

**CANADIAN DOMESTIC VIOLENCE CONFERENCE 4**  
**When Shared Parenting and the Safety of Women and Children Conflict**  
***Presentation by Pamela Cross, Legal Director, Luke's Place***

**Thursday June 4, 2015: 10:30 – 12 noon**  
**Speaking Notes**

Introduction

A family court system premised on “friendly parenting” that does not understand ongoing post-separation violence creates serious challenges for women and often results in custody outcomes that force them and their children into close and unsafe – even lethal -- contact with their abuser for many years.

Yet many of us providing family court support to women who have experienced abuse feel as though these women start from a position where they have to convince the judge that shared parenting is not the default go-to arrangement for their children. This may not be said in so many words, and it is certainly not said in the written law, but there seems to be a culture in many family courts in this country 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.

This culture denies the reality of the violence that many women have experienced and places them and their children in long-term unsafe situations.

In this presentation, I am going to talk about:

- The importance of bringing an intersectional, feminist analysis of violence within families into custody and access decision making
- The role of the fathers’/men’s rights movement in Canada and its role in shaping public policy in Canada
- The impact of post-separation violence on women’s experiences in family court
- The impact of idealized notions of families and fathers on custody and access decision making
- The false dichotomy that has been established between women’s interests and safety and the best interests of the children
- The role of family court and the underlying assumptions in court process in custody and access cases
- The impact of the lack of legal representation on women’s ability to engage meaningfully and effectively in their custody and access cases

- Why we need to move away from presumptions – formal or informal – about appropriate parenting arrangements in cases involving domestic violence

#### Lack of an intersectional, feminist analysis of violence within families

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 claims to be gender neutral, 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.

Nowhere is this more obvious than when looking at the issue of violence within the family. Often called domestic violence by those setting and implementing policy and programming, violence within the family is, in fact, highly gendered, and would more appropriately be labelled as a form of violence against women.

As Deb Sinclair wrote in her 2003 paper:

*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. The conclusion reached in this document is that 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.<sup>1</sup>*

Six years later, Walter DeKeseredy and Molly Dragiewicz reached a similar conclusion when they examined public policy responses to violence experienced by women:

*Most readers lacking expertise on woman abuse research would probably not realize that respondents were not asked questions about the context of the incidents, including whether these acts were defensive or offensive. Nor would many readers likely detect that the types of acts and outcomes reported by men and women are significantly different, or that the similar prevalence numbers are generated only when serious forms of violence like sexual assault and homicide are omitted.<sup>2</sup>*

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<sup>1</sup> Sinclair, Deborah. “Overcoming the Backlash: Telling the Truth about Power, Privilege and Oppression. 2003, p. 11

<sup>2</sup> DeKeseredy, Walter S. and Dragiewicz, Molly: “Shifting Public Policy Direction: Gender-Focused vs Bi-Directional

In its 2009 report, Ontario's Domestic Violence Advisory Council noted:

*Gender neutral language misrepresents research on the nature of violence, impeding development of appropriate empirical work, policy and programs. Instead of making the discourse more inclusive, gender-neutral language promotes understandings of woman abuse as mutual, reciprocal or bi-directional, recalling the days before battered women's advocates created shelters and fought for legal reforms, and scholars conducted hundreds of studies documenting survivor experiences."*<sup>3</sup>

If we continue to misidentify the key underlying issues of a social problem, our solutions will be wrong. The issue of custody and access in families where there has been violence against women is one example of this.

We need, rather than using a so-called gender neutral framework for our discussions about custody and access to use an intersectional feminist analysis. This would allow us to understand violence within families as existing on a continuum, much as has been described by Michael Johnson, with couples who engage in mean, disrespectful treatment of one another but where no one gets physically hurt and where neither partner is in fear of the other at one end (to use Johnson's term – situational couple violence) and with other couples where there is a high risk of serious physical injury and where one partner lives in fear of the other at the other end (these are what Johnson calls relationships of coercive controlling violence). Somewhere between the two sit situations of violent resistance, which are couples where the victim of coercive controlling violence engages in resistant or self-defensive actions that may involve physical force or violence.

If we look at family violence this way, the numbers show us clearly that while women may be as likely as men to engage in situational couple violence, it is almost exclusively men who engage in coercive controlling violence and, not surprisingly, more often women who engage in violent resistance.

The mistake the family court often makes is to group all of these kinds of bad relationships together and provide a one size fits all response when, in fact, each kind of relationship requires a different response.

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Intimate Partner Violence." March 2009, p. 8

<sup>3</sup> Domestic Violence Advisory Council. "Transforming our Communities." May 2009, pp. 23 – 24.

An intersectional, feminist framework would look at the gendered reality of violence in families as well as at cultural issues that shape both the experience of abuse and the limits to opportunities for victims to leave abusive relationships.

The role of the men's/fathers' rights movement in shaping the discourse on custody and access in Canada and in disappearing women's equality rights and interests

It is important to understand where the roots of shared parenting presumptions lie, and to do so we have to go back to the introduction of the federal child support guidelines in 1997. Heralded by many, rightly so, as a move to improve the previous rather ad hoc and inadequate child support regime in Canada, the introduction of these guidelines was also responsible for a sudden growth in the so-called men's or father's rights movement.

This special interests constituency reacted strenuously to the guidelines, claiming that it favoured vindictive and vengeful women who wanted nothing more than to separate men from their wallets while also interfering in their relationships with their children.

These men 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.

Using this "40% rule", fathers' rights lobbyists began to call for a presumption of joint custody or shared parenting. They mounted an emotional media campaign and argued 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,"<sup>4</sup> 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.

They received considerable support in the Senate, which led to the decision by-then Minister of Justice Alan Rock to establish the Special Joint Committee on Child Custody and Access. This committee held hearings about custody and access across the country, many of which featured open hostility to representatives of women's organizations. When issues of violence against women and child sexual abuse were raised, they were routinely mocked, dismissed or ignored.

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<sup>4</sup> C. Bertola, J. Drakich, "The Fathers' Rights Movement: Contradictions in Rhetoric and Practice" (1993) *Journal of Family Issues* 592

The Committee's 1998 report, entitled *For the Sake of the Children*, recommended a presumption in favour of shared parenting and criteria to define the "best interests of the child" test, which ignored the issue of violence within the family and focussed on extensive contact between the child and both parents. It envisioned highly punitive consequences for custodial parents who failed to facilitate access time by the non-custodial parent.

In March 2001, the Federal/Provincial/Territorial (F/T/P) Family Law Committee, in collaboration with the Department of Justice undertook a further national consultation about custody and access.

In November 2002, then Justice Minister Martin Cauchon introduced Bill C-22, which contained significant amendments to the custody and access provisions of the *Divorce Act*.

It offered a number of promising innovations, including criteria to better determine what is in the child's best interests; recognition of the relevance of family violence to the security and well-being of children and the elimination of the maximum contact/friendly parent rule, while not introducing a presumption of shared parenting or mandatory mediation, despite considerable pressure from some special interest groups to do so.

Bill C-22 died on the order paper when Parliament dissolved for a federal election and was not re-introduced by the new government.

Since then, there have been a number of attempts, usually in the form of Private Member's Bills, to reintroduce the concept of a presumption in favour of shared parenting.

At this point, the *Divorce Act* remains silent on the issue, with the legislation simply stating that decisions about custody and access are to be made using the best interests of the child test. The *Divorce Act* does also contain a provision 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. This places women with abusive partners in a no win situation: either they tell the court they will support extensive contact between the children and their father, even if they think this is unsafe or they tell the court they want to limit access for safety reasons and risk having this negatively affect their custody case.

Legislation at the provincial and territorial levels generally sets out criteria to assist the court in applying this test and, in many jurisdictions, includes a specific reference to violence within the family.

Nonetheless, the men's/fathers' rights lobby, while not as vociferous as it was in the late 90s and early 2000s, continues to have an impact on the development of public policy and on the environment and culture of family law and family court.

#### Lack of understanding of dynamic of VAW post-separation violence

One of the most serious and troubling issues for many women who have left an abusive relationship when they are dealing with the family court system is the misapprehension held by many professionals in that system that the abuse ends at the time of 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.

This 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.

When I talk about separation violence I mean any tactics used by an abuser that stop a woman from leaving a relationship, retaliate for her departure or forcibly end the separation.

Of course, the violence and abuse must move into new locations because the abuser no longer shares a home with his former partner. Common locations and tactics of post-separation abuse include:

- i. The woman's workplace:
  - 70% of women with abusive partners who work outside the home experience domestic violence at their workplace
  - The abuser knows where it is and is known to her coworkers so his presence is not noteworthy
  - He may enter the workplace to threaten or assault her, to threaten or assault her coworkers or to interfere with her ability to do her job; thus threatening her employment/financial independence
  - He may stalk her to and from work
  - He may harass her from a distance through phone calls, text messages etc

- Whatever he does, he makes what may have been her safe place unsafe for her
- ii. Her extended family/friends
  - Shows up at family events
  - Interferes with her social life with friends
- iii. Their children:
  - He shows up at their school when she is dropping the kids off or picking them up. He may be highly emotional in front of the children, making them feel sorry for him, or may be verbally abusive to her in front of the children
  - He shows up at their activities
  - He shows up when she takes the kids to the movies
- iv. Stalking
  - In-person – he knows her routines, so knows where to find her (eg grocery store)
  - Electronic stalking through spyware, GPS, social media etc.

It is an unrelenting focus on her that often goes well beyond what happened during the relationship.

Post-separation violence affects both children and mothers. 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, ironically, when some mothers take steps to provide that protection for their children, they are accused of alienating the children from their father.)

The stresses for children continue post separation. They may:

- experience tension when they see their parents together at access exchanges
- witness verbally and/or physically abusive behaviours by their fathers towards their mothers and then have to leave with their father for access time
- be provided with information about the court process by their father in an attempt to win their sympathy
- be threatened by their father if they indicate they do not want to spend time with him
- be manipulated or bribed by the father to encourage access
- be questioned by the father about the mother's activities
- be told lies about the mother by the father

- be expected to keep the family secret and worry about the consequences if they do not
- may see themselves as the source of conflict or think it is their responsibility to protect their mother from further harm
- may find themselves alone in their father's care for the first time. This can present a number of issues. Many men who abuse their partners have a low tolerance for frustration and tend to use harsh discipline when interacting with their children. In their relationship with their partner, abusive men will often use brute force to "settle" disagreements and conflict and may use the same strategy with their children. A lack of parenting experience can also raise challenges.

When women report their concerns about their children they often find that they are not taken seriously or that they are seen as attempting to circumvent the legal system. And, as I noted above, the abuser or others may even make an allegation of parental alienation against the mother.

Women experience the impact of post-separation violence in different ways, but in all cases they enter the family court process severely disadvantaged.

Women are often disbelieved when they talk about ongoing abuse, even as their former partner uses the court process itself as a weapon in his ongoing efforts to maintain power and control.

Many women experience trauma as a result of the abuse. This can create further challenges for a woman who is involved with family court proceedings. She 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



Much is made by those who favour shared parenting 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 – I have some in my very own family -- and hope for continued and meaningful movement towards increased equality for family and home responsibilities between the sexes.

However, family court outcomes need to reflect and acknowledge reality and not individual exceptions or hopes for future change. Custody decisions must take account of the fact that women continue to hold most of the responsibility for child rearing and general household management and tasks in most Canadian families, both before and after separation. While there is no doubt that fathers spend more time with their children now than, say, when I was growing up, even in 2006, only 11% of fathers were participating in the paid parental leave program under the Employment Insurance Act.

Public policy with respect to custody and access must promote women's equality within the family and in society at large. As was noted in a Status of Women Canada report on roles of women within the family:

*“A woman with children is always a mother, whether in the work force or at home with her children. The presence of children affects women's lives differently from the way it affects most men, in terms of both her life choices and her life chances.”<sup>5</sup>*

In the vast majority of cases, women continue to be the primary caregivers for children and to do most of the housework. According to data gathered in the 2005 General Social Survey, women spend 4.3 hours per day compared to men's 2.5 on unpaid housework and child care.<sup>6</sup> By 2010, the General Social Survey concluded that women spent more than twice as much time on child care as did men. – even when both parents worked full time, mothers spent on average 5 hours and 13 minutes per day caring for children while fathers spent 2 hours and 59 minutes.

This at a time when more and more women, especially those with young children are employed outside the home: by 2004, 65% of women with children under the

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<sup>5</sup> Christa Freiler, Felicite Stairs and Brigitte Kitchen with Judy Cerny 2001 *Mothers as Earners, Mothers as Carers: Responsibility for Children, Social Policy and the Tax System* SWC p 5

<sup>6</sup> *The Daily*, Wednesday July 19, 2006

age of 3 were working, a figure which is more than double the employment rate for women in this category just 30 years before.<sup>7</sup>

In principle, the concept that both parents have ongoing responsibilities towards their children is unquestionably a good one. Many women struggle on a daily basis to convince their spouses that they do in fact have parenting responsibilities with respect to their children, both during the marriage and after separation or divorce.

Most mothers would welcome increased parental involvement from fathers after a divorce, on the condition that it does not threaten their children's well-being or security. However, 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 many women to ensure that their children have what they need in the way of clothing, books, toys and such when they are in the care of their father.

#### Lack of understanding of the relationship between mothers' safety and the best interests of the child test

The ability to parent well is rooted in the safety of the parent. An unsafe parent cannot parent as well as a safe parent. This would appear to be self-evident; yet ongoing orders for joint custody and shared parenting by definition 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 is motivated by his need for power and control rather than the children's best interests, and he 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 are often seen as selfish, and we know there is nothing worse than a selfish mother.

#### Family court process

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.

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<sup>7</sup> *Women in Canada: A Gender Based Statistical Report 2006* Status of Women Canada p 105

Furthermore, family court tends to focus on encouraging families to “move on,” to put the past behind them. For a woman whose former partner continues to abuse her after they separate, there is no clear delineation between before and after; women in this situation can only “move on” when the systemic response acknowledges the ongoing safety issues and puts measures in place to limit them.

The focus on early settlement, on compromise by both parties, on ADR, further exacerbate the challenges for women experiencing ongoing abuse by their former partners and, in some cases, lead women to concede to arrangements like joint custody or even 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.

Let's just remember that most 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.

They are often confronted by a court system that:

- Assumes any father is a good father
- Expects her to prove why and how she is a good mother
- Thinks children always fare better when both parents are closely involved in their lives
- Wants to believe that both parties are operating in good faith, placing the best interests of their children first
- Does not understand the long-term impact of abuse on women (and their children)
- Does not acknowledge the prevalence of post-separation abuse
- Does not fully understand the pervasive impact of non-physical abuse
- Strongly encourages negotiation, compromise and settlement

As well, increasingly the court system is promoting such so-called solutions to managing high conflict post-separation parenting as:

- Parenting coordinators
- Reunification therapists
- Family wizard
- Parenting journals

While there may be some value to some of these approaches and solutions for families where abuse is not a factor, they are almost never appropriate or effective when it is.

For example, lack of regulation means not all parenting coordinators have received the same level of training. Of particular concern, is the lack of standardized training on the issue of violence within the family and power and control issues. There are no province-wide standards.

Reunification therapy starts from the premise that the child should be reunited with the other parent. This is not always the case – sometimes the estrangement of a child from one parent is for very good reasons, related to abuse -- but as long as courts continue to deny the reality of violence in families, reunification therapy will continue to be put on the table as an option or even a requirement.

Communication tools – whether handwritten or online – can play right into the hands of a persistent abuser who – because he is motivated not by concern for the best interests of his children but rather by the need to maintain power and control over his former partner – will abuse these resources and use them as a means to intimidate, harass and interfere with his children’s mother.

#### Lack of legal representation in family court

No single issue arises more often as a serious concern among women experiencing violence and frontline violence against women service providers than the lack of access to legal representation in family court.

There is no doubt that 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 note:

*[T]here 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.<sup>8</sup>*

They comment that the family court system has in many ways become a two-tier

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<sup>8</sup> Birnbaum and Bala, *Ibid*, p. 5

system:

*[W]ith those who are wealthier tending to resolve disputes with lawyers outside the court system, and those with more limited means tending to resolve family disputes in a stressed family justice system, often without adequate legal advice or assistance.<sup>9</sup>*

While most people without lawyers are in that position because they cannot afford to pay for one and do not qualify for legal aid, there are other motivations in play as well. As some lawyers and judges have noted, there is a significant gender difference in why parties are not represented in family court proceedings:

*These professionals [judges and lawyers] believe that women are more likely to be self-represented due to lack of finances or of the inability to afford a lawyer [stet], while for men self-representation may be more likely due to wanting to confront a former partner. . . . men's lack of representation is more likely to be a result of the desire to directly engage with their former partner.<sup>10</sup>*

Both lawyers and judges noted 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.<sup>11</sup> 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.<sup>12</sup>*

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. This creates serious concerns for the woman's physical and emotional safety as the abuser will use this circumstance as an opportunity to continue to control, intimidate, harass and manipulate her
- Without a lawyer, she may be unable to present important and relevant evidence or to argue points of law (for example, the provisions of the best

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<sup>9</sup> Ibid, p. 5

<sup>10</sup> Ibid, pp. 12 – 13.

<sup>11</sup> Ibid, p. 23 – 24.

<sup>12</sup> Ibid, p. 24

- interests of the child test that relate to family violence). She may not know she can call expert witnesses or have the financial resources to pay for them
- She may enter mediation because she does not have a lawyer 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 or because her abuser's ongoing bullying of her has worn her down, used up her financial resources, and left her terrified for her safety<sup>13</sup>
  - 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 no understanding of the unique issues presented by cases involving violence against women and, as a result, may provide inadequate representation.

Some would argue that access to any lawyer is better than access to none, and to some extent that is true. A reasonably competent lawyer, whether or not familiar with the dynamics of violence against women, can at least provide a client with information about the law and court processes, complete required forms, deal with the lawyer on the other side or, if the abuser is self-representing, with the abuser himself, make court appearances and so on.

However, the subtleties, complexities, and nuances as well as the serious and ongoing safety issues involved in violence against women can only be appropriately handled by lawyers who have specialized knowledge, understanding and skills.

Linda Nielson, in her exhaustive 2001 study, 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: "(S)urvivors

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<sup>13</sup> In its research on the experiences of unrepresented abused women in family court in 9 locations in Ontario, Luke's Place Support and Resource Centre found that fully 63% of women feared for their lives through their family court proceedings.

of abuse, primarily women, spoke of pressures to abandon allegations of abuse and claims for denial and/or restrictions on access.”<sup>14</sup>

Her research found what she calls a “siphoning effect”:

*[[]Information about abuse and irresponsible parenting is excluded or omitted at each stage in the legal process: during lawyer-client interviews, during legal interpretations of those interviews, during preparation of court documents, during negotiations between lawyers, and during the presentation of evidence to judges. Thus, by the time cases reach judges, for decisions or confirmation of ‘consent’ orders, much of the evidence of abuse and irresponsible parenting has been screened from the legal process.*<sup>15</sup>

Neilson’s conclusions were confirmed in a 2005 paper which noted that “the court was made aware of less than one fourth of those cases with a substantiated history of intimate partner violence.” The author of that paper 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.<sup>16</sup>

### Conclusion

Shared parenting is a wonderful concept. It can work in families where violence is not a factor, where both parents have strong communication skills and where they are both able to put the interests of their children ahead of their own feelings of hurt or disappointment at the end of the relationship. But even in those situations, shared parenting takes a lot of work. And, even in those situations, it is not the approach that works for all children.

Indeed, the research on shared parenting appears conflicted. While there are certainly studies that show children can benefit from shared parenting arrangements, many of those studies acknowledge that the presence of abuse in the family is a negative factor. A 2011 review of shared parenting research in the U.S. specifically excluded cases that were identified as “high-conflict, “of which VAW cases would be a subset. The authors note in the introduction to their paper:

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<sup>14</sup> Nielson, Linda C. “Spousal Abuse, Children and the Legal System Final Report.” Canadian Bar Association, Law for the Futures Fund. March 2001, iii.

<sup>15</sup> Ibid, p. iii.

<sup>16</sup> Kernic et al. *Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence*. Violence Against Women, Vol. 11, No. 8, August 2005, 991 - 1021

*These adults unrelenting conflicts are extremely aggressive, physically threatening and often violent or physically abusive. Designing parenting plans for these parents is a challenging task. . .*<sup>17</sup>

Even studies examining shared parenting arrangements in healthy families say that there are no differences in child well-being for kids living in those arrangements vs kids in sole custody arrangements.<sup>18</sup>

According to the same study, there is unanimity among researchers that parental conflict is a major source of reduced well-being among children of divorce:

*Recent research indicates that joint physical custody and frequent child-nonresidential parent contact have adverse consequences for children in high-conflict situations, and that joint physical custody and frequent child-nonresidential parent contact do not promote parental cooperation.*

Almost by definition, the environment required to make shared parenting even a possibility does not exist for women leaving abusive partners and their children:

- the abuser is motivated by his need for ongoing power and control, not by concern for what is best for his children
- the abuser does not enter the process – either litigation or ADR – operating 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. After all, 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 a common face to the children

In reality, a shared parenting regime in the context of violence against women means:

- mothers are trapped in an ongoing relationship with their abuser rather than being free to move on to a life free from violence
- mothers remain exposed to the threat and reality of ongoing physical violence,

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<sup>17</sup> Nielsen, Linda. *Shared Parenting After Divorce: A Review of Shared Residential Parenting Research* in “Journal of Divorce and Remarriage,” 2011. Pp 586 – 609.

<sup>18</sup> Lye, Diane N. *Washington State Parenting Study*. 1999



- children become tools of their father in his ongoing quest to intimidate and harass their mother
- children continue to be exposed to the abuse of their mother by their father

In no-one's world is this in the best interests of anyone, particularly children.