, the mother had a mental health breakdown and was hospitalized for two months, during which time the children were cared for by the maternal grandmother. When the mother was released, the children again resided with her. The grandmother continued to provide parenting assistance, and the father still only had daytime visits. Almost two months after the mother's release from the hospital, the father did not return the children to the mother after a visit and refused to allow the mother to see them in person. He then began an application without notice to the mother for temporary custody, claiming that her mental health situation required urgent court action. The mother sought custody, with only limited contact with the father. Both motions came before Justice Sherr about two months after the father's unilateral action, with affidavits of each parent alleging abuse by the other. Justice Sherr began with the mother's onus of proof for trying to limit the father's time to supervised daytime visits:

The party who seeks to reduce normal parenting time will usually be required to provide a justification for taking such a position. The greater the restriction sought, the more important it becomes to justify that restriction.

The person seeking supervised parenting time for the other parent bears the burden of establishing that supervision is necessary. (at para. 52-53)

The court accepted that the mother had been the children's primary caregiver except for the two-month period of her hospitalization. While recognizing that this was a temporary hearing, and the court was not making a final factual determination, the judge found that the mother was a "credible witness" in testifying in court about the father's abuse of her, and about his threats to abduct the children to Germany or Afghanistan, where he had relatives. The court characterized his conduct in taking the children into his care, which included not enrolling the older child in school and withholding all in-person contact with the mother, as "appalling." Justice Sherr concluded:

It is apparent to the court that there is a significant power imbalance between the mother and the father. The father is university educated.... The mother has cognitive and mental health challenges. She is very vulnerable. The father appears to have taken advantage of this power imbalance. It is easy for him to threaten and intimidate the mother. ...it is easy for him to control the mother by telling her how he has powerful friends who will assist him with any abduction. She believes him. He is powerful to her...

The court finds that the father has subjected the mother and the children to family violence. This violence has been physical, emotional, psychological and financial. It has been persistent. The father has acted in a controlling and coercive manner towards the mother. (at para. 79 & 103)

The court found that the mother had established “an objective and subjective basis” to fear for the safety of herself and the children, and awarded her temporary care and decision-making, with only limited, professionally supervised parenting time to the father, as well as a restraining order on his contact with the mother, and later ordered him to pay \$10,000 towards the mother’s legal fees (2022 OCJ 28).

The decision in *M.H.S. v M.R.* illustrates the importance of an intersectional analysis, taking account of the multiple vulnerabilities of the mother that the father exploited in a coercive controlling way.

5.1.3 Alienating behaviour as family violence

The amended *Divorce Act* s. 16(3)(c) provides that a factor in making best interest decisions is each parent’s “willingness to support the development and maintenance of the child’s relationship with the other” parent. As noted by the Supreme Court of Canada in *Barendregt v. Grebliunas* (2022), s.16(3)(c) was formerly part of s. 16(10) of the 1985 Act and is sometimes referred to as the “friendly parent provision.” Some courts have held that undermining a child’s relationship with the other parent may be a form of “family violence,” as it may be psychologically harmful to both the child and other parent.

Some recent decisions in Ontario are of interest since the *Children’s Law Reform Act* has been amended with similar language to the *Divorce Act*. In *C. v A.J.* (2021 ONSC 8191), an Ontario family court found that the father’s course of alienating behaviour constituted “coercive control” and “family violence.” The mother claimed that the father had been physically and emotionally abusive towards her while they lived together, which eventually resulted in her moving to a shelter without the children. After separation, the father did not permit her to see the children for six months, and she was only able to see them after bringing a motion for temporary relief. The father reported to the child protection agency that the mother had been physically abusive of the boys. The agency investigated but concluded that the father had coached the two sons into making unfounded allegations against their mother. A clinical investigator from the Ontario Office of the Children’s Lawyer concluded that the father “exerted an enormous amount of pressure on the mother and the children to do his bidding... and incited the children to be belligerent” and aggressive with their mother (at para. 22). The Ontario Office of the Children’s Lawyer investigator was very concerned about the emotional environment for the boys while in the care of their father. At the parenting motion, Justice Audet ordered that the mother have primary care and sole decision-making, with the father having only supervised contact and, on consent, both the parents and boys were to undertake counselling.

While the courts are concerned about alienating behaviour, they also recognize that there are cases in which abusive parents, especially men, make unfounded claims of alienation against the other parent. In *Armstrong v Coupland* (2021 ONSC 8186), the mother wanted the father of their four-year-old child to have only supervised contact because of his abusive behaviour. At a hearing for a temporary parenting order, the mother’s counsel introduced emails which the father had sent the mother and her counsel, in which he claimed that they were “alienating” the girl from him. Justice Chappel concluded that the father’s communications were often:

...inappropriately aggressive, demanding and threatening. While many of the comments have been directed towards [mother’s counsel], they have been sent to the [mother] as well and have been clearly designed to destroy a solicitor client relationship that the mother considers to be

critical to ensure the safety and wellbeing of herself and her children. In this sense, the communications amount to a pattern of threatening, coercive and controlling behaviour towards the [mother]. (at para. 39)

The court ordered that the father was only to have limited, supervised parenting time, and a restraining order was imposed on the father. Justice Chappel observed:

The definition of family violence specifically recognizes that conduct that may not constitute a criminal offence can constitute family violence for Family Law purposes...The specific inclusion of this factor as a mandatory consideration in determining the best interests of children recognizes the profound effects that all forms of family violence can have on children. These consequences can be both direct, if a child is exposed to the family violence, or indirect, if the victimized parent's physical, emotional and psychological well-being are compromised, since these consequences in turn often negatively impact that parent's ability to meet the child's physical and emotional needs. (at para. 21)

It is clear that the courts recognize that alienation can be part of a pattern of family violence and coercive control in undermining the victim's relationship with the children. This paper is focused on abusers turning children against the other parent or a victim parent being falsely accused of "alienation" with the misuse of the concept (Lapierre et al, 2020; Sheehy & Boyd, 2020). We appreciate that claims of alienation need to be approached in a thoughtful fashion, and that there are unfounded claims of alienation as well as founded claims.

5.2 Parenting arrangements

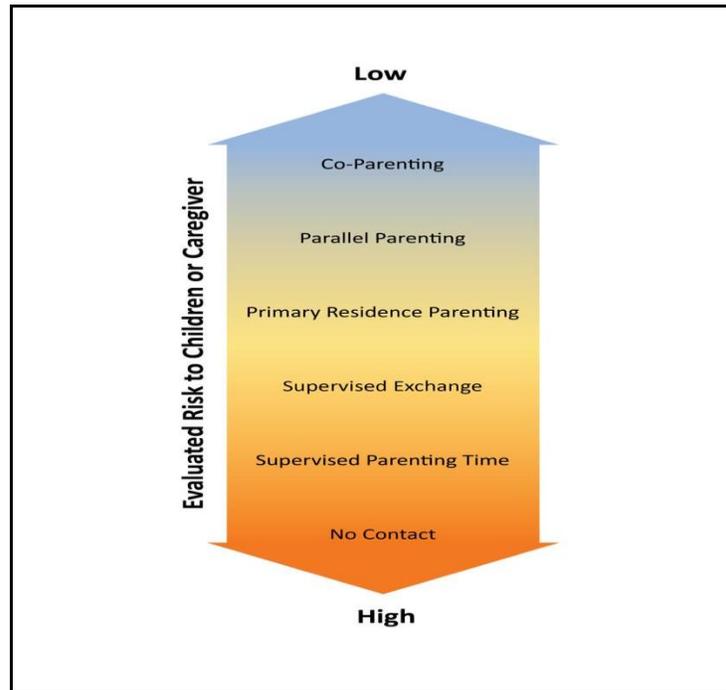
There has been little research evaluating the application of specific types of parenting arrangements to different patterns of family violence. Too often, research has compared child adjustment outcomes for different parenting arrangements (e.g., shared decision-making versus a predominant or principal parent making all decisions) without including family violence as a moderator. In this section, we outline a range of parenting arrangements aligned to the research on family violence.

The cases at the extreme ends of the family violence spectrum are most easily addressed. At one end of the continuum, there is no doubt that a perpetrator of chronic family violence who has demonstrated a pattern of abusive coercive controlling behaviour over time, with little remorse or investment in treatment should have either no parenting or limited supervised parenting by highly trained professional staff. At the other end of the continuum, an isolated, relatively minor assault which is out of character, accompanied by genuine remorse, and that did not induce ongoing fear or trauma, may not preclude 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, as well as to the children who are involved.

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 if there has been appropriate counselling and support. 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.

Figure 4: Parenting arrangements after family violence



5.2.1 Co-parenting

Definition and description

Co-parenting refers to an arrangement in which separated parents cooperate relatively closely in raising their children. This arrangement often approximates the pre-separation pattern of care for the children, with both parents actively involved in the lives of their children, sharing information, and co-operatively problem-solving the 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, taking account of the distance between homes, children’s needs and stage of development, and parents’ schedules (AFCC Ontario, 2021). Co-parenting may involve equal parenting time, for example a “week about” arrangement, but it is often not equal time, and there are likely to be changes in parenting time schedule negotiated by the parents as the children grow older and circumstances change.

In many cases of parental separation, co-parenting is best for children as it helps maintain a meaningful 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 well-being of the children.

Indicators and contra-indicators

Co-parenting requires two parents who can maintain a civil and child-focused relationship post-separation. There should be mutual trust and respect that allows for constructive communication between parents. Parents may vary along these dimensions from time to time during periods of crisis or major transition (e.g., jealousy over new partners, challenges over parenting adolescents), but overall, the parents need to be able to make this arrangement work.

Co-parenting is contra-indicated by continuing family violence, including concerns about continuing effects of coercive controlling behaviour on victims. Other factors also contra-indicate co-parenting, including a history of poor communication, coercive interactions, inability to jointly problem-solve, or a lack of child-centred focus by one or both parents. In addition, there may be mental health problems or substance abuse suffered by one or both parents that can preclude use of co-parenting.

Special considerations

There are circumstances under which parents may overcome difficulties with time and/or counselling 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, despite the best efforts of the other parent and third parties such as mediators.

There is considerable debate about whether co-parenting should be imposed on an unwilling parent. These cases require special skills on the part of assessors, lawyers and judges to properly assess the reason for the resistance to co-parenting. For example, a parent who has felt bullied or victimized and experienced considerable anticipatory anxiety in dealings with the other parent may have a legitimate aversion to co-parenting.

Case Suitable for Co-parenting Despite History of Family Violence

The Singhs were born and married in Canada. They separated four years ago. At the time of the separation, there was an incident of violence when Mr. Singh grabbed Mrs. Singh 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 (ages 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 their mother, each parent is involved in day-to-day decisions, as well as more important issues regarding health care and education. There is flexibility based on the children's needs and conflicting parental commitments in changing father's normal parenting time schedule of alternate weekend and one evening mid-week schedule.

5.2.2 Parallel parenting

Definition and description

In contrast to the cooperative nature of a co-parenting arrangement, parallel parenting describes an arrangement where each parent is significantly involved in the children's lives, but the arrangement is structured to minimize contact between the parents to 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 their care, and by allocating responsibility for major decisions, like education, to one parent. There is limited flexibility in a parallel parenting arrangement, and the parents typically abide by a structured and detailed parenting time schedule.

Parallel parenting developed in recognition of high conflict separations, where both parents appear competent and have been involved in the children's lives. Rather than encourage co-parenting, the goal of this plan is to disengage the parents from each other and any long-standing hostilities, and reduce scope for conflicts (Fidler & McHale, 2020). Natural transitions can 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 parenting time. There must be a careful structuring of communication between the parents, for example, by requiring all communication to be by email or through an app which, if need be, can be monitored by a third party. Children should not be expected to carry messages back and forth in high-conflict cases. Parallel parenting is generally only appropriate for children if, despite their conflicts, the parents have fundamentally similar ideas and expectations about parenting and child-rearing.

There is controversy about parallel parenting because some professionals view it as a judicial "compromise plan" that is a form of imposed co-parenting. Some commentators 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 & Madsen, 2004). If there is a lack of genuine communication and cooperation between parents, the plan may require active negotiations and arbitration by a third party, such as parenting coordinator, if the parents have the resources to afford these additional supports.

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. Parallel parenting may be most appropriate at the temporary (or interim) stage, with the hope that over time, parental hostility may decline, and that parallel parenting may develop towards some form of co-parenting (Fidler, 2012). In cases where there is continuing high conflict and a trial is many months or even years after separation, conflict is less likely to diminish after trial. Therapy for the parents to deal with their feelings of anger and hostility 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 their involvement with the children, but direct parent-parent contact needs to be limited due to ongoing acrimony and the possibility of hostility in the presence of the children. 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 continuing concerns of violence or coercive control towards the other parent, would contra-indicate a parallel parenting arrangement.

Special considerations

Whether a parallel parenting arrangement might be appropriate in the aftermath of violence towards children or an adult partner generally requires a careful assessment by a professional with a background in family violence cases. Factors critical to this determination include whether the perpetrator of the violence has taken responsibility and successfully completed an intervention; whether the children have received 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 or the other parent clearly contra-indicates a parallel parenting arrangement.

Case Suitable for 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) to minimize the parents being in each other's presence. 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 parenting 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 (perhaps by an app like Our Family Wizard).

5.2.3 Primary residence parenting

Definition and description

Primary residence parenting is somewhat analogous to what occurred before the 2021 *Divorce Act* reforms when one parent had custody of the children and the other parent had a limited access schedule. Primary residence parenting arrangements place the child primarily in the care of one parent while the other parent has a more limited role, recognizing that there are limitations to the ability of the other parent to make positive contributions to the child, possibly due to ongoing concerns about that parent's use of coercive control, inability to prioritize the child's needs over their acrimony towards the primary residential parent, or due to serious concerns about the parenting capacity, mental health or substance use of the other parent. In this type of parenting arrangement, the parent with the child's primary residence is granted sole decision-making on all or most parenting issues, but may still consult with the other parent on their views. The child maintains contact with the other parent, but parenting time may be limited to weekends or even just daytime visits. The concerns are not at the level of needing supervised exchanges or supervised parenting which are discussed below.

Indicators and contra-indicators

This plan assumes that there are no safety concerns that would require supervision for exchanges or supervision of the parenting time. It also assumes that the parenting time is not being used to undermine the primary residence parent.

Special considerations

This plan may work best when the family violence or coercive control by one parent has been acknowledged and there is an intervention plan in place to address the past conduct and the impact it may have had on the victimized parent and the children, and safety concerns are adequately addressed. Over time, this plan could evolve into a co-parenting plan.

Case Suitable for Primary Residence Parenting

The Kowalskis' separation was acrimonious. During an argument about their separation, Mr. Kowalski threatened his wife and shoved her against the front door when she tried to exit the home. Their sons were exposed to this violence and the aftermath. Mr. Kowalski was charged with assault. He accepted responsibility and indicated his remorse. The case was resolved with a conditional discharge based on his willingness to attend a partner assault program and a parenting program to consider the impact of his behaviour on his two sons (ages 7 and 9 years). He had been involved with his sons through soccer and was an assistant coach on the older boy's team. Ms. Kowalski was given the role of primary residential parent and all decision-making. Mr. Kowalski had every Saturday from 10 am to 7 pm and Wednesdays from after school until 8 p.m. to coincide with the soccer schedule. Ms. Kowalski was involved in counselling dealing with the family violence and trauma she suffered. She is not fearful of her ex-husband. The Kowalskis' were optimistic that they might move to a more flexible schedule if Mr. Kowalski was able to maintain safe and respectful behaviour towards Mrs. Kowalski.

5.2.4 Supervised exchange

Definition and description

Supervised exchange involves transferring children from the care of 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 using a public venue for the exchange, such as the parking lot of a fast-food restaurant or, if necessary, at a police station. The supervision can also be formalized through a supervised exchange service or use of a designated professional, such as a childcare 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 not come into contact. These are cases with sufficient concerns about one parent that 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 well-being of the children while in the care of the non-primary care parent that parenting time 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, thereby exposing the children to the risk of high levels of conflict. It is also useful when there is a historical pattern of family violence, and the victim may experience distress or have trauma triggers encountering the other parent. However, supervised exchanges do not mitigate the risk of violence if there are ongoing concerns about the safety of children and their primary caregiver.

Special considerations

Supervised exchanges are sometimes inappropriately used to create a sense of safety when a more restrictive measure (such as supervised parenting) is warranted. As well, informal third-party supervised exchanges or exchanges in a public place may be well-intended but inadequate; supervision may require a knowledgeable professional to monitor safety and inappropriate behaviours. If there is continuing high conflict, even exchanges in a place like a police station parking lot can be hostile and very stressful for children. Further, some abusers 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.

Case Suitable for Interim Supervision of Exchange

The Zhangs have been separated for six months. Ms. Zhang describes her husband as a bully who was 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. The police were called; the father was arrested, pled guilty and is on probation. Ms. Zhang has interim parenting decision-making responsibility and moved to her parents' home, a 45-minute's drive from the former family home, where the father continues to reside. Mr. Zhang was verbally abusive of his wife at the initial visits after the separation, and the court allowed him to see his son every Saturday afternoon to Sunday afternoon, through an exchange at a supervised parenting centre. Mr. Zhang desires equal parenting time but also understands that, given his abuse, he needs to maintain non-abusive behaviour for a period of time to rebuild his families' trust in him. Ms. Zhang reports that 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 family litigation. A court review is scheduled in three months.

5.2.5 Supervised parenting time

Definition and description

Supervised parenting time is an arrangement designed to promote a child's safe contact with a parent who is a risk due to a range of behaviours from physical abuse to possible abduction of the child. It may also be appropriate where a child has fears of a parent, for example, because of having witnessed the parent perpetrate abuse or because of having been abused by that parent, but still wants to maintain a relationship. Although supervised parenting time is a long-accepted practice in the child protection field (Saini et al., 2012), it has emerged more recently in the parental separation context with parents who pose a risk to the children or the other parent (Hunter et al., 2018). Like supervised exchanges, supervised parenting time 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 use of therapeutic supervised parenting time,⁶ which involves a mental health professional who may be involved in trying to improve a troubled parent-child relationship through counseling and support during this parenting time.

Supervised parenting time should normally be a short-term solution to concerns about child safety, though in some cases it may continue for years where these concerns have not dissipated but the child continues to enjoy seeing the parent (Bala et al., 2016).

⁶ Therapeutic supervised parenting time offers an opportunity for contact between a parent and child in a supervised setting with a therapist intervening, promoting healthy parenting, relationship building, and cooperation between the parties. Therapeutic supervised parenting time is a specialized short-term intervention aimed at assisting parents towards non-supervised parenting time (access) while meeting the needs of the children.

While much less expensive and less intrusive for the parent and child, supervision should only be provided by a friend or relative if the court is satisfied that this person is willing and able to fully protect the child and resist the wishes of the supervised parent.

Indicators and contra-indicators

Supervised parenting time should only be undertaken if it is believed that a child will benefit from a parent maintaining an ongoing role in the child's life but there remain concerns about the risk that the abusive parent poses to the other parent and the child. There are ongoing risks of physical or emotional abuse to the adult victim and the safety of the child is in jeopardy. Supervision is usually only considered for what is expected to be a transitional period while the parent addresses behavioural or emotional issues and proves that the supervision is no longer required due to changes in their behaviour and addressing problem areas. Serious concerns demand more specialized services 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 appropriate.

Special considerations: supervised parenting programs

There is great variability among supervised parenting services, training of staff and mandates for programs. If there has been a history of sexual or emotional abuse of a child, the supervisor should have appropriate training to recognize subtle forms of abuse. There have been efforts to establish standards for staffing and practices (e.g., Supervised Visitation Network, 2022; Pulido et al., 2011), but in many locales their implementation would require greater funding than is currently available. Some parents may require extensive assistance during their parenting time to say and do things that match their children's needs and stage of development. Professional supervision is relatively expensive, though in some locations in Canada, especially in Ontario, there are subsidies available for supervision of visits for low-income parents.⁷

In some cases, there may be a strained relationship between an abusive parent and child due to historical events or the lengthy disruption of any meaningful parent-child relationship and the child may require more than a safe place for parenting time. In these cases, significant interventions by a trained professional may be required to promote healing and enhance parenting before visits with the child should be allowed.

Supervised parenting cannot be a substitute for a comprehensive assessment by a qualified mental health professional. Courts may draw inappropriate conclusions about the meaning of "successful" 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 in which nothing overly negative has occurred but there have been no interventions. If there has been significant violence or a child has continuing fears, there should be an onus on a perpetrator of the violence to show that they have made significant changes and are taking responsibility for past transgressions, not merely that they can contain inappropriate behaviour under supervision (Bancroft et al., 2012; Scott & Crooks, 2007).

It has long been recognized that it is important for there to be clear expectations and written agreements between the supervisor and the court, counsel and parents for supervision, especially in cases such as where there has been a history of child abuse (Oehme & O'Rourke, 2011). These agreements have many benefits. Supervised parties have clear boundaries about acceptable and unacceptable behaviours; supervisors know what behaviours they are monitoring; courts have records and information upon which to base subsequent decisions; and there is clear agreement among parties of the situation (versus an informal arrangement where

⁷ See <https://www.ontario.ca/page/supervised-access-centres>

the supervisor and supervised party may see the supervised party as the victim or client). A recent longitudinal study of parents and children in (Canadian) supervised parenting time programs demonstrates the need for careful assessment and individualized parenting plans as not all children benefit or feel safe from supervised parenting arrangements (Saint-Jacques et al., 2020).

The Supervised Visitation Network (2022) has very useful standards and guidelines, as well as sample contracts, available on their website. Practices vary across Canada in terms of government funding and availability of services.

Case Suitable for Supervised Parenting Time

Ms. MacLeod is an alcoholic who has endangered her children in the past through drinking and driving. She has also assaulted her husband several times while she was drinking, including an incident which resulted in a conviction 18 months ago for stabbing him in the shoulder with a kitchen knife. After the stabbing, the father separated from her. The children have lived with him pursuant to a court order. Her contact was limited to one supervised visit a month. Her two daughters (ages 5 and 8) are attached to her but were frightened by her behaviour when she was drinking, and a few visits were cancelled because she arrived at the supervised visitation facility inebriated. The children 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 counselling about her violent behaviour. She has joined Alcoholics Anonymous and has been sober for six months. The court awards her three hours of supervised visits, twice a week at a government-funded supervised parenting centre.

5.2.6 No contact

Definition and description

In cases where a parent presents an ongoing risk of violence to the child or other parent, or has made threats of abduction, it may be that no meaningful parent-child relationship is possible for a significant period of time. In these cases, the court may be required to suspend all parenting on a short- or long-term basis. While in theory parenting time should only occur if it promotes the best interests of the child, in practice, judges often presume that a child will generally benefit from a relationship with both parents and require significant evidence of risk of harm to the child before terminating all visits (Holt et al., 2008; Jaffe et al., 2008). Cases where a victim expects contact with an abuser and child to be suspended present a significant challenge for advocates and assessors; it is generally necessary to provide thorough and credible information to the court to obtain an order to suspend the parent-child relationship.

Even if contact is suspended with an abusive parent, there may be the prospect of that child deciding to have contact with that parent in late adolescence or adulthood when the child has the ability to take protective steps.

Indicators and contra-indicators

When a parent has engaged in a pattern of family violence and has indicated no remorse and real willingness to change, suspension of the parental relationship may be required. There are also cases where the abusive parent 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 (Deutsch et al., 2020).

Although a perpetrator may ultimately receive significant consequences in the criminal justice system and demonstrate some changes in behaviour, the damage done to the parent-child relationship may continue. In cases such as these, successful parent-child contact depends on the family undergoing change rather than one individual party successfully completing treatment. Attempts at reunification require consent of all the parties and a solid foundation of a parent-child relationship as well as a demonstrated commitment for a reunion in the family.

Special considerations

A court order for no contact is relatively rare. Section 2.3 outlined some of the tools and risk assessment instruments that are required to present evidence to the court about the concerns that may justify this response. It may be appropriate as a temporary measure but should also occur on a long-term basis if the need for this is established. There are special challenges for courts and court-related professionals to try to prevent child homicides and domestic homicide-suicides in the context of parenting disputes. In some cases, the perpetrator may not be seen as a risk for child abuse because they have never directly harmed the child but there is a concerning pattern of coercive control and a potential for a parent to kill the child as an act of revenge against their partner for leaving the relationship (Jaffe, Campbell, et al., 2014; Scott et al., 2020). Although children's best interests are supposed to be the focus of a family court hearing, their needs and risks may be overlooked as the children may be the hidden victims of domestic violence and be at risk of homicide (Reif & Jaffe, 2019).

Case Suitable for No Contact

Mr. Able had a long history of spousal violence, which never came to the attention of the police but was reported by his wife to several counsellors and the family doctor. He denies any responsibility, despite medical evidence in regard to his wife's prior injuries and consistent observations of other family members. After separation, the three children disclosed to a social worker a history of physical abuse by their father and exposure to spousal violence. The family court made a finding of spousal violence and ordered supervised visits, recommending that Mr. Able take a batterers' treatment program. Mr. Able refused to participate after attending an initial intake interview where he reported that his wife was his only problem. Mr. Able went to the supervised access centre earlier than directed and confronted his ex-wife in front of the children. He threatened to kill his wife and himself if she did not return to the matrimonial home. The staff called the police and charges were brought before the criminal court.

The Family Court judge suspended all contact between Mr. Able and the children with a court review scheduled in six months and the expectation that the father will present evidence at the review date of his participation in treatment and provide the court with a risk assessment and risk management plan.

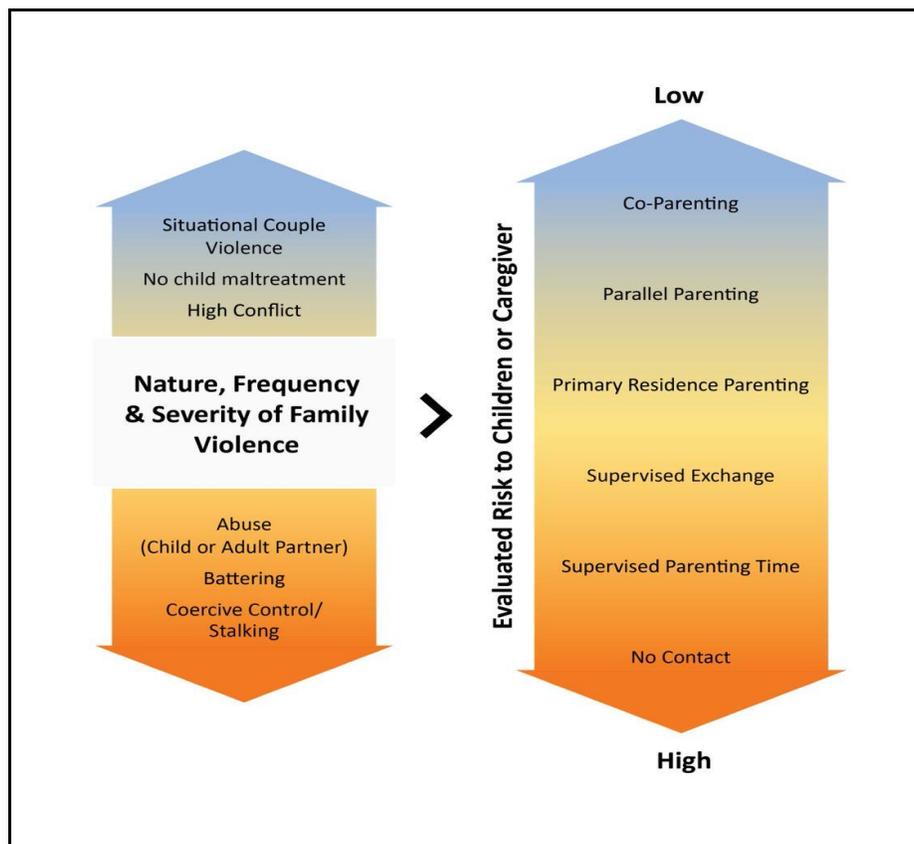
5.3 Type of violence history

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. Lawyers, judges, assessors, and other professionals, as well as parents, should be considering the type of family violence and resources available, when developing parenting plans to assure the safety of the children and the adult victim.

The continuum of violence presented in Figure 3 above identifies a range of factors in considering the nature, impact, and associated characteristics of different forms of abuse. This continuum together with a domestic violence history and an identification of coercive control can be added to the dimension identified of low to high-risk parenting arrangements as shown in Figure 5, below.

Thus, a history of situational couple violence may not preclude co-parenting or parallel parenting, but a history of coercive control or post-separation violence, abuse or stalking would certainly contra-indicate these responses. Further, the presence of a child maltreatment history must also be factored into these considerations. The type and severity of violence and the safety of the victims must be assessed for both child and adult victims.

Figure 5: Parenting arrangements after family violence and history of violence



5.4 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 on a timely basis.

Family courts are only as effective as the resources that can be provided to parents and their children, inside and outside the courthouse. The starting point in family violence cases is access to risk assessment information as outlined in Section 2.3 and then implement safety plans for the parent victim and children, as well as risk management strategies to deal with the perpetrator. Parents and children involved in the family justice process usually benefit from appropriate counselling and support services, which may or may not be readily available. This need is accentuated in family violence cases. For example, in a case with an abuser with multiple problems, there may be a need for the perpetrator to seek assistance for substance abuse-related problems and enter a batterer's intervention program. During this time, the children would receive counselling in a group program for children exposed to family violence, and the victimized parent may be in a support group to develop coping strategies for dealing with a history of violence. Parenting time 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 parenting program. Promising practices in this area include programs for perpetrators that simultaneously address issues of child maltreatment and IPV (McConnell et al., 2017, Scott et al, 2021). The dimension of resource availability is an additional factor for consideration, as depicted in Figure 6. As noted in the diagram, a lack of availability of resources may require a more restrictive parenting plan.

In many cases, courts must "make do" with limited resources, which may involve a community volunteer or grandparents supervising the visits, while parents and children wait for counselling resources that fall short in that they do not specialize in family violence. 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 may contribute to domestic homicides (Reif & Jaffe, 2019; Scott et al, 2020).

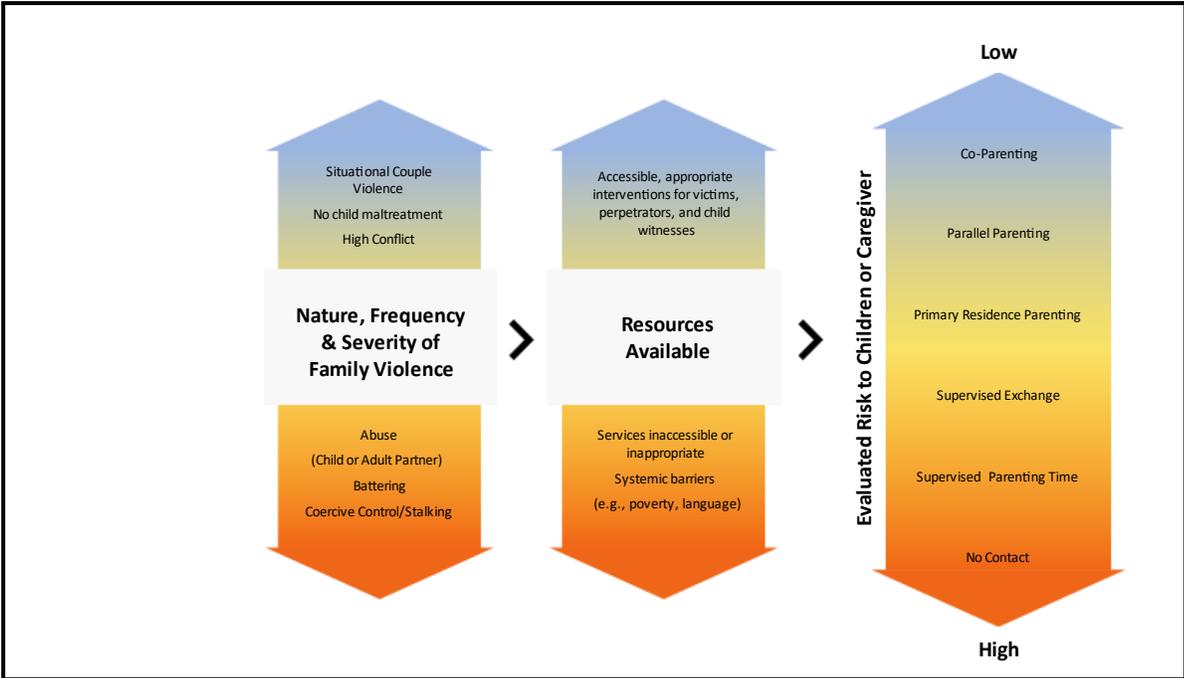
Timely access to services may be impeded by a lack of community and parental resources, waiting lists, and the absence of culturally appropriate service providers. Often, multiple services need to be accessed, including services for batterers, victims and children exposed to family violence. Even once 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.

Aside from concerns about the availability of resources, there is also an active debate about the effectiveness of various programs for perpetrators of family violence. Some researchers have argued that batterer programs are successful for many perpetrators, at least in the context of a responsive justice system that includes monitoring and compliance reviews as well as an overall coordinated community response (Gondolf, 2012). A more pessimistic outlook contends that batterer intervention programs are largely unsuccessful in changing actual behaviour towards victims (Cheng et al., 2021). The research in this area is moving beyond **whether** intervention works to a more nuanced picture of **what works for whom under what conditions**. For example, some researchers suggest that indicators such as severe psychopathology, ongoing substance abuse problems, and violations of court orders predict poor outcomes in any batterer intervention program (Gondolf, 2012).

If a family court orders some type of counselling or intervention, it is important that there is reporting back to the court by service providers to monitor compliance, though too often there is no judicial monitoring. Reporting to the court encourages engagement and allows adjustments to the order as circumstances require.

In addition, high-conflict and family violence cases benefit from specialized judges who have family law experience and, often, a one-family-one-judge case management model to ensure appropriate assessment and implementation of court and community remedies (Bala et al., 2010; Cyr et al., 2020; Martinson, 2010; Paquin-Boudreau et al., 2021).

Figure 6: Parenting arrangements: History of violence and resources available



Although monitoring individuals’ compliance with an intervention may provide useful information to the court, the use of specific behavioural goals may be more valuable. In a best-case scenario, a parenting arrangement post-family violence would identify specific goals for the perpetrator to achieve before progressing further with the plan. For example, if a perpetrator had substance abuse issues, behavioural goals could include completion of substance abuse intervention, as well as clean drug tests for a specified period before unsupervised parenting 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 arrangements may be tied to the victim’s or children’s functioning. For example, successful completion of therapy for a child victim or witness to family violence, as indicated by the child’s lack of symptoms, general functioning, a therapist report, and the child’s ability to articulate who was responsible for the violence, might be important indicators that a less restrictive plan of parenting time should be considered. Unfortunately, too often in Canada, there is little monitoring or reporting back to family courts that make orders, and when this occurs, it is focused on program attendance rather than attaining specific behavioural goals. Too often in high-conflict and family violence cases, the basis for a variation application is the passage of time without serious incident and, perhaps, the limited information about program attendance, rather than the attainment of specified behavioural goals.

5.5 Timing of disclosure and establishing validity of allegations

Disclosures of family violence may be made at many different points of involvement in the child protection, criminal or family process. Disclosures may happen while a couple is still together, at the point of separation, or after the separation. The disclosure of family violence usually triggers a crisis for a family. If family violence is reported to the police by the victim while the parties are living together, the likely arrest of the perpetrator and their removal from the home will mean the disruption of parenting and often have economic repercussions.

Critical factors in whether a disclosure of family violence leads to more intensive investigation include 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 and an ongoing parenting dispute 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 parenting, or to make a claim for a restriction of the role of other parent in the child's life. 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 (Jaffe et al., 2014).

A central issue for separating parents is whether allegations of family violence have become part of a criminal or child protection process, or whether the allegations are left to be resolved in family court. If the police or CPS become involved with the family, and investigate and substantiate family violence concerns, then the family justice system generally does not have to resolve conflicting allegations. However, if reports of family violence are only made after separation, child protection agencies tend to be reluctant to be involved. Child protection workers with heavy caseloads are often relieved when parents are seeking protection through the family law system and may decide not to aggressively pursue a protection 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 parent reporting abuse by the other parent is responsibly caring for the children, child protection workers may be inclined to close the file and leave parenting arrangements to the family court (Birnbaum & Bala, 2022; Olszowy et al., 2021; Scott et al., 2020).

In the absence of investigation and clear documentation of family violence by the police or child protection services, the family justice system is often faced with conflicting allegations and denials by the parents. In a family law case, there is an onus on the party making an allegation to prove it, though the standard of proof is the 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 family violence because of the lack of effective legal representation. Even a family lawyer with experience in this area may have considerable difficulty establishing that abuse occurred if there is a lack of corroborative evidence of the victim's allegations, for example from a doctor, neighbour or babysitter.

As discussed in Section 4, it is not uncommon in contested parenting disputes for the court to appoint an independent psychologist or social worker to assess the case and report to the court, usually including recommendations for a parenting plan that will promote the best interests of the child involved. An assessment can help a court to determine the validity of an abuse allegation, provided that the mental health professional conducting the assessment has appropriate training, knowledge and skills to deal with these especially challenging cases. In many jurisdictions, there is a shortage of professionals who are willing to do this work.

Research on family court files in one locale in Canada found a lack of assessments in general and no risk assessment on the dangers facing adult victims and their children (Neilson et al., 2022).

Post-separation reports of child abuse, especially child sexual abuse, can be very challenging for the family courts. 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. There is, however, also a higher incidence of unsubstantiated allegations of child abuse in the post-separation context than in other situations (Parkinson, 2021; Saini et al, 2020; Trocmé & Bala, 2005). Only a relatively small number of unfounded post-separation allegations of child abuse are due to deliberate or malicious fabrication. More common are cases of post-separation allegations in which the accusing parent has an honestly held (albeit erroneous) belief about abuse, based on the child'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 an unfounded belief that child abuse occurred.

It is important to recognize that many of the unfounded post-separation allegations of child neglect and abuse are made by fathers against primary care mothers or their new partners (Houston et al, 2017; Johnston et al., 2005). It is also important to appreciate even in the context of parental separation, family violence is under-reported, and some victims may be reluctant or even advised not to report for fear of inflaming the dispute or being subject to claims of engaging in alienating behaviour (Hrymak & Hawkins, 2021).

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 must manage their limited resources to ensure repeated assessments and the litigation process are not harming the children. If the accusing parent is the primary caregiving 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 other 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 or a personality disorder (Birnbaum & Bala, 2022).

5.5.1 Interim hearings and temporary orders

The period after separation may be volatile, and victims and their children may be especially vulnerable if they are leaving a relationship where there has been coercive controlling behaviour by a perpetrator. This is also a period of heightened lethality. If the police are involved and a criminal proceeding has been commenced, conditions of release of the alleged perpetrator on bail may provide some protection and stability.

If criminal proceedings have not been commenced, the period after separation can be especially challenging for victims, their lawyers, and the family courts. There may be conflicting claims, and little time to secure evidence to prove what has occurred, especially in the context of an interim hearing that is often based only on affidavit evidence, without cross-examination. Further, the children may be unsettled as parental care arrangements and often their place of residence may be in flux. While the requirement of the amended *Divorce Act* s.16(2) to give priority to child safety may be especially significant at the initial stages of the family court process, there remains a concern that parental relationships should be maintained if possible. Initial orders that require supervision or restrictions on parenting time will often be time-limited to avoid jeopardizing the children's relationship with an alleged perpetrator if the allegations are unfounded, based on misunderstandings, or less serious than alleged.

The need for a “cautious approach” at the initial stages of a family proceeding where violence is alleged was recognized by the Quebec Court of Appeal in *Droit de la famille – 21917*. The parents lived together for over three years and had two young children. The mother left the family home with the two young children and went to live with her parents, claiming that she was the victim physical, emotional and sexual violence. She was prepared to allow the father to have parenting time, but he applied for a “nesting order” that would have the children living in the former family home, and each parent moving in for their parenting time and then moving out. Within two months of separation, a trial judge granted the father’s request for a nesting order, which had the advantage of allowing the children to remain in their home but raised real concerns about the safety of the mother and the potential for her continued abuse. The Quebec Court of Appeal had an expedited hearing and reversed the nesting order, requiring the parents to exercise their parenting time in their own residences, with Justice Hogue writing:

I would reiterate that, at this point, that the spousal abuse allegations are unresolved, and cannot be assumed to be true. I would add, however, that they cannot be ignored either. That being said, I believe that forcing the [mother] to live in the family residence when she exercises her parental time a residence to which the [father] would necessarily have access and to which he would have the key given that he would also be required to exercise his parental time there, is likely to cause irreparable harm to the [mother].

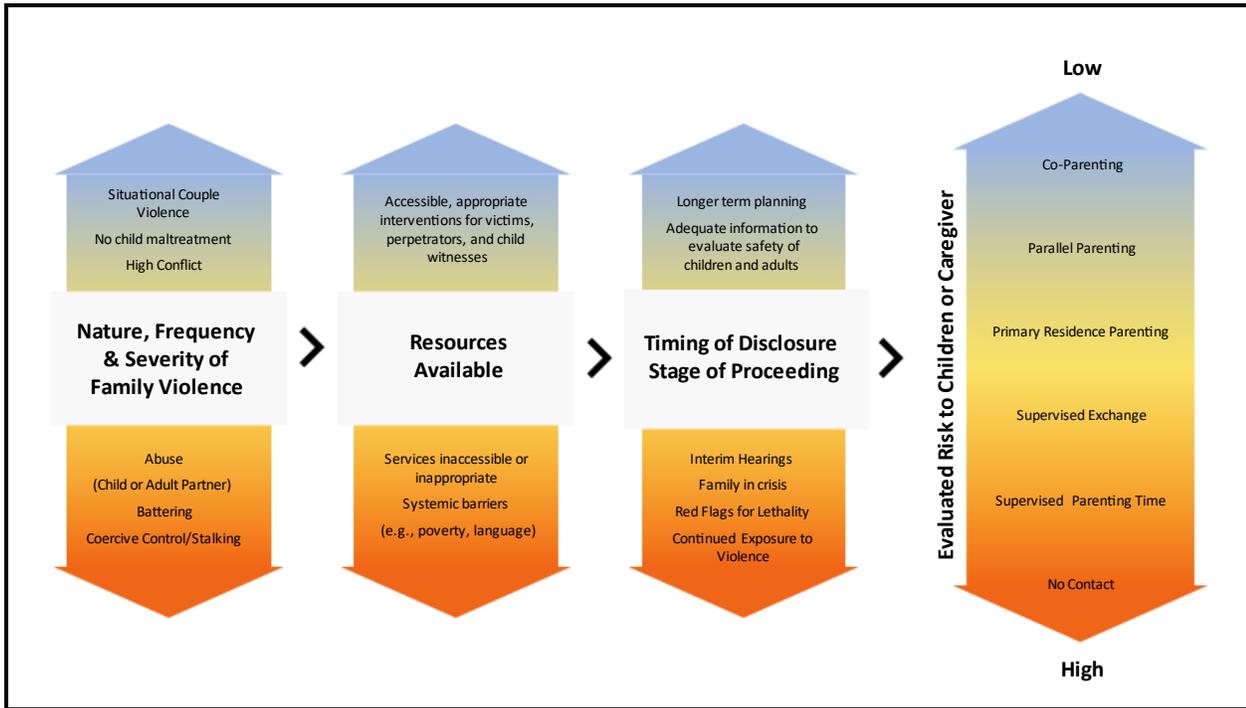
In addition to creating a feeling of insecurity in her, maintaining this order would force the applicant to leave her parents' home and to remain, during the exercise of her parental time, in a place where the respondent could enter easily..... This, in my opinion, could constitute a serious danger for her physical, psychological and sexual integrity if it were eventually to be shown that she was indeed the victim of domestic violence.

I recognize that it is possible that the spousal abuse allegations may eventually turn out to be unfounded, but at this point I believe that one must exercise caution and accept that they may be true in order to determine there is irreparable harm.⁸

The Court of Appeal ordered that the parents have their next attendance in the family proceedings within two months. If there is evidence that raises significant family violence concerns, but there is a lack of sufficient evidence to establish whether there are legitimate child safety concerns, a temporary supervised parenting arrangement may serve a dual purpose of protecting alleged victims from potential threat, and protecting wrongly accused perpetrators from further allegations. A more permanent arrangement must be made after further information is gathered. Figure 7 depicts this dimension of timing of disclosure/stage of proceeding as an additional consideration.

⁸ *Droit de la famille – 21917*, 2021 QCCA 864 (CanLII), at para. 24-27. Translation by the authors.

Figure 7: Parenting arrangements after family violence as a function of history of violence, resources available and timing of disclosure



5.5.2 Orders at trial and review

Trials over parenting issues in family court are usually held many months, or even years, after separation. If the parties have resources, they will have had time to marshal evidence. There may also be a court-ordered assessment. The parents’ conduct since the separation may also be very revealing.

If the family violence concerns are proven to be founded, the court will look for evidence about the effects of the violence on the parents and children as well as the resources needed for rehabilitation and safe contact. Family court orders made after a trial are generally intended to be final and remain in effect until there is a variation application, which requires a “material change in circumstances,” or the parties agree to make a change. However, in cases involving high conflict or family violence, there may need to be provisions in the order made after trial for judicial review or monitoring. Although the courts and parties 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 (Bala et al., 2010; Martinson, 2010).

5.5.3 Re-establishing a child’s relationship with a parent who has abused the other parent

Courts often seek to discourage parents from getting into prolonged litigation because of the emotional and financial costs as well as the negative impact of ongoing conflict on children (Jaffe et al., 2010). Once a case enters the litigation process, there are many options for lawyers and judges to consider, such as a court-ordered assessment by a mental health professional, court monitoring and case management by a single judge (see Martinson & Jackson, 2017). In general, if there are findings of family violence or child abuse, a key step beyond safety planning and risk management is providing treatment for the victimized parent and the children who may

have been traumatized by their exposure to the domestic violence or direct abuse. Another important step is providing family violence interventions for the abuser, if they are willing to engage.

Some parents who have been perpetrators of family violence will continue to deny or minimize their conduct and will be resistant to change, but others may, over time, be willing to accept at least some responsibility and be willing to change to have a good relationship with their children. Perpetrators who are willing to change may go through stages of response in the family litigation process. The first stage often involves the abuser's denial and minimization of the abuse; the second stage is the admission of violence but the lack of connection to the children's welfare ("intimate partner violence is an adult issue"), and the third stage may be the acknowledgment of the connection but an assertion that there is no future risk, and the victim therefore should forgive and move on. When the victim does not move on, either because they are still traumatized, the children are still uncomfortable or traumatized, or there is still a risk from the perpetrator, the victim parent is often accused of not promoting a proper relationship with the other parent, and perhaps of alienation (Hrymak & Hawkins, 2021).

Strained parent-child relationship problems are often the result of the complex interaction of many factors and vary in severity (see Faust, 2017; Johnston et al., 2005). After separation, children may resist or refuse contact with a parent, and it is important to differentiate the types of parent-child contact problems. To move forward with any intervention in cases where family violence has been verified, there must first be a resolution of the issues related to this violence. There is some agreement in the field (e.g., Bancroft & Silverman, 2002) that the following elements are necessary for children to recover from exposure to abusive behaviour:

- a child's sense of physical and emotional safety;
- structure, limits and predictability;
- a child's strong bond to the non-abusive parent, as well as to their siblings;
- a child not feeling the need to be responsible to take care of adults; and
- contact with the abusive parent only when the child is ready, accompanied by strong protection for their physical and emotional safety.

Critical to moving forward with a relationship with an abusive parent and assessing the risk to children is assessing the abuser's capacity and willingness to change behaviour. The following issues (see Bancroft & Silverman, 2002) should be addressed:

- **Full disclosure of the history of the abuse.** The abuser should overcome denial and minimization in order to confront the abusive behaviours in a meaningful way.
- **Recognize that the abusive behaviour is unacceptable.** The abuser should acknowledge that their abusive behaviour was wrong and not continue to justify their past behaviour (e.g., through blaming the victim).
- **Recognize that the abusive behaviour is a choice.** The abuser should accept full responsibility, which includes recognition that abusive behaviour was intentional and instrumental.
- **Show empathy for the effects of their actions on their partner and children.** The abuser must show the ability to recognize the impact of the abuse on the victimized partner and children, without shifting the focus to their own emotional needs or grievances.
- **Develop respectful behaviours and attitudes.** The abuser must identify their pattern of controlling behaviours and attitudes and demonstrate that they have developed respectful behaviours and attitudes.

- **Make amends and be accountable such that the victim parent and children are able to feel safe.** The abuser must take action to lay aside their own grievances and recognize that abusive behaviour carries consequences with it. Recognizing these consequences, the abuser must take steps to be accountable for the harm they have caused; specifically, they must take actions and make changes that will allow the victim parent and children to feel physically, emotionally, and psychologically safe with them.

The list above reflects important therapeutic steps. If an abuser cannot acknowledge the impact of their behaviour on the children and make changes to their behaviour, the emotional and physical safety of the children will remain compromised. The victim parent needs to feel safe for the child to feel safe with the parent who has been the abuser. It may be that the abuser needs to participate in an abuser program to examine their attitudes and behaviours and make meaningful change in their abusive behaviour.

Abusers need to prove themselves to be a safe and reliable person to the children. There are also specialized programs which may be helpful in focusing an abuser on their role as a parent (see Crooks et al., 2006; Scott et al., 2021). However, attendance at a program like Caring Dads (2023) is only meaningful if there was evidence of active participation, accountability and demonstrated learning. Such a program could help a father who has behaved abusively make changes that should be a pre-requisite to greater parenting time.

Creating a better relationship with children requires an abuser to recognize that this commitment is a process and not a quick fix. Timelines for increased parenting should be conditional on the abuser's acceptance and responsibility, the abuser's progress and treatment, and critically, on the time it may take for victims and children to feel a sense of safety. It is not unusual for an abuser to have multiple challenges or co-morbid disorders beyond the abuse, including issues such as mental health problems and addictions that require their own unique intervention. The perpetrator's willingness to proceed can be assessed by their motivation to follow through on these steps, which may be a positive sign that they would more likely follow through with developing a healthy relationship with the children.

Aside from the steps outlined above, another important consideration is the children's readiness for contact based on their response to individual trauma-based therapy prior to any reintegration with the abusive parent. Ongoing assessment is essential to determine when the reintegration, supported by counselling, may be indicated. Any contact the child has with the abusive parent needs to be supervised initially in combination with court monitoring or child protection agency case management to assess whether the contact should continue, and if so, under what circumstances (i.e., frequency, duration, location and extended supervision).

6.0 Conclusions

This paper is a revision of the 2005 Justice Canada publication, *entitled Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices* (Jaffe et al., 2005). This updated paper captures the significant changes in the field including major legislative reforms. Amendments to the *Divorce Act* that came into force in March 2021 include a comprehensive definition of family violence and recognize the importance of a coercive control framework. These amendments make the federal statute consistent with provincial and territorial laws that already recognized the significance of family violence for making post-separation parenting plans.

We have reviewed the literature and applied our analysis to developing parenting plans in the context of separation and family violence allegations. The paper discusses a number of themes:

1. Family violence is a serious problem across Canada that impacts adult victims and children in terms of their physical and psychological well-being, which includes their personal safety. Family violence can be lethal.
2. Legal and social responses to family violence cases require a recognition of the harm to children. Children may be traumatized by direct and indirect exposure to family violence. Children who have been exposed to family violence can experience lifelong negative effects.
3. Coercive control has become a critical concept both in law and in research. Coercive control refers to a pattern of abuse over time that maintains power over an intimate partner through a variety of means including threats, intimidation, as well as emotional and financial abuse.
4. Intersectional considerations are required to determine the most appropriate parenting plan in the context of family violence. This requires consideration of an individual's life circumstances, including such factors as socioeconomic class and resources, immigration status, race, ethnicity and Indigeneity, religion, and disability. A one-size-fits-all focus on post-separation parenting is not appropriate for family violence cases.
5. Separation can increase the immediate risks of serious harm or death from family violence for adult victims and children.
6. All cases of divorce and separation need to have an initial screening for family violence by family justice professionals, as well as ongoing monitoring.
7. Specific considerations for decision-making about post-separation parenting when there are findings of family violence include a thorough examination of the parenting of the abusive parent as well as understanding of the parenting decisions of the victim parent.
8. Findings of family violence are a contra-indication of a co-parenting arrangement after separation. Co-parenting cannot take place in the context of continuing fear and trauma from a history of family violence. Supervised exchanges or supervised parenting time may be essential for adult and child victim safety.
9. Significant caution should be used when assessing claims of parental alienation made against parents who may be victims of family violence.
10. Family courts may fail to recognize or misinterpret survivors' ways of responding to violence and the influence of systemic and structural violence on families, including the influence of violence on decisions that parents make in caring for their children and in acting to protect them from family violence.

11. Raising concerns about family violence may well increase a victim's financial and emotional costs in the court process but may be essential to protect their children and themselves. Lawyers, judges and family justice professionals need to be aware that abusers may misuse the court process to continue patterns of coercive control in their intimate relationship in court proceedings.
12. Findings of family violence should lead to a differentiated approach to parenting arrangements depending on the severity and history of family violence and coercive control, the timing of the disclosures (e.g., a temporary versus more stable plan) and the resources available to address safety for the adult and child victims.

There is no doubt that there has been a heightened focus on family violence issues in family courts across Canada. There are ongoing efforts by many, including governments, law societies, professional organizations, and the National Judicial Institute to provide educational opportunities for lawyers and judges and to increase awareness and understanding of family violence and the legislative reforms aimed to address it. Similar professional education programs are being offered to other family justice professionals, including mediators, assessors, and mental health professionals. There are also ongoing efforts to educate members of the public, in particular victims and perpetrators of family violence, and to improve access to services.

There is a clear 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 justice, criminal justice, child protection and immigration proceedings. Specific protocols are required to guide practitioners and judges in managing cases with family violence allegations that fall into the area of overlap between safety concerns for children (i.e., triggering criminal justice or child protection process) and disputes between parents. Family courts rarely have access to the resources they require to handle these more complex cases, which require interventions that go beyond parent education and mediation services. The required resources for these cases include timely access to free or affordable legal services for IPV victims; timely access to specially trained parenting assessors with expertise in family violence and alienation; supervised parenting services; 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 to monitor family members' progress and revise parenting arrangements as needed. It is not sufficient to assume that no news is good news in these cases. Ongoing reporting to the court and judicial case management and monitoring may be required in parenting disputes with histories of family violence.

There is also increasing awareness about the need for courts to be informed about the effects of trauma and ensuring that judges and court-related professionals contribute to system changes that recognize the special needs of victims and their children (Deutsch et al., 2020; Sickmund, 2016). There is little written in Canada about the progress in developing trauma-informed family courts. The one population that has been repeatedly identified in Canada as needing specific approaches to recognize its history of oppression and colonization are Indigenous peoples (Truth and Reconciliation Commission, 2015); there is growing recognition that Indigenous individuals and families need trauma-informed legal processes. These issues are starting to be addressed in the criminal justice system, with growing recognition of the disproportional incarceration of Indigenous offenders, but there is a lack of awareness let alone resources in Canada's family courts for trauma-informed approaches. This topic requires a separate paper from Indigenous voices.

Justice and the promotion of the welfare of children require an understanding of needs of diverse populations to access the justice system. As one example, there are significant gaps in providing culturally and linguistically appropriate services for racialized immigrant women and their children involved in the justice system. Few

existing services recognize their multiple intersecting vulnerabilities, systemic barriers, and cultural realities. There is a lack of coordination between different institutions providing services to these women. The issue of systemic racism is a challenge for survivors when trying to access IPV services (George et al., 2022). To respond to these gaps, there is a need for interdisciplinary, holistic and culturally informed services (George et al., 2022).

There are other vulnerable groups who experience significant barriers to disclosing family violence and accessing necessary services such as victims living in rural communities (Youngson et al., 2021) and the 2SLGBTQ+ population (Abramovich et al., 2022). Reference to this context must be incorporated into analyses of the best interests of the child and parenting arrangements.

Finally, there are significant gaps in the existing research that limit the understanding of these cases and identification of best practices on how to respond. 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 court system, and less is known about the long-term experiences of those who do not commence court proceedings. Research about post-separation parenting has also been criticized for looking at the outcome of biased samples. For example, the promotion of shared parenting is largely based on retrospective studies of cooperative couples. 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 largely developed independently of each other. Approaches to high-conflict cases involving family violence are often misguided by applying a general understanding of separating and divorcing parents that includes many who are not involved in litigation and have no history of abuse. Our goal in this document is to assist policy makers, practitioners and researchers by bridging the family violence and divorce literatures and outlining a framework for examining situations where these issues may be present, especially in the face of major reforms in family legislation in Canada.

Supplement # 1: Differentiated approaches to parenting arrangements after family violence

Each family is unique, and there is not a one-size-fits-all model for parenting arrangements, especially for family violence cases. Parenting arrangements after separation always need to be tailored to address the needs of the children, the abilities of the parents, and their ability to parent together. Family violence allegations and findings require special considerations to address the best interests of the children and ensure the safety of children and victimized parents.

The diagram below outlines a framework to approach parenting arrangements in cases where there are family violence issues. At one end of the continuum, there are cases where there is no doubt that a parent has perpetrated a pattern of abusive coercive controlling behaviour over time, with little remorse or investment in treatment; in these cases, that parent should have either no parenting or limited supervised parenting by highly trained professional staff. At the other end of the continuum, there is an isolated incident of spousal abuse that is out of character, accompanied by genuine remorse, no ongoing fear or trauma, and evidence of a current ability to respect and value the contribution of the other parent; in this case, a co-parenting arrangement may be appropriate. In between these extremes, there are multiple possibilities for matching parenting arrangements to families.

Multiple factors need to be considered, such as the nature and severity of the family violence and the impact on parents and children. A critical consideration is the resources available to support and protect victims and offer remediation and supervision for abusers. The stage of proceedings and available information to professionals and the court are also important. For example, the situation at the time of separation, which is often a time of particular risk and vulnerability for family violence, may be very different from the situation at the time of a possible trial a year or more after separation. At the time of trial, there may be much more information available from multiple professionals and a post-separation pattern of behaviour to consider.

Co-parenting

Co-parenting refers to an arrangement in which separated parents cooperate relatively closely in all aspects of raising their children. This arrangement may often roughly approximate the pre-separation pattern of care for the children, with both parents actively involved in the lives of their children, sharing care and information, and cooperatively problem-solving the normal challenges of parenting as they arise. Co-parenting requires two parents who can maintain a civil and child-focused relationship post-separation. There should be mutual trust and respect that allows for constructive communication between parents. Co-parenting is contra-indicated by continuing family violence, including concerns about continuing effects of coercive controlling behaviour on victims.

Parallel parenting

Parallel parenting describes an arrangement where each parent is significantly involved in the children's lives, but the arrangement is structured to minimize contact between the parents. Each parent makes day-to-day decisions independently of each other when the children are in their care, and responsibility for major decisions, like education, is allocated to one parent. Parallel parenting is generally only appropriate for children if, despite their conflicts, the parents have fundamentally similar ideas and expectations about parenting and child-rearing. Whether a parallel parenting arrangement might be appropriate in the aftermath of violence towards children, or an adult partner generally requires a careful assessment by a professional with a background in family

violence cases. Factors critical to this determination include whether the perpetrator of the violence has taken responsibility and successfully completed an intervention; whether the children have received 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 or the other parent clearly contra-indicates a parallel parenting arrangement.

Primary residence parenting

Primary Residence Parenting is somewhat analogous to what occurred before the 2021 *Divorce Act* reforms when one parent had custody of the children, and the other parent had a limited access schedule. Primary residence parenting arrangements place the child primarily in the care of one parent while the other parent has a more limited role. This recognizes that there are limitations to the ability of the other parent to make positive contributions to the child, possibly due to ongoing concerns about that parent's use of coercive control, an inability to prioritize the child's needs over their acrimony toward the primary parent, or serious concerns about their parenting capacity, mental health, or substance use. A primary residence parenting arrangement assumes that there are no safety concerns that would require supervision for exchanges or supervision of the parenting time. It also assumes that the parenting time is not being used to undermine the primary residence parent. This type of arrangement may work best when the family violence by one parent has been acknowledged, there is an intervention plan in place to address the past conduct and its impact, and safety concerns are adequately addressed.

Supervised exchange

Supervised Exchange involves transferring children from the care of 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 by using a public venue for the exchange, such as the parking lot of a fast-food restaurant or, if necessary, a police station. The supervision can also be formalized through the use of a designated professional, such as a childcare worker, social worker, or agency. The history of family violence in these cases raises enough concern to keep the victim parent away from the abusive partner, but the children are deemed not to be at risk.

Supervised parenting time

Supervised Parenting Time is an arrangement designed to promote safe contact with a parent who presents as a risk due to a range of behaviour, from physical or emotional abuse to possible abduction of the child. It may also be appropriate when a child has fears of a parent, for example, because of having witnessed the parent perpetrate abuse or having been personally abused by that parent, but still wants to maintain a relationship. Supervised parenting time should only be undertaken if it is believed that a child will benefit from a parent maintaining an ongoing role in the child's life. Like supervised exchanges, supervised parenting time may vary in formality from extended family or volunteers to a specialized centre with professional staff with expertise in these issues. Related to this is the use of therapeutic supervised parenting time, where a mental health professional is involved in trying to improve a troubled parent-child relationship through counselling and support during this parenting time. Supervised parenting time should normally be a short-term solution to concerns about child safety, though in some cases, it may continue for years where these concerns are ongoing, but the child continues to enjoy seeing the parent.

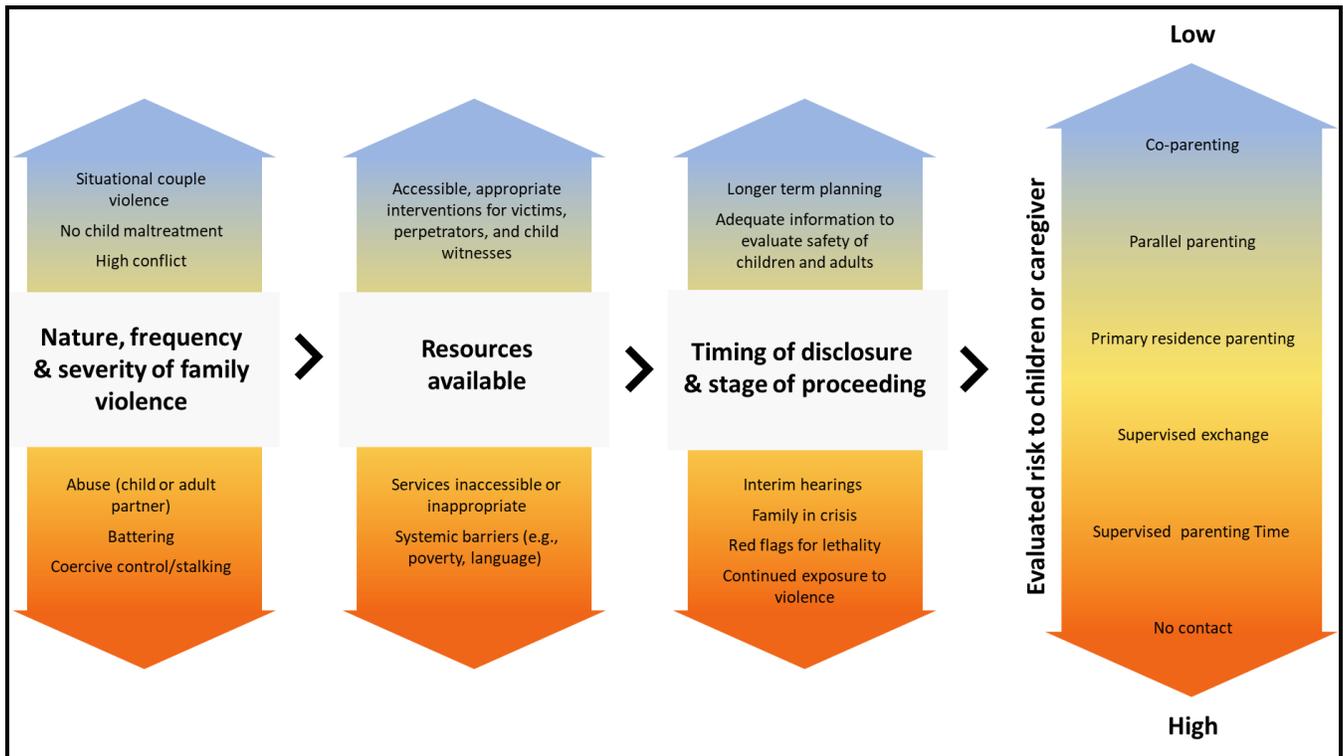
No contact or suspended parenting time

No Contact or Suspended Parenting Time is appropriate when a parent presents an ongoing risk of violence to the child or other parent, including emotional abuse to the child or threats of abduction. In these cases, the court may be required to suspend all parenting on a short or long-term basis.

Parenting arrangements after family violence as a function of history of violence, resources available, and timing of disclosure

The diagram below outlines the factors to consider in developing the most appropriate parenting arrangement based on the nature and severity of the family violence, the resources available to address the issues presented by the victim, abuser, and children, as well as the stage of the proceedings in the decision-making process. The possible parenting arrangements are shown on the far right in descending order of level of risk to children or to the parent who has been victimized by family violence. Co-parenting at the top would be consistent with a minimal or no history of family violence, and no contact at the bottom would be the opposite extreme for a case with a parent presenting as high risk. The other factors to consider in this framework – severity of family violence, resources available and stage of the proceedings - are all factors that must be considered as part of the level of risk of harm to children and parents. The orange factors at the bottom of each bar would raise concern about the level of risk.

Figure 1: Parenting arrangements after family violence as a function of history of violence, resources available and timing of disclosure



Supplement # 2: Coercive control as a form of family violence

Coercive control as a form of family violence

The federal *Divorce Act* and provincial and territorial family legislation recognize many forms of family violence. Family violence is now understood as more than just individual acts of physical and sexual abuse. It is essential to assess whether there has been a pattern of abuse over time that is aimed at maintaining power over an intimate partner and/or children through a variety of means such as threats, intimidation, and emotional, sexual, or financial abuse. Coercive control can have a profound impact on both adult victims and children exposed to this behaviour. Coercive control compromises the victim's independence, self-esteem, and safety.

What is coercive control?

...a pattern of abusive behaviours used to control or dominate a family member or intimate partner.

Coercive control may involve a range of behaviours during a relationship, and following separation, including the following:

- Intimidation, making threats to harm the victim or themselves (self-harm, suicide)
- Minimizing and denying the abuse
- Isolating the victim from friends, family, or work/school
- Emotional abuse such as constant criticism and degrading verbal abuse
- Economic abuse and control
- Stalking and monitoring

Coercive control may limit the victim's freedom and choices in many ways, and often has consequences for parenting arrangements. Some of the effects of coercive control include:

- Undermining the victim's sense of physical safety and/or creating a sense of fear for self or other loved ones
- Violating the victim's sense of emotional safety and/or creating a sense of serious distress and alarm for the emotional safety of self or other loved ones
- Creating conditions of subordination, dependency, or entrapment in a relationship
- Violating or removing the autonomy of the victim by controlling or greatly disrupting their daily activities
- Undermining a victim's credibility and making them doubt the reality of their experiences

Coercive control very often continues after separation:

- Abuser blames the victim for the violence
- Abuser minimizes their role in the violence
- Abuser uses the children by trying to turn them against the victim or getting them to spy on the victim
- Violence is ongoing
- Litigation abuse occurs including bullying that seeks to use up the victim's resources, failing to follow through on agreed-upon plans, making false claims that the victim abused or kidnapped their children, undermining victim's credibility (e.g., calling the victim a liar)

Findings of coercive control have significant implications for parenting arrangements. Critical considerations include the following:

- Reduce opportunities for ongoing abuse through well-structured decision-making and parenting time arrangements
- Develop and implement a safety plan
- Minimize ongoing contact between the parents
- Co-parenting is not appropriate in coercive control cases
- Seek supervision of parenting time where necessary
- Recognize litigation abuse as a form of ongoing coercive control

Coercive control is family violence

Coercive control is a common form of family violence. Understanding the nature and impact of coercive control is essential for family courts and legal professionals.

Coercive control involves repeated acts of humiliation, intimidation, isolation, exploitation and/or manipulation, frequently accompanied by acts of physical or sexual coercion. This form of abuse is **characterized by the ongoing way it removes the autonomy of the victim**, often entrapping them in the relationship, and causing distinct emotional, psychological, economic, and physical harms.

Coercive control is now recognized as a **form of family violence in the *Divorce Act*** and most provincial and territorial family laws.



Family violence is defined in the *Divorce Act* as any behaviour by a family member towards another family member that is:

- violent, or
- threatening, or
- a pattern of coercive and controlling behaviour, or that
- causes a family member to fear for their safety or the safety of another person

and in the case of a child, the direct or indirect exposure to such conduct.

Your client may feel:



- Afraid for themselves or loved ones
- Unsafe due to violations of no-contact orders
- Worn down and exhausted
- That they are second guessing themselves
- At the whim of their ex-partner
- Financially dependent on their ex-partner
- Unable to get away from their ex-partner
- Micro-managed by their ex-partner
- That their daily activities are disrupted
- Like they are “crazy”
- That they cannot trust their own decisions

Any of the impacts above may be signs of coercive control and family violence.

It is important that your client can share their experiences in court and receive the counselling they require from specialized services in the community. Their children may also require counselling to deal with the family violence they have been exposed to.

Perpetrators of coercive control need to acknowledge and take responsibility for their behaviour as a first step in getting help for themselves.

Lawyers should look for patterns of behaviour, know that violence is likely to continue following separation, and understand how it can impact the family law process and parenting arrangements.



Harassment

Aggressive pressure or intimidation, constant calling, or messaging. Using

victim's identity against them, including racist and sexist slurs.



Isolating

Stopping victim from seeing family, friends, or work colleagues.



Technological abuse

Viewing text messages, emails, and social media without consent. Electronic stalking. Controlling phone access.



Financial abuse

Limiting access to money and controlling how it is spent, not paying child support, not providing financial information.



Blaming & degrading

Putting down, humiliating, using secrets against victim, sharing intimate photos, blaming victim for all family problems.

Coercive Control



Stalking

Following or making victim feel like their activities and whereabouts are being monitored at all times.



Physical & sexual abuse

Hitting, kicking, punching, injuring, pressuring into nonconsensual sex acts, forced pregnancy or abortion.



Gaslighting

Causing confusion, manipulating emotions, encouraging self-doubt, and making victim feel like they're going crazy.



Threatening

Threats, including from extended family to kill, hurt or ruin life of victim or their family, friends, or pets.



Emotional abuse

Constantly questioning or saying that victim is lying. Posting intimate images on social media.

Family violence with coercive control



Factors to consider when gathering evidence:

- History of the relationship and the **forms of abuse and threats that have been used to try to control** the victim and/or children
- Reports or observations of this conduct by third parties such as friends, relatives, co-workers, or professionals
- **Litigation abuse** as a continuing form of coercive control after the end of cohabitation
- Past and ongoing impact of abusive behaviours on children, on parenting, and on parent-child relationships



How to deal with it:

- Document to demonstrate patterns of conduct rather than isolated acts of abuse
- Recognize that exposure to coercive control is **harmful** to children
- Document harm to victim and/or children in terms of how the coercive control **affects** family members



Impact on parenting arrangements:

- Co-parenting and joint decision-making are **inappropriate** since they may allow continuation of the pattern of abuse
- Supervised parenting time or suspension of parental contact **may be required**
- A minimum requirement is a highly structured parenting arrangement with little flexibility to avoid ongoing disagreements and litigation

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C. v. A.J., 2021 ONSC 8191 (Ont. S.C.J.).

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MHS v MR, 2021 ONCJ 665.

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Training materials, websites, and webinars

Association of Family and Conciliation Courts. <https://www.afccnet.org/Resource-Center/Practice-Guidelines>

Canadian Domestic Homicide Prevention Initiative. www.cdhpi.ca

Caring Dads. <https://www.caringdads.org/>

Centre for Judicial Excellence. <https://centerforjudicialexcellence.org/>

FVFL - Family Violence Family Law: Supporting the Health of Survivors of Family Violence in Family Law Proceedings <https://www.fvfl-vfdf.ca/home.html>

Family Violence Screening Tools for Family Law Practitioners. <https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/can-peut.pdf>

HELP Toolkit. <https://www.justice.gc.ca/eng/fl-df/help-aide/index.html>

Intimate Partner Violence Risk Identification & Assessment Framework in Family Court. <https://www.schliferclinic.com/wp-content/uploads/2020/12/IPV-RIA-User-Guide-Final.pdf>

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