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When Shared Parenting and the Safety of Women and Children Collide

By Pamela Cross, B.A., LLB
Legal Director, Luke's Place Support and Resource Centre

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Introduction

Women who have left abusive partners need and deserve a legal system that is able to adequately assess and address the violence they have experienced in its decision-making about child custody and access. Outcomes of family court decisions about custody and access should contribute to the safety of women and children, not detract from it. Yet many of us who provide family court support to women leaving abusive relationships observe that family court systems in Canada do not understand the ongoing impact of intimate partner abuse on women, many of whom are dealing with post-separation abuse, with the result that custody and access outcomes too often force women and children into unsafe – even lethal – contact with their abuser for many years (Harrison, 2008; Hardesty, Khaw, Chung, & Martin, 2008; Holt, 2015).

This paper explores this topic from an experience-based perspective: my work as a family law lawyer representing women who had experienced abuse and my work at the systemic level as a community researcher, educator and advocate, working with frontline workers who support women involved with family court after leaving abusive relationships. It reflects the stories and lived experiences of hundreds of women that I have encountered either directly or through their legal support workers.

Certainly, there are differences in the potency, pervasiveness, perpetration, pattern and impact of the abuse that many women experience in their intimate relationships (Jaffe, Johnston, Crooks & Bala, 2008). There are incidents of violence that are relatively minor and that don't provoke fear. Violence in relationships is sometimes mutually perpetrated or occurs as an isolated incident. On the other hand, some violence is severe, injurious and controlling with pervasive impacts on the lives of victims. These different "types" or patterns of violence have different implications for custody and access. Historic and/or ongoing experiences of severe, controlling, fear-provoking abuse should preclude the possibility of shared parenting. The environment for such an arrangement simply does not exist. In our experiences, the abuser is motivated by his need for ongoing power and control, not by concern for what is best for his children, and does not enter

the process – either litigation or alternative dispute resolution – in good faith. The mother’s ability to collaborate with her former partner – or, often, to even just communicate with him – will be compromised by her ongoing fear.

Parenting is about much more than getting kids to and from soccer practice. It involves decision-making about difficult issues, managing children through crises, negotiating with adolescents and teenagers who are testing the limits of their independence, and so on; all of which requires parents to be able to communicate effectively, trust one another and present at least a somewhat common face to the children. In a situation of ongoing abuse, all of these points of contact are potential locations for abuse. Mothers are trapped in an ongoing relationship with their abuser, exposed to the threat and reality of ongoing physical and emotional violence, rather than being free to move onto a life free from violence. Children become tools of their father in his ongoing quest to intimidate and harass their mother and continue to be exposed to the abuse of their mother by their father. The abuser may get what he wants – ongoing contact with and power over his former partner – but at the expense of everyone else in the family.

Although not an easy task, a number of frameworks have been advanced to help custody and access assessors and family court judges distinguish between couples in unhealthy relationships, who engage in mean, disrespectful treatment of one another but where neither partner fears the other (what Kelly and Johnson call situational couple violence) and those where there is ongoing risk of physical harm coupled with intense fear by one partner of the other (Kelly and Johnson’s coercive controlling violence) so that these differences can be taken into account.

The purpose of this paper is not to review the models of differentiation, but rather to consider what it might take for such assessments to become common practice within family court. I argue that our current system, premised on “friendly parenting,” does not listen to women’s voices and does not understand the potentially ongoing impact of intimate partner abuse on women. To work towards new approaches and best practices that could integrate concerns of high risk violence cases into family court decisions, this paper reviews what contributes to the existing

context: the impact of a so-called gender neutral framework in family court, the historic and ongoing role of the fathers' rights movement, the limited understanding of the long-term dynamics of abuse, the ongoing prevalence of idealized notions of families and fathers, the false construction of an inherent conflict between mothers' and children's interests and the role of the family court process itself, including the lack of legal representation for many litigants. I also consider the specific impacts of these barriers on those women whose experiences of past and current abuse are severe, fear-provoking, controlling and potentially lethal. Finally, I highlight some emerging best practices for consideration of intimate partner abuse in family court.

"Friendly parenting" in family court

A first barrier to adequate assessment and consideration of intimate partner abuse is the focus of the family court on "friendly parenting." Many of us who provide family court support to women leaving abusive relationships observe that these women start from a position of having to convince judges and others involved in the family court process (court staff, mediators, duty counsel, parenting coordinators, those conducting safety assessments and even women's own lawyers) that shared parenting (collaborative arrangements in which both parents are significantly and actively involved in raising their children) should not be the automatic or default arrangement.

While not said in so many words, and certainly not set out explicitly in the law, there appears to be a culture in many Canadian and American family courts that "good" parents – parents who put their children's best interests first – will find a way to parent collaboratively post-separation, regardless of any historical or ongoing abuse. Many women report that subtle and not so subtle hints are dropped by those they encounter through the family court process that they should set their concerns for safety aside in order to put their children first (which is a profound insult to women who are intensely focused on their children's well-being, often to the detriment of their own). They are told – sometimes even by their own lawyer – that judges like parents who are

prepared to work together to raise their children and are warned that if they do not appear “reasonable” (which seems to mean being receptive to joint custody and/or extensive access with no built-in safeguards) they will suffer the consequence for their failure to cooperate in the form of inappropriate and unsafe custody and access regimes. For women who have escaped from severe, controlling abuse and who continue to be impacted by post-separation violence, these messages are unsupportive, at best. This approach denies the realities of the violence that these women have experienced and undermines their attempts to gain the court’s support for long-term safety of themselves and their children.

Impact of a so-called gender-neutral framework

Too often, public discourse and policy about violence against women has been based on a so-called gender-neutral analysis which is, more often than not, anything but gender-neutral. Policy analysis that makes this claim, in fact, reflects and reinforces the status quo and maintains the ongoing inequality of women, with the result that outcomes are often unsuccessful, inadequate or counter-productive even, at times, worsening the problem. Public discourse also originates in what many would call a culture-neutral place, which denies the complex intersectional realities faced by many families. This is particularly apparent when looking at violence experienced by women within the family. Often called domestic or intimate partner violence by those setting and implementing policy and programming, violence within the family is, in fact, highly gendered, is significantly affected by the social location of women and others in the family and would more appropriately be labelled as a form of violence against women. As Deborah Sinclair (2003, p.11) wrote:

The challenge is to name the problem accurately and not to be silenced by the reaction. The mission is a monumental one – to reclaim expertise and reflect the truth about women’s lives as seen, known and understood on the front lines of the violence epidemic. A gender-neutral analysis of woman abuse, which assumes a level playing field between men and women, does not aid equality but rather renders invisible the

inequalities that exist between the genders.

In its 2009 report, Ontario's Domestic Violence Advisory Council reached a similar conclusion that gender-neutral language misrepresents the nature of violence and impedes the development of good policies and programs. To make effective and appropriate custody and access decisions in families where violence is present, courts need to abandon the so-called gender-neutral framework and replace it with a framework that puts intimate partner violence against women on a continuum with varying degrees of severity, frequency and impact. This will lead to better decision-making with respect to possible sanctions for the abuser, determinations about whether parent-child contact is appropriate and, if so, what it should look like, and parenting plans that are healthy for children and parent-child relationships.

It is also worth noting that when intimate partner violence is looked at in this differential way, it immediately becomes apparent that most victims of the most serious abuse – coercive controlling violence – are women and most of the perpetrators are men (Kelly & Johnson, 2008). When family courts group all of these kinds of relationships together, the problem is incorrectly identified, the gendered reality of family violence is missed, and a one-size fits-all approach that focuses on maximum contact between children and both parents regardless of the history of abuse follows, which leaves these particular women and children exposed to ongoing danger.

The fathers' rights movement and legislative reform

The introduction of the federal child support guidelines in 1997 led to the emergence of a strong and vocal Canadian fathers' rights movement with its eye fixed firmly on the issue of shared parenting. This movement claimed that the child support guidelines favored "vindictive" and "vengeful" women who wanted nothing more than to separate men from their wallets while also interfering in their relationships with their children. They quickly seized on one of the exceptions in the guidelines which allowed for a different calculation

of child support if the children were spending at least 40 per cent of their time with each parent and mounted an emotional media campaign, arguing that family courts discriminated against fathers by systematically granting custody to mothers. They legitimated their claim by representing themselves as the objects of sexual discrimination, in a legal system that they claimed held biases in favour of women. Using a “personal troubles discourse” (Bertoia & Drakich, 1993), they successfully positioned themselves as victims. They also organized a vigorous and strong-armed lobby on both national and provincial levels, as well as a network of local grassroots groups (Côté, Cross, Curtis & Morrow, 2001).

Since 1997, a number of federal law reform initiatives with respect to the custody and access provisions of the *Divorce Act* (section 16(8)) have resulted from or been heavily influenced by the fathers’ rights lobby, which continues to have an impact on the development of public policy and on the environment and culture of family law and family court (Ogle, 2009). During the same period of time, attempts by feminist family law practitioners and law reform advocates to draw attention to the need for a differentiated family law response to situations involving violence within the family have been largely unsuccessful (National Association of Women and the Law, 2003).

The overall result has been that provisions in the *Divorce Act* have remained unchanged since 1985, stating simply that the court “shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.” Section 16(10) of the *Divorce Act*, often called the “friendly parent rule,” which states that the willingness of a parent seeking custody to ensure maximum contact between the child and the other parent will be a factor for the court to consider in making a custody and access order, creates further challenges for a woman with an abusive spouse. If her spouse seeks access, does she tell the court she will support extensive contact between the children and their father, even if she thinks this is unsafe, or does she tell the court she wants to limit access for safety

reasons and risk having this negatively affect her custody case? Because the *Divorce Act* does not refer specifically to violence as being part of the best interests of the child test, it could disappear from consideration if a judge is focused on the issue of maximum contact, which is spelled out in the legislation.

Fortunately, many mothers pursue their cases for custody and access under provincial/territorial legislation which, unlike the *Divorce Act*, generally set out criteria to assist the court in applying the best interests of the child test. In many Canadian jurisdictions, the criteria include violence within the family. This at least gives women a starting point from which they can raise the issue, but because of a lack of specialized knowledge about family violence on the part of judges and others (Martinson & Jackson) the inclusion of family violence in the criteria on its own is not sufficient to ensure appropriate custody and access outcomes.

Understanding post-separation violence

Another contributor to the family court's lack of proper consideration of intimate partner violence is its misperception of violence that occurs post-separation.

The violence that happens as a woman leaves her abuser and throughout the court process and beyond can have significant long-term consequences as serious as death. The initial period of separation, when the violence continues and possibly escalates, is also when separated couples are the most likely to be involved in difficult and contested family court proceedings. Emotional and stressful for any separating couple, these proceedings can take on a deadly tone for families where there has been a history of woman abuse.

Research has well documented that women are at the highest risk of lethality at the point of separation and for the year immediately following. In Ontario, the annual reports of the Domestic

Violence Death Review Committee repeatedly identify recent or pending separation as the second highest risk factor for lethality. Its 2012 Annual Report noted that, in all cases reviewed between 2003 and 2012, “72% of the cases involved a couple with an actual or pending separation” (Domestic Violence Death Review Committee, p. 6). And, yet, this risk (and reality) of increased abuse often goes unrecognized or acknowledged by the systems to which women turn for support and protection because of an underlying societal attitude that abuse ends at the point of separation. Of course, the violence and abuse change when a couple separates. However, changes in location and tactics do not mean the abuse is necessarily less harmful or dangerous.

Post-separation abuse often moves into the workplace in situations where the woman is employed outside the home. The abuser may enter the workplace to threaten or harm her or her coworkers or may interrupt her ability to work by phoning, texting or stalking her while she is at or going to or from work.

An abuser may show up at family events even after separation, thrusting her family into the midst of the situation and possibly isolating her from her family if she is worried about their safety. Or, he may interfere with his former partner’s social life by showing up when she is out with friends and engaging in other behaviours that serve to isolate her from others.

Children are an obvious means through which an abuser can continue to harass and intimidate his partner after separation. He may show up unnecessarily at their school or activities, be highly emotional in front of the children, talk inappropriately with them about the family court case or be verbally abusive to her in front of them.

Unfortunately, interventions by police and child welfare agencies are often focused on the abuse children witness prior to the parents’ separation. Separation is seen by many as the end of the violence or, minimally, as removing the immediate risk to the children. There is an expectation that, at this point, mothers can and should protect their children from exposure to further violence and that any exposure to ongoing violence is a failure on the part of the mother. And

yet, when some mothers take steps to provide that protection for their children, they are accused of alienating the children from their father. If custody and access proceedings are underway, women's actions to protect their children may be seen by the court – with the encouragement of the abuser – as attempts to advantage their position in the case.

Stalking plays a large role in post-separation abuse. Just as partners know one another's friends and social activities, so do they know one another's daily habits and routines. An abuser can harass his former partner by showing up as she engages in her daily routines or he can engage in electronic stalking, either of which can leave a woman feeling as though she is never free from the gaze and control of her former partner.

The combination of past and ongoing abuse leads to trauma for many women (Herman, 1992), which can create further challenges during family court proceedings (Cross, 2012). A woman may have difficulty concentrating on her case; listening to and retaining the information and advice her lawyer is providing; accepting strategies that are presented to her. She may appear hard to get along with or unreasonable. She may engage in avoidance behaviours or be unreliable in terms of showing up for appointments or completing paperwork when required. Her affect may be flattened, with the result that she appears disengaged or even uncaring about her children or the outcome of her case. She may make decisions that seem counterproductive to her best interests, simply because she cannot bear for the case to continue on and on. She may even be hostile to those who are supporting her. All of these behaviours can combine to sabotage a woman in family court, particularly if her abuser – as is common – is charming and gracious to those he encounters and she appears to be unreasonable, suspicious, withdrawn and/or hostile.

Idealized notions of families/fathers

Those who favour shared parenting make much of the changing role of fathers in Canadian families and of stay-at-home dads who spend at least as much time with the children as do the

mums. Those of us who work for women's equality know such men and hope for continued and meaningful movement towards increased equality in the delineation of family and home responsibilities.

The concept that both parents have ongoing responsibilities towards their children is unquestionably a good one. However, many women struggle on a daily basis to convince their spouses that they do, in fact, have parenting responsibilities, both during the marriage and after separation. Most mothers would welcome increased parental involvement from fathers after separation, on the condition that it does not threaten their children's well-being or security. Unfortunately, instead of taking on this responsibility, many abusive men renege on even the basic requirements of making their time with the children work smoothly, leaving their former partners to organize and manage their involvement with the children and to ensure that the children have what they need in the way of clothing, books, toys and such when they are in the care of their father.

Women often feel that they are confronted by a court system that assumes any father is a good father and that expects them to prove why and how they are good mothers, that thinks children *always* fare better when both parents are closely involved in their lives and that wants to believe that both parties are operating in good faith and placing the best interests of their children first. Coupled with an ongoing lack of understanding of the long-term impact of abuse, including post-separation abuse, on women and their children, the scene is set for outcomes that do not reflect the best interests of the children and that do not keep mothers and children safe.

Family court outcomes need to reflect and acknowledge the reality of specific families and not be based on idealized notions of who does what or on hopes for future change. At the same time, judges must recognize that men who engage in abusive behaviour are very good at making promises to change, whether that is with respect to abuse or to their

parenting. Judges need to consider detailed evidence about the family's past history rather than accepting at face value untested promises about the future.

The relationship between mothers' and children's interests

The ability to parent well is rooted in the safety of the parent. An unsafe parent cannot parent as well as a parent who feels safe. This would appear to be self-evident; yet ongoing orders for joint custody and shared parenting place women with abusive ex-partners in unsafe situations; often for many years. Both joint custody and shared parenting require extensive contact, conversation, cooperation and collaboration between the parents. An abuser who is motivated by his need for power and control rather than the children's best interests can best maintain that power and control by creating fear in his former partner.

Too often, custody and access orders do not take this relationship between the mother's safety and the children's best interests into account or, worse, set up a false dichotomy between the two as though, somehow, protecting the well-being of mothers with abusive former partners is inherently in conflict with ensuring the best interests of their children. Women who raise concerns about their safety in this context may be seen as selfish and, as popular culture tells us so often, there is nothing worse than a selfish mother.

Family court processes

Family court is itself part of the problem. It encourages friendly litigation as well as friendly parenting, both of which can have deadly consequences for women with highly abusive partners. Furthermore, family court tends to focus on encouraging families to "move on," to put the past behind them, which is very difficult for a woman to do when is experiencing the kinds of post-separation abuse discussed above. The focus on early settlement, on compromise by both parties and on alternative dispute resolution – particularly mediation – further exacerbates the challenges

for women experiencing ongoing abuse by their former partners. In some cases, it can lead women to concede to arrangements like joint custody or shared parenting because they feel so heavily pressured to do so not just by their abusive former partners, but by those they encounter through the family court process. And when women won't compromise because of legitimate concerns for the safety of their children as well as their own safety, they are seen as unreasonable, vindictive and perhaps also as trying to alienate their children from their father.

Women with children who leave abusive partners want to ensure their children are safe. Where they seek sole custody or limited or supervised access, it is because they believe that is what is in the best interests of their children, not because they are seeking revenge against their partner.

Lack of legal representation in family court

The number of litigants in family court who do not have lawyers has reached a critical state, with between 50 and 80% of family court cases now involving at least one party who is unrepresented. In their paper examining unrepresented litigants in family court, Rachel Birnbaum and Nick Bala (2013, p. 71) note: "There has been a significant increase in the number of self-represented family litigants, with over half the family cases in Canada's courts now having one or both parties without a lawyer." As some lawyers and judges noted in their research, there is a significant gender difference in why parties are not represented in family court proceedings, with women more likely to be unrepresented because they do not have enough money to pay for a lawyer and more men to be unrepresented because they want to confront their former partner directly (Birnbaum & Bala, p. 81-82). Both lawyers and judges noted further concerns about a lack of legal representation in cases involving violence. Lawyers observed that when it is the victim who does not have a lawyer, she may be coerced into accepting a settlement that does not adequately protect her or her children. As one judge said, "There is always the fear that this category of self rep is not truly or accurately articulating their position because of fear or intimidation " (Birnbaum & Bala, p. 86).

The consequences of being unrepresented for women whose partners are abusive are significant. If their partner is also unrepresented or chooses to self-represent, there will have to be direct contact between the parties, which creates concerns for the woman's physical and emotional safety. Without a lawyer, she may not present important and relevant evidence or argue points of law, may not know she can call expert witnesses or have the financial resources to pay for them or may not know that she can bring an *ex parte* motion in very serious situations. She may enter mediation and, without a lawyer to review any agreements reached in this process, she has no guarantee that the outcome upholds her legal rights or that it will keep her and her children safe.

It is more likely a woman may concede on important legal issues because she does not have access to a lawyer to assist her in making these decisions or because she is exhausted from managing the legal process and her former partner's ongoing bullying. The legal issues are more complex and the appropriate solutions more nuanced in cases involving woman abuse. Access to generic legal information, no matter how good, is not good enough for women in this situation, yet it is all that many have.

Also important is the fact that even when a woman has a lawyer, that lawyer may have limited understanding of the unique issues presented by cases involving violence against women and, as a result, may provide inadequate representation. In her exhaustive 2001 study, Linda Nielson points out that one of the dangers of lawyers without the necessary knowledge handling these cases is that they do not understand the importance of the abuse in custody and access cases and so do not gather the evidence needed to raise the issue. In fact, in some cases, lawyers actually discourage their clients from raising allegations of abuse in their pleadings. "One of the more common themes among interview participants was that lawyers were discouraging the presentation of evidence and claims of abuse in legal proceedings" (Nielson, p. 35). Her research found what she calls a "siphoning effect" in which information about abuse and poor parenting is omitted at each stage of the legal process, starting with lawyer-client interviews and ending during the presentation of evidence in court. The result, of course, is that much of this important

evidence is missing by the time decisions are being made.

Neilson's conclusions were supported in Kernic and colleagues' 2005 paper that noted "the court was made aware of less than one fourth of those cases with a substantiated history of intimate partner violence" (p. 1017). The authors of this American study found that fathers with a history of committing abuse were denied access in only 17% of cases and mothers were no more likely to obtain custody than mothers in non-abuse cases (Kernic et al., p. 1014).

Best practices

If the issue of custody and access when family violence is present is to be dealt with more appropriately in Canada's family courts, legislative and policy reform, education for those who have responsibility for implementing and applying the law, increased access to legal representation for family court litigants and changes to family court culture are all needed. Fortunately, there are best practices in all these areas on which future work can be built.

Legislation and public policy

The family violence provisions in British Columbia's *Family Law Act* are the most detailed and progressive in Canada. The best interests of the child test (*Family Law Act* SBC 2011C.25, section 37(2)) speaks directly to family violence and section 38 details the nine factors to be considered when assessing the impact of family violence. These include a consideration of the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member, whether the actions of the person responsible for the family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's need and the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child,

including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members.

The legislation goes even further and stipulates that denial of parental contact time is not wrongful if the parent denying the contact reasonably believes the child might suffer family violence during the contact (section 62). This legislation should be used as a guide to all provinces and territories as well as to the federal government in making reforms to family law legislation.

A recent review of the early jurisprudence under this new legislation raises some concerns that it is not always being interpreted in the spirit in which it was written (Boyd and Lindy, 2015), but it does at least provide a formal legislative structure within which violence within the family can be considered properly in custody and access cases.

Education for judges and lawyers

Even with a strong legislative framework, as a 2016 report by Donna Martinson and Margaret Jackson points out, very little information about family violence and the risk of future harm is being provided to the court and, when it is not, judges almost never ask for it, which speaks to the need for both judges and lawyers to be educated about the importance of evidence about family violence and the risk of future harm in custody and access cases.

There are some excellent professional education models to build on. The National Judicial Institute has developed a rich four-day seminar for both family and criminal judges on managing domestic violence cases. Judges from across the country come together to learn in an interactive format, using a case study. Taught from a skills development/trial management perspective, the seminars provide an intense learning environment for a relatively small group of judges (30 to 40) to work together with a

single case study and engage with the family at various stages throughout the court (family or criminal) process. Videotapes with actors playing the parts of the husband and wife and lawyers and judges playing the parts of lawyers and judges show specific proceedings and are interspersed with live lectures, comments from a panel of experts, and small group work.

Legal Aid Ontario (LAO) has also undertaken a massive domestic violence training initiative for its staff. In 2014/2015, approximately 1,000 LAO staff from across the province in various positions (duty counsel lawyers, telephone intake workers, summary legal advice lawyers, senior management, policy staff, provincial office staff and others) participated in a mandatory one-day in-person training session and now have access to online learning modules and resources. This training has now been extended to include those who work in community legal clinics and lawyers working on a *per diem* basis with LAO. The training is developed and delivered by a community lawyer working in the area of violence against women. Added to this effort, a number of provincial family mediation associations offer domestic violence training to mediators. Finally, the Office of the Children's Lawyer in Canada and child protection agencies are working to increase awareness on the part of those doing work for them.

All of these models can be adapted and expanded to incorporate an intersectional feminist framework, include survivor voices and perspectives, and apply the differential analysis of intimate partner abuse discussed above. Curriculum needs to look at the prevalence of post-separation abuse and the relationship between the safety of the primary caregiver and the well-being of children. Education needs to be mandatory and offered consistently over time to address staff turnover and provide opportunities for ongoing learning.

Increased access to legal representation

Without adequate legal representation, survivors of family violence will continue to emerge from the court process with orders that do not reflect their needs or the best interests of their children. To ensure legal representation for all family court litigants will require a massive infusion of funds into the provinces' and territories' legal aid programs, for which all those working in the family court system should be advocating. In the meantime, there are some promising practices in this area.

One example is work by LAO, which has recently changed the financial eligibility criteria for its certificate program to allow clients who have experienced or are experiencing domestic violence to qualify at a higher income level than other clients. LAO provides up to 6 hours of free independent legal advice to parties engaged in mediation who qualify financially (using the same relaxed eligibility test). The domestic violence awareness training described above has increased the awareness of those determining who can get a legal aid certificate with the result that fewer survivors of domestic violence are being turned down.

Changing the culture of family court

Family court support worker programs are a promising method of changing the culture of family courts. These programs (e.g., Ontario's Family Court Support Worker Program) place specially trained workers, most of whom work for community-based violence against women organizations, in each of the province's family court jurisdictions, to provide a wide range of supports to survivors of domestic violence. Not a replacement for legal representation, Family Court Support Workers are able to assist their clients navigate the court system, help them gather evidence of the abuse they have experienced, prepare them for and debrief with them after meetings with duty counsel and court appearances, assist with safety planning and provide emotional support as well as refer them to other court and community resources as appropriate and available.

Programs like this that place highly trained violence against women specialists in the courts are changing court culture to better understand the dynamics of family violence, as court staff, lawyers and judges begin to refer clients to the workers and ask the workers for their input on family violence cases. Although often under-funded and not yet available in many jurisdictions, court support worker programs offer an exciting promising practice to build on.

The National Child Custody Project of the Battered Women's Justice Project in Minneapolis, Minnesota, offers yet another promising practice. This project is changing court culture in cases involving family violence by promoting domestic violence-informed decision-making in custody disputes by providing training and technical assistance to courts, legal professionals, advocates and others. The project's goal is to increase safety for battered parents and their children while promoting fairness in all custody-related processes.

Conclusion

By building on and expanding the best practices identified above, we can work towards a family court process that hears and, if necessary, requests information on violence within the family to help make the best possible custody and access decision for each family; a family court process where family violence is dealt with openly; where women who have experienced abuse are not afraid to raise and not told not to raise their concerns; where there is an openness to believing those concerns.

When courts are provided with this information, they can consider each case individually, question evidence appropriately and use a range of solutions to ensure children's safety and well-being as well as the safety of their mothers.

Properly educated court personnel will understand a child's best interests in a manner that includes rather than dismisses an understanding of violence within the family and its ongoing impact on the child and the mother.

With a changed culture, courts will be able to accept the gendered reality of violence within the family – in the majority of cases, women are abused by their male partners – as well as the gendered reality of parenting in many families, with women taking on the majority of child care responsibilities.

Custody and access decisions, in such a family court process, will still be made based on the evidence in each individual case. However, they will also keep mothers and children safe and reflect what is truly in the best interests of the children.

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