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PARENT PERCEPTIONS AND EXPERIENCES OF CHILD CUSTODY DECISION-
MAKING

by

Beth Archer-Kuhn

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Windsor, Ontario, Canada

Parent Perceptions and Experiences of Child Custody Decision-Making

by

Beth Archer-Kuhn

Approved by

_____

D. Hiebert-Murphy, External Examiner

University

_____

C. Senn

Department of Psychology

_____

R. Birnbaum

School of Social Work

_____

D. Levin

School of Social Work

_____

J. G. Grant, Advisor

School of Social Work

April 30, 2016

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ABSTRACT

This dissertation presents a research project that considers parents" perceptions of decision-making in the process of separation and divorce. Eighteen men and women were interviewed about their experiences with decision-making regarding custody and access of their children. The study findings illuminate the experiences of separated and divorcing parents from their own perspective such that we learn from the study participants the ways in which shared decision-making can be achieved and the challenges that are associated with shared decision-making in child custody. Through two analyses, the findings help us to understand the importance of hearing the voices of parents, and the significance of differentiating parent experience in child custody decision-making among those experiencing low conflict, high conflict and domestic violence.

Using the works of Lukes (2005) and Gutierrez (1994), this dissertation provides a critical view of the study findings through a discussion of power and empowerment to illustrate that, within child custody decision-making, one"s capacity for power is affected not just by scope and significance, as suggested by Lukes (2005), but also by the level of conflict and experience of violence. Viewing the findings from this lens provides another understanding of the parent experience of child custody decision-making, putting into perspective their acts of resistance to structural barriers. These acts of resistance, I show, are avenues for change. Specifically for the findings in this study, these acts of resistance demonstrate a pathway for those with seemingly little power to challenge legislation.

Recommendations for policy focus on "the best interests of the child" standard in child custody legislation and employment standards. The study findings illuminate the tensions in Canadian child custody legislation and presumptions of shared parenting as they relate to parent experiences that are differentiated by level and type of conflict. Recommendations for practice

encompass the need for community collaborations and education for service providers and

service users alike. The recommendations for research focus on developing studies to inform

policy and practice for family experiences that are differentiated by level and type of conflict.

DEDICATION

I dedicate this dissertation to my family who mean so much to me, each who have encouraged me along my journey, believed in me and had no doubt at any time that I would indeed, finish. To my partner, Terry Kuhn, who listened as patiently as one could expect, who asked questions and never pretended to understand when I was not clear, and who took in stride the challenges that come with this incredible but lengthy journey. To our children, Robert and Alexandra, who found the consequences of this journey to be at times very difficult, such as leaving our family home, and who embraced with courage each new beginning that we faced along the way. And who can forget our family dogs, Millie and Shadow, who eagerly ran beside me when I just needed to clear my head.

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To our cohort. We were told at the beginning of the program that we would become best friends and indeed, I became connected with each of you in really meaningful and memorable ways. I am grateful for your support, the debates, the challenges and the understandings. I have enjoyed and benefitted from our learning community and I look forward to our future learning.

Each of my committee members has been instrumental in helping me through this process. To Dana Levin, I am thankful for your willingness to join my committee along this journey, and for providing helpful and insightful suggestions, particularly in the area of empowerment. Your knowledge and experience in this area was a really great addition to the committee. To Charlene Senn, I am grateful for your attention to detail, process and excellence. Your willingness to share your knowledge of resources and to challenge my thinking at important times has been invaluable. To Rachel Birnbaum, I would like to thank you for your willingness to sit as an external/internal committee member, bringing with you such a depth and breadth of substantive area knowledge. Thank-you for your patience and direction that has so clearly strengthened my work.

I would like to acknowledge and show my deep appreciation to the eighteen parents who agreed to participate in this study. Your real life stories of your experiences have provided new

knowledge in this field of study that can be used as a springboard for future studies that I hope one day will make the challenges of child custody decision-making more child and family focused both in policy and practice.

There are two additional people that I would like to acknowledge as being impactful for me in this journey. First, I would like to acknowledge Thecla Damianakis. Your tangible efforts to support me and our cohort, initially adjust, and then move through the program has enriched our experiences of higher learning. You are a great role model for doctoral students to learn the many components of academic life.

Finally, I would like to acknowledge and express my deep appreciation to Jill Grant. You have been such a wonderful mentor throughout this program on so many levels. I appreciate your clarity, commitment to learners, demand for excellence, and especially your focus on helping people to achieve their goals. Your respect for difference has been a real blessing throughout this journey and an important take-away for me. I am grateful for your belief in my ability to be successful, particularly through the very trying times and temporary moments of wavering belief that come with doctoral studies. The extra that you give of yourself to learners, makes all the difference in our ability to navigate challenging learning as we transform ourselves.

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Chapter 1

Introduction

This dissertation presents a research project that considers parents‟ perceptions of decision-making in the process of separation and divorce. Eighteen men and women were interviewed about their experiences with decision-making regarding custody and access of their children. The study findings illuminate the experiences of separated and divorcing parents such that we learn from the study participants the ways in which shared decision-making can be achieved and the challenges that are associated with shared decision-making. The findings help us to understand the importance of hearing the voices of parents, and the significance of differentiating parent experience in child custody decision-making among those experiencing low conflict, high conflict and domestic violence[1]. Knowledge from the parental differentiated[2] experiences has led to clearly identified implications for policy, practice and research in the area of child custody decision-making.

1.1 Rationale For The Study

Divorce and custody decision-making are issues that affect a large number of Canadians. In 2005, nearly 29,000 couples divorced in Ontario and over 72, 000 in Canada (Statistics Canada, 2007). In 2008, the numbers showed a slight decrease (70,000) (Statistics Canada, 2011) and in 2010/2011, Ontario showed a slight increase (31,281) in new applications for divorce in family court (Statistics Canada, 2012). Divorce in Canada, then, appears to be increasing.

Furthermore, these statistics do not account for separations within common-law relationships, the largest growing family type in Canada (Statistics Canada, 2007). The 2011 Census reveals

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[1] Domestic violence in this study refers to male violence against women within the family, including present and former married and common-law partners

[2] Differentiated experience in this study refers to level and type of conflict

that approximately 30% of Canadian children ages 14 and under reside in step-parent or lone parent families (Statistics Canada, 2012).

The General Social Survey (2006), a national telephone random sample survey, was conducted with large numbers of the Canadian population (Robinson, 2009). According to the General Social Survey (GSS), between the years 2001 and 2006, approximately 800,000 adults with dependent children separated or divorced, including 264,000 from common-law relationships (Statistics Canada, 2007). This highlights that the reported large numbers of parents and children experiencing divorce are an underestimate of the reality in Canadian society. Respondents to the General Social Survey (2011) indicate that 15% (171,000) of children from separated parents live primarily with their father, 70% (824,000) reside primarily with their mother and nine percent (109,000) share equal time in each home (Statistics Canada, 2012).

Children, parents and those who interact within the family justice system (superior and family courts) experience the effects of these large numbers. Members of the broader legal system (for example, judges, lawyers, custody and access investigators, mediators, parent coordinators, parent coaches, arbitrators and others) have involvement to a large extent in the divorce process (Birnbaum & Fidler, 2005), potentially influencing parental decision-making. It is people who make decisions regarding child custody; yet, legislation, legal procedures and processes drive the legal system and influence decisions, including the parental role in decision-making.

Robinson (2009) reflects on the 2006 General Social Survey and argues that a small percentage of parents prepare child custody arrangements on their own (between six and eight percent), whereas a larger percentage of parents say they require assistance preparing child custody arrangements with court services (12-19%), a lawyer (16-21%) or by court order (17-

22%). The General Social Survey (2011) indicates a rise in both parents making major decisions together, up to 35%, while 60% of decisions about children are made by sole parents.

Parental decision-making in the divorce process has changed over time and has been influenced by changing societal norms. Historically, sole custody decisions were made based on the dominant discourse in society. In the early 1800s, fathers were almost exclusively awarded sole custody, as society''s patriarchal views positioned fathers as the owners of their children (Luftman, Veltkamp, Clark, Iannacone & Snooks, 2005). In the 1950s, Bowlby''s work on attachment theory (Luftman et al., 2005) and the "tender year''s doctrine" (Bala, 2014) were valued, and the majority of sole custody decisions were awarded to mothers. This continued until the 1980s when again a shift in thinking occurred, including fathers in sole custody awards (Luftman et al., 2005).

A number of changes occurred for women following the 1960s, including the enactment of the *Divorce Act* in 1968 (Canada''s first federal law addressing divorce), increased attainment by women of post-secondary education, employment for women outside of the home and, the introduction of the birth control pill (Tremblay, 2001). Within intact families, fathers began to take on a greater role in child care, and this trend continued when families separated (Birnbaum & Bala, 2010). Child custody decisions in the court began to include joint custody and shared parenting (Birnbaum & Bala, 2010).

Today, joint custody is awarded more routinely through the courts (Bala, 2014; Statistics Canada, 2012). This shift to joint custody decisions comes without research evidence or consensus in the literature and with little knowledge about the indicators that determine the success of joint custody (Saini & Birnbaum, 2005). The method for measuring success or failure of joint custody can fluctuate in the research literature because of the differing variables under

study and varying methodologies. Saini and Birnbaum (2005) conclude that much weight in judicial decisions is given to the parents" ability to communicate with reduced conflict. The increase in joint custody awards highlights again the shifting societal norms, which continue today, when both parents in intact families provide care for their children as is evidenced by the 2011 Census report above. The 2011 Census report indicates that there are 403,000 families sharing legal custody, and 691,000 lone custodial parents (15% fathers and 85% mothers; Statistics Canada, 2012).

Legal custody refers to the ability to make decisions on behalf of children, whereas residential custody means time parents and children share (Robinson, 2009). Joint custody, then, implies not only sharing time with children, but parents making decisions together or, at a minimum, agreeing to how decisions will be made. In Canada, shared care or joint custody means at least 40/60 ratio of time that children spend with each parent (Bala, 2014).

Parents" perceptions about shared decision-making vary by physical custody arrangement. For example, 76% of non-residential parents (NRP) perceive themselves as sharing in decision-making, where only 35% of residential parents (RP) recognize shared decision-making in physical custody arrangements (Robinson, 2009). The perspectives of parents experiencing the divorce process did not inform the shift in parental decision-making practice from fathers to mothers to both parents, as there is a lack of parental voices in the research literature.

Some studies within the divorce literature have shown a relationship between shared care and shared decision-making between parents, identifying their link with positive outcomes for children (Cashmore et al., 2010; Kaspiew et al., 2009). Other studies report negative outcomes for children when parents are unable to share decision-making (Johnston, 1994; Kelly, 2000; Maccoby & Mnookin, 1992; McIntosh, Smyth, Wells & Long, 2010). Shared care arrangements

have shown improvement in mental health for children (McIntosh et al., 2010), greater flexibility, cooperation and joint decision-making (Cashmore et al., 2010) compared with families who do not have shared care arrangements. Parents who report joint decision-making demonstrate, in comparison to those who don't, a greater ability to cooperate, are more likely to report full child support compliance, and perceive current support levels as fair (Kaspiew et al., 2009).

Relationships with parents continue to play a critical role in shaping children's social, emotional, personal and cognitive development into adolescence (Lamb & Lewis, 2010). Thus, it is important that parents cooperate to focus on the needs of the children so that children can maintain relationships with both parents. The General Social Survey reveals that approximately 44% of the parents use a third party both for dispute resolution and for major decisions as they relate to the children (Robinson, 2009). Little is known about the experiences and perceptions directly from those who attempt to share decision-making and the ways in which the shift in decision-making practices are experienced by parents.

This dissertation addresses this gap by exploring parent perceptions and experience of their decision-making in child custody. The project includes perspectives within a critical theories paradigm consistent with the social work values of empowerment and social justice.

1.2 Definition of Terms

The following terms are used in this dissertation and provide definitions for clarity.

Divorce.

For the purpose of this study, divorce means the ending of the marital relationship, legal or common-law, through separation, with the intent to no longer reside together or be a family unit. This definition allows for more inclusivity than the legal definition (Allan, 2013) of a legal dissolution of a marriage and accounts for the reality in society of couples joining together without legal bonds such as "common-law."

Child custody.

In this study, child custody refers to both legal and residential custody. Legal custody means parents make decisions on behalf of their children, whereas residential custody represents time parents and children share (Robinson, 2009). Shared custody refers to both parents having the ability to make decisions on behalf of their children. Parents with custody of children have the legal ability to provide care, parenting and make decisions on behalf of children (Kelly, 2011).

Shared parenting.

Shared parenting refers to any number of residency situations where children share time with each of their parents. In the more recent research literature, these shared time arrangements include children spending time in a ratio of 30/70 or in a ratio of up to 50/50 with parents; that is at least 30% and up to 50% of the child"s time with each parent (McIntosh & Smyth, 2012). In Canada, child support guidelines define shared care as 60/40 (Bala, 2014).

Shared decision-making.

Shared decision-making in this study refers to the ability of the parents to agree on which decisions about the child (ren) the parents will make and how. This definition implies an

opportunity for cooperation between parents in decision-making, including sharing child care responsibilities (Kaspiew et al., 2009; Turkat, 2002). It does not imply consultation between parents about day-to-day decisions regarding the child (ren). Rather, there is agreement about how parents make decisions, that decisions have a child focus (McIntosh & Smyth, 2012), and that each parent has the ability to make decisions while they provide care for their children (Kaspiew et al., 2009). This definition of shared decision-making also implies that both parents agree on major decisions as they relate to the children, including education, health care, religion and social activities (Kaspiew et al., 2009). In Canada, shared decision-making has the same meaning as joint or legal custody (Bala, 2014).

1.3 Scope and Severity

Thousands of couples divorce in Ontario (29,000) and Canada (72,000) annually, with many of them sharing children. Similarly, nearly 50% of all marriages end in divorce in the United States (Jeynes, 2001; Price & Kunz, 2003) and, according to Sun and Li (2009), 40% of all American children of married parents experience a family breakdown before they reach adulthood. In Australia, the number of divorces varies between approximately 41,000 (1988) and 48,000 (2007), with the highest numbers reaching over 53,000 (2003), annually affecting between 23,000 and 27,000 children (Australian Bureau of Statistics, 2007). Additionally, there are estimates that high conflict families make up approximately 20% of all divorcing families (Lamb, 2012), although it is generally understood that high conflict is a term for which researchers do not have a shared definition (Saini & Birnbaum, 2007). These statistics suggest that the prevalence of divorce is high across various regions of the world. Appendix A provides further divorce statistics by global region. These statistics show Canada as having divorce rates

higher than North Africa and the Middle East, similar rates to North West Europe, North East Asia and Australia, and lower than the USA (Australian Bureau of Statistics, 2007).

According to Statistics Canada (2007), common-law relationships are the largest growing family type in Canada. The 2006 General Social Survey of Canadian participants estimates that 264,000 people from common-law relationships have separated between the years 2001 and 2006, in addition to 528,000 couples of legal marriage. This underscores that the large numbers of parents and children who feel the effects of changes in family structure are likely an underestimate of the reality.

Lone parent mother-led families continue to be the highest percentage outcome of divorce (Statistics Canada, 2007) and some researchers identify that it is common with this family type to find a reduction in income post-divorce, leading to poverty (Amato, 2000; Corcoran & Nichols-Casebolt, 2004). Poverty correlates with a number of social challenges including mental health and health problems, school drop-out, an increase in risk of child abuse and neglect, family violence, drug and alcohol abuse (Corcoran & Nichols-Casebolt, 2004), and early pregnancies without a committed relationship (Musick & Meier, 2009). A number of studies have been completed that relate to positive and negative outcomes for children of divorce, including custody arrangements (Amato & Fowler, 2002; Amato & Gilbrete, 1999; Bausermer, 2002; Booth & Amato, 2001; Cashmore et al., 2010; Clarke-Stewart & Brentano, 2006; Cunningham & Davies, 1994; Finley & Swartz, 2007; Grych, 2005; Hetherington, 1999; Hetherington & Kelly, 2002; Johnson, 1994; Kaspiew et al, 2009; Kelly, 2000; Kelly & Emery, 2003; Lamb 2012; Lamb & Lewis, 2010; Maccoby & Mnookin, 1992; McIntosh, Smyth, Wells et al., 2010; Menning, 2006; Nord, Brimhall & West, 1997). Studies demonstrate that quality time with each parent and active involvement of each parent with the child (ren) lead to positive adjustments for children (Lamb, 2012), including attachment relationships, better grades in school, lower school drop-out rates (Nord, Brimhall, & West,

1997), less likelihood of smoking (Menning, 2006), and better mental health (McIntosh et al., 2010). In comparison to lone parent families, children from two parent families and children in shared custody arrangements both demonstrate more positive adjustment (Bauserman, 2002).

1.4 Conceptual and Theoretical Frameworks

This project is situated within a critical theories paradigm. In her work on empowerment, Gutierrez (1994) discusses a critical theories perspective, explaining that society is comprised of differing groups of people, some of whom have more power and control over resources. Change, in this perspective, occurs through conflict, usually between those with power and those without. Those without power must become empowered to create the change and, through their transformation, their process of empowerment generates power (Gutierrez, 1994). Critical theories challenge societal norms and structures focusing on relations of power and oppression, with a goal of reducing barriers to social justice (Crotty, 2012). For example, in this study critical theories are used to challenge policies that govern child custody decisions to consider alternative ways of understanding the parent experience.

Power can be used to build people up and to keep people down. This study considers power from both perspectives. Addressing the former, using the work of Lukes (2005), I discuss power as a capacity, as ability for one to control their lives: in other words, to be empowered. The work of Gutierrez (1994) and Gutierrez, Parsons and Cox (1998) will help to explicate empowerment.

Power can also be oppressive, used to manipulate and control. Feminism, a critical theory, helps us to understand this use of power. Oppression is considered from a feminist perspective using standpoint theory feminist authors including GlenMaye (1998), and Mann (2008). This lens provides an opportunity to consider participant acts of resistance to structural barriers.

In this study, I pay attention to the ways in which parents experience empowerment and oppression as it relates to their decision-making in child custody. As such, it is essential to position the study within the particular concepts of power and empowerment used as frames for understanding. I begin with an overview of power from the perspective of Lukes (2005).

Lukes and Power.

Lukes (2005) identifies that power has three practices. This study attends to the third of these. The first practice is mapping our social world and includes identifying who has influence, and how this influence can help us to achieve our goals (Lukes, 2005). The second practice of power is assigning responsibility, how we ascribe importance to human agents to bring about particular outcomes that affect the interests of others (Lukes, 2005).

The third practice of power is its distribution, how some people or groups of people have more power and some have less power. It is viewed as a capacity (Lukes, 2005). For example, within a traditional social service organization, one might observe people in management positions having a greater capacity for power than staff in front line positions. The decision to share power with front line staff within the organization through sharing day to day programming decisions may increase staff"s capacity for power.

For the purposes of this study, consideration is given to this specific aspect of the third practice, power as a capacity. From this view, capacity is unknown and power"s potential may or may not be realized (Lukes, 2005), because power is an action that is exercised or not exercised, depending on one"s view of themselves in relation to others. The determinants of power"s potential (how much power one might achieve) can be seen when considering the scope and significance of power (Lukes, 2005).

Lukes (2005) speaks of the scope of power in three ways: the context, the intention, and the activity. The context considers both the specific circumstances and the range of circumstances in which one could have power. The intention refers to the expected outcome based on the power one has, and activity examines how one"s actions give people power. The degree of power one has can be observed by the significance of the outcomes one is trying to bring about, so that one ensures that one"s interests can be maintained through one"s actions or inactions (Lukes, 2005). Rees (1998) says that, when power is used as a capacity in the way that Lukes intends, it represents empowerment.

In this study, the context in which parents find themselves includes the process of renegotiating their family, for which they may have certain expected outcomes. Within this context, the research project helps parents to explore the activities that give themselves (and others) power including the ways in which child custody decisions are made: alone, with their ex-partner, with the assistance of legal or social service professionals, and/or through the courts.

I use feminist standpoint theory to further consider relations of power from a feminist perspective. Feminist standpoint theory provides an avenue to consider the ways in which power is experienced in child custody decision-making, as oppressive, as empowering, or both.

Feminist Standpoint Theory.

Feminist standpoint theory, a feminist critical theory, evolved between the 1970"s to 1980"s as a way of examining the relations between the production of knowledge and the practices of power (Harding, 2004). Feminist standpoint theory privileges situated knowledge, which is knowledge particular to one"s situation and experiences, mindful of one"s position of oppression and privilege in relation to others (Harding, 2004). Used both as a theory and method, feminist standpoint theory is intended to encourage us to create the conditions necessary to empower

oppressed groups by appreciating and valuing their experiences and awakening their consciousness by preparing them to present their reality, one that is different from the dominant group (Harding, 2004). Fineman (1991) views men and women as distinct, with differing needs, demanding different treatment to accommodate the discriminatory qualities that have been established and maintained within societal institutions (Fineman, 1991). Feminist standpoint theory provides an avenue for women as knowledge producers to answer their own questions about nature and social relations from their own social location (Harding, 2004). Gutierrez et al. (1998) say empowerment happens through this transformation of knowledge production.

   Empowerment.

   According to Rees (1998) and Walsh (2010), empowerment means that one has the capacity to exercise or realize power. Many authors do not specifically define the concept of empowerment except to identify that it is either a process or an outcome (Gutierrez, Parsons & Cox, 1998; Shera & Wells, 1999).

   Considering empowerment as an outcome means that empowerment is described as the state of having gained control over a decision, for example, that is made about one"s life. On the other hand, empowerment as a process refers to the ongoing development of one"s experiences through participation in events about one"s life, including an ability to participate as a member in one"s community (Shera & Wells, 1999).

   Bay-Cheng et al. (2006) further highlight three types of power that help to define empowerment: a) power as an attribute, b) power as a relationship of domination, and c) power as a capacity. These authors express concern that, in theory, empowerment was intended to reflect a capacity, but in practice it was operationalized as an attribute, focusing on the individual consumer rather than targeting the oppressive social environment.

A focus on empowerment in social work is important because it is consistent with the professional practice values and principles including: 1) respect for the inherent worth and dignity of persons; 2) pursuit of social justice; and 3) service to humanity (CASW, 2005). Additionally, a focus on empowerment in social work can help increase personal and political power for marginalized groups and lead to social change through individual and social transformation (Gutierrez et al., 1998).

Gutierrez, DeLois and GlenMaye (1995) suggest that empowerment practice in social work began with efforts to help women and people of colour who had unequal access to resources. Jonnson (2010) describes that, through participation, members of marginalized groups may seize power, exercising that power and creating influence, which may lead to support, self-actualization and organization of social movements for groups of people experiencing disadvantage and marginalization. This focus on social justice may increase access to services and resources ordinarily restricted to the dominant group (Jonnson, 2010). In other words, this macro level focus aims to reduce structural barriers.

Empowerment can be an ongoing process, both circular and mutually reinforcing (Carr, 2003), whereby people develop capacities that allow them to gain power and control of decision-making within their lives, in personal, interpersonal and political realms (Savage, Harley, & Nowak, 2005). There appears to be agreement that, through empowerment, people gain a sense of efficacy (Angelique, Reischl, & Davidson II, 2002; Francescato, Solimeno, Mebane, & Tomai, 2009), an ability to produce an effect.

Critique.

Empowerment conceptualized as both theory and practice is criticized for its focus on a micro level, ignoring in large measure, attention to social change and real change in social power (Bay-

Cheng, Lewis, Stewart, & Malley, 2006). A micro focus of empowerment in practice may personalize and depoliticize issues of social justice (Gutierrez, DeLois, & GlenMaye, 1995). The result in practice may be strategies aimed at changing service user perceptions rather than promoting transformation of oppressive social environments (Bay-Cheng et al., 2006). In this study, I pay attention to empowerment on a micro and macro level: both for parents experiencing divorce and for policy and practices related to custody and access.

Some authors suggest that empowerment processes result in service providers holding the power rather than the consumer, as intended, mirroring the paradox of empowerment (Bay-Cheng et al., 2006). It has become common in the last decade for researchers to argue that the concept of empowerment risks placing the professional in the power role of expert with privileged knowledge and insight (Bay-Cheng et al., 2006; Wendt & Seymour, 2010). In this way, empowerment appears as domination, meeting the needs of the "empowerer" suggesting that one person (service provider) has the ability to empower another (service user) and also suggesting that the professional determines the state of empowerment (Bay-Cheng et al., 2006). Bay-Cheng et al. (2006) note that empowerment would need to be consumer driven and reflexive to meet the needs of everyday people for personal transformation of oppressive social environments. This study reflects Bay-Cheng's assertions by focusing on and believing the perceptions of parents experiencing judicial intervention in custody and access.

Gutierrez.

Empowerment is viewed by Gutierrez (1994) as both a process and an outcome. As an outcome, empowerment is considered as an achievement, a point at which one reaches, or a state of being in which one has increased power (Gutierrez, 1994). As an example, a woman may feel empowered as a protective parent by implementing strategies to keep her children safe and

taking court action, particularly if she feels heard and supported in the legal process, is awarded custody, and has the capacity to protect her children.

Empowerment as a process can be a continual course of growth throughout one's life (Gutierrez, 1994). As a process, empowerment is viewed as the means by which change occurs on an individual, interpersonal or political level such that others can be influenced and social structures can be changed (Gutierrez, 1994). For example, early feminism gave women a greater voice as citizens, within the family and workplace, creating influence over legislation to secure their participation in the social, political and economic realms of society (Canadian Advisory Council on the Status of Women Canada, 1980). Gutierrez, Parsons and Cox (1998) identify four stages of empowerment, seen as a process including: increasing self-efficacy, developing a critical consciousness, developing skills of reflection and action, and involvement with similar others. These are explored below.

Increasing Self-Efficacy.

Increasing self-efficacy means believing in your self-worth and taking action on one's own behalf (Gutierrez et al, 1998). For example, if one feels taken advantage of by another, they may choose to address their concerns to that person, setting limits and boundaries on what they believe is an acceptable or appropriate manner in which to be treated. Once a person develops a sense of self-efficacy, the next three stages become possible.

Developing Critical Consciousness.

Developing a critical consciousness means becoming aware of the causes of your challenges beyond oneself, and can happen through collective experiences with others (Gutierrez et al, 1998). For example, survivors of domestic violence may develop an awareness of violence as an expression of power imbalance through their attendance at a women's shelter support group.

This development of a critical consciousness may help to identify ways of taking action, the necessary ingredients for empowerment.

Developing Skills of Reflection and Action.

Developing skills of reflection and action may entail thinking critically about both the micro and macro contributors to problems. For example, micro level contributors may be one"s beliefs and attitudes, while macro level contributors relate to social structures. The development of skills includes discovering how to access information and how to take action on the contributors to the problem (Gutierrez et al., 1998). In domestic violence situations, for example, women can be held accountable for not protecting their children by the structures in society that are designed to assist them, such as the child welfare and legal systems (Hughes, 2015). Gaining an understanding about domestic violence and power relations can provide women the necessary information they require to advocate on behalf of themselves and their children, as a protective parent. These developing skills are the foundation for the action phase of empowerment.

Taking Action on Your Own Behalf.

Taking action on your own behalf means formulating strategies and plans that are developed through reflection and will lead one to act upon one"s knowledge about the problem (Gutierrez et al., 1998). For example, a woman may choose to seek sole custody of her children knowing that her former partner has not received treatment for his violent behaviour and that they may not be in a position to co-parent at that point in time.

Gutierrez, Parsons and Cox (1998) describe empowerment as a means of helping oppressed people raise themselves out of oppressive situations. The following is GlenMaye"s (1998) description of oppression, which is followed by a discussion of women"s empowerment and

GlenMaye‟s (1998) discussion of the ways in which empowerment addresses the conditions of oppression.

Oppression.

Oppression occurs when power is used to repress people. In a patriarchal society, women are an oppressed group because the standard by which the rules and structures of society are made are male- dominated and male-oriented, ensuring continued male supremacy (MacKinnon, 1984). Oppression is a social injustice on a group of people, through the unequal distribution of resources that are maintained through societal rules, actions and structures by those who have more power (Cudd, 2005). For example, women in society do not have equal access to employment or types of employment, regardless of qualifications, as do men.

Women's Empowerment.

One particular application of empowerment relevant to this study is empowerment for women (GlenMaye, 1998), since, as will be shown, some women in this study describe a distinct experience with child custody decision-making. From a standpoint perspective, GlenMaye (1998) says empowerment for women within a patriarchal society includes development of consciousness of self, reduction of shame and self-blame, and an assumption of personal responsibility for change.

Development of Consciousness of Self.

Development of consciousness of self refers to the ways in which women develop an awareness of themselves and the impact that the social forces of sexism[3] have had on their lives (GlenMaye, 1998). This may include, for example, women becoming aware of challenges to their physical and emotional safety or to barriers to employment advancement.

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[3] I am using the language of the author.

Reduction of Shame and Self-Blame.

Reduction of shame and self-blame means, through increased consciousness of their realities, women let go of the shame that may have been assigned to them through the structures of patriarchy; the anger that comes with this new consciousness can spark them into action against their injustices (GlenMaye, 1998). A woman who has experienced domestic violence may take on the blame for the abuse. When she reaches an awareness of the impacts of patriarchy on her realities, she may choose to release herself from criticism.

An Assumption of Personal Responsibility for Change.

The assumption of personal responsibility for change can happen when women believe they have personal and political power and an ability to act on that power (GlenMaye, 1998). This belief in personal and political power can challenge how women are constructed within a patriarchal society, when they see themselves as strong, wise and knowledgeable about their own lived experience (GlenMaye, 1998). According to GlenMaye (1998), women can change their conditions of oppression when they believe in their power and act on their belief to protect both themselves and other women from harm.

Chapter 7 helps the reader to appreciate GlenMaye‟s (1998) message about the ways in which changing conditions of oppression can be difficult when applied to child custody decision-making. The discussion in Chapter 7 identifies some of the structural constraints inherent in child custody decision-making that can make changing conditions of oppression challenging. I show the ways in which study participants have demonstrated acts of resistance to these structural barriers, allowing for avenues of change.

1.5 Summary

Gutierrez‟s work suggests that increasing self-efficacy, developing critical consciousness, developing skills of reflection, and involvement with similar others can lead to social justice and empowerment. From empowerment comes agency or the capacity to control one‟s life. Lukes‟ work highlights capacity as scope and significance revealing context, intention, activity and interests, observing that the process of decision-making can influence the capacity of power one believes they have. The works of Gutierrez and Lukes are consistent with a critical theories paradigm which is the basis upon which this dissertation is considered.

1.6 Positioning Self

I intend in this section to make myself visible so the reader can gain an understanding of who I am as the researcher and the influences I bring to this study (Creswell & Miller, 2000; Merrick, 1999). Conducting qualitative research allows me to become the instrument in the study and as such, I would like to identify and acknowledge the biases, assumptions and experiences I bring to this research project that may influence how I conduct the study and interpret the data.

I position myself from three perspectives: gender, personal experience and professional experience. I am a woman who views the world from a woman‟s unique perspective, meaning that my perspective reflects my everyday life experiences (Smith, 1987), yet does not represent all women: each person brings their individual story. I am a parent of two children with whom I have shared the joys and challenges of co- parenting with my partner and father of the children for many years. Additionally, I have enjoyed the benefits and privileges of a two parent family during my childhood.

I am a professional social worker who has been engaged in social work with children for over twenty-five years; first in child welfare, then children‟s mental health, and at the same time, as a

custody and access investigator within the field of high conflict separation and divorce. I have participated in extensive training related to best practices in custody and access investigations and children‟s mental health and have reviewed the literature related to this dissertation topic.

All of these roles have shaped my location and position and helped me to attain an appreciation for the complexities families experience through the divorce process and that each experience is unique to the individual and family having the experience. Specifically, families experience influences on multiple levels (micro, mezzo, and macro) and their voices about those experiences have yet to be heard.

This work is messy. There can be and often are competing agendas that are as varied as the individuals. Parents, family members, children, lawyers, community supports and judges all have ideas about what should happen in the divorce process. In each of my professional roles, I have been in the difficult position of advocating for and recommending against parental custody decisions; decisions that might more appropriately have been made by the two people who are frequently in the best position to make those decisions, the parents.

I have a number of beliefs that have formed from my experiences and a significant bias. My bias is that children can benefit from both parents, and unless there is a reason to suggest that parenting by both parents is harmful to the children, my bias is toward a co-parenting arrangement. The experience I have gained as custody and access investigator has taught me that the majority of children from high conflict divorce situations struggle with their emotions and loyalties during their parents‟ divorce. In some ways, the world they knew no longer exists and they neither asked for the change nor want it to happen.

I believe that parents want to make the best possible decisions for their children, yet there may be influences that challenge their ability to do so. I believe children have the right to share a

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caring, loving, nurturing, supportive and respectful relationship with both of their parents (and acknowledge that there are circumstances where this is not possible). I believe children are people, whose voices should be and need to be heard, who have the right to grow up in an environment free from high conflict, one with parents who may live apart, but can still model respectful and kind interactions, good communication skills and an ability to focus on the needs of their child(ren). Finally, I believe that decision-making that leads to high conflict can be harmful to children. Because of these views, I have a desire to better understand from the parent experience and perspective their ability to make child custody decisions together.

1.7 Organization of the Dissertation

Chapter one has provided the rationale for the study and the theoretical framework for the study. Chapter 2 provides a literature review. Chapter 3 discusses the methodology of the study. Chapters 4 & 5 reveal the study findings; first through a whole group analysis and then through a sub-group analysis. Chapter 6 is a presentation and further discussion of the practice literature. Chapter 7 is a further discussion from the perspective of the theoretical framework. Finally, Chapter 8 presents the implications for policy, practice and research and conclusions of the study.

Chapter 2

Literature Review

This review explores the topic of separation and divorce and child custody decision-making through a comprehensive assessment of the scholarly social science literature as well as family law literature as it relates to the divorce process.[4] The literature reveals a number of changes to Canadian divorce legislation since its inception in 1968. These changes have been influenced by cultural shifts in parenting arrangements. These cultural shifts have led to an increase in shared parenting arrangements. Within the social science and legal literatures, there are differing views about shared parenting arrangements, particularly as they relate to situations of domestic violence, high conflict and young children.

Turkat (2002) suggests that joint decision-making in situations of divorce requires cooperation between parents. He writes that sabotage of joint decision-making can occur when parents exhibit "negative emotional displays," meaning that the parents are unable to work cooperatively together (p 391). This study reveals some of the influences and complexities that support parents working together and those that do not.

This chapter begins with a brief review of Canadian divorce legislation, a brief overview of child custody decision-making in Ontario courts in the present time, and then a history of child custody decision-making. Following this, is a review of the empirical literature about custody

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[4]A number of electronic searches were conducted using multiple search databases, including Social Service Abstracts, Family Studies Abstracts, Medline Abstracts, Psych Info Abstracts, Social Science and Scholars Portal Abstracts, Sociological Abstracts and Violence and Abuse Abstracts. The searches included terms such as decision-making, power, empowerment, positive and negative outcomes for children and families, empowerment, resilience, attachment, high conflict and experiences with court. Further searches include the term shared parenting and shared custody to explore the literature on parenting arrangements. Additionally, specific journals have been searched, for example, the Journal of Family Law and Family Court Review, to reflect that this topic intersects with both the Legal and Social Science literature

decision-making with a particular focus on shared parenting. Within the topic of shared parenting, the literature reveals varying perspectives. Components of shared parenting include "decision-making" (who makes decisions about children) and "time" (the amount of time a child spends with each parent; Bala, 2014). As part of this review on shared parenting, discussions include domestic violence, high conflict families, and families with children under the age of four, as they each relate to shared parenting. The impact of shared parenting on children, mothers and fathers as well as methods for resolving parental differences are also highlighted. The chapter concludes with some of the alternative dispute resolution (ADR) approaches that are being implemented within the family law system to assist both parents post separation.

2.1 Divorce Legislation in Canada

The *Divorce Act* (1967-68) was passed in 1968 and became Canada‟s first federal law addressing divorce (Douglas, 2001; Payne & Payne, 2013). Three major changes have occurred in the development of divorce legislation in Canada: in 1968, 1985, and 1997. The amendments to the Divorce Act (1968) can be traced to recommendations that have been made by the Royal Commission on the Status of Women in Canada (Commission), so this section includes a discussion of this Royal Commission. First, the legislative changes are presented and then the work of The Commission is discussed to show the link between The Commission‟s recommendations and the legislative changes that have followed.

Prior to the passing of the Divorce Act (1967-68), some provinces had their own legislative means of dissolving marriages, without consistency among them (Abernathy & Arcus, 1977; Payne & Payne, 2013; Veitch, 1979). The *Divorce Act* (1968) introduced "no fault" divorce, which meant the breakdown of marriage could be the sole ground for divorce (Law Reform Commission of Canada, 1976; Payne & Payne, 2013).

Almost twenty years after the first Divorce Act, The *Divorce Act* (1985) was passed and included amendments to the *Divorce Act* of 1968 that reduced the required period of separation prior to divorce to one year. Additionally, the *Divorce Act* (1985) shifted the focus from the grounds for divorce to an emphasis on economic and parenting consequences of divorce (Payne & Payne, 2013). In 1997, Bill C-41 was passed, An Act to amend the *Divorce Act* (1968) (Veitch, 1979), which helped to establish guidelines for child support for families experiencing divorce (Veitch, 1979).

Influences of the Royal Commission on the Status of Women in Canada.

In the 1960s, the Royal Commission on the Status of Women in Canada was launched by the Canadian federal government. The recommendations from this Commission are important to this study as they represent an example of women resisting social policy related to child custody, and the actions of the Commission have improved conditions for Canadian women. The Canadian government received pressure from a number of feminist groups to advance equality for women (Canadian Advisory Council on the Status of Women, 1980). The Commission had as a mandate to "inquire into and report upon the status of women in Canada, and to recommend what steps might be taken by the Federal Government to ensure for women equal opportunities with men in all aspects of Canadian society" (Canadian Advisory Council on the Status of Women, 1980, p 1). The Commission‟s work was to improve life for Canadian women.

The legislative changes brought about by the Commission resulted in less wait time in divorce and a concern for the economic impact of divorce on women and children. For example, spouses who were financially dependent could seek support when the relationships ended (Payne & Payne, 2013). This meant that litigating spouses were to file financial and property statements to facilitate support orders (Payne & Payne, 2013). The importance of this cannot be understated

because women and children often were left without adequate financial resources following divorce (Freeman, 1998). Appendix B provides greater detail of the work the Commission engaged in from its inception through to the 1990s (Canadian Advisory Council on the Status of Women (1980,1992/93). These recommended changes coincide with legislative changes to family law in Canada, including the *Divorce Act* (1985), suggesting that the Commission"s work has had the intended influence on legal reform.

2.2 Child Custody Decision-Making in Ontario Courts Today

In Ontario courts, judges have legislation that allows them to order assessments to inform their decisions regarding custody and access matters. The judge may order either a mental health professional or a child legal representative to assist the court in their decision-making. In Ontario, the Office of the Children"s Lawyer (OCL; lawyer, social worker or both) or private mental health practitioners (e.g., social worker, psychologist, or psychiatrist) are often called upon to assist the court in these matters. These professionals provide the court with information about the needs of the child and the parents" ability to meet those needs. Typically, in Ontario, children are not part of the court proceedings, although their views and preferences can be gathered by one of the above- mentioned professionals and are only a piece of information that a judge uses in the decision-making.

Custody and access evaluations are completed by psychologists and have been used as a method to settle early custody disputes through the use of a brief evaluation (Semple, 2009). The psychologist completing the brief evaluation shares their recommendations and beliefs about potential litigation outcomes. An evaluation of this service reveals that half of the parents (51%) are fully able to settle their disputes while another twelve percent have a partial settlement (Emery & Emery, 2014; Pearson, 2006).

In his thesis on decision-making processes of judges and OCL social workers, Semple (2009) identified the judicial process as follows;

The judge generally begins by reviewing uncontested facts and then the evidence given by the parties, by the OCL, and by other witnesses. A decision is then made about the credibility of the persons presenting these often contradictory stories. In some cases, although not all, the applicable statutory sections are included, but reference to case law precedents are quite rare. Finally, a conclusion is reached and a custody and/or access order is made, sometimes in a separate Schedule if a complex parenting plan is involved. (p 8)

The information that is provided to a judge can be in the form of custody and access assessments in the case of a psychologist, or in the form of custody and access investigations as are more common in Ontario through the Office of the Children‟s Lawyer (Birnbaum & Fidler, 2005). Assessors provide the court with information to determine if and what type of parenting plan can be helpful to families post-separation (Birnbaum & Fidler, 2005). The assessors consider the level and type of conflict between the parents, including the "nature, degree and extent to which the children are involved in their parent‟s conflict," making recommendations for service that can become part of the parenting plan and potentially embedded in Minutes of Settlement and court orders (Birnbaum & Fidler, 2005, p 341). The absence of parental conflict does not necessarily eliminate the use of parenting plans, as parallel parenting can be used as a strategy to help parents disengage to reduce conflict for their children (Birnbaum & Fidler, 2005). This will be discussed in the section about high conflict and shared parenting.

Social workers who contract with the Office of the Children‟s Lawyer employ the Model Standard of Practice for Child Custody Evaluation (Martindale, Martin, & Austin, 2007),

providing a process for conducting custody and access investigations that has been developed

through the Association of Family and Conciliation Courts (AFCC) (Martindale et al., 2007).

The process includes a review of the court documents, individual interviews with parents,

individual interviews with children, observation of the children in each parent‟s home,

consultation with collateral sources and a disclosure meeting with the parties and their lawyers

(when represented). Challenges with these expert reports include a lack of consistency both

within and between disciplines (Semple, 2009). For example, a psychologist and a social worker

both consider the "best interests of the child" while gathering information for the court and their

means for doing so vary: psychologists utilize psychological testing, and social workers follow

the process that is described above.

The nature of the information the court receives, then, is dependent on the source of the

information (Semple, 2009). There are a number of strategies that have been employed by the

courts in Ontario to help in the process of child custody decision-making. These include

collaborative approaches to Family Law including mediation, negotiation, parenting

coordination, mediation/arbitration and parent education (Bala, 2014).

2.3 History of Child Custody Decision-Making

The history of child custody decision-making is in some ways a history of searching for

legal presumptions that will guide judicial decisions. A presumption is a legal term that means

an "assumption" or "default position." Semple (2009) describes three legal presumptions that

historically governed child custody decision-making through the courts: the "paternal

presumption;" the "innocent presumption;" and, the "tender year‟s presumption." The "paternal

presumption" signified that children were property of their father (Akre, 1992). This presumption

was enforced in situations of divorce prior to the 1900‟s, with rare exceptions, usually those

allowed by Lord Talfourd"s Act of 1839, whereby a mother in exceptional circumstances who had children under the age of seven, could be granted custody (Semple, 2009).

Between the 1900s and 1970, moral factors weighed heavily on the court"s decisions of custody, providing custody to the parent who was presumed innocent (Bala, 2014; Semple, 2009). The innocent presumption referred to the parent who had not broken the marriage vows (for example, through behaviour such as adultery), who was viewed more favourably when child custody awards were made (Bala, 2014; Bayda, 1980). Parents who engaged in adultery, cohabitation or substance abuse were often not granted custody of the children with an assumption that the "best interests of the child" would not be achieved (Bala, 2014).

The "tender year"s presumption" applied between 1930 and 1970, with mothers often awarded custody of their children, younger than thirteen years of age (Bala, 2014; Winton, 2002).

As these legislative shifts occurred, there was greater attention paid to the issues of custody and access (Douglas, 2001), with continued influence played by the Royal Commission on the Status of Women. The Commission informed the government on issues related to domestic violence and the "best interests of the child" standard (Canadian Advisory Council on the Status of Women, 1992-1993). The Commission was opposed to the "friendly parent provision" and a presumption of "joint custody," which they perceived as harmful to women and children in situations of domestic violence (Canadian Advisory Council on the Status of Women, 1992-1993). These are discussed in detail in the section on domestic violence.

Although there seemed to be an understanding that the "best interests of the child" guided custody decision-making after 1970, the language was not added to the *Family Law Reform Act* until 1978 and the *Divorce Act* until 1985 (Bala, 2000). In Ontario today, custody and access

decision-making through the court is subject to either the *Divorce Act* (1985) or the *Children's Law Reform Act* (CLRA, 1990), with a presumption of the "best interests of the child" (*Children's Law Reform Act*, 1990; *Divorce Act*, 1985). At the same time, the provincial legislation supports both parents having custody of their children: "except as otherwise provided in this Part, the father and the mother of a child are equally entitled to custody of the child" (R.S.O 1990, c. C.12, s.20 [1]). The factors that help judges in Canada make decisions about a child's best interests include: 1) "children's ages, special needs, and relationships with the important people in their lives; 2) the role of extended family and cultural issues; 3) history of the parenting of these children; and 4) the future plans for the children" (Department of Justice Canada, 2015, p 1). Appendix C provides a list of specific factors that judges in Ontario use when determining child custody (Children's Law Reform Act, s12, ss2-4).[5]

Forty years ago, Mnookin (1975) identified a significant challenge with the "best interests" standard, calling it indeterminate. By this, he meant that the judge would require predictive abilities, be able to measure and compare alternative outcomes that take into account their own values, and rely on significant information for which they typically do not have the resources to gather (Mnookin, 2014). He identified significant challenges: a) social science research does not provide predictive alternative information about the best outcomes for custody dispositions; and, b) there is an absence of societal agreement in regard to the values used to determine the best or

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[5] Each province has its own legislation about custody. It is worth noting that, with the introduction of *the Family Law Act* (2013) in British Columbia, there is a shift in how decisions are made about custody and access, using a more collaborative approach, with the *Act* placing an emphasis on the safety and best interests of the child (Ministry of Justice, 2014). This means the best interests of the child is the sole consideration in custody decisions and this includes the impact of family violence on the child's safety, security or well-being (Ministry of Justice, 2014). Within this Act, there is no presumption of best parenting arrangement, all guardians can assert "parental responsibilities." What we might think of as "custody", and "parenting time" or access, allows parents to take on parental responsibilities while the child is in their care, so that day to day decisions can be made by the parent who has "parenting time" (Ministry of Justice, 2014).

least harm to the child (Mnookin, 2014). When asked recently to review and comment on his article from 1975, Mnookin (2014) indicated that the situation persists today with the "best interests of the child" remaining an undefined and indeterminate concept.

In Ontario, the *Children's Law Reform Act (1990)* provides that both parents have the right to custody of their children and, in Canada, the public policy goal encourages children and parents to have frequent and meaningful access (Jaffe, 2014; Pruett & DeFonzo, 2014). Yet, Jaffe (2014) and Scott and Emery (2014) argue that custody of children remains an ongoing gendered debate.

In 1999, For the Sake of the Children Report was completed by the Special Joint Committee of the Senate and the House of Commons on Child Custody and Access with recommendations about shared parenting (Department of Justice Canada, 1999). This report formed the basis for the Canadian government strategy for child custody reform (Government of Canada, n.d.). Fifteen years later, in March 2014, *Bill C-560*, an Act to amend the *Divorce Act* (1985), was brought before the House of Commons by Conservative MP Maurice Vellacott as a private member's bill supported by men's advocacy groups (Canadian Equal Parenting Council, 2014). The Bill, if enacted, would result in "shared parenting" as the assumed or default position in custody and access matters, the very issue against which the Commission had recommended (Canadian Advisory Council on the Status of Women, 1980, 1992-1993). The Bill proposed amendments beyond the notions of shared decision-making to include (among other things) an equal amount of parenting time (Kay, March 19, 2014). The Bill was defeated May 28, 2014 (National Post, May 28, 2014). There are many reasons why the Bill was defeated. However, it is clear, that advocacy groups based on gender ideology were not the appropriate source for legislative change about child custody decision-making.

In 1972, there were 32, 364 divorces granted in Canada, affecting 37, 323 children. In these families, custody was granted to mothers in 73% of divorces (26, 816) and to fathers in 13% (4,814) (Schlesinger, 1977). Additionally, children (siblings) were split between parents (divided awards, 2,162) and in some situations, no custody awards were granted (3,372), presumably because of the older age of the children (Schlesinger, 1977). In comparison, a review of court files between 2010-2012 (almost forty years later) by the Department of Justice Canada affirmed that: a) in 75% of situations, parents had joint legal custody (20% mothers had sole custody, 3% fathers had sole custody); b) in 62% of situations, children resided with their mother compared to nine percent when children resided primarily with their father; and c) in 21% of the situations, children shared at least 40% of their time with each parent (Bala, 2014). As of 2012, the number of Canadian families of divorce increased, leaving many children in lone parent households: 1,200,295 with lone mothers and 327,545 with lone fathers (Statistics Canada, 2012).

In 1997, judges began to use the Federal Child Support Guidelines to order child support in divorce proceedings (Payne & Payne, 2013). These guidelines, as set out in section 3.1 of the Federal Child Support Guidelines (Department of Justice Canada, 2015), require the court to order monthly amounts of child support payments set out provincially and based on annual income and number of children until the child reaches the age of majority (Payne & Payne, 2013).

Recent amendments to family law in Ontario began with two communities in 2010 implementing Four Pillars of family justice reform. The remainder of Ontario would follow in 2011. The four pillars include mandatory information programs, dispute resolution officers, information and referral coordinators and family mediation services (Ministry of the Attorney General, 2010). These services are discussed further in the section on shared parenting.

Bill C-560, a Bill for a presumption of shared parenting, was presented in the House of

Commons. Positions for and against a presumption of shared parenting were discussed through

the media. In one, it was suggested that the problem (with the "best interests" standard) stems

from the language of "best interests of the child" as outlined in the *Divorce Act* (1985), not

unlike what Mnookin said years before (Kruk, National Post, March 25, 2014). Judges, Kruk

states, are forced to focus on parental deficits instead of meaningful relationships between

children and parents, and this can undermine the parental responsibility of caring for their

children when one parent is removed from their parental duties (Kruk, National Post, March 25,

2014).

Birnbaum & Bala (2014) note that the Canadian Bar Association did not support *Bill C-560;*

however, there is much support from legal professionals to amend the *Divorce Act* (1985) to

include language supporting shared parenting or co-parenting that would take a child-focused

approach to parenting arrangements. This approach does not include equal time parenting, yet

allows children to enjoy an ongoing relationship with both parents (Birnbaum & Bala, 2014).

In the following section on shared parenting, the literature is presented from varying

perspectives. This includes some of the challenges with the present legislation that guides child

custody decision-making, what is known, and what gaps exist that are related to shared

parenting. This review helps to clarify the present state of knowledge on shared parenting and to

contextualize this study.

2.4 Shared Parenting

Most parents (85-90%) are able to make their own post-separation parenting arrangements without the use of the legal system, and many are choosing to share parenting (Bala, 2014; McIntosh et al., 2010; Neilsen, 2013). A most recent study by Birnbaum, Bala, Polak and Sohani (2016, Feb) indicates that 30% of the 1000 litigated cases in two Ontario court districts are also shared parenting. There is growing debate among professionals in both the legal and social sciences communities about shared parenting that encompasses both *decision-making* and *time*. This section of the literature review will help to clarify the issues surrounding the debate that is occurring about the legal policies and practices that are associated with shared parenting, and research evidence on shared parenting. Some legal language is used to remain consistent with the literature and highlight the discussion, for example, a "presumption." A presumption of shared parenting would mean that when parents separate, there is an assumption that shared parenting would be the post-separation arrangement or that shared parenting is the default position a judge would consider first unless evidence is presented to the court to suggest otherwise (Bala, 2014).

When parents choose to end their relationship, the acts of separation and divorce can become entangled in social and legal debates. The private family matters can become very public discussions. Recently, academics in Social Sciences and Law have published a number of articles and reports highlighting these public debates, which are presented here. Reflecting on these debates Pruett and DiFonzo (2014) write that the "most significant current trend in contemporary child custody law is toward greater active involvement by both parents in post-separation childrearing" (p 156).

Our present legislation says both parents have a right to custody of their children (CLRA, 1990). Additionally, the public policy goal in Canada is for children to have frequent and meaningful access to both parents (Jaffe, 2014; Pruett & DiFonzo, 2014). The federal *Divorce Act* (1985) lays out the criteria to be used to apply the "best interests of the child" standard when decisions are made about child custody, and Payne and Payne (2013) say the Divorce Act provides a presumption of "best interests of the child", which means it is assumed that decision-makers take the child"s best interests into account. Some say presumptions of joint physical custody support frequent and meaningful contact, which is in the "best interests of the child," yet the relationship between best interests and joint custody have not been agreed upon (DiFonzo, 2014). Some states in the USA have used the "approximation rule" when deciding on child custody arrangements, which provides the child the same amount of time with each parent after separation as they enjoyed prior to the parental separation (DiFonzo, 2014; Elrod & Dale, 2008; Scott & Emery, 2014).

Within the legal community, some assert that social and legal norms have shifted in favour of shared parenting (Boyd, 2015). An internet search in February, 2015 for the last 10 years of a Canadian legal data base, Canadian Legal Information Institute (Canlii), using the words *shared parenting*, reveals the number of times the terms have been used by judges in family court decisions in various provinces (Canlii, 2015): British Columbia 472, Alberta 1753, Saskatchewan, 2392, Manitoba 716, Ontario 6148, Quebec 1827, New Brunswick 409, Nova Scotia 1943, Prince Edward Island 112, Newfoundland 717, Yukon 155, North West Territories 167, and Nunavut 39.

The prevalence of the terms" use in Ontario is quite striking because of the elevated number compared to British Columbia and Alberta, where there have been legislative changes to

incorporate language that encourages shared parenting; for example, *shared parental guardianship* (Birnbaum, Boyd, Bala & Bertrand, 2014). Ontario‴s legislation does not reflect the same language changes as BC and Alberta and instead relies on the language of custody and access. Overall, it is clear that judges use the term "shared parenting" in family court decisions in Ontario the most frequently and it is becoming more commonly used within the court system across Canada (Canlii, 2015).

The deliberations over Family Law Reform share commonalities. First, proposals for reform, including a presumption of shared time parenting have been initiated by men‴s advocacy groups (Bala, 2014). Second, the opposing groups to these proposed reforms have been feminist groups and the legal community (Bala, 2014). As mentioned earlier, Jaffe (2014) and Scott & Emery (2014) have characterized these discussions as a gendered debate. Sharing "decision-making" appears to be less of a concern than "sharing time," as is expressed throughout the debate on legislative reform (Pruett & DiFonzo, 2014).

Although the debate envelops shared time parenting (parents having equal time with the children), there is concern about particular situations of shared parenting, including when there are: 1) safety concerns (Kaspiew et al., 2009); 2) parental high conflict (Cashmore et al, 2010; McIntosh et al., 2010); and 3) situations involving very young children (McIntosh et al., 2010). In each of these situations of domestic violence, high conflict, and when children are under the age of four, opinions vary about the potential implications of shared parenting, the strength of which diminishes when considering sharing *decision-making* responsibility instead of sharing *time with children*. For example, the Association of Family and Conciliation Courts (AFCC) Think Tank Report (2014) indicates that, among the leaders of the AFCC organization, many favour a presumption of joint decision-making, suggesting that not all members support it (Bala,

2014). There is also a suggestion that the research literature has not been able to provide clarity in direction for those making legislative reform (Bala, 2014; Fehlberg, Smyth, Maclean & Roberts, 2011; Nielsen, 2013; Smyth, Chisholm, Rodgers, Son, 2014; Trinder, 2010).

Nielsen (2013) identifies what she refers to as "six assumptions or myths" about shared parenting including: 1) additional time between fathers and children is not beneficial; 2) meaningful relationships are not formed through the time children spend with their father; 3) shared parenting is not related to children's well-being; 4) only limited numbers of families benefit from shared parenting; 5) shared parenting arrangements cannot work because they are too stressful; and 6) most children in shared parenting arrangements hate it and resent their parents (p 62). She states that these positions are not supported in the research (Nielsen, 2013).

2.5 Definition and Application of Shared Parenting

Shared parenting is an important area to consider in the research literature in relation to this study. A review of this literature provides an understanding of the ways in which the term is being used and the relevant research. Sometimes, shared parenting refers to shared (legal) custody, meaning who has decision-making authority (Fehlberg, et al., 2011). At other times, it refers to shared (residential) time (the amount of time the child spends with each parent), and at still other times, it refers to both decision-making and time (Fehlberg, et al., 2011). In Canada, legal custody is now referred to as *decision-making* and physical custody is now called *parenting time* (DiFonzo, 2014). This is an area of considerable discussion, and sorting through the language to understand the issues helps to provide clarity. Reporting on prevalence of shared parenting arrangements can be challenging and dependent on how one defines the term.

A focus on shared parenting reflects a cultural shift in language and practices around one form of post-separation arrangement. In Canada, the USA, the UK and Australia, researchers

describe these post-separation arrangements, where both parents assume responsibility for the care and decision-making of their children, with varied language that replaces the former language of child custody, custody (legal) and access (residential, Smyth et al., 2014). For example, a global view of shared care reflects 50/50 ratio of time (with each parent) in the UK and Sweden, and 30/70 or 35/65 ratio of time in Australia and the USA (Fehlberg, et al., 2011). There is agreement among researchers that shared parenting implies that children are spending at least 30% of their time with each parent (Fehlberg et al., 2011; Smyth, 2009).

2.6 Prevalence and Relevance of Shared Parenting

The prevalence of shared time parenting or equal time parenting varies across and between countries. In the UK, children are spending equal time with each parent in a small percentage (3.1%) of the arrangements (Ermisch, Iacovou & Skew, 2011). This arrangement is in a much larger percentage (28%) in Sweden (Lundstrom, 2009) and somewhere in between (9-15%) in Canada (Swiss & Le Bourdais, 2009), the USA (22%; Melli & Brown, 2008), and Australia (12-17%; Smyth, 2009). These percentages, however, remain specious given the differing understandings of shared care across studies and jurisdictions.

Considering the views of the legal profession on the issue of shared parenting, a recent study by Birnbaum et al., (2014) reveals that, of the 174 respondents (83% lawyers, 13% judges), the majority (77%) do not support a presumption of equal time parenting. An equally high percentage of study participants (78%), however, do support the need for the language to change within the *Divorce Act* (1985) in Canada: to describe custody as *parental responsibility* and to describe access as *parenting time*. A large group of participants (55%) reside in British Columbia and Alberta, where legislative changes have occurred and include a presumption of shared

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parental guardianship and language such as parental responsibility and parenting time (Birnbaum et al., 2014).

Impacts of parenting arrangements on children.

A number of literature reviews have been published summarizing the impacts of various parenting arrangements on children (Kelly, 2000; Kelly, 2006; Nielsen, 2011). In Nielsen"s (2011) review of 20 studies from 1979-2009 (excluding high conflict families), the author finds that most children in studies of shared time parenting arrangements fare at least as well as, and, often better than children living primarily with the mother. For the purposes of this dissertation, it is important to note that none of these studies that include shared parenting arrangements have explored the process of the parent experience in child custody decision-making. Instead, the outcome studies have focused on children"s adjustment and child well-being from the parent"s views (Birnbaum & Saini, 2015; Trinder, 2010). In a most recent study, Jevne and Andenaes (2015) explore parents" practices of shared care across households. Although they use the term shared care, the description of shared care for their study participants is different as half of the 15 participants had no access, limited access or supervised access with the children (Jevne & Andenaes, 2015). The child"s voice is mostly absent from the social science literature. This study contributes the parental voice to this discussion on the experiences of their own process of child custody decision-making.

Of the 20 studies Nielsen (2011) charts, seventeen show positive outcomes for shared residential custody (Campana, Henderson & Stolberg, 2008; Breivik & Olweus, 2006; Brotsky, Steinman, & Zemmelman,1991; Buchannan & Maccoby, 1996; Fabricius, Diaz, & Braver; 2011; Fabricius & Luecken, 2007; Irving & Benjamin, 1991; Juby, Burdais & Gratton, 2005; Kaspieu et al., 2009; Lee, 2002; Luepnitz, 1991; Melli & Brown, 2008; Prazen et al., 2011; Smyth, 2009;

Spruijt & Duindam, 2010), two indicate mixed results (Neoh & Mellor, 2010; Smart, 2001), and one reveals no difference between shared residential custody and maternal residence (Pearson & Thoennes, 1991). After reviewing the studies, Nielsen (2011) draws four conclusions about the research on children of divorce: 1) an authoritative, actively engaged father across a range of daily activities results in the most benefit for children of divorce; 2) when children reside primarily with their mothers, most fathers do not spend the quality of time noted in #1 above; 3) when children reside primarily with their mothers, the father/child relationship deteriorates, sometimes altogether; and 4) the ongoing quality and endurance of the father/child relationship correlates with the amount of time that is spent immediately following the parental separation.

These findings are similar to a review of 33 studies comparing joint physical and sole maternal custody from court orders, using convenience and school-based samples (Kelly, 2006). Kelly (2006) indicates that children in joint physical custody arrangements (shared time parenting) who reside primarily with their mother are better adjusted children on several factors, including behavioural and emotional adjustment, self-esteem, and family relations, as is indicated by mothers, fathers, children, teachers and clinicians. These results are similar to a more recent Australian study of mother reports showing no difference in child well-being in shared care or in maternal care arrangements except where mothers express safety concerns (Kaspiew et al., 2009).

It is reported that children"s well-being and adjustment after separation is linked to the quality of the parental relationship rather than the frequency of contact (Amato, 1999; Nielsen, 2011). Similarly, a number of studies support the idea that the outcomes for children are determined by the manner in which parents manage the relationship between them and provide quality parenting that includes practical resources rather than a particular pattern of parenting time

(Irving & Benjamin, 1995; Lye, 1999; Moyer, 2004; Pryor & Rogers, 2001; Shaffer, 2007; Smyth & Wolcott, 2003).

Smyth (2009) and Shaffer (2007) both indicate that there has been no empirical evidence showing a clear linear relationship between the amounts of shared time children spend with each parent and outcomes for children. This suggests that there is no particular post-separation parenting arrangement that is most beneficial to children (Fehlberg et al., 2011). Yet, in a most recent study of adults who expressed concern about their experiences of their own childhood arrangements, Whitehead (2015) found that their shared parenting arrangements were rigid, focusing on stability and fairness for adults rather than having a child-focus.

Some studies reveal poor outcomes for children in high conflict situations, although not necessarily in shared care arrangements (Kelly, 2000; Pruett, Williams, Insabella & Little, 2003). Johnston and Roseby (1997) say the impacts on children of high conflict can include learning unhealthy communication patterns and repeating the cycle of poor communication in future adult relationships. There is concern about shared parenting time in high conflict situations for children, particularly under the age of four (McIntosh et al., 2010). These are discussed further along in the discussion on high conflict. Through her review of the literature on shared time parenting, Trinder (2010) draws similar results and concludes (similarly to other researchers) with an understanding that there is not a clear relationship between shared care and child well-being.

Children's preferences.

A recent qualitative synthesis of ten studies of children's experiences in shared care arrangements reveals consistency that children want to be included and be heard in discussions of post-separation arrangements (Birnbaum & Saini, 2015). Their findings include: a) having

input to decision-making processes; b) having their voice heard; and c) maximizing time with both parents and siblings and are supported by both qualitative and quantitative studies (Campbell, 2008; Timms, Bailey & Thoburn, 2008). To facilitate this, the authors suggest the need for parenting plans that are child-centered, involve children in their preparation and allow flexibility to meet their changing needs (Birnbaum & Saini, 2015).

2.7 Legislation

Canada and the UK.

Shared parenting has been debated in Canada and other countries both for meaning and the implications of meaning. For example, in Canada and the UK, Private Member''s Bills supporting shared parenting (equal time parenting) as policy have been defeated (Fehlberg et al., 2011; Trinder, 2010).

In the UK, the *Children's Act* (1989), in Canada the *Divorce Act* (1985) and specifically in Ontario, the *Children's Law Reform Act* (1990) all use the "best interests of the child" standard when making child custody decisions. Additional reforms have been occurring in British Columbia and Alberta, yet both remain with no presumption of shared time parenting and are still the using "best interests of the child" standard (Fehlberg et al, 2011).

Australia.

In Australia, the *Family Law Act* (1975) also uses the "best interest of the child" standard for child custody decisions (Fehlberg et al., 2011). In 2003, the House of Representatives Standing Committee of Family and Community Affairs engaged in an inquiry about joint custody following up on a concern about absent fathers post-separation (Commonwealth of Australia, 2003). Following discussions, they decided against a presumption of equal time parenting for lack of consensus on, or clarity in the research literature to support it (Commonwealth of

Australia, 2003). In 2006, a number of Family Law reforms were introduced in Australia, including changes to the language that include *shared parenting responsibility*.

Part of the debate resulting from language can be observed through the Australian legislative changes in 2006 to the *Family Law Act* (1975). These changes include: "1) shared-parenting amendments; 2) changes to legal processes; 3) changes to services; and 4) changes to child support" (Smyth et al., 2014, p 118). The shared-parenting amendments create a presumption of "equal shared parenting responsibility" (p 118). This assumption of shared decision-making is also linked to the time children share with each parent because the equal shared parenting responsibility requires the court to then consider "equal or substantial and significant time with each parent where such arrangements are in children"s best interest" (p 119). Shared parenting, then, is about custody and access, to use former North American terminology, and this raises a number of concerns for researchers, policy makers and parents who worry about the families who may not fit the profile of those who have chosen these arrangements.

Initial reports about the legislative change have raised concerns locally and abroad because of the following three findings from the Australian experience: 1) judicially imposed shared time parenting arrangements have increased significantly (4% to 34%); 2) the legislative changes are perceived as complex and confusing, leading to a focus on parent"s rights over children"s best interests (Fehlberg et al., 2009), and furthering the reluctance of mothers to disclose violence and abuse; and 3) the research about parents" and children"s experiences of shared time arrangements suggest mixed outcomes for children (Fehlberg et al., 2011). The legal and social science fields remain entangled in discussions of shared parenting.

One challenge with the Australian legislation is having the dual emphasis on: a) observing meaningful relationships between children and parents; and b) recognizing family violence

(Fehlberg et al., 2011). When there are tensions between these two policies, there has been a competition for priority, such as in litigated cases (Fehlberg et al., 2011).

The Australian experience is being observed by other jurisdictions as the government has provided funding for research by social scientists, which is underway in Australia. This support for research is notable as legal reforms have been occurring without necessarily being well informed by research (Neilsen, 2013; Trinder, 2010).

2.8 Shared Parenting - Time

In many ways, the discussions over shared parenting and, perhaps more accurately, shared time parenting is mostly about ten percent of parents because eighty-five to ninety percent are able to resolve their differences and make parenting arrangements on their own (Nielsen, 2011). The research literature often refers to this smaller group of parents as embroiled in high conflict and, as a result, some researchers are less inclined to support shared parenting arrangements (Cashmore et al., 2010; Fehlberg et al., 2011). Interestingly, Nielsen (2013) finds, from her review of the literature on shared parenting, that conflict remains higher in sole custody situations than in joint custody, particularly when parenting time is not shared.

Bauserman (2012) provides the pros and cons of shared parenting for mothers and fathers from a meta-analysis on joint custody reviewing studies over a 30 year period from 1979 to 2009. The studies: a) were conducted in Canada and the United States; b) compared mothers and fathers on psychological adjustment while living within varying custody arrangements; and c) used parental reports only (Bauserman, 2012). All of these studies had in common a subgroup of parents with joint custody arrangements and they also provided some comparison between joint custody arrangements and other types of parenting arrangements (Bauserman, 2012). Excluded

were studies that did not demonstrate comparisons between various parenting arrangements (Bauserman, 2012).

In these empirical studies, both mothers and fathers of joint custody arrangements reported that: a) fathers were more involved with the children and more satisfied with their relationship with the children; b) there was less frequency of re-litigation; and c) there was less conflict with their ex-partner, more emotional support and more positive feelings in the relationship with their ex-partner (Bauserman, 2012). Mothers of shared parenting arrangements reported less parenting burden and stress, and these mothers also experienced less satisfaction with the custody arrangements than mothers whose child lived primarily with them (Bauserman, 2012). There was some indication that mothers and fathers in joint custody arrangements (which are different than shared parenting arrangements) in this study were better educated, and had higher incomes and socioeconomic status (SES) than when children reside primarily with their mother. The author attributes the lower conflict and greater satisfaction among the joint custody parents to their personal and social resources that come with higher education and income (Bauserman, 2012).

A number of other studies (Bauserman, 2012; McIntosh & Chisholm, 2008; McIntosh et al., 2010; Parkinson & Smyth, 2004; Smyth, Sheehan & Fehlberg, 2001;Trinder, 2010) find pros and cons of shared parenting arrangements for children, mothers and fathers when considering the issue of *shared residency* or *time*. Children can maintain meaningful relationships with care-giving parents (McIntosh & Chisholm, 2008) and are happier when they have input into the discussion of parenting arrangements (Trinder, 2010). McIntosh and Chisholm (2008) find that there are risks to children‟s healthy development in some parenting arrangements when parents display particular characteristics (for example, are immature or emotionally unavailable). Children, particularly under the age of 10 and in high conflict parenting situations, are least

satisfied with shared parenting arrangements and children under the age of four have reflected negative impacts from shared parenting arrangements, such as higher irritability and distressed parent-child interactions (McIntosh & Chisholm, 2008; McIntosh et al., 2010; Trinder, 2010).

Mothers and fathers suggest that shared time parenting allows parents to be fully involved. McIntosh et al. (2010) find, in situations of high conflict, mothers and fathers are equally happy in shared care arrangements when they are flexible. Trinder (2010) notes that 40% of mothers involved in litigation indicate that shared care is not working, and that mothers with safety concerns (perhaps the reason for litigation) are twice as likely to indicate that shared care is not working for their children than mothers who have primary care. Fathers of shared care arrangements are the most satisfied of any group, including in high conflict situations (McIntosh et al, 2010, Trinder, 2010).

Some studies of shared parenting report on public opinion. Of interest to the argument of a shared time parenting presumption is the assertion that no research evidence has yet been presented that favours this arrangement (Nielsen, 2011). In her review of shared residential parenting research (children residing at least 35% of the time with each parent), the author indicates that state legislatures in the United States are revising custody laws to reflect changes in cultural norms. She provides three examples of studies in Massachusetts and Arizona where the participants (voters, college students and jury duty candidates) indicate their views that children should reside equally with both parents (Nielsen, 2011).

Some express concern that shared parenting time can have an emphasis on "mathematising parenting time" (50/50, 60/40, 70/30) (Smyth, 2009, p 42). For example, Smyth (2009) says the focus within the legal system is on numbers instead of subjective experience and can result in people forgetting about what is important to children. In Canada, mathematising parenting time

can be a result of the Child Support Guidelines that determine how much financial support a parent will have to provide to the other parent to help support the children (Bala, 2014). For example, as noted earlier, a parent who provides care for a child 40% of the time can have less financial obligation to the other parent than if they were providing care to their child for 30% of the time (Bala, 2014; Payne & Payne, 2013; Scott & Emery, 2014).

This perseverance with numbers when it is applied to all people can ignore situations of safety, conflict and young children. For example, on the presumption of equal time parenting as it relates to domestic violence, Jaffe (2014) says that there is research to support that violence does not end with separation and may escalate. He does not support a default position of shared parenting for situations of domestic violence and high conflict and notes a lack of outcome studies on differential parenting arrangements in the context of domestic violence (Jaffe, 2014). The author recommends that all professionals working in this field receive information about the pros and cons of shared parenting and that post-separation parent education programs should encourage shared parenting for those parents who are not experiencing domestic violence (Jaffe, 2014).

2.9 AFCC Think Tank Report

In the spring of 2014, the Association of Family and Conciliatory Courts (AFCC) published AFCC Think Tank Report. Following the report, a series of articles from various authors joined the discussion in response to the report.

The report is aimed at reflecting the discussions of leaders in the legal and social science fields about the state of knowledge on shared parenting (Pruett & DiFonzo, 2014). The report highlights the limitations of post-separation research and provides twelve points of consensus (and some disagreements) among some leading members of AFCC. The twelve points of

consensus that have been reached among the AFCC Think Tank group are summarized in the report by Pruett and DiFonzo (2014) as follows:

1) Shared parenting is not only a legal issue but is also a public health issue that can be a protective factor in children''s post-separation adjustment and ongoing healthy family relationships;

2) Research evidence provides guidance to legal and clinical professionals in their work with children and families;

3) Areas of sufficient (and insufficient) research need to be identified to help with interpretations for people to use in their work with separating families;

4) Extra care needs to be given to decisions affecting very young children;

5) From the beginning of their lives, children can benefit when parents share parenting;

6) When a child''s care is in dispute, all relevant factors need to be considered;

7) Whenever possible and when safe to do so, parents need to be supported in self-determination of their parenting arrangements;

8) The majority of Think Tank members support a presumption of joint decision-making, and believe this still allows individual determinations in situations of concern such as safety;

9) Third party involvement in determining parenting arrangements may be necessary and remain case specific;

10) Parenting plans that support ongoing shared parenting relationships that are safe, secure and developmentally responsive are in children''s best interest;

11) A list of factors including qualities of the child, qualities of the parent, nature of child/parent relationships, quality of co-parenting relationships and nature of broader

caregiving and cultural environment can determine parenting time rather than a specific

presumption of shared parenting time; and

12) Alternative dispute resolution (ADR) strategies and case management tools are preferred

to litigation.

One main point of consensus is that social science research strongly supports shared parenting and the report helps to distil what that means. For example, there is agreement on the point that limited research is available to draw conclusions for all people, that many post-separation families who choose these arrangements enjoy success with shared parenting, while caution is raised about other families who use litigation to resolve their child custody disputes, or those who experience high conflict, family violence or have children under the age of four (Pruett & DiFonzo, 2014).

Pruett and DiFonzo (2014) highlight the areas of agreement. They note that there is agreement among members that further research is necessary to guide legislative reform (Pruett & DiFonzo, 2014). They also note agreement that various people working within this field could benefit from understanding the present state of research findings and how it can be used to guide for determinations of child custody decisions (Pruett & DiFonzo, 2014). There is a belief that, with further knowledge, consensus can be developed to "[establish] policy and common practices about shared parenting" (p 159).

In his review of the Association of Family and Conciliation Courts (AFCC) Think Tank Report, DiFonzo (2014) suggests the public policy of frequent and meaningful time between children and their parents can be supported through presumptions and preferences for joint custody and that the children''s best interests must be paramount in any decisions.

2.10 Complexities in the Debates

    Are domestic violence and high conflict the same?

Fidler, Bala, Birnbaum and Kavassalis (2008) discuss the distinctions between families where domestic violence is occurring and families who are experiencing high conflict, based on the work of Koch and Pincolini-Ford (2006), while also acknowledging that in some situations of high conflict, violence does occur. Fidler et al. (2008) suggest that, in high conflict situations, the balance of power is roughly equal and parents do not have to make safety-based decisions, whereas in situations of domestic violence, power is unequal and safety-based decisions are required. In high conflict situations, the types of custody arrangements can vary, whereas violence must be considered as part of the "best interest of the child" standard in determining custody arrangements (Fidler et al., 2008). In families experiencing high conflict, each of the parents name the other as the cause for their troubles, while in families of domestic violence, the abuser minimizes the impact of the violence for their ex-partner and for the children (Fidler et al., 2008). In high conflict families, safety planning is not the focus during the assessment of custody arrangements, whereas safety planning is a priority in families where men are violent towards women (Fidler et al., 2008). Separating out situations of male violence from high conflict families in research is necessary to consider appropriate interventions for each group.

    Domestic violence.

There appear to be two different perspectives on the presumption of shared time parenting, one expressing concern about domestic violence or safety and responsibility, and the other concern about parental alienation from children, or the rights of parents; both are perceived to be problematic to policy reform toward shared parenting (Scott & Emery, 2014).

Presumptions for shared parenting are perceived by some as problematic in the area of domestic violence for a number of reasons, including that the survivor of violence (most often the mother) has the burden of proof (Jaffe, 2014), and the "friendly parent doctrine." The "friendly parent" provision refers to the fact that the parent who encourages regular access between the child and both parents may be awarded custody of the children by the court. From this perspective, the friendly parent provision is problematic in situations of domestic violence because women who have been abused may not want to encourage contact between the child and their other parent for reasons of child protection. The consequence of being a protective parent may be loss of custody of the children. For example, in situations of domestic violence, the mother may be fearful of ongoing contact between the child and the other parent and may not support it (Bailey, 2013; DiFonzo, 2014), hence may be interpreted as an "unfriendly" parent.

Boyd (2014) claims that mothers" attempts to protect their children can be misinterpreted as selfishness, promoting their own interests or creating a situation that leads to alienation of the father, as it is the role of the court to consider which parent will facilitate the child"s ongoing relationship with both parents (Pruett & DiFonzo, 2014). For example, despite the suggestion that mothers make false child abuse allegations against fathers in an attempt to reduce father and child contact, studies have shown that only 1.3% of sexual abuse allegations made by mothers are false, whereas 21% of allegations of sexual abuse that were made by fathers about mothers have been unfounded (Bala & Schuman, 2000; Trocme, McPhee, Tam & Hay; 1994).

Kruk (2013) argues another perspective in favour of a shared parenting presumption. He supports the "friendly parent doctrine" and the need for criminal charges in situations of domestic violence (Kruk, 2013). However, Kruk (2013) claims that there is strong evidence of a pervasive anti-male bias in the justice system. He suggests a shared parenting presumption

except when criminal charges are in place (Kruk, 2013), supporting the burden of proof with the victim of violence. The present legal determinations, Kruk argues, leads to the removal of one parent from their parenting role (Kruk, 2013).

Most often it is the father who reports the mother is alienating the children from him as, traditionally, mothers receive sole custody and have decision-making abilities (Emery & Scott, 2014). Curiously, the authors do not mention the fact that most perpetrators of violence are men; indeed, they may feel alienated if a mother is trying to keep children safe (Canadian Women's Foundation, 2014; Scott & Emery, 2014; Jaffe, Zerwer, & Poisson, 2002). The most recent Canadian statistics identify that women represent 80% of survivors of violence (Statistics Canada, 2012). Scott and Emery (2014) say a presumption of shared parenting can lead to a focus on gender as the reforms become viewed as privileging mothers or fathers, yet the very idea that mothers might be privileged ignores or minimizes the realities of spousal abuse noted above and further ignores issues of safety for women and children given the lack of efficacy in treatment programs for male violence (Evans, (2004; Jaffe, 2009; Kelly & Johnson, 2008).

High conflict.

In their Family Policy Briefing in the UK, Fehlberg et al. (2011) indicate that there seems to be an understanding that most people believe children should have regular contact with both parents, yet may see this as a different phenomenon than legislating for shared time parenting in situations where high conflict is more likely to be present in the adult relationship. Parents experiencing high conflict are the ones who most commonly seek the assistance of the courts, where judges make decisions about custody and access according to the local legislation that guides those decisions.

Johnston first identified the term "high conflict" as having a number of attributes including: a) high degree of anger, hostility, and distrust; b) incidents of verbal and/or physical abuse; and c) high rate of custody litigation (Johnston & Roseby, 1997). The author states that parents experiencing high conflict have trouble focusing on the children"s needs as separate from their own (Johnston & Roseby, 1997). The ongoing difficulty in communication about and cooperation over the care of their children can last more than two to three years following parental separation (Johnston & Roseby, 1997).

Some findings have indicated that, within high conflict situations, the children experience higher depressive and anxiety symptoms in shared time parenting arrangements (as reported by the parents) than in situations where the children reside primarily with their mother and that the children want a change to the residential arrangements (McIntosh et al., 2010). A number of factors that lead to risks for children"s healthy development in high conflict families have been identified including: 1) low levels of maturity and insight on the part of parents; 2) poor emotional availability of parents to the child; 3) ongoing high levels of conflict; 4) ongoing significant acrimony between parents; and 5) perception of risk to the child by one parent while child is in the care of the other parent. Knowledge about the satisfaction with care arrangements depends on the informant (mom, dad, or child) and whether there are concerns for safety or conflict (Trinder, 2010).

High conflict and non-high conflict families have often been considered together in research. This is perceived as problematic, as differing approaches may be necessary with varying family characteristics (Trinder, 2010). Shared care arrangements have also been reviewed within high conflict situations over a ten year period (1990 to 1999), considering the impact of marital conflict, parental violence, and divorce on child, adolescent and young adult adjustment (Kelly,

2000). Kelly (2000) reports that: 1) marital conflict is a more important predictor of child adjustment than is divorce or post-divorce conflict; 2) violence is more likely to occur in high-conflict marriages and the impacts of violence on children"s adjustment are stronger than when there is high conflict without violence; 3) children"s adjustment to marital conflict depends on the intensity, frequency, style, method of resolution and buffers to ameliorate its effects; and 4) parents in high conflict marriages are more depressed, which may lead to poor family functioning.

The initial findings from the Australian experience of legislative change suggest that there has been a reduction in conflict for families with shared time parenting. Yet, five years after the changes, a large percentage (64-70%) of judicial determinations have resulted in children spending the majority of their time with their mother, a smaller percentage (22-30%) with their father, and near-equal time has been ordered in only ten percent of arrangements (Smyth et al., 2014). Some do not see a link between legislative change and reduced conflict for families, but rather suggest the reduction in high conflict situations with the shared time parenting group may more accurately represent some of the other changes that have occurred in conjunction with the legislative changes (such as the mandatory mediation, child-focused dispute resolution and family relationship services; Smyth et al., 2014). Sixty-five Family Relationship Centers have been implemented in Australia following the legislative changes, with a mandate to be more child-focused by using supportive services to direct families away from the court when resolving their differences (Smyth et al., 2014).

Children under the age of four.

Some researchers are for and some are against a presumption of shared time parenting when considering children under the age of four, particularly for overnight care (Kelly & Lamb, 2000;

McIntosh & Chisholm, 2008; Millar & Kruk, 2014; Sroufe & McIntosh, 2011; Tornello, Emery, Rowen, Potter, Ocker & Xu, 2013). For example, in high conflict situations, shared overnight care for children under the age of four has been found to result in negative impacts on emotional and behavioural regulation outcomes, the evidence of which dissipates by the time children reach the ages of four to five years (McIntosh et al., 2010).

Tornello et al. (2013) say there are two camps when discussing overnight time with the "second parent," which causes time away from the primary attachment figure (first parent): they refer to Sroufe and McIntosh (2011) whom they say oppose the presumption of equal time parenting and Lamb and Kelly (2001) whom they say favour the presumption, as it could facilitate frequent and regular contact. Tornello et al. (2013), researchers who oppose a presumption of shared time parenting, present the findings of their study stating that "frequent overnights were significantly associated with attachment insecurity among infants, but the relationship was less clear for toddlers" (p 871).

Millar and Kruk (2014), researchers in favour of a presumption of shared time parenting, respond to Tornello et al. (2013), highlighting methodological weaknesses, naming the study findings both invalid and unreliable in terms of measuring attachment in young children. Emery and Tornello (2014) counter-argue, defending their interpretations of their study findings. Given that the implications of the Tornello et al. (2013) study can provide further strength to an argument in favour of a sole residency and limited access to a second parent (to preserve the primary attachment relationship), the debate will likely continue because of the potential negative impact on the argument for a presumption of *shared time parenting* (equal time).

Despite these differing views, Birnbaum et al. (2016, Feb) reveal in a most recent study of court outcomes two Ontario districts, that shared parenting is ordered more often for young

children. Examining 1000 Ontario court files (2010-2015), the authors discover orders for shared

parenting nearly half of the time (48%) for children under the age of five (Birnbaum et al., 2016,

Feb).

2.11 Shared Parenting – Decision-Making

When parents are unable to settle their child custody matters, they may consult a lawyer or

mediator to help them resolve their areas of dispute (Bala, 2014). Most parents come to

agreements on their own for issues of custody and access, including shared parenting (Fehlberg

et al., 2011). Doing so often results in their making the arrangements work for themselves

(Fehlberg et al., 2011). The majority (75-80%), even if experiencing some increased conflict

during the initial adjustment period, are able to reduce their conflict within two to three years

(Levite & Cohen, 2012). The use of a parenting plan, through which parents maintain autonomy

and draft their own arrangements, are perceived as the preferred method to achieve the public

policy goal of frequent and meaningful access with each parent (Jaffe, 2014; Pruett & DiFonzo,

2014).

It has been reported in the social science literature that parents who make their own

agreements have characteristics that facilitate the ease of these agreements such as: a) socio-

economic resources (adequate housing and income); b) higher education; c) more cooperation; d)

closer residences; and e) respect for each other as parents (Cashmore et al., 2010; Fehlberg et al.,

2011; Kaspiew et al., 2009; Pruett & DiFonzo, 2014; Smyth et al., 2014).

Not all researchers have found these parental characteristics in shared parenting. For example,

Nielsen (2011) reviewed twenty studies on shared parenting and found that the parents in the

studies were often initially not interested in a shared parenting arrangement, yet reluctantly did

agree to this arrangement (only one in five originally wanted shared time parenting), did not

make significantly more money and were not significantly more cooperative or more educated than the parents with other arrangements. The author cites the Stanford Custody Study (Maccoby & Mnookin, 1992), where nearly 80% of mothers initially were not in favour of shared time parenting (Nielsen, 2011). These parents are described as having a "business-like parallel parenting" relationship and communicate only when necessary (Nielsen, 2011, p 593; Smyth, 2009, p 46). Nielsen (2011) finds the two characteristics that set these parents apart from parents with other arrangements are: 1) both parents are committed to having the father be an engaged parent with the children; and 2) the father's work schedule provides the necessary flexibility for the children to reside with him at least thirty-five percent of the time.

Resolving Differences.

Alternative dispute resolution (ADR) strategies are intended to assist families to resolve their differences and create a plan that can work for their family (Emery & Emery, 2014). These can include mediation, parent coordination, arbitration, and parenting education (Bala, 2014). There have been mixed results and varying opinions in the research literature on the effectiveness and appropriateness of ADR strategies (mediation) with some people such as those involved in domestic violence. For example, an earlier meta-analysis by Amato (2001) shows a decline in child well-being despite a number of services enacted to ameliorate the impact of divorce on children, including parenting classes, school interventions and divorce mediation. More recent studies have shown promise for mediation programs (Bailey & Robins, 2005; Holtzworth-Munroe, 2011; Tishler, Bartholomae, Katz & Landrey-Meyer, 2004), although, according to Beck, Walsh and Weston (2009) and Holtzworth-Munroe (2011), little research has been conducted in the area of domestic violence and mediation outcomes.

Mediation has been used as one way of supporting parents to make decisions about child custody. Mediation offers more control over the outcome for participants than the control that is maintained by the legal community through litigation (Bailey & Robbins, 2005; Holtzworth-Munroe, 2011; Lowenstein, 2009). In reviewing a longitudinal study of both randomized trial and evaluation of large scale programs, researchers have found that mediation as a form of alternative dispute resolution has been shown to help parents settle their disputes in a larger percentage (50-85%) of situations than legal negotiations or formal adjudication (Emery et al., 2001; Kelly, 2008). Further, parental relationships and relationships between parents and children all improve when parents are able to settle their disputes through mediation (Emery & Emery, 2014). When parents make decisions together through mediation, there is less of a burden on judges and it can convey a greater respect for parents" self-determination (Emery & Emery, 2014).

Less conflict between the parties can lead to more positive outcomes for children (Holtzworth-Munroe, 2011). The implementation of mandatory mediation in California in the early 1980"s reveals that the majority of parents (litigants) settle their matters through mediation, although this method does not resolve disputes for all families (Emery & Emery, 2014). Separation in families where men are violent towards women does not necessarily terminate the violence, as ongoing contact between the parties may continue through child access (Holzworth-Munroe, 2011).

Thus, it is difficult to determine if mediation is an appropriate method of alternative dispute resolution to litigation. However, there is some evidence to indicate that 57% of couples experiencing high violence develop agreements for joint custody of the children with equal access time (50/50), leaving the researchers with uncertainties about the implications for

mediation with this population (Holtzworth-Munroe, 2011). Beck, Walsh and Weston (2009) suggest that the literature demonstrates that one third to three quarters of divorce mediation involves families with reports of domestic violence, calling into question the authenticity of the strategy's intent in providing both parents control over decision-making. Jacobs and Jaffe (2010) have been supported by other researchers in their position that divorce mediation may not be effective for high conflict couples, including those who experience domestic violence (Beck, Walsh & Weston, 2009; Kelly, 2008; Lowenstein, 2009). Jacobs and Jaffe (2010) did find in their small sample study that introducing a therapist into the mediation process can help some families experiencing high conflict to separate emotionally from one another and move to a more cooperative relationship.

Recent research is shifting the discourse to include a more differentiated approach to divorce mediation, dependent on the level of conflict and violence between the parties. Strategies resulting from mediation range from "co-parenting" to "parallel parenting" to "suspended parenting" (Holtzworth-Munroe, 2011; Jaffe, Johnston, Crooks & Bala, 2008). There may be some characteristics of successful divorce mediation that include parental cooperation, attention to emotional issues, establishment of a business like relationship between the parents and avoiding negotiations that are divisive (Lowenstein, 2010).

The nature of the ending of the marital relationship has been found to be correlated with the psychological impact on the adults, which influences the conflict they portray to children (Sbarra, 2005). Of interest for this dissertation study is the suggestion that the adjustment adults experience post-separation is related to their level of acceptance or non-acceptance of the relationship ending. The participation in successful divorce mediation can keep parents

connected in ways that may not be good for their mental health and can increase the level of non-acceptance of the divorce relationship for men (Sbarra, 2005).

The absence of children"s voice has been raised as a concern in the divorce mediation process, although there is limited evidence to determine best practices in this regard (Birnbaum, 2009). Hart (2009) supports the practice of inclusion of children in divorce mediation to ensure children have a voice and to assist in assessing the extent to which domestic violence plays a role in the future of the child"s sense of security. Child Focused (CF) mediation has been compared to Child Inclusive (CI) mediation, with the results suggesting a greater positive impact on reduction of conflict between the parents who participated in the Child Inclusive mediation (McIntosh, Wells & Long, 2007; McIntosh et al., 2008). The differences in these methods involve the direct inclusion of children"s voice (CI approach) through interviews compared to reliance on education of parents about the impact of high conflict on children in CF (McIntosh et al., 2007).

Parenting coordination is another strategy gaining in popularity as a means of reducing conflict in the divorce process (Coates, Deutsch, Starnes, Sullivan & Sydlik, 2004; Emery & Emery, 2014; Mitcham-Smith & Henry, 2007). It is often used in high conflict situations to manage recurring disputes (Kelly, 2008). Parent coordination takes into consideration: a) the whole family; b) counsellors and mediators, to assist parents to learn communication and parenting skills; c) conflict resolution strategies; and d) information about the needs of their children so that they might carry out the parenting plan with minimal conflict (Mitcham-Smith & Henry, 2007). Sometimes, parent coordination can include arbitration for those who are unable to come to agreement so that the parenting coordinator in the role of mediator becomes an arbitrator who makes the final decisions (binding arbitration) for the parenting plan (Emery & Emery, 2014).

Parenting plans provide parents an opportunity to create their own arrangements around both decision-making and time, and some see this as a shift away from the adversarial to a more collaborative process (DiFonzo, 2014). Parents can draft these plans on their own or with the assistance of a mediator. Some jurisdictions, such as Arizona, have adopted an expectation that parenting plans have incorporated eight specific components, including information such as decision-making, time the child spends with each parent, and future dispute resolution processes (DiFonzo, 2014). Kelly (2006) supports the use of research-based models of parenting plans that provide parents with varied arrangement options to meet their own family needs. Emery and Emery (2014) argue that there should be no judicial reviews for situations where parenting plans have been created by parents, limiting court access in favour of ADR strategies. Advocates of children‟s voice believe parenting plans need to be child-centered and consider children‟s input and changing needs (Birnbaum & Saini, 2015; Kelly, 2008).

Parent education has shown some evidence of effectiveness in the research literature. Family Transitions Triple P (Positive Parenting Program) is reported to have shown moderately large effect sizes on child behaviour, parent distress and dysfunctional parenting practices through a randomised trial (Sanders, 2010). This version of Triple P has been adapted to address the specific needs of separating and divorcing parents using a twelve week active skills training intervention (Stallman & Sanders, 2009). A review of the literature also suggests that not all parenting programs have been effective (Sigal, Sandler, Wolcik & Braver, 2011). Sigal et al. (2011) reviewed fourteen parent education programs that were designed to support healthy post-separation parenting. The results suggest that there is little evidence that these programs are achieving their stated goals, including improving well-being. Methodological limitations are indicated as well as lack of rigor of evaluations (Sigal et al., 2011).

In a meta-analysis of outcome studies of thirty North American (three Canadian) court-affiliated parent education programs, Fackrell, Hawkins, and Kay (2011) find that the majority of the programs have moderate amounts of instruction (4-9 hours) and about thirty percent of the court mandated programs have minimal amounts of instruction (1-3 hours). They found, in nineteen control-group studies, that there was a moderate effect size (d=.39) overall and for each variable (co-parenting conflict, parent-child relationships, parental discipline, child well-being). A higher effect size (d =.61) was found for the variable, "improved parent well-being." The researchers suggest that their findings provide support for legislative and judicial policy of parent education programs (Fackrell et al., 2011).

2.12 Summary

The literature review has focused on the Canadian divorce legislation and a history of child custody decision-making with a particular focus on parental experiences with shared parenting. Many of the discussions involving shared parenting today can be traced to legislative reforms resulting from various advocacy efforts, including those of men's groups (through private member bills) and feminist groups (such as recommendations by the Commission) that reflect the shifting parenting roles and views in Canadian society. The ongoing debates about shared parenting in the social science and legal literature highlights the struggle in common language, meaning, and legislative reform that needs to occur to more accurately represent contemporary Canadian families.

The discussions about shared parenting are primarily concerned with the issue of equal parenting time and the potential impacts that such a legal presumption may incur. The proposed legal presumption of shared time parenting sparks debate over the issues of high conflict, domestic violence and very young children. Researchers from both the legal and social science

communities agree that further study is required to clarify the outcomes of shared parenting on children''s well-being, particularly very young children. With the increase in numbers of shared parenting arrangements, it may be time for longitudinal research designs to understand these issues and the impact on children and parent-child relationships. Many professionals who are opposed to and those in agreement with a presumption of shared time parenting can agree that the child custody laws are outdated and require reform of language to better reflect families today (Pruett & DiFonzo, 2014).

Studies that show positive results of shared parenting arrangements do not always include high conflict families (Nielsen, 2013). Some research has included shared parenting among high conflict families and has demonstrated poor results (McIntosh & Chisholm, 2008). Not all parents who have made the shared time parenting arrangement work start from a position of favouring this arrangement, and may have similar characteristics as parents from other arrangements (Nielsen, 2013). The difference seems to be that they have made a commitment to it working and the fathers do have flexibility in their work schedule to allow children to reside with them thirty-five percent or more of the time (Nielsen, 2013). Children favour shared care when they are provided an opportunity to participate in decisions that are made about them and are able to maintain meaningful relationships with both parents and their siblings (Birnbaum & Saini, 2015).

A number of ADR strategies are being implemented to provide parents more control over the outcomes of the decisions in child custody and more recent research is suggesting there may be some benefits, including a reduction in the conflict between the parents, and parenting plans that can be supported and maintained (Emery & Emery, 2014). Fehlberg et al. (2011) say it is

important to identify ways to help parents first consider the arrangements that will best serve their children‏'s changing needs before their own needs.

The literature on shared parenting has exploded in the last few years, possibly as a result of the increase in families choosing these arrangements and the increase in shared parenting orders that have been made in the courts. While studies are underway, there remain a number of gaps in the research literature on this topic. Of note, an exploration of parent experience in decision-making is absent from the research literature, and this study for this dissertation begins to fill that gap.

Through the literature review we learn that there are many quantitative studies in the area of separation and divorce, reflecting parental reports about child outcomes, and these outcomes suggest mixed results about children‏'s adjustment post-separation. We also know that most parents make their own post-separation parenting arrangements without the courts, and that many parents today are choosing to share parenting. For those parents who are unable to, or choose not to, make child custody decisions on their own, the "best interests of the child" standard is the only Canadian legal presumption that guides judicial child custody decisions.

The research literature is not yet able to inform child custody decision-making in a few areas including, child outcomes in situations of families experiencing domestic violence, families experiencing high conflict, and families with children under the age of four. Additionally, we have not yet heard from parents about their experiences with child custody decision-making, nor do we yet understand these experiences as differentiated by type and level of conflict. Further there is no agreement on the meaning of the "best interests of the child" standard across Canadian provinces.

To improve research in this area we require qualitative studies that explore and analyze parent experience as they are differentiated by type and level of conflict. As well, we need to explore the factors of the "best interests of the child" standard specifically as it relates to domestic violence. The ways in which my study begins to address these gaps is through: a) utilizing a qualitative study design that highlights parental voice; b) exploring parental experiences that are differentiated by type and level of conflict; c) analyzing parent experiences for all parents; d) analyzing the experiences of a sub-group of parents who have experienced domestic violence; and e) providing an illustration of the parent experiences that are differentiated by type and level of conflict. The following, Table 1, is a summary of how this study is positioned within the research literature and how it begins to address the gaps that are noted above.

Table 1 Positioning Study Within The Literature

	What we know	**What we don't know**	**How research in this area can be improved**	**Response of current study**
Child Outcomes	Children in shared care arrangements want a voice Quantitative outcome studies on parental reports support shared parenting arrangements in low conflict situations Quantitative studies on parental report of child outcomes suggest mixed results about children's adjustment	Children's experiences Unknown outcomes in situations of domestic violence, high conflict and children under the age of 4	Longitudinal studies Qualitative studies of differentiated experiences Meta ethnographic study re: child-centered arrangements	Qualitative study highlighted parental voice and explored differentiated experiences
Legal Influences	Joint custody awarded more routinely through the court Best interests standard is only legal presumption in Canada Domestic violence is not consistently considered as a factor in the best interests standard Views of Professionals on legal presumptions	Lack predictive info. re: custody arrangement outcomes No agreement on meaning of best interests Parent and children's views on decision-making trends	Voices of children and parents, using cross sectional comparisons for age, arrangements and differentiated experiences Exploration of domestic violence as factor in best interests standard	Explores differentiated experiences Analyzes the experiences of those affected by domestic violence
Parental Experiences	Most parents make their own post-separation parenting arrangements without the courts Many choose to share parenting 30% of litigating parents in Ontario are also sharing parenting Good understanding of situations of low conflict	Differentiating experiences (high conflict, domestic violence) of parents who choose to litigate	Analysis and comparisons of differentiated groups Exploration of parent perceptions of ADR strategies	Illustrates differentiated experience for families experiencing domestic violence Provides depth to experiences

Chapter 3

Methodology

3.1 Overview

In this chapter I describe the methodology of this qualitative phenomenological study exploring parent experiences of decision-making related to custody of their children. Discussions include: research design, sample, recruitment, data collection, data analysis and reflections. I conclude this chapter with a discussion of researcher assumptions.

Qualitative research is used when researchers are seeking information directly from participants about their experiences regarding the subject (Creswell, 2009; Morse & Fields, 1995), describing and explaining what is happening in our social world (Morse & Field, 1995). As the purpose of this study is to gain an understanding of parent perceptions of their ability to make decisions together in the divorce process, the use of a phenomenological design allows the researcher to "describe, interpret and understand the meanings of experiences at both a general and unique level" (Holloway & Todres, 2003, p 348). This methodology is consistent with van Manen‟s (2007) view that self-reflection is an essential component of phenomenology.

I am reminded of van Manen‟s words about the inquiry process in phenomenology at the beginning of the writing process: "no interpretation is ever complete, no explication of meaning is ever final, no insight is beyond challenge" (van Manen, 2002, p 7). The iterative process in phenomenology provides an opportunity to gain a better understanding through reflection of the parents‟ experience and their perception of their ability to make decisions together.

3.2 Research Question

This study explores the following research question: *in the divorce process, how do parents perceive and experience their ability to make child custody decisions together?* The intention of this research question was to explore with parents their experience and perceptions, how they

interpret their experiences and the meanings they give to them, using phenomenology as the methodology (Morse, Barrett, Mayan, Olson & Spiers, 2002).

3.3 Location of the Study

This study of parents undergoing divorce and custody proceedings was held in a mid-sized city in Ontario, with participants in the Ontario Mandatory Information Programs. Starting in January 2012, there was a requirement that any person seeking a divorce (or motion to change custody or access) in Ontario attend a mandatory information program (MIP). The MIP sessions provide information about the legal process, the impact of divorce on adults and children and services available in the community.

3.4 Research Design

This study is guided by phenomenology. During their lifetime, two philosophers, Edmund Husserl (1960) and Martin Heidegger (1962), each had their own understanding of phenomenology (Cohen & Omery, 1994). Husserls" view of phenomenology describes the lived experience from an epistemological perspective, while Heidegger"s outlook of phenomenology focuses on the interpretation of the lived experience from an ontological view (Cohen & Omery, 1994). van Manen (2007) considers phenomenology as both a description and interpretation of the lived experience, honouring both of the perspectives of Husserl and Heidegger.

I use van Manen"s approach to phenomenology in this study, which means my interest is in understanding the parent experience in two ways: seeing and being. I want to understand the parent experience as they describe it (seeing) and as they experience it or live it (being). I want to appreciate the lived experience of child custody decision-making for parents.

As a philosophy, phenomenology considers people"s experience as a reflection of that which they know or as part of their consciousness (Morse & Field, 1995). As a methodology,

phenomenology intends to explicate or illuminate consciousness or awareness and at the same time discover how we observe ourselves in the world, our presence (Cohen & Omery, 1994).

Husserl's eidetic (descriptive) phenomenology is concerned with universal essences, discovering insights about experiences through the exploration of structures and the relationships between them, to reveal consciousness (Cohen & Omery, 1994). He is known to explore the ideas of "the world of lived experience," believing that phenomenological reduction leads to clarity of the phenomena's beginning or origin (p 139). These origins refer to the phenomena before interpretation, what is referred to as the everyday (Cohen & Omery, 1994). Through interpretations of Husserl's work, it is believed that, during this process of reduction, the researcher suspends their standpoint, allowing a clear observation of the phenomena (Cohen & Omery, 1994). Through the process of reduction, the structures of the experience find definition and the essence of the experience of people's everyday life stories are revealed (Cohen & Omery, 1994). This becomes the truth of the everyday life experience for the people who have the experience (Cohen & Omery, 1994).

Heidegger's interpretive phenomenology has a focus on presence or "Being" and discovering the larger meaning of "Being" (1962, p 141). Heidegger's use of phenomenology as a method (Heidegger, 1962) is a revealing of the unknown or the hidden, that which we cannot ordinarily see and, through this unveiling, truth is discovered (Cohen & Omery, 1994). In the work of Heidegger, truth is viewed as accessible in lived experience but not yet realized (Cohen & Omery, 1994). Phenomenology provides the means for discovering truth for the researcher by revealing what is already known through the interpretation of the everyday experience, making explicit meanings that are hidden (Cohen & Omery, 1994). This is consistent with Gutierrez's

conception of critical awareness discussed in Chapter 1: through critical awareness, everyday experiences are revealed.

During this project, I follow van Manen‟s application of phenomenology as a methodology in order to better understand how parents perceive or make meaning of their experiences of their ability to make child custody decision-making. I describe both the structures (themes) and relationships between them (analysis framework), revealing the essence of the parent lived experience, and interpret the everyday experience by understanding the parent experiences through their examples, illuminating hidden meanings. van Manen (2002) writes that the reflective process that is afforded in phenomenology brings about an awareness that may, at times, seem profound and, at other times, trivial.

Similar to the studies in the area of separation and divorce (Melikian, 1997; Robson, 2008) that use phenomenology as a methodology, I use this design because the experiences of the study participants have yet to be heard. My intent is that the results of gaining an understanding of participant experience will lead to new knowledge in the field of child custody decision-making with implications for practice, policy and further research.

A phenomenological design helps to understand the parent experience through their description in such a way to illuminate the significance of that experience on a deeper level and in a fullness not previously known (van Manen, 2007). In the data analysis section, I describe this process and demonstrate through specific examples of the study data the ways in which the significance of the experience for parents becomes illuminated or known. In other words, I gain an understanding of the parents‟ everyday lived experience with child custody decision-making. The importance of participant voice and people‟s participation in decisions about their own lives is demonstrated in a study by Grant (2007) about mental health service users and is supported by

the Ontario mental health policy (Government of Ontario, 1999). Service user participation can provide people an opportunity to access and exercise power in such ways as to have an impact on and change the social structures (Grant, 2006).

van Manen (2014) describes phenomenology as a method that requires the researcher to maintain a curiosity or wonder about the phenomena as they appear, focusing on meanings from their origins. As researchers, we want to reveal the pre-reflective parent experience, or the everyday, to allow the meaning of the parent experience to be revealed using a method of questioning rather than a method of answering through determinate conclusions (van Manen, 2007). This process of investigation and expression using rich language as revealed by participants" ordinary experiences allows the researcher to guard against assumptions induced by theory (van Manen, 2007). The experience reveals meaning rather than meaning being determined by theory.

In this project, I use theory after data analysis. Although some social science research uses theory to interpret phenomena, phenomenologists question the assumptions of theory (van Manen, 2014). Instead of using theory to build interpretive structures, phenomenology uses theory to reflect that which has been revealed through participant experience. This is particularly useful when the lived experience reveals insights about selected topics of cultural significance (van Manen, 2014), such as gender. In this study, as will be shown in Chapter 7, I use critical theories to provide another understanding of the parent experience from a gendered perspective through feminist standpoint theory, power and empowerment.

This study has been approved by the University of Windsor"s Research Ethics Board. Approval was granted in August 2013.

3.5 Sample

My collaboration with a community service provider has allowed me access to the parents through the mandatory information sessions. The agency, with a location in Ontario, is a local support (alternative dispute resolution – ADR) service for families experiencing separation and divorce. The agency receives funding from the Ministry of the Attorney General, Ontario. Alternative dispute resolution means the parents have an opportunity to try to resolve their disagreements outside of the court process such as through mediation. This service provider facilitates mandatory information program sessions for all adults seeking divorce in the court jurisdiction.

Convenience sampling was used in this study and the participants were separating/divorcing parents who attended the mandatory information session. These parents agreed to participate in an interview about their experiences in child custody decision-making. This sampling strategy is appropriate for the study because all people attending the mandatory information program for both sessions have the knowledge to answer the research question (Hulley et al., 2007). Additionally, this strategy provides for the possibility of diversity, in sample selection, as it is a requirement that all parents seeking divorce or a change in custody arrangements attend these sessions.

In one situation, I used snowball sampling. Although not a requirement of study participation, following her interview, one participant contacted me via e-mail to identify a friend who had information that was directly related to the study (Miles & Huberman, 1994). She had shared her experience of being a study participant with a friend. This participant indicated her friend‟s desire to participate in the study. With her friends‟ permission, the participant copied

her friend on the e-mail message and I followed up on this information. In this situation, the new study participant had previously participated in the mandatory information program.

3.6 Recruitment

Over a four month period (September to December, 2013), I attended eight of eleven of the mandatory information sessions for the purpose of participant recruitment. The sessions occurred on Wednesdays in the Superior Court of Justice and on Fridays in the Ontario Court of Justice building. The difference in days reflected the schedule of mandatory information sessions set by the courts. The two local courthouses, the Ontario Court of Justice and the Superior Court of Justice have been utilized for recruitment of the 18 participants in this study. In the Ontario Court of Justice, matters involving child custody, access and support are heard, while in the Superior Court of Justice, matters of property and divorce are addressed. The mandatory information sessions that are described above occur within these two courthouses.

While the parents awaited the commencement of the mandatory information session, I provided the Letter of Information (Appendix D). The coordinator of the program introduced the presenters and then allowed me a few minutes for discussion of my study, prior to the presentation. I introduced myself and provided information to the audience about the study using the Letter of Information as a guide. I informed them I was in the waiting room outside and was available during the break, for those who wanted to provide their contact information to me.

Parents remained after the break, whereas separating adults without children left at break time. On one occasion, I arrived after the break. One of the presenters introduced me and I provided the same information as the other recruitment days except, this time, potential participants located me in the waiting room after the session. On one additional day, I planned my arrival for the break time but this time, the presenters were ahead of schedule so when I

arrived, the break was finished and the second half of the program had commenced. On this day, the audience met me at the end of the session and I spoke to them briefly at that time, apologizing that I was late due to transporting someone for surgery. As a result, I spoke to them at the end of the session. On this day, six people provided contact information, which was twice or three times the typical number of people from previous recruitment sessions.

Although an assumption, I think there was an increase in participant interest on this day for a couple of reasons, primarily one of relating. First, the participants observed me in the room with them for a significant amount of time and in that way, I became part of their experience. Second, participants had just experienced a description of the impact of separation and divorce on children, emphasizing their role as parent. Third, I described a situation to the parents where life intervened and as a result I was later than anticipated a situation not uncommon for parents. Perhaps I gained a sense of humanness not as apparent in my previous recruitment moments of coming in and out so quickly and at a different time of the meeting. Additionally perhaps parents perceived that I was one of the group as I listened to the session along with them.

The numbers of parents attending the mandatory information sessions can vary. They receive a form from the court with the date, time and location of the MIP session they are to attend. Parents (in this study women and men) also attend different sessions than their former partner. Sometimes parents are unable to keep that schedule and, instead, arrive at another MIP session where they do not find their name on a court docket for that day. These parents sign in with their name and court file number. Most of the time, this is not a concern but occasionally space becomes challenging as I experienced during recruitment. Table 2 illustrates the number of people in attendance at each MIP session available for recruitment in this study.

Table 2 Attendance at Mandatory Information Session – September to December 2013

Date of Recruitment	People in Attendance	Parents who provided contact information	Study Participants
Wednesday September 4	35	3	3
Friday September 13	27	3	4
Wednesday October 2	34	2	0
Friday October 11	43	2	3
Wednesday November 6	51	3	2
Friday November 15	40	3	1
Friday November 22	38	6	3
Wednesday December 4	27	2	2

A total of 26 people indicated that they had an interest in participating in the study, with ten coming from the recruitment days at the Superior Court of Justice building and sixteen from the Ontario court of Justice building. Eighteen parents agreed to participate in the study (Table 1). Eight potential participants withdrew their interest in the study (did not schedule an interview), seven male and one female. When I contacted them, they simply indicated that they had changed their mind about participation in the study.

Eighteen parents have agreed to participate in my study and share their story and experience of decision-making in child custody. In qualitative research, saturation helps to determine sample size (Denzin & Lincoln, 1994/2011; Mason, 2010; Sandelowski, 1995). Saturation was reached with 18 parents because new codes were exhausted. The sample size in phenomenological studies reflects the intent to engage in a process that uncovers depth of meaning in participant data. As will be shown, the 18 participants have created deep meaning.

All parents who agreed to participate in the study through the recruitment process, and who followed through in scheduling an interview, are included in the study data. I did not differentiate people who are changing agreements from those who are making them for the first time.

Table 3 presents the study population by self-identified culture. Although the majority of the participants are Caucasian, representation of five additional ethnic/race groups are present. Participants identified the following when responding to the question on the demographic survey about race and ethnicity.

Table 3 Participant Self-Identified Ethnicity/Race

Native Canadian	Hungarian	Belizean	Kenyan	Iraqi	Caucasian
1	1	1	1	1	13

Phenomenology intends to elicit the phenomenon as a whole, not in relation to one person's ethnic group or race. I am not attempting to say, for example, that people from Iraq believe this or people from Kenya believe that about child custody decision-making. Rather, I am seeking to understand the phenomenon of the parent experience as a whole and recognize people as individuals. All participants in the study reflect on their lived experience with child custody decision-making.

Of the 18 participants, eleven are women and seven are men. They range in age from 25-51. Figures 1 and 2 provide a visual representation of this by participant and by age range. The charts illuminate that the majority of the study participants are between 31 and 50 of age.

Figure 1 Age Range and Sex of Participants

Number of
Participants

Age of Participants
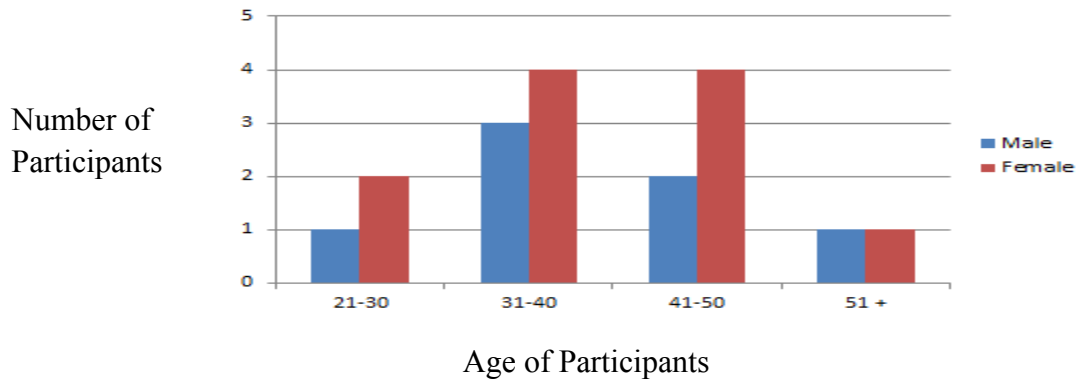
In this study, the majority of participants (14) are the custodial parent, and the children reside with them. Seven of the mothers (39%) have sole custody and say the children reside primarily with them, while one (five percent) of the fathers in the study has sole custody and reports that the children reside primarily in his home. For one mother, the children reside primarily with her, yet custody of the children remains undecided. There are two situations of shared parenting in this study. In one situation, a participant and their ex-partner continue to reside in the same home while awaiting the divorce process to finalize through the courts, and are represented in Figure 2 as "both, together." In the second situation, the children reside equally in each home, "both, shared." In three situations, the parents (two dads and one mom) indicate that the children are split between the parents, meaning one child resides primarily with one parent and the other child (ren) resides primarily with the other parent "both, split." The remaining four parents are fathers who say they are the non-custodial parent and have access with their children "dad, no."

Many parents in this study have been separated from their ex-partner for more than three years (seventy-two percent) and another seventeen percent have been separated between one and three years (Figure 4). Two participants in the study have been separated less than six months.

In order to understand how parents contextualize the level of conflict in their relationship with their ex-partner, I asked them to identify the level of conflict between them and their ex-partner on a scale from one to five, extremely low to extremely high. My understanding of participant level of conflict, then, is the same as they have identified. Eighty-three percent of parents in the study identify the level of conflict between them and their ex-partner as either a four (high), or a five (extremely high), while 17% of the parents identify the conflict between them and their ex-partner as a one (extremely low), two (low) or three (medium) (Figure 4). Of significance here is that 13 of the 18 (72%) parents in this study have been apart for more than three years and, of those, 11 (85%) indicate high or extremely high level of conflict. Researchers say that, although conflict is common between couples after separation and for the first few years (Kelly, 2000; Hetherington, 1989; Maccoby & Mnookin, 1992), even parents who consider their experience to be moderately to high conflict levels are able to settle into their new family lives and focus on discussions regarding the children (Maccoby & Mnookin, 1992).

Figure 4 Level of Conflict and Separation Date

Number of Participants

Time since Separation
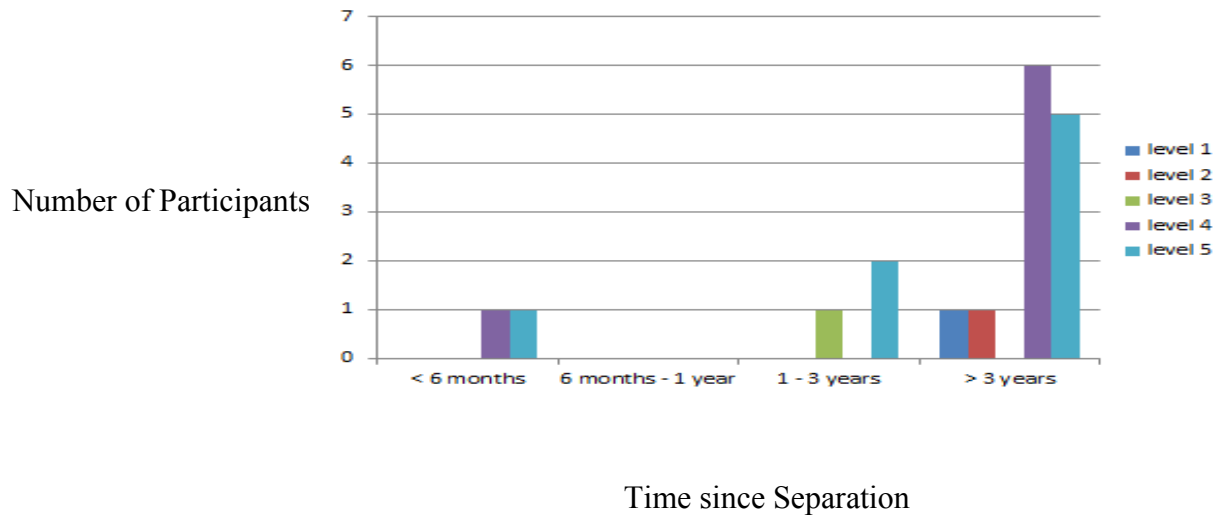
3.7 Data Collection

I conducted one-on-one in person interviews with participants, and followed-up with a process of member checking through e-mail communication and Canada Post with a sub-group of participants. The interview is described as a powerful and revealing method that is used in qualitative research to help the researcher see the world from the participant perspective (McCracken, 1988). When it is used as a method in phenomenology, the interview helps the researcher gain an understanding of the lived experience of the participant (parent) by asking the participants to talk concretely about the experience through specific examples. This allows me to construct potential interpretations of the parents" specific lived experience based on an understanding of the parent meaning (van Manen, 2007).

Participants were contacted either by telephone (five participants) or e-mail (13 participants). Thirteen of the participants provided their e-mail addresses, and I sent them the Consent (Appendix D) and Letter to Participate in the Study (Appendix E) forms via e-mail. Some

participants provided telephone numbers instead of a mailing address and I gave them the

Consent and Letter to Participate in the Study forms at the interview time.

Study participants had the choice of location for the interview, at their home, an office at the

University of Windsor (doctoral student lab), or in an office at the courthouse. None of the

participants in this study opted to be interviewed in the courthouse. Eleven of the eighteen

participants (61%) asked me to their home for the interview. Five of the participants (28%) came

to the university lab. Two participants (11%) requested alternative options for the interview

venue. One, a single parent, completed the interview at a community center during the time their

only child attended a dance class, leaving the parent free of child care duties. Finally, the second

participant suggested a telephone interview to accommodate their out of town residency as their

time in this city was limited to facilitating once a month weekend access with their children.

At the interview, participants completed a demographic sheet (Appendix F). The individual

interview for each participant was audio recorded and transcribed. Participants were not required

to sign consent to participate or consent to audio tape forms to ensure their identity was not

revealed. Instead, I provided them a copy of the form (Appendix G) and asked them for verbal

consent on the audio tape in an attempt to secure their anonymity in the study. Individual

interviews lasted between one hour and one and a half hours.

Participants were asked to respond to open-ended questions from the interview guide

(Appendix H). Kvale (2006) described this type of interview as an exploratory and descriptive

interview. I used an interview guide to ensure participants were asked to respond to the same

general questions, keeping the conversation focused on the research question. Based on parent

responses, further inquiries followed. The prompts added to the interview guide facilitated the

interview process while participants considered various aspects of the questions asked in each

interview. For example, the first question in the interview guide was general and allowed parents to tell their unique story. I explored further with the prompts while keeping participants focused on the research question, as noted in the following two examples.

Q: Tell me about decision-making in your divorce process.

Prompts: where are you in the divorce process (timing)? what was expected and what wasn‟t expected and how did you manage that, talk about how decisions are made with your partner?

Q: Describe how your experience has been with shared decision-making?

Prompts: for your children, for your „ex‟, for the family, anyone else?

I asked participants questions that explored their perceptions and experience of their ability to make decisions together and then provided them the space to use their own words and language while they described their personal experiences. Each participant shared their custody status during the interview.

Participants were paid an honorarium for their time in the study: $15 for the interview, $10 for parking, and $15 for review of the data analysis. At the end of each interview, I thanked the participant for their participation and asked about their interest in further participation to review the themes from the analyzed data, as a form of member checking. All of the parents agreed verbally to participate further in the study through a member check process, although only a sub-group of parents followed through with this stage of the study.

Access to study participants

van Manen (2007) asserts that data collection and data analysis in phenomenology are part of the same process because the researcher uses the interview to have a conversation with the participant providing, at times, an opportunity to gather information about the lived experience and, at other times, an opportunity to process the meaning of the experience through reflection

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(van Manen, 2007). My experience in this study is active involvement in data collection and data analysis simultaneously through the interview process. For example, after interviewing four participants, I began the deconstruction process using the interview transcripts to analyze the data through coding, creation of categories and then themes. The process of interviewing and analysis continued until saturation was reached. Participant interviews were transcribed verbatim.

3.8 Data Analysis

I used thematic analysis to analyze the data from the study. In this form of data analysis, the researcher organizes the data into codes, categories and themes with the goal to seek patterns in the data (Braun & Clarke, 2006). Using phenomenology as methodology, the researcher describes and understands participant stories as they reveal their stories and experience of them (van Manen, 2007).

I used Braun and Clarke (2006) as a guide for my data analysis. Braun and Clarke (2006) identify various types of thematic analysis and suggest that the specific type is dependent on a number of decisions made by the researcher; for example, a) rich description or detailed account, b) inductive or theoretical, c) semantic or latent, and finally, d) realist or constructivist. They recommend that, prior to data collection and describing the analysis process, consideration be given to these decisions (Braun & Clarke, 2006). For this project, I used a rich description of the data, an inductive approach, considered the data from a semantic level and conducted the thematic analysis from a realist paradigm, as described in each phase of analysis below. I viewed these decisions as consistent with the philosophy of phenomenology. I incorporated my rationale for these decisions into the description of the phases of data analysis.

I added a phase to Braun and Clarke's (2006) work, going from codes to categories to themes, instead of from codes to themes and sub-themes and provided a further layer of reflection and organization of the data. This allowed for description and interpretation while at the same time honouring the process of phenomenology, whereby I attempted to keep the codes close to the data and participant meaning. Although presented in phases, the iterative process with recruitment, data collection and data analysis occurred simultaneously, consistent with the methodology of phenomenology.

In *Phase 1*, I became engaged and familiar with the data in several ways. This included transcription of half of the interviews (and hiring out the other half), reading, rereading transcripts, and reviewing the transcripts with the audio tapes for accuracy. This process allowed me recall of the interviews with more clarity as I reflected on the content and meaning for the parent. Further engagement with the data occurred while I read the transcripts and made notes of points of interest. I began the process of coding once I achieved a level of familiarity and comfort with the data.

Coding significant phrases and sentences in the transcripts demonstrated a rich description and captured the meaning of the experience for the parents. According to Braun and Clarke (2006), the decision to obtain a rich description of the data is useful when researching a topic not well known or whose participant views are not known. This study explores the topic of child custody decision-making from the experiences of parents, which is not well known in the research literature, allowing me to remain open to all possibilities of meaning that participants identify.

In *Phase 2,* the data were coded. I organized or grouped data into codes and began making meaning from the data. This organization of data was possible when I recognized what Morse

and Field (1995) referred to as "persistent words, phrases or themes" (p132). I underlined words and phrases in the transcripts. I then transferred those words and phrases to a table (Appendix I), capturing the text, adding the codes that were applied to the text, to the column on the right of the text. I set up the columns on the table side by side for several purposes: ease of organizing a large amount of narrative data, for transparency, accessibility of my work for the purposes of reflection, and for ease of an audit.

An inductive approach was used to develop the codes, meaning that I developed the codes from the data rather than a pre-existing coding frame. I understood that, within qualitative research, knowledge, assumptions and interpretations of the data quite possibly held very different meanings for myself and for the study participants. One way of maintaining awareness of this potential challenge for myself was keeping the codes as close as possible to the data. For example, a phrase by a participant that reads "I don't think decisions are always made on how these things impact little ones" (P001), is coded "decisions don't consider impact on kids", reflecting the parents words and meaning as I understood it. Braun and Clarke (2006) refer to this as the codes being driven by the data rather than by theory. At this point, I was simply describing the data by using codes.

After coding the first transcript manually, I entered the transcript into the software program N-Vivo. I described each code within the N-Vivo program. I read and re-read the second transcript and manually provided codes. I chose to do it this way, honouring each participant as an individual first, rather than considering their data only in relation to the previous participant. This allowed consideration of the parent experience at both a general and unique level (Holloway & Todres, 2003): general, as I viewed the experiences in relation to other parents, and unique to the parents' experiences in child custody decision-making. I found that after coding and then re-

reading, I made some changes to the codes to better reflect the data. The raw data from the transcripts were further organized into the codes within the N-Vivo software.

I followed the same process for the remaining transcripts. Completing the coding manually allowed me to go back and quite easily re-check how I coded the data by flipping back in the pages. Manually coding, physically touching the data, and inserting the codes into categories and then themes kept me close to the data. Using N-Vivo allowed me to organize the large amount of data that I then utilized to check my manual analysis. For example, once I organized the data into each code, I printed off the codes with all the raw data that were attached to them for consistency in the meanings of the codes. This checking and re-checking of the codes allowed me a familiarity with the data and I developed over time a comfort level with the tightness of fit of raw data to codes.

The first transcript was organized into 215 codes and the next three were as follows: the second transcript had an additional 26 codes, the third transcript an additional 20 codes and the fourth transcript an additional 23 codes. I then scrutinized the first four transcripts again for a good fit of the data with the codes and made a few changes to the second, third and fourth transcript coding so that now the second transcript had an additional 35 codes, the third transcript an additional 18 codes, and the fourth transcript had an additional 22 codes.

This process was very tedious and time-consuming. Yet, my comfort with the process increased with each opportunity to recheck my work. Sandelowski (1995) suggested, in phenomenology, six study participants may be enough to reach saturation. In this study, six participants did not allow me to reach saturation. Indeed, I created an additional 15 codes over the next many transcripts.

As I continued the analysis through the remaining transcripts, there was a pattern developing of less code creation than with the original five transcripts. Transcript six had three new codes, transcript seven had five new codes, transcripts eight, nine and ten had two new codes each, and transcripts 11, 12 and 13 had one new code each. In transcripts 14 and 15, there were no new codes. Transcript 16 had one new code and transcripts 17 and 18 had no new codes. As such, I feel confident that saturation of coding was reached within this data set as the last five transcripts have produced only one new code. Table 4 provides illustration of the code creation by transcript.

Table 4 Additional Codes Developed with each Transcript

Participant	Number of Codes
001	215
002	35
003	18
004	22
005	8
006	3
007	5
008	2
009	2
010	2
011	1
012	1
013	1
014	0
015	0
016	1
017	0
018	0

In *Phase 3*, I began to consider how the codes could sort into categories. Within this phase, I

asked myself what these codes had in common and in what ways they were different. Through

this reflective process, I began to put codes into categories, considering the relationships among codes and how they fit together into a category that captured the meaning of all of the codes.

Manually, I recorded categories on the tables beside each code (Appendix I). Using a semantic level for identification of the themes meant I was seeking a surface meaning to the data that represented the content of what the participant shared or described about their experience. I organized this description into categories revealing patterns in the data, further preparing the data for interpretation. To complete this process, I began to review the first four transcripts with corresponding tables of raw data and codes. Once I felt comfortable that the codes had a good fit with the categories, I used these categories to continue the analysis for transcripts five through eighteen. I compared the codes from across all transcripts and created categories, following Braun and Clarke"s (2006) thematic analysis.

 During the analysis of codes to categories with the first four manuscripts, I reviewed the categories that had been created from the codes. From this additional review, a category was added during the analysis of transcript two (decisions of custody) and I added four categories during the analysis of transcript three (priorities of importance, impact on children, expectations and lessons learned). When I completed the organization of all codes into categories, I then used the data from the software program as a means of checking my work. In essence, I reviewed all of the codes for each transcript, with corresponding raw data, for a good representation of the categories from codes. In total, I had forty-three categories. As a final step in this process, I organized the categories and themes on a table and revised it later when I reduced the themes from ten to nine and later still from nine to five (Appendix J).

After I assigned all of the codes into categories, and also entered them on a table for each transcript, I requested two colleagues to review my analysis from raw data to codes to categories.

van Manen (1997) refers to this as a formal way to check out or test my analysis. They each reviewed two tables (transcripts 8, 9, 12, 15) and provided feedback about how they saw the logic in my analysis from raw data to categories. There were a couple of examples where they suggested a code might also fit into another category and at the same time, observed the fit in the way I interpreted the data. Given our varying subjective realities, I understood that we all might have different interpretations of the data based on our understanding of the world.

Phase 4 involved moving the analysis from categories to themes. During this phase, categories were considered from a realist perspective, consistent with phenomenology, to capture the essence of the parent experience. I started by pinning the forty-three categories to corkboards and asking myself what the meaning of these categories was for the parents. Having the tables of raw data, codes and categories and the printouts from N-Vivo, I began inspecting all of the data again, for an understanding of the intended meanings. I then created a new table representing the codes, categories and themes for each participant providing a visual reminder that I again could touch. Through this iterative interaction of data and analysis, I developed confidence in the decisions I was making about the development of themes. Initially, I created ten themes. I organized the codes, categories and themes on the tables for each participant. I then created another table to summarize the data analysis for each participant, indicating which categories were represented in each theme by participant. With this new visual aid, I could see some obvious gaps in categories for participants and reflected on possible meanings. It also provided me an opportunity to explore negative cases in the data.

During *phase 5*, I really began to observe the ways in which I had organized the data and what meanings I could begin to draw around how the themes, and categories within them, related to one another. I started to draw visual representations of the themes, placing them strategically

on the page with arrows that indicated the ways in which the themes related to one another

(Appendix K). I was engaging in a process of interpretation of the themes when I reflected on my

need to understand the meaning from the participant perspective, not my own interpretation of

their perspective.

I decided the time was right to request feedback from the study participants about the analysis

of the data into themes. As noted by van Manen (2007), "good phenomenological

description…is validated by lived experience and it validates lived experience" (p 27). The

participants were able to validate (or not) their lived experience through my understanding of

that experience. I drafted a summary of my preliminary analysis and a table for anyone who

agreed to participate in the member check (Appendix L). I contacted each participant by the

original contact information. For the six who provided a phone number, I called them on the

telephone and invited them to participate in this next phase of the study. Five agreed to

participate and four of the participants provided e-mail addresses. One of the participants could

not be reached as the telephone number was not in service. One of the participants did not have

an e-mail address and provided a home mailing address. Of the 12 participants who originally

provided an e-mail address, seven responded within an hour of me sending the message and also

agreed to participate. One responded three days later and agreed to further participation in the

study. I provided the 13 participants the table of the themes for review and comment, and

requested that they return them via e-mail. With one participant, I used Canada Post.

While deciding on what to send the participants, I reviewed the summary of themes and

categories for each participant again as I was concerned about the number of categories and

potential overlap. Through a process of reviewing the Codes, Categories and Themes tables

(Appendix I) for each participant while considering the ten themes, I noticed that two of the

themes represented the same message, theme five and nine. I collapsed these into one theme, staying with the name of theme five. This review helped me to re-organize some of the categories within different themes or collapse them within the same theme into another category with the same meaning. For example, theme two had the category *negative experiences* only for participant one. While reviewing the codes within this category, I was able to move it to *negative partner behavior* in theme one.

Participants were asked to reflect on the themes that emerged when there were nine themes. Since that time, the themes were reduced to five themes. The feedback from participants was incorporated into my thinking about the reduction of themes. This member check process strengthened the analysis as it allowed me to more clearly understand the parent experience from their perspective, not mine.

Five participants provided written feedback about how their experience fit or didn't with the nine themes. Two of the five participants said all nine themes resonated with their experience. A third participant said all but one theme resonated with their experience. Two participants said that six themes resonated with their experience and three did not. Upon further reflection, I have realized that these two participants each had experienced domestic violence.

This process provided me another opportunity for review of the data within the themes, how they fit together meaningfully and to consider if the themes were all separate and distinct from one another. This provided another check to see if the themes reflected the meaning of the data. van Manen (2007) referred to this reflective process as comparing parts to whole. Braun and Clarke (2006) referenced this process as organic, meaning that it changes over time as necessary and apparent. The ending of this phase is a visual story about the data that the parents provide,

through a thematic map that clearly delineates the different themes and the relationship among the themes.

Using this approach, I observed the data from a realist perspective, meaning that parent perceptions were not independent but was influenced by social and cultural factors (Braun & Clarke, 2006). A realist perspective views knowledge both as that which we experience and our reflection upon that experience (Braun & Clarke, 2006). From this perspective, then, my conversation with parents was about the meaning they made of their experiences based on their reflections upon those experiences.

Phase six involves being clear about the themes so that the reader understands the meaning and what was interesting and meaningful about the themes. Braun and Clarke (2006) refer to this as identifying the "essence" of each theme. In this phase I identified participants" use of specific phrases illustrating the ways in which I captured the meaning of the quotation and how I reflected it in the theme. I began to see the full picture or story of the parent experience through a combination of reflection on the data, the analysis of the data and consideration of the parent response to the initial analysis. In the broader story, I observed the connections among the themes.

To do this, I reviewed the categories, the codes within them and the raw data that formed the codes, using the N-Vivo printouts of the organized codes. This provided me an opportunity to deliberate over the whole data set when reviewing the themes as having component parts, the categories. The description of each category then came from considering the whole data set.

The meaning of the "essence" of the structures originated from my reflective process of all the data and my understanding of the parent meaning that I gained through the data collection, data analysis and parent reflection on the initial analysis.

Table 5 Data Analysis Reduction

Former Categories	Present Categories	Themes
Decision To Divorce Parent/child relationships Type of Decisions Timing of Decisions Parental Rights Decisions About Access	Decision To Divorce Parent/child relationships Type and Timing of Decisions Decisions About Access	Redefining Roles
Lessons Learned	Lessons Learned	Agency
Emotional Readiness Decisions of Agreement Facilitators to Agreement Priorities of Importance Process of Decision-Making	Emotional Readiness Decisions and Facilitators to Agreement Process of Decision-Making	Shared Decision-Making
Areas & levels of conflict Safety Areas of Uncertainty Children"s Involvement in Conflict Feelings About Experience Feelings About Process Feeling About Divorce Feelings About Conflict Expectations Communication Behaviour To Avoid conflict Behaviour When Not in Agreement Barriers To Agreement Negative Partner Behaviour Denigrating Partner Behaviour Decisions of Disagreement	Areas and Levels of Conflict Feelings About Experience Communication	Barriers To Agreement
People involved in Decision-making Community Services Supportive Services Outside Influences Decisions of Custody Decisions Not Made By Parent Legal Services Impact of Decision-Making Feelings About Decision- Making	People Involved in Decision-Making Impact of Decision-Making	Complexities Involved in Shared Decision-Making

The following description reflects my process in further reduction of the data into categories

and themes. I will use the first set of categories to describe my process of reduction from

categories to themes. Theme one, redefining roles was comprised of four categories, *decision to divorce, parent/child relationships, type and timing of decision* and *decisions about access*. In each of the remaining themes, I experienced a similar process as illustrated in the colour coding in Table 5.

Further reflections.

Over the next few months I continued refining the data analysis. As a result, the categories and themes became more descriptive and representative of participant meaning as I understand it; for example, B*arriers to Shared Decision-Making* became *The Battleground – Barriers to Shared Decision-Making*.

Continued refinement led to additional reduction of categories and further description of both categories and themes. Table 6 represents the updates from work on the analysis.

Table 6 Data Analysis Reduction 2

Former Categories	Present Categories	Themes
Decision To Divorce Parent/child relationships Type and Timing of Decisions Decisions About Access	Decision To Divorce Parent/child relationships Type and Timing of Decisions Decisions About Access	Redefining Roles
Lessons Learned	Lessons Learned About the Legal System and Finding Middle Ground	The Importance of Agency
Emotional Readiness Decisions and Facilitators to Agreement Process of Decision-Making	Emotional Readiness for co-parenting – loving your kids more than you hate your ex-partner Process of Decision-Making	Shared Decision-Making
Areas and Levels of Conflict Feelings About Experience Communication	Areas and Levels of Conflict Feelings about the relationship ending and about the process of the experience Challenges with Communication	The Battleground - Barriers To Shared Decision-Making
People Involved in Decision-Making Impact of Decision-Making	The Village Unleased – People Involved in Decision-Making Impact of Decision-Making	Complexities Involved in Shared Decision-Making

Phenomenology includes reflexivity about feedback regarding the data (van Manen, 2007). I received questions about gender differences. My initial understanding about phenomenology meant that I was viewing this group of participants as one group, a group of parents, not a group of women and men. Being more reflexive about the process allowed for a second analysis of the data, a gendered analysis. The second analysis strengthened the methodology, looking beyond the experience of the whole participant group, revealing experiences that were different for some participants. In reviewing all of the participant codes and categories, I was not observing differences between the genders. For example, some women may have had a greater or lesser representation of a particular code and the same was true for some men, yet not for only women or only men.

Upon reflection of the literature, I began to enter some key words (physical, verbal, financial, abus, hit, slap, punch, choke) into N-Vivo to search the transcripts for all participants. What emerged from these searches was a clear gendered difference on one issue, physical violence. Five women had experienced physical violence from their former partner whereas none of the men had experienced physical violence.

I then completed a second analysis, using only the data from these five women. I used a similar process as I indicated earlier, completing thematic analysis (Braun & Clarke, 2006). I began with the categories that were associated with each of these transcripts. I considered the meaning of the categories for the five participants, comparing them to the codes. I began to cluster the categories with similar meanings. From these groupings of categories emerged the themes. Working back and forth between the themes and categories, I collapsed categories within the themes.

Four themes emerged from this gendered analysis: 1) safely redefining role; 2) survival strategies; 3) empowerment in action; and 4) don‟t want shared decision-making. The result is a second data analysis framework. I have named these two different analyses, whole group and sub-group. Table 7 below represents the sub-group data analysis reduction from categories to themes and further reduction of categories within themes. The whole group analysis considers the data from the whole participant group, both men and women. The sub-group analysis describes the data that is different from the whole group. The difference for this study is for a sub-group of women who have experienced domestic violence.

Table 7 Sub-Group Analysis Categories and Themes Reduction

Categories from Gendered Data Analysis Framework	Reduction of Categories	Initial Themes	Final Themes
Parent/child relationship Feelings About experience Person with custody Decisions of custody Safety Areas of uncertainty Feelings About Conflict Areas of Conflict	Protective Parenting Unveiling Conflict as Control Assessing Safety of children and self	Safely Redefining Role	Safely Redefining Role
Timing Type of Decision Behaviors To Avoid Conflict Process of Decision-Making Supportive Services People Involved in Decision-Making Outside Influences Legal Services Decisions Not Made by Parents Community Services	Managing Potential Danger Supportive Services Outside Influences	Survival Strategies	Survival Strategies
Decision to Divorce Emotional Readiness Lessons Learned Facilitators to Agreement Decisions of Agreement	Ready to Let Go Power and Control is Readjusted Lessons Learned	Gaining Emotional Strength	Empowerment in Action
Negative Partner Behavior Feelings about Divorce Denigrating Partner Behaviour Communication Children‟s Involvement in Conflict Behaviour when not in agreement	Abusive Behaviour and co-parenting Lack of Responsible parenting	Battleground: Abuse and Bad Behaviour	Don‟t Want Shared Decision-Making
Feeling About Process Expectations Priorities of Importance Parental Rights Barriers to Agreement Decisions of Disagreement Level of Conflict Impact on children Impact of Decision-Making Decisions around Access	The Deal Has Changed Complexities in Shared Decision-Making	Complexities in Shared Decision-Making	

3.9 Negative Cases

Thematic analysis provided an across case analysis as all the data were considered while developing the structures or themes that told the parent story. To consider negative cases, I reviewed the data from a within case analysis. I created a table to assist me as part of the thematic analysis that provided me with a visual representation of how many categories were present for each transcript representing each theme. For the within case analysis, I created another table that represented how many times each category was present within each theme, for each transcript. This provided another visual representation of categories that were present, the categories not present and the categories represented many times. This allowed me to consider the similarities and differences between transcripts and how that might represent different meanings for participants in terms of their individual experiences in relation to the themes.

3.10 Researcher Assumptions, Bias, and Rigour

In qualitative research, trustworthiness, authenticity and credibility are determined by the researcher, participant and reader (Creswell, 2009). Rigour can be observed in this study throughout this chapter as it is woven into the description of the data analysis process and the specific phases that I have identified through the use of Braun and Clark"s structure. The following are a summary of some of the ways in which rigour has been incorporated into this study.

Of primary importance in data analysis is a focus on participant experiences, not researcher expectations. There are multiple ways in which I tried to understand the parent experience beginning with data collection by seeking clarity in the participants" stories during interviews. I paid attention to researcher bias; I checked in with participants about their meaning both during the interviews and after the initial analysis. Accuracy of the participant data was attempted

through multiple readings of the transcripts while reviewing the audiotapes. During analysis, I kept the codes very close to the participant statements in the coding process. I also worked hard to understand participant meaning by remaining open to possible meanings for participants that may be present through the data. In addition to the manual analysis, I also used a software program to provide multiple ways to consider and check the data, for example, by codes, by participant and across participants.

To check transparency, the process of data analysis was recorded, from transcript data, to codes, themes and sub-themes. I used tables to record the raw data and the codes, categories (and later themes) that I assigned to the raw data as a means of organization and to allow the reader to observe my process. Two peers reviewed samples of transcripts and my recording of codes and categories based on those transcripts as an example of peer debriefing. Additionally, because this study is part of the fulfillment of a dissertation, built into the process is another form of peer debriefing, whereby I have a supervisor and committee members who were able to provide feedback and ask questions about the study, as they are outsiders to the study. For example, I met with my supervisor after the initial analysis and member check to talk through the data analysis framework and next steps. These meetings occurred at other critical steps. For example, I asked my supervisor to review the Methodology and Data Analysis chapters. At the same time, I had the opportunity to present the data analysis in two separate forums.

In preparation for the presentations, I found myself considering my supervisor"s feedback about the clarity of some of the themes. Reviewing the categories again, I reduced the themes from nine to five. In reorganizing and rewriting the themes to better articulate the parents" stories, I reduced the categories from thirty-seven to thirteen. Additionally, I have reflected on my journal as a means of considering my process and have presented earlier versions of the data

at conferences to reflect upon how the audience have received the information to help organize

my thinking about the process. The use of reflexivity, going back to the data after reflecting on

feedback is known by some phenomenological researchers as bracketing (Fisher, 2009).

Another opportunity for rigor in this study occurred when asking participants to review the

initial analysis and provide feedback about the ways in which the nine themes fit with their

experience. I asked parents to return their responses via e-mail on the table that I provided them

(Appendix L). I read the feedback and included the responses by description in the data analysis,

Chapter 4.

The gendered analysis is an example of taking the feedback that I have received and

considering the data again from another perspective so that I am attempting to reduce the bias

upon which the data is interpreted. This analysis is a result of feedback through peers, both on a

committee level and through conference presentation and also through feedback by participants

in the member check process, whereby the participants who had experienced violence indicated

that their experience had some differences than my initial data analysis.

Ethical considerations.

In this study, I addressed ethical considerations of respect for participants, their right to

choice, beneficence and justice (Mishna, Antel & Regehr, 2004) in the following ways. During

recruitment, I provided participants information and choice in participation. During data

collection (interviews), I offered participants choice on venue and how much they shared on the

participant profile questionnaire and interview.

I invited participants at the beginning of the interview to end the interview if they felt

uncomfortable in any way. One participant was quite emotional during the interview as they

shared their experience of their daughter choosing to live with their ex-partner. I asked if they

preferred to end the interview and they declined. I encouraged them to make use of the list of community support people and they shared that they had a mental health professional that they contacted on occasion for support.

Participants were provided opportunity to share their experiences, use their own language and help me understand their meaning of their experiences. I employed a process of paying attention to participant voice and attempted to do so in understanding the meaning as participants described.

All participants" e-mail and telephone numbers have been kept confidential and, upon completion of the study, will be destroyed. I have them until completion of the study so each participant will have a summary of the study findings. My audit trail has been identified throughout this chapter and again in Chapter 4.

3.11 Assumptions about Data Analysis

Identifying your assumptions as a researcher prior to data collection and analysis is a critical part of methodology when using phenomenology (Cohen & Omery, 1994). In Chapter 1, I demonstrated transparency by positioning myself. Before presenting the data analysis in Chapter 4, I want to be clear on my assumptions specific to this section to make visible who I am as a researcher. Social justice and empowerment are key social work values consistent with my world view. I believe in participant voice and valuing the knowledge of lived experience. First, I need to understand the participant voice and I tried to do this through my choice of methodology, phenomenology, and method of analysis (thematic analysis). Both the methodology and method are consistent with my values of honouring participant voice and valuing knowledge creation through lived experience.

As I have described while positioning myself, each of my professional roles has helped me to gain an appreciation for the complexities families experience through the divorce process and that each experience is unique to the individual and family having the experience. Specifically, families experience influences on multiple levels, micro to macro, and through this project I attempt illumination of their voices about those experiences. Yet my experiences have also been influenced on multiple levels and I need to pay attention to how my experiences can influence the way in which I interpret the data.

I have a number of beliefs that have formed from my experiences and a significant bias that I bring with me into this study. My bias is that children benefit from both parents, and unless there is a reason to suggest that parenting by both parents is harmful to the children, my bias is to consider a co-parenting arrangement. I pay attention to my bias and do not bracket my assumptions as has been suggested as necessary in phenomenology (Cohen & Omery, 1994). Rather, I am mindful of this throughout the study and remain open to understanding what parents say about their experiences. For example, in the study, I have had conversations about what prevents parents from making child custody decisions together, what from their perspective can make it work, and then incorporating it all into the data analysis by being open to their input and reflecting on their data and their meaning.

I have an assumption that open coding, keeping codes close to participant words, helps to mitigate some of my bias through my own lived experience. For example, when I made an assumption that parents love their children, want involvement in their lives and wish that involvement to be meaningful by having input to decisions about the children, I have used as close as possible, their words to code the raw data, to mitigate my perceptions of their meaning. van Manen (1998) refers to data analysis as a line by line approach when researching lived

experience through phenomenology. I have reviewed the transcripts line by line, searching for words and phrases that may describe the participant experience. My thematic analyses are a reflection of my belief that comparison across transcripts allows me to see similarities and differences in meaning so that I can capture them in the development of themes and linkages among them. The use of N-Vivo has allowed me to return to my data quite easily to search for areas that I may have been less visible within the larger data set. The next two chapters present the findings from the research project – first with all participants and then with only a sub-group of participants.

Chapter 4

Findings

In the next two chapters I present the findings through two data analysis frameworks. For

each framework, I describe each of the themes and corresponding categories. I begin this chapter

with a brief summary of a description of the environment of the court buildings as this is where

the participants and I first met during recruitment. This is important as it provides a context to

the system participants describe in their interviews. Using phenomenology as methodology, I am

"construct[ing] a possible interpretation of the nature of a certain human experience" (van

Manen, p 41) and, as such, will provide the context in which child custody decision-making

occurs for these participants prior to describing the experience.

4.1 Location

In the Ontario Court of Justice, the mandatory information sessions are held either on the 5th

floor of the building in courtroom five or on the 2nd floor of the building in courtroom one. In the

Superior Court of Justice, the mandatory information sessions occur on the second floor in

courtrooms one, two and, on one occasion during recruitment, courtroom five. The specific

location for each day is identified in both buildings on a board or easel on the first floor. Both

courthouses are located in the downtown area of the city across the street from one another. The

police headquarters is attached to the Ontario Court of Justice building. The courthouses, where

my recruitment has occurred, are not designed with private waiting rooms or areas that parents

can speak with their lawyers in confidence because, in Canada, legal proceedings and records are

public, not private.

Moreover, when entering both of these buildings, armed security guards are the first people to

greet you. Going through the security screening is not unlike what one might encounter at an

airport where all personal items are deposited in a bin including outer clothing, bags, purses,

cellular telephones and shoes, for inspection. This screening process is only for non-employees/known visitors at the courthouse. For example, the person who coordinates the facilitation of the mandatory information sessions is not required to go through a security screen even though she is not an employee at the courthouse.

All of the courtrooms are relatively similar in that there is an area of wooden benches in rows. There is typically a wooden half wall that divides the front of the room from the back. The front of the room has a design with an elevation to accommodate the family justice professionals (i.e., lawyers, judges, court reporters) in the courtroom. At the front of the courtroom is another area of elevation, where the judge sits when in session.

In the middle of the room, parents sign a form indicating their presence at the mandatory information sessions. The mandatory information session begins at a time scheduled by the court. The coordinator introduces herself, and the two voluntary speakers (one lawyer and one mental health professional) provide an overview of the content of the session and other relevant process details. A very small television on a stand is situated by the tables and a power point presentation provides the scripted information. Parents receive a copy of the presentation slides.

It is within this setting that I have recruited participants for this study from the group of parents who have participated in the mandatory information sessions. Table 8 provides a visual picture of the custodial status of the participants, the separation date and the primary residence of the children.

Table 8 Parental Custodial Status, Separation Year and Child Residency

Participant	Custody Parent no access to other parent	Custody Parent regular access to other parent	Shared parenting	Access parent	Ages of children at time of interview	Primary residence for children	Separation Date
001	X				14,16,18, 19	mother	1999
002		X			8,9	father	2010
003		X			2,6	mother	2010
004				X	7,9	mother	2006
005			X		12,15,19	both	2000
006				X	8,9	mother	2010
007		X			13,14	Split arrangements*	2006
008		Undetermined***			3,5,8	mother	2010
009		X			13,14	Split arrangements*	2006
010	X				2,3 ½	mother	2013
011				X	11	mother	2013
012				X	7	mother	2012
013		X			8	mother	2008
014		X			10,11	mother	2006
015		X			8,9,11,14, 16	Split arrangements**	2008
016			Undetermined****		2,4,8	Both parents and their children reside in matrimonial home	2012
017	X				13,16	mother	2001
018		X			8,10,11,13	mother	2010

*Each parent has custody of one child and access to the other child
**Dad has custody of one child and two children reside primarily with him, while his former partner has custody of 4 children and three reside primarily with her
***custody status is yet undetermined and the children reside primarily with mother and have access to their father
****custody status is yet undetermined and the parents continue to reside in the matrimonial home with their three children

4.2 Interview Data: Whole Participant Analysis

Five themes emerge from the interview data using thematic analysis: 1) *redefining roles; 2) importance of agency; 3) shared decision-making; 4) the battleground - barriers to shared decision-making; and 5) complexities involved in shared decision-making*. Each theme represents a piece of the overall story participants have shared of their experience with child custody decision-making, with a focus on their experiences with shared decision-making. I present these themes in a sequence that emphasizes the participants" story of their experience. Illustration of this sequence is in the data analysis framework below (Figure 5). First, I describe this framework and then the participants" ideas about shared decision-making. I also describe the themes in greater detail and discuss the connections among them. The final section of this chapter is a summary of the analysis framework.

4.3 Data Analysis Framework

Figure 5 Data Analysis Framework
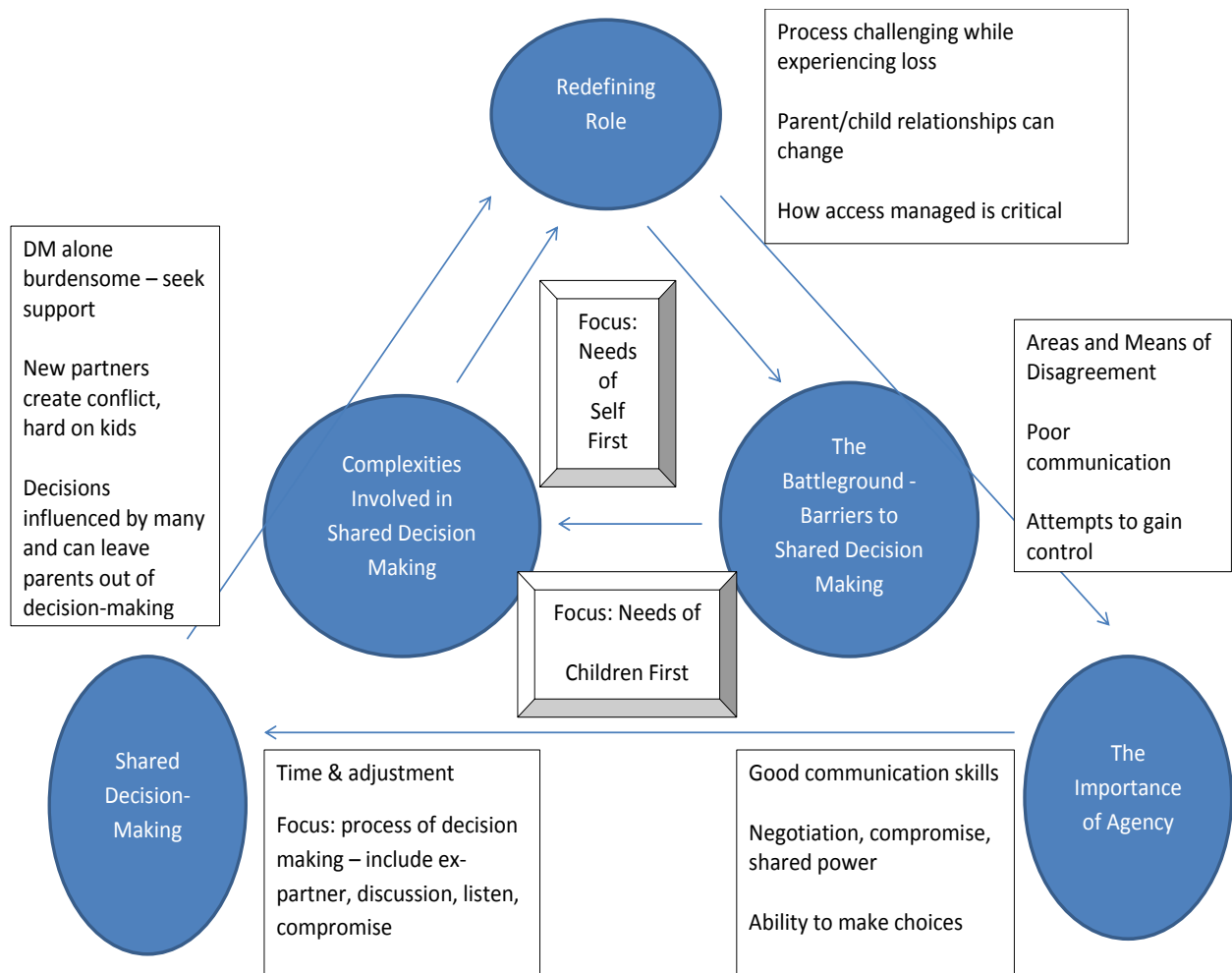
Figure 5 illustrates that five themes have emerged from the data analysis. These themes embody the participants" experiences in this study of child custody decision-making. The participants" experience is a story that can be told in two ways: first, the narratives of the ways in which participants make decisions that focus on the needs of the children or not; and second, decisions are made that focus on the needs of self during the parental separation process.

The first path shown within this framework (see Figure 5) describes the ways in which participants experience the separation period whereby they redefine their role as parent.

Successfully redefining their role includes managing the loss of relationships (with their partner, extended family, and friends), changes in their relationship with their children, and access arrangements. This redefinition of role can help parents feel they have an ability to make choices and have input to the decisions that are made about their children: they have a sense of agency. When they exercise agency, participants say they are able to share decision-making with their ex-partner. In this study, participants identify that a critical component of this path that leads to shared decision-making is the focus by both partners on the needs of the child. Although participants understand the path to shared decision-making and, as I will illustrate, can provide examples of times they have shared decision-making with their former partner, it is more common for many in this study to find themselves in a process involving the second path that does not lead to shared decision-making, as I will describe next.

Participants also describe another potential path in child custody decision-making that can lead to decision-making alone, without input from their former partner (Figure 5). This second path can occur when parents are not successful at redefining their role and face a number of barriers to shared decision-making. They may have a number of areas of disagreement (including access arrangements), have poor communication, and may attempt to gain control over the situation. Parents experience these barriers as conflict in their relationship which can lead them to make decisions alone, excluding their former partner from the decision-making process. Participants say they can struggle with the complexities of involving others in their decisions such as family, friends, new partners, or community and legal services when their experience of decision-making alone is stressful or burdensome for them, because involving others often means conflict increases with their ex-partner.

Through their stories, participants share their beliefs and preferences about shared decision-making in child custody. Eleven of the participants say they want shared decision-making with their ex-partner and one participant does not. An additional three participants express that they want to share decision-making with their former partner and yet they have not been able to achieve this because of a history of not being able to make decisions together or because their communication patterns do not permit shared decision-making.

The remaining three participants express varying degrees of uncertainty regarding shared decision-making with their ex-partner and use qualifiers such as, "it depends." For example, for one participant, having the ability to share in decisions about their children is preferable when they do not have legal custody. Yet, when the circumstances change and they receive interim custody of one of their children, their preference changes to making decisions alone about the child, without their former partner's input. Five participants reveal their experience of domestic violence in the relationship and ongoing verbal abuse after separation. Two of these five participants do not want to share decision-making (three say it is their preference) because they have no history of successful negotiation with their ex-partner. Yet one of these two participants believes it is better for their child to have involvement of both parents in decisions and wishes for the possibility of shared decision-making. Participants express their view that children interpret shared decision-making as meaning that both parents care for them.

Fourteen participants express a desire to share child custody decision-making with their former partner, and yet, they say they are not always successful in making decisions together. An additional three participants want to make decisions alone and one participant's views change as their status of non-custodial parent is replaced by custodial parent. Whether or not they are successful achieving shared decision-making routinely with their former partner, participants in

the study all provide examples of times they are able to share decisions together, the conditions that are necessary to achieve shared decision-making, and the barriers that create challenges for them. Participants‟ quotes illustrate their insights about their experiences. I use the participant quotes in each of the themes and corresponding categories.

4.4 Themes

The five themes are comprised of fourteen categories. As a method of presentation, I describe the theme and then discuss the categories that comprise the theme. Block quotations illustrate the meaning of each theme and category. After describing the themes and associated categories, I demonstrate how these connect to and begin to form a starting framework of the data analysis, what Braun and Clarke (2006) refer to as the "essence" of the structures (themes).

Theme I: Redefining roles.

Parents in this study seek to redefine their role following separation, and this process occurs regardless of how prior parenting decisions have been made. They redefine their roles through their *decision to divorce,* including the *timing and type of decision*, a renegotiation of *parent/child relationships,* which includes *decisions about access,* the four categories of this theme. As is noted above, in the data analysis framework, negotiation of this process can lead to shared decision-making, participants say, when the focus is on the needs of the children. When this is not the focus, shared decision-making becomes difficult.

As will be shown below, participants in the study suggest that having contact with their child is important to them and is part of how participants define their role. Given this notion, the ways in which access is managed can be a critical part of parent/child relationships and also seem to define the ways in which participants are able to navigate beyond this stage in their relationship with each other. For example, when participants are able to agree on access arrangements, they are better able to negotiate other decisions regarding the children. The majority of participants

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believe the children maintain relationships with both parents when the needs of the children come before the needs of the parents in parenting.

Decision to separate and/or divorce.

Participants report that the decision to separate is often not mutual. In this study, only one parent said the decision to separate from their ex-partner was a mutual decision, whereas seventeen parents said the decision to separate from their ex-partner was made by one partner.

> I did not want to be with him anymore. He should have known. We had the discussion
> for, like I said we had been to counselling for a couple of years so it shouldn't have come
> as a surprise but he wasn't feeling the same way as I was. (P001)

This one-sided decision can leave one or both parents feeling unsettled with the decision. Not everyone is emotionally ready to separate when it happens and some participants mention that they believe their ex-partner continues to hope for reconciliation.

> Sometimes I think he thinks we'll get back together and I've made it very clear that that's
> just not going to happen. I did take him back, back in 2009 and then I realized it was just
> very unhealthy for the kids, very unhealthy for everybody. I think that sometimes he
> thinks there will be a chance of us getting back together but I've made it very clear that
> it's absolutely not happening. (P008)

There is great variation in the ways in which participants manage their level of readiness and the loss of their former family structure. Regardless of who makes the choice, a separation requires an adjustment period to their new circumstances. Having time to adjust seems to be an important element for participants in their ability to work together.

Participants note their level of emotional readiness for the separation can help them to focus on the needs of their children and move on from their former relationship with their ex-partner to

a new and different relationship with their former partner. During this time of adjustment, they have to re-establish their relationship as a parent.

> I never wanted, I never wanted to separate and divorce. Ah, it was all her decision, it was all her decision for me to move out of the house…and then I just decided you know what, I"ve got to move on…And I think she thought that once she kicked me out I"d struggle and then beg to go back and she would have the upper hand but it didn"t turn out that way. Three months in and I was slowly chugging through school, my expectations of seeing the kids and I just slowly moved on. (P006)

Parent/child relationships.

Part of redefining their new parental role, as expressed by participants, includes attention to relationships between parents and children. Relationships can change after parental separation as parents try to navigate their new family structure. The amount of time they are able to spend with their children may feel limited, seemingly prolonging the adjustment period.

> It makes simple things very stressful when you"re planning out a simple vacation…I didn"t know if I was going to get them…for me and the kids right because they see me upset and they then understand why…she made it think that it [the separation and move] was going to be fun for the kids and they didn"t really understand the impact right. Like even moving to (name of city), oh they think, oh they understand that they get to ride a subway all the time and they"ll be able to go to (name of amusement park) and all those things but they didn"t really understand …right now she lives 7 minutes away and she still gives me a hard time about weekends so I know, you know, four hours away there"s no way that she"s going to drive half way or drive them to me every weekend I know that"s not realistic, right. (P004)

Participants in the study identify that they love their children. They express how critically important it is for them to spend time with their children and maintain a relationship with them. Many participants articulate how important they believe it is for children to have an ongoing relationship with both parents.

She knows how much I love him…My point is, why would we go to police or a lawyer. It‟s a mother, son and a father. As much she want to see him, I want to see him. As much I want to see him, she want to see him. (P011)

Another participants says,

I love my children, well she knows that, my children are my world…I think my kids are wondering why I won‟t see them…I just don‟t want to put some negative vibe to my children about their mother…decision-making can be as easy as 1,2,3. By 1,2,3, I mean, half, the mother of the children and the father of the children and both are equal and decision-making is as simple as that. (P006)

Participants also acknowledge how difficult it can be to separate their feelings for their ex-partner from their children‟s feelings for their other parent. Focusing on the needs of their children can help participants remember that the children can still love their other parent even if they (the parent) no longer care for their former partner.

It still is hard though because you dislike the person so much that you just don‟t want to agree with them sometimes…if you make it about yourself it‟s going to be really difficult for the kids…I think that‟s the main one for me, is putting your kids first because you have to love your kids more than you hate your partner and that‟s a big one for me. (P016)

When access is an area of conflict or when it is sporadic, participants say they wonder how their children perceive their relationship. Regardless of the former relationship between parent and child prior to the separation, participants say the new family structure requires the establishment of new relationships with their children. Some participants in the study report a sense of loyalty from children towards both parents. Others suggest children feel an obligation to their non-custodial parent and may rely more on a step-parent than a biological parent.

> I think they just kind of accepted their relationship between their dad for what it was. They loved him because it"s their dad and they went to visit him because it"s their dad but they didn"t really have any expectations...he would tell them not to bring their homework because that"s not how he wanted to spend his visit…my kids really counted on their step dad because they knew they couldn"t count on their biological dad… kids love their parents. It doesn"t matter what kind of parent you are, that loyalty is still there. (P001)

Type and timing of decisions.

Parents in this study speak of decisions in various ways. Child custody decisions can be agreeable to both parents, or they can be contentious. These decisions can be made jointly, or they can be made by one parent alone. Some decisions, according to parents, must be delayed because there is no agreement. Participant 003 provides an example: "Religion. We still can"t make a decision on that, so, because we are at odds with that, we have actually made a joint decision to not bring it up until she approaches us with it."

A number of participants say decisions have not been shared during or after the separation, while some say they were. While many parents in the study have experienced shared decision-making during their union, with passing time and the establishment of new family patterns, not

all parents experience that their input is considered. When this occurs, they return to the legal system to request changes to their orders or agreements.

> I mean, we made decisions together, we talk…you know we talked school and we talked about, you know, what sports we"d like him to be in…as far as raising them we"re both on the same page really…that changed during separation because she used them as a tool to try to control me and get back at me so I mean…she"d just make them and without even consulting me right…see what happened was I filed for an emergency court hearing to stop the kids from moving to (name of city). (P004)

In this study, participants express a preference to be part of their child"s life and view decision-making as a means of doing so. They share the various ways decisions are made (with their ex-partner) after separation, including making decisions alone, with their ex-partner as a shared decision, and as a decision they have made with consent from their ex-partner. The following narratives demonstrate each of the three ways participants experience decisions with their ex-partner. First, decisions involving their ex-partner making decisions alone.

> She is making the whole, the decisions by herself. And, uh, I"m not involved whatsoever even though she does so many things that actually need my input…And I just want the decision-making „cause I just feel that she just bases her decisions on how she basically feels and doesn"t consider the impact it is having on the kids…both parents should be given an equal opportunity to be making decisions for the kids. (P006)

Next, when decisions are shared.

> Since the divorce in "06, it was, um, pretty good. Like we were able to talk, sit down…And it was really good communication…I called up my ex and I was like, we need to get him (son) out and we"re going to do it now. And so we sat down and we went

over with finances and everything and how we're going to do this and even though he makes a lot more money than I do, I wasn't going to fight over, you know…I said we're going to do 50/50 all the way across the board and we moved him into a private school. (P009)

Finally, when decisions are made by one parent with consent of the other.

I had my oldest son in a French school and he was really struggling so I had him educationally assessed…and it was recommended that I put him in English so I ended up doing that and just telling him (ex-partner) afterwards. And actually that was a non-conflict issue. Yeah the school, anything to do with school, he listens to me. (P008)

The establishment of custody and access through the court at the time of separation does not necessarily mean that parents will accept these decisions over time. The participants in this study have been separated anywhere from six months to fifteen years, suggesting that, even over long periods of separation, participants continue to want input into how child custody decisions are made. Decisions at separation do not always reflect changing family circumstances, and participants may want to establish different arrangements over time.

I realized pretty quickly that the agreement was null, you know…it wasn't until later on that I really felt like I had a choice and uh, the power to decide…it wasn't until I had money that I could really start to make some changes…well at the time I had no custody, I had no choice…well I now, when I met you, I was actually going through the process to, my daughter, my daughter indicated to us that she wants to live with us…and umm, so we, we got an emergency order and I have uh, temporary custody. (P007)

While this section has discussed different sorts of decisions affecting children and their parents, the next section addresses one of the primary decisions: decisions about access.

Decisions about access.

Access decisions are complicated and it appears that the ways in which these decisions are navigated can have important impacts on families. As will be shown below, focusing on the needs of children in these decisions can lead to one path in the restructured family relationships, while focusing on adult needs can lead to a very different path.

Some of the complications related to access decisions may lead to parents refusing to participate or being prohibited from participating in access visits with their children even when the children want to see their non-custodial parent. For example, there may be a no access order in place for one parent.

> Like I said there was a no access order put in place. They felt that he was a detriment to
>
> the process so the three of us would just meet with the health care professional or with the
>
> worker and go from there and kind of come up with a plan that is best for everyone.
>
> (P001)

Additionally, when parents are not able to work together and make decisions together for their children, they may have less interest in seeking input from their ex-partner about access decisions and instead make them alone. This may not accommodate both parents" schedules. The following narrative is an example when participants try to navigate access around their schedule and have yet to establish a good working relationship and agreement.

> I"m trying to move towards him also having some overnights because it"s generally very
>
> spotty, a couple hours here, couple hours there. He might take one of them, he might take
>
> three of them, like it"s just been all over the map and I"m trying to get it so that it"s more
>
> consistent, both for me, for organizing my life. (P008)

Participants express that there are times when the adults consider their own needs and rights before the needs of the children. For example, when one parent decides to move to another neighbourhood, new school district, or new community, and the children already have an established functioning access arrangement with the other parent, disruption or termination of the parent\child relationship can result. For example, the following participant has experienced extended periods of time without access to their children when their former partner moved to another community.

[I] tried to be involved in my kids lives but she [has] been difficult. For example, I haven't seen my kids for the last 2 months, and I have been in (name of city where children reside) twice. (P006)

The same participant explains the deterioration of access with the children over time.

Since the summer of 2011, maybe 4, maybe 5 times that summer [weekend access]…[2012] I tried to go at least once a month…I have access with them via skype up until 2012, October and she cut the skype off…but now my contact with the kids has now dwindled from me having access by phone to fully cutting it off…I am asking for a schedule for access to my kids, so every second weekend…I think my kids are wondering why I won't see them and they have asked me that question numerous times. (P006)

When participants focus on the needs of children, they note a better ability to include access arrangements in their decisions and are better able to come to an agreement, as is noted in the following narrative.

The kids would be coming with me because I had more of a support system…We had both agreed…What I was offering with the kids was access anytime she had ever wanted…or also too she had said, you know, this is the date when I will pick them

up…We had a written separation agreement before the divorce…I think it went relatively well…especially moving from (name of former community) to (name of present community). (P002)

An important part of access arrangements appears to be the manner in which parents communicate. As the above quotation suggests, when parents are able to communicate well, perhaps through discussion as in this situation, participants can arrange an agreement for the time the children will be with each of them. Their willingness or ability to be flexible can increase with good communication and that flexibility reflects their ability to focus on the needs of the children. In the above situation, the parents have been able to consider their support system and schedules to fit around the needs of the children.

Poor communication appears to lead to strained access arrangements as seen through blocking, prohibiting or extending access. The following quotation shows that the children‟s time with one parent can be prohibited when the other parent rearranges then extends their own access.

At first it wasn‟t a question at all, it‟s just what happened, we had both agreed…now the mother of the children is trying to create her own stipulations…during the summer she had cancelled several times…she would take the children every other weekend…she had missed several day, switched a few around and started making up her own schedule…One weekend the children went over and she kept them for an extra three days without contact. (P002)

Having the ability to make choices that are related to decisions about the children is important to participants. When they are successful at redefining their new role and they do so by focusing on the needs of their children, they appear to be able to achieve agency and move to shared

decision-making. Three examples illustrate this path. The first is Participant 007. "Well, I think to put it simply, uh, especially in the case of custody, the adults need to put their personal feelings and desires aside and simply do what is best for the children." Next is Participant 010. "I guess it would just have to be communicating clearly. Putting your personal differences aside and focusing on what really matters…the kids." And finally, Participant 015 suggests,

> The communication part is very key but you also have to be able to compromise…the
> children are the key factors. They are going to be affected by whatever decisions are made
> so you both have to be on the same wavelength. (P015)

As will be shown below, when participants do not focus on the needs of the children first, a very different path can follow.

I will first present the path that leads to shared decision-making, considering the themes of *agency* and *shared decision-making*. I will then present another path that participants can follow which focuses on the needs of self.

Theme II: The importance of agency.

Agency in this study refers to the ability to make choices. Parents are clear that they want to be involved in the decisions about their children, particularly in terms of having input or choice when decisions about child custody are made.

> We were able to both agree and … even if we disagreed we were able to you know, voice
> our opinion…it was good, right, ‚cause I felt like I had a say in what was going on within
> my children"s lives and it felt that I had an impact right. (P004)

When participants experience agency, they seem to develop hope or belief that their input is important and they allow communication and compromise. Participants believe focusing on the needs of the children helps motivate them to work together and compromise. This can lead to shared decision-making, as we see in the following example.

It was very early on, but we had discussed everything thoroughly beforehand and we were

on the same page with everything. Something to be agreed upon in the middle you know,

there‟s a big middle between two sides…Yes I'm assuming in a lot of cases there would

be a lot of compromise depending on how huge the conflict is. There‟s always going to be

a middle ground and that middle ground is a very large place. (P002)

In the study, I asked participants to share their experiences about how shared decision-making

can be facilitated. Thus, participants reflect on insights they have gained through the process of

child custody decision-making; these insights relate to *the legal system as choice*, and *finding*

middle ground, the two categories of this theme.

The legal system as choice.

Participants express that when there is not agreement on child custody decisions, they often

find themselves back in court because they perceive this as the only option for resolving their

differences with their ex-partner. "And right now I have my fourteen year old living with me. I

have temporary guardianship of her and I‟m currently going through court to change the

separation agreement." (P015)

Participants in this study voice their desire for options beyond litigation so that they have the

opportunity to work through their differences. They want to be able to think through their

decisions without the expense, time and stress that can be associated with the legal process, as is

noted in the following two examples. The first example, Participant 018, illustrates the length of

time the legal process can take, "Well in all terms it was a full two years. That whole process

was a full two years, almost to the month. Well mediation would have been much easier."

The cost of the legal process can be stressful for participants.

Lucky enough, for those of us who qualify for financial aid that helps. But financial aid

doesn't cover divorce. It's only for family law, for custody battles. They won't do

anything about a divorce. You still have to pay for that. Where am I going to come up

with that kind of money if I had to get legal aid to help me come up with support? (P010)

Participants say at times they feel pressure to make decisions that will end the stress and expense

of the legal process rather than focusing on the needs of their children.

Well a lot of it would be based on stress. You want it to be over as soon as possible as

with finances, the timeline involved with the court system. And yeah that would definitely

increase the costs. You just (pause) you're (pause), it's not concentrating on what you

should be. You're like this could be done, this could be done. Not necessarily that you

have to, you know, you're just trying to think of other means to get to where you want to

be. (P002)

Some participants suggest that the language that is utilized within the legal system does not

support shared parenting. They suggest changes reflective of today's families where both parents

provide care for the children. Participant 004 expresses that the term "access" can leave the

parent feeling as though their parental role has been minimized.

Even the word access, when the mom sees the kids it's parenting, but when it's the dad,

it's access and I'm like what the hell is that…you just feel powerless…they should be

using a word like parenting or fathering not access. (P004)

Finding middle ground.

In addition to using the legal system, participants discuss skill development including good

communication skills, negotiation, compromise, and shared power. Most participants suggest

that services can be useful for resolving differences, as the following example from Participant

005 suggests. "The counselling that I have received to help them…an actual mediator not in a legal sense but a mediator or a coach…I see the role of coach. Rather than a lawyer, a coach."

Participants identify the need to develop communication skills when making child custody decisions together, skills that can help them focus on resolving their differences.

> For joint decision-making to happen you need two people that are calm and are able to talk. They have to understand that when somebody is talking, you don"t shut them out…you pay attention to what the other person"s been saying. You need to have good listening skills, not just communication. The communication part is very key, but you also have to be able to compromise. (P015)

For many participants in the study, this is the first time they have experienced a separation or divorce and they suggest that education to assist in making decisions that meet the needs of their children may be helpful. Also, some participants indicate it would be useful to have a process that assists them in sorting through the maze of challenging decisions in their new role as single parent, as noted in the following narrative.

> That MIP (mandatory information program). I think if they had something like that, but joint, with both parents there, and have a chance to meet with somebody and talk about a few of the issues together…at the beginning so it can kind of set up some skills for both parties. Obviously with us it"s the communication part but it could be educational as well as what would be best for the kids. (P008)

Many participants recommend having a third party such as a coach or mediator to help them navigate and demystify the challenges of child custody decision-making. In the first example, Participant 013 states, "I"d have to say the information session that I went to would have been very valuable to me initially and perhaps a little bit of free legal advice." They highlight that the

process of child custody decision-making is confusing and difficult to understand, as can be observed in the following two examples.

It's very confusing. I have a lawyer but I don't really understand a lot of it. I don't understand if we go to court, are they going to give 50/50 custody? Are they going to give sole custody? I'm not. I'm very confused with the process. (P016)

The second example suggests that participants would like to have additional support to help them navigate the legal processes.

I think that having a third party there who is not partial to either side would make a huge difference. The conversations I've had with the clerks, they've just been very informative, not judgemental. The clerks have been really helpful walking me through the paper work. (P008)

Having someone who is focused on support rather than competition to guide them through this process with the goal of helping resolve differences between partners can shift the focus to the needs of their children. Additionally, a process that provides education and information that they can incorporate into their decisions, participants offer, can be helpful. The following two participants describe aspects of this process that may be helpful. The first example, Participant 005, suggests that participants view the mandatory information sessions as an opportunity to support parents in their ability to work together. "So for each participant you know and to view them not, to view themselves as participants rather than combatants or opposed, they want to participate in their children's futures." The second example illustrates that participants want support through learning skills such as communication that may facilitate working together with their ex-partner.

Obviously with us it‟s the communication part but it could be educational as well as what

would be best for the kids. Because I think we all get caught up with the process…we

forget about the decisions that we have to make…I think that having that third party there

who is not partial to either side would make a huge difference. (P008)

Participants suggest that, as part of the process, children need an opportunity to be heard or

have a voice, through an independent person. For example, sometimes the Office of the

Children‟s Lawyer or counsellor is used to ascertain the children‟s wishes. This information can

then be incorporated into parents‟ decisions. Many participants say the children‟s views require

consideration and there is an understanding that the children can feel pressure to tell their parent

what they want to hear.

It‟s not the same environment and they wanted to be home with me. So they made me

promise not to tell him that because they didn‟t want to suffer the repercussions or feel

like they‟re traitors…They didn‟t want him to know that they came to me about this…We

had a children‟s lawyer…and we made a recommendation to the court. (P014)

Finally, participants indicate the process requires some timelines that allow for immediate

decisions, provides stability for all, including the children, and does not allow the process to be

unnecessarily extended. For parents who choose not to engage in the process of resolving child

custody decisions, participants want to see consequences to encourage compliance.

When someone is not engaging of the process that there should be certain manners to

expedite the process. I mean it is (pause) ah, consequences, certainly consequences. Well

I‟ll give you an example of the settlement conference. How does someone not have

consequences for not showing up when there is a judge, two lawyers and myself there to

try to mediate and settle an issue? (P018)

Having the ability to make choices helps participants feel part of the process of child custody decision-making. Parents in this study identify their desire to take an active parenting role that includes having input into decisions about their children. When they experience the ability to make a choice and provide input, they say they are able to move to a place of shared decision-making with a focus on the needs of the child.

Theme III: Shared decision-making.

According to participants, parents who focus on the process of decision-making, such as the inclusion of their ex-partner in discussions, listening to the needs of all involved, and compromising, are able to share child custody decision-making. Participants acknowledge that this can be a very challenging process, especially during a time when they do not have positive feelings towards their former partner. For some, it is simply not possible. It requires a level of maturity that allows parents to set aside the personal differences between the adults and focus instead on the needs of the children.

> We work well together when we're making decisions for the children…even if I were to get full custody I would never make a decision without him. These are not just my children. We're going to have to figure it out because you get one shot at parenting…you have to love your kids more than you hate your partner. (P016)

Two categories make up the theme of shared decision-making: *emotional readiness for co-parenting – loving your kids more than you hate your ex-partner*, and the *process of decision-making*.

Emotional readiness for co-parenting - loving your kids more than you hate your ex-partner.

Separating from a partner can be a significant change for parents and it takes some time before they feel emotionally ready for their new family life.

In the beginning, like the first couple of years, when you"re just kind of getting used to

it…if people are you know, in a good place with themselves then they are able to parent

together and co-parent and put their kids first. (P001)

The former spousal relationship becomes one of a partnership in parenting and supporting

decisions that focus on the needs of the children with less focus on the needs of the adults. The

following quotation, Participant 008, demonstrates the shifting of relationships to a partnership

around parenting, leaving behind the personal conflicts with their ex-partner. "Sometimes around

the children, sometimes around the fact that I"m dating…now I tend to just say, you need to

concentrate on your life and just leave it there and just turn my phone off or whatever."

The timing of becoming emotionally settled varies for participants.

I think if people are, you know, in a good place with themselves then they are able to

parent together and co-parent and put their kids first, and they"re able to do that. I think it

just depends on the individuals and the level of conflict and where they"re at with each

other and themselves and personally. (P001)

Sometimes, when participants begin to co-parent in a way that they both feel allows

consideration for the needs of their children first, they can begin to wonder if they might have

been able to sort out their differences and remain together as a family.

The experience and our life can be really good but then something will happen and you"ll

go back to that kind of dark place…because you work together as a family and see you

can work together and you feel like you might be able to work it out. It"s a reflection of

how when you work together as a family, you feel that, we"re a family. (P016)

During the study, some participants have reflected that they share a special bond with their

ex-partner through the children. This is evident even after separation; for example, the parents

find themselves connected to each other on a level they do not share with anyone else as we hear from Participant 016. "It"s good we still have that together. You"re still sharing experiences together…the kids, they still bring that out in us."

Participants reveal that they need to take some control back before they can feel emotionally ready to co-parent. For most participants, that means taking a stand for themselves or for their children and that may mean exercising their right to make choices as a free individual, separate from the former relationship. The first example, Participant 003, illustrates that the participant is feeling stronger in their ability to take a position that may be different from others, "I learned to stand my ground and listen to my own opinions before the opinions of others." The second example shows that time can be required for participants to feel emotionally ready to make decisions together with their ex-partner.

> In the beginning, like the first couple of years, when you"re just kind of getting used to it…there"s hostility right…and I think it just kind of takes time for that to happen…some people have a harder time to find, kind of moving on…I think that really prevents you from being able to make joint decisions…if everyone was on the same page, it works out wonderfully. (P001)

When parents are emotionally ready to co-parent, they are able to agree on decisions together, and they identify that this is less stressful, financially more manageable, and beneficial for adults and children as we hear from Participant 004. "My lawyer said you know what, why spend all of these thousands of dollars and fight over full custody if you two could agree on most things."

Participants suggest that, when they are able to agree on matters with their ex-partner, it benefits themselves and their children. "I"m much more relaxed, I"m not as tense, as miserable and I see that reflecting on the children." (P010)

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Participants in the study recognize that separation can bring on high levels of emotional stress and suggest that they need to set those aside when communicating with their ex-partner so they can focus on the children. For example, Participant 003 states that, "People need to be able to put aside their feelings towards each other." Some participants link this with being able to work together, such as when Participants 001 says, "You have to be willing to work together as a team." Participant 009 provides a further example of this.

Like before we used to, he"d come over to my house, he"d walk into my house and be like, hey guys how"s it going? To me and my husband and I, we"re like, oh nothing much, he"d grab the kids, they"d leave, I could do that to his house too and go talk to his parents, sit down and have something, you know a coffee or whatever. (P009)

Participants have identified a number of actions that have helped them share decision-making with their former partner. Some of these include a willingness to work together, the ability to discuss situations, negotiate, listen and compromise as is illustrated in the following two examples. In the first, Participant 010 reflects, "It"s great knowing that I have such a good relationship with him where we can sit here like this, on the couch and talk." Another participant shares the following example.

When somebody is talking, you don"t shut them out…you pay attention to what the other person"s been saying…you give that person the chance to speak their mind on that subject…And then when the shoe"s on the other foot, the first person is sitting there listening. (P015)

Process of decision-making.

Most of the participants in the study say the process of decision-making needs to start with putting the children first in parenting or considering the needs of the children in all decisions. For many, that also means making decisions together. For example,

> If I worked on a Sunday, I would go and be like, hey can I pick up the kids at 7:00pm, because I"m not done work until that time. You know, not a problem, not a big issue. If he had an extra three day weekend, he"d be like, can the kids stay? And I"d be like, go ahead, have your extra day with them, I don"t care you know, if they wanna" stay its fine. It"s like no arguing, it"s just you know like shaking hands, good deal you know what I mean, and there"s no really big issue you know because it"s just what is good for the kids.
> (P009)

Participants suggest that children need to be the priority in decision-making.

> Maybe that has to be written into employment benefits that somebody dies, you get bereavement leave, you"re getting a divorce, you get some time too because I mean looking after our children is part of looking after our society and if we want to, we have to make it a priority. (P005)

Some participants suggest that, when parents come to an agreement, a court order should be used to mandate it. Participant 002 expresses it this way. "This is what needs to be done. This is what should have been done in the first place. I think that if there is an agreement it should be automatically go to the court." When participants are in control of the outcome of their decisions, they seem to feel a commitment to a plan that they have created. Having an ability to make choices they say, allows them to move to shared decision-making.

We went through mediation. The very first point on our separation agreement was that both parties agreed to be divorced. We start signing off on each other"s requests… Originally, when we sat down, we both agreed that it would be joint. It was expected that if there was a problem with any of the child rearing or any of the problems that came around with the child that she had, she would give me a call and ask for my advice. Same on the other front. (P015)

When participants are not able to achieve shared decision-making, they can follow another path which includes a focus on self instead of a focus on the child. The themes are *the battleground - barriers to shared decision-making* and *complexities involved in shared decision-making.*

Theme IV: The battleground - barriers to shared decision-making.

Participants have experienced barriers to shared decision-making, including areas of disagreement and the means by which they demonstrate that disagreement. Areas of disagreement include parenting, finances and new partners. In demonstrating these areas of disagreement, participants may focus on their own needs. At these times, they say the communication with their ex-partner is strained, reduced, and can affect the children, new partners, or other adults as they may be unable to participate in decisions together regarding their children.

The theme of *the battleground - barriers to shared decision-making* has three categories: *areas and levels of conflict, feelings about the content and the process of the experience, and challenges with communication.* They are presented here with comments from study participants.

Areas and levels of conflict.

Parents liken their experience with child custody decision-making to a battleground when there is conflict in their relationship. They use language such as, "control", "fighting" and

"custody battle" to describe their difficulties as frustrating and stressful experiences that often lead to exhaustion. As one participant says,

> It"s exhausting when you have to create a file of, of, of, really nonsense…it does lead to more conflict and then at that point, I ah, ignore everything that she says because there is nowhere in the court order that that is required. (P006)

Within these challenging relationships, decisions about access and finances also often lead to conflict. Sometimes access and finance decisions are linked so that participants who are unhappy with their access arrangements compare their financial contribution to the time that is spent with their children. In the first example, the participant makes the connection between support payments and access rights.

> I was asking to see my daughter every weekend for 3 hours, Friday, Saturday and Sunday. Any special occasion, I get her for 2 hours…it was an agreement that I give her, it started out fifty bucks a week…then it went to sixty-four dollars, the legitimate amount, exactly what you are supposed to pay for a low income. (P012)

In the second example, the participant does not want child support (to avoid conflict) and wants the father to have access with the children.

> I did put in there that he would have a minimum of two days per week with just like, a week"s notice, because generally what"s been happening is he"ll just call me up that day or the day before (saying) I want to come pick up the kids for a couple hours…as far as the child support I"m not asking for any child support. Anytime something came up about money, it just triggers something. Really, I don"t need his money. I make enough on my own to support my kids. (P008)

Participants can want to increase their access to the children believing they will be responsible for less child support.

I feel like if I drop them off at school and then pick them up and then fed them, then they are with you 70% of the time like it"s just the way that, the way the law is as far as determining how much parenting you do is, I think is very unfair…if they"re with you I guess the less you have to pay but then it, it gets sticky especially if they"re going to school. For instance, if we had shared custody where they"re two weeks with me, two weeks with her then its split down the middle so there wouldn"t be any child support. (P004)

In addition to finances and access arrangements, participants report the introduction of a new partner as an area of conflict.

Once the divorce process has settled and, you know, people are starting new relationships that, sometimes can become conflictual. Maybe the ex (partner) doesn"t like that or has some unresolved feelings or you know, maybe the new partner is influencing someone to make decisions that they wouldn"t necessarily make and that can impact the relationship because maybe if there"s jealousy issues the new partner don"t always like ex"s communicating. (P001)

The parent may find it difficult for their ex-partner"s new partner to be involved in the decisions about the children.

He met a girl who decided that even though she never had children she knew how to raise my daughter and at the time we had joint agreement so he would have her one week and I would have her the next but we"ve always had an open door policy but he started seeing

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this woman and she refused to return my daughter and I was 9 months pregnant and went

ballistic. (P003)

When participants report poor communication between them, they say the children can be put

in the middle, becoming either the communication line between them, or a means of getting back

at their former partner.

Dad, mom wants the child support money, she doesn‟t want to come get it from you. Can

you give it to me so I can go give it to her. There was a bunch of stuff. The kids were

constantly being used as pawns. (P015)

Participant 006 notes, "And the only way she sees punishing me is through the children. I find

that really wrong. Instead of punishing me, she is punishing the children."

Similarly to Participant 006, Participant 007 believes this placement of children in the middle of

the conflict is meant to hurt them: "But my ex keeps including them and I believe it‟s to hurt me.

She feels that if the kids are involved and she uses them as a shield maybe I‟ll back off."

Sometimes the children are used to win an argument related to custody agreements. For

example, the children can be placed in the position of requesting more access time with a parent.

A good five years ago, he got remarried but she didn‟t come over here until about three

years ago. And then uh, they just bought a house last year. That‟s when everything

started, you know, going down, oh, come live with me. I didn‟t know anything about this

right? And uh, then I go and my son tells me that my ex tried, he was like, well, if you

come live with me, I‟ll pay you the child support. (P009)

Further, participants indicate that children can feel they have to choose between the opposing

positions of their parents.

I've seen crying, I mean, I've seen emotional outbursts, I've seen them speaking of fear…And then it finally came out that her dad said it was time for her to choose…he's also gone to the level of um, basically challenging the US educational system. If you go to school in the US you're going to have a really hard time in life, they just don't have any good schools, it's going to be really challenging for you. For (name of child) he's taking the fear approach. The crime rate in the states is horrendous. (P018)

Many participants in the study report finding the conflict exhausting and look for ways to avoid contact with their ex-partner in an attempt to limit the disagreements between them. Participants have shared that some of the behaviours that they use to avoid conflict with their ex-partner include giving in, letting their ex-partner make the decision, and avoiding difficult decisions.

A lot of times I would just kind of give in and let him make the decision because of arguing and the conflict wasn't worth it and I didn't like the kids to see the fighting. So I would just kind of give in and let him make the decision. (P001)

Sometimes avoiding conflict can lead to one parent making decisions alone.

He doesn't put very huge emphasis on school and things like that so the kids came to me and said, mom we don't feel very good going to school from dad's house…there was no way I can get him to agree to what we want without putting them in the middle of it…so I just moved, changed the school districts and now he's across town so basically he doesn't have a choice. He has to get them to me Sunday nights so they can get to school. So it's kind of sneaky/underhanded but it was the easiest way to get something resolved without a conflict. That's my main goal for everything I do with him. (P014)

There is a sense from some participants that just having conversations about child custody decision-making can lead to conflict between them, so they may avoid those conversations as a means to avoid conflict.

It‟s been hard to make decisions. We work well together when we‟re making decisions for the children but when it comes to the custody, we‟re going to probably wind up having a judge make the decision for us because we can‟t seem to have that conversation and talk about it. (P016)

Sometimes, according to participants, the conflict involves a lack of communication between the parents, and children find it challenging to observe their parents in silence.

We don‟t talk two or three days, (name of child) goes, „come on guys, [he‟s a kid you know], talk.‟ Like you know. If I say, „did you pay the bill today?‟ „No I didn‟t pay it‟…even if it was going to be a conflict, at least we was talking, he goes, „oh, at least you guys talking.‟ (P011)

Some participants blame the other parent in conversations with the children and this may pull them into an adult conflict.

I call every day to see how he‟s feeling and see if he wants to see her and we go from there, but if he didn‟t want to see her that day, he would say, „oh mommy didn‟t let you see me‟…I don‟t like that but I don‟t want to say, „no daddy did this‟ because I don‟t want to put her in the middle. So my daughter hates me right now and I have to be okay with that. (P003)

With young children, participants indicate that making access arrangements is worrisome as they are uncertain about what is appropriate. In circumstances when parents are not communicating well or one parent has concerns about their ex-partner‟s parenting abilities or

lifestyle, the worry intensifies, as the parent has no way of knowing if the children are healthy and safe during access visits. This, too, increases the conflict between the parents.

> To put my daughter in that situation when she was three years old, not knowing how to protect her. While he had her for a full eight hours on a Saturday. And there were some very bad things that happened to her in that time. There was one day when he told her that he wasn‟t going to bring her home to me, that she was never going to see me again and she came home extremely traumatized from that…I‟m not quite sure he should have been really granted any visitation. It should have been supervised access until he attended the rehab facility…I basically went through hell every weekend worrying about her. (P013)

Participants also express confusion about when a child‟s voice can be heard. For example, Participant 001 suggests, "I don‟t know how young it is to have a voice. Like I don‟t know what‟s too young."

Participants suggest that the level of conflict decreases when the circumstances are peaceful and the level of conflict increases when the circumstances become more stressful.

> There will be times where I feel like, you know, I can get along and talk and be good together and uh, and then other times, you know, she gets very combative and difficult to talk with. And I find that she‟s difficult mainly when there are changes. (P007)

Similarly, as another participant says,

> We have those moments where we laugh together and then we go back to being kind of cold to each other. But sometimes those times can last for a week, where we get along and we‟re laughing and joking with each other…the experience and our life can be really good but then something will happen and you‟ll go back to that kind of dark place. (P016)

A participant may have a conflictual relationship with their ex-partner and share a warm and caring relationship with their child, yet the ex-partner assumes the relationship between the child and the other parent is conflictual, like their own.

> For sure, for sure, because they know, because I can read them, you know. I know when they come back and they're upset and I know that something has happened you know, they, and I want them to work through it and so you know, I poke or massage a little bit and say, you know, like „let's debrief this, lets, get this out" because I lived in it and I know what it's like to be in that situation and if, you know, you're in it, it's different, but at least you can put words to it. (P005)

Feelings about the relationship ending and about the process of the experience.

Participants express a variety of feelings about their experience with child custody decision-making: feelings about their relationship, about the experience with the legal system, and about decision-making.

> I wanted to move on with my life. I mean, I probably lost a year, I mean, I still move forward and everything else, but you are only moving forward incrementally, this is how the whole process is, it's a road block, you never totally move on right…it was the part of not being able to let go of it because it is not done…and now, here we go again, right, you relive it again…now I'm going through my old paperwork again, and I'm going through old court files, we're talking about the past, we're talking about old business from 2009. It feels like, ok let's rip off the bandage, oh there's still a wound there, let's poke at it a little bit and see what we can get out of it. (P018)

Feelings about the relationship ending.

Most participants in the study describe separation and divorce or the ending of a committed relationship as a time of conflict and hostility while decisions are made about new family situations. The anger and hostility parents express is described as stressful and costly.

> I don''t want to have this on my plate anymore. I''m so tired of this. But now I''m getting angry, you know, it''s affecting everything, you know. I''m living here now, you know, I''m (pause) we''re spending so much money and you know the conflict is expensive. It''s emotionally exhausting…the two of us have never been in a room together for a conversation in 13 years. (P005)

Feelings about the process.

Participants express a wide range of feelings about the process of negotiating child custody: they feel powerless, excluded, frustrated, disillusioned, and confused. A number of participants express feelings of powerlessness regarding the process of child custody decision-making. Participant 011 expresses it this way, "Oh, she is the boss always. Anything she say or I would have fight, big fight…any decision I want to make, wouldn''t count." This is concerning, given that participants say that when they have *choice* or an ability to provide input into the process of decision-making, they can experience agency, which can then lead to shared decision-making. Some fathers describe a perceived bias against men in custody proceedings; this creates a sense of powerlessness.

> I just think the whole thing is just totally biased against men…when the kids are with me, I''m their dad and (I) feed them, do their homework, and we play and there''s no, I''m not accessing my children, I''m fathering my kids, I mean, you know, it''s just ridiculous. It''s just stuff like that which totally, I think just puts you… you just feel powerless or you feel

like you're not even, I don't want to say parentless but it's just very cold. I think it leaves

men powerless really. (P004)

Scheduling court appearances or conferences can be another source of powerlessness as

participants have to find a way to fit these stressful activities into already busy lives.

I was working so I would have to book the day off. If it ran into the afternoon, I would

have to get someone to watch the children and then I would have everything organized

and then they would change the court date. (P002)

Feelings of powerlessness and of having little voice can lead to efforts to be recognized by

others. In this study, some participants demonstrate that, when they are excluded, they find ways

to include themselves in the process even if it is not cooperative or collaborative. For example, a

parent refuses to sign the separation agreement that is created without their participation.

She handed them (separation agreement) and I threw them on the step and said I'm not

taking them. That's what she wanted me to agree to. No! I took the papers, I threw them

on the step and I left. (P012)

Feeling excluded extends to experiences with lawyers as well.

That was the biggest shock to me, the injustice of it all. I just felt like we were just sitting

around and waiting. Every time the phone would ring I would just hope it was the lawyer

calling…because our life was kind of just on hold, waiting for what's going to

happen…and it was all in the hands of this lawyer…so it was all about lawyers. (P017)

Some participants express feeling unheard by professionals in the process of decision- making,

as we can see from Participant 009. "No, I don't find that they do [listen]. I don't find that the

court system, (pause) I find them like doctors. You go in and you come out. There's not really

any listening to what is being said."

Participants say they feel frustrated because there are no consequences for the offending parent when ex-partners do not follow the process, a court order or the timelines set out by the court and may begin to lack confidence in the authority of the court and the ability of the court to help them resolve their differences regarding child custody decision-making. One participant describes,

My ex repeatedly got his wrist slapped and told that you can‟t use the children as confidantes, you can‟t not follow the court order, but there was never any consequence, so he didn‟t have to play by the rules at all... I really thought that the court orders meant something, that once they were signed and sealed that they were… that they had to be followed…He didn‟t follow them and there was no consequence. (P005)

Participants also say they have no control once their matter enters the legal system.

The judge said, „I don‟t like shared custody. I don‟t like shared access schedules, it‟s too hard on the kids.‟ Yeah so that‟s, so that was, that was like, we went through this process, you know for five years, you know, five year long process and a report that said these kids should have a shared access schedule, and the judge can say, I don‟t like shared schedules. (P005)

Many participants describe feeling disillusioned with the court process. They have expectations that following the process will result in a fair outcome regarding the decisions made for their children, yet their experience deviates in actuality from their expectations.

The number one thing that really shocked me when you asked the question was that I really thought our Ontario court, lawyers, justice and all this, would really step in and kind of say,‟ OK, here‟s what‟s going to happen now‟…I was really surprised how it‟s almost like the whole experience depended on how good your lawyer was…that was the

biggest shock to me, the injustice of it all…Can I wish to overhaul the whole court system

and everything? (P017)

A number of participants are confused by the length of the legal process and the delays, which

create financial challenges for them as the following two examples illustrate.

I left in May 2008 and didn‟t get my first case conference until January 2010…Just the

length of time and the cost. The punitive legal fees. Those two lawyers exchanged letters

constantly, just drumming up legal fees on purpose. It cost me thousands and thousands of

dollars. There should be more control over the lawyers in the family law system. They

should be regulated better…like why did it take two years to get a case conference? Or to

get him to produce any financial information? Why was he given two years to get rid of

all the assets? (P013)

And,

There really seemed to be a lot of game playing and all these affidavits and he contested it

so I couldn‟t go through with it. Our house was sold and he didn‟t want to share half of it

because it was in his name so that just got put frozen in a trust fund. (P017)

It would appear that at least part of participants‟ reactions to the challenges they face relates

to their unmet expectations about how the custody proceedings would go. These expectations

may relate to their co-parent‟s behaviour, as for Participant 010: “I was expecting a little bit of

resentment, hatred, but eventually, he‟d get over it… I pictured everything going much smoother

in my head.”

Unmet expectations may also relate to the legal proceedings themselves.

I thought it would be heard by a judge. And that we would both go to court and, you

know, talk in front of the judge because, with the relationship that my ex and I have,

things are fine and we can talk…it"s been taking me so long because we"ve had this back and forth. I didn"t expect was (that) they did tell me that because I"ve got three children and when I told them that I wasn"t asking for child support, they said that the judge will not agree with it…I think if they had something like that (MIP), but joint, with both parents there, and have a chance to meet with somebody and talk about a few of the issue together. (P008)

Finally, some participants describe unmet expectations in terms of the custody decisions themselves.

All of the professionals being involved and said you know what, these kids are pretty together, she"s done a good job, let"s let that continue. Giving me custody and decision-making. I never expected that they would give him full custody. (P005)

One can imagine that the feelings that participants have expressed influence the ways in which they are able to work together and focus on the needs of their children. Disappointments through unmet expectations combined with strong feelings about one"s own experiences can negatively affect relationships between co-parents, particularly when adults are focused on their own needs over the needs of their children. Thus, communication issues can arise.

Challenges with communication.

Participants say that communication can be very difficult during separation and divorce. For some participants, they no longer see a way forward in making decisions together because there is no ability to negotiate or willingness to respond to the ex-partner. This lack of communication makes moving forward with shared decision-making very challenging.

Often, communication has been problematic between the couple even during their union, and the end of their relationship provides no motivation to work on improving communication. Poor communication can make it challenging to share information about the children.

> She"s very controlling, she doesn"t want to allow anybody else to have any, any power, to have any choice…that"s primarily what destroyed the marriage, was the inability to have any sort of, you know, communication or-or negotiation. (P007)

When communication is not sorted out between adults, parent/child communication can be affected, as we can see by Participant 017. "While they were with him, he wouldn"t let them talk to me, he wouldn"t let me call and say goodnight and they were not allowed to mention my name even."

Communication challenges between parents can also become reflected in children"s communication with their parents. Participants report that children may ask them to keep information from the other parent for fear that they will upset one parent. Rather than communicating directly with their parent, they have learned to use one parent as a buffer against the other. For example,

> It was very difficult for them, too, because they wouldn"t ask him for things and they didn"t want him to know certain things because of how he would react and they didn"t want him, to be put in that situation, they just wanted to get through their weekend, their access visit, have it go smooth without upsetting him, or without him becoming angry. (P001)

When direct communication is not present, participants may use other, more damaging forms of communication.

Avoidance and hostility as forms of communication.

Damaging behaviours may take the place of conversations when there is conflict between the parents. In this example, Participant 015 suggests, "A lot of yelling, name calling, swearing and profanity." Participants may be especially concerned if the verbal attacks occur in front of the children such as we see from Participant 011. "I don't know what we were talking about, something, she got pissed off, she swear, swear, swear in front of (name of child)…She give me a finger, and tell me f-you."

Other participants say that they perceive non-verbal forms of communication, for example, ignoring telephone calls, as a strategy to avoid one another such as Participant 011, "I was calling her and she was never answer [ing] the phone."

Participants can communicate hostility through control of the children. For example, one participant described that the mother of his children started "Keeping them from me or, vacation…I'd plan vacation and she wouldn't let me have them." (P004)

Some participants report violence and abuse.

He was always angry and volatile…but it was just a continuation of the verbal abuse and some physical abuse that went along with that because of his being so angry about it…it was a lot of swearing and calling, telling me that, you know, "you won't make it on your own, you're, you know, you're useless." A lot of swearing, and put downs and at one point he tried to choke me. (P001)

Sometimes, when parents are in disagreement about decisions, the difficult ones are avoided and there is no shared decision-making: one parent may unilaterally decide to take action without the support of the other.

Two years ago she tried to move them to the States and [I] stopped that and then in August I got a letter from her stating that they were moving to (name of city) at the end of August. So we did get a court order saying that the kids cannot move, move out of the city or change school until the matters have been resolved so that"s where we"re sitting right now. She actually is working in (name of city) during the week and she comes home on the weekends. (P004)

For some participants, it is challenging to reach agreements when, for example, the other parent does not participate in the process, and may choose to criticize after decisions are made.

I had to make a lot of the decisions myself or my current husband and I would make the decisions that we thought were best…I had to make all of those, her dad was not interested in any of that and I would invite him but he wouldn"t come…So I mean, prior to getting remarried, I just made the decisions myself. So it"s burdensome, especially when you might go ahead and do what you think is the right thing to do. Someone"s been asked to share, they don"t want to share, and then you"re getting berated because they didn"t like the decision that has been made. (P001)

As is evident from the above, communication in custody decision-making is complex. There are many complexities, as demonstrated in the final theme: *complexities involved in shared decision-making*.

Theme V: Complexities involved in shared decision-making.

This theme considers a multitude of complex issues arising in child custody decision-making. The complexity of decision-making in child custody extends beyond the parents. When one or both partners choose to separate or divorce, decision-making can happen together or alone. Participants in this study reveal decision-making alone can be burdensome. When parents make

decisions alone instead of together, they can seek support through other people such as new partners or community supports. In the category *challenges with communication* above, there is a discussion about how new partners in this role can create conflict between parents. While decisions are being sorted, children have to adjust to adult decisions of access with potentially different parenting styles. This transition period can be unsettling for children.

As a result, sometimes one or both parents feel they are left out of the decision-making process. The first example is from Participant 005 who experiences decision-making through the legal process, "I was not in a position to advocate for myself or my children. I was pretty much railroaded from the beginning…My lawyer said, „basically, you have no choice." Below is an example of a participant involving a number of community professionals in the decision-making process.

> I got the CAS involved because there is no communication, there"s no ability for us to communicate or to try to work through this. I have to go through a third party…waiting for the uh, the Office of the Child Advocate to, uh assess the situation and make a decision. (P007)

This theme has been created from two categories, *the village unleashed - people involved in decision-making and the impact of decision-making*. Each category below contains quotations from parents, representative of the category.

The village unleashed - people involved in decision-making.

Parents who are in the process of deciding on custody and access for their children discover that many people may be involved in decision-making and may influence the decisions they make, including family, friends, community services, and members of the legal community.

Although parents may want to be the first source of decision-making, some participants suggest that they would prefer not to work with the other parent. Participant 008 said that they sought, "sole custody, just so I didn"t have to get his consent." Others have sorted through the conflict and view shared decision-making as a way to share the stress of parenting decisions, as can be observed in the example below.

When it"s 50/50, it"s half the stress…sometimes not with her actually, pressure, but knowing that it ultimately came up to me. If I made a bad decision it would be 100% my fault. To have that, I guess, stress upon that as well. (P002)

Participants do acknowledge that sometimes involvement by others in decision-making can be unhelpful, particularly friends and family.

It might seem kind of weird but other people"s input…usually family members and friends always think they know what"s best for you and they don"t take yourself into actual consideration. It"s just what they think you know, from their view and their standpoint, this should happen because it would be better in the short run/long run, whatever they see, but they"re not actually in the situation. (P002)

Participants identify the need for supportive services while they are adjusting to their new family arrangements, such as counselling. "Went to counselling together and I went to counselling on my own, and now we have an open door policy." (P003)

Family, friends, and counselling services are generally forms of input that participants have chosen to solicit. Sometimes, others become involved when parents may not have preferred that they be involved. For example, sometimes, one parent chooses to involve community services without the consent of the other parent.

They adjourned the uh thing, because they said we"re going to get OCL [Office of the

Children"s Lawyer] involved and Children"s Aid was involved. And actually they

adjourned it again because he wanted to do an interim custody, which means the child is

in danger…you can"t just go and poof, take the kid out, unless there"s something

wrong…I wasn"t able to talk to her because they uh filed for an interim custody… I just

found out my daughter is getting an actual lawyer, so now I"ll have to be going against

two [lawyers]…If you want to make those decisions and the courts are going to allow

that, it"s like society, (pause) then I should stop parenting at twelve. (P009)

Participants understand the judge will make the final child custody decisions. When a child"s

safety is at stake, participants may find that police or child welfare services take a larger role in

decision-making.

I had that and I had another incident where he showed up completely drunk to pick her up

and I actually had the police come and get him in the driveway. They didn"t arrest him but

they acknowledged that he had been drinking and they made him take a cab home. (P013)

The police can provide advice to participants, for example, to pursue temporary custody

agreements and peace bonds.

The day I called the police. When they came back to talk to me they advised me to go to

the courts and get the temporary custody agreement for emergencies. They advised me to

go and get a peace bond because of his behaviour. (P010)

At times it may appear to participants as though their life has been put on hold while they

wait for others to make decisions about their children.

I"m waiting around for the phone to ring, for my lawyer to get back to me about

something and living in fear…I did have fear of, I have no control…two years went by

and he couldn't contest it anymore. His lawyer and my lawyer got together at his lawyer's office. The lawyers would keep meeting in a third place, and keep coming back to us. And it's kind of just what <u>they</u> came up with...I would say the lawyers [made the decisions] and then they were just trying to get our consent. (P017)

Some participants suggest that, when decision-making is challenging, mediation may be a positive option: "I think having that third party there who is not partial to either side would make a huge difference." (P008)

When conflict in the relationship makes shared decision-making impossible, participants may find themselves making decisions on their own.

Impact of sole decision-making.

It would appear that participants would prefer to make decisions with the other parent, providing this is possible without conflict. Participant 011 states, "When we agree on something, I feel like to hug her, kiss her, ahh, anything she wants." This same participant reports that, when they share decision-making, they feel they receive respect from their ex-partner. "When we agree on something, I would feel so happy, I feel like I have my word, I feel respected."

Making decisions alone can be stressful and can create impacts on parents, children and others.

Impacts on parents.

Participants say decision-making alone can feel like a burden or a heavy load to carry. In this example, Participant 001 indicates that, "Prior to getting remarried, I just made the decisions myself, so it's burdensome."

Participant 003 adds,

I"d have preferred to see it done jointly because I think that the input of both parents will

impact the way the child"s life turns out and I think that if both parents have the input then

the best interests of the child is reached and I think that"s really important. (P003)

A few participants say they enjoy making decisions alone, without their ex-partner,

particularly when there is much conflict between them as the following example by Participant

010 indicates, "It"s wonderful right now. I don"t have any shared decision-making. It"s

fantastic." They report that simple things can become stressful when conflict exists and their

ability to make decisions without consultation can at times be less stressful for them as

Participant 013 notes, "I was kind of thankful to take over the decision-making."

Finally, sometimes the impact of decision-making falls directly on participants and they feel

they have no control, in part, because of the legal process. Participants find themselves in a

position of complying with rules and decisions with which they do not agree rather than in the

manner they prefer. The conflict between the parents increases when they do not agree on the

outcomes of decisions. For example, Participant P005 describes a variety of legal interventions

including parenting assessments, multiple court reappearances (reflective of a high conflict

relationship), and requests for a custody and access investigation, prior to a court ordered shared

parenting arrangement. Despite the high conflict between the parents, a judge decided that shared

parenting was the appropriate order. The parents were left to comply with the order and manage

the increasing conflict that followed.

[court decision] We"re going to split this one right down the middle… There was parenting

assessments, we went through LCAP in London. I think it was 5 years before we were

divorced and had a final order…it certainly didn"t settle down at that point, it was already

high conflict…we went back to court again in 2007…it got difficult again in 2011 and then it's been extremely high conflict since 2011…we're at the point where the office of the children's lawyer has been requested. I got a lawyer. I'm playing by the rules…I really thought playing by the rules was the way to do things and that the different investigators…would reach a reasonable conclusion and my ex repeatedly got his wrist slapped and told that you can't use the children as confidantes, you can't not follow the court order but there was never any consequence. (P005)

Impacts on children.

Participants report that, when one parent makes decisions independently, they do not always consider the impact of decisions on the children. "All she sees is herself and what benefits, what is better for her…I see this as her saying my best interests, but this has to be in the best interests of the kids." (P006)

Participants give examples of times when the custodial parent prevents access.

No…my daughter stays with me all the time. Because there has been a risk for health and safety, his home has also been deemed unfit for them (by) CAS…It's a combination of everything. He doesn't like the fact that I sent the cops to his house, he doesn't like the fact that he was brought into the psych (iatric) ward. After the third suicidal text messages, I had finally had enough…I was not going to carry that with me for the rest of my life if something were to happen…There's no communication. (P010)

Other times the non-custodial parent chooses not to pursue access with the children, as is evident in the following,

So he called me up and basically gave me an ultimatum. Call off the child support lawyer or I'm not seeing the kids anymore. And I said, I don't understand how that's related. He

quit seeing the kids again. And then I finally had to tell them, he"s not coming. That

would have been a good ten years ago since they last saw him. (P017)

In both situations, the impact of not being able to resolve their differences means the children

will only have a relationship with one parent.

Participants indicate that, sometimes, decisions are made with the intention to exact revenge

upon the other parent. For example, a parent may not allow the other parent to communicate with

the children during their access time. When one parent prevents contact with the other parent

during access time, children can feel the impact of that decision.

Even on the phone, when to talk to, (name of child) or something. She couldn"t let me.

My lawyer did say you have a right to call every day and say goodnight…but I hardly talk

to him…every time I call, he is busy. (P011)

Participants suggest that children benefit most in terms of the impact of shared decision-making.

I"d have preferred to see it done jointly because I think that the input of both parents will

impact the way the child"s life turns out and I think that, if both parents have the input,

then the best interests of the child is reached and I think that"s really important. It didn"t

turn out that way but I think it would have made a huge difference and my little anxious

girl probably wouldn"t be so anxious if she had both parents" input regularly. (P003)

Impacts on others.

When parents believe they are unable to make decisions with their former partner, they rely

on input from others close to them such as family.

My parents and for (name of new partner) it"s been very stressful this entire road…my

parents, they"ve been travelling this entire journey with me so, and my mom she"s taken

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on the role of (name of child) other parent…mostly when (name of new partner) first

came into our lives, it was the conflict that had to be resolved. (P003)

Participants in the study reveal that it is also stressful for family, friends or new partners when

one parent takes the bulk of responsibility for decision-making.

Well it impacts my husband (new partner) and I now. It certainly impacts my parents, I

mean, my parents have always stepped up when he (ex-partner) has not…So I would say

certainly they have been affected by his lack of decision-making. (P018)

Some participants note their perception that professionals also feel the impact by the stress of the

situation.

The entire family is upset to see the children suffer and everybody…My lawyer, you

know, one day she told me privately, she called me in my car, on the car phone and she

said, „you know (name of participant), I‟ve been taking this home with me." (P007)

Similarly,

She‟s [child‟s counsellor] been offering, she‟s been wanting to write a letter, let‟s just put

it that way. She‟s been wanting to help (name of child), like it‟s been frustrating for

(name of counsellor) to watch this happening as well. (P013)

4.5 Summary of the Whole Participant Data Analysis Framework

The data analysis framework (Figure 5) is a visual representation of the ways in which the

themes are linked (or not), the ways in which they connect and join together. It is represented by

two distinct paths of decisions made in child custody. Participants say one occurs when parents

make decisions that focus on the needs of the child and the other path involves the focus on the

needs of self.

The first, a focus on the needs of the children begins with the participants redefining their role

as parent following separation. The manner in which participants navigate their adjustment to

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their new family structure, the ways in which they redefine their role as parent and how they sort out access of the children between them may influence their ability to reach a point of being able to share decision-making. There is no precise time period for the participants to achieve this stage of re-becoming. It can vary participant to participant. A critical component for participants in redefining their role is their ability to manage access of the children with each parent. Participants want to be involved in decisions regarding their children and the extent to which they have input can determine their ability to achieve agency, or the ability to make choices.

Successfully redefining their role with a focus on the needs of children can lead to parental agency. When parents have involvement in decisions for their children and feel they have choice in the decisions, they can achieve agency. Exercising agency is important for participants to be able to work together with the other parent. Without agency, participants say they are not able to achieve shared decision-making. With agency, however, they can achieve shared decision-making.

Participants report that achieving agency may require a process of support in helping parents to develop good communication skills. Combining this with a focus on the needs of the child can assist parents in moving to shared decision-making.

Shared decision-making can be achieved when participants feel they have input and choice into decisions as they relate to their children. They may require support to allow them to focus on the needs of their children. Some parents will be able to do this on their own as they already have experience developing good communication skills, are emotionally ready and can focus on the needs of the children. Many parents in the study reflect that they can benefit from this support. Being able to follow a process of decision-making that includes both parents can facilitate future agreements that need to be made when circumstances and family life changes.

The second path participants may choose in child custody decision-making results when the focus is on the self. When participants make decisions that take into account their needs first, rather than the needs of children, they report that they are not able to come to agreement. This may create a number of barriers to shared decision-making, and conflict can increase and endure indeterminately. There are a variety of reasons that parents might choose to focus on their self, first, and as we will see next, for some participants, it is necessary to focus on the self, first because these participants do not want shared decision-making. In this next chapter, data from a subgroup of participants reveal some possible reasons for this difference in experience.

Chapter 5

Findings - Sub-Group Data Analysis

5.1 Introduction

In the first Findings chapter, I have presented an analysis of the data where data is viewed as a whole. Participant data is mostly similar across codes, categories and themes for men and women. However, it became apparent that there was one major difference in the experience of child custody decision-making. When considering the participants where violence has been or is a factor, it is only females. This chapter, then, will be an analysis of this sub-group of participants to consider the gendered differences as they relate to violence.

Using a feminist lens, this chapter considers a subset of the data: five participants, all women, whose interviews have indicated that they have experienced physical and/or verbal violence in the relationship with their children"s father. During their interviews, the five participants have all expressed experiences with physical violence at the hands of their former partner. I present the findings from this subset of participants in a similar fashion as in the preceding chapter. I then discuss a brief comparison of the similarities and differences of the findings from the whole participant group and the findings from this subgroup of participants.

In this analysis, I asked questions of the data specific to women and their experiences with violence. I wanted to know in what ways violence had influenced the women"s experiences with (shared) child custody decision-making and if there were similarities and differences between families who reported high conflict without violence and those who reported violence.

Four themes emerge from the data: 1) *safely redefining role;* 2) *survival strategies;* 3) *gaining emotional strength; and* 4) *don't want shared decision-making.* Each theme represents a piece of the overall story this subgroup of participants have shared of their experiences with child custody

decision-making. It is important to note that each of the participants who discussed violence was engaged with child protective services.

I present these themes in a sequence that emphasizes the participants" story of their experience. Illustration of this sequence is in the data analysis framework below (Figure 6). First, I describe this framework and then the participants" position on shared decision-making. I also describe the themes in greater detail and discuss the connections among them. The final section of this chapter is a summary of the analysis framework followed by a discussion of the similarities and differences between the findings representing all of the participants and the findings representing this subgroup of participants.

5.2 Sub-Group Data Analysis Framework

Figure 6 Sub-Group (Gendered) Analysis Framework
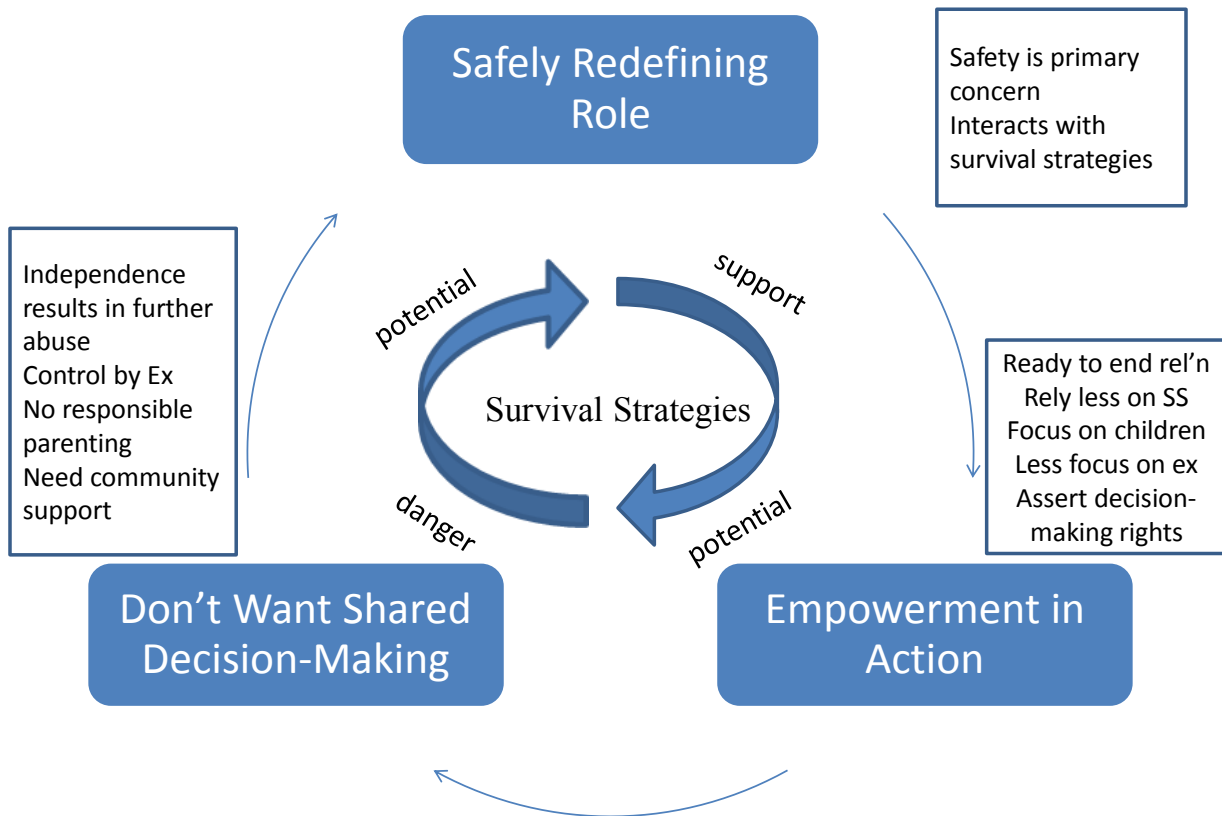
Figure 6 illustrates the experiences in child custody decision-making from the perspective of survivors of physical violence by their ex-partner.

5.3 Themes

The four themes are *safely redefining role, survival strategies, empowerment in action*, and *don't want shared decision-making*. Each theme is comprised of categories.

As a method of presentation and similar to Chapter 4, I describe the theme and then discuss the categories that comprise the theme, as they are supported by quotations from participants.

Theme I: Safely redefining role.

The theme of safely redefining role includes the following categories: *assessing safety of children and self*, *protective parenting*, and *unveiling conflict as control.* Before presenting these categories, an overall description is presented of the process that the women describe in safely redefining their roles.

In this theme of safely redefining role, the women̋'s experience of violence and their feelings about child custody decision-making in the aftermath of the violence is discussed as they begin to consider their role as parent, separate from their former partner. The women in this subset have sole custody of their children, with access, or are in the process of seeking sole custody. The focus during this stage is on keeping themselves and their children safe, while redefining who they are as a parent and valued person who can make good decisions for their children without requiring the input of their ex-partner. This stage can be tricky because they have adopted a number of survival strategies that are designed to keep them and their children safe by reducing opportunities for conflict with their former partner. These survival strategies can be helpful and can result in these women re-examining and discovering their worth as human beings and parents, yet can be misread by others. For example, women in the sub-group analysis said they made decisions alone instead of seeking the input of their former partner to avoid what they experienced to be inevitable conflict. This could be misunderstood to mean that the mother was the unfriendly parent as she did not include the father in decisions about the children.

Assessing safety of children and self.

Most of the women in this subgroup have sole custody of their children and the legal ability to make decisions on behalf of their children. The one woman who does not have sole custody is seeking custody through family court. The following examples illustrate the custodial status for each of the women.

"I had custody of all of them." (P001) "[H]e has signed over complete custody to me…he has no rights to make any decisions." (P003) "I drew up my own divorce plan. I wanted sole custody…just so I didn"t have to get his consent…all of the sudden he"ll yell at me that he wants joint custody." (P008) "[I]t was decided that I would have full custody." (P013) "[W]e had a children"s lawyer…and the recommendation was that they"d reside and I"d have full custody. That"s what the judge went with." (P014)

Despite their legal status, the experience of violence has instilled fear in the women. Their self-esteem has been impacted and they are left feeling vulnerable, disrespected, and acutely aware of their need to be vigilant about their own and their children"s safety. Following, each of the women describes her experience of violence at the hand of her former partner. Participant 008 identifies violence as one of the factors that have led to the end of her marriage: "He had every aspect of my life completely controlled…part of the reason why we got divorced was once a year he"d beat me up…he threw me down the stairs and strangled me."

Similarly, Participant 001 describes feeling unsafe because of her former partner"s behaviours.

He didn"t want to be a part of anything and any discussion surrounding that led to a great deal of conflict that would sometimes escalate to me not feeling safe because of his verbal

abuse and threats and so on…he was always angry and volatile…a lot of swearing, and

put downs and at one point he tried to choke me. (P001)

Fear is clearly evident in the following quote:

Because of the domestic violence involved in the marriage, it was not amicable at all. I

initially feared for my life when I left, so I knew that there was not going to be any

working together to decide custody and access…I left him because he was abusive and

then he was abusive to her. (P013)

Although she doesn‟t use the same language, it is easy to imagine that Participant 003 also

experienced intense fear when she says,

He became physical with me and tried to take my daughter. I locked my two children and

myself in my baby‟s room…He was very physically, mentally, and verbally abusive…the

day I was due to deliver our daughter, he beat me back and blue; we didn‟t think that my

daughter would survive. (P003)

Finally, participant 014 clearly links the experience of violence with impacts on self-esteem

with this statement,

It was an abusive relationship. He didn‟t display any restraint on fighting with me in front

of the children…I went to go stay at (name of shelter)…He‟s been charged with assault

on me…He was always very physical with me…there‟s a breakdown in your self-esteem.

(P014)

Of particular concern for these women is the safety of their young children. They express

uncertainty about their young child‟s safety during access visits with their father and the

child‟s ability to have a voice or express potential concerns. For some of these women, the

fear of their children‟s safety is related to their own experience of violence and their

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observation of their ex-partner‟s abusive behaviour toward the children. Participant 013 experiences her fear of the unknown when she has no way of ensuring the safety of her young child from her former abuser, "to put my daughter in that situation, when she was three years old, not knowing how to protect her…I basically went through hell every weekend worrying about her." Participant 001 shares her worry about the inability of children to communicate their needs when they are very young.

When your kids are smaller it is a worry because they can‟t speak up for themselves. They can‟t have those rights, you know, and when they‟re at the mercy of an adult who may or may not have their best interests, it‟s worrisome…like I don‟t know how young it is to have a voice. Like, I don‟t know what‟s too young. (P001)

The women reveal through their statements above that the impact of violence can leave them feeling vulnerable as a protective parent. Sometimes they feel they are not believed by those who are employed to protect them such as the Children‟s Aid Society (CAS) workers and lawyers. Their feelings of vulnerability can increase when the women fear they cannot protect their children from their ex-partner.

I felt threatened because I was told by my lawyer that I can‟t stop him from seeing her… I don‟t understand how the court really thought that was ok. Like no regard in my opinion for the safety of my daughter…he would drive drunk with her… he was really drunk and I said to him, that‟s the last time you‟re driving drunk with my daughter. So I called [Children‟s Aid Society] the next day…I need you guys to help me…but there wasn‟t a lot they could do. They don‟t have enough power to really, at least they told me they didn‟t, to be able to do anything about it. (P013)

After assessing that there was risk to themselves and their children, the women describe a protective approach to parenting.

Protective parenting.

Being a protective parent can be challenging when you have been left vulnerable and feeling helpless, disrespected and powerless. The women are cautious about seeking support from those who are employed to help them. For example, Participant 008 notes, "Her (the lawyer) and I didn"t really see eye to eye so I took things into my own hands." This woman"s lawyer appeared not to believe that abuse was involved, so she has decided to hire another lawyer. Another participant expresses concerns with child protective services.

> I went to go stay at (name of shelter). As soon as (shelter staff) found out what was going
>
> on, they contacted [Children"s Aid Society], which from my experience and from what
>
> I"ve heard, has always been a kind of double-edged sword for some families. Especially
>
> Native families…in the Native community, they"re not trusted. (P014)

The double-edged sword that is referred to above means if the woman, as custodial parent, allows the children to have a relationship with her abuser, she may be accused of being a non-protective parent. This has the potential for the woman to have her children removed from her care from the very agency that is expected to help her to protect her children. On the other hand, if the woman chooses not to allow the children to see their father for access visits because of her concerns for the children"s safety, she may find herself in contempt of court for disobeying a court order that permits the father to have access with his children. As is noted above, some of these women have been advised by their lawyers that they must allow access between the children and their father, leaving them in a very challenging position.

For some of these women, the children have been witness to the violence, at times an impetus for their leaving, and they want to minimize their children‟s further exposure to violent behaviour. Participant 008 highlights the power of the desire to protect children: "[W]hen my son witnessed it, that just kind of finalized it, like, what am I doing? I‟m basically telling them its ok, and that was it for me."

While the women are wary for their safety and that of their children they also must manage the controlling behaviours of their former partner. These behaviours can be displayed in the form of conflict, as is discussed in the following category.

Unveiling conflict as control.

The women who have experienced abuse may not be safe attempting to share decision-making with their ex-partner. When the women subsequently have made decisions on their own, their ex-partner may berate their choices, such as in the following example.

> It was frustrating, very frustrating…he never responded to anything…everything was just
> a conflict and argument…In the beginning I would try to involve him in things and invite
> him to things but he didn‟t ever want to come so I stopped… It didn‟t matter what I
> wanted to do, it was never the right decision…Someone‟s been asked to share, they don‟t
> want to share, and then you‟re getting berated because they didn‟t like the decision that
> has been made. (P001)

Reflecting on their experiences, the women observe, differently perhaps now, their ex-partner‟s display of anger when he does not agree with their opinion as a means of control and a way to prolong indecision.

> A lot of it is just control with him…during our marriage it was like that. If he didn‟t get
> his way, it‟s like a control thing and I finally realized…it‟s cyclical like he‟ll attack me

and then the next day, like this just happened on Friday. I can't even remember what we

had to make a decision about but it was just something simple and he got mad so he was

just calling me a lot of really mean names. Saturday morning I get a bunch of texts saying

that he's sorry…I really think it's just a control thing. He's still trying to hold onto

whatever control he can. With the kids, it's still back and forth with the sole and joint.

(P008)

Money can be used as control by their former partner and can negatively affect the

children.

It was about three years of going back and forth in court…The first lawyer said, „well you

should just settle for that" and I said, „I'm not settling for anything." I've fought too long

to settle…I found my current lawyer…and we're just basically modifying the existing

support arrangement because he doesn't pay child support so we're going for child

support…he screwed up my taxes for two years in a row so I had my baby bonus

withheld. I'm trying to support my kids and they're going to shut off my hydro because

he won't make one phone call. (P014)

The level of conflict that is displayed throughout the relationship with their former partner

can vary at different times. To manage the conflict the women have had to develop a number

of strategies to keep themselves and their children safe.

Theme II: Survival strategies.

Living with a violent partner has resulted in these women developing a number of

strategies to help them survive their former partner's abuse. They have learned to manage the

ongoing potential danger inherent in their relationship with him. They use strategies that are

designed to reduce conflict and minimize opportunities for displays of anger. This theme is

comprised of three categories: *managing potential danger, outside influences, and supportive services.*

Managing potential danger.

This category describes some of the ways in which the participants have adjusted their behaviour in an attempt to navigate the ever uncertain moods of their former partner. The goal here appears to be to avoid upsetting him or to avoid doing anything that the women believes might incite anger in him, such as questioning his opinion or seeking his input on difficult decisions. For example, Participant 001 explains, "I made most of the decisions. Anything that"s difficult, or, he doesn"t want any part of that." Some women say they concede, allow their ex-partner to make decisions and generally try to keep the peace, particularly so the children are not exposed to the conflict.

> I would just kind of give in and let him make the decision because of the arguing and the conflict wasn"t worth it and I didn"t like the kids to see the fighting…unless it was a way he wanted things. If it was going the way he wanted then it would be fine…our main concern, not making dad mad. (P001)

Another strategy that the women use is to minimize the amount of face to face contact and verbal communication they have with their former partner. For example, they may arrange to have dad pick up the children for access visits at the children"s school as Participant 008 shares: "if he"s going to take them, I"ll plan that they stay at school late. It minimizes too the times we have to talk." One participant describes how she tries to set up situations so that the children can have their needs met and, at the same time, reduce the conflict between the adults with less personal contact.

There was no way I can get him to agree to what we want without putting them (children) in the middle of it. I just moved, changed the school districts, and now he's across town so basically, does not have a choice. He has to get them to me Sunday nights so they can get to school. (P014)

Outside influences.

All of the women have utilized a number of community services during times of conflict and violence such as the Children's Aid Society, women's shelters and the court. The police are also called when the ex-partner has been violent with the women, such as when the dad tries to choke the mom as Participant 001 explains, "the police were involved in that instance" or when his abusive behaviour puts the children at risk of harm by driving while under the influence of alcohol with the child in the car, as Participant 013 recalls. "[H]e showed up completely drunk to pick her up and I actually had the police come and get him."

The police may involve the Children's Aid Society in situations of violence such as Participant 014 explains: "I had the police attend and they contacted [Children's Aid Society]…their main concern was to make sure we stayed in our corners." In other instances, Children's Aid may be invited by the women: "[Children's Aid Society] sees all of this because I'm in contact with them," shares Participant 003. Some of the women experience a threat of safety for their child and use the court as a means of protection. "I started getting threatened that he was going to take the kids, take off with them, then I figured, OK, I have got to get to court." (P014)

The women express that the children's needs are not necessarily viewed as a priority and, instead, the children have to adjust to the needs of the adults:

"when a decision is made between custody and access, we expect the kids to kind of be included and adapt their lives to what best suits the adults and I think that"s kind of backward…I don"t think decisions are always made on how these things impact little ones." (P001)

The women experience that, when they express concerns about the safety of the children, they are perceived as the "unfriendly parent" or as trying to prohibit access between the children and their father, rather than as they intend; a protective parent. One woman expresses it this way,

I don"t ever remember anyone asking or sitting down with my kids and asking them, "oh, what goes on at Dad"s?" Like no one even bothered and it was always up to me to initiate having someone intervene or look into it based on what they were telling me and sometimes you look like the crazy parent who, because you know, you don"t want, you know what I mean, sometimes people misinterpret that when there"s really valid concerns. (P001)

Frequently, the women who experience violence are able to find support.

Supportive services.

Counselling is a common support service that many of the participants use to begin to help them address the impact of the violence by their former partner. Some use counsellors at the women"s shelter and others use practitioners in the community, while some of the women have been to counselling with their ex-partner. For example, Participant 003 explains, "we went to counselling together and I went to counselling on my own…I had a counsellor at (name of shelter) and she was absolutely amazing." Sometimes, the counselling is specific for behavioural issues as described by Participant 008, "we were going to family counselling for

his anger and things like that." Sometimes, counselling is a means of support for the women on their own, "I've taken counselling on my own…it was all great, I learned and benefitted from it." (P014)

One woman describes a supportive community counsellor who has helped to validate her experiences of violence and fear. Both Participant 013 and her daughter have attended counselling and the counsellor has offered to document her concerns in writing through a letter of support for the woman during her court process as is noted here, "she's been offering, she's been wanting to write a letter…she's been wanting to help (name of daughter), like it's been frustrating for (name of counsellor) to watch this happening as well." As women gain strength and experience support, they may experience the positive effects of empowerment.

Theme III: Empowerment in Action.

Theme three, "empowerment in action," is created from three categories: *ready to let go*, *power/control is readjusted,* and *reflective insights*. As is evident in the presentation of categories below, the women have each come to a decision where they are ready to end their relationship with the former partner and move on. They are developing a good sense of themselves as a protective parent. With their ex-partner, they can more often stand their ground when their opinions differ. When asserting their right to make their own choices, these women have experienced a greater sense of control over the relationship. They have begun to set boundaries on the type of behaviour they will permit from their former partner.

The majority of the women describe a desire for shared decision-making with their ex-partner (see whole group analysis) because they believe it will benefit their children to see their parents working together. In their specific circumstances of violence and abuse, the

women believe shared decision-making can only occur with their ex-partner <u>if</u> he stops the violence and control. The women express fear, from their experiences, and are dubious that this will occur. They understand that it is his behaviour that needs to change.

Ready to let go.

Over time, the women begin to feel emotionally stronger and recognize the reality of their former relationship, as is indicated by Participant 013 in the following statement, "ok, cancel that love part, because that wasn"t even, even though he would say that to me like in front of her and stuff, I guess it"s just kind of the sickness."

Once they feel free from the abusive relationship, the participants can begin to assert their right to make decisions independently of their ex-partner. For example, Participant 013 indicates, "I know I have more rights than that and at the time, I didn"t." Participant 003 shows that, with time, she has learned to set limits on acceptable behaviour from her former partner. "I"m now strong enough after years of therapy to say, ,hey you can"t do that"…I set up boundaries and I am very strict at enforcing them. He"ll voice his opinion about that but I don"t care anymore."

Power/control is readjusted.

As the women assert their right to make decisions for the children, relations of power can shift between the mother and father. The following example illustrates how, over time, the women can believe they do not have to be controlled by their ex-partner and can choose other strategies such as the example shared by Participant 008, "now I tend to just say, you need to concentrate on your life and I just leave it there and just turn my phone off." As noted above, for many of the participants, it is the realization that the children can be harmed that propels them into the action of leaving their ex-partner and seeking sole custody of the children.

Participant 014 explains it this way, "once it got to the point where he was being violent in front of the children, then I couldn't, I had to put my foot down. I made him leave. I knew it wasn't going to work so I had to get rid of him." This participant has readjusted the power and control in the relationship by simply asserting her rights and her children's rights to safety.

Reflective insights.

Reflecting on their experiences with child custody decision-making, these participants discuss a number of lessons they have learned that help them to experience freedom to exercise their strength. One woman illustrates that the inability to share decisions means that one parent has to make the decisions, "we have to have one person make the final decision because we can never agree on anything. Somebody's got to make the final decision and that's me." (P014)

Further insights from the women include that limits or boundaries must be set and honoured for shared decision-making to occur with their ex-partner. For example, Participant 003 addresses his controlling behaviour as follows, "I learned that I don't need to abide by his rules. He can't control the way that I live my life." Finally, for shared decision-making to happen with their former partner there are a few requirements. First, communication would need to improve as is suggested by Participant 001, "being able to have some sort of rational discussion in working towards a common goal, what was best for the kids." Next, education on the needs of children and how to protect children would be required, says Participant 013, "so I guess making parents aware of how they can protect their child." Finally, having common goals between the parents to meet the needs of the children, as is illustrated here,

"Bringing the couples together at the beginning so it can kind of set up skills for both parties…the communication part…educational as well as what would be best for the kids…positive communication…developing a plan for what"s best for the kids, and being able to put that plan to the courts." (P008)

The participants provide a number of examples of how they would prefer to see decision-making together with their former partner if possible and note their belief that the "best interests of the child" is achieved through shared decision-making. Yet, they have been put in a position of needing to protect themselves and their children from his abusive behaviours. Participant 001 says, "if people are you know, in a good place with themselves then they are able to parent together and co-parent and put their kids first." Participant 008 expresses a balanced perspective on what would be required for shared decision-making when she says, "I know that there has to be some give and take on my side as well," yet the challenge is being able to communicate together. That means, first, he must address his issues of violence and control. Sometimes, the violent behaviour can be compounded by the issues of addiction, highlighting further areas for treatment, for example, "he would need to be rehabilitated. He would have to stop drinking and doing drugs or else it"s hopeless." (P013)

Theme IV: Don't Want Shared Decision-Making.

When the abusive behaviour by the men continues for these women, decisions about the children are not amicable. Theme four is comprised of three categories: *abusive behaviour and co-parenting; lack of responsible parenting;* and, *the deal has changed*.

The process of empowerment the women are experiencing is non-linear and, at times, they can resort to their previous survival strategies to get what they need for their children. They do want support in making decisions about their children and perceive their former partner as

removing himself from the role of responsible parent. Some of the women experience a cycle of abusive behaviour followed by apologies.

Abusive behaviour and co-parenting.

The abusive behaviour from their ex-partner may continue after the women realize they no longer have to comply with him. The women describe much verbal abuse, threats and swearing, a display of former behaviour that has been successful in gaining her compliance. For example, Participant 001 explains, "he was very angry…becoming enraged…a lot of swearing…his verbal abuse and threats…they hold on to things that may be beyond their control." The women find this difficult because the children may continue to be exposed to the abusive behaviour, as is indicated here as an example of an access exchange.

> I could tell by his voice that he had been drinking. I was waiting at my mom‟s and there was a police car sitting out in front of her apartment building and he came down the street to drop her off and saw the police car and drove right by. So, then he called me and he thought I had called the police on him. Which I really should have, and he was like, ‚nice try, I‟ll meet you at your house.‟ So then I go to my house and now his girlfriend is driving, and my daughter tells me, ‚we went by but he wouldn‟t drop me off.‟ And she was scared again, she was like, ‚why wouldn‟t you bring me home?‟ So he gets out of the car and he‟s shooting me the finger and being all belligerent and stuff. (P013)

Lack of responsible parenting.

The women report feeling frustrated not only with how they are disrespected but also that the fathers may remove themselves as responsible parents; for example, putting the children in the middle of the adult conflict. The first woman says, "they felt caught in the middle" (P001), and the second woman suggests the father blames the mother when he indeed has

removed himself from the role of responsible parent, "I call every day to see how he"s feeling

and see if he wants to see her. But if he didn"t want to see her that day he would say, „oh

mommy didn"t let you see me."" (P003)

These women suggest that their former partner uses conflict as a way of removing himself

from the responsible parent role, leaving them to make the decisions about and for the

children.

Well, [daughter] has always lived with me…she went to reside at (name of group home)

where she was getting treatment… [former partner] didn"t want to be a part of it…I didn"t

realise this but [daughter] and her dad were communicating via text and he helped her run

away and he hid her from me for 2 weeks and I didn"t know where she was… [New

partner] would come to the parent-teacher interview. He [New partner] would come to the

meetings regarding my daughter. Not that my ex-husband wasn"t invited, he was, he just

didn"t show up. It felt like he [new partner] was stepping on his [former partner"s] toes

and replacing him…then that created conflict…But [former partner] didn"t want that role

himself. He had no interest in that role. (P001)

Another way the women perceive that the fathers remove themselves as a responsible

parent is through their delays of the process for making custody and access decisions. For

example, participant 014 describes a situation when a custody and access investigation is

ordered through the court and the father does not comply. "I had a few interviews and then

my ex withdrew from the process…we had to stop the investigation because my ex wouldn"t

sign the releases and wouldn"t participate." (P014)

One mother talks about the father"s minimization of the child"s need for corrective eye

wear, taking himself out of the role of responsible parent when Participant 014 mimics him,

saying, "you don't need glasses, that's crazy." She then discusses how the child is left in the middle of the adult conflict because she is enforcing that her son wear his eyeglasses while the child's father is not; as she explains, "the other three days of the week his dad is telling him not to bother." A further example illustrates the woman's understanding that the father is disrespectful of her to the children and removes himself as a responsible parent when she says,

> It doesn't surprise me that he talks me down to the kids. They take it upon themselves to try and keep the peace. Things like, my son's not doing very well in school so we've been working really hard to try and get his grades up. And he goes to his dad's house with a bunch of homework to catch up on and it doesn't even get taken out of his backpack…when I try to say something to [ex-partner] about it, he says, "well, he told me he didn't have any homework", and I say, "he's a nine year old boy, of course he's going to tell you he doesn't have any homework." You have to physically go into his bag and look." (P014)

The result of the father removing himself from a responsible parenting role is that these women take on a greater share of the responsibility and it can feel overwhelming. "When you're making a family it's extra weight that should be dispersed between two people and when it's not, it can be overwhelming." (P014)

Some women understand the inability to decide on custody and decision-making as a financial one, for example, Participant 008 suggests, "He's just concerned about the money aspect of it. He's not really concerned about the custody or anything like that." Indeed, some women avoid discussions of child support due to fear. "I told them that I wasn't asking for child support, they said "the judge will not agree with it"…The reason I don't want to is

because life for me is much easier…Anytime something comes up about money, it just triggers something." (P008)

When they try to explain their concerns about their safety or the safety of their children, the women do not believe they have been heard either by their former partner or by the legal system, which can be disarming as Participant 013 shares. "I didn"t feel empowered, I felt threatened and if I didn"t follow the rules, then I was going to be in contempt and get in trouble for withholding her from him." This same parent reveals her concerns further when she says,

> "I should have been calling [Children"s Aid Society] a lot sooner than I did. I was afraid
> of that, I was afraid because I"d heard horror stories, that they can come in and interview
> you and just decide that they"re going to take your child away." (P013)

Sometimes, some women may resort to former survival strategies to keep the peace because they want their child to have a relationship with their father. For example, Participant 003 indicates that, "He"s exercising his right to not make decisions but I like to call him and say [child] has got this happening." Most often, the women find they are again being treated disrespectfully, which is how Participant 008 reveals: "then we try and talk which sets up a lot of name calling…we get completely off the issue that we"re supposed to be talking about…it"s not productive."

The women say that a number of influences have brought them to the realization that shared decision-making will not be possible with their former partner and are described in the next category of *the deal has changed.*

The deal has changed.

The ongoing verbal abuse, inability to cooperate collaboratively in decisions about the children, removal by the father of himself as responsible parent and success at putting the children in the middle of the adult conflict may lead these women to no longer wish to participate in shared decision-making with their ex-partner. The deal has changed as they focus instead on protecting their children and themselves from him.

Participant 001 explains, "When you have children, everyone wants to spend time with them and be with them. I understand that, but sometimes I think that right overshadows what is really best." They have learned that they can no longer trust their former partner to care for the children, as is noted in this example,

> He couldn"t deal with the responsibility, or accountability or whatever that is but he"s just never been accountable…if he actually completed a program and got sober, and wanted to participate and wanted to just be there for her and to help me as well…help me parent.

These participants need support to help them protect their children. In each of these women"s situations, they have returned to court requesting sole custody. Some use public spaces such as schools or fast food restaurants for access exchanges, and some want access to be supervised following failed attempts to participate in a custody and access investigation.

> Why did I go through all that and pay that money when I"ve got this completely uncooperative person who can"t even attend an interview for his daughter…so now I"m finally going through the court and through a motion to have supervised access. (P013)

Lastly, a final example is expressed by Participant 014 to exemplify her frustration, lack of trust in her ex-partner and reconciliation to not share decision-making with her ex-partner, "I don"t trust his judgement so why would I want his opinion?"

5.4 Summary of Sub-Group Data Analysis

In this analysis, I began by presenting the data through themes and categories of five female study participants, all survivors of violence by their former partner. Decision-making in child custody can be very challenging for women who have experienced violence. They are redefining their role as parent following the separation, yet the primary concern is the safety of themselves and their children from their former partner. The women describe how they redefine their role as parent as they focus on keeping themselves and their children safe. During this time, the woman has to be a protective parent, which can be risky when their behaviours can be misinterpreted.

The use of formerly-useful survival strategies can help her to identify the conflict with her former partner as control. The woman may feel ready to end her relationship with the ex-partner and may begin to rely less on old survival strategies, focusing less on the needs of the man and more on the needs of the children. When they feel empowered, the women in this sub group work on moving past their former relationship. They realize their rights to make decisions without consent of their former partner. Sometimes, they wrestle with survival strategies that were once a necessary part of their interactions, as they continue to seek ways to reduce conflict.

The women's assertions of independence can result in continued abusive behaviour by their former partner. The women assert their right to make decisions alone as custodial parents, readjusting the power relationship between themselves and their former partner. For some of the women, their renewed sense of self as custodial parent brings further abusive behaviours from their ex-partner. He continues to be abusive, attempting to assert familiar control. At any time the women may return to survival strategies to help reduce the conflict.

Another possibility for these women is that they move from gaining emotional strength to shared decision-making with their ex-partner. To do this, they state that they need to see that

their ex-partner has received help for his violent behaviour and that he can focus on the needs of the children first. The women fear that the men will not seek help, stop the violent behaviour or focus on the needs of the children. If they reach shared decision-making, as one woman in this subgroup of study participants says she has, or even if they do not, the women talk about the lessons they have learned about how to get to shared decision-making, as has also been shown in the whole participant group analysis. One woman is noted in the previous analysis saying that she consults with her former partner and tries to negotiate decisions about the children. Legally, she has sole custody now, whereas previously they shared custody.

The women report a belief that sharing decisions between parents is in their children˙s best interests, and in an ideal world shared decision-making with their ex-partner would be their preference. Yet, the women have also expressed that they have come to understand that, in their situations, shared decision-making is not possible. Some of the women have made efforts to share decision-making with their former partner and find that the men continue their abusive and controlling behaviour. These five women have come to a realization that they are no longer interested in achieving shared decision-making with their ex-partner. At this point, the women feel unsupported by their ex-partner and some also by the family court and child welfare systems.

The women use this experience in their ongoing process of redefining their role. The cycle can repeat when the women experience concern for child/father access and belief that they can work together "if" a) the man receives help, b) the man focuses on the children˙s needs, and c) the man moves on with his life without trying to control his ex-partner. The women seem to come to recognize that shared decision-making and shared parenting is not possible unless the abusive behaviour stops. The women do not appear to hold hope for change with

their former partner and understand that, not only will they not be able to rely on the father for parenting assistance, but they will also need to find allies in the service and legal sectors who can offer assistance to keep them and their children safe.

Through their experiences, these women recognize they cannot trust their former partner to share decision-making or participate in the role of responsible parent, leaving them in the role of sole responsible parent. They need the legal means to ensure their own and their children‟s physical and financial security, to maintain their role as protective parent.

5.5 Whole and Sub-Group Analyses: Similarities and Differences

One important revelation from the findings is that violence and control can be masked as poor communication and conflict for some participants when people experiencing high conflict and those experiencing physical violence are combined in the analysis. This information has led to the exploration of a gendered analysis. The reference to physical violence from the subgroup of participants was less visible when combined in the whole participant group.

From this analysis, we learn that shared decision-making can only be achieved under very specific circumstances when violence has occurred. For example, the man must get treatment and participate in a meaningful way so as to change his attitudes and behaviours, stop the violent behaviour, and interact with his ex-partner in a respectful manner (Evans, 2004). When violence has occurred in the relationship, shared decision-making is not the goal of child custody decisions for these women. The goal is to keep themselves and their children safe. This is a very different focus than is presented in the whole group analysis as I discuss next in Chapter 6.

Chapter 6

Discussion

6.1 Introduction

The findings in this study come from two analyses of the data that help us to better understand the parent experience in child custody decision-making. The first analysis, presented in Chapter 4, is of the whole participant group. Five themes emerge from this analysis*: 1) redefining role; 2) the importance of agency; 3) shared decision-making; 4) the battleground: barriers to shared decision-making; and 5) complexities involved in shared decision-making.* From this analysis, two separate paths emerge, one leading to shared decision-making and the other, not. The two different paths are characterized by the study participants as resulting in a focus on the needs of children first (achieving shared decision-making) or focusing on the needs of self, first (unable to share decision-making).

Most of the study participants, both mothers and fathers, say their preference is to share decision-making with their former partner; yet, for many in the study, this is not possible. They reveal that there are specific things that could help them to achieve shared decision-making: 1) the ability to develop positive communication skills; and 2) better understanding and education about the legal processes, the impact of divorce on children, and access arrangements to meet the specific needs of their family. These study participants also share details of that which prevents them from achieving shared decision-making: 1) poor communication (including control/violence); 2) inability to share power; and, 3) structures based on patriarchal values that support win/lose outcomes for parents. From this analysis, further questions arise about the parent experience in situations of violence.

The second analysis, presented in Chapter 5, is of a sub-group (all women who are also part of the first analysis), of participants who have experienced violence in their relationship with their former partner. From them, we learn about the influence of the experience of violence on the child custody decision-making experience, suggesting differences and similarities compared to parents experiencing high conflict without violence. In the sub-group analysis, four themes emerge: 1) *safely redefining role,* 2) *survival strategies,* 3) *empowerment in action,* and 4) *don't want shared decision-making.* One circular, potentially repetitive, path illustrates the experiences of five women in the gendered analysis framework (Chapter 5).

From this analysis, we learn that shared decision-making can only be achieved under very specific circumstances when violence has occurred. For example, the man must get treatment and participate in a meaningful way so as to change his attitudes and behaviours, stop the violent behaviour, and interact with his ex-partner in a respectful manner (Evans, 2004). Additionally, survivors of violence require helpful and reliable information about dispute resolution strategies and the implications of each so that they can choose the approach that is appropriate to their needs (Davis, Ver Steegh & Fredericks, 2014). When violence has occurred in the relationship, shared decision-making is not the goal of child custody decisions for these women. The goal is to keep themselves and their children safe. This is a very different focus than is presented in the whole group analysis (Chapter 4).

One important finding is that poor communication and conflict can mask violence and control for some participants when people experiencing high conflict and those experiencing physical violence are combined in the analysis. While this has been the subject of prior research into the experience of professionals working in the field of domestic violence (Ver Steegh & Dalton,

2008), it is particularly interesting to hear this insight from the participants in this study as they are the survivors of the violence and have spoken directly to their experience.

In this study, there are five women who have experienced violence. As a whole participant group, the issues that are faced by high conflict families are also present for the participants who have experienced physical violence. However, the references to physical violence from the subgroup of participants were less visible when combined in the whole participant group. This is a reminder of the importance of separating out physical violence and high conflict because, although there may be similarities, the experiences of these two groups can be very different. When they are considered together, the participants in this study are more heavily weighted in the high conflict group, illuminating with more prominence the issues parents experience in high conflict situations.

The following is a discussion of the findings in relation to the research literature. I begin with a discussion of the whole group analysis to explore the relevant literature with a specific focus on women‟s influence on Canadian legislation related to economic and parenting consequences, the best interests of the child standard, child-focused approaches to child custody arrangements, legislating for shared parenting, and families experiencing high conflict. I then situate the sub-group analysis within the research literature with a specific discussion of this study in relation to the other two areas that have been identified as problematic in terms of legislative reform: domestic violence and young children (Bala, 2014). Finally, I discuss this study in relation to alternative dispute resolution strategies including mediation with families experiencing domestic violence, high conflict, and parenting coordinators working with high conflict families. I conclude with identifying the study contributions to the literature.

6.2 Whole Group Analysis: Relevance to Literature

As noted in the literature review in Chapter 2, shared decision-making is seen as problematic in three circumstances: violence, high conflict relationships, and young children (Bala, 2014). This study has all three components and provides interesting insights into the research in these areas. Relevant to the literature, then, is this question: what is the parent experience in child custody shared decision-making in each of these circumstances? Further, based on their experiences, what policies and practices are necessary to address these three areas of concern? In other words, how does a presumption of shared parenting relate to the findings in this study?

I will situate my study within the shared decision-making literature, beginning with important influences on Canadian legislation, the best interests of the child standard, a child-focused approach and legislation for shared parenting. I will then focus specifically within three areas (high conflict, violence, and young children) to address the above questions.

Canadian divorce legislation shifts.

As discussed in Chapter 2, Canadian divorce legislation has shifted to a greater focus on economic and parenting consequences to include no fault divorce, spousal support, child support guidelines, and custody and access related issues (Payne & Payne, 2013). Across many years, the Status of Women Canada has provided input to this legislation through their mandate of focusing on equal opportunity for women and men (Canadian Advisory Council on the Status of Women, 1980). This includes ensuring that women and children are not left without adequate financial resources upon divorce. This illustrates that women have been resisting Canadian social policy that includes child custody legislation, and their actions have been successful in improving conditions for women. However, the following examples from study participants reveal the

importance of illuminating the inequalities that continue to exist for Canadian women, despite the lengthy efforts to improve life for them.

In a situation of high conflict, participant 017 shares that her former partner has arranged for the assets to be frozen, leaving her unable to access them, while in a situation of violence, participant 013 shares that her former partner has spent all of their accumulated resources during the eighteen months that it took for their first case conference to be scheduled. In both of these situations, financial resources were overlooked by the legal system, leaving the women and children inadequately supported. The challenge for families experiencing high conflict and those families experiencing violence is to address the financial stressors while the specific processes are being sorted. This helps to ensure that women and children are not left without adequate resources in the short-term and the long term because, in these situations, finances can be controlled by their former partner.

The Commission has influenced legislation on the issue of domestic violence, informing the government on several issues, including domestic violence and the standard of "the best interests of the child", opposing the "friendly parent provision" and a presumption of "joint custody" which they perceived as harmful to women and children in situations of domestic violence (Canadian Advisory Council on the Status of Women, 1992-1993). The "best interest of the child" standard is explored in the next section as it remains in effect as the only legal presumption in child custody.

Best interests of the child standard.

Participants explained that it is important to focus on children's needs first in order to navigate the challenges that can occur when couples separate. Some seemed to equate a focus on the children's needs with the "best interest of the child" standard. The "best interests of the

child" standard has endured for decades despite the resistance by men's advocacy groups, for a number of possible reasons. One of those reasons might include that the legislation is designed to focus on the needs of children. This child-focus may be uncomfortable for an adult who wishes to focus on their own needs. For example, the gender debates as defined by Jaffe (2014) and Scott & Emery (2014), which privilege a presumption of shared parenting or friendly parent doctrine, focus on the rights of adults as they relate to decision-making and time with children. The "best interests of the child" standard means the focus is to be on children, not adults.

The majority of the participants in this study have self-identified as experiencing high conflict with their former partner and say they are unable to achieve shared decision-making because the primary focus is on the needs of adults. For some, the "best interests of the child" standard is understood to mean that, if the child has access with both parents, it is in the child's best interest. In other words, the presumption seems to be: what is good for the adults is good for the child, without consideration of any of the many factors such as parental conflict that are considered in the "best interests of the child" standard. The focus becomes on the rights of adults not the children, as is intended in the legislation (Ver Steegh & Davis, 2015). This is not consistent with McIntosh and Smyth's (2012) definition of shared decision-making which includes a child focus.

The legislative debates are couched in an assumption that the Canadian public policy statement is about meeting the needs of children, and this occurs by encouraging meaningful contact with both parents. The "best interests of the child" begins from the position that children's needs are met by maintaining a meaningful relationship with both parents (Bala, 2014). However, social science research has not yet been able to demonstrate a clear, undisputed preference for shared parenting in all situations. For example, the relevance of this is unclear in

circumstances of domestic violence, high conflict and children under the age of four (Bala, 2014; DiFonzo, 2014; Nielsen, 2013; Trinder, 2010).

Indeed, social science researchers can agree that a differentiated approach to custody arrangements is necessary, particularly in relation to the three areas just mentioned. Yet the systems required to support positive outcomes for children remain elusive. For example, processes for differentiating violence, assessment tools, coordination between legal and social service systems and service development are underway, but have yet to provide sufficient information to suggest legislative reform (Bala, 2014).

Joint legal custody is occurring more routinely: studies show that approximately one in five children live 40% of their time in each of their parent's home (Bala, 2014). In Ontario, the recent amendments to family law, known as the Four Pillars that include alternative dispute resolution strategies have been a starting place to provide families support, information, and a less adversarial process (Ministry of the Attorney General, 2010). The Four Pillars includes mandatory information sessions, dispute resolution officers, information and referral coordinators and family mediation services (Ministry of the Attorney General, 2010).

Findings from the current study suggest this is good but not enough. For example, participants indicate that the mandatory information session is helpful but that they need further information about arranging access specific for their family needs and developing positive communication skills with their former partner. Mediation services may be premature for this group of parents as they are experiencing high conflict and (for some) violence (Beck, Walsh and Weston, 2009; Kelly, 2008; Lowenstein, 2009).

Child-focused approach.

Participants in this study say that helping parents to learn positive communication skills can reduce parental conflict and allow parents to focus on the needs of their children. A study of members of the Canadian Bar Association demonstrates support for a change in language that might further emphasize a focus on children‫'‬s needs, seeking and respecting the voice of the child, such as a child-focused approach to custody and access arrangements (Birnbaum & Bala, 2014). For example, they suggest utilizing the phrase *parental responsibility* in place of custody and *parenting time* instead of access (Birnbaum & Bala, 2014). This new language is consistent with the Canadian public policy of frequent and meaningful access to both parents, and it places the emphasis on parents to act responsibly in their role of protective parent. Acting as a protective parent can help to ensure children‫'‬s rights, as set out in the Convention of the Rights of the Child, to "grow up in a family environment, in an atmosphere of happiness, love and understanding" (United Nations Human Rights, 1990, preamble). Responsible parenting, then, can help to shape the varying types of child custody arrangements based on parents‫'‬ ability to act responsibly by focusing first on the needs of their children.

All parents in the first analysis say they have a preference for their children to have a meaningful relationship with both parents, if possible, while 83% of participants say they would have preferred to have a shared parenting arrangement. For some, the level of conflict is too great. The second analysis, from a gendered lens, suggests that, in situations of violence as are described by these participants, shared parenting is not possible for the women as their former partner is not able to demonstrate responsible parenting.

The "best interests of the child" standard has yet to address the relevance and importance of violence and high conflict with regard to the protection of children. For example, when parents

model irresponsible parenting such as poor communication, violence and control, they do not exercise their responsibility to protect their children from harm. These patterns of behaviour have been demonstrated to have negative impacts on children (Kelly, 2000). Considering the impact of violence in the "best interests of the child" standard, as has occurred recently in British Columbia, can reinforce the intent of the standard and keep children and women safe (Ministry of Justice British Columbia, 2013). In other words, protection from violence needs to trump a desire for meaningful relationships in the planning for custody arrangements.

A focus on children means parents need to provide a healthy environment, they need to productively and safely address conflict and consider alternatives to litigation such as child-focused mediation and child-centered parenting plans (Birnbaum & Saini, 2015). Many study participants agree that a child-focused approach or a focus on the needs of children may reduce adult conflict and provide for the involvement of both parents in the lives of their children.

Legislating for shared parenting.

Legislating for shared parenting, then, may not have to be as complicated as the debates suggest. The participants in this study help us to learn about the varying policies and practices that are necessary to support a variety of parenting arrangements when we differentiate level of conflict. For example, we ought to separate situations of parents who do not experience high conflict, from parents who experience high conflict, and from those who experience violence. A focus on the needs of children in custody arrangements can help to center the debates and reform, in keeping with the "best interests of the child" standard.

Nielsen (2011) describes that conflict can remain higher in sole custody situations than in joint custody, particularly when parenting time is not shared. These studies focus on non-high conflict situations (Nielsen, 2011). Non-high conflict families appear to be able to resolve their

differences on their own and may benefit from supportive services given the high stress time of separation and divorce. They may represent the growing numbers of families who are choosing to share decision-making (Bala, 2014; McIntosh et al., 2010; Nielsen, 2013).

Two of the three participants in this study who have self-identified as experiencing low conflict have been able to cooperate with their former partner in decisions about the children. One remains in the same household as the former partner and they share parenting while they await decisions of custody arrangements. A second participant has a split custody arrangement where each parent has custody of one child and access with the other child. For these two participants, the conflict is low and parenting time is shared, supporting Nielsen"s results. The third participant no longer has contact with their former partner so, although they have sole custody, the lack of parental contact has reduced the level of conflict. The conflict is low even though the parents are not sharing parenting, which is not consistent with Nielsen"s (2011) study.

Consistent with Bauserman (2012), this study"s participants say that shared parenting can relieve some of the burden and stress associated with parenting. The study participants experiencing high conflict say they want and need to develop positive communication skills. An approach that is differentiated for families based on their experiences seems consistent both with the literature (Jaffe et al., 2008) and with the stories that have been shared by the parents in this study.

High conflict families in this study say they need support to help them focus on the needs of the children. They suggest a need to improve communication skills. The literature cautions about the need to separate out conflict with violence from conflict without violence and the need to not minimize violence that occurs sporadically or seemingly only upon separation (Bancroft &

Silverman, 2002). The following discussion focuses more specifically on situations of high conflict, domestic violence and young children.

6.3 High Conflict Families

Participants in this study support the notion put forward by Fehlberg et al. (2011) suggesting that families experiencing high conflict want both parents to have contact with their child, yet do not necessarily want this to be reinforced in legislation. They have suggested that parents would need to gain further information and skills to improve their communication and decrease their level of conflict. The families in this study also support Johnston and Roseby (1997) findings that that high conflict parents find it difficult to focus on the needs of the children. Indeed, many of the parents in this study say that the focus can instead become on the self, first. This focus on the needs of self can lead to further conflict and an inability to share decision-making.

Six of the participants who experience high conflict have been separated for more than three years and say they struggle to focus on the needs of the children. The families in this study experiencing high conflict have illustrated that high conflict families can experience an inability to focus on the needs of their children far longer than is reported in the literature. Some authors observe that parents experiencing high conflict can struggle to focus on the needs of the children for up to two or three years post separation (Johnston & Roseby, 1997; Kelly, 2000). Participants in this study say that the high conflict and lack of focus on the needs of the children can and have lasted for much longer periods of time, between three and 15 years. It is challenging to compare levels of conflict and to compare families experiencing high conflict without violence to families experiencing violence; neither group is differentiated in the present research literature as studies involving high conflict families often also have families who have experienced violence (Jevne & Andenaes, 2015; Koch & Pincolini-Ford, 2006).

Legislating for shared parenting between high conflict parents, then, appears to be premature. Yet, with some additional services, as is noted by the parents in this study, some parents may be able to achieve shared decision-making. The focus on legislative reform, then, ought not to include a presumption of shared parenting for families experiencing high conflict, but rather supports for reduction of conflict, which may lead to an ability to share parenting. For example, participants in this study have identified strategies that can help parents experiencing high conflict gain an understanding in three areas: 1) the ways in which divorce and conflict can impact on children; 2) the ways in which access can be managed for their individual family; and, 3) the ways parents might improve their communication skills.

Trinder (2010) suggests that high conflict and non-high conflict families require different approaches to intervention. The current study would suggest the need for a possible third approach for families experiencing violence. This third approach would include policies and practices that address the safety of the mother and children, including treatment for the abuser and support for the mother and children. Research into effective co-parenting in the context of domestic violence is in its infancy stage (Hardesty, Haselschwerdt & Johnson, 2012) and should be expanded.

The participants in the current study have been clear that they believe education about the legal process, the impact of divorce on children, and management of access for their families, as well as skill development in the area of communication, can all help them to reduce the conflict in their relationship with their former partners. Recent legislative changes in family law in Australia appear to have reduced reports of high conflict situations for families; yet, Smyth et al. (2014) suggest that the reduction being reported may have more to do with the supportive services available to families than with the shared parenting legislative reform. Some of these

services include mandatory mediation, child-focused dispute resolution and family relationship services (Smyth et al., 2014). Given that we know that children from high conflict families can do poorly and that high conflict can last for extended periods of time for some families (Kelly, 2000), a focus on the reduction of parental conflict will be an important consideration.

Since, according to participants in this study experiencing high conflict, communication skills may be a challenge, parallel parenting with supervised child exchanges may be appropriate options for parents experiencing high conflict (Jaffe et al., 2008). Parallel parenting allows each parent to have decision-making over specific domains of their children‟s lives or can allow parents to make independent decisions about the children during the times that they provide care (Birnbaum & Fidler, 2005). The supervised exchange may provide opportunities to improve communication skills, an area of growth suggested by participants in this study. Yet, Jevnes and Andenaes (2015) recently found in their study of 15 parents that focusing on parenting as separate experiences (mothers‟ and fathers‟) leads to parents expressing themselves as *concerned parents* or *accused parents* with very different approaches to sharing care and without a focus on care for the child.

Participants in this study who experience high conflict suggest that they need skill development to manage conflict in a positive way. According to Kelly and Johnson (2008), men and women who display "situational couple violence", violence during the high conflict and stressful time of separation, can benefit from a cognitive behavioural group where the focus is on interpersonal skill development and anger management techniques. It is essential, though, that caution is paid to separate out high conflict families from families experiencing violence, as situational violence is still violence.

The "best interests of the child" standard may be the presumption for high conflict families with a consideration given to parallel parenting to help reduce the conflict. This approach supports the Canadian public policy goal of encouraging meaningful relationships between children and both parents. The presumption for families experiencing high conflict, then, would be the "best interests of the child" standard with consideration for parallel parenting depending on the parents" ability to learn to communicate in a more positive manner.

The above section has provided some answers to one of the three questions posed earlier: what is the parent experience in child custody shared decision-making in each of these circumstances of high conflict, domestic violence and children under the age of four? Yet, some limitations of the methodology are revealed upon further reflection of the initial analysis through a gendered lens. The use of a gendered lens extends our understanding of the whole participant group, and as I will show below, is an important component of understanding differences in the parent experience.

Some researchers describe phenomenology as a method with no method (Gadamer, 1975; Rorty, 1979), yet phenomenology is a tradition that provides guidance and recommendations for a principled focus of inquiry (van Manen, 2007). A limitation I have found using phenomenology in this study is a lack of attention to gender, race, and cultural understandings (Dowling, 2007; Kall & Zeiler, 2014). Dowling (2007) suggests that within the field of nursing, researchers have been able to incorporate culture into their understanding of participant illness experience, using what is referred to as a new phenomenology (North American) that expands the original development of phenomenology by Husserl and Heidegger (European). Phenomenology used as a method in nursing research is controversial in the areas of rigour and philosophical boundaries (deWitt & Ploeg, 2006), because of the interpretation beyond the lived

experience, to the illness experience, which incorporates culture. Feminist research has expanded the value of phenomenology as methodology adding the context of gender, race, and culture (Kall & Zeiler, 2014). In this study differences in gender are unveiled as the effects of power relations, patterns of prejudice and privilege, and social and cultural practices (Kall & Zeiler, 2014) illuminating lived experiences of a sub-group of women as distinct from the whole group.

The gender difference of violence was not attended to in the first analysis. The broader meaning for the whole participant group became the focus, whereas, the application of feminist standpoint theory provided an important understanding of the parent experience from a gendered perspective. The limitation of the method is revealed in the differences between the whole group analysis and the sub-group analysis. Viewing the participant group as a whole suggests that all participants have the same experiences (Schoppmann, Schrock, Schnepp & Buscher, 2007). For example, men and women have the same experience with child custody decision-making because they are parents. Chapter 5 illuminates that indeed there are differences in experiences in this study, in relation to gender, and type of conflict.

In this next section, I discuss the relevance of the literature to the sub-group analysis. This subgroup of five women has experienced physical violence in the relationship with their former partner.

6.4 Sub-Group Analysis

The sub-group analysis focuses our attention on the issues that have been raised in child custody decision-making by the presence of violence.

Domestic violence.

Five women in this study have experienced domestic violence. Their stories support the position of Fidler et al. (2008), based on the work of Koch and Pincolini-Ford (2006), that families experiencing physical violence require safety-based decisions and that this is different from families experiencing high conflict. This is an important distinction because the policies and interventions will need to be different for these two groups. For example, violence does need to be a factor in the "best interests of the child" standard because power is not equal between parents when there is violence (Fidler et al, 2008).

In high conflict situations, power is considered roughly equal and safety-based decisions are not required (Fidler et al., 2008). Therefore, custody arrangements can vary; however, in situations where families experience violence, the perpetrator of the violence minimizes the impact of the violence on the woman and children (Fidler et al., 2008). Custody arrangements in situations of violence need to consider the safety of the mother and children. An illustration of how legislation can be reformed to protect mothers and children in situations of violence is evident in British Columbia, where the recent *Family Law Act* (2013) includes the impact of family violence on the children as one of the factors when determining custody and access (Ministry of Justice British Columbia, 2013).

Indeed, the survivors of violence in this study suggest that the catalyst for leaving the abusive relationship is their inability to prevent their children from observing the violence and their concern about the impact of the violence on their children. In other words, they are acting in the role of a protective parent. Taking on the role of protective parent in situations of violence can be precarious for women, as participants have shared. For example, as has been reported in Chapter

5, one participant has expressed concern that telling the Children's Aid Society about the violence would result in their perceiving her as unable to protect her children.

Similarly, Chapter 5 discusses another participant who feared that her "Native status" would further disadvantage her with the Children's Aid Society. She expressed concern over being perceived by the Children's Aid Society workers as unable to protect her children. At the same time, she feared that the legal professionals would find her in contempt of court for not allowing the abuser access to the children as per the court order. The women who reached out for help from the court, Children's Aid and the police sometimes found none was forthcoming. They were left fearing that they would lose custody of their children if they protected them.

Hughes (2015) discusses that women experiencing violence shoulder inappropriate blame for the impact of the violence on their children, from both the child protection services and from the family law system. A woman is constructed as an unfit mother from the very systems that are designed to protect her. This is a Canadian example of the gender bias that Bancroft and Silverman (2002) describe in the United States. They say that fathers are favoured over mothers in custody disputes and illustrate a number of reasons for which this is problematic. For example, they suggest that women and men are judged by different standards. They claim that the mother's history of parenting is considered while the father is judged by his ability to express emotion and how he talks about his future (Bancroft & Silverman, 2002). Additionally, a woman is judged more harshly for not protecting children from violence and by professionals who question her motivation (Bancroft & Silverman, 2002). Jevne and Andenaes (2015) discuss this same finding in their study of 15 parents wherein the safety concerns expressed by two mothers were rejected by professionals and resulted in a loss of maternal custodial status, with limited supervised access to the children.

The findings of this study would not support a presumption of shared decision-making or shared parenting when parents experience violence. The study participants have been clear that shared decision-making is only possible if the offender can benefit from treatment for his abusive behaviour, as is noted in Chapter 5. The lack of evidence supporting the effectiveness of treatment for male violence suggests that there needs to be more than a reliance on participation in treatment programs by men to ensure the safety of the woman and children (Evans, 2004).

Bancroft and Silverman (2002) identify 12 steps they suggest are necessary for men who are violent to reach the following outcomes: 1) become responsible and safe parents including taking ownership for the abusive behaviour and the decision to abuse; 2) demonstrate the development of empathy and respect for victims; 3) illustrate awareness of his entitled attitudes; and 4) exhibit a commitment to not abuse in the future. In all five situations of women in this study who experienced domestic violence, the woman indicated that the violent man did not attend a treatment program to help him stop the violence. Three of the participants attended counselling with their former partner, but the counselling focused on relationship problems and communication issues. The presence of violence was either never broached or was denied; thus, a treatment group for male violence was not pursued. None of these was able to help her.

Differentiating domestic violence and matched custody arrangements.

Some work has been done on differentiating violence by a number of researchers (Austin & Drozd, 2012; Austin & Drozd, 2013; Jaffe et al., 2008; Johnston & Campbell, 1993; Kelly & Johnson, 2008), yet much further research is required to understand its relevance in the area of domestic violence and child custody decision-making. Jaffe et al. (2008) have made the linkages between types of violence and custody arrangements, using Kelly and Johnson‟s typologies.

Jaffe et al. (2008) suggest that the differentiated types of violence need to be matched with custody arrangements.

Although there is agreement among researchers that differentiated types of violence need to match custody arrangements (Austin & Drozd, 2013; Ellis, 2008; Jaffe et al., 2008; Kelly & Johnson, 2008; Ver Steegh & Dalton, 2008), there is little research information to support specific arrangements that lead to positive outcomes for children in families where there is violence (Jaffe et al., 2008). Bancroft (2002) cautions that using certain typologies can mask a pattern of controlling behaviour and can also create perceptions that the violent men may be less dangerous both to the woman and children, despite the fact that evidence is not available to support this position. Instead, children may be at higher risk of abuse from the violent parent, as many researchers agree that a large percentage of children are physically, sexually and emotionally abused by the violent parent during access visits (Bancroft, 1998; Jaffe et al., 2008; Kelly & Johnson, 2008). Additionally, research into programs for male violence suggests insufficient evidence of effectiveness at preventing future male violence (Kelly& Johnson, 2008). This suggests that there is much work that needs to be done in this area of domestic violence as it relates to child custody decision-making. Presumptions of shared parenting, then, are not called for in situations of violence. Each situation would require an order based on the risk assessment results, and later, based on the outcomes of treatment for the violent man and possibly the children (Jaffe et al., 2008).

Scott and Emery (2014) suggest that a presumption of shared parenting can lead to a focus on privileging one gender over the other. In this study, the privileged gender would be men, as a shared parenting presumption would ignore the issue of violence against women and children. In this study, in families where violence occurred, men were the perpetrators. Custody and access

situations involving violence require non-traditional interventions to address the power imbalance in the relationship between the parents (Hardesty et al., 2012).

Although there may not yet be sufficient evidence in the social science literature to recommend specific custody arrangements for types of violence, we do know several things about domestic violence that can inform custody arrangements in situations of domestic violence. First, domestic violence in Canada is gendered; it is male violence (Jaffe, 2014). Second, current policies are not reducing male violence (Jaffe, 2014). Third, women and children are left vulnerable when male violence is not addressed (Evans, 2004). Fourth, services to address male violence need to be coordinated and monitored (Jaffe et al., 2008). Finally, men need to be held accountable for their violence by our social systems if we are to protect women and children and support the "best interests of the child" standard (Johnston & Ver Steegh, 2013).

Holding men accountable in situations of child custody could mean identifying a service coordinator to monitor and report to the court on treatment progress and coordinate services (Jaffe et al., 2008). There is support for the need to have reporting on attendance and completion of programs for male violence (Bancroft, 2002; Kelly & Johnson, 2008).

The above discussion of families experiencing violence has provided further answers to the question posed earlier: 1) what is the parent experience in child custody shared decision-making in each of these areas of high conflict, domestic violence and children under the age of four? For these families, there can be no presumption of shared decision-making in situations of violence.

Young children.

In this study, the focus has been on parents. I have not interviewed children and have limited information to discuss the effects of shared decision-making on young children. The one area of exception is in the area of domestic violence. The gendered analysis reveals participants‟

concerns about abusive behaviour by their former partner during access visits with the children. Participants have made reference to concerns about how to protect their young children when there is a court order for access between the children and the violent former partner. Men who are violent to women are more likely than non-violent men to violate children through acts of physical, psychological and sexual abuse (Bancroft & Silverman, 2002; Bancroft, 1998; Johnston & Ver Steegh, 2013). Further, interventions such as male violence treatment programs have proven insufficient to provide assurances of the children"s safety, creating the need for the further structure provided by supervised access (Evans, 2004). The women in this study express concerns about their former partners having unsupervised access with the children and require support through policies to keep their children safe.

Bala and Schuman (2000) say that arguments by men"s groups about allegations of sexual abuse made by mothers in an attempt to reduce a father"s opportunity to share custody cannot be substantiated. Their study reports that only 1.3% of sexual abuse allegations made by mothers are false, whereas 21% of allegations of sexual abuse that were made by fathers about mothers have been unfounded (Bala & Schuman, 2000). These findings are consistent with an earlier study by Trocme , McPhee, Tam and Hay (1994) and differ from Kruk (2013) who claims that false allegations of abuse are prevalent from both parents in child custody disputes.

Two participants, as reported in Chapter 4, describe their concern about their children"s safety during visits with their former partner. As is noted, male violence treatment programs have inconsistently demonstrated successful outcomes for male perpetrators (Evans, 2004) and some suggest that a number of interventions are necessary to ensure the safety of the children and mother such as: proof of rehabilitation, which means more than simply completing a program,

but may also include waiting a period of time to assess if the perpetrator has re-assaulted, and supervised visits with the children (Dunford, 2000).

A presumption of shared parenting cannot be favoured for children under the age of four when there is domestic violence. Indeed, situations of domestic violence concern not only children under the age of four, but also older children, who are dependent upon their parent for care and who are vulnerable to an abusive parent. Thus, shared parenting may not be appropriate for situations of male violence, no matter the age of the child.

This discussion about young children has provided additional answers to the question posed earlier: 1) what is the parent experience in child custody shared decision-making in each of these areas of high conflict, domestic violence and children under the age of four? There can be no presumption of shared decision-making in situations of young children from families where men are violent towards women.

6.5 Challenges with Service Coordination

Missing from the research literature are ways in which various providers in Canada collaborate and communicate about male violence treatment to ensure a circle of safety for women and children. Jaffe et al. (2008) suggests that this lack of coordination is common among Canadian communities. For example, how are decisions made to increase access between the abuser and the children if service providers are not communicating and sharing information?

In the local community in which the study participants reside, there are no coordinated efforts among the various service providers to support families where men are violent towards women, to protect women and children and to provide treatment to male perpetrators of violence (C. Binder, personal communication, May 4, 2015).

An environmental scan of supervised visitation centers across Canada was completed by

Tutty, Barry, Weaver-Dunlop, Barlow & Roy (2006). The authors presented various services and

funders across provinces. Recommendations to the Alberta government following the

environmental scan included a need to provide supervised access with a greater focus on issues

of domestic violence. This is more common in the United States (Tutty et al., 2006). In Canada,

many of the supervised access centers, including in Ontario where there are 54 centers, maintain

a service philosophy of neutrality, which justifies the lack of connections and collaborations with

other community services such as women‟s shelters, male violence programs, child welfare and

the courts (Tutty et al., 2006).

In the United States, programs that focus on domestic violence (e.g. Minnesota and

Washington, DC) maintain a service coordination and monitoring function (US Department of

Justice, 2008). These communities provide a number of programs to support families who have

been affected by violence, including male violence programs with a feminist perspective,

intervention programs for women who have experienced partner violence, women‟s

empowerment groups, supervised exchange, supervised visits and correspondence services for

families utilizing a parallel parenting approach (US Department of Justice, 2008). Additionally,

the Supervised Visitation Network (SVN) (2015) is a multi-national membership organization,

with four of their five regions situated in the United States and one internationally. The mission

of SVN (2015) is to establish standards of practice that ensure access to safe visitation between

children and their parents. SVN utilizes best practice guidelines and standards of practice that

include a philosophy of safety for all participants first, followed by the well-being of the child.

Interestingly, their standards of practice also identify neutrality as a practice during access visits

by maintaining an unbiased environment (Supervised Visitation Network, 2015).

In Ontario, male violence treatment programs are offered in a variety of communities and can be court-ordered through the Domestic Violence Courts that are located in the 52 court districts. In Toronto, a Partner Assault Response (male violence) program is offered through the Family Service Toronto agency which has accountability built in so that the agency staff completes a report of the man's progress within the twelve week program and submits the report to the court (Family Service Toronto website, n.d.). This same agency provides safety planning services for the women who have been physically assaulted (Family Service Toronto website, n.d.).

Locally, and across the province, similar programs are offered to men where their attendance at the Partner Assault Response program is monitored through the court. However, in the region in which this study has taken place, the local agency has announced that they will terminate as a service provider because the government has reduced the funding and scope of the program to education, not rehabilitation (Thompson, 2015, Feb. 20). In Toronto, these services also include training for police, crown attorneys, court staff and probation and parole officers (Ministry of the Attorney General website, n.d.). Missing from these coordination efforts are the supervised access centers, child welfare organizations and other counselling service providers.

6.6 Alternative Dispute Resolution

Domestic violence and mediation.

In this study, the parents who have experienced violence say they cannot share control. The women have stated their former partners use a number of controlling, manipulative and abusive behaviours to assert control over them. Sbarra (2005) indicates that divorce mediation may keep parents connected in unhealthy ways. This raises concern for mediation with this population. Similarly, there is no indication from participants in this study that mediation would be a suitable intervention option, given the absence of trust, respect or ability to share power between the

parents. It would appear with this population that sharing power can only occur if the abuser is prepared to seek assistance for their violent and controlling behaviours and change them.

Some researchers question the value of mediation when there has been domestic violence, although Beck, Walsh and Weston (2009) suggest that between one third and three quarters of divorce mediation involves people experiencing domestic violence. Given the power differences in situations of domestic violence, the authors question if both parents are able to have control over decisions that are made through mediation (Beck, Walsh & Weston, 2009). It would appear that the participants in this study would share their concern that mediation may not be indicated in situations of domestic violence.

High conflict families and mediation.

Mediation is viewed by some as an opportunity for parents experiencing high conflict to learn effective communication skills so that they are able to develop an appropriate child-centered parenting plan and so they are better armed for further negotiations in situations requiring them to work together (Bailey & Robbins, 2005; Holzworth-Munroe, 2011; Lowenstein, 2009). In the current study, one participant (P015) shared that mediation did offer them more control over their parenting plan, yet they have now returned to court to change the custody arrangement. There does not appear to have been an integration of the newly developed communication skills.

If mediation is viewed as a means to also support future negotiation skills (Bailey & Robbins, 2005; Holzworth-Munroe, 2011; Lowenstein, 2009), then it is important that parents have an opportunity to solidify those skills so they can continue to navigate the difficult terrain of co-parenting throughout their children's lives. Prior to mediation, participation in services to develop communication skills may be a more appropriate approach so that high conflict families can then benefit from the mediation services.

High conflict and parenting coordinators.

In this study, participants did not utilize parenting coordinators to help mitigate the conflict in their relationship with their former partner. The use of parenting coordinators is another strategy that has the potential to reduce conflict for parents experiencing high conflict (Birnbaum & Fidler, 2005). A number of researchers suggest that parenting coordinators can not only help to reduce recurring conflict between parents (Coates et al., 2004; Emery & Emery, 2014; Mitcham-Smith & Henry, 2007), but also that it offers various services such as bridging court services, counselling, mediation, communication and parenting skills, conflict resolution strategies and education about children"s needs (Mitcham-Smith & Henry, 2007). These kinds of services are similar to the lack of supports that have been identified by participants: education and skill development. This is particularly true for families experiencing high conflict and not domestic violence.

Parenting coordinators can help families in high conflict navigate a useful and child-centered parenting plan through the development of communication skills (Emery & Emery, 2014). Mediation could then follow, providing opportunity to work out a parallel parenting arrangement.

The above sections have provided a number of answers to the three questions posed earlier: 1) what is the parent experience in child custody shared decision-making in each of these areas of high conflict, domestic violence and children under the age of four?; 2) based on participant experiences, what policies and practices are necessary to address these three areas of concern?; and 3) how does a presumption of shared parenting relate to the findings in this study? I summarize the responses below in Table 8. Chapter 8, Recommendations, will more specifically address policy, practice and research implications.

6.7 Summary

In this Chapter, I have discussed the findings of the two analyses in relation to the research literature. The first includes all of the study participants. In the discussion of this whole group analysis, the focus is on influences in Canadian legislation, the "best interests of the child" standard, child-focused approaches, legislating for shared parenting, and high conflict families. Most participants in the study reveal their preference for shared decision-making; many are unable to share decision-making with their former partner and some are managing it.

The results from this study do not support a presumption of shared decision-making for high conflict families; yet, there may be opportunities for these families to share decision-making after some additional services.

I discuss the subgroup analysis in relation to the two remaining areas that have been identified as challenging in legislating for child custody: domestic violence, and young children. There is no support for shared decision-making from participants in my study who have experienced domestic violence, which is consistent with the literature. Additionally, mediation for families experiencing domestic violence cannot be supported either through this study"s findings or through the research literature. The availability of quality services is a critical need for perpetrators of domestic violence so that they stop the violence toward their former partner and children.

Table 9 below summarizes the similarities and differences by experience of high conflict, domestic violence and those families experiencing domestic violence with children under the age of four. Each of these has been discussed in detail to suggest a fit or not with a presumption of shared parenting and recommended interventions that are based on the research literature and the participant experiences.

Table 9 Similarities and Differences by Parental Differentiated Experience

	Parents Experiencing High Conflict	Parents Experiencing Domestic Violence	Parents With Children Under the Age of 4 (families where men are violent towards women)
Similar Experiences	Parents want child contact with both parents Focus on children difficult Parents want conflict reduced	Parents want child contact with both parents Focus on children difficult Parents want conflict reduced Difficult to focus on needs of children Concern for young children during access Insufficient treatment programs for male violence	Parents want child contact with both parents Concern for young children during access Insufficient treatment programs for male violence
Different Experiences	Preference for shared decision-making Some can manage shared decision-making Identified strategies for reducing conflict Longevity of inability to focus on the needs of children	Don''t want shared decision-making Impact of violence on children Protective parent role Perception of non-protective parent Fear of losing children Constructed as unfit mother Fathers favoured in court Higher risk of physical, sexual and emotional abuse of children Women may experience further violence	Don''t want shared decision-making Concerns about how to also protect older children too from abuse during access visits
Shared Parenting Presumption	No, but shared parenting may be possible for some	No Need violence as factor in the "best interest" standard Shared decision-making only possible if man gets treatment for violence and stops the abuse	No
Interventions	Goal: reduce parental conflict Skill development Mediation after communication skill development Child-inclusive mediation Parallel parenting Supervised exchanges Parenting coordinator Child-focused parenting plans	Goal: stop male violence Safety-based decisions required Focus on male violence treatment Secure safety for woman/children Adequate finances for woman Stepdown process (only after successful completion of male violence treatment) includes, • Supervised Access Visits • Supervised Exchanges • Parallel Parenting Service Coordinator & coordination	Goal: (in families experiencing domestic violence) stop the violence Focus on male violence treatment Step down process in male violence treatment to ensure safety of children

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This next chapter will take a more critical view of child custody decision-making, using power

and empowerment as lenses through which to consider the parent experience.

Chapter 7

Discussion – Power and Empowerment

7.1 Introduction

This chapter provides a critical view of the study findings through a discussion of power and empowerment. Through this discussion, I will illustrate that, within child custody decision-making, one‟s capacity for power is affected not just by scope and significance, as suggested by Lukes (2005), but also by the level of conflict and experience of violence. Critical theories, where the theories of power and empowerment are nested, provide an opportunity to gain insight into the parent experience in child custody decision-making. Critical theories challenge knowledge that has been created historically by people in positions of power who have made the rules (Crotty, 2012; Gutierrez, 1994) or, in this situation, the policies that govern child custody decisions. Viewing the findings from this lens provides another understanding of the parent experience of child custody decision-making, putting into perspective their acts of resistance to structural barriers. These acts of resistance, I will show, are avenues for change. Specifically for the findings in this study, these acts of resistance demonstrate a pathway for those with seemingly little power to challenge legislation.

In this chapter, I will discuss the function of power as a capacity. I will consider Canadian social policy on child custody decision-making, for example, to observe how structural practices of power can work, and the reciprocal nature of the impact of power on an individual and structural level, for some of the participants in this study. Further, I will demonstrate the ways in which some participants have become empowered through their acts of resistance. They have increased their power when their personal safety and the safety of their children are in conflict with our Canadian social policy on child custody decision-making.

First, I remind the reader of Canadian social policy in child custody decision-making. In Chapter Two, there is a discussion of provincial legislation in Ontario that states that both parents have equal entitlement to custody of their children (CLRA, 1990). Some researchers have argued that the social policy goal in Canada for child custody decision-making reflects the intent for both parents to maintain meaningful relationships with their children through frequent and meaningful access (Jaffe 2014; Pruett & DiFonzo, 2014). Frequent and meaningful contact between children and parents is reflected in the Divorce Act (1985) and is emphasized further in the Canadian government strategy for child custody reform (Government of Canada, n.d.), which is based on the work of the Special Joint Committee on Child Custody and Access, wherein they recommend favouring shared parenting arrangements (Department of Justice Canada, 2002).

Despite this analysis by Jaffe (2014) and Pruett and DiFonzo (2014), in reality, the definition of "frequent and meaningful" access or contact has been fairly nebulous. Through the lens of power, I discuss the challenges with Canadian social policy for participants in this project who have been in situations of high conflict and domestic violence. I will argue that the expectation for parents to comply with Canadian social policy does not always reflect the realities of today's families and, as a result, can increase conflict between parents and in some situations, increase the risk of harm for women and children.

7.2 Power

In this study, power is considered as a capacity. According to Lukes (2005), looking at power as a capacity helps us to understand the ways in which power is unevenly distributed. I will discuss power as a capacity to, not only make change in one's life, but also to control one's life through resistance (Lukes, 2005). Exercising this capacity, one can feel empowered. Yet, for

some in this study, power as a capacity can also be oppressive. I discuss the ways in which power is experienced by participants in this study, as at once empowering and oppressive.

Lukes (2005) tells us that power as a capacity is unknown and has the potential to be realized or not because it is an action. As an action, it can be exercised or not, depending on one‟s view of themselves in relation to others. Lukes (2005) suggests that one‟s view of one‟s power in relation to others depends on the scope and significance of power. The scope of power includes the context, intention and activities (Lukes, 2005) and addresses the ways in which people are affected by the reach or breadth of power. The significance of power is determined by the outcomes in relation to interests; according to Lukes (1986), the outcomes must serve the interests of the powerful.

Whether or not participants in this project exercise power depends on the degree of conflict (or violence) they are experiencing. In low conflict and domestic violence situations, the parents in this study can feel empowered, as will be discussed next in relation to the themes. They may choose to act on the power they possess and, in exercising power, they experience empowerment.

For the parents who experience domestic violence, prior to their realizing and exercising their power, they have experienced oppression. Specifically, the women have experienced the structural barriers imposed by patriarchy.

Similarly, parents in this study experiencing high conflict do not appear to experience empowerment. Lukes (2005) suggests that people are not able to act on their power because they believe they have less power in relation to others. One reason participants experiencing high conflict in this study may not be able to exercise power is they believe they have less power than their former partner (as discussed in Chapter 4). Additionally, their actions, from a power lens,

may be understood as resistance to Canadian social policy: the challenging realities of everyday life may not be consistent with maintaining a meaningful relationship between children and both parents. To further explore these assertions, I discuss the scope and significance of power's capacity, with specific attention to the themes that have emerged from the participant data.

Context

The first component of the scope of power is the context; the specific circumstances and the range of circumstances in which one can have power. Participants understand that the Canadian social policy goal in child custody decision-making is to maintain meaningful relationships between children and both parents. This creates expectations that parents are able to work together and, if they cannot, they are positioned to resist social policy if they wish to be able to make decisions on behalf of their children.

In the legal context in which participants find themselves, they describe the court as having the greatest power and ability to make decisions which can influence their interests. Within the theme *redefining role,* participants demonstrate that their experiences of their role as parent are influenced by their former partner and the legal process. Their ability to negotiate a desirable custody status for themselves includes not only decision-making capacity (custody) but also time with their children (access). Custody status (sole or joint custody) is a specific circumstance for increasing participants' power through legal means and within a range of circumstances (full custody with various forms of access, joint custody with varying forms of access, no custody with access, and no access to children). Resisting Canadian social policy would require significant resources and, as participants in this study have noted, the legal process can be lengthy, expensive and stressful at a time when their resources are stretched.

Some participants suggest that their former partner has more power than they do because they have money to hire a lawyer, have a more confident or persuasive personality when talking to professionals such as child welfare or a judge, or support from family, friends and professionals: all examples of resources that create power. The partner without access to such resources may experience themselves as lacking in power and feel at a disadvantage. If, for example, a parent wants 50% of the time with their children to reduce their child support costs (or for other reasons) they may argue, through their lawyer, that meaningful relationships can be maintained through a 50/50 or 60/40 parenting arrangement which, in Canada, would still reduce their child support obligation. This increase in time may increase the conflict between the parents and may maintain unhealthy relationships between them, yet is consistent with and encouraged by Canadian social policy.

Participants say they redefine their role as parent upon separation and this continues throughout this varied and unique adjustment period. For participants in this study, then, the context plays a significant role in how they see themselves as having power or not in relation to others, both on a personal level with their former partner and on a structural level in relation to professionals, who can help them align with or resist the Canadian social policy.

Intention

The second component of the scope of power is the intention, the idea that one"s expected outcome is based on one"s power. This is important because the amount of power participants ascribe to others (such as their ex-partner, lawyer, judge, or custody and access investigator) determines how much power the parent thinks <u>they</u> have, and therefore the kind of outcome they expect of their ability to make decisions. This is represented in the theme *importance of agency*.

When participants in the study believe they have input into the decisions that are made about their children, they ascribe less power to others because they expect a more favourable outcome for themselves. For example, participants who describe low conflict in their relationship with their former partner anticipate that both parents will maintain custody and access with their children. From their perspective, they will have the advantage of both input to decisions about their children, and the support of their former partner in parenting. Even in situations of high conflict, the participants have shared that there have been times when the conflict was lower: it was during these times that they were able to have input into decisions about their children. In these circumstances, they say that they are more willing to cooperate with their former partner. Participants are then able to better negotiate with their former partner and focus on the needs of their children instead of including numerous others in the decisions about the children.

This ability to have input into decisions about their children that is described in the theme *importance of agency* is the critical component for participants to be able to share decision-making with their former partner. Some participants equate the ability to have input into decisions about their children with having power: they connect the experience of agency to the holding of power.

Lukes (2002) critiques Hayward when she ties power to agency. Hayward claims that agency tied to power is problematic when power is used to dominate because there is an assumption that those who are dominated cannot navigate the structural barriers (Lukes, 2002). Lukes (2002) does not see this relationship of power and agency as mandatory or vital but proposes that the connection is possible. In the whole group analysis, participant data suggests that agency leads to shared power and that, when power is used to dominate, agency is not achieved. Participants explain that their inability to participate in decision-making or to have input into decisions about

their children results in a belief that they have less power than their former partner. They do not act upon the power they have as they do not think they have power. Instead, external decision-makers are recruited in an attempt to increase their capacity; this has the opposite effect, leaving parents out of the decision-making process for their children.

In situations of high conflict, for example, participants are tied to the Canadian social policy of maintaining meaningful relationships, and battle over the interpretation of what that means, fuelling their ongoing conflict (*the battleground: barriers to shared decision-making*). Yet as will be discussed, some parents are able to navigate the structural barriers once they feel empowered.

One way to interpret high conflict through a lens of power is to look at what parents are being asked to do. Parents are positioned to maintain meaningful relationships between their children and their former partner, sometimes when they hate their former partner, sometimes when they think their former partner is a bad parent, and often they just wish the person would go away forever. At the same time, they say that they <u>wish</u> they had been able to share a relationship with their former partner that would have allowed for a shared parenting arrangement because they would have <u>preferred</u> that their children have two parents and to have support raising the children. This however, is not their reality. And yet they are forced to comply with an order that often maintains the conflict between the parents, known in the research literature as high conflict parents. I would argue that it is the interpretations of what "meaningful relationships" means that creates the challenges and that the ambiguity of social policy positions parents to be at odds through their varied and multiple interpretations.

As discussed in Chapter 2, the interpretation of legislation can lead to challenges. For example, in Australia the Family Law was amended in 2006, including language to support

shared decision-making in child custody (Fehlberg, 2011). This presumption of shared decision-making also came with an obligation to consider whether shared time might be a reasonable child custody arrangement (Fehlberg, 2011). The legislation then became interpreted in the legal community to mean a presumption of shared parenting. This presumption of shared parenting, where children spend significant periods of time with each parent, illuminated the challenges of families experiencing high conflict and domestic violence.

In Ontario, although we do not have a presumption of shared parenting, I would argue that the social policy of "frequent and meaningful access" (Jaffe, 2014; Pruett & DiFonzo, 2014) has been interpreted to mean that a significant amount of access time is necessary for parents and children to maintain meaningful relationships. Thus, the starting point in practice within the legal system becomes strategizing about the ways in which to make this happen. This focus on significant amounts of access time has resulted in court orders that are made by judges in compliance with Canadian social policy, so that lawyers argue for these child custody arrangements and parents are led to believe that these arrangements are the expectation.

Perhaps it is only through the refusal or resistance of parents to comply with these orders that other arrangements are made. Resisting social policy can lead to labels such as high conflict or unfriendly parents, or worse yet, parents with mental health problems (Hughes et al., 2015). Despite not having a presumption of shared parenting in legislation, our social policy, according to Jaffe (2014) and Pruett & DeFonzo (2014), is "meaningful relationship." This undefined term privileges adults in the legal process in a similar way to the Australian experience, straying from the intent of legislation to focus on the "best interests of the child."

Activity

The third component of the scope of power is the activity: Lukes (2005) explains that one's actions gives one power. Participants in this study identify a number of activities that increase their ability to share decision-making, and several other activities that decrease their ability to share decision-making. Sharing decision-making is perceived by many of the participants as increasing their power because they have the support of both parents to provide care for the children and have input into decisions about the children. Although it has a different meaning, sharing decision-making is also consistent with Canadian social policy of maintaining meaningful relationships between children and both parents (Department of Justice Canada, 2002). One could argue that the increase in joint custody orders that is happening in Ontario (Bala, 2014) is a merging of legal custody (decision-making) with access (time) to reflect the social policy of frequent and meaningful relationships. It is not difficult, then, to understand why some participants in the study appear to link the idea of meaningful relationships with children to the time that they spend with them. Although participants say their preference would be for shared decision-making, few are able to achieve this, calling into question the applicability of social policy to the realities of daily life.

Participants who experience violence, for example, may initially believe that sharing decision-making will increase their power and, over time, they come to learn that shared decision-making does not increase their power. In fact, for these participants, becoming aware of their realities allows them to understand their power in relation to others and to exercise it as sole decision-makers, not as shared decision-makers. The goal is not shared decision-making and the focus on protecting oneself is not only appropriate, but also vital.

The activities that can enlarge scope of power for those who have experienced violence include asserting their right and the rights of their children to safety, ending the relationship with their former partner, regaining control over decisions in their life, and setting boundaries on acceptable behaviour. These activities can be understood as challenges to Canadian social policy as they do not necessarily support frequent and meaningful contact between the children and their other parent, and in some situations, are directly opposed to maintaining frequent and meaningful contact between the children and their other parent. These activities are represented in the theme *empowerment in action* and are indicative of responsible parenting. For them, sharing decision-making is not possible, as power is not equal when one partner has misused it over another.

For families who are experiencing a low level of conflict and are sharing parenting, the activities that broaden or narrow the scope of power include input from each parent, good communication, a focus on the needs of children, counselling and education about the divorce process, and support for their ex-partner in parenting. These are represented in the theme *shared decision-making*. For participants who are experiencing high levels of conflict, the control parents believe they have over decisions in their lives can be thwarted. The activities that can expand or narrow the scope of power are represented by the theme, *the battleground, barriers to shared decision-making*. These activities include decisions made alone, poor communication, need to control, focus on the needs of self, and input from outside sources.

Significance

The significance of power can be understood as the degree of power one has and it can be observed by the intention of the outcomes one is trying to bring about. In this way, one ensures that one‟s interests can be maintained through one‟s actions or inactions. Participants experience

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the power of the court as at once the domination of structural practices (oppressive) and as an opportunity to increase their power or interests (empowerment). For example, in situations of violence, the survivor may be forced to maintain a relationship with her abuser through access arrangements for the children, which may be experienced as oppression. At the same time, parents experiencing violence in this study have learned that they can make decisions alone (sole custody), and this custody status can support them in their role of protective parent. This latter situation may be experienced as empowerment.

For these same families, the structural practices can be experienced as oppressive. This is observed in the theme *safely redefining role.* Through both child welfare and legal practices, according to Hughes et al. (2015), mothers are held to a higher standard than fathers to demonstrate their ability to be a protective parent. For example, mothers may be expected to determine on their own if it is safe for their child to attend an access visit, if they are informed by the child welfare agency that the agency does not get involved in custody and access matters. At the same time, the mother is to provide safeguards for the times when a child may not be safe. A participant recounts that a father is not held accountable for attending an access visit while he is intoxicated, even if he is drinking and driving. Instead, when a mother makes a report to the police about the father's state of intoxication, the father is made to leave in a cab by the police. He is not held accountable for his behaviour or for his lack of responsible parenting when the visit does not occur. The child's time with the parent is left to the mother to accommodate. This example illustrates the structural barriers that may maintain men's power over women in a society of patriarchy.

At the same time, the theme *empowerment in action* shows that the significance of power's capacity can be empowering for these parents as they experience the realities of their situation

and make decisions both for their children and their own lives to ensure safety. Their interests are maintained through their choice to remain a protective parent and make child custody decisions alone, without their former partner. They are able to realize power because they can recognize their capacity in relation to others. In this study, that means the participants who have experienced violence are able to recognize their former partner as a danger and, by removing themselves from the situations of violence, they are able to realize power. The significance of power's capacity, then, is in motion because the parents have been assigned custodial status of the children, have gained awareness of their situation, and have acted upon their power to continue in their role of protective parent.

As Lukes (1998) describes when he discusses interests, the outcomes need to serve the interests of the powerful. Participants describe the court as having the most power. In this study, participants also say that those who have custody would have to be the most powerful, with access to the most resources. Yet, the participants in the sub-group analysis who have experienced violence, who have experienced powerlessness, are all women and yet have custody of their children. These are not typically individuals whom one would consider as the most powerful within a patriarchal society. These participants have gained power through the court and through their legal status have increased their power within the family context. They are not the most powerful in society, and yet these participants can increase their power through their actions: they have learned to navigate the structural barriers. They have increased their capacity for power through their acts of resistance to a Canadian social policy that appears not to make sense for their life experiences. They are not prepared to sacrifice their safety and the safety of their children to comply with a policy that supports contact that does not ensure safety.

A further view of the ways in which the significance of power can work can be observed by the participants who are low conflict and for whom Canadian social policy makes sense. They have chosen to work together with their former partner to maintain meaningful relationships between the children and both parents because it is safe and practical to do so. Social policy, for these families, supports their desires and their abilities because they do not face the same degree of barriers as families experiencing violence. Thus, their power is reinforced by a policy that supports them.

Participants experiencing high conflict, however, may be in conflict with Canadian social policy. Requiring such families to share custody when it is damaging to relationships may lead them to continue to return to court in hopes of changing their child custody status. When they are not in agreement with their former partner, the court makes a ruling in line with Canadian social policy. Engaging in conflict may be a natural reaction for those attempting to maintain meaningful parent-child relationships. At the same time, parents may be pathologized when a policy prescribes an expectation that they get along on behalf of their children.

For the participants in this study, their capacity for power is not only determined by the scope and significance of power (Lukes, 2005), but also by the level of conflict and the experience of violence, and Canadian social policy's appropriateness to their situation. Some participants in this study have an ability to shape and control their lives consistent with the apparent expectations of policy. For these participants, they have experienced a sense of empowerment.

7.3 Empowerment

The study findings suggest that empowerment can be achieved for some parents in the process of child custody decision-making. Women experiencing violence, for example, can achieve empowerment in child custody decision-making, as is evident in the subgroup analysis.

This is true at the same time as it is true that experiences of violence can result in women being silenced in a patriarchal society. The women in this study have demonstrated that they have resisted de-gendering of violence. They have also suggested that, in child custody decision-making, shared parenting can privilege one gender. Both of these points are discussed below.

Developing a critical consciousness means becoming aware of the causes of your challenges, and framing them as something beyond personal failings, such as gender or structures; this can happen through collective or shared experiences with others (Gutierrez et al, 1998). Developing a critical consciousness can be an important part of the ways in which participants in this study redefine their role as parent. The women in this study who have experienced violence have developed a critical consciousness: an awareness of their realities in relation to their former partner, to people in positions of power (professionals), and to the structures that maintain power (Canadian social policy on child custody). Additionally, when participants are successful at safely redefining their role, there is an impact on *survival strategies*, as their new awareness that has been transformed through their critical consciousness allows them to rely less on their traditional survival strategies.

One barrier to consciousness that has been identified by GlenMaye (1998) is that many in society believe women are not an oppressed group. Additionally, the author suggests that oppression for women has common elements for all women including "the service of men and men"s interests as defined by men" (p 31), as well as diverse elements, such as race and class (GlenMaye, 1998). Identifying oneself as part of an oppressed group can leave women feeling vulnerable, and naming an oppressor can leave women as a target to be categorized as "male-bashing" (GlenMaye, 1998).

In this study, the women in the sub-group analysis say that being identified as a "victim" of domestic violence can position them as vulnerable; for example, at risk for losing their children. This vulnerability can leave them fearful because the result may be that others perceive them as a non-protective parent. This fear and susceptibility is illustrated in the theme *safely redefining role*.

A woman who has experienced domestic violence may initially experience a sense of blame for the abuse. When she reaches an awareness of her reality, that indeed she is not responsible for the violence, she may decide to begin life anew. This has been the action of the women in this study, and this might include leaving the relationship with her former partner. This new awareness allows her to reconstruct her understandings, no longer seeing her situation as personal failings but rather a result of patriarchy. Recognizing the unjust treatment can allow shame to dissipate and may serve as a catalyst of action as is reflected above from the theme *empowerment in action*. Achieving empowerment can be challenging for these women when their former partner's behaviour has had the intent of silencing them, yet each of them has taken action.

Silencing women

In this study, the five women who have experienced violence have all taken action, challenging male power in a patriarchal society, what I will refer to as structural barriers. They have resisted the Canadian social policy of children maintaining meaningful relationships with both parents and illuminate that social policies on child custody are in need of reform in situations of domestic violence. For these women, maintaining meaningful relationships for the children with both parents would mean putting both themselves and their children at risk of harm. They have also left their violent situation, resisting the notion that male violence is

acceptable and that they are dependent on a male to survive. These actions highlight some of the structural barriers that have silenced women.

The women in the study share the ways in which they have been silenced, for fear of how those in positions of power will respond to them. When children are harmed, women are blamed for not protecting them rather than men being held accountable for their violence (Hughes et al., 2015). Challenging the oppressive structures in contradiction to legal advice, as some women in the study have done by refusing to agree to sharing custody, or refusing to allow access when safety is a concern can help women begin to shift the relations of power.

According to GlenMaye (1998), women can change their conditions of oppression when they believe in their power and act on their ability to protect both themselves and other women from harm. Despite the risks described above, the women whose voices are represented in the sub-group analysis have taken responsibility for themselves and their children through action to change their situation. This is observed in the theme *don't want shared decision-making*. Through their developing awareness that their former partner would not participate as a protective parent, they have made a decision to parent without him, seeking sole custody of their children and making decisions alone. These acts of resistance have encouraged the people in positions of power to pay attention to their voice, to their story and to their situations of violence.

Over time, these women have received support from the court and for some, the child welfare authorities, to parent alone. This act of resistance to gender norms displays their belief in their right to be treated with respect and dignity. Support from professionals, some researchers say, means accepting survivors'' expressed safety concerns for their children and eliminating an expectation of trust between parents who have had no history of trust (Jevne & Andenaes, 2015; Kitterod & Lyndstad, 2012).

Resisting de-gendering

The survivors of violence in this study have resisted de-gendering domestic violence in a number of ways. First, the women have safely left the relationship. They have not become physically violent individuals in retaliation to the ways in which they have been treated (Mann, 2008). Second, they demonstrate citizenship through their role of protective parent; that which Mann (2008) refers to as responsible parenting without resorting to coercion, intimidation, bullying or violence. These women have safely removed their children from the violence and have requested sole custody through the court in an attempt to prevent further conflict through the violent partner‟s contributions to decision-making. Third, the women participate as responsible citizens through cooperative engagement in the court process, child welfare, shelter and counselling services. They make attempts to negotiate with their former partners and follow the rules as set out in the legal process. In this way, they continue to act in the role of protective parent by modelling non-violent interactions for their children (*empowerment in action*). One way in which participants experience differs from Mann‟s (2008) analysis is regarding the notion of gender bias in shared parenting.

Shared parenting privileges one gender

Men‟s advocacy groups have argued that a presumption of shared parenting avoids privileging women in the way in which they believe a presumption of the "tender years" doctrine or the "best interests of the child standard" have done (Kruk, 2013). The idea that shared parenting will privilege one gender has some merit based on the findings in this study. The privileged group would be men. Mann (2008) finds that men‟s groups criticize feminism for portraying domestic violence as gender specific, incorrectly in their view. These same men‟s

groups suggest that anti-domestic violence interventions promote hatred of and bias against men (Mann, 2008).

The men's advocacy groups continue to argue for shared parenting. Perhaps it is their perception that shared parenting is already our social policy, which would justify their pronouncements about gender bias when they are not successful in their demands for 50% of parenting and decision-making. Kruk (2013), for example, argues for father's rights to parent except when there are criminal charges, despite leaving burden of proof with survivors.

The women in this study who have experienced physical violence say that they would have liked their former partner to get treatment for violence so that they could participate in child rearing. In other words, these women would have preferred shared parenting if their circumstances were different and their former partner was not abusive. The women in the sub-group analysis wanted their former partner to receive treatment; they supported anti-domestic violence interventions so that they too might have a non-violent life which is different from the criticisms that Mann (2008) presented in her article. The women in the sub group analysis wanted their former partner to receive treatment. Shared parenting does not privilege women, nor does it reduce the bias that men's groups say privileges women. It does privilege men, as domestic violence is male violence and a presumption of shared parenting would ignore male violence, an act of privileging men. This project illustrates through the women who have experienced violence that contrary to Mann's (2008) analysis, gender bias is experienced differently for the women than as expressed through the arguments of the men's advocacy groups.

The women in this study who have experienced abuse are not seeking sole custody because they hate men. They are seeking custody to maintain safety for themselves and their children. A

claim of male bashing denies the realities of the violence these women have endured. Consequently, it also justifies a lack of response to this very serious societal concern, supporting the reproduction of structures that maintain violence. The theme, *don't want shared decision-making* summarizes awareness on the part of these women that their former partners must become responsible parents able to participate in a shared parenting arrangement. To do so, their former partner must have access to and participate meaningfully in treatment services that will allow them to change their thinking and end their violent behaviour. Additionally, the women also illuminate that violence can be met with silence unless and until those experiencing the violence are able to help those in power recognize what is happening. Legislation that assumes children will maintain meaningful relationships with both parents can maintain male power over females. Legislative reform needs to consider the ways in which male power is maintained and consider instead the needs of children over the rights of adults.

7.4 Summary

This study has some teachings about power and empowerment in child custody decision-making. First, Canadian social policy in child custody decision-making can set up unrealistic expectations for some parents who are ending their relationship. Daily life can be really challenging when parents separate. The goal of maintaining meaningful relationships among children and their parents in the midst of the turmoil that families can experience when they separate may not be reasonable, and for some families experiencing high conflict, not possible.

Participants experiencing domestic violence have illustrated that they can resist Canadian social policy on child custody to keep themselves and their children safe. They can gain power through resistance of the social policy, but require resources to do so. In addition to resources, they need the support of people in positions of power to align with them in their effort to be a responsible parent and that might include parenting alone.

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Finally, participants who experience low conflict with their former partner share in common with the general population of divorcing parents an ability to make decisions together. For these participants, they have learned to adjust to the expectations that they will work together on behalf of their children and appear to have the resources to do so.

Chapter 8

Implications and Conclusions

8.1 Introduction

In this final Chapter, I present the implications of this study for policy, practice and research. The recommendations are made in each of the following areas: policy – best interests of the child and employment policy; practice – community coordination among sectors and services, education for parents and professionals, and parenting coordination; research – generalizability, and reduction of male violence. Some limitations to this study are presented next. Finally, I present conclusions.

This project has been a very interesting journey, revealing much about the ways in which the participants perceive and experience child custody decision-making. Participants have shared their experiences through their stories, which will contribute to the research literature. This study has situated that which traditionally might be considered marginalized knowledge, arising from parents" everyday experiences, not from professionals in the field of child custody, but from parent voices themselves, and has centered this knowledge. I have explored the parent experience through the lenses of power, empowerment in child custody decision-making. Through this project, I have had the privilege to learn about these experiences for eighteen parents with varied custody statuses.

The data analysis from the full participant group has been followed by a second analysis of a sub-group of participants. This sub-group consists of women who have experienced physical violence from their former partner. The difference in the two analyses is apparent when violence is a factor in the relationships, as safety becomes the primary concern of the women. The two analyses highlight the similarities and differences between groups of participants in the study.

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These are presented in Table 9 towards the end of the chapter as recommendations for policy, practice and research.

8.2 Study Contributions

This study has made a number of contributions to the knowledge in child custody decision-making. First, this is the first time that parents accessing court services have been asked about their perceptions and experiences of child custody and access specific to shared decision-making. The thoroughness of the member check process added strength to our understanding of the parent experiences. Indeed, the member check comments highlighted the need to further review the data when some participants suggested the analysis did not fit with their experiences.

Second, this study supports the suggestion by Fidler et al. (2008) that a focus on safety-based decisions is necessary in families experiencing violence and not in high conflict families. The participants in this study have been clear that, when violence is present, safety is the top priority. In high conflict situations without violence, redefining who one is as a parent in a new family situation is paramount. For families experiencing violence, both of these processes are happening at the same time. They are redefining their role as a parent but in the context of keeping themselves and their children safe.

Third, this study differentiates interventions in three areas: low conflict, high conflict and domestic violence. This act of separating out high conflict and violence in families has not been done in recruitment of distinctive groups of parents in child custody research and is important because of the differentiated interventions that are required for each type of family situation.

Lastly, this study identifies that those who commit violence require treatment and a monitoring system for accountability: in families where there has been violence (different from those where there is high conflict without violence), there cannot be a presumption of shared

parenting in legislative reform. Unlike in situations of high conflict, when there is violence, the focus is not on helping parents to communicate. The focus when violence has occurred is on help for the person who has abused (usually the father) to change, and on policies and practices to protect the mother and children physically and financially. A coordinated community approach can facilitate a system of monitoring and accountability (Ministry of Public Safety and Solicitor General, 2010).

The participants in this study constitute three groups: families experiencing low conflict, families experiencing high conflict, and families experiencing domestic violence. Differentiating these three groups of parents helps to identify important considerations for each group of participants. These are presented below.

8.3 Implications and Recommendations

The following recommendations are made for policy, practice and research. These recommendations reflect the findings from this study and are presented as follows. Recommendations for policy include two areas, the "best interests of the child" standard and employment policy. Recommendations for practice include community coordination among sectors and services, education for parents, education for professionals, and parenting coordination. Recommendations for research include studies that address generalizability of study findings and reduction of male violence.

Recommendations for policy.

Best interests of the child

In Ontario and in Canada, the "best interests of the child" standard is the only legal presumption in child custody decision-making (Divorce Act, 1985; CLRA, 1990). This means that judges in each province or territory are to be guided by their jurisdictional "best interests of

the child" factors when making custody decisions. As has been discussed, child custody legislation endorses frequent and meaningful access between children and both of their parents and links this kind of arrangement with the "best interests of the child" standard. The starting point in child custody decision-making in Canada, then, is that children require frequent and meaningful contact with both parents to ensure their interests are achieved. Thus, there has been an increase in shared custody decisions in more recent years (Bala, 2014; Statistics Canada, 2012).

Recommendation #1

The "best interests of the child" standard must remain the legal presumption in child custody decision-making for families experiencing high conflict and families experiencing domestic violence.

As mentioned earlier, currently, courts recognize the "best interest of the child" as the legal presumption in custody and access decisions. The "best interest of the child" standard must remain as the legal presumption in situations of domestic violence and high conflict. Further, domestic violence ought to be a determining factor in the "best interest of the child" standard in awarding custody and access arrangements: time spent with the child and decision-making about the child. In other words, maintaining safety of the mother and the child must take precedence when determining "best interest of the child."

In this study, participants experiencing domestic violence do not endorse a legal presumption of shared decision-making or shared parenting. Safety of the non-offending parent (most often the mother) and children must be the priority; thus, when there is violence, the "best interest of the child" standard would mean that child custody is awarded to the non-offending parent, as they have acted in the role of protective parent.

Physical safety of mothers and children as well as financial security in the immediate and longer term is required when parents separate. Policy must reflect these realities and they ought to be considered as factors in child custody legislation to reflect the "best interests of the child." For example, in British Columbia, the "best interests of the child" standard in the Family Law Act (2011) includes as one of the four determining factors the nature of the impact of family violence on the child. Under this new legislation, the court can make a Family Law Protection Order that can be reinforced through the criminal court system (Family Law Act, 2011).

In Ontario, by comparison, the court decides if incidents of domestic violence are relevant to a perpetrator"s ability to parent (CLRA, 1990). Therefore, domestic violence may or may not be considered by the court as a factor in Ontario"s "best interests of the child" standard (Appendix D). The federal Divorce Act (1985) as well as other provincial legislation ought to follow British Columbia"s lead to keep women and children safe.

At the same time, policies must address the financial situation in which the child will be living while custody and access arrangements are being sorted. For example, enforcement of child support payments is required immediately upon separation to allow the needs of the children to be addressed until a more detailed review of each parents" financial situation can be processed.

To promote the safety of women and children, policy ought to require that violent men attend treatment programs prior to the commencement of access with the child. This is important given the high risk of abuse to children by violent parents (Bancroft & Silverman, 2002; Johnston & Ver Steegh, 2013), as has been discussed in Chapter 6. For example, violent parents can be required by the Family Law Protection Order in British Columbia (mentioned above), to attend

treatment prior to access arrangements with the children. Additionally, treatment for male violence must be monitored and include a mechanism for accountability.

Perpetrators of violence must have access to programs that offer treatment and education about power and violence. The expected outcomes for these individuals must include that they demonstrate respectful relations and stop violent behaviour. Bancroft and Silverman (2002) suggest that, to do this, programs require a focus on helping the perpetrator to: 1) become a responsible and safe parent taking ownership for abusive behaviour and decisions to abuse; 2) demonstrate empathy for survivors; 3) illustrate an awareness of entitled attitudes; and 4) exhibit a commitment to avoid future abuse.

For the families experiencing high conflict in this study, the "best interests of the child standard" and the present policy expectations (frequent and meaningful contact with both parents) are not realistic and achievable. Parents are expected to achieve a level of cooperation that may not be possible, particularly when they are struggling in their interpersonal relationships. Participants" stories suggest that the lack of clarity in present child custody legislation (the best interests of the child standard) can escalate conflict between parents.

According to the parents in this study, shared decision-making (which is required in shared parenting arrangements) appears to only be possible when parents can focus on the needs of their children first. As such, a presumption of shared parenting for families experiencing high conflict can only be supported once parents demonstrate an ability to reduce their conflict and improve their positive communication skills, conditions they say are necessary in order to focus on the needs of children. This is supported by a most recent study where Birnbaum et al. (2016, Feb) suggest that shared parenting may not be appropriate for family court litigants who experience high conflict because of the complexities of their situations.

Findings from this study suggest that policy reform should not include a presumption of shared parenting for families experiencing high conflict: in their conflict, they are not ready for a shared parenting arrangement. A presumption of the "best interests of the child" standard in situation of high conflict ought to remain the legal presumption. This is supported in Whitehead"s (2015) recent study of the adults" recollection of their childhood shared parenting arrangements. Most of the study participants said their arrangements require flexibility to more accurately meet their changing needs (Whitehead, 2015), something families experiencing high conflict struggle to achieve.

Recommendation #2

A presumption of shared parenting can be included in legal reform for families experiencing low conflict.

Parents experiencing low conflict constitute the majority of separating and divorcing families today (Bala, 2014; McIntosh et al., 2010; Neilsen, 2013). According to the experiences of participants in this study, a presumption of shared parenting and shared decision-making is reasonable for parents who do not experience high degrees of conflict because they appear to be able to focus on the needs of their children while making child custody arrangements. Sometimes, parents in low conflict situations are able to make their own arrangements, without intervention of the court.

The Family Law Act (2011) in British Columbia provides for arrangements made outside of the court in these situations to hold as much weight as a court order. In Ontario, parents receive information through programs such as the MIP sessions that can provide them with information about the legal process and the impacts of separation and divorce on adults and children, while informing them of available community services that can assist them through this difficult

adjustment period. Families in low conflict situations can manage a presumption of shared parenting and shared decision-making and would have security of knowing their agreed upon arrangements are recognized and supported by the legal system.

Recommendation #3

Policy reform on child custody arrangements ought to include language that identifies access as parenting time and custody as parenting responsibility.

Some participants in this study suggest the language of custody and access be amended to include parent friendly language and avoid the terminology of custody and access. This suggestion is similar to the ideas of parenting time and parenting responsibility referred to as shared parental guardianship, now part of the legislation in British Columbia (Birnbaum, Boyd, Bala & Bertrand, 2014). This focus on parental responsibility is supported by participants in this study. For example, participants who have experienced violence say that they need support to be a protective parent, while participants who have experienced high conflict say that they require support to reduce the conflict between themselves and their former partner in order to focus on the needs of their children (an indicator of parental responsibility). Focusing on "parental responsibility" highlights the actions that the parents need to take in order to meet the needs of their children and is, thus, consistent with the "best interests of the child" standard.

Employment policy

Canadian child custody legislation facilitates, for many parents, the maintenance of an ongoing relationship with their former partner, with an expectation that parents will contain their ill feelings for the other parent, in the name of "the best interests of the child." Parents in this study have indicated that they require supports to facilitate this expectation. Parents need time to

participate in services without the added financial stress that can be associated with time away from employment.

Recommendation #4

Employment policies need to be flexible to allow parents opportunity to attend services that can help them focus on the needs of their children and reduce the conflict between the parents.

Separating and divorcing parents require opportunities to participate in services that can help to reduce the adult conflict and support families without the imposition of a larger financial strain. As such, policies must ensure that parents cannot be penalized through loss of employment or wages to attend sessions that may be offered during the work day, such as mandatory information, parenting coordination or positive parenting programs such as Triple P.

A few jurisdictions in Canada, such as British Columbia, New Brunswick and Prince Edward Island have included family responsibility days in their Employment Standards Act (The Institute for Professional Management, 2015). These family responsibility days allow parents to have unpaid time away from work without penalty of job loss: three days in New Brunswick and Prince Edward Island, and five days in British Columbia (Ministry of Jobs, Tourism and Skills Training and Responsible for Labour, n.d.). Paid family responsibility days would make it more affordable for parents to attend activities related to the separation and divorce, such as court (as suggested by a study participant), or to attend services that can help to resolve the parental conflict and focus on the needs of the children. Therefore, all Canadian jurisdictions ought to implement three to five paid family responsibility days for employees per year.

Recommendations for Practice.

Community Coordination among sectors and services.

All participants in this study spoke of the challenges that they have faced trying to navigate the complexities of the legal and social service sectors in the midst of child custody decision-

making. The lack of coordinated community efforts in child custody has also been noted by Bala (2014).

Recommendation #5

Service providers in each community ought to develop a coordinated system to improve monitoring, accountability and communication among legal and social service providers.

Bala (2014) reports a lack of service coordination generally among legal and social service providers in child custody arrangements across Canadian communities. More specifically, Jaffe et al. (2008) suggest that there exists a lack of coordination to keep women and children safe from male violence. Many researchers agree further that the legal and social service systems must be coordinated to ensure the safety of women and children (Bancroft, 2002; Boyd, 2015; Kelly & Johnson, 2008). As discussed above, a coordinated effort to keep women and children safe may include monitoring and communication mechanisms to oversee the outcomes of treatment for male violence (Bancroft, 2002; Kelly & Johnson, 2008).

Given the diversity of resources in communities, each community will need to consider the ways to implement such a system tailored to meet their unique needs and resources. Presently, in Ontario, domestic violence program staff report to the court about the offenders" participation in treatment (Ministry of the Attorney General website, n.d.). Also, in the United States, Minnesota and Washington, DC provide coordinated community efforts that include monitoring and accountability of male violence, including as it relates to child custody (Arean & Mederos, 2008). Boyd (2015) suggests that child custody policy ought to reflect a system of monitoring and accountability to ensure the safety of women and children. It is recommended, then, that the current level of accountability expand to include a parenting coordinator who would facilitate communication among the courts, male violence treatment program, domestic violence shelters,

and the supervised access centers. For example, parenting coordinators or child welfare workers must be accorded authority through the court, in order to monitor the family violence treatment and advise the court on the timing and appropriateness of parenting time arrangements.

Supervised access and exchanges must be part of a coordinated community effort that includes a monitoring of progress and accountability to the courts. Male violence treatment programs must work in collaboration with supervised access and exchange programs as part of the collaborative community effort so that children can remain safe during access visits. Evans (2004) indicates that male violence treatment programs have proven insufficient to provide assurances of children‟s safety during visits. Dunford (2000) suggests that a waiting period is required between the completion of male violence treatment, and the onset of child access, to monitor perpetrators for re-offending incidents.

In situations of domestic violence, community coordination has been found to be a necessary component of protecting women and children, combined with appropriate and effectively implemented policies and protocols (Pence & McDonnell, 2000). Such a community framework exists in British Columbia, based on eight principles that utilize a gender lens to respectfully support survivors, provide best practice strategies for treatment, provide mechanisms for monitoring and accountability of male violence, and ensure communication among service providers (Ministry of Public Safety and Solicitor General, 2010).

Community coordination efforts can provide information and education about issues affecting separating and divorcing families. Fotheringham, Dunbar & Hensely (2013) say that organizations providing services to separating or divorcing high conflict families or those who have experienced violence often lack the information that they require to effectively support the families (Fotheringham, Dunbar & Hensley, 2013). These organizations may include domestic

violence shelters and treatment programs, child welfare organizations, children's mental health

organizations, and supervised access programs. Additionally, the authors indicate that members

of the judiciary, family lawyers, law enforcement personnel, and mediators are often placed in

the position to influence or make decisions about child custody with insufficient information

about situations of high conflict or domestic violence (Fotheringham, Dunbar & Hensley, 2013),

or about the needs of children (Hensley & Dunbar, 2011).

Community Collaborations

Community collaborations can be tailored to meet the unique needs of communities and are

one way to achieve community coordination. They are comprised of community members with a

common agenda pursuing shared decision-making and developing strategies to help influence

policy (Raynor, 2011). Community collaborations aimed at improving coordinated efforts in

child custody arrangements would be comprised of service providers from the legal and social

service fields collaborating to increase coordination, to monitor services, to create a system of

accountability, and potentially be in a position to influence policy.

Raynor (2011) suggests that community collaborations have been effective at advocacy

efforts and can be an effective advocacy strategy by implementing "issue analysis, organizing,

raising public awareness and lobbying" (Raynor, 2011, p 6). Advocacy about high conflict and

domestic violence within separating and divorcing families may be helpful by influencing

legislative reform that is focused on the needs of children and that will help to keep women and

children safe.

Supervised Access and Exchange

Tutty, Barry, Weaver-Dunlop, Barlow, and Roy (2006) found that, in situations of domestic

violence, the provision of supervised access is vital. This requirement appears to be supported by

Bancroft and Silverman (2002) and Johnston and Ver Steegh (2013), who have identified a high

risk of abuse to children by perpetrators of domestic violence. In Ontario, supervised access

programs, funded by the Attorney General, are available in each court district, although this is

not the situation in all provinces.

Families experiencing high conflict require supervised exchanges to help shield the children

from the adult conflict. Jaffe et al. (2008) suggest that supervised exchange combined with a

parallel parenting arrangement (in which each parent has decision-making abilities while the

child is in their care), can be helpful in reducing conflict opportunities for families experiencing

high levels of conflict. Exchanges can move to unsupervised once the parents achieve a level of

civility between them and are able to parent cooperatively and share information about the

children. Supervised exchanges can support parallel parenting arrangements, which could be

facilitated with or without a parenting coordinator.

In Ontario, the Ministry of the Attorney General funds the provision of supervised access

centers in all court districts in the province (Ministry of the Attorney General, 2016). These

centers provide supervised access and exchanges and function in a manner to facilitate the safety

of women and children during visits and exchanges. All referrals are screened for male violence

and separate entrances and times are used to ensure safety (Ministry of the Attorney General,

2016). The staff employed at the Supervised Access Programs can play an important role in

sharing critical information about the visits and exchanges for those in positions of influencing

child custody decisions. For example, connections should be maintained with the legal

community in situations of high conflict, and with child welfare workers for families

experiencing male violence. Based on the above information, the following recommendations are

made for staff working in Supervised Access Programs.

Recommendation

Coordinate with legal services, and child welfare.

Staff at the center needs to provide information to lawyers representing families who attend the program, child welfare workers, and parenting coordinators. For example, they can share the visit and exchange notes to inform lawyers about the family participation and response to supervised access service. Additionally, in situations where families are experiencing domestic violence and high conflict, staff should contact the child welfare authorities to inform them of the possible risk of harm to the child.

Providing information to the court can better inform judges about the family experience and alert them to concerns of ongoing violence and conflict. This is important because judges are in the position to make decisions about child custody arrangements. Kelly (2010) suggests that there is a perception by judges that supervised access, even in situations of male violence, is in the child"s best interests, despite a lack of evidence to support this position.

Education for parents and professionals.

Participants in this study have described information and education that they believe would be helpful to them in navigating child custody decision-making. Additionally, based on participant experiences, it is apparent that professionals in the legal and social service fields also require education. The following recommendations focus on the areas of education that are necessary for parents and professionals.

Recommendation #6

Mandatory education for parents experiencing separation and divorce is vital.

Presently, child custody legislation in Canada requires frequent and meaningful contact for the child with each parent, facilitated by the parents (Bala, 2014), and there is an increase in

shared parenting arrangements ordered through the courts (Bala, 2014; Statistics Canada, 2012). Families in this study experiencing high conflict suggest that a mandate to share parenting requires support. The majority of participants in this study suggest that, together with their former partners, they experience few problem-solving skills, poor communication, and few if any, opportunities to experience shared parenting. Specifically, participants in this study illustrate the importance of support and education in the following areas: the impact of divorce on children, unique access arrangements, information about the legal process, and communication strategies with their former partner. The Four Pillars that have been implemented in Ontario (MIP, dispute resolution officers, information and referral officers, and mediation) address some of this. Yet, participants in this study suggest that further service is required, particularly for parents to reduce their conflict. Further, parents may find Triple P, an effective community parenting program with a specific program to focus on separation and divorce (Saunders, 2009), to be a supportive program for families.

In addition to the treatment and education provided to those who are abusive (discussed above), women need education about the potential impacts of violence on women and children. This would be beyond what is presently being offered in Ontario through the mandatory information sessions. Supportive services for women and children can include counselling or education about the impact of violence on women and the impact of violence on children. To support families through the adjustment period following separation and divorce, and to support women and children, the following recommendations are made for social workers employed in counselling centers.

Recommendation

Assist families to focus on the needs of children.

Participants in this study were very clear in their statements that the conflict between parents is reduced when they focus on the needs of the children. Parents need to appreciate that, even though they may no longer like their former partner, the child may continue to have a meaningful relationship with the other parent. Parents may need help in developing positive communications skills such as sharing information about the children with the receiving parent during exchanges, for example, information about the child's health or events.

Parents also need information about the negative impacts of parental conflict on children so they can begin to discuss strategies to reduce their conflict. For example, it may be helpful to use a communication book or e-mail communication during a difficult phase so that important information about the child is shared. This may also help to limit communications between the parents to topics relating to the child. Parents need to be encouraged to focus on enjoying their time with their child and avoid engaging the child in conversations about the other parent.

Triple P, a positive parenting program, is being utilized in many communities as a public health approach to reducing prevalence rates of inadequate parenting at a whole population level (Stallman & Sanders, 2009), and is offered in the community in which this study occurred. As noted in Chapter 2, Triple P is an evidence-based parenting program that has illustrated effectiveness as a parenting intervention program. A specific version of Triple P, Family Transitions Triple P, has been developed for parents with children experiencing separation and divorce, and has shown moderately large effect sizes on child behaviour, parent distress and dysfunctional parenting practices (Stallman & Sanders, 2009). This twelve week parenting program is divided into three sections. The first five weeks focus on promoting a smooth transition through divorce by providing education about; putting the needs of children first, being aware of how one's own actions impact children, managing emotions, conflict

management and communication, and balancing work, family and play. The next four weeks of the program, focus on effective parenting strategies including; how to promote children"s development, how to manage common child behaviour problems, and principles to manage high risk situations. The last three weeks include brief weekly telephone consultations for support and maintenance of skill development.

Participants in the study said they need information about various custody arrangements that can be useful for their unique family situation. Exploring possibilities with parents that begin with the needs of the children can help to facilitate a child focused parenting plan. Child focused parenting plans can lead to a reduction in parental conflict (Birnbaum & Fidler, 2005). Additionally, during the initial separation period, counselling can provide support to families by making referrals to community services. For example, many participants discussed the financial challenges that come with separation and divorce. A referral for financial counselling may be of assistance for some families. Additionally, individual family members may benefit from counselling services, either for children or parents. For example, the participants in the study who were survivors of male violence said they appreciated the support that they received from counsellors who were able to help them understand that they were not to blame for the violence.

Recommendation #7

Provide education for professionals working in the field of separation and divorce about family dynamics in situations of domestic violence and high conflict.

Professionals in social service and legal communities need to support women in their role of protective parents in situations of violence (Hughes et al., 2015). Additionally, the acts of resistance demonstrated by women aimed at escaping the violence for themselves and their children require support by the professional community (Hughes et al., 2015). Education for

service providers about domestic violence, and the critical components of successful treatment, can highlight service providers" responsibilities to ensure the safety of women and children. A similar recommendation has been made from the Special Joint Committee on Child Custody (Department of Justice Canada, 2002) and has been acknowledged through the Canadian Government Strategy for Child Custody (Government of Canada, n.d.); yet, a strategic effort to facilitate training for legal and social service professionals working in the field of child custody has not occurred. As a result, it is recommended that counselling professionals, parenting coordinators, child welfare workers, lawyers and judges receive information about the impact of domestic violence on women, so that they can support women to be protective parents and appropriately monitor the perpetrator treatment and the appropriateness of access with the children.

Local expertise can be used when available and external trainers can be invited into communities when necessary. For example, service providers need to participate in community education sessions both as trainers and participants and begin to challenge the misperceptions that are held about survivors of violence and de-gendering of violence. As is discussed in Chapter 6, training occurs in the United States, and includes judges, lawyers, social workers, shelter staff, treatment organizations, supervised access staff, and parent coordinators.

Education for judges and lawyers can influence the decisions and the functioning of the legal system in issues relating to custody and access. In her study of judicial orders for supervised access, Kelly (2010) finds three themes emerge representing judicial assumptions that impact their decisions about access to non-custodial parents even in situations of male violence: 1) legislative regime requires access; 2) supervised access is in a child"s best interest; and 3) access is a child"s right. Kelly (2010) explains that these themes suggest that judges believe: 1) children

must have access with both parents to comply with legislation; 2) supervised access ensures children and mothers are safe, and that contact between fathers and children is in the best interests of children; and 3) children's right to access is necessary even when children oppose access so that the children's right becomes the access parent's right to access. The author indicates that judges inappropriately interpret research that they cite in their judgements to support these beliefs. To provide judges and lawyers further information to inform their decisions, the following recommendations are made.

Recommendation

Judges and lawyers should encourage a collaborative process for families in child custody decision-making while seeking information pertaining to type and level of conflict experienced by women and children.

Judges and lawyers should continue to encourage and support parents to participate in the mandatory information program as soon as possible following separation. Many participants in the study indicated the importance of timeliness for receiving critical information to help them to navigate what they describe as a complex legal system, and to consider the impact of the separation on them and on their children. Additionally, it is important for judges to receive information from community providers to inform their decisions about child custody arrangements. For example, it is important that judges be informed about the realities of the parent and child experience with supervised access and exchanges, particularly in situations of male violence when the "best interests of the child" may be overshadowed by the best interests of the parent (Kelly, 2010).

Given the interdisciplinary nature and complexities involved in child custody decision-making, the following recommendation is made for all professionals working with children and

families including social workers, lawyers, judges, shelter and treatment agency staff, and parenting coordinators.

Recommendation

All professionals working with children and families should participate in training in the areas of high conflict and domestic violence.

Professionals need to be positioned to better support families. Given the large percentage of families who are impacted by separation and divorce, and the significant percentage that experience high conflict and male violence, there needs to be an appreciation for the differentiated types and levels of conflict that families experience. Additionally, education for social workers should include a course on working with children and families experiencing separation and divorce and include information about high conflict and domestic violence. This might be part of a course in social work curriculum on working with families.

One way to encourage a critical dialogue about child custody decision-making in the community is through participation and membership in associations related to the field, such as the Association of Family and Conciliation Courts (AFCC). This group offers conference presentations on the most recent research and also provides workshops on issues of concern to practitioners including judges, lawyers and social workers. AFCC is an international organization with chapters in many Canadian provinces (AFCC, 2015).

Parenting coordination.

Based on the experiences of participants in this study, parenting coordination appears to be an important component to helping parents navigate the complexities of child custody decision-making. This is especially important for the participants experiencing high conflict and those experiencing domestic violence.

Recommendation #8

Parenting coordination must be a mandatory service for families experiencing high conflict and families experiencing domestic violence in situations of separation and divorce.

Parenting coordination has been shown to reduce conflict between parents experiencing high conflict (Coates et al., 2004; Emery & Emery, 2014; Mitchan-Smith & Henry, 2007). As noted in Chapter 6, parenting coordination can serve a number of functions, including counselling, mediation, communication and parenting skills, conflict resolution strategies, and education about children"s needs, while also bridging court services (Mitchan-Smith & Henry, 2007). Examples of parenting coordination services can be found in the United States (Arean & Mederos, 2008; AFCC, 2003) and also in some Canadian jurisdictions such as Ottawa and Toronto (Linton, 2011).

Carter (2011) states that parenting coordinators need skills in the following areas: mental health, evaluation, mediation, education, case management and domestic relations law. This is consistent with recommendations from study participants who indicate that they need information on varied access arrangements, positive communication skills, child-focused parenting plans, the impact of divorce on children, and service coordination. According to Emery and Emery (2014), parenting coordinators can help families experiencing high conflict to navigate child-centered parenting plans through the development of communication skills. In a most recent study of 1000 Ontario court files Birnbaum et al. (2016, Feb) note judicial support for ADR strategies. For example, the authors find that courts order shared parenting in 30 % of litigated situations and recommend these families engage a parenting coordinator and attend mediation for future dispute resolution (Birnbaum, Bala, Polak & Sohani, 2016, Feb).

AFCC (2005) has developed guidelines for parenting coordinators and has also suggested four modules of training in the following areas for parenting coordinators: parenting coordination process, family dynamics in separation and divorce, parenting coordination techniques and issues, and court specific parenting coordination procedures. These training modules can assist communities to develop parenting coordinators.

Birnbaum and Fidler (2005) assert that parallel parenting may be a very good option for families experiencing high conflict as it provides parents an opportunity to maintain the role of responsible parent, particularly for those who have not yet learned to manage the conflict with their former partner. Several participants in this study noted the need for this sort of assistance. Therefore, parenting coordination should be adopted as one of the mandatory services for separating and divorcing families experiencing high conflict, with the option of parallel parenting arrangements.

Parenting coordinators ought to contribute to the coordination of legal and social service systems related to male violence and monitoring and accountability of the perpetrator, as discussed above (Bancroft, 2002; Kelly & Johnson, 2008). For example, the parenting coordinator would report to courts on the attendance and outcomes of treatment.

As noted previously, parents experiencing low conflict comprise the majority who are experiencing separation and divorce (Bala, 2014). Parenting coordinators should be available, but not mandatory, for parents experiencing low conflict who wish to utilize these services. Presently in Ontario, social workers employed through the Office of the Children‟s Lawyer (OCL) provide investigations and recommendations to families and the court regarding child custody arrangements (Ministry of the Attorney General, 2015). These social workers appear to be positioned to provide parenting coordination services, given their ongoing training in the areas

of high conflict and male violence. Families who qualify for services by OCL are characterized as experiencing high conflict, and some, domestic violence (Ministry of the Attorney General, 2015). The following recommendation is made to expand the role of OCL investigators to include another function; parenting coordination for families experiencing high conflict.

Recommendation

The Office of the Children's Lawyer should expand their services beyond investigation and include a parenting coordination function for families experiencing high conflict.

As noted above, AFCC has taken the lead in providing training in the area of parenting coordination and would be an appropriate partnership for OCL in training their social workers. Some of the functions social workers would carry out in the capacity of parenting coordination include assisting families experiencing high conflict and domestic violence with services such as counselling, mediation, communication and parenting skills, conflict resolution strategies, and education about children‟s needs, while also bridging court services (Carter, 2011; Mitchan-Smith & Henry, 2007). Many families in this study spoke of the need for systems and emotional support, and skill development and education, such as might be provided through a parenting coordinator. Additionally, researchers in this area suggest parenting coordination can facilitate child-centered parenting plans that may include parallel parenting for families experiencing high conflict (Birnbaum & Fidler, 2005).

Recommendations for research.

Although the field of child custody continues to grow in research knowledge, there is still much that is unknown about parents who experience high conflict, parents who experience violence and children under the age of four. Reform to address the circumstances of today‟s

families must be driven by research knowledge. The following recommendations are made to expand our knowledge and inform our Canadian policy decisions.

Generalizability.

Recommendation #9

Conduct a study to test the findings of this exploratory study using a provincially or nationally representative sample and quantitative or mixed methods methodology.

This study uses qualitative methods to understand the parents" subjective experiences. This means the results are not generalizable to the population. Future research that uses a survey or questionnaire applying the study findings would create further understanding of the experience of parents across geographic locations and cultures. If such a study used a representative sample, findings could then be generalized to the population. For example, a national study representative of each of the three groups that have been identified in this exploratory study could uncover the applicability of the general patterns described here, and could compare across the three groups. Findings from such a study have the potential to influence Canadian social policy on child custody.

Trinder (2010) notes that studies have not distinguished low and high conflict families (but should), while Koch and Pincolini-Ford (2006) suggest that parents experiencing high conflict and domestic violence have not been distinguished (but should be distinguished) in study populations. A number of researchers agree that these groups require differentiated responses (Fidler et al., 2008; Trinder, 2010). To focus on differentiated responses, recruitment procedures must include a mechanism for separating out families experiencing violence and by level of conflict. For example, a screening tool for domestic violence would distinguish families experiencing high conflict from families experiencing domestic violence. Similarly, screening

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for level of conflict would help to differentiate families experiencing high and low conflict. These results could be used to further inform policy and practice related to differentiated approaches to custody and access.

Reduction of male violence.

Recommendation #10

Conduct further research to determine the successful components of male violence treatment.

Further research is necessary on male violence treatment programs to determine the effective components of treatment. This research should also help to assess monitoring and reporting systems of coordination among service providers, and educational programs for service providers. Jaffe et al. (2008) have suggested differentially-matched custody arrangements. The relevance of their suggestions needs to be explored through research.

A meta-analysis aimed at comparing different models of treatment for perpetrators of domestic violence has revealed that treatment models for male violence with a systemic or structural focus, such as radical feminist treatment models, are more effective at making change within larger systems or structures in society (Gorey, 2002). The effectiveness of radical feminist treatment models demonstrated both statistical and practical significance; however, the author has noted that the research design at the meta-analysis level (cross-sectional) leads to a strong hypothesis that radical feminist treatment models are more effective with male perpetrators of domestic violence (Gorey, 2002). As a result, Gorey has suggested that well-designed social work research is required to compare varying treatment methods to test the hypothesis that radical feminist treatment methods are more effective than non-radical feminist treatment methods in male violence treatment programs.

The role and service effectiveness of parenting coordinators in the process of child custody decision-making also requires evaluation. This will include process evaluations of the ways in which parenting coordination services are utilized by families experiencing low conflict, high conflict and domestic violence, and outcome evaluations to consider the impact of the service.

The following table provides a summary of the recommendations that have been made for this study.

Table 10 Recommendations for Policy, Practice and Research

	Domestic Violence	High Conflict	Non-High Conflict
Policy	No presumption of shared decision-making or shared parenting Presumption of "best interests" –custody held by non-offending parent Physical safety, financial security Employer friendly policies	No presumption of shared decision-making or shared parenting Presumption of "best interests" Parallel parenting possible Financial security where necessary Employer friendly policies	Presumption of shared decision-making or shared parenting Employer friendly policies
Practice	Treatment for men Suspended access, supervised access in centers with potential for supervised exchanges Service coordinator to monitor and report on progress Support services for women and children Education for service providers regarding domestic violence and child custody	Mandatory Information Programs Mandatory parenting coordination Child focused parenting plans Supervised exchange Education for service providers	Mandatory Information Programs Optional parenting coordination
Research	Treatment outcomes for male violence	Evaluation of mandatory parenting coordinator services	The relevance of parenting coordination services in situations of low conflict families

8.4 Study Limitations

This study has a few limitations. The sample size is small and represents the voices of the eighteen participants; it cannot be generalized beyond these participants. This is particularly so because the participants in this study are recruited from one county in Ontario during a limited period of time (September to December 2013). This may be different from the participant experience in another location or for parents separating and divorcing at a time other than the four months of recruitment. A limitation I have found using phenomenology in this study is a lack of attention to gender, race, and cultural understandings (Dowling, 2007; Kall & Zeiler, 2014). Participants in the study represent some limited diversity of gender and culture. Greater cultural diversity may or may not result in different findings and can be explored in future research studies. Feminist research has expanded the value of phenomenology as methodology adding the context of gender, race, and culture (Kall & Zeiler, 2014). In this study differences in gender are unveiled as the effects of power relations, patterns of prejudice and privilege, and social and cultural practices (Kall & Zeiler, 2014) illuminating lived experiences of a sub-group of women as distinct from the whole group. The limitation of the method is revealed in the differences between the whole group analysis and the sub-group analysis and is strengthened through the use of the second analysis. Given that gender differences showed up only when using a purposeful gender lens, it is possible that there are other differences (related to class, culture, etcetera) that may have become evident if a specific relevant lens were used. This leaves us with the question: does phenomenology as a methodology have the potential to hide differences that a theoretical lens may help us to see?

Study participants were not recruited specifically from shared parenting arrangements, yet all participants had participated in the mandatory information session. Only a small number of

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participants (16%) in this study had a shared parenting arrangement and spoke directly about that experience. Other participants shared their experiences with the challenges of achieving a shared parenting arrangement. Additionally, there was variation in the amount of time participants had been separated, their access arrangements, and their purposes for attending the mandatory information sessions. For example, some participants were in court to change their agreement, while other participants were in court to achieve an initial agreement. These differences were not distinguished in this study given the exploratory nature of the research question and purpose of the study, which did not differentiate among participant experiences. Finally, participants were recruited from the Ontario Court of Justice, where issues of custody, access, and child support are heard, and the Superior Court of Justice, where divorce and property applications are adjudicated. The experiences for parents of these different courts are not distinguished in this study.

8.5 Conclusions

This study has illuminated the experiences of eighteen separated and divorcing parents to understand the ways in which they perceive and experience decision-making in child custody. The findings provide new knowledge to the field of child custody decision-making. This new knowledge raises the voices of separating and divorcing parents and can help to inform future reform efforts, bringing awareness to the need for a more collaborative way of providing service. The findings can also be a starting point for future research that is more generalizable across communities, cultures and groups of parent experience.

The findings suggest that the parent experience in child custody decision-making can vary according to the ways in which the initial experience is managed when parents separate and redefine their role, and depending on whether parents are experiencing violence, high conflict or

low conflict. Participants can feel they have the ability to make choices with regard to decisions about their children and this can lead to shared decision-making. Participants can also find themselves embroiled in a battleground with their ex-partner and experience a number of barriers to shared decision-making. Participants experiencing violence may not want to share decision-making, nor may it be appropriate or safe for them (or the children) to do so.

Participants can but do not always experience empowerment in the process of child custody decision-making. Policy influences from the legal and social service sectors are significant and can contribute to the amount of power that participants" feel they have in relation to others, highlighting the fact that social policy may not reflect the day-to-day experiences of today"s parents. Community efforts to coordinate services within and between legal and social service sectors are necessary to help to inform and illuminate policy, practice and research.

When the family court system makes reforms, it is vital to hear the parent voice and value their subjective experiences. When this occurs, we may increase the chances of the changes being reflective of the needs of the service users of the family court system.

REFERENCES

Abernathy, T., Arcus, M. (1977). The Law and Divorce in Canada. *The Family Coordinator*, *26*(4), 409-413.

Akre, L. (1992). Struggling with indeterminacy: a call for interdisciplinary collaboration in redefining the best interest of the child standard. 75 MARQ Rev. 628. Retrieved from http://scholarship.law.marquette.edu/mulr/vol75/iss3/6

Allan, M. (2013). Profile of child-related family law cases in civil court, 2011/2012. Juristat Article. Statistics Canada, ISSN 1209-6393.

Amato, P. R. (2001). Children of divorce in the 1990"s: An update of the Amato and Keith (1991) meta-analysis. *Journal of family psychology, 15*(3), 355-370.

Amato, P. R. (2000). The consequences of divorce for adults and children. *Journal of Marriage and the Family, 62*, 1269-1287.

Amato, P. R. & Gilbreth, J. G. (1999). Non-resident fathers and children"s well-being: A meta-analysis. *Journal of Marriage and the Family, 61* (3), 557-573.

Angelique, H., Reischl, T., & Davidson II, W. (2002). Promoting political empowerment: Evaluation of an intervention with university students. *American Journal of Community Psychology, 30*(6), 815-833.

Angen, M. (2000). Evaluating Interpretive Inquiry: Reviewing the Validity Debate and Opening the Dialogue. *Qualitative Health Research, 10*(3), 78-395. DOI: 10.1177/104973230001000308

Arean, J., & Mederos, F. (2008). Fathering After Violence. Working with Abusive Fathers in Supervised Visitation. United States Department of Justice. Office on violence against women. Retrieved from

http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/fathering_after_v
iolence.pdf

Association of Family and Conciliation Courts (2015). Website. Available at:

http://www.afccnet.org/Home/gclid/CLHRpZ2nuckCFQ8vaQodHv8COQ

Association of Family and Conciliation Courts (2005). Guidelines for parenting coordination.
Available at:

https://www.afccnet.org/Portals/0/PublicDocuments/Guidelines/AFCCGuidelinesforParenting
coordinationnew.pdf

Association of Family and Conciliation Courts (2005). AFCC parenting coordinator task force
report. Available at:

www.afccnet.org/Resource-Center/Center-for-Exellence-in-Family-
CourtPractice/ctl/ViewCommittee/CommitteeID/23/mid/495

Austin, W., & Drozd, L. (2013). Judge‟s bench book for application of the integrated framework
for the assessment of intimate partner violence in child custody disputes. *Journal of Child
Custody, 10*, 99-119.

Austin, W., & Drozd, L. (2012). Intimate partner violence and child custody evaluation, Part 1:
Theoretical framework, forensic model, and assessment issues. *Journal of Child Custody, 9*,
250-309.

Australian Bureau of Statistics. (2007). (n.d.). *Divorces, Australia, 2007*. Available at
Australian Bureau of Statistics website: abs.gov.au/ausstats/abs@.nsf/mf/3307.0.55.001

Bala, N. (2014). Shared parenting: Now the under-appreciated norm in Canada – Implications
for policy & practice. National Family Law Program, Federation of Law Societies of Canada,
Whistler, July 15, 2014.

Bala, N. (2000). The best interests of the child in the post-modern era: A central but paradoxical concept. *Special Lectures of the Law Society of Upper Canada*.

Bala, N., & Schuman, J. (2000). Allegations of sexual abuse when parents have separated. *Canadian Family Law Quarterly, 17*, 191–241.

Bailey, A. (2013). Prioritizing child safety as the prime best interest factor. *Family Law Quarterly, 47* (1), 35-64.

Bailey, J., & Robbins, S. P. (2005). Couple empowerment in divorce: A comparison of mediated and non-mediated outcomes. *Conflict Resolution Quarterly, 22*(4), 453-472.

Bancroft, L. & Silverman, J. (2002). *The Batterer as Parent. Addressing the Impact of Domestic Violence on Family Dynamics*. Sage Publications, Thousand Oaks, California.

Bancroft, L. & Silverman, J. (2002). Assessing risk to children from batterers. Available at Violence Against Women website.
http://www.vawnet.org/assoc_files_vawnet/risktochildren.pdf

Bancroft, L. (1998). Understanding the batterer in custody and visitation disputes. Available at Lundy Bancroft website:
http://www.lundybancroft.com/articles/understanding-the-batterer-in-custody-and-visitation-disputes

Barsky, A. (2011). Parenting coordination: The risks of a hybrid conflict resolution Process. *Negotiation Journal, 27* (1), 7-27.

Bauserman, R. (2012). A meta-analysis of parental satisfaction, adjustment, and conflict in joint custody and sole custody following divorce. *Journal of Divorce & Remarriage, 53*(6), 464-488, DOI:10.1080/10502556.2012.682901

Bauserman, R. (2002). Child adjustment in joint-custody versus sole-custody arrangements: A

meta-analytic review. *Journal of Family Psychology, 16*(1), 91-102.

Bay-Cheng, L., Lewis, A., Stewart, A., & Malley, J. (2006). Disciplining girl talk: The

paradox of empowerment in a feminist mentorship program. *Journal of Human*

Behavior in the Social Environment, *13*(2), 73-92.

Bayda, E. (1980). Procedures in child custody adjudication: A study in the importance of

adjective law. *Canadian Journal of Family Law, 57*, 57-70.

Beck, C., Walsh, M., & Weston, R. (2009). Analysis of mediation agreements of families

reporting specific types of intimate partner abuse. *Family Court Review, 47*, 401–415.

Bill C-560 (2014). An Act to amend the Divorce Act (equal parenting) and to make

consequential amendments to other Acts. Available at:

http://openparliament.ca/bills/41-2/C-560/

Binder, C. (2015). Windsor/Essex Supervised Access Program. Personal communication. May 4,

2015.

Birnbaum, R. (2009). The Voice of the child in separation/divorce mediation and other

alternative dispute resolution processes: A literature review. Report for the Department of

Justice Canada, June 2009.

Birnbaum, R., & Bala, N. (2014). A survey of Canadian judges about their meetings with

children: Becoming more common but still contentious. *Canadian Bar Review, 91*, 637-655.

Birnbaum, R., & Bala, N. (2010). Toward the differentiation of high conflict families: An

analysis of social science research and Canadian case law. *Family Court Review, 48*(3), 403-

416.

Birnbaum, R., & Bala, N. (2010). Judicial interviews with children in custody and access cases:

Comparing experiences in Ontario and Ohio. *International Journal of Law, Policy and the*

Family, 24(3), 300-337.

Birnbaum, R., Bala, N., Polak, S., & Sohani, N. (2016, February). Shared parenting: Ontario case
law

and social science research. National Judicial Institute Educational Conference, Feb 4, 2016,

Toronto, Ontario.

Birnbaum, R., Boyd, J., Bala, N., & Bertrand, L. (2014). Shared parenting is the new norm:

Legal professionals agree on the need for reform. Canadian Bar Association National Family

Law Section Newsletter. Retrieved from

http://www.cba.org/CBA/sections_family/newsletters2014/shared.aspx

Birnbaum, R., & Fidler, B. (2005). Commentary on Epstein"s and Madsen"s "Joint custody with

a vengeance: The emergence of parallel parenting orders." *Canadian Family Law Quarterly,
24*, 337-349.

Birnbaum, R., & Saini, M. (2015). A qualitative synthesis of children"s experiences of shared

care post divorce. *International Journal of Children's Rights, 23*, 1-24.

Boyd, J. P. (2015). Alienated children in family law disputes in British Columbia. Canadian

Research Institute for Law and the Family, July, 2015.

Boyd, S. (2012-2013). Consent, coercion and shared parenting: Ruffedeen-Coutts v Coutts.

Canadian *Journal of Family Law, 28*, 279-294.

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in

Psychology, 3*, 77-101.

Campbell, A. (2008). The right to be heard: Australian children"s views about their

involvement in decision-making following parental separation. *Child Care in Practice, 14*

(3), 237-255.

Canadian Advisory Council on the Status of Women. Annual Report 1992-1993.

Canadian Advisory Council on the Status of Women. Recommendations on the Royal

Commission on the Status of Women. 1980.

Canadian Association of Social Workers. (2005). Code of Ethics. Available at:

http://www.casw-acts.ca/en/what-social-work/casw-code-ethics

Canadian Bar Association (2013). Standing committee on access to justice. Toward National

Standards for publicly-funded Legal Services, April, 2013.

Canadian Equal Parenting Council. (2014). Available at Canadian Equal Parenting Council

website:

http://fullcomment.nationalpost.com/2014/03/03/ryan-glass-fixing-canadas-divorce-act/

Canadian Women"s Foundation (2014). The facts about violence against women. Retrieved

from

http://www.canadianwomen.org/factsaboutviolence?gclid=COS8ubrkosQCFYI_aQodzUs

AHA

Canlii (2015). (n.d.) The Canadian Legal Information Institute website. Available at:

http://www.canlii.org/en/

Carr, E. S. (2003). Rethinking empowerment theory using a feminist lens: The

importance of process. *Affilia, 18*(1), 8-20.

Carter, D. (2011). Parenting Coordination: A Practical Guide for Family Law Professionals.

Springer Publishing, N.Y.

Cashmore, J., Parkinson, P., Weston, R., Patulny, R., Redmond, G., Qu, L., Baxter, J., Rajkovic,

M., Sitek, T., & Katz, I. (2010). Shared care parenting arrangements since the 2006 Family

Law Reforms: Report to the Australian Government Attorney-General"s Department.

Sydney, Australia: University of New South Wales Social Policy Research Centre.

Children's Law Reform Act (1990). Available at the Ministry of the Attorney General

website: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c12_e.htm

Coates, C. A., Deutsch, R., Starnes, H., Sullivan, M. J., & Sydlik, B. (2004). Parenting

coordination for high-conflict families. *Family Court Review*, *42,* 246–262.

Cognetti, M., & Chmil, N. (2014). Shared parenting. Have we really closed the gap? A comment

On AFCC's Think Tank Report. *Family Court Review, 55*(2), 181-186.

Cohen, M., & Omery, A. (1994). Schools of Phenomenology: Implications for Research. Chapter

8 in Morse, JM. (ed.) *Critical Issues in qualitative Research Methods*. Thousand Oaks, CA:

Sage Publications, 136-156.

Commonwealth of Australia (2003). *Every Picture Tells a Story: Report on the Inquiry into*

Child Custody Arrangements in the Event of Family Separation, Canberra: Standing

Committee on Family and Community Affairs. Retrieved from:

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_representatives_Co

mmittees?url=fca/childcustody/report.htm

Cook, K., & Nunkoosing, K. (2008). Maintaining dignity and managing stigma in the interview

encounter: The challenge of paid-for participation. *Qualitative Health Research, 18*(3), 418-

427.

Creswell, J. W. (1998). *Qualitative Inquiry and Research Design. Choosing Among 5 Traditions*.

Sage.

Creswell, J. W. (2009). Research Design: Qualitative, Quantitative, and Mixed Methods

Approaches. Chapter 9, *Qualitative Procedures*. Thousand Oaks, CA: Sage.

Creswell, J. W., & Miller, D. (2000). Determining validity in qualitative inquiry. *Theory into*

Practice, 39(3), 124-130.

Crotty, M. (2012). *The foundations of social research. Meaning and perspective in the research process.* Sage.

Cudd, A. (2005). How to explain oppression: Criteria of adequacy for normative explanatory theories. *Philosophy of the Social Sciences, 35* (1), 20-49.

Davis, G., Ver Steegh, N., & Frederick, L. (2014). An appeal for autonomy, access, and accountability in family court reform efforts. *Family Court Review, 52*(4), 655-661.

Denzin, N., & Lincoln, Y. (1994/2011). *The Sage Handbook of Qualitative Research.* Sage.

Department of Justice, Canada (2015). Federal Child Support Guidelines. Retrieved from http://www.justice.gc.ca/eng/fl-df/child-enfant/ft-tf.html

Department of Justice, Canada (2015). Putting Children's Interest First - Federal-Provincial-Territorial Consultations on Custody and Access and Child Support. Part 1. Parenting After Separation or Divorce. Retrieved from http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/cons/consdoc/bic-ise.html

Department of Justice Canada (2002). Putting Children First. Special Joint Committee on child Custody and access, the Federal/Provincial/Territorial Family Law Committee. Available at: http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/flc2002/pdf/flc2002.pdf

Department of Justice Canada (1999). Government of Canada‟s response to the report of the Special Joint Committee on Child Custody and Access. Strategy for Reform. Retrieved from http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/sjcarp02/pdf/sjcarp02.pdf

Desmond, E. (2008). Divorce and the Family Court: What can be done about domestic violence? *Family Court Review, 46*(3), 531-536.

De Witt, L. & Ploeg, J. (2006). Critical appraisal of rigour in interpretive phenomenological nursing research. *Methodological Issue in Nursing Research*, p 215-229, doi: 10.1111/j.1365-

2648.2006.03898.x

DiFonzo, H. (2014). From the rule of one to shared parenting: Custody presumptions in law and policy. *Family Court Review, 52*(2), 213-239.

Divorce Act, S.C. 1986, c.4. Available at:

http://laws-lois.justice.gc.ca/PDF/D-3.4.pdf

Douglas, K. (2001). *Divorce Law in Canada*. Government of Canada. Available at:

http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/CIR/963-e.htm

Dowling, M. (2007). From Husserl to van Manen. A review of different phenomenological approaches. *International Journal of Nursing Studies, 44*, 131-142.

Dunford, F. W. (2000). The San Diego Navy experiment: An assessment of interventions for men who assault their wives. *Journal of Consulting and Clinical Psychology, 68*, 468 – 476.

Ellis, D. (2008). Divorce and the family court: What can be done about domestic violence? *Family Court Review, 46*(3), 531-536. DOI: 10.1111/j.1744-1617.2008.00218.x

Elrod, L., & Dale, M. (2008). Paradigm shifts and pendulum swings in child custody: The interests of children in the balance. *Family Law Quarterly, 42*(3), 381-418.

Emery, K., & Emery, R. (2014). Who knows what is best for children? Honoring agreements and contracts between parents who live apart. *Law and Contemporary Problems, 77,* 151-176.

Emery, R., Laumann-Billings, L., Waldron, M., Sbarra, D., & Dillon, P. (2001). Child custody mediation and litigation: Custody, contact, and co-parenting 12 years after initial dispute resolution. *Journal of Consulting and Clinical Psychology, 69*, 323-332.

Ermisch, J., Iacovou, M., & Skew, A. J. (2011). Family relationships. In S.L. McFall & C. Garrington (Eds.) Early findings from the first wave of the UK"s household longitudinal

study. Colchester: Institute for Social and Economic Research, University of Essex.

Retrieved from

http://research.understandingsociety.org.uk/files/research/findings/earlyfindings/2%20Early%20findings%20Chapter%202.pdf

Evans, K. (2004). Can a leopard change his spots? Child custody and batters" intervention. *Duke Journal of Gender Law and Policy, 11* (121), 121-139.

Fackrell, T., Hawkins, A., & Kay, N. (2011). How effective are court-affiliated divorcing Parents education programs? A meta-analytic study. *Family Court Review, 49*(1), 107-119.

Family Service Toronto. (n.d.). Partner assault response program. Available at Family Service Toronto website: http://familyservicetoronto.org

Family Law Act (2011). Queen"s Printer, Victoria, British Columbia. Available at http://www.bclaws.ca/civix/document/id/complete/statreg/11025_01

Fehlberg, B., Millward, C., & Campo, M. (2009). Post-separation parenting in 2009: An empirical snapshot. *Australian Journal of Family Law, 23*(3), 247-275.

Fehlberg, B., Smyth, B., Maclean, M., & Roberts, C. (2011). Caring for children after parental separation: Would legislation for shared parenting time help children? Family Policy Briefing 7. University of Oxford, Department of Social Policy and Intervention.

Fidler, B., Bala, N., Birnbaum, R., & Kavassalis, K. (2008). *Challenging Issues in Child Custody Disputes. A Guide for Legal and Mental Health Professionals*. Thomson Canada Limited.

Fineman, M. (1991). *The Illusion of Equality. The Rhetoric and Reality of Divorce Reform.* The University of Chicago Press, Chicago.

Finley, G. & Schwartz, S. (2007). Father involvement and long-term young adult outcomes: The differential contributions of divorce and gender. *Family Court Review, 45*(4), 573-

587.

Fotheringham, S., Dunbar, J., & Hensley, D. (2013). Speaking for themselves: Hope for children caught in high conflict custody and access disputes involving domestic violence. *Journal of Family Violence, 28*(4), 311-324.

Francescato, D., Solimeno, A., Mebane, M., & Tomai, M. (2009). Increasing students‟ perceived socio-political empowerment through online and fact-to-face community psychology seminars. *Journal of Community Psychology, 37*(7), 874-894.

Freeman, R. (1998). Parenting after divorce: Using research to make inform decision-making about children. *Canadian Journal of Family Law, 15*(1), 79 – ii.

Gadamer, H. G. (1975). *Truth and method* (G. Barden & J. Cumming, Trans.). New York: Seabury.

GlenMaye, L. (1998). Empowerment in Women. In L. Gutierrez, R. Parsons & E. Cox (Eds.), *Empowerment in Social Work Practice. A Sourcebook*. (25-51). Brooks/Cole Publishing Company, USA.

Gorey, K. (2002). The effectiveness of feminist social work methods: An integrative review. *Journal of Social Service Research, 29* (1), 37-55.

Government of Canada (n.d.). Department of Justice. Government of Canada‟s Strategy for Reform. Website updated January 2015. Available at: http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/sjcarp02/p3.html#p3_3

Government of Ontario. (1999). Making it happen: Operational Framework for the delivery of mental health services and supports. Toronto: Queen‟s Printer for Ontario.

Grant, J. (2007). The participation of mental health service users in Ontario: A Canadian application of the consumer participation questionnaire. *International Journal of Social Psychiatry, 53*(2), 148-158.

Gutierrez, L., Parsons, R., & Cox, E. (1998). *Empowerment in Social Work Practice. A Sourcebook.* Brooks/Cole Publishing Company, USA.

Gutierrez, L., DeLois, K., & GlenMaye, L. (1995). Understanding empowerment practice: Building on practitioner-based knowledge. *Families in society, 76*(9), 534-542.

Gutierrez, L. (1994). Beyond coping: An empowerment perspective on stressful life events. *Journal of Sociology and Social Welfare*, *21*, 201-219.

Harding, D. (2004). *Feminist Standpoint Theory Reader: Intellectual and Political Controversies.* Routledge, NY.

Hardesty, J. L., Haselschwerdt, M. L., & Johnson, M. P. (2012). Domestic violence and child custody. In K. Kuehnle & L. Drozd (Eds.) *Parenting Plan Evaluations: Applied Research for the Family Court* (pp 442–478). New York, NY: Oxford University Press.

Hart, A. (2009). Child-inclusive mediation in cases of domestic violence in Australia. *Conflict Resolution Quarterly, 27*(1), 3-26.

Hayward, C. & Lukes, S. (2008). Nobody To Shoot? Power, structure and agency: A dialogue. *Journal of Power, 1*(1), 5-20.

Hensley, D., & Dunbar, J. (2011). Speaking for themselves: A pilot program balancing children's rights and best interests in high-conflict families in children and the law: Essays in honour of professor Nicholas Bala, ed. Sanjeev Anand, Irwin Law.

Heidegger, M. (1962). *Being and Time.* New York, Harper and Row. (Translated from the original 1927 publication by J. Maquarrie and E. Robinson)

Hetherington, E. M. (1989). Coping with family transitions: Winners, losers, and survivors. *Child Development, 60*(1), 1-14.

Holloway, I. & Todres, L. (2003). The status of method: flexibility, consistency and coherence. *Qualitative Research, 3*(3), 345-357.

Holtzworth-Munroe, A. (2011). Controversies in divorce mediation and intimate partner

    violence: A focus on the children. *Aggression and Violent Behaviour, 16*(4), 319-324.

Hughes, J., Chau, S., Vokrri, L. (2015). Mothers" narratives of their involvement with child

    welfare services. *Affilia: Journal of Women and Social Work*, 1-15. DOI:

    10.1177/0886109915574579

Hulley, S. Cummings, S., Browner, W., Grady, D., & Newman, T. (2007). *Designing Clinical*

    Research. 3rd Ed. Lippincott, Williams & Wilkins.

Husserl, E. (1960) *Cartesian Meditations: An Introduction to Phenomenology*. The Hague:

    Nijhoff.

Irving, H., & Benjamin, M. (1995). *Family mediation: Contemporary Issues*. Thousand Oaks.

Jacobs, N., & Jaffe, R. (2010). Investigating the efficacy of CoMeT, a new mediation model for

    high-conflict separating parents. *The American Journal of Family Therapy, 38*, 16-31.

Jaffe, P. (2014). A presumption against shared parenting for family court litigants. *Family Court*

    Review, 52(2), 187-192.

Jaffe, P., Johnston, J., Crooks, C., & Bala, N. (2008). Custody disputes involving allegations of

    domestic violence: Toward a differentiated approach to parenting plans. *Family Court*

    Review, 46(3), 500-522.

Jaffe, P., Zerwer, M., & Poisson, S. (2002). Access denied: The barriers of violence & poverty

    for abused women and their children after separation. The Center for Children and

    Families in the Justice System, London, ON. Available at:

    http://www.lfcc.on.ca/access_denied_short.pdf

Jevne, K. & Andenaes, A. (2015). Parents in high conflict custodial cases: Negotiating shared

    care across households. *Child and Family Social Work*, 1-10. doi:10.1111/cfs.12240

Jeynes, W. (2001). The effects of recent parental divorce on their children˘s consumption of

alcohol. *Journal of Youth and Adolescence, 30*(3), 305-319.

Johnston, J. (1994). High conflict. *The Future of Children*, *4*(1), 165-182.

Johnston, J. & Campbell, L. (1993). Parent-child relationships in domestic violence families

disputing custody. *Family and Conciliation Courts Review, 31*, 282-298.

Johnston, J. & Roseby, V. (1997). *In the Name of the Child. A Developmental Approach To*

Understanding and Helping Children of Conflicted and Violent Divorce. The Free Press, N.Y.

Johnston, J. & Ver Steegh, N. (2013). Historical trends in family court response to intimate

partner violence: Perspectives of critics and proponents of current practices. *Family Court*

Review, 51(1), 63-73.

Jonnson, J. (2010). Beyond empowerment: Changing local communities. *International*

Social Work, 53(3), 393-406.

Kall, L., & Zeiler, K. (2014). Feminist Phenomenology and Medicine. Why Feminist

Phenomenology and Mediciane? Ch. 1. Suny Press.

Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., & Qu, L. (2009). Evaluation of the

2006 Family Law reforms. Melbourne: Australian Institute of Family Studies.

Kay, B. (2014, March 19). After a divorce, equal parenting rights should be the norm. Bill C-

560. Available at National Post website:

http://news.nationalpost.com/tag/bill-c-560

Kelly, F. (2010). Enforcing a Parent/Child Relationship at All Cost?: Supervised Access Orders

in the Canadian Courts. *Osgoode Hall Law Journal, 49* (2), p 1-36.

Kelly, J. B. (2011). Risk and protective factors associated with child and adolescent adjustment

following separation and divorce. In, K. Kuehnle & L. Drozd (Eds.) *Parenting Plan*

Evaluations: Applied Research for the Family Court. New York, NY: Oxford University

Press.

Kelly, J. B. (2007). Children‟s living arrangements following separation and divorce: Insights

from empirical and clinical research. *Family Process, 46*(1), 35-52.

Kelly, J. (2006). Children‟s Living Arrangements following separation and divorce: Insights

from empirical and clinical research. *Family Process, 46*(1), 35-52.

Kelly, J. B. (2000). Children‟s adjustment in conflicted marriage and divorce: A decade review

of research. *Journal of the American Academy of Child Psychiatry, 39*, 963-973.

DOI:10.1097/00004583-2000080000-00007

Kelly, J., & Johnson, M. (2008). Differentiation among types of intimate partner violence.

Research updates and implications for interventions. *Family Court Review, 46*(3), 476-499.

Kelly, J. B., & Lamb, M. E. (2000). Using child development research to make appropriate

custody and access decisions for young children. *Family and Conciliation Courts Review, 38*,

297-311.

Kitterod, R. & Lyndstad, J. (2012). Discussion Papers. Statistics Norway Research Department.

Retrieved from http://www.ssb.no/en/forskning/discussion-papers

Kruk, E. (2014, Mar. 25). Equal shared parenting – best for parents, best for children. The

National Post. Retrieved from

http://fullcomment.nationalpost.com/2014/03/25/edward-kruk- equal-shared-parenting-

best-for-parents-best-for-children/

Kruk, E. (2013). *The Equal Parent Presumption: Social Justice in the Legal Determination of*

Parenting after Divorce. McGill-Queen‟s University Press.

Kuehnle, K. & Drozd, L. (2012). *Parenting Plan Evaluations. Applied Research for the Family*

Court. Oxford University Press, NY.

Kvale, S. (2006). The interview situation (chapter 7). In *Interviews: An Introduction to Qualitative Research Interviewing*. Thousand Oaks: Sage.

Lamb, M. (2012). Critical analysis of research on parenting plans and children˝s well-being. *Parenting Plan Evaluations. Applied Research for the Family Court*. Ch.8. Oxford University Press. New York.

Lamb, M. E., & Kelly, J. (2001). Using the empirical literature to guide the development of parenting plans for young children. *Family Court Review, 39*, 365-371.

Lamb, M. E., & Lewis, C. (2010). The development and significance of father-child relationships in two-parent families. In M. E. Lamb (Ed.), *The Role of the Father in Child Development* (2nd ed., pp 94-153). Hoboken, JJ: John Wiley & Sons, Inc.

Levite, Z., & Cohen, O. (2012). The tango of loving hate: Couple dynamics in high-conflict divorce. *Journal of Clinical Social Work, 40*, 46-55.

Linton, H. (2011). How to become an arbitrator or parenting coordinator. Riverdale Mediation website. Available at: www.riverdalemediation.com/2011/07/how-to-become-an-arbitrator-or-parenting-coordinator/

Lowenstein, L. F. (2010). Attachment theory and parental alienation. *Journal of Divorce & Remarriage, 51*, 157-168.

Lowenstein, L. F. (2009). Mediation with separated parents: Recent research 2002-2007. *Journal of Divorce & Remarriage, 50*, 233-247.

Luftman, V., Veltkamp, L., Clark, J., Lannacone, S., & Snooks, H. (2005). Practice guidelines in child custody evaluations for licenced clinical social workers. *Clinical Social Work Journal, 33*(3), 327-357.

Lukes, S. (2005). *Power: A Radical View.* Palgrave, UK.

Lukes, S. (2002). Power and agency. *British Journal of Sociology, 53*(3), 491- 496.

Lukes, S. (1986). Power. Readings in Social and Political Theory. Chapter 12, *Power and Privilege.* New York University Press. Washington Square, NY

Lundstro¨m, K. (2009). Va¨xelvis boende o¨kar bland skilsma¨ssobarn [Alternate residences increases among children of divorce]. Va¨lfa¨rd, 9, 3–5.

Lye, D. (1999). Washington State Parenting Act study. Olympia: Washington State Gender and Justice Commission and Domestic Relations Commission.

Maccoby, E., & Mnookin, R. H. (1992). *Dividing the Child: Social and legal dilemmas of Custody.* Harvard University Press: Cambridge.

MacDougall, D. (1995). Marriage resolution and recognition in Canada. *Family Law Quarterly, 29*(3), 541-548.

Mack, N., Woodsong, C., MacQueen, K., Guest, G., & Namey, E. (2009). *Qualitative Research Methods. A Data Collector's Field Guide.* Family Health International. USA.

MacKinnon, C. (1984). Difference and Dominance: On Sex Discrimination. In K. Maschke (Ed), *Feminist Legal Theories* (2-22). Garland Publishing Inc., NY.

Mann, R. (2008). Men‟s rights and feminist advocacy in Canadian domestic violence policy arenas. Context, dynamics and outcomes of antifeminist backlash. *Feminist Criminology. 3*(1), 44-75.

Manthey, T., Knowles, B., Asher, D., & Wahab, S. (2011). Strengths-Based practice and motivational interviewing. *Advances in Social Work, 12*(2), 126-151.

Martindale, D., Martin, L., Austin, W. (2007). Model Standards of Practice for Child Custody Evaluation, *Family Court Review, 45*(1), 70-91. DOI: 10.1111/j.1744-1617.2007.129_3.x

Mason, M. (2010). Sample Size and Saturation in PhD Studies Using Qualitative Interviews [63

paragraphs]. *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research*, *11*(3),

Art. 8, http://nbn-resolving.de/urn:nbn:de:0114-fqs100387.

McCracken, G. (1988). *The Long Interview. Qualitative Research Methods.* Series 13. Sage,

London.

McIntosh, J. (2011). Guest editor‟s introduction to special issue on attachment theory,

separation, and divorce: Forging coherent understandings for family law. *Family Court

Review, 49*(3), 418-425.

McIntosh, J., & Chisholm, R. (2008). Cautionary notes on the shared care of children in

conflicted parental separation. *Journal of Family Studies 14*(1), 37-52.

McIntosh, J. & Smyth, B. (2012). Shared Time Parenting. An Evidenced-Based Matrix. In,

Parenting Plan Evaluations. Applied Research for the Family Court. Oxford University

Press.

McIntosh, J., Smyth, L., Kelaher, M., Wells, Y., & Long, C. (2010). Parenting arrangements

post-separation: Patterns and outcomes. A longitudinal study of school-aged children in high

conflict divorce. In K. Kuehnle & L. Drozd (2012), *Parenting Plan Evaluations. Applied

Research for the Family Court.* Oxford, 155-187.

McIntosh, J., Wells, Y., & Long, C. (2007). Child focused and child inclusive family law dispute

resolution. One year findings from a prospective study of outcomes. *Journal of Family

Studies, 13*(1), 8-25. Retrieved from

http://onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2007.00186.x/full

Melikian, K. (1997). The phenomenology of decision-making in a child welfare setting.

Doctoral Dissertation. School of Social Work, Simmons College.

Melli, M., & Brown, P. (2008). Exploring the new family form – The shared time family. *International Journal of Law, Policy and the Family, 22*(2), 231-269.

Menning, C. L. (2006). Non-resident fathers" involvement and adolescents" smoking. *Journal of Health and Social Behavior, 47*, 32-46. Doi:10.1177/002214650604700103 PMid: 16583774

Merrick, E. (1999). An exploration of quality in qualitative research. In M. Kopola & Suzuki, A. (Eds.) *Using Qualitative Methods in Psychology*. Sage.

Miles, M., & Huberman, M. (1994). *Qualitative Data Analysis*. 2nd Edition. Sage.

Millar, P., & Kruk, E. (2014). Maternal attachment, paternal overnight contact, and very young children"s adjustment: Comment on Tornello et al. (2013). *Journal of Marriage and Family, 76*, 232-236.

Ministry of Jobs, Tourism and Skills Training and Responsible for Labour (n.d). Employment Standards Branch. A guide to employment standards. Retrieved from Government of British Columbia website: https://www.labour.gov.bc.ca/esb/esaguide/welcome.htm#14

Ministry of Justice (2013). Retrieved from British Columbia Ministry of Justice website: http://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/legislation-policy

Ministry of Justice (2014, May 27). Retrieved from British Columbia Ministry of Justice website: http://www.ag.gov.bc.ca/legislation/family-law/

Ministry of Public Safety and Solicitor General (2010). Domestic violence response. A community framework for maximizing women"s safety. Victim Services and Crime Prevention Services. British Columbia.

Ministry of the Attorney General (2016, March). Website. Supervised Access Program.

   Retrieved from

   http://www.attorneygeneral.jus.gov.on.ca/english/family/supaccess.php

Ministry of the Attorney General (2015, Oct). Website. Office of the Children's Lawyer.

   Retrieved from http://www.attorneygeneral.jus.gov.on.ca/english/family/ocl/

Ministry of the Attorney General. (2010). Website. Family law reform in Ontario. Retrieved

   from http://www.attorneygeneral.jus.gov.on.ca/english/news/2010/20101209-family-bg.asp

Ministry of the Attorney General. (n.d.). Website. Partner assault response program. Retrieved

   from http://www.attorneygeneral.jus.gov.on.ca/english/ovss/programs.asp

Mishna, F., Antle, B., & Regehr, C. (2004). Tapping the perspectives of children. Emerging

   ethical issues in qualitative research. *Qualitative Social Work, 3(*4), 449-468.

Mitcham-Smith, M., & Henry, W. J. (2007). High-conflict divorce solutions: Parenting

   coordination as an innovative co-parenting intervention. *The Family Journal: Counselling*

   and Therapy for Couples and Families, 15(4), 368-373.

Mnookin, R. (1975). Child-Custody adjudication: Judicial functions in the face of indeterminacy.

   Law and Contemporary Problems, 39, 226-293.

Mnookin, R. (2014). Child custody revisited. *Law and Contemporary Problems, 77*, 249-270.

Morse, J. M., Barrett, M., Mayan, M., Olson, K., & Spiers, J. (2002). Verification Strategies for

   Establishing Reliability and Validity in Qualitative Research. *International Journal of*

   Qualitative Methods, 1(2). Article 2. Retrieved from http://www.ualberta.ca/~ijqm/

Morse, J. M., & Field, P. A. (1995). Principles of conceptualizing a qualitative project. In

   Qualitative Research Methods for Health Professionals. Thousand Oaks, CA: Sage.

Moyer, S. (2004) Background paper child custody arrangements: Their characteristics and

outcomes. Department of Justice, Canada.

Musick, K., & Meier, A. (2009). Are both parents always better than one? Parental

conflict and young adult well-being. *Social Science Research, 39(5)*, 814-830.

National Post. (2014, Mar. 28). Bill C-560. Available at: National Post website:

http://news.nationalpost.com/tag/bill-c-560

Nielsen, L. (2013). Parenting time and shared residential custody: Ten common myths. The

Nebraska Lawyer.

Nielsen, L. (2013). Shared residential custody: Review of the research, Part 1 of 2. *American

Journal of Family Law, 27,* 61-71.

Nielsen, L. (2013). Shared residential custody: Review of the research, Part 2 of 2. *American

Journal of Family Law, 27,* 123-137.

Nielsen, L. (2011). Shared parenting after divorce: A review of shared residential parenting

research. *Journal of Divorce & Remarriage, 52*, 586-609.

Nord, C. W., Brimhall, D., & West, J. (1997). Fathers" Involvement in their Children"s Schools.

NCES 98-091. Washington, DC: U.S. Department of Education, National Center for

Education Statistics.

Payne, J. & Payne, M. (2013). *Canadian Family Law*. Toronto, ON, Irwin Law.

Payne, M. (2005). *Modern social work theory* (3rd ed.). Chicago, Illinois: Lyceum.

Pearson, Y. (2006). Early neutral evaluations: Applications to custody and parenting time cases

program development and implementation in Hennipen County, Minnesota. *Family Court

Review, 44* (4), 672-682.

Pence, E., & McDonnell, C. (2000). Developing protocols and policies in Duluth, Minnesota. In

J. Hanmer and C. Itzin (Eds.) Home truths about domestic violence: Feminist influences on

policy and practice: A reader. pp 249-268. London, UK: Routledge Falmer.

Price, C., & Kunz, J. (2003). Rethinking the paradigm of juvenile delinquency as related to

Divorce. *Journal of Divorce and Remarriage, 39*(1/2), 109-133.

Pryor, J., & Rodgers, B. (2001). *Children in Changing Families: Life After Parental Separation.*

Oxford: Blackwell Publishers.

Pruett, M. & DiFonzo, J. H. (2014). Closing the gap: Research, policy, practice and shared

parenting. AFCC Think Tank Final Report, *Family Court Review, 52*(2), 153-174.

Pruett, M., Williams, T., Insabella, G., & Little, T. (2003). Family and legal indicators of child

adjustment to divorce among families with young children. *Journal of Family Psychology,*

17(2), 169-180.

Raynor, J. (2011). What makes an effective coalition? Evidence-based indicators of success.

Report prepared for: The California Endowment. Retrieved from

https://www.mcf.org/system/article_resources/0000/1297/What_Makes_an_Effective_Coaliti

on.pdf

Rees, S. (1998). Empowerment of youth. In L. Gutierrez, R. Parsons & E. Cox (Eds.),

Empowerment in Social Work Practice. A Sourcebook. (130-145). Brooks/Cole Publishing

Company, USA.

Robinson, P. (2009). Parenting after separation and divorce: A profile of arrangements for

spending time with and making decisions for children. Statistics Canada. Retrieved from

http://www.statcan.gc.ca/pub/85-002-x/2009004/article/10931-eng.pdf

Robson, K. (2008). Wrapped in the flag of the child: Divorced parents perceptions of and

experiences with the Federal Child Support Guidelines. *Canadian Journal of Family Law,*

24(2), 283-316.

Rorty, R. (1979). Transcendental arguments, self-reference, and pragmatism. In *Transcendental*

arguments and science, 77-103. Springer Netherlands.

Sadowski, C. (2012). The lived experience of security and contentment for latency aged children
in shared care, post-separation: A descriptive phenomenological enquiry. Unpublished
dissertation. University of Ballarat, Victoria, Australia.

Saini, M., & Birnbaum, R. (2007). Unraveling the label of "High Conflict": What factors really
count in separated and divorced families? Part 1. *OACAS Journal, 51*, 14-20.

Saini, M. & Birnbaum, R. (2005). Linking Judicial decision-making in child custody awards with
evidenced-based practice: Is it possible? *Canadian Family Law Quarterly, 24*(2), 139-165.

Sandelowski, M. (1995). Focus on qualitative methods. Sample size in qualitative research.
Research in Nursing & Health, 18, 179-183.

Sanders, M. (2009). Adopting a public health approach to the delivery of evidence-based
parenting interventions. *Canadian Psychology, 51*(1), 17-23.

Savage, T., Harley, D., & Nowak, T. (2005). Applying social empowerment strategies as
tools for self-advocacy in counselling lesbian and gay male clients. *Journal of
Counseling & Development, 83*, 131-137.

Sbarra, D. (2005). Co-parenting conflict, non-acceptance, and depression among
divorced adults: Results from a 12-year follow-up study of child custody mediation
using multiple imputation. *American Journal of Orthopsychiatry, 75* (1), 63-75.

Schlesinger, B. (1977). Children and divorce in Canada. The law reform commission‟s
recommendations. *Journal of Divorce, 1*(2), 175-183.

Schoppmann, S., Schrock, R., Schnepp, W., & Buscher, A. (2007). „Then I just showed her my
arms . . .‟ Bodily sensations in moments of alienation related to self-injurious
behaviour.* A hermeneutic phenomenological study. *Journal of Psychiatric and Mental
Health Nursing* **14**, 587–597.

Scott, E., & Emery, R. (2014). Gender politics and child custody: The puzzling persistence of the best-interests standard. *Law and Contemporary Problems, 77*, 69-108.

Semple, N. (2009). The eye of the beholder: Professional opinions about the best interests of a child. A Thesis submitted to the faculty of graduate studies in partial fulfilment of the requirements for the degree of master of laws. York University, Toronto, ON, June.

Shaffer, M. (2007). Joint custody, parental conflict and children's adjustment to divorce. What the Social Science literature does and does not tell us. *Canadian Family Law Quarterly, 26*, 285-313.

Shera, W., & Wells, L. (1999). *Empowerment Practice in Social Work. Developing Richer Conceptual Frameworks*. Canadian Scholars Press Inc.

Sigal, A., Sandler, I., Wolchik, S. & Braver, S (2011). Do parent education programs promote healthy post divorce parenting? Critical distinctions and a review of the evidence. *Family Court Review*, 49(1), 120-129.

Special Joint Committee on Child Custody and Access, (1998). For the Sake of the Children: Report of the Special Joint Committee on Child Custody and Access. Ottawa: Parliament of Canada.

Smith, D. (1987). *The Everyday World as Problematic. A Feminist Sociology*. Northeastern University Press. Boston.

Smyth, B. (2009). A 5-year retrospective of post-separation shared care research in Australia. *Journal of Family Studies, 15*(1), 36-59.

Smyth, B., Chisholm, R., Rodgers, B., & Son, V. (2014). Legislating for shared-time parenting after parental separation: Insights from Australia? *Law and Contemporary Problems, 77*(1), 116-149.

Smyth, B., & Moloney, L. (2008). Changes in patterns of parenting post-separation over time.

Journal of Family Studies, 14, 7-22.

Smyth, B. & Wolcott, I. (2004). Parent-child contact and post-separation parenting

    arrangements. Australia Institute of Family Studies, report 9, July. Retrieved from

    https://aifs.gov.au/publications/parent-child-contact-and-post-separation-parenting-

    arrangeme/1-why-study-parent-child

Sroufe, A., & McIntosh, J. (2011). Divorce and attachment relationships: The longitudinal

    journey. *Family Court Review, 49* (3), 464-473

Stallman, H. M., & Sanders, M. R. (2009). Practitioner"s Manual for Family Transitions Triple

    P. Brisbane, Australia: Triple P International.

Statistics Canada. (2012). Canada (Code 01) and Canada (Code 01) (table). Census Profile.

    2011 Census. Statistics Canada Catalogue no. 98-316-XWE. Ottawa. Released

    October 24, 2012. Available at:

    http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/prof/index.cfm?Lang=E

    (accessed March 14, 2015).

Statistics Canada (2012). Juristat. Divorce cases in civil court, 2010/2011. Retrieved from

    http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11634/tbl/tbl01-eng.htm

Statistics Canada (2011). Juristat. Family court cases involving child custody, access and support

    arrangements, 2009/2010. Mary Bess Kelly. Retrieved from

    http://www.statcan.gc.ca/pub/85-002-x/2011001/definitions-eng.htm#c34

Statistics Canada (2011). General Social Survey. Overview of families in Canada.

Statistics Canada. (2007). *Windsor-Essex County Health Unit, Ontario (Code3568)* (table).

    2006 community profiles. 2006 census. Statistics Canada catalogue no. 92-591-XWE.

    Ottawa. Released March 13, 2007.

Sun, Y., & Li, Y. (2009). Parental divorce, sibship size, family resources and children‟s

academic performance. *Social Science Research, 38*(3), 622-634.

Supervised Visitation Network (2015). Standards for supervised visitation practice. Retrieved

from http://www.svnetwork.net/standards.asp

Swiss, L., & Le Bourdais, C. (2009). Father-child contact after separation. The influence of

Living arrangements. *Journal of Family Issues, 30*(5), 623-652.

Timms, J., Bailey, S. & Thoburn, J. (2008). Children‟s views of decisions made by the court:

Policy and practice issues arising from the Your Shout Too! Survey. *Child Care in Practice,*

14 (3), 257-274.

Tishler, C., Bartholomae, S., Katz, B., & Landrey-Meyer, L. (2004). Is domestic violence

relevant? An exploratory analysis of couples referred for mediation in family court. *Journal*

of Interpersonal Violence, 19(9), 1042-1062.

Thompson, C. (2015, Feb. 20). Hiatus House ends program for men convicted of

domestic violence. Windsor Star. Retrieved from

http://windsorstar.com/news/hiatus-house-ends-program-for-men-convicted-of-domestic-

violence

The Institute of Professional Management (2015). Workplace standards. Retrieved from

https://www.workplace.ca/laws/employ_standard_comp.html

Tomcikova, Z., Geckova, A. M., Orosova, O., van Dijk, J. P., & Reijneveld, S. A. (2009).

Parental divorce and adolescent drunkenness: Role of socioeconomic position, psychological

well-being and social support. *European Addiction Research, 15*(4), 202-208.

Tornello, S., Emery, R., Rowen, J., Potter, D., Ocker, B., & Xu, Y. (2013). Overnight custody

arrangements, attachment, and adjustment among very young children. *Journal of Marriage*

and Family, 75, 871-885. DOI:10.1111/jomf.12045.

Tremblay, A. (2001). Equality of access, inequality of results: Women and higher education

since 1960. *London Journal of Canadian Studies, 17*(1), 101-117.

Trocme, N., McPhee, D., Tam, K. K., & Hay, T. (1994). Ontario Incidence Study of Reported

Child Abuse and Neglect. Toronto: Institute for the Prevention of Child Abuse.

Trinder, L. (2010). Shared residence: A review of recent research evidence. *Child and Family*

Law Quarterly, 22(4), 475-498.

Turkat, I. (2002). Shared Parenting Dysfunction. *The American Journal of Family Therapy, 30*,

385-393.

Tutty, L., Barry, L., Weaver-Dunlop, G., Barlow, A., & Roy, M. (2006). Supervised visitation

and exchange centers for domestic violence: An environmental scan. Report prepared for the

Alberta Ministry of Children˚s Services (March).

United Nations Human Rights. (1990) Convention on the Rights of the Child. Retrieved from

http://www.ohchr.org/en/professionalinterest/pages/crc.aspx

United States Census Bureau. The Center of Disease Control and Prevention. Retrieved from

http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm

van Manen, M. (2014). *Phenomenology of practice: Meaning-giving methods in*

phenomenological research and writing (Vol. 13). Left Coast Press.

van Manen, M. (1998/2007). *Researching Lived Experience. Human Science for an Action*

Sensitive Pedagogy. Althouse Press.

Van Manen, M. (2002). *Writing in the Dark. Phenomenological Studies in Interpretive Inquiry.*

The Althouse Press.

Ver Steegh, N. & Davis, G. (2015). Calculating safety: Reckoning with domestic violence in the context of the child support parenting time initiatives. *Family Court Review, 53*(2), 279-291.

Ver Steegh, N. & Dalton, C. (2008). Report from the Wingspead conference on domestic violence and family courts. *Family Court Review, 46*(3), 454-475.

Ver Steegh, N. & Gould-Saltman, D. (2014). Joint legal custody presumptions: A troubling legal shortcut. *Family Court Review, 52*(2), 263-270.

Veitch, E. (1979). Divorce Under the Divorce Act of Canada, 1968-1978. *Journal of Divorce, 2*(3), 295-307.

Walsh, J. (2010). *Theories for Direct Social Work Practice.* 2nd Ed. Wadsworth Cengage Learning.

Warshak, R. (2003). Payoffs and pitfalls of listening to children. *Family Relations, 52*, 373-384.

Wendt, S., & Seymour, S. (2010). Applying post-structuralist ideas to empowerment: Implications for social work education. *Social Work Education, 29*(6), 670-682.

Whitehead, D. (2015). Is shared custody the Alchemy of family law? *Canadian Family Law Quarterly, 31*(5), 1-30.

Winton, K. (2002). Spoilt Darling of the Law: Women and Canadian child custody law in the postwar period (1945-1960). *Canadian Journal of Family Law, 19,* 193-244.

Appendix A International Comparison of Divorce

Country	Year	Divorce by number	Divorce rate per 1,000 population
Australia	2007	47,963	2.3
North-West Europe • United Kingdom • France • Germany • Sweden	2003 2006 2006 2006	166,536 139,147 190,928 20,295	2.8 2.3 2.3 2.2
North Africa and Middle East • Iran • Israel	2006 2005	94,040 11,030	1.3 1.6
North-East Asia • China • Japan • Korea	2005 2006 2006	1,785,000 257,475 125,032	1.4 2.0 2.6
Americas • **Canada** • United States of America • Mexico	**2004** 2006 2006	**69,644** 872,000* 72,396	**2.2** 3.6 0.7

*United States Census Bureau.

Appendix B Work of The Commission on the Status of Women 1970-1990.

1970	Reform of Divorce Act (1968)
	• Reduce 3 year separation period to one year
	• Equity in marriage
	• Unified family courts
	• Matrimonial property
	• Maintenance and custody of children
	One-parent families
	• Revise labour legislation
	• employment programs
	• support services and
	• unified family courts to assist primarily mothers
	Maternity benefits
	Rape and sexual offences
1980	Sexual Assault
	Wife Battering
	• Increase shelters for women and their children
	• Canadian Mortgage and Housing Corporation funds for women
	• Training for officers of the court
	Enforcement of maintenance orders
	Sharing family assets
	Parental benefits
	Employment equity
	Custody and access
	• Best interests standard
	• Friendly parent provision
	Constitutional changes
	• appointment of equal representation of women to vacancies in Supreme Court
1990	Wife Battering
	• Increase shelters for women and their children
	• Canadian Mortgage and Housing Corporation funds for women
	• Training for anyone involved in family law
	Enforcement of maintenance orders
	Sharing family assets
	Parental benefits
	Employment equity
	Custody and access
	• Best interests standard
	• Friendly parent provision
	• Shared parenting plans
	• Alternative Dispute Resolution
	• Custody Assessors
	• Legal Aid, Legal Services, interpreters

Canadian Advisory Council on the Status of Women (1992/93, 1980).

Appendix C Best Interests of the Child Factors (*Children's Law Reform Act*, 1990, s12, ss 2-4)

(2) The court shall consider all the child's needs and circumstances, including,
   a) The love, affection, and emotional ties between the child and,
      - Each person entitled to or claiming custody of or access to the child,
      - Other members of the child's family who reside with the child, and
      - Persons involved in the child's care and upbringing;
   b) The child's views and preferences, if they can reasonably be ascertained;
   c) The length of time the child has lived in a stable home environment;
   d) The ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessaries of life and any special needs of the child;
   e) The plan proposed by each person applying for custody of or access to the child for the child's care and upbringing;
   f) The permanence and stability of the family unit with which it is proposed that the child will live;
   g) The ability of each person applying for custody of or access to the child to act as a parent; and
   h) The relationship by blood or through an adoption order between the child and each person who is a party to the application.

(3) A person's past conduct shall be considered only,
   a) In accordance with subsection (4); or
   b) If the court is satisfied that the conduct is otherwise relevant to the person's ability to act as a parent.

(4) In assessing a person's ability to act as a parent, the court shall consider whether the person has at any time committed violence or abuse against,
   a) His or her spouse;
   b) A parent of the child to whom the application relates;
   c) A member of the person's household; or
   d) Any child.

Appendix D Letter of Information for Consent to Participate in the Study

Title of Study: **Parents' Perceptions and Experience of their Decision-Making in Child Custody during the Divorce Process?**

You are invited to participate in a research study conducted by **Beth Archer-Kuhn**, from the School of Social Work at the University of Windsor**. The results of this study will be used in the completion of a dissertation.**

If you have any questions or concerns about the research, please feel to contact Dr. Jill Grant, the supervisor of Beth Archer-Kuhn, at the School of Social Work, 253-3000 ext. 3074, e-mail at jgrant@uwindsor.ca or Ms. Beth Archer-Kuhn, at _____ or e-mail at kuhnd@uwindsor.ca

PURPOSE OF THE STUDY
The purpose of this study is to understand how parents experience decision-making in child custody.

There is much written in the literature regarding child custody and how decisions are made but not from the point of view of parents. There is an increase in child custody decisions favouring joint or shared custody and these decisions often appear to be made by people other than the parents. This study will add to the body of knowledge about decision-making in child custody from the parents' experience, informing both the social work and legal fields of practice.

PROCEDURES
If you volunteer to participate in this study, you will be asked to:

Participate in approximately a one hour interview. The interview can take place in one of a few possible places including in your home, at the University of Windsor (Essex Hall), at the Ontario Court building, or a the Superior Court building. The variety of options is intended to help you feel comfortable. Additionally, you may be asked to participate in providing feedback via e-mail, about the findings from the interviews.

POTENTIAL RISKS AND DISCOMFORTS

Some people may become uncomfortable when talking about their experiences with decision-making in child custody. Others may not. In case you find the interview difficult and feel that you would like some support afterward, below is a small list of available community services that you can call. Additionally, as a social worker, I have a duty to report issues of harm to self, harm to other or child abuse.

Agency	Fee	Address	Phone
Family Service Windsor	Sliding scale (based on income)	235 Eugenie St. W., Suite 105A	519-966-5010
Windsor/Essex Community Health Center	No fee	1585 Ouellette	519-253-8481
Youth & Family Resource Network	No fee	Locations in Leamington, Kingsville	519-733-8983
Maria DeRubeis	Hourly rate	2052 Ottawa St.	519-973-6161
Granneman & Daragon	Hourly rate	3039 Walker Rd	969-3534
Steve Kerr	Hourly rate	691 Ouellette	519-258-2422

| Dr. Leenaars | Hourly rate | 1500 Ouellette | 519-253-9377 |

Private practitioners with an hourly rate may subscribe to Green Shield or other Health Care providers

| | | | |

POTENTIAL BENEFITS TO PARTICIPANTS AND/OR TO SOCIETY

You may find it helpful to share your perceptions and experiences during an interview. You may also have the opportunity to learn about the experiences of other parents experiencing the divorce process by participating in the feedback portion of the study or reading the results of the study posted on the Research Ethics Board website.
Additionally, by participating in this study, you will know that you are adding to the knowledge about child custody decision-making from the parents' perspective. This has the potential to make a difference in how the courts work with parents when making child custody decisions in the future.

COMPENSATION FOR PARTICIPATION

You will be compensated $15 for the interview, $10 to assist with transportation costs and an additional $15 if you choose to participate in providing feedback about the study results.

CONFIDENTIALITY

The information/data that you provide during the individual interview will remain confidential. No identifying information will be kept with your interview tape or transcript. The feedback or member checking information will remain confidential with the researcher. Your identity will not be revealed by the researcher.

PARTICIPATION AND WITHDRAWAL

You can withdraw your interview data any time up to two weeks following the interview. If during the interview, you wish to withdraw from the study, you will be asked to leave your data to that point in the study. If you still want the data removed, tapes (electronic files) will be destroyed and any paper notes will be shredded. Ms. Archer-Kuhn may withdraw you from this research if circumstances arise which warrant doing so. An example might be that the researcher believes the interview is having a significantly negative impact on the participant.

FEEDBACK OF THE RESULTS OF THIS STUDY TO THE PARTICIPANTS

A summary of the results of the study will be available on the Research Ethics Board website at the University of Windsor

Web address: www.**uwindsor**.ca/**reb**/

Date when results are available: September 30, 2014

SUBSEQUENT USE OF DATA

These data may be used in subsequent studies, in publications in academic journals, journals available to lawyers and community organizations and in presentations to researchers, lawyers, social workers, parents and others in the field of custody and divorce.

RIGHTS OF RESEARCH PARTICIPANTS

If you have questions regarding your rights as a research participant, contact: Research Ethics Coordinator, University of Windsor, Windsor, Ontario N9B 3P4; Telephone: 519-253-3000, ext. 3948; e-mail: ethics@uwindsor.ca

This consent form does not require your signature to ensure that the data you provide cannot be associated in any way with the circumstances of your divorce proceedings. If you choose to participate in the study, you will be asked to give verbal permission on audiotape. Additionally, if you choose to participate in reviewing the study finding, you will be asked to provide verbal consent on the audiotape at the beginning of the interview.

SIGNATURE OF INVESTIGATOR
These are the terms under which I will conduct research.

_____   _____

    Signature of Investigator   Date

Appendix E Consent to Participate in the Study

CONSENT TO PARTICIPATE IN RESEARCH

Title of Study: **Parents' Perceptions and Experience of their Decision-Making in Child Custody during the Divorce Process**

You are invited to participate in a research study conducted by **Beth Archer-Kuhn**, from the School of Social Work at the University of Windsor**. The results of this study will be used in the completion of a dissertation.**

If you have any questions or concerns about the research, please feel to contact Dr. Jill Grant, the supervisor of Beth Archer-Kuhn, at the School of Social Work, 253-3000 ext.3074, e-mail at jgrant@uwindsor.ca, or Ms. Beth Archer-Kuhn, at _____ or e-mail at kuhnd@uwindsor.ca

PURPOSE OF THE STUDY
The purpose of this study is to understand how parents experience or make decisions in child custody.

There is much written in the literature regarding child custody and how decisions are made but not from the point of view of parents. There is an increase in child custody decisions favouring joint or shared custody and these decisions often appear to be made by people other than the parents. This study will add to the body of knowledge about decision-making in child custody from the parents' experience, informing both the social work and legal fields of practice.

PROCEDURES
If you volunteer to participate in this study, you will be asked to:

Participate in approximately a one hour interview. The interview can take place at your home, at the University of Windsor (Essex Hall), at the Ontario Court building, or at the Superior Court building. You can pick the location that makes you feel most comfortable. Additionally, you may be asked to participate in providing feedback via e-mail, about the findings from the interviews.

POTENTIAL RISKS AND DISCOMFORTS

Some people may become uncomfortable when talking about their experiences with decision-making in child custody. Others may not. In case you find the interview difficult and feel that you would like some support afterward, below is a list of available community services that you can call. Additionally, as a social worker, I have a duty to report issues of harm to self, harm to other or child abuse if there is a risk of harm occurring to self or others.

Agency	Fee	Address	Phone
Family Service Windsor	Sliding scale (based on income)	235 Eugenie St. W., Suite 105A	519-966-5010
Windsor/Essex Community Health Center	No fee	1585 Ouellette	519-253-8481
Youth & Family Resource Network	No fee	Locations in Leamington, Kingsville	519-733-8983
Maria DeRubeis	Hourly rate	2052 Ottawa St.	519-973-6161
Granneman & Daragon	Hourly rate	3039 Walker Rd	969-3534
Steve Kerr	Hourly rate	691 Ouellette	519-258-

			2422
Dr. Leenaars	Hourly rate	1500 Ouellette	519-253-9377
Private practitioners with an hourly rate may subscribe to Green Shield or other Health Care providers			

POTENTIAL BENEFITS TO PARTICIPANTS AND/OR TO SOCIETY

You may find it helpful to share your perceptions and experiences during an interview. You may also have the opportunity to learn about the experiences of other parents experiencing the divorce process by participating in the feedback portion of the study or reading the results of the study posted on the Research Ethics Board website.
Additionally, by participating in this study, you will know that you are adding to the knowledge about child custody decision-making from the parents' perspective. This has the potential to make a difference in how the courts work with parents when making child custody decisions in the future.

COMPENSATION FOR PARTICIPATION

You will be compensated $15 for the interview to thank you for your time and effort and provided with $10 to assist with transportation costs. If you are asked to read over a report of the findings and provide feedback, you will be compensated an additional $15.

CONFIDENTIALITY

The information/data that you provide during the individual interview will remain confidential. No identifying information will be kept with your interview tape or transcript. If you choose to provide feedback about the results of the study, this too will remain confidential. Your identity will not be revealed by the researcher. The only exception would be if a participant disclosed their intent to harm themselves or someone else.

The consent form does not require your signature to ensure that the data you provide cannot be associated in any way with the circumstances of your divorce proceedings. Additionally, the results of the study will be used for publication but will not in any way reveal the identity of the study participants.

PARTICIPATION AND WITHDRAWAL

You can withdraw your interview data any time up to two weeks following the interview. If during the interview, you wish to withdraw from the study, you will be asked to leave your data to that point in the study. If you still want the data removed, tapes (electronic files) will be destroyed and any paper notes will be shredded. Ms. Archer-Kuhn may withdraw you from this research if circumstances arise which warrant doing so. An example might be that the researcher believes the interview is having a significantly negative impact on the participant.

FEEDBACK OF THE RESULTS OF THIS STUDY TO THE PARTICIPANTS

A summary of the results of the study will be available on the Research Ethics Board website at the University of Windsor

Web address: www.**uwindsor**.ca/**reb**/

Date when results are available: September 30, 2014

SUBSEQUENT USE OF DATA

These data may be used in subsequent studies by the same researchers, in publications in academic journals, journals available to lawyers and community organizations and in presentations to researchers, lawyers, Social Workers, parents, and others in the field of custody and divorce.

RIGHTS OF RESEARCH PARTICIPANTS
If you have questions regarding your rights as a research participant, contact: Research Ethics Coordinator, University of Windsor, Windsor, Ontario N9B 3P4; Telephone: 519-253-3000, ext. 3948; e-mail: ethics@uwindsor.ca

This consent form does not require your signature to ensure that the data you provide cannot be associated in any way with the circumstances of your divorce proceedings. If you choose to participate in the study, you will be asked to give verbal permission on audiotape. Additionally, if you choose to participate in reviewing the study findings, you will be asked to provide verbal consent on the audiotape at the beginning of the interview.

SIGNATURE OF INVESTIGATOR
These are the terms under which I will conduct research.

_____   _____
      Signature of Investigator   Date

Appendix F Participant Profile Questionnaire

Participant Profile Questionnaire

Participant number: _____

Date: _____

Please complete this page so that we can describe in general the characteristics of the people who participated in this study. These demographics will also be used to understand the interview information you provide.

1. Sex: _____

2. Age: _____

3. Current marital status:

□single   □common-law

□married   □separated

□divorced   □other (please specify): _____

4. With what ethnicity and/or race do you identify?
_____

5. With what religion, if any, do you identify?_____

 6. What is your occupation? _____

7. Current employment status:

□ employed full-time

□ employed part-time

□ seasonal employment

□ currently unemployed

□ retired
□ other (please specify): _____

8. Please check off the highest level of education you have completed:

□ no formal education completed

□elementary school

□high school

□college diploma

□bachelor degree

□master or doctorate degree

9. Date of current separation? _____

10. Number and Ages of children? _____

11. Are the children currently residing with you? Yes_____No _____

a) If yes, what amount of time? If no, what access arrangements do you have?

_____
_____

_____
_____

b) If no, what access arrangements do you have?

_____
_____
_____

12. Please identify by circling the number best describing your view of the conflict experienced between you and your ex-partner.

  1_____2_____3_____4_____5

  Extremely low   low   medium   high   extremely high

13. Who, if anyone, provided support to you throughout your separation/divorce process?

_____

_____

_____

14. If you attended any form of counselling or formal support after the separation please list them here:

Counselling or Formal Support	Month/Year it began	Month/Year it ended

Thank-you for participating! Please hand this form to the researcher when you have completed it.

Appendix G Consent to Audiotape Interview

Name of Study: Parents' Perceptions and Experience of their Decision-Making in Child Custody during the Divorce Process

I, Participant # ___, agree to allow the researcher to audiotape the interview. I understand that Ms. Archer-Kuhn is conducting a research study to be used in partial fulfillment of the dissertation. I am aware that the data from the audiotape will be transcribed and be non-identifying. I further understand that Ms. Archer-Kuhn will keep the audio recording stored on her password protected laptop until transcription and then the audio recording will be destroyed.

I understand that I will be asked to verbally consent to the audiotaping of the interview while being recorded by audiotape during the interview and will not be required to sign this consent form.

I also understand that I will be asked to verbally consent to future contact, for example, to review the findings of the study while being audio recorded and will not be required to sign this consent form. If I choose to consent to future contact by the researcher, I understand I will have the option to withdraw my consent at a future date.

Appendix H Interview Guide

Research Question: In the divorce process, how do parents perceive and experience their ability to make child custody decisions together?

1. Tell me about decision-making in your divorce process.

Prompts: where are you at in the process (timing), personal and social, resource, hopes and dreams, vision, what was expected and what wasn"t expected and how did you manage that, describe the level of conflict, talk about how decisions are made

2. Describe how you and X make decisions regarding the children,
   - Before separation?
   - During separation?
   - After separation?

Prompts: describe an example of when you made a decision together, give another example, when you were unable to make decisions together, what was helpful, what was not helpful

3. Describe how your experience has been with shared decision-making?

Prompts: for your children, for your X, for the family, anyone else?

4. Talk about how you would have preferred to see decision-making occur.

5. From your experience, how can joint decision making be facilitated?

Prompts:

   - Before separation?
   - During separation?
   - After separation?

6. Are there recommendations would you like to make or changes you would like to see in the divorce process?
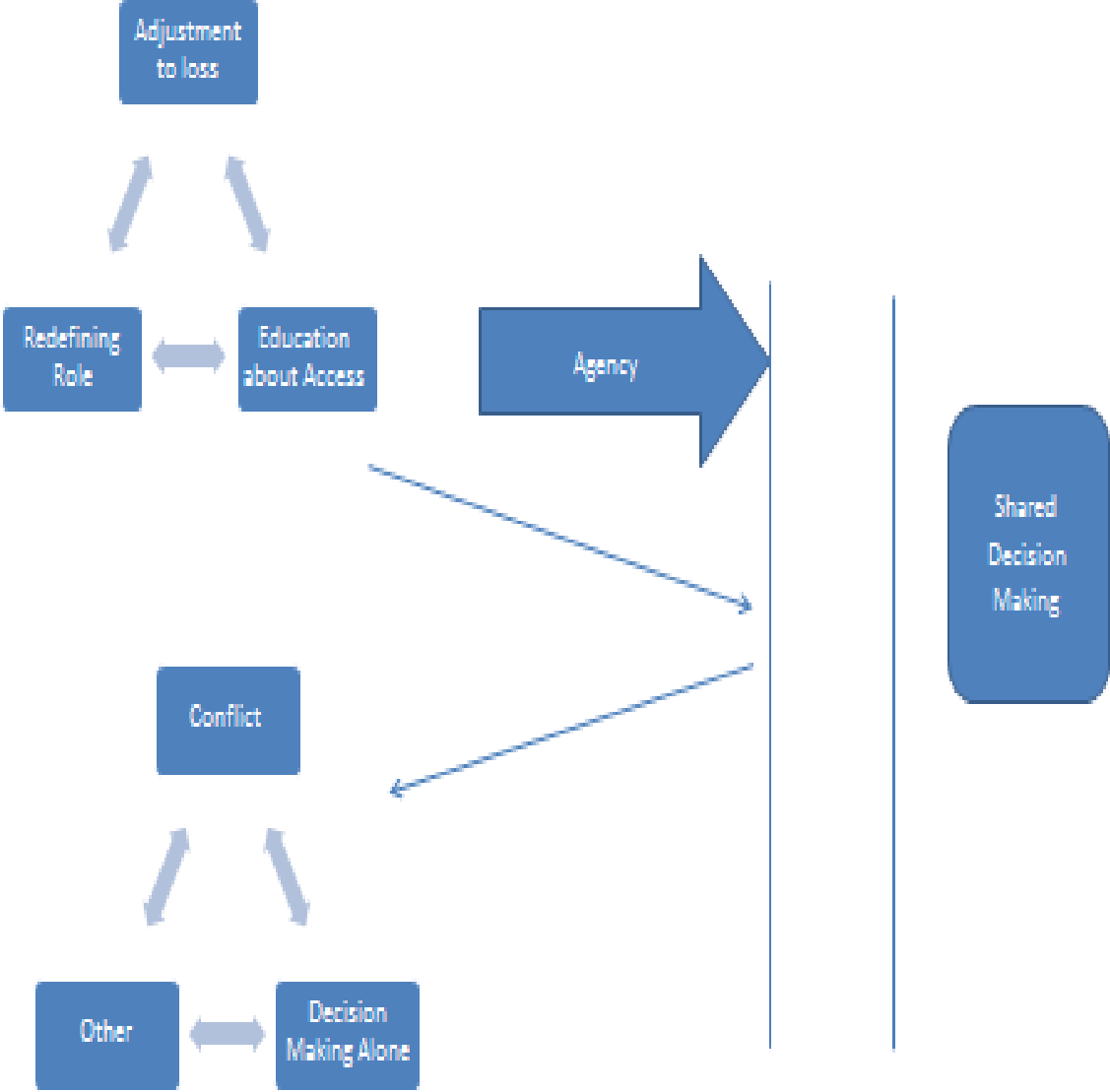
Appendix I Data Analysis Table

Participant # ___			
Interview Data	**Codes**	**Sub-Themes**	**Themes**

Appendix J Categories and Themes for 5 Themes

Categories	Themes
Decision To Divorce Parent/child relationships Type of Decisions Timing of Decisions Parental Rights Decisions About Access	Redefining Roles
Lessons Learned	Agency
Emotional Readiness Decisions of Agreement Facilitators to Agreement Priorities of Importance Process of Decision-Making	Shared Decision- Making
Areas & levels of conflict Safety Areas of Uncertainty Children‟s Involvement in Conflict Feelings About Experience Feelings About Process Feeling About Divorce Feelings About Conflict Expectations Communication Behaviour To Avoid conflict Behaviour When Not in Agreement Barriers To Agreement Negative Partner Behaviour Denigrating Partner Behaviour Decisions of Disagreement	Barriers To Agreement
People involved in Decision-making Community Services Supportive Services Outside Influences Decisions of Custody Decisions Not Made By Parent Legal Services Impact of Decision-Making Feelings About Decision- Making	Complexities Involved in Shared Decision-Making

Appendix K Initial Visual Representation of Themes

Appendix L Table for Member Check

Theme	How Theme is understood by researcher	How Theme represents participant experience	How Theme does not represent participant experience	Other Comments about theme
Adjustment to loss	Until parents are able to adjust to their new family life, their sense of loss over the relationship can leave them behaving inappropriately towards their ex-partner and unable to participate in decisions together about their children.			
Barriers	In child custody decision making parents can experience many barriers to agreement and this experience can feel unique to their situation. Some barriers include areas of disagreement and the means by which they demonstrate that disagreement. Areas of disagreement include parenting, finances and new partners. Parents focus on their needs and communication is strained, reduced and can include the children, new partners or other adults. For parents who are able to let go of their anger for their ex-partner, and consider the needs of their children first, the level of conflict between parents reduces as they adjust to their family life. For other parents, communication becomes more challenging and the conflict lingers.			
Education	Parents don't always know how access can be organized to consider the needs of their children making decisions about access challenging for them. Access is often patterned to reflect the parents" schedules. At times, parents get input from professionals about children"s needs and voice to incorporate into their decisions of access.			

Shared Decision Making	Shared decision making can involve time, adjustment to new circumstances and a desire to consider needs of children first in parenting. Parents who focus on the process of decision making, including their ex-partner in discussions, listen to the needs of all involved and compromise, are able to share child custody decision making.			
Redefining roles	Parents seek to redefine their role as parent regardless of who previously took on the responsibility for decisions of the children. This process can be challenging while parents are experiencing the loss of their former family structure. Relationships between parents and children can change after parental separation as parent try to navigate their new family structure. Parents report that children maintain relationships with both parents when parents are able to put the needs of the children first in parenting.			
Decision Making Alone	When one or both partners choose to end the relationship, decision making alone can be burdensome. When parents can't make decisions together, they may seek support through other people such as new partners or community supports. New partners in this role can create conflict between parents. While decisions are being sorted, children have to adjust to adult decisions to access and different parenting styles and this transition period can be hard on kids.			
Conflict	Conflict after separation can be exhausting for parents. Many parents report behaviours to avoid conflict in part to shield the children from the adult turmoil and in part to reduce the frequency of engagement with their ex-partner.			

Others	The complexity of decision making in child custody extends beyond the parents. Parent decisions may be influenced by a variety of people such as support (family, friends), legal (lawyer, judge, police), community (professionals) and children. As a result, sometimes one or both parents are left out of the decision making process.			
Agency	Attention is required to a process that helps parents resolve differences while maintaining individual agency (ability to make choices). Parents reported on facilitators to joint decision making such as skill development including negotiation, compromise, and shared power. Parents also reflected on challenges that might be adjusted to further facilitate joint decision making including changes to the legal system that consider both parents in decisions of parenting and in presenting parenting plans, changes to legislation that might impede on the above and to consider significant consequences for parents who delay the process or ignore court orders or processes to encourage compliance.			

Vita Auctoris

Beth Archer-Kuhn was born in Windsor, Ontario where she has attended all of her formal education. She graduated with a Bachelor of Social Work in 1986 and a Master of Social Work in 1991 from the University of Windsor, School of Social Work. Beth has worked in the fields of child welfare, children"s mental health and child custody and access in the Windsor area for over twenty-five years. She is presently an Assistant Professor with the University of Calgary in Alberta, Faculty of Social Work.