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Introduction: Domestic Violence and Access to Justice within the Family Law and Intersecting Legal Systems

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INTRODUCTION: DOMESTIC VIOLENCE AND ACCESS TO JUSTICE WITHIN THE FAMILY LAW AND INTERSECTING LEGAL SYSTEMS

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The articles in this collection explore the access to justice issues that arise for survivors of domestic violence[1] in their encounters with Canada's family law system. While family law and family dispute resolution processes are the central focus of the articles, three contributions also address family law's intersections with other legal domains (civil restraining orders, child welfare, and immigration). Common across the contributions is a desire to carefully interrogate the potential of law and legal processes to

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[1] The term "domestic violence" is used in various ways, in different contexts, by particular actors. We use a feminist definition of "domestic violence" throughout the volume to capture the multiple forms of violence and abuse, including coercive control, which occur in the context of intimate adult relationships and the gendered nature of the phenomenon. For a discussion of terminology, see e.g. Renate Klein, ed, *Framing Sexual & Domestic Violence Through Language* (New York: Palgrave Macmillan, 2013).

enhance—or conversely to undermine—the safety and well-being of survivors[2] and their children.

The research drawn upon in these articles is derived from a larger project on domestic violence and access to justice at the intersection of different legal domains. Several considerations underpinned our decision to focus on family law in these articles. While estimates vary, a substantial number of those seeking legal advice or engaging in family law dispute resolution processes have experienced, or are experiencing, domestic violence.[3] Moreover, it is well-established that violence often escalates post-separation, and separation is the most dangerous time for women and children.[4] The importance

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[2] We use the term "survivor" when referring to those who are experiencing or have experienced domestic violence. While we use the term "victim" when this appears in statutes and other sources under discussion, we prefer the term "survivor" because it better denotes the resistance, resilience, and agency of those experiencing domestic violence.

[3] See Canada, Department of Justice, *Research in Brief: Family Violence: Relevance in Family Law* (Ottawa: September 2018) at 3–4, online (pdf): <www.justice.gc.ca/eng/rp-pr/jr/rg-rco/2018/sept01.pdf>.

[4] See Peter Jaffe et al, "Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce" (2014) at 12, online (pdf): <www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfv-freevf/rfcsfv-freevf.pdf> (which maintains that "[s]eparation can be the most dangerous time for not only adult victims of domestic violence but also for children"). See also Canada, Department of Justice, "Legislative Background: *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act* (Bill C-78 in the 42nd Parliament)" (June 2019) at 23, online (pdf): <www.justice.gc.ca/eng/rp-pr/fl-lf/famil/c78/legislative_background_E.PDF>; Myrna

of identifying and understanding the complexities of, and harms associated with, domestic violence is reflected in the recent reforms to the *Divorce Act*[5] and to the various provincial family law statutes that followed suit. These reforms include adoption of a broad definition of "family violence" and the requirement to consider family violence in the assessment of the best interests of a child.

While the aim of these articles is not to assess these reforms, they nonetheless speak to them in a variety of ways. The articles review and engage with the social science literature regarding the nature of domestic violence and its impacts on the safety and well-being of women and children that underpins these reforms. In this way, they provide a deeper appreciation of what underpins these changes and—as becomes clear through the articles in the volume—this deeper appreciation of domestic violence and its legal significance is critical to the realization of the legislative goals of promoting the best interests of children and addressing family violence.[6] The articles also highlight the multitude of challenges that survivors encounter—the lack of access to well-funded legal representation, the persistence of myths and stereotypes, and the lack of understanding of domestic violence among legal actors, as examples—that will not be addressed by statutory reform

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Dawson et al, "#CallItFemicide: Understanding sex/gender-related killings of women and girls in Canada, 2020" at 65, online (pdf): < femicideincanada.ca/callitfemicide2020.pdf>.

5 *Divorce Act*, RSC 1985, c 3 (2nd Supp).

6 See Government of Canada, "Strengthening and modernizing Canada's family justice system" (7 March 2022), online: < www.justice.gc.ca/eng/fl-df/cfl-mdf/01.html>; Canada, Department of Justice, "Legislative Background," *supra* note 4.

alone. As such, they also point to additional measures that are needed if the legislative goals are to be achieved on the ground and if survivors are to have meaningful access to justice. Here the articles resonate with the existing literature that has demonstrated a substantial disjuncture between the legislative intention to prioritize the safety and emotional security of children and actual outcomes.[7] For example, a review of the earlier amendments in British Columbia by Susan Boyd and Ruben Lindy found that judges appeared more willing to make findings of family violence given the broad statutory language in the British Columbia *Family Law Act*.[8] However, such findings did not necessarily affect case outcomes given the discretion the judges had to consider and weigh a number of other factors.[9] More recent research out of British Columbia by Rise Women's Legal Centre—which undertook surveys and focus groups rather than a study of reported case law—concluded that "the family law system may have changed its legislation, but it did not change its underlying attitudes and assumptions, which are frequently built upon a foundation of preconceived myths and stereotypes about

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7 See Linda C Neilson & Susan B Boyd, "Interpreting the New Divorce Act, Rules of Statutory Interpretation & Senate Observations" (2020), online (pdf): *Women's Legal Education & Action Fund* <leaf.ca/wp-content/uploads/2020/03/Interpreting-the-New-Divorce-Act.pdf>.

8 See Susan B Boyd & Ruben Lindy, "Violence Against Women and the B.C. Family Law Act: Early Jurisprudence" (2016) 35:2 Can Fam LQ 101 at 104–112 (for example, Boyd and Lindy found that courts sometimes recognized systems abuse—the use of family law and other legal systems to control survivors—as family violence, see *ibid* at 105-06). Systems abuse can deter survivors from engaging with the legal system or cause them to agree to outcomes that are contrary to their and their children's interests.

9 *Ibid* at 136–38.

the dynamics of interpersonal violence."[10] Much of the existing research is disheartening in terms of whether legislative change will have its intended impacts. The articles in the collection help to further illuminate why change has been so limited, and what more is needed.

The articles also make an important contribution to the literature on access to justice. We conceive of access to justice broadly, including access to the forums, laws, and supports that provide meaningful redress for domestic violence, as well as safety, fairness, and equality for survivors and children.[11] Access to justice should also be conceptualized "from the perspective of those most affected, especially those marginalized by social

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[10] Haley Hrymak & Kim Hawkins, "Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger" (2021) at 9, online (pdf): *Rise Women's Legal Centre* <womenslegalcentre.ca/wp-content/uploads/2021/01/Why-Cant-Everyone-Just-Get-Along-Rise-Womens-Legal-January2021.pdf>.

[11] See e.g. Jennifer Koshan, Janet Mosher & Wanda Wiegers, "The Costs of Justice in Domestic Violence Cases" in Trevor Farrow & Lesley Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver, UBC Press: 2020) at 149; Janet Mosher, "Grounding access to justice theory and practice in the experiences of women abused by their intimate partners" (2015) 32:2 Windsor YB Access Just 149. See also Stephanie Ehret, ""You Can't Look the Other Way": Justice as "Recognition" for Intimate Partner Violence" (2022) 34:1 CJWL 146 (examining "justice" in terms of recognition, fairness, and safety); Trevor Farrow & Lesley Jacobs, "Introduction: Taking Meaningful Access to Justice in Canada Seriously," in *The Justice Crisis*, *ibid* at 8-9 [Farrow & Jacobs, "Introduction"] (arguing meaningful access to justice has four pillars: it is problem-focused, person-centred, attentive to legal consciousness and mobilization, and cognizant of systemic barriers and injustices).

institutions such as law."[12] In these articles, access to justice is conceptualized from the perspective of survivors of domestic violence with attention paid to how various structures of oppression (sexism, racism, ableism, colonialism, homophobia, for example) enable domestic violence and differentially shape the options available to survivors. Our focus on domestic violence in the family law realm brings to the foreground some of the "everyday legal problems" that have been the subject of current access to justice studies.[13] Three of the articles also address an issue often neglected in the access to justice literature by attending to how the multiple laws and legal domains that intersect with family law may produce barriers, risks, and inequalities for survivors, whether they seek legal remedies themselves or are drawn into proceedings by their (ex)partners or the state.[14] Analysis of access to justice also requires attention to dispute resolution (DR) processes, which may be encouraged for, and even imposed on,

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12 Koshan, Mosher & Wiegers, *supra* note 11 at 150, citing Action Committee on Access to Justice, *Meaningful Change for Family Justice: Beyond Wise Words—Final Report of the Family Justice Working Group* (Ottawa, 2013); Canadian Bar Association, *Reaching Equal Justice: An Invitation to Envision and Act* (Ottawa: CBA, 2013); Trevor Farrow, "What is Access to Justice?" (2014) 10 Osgoode Hall LJ 12.

13 See e.g. Farrow & Jacobs, "Introduction," *supra* note 11, 9-10; Trevor Farrow et al, *Everyday Legal Problems and The Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016) at 8, n 21.

14 For discussions see e.g. Koshan, Mosher & Wiegers, *supra* note 11; Hrymak & Hawkins, *supra* note 10 at 30-36; Zara Suleman, Haley Hrymak & Kim Hawkins, *Are We Ready to Change? A Lawyer's Guide to Keeping Women and Children Safe in BC's Family Law System* (Vancouver: Rise Women's Legal Centre, 2021) at 6.

family litigants in response to concerns about an overburdened legal system and associated costs and limitations.[15]

Dispute resolution and other legal responses to domestic violence may also be viewed through the lens of neoliberalism. Neoliberalism—the dominant socio-political ideology in North American society—reifies individual freedom and responsibility, privatizes costs formerly borne by the welfare state (reducing, for example, access to legal representation and community supports), individualizes and de-genders violence, and increases social marginalization, relying on the state's punitive powers to enforce compliance with dominant norms.[16]

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[15] See e.g. Action Committee on Access to Justice in Civil and Family Matters, "Access to Civil & Family Justice: A Roadmap for Change" (2013) at 11–13, online (pdf): *Canadian Forum on Civil Justice* <cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf>; Koshan, Mosher & Wiegers, *supra* note 11; Linda C Neilson, "At Cliff's Edge: Judicial Dispute Resolution in Domestic Violence Cases" (2014) 52:3 Fam Ct Rev 529.

[16] For discussions of neoliberalism in the context of family and gender-based violence, see e.g. Brenda Cossman, ''Family Feuds: Neo-Liberal and Neo-Conservative Visions of the Reprivatization Project,'' in Brenda Cossman & Judy Fudge, eds, *Privatization, Law, and the Challenge to Feminism* (Toronto: University of Toronto Press, 2002), 169 at 178 (also noting neoliberalism's connections with neoconservatism and its valorization of the traditional family); Lise Gotell, "The Discursive Disappearance of Sexualized Violence: Feminist Law Reform, Judicial Resistance and Neo-liberal Sexual Citizenship" in Dorothy E Chunn, Susan B Boyd & Hester Lessard, eds, *Reaction and Resistance: Feminism, Law and Social Change* (Vancouver: University of British Columbia Press, 2007), 127 at 128-130; Deborah M Weissman, "Countering Neoliberalism and Aligning Solidarities: Rethinking Domestic Violence Advocacy" (2015) 45:4 Southwestern Law Rev 915 at 919-922. More generally, see Jamie

While there is a rich body of literature engaging with neoliberalism and the criminalization of gender-based violence,[17] critiques of neoliberalism are also relevant to an examination of other legal responses to and forums for domestic violence, including those in the family, child welfare, protection order, and immigration spheres.[18] These critiques necessitate a continued focus on the systemic issues raised by the law's and legal actors' treatment of domestic violence, which can potentially be obscured by a narrow access to justice framework.[19]

METHODOLOGY

The articles in this special issue adopt a mixed methods approach that prioritizes in-depth, nuanced analysis to

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Peck & Adam Tickell, "Neoliberalizing space" (2002) 34:3 Antipode 380, discussing neoliberal governments' dual strategies of "roll-back" (deregulation) and "roll-out" (re-regulation, often punitive).

17 For a recent literature review see Clare McGlynn, "Challenging anti-carceral feminism: Criminalisation, justice and continuum thinking" (2022) 93 Women's Studies International Forum 102614. Neoconservatism can also be associated with punitive responses to domestic violence. See e.g. Elizabeth Comack, "The Feminist Engagement with Criminology," in Gillian Balfour & Elizabeth Comack, eds, *Criminalizing Women: Gender and (In)Justice in Neoliberal Times*, 2nd ed (Halifax: Fernwood Publishing, 2014) 12 at 34-35; Jennifer Koshan & Wanda Wiegers, "Theorizing Civil Domestic Violence Legislation in the Context of Restructuring: A Tale of Two Provinces" (2007) 19:1 CJWL 145 at 156-157.

18 See e.g. Cossman, *supra* note 16 (discussing family law); Koshan & Wiegers, *supra* note 17 (discussing civil protection orders); Weissman, *supra* note 16 (discussing social welfare law).

19 See, however, Koshan, Mosher & Wiegers, *supra* note 11, and Farrow & Jacobs, "Introduction," *supra* note 11 (which include systemic injustices and inequalities in their definitions of access to justice).

examine how the family law system responds to and addresses the problem of domestic violence. The various research methods employed consisted of fieldwork data gathered using semi-structured interviews, as well as documentary data in the form of case law selected from legal databases and federal, provincial, and territorial laws and policies on domestic violence. Using multiple methods has proven invaluable to providing a variety of perspectives from which to better understand the access to justice issues in the context of domestic violence and a qualitative approach offers the opportunity to delve deeply into these issues as it is more flexible, open, and responsive to this context. Qualitative interviews also allow for an examination of trends and issues regarding how domestic violence laws are working on the ground, which cannot always be ascertained through reported case law. After an extensive literature review had been completed collectively and by each author in their specific area(s) of focus, purposive sampling was employed to identify interview participants and relevant legal documents for data collection that would build on prior research and theory. All the researchers involved in this project were required to obtain ethics approval from their respective university research ethics boards prior to conducting fieldwork; this proved to be straightforward for some, but significantly challenging for others as each university research ethics board had different criteria for assessing and granting approval. In particular, the researchers conducting projects that would include Indigenous voices, perspectives and experiences encountered more barriers and delays to obtaining ethics approval.[20] Analysis of the data gathered

[20] See Canada, "Chapter 9: Research Involving the First Nations, Inuit and Métis Peoples of Canada" in *Tri-Council Policy Statement: Ethical*

used a thematically based, iterative process that aimed to identify gaps and situations where survivors in the legal system were facing problems of access to justice, including at the intersection of different legal domains. As well, project team discussions on the analysis of the data and development of the papers in this collection helped to strengthen the common themes found across the individual papers.

Before we turn to an overview of the various contributions in the volume, we provide a brief description of the recent legislative reforms regarding family violence, as well as an overview of family legislation in each province and territory, as this provides important context for all of the contributions.

DOMESTIC VIOLENCE AND PARENTING DISPUTES IN THE FAMILY LAW SYSTEM

Domestic violence can arise as a relevant concern in several different family law claims.[21] It can affect a survivor's ability to be self-sufficient in assessing

Conduct for Research Involving Humans (Ottawa: Canadian Institutes of Health Research, Natural Sciences and Engineering Research Council of Canada, and Social Sciences and Humanities Research Council, 2018). Researchers on this project found that their institutions interpreted the guidelines on engagement with Indigenous communities and governing authorities very differently. Some institutions were slow to recognize the specific difficulties that may arise in research involving Indigenous women affected by gender-based violence.

21 For the purposes of this volume, we distinguish the child protection or child welfare system from the family law system, which deals primarily with disputes between individual litigants and caregivers.

entitlement to spousal support,[22] and in some cases, may amount to dissipation in a claim to family property division.[23] However, it arises most commonly and directly as a relevant factor in determining a child's best interests in parenting disputes.

The amendments to the *Divorce Act* that took effect on March 1, 2021 provide that courts, in identifying the best interests of a child, are "to give primary consideration to the child's physical, emotional and psychological safety, security and well-being."[24] Judges are now also required to consider "family violence" and its impact on the willingness and ability of the party responsible for the violence to care for and meet the needs of the child, along with the appropriateness of requiring cooperation between the parties.[25] Family violence is defined broadly to include conduct that "is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes the other family member to fear for their own safety or for that of another person—and in the case of a child, the direct or indirect exposure to such conduct."[26] The violence can take a number of different forms and expressly includes:

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22 See *Leskun v Leskun*, 2006 SCC 25 at para 21. Domestic violence may also be relevant in explaining delays in retroactive support applications, challenging spousal support waivers, and to applications for restraining and exclusive possession orders under family law statutes. It may also ground several tortious claims, including the "tort of family violence" recently established in *Ahluwalia v Ahluwalia*, 2022 ONSC 1303, and now under appeal.

23 See e.g. *Thomas v Wohleber*, 2020 ONSC 1965.

24 *Divorce Act*, *supra* note 5, s 16(2).

25 See *ibid*, s 16(3)(j).

26 *Ibid*, s 2(1).

physical and sexual abuse, psychological or financial abuse, harassment, failure to provide necessaries, and threats of or conduct that harms or kills an animal or damages property. In assessing its impact, judges must also consider a number of factors, including: the nature, seriousness, frequency of the violence and when it occurred; whether the violence was coercive and controlling; whether it was directed at a child or a child was exposed directly or indirectly; the physical, emotional, and psychological harm or risk of harm to children; whether the violence has compromised, or causes fear for, safety; steps taken to address the behaviour; and any other relevant factor.[27]

Significantly, the definition reflects the evolution in research regarding the nature of domestic violence and the harms to women and children. Law has long been critiqued for its myopic focus on discrete acts of physical or sexual violence, ignoring other manifestations of abuse and patterns of coercive control.[28] The attention in the *Divorce Act* to coercive control is a major development. As elaborated perhaps most fully by Evan Stark, coercive control captures the reality that through tactics of isolation, manipulation, humiliation, surveillance, micro-regulation of gender performance, economic abuse, and threats, abusive partners instill fear, control and entrap their victims, and cause deep psychological, emotional, spiritual, and economic harm.[29] While physical and/or

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27 See *ibid*, s 16(4).

28 See Mosher, *supra* note 11.

29 Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (New York: Oxford University Press, 2007); Evan Stark & Marianne Hester, "Coercive Control: Update and Review" (2019) 25:1

sexual violence may be among the tactics deployed, in Stark's conception, they are not essential elements of coercive control.[30] Coercive control is distinct from psychological abuse, as not all psychological abuse is controlling and the repertoire of coercive controllers extends beyond psychological abuse.[31] While there are multiple and varied descriptions of coercive control in the literature, Hamberger et al suggest that they share three common characteristics: intention or motivation of the perpetrator to control the target; the perception of the behaviour as negative by the target; and the perpetrator's ability to make the threat credible.[32]

Importantly, there is mounting evidence that the degree of coercive control in a relationship is more predictive of severe, and indeed lethal violence, than discrete acts of prior physical violence.[33] Coercive control

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Violence Against Women 81. See also Emma Williamson, "Living in the World of the Domestic Violence Perpetrator: Negotiating the Unreality of Coercive Control" (2010) 16:12 Violence Against Women 1412; Andy Myhill & Katrin Hohl, "The "Golden Thread": Coercive Control and Risk Assessment for Domestic Violence" (2019) 34:21–22 J of Interpersonal Violence 4477; Bridget A Harris & Delanie Woodlock, "Digital Coercive Control: Insights from Two Landmark Domestic Violence Studies" (2019) 59:3 British J of Criminology 530.

30 See Stark & Hester, *supra* note 29 at 89.

31 L Kevin Hamberger, Sadie E Larsen & Amy Lehrner, "Coercive control in intimate partner violence" (2017) 37 Aggression & Violent Behavior 1.

32 See *ibid* at 3.

33 See Stark & Hester, *supra* note 29; Holly Johnson et al, "Intimate Femicide: The Role of Coercive Control" (2019) 14:1 Feminist Criminology 3.

is more likely to persist after separation, and the prior level of control is also predictive of post-separation physical/sexual assault, thus making it a highly relevant context in family law.[34] Survivors commonly report that the scars left by coercive control are much more difficult to heal from than those left by physical violence.[35]

The concept of coercive control has been developed in the context of heterosexual relationships, and gender inequality has been theorized as central to its enablement. This focus on gender inequality has been the subject of critique, and scholars have highlighted the need to attend to multiple, interlocking nodes of structural oppression.[36]

Domestic violence statistics help us to understand this social phenomenon even though many scholars acknowledge the limitations of official statistics. Statistics

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34 See Stark & Hester, *supra* note 29 at 89–91. See also Statistics Canada, *Spousal violence in Canada, 2019*, by Shana Conroy, Catalogue No 85-002-X (Ottawa: Statistics Canada, 2021) online: *Statistics Canada* <www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00016-eng.htm> [Statistics Canada, *Spousal violence*], (45% of victims of self-reported domestic violence experienced violence after leaving their partners).

35 See e.g. Diane R Follingstad, "The role of emotional abuse in physically abusive relationships" (1990) 5:2 Journal of Family Violence 107; Deborah Epstein & Lisa Goodman, "Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences" (2019) 167 U Penn L Rev 399 at 418.

36 See e.g. Janice Ristock et al, "Impacts of colonization on Indigenous Two-Spirit/LGBTQ Canadians' experiences of migration, mobility and relationship violence" (2019) 22:5–6 Sexualities 767.

are available for both police-reported[37] and self-reported[38] rates of domestic violence. These statistics reveal that domestic violence is not uncommon in Canada,[39] yet it is under-reported to the police, particularly if there are children involved in the relationship.[40] They also confirm that survivors of domestic violence are disproportionately women and approximately 80% of the victims of intimate partner killings are women.[41] Women who are

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37 Statistics Canada, *Family violence in Canada: A statistical profile, 2019* by Shana Conroy, Catalogue No 85-002-X (Ottawa: Minister of Industry, 2021), online: *Statistics Canada* < www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00001/03-eng.htm> [Statistics Canada, *Family violence*].

38 See *ibid*, reporting on the 2019 General Social Survey on Canadians' Safety (Victimization). For both police-reported and self-reported rates of "spousal violence," only acts constituting criminal offences are included. The various instruments used to gather data will often vary in terms of the relationships, the behaviours, and timeframes included, making it difficult to compare findings across studies.

39 See Statistics Canada, *Family violence*, *supra* note 37, s 3 (of all the victims of police-reported violence in 2019, 30% were victimized by an intimate partner).

40 See *ibid*. Under-reporting may be heightened for persons experiencing intersecting inequalities, such as racialized women. See e.g. Statistics Canada, *Intimate partner violence: Experiences of visible minority women in Canada, 2018*, by Adam Cotter, Catalogue No 85-002-X (Ottawa: Statistics Canada, 2021) [Statistics Canada, *Visible minority women*].

41 See Statistics Canada, *Family violence*, *supra* note 37, s 3 (79% of victims of police-reported intimate partner violence were women, and 45% of all female victims of police-reported violence were victimized by an intimate partner); Statistics Canada, *Spousal violence*, *supra* note 34 (4.2% of women self-reported experiencing spousal violence compared to 2.7% of men). This differs significantly from the 2014 finding that 4.2% of men and 3.5 % of women reported being victims of spousal abuse in the preceding 5 years: Statistics Canada, *Family*

marginalized may experience domestic violence at higher rates or in different forms, including Indigenous women,[42] racialized women,[43] young women,[44] women with disabilities,[45] sexual minority women,[46] and women living in rural and remote areas.[47] While surveys of self-reported violence are sometimes used to argue that rates of domestic violence against men and women are comparable, we

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violence in Canada: A statistical profile, 2014, Catalogue No 85-002-X, 7 December 2021 correction (Ottawa: Statistics Canada, 2016).

42 See e.g. Statistics Canada, *Intimate Partner Violence: Experiences of First Nations, Métis, and Inuit women in Canada, 2018*, by Loanna Heidinger, Catalogue No 85-002-X (Ottawa: Statistics Canada, 2021).

43 See Statistics Canada, *Visible minority women*, *supra* note 40 (noting that while racialized women overall experience domestic violence at similar rates to non-racialized women, the numbers differ for different ethno-cultural groups). Racialized women may be more susceptible to abuse associated with migration status.

44 See Statistics Canada, *Intimate partner violence: Experiences of young women in Canada, 2018*, by Laura Savage, Catalogue No 85-002-X (Ottawa: Statistics Canada, 2021).

45 See Statistics Canada, *Intimate Partner Violence: Experiences of women with disabilities in Canada, 2018*, by Laura Savage, Catalogue No 85-002-X (Ottawa: Statistics Canada, 2021).

46 See Statistics Canada, *Intimate partner violence: Experiences of sexual minority women in Canada, 2018*, by Brianna Jaffray, Catalogue No 85-002-X (Ottawa: Statistics Canada, 2021) (including lesbians and bisexual women, who reported domestic violence from both same and different sex partners).

47 Canadian Centre for Justice and Community Safety Statistics, Statistics Canada, *Brief: Statistical profile of intimate partner violence in Canada* (submitted to the House of Commons Standing Committee on the Status of Women, February 15, 2022).

believe that critiques of this data are compelling.[48] Accordingly, we use gendered language when speaking about domestic violence in this collection. Our focus is not intended to diminish the experiences of gender diverse people, including those who are two-spirit, transgender, and/or non-binary, who encounter high rates of gender-based violence as well as misconceptions about that violence.[49]

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[48] See e.g. Molly Dragiewicz & Walter S DeKeseredy, "Claims about Women's Use of Non-fatal Force in Intimate Relationships: A Contextual Review of Canadian Research" (2012) 18:9 Violence Against Women 1008 at 1011–13 (noting that these surveys are flawed and acontextual, e.g. by failing to distinguish between offensive/controlling violence typically used by men and defensive violence typically used by women). Moreover, survey data show that women report more severe forms of violence and are more likely to fear for their lives.

[49] See Statistics Canada, *Sexual minority people almost three times more likely to experience violent victimization than heterosexual* people (Ottawa: Statistics Canada, 2020) online: *The Daily* <www150.statcan.gc.ca/n1/daily-quotidien/200909/dq200909a-eng.htm> (excluding domestic violence, which is to be reported at a later date). Until recently, data has been collected in a manner that presupposes a gender binary and that is grounded in heteronormative assumptions. This limited and problematic framing tends to obscure the violence in many relationships and is addressed by, among many others, KellyAnne Malinen, "'This was a Sexual Assault': A Social Worlds Analysis of Paradigm Change in the Interpersonal Violence World" (2014) 37:3 Symbolic Interactions 353; Valérie Grand'Maison and Edelweiss Murillo Lafuente, "Dys-Feminicide: Conceptualizing the Feminicides of Women and Girls with Disabilities" (2022) 21:1 Sociation 129; Michaela Rogers, "Challenging cisgenderism through trans people's narratives of domestic violence and abuse" (2019) 22:5-6 Sexualities 803; Emily M Lund, "Interpersonal Violence Against Sexual and Gender Minority Individuals with Disabilities" in Emily M Lund, Claire Burgess & Andy J Johnson, eds, *Violence Against LGBTQ+ Persons: Research, Practice, and Advocacy* (Springer, 2020) 726.

Increasingly recognized, and reflected in the *Divorce Act* amendments, are the harms to children of exposure to family violence, including to coercive control. A child may be directly exposed to family violence (e.g. by seeing or hearing it) or exposed indirectly (e.g. by seeing a fearful or injured parent).[50] Additionally, a child may be harmed through exposure to a toxic environment or a primary caregiver who is experiencing chronic stress as a result of a pattern of coercive control.[51] The harms to a child of exposure to domestic violence can include a higher risk of: direct physical and sexual harm or cross-fire violence; impaired attachments with abused mothers; short- and long-term emotional, psychological, and behavioural disturbances (such as depression, anxiety, and PTSD); developmental and neurological harm; and a higher risk of negative health, academic, employment, and relationship outcomes.[52] Research is also just beginning to document the ways in which coercive control is exercised

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50 See Sibylle Artz et al, "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014) 5(4) International J of Child, Youth and Family Studies 493, cited by Karakatsanis J in *Barendregt v Grebliunas*, 2022 SCC 22 [*Barendregt*].

51 See Linda C Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases*, 2nd ed (2017 CanLIIDocs 2: Canadian Legal Information Institute, 2020), at 6.2.5.1, online (ebook): *Canlii* <canlii.ca/t/ng> [Neilson, *Responding*]; Center on the Developing Child, "Toxic Stress" (2023), online: *Harvard University* <developingchild.harvard.edu/science /key concepts/toxic-stress/>.

52 See Neilson, *Responding*, *supra* note 51; Artz et al, *supra* note 50; however, note the lack of clarity around the definition of 'exposure' to domestic violence in many empirical studies.

against children, including post-separation.[53] As Karakatsanis J acknowledged in *Barendregt v Grebliunas*, "proof of even one incident may raise safety concerns for the victim" and "any form of family violence" may have "grave implications … for the positive development of children."[54]

Most provincial and territorial jurisdictions in Canada also require consideration of family or domestic violence in assessing a child's best interests, but definitions vary substantially across jurisdictions.[55] Five jurisdictions—Saskatchewan, Ontario, New Brunswick, PEI, and Nova Scotia—include definitions that substantially replicate or mirror the definition in the amended *Divorce Act.*[56] Manitoba has passed similar

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53 See Emma Katz, Anna Nikupeteri & Merja Laitinen, "When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence" (2020) 29:4 Child Abuse Review 310.

54 *Barendregt, supra* note 50 at paras 144, 147. Eight members of the Court concurred.

55 Under the *Divorce Act*, *supra* note 5, s 16(1) and most provincial and territorial statutes, the child's best interests is the sole governing principle, but Manitoba and Nova Scotia provide that the child's best interests is the "paramount" rather than sole consideration (*The Family Maintenance Act*, CCSM c F20, s 2(1) [MB *FMA*]; *Parenting and Support Act*, RSNS 1989, c 160, s 18(5) [NS *PSA*]).

56 See *The Children's Law Act*, *2020*, SS 2020, c 2 , ss 2(1), 10(2), 10(3)(j) [SK *CLA*]; *Children's Law Reform Act,* RSO 1990, c C.12, ss 18(1),(2), 24(3)(j), 24(4) [ON *CLRA*]; *Family Law Act*, SNB 2020, c 23, ss 1, 50(2)(j), 50(4) [NB *FLA*]; NS *PSA*, *ibid*, ss 2(da) (defining "family violence, abuse or intimidation"), 18(6)(j), 18(6)(ia), 18(7); *Children's Law Act,* RSPEI 1988, c C-6.1, ss 36(2), 33 [PEI *CLA*] (references the *Victims of Family Violence Act*, RSPEI 1998, c V-3.2,

legislation that has yet to come into force.[57] British Columbia has required a broad consideration of family violence since 2013 and defines family violence in terms similar to that of the *Divorce Act* amendments.[58] Three jurisdictions require consideration of family violence but do not define it.[59] Alberta limits the definition of family violence to physical harm, forced confinement, and sexual abuse or acts that cause a reasonable fear for one's safety or that of another, but excludes "acts of self-protection or protection of another" as well as "reasonable" corrective force used by a parent or guardian against a child.[60] Provisions in two jurisdictions still do not appear to require consideration of family or domestic violence in resolving parenting disputes.[61]

In terms of parenting arrangements, the amended *Divorce Act* continues to lack explicit presumptions in

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s 2 [PEI *VFVA*] in defining family violence to include emotional abuse and the deprivation of necessities).

57 Currently MB *FMA*, *supra* note 55, s 1 references the definition in *The Domestic Violence and Stalking Act*, CCSM, c D93, s 2(1.1) [MB *DVSA*] which includes conduct that "reasonably, in all the circumstances, constitutes psychological or emotional abuse". *The Family Law Act*, SM 2022, c 15, Sch A, comes into force when proclaimed.

58 See *Family Law Act*, SBC 2011, c 25, ss 38, 37(2) [BC *FLA*].

59 See *Children's Law Act*, RSNL 1990, c C-13, s 31(3) [NL *CLA*]; *Children's Law Act*, SNWT 1997, c 14, s 17(3) [NWT *CLA*]; *Children's Law Act*, SNWT (Nu) 1997, c 14, s 17(3) [NU *CLA*].

60 *Family Law Act*, SA 2003, c F-4.5, s 18(3) [AB *FLA*].

61 See *Children's Law* Act, RSY 2002, c 31, s 30 [YK *CLA*]; *Civil Code of Québec*, CQLR, c CCQ-1991, arts 514, 521.7 [QB *CCQ*].

favour of any particular outcome.[62] British Columbia is the only jurisdiction to expressly provide that no particular parenting arrangement is presumed to be in the best interests of a child.[63] The British Columbia *Act* also stipulates that denial of parenting time or contact is not wrongful where it is reasonably believed that a child might suffer family violence if parenting time or contact is exercised.[64] Several jurisdictions provide for a default presumption of equal decision-making authority in the absence of an order or agreement,[65] and several include a provision in their legislation that allows each parent as much contact as is consistent with the child's best interests.[66] In the *Divorce Act*, this provision is now

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62 Note, however, that the burden of proof may shift in cases involving relocation, *Divorce Act*, *supra* note 5, s 16.93; and that notice of an intention to relocate should be given, or a judicial exemption from the notice provisions should be obtained, including where there is a risk of family violence. Failure to do so will be taken into account in authorizing any relocation, see *Divorce Act*, *supra* note 5, ss 16.8, 16.9, 16.92(1)(d); BC *FLA*, *supra* note 58, ss 65-71. Such provisions may be difficult to meet for survivors of domestic violence depending on their ability to access legal counsel in a timely way.

63 See BC *FLA*, *supra* note 58, s 40(4). Saskatchewan's *Act* now includes a clause that bars any presumptions or inferences as to a preferred parent, but it is unclear how this will be interpreted: SK *CLA*, *supra* note 56, s 11.

64 See BC *FLA*, *supra* note 58, s 62. See also NS *PSA*, *supra* note 55, s 40(3)(a).

65 See e.g. ON *CLRA*, *supra* note 56, s 20; NS *PSA*, *supra* note 55, s 18(4).

66 See *Divorce Act*, *supra* note 5, s 16(6); ON *CLRA*, *ibid*, s 24(6); NB *FLA*, *supra* note 56, s 50(6); NS *PSA*, *ibid*, s 18(8) (though specific reference is made in the section to "consideration of the impact of any family violence, abuse or intimidation"); PEI *CLA*, *supra* note 56, s 40(1). Jurisdictions that do not include such a provision are: BC *FLA*, *supra* note 58; AB *FLA*, *supra* note 60; SK *CLA*, *supra* note 56; MB

situated in the section dealing with best interests, and the previous reference to "maximum contact" in the marginal note has been removed. As well, the 'friendly parent provision'—which considers the level of cooperation between the parties— has been removed from the previous section in the *Divorce Act* and now appears in a modified form as one of many factors that must be considered as relevant to a child's best interests.[67] In *Barendregt,* Karakatsanis J noted that the amended *Act* "recasts" the maximum contact principle in more "neutral" and "child-centric" terms as a "parenting time factor" that allows for contact only to the extent that it is consistent with the best interests of the child.[68]

Relevant to several articles in this volume that focus on intersecting legal domains, the amendments to the *Divorce Act* and similar provisions in some jurisdictions also require courts to consider whether there have been civil or criminal proceedings that are relevant to the safety, security, and well-being of the child when making parenting orders.[69] However, while court rules or forms

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FMA, *supra* note 55; Art 514 CCQ, *supra* note 61; NL *CLA*, *supra* note 59; YK *CLA*, *supra* note 61; NWT *CLA*, *supra* note 59; NU *CLA*, *supra* note 59.

67 *Divorce Act*, *supra* note 5, s 16(3)(c) (willingness to support a child's relationship with the other parent) and s 16(3)(i) (ability and willingness to communicate and cooperate with the other spouse).

68 *Barendregt*, *supra* note 50 at para 135.

69 See e.g. *Divorce Act*, *supra* note 5, ss 7.8(2), 16(3)(k); AB *FLA*, *supra* note 60, s 18(2)(viii)(B); SK *CLA*, *supra* note 56, s 10(3)(k); ON *CLRA*, *supra* note 56, s 33.3; *Regulation of the Superior Court of Québec in family matters*, CQLR c C-25.01, r 0.2.4, s 16; NB *FLA*,

may require the parties to provide an affidavit that discloses whether they have been or are now involved in child protection or criminal proceedings,[70] many jurisdictions lack the capacity to verify accounts provided by the parties. This places an onus on survivors to attempt to access such records through applications to courts or through freedom of information applications to police or child protection authorities. In British Columbia, applicants for guardianship must agree to a child protection record check in addition to disclosing in an affidavit any incidents of family violence.[71] In Ontario, non-parents who apply for a parenting order must provide criminal record and child protection checks, and a clerk of the court may be required to provide information regarding such proceedings.[72]

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supra note 56, s 7; NS *PSA*, *supra* note 55, s 18(6)(ia); PEI *CLA*, *supra* note 56, s 5.

70 For example, in Saskatchewan, see Government of Saskatchewan, "The Saskatchewan Gazette" (3 March 2017) at 400, online (pdf): *Government of Saskatchewan* <www.qp.gov.sk.ca/documents/gazette/part1/2017/G1201709.pdf>; and in Ontario, see Ontario Ministry of the Attorney General, "Ontario Court Forms" (last modified 1 Sept 2021), online (MS Word): *Ontario Court Forms* < ontariocourt forms. on.ca/en/family-law-rules-forms/351/>.

71 *Family Law Act Regulation*, BC Reg 347/2012, s 26.1, Form 5 and *Provincial Court (Family) Rules*, BC Reg 417/98, Form 34.

72 ON *CLRA*, *supra* note 56, ss 21.1, 21.2, 21.3 and for the affidavit provided by the parties, see s 21(2); see also PEI *CLA*, *supra* note 56, s 37, which authorizes a court to require an investigation and report by the Director of Child Protection in some circumstances. A court is also empowered to inquire of the parties and review information "that is readily available and that has been obtained through a lawful search, s 33.3(3).

Legislatures and courts have for some time encouraged or even mandated the resolution of family law disputes through processes other than court-based adjudication. Such processes include negotiation, mediation, collaborative law services, parenting coordination, arbitration, and judicial dispute resolution. This trend is consistent with many access to justice recommendations but may raise concerns for survivors of domestic violence. It also means that one cannot rely on case law alone to get a sense of how family disputes and intersecting legal issues are being resolved, hence the importance of the diverse methodology employed for the articles in this volume.

The amended provisions of the *Divorce Act* now impose a duty on the parties to try to resolve conflict through family dispute resolution (FDR) processes "to the extent it is appropriate."[73] Legal advisors also have a duty to advise their clients of dispute resolution processes and encourage their use, unless "clearly" inappropriate.[74] Several provinces have, either before the amendments or in their wake, incorporated some or all of these duties in their family legislation.[75]

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73 *Divorce Act*, *supra* note 5, s 7.3.

74 *Ibid*, s 7.7(2)(a).

75 E.g. AB *FLA*, *supra* note 60, s 5(1)(b) (duty on lawyers to inform clients of types of DR); *The Family Property* Act, SS 1997, c F-6.3, s 44.1(1) [SK *FPA*], *The Family Maintenance Act, 1997*, SS 1997, c F-6.2, s 16 [SK *FMA*], SK *CLA*, *supra* note 56, s 20 (lawyers must advise of mediation and collaborative law services); ON *CLRA*, *supra* note 56, ss 33.1, 33.2; Art 2 *CCQ*, *supra* note 61; NB *FLA*, *supra* note 56, ss 5(3), 6; NS PSA, *supra* note 55, s 54C(1) (lawyers must advise of

In accordance with the *Divorce Act*, a judge may order a FDR process.[76] Under most provincial and territorial statutes, judges may also be empowered, on the request of a party or on their own initiative,[77] to order a mediation session and/or adjourn family proceedings for such a purpose.[78] In only a few instances are courts expressly required by statute to consider whether there has

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negotiation and alternative dispute resolution); PEI *CLA*, *supra* note 56, ss 3(3), 4.

76 *Divorce Act*, *supra* note 5, s 16.1(6).

77 E.g. AB *FLA*, *supra* note 60, s 97; *The Queen's Bench Act 1998*, SS 1998, c Q-1.01, s 96 [SK *QBA*]; SK *FMA*, *supra* note 75, s 15; SK *CLA*, *supra* note 56, s 18; *The Court of Queen's Bench Act,* CCSM c C-280, s 47(1) [MB *QBA*]; ON *CLRA*, *supra* note 56, s 31(1); QB *Code of Civil Procedure*, CQLR c C-25.01, Art 420 [*CCP*]; NB *FLA*, *supra* note 56, ss 8, 52(4)(d); *Nova Scotia Civil Procedure Rules*, Royal Gaz Nov 19, 2008, ss 59.18, 59.30, 59A.040 [NS SC Rules]; *Family Court Rules*, NS Reg 20/93 as amended, ss 6.14-6.16 (court-based ADR) [NS PC Rules]; *Family Law Act*, RSPEI 1988, c F-2.1, s 3 [PEI *FLA*]; PEI *CLA*, *supra* note 56, ss 13(2), 39(6); NL *CLA*, *supra* note 59, s 37, *Family Law Act*, RSNL 1990, c F-2, s 4 [NL *FLA*]; YK *CLA*, *supra* note 61, s 42; NWT *CLA*, *supra* note 59, s 71; *Family Law Act*, SNWT 1997, c 18, s 58 [NWT *FLA*]; NU *CLA*, *supra* note 59, s 71; *Family Law Act*, SNWT (Nu) 1997, c 18, s 58 [NU *FLA*]. In BC, a party may give notice of mediation to the other party and each must attend a pre-mediation meeting, sign an agreement to mediate and attend a mediation session: *Law and Equity Act*, RSBC 1996, c 253, s 68; *Notice to Mediate (Family) Regulation*, BC Reg 296/2007, s 16 [BC Notice]. This is subject to some exemptions such as where a protection order or peace bond has been obtained or the mediator finds it inappropriate or likely to be unproductive, ss 23, 26 (court may exempt where not likely to succeed or for any other appropriate reason).

78 AB *FLA*, *ibid*, s 97; SK *QBA*, *ibid*, s 96; MB *QBA*, *ibid*, s 47(1); Art 420, *CCP*, *ibid*; NB *FLA*, *ibid*, ss 8, 52(4)(d); NS SC Rules, *ibid*, ss 59.18, 59.30, 50A.040 and NS PC Rules, *ibid*, ss 6.14-6.16.

been an equal balance of power between the parties where there are allegations of family or domestic violence.[79]

While the *Divorce Act* stops short of otherwise requiring parties to engage in FDR, several provinces and territories in their family legislation or rules of court do generally require parties to participate in family dispute resolution at some stage of the proceedings.[80] In Alberta and Saskatchewan, parties must certify that they have participated in an FDR process or obtain a judicial exemption from or waiver of such a requirement.[81]

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79 QB *CCP*, *ibid*, Art 420; PEI *CLA*, *supra* note 56, ss 31(2), 39(6); *Rules of the Supreme Court, 1986*, SNL 1986, c 42, Sch D F24.01(2)(f) [NL SC Rules].

80 Parenting education or information sessions have also been mandated in some jurisdictions, see e.g. SK *QBA*, *supra* note 77, s 44.1, though a party may be exempted if they have sought interim custody incidental to an *ex parte* application for a restraining order where there has been domestic violence, where a child has been kidnapped or abducted, or where a judge finds "extraordinary circumstances" (s 44.1(9)). Parties may be exempt from such sessions in Québec if they file a certificate verifying that they have sought help at a victim assistance association as a victim of domestic violence, *CCP*, *supra* note 77, Art 417.

81 Alberta Court of Queen's Bench, "Notice to the Profession & Public Enforcement of Mandatory Alternative Dispute Resolution Rules 8.4(3)(A) and 8.5(1)(A)" (July 2019), extended indefinitely in Sept 2020 by a Notice to the Profession, online: < albertacourts.ca/qb/resources/announcements/extension-mandatory-ADR-rule>; SK *QBA*, *supra* note 77, s 44.01. Such a process appears to exclude conventional negotiations between lawyers, see *Alberta Rules of Court*, Alta Reg 124/2010, s 4.16(2) [AB Rules]; SK *QBA*, *ibid*, s 44.01(1). A failure to participate may result in the striking out of pleadings, denial of submissions, an order to participate or costs and other relief, *ibid*, s 44.01(5). Under *The Family Dispute Resolution (Pilot Project) Act*, SM 2019, c 8, Sch A, [*FDRPPA*], when in force, a resolution officer will be required to assist parties in reaching an agreement unless there is a no contact order or circumstances that

Exemptions or waivers require proof of a "compelling reason" in Alberta[82] and in Saskatchewan, among other circumstances, require proof of a restraining order against one party or a "history of interpersonal violence."[83] Problematically, these requirements force a survivor to either disclose violence by applying for an exemption (with associated legal costs) or participate in the process, both of which options can place her at risk.

In terms of the FDR process itself, some jurisdictions explicitly require that all or selected FDR professionals screen for domestic violence[84] and/or receive training in the dynamics of domestic violence.[85] However,

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justify an emergent hearing. Failing agreement, an adjudicator can recommend an order before a court hearing.

82 AB Rules, *ibid*, s 4.16(2).

83 SK *QBA*, *supra* note 77, s 44.01(6).

84 BC *FLA*, *supra* note 58, s 8 (FDR professionals must assess the impact of family violence on the safety of the parties and their ability to negotiate a fair agreement); BC Notice, *supra* note 77, s 13. In the Manitoba *FDRPPA*, *supra* note 81, resolution officers and adjudicators must consider whether resolution could "expose a party or a child to a risk of DV or stalking" and must ask regarding a history of DV, police involvement and prior or existing orders restricting contact or communication, s 39. Arbitrators must also ask the parties whether there has been a history of domestic violence or stalking or related contact with a law enforcement agency or a no-contact order, see also *Family Arbitration Regulation,* Man Reg 105/2019, but there is no requirement for training; PEI *CLA*, *supra* note 56, s 11 (DR professional or lawyer must screen for family violence and its impact).

85 BC *Family Law Act Regulation*, *supra* note 71, ss 4-6 requires training for mediators, arbitrators and parenting coordinators, see also the BC Notice, *supra* note 77; in Saskatchewan, see *The Queen's Bench Regulations*, c Q-1.01 Reg 1, s 7.4 (14 hours of training for mediators and collaborative lawyers), *The Arbitration Regulations*, A-24/1 Reg

screening and training is not legislatively required in Alberta, where participation in an FDR process is mandatory. In British Columbia, family law lawyers generally are required to undertake screening to identify whether family violence is present and assess its impacts, but they are not required to obtain training.[86]

In the past, concerns with respect to domestic violence had led to the diversion of cases from mediation. However, in the last decade growing concerns about access to justice (and a growing body of research questioning the effectiveness and accessibility of litigation in particular) have fed the expansion of dispute resolution programming. The development of more detailed screening tools has accompanied the devolution in responsibility to the mediator or FDR professional to assess whether such a process is suitable.

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1. s 3(1)(b)(iii) (14 hours for arbitrators); *The Children's Law Regulations, 2021*, SR9/2021, s 4 (14 hours for parenting coordinators). Arbitrators in Ontario must receive 14 hours of training on screening for domestic violence and power imbalance and certify to screening, *Arbitration Act, 1991*, SO 1991, c 17, s 58; O Reg 134/07, ss 2-4; *Regulation Respecting Family Mediation.* CQLR c C-25.01, r 0.7, s 2(4) (mediators must complete at least 6 hours of domestic violence training). In PEI, see *Children's Law Act Parenting Coordinator Regulations*, PEI Reg EC99/21, s 4(3)(viii), (requiring 12 hours of family violence training). In the upcoming FDRPPA in Manitoba, resolution officers and adjudicators need only ask the parties questions regarding a history of domestic violence and contact with law enforcement agencies and training is not required, *supra* note 81.

86 BC *FLA*, *supra* note 58, ss 1, 8*; Family Law Act Regulation*, *ibid.*

THE ARTICLES IN THIS VOLUME

The volume begins with an article by Jennifer Koshan identifying the ongoing influence of myths and stereotypes about domestic violence on legal actors, which undermines survivors' access to justice and their and their children's safety. The article catalogues two overarching and related categories: myths and stereotypes about survivors' credibility, and those about the nature and harms of domestic violence. It then examines the Supreme Court of Canada's guidance on these myths and stereotypes in criminal and family law decisions involving domestic violence, also drawing on sexual assault decisions. Although some myths and stereotypes about domestic violence and survivors remain to be refuted, the article argues that the Court has provided a strong basis for obliging lower courts and other legal actors to avoid these myths and stereotypes in their decisions. The article concludes with recommendations for addressing myths and stereotypes about domestic violence, focusing on education for judges and other legal actors.

Wendy Chan and Rebecca Lennox's article documents the impact of British Columbia's *Family Law Act* 2013 on frontline workers and lawyers supporting abused women in Greater Vancouver. They highlight the many challenges facing women in the family law system and suggest that the perceived unfairness many women experience is neither accidental nor uncommon. Abused women's access to justice is severely hampered by the structural barriers they experience getting into the courtroom and by the widespread judicial ignorance about family law and family violence that disadvantage women seeking just separations from abusive partners.

Michaela Keet and Jeff Edgar's article summarizes the results of an interview-based study with Canadian leaders in the mediation field as they discussed best practices in this area. It canvasses the discretion that mediators use as they identify risks and manage difficult dialogue; how they frame their role and responsibilities; and what else they think needs to happen in dealing with cases involving domestic violence. In this way, the article offers a snapshot of current views in the mediation arena and offers a framework that might help identify research questions for the future.

Wanda Wiegers' article compares the impact of the child protection and family law systems in cases involving allegations of domestic violence, highlighting the challenges within each, their differences in identifying and responding to domestic violence, and the problematic ways in which the systems interact and generate contradictory pressures for survivors, most often mothers. The focus of this study is Saskatchewan, which has relatively high rates of children in state care and the highest rate of police-reported domestic violence of all provinces.[87] Wiegers argues that the tensions and contradictions experienced in these systems could be mitigated by the provision of adequate and appropriate preventative and legal supports in both systems, along with information and procedural protocols, more uniform understandings of domestic violence, and adequate training for all personnel in the dynamics of domestic violence, the impact of systemic inequalities, and the specific issues arising at the intersection of both systems.

[87] See Statistics Canada, *Family violence*, *supra* note 37.

Jennifer Koshan contributes a second article examining the intersections of civil protection orders, family law, and other legal areas and systems. Civil protection order legislation is a distinctive response to domestic violence with its focus on immediate safety and access to justice, but similar remedies continue to be utilized in the family law and other arenas, creating potential overlaps and conflicts. Using Alberta as a case study, the article reveals several concerns: allegations that survivors use protection orders to influence family law disputes; the ubiquity of mutual protection orders due to system-level pressures; the reluctance of judges to include children in protection orders and of police and child protection workers to apply for these orders; and other issues that contribute to a lack of access to justice for survivors and their children, particularly those who are members of marginalized groups. The article concludes with recommendations for further research and reform of civil protection order legislation and its application in practice.

In her article, Janet Mosher explores many of the intersections between family law and immigration law in cases of domestic violence. Her results show profound cross-domain influences: the evidence, findings, and outcomes in a family law proceeding will bear on decisions taken in the immigration realm, including whether a survivor is able to secure permanent resident status or face removal from Canada. Similarly, a survivor's precarious immigration status may impact family law decision-making, including in assessing allegations of "family violence" and in contextualizing the challenges of mothering in the context of deportability. The article

reveals that survivors' access to justice is significantly impaired by the failure of system actors to appreciate how actions taken in one domain will reverberate materially in another and by the inadequacy of funding and structures for representation and collaboration in the family and immigration law domains.