



[Home](#) → [Reports and Publications](#) → [Family Law](#)

Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection)

A Family Law, Domestic Violence Perspective

[← Previous Page](#)

[Table of Contents](#)

[Next Page →](#)

Part 4: Collection and Exchange of Information

4.1 Patterns of Revealing Particulars of Violence

The failure to document and to present evidence of domestic violence during mediation, hearings and trials in family law cases is reported repeatedly in empirical studies from all western common law jurisdictions. ¹⁸ The reasons, include: claims of domestic and other forms of family violence ¹⁹ being 'negotiated' out of the litigation process in return for concessions from the other party (such as agreements to pay child support or to abandon joint custody claims); non-perpetrating parents succumbing to settlement pressure from professionals who do not understand the significance of domestic violence in connection with harm to children; failure to present evidence when judges have demonstrated a resistance to considering such evidence or have a record of penalizing parents who seek restrictions on access to children; lack of specialized understanding of the dynamics and implications of domestic violence among those who work in the family and child protection systems. For further particulars, see the footnote ²⁰ and [part 8.6](#) in connection with the impact of domestic violence on settlement patterns.

Other exclusionary factors include: lack of financial and psychological resources required to pursue litigation or to hire domestic violence experts, fear of retaliation, embarrassment, protection of family or cultural 'honour', emotional inability to offer coherent testimony as a consequence of damage caused by domestic violence, and concerns about child safety (such as the potential for perpetrator retaliation against children). The failure to present full information of domestic violence during hearings is being reported regularly across western legal jurisdictions.

In the criminal context, Statistics Canada informs us that the vast majority of criminal acts of domestic violence are not reported to police – much less prosecuted and tried in criminal court. People targeted by criminal acts of domestic violence can have numerous valid reasons for not cooperating in criminal proceedings, some of them associated with family safety.²¹ Research studies document that those who have negative experiences in the criminal justice system (e.g. they were subjected to violent retaliation, they were not protected because criminal sentences offered limited safety and protection, or they experienced perpetrator rage and increased abuse and violence following a criminal conviction) may not call the police on the next occasions.²² If family lawyers and courts ignore or discount patterns and incidents of domestic violence that do not result in a criminal charge, the vast majority of the criminal acts of domestic violence will not be considered in family and child protection litigation.

People who have been threatened, or have been taught to fear the involvement of police or child protection authorities (for example those new to Canada from oppressive countries), and those who fear negative implications of a criminal conviction such as deportation or perpetrator retaliation, may avoid the criminal system altogether but may initiate family law proceedings in an effort to protect the children. Family law cases involving domestic violence are not necessarily less serious or less dangerous than criminal cases. Indeed some are more dangerous.

In short, police and court records, while important as sources of information, are unlikely to document fully the particulars of domestic violence and other forms of family violence.

Implications for family lawyers:

- Resist assumptions that clients will volunteer full information about domestic violence
- Make use of domestic violence information gathering tools endorsed by experts
- Encourage and support targeted clients to reveal all forms of family violence, including domestic violence
- If acting for the targeted party seek permission to document particulars
- Resist the notion that lack of prior criminal charge indicates safety or reduced reason for concern

4.2 Patterns of Revealing Domestic Violence: Survivors

People who are targeted by domestic violence exhibit responses that can easily create confusion among law professionals – such as protecting perpetrators, recanting claims of violence, limiting early disclosure followed by increasing disclosures of the most severe forms of domestic violence over an extended period of time, engaging in resistance violence, presenting aggressive demeanours, self-medicating with alcohol and drugs, overreacting to stress, and returning repeatedly to violent homes. Yet all of these responses are common by-products of domestic violence. Domestic violence can produce scientifically verifiable mental health reactions, including post-traumatic stress, depression, anxiety and panic disorder, hyper-vigilance as well as a host of short- and long-term physical medical conditions. These psychological responses are a means

used to psychologically withstand abuse and violence; they often can be managed or stopped once abuse and violence stop, particularly if help is provided. Such survival responses do not necessarily affect the capacity to parent. ²³

The link between being subjected to violence and Post-traumatic stress (PTS) is now firmly established. PTS and its associated diagnostic mental health condition, Post-Traumatic Stress Disorder (PTSD) ²⁴ is a well-documented psychological condition that is a reaction to exposure in violence. PTSD is not specific to gender. Anyone subjected to severe or patterned violence (in the home, in the community, or during war) can develop the disorder. The cause is exposure to severe or repeated violence.

Post-traumatic stress disorder can affect 'victim' witness disclosure patterns and testimony by causing: difficulty giving testimony in a linear, time-ordered sequence; difficulty recalling collateral details surrounding the violence; emotional detachment (e.g. testimony may be given in an unemotional, flat, detached manner); inability or difficulty offering complete information about abuse and violence (thanks to the protective response of minimizing and avoiding such memories); and exaggerated startle and defense responses resembling anger, hostility and aggression. When witnesses have been subjected to severe domestic violence, such patterns in testimony and demeanour should be expected. ²⁵ Demeanour is, therefore, unreliable in a domestic violence context, where harm can result in exaggerated defence reactions resembling hostility or aggression.

Delays in disclosure can be expected as a by-product of the minimization and avoidance patterns associated with post-traumatic stress, particularly when the targeted party has not been asked specific, specialized questions. The fact that few incidents of violence are disclosed initially and that details of violence only emerge later as the case proceeds is not a dependable indicator that subsequent disclosures are unreliable.

When a person who has been subjected to domestic or family violence offers few details of violence at first, discloses more and more details over time, provides information in an emotionally detached manner, is unable to present information in a linear fashion, leaves out pertinent information, presents with an aggressive or angry demeanour, consider the need for a PTS assessment, preferably by someone who is also a domestic violence expert.

Implications for family lawyers:

- Anticipate the likelihood of delayed disclosure
- Assess the misuse of alcohol and drugs in the context of power and control patterns associated with the domestic violence
- Consider, when indicators associated with PTS are present, referring the client to a specialist for PTS assessment
- Resist assumptions that delayed disclosure patterns, detachment, and inability to relay information in linear sequence indicate lack of credibility and reliability; consider the possibility that such disclosure patterns can be evidence of harm from domestic violence
- Ensure that child protection authorities and the Crown are aware of 'normal' trauma-related disclosure patterns in a domestic violence context

- Keep in mind the well documented litigation tactic of perpetrators attempting to introduce evidence of psychological harm from domestic violence as evidence of unfitness to parent. Given that this report focuses on issues at the intersection of family and criminal law and not on family law cases *per se*, discussion of evidence issues within family law litigation is beyond the scope of this report. Nonetheless citations to literature that may offer assistance to family lawyers on this issue are provided in the footnote ²⁶
- Anticipate the need to continuously document and reassess risk as new information is disclosed and as circumstances change
- Anticipate the potential need to call upon a domestic violence expert to explain disclosure patterns to assessors, Crown, or the court
- Anticipate the likelihood that patterns of domestic violence will be disclosed over the course of the family law process and that these patterns will not always be known to police or to child protection authorities

4.3 Patterns of (Not) Revealing Domestic Violence: Perpetrators

People who engage in coercive forms of domestic violence (see [part 5.4.3](#) below) tend to deny and minimize their own violence – to themselves as well as to therapists, researchers, lawyers and judges. More serious violence is often denied at the same time minor, isolated incidents of violence are admitted, in order to bolster credibility. ²⁷

In fact, it is likely that many perpetrators truly believe the other partner is lying about the extent of violence since, from the perpetrator's point of view, abuse and violence are episodic in otherwise good behaviour. Those who are targeted, however, experience domestic violence – both in terms of perception and damage – cumulatively, whereby each incident adds psychologically to the damage of previous incidents.

Another common perpetrator trait affecting whether or not perpetrators will reveal domestic violence is projection of responsibility. Examples include: claiming the violence was in self-defence or was the product of the other's bad behaviour; claiming the abuse and violence was mutual; claiming that the targeted party is overly sensitive as a result of having been abused as a child or by a former intimate partner; and claiming or implying that perceptions of domestic violence are the result of mental instability or illness. When the targeted person is physically harmed, injuries may be attributed to the other's susceptibility (e.g., "she bruises easily") or self-harm (e.g. "she slammed herself in the face with the kitchen cupboard").

Implications for family lawyers representing parties who are alleged to have engaged in domestic violence:

- Anticipate the likelihood of denial, minimization and deflection of responsibility
- Anticipate acknowledgement of minor acts of violence along with denial of more serious allegations
- Check for additional information

4.4 Obtaining Particulars

Experts, including a number of judicial associations such as the National Council of Juvenile and Family Court Judges in the United States, have repeatedly recommended comprehensive screening for domestic violence in all family law and child protection cases. Numerous specialized information gathering tools have been developed in various jurisdictions.

Examples are offered in [Part 3.1](#) above. Some domestic violence screening tools are better than others.

All screenings for domestic violence should elicit information about:

- Sexual abuse (psychological and demeaning commentary as well as physical sexual abuse). Many domestic violence researchers claim that most cases of coercive domestic violence also include sexual abuse. Lawyers, mediators, and service providers will not always be aware of this because the failure to report sexual abuse in the absence of specialized questioning is well known. It is important, therefore, to include questions to elicit information about sexual abuse (emotional as well as physical) when obtaining information from family law clients. Lawyers and service providers may refer to the American National Judicial Education Program of Legal Momentum's [*Intimate Partner Sexual Abuse* educational web course](#) available on line at <http://www.njep-ipsacourse.org/> for additional information as well as access to a list of pertinent questions
- The social and cultural context
- The pattern of the abuse and violence throughout the relationship
- Criminal behaviour (particularly violent criminal behaviour)
- Violence toward intimate partners and or children in former or collateral relationships
- Violence directed at pets and other animals
- Drug and alcohol misuse
- Mental health problems
- Abuse and violence against or on behalf of third parties, such as friends, gang members, and/or members of the intimate partner's extended family
- Information about abuse and domestic violence in each person's family of origin and prior relationships since the latter can result in minimization or acceptance of abuse and violence as 'normal' and acceptable

Particularly important, in a family law context in connection with the type of violence and risk, is collection of complete information about the pattern of violence and abuse of each party and the pattern of coercion, power and control in the relationship (not limited by a particular time frame). See [parts 6](#) and [7](#) in connection with information associated with risk.

In addition, specialized information-gathering questions are recommended for cases involving First Nations and other aboriginal peoples, those with disabilities, those immigrating to Canada, persons in same-sex or bi-sexual intimate relationships, and members of minority populations. Culture, age, gender, sexual orientation, ethnicity and immigration status are all associated with particular forms

of domestic violence and with obstacles to obtaining services and support. Ideally, domestic violence and cultural specialists in each jurisdiction should be enlisted to assist with the design screening tools specific to the cultural and legal composition of each jurisdiction.

Implications for family lawyers:

- Consider initiating the formation of committees composed of domestic violence, cultural and family law experts, to design specialized domestic violence information gathering instruments for use in each jurisdiction as suggested in [Part 3](#). Also consider inclusion of representatives from the criminal and child protection sectors on such committees in order to attend to cross legal sector information needs.

4.5 Gathering Evidence: Where to Look

In a criminal context, given the high rates at which 'victims' recant, (discussed in more detail in [part 9.5](#) below) experts recommend the use of specialized evidence collection methods that do not depend on 'victim' cooperation. In the criminal law context, the 2013 *[Domestic Violence Handbook For Police and Crown Prosecutors in Alberta](#)* offers useful information on this issue as does the Michigan Judicial Institute (2013) *[Domestic Violence: A Guide to Civil & Criminal Proceedings – Third Edition](#)* on line at: <http://courts.mi.gov/education/mji/Publications/Documents/Domestic-Violence.pdf>

In connection with family law matters, Elizabeth Jollimore offers a helpful list of pertinent evidence in "Checklists: Best Practice for Representing Clients in Family Violence Cases" (Department of Justice). More particularly, she recommends that family lawyers representing those targeted by domestic violence obtain:

- Verbally abusive phone messages, letters, cards or other communications, including apologies for past abuse
- Medical reports, police incidents reports, and mental health counseling records (in connection with medical and counseling records, see [part 8.11](#) below)
- Transcripts of prior family, child protection or criminal trials (to ensure that previous events or convictions are not minimized or misrepresented)
- Copies of tapes of 911 calls and calls to domestic violence intervention services
- Information from school teachers, activity leaders, parents of children's friends - people a child may have confided in
- Certificates of criminal conviction relating to the current and former intimate relationships
- Prison, parole and corrections records, including records relating to substance abuse and the success or failure of engagement in prior counseling or treatment programs
- Information about prior domestic violence from former spouses and intimate partners
- Corroborating statements from individuals to whom abuse was disclosed
- Information from relatives, friends, doctors, or co-workers who may have observed injuries (anticipating that 'victims' often offer health professionals false explanations of the cause of domestic violence injuries)

- A client record, in as much detail as possible of the pattern of abuse and violence, including dates, times, places, type of violence, words spoken and threats uttered; also any treatment or medical attention received, and information about whether or not the children witnessed the abuse or the injuries
- An ongoing record, from the client, of any ongoing contacts and communications with the perpetrating party
- Retention of a domestic violence expert to testify about risks and potential harm to children, after conducting research to see how the expert's evidence has been received in other cases
- A record of all prior court orders, recognizances and peace bonds, including a record of breaches
- Consideration of whether a custody or access assessment will be needed. (Note the need, if representing the targeted party, to ensure that the assessor is a domestic violence expert.)
- A check for evidence of parenting practices that are often associated with coercive domestic violence (see 5.9 below)
- A record of whether the domestic violence occurred in the presence of the child, whether the child ever attempted to intervene to protect a parent, and a record of any act of abuse or violence against the child, including information about any child injuries

Additional sources of evidence, when representing 'victims' of domestic violence, can include:

- Documented workplace observations, risk assessments, accommodations completed in Ontario pursuant to the duty imposed on employers pursuant to amendments to the *Occupational Health and Safety Act* to respond to risks associated with domestic violence. For additional information about this initiative and particularly the development of education materials in connection with risk assessment, contact Dr. Peter Jaffe at the *Centre for Research and Education on Violence Against Women and Children*
- Information from witnesses, neighbours, family, and friends who may have witnessed the abuse and violence
- Records from veterinarians of injuries to livestock and pets (see [part 5.8](#) below),
- Surveillance records from security cameras in public areas and or common areas in apartment buildings that may have captured incidents of abuse and violence
- Court records documenting the targeted parent's recanting of earlier complaints
- Dental records
- Computer files, programs, and hard drives, cell phone records, and e-mails documenting or corroborating stalking, monitoring, abuse and or violence (for further information, see [part 5.8](#) below)
- Police risk assessment conclusions
- Copies of current and former child protection agreements and orders
- A record of compliance or non-compliance with prior court orders, agreements or undertakings
- School attendance and educational records - in connection, for example, with children missing time at school as a result of child abuse or caring for a parent subjected to violence

- Court findings and orders from other legal proceedings (criminal, family, child protection, civil domestic violence prevention proceedings) involving the same parties, similar issues, and/or findings relevant to parenting and child best interests (see, for example British Columbia (Attorney General) v. Malik, 2011 SCC 18; *Delichte v. Rogers*, 2011 MBCA 50; Wong v. Giannacopoulos, 2011 ABCA 277; *J.F. c. Newfoundland and Labrador (Child, Youth and Family Services)*, 2013 NLCA 27; *J.F. v. Newfoundland and Labrador (Child, Youth and Family Services)*, 2013 NLCA 55; *BL v. Saskatchewan (Social Services)*, 2012 SKCA 38
- Information about parenting practices in current and former intimate relationships

In Ontario, pursuant to section 21 of the Children's Law Reform Act, applications for custody or access to a child must be accompanied by an affidavit setting out the person's current or previous involvement in a family proceeding, including child protection proceedings or any criminal proceedings. While the duty to report in Ontario should help to reduce the risk of family courts and family lawyers not being aware of other court proceedings affecting the family, researchers warn that parties will not always provide complete information.²⁸ This is most likely to be the case in connection with collateral child protection proceedings (for example when findings associated with child safety reflect poorly on both parents). Limited information can cause child and adult safety problems. Carefully constructed information exchange protocols between child protection authorities and family courts (and judges and justices of the peace who make orders pursuant to domestic violence prevention legislation) could help to reduce child risk as well as the danger of conflicting orders.²⁹ Family lawyers can help to reduce risk by forming close working relationships with child protection authorities in domestic violence cases.

4.6 Eliciting Information from Children

Proceed with caution when deciding whether or not to obtain information about domestic and other forms of family violence or information about parenting from a child. Generally, Canadian courts have tended to endorse the notion that children's best interests are *seldom* served by direct testimony on behalf of one parent against the other in a custody and access cases, for example: *Woodhouse v. Woodhouse*, 1996 CanLII 902 (ON C.A.).

In a domestic violence context, the risk of harm to a child being asked to give direct testimony against one or both parents is elevated in the form of:

- violent or psychological parental retaliation
- parental manipulation, and
- parental estrangement

Other considerations relate to research findings that children suffer from being asked to convey information about child abuse and domestic violence more than once in multiple proceedings.³⁰ Furthermore, questioning techniques should be appropriate to the child's age and stage of development since inappropriate interviewing techniques (particularly the use of leading questions) could contaminate use of the child's evidence in criminal and child protection proceedings.

In addition is the need for specialization such that the perspectives and information from children is properly interpreted in an appropriate domestic violence and child development framework.

While there may be cases in which older children benefit from being able to offer direct information about violence, custody preferences, or parenting practices, the more prudent course of action, in a family law context, will often be to have an expert (or at least a neutral third party or representative of the child) elicit and introduce evidence from children.

When a child is simultaneously involved in criminal, child protection, and family law proceedings, consider calling a meeting with the Crown and child protection authorities to reach an agreement on how evidence from the child will be collected and introduced in order to prevent the potential for contamination and to reduce exposing the child to the stress of having to provide information, give evidence, and or testify more than once.

If the child must offer direct testimony in a family law case, seek input from a domestic violence expert, insist on age appropriate questioning, and consider testimonial protections (see [part 9.9](#) below).

4.7 Exchanging Information Across Legal Systems

Keeping in mind patterns of revealing or failing to reveal information about domestic violence identified above, the sharing of information pertinent to risk across legal systems is critically important for family and child safety. Information sharing can enable accurate and consistent assessment of risk and the potential for lethal outcome (discussed in [parts 6](#) and [7](#) below) as well as seamless, co-ordinated, and consistent use of community services and therapeutic resources. In addition, sharing of information across legal sectors discourages litigation harassment such as the filing of frivolous claims in multiple courts. It also prevents inconsistent orders and agreements. The failure to identify and share information across legal systems has been credited repeatedly by Canadian commentators with the failure to offer adequate protection in domestic violence cases, sometimes resulting in death. ³¹

Looking at Family Court-Involved Domestic Violence and Child Abuse Fatality Cases Through a Lens of Prevention, online at: <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/famct/id/193> (Institute for Court Management, Florida) is one of the few studies to examine domestic violence homicides connected to family courts. The study documents, albeit in an American context, child and parent deaths in domestic violence cases, despite family court involvement. The failure to take into account the involvement of the same families in other court systems was associated with the failure to respond to clear indicators of risk and to offer adequate protection. Three quarters of the families had prior involvement with child protection authorities. In half of the homicide cases, the children heard or witnessed the fatal outcome. Similar concerns are reported by Mary Ellen Turpel-Lafond in Canada in her (2012) report *Honouring Kaitlynn, Max and Gordon: Make Their Voices Heard Now*. ³² These reports present a sobering wake up call for family lawyers and family courts everywhere, demonstrating clearly the critical importance of obtaining and sharing information across court systems.

Make note, however, of the limitations on information sharing outlined in [Part 8](#) below, particularly the need to inform family law clients that information disclosed to police, Crown, and in some jurisdictions, depending on connections to police services, victim- services, must be made available to the defence (and thus to the alleged offender) to enable full answer and defence, pursuant to *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 and subsequent criminal cases. Family lawyers will wish, therefore, to discuss with their clients the implications of such disclosures and to ensure that safety plans are updated in accordance with any increasing risk associated with disclosure. Subject to the comments in [Part 6](#) below, regarding risk, and in [Part 7](#) regarding the potential for lethal outcome, people who are targeted by domestic violence are usually in the best position to assess whether or not revealing particular information will increase or decrease risk. The best course of action is to obtain the consent of the survivor of violence to the release of information and to work with the client to alleviate any safety concerns.

Lawyers and service providers should attempt to ensure that targeted parents have access to domestic violence advocacy and victim support services separate and apart from police and Crown so that confidentiality can be preserved when disclosures could compromise safety. Clients targeted by a pattern of domestic violence require continuous access to safety planning.

People subjected to domestic violence do not always understand the level of risk to themselves or to their children. Those representing parties targeted by domestic violence will wish to keep in mind the risk criteria outlined in [parts 6](#) and [7](#) below, particularly when risk levels are high or the safety of a child is a concern. In cases of high risk and or a potential for lethal outcome, concerns about personal safety may dictate the disclosure of information to enable protection and support without consent. For particulars, see [parts 6](#) and [7](#).

Perpetrators of domestic violence, on the other hand, are unlikely to consent to the obtaining or release of information. This puts service providers and lawyers in a difficult situation when disclosures are pertinent to risk of continuing violence or to the potential for lethal outcome. Many intervention programs, particularly those that follow recommended standards for domestic violence intervention programs,³³ require consent to the release of information pertinent to risk as a condition of participation in the service. Family lawyers representing alleged perpetrators of domestic violence will wish to inform clients and discuss the potential implications of signing such consent forms. See [Part 10](#) below in connection with evaluations of domestic violence intervention programs and [parts 6.5](#) and [7.4](#) in connection with information sharing.

4.8 Disclosure Requirements: Child Protection Legislation

Family lawyers should also remind clients that police officers and service providers who offer domestic violence intervention services, drug and alcohol services or mental health services, will often have a legal duty to report disclosures of domestic violence affecting children, as well as child abuse, to child protection authorities, pursuant to provincial and territorial child protection legislation.

Domestic violence is specified as a criteria when deciding whether or not a child is in need of protection in the following jurisdictions: Alberta: *Child, Youth and Family Enhancement Act*, Chapter C-12 section 1(3) (c); New Brunswick: *Family Services Act*, Chapter F-2.21983, c.16, s.1 section 31(1); Newfoundland/Labrador: *Children and Youth Care and Protection Act*, SNL 2010, c C-12.2 section 10 - this statute refers to violence; Northwest Territories: *Child and Family Services Act*, S.N.W.T. 1997, c. 13 section 7(3)(j); Nova Scotia: *Children and Family Services Act*, S.N.S. 1990, c. 5 section 22(i); Quebec: *Youth Protection Act*, R.S.Q. c.P-34.1. - domestic violence is included in section 38 in a list of "psychological ill-treatment" criteria; Prince Edward Island: *Child Protection Act*, c.5.1 section 9(m)(n); Saskatchewan: *Child and Family Services Act*, S.S. 1989-90, c.C-7.2 section 11(a)(vi). The Yukon's *Child and Family Services Act*, S.Y. 2008, c. 1, section 4(1)(j) includes family violence, and the effects on the child, as a best interest of the child criterion when choosing a potential caregiver rather than as an indicator of the need for state intervention. CanLII, managed by the Federation of Law Societies of Canada, provides public access to federal, provincial and territorial statutes on line at: <http://www.canlii.org/en/index.html>.

Note also, however, that most statutes require circumstances in addition to domestic violence in order to find a child in need of protection - for example that the child is negatively affected. The particulars vary by statute; one must check the wording of the applicable statute.

Although domestic violence is not a specified criterion in Ontario's *Child and Family Services Act*, R.S.O. 1990, c. 11, the child welfare manual currently in use in Ontario includes domestic violence as an indicator of child risk. While child protection statutes in some Canadian jurisdictions do not expressly include domestic violence as an indicator that a child is in need of protection, all statutes throughout Canada, authorize protective intervention when a child is at risk of or is being emotionally harmed, by domestic violence or otherwise.

In sum, service providers in most jurisdictions will have a duty to report information relating to domestic violence adversely affecting a child; clients should be advised accordingly.

Footnotes

- 18 Linda C. Neilson et al. (2001) *Spousal Abuse, Children and the Legal System Final Report* (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research); Hon. D. Hitchens and P. Van Horn (2005) “The Court’s Role in Supporting and Protecting Children Exposed to Domestic Violence” in *Journal of the Centre for Families, Children and the Courts* 31-52; M. Kernic, D. Monary-Ernsdorff et al. (2005) “Children in the Crossfire Child Custody Determinations Among Couples With History of Intimate Partner Violence” in *Violence Against Women* Vol. 11(8): 991-1021; Hon. J. Bowles, Hon. Kaye Christian, Margaret Drew and Katheryn Yetter (2009) *A Judicial Guide to Child Safety in Custody Cases* (National Council of Juvenile and Family Court Judges) at 7.3.
- 19 Here the term 'family violence' refers to all forms of violence and abuse within families.

20 Within the family law context, some of the other reasons that domestic violence is not documented have included lawyers adopting a practice of not seeking divorce on grounds of mental or physical cruelty when the divorce can be obtained on the basis of one year's separation. In such cases evidence of domestic violence and other forms of family violence may never be presented to the court, particularly if lawyers handling the case do not understand the relevance of domestic violence to parenting and to child safety. While dedicated attention to educational initiatives can improve practice, other reasons evidence of family violence is not always presented to courts, documented repeatedly in the research literature include: concerns that allegations of domestic violence could inflame the conflict between parents; concerns that revealing domestic violence could result in a child protection investigation and potential risk of loss of the children; limited resources and the cost of proving claims; lawyers and other professionals advising against claiming domestic violence out of a (not totally unfounded) concern that raising concerns about child safety and about domestic violence could result in adverse findings in connection with that parent's willingness to maximize the child's contact with the other parent; fears about the impact of domestic violence claims on criminal, immigration, or child protection proceedings; professional failure to ask specialized questions designed to elicit complete information about domestic and family violence (empirical research has documented repeatedly that mediators, therapists, evaluators, mental, medical health professionals as well as lawyers tend both to underestimate and to under-document domestic violence. L. Neilson (2002), *supra* note 12; J. Meier (2003) "Domestic Violence, Child Custody and Child Protection: Understanding Judicial Resistance and Imagining the Solutions" *Journal of Gender, Social Policy and the Law* 11(2) 657-731; P. Jaffe, M. Zerwer, S. Poisson (2003) *Access Denied: The Barriers of Violence and Poverty for Abused Women and their Children's Search For Justice and for Community Services after Separation* (London, Ontario: Centre for Children and Families in the Legal System); J. Rivers, C. Maze, S. Hannay and C. Lederman (2007) "Domestic Violence Screening and Service Acceptance Among Adult Victims in a Dependency Court Setting" in *Child Welfare* Vol. 86(1): 123-145; L. Bancroft, J. Silverman and D. Ritchie (2012) 2nd edition *The Batterer as Parent. Addressing the impact of Domestic Violence on Family Dynamics* (Thousand Oaks: Sage) p. 118-122.

- 21 S. Paterson (2010) “Resistors”, “helpless victims” and “willing participants”: the construction of women's resistance in Canadian anti-violence policy” 17(2) *Social Politics: International Studies in Gender State and Society* 159-184; J. Davies (2011) *Advocacy beyond leaving helping battered women in contact with current or former partners: a guide for domestic violence advocates* (Greater Hartford Legal Aid, National Resources Center on Domestic Violence & Family Violence Prevention Fund); C. Akers and C. Kaukinen (2009) “Police Reporting Behavior of Intimate Partner Violence Victims” in *Journal of Family Violence* 24(3): 159-171; A. Klein (2009) *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*(U.S. Department of Justice, Office of Justice Programs, National Institute of Justice).
- 22 National Institute of Justice (2006) “Victim Satisfaction with the Criminal Justice System” *NIJ Journal*253 (January 2006).
- 23 D. Markham (2003) “Mental Illness and Domestic Violence: Implications for Family Law Litigation” *Journal of Poverty Law and Policy*23-35; J. L. Edleson, L. F. Mbilinyi, S. Sheety (2003) *Parenting in the Context of Domestic Violence* (Judicial Council of California).
- 24 The terminology associated with this condition is unfortunate. As C. Warshaw points out in C. Warshaw (2007) “Toward Better Practice: Enhancing Collaboration Between Mental Health Services & Women's Domestic Violence Services”, Power Point, Australian Domestic & Family Violence Clearinghouse Forum, Leichhardt Town Hall April 2, 2007. There is nothing ‘post’ about PTSD. Inclusion of the term ‘post’ focuses attention on the fact that the incidents that gave rise to the reaction occurred in the past. This is unfortunate for three reasons: 1) it places the responsibility for ‘getting over it’ and ‘putting the past behind’ on the person targeted rather than placing responsibility on the violator; 2) it implies a lingering, present and thus irrational response to incidents that occurred in the past thus ignoring lingering long-term consequences of domestic violence as well as continuing relationship dynamics and the fact that everyone interprets current experience on the basis of past experience; and 3) the term “post” discounts the current nature of psychological and medical harm from past domestic violence. In addition, the term disorder implies irrationality, yet traumatic stress is a perfectly normal reaction to being targeted repeatedly by abuse and violence. Although the term “trauma response to abuse and violence” is better, the term ‘post-traumatic stress disorder’ is used in these materials because, until the name is changed, it is the name currently used in diagnostic literature to describe this normal human reaction to domestic violence.

- 25 For example: Hon. Jerry Bowles et al., *supra* note 18 at page 10; Mary Ann Dutton “Pathways Linking Intimate Partner Violence and Posttraumatic Disorder” (2009) 10(3) *Trauma, Violence & Abuse* 211-224; Michelle Dennis, Amanda Flood et al. “Posttraumatic Stress Disorder or Major Depressive Disorder” (2009) 15(5) *Violence Against Women* 618-627.
- 26 Warshaw, *supra* note 24; Dutton, *ibid*; Markham, *supra* note 23; Jane Murphy and Jane Aiken (2002) “Dealing with Complex Evidence of Domestic Violence: A Primer for the Civil Bench” 39 *Court Review* 12-22; Jennifer Long for American Prosecutors Research Institute (2007) *Introducing Expert Testimony to Explain Victim Behavior in Sexual and Domestic Violence Prosecutions* (American Prosecutors Research Institute) http://www.ndaa.org/pdf/pub_introducing_expert_testimony.pdf
- 27 K. Cavanaugh et al. (2001) "Remedial work: Men's strategic responses to their violence against intimate female partners" *Sociology* 35 (3) 695-714; Bancroft et al., *supra* note 20.
- 28 See for example: Fiona Kelly and Belinda Fehlberg "Australia's fragmented family law system: jurisdictional overlap in the area of child protection" (2002) 26 *International Journal of Law, Policy and the Family* 38 -54. Although Kelly and Fehlberg are reporting on Australia research, Canada and Australia share common problems in domestic violence cases, particularly in connection with information sharing problems across court systems and problems associated with divisions in jurisdiction.
- 29 These types of information exchange protocols have been implemented in some areas of Australia in order to protect children. See, for example: Family Law Council (2009) *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues* (Attorney General: Government of Australia) Chapter 9 online at: http://www.ag.gov.au/Documents/Family_Violence_Report.pdf

- 30 Sarah Krahenbuhl and Mark Blades (2009) “Does the Form of Question Repetition have an Effect on Children's Recall Accuracy and Consistency?” 11(4) *International Journal of Police Science & Management* 460-475; National Institute of Justice and American Bar Association’s 1998 publication, *Legal Interventions In Family Violence: Research Findings and Policy Implications* (Washington: US Department of Justice) particularly the Chapter by Whitcomb. Goodman, Runyan, and Hoak. AIJA Committee 'Children Giving Evidence' (2009) *Bench Book For Children Giving Evidence in Australian Courts*(Australian Institute of Judicial Administration) on line; Center for Children and Families in the Legal System (2002) *Child Witnesses in Canada: Where We’ve Been, Where We’re Going*: http://www.lfcc.on.ca/CW_in_Canada.html; Louise Sas (2002) *The Interaction Between Children's Developmental Capabilities and the Courtroom Environment: The Impact on Testimonial Competency* (Ottawa: Department of Justice) : http://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr02_6/index.html; Nova Scotia Department of Justice, Victim Services Division (2001) “Child Victims and the Criminal Justice System” *Viva Voce* 4(1): http://www.lfcc.on.ca/vivavoce_winter_01.pdf
- 31 Mary Ellen Turpel-Lafond (2012) *Honouring Kaitlynn, Max and Cordon: Make Their Voices Heard Now*(British Columbia Committee for Children and Youth); Turpel-Lafond, *supra* note 12; K. Abshoff and S. Lanthier (2008) “Family Action Court Team (F.A.C.T.) Court Watch Project 2008 Background Paper” (Women Abuse Council of Toronto) report limited dialogue between criminal and family courts resulting in missing evidence of criminal charges and criminal court proceedings in family court cases. See also: Report to the Chief Coroner of British Columbia (2010) *Findings and Recommendations of the Domestic Violence Death Review Panel*(Government of British Columbia).
- 32 Turpel-Lafond (2012), *ibid.*
- 33 For information about domestic violence intervention standards, see for example: National Institute of Justice (2010) *Batterer Intervention: Doing the Work and Measuring the Progress* (Family Violence Prevention Fund) and Batterer Intervention Services Coalition Michigan which provides access to 43 sets of state standards on domestic violence intervention. Best practices dictate a ‘victim’ safety focus with perpetrator consent to the release of information, such as record of attendance, to ‘victims’. This is because non-attendance is associated in research with enhanced risk. See also Attorney General & Justice New South Wales (2012) *Minimum Standards for Men's Domestic Violence Behaviour Change Programs*