



# WHY CAN'T EVERYONE JUST GET ALONG?

HOW BC'S FAMILY LAW SYSTEM  
PUTS SURVIVORS IN DANGER

*Rise*   
WOMEN'S LEGAL CENTRE

WITH GENEROUS SUPPORT FROM WOMEN AND GENDER EQUALITY CANADA



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JANUARY 2021

# Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger

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Rise Women's Legal Centre  
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Canada 

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The views expressed by project participants are their own. Any errors or omissions, however, are the responsibility of Rise Women's Legal Centre.

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This report is dedicated to all of the women who courageously shared their experiences with us in hopes of making the legal system safer for survivors.





# A Note on Terminology

**FAMILY VIOLENCE:** “Family violence” is the term used in BC’s *Family Law Act* to describe acts of violence that take place within the family setting, including against spouses. Because this report is being created for people who work in and use the legal system, we use the phrase “family violence” throughout. However, we recognize that this term has been criticized for neutralizing the gendered nature of violence, which is disproportionately perpetrated against women by men. The term family violence is not generally used by women-serving organizations, where the more common descriptors are “violence against women” (VAW) and gender-based violence (GBV). Other terms that are frequently used are intimate partner violence and child abuse. We acknowledge at the outset that family violence can be perpetrated against anyone, whatever their age, race, socio-economic status, religion, sexual orientation, gender identity, dis/ability or education, and that some populations are disproportionately impacted.

**SURVIVOR:** We predominantly use the term “survivor” to refer to women against whom family violence has been perpetrated. However, we acknowledge that not everyone identifies as a survivor and some people may refer to themselves as victims, or may not label their experiences. We also refer to survivors as women with lived experiences (of violence).

**CUSTODY AND ACCESS:** Historically, both BC’s provincial family legislation and the federal *Divorce Act* used the terms “custody” and “access” to refer to parents’ rights to care for and spend time with their children. Despite changes in the legislation over time, we use the terms custody and access throughout this report to refer to guardianship, parenting responsibilities, and parenting time. This is because many of the women we spoke to used these terms, and they are widely understood internationally.

**FAMILY COURT:** While BC does not have specialized family courts, we use the term “family court” in a general sense to describe courts hearing family law matters. Family matters in BC may be heard in either the Provincial Court or the Supreme Court, and different procedural requirements apply to each court; however, the concerns that were raised by the women we spoke to apply to both levels of court.

**POLICE:** We use the term “police” broadly to refer to all police officers working within different police agencies in BC. For example, we do not differentiate between RCMP and police. This is to help protect the identity of the women in our focus groups.

We predominantly use the term “survivor” to refer to women against whom family violence has been perpetrated. However, we acknowledge that not everyone identifies as a survivor and some people may refer to themselves as victims, or may not label their experiences. We also refer to survivors as women with lived experiences (of violence).

**GENDER-BASED VIOLENCE:** We refer primarily to men as the perpetrators of violence, and women as the survivors. We recognize that violence can be committed by all genders. However, our research reflects that gender-based violence is most pervasive by men towards women, children, and gender diverse individuals. This report draws on the real life stories of women in BC.

**UNREPRESENTED:** Many women-serving organizations draw a distinction between “self-represented” individuals who can afford a lawyer but choose not to, and individuals who are “unrepresented” as they are unable to obtain counsel, usually for financial reasons. At the same time, many others including the National Self-Represented Litigants Project in Windsor, Ontario, adopt “self-represented” as a single generic term, arguing that people who represent themselves rarely fall neatly into these two categories, and because “unrepresented” assumes that being represented by lawyers is the norm (a norm that can no longer be maintained). In this report we have chosen to use “unrepresented” to describe women who were unable to afford counsel and/or access a lawyer through legal aid. We typically use “self-represented” to describe individuals engaged in litigation harassment since refusing to work with counsel in order to have greater access to their ex-spouse is often a feature of such abuse.



## Introduction



**We** live in an extraordinary moment in time, when many women’s voices are gaining strength. One of the most obvious examples is the #MeToo movement which shone a spotlight on the prevalence of sexual harassment and assault directed at women, although this movement has been subject to criticism for failing to be inclusive of all women’s experiences. While the #MeToo movement gained momentum in 2017, its outlines were visible much earlier, including in the response of the Canadian public to Jian Ghomeshi’s arrest for sexually assaulting multiple women in 2014.<sup>1</sup> In 2017, while “#MeToo exploded across the globe, Canadian journalist Robyn Doolittle released her “Unfounded” series in the *Globe and Mail* which detailed the police’s systemic failings in their handling of sexual assault cases.<sup>2</sup> The day after Donald Trump was inaugurated, the international Women’s March protests, the largest single-day protest in United States history, left streets covered with pink pussy hats, and in the intervening years record numbers of



Across the province we heard story after story about a legal system that is not designed to recognize the pervasiveness of family violence, nor to meaningfully assess and respond to the risks of future violence, which is “particularly high following parental separation.”

women have run for political office in both Canada and the US (although this has not necessarily translated into winning seats). In February 2020, when Harvey Weinstein was convicted by a jury in New York and sentenced to 23 years for rape and sexual assault, a watershed moment for #MeToo was realized.<sup>3</sup>

Unfortunately, violence against women in the context of family law has yet to have its #MeToo moment, despite Canada’s federal government giving increased attention to gender inequality and despite the enactment of provincial family legislation which is supposed to focus judicial attention on the harms that family violence causes. Many hoped that there would be a significant improvement in the way that survivors of violence fared in BC’s legal system when the new *Family Law Act (FLA)*<sup>4</sup> came into force in 2013. However, despite some small steps forward, on balance, these hopes have not been realized. The reality is that everything we heard from women across the province has been said many times before; the family law system may have changed its legislation, but it did not change its underlying attitudes and assumptions, which are frequently built upon a foundation of preconceived myths and stereotypes about the dynamics of interpersonal violence.

Despite the well-documented prevalence of family violence directed at women, our research found that many legal system professionals still tend to view cases involving family violence as outliers or exceptions to the norm.

Throughout the years we worked on this project we continued to be overwhelmed by the number of children and women across Canada being killed by their partners, often in the context of separation.<sup>5</sup> The murder of two young girls by their father in Oak Bay, BC, and Canada’s deadliest massacre in Portapique, Nova Scotia formed devastating bookends to this project.

The murder of the two Berry children in December 2017 followed a Supreme Court decision granting their father overnight access despite a lengthy history of abusive behaviour. The case quickly became a flashpoint, with academics and reporters citing the case as a symbol of the BC family law system’s failure to respond to red flags, and members of the legal profession defending the decision as predicating a tragedy that could not have been predicted.

However, to understand why the family law system failed Chloe and Aubrey Berry we need to recognize that this as a systemic failing rather than the failure of individual legal professionals who

Recent statistics indicate that family violence continues to cause pervasive harm to women and children:

# 99,000+

In 2018 Statistics Canada reported that one-third of violent crimes were committed by intimate partners, affecting, “...over 99,000 victims aged 15 to 89.”<sup>6</sup>

## 1 woman murdered every 6 days

One in five homicides in Canada involve the killing of an intimate partner.<sup>7</sup> One woman every six days is murdered by their intimate partner in Canada.<sup>8</sup> Femicide is an epidemic worldwide.

## most common form of violence for **WOMEN**

Women are more likely to experience violence than men,<sup>9</sup> and accounted for almost 8 in 10 victims of intimate partner violence, and it is the most common form of violence women experience.<sup>10</sup>

## 1 in 5 women

Canadian research in 2016 showed that one in five women experience intimate partner violence,<sup>11</sup> and a little less than “one-third of Canadians” self-reported experiencing abuse during childhood.

## some at greater risk

Girls and young women, Indigenous women, LGBTQI2S+ people, women living with a disability, and women in rural and remote areas are all at greater risk of violence.<sup>12</sup>

## most likely victim of murder-suicide

In Canada, men account for 95 per cent of those accused of murder-suicide, with his intimate partner being the most likely victim.<sup>13</sup>



The National Inquiry into Missing & Murdered found that Canada engaged in genocide against Indigenous women and girls, who have been murdered or have gone missing at a rate **four times higher** than the general population in Canada.<sup>14</sup>

PHOTO: REDRESS PROJECT, ACADIA UNIVERSITY, COURTESY RODGER EVANS/FLICKR COMMONS

made the final orders in a years-long family law proceeding. Preventing such a tragic outcome would have required the legal system to recognize the safety risks posed by Mr. Berry's behaviour at an early stage, and rapidly respond by protecting the other family members. Legal system professionals would have needed to respond both protectively and preventively, with the requirement that Mr. Berry prove that he was not a risk over time. But this is not how the family court system works. The girl's mother, Ms. Cotton, was represented by a lawyer who presented evidence of family violence but likely predicted, correctly, that the court would be reluctant to suddenly terminate Mr. Berry's access when it had been accommodated throughout years of abusive behaviour. The presiding judge granted an order that was close to what counsel requested. The status quo had already been established by years of "reasonable" compromises in which ensuring the children's relationship with their father was prioritized over safety.

To achieve a different result Ms. Cotton needed the ability to seek safety at the start of her family law history and a legal system that was willing to take risks seriously. This case highlights some of the challenges inherent in relying on the family law system to address risk of future harm. It is uncontroversial that criminal courts are backwards looking — an accused cannot be convicted of crimes until they have actually been committed. But family courts are forward looking and are supposed to help families deal with the impact of separation, often over many years. If family courts fail to adequately address the risk of physical violence, and only respond once it has occurred, and criminal courts by definition cannot respond until violent acts have been completed then cases like *R v Berry* are all but inevitable. Identifying and responding to risk also means taking less tangible forms of violence, like psychological abuse, stalking, and financial abuse seriously — but conversations with over a hundred women with lived experiences of violence suggest that these are the very forms of violence which receive scant attention from legal professionals.

On April 18, 2020, on the other side of the country, Canada saw its most deadly massacre in history, when a man dressed in RCMP uniform killed 22 people, following an assault on his girlfriend.<sup>15</sup> Like so many mass shootings, the intentional killings started with violence towards his intimate partner.<sup>16</sup> One neighbour, who was interviewed before information about the family violence had been made public stated "He was very jovial. But there is another side to Gabe. He had some issues, especially with his girlfriend. There was [*sic*] some underlying issues that I think he had with his relationship. It was a red flag..."<sup>17</sup> As with *R v Berry*, the red flags were there, but the legal system did not proactively respond to them.

This report bears witness to the family violence that women in BC have continued to experience since the *FLA* came into effect in 2013. Across the province we heard story after story about a legal system that is not designed to recognize the pervasiveness of family violence, nor to meaningfully assess and respond to the risks of future violence, which is "particularly high following parental separation."<sup>18</sup> Within a system which is not designed to protect them, women are encouraged to ask for what they can get rather than what they need. Safety is often rationed in days or weeks.

This has all been said before. We conclude with recommendations to make systemic and cultural change to the family law system, in the hopes it will not all have to be said again.



# Methodology

**T**hrough this project we sought to understand how the legal system responds to family violence, with a focus on the family court system since the enactment of the *FLA*. We applied a mixed methodology approach to answer this question, drawing on literature review, case law analysis, surveys, interdisciplinary roundtable discussions, key informant interviews, focus groups and one-on-one conversations. While each method gave rise to some limitations (as discussed below), we have pulled these data together to assess how legal stakeholders understand family violence in BC courts and what key challenges remain.

## Our Methods

The following methods inform the findings of this report.

### Doctrinal Research

At the start of the project we conducted a literature review of secondary sources related to the *FLA* in BC, as well as to family violence. These sources provided a foundation for the framing of our study and are referenced throughout this report to show how the findings in secondary sources were frequently supported and confirmed by women with lived experience of violence.

### Family Lawyer Survey

In May 2018, we distributed a survey to family lawyers seeking to understand lawyers' experiences with using the *FLA*, particularly to extent to which the inclusion of a specific consideration of family violence impacted their practice and approach to client advocacy. While we made efforts to reach a large number of lawyers using social media outreach and distribution to a list of approximately 100 practitioners, we received 18 responses to this survey.

## Key Informant Interviews

Between 2018 and 2019 we conducted 31 key informant interviews with front-line workers and experts from different disciplines, including people with expertise in psychology, law, social work, education, nursing, advocacy, and counselling. While every participant was asked the same list of questions, each interview addressed family violence through a different lens. These interviews were conducted either on the phone or in person, and occasionally in a group setting.

## Focus Groups and Interviews With Women With Lived Experience

Between 2018 and 2019, we conducted a total of 27 focus groups across BC in 25 different communities, with 160 participants. These participants were women who had experienced family violence and accessed the family court system after the *FLA* came into effect in 2013. This number also includes at least one front-line advocate or support worker at each focus group who attended as a resource for participants. The front-line advocates also frequently participated in the groups and gave insights into the experiences of the women they work with in their communities. We also spoke with front-line workers in an additional two communities and had approximately 10 additional one-on-one interviews with women with lived experiences.

Focus group conversations were semi-structured which allowed for fluidity in responses. Rise Women's Legal Centre (Rise) sought input into the design of the project, and particularly the focus groups, from numerous community partners through our own Community Advisory Committee, and from the STRENGTH Project's Community Advisory Committee.<sup>19</sup>

We attempted to speak with women who had a wide variety of attributes and identities. To recruit participants, we worked collaboratively with community organizations, who frequently hosted the focus groups. The qualitative interview data was analyzed in this project using a thematic analysis, a method of analyzing qualitative data by deeply exploring the research questions and responses to find themes within the data. Throughout our report, we give context to the themes presented by presenting the quotes from women's experiences.<sup>20</sup> These quotes are used with the permission of the participants, and are often paraphrased to protect the identity of the women.

## Roundtable Discussions

Between 2018 and 2020 we organized five roundtable discussions on the following topics: Section 211 Reports (Custody and Access Reports); Violence-Informed Practice; Protection Orders; Mobility and Relocation Concerns; and Litigation as Abuse. Each roundtable was attended by experts from a variety of disciplines and women with lived experience of family violence for a total of 39 participants. These roundtable discussions involved brainstorming solutions to specific challenges identified through our interviews and focus groups.



## Section 211 Reports

Between 2017 and 2019 we gathered section 211 reports. We received a total of 27 reports from 22 women (with some women having more than one section 211 report prepared over the course of her family law matter). Twenty-one women participated in a supplementary interview to provide context to their report. These reports were explored using an analytical framework established by Dr Linda Coates. Given the large quantity of data relating to section 211 reports we have included this information in a separate section 211 toolkit, and we do not draw on the results here.

## Participant Survey

We designed a participant survey for women with lived experiences at the start of 2020, once we had completed a rough draft of this report by summarizing our key findings. We created this second survey because we had identified several significant themes, and we wanted to attach quantitative data to those results. We sent this survey to approximately 70 participants from our focus groups who we had email addresses for and received 27 responses. Those results are incorporated throughout this report and we refer to them as our survey results.

## Limitations

This project has addressed family violence within the context of the *FLA*, which is provincial legislation only applicable in BC. Statutory provisions, case law, and other remedies discussed in this project are not automatically applicable to other jurisdictions in Canada. However, we are deeply indebted to lawyers and academics across Canada who have shared their expertise with us. Legal remedies may differ, but violence knows no provincial boundaries.

We have also chosen to focus only on women who have experienced violence, and whose experiences with the family law system have occurred since 2013, when the *FLA* came into effect. Due to the large volumes of information, we did not attempt to address the experiences of women who may have been engaged with the criminal law system at the same time.<sup>21</sup> That said, we spoke with many women who were also interacting with the criminal law system as the complainant in cases relating to their ex-partner's violence.

While we endeavoured to engage with a diverse group of women across the province, in the focus groups, we did not require women to disclose their demographic data out of concern for their safety and privacy, and therefore cannot provide complete disaggregated information relating to different marginalized groups. Many women are experiencing intersecting systems of oppression that impact their ability to fully participate in the family law system. The challenges of the family

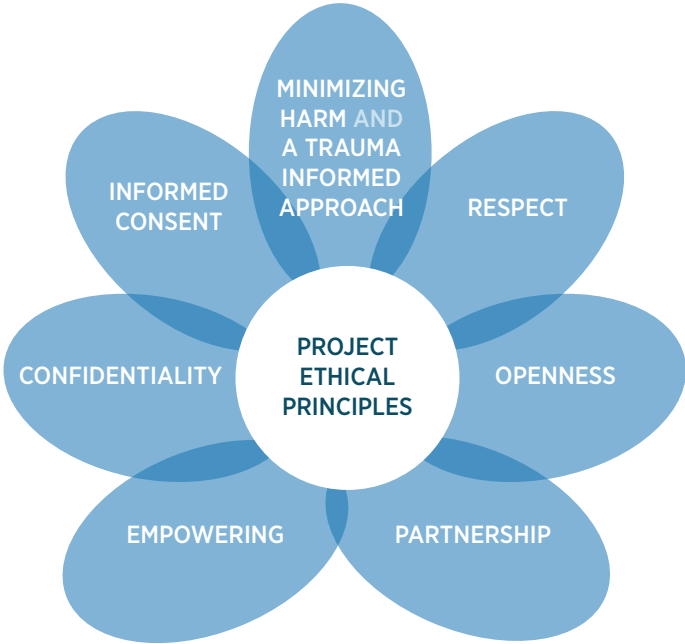
Women in our research raised how a number of compounding issues impacted them: poverty, systemic racism, lack of available or affordable housing, disability, English as an additional language, living in rural areas, lack of literacy, elder abuse and ageism, being a member of the LGBTQI2S+ community, being an immigrant to Canada without permanent residence, and involvement with MCFD.

law system are amplified when people are marginalized, which can lead to “reinforcing rather than alleviating [people’s] vulnerability.”<sup>22</sup>

Women in our research raised how a number of compounding issues impacted them: poverty, systemic racism, lack of available or affordable housing, disability, English as an additional language, living in rural areas, lack of literacy, elder abuse and ageism, being a member of the LGBTQI2S+ community, being an immigrant to Canada without permanent residence, and involvement with MCFD. We recognize this is not an exhaustive list, and unfortunately, we cannot explore these factors in the way that is necessary to fully appreciate their impact on women who are experiencing violence and navigating the legal system.

We wanted to especially acknowledge that a significant limitation of this research is that it does little to address the ways in which the family court system furthers colonial violence against Indigenous families, particularly women and children. Through the period of this research we followed the National Inquiry into Missing and Murdered Indigenous Women and Girls, and the release of the final report which included 231 individual Calls for Justice. And, over a year after the release of this report, we still wait for the development of the government’s national action plan to address the recommendations. Our report discusses what was shared with us from Indigenous women in our focus groups, but we recognize that more needs to be done and the voices of Indigenous women need to be at the forefront. One of the ways we are addressing this limitation is through a future project, “Working Against Cultural Biases in Family Court, which is being funded by the Law Foundation of BC. In this project we will work with Indigenous lawyers and consultants to learn about the work of decolonizing legal practices and the court process to better support Indigenous clients.

# Ethical Considerations



The following ethical principles and considerations were incorporated within this project’s design.

- **Informed consent:** All participants of this research completed a consent form explaining the parameters of the project. Participation in this project was entirely voluntary. All participants, including community partners, were free to choose whether to participate. Participants had the right to withdraw from any aspect of the project at any time without any negative consequences. No clients with existing files at Rise were approached for participation, and participation in the research had no impact on a woman’s ability to receive future services from Rise.
- **Confidentiality:** The strictest principles of confidentiality were upheld through the implementation and dissemination of this study. No identifying details about women with lived experience were recorded. The names and experiences of the key informants have been included within this report with permission.
- **Minimizing Harm and a Trauma-Informed Approach:** The design of the study itself was trauma-informed. We did not specifically ask questions about their experiences of violence within the focus groups and made attempts to make sure that women were not asked to again tell their stories of the abuse they experienced.<sup>23</sup> A support person was in attendance or nearby for every focus group. At the end of each session there was an acknowledgment of the heaviness of the sessions and a debrief, and participants were given a sheet with resources for VictimLink, and resources in their community.

- **Empowering:** At the beginning of each focus group we explained the types of questions we would be asking, but let participants know that they were the experts and we would listen to what they wanted to share. Women were told it was their choice to answer the questions, and they did not have to answer anything at any time. In all of our methodologies we let people know that they would receive the honorarium at the beginning of the focus group, and regardless of how much of the survey they completed.
- **Respect:** Every effort was made to phrase questions for interviews and focus group discussions in respectful language. Community based consultation took place to ensure that our research approach was respectful to women’s experiences and to ensure that participants were in safe, familiar locations with supports. The women who participated received honorariums, the cost of child care, transportation, and snacks or lunch. Women were asked to register ahead of time to allow for Rise to organize interpretation services if needed, and to learn of any specific requirements that the women might have such as food allergies. Our researcher completed each focus group by thanking participants, and expressing gratitude for their resilience, strength, and a recognition that they have been working hard to keep themselves and their children safe for a very long time.
- **Openness:** We endeavoured to be transparent with research participants about our processes and our limitations. We specifically sought out participants who had family law matters that were complete because we recognized that we would be unable to provide direct legal services through our research activities. That said, many women who had active family law matters still wanted to participate in our research when they learned we could not provide them with legal advice or assistance with their legal matters. We endeavoured to connect participants who expressed an interest in obtaining legal services with the Case Manager at Rise, who could provide appropriate referrals and resources.
- **Partnership:** Throughout this project we have offered women the opportunity to remain in contact and receive copies of this report. Women with lived experience were invited to be part of our evaluation committee. We were able to establish connections with many transition houses and resource centres throughout the province, and we now offer legal services to many of these community partners through our Virtual Legal Clinic.

We specifically sought out participants who had family law matters that were complete because we recognized that we would be unable to provide direct legal services through our research activities. That said, many women who had active family law matters still wanted to participate in our research when they learned we could not provide them with legal advice or assistance with their legal matters.



## BC Context



*What I would love for the system to hear is that I am a woman who has experienced being picked up by my head, having a knife held to my throat, and then had that knife forced into my hand and put up to my throat and then his throat. I went through believing I would be murdered, to believing it would look as though I killed myself, to believing it would look like I had murdered him. I was completely at the mercy of someone with a weapon who was known to be dangerous. I've told this story to SO many people within the system and tried to get help without making a statement which would have put me at greater risk. Why hasn't anyone recognized – wow, we have a really big problem here.”*

### Family Law Act

Family violence can trap its victims, disproportionately women, in a web of social, legal, political and interpersonal realities which can be challenging for the legal system to address. However, the *Family Relations Act (FRA)*, the BC provincial family legislation in effect from 1979 to 2013, provided no guidance to legal professionals about how violence should be defined or addressed. On March 18, 2013, the *FRA* was replaced by the *FLA*, which made progressive changes to the provincial legislation that governs how families live after separation.

The new *FLA* was the first comprehensive review of family law legislation in BC since 1978, and the goal of changing the *FRA* was to create a statute that would help families resolve matters in a simpler, and more affordable way, while promoting the wellbeing of the children.<sup>24</sup> In addition to taking into account academic research and analysis of family laws across Canada and internationally, the new *FLA* was the product of five years of consultation throughout BC, with the Ministry of Attorney General receiving feedback from over 500 organizations.<sup>25</sup> These consultations affirmed that there were serious gaps in BC's family laws when it came to violence between partners and the impact on children.





In part, the *FLA* aimed to resolve long-standing problems with the way family violence was addressed under the prior legislation.<sup>26</sup> Notable changes include how family violence is assessed; how the best interests of the child are determined when family violence is present; and the obligation for family dispute resolution professionals to assess all cases for family violence.<sup>27</sup> The *FLA* established a new remedy of protection orders, which are enforceable through the *Criminal Code*<sup>28</sup> and women may apply to the court to waive the requirement to give notice of relocation where notice cannot be given without incurring a risk of family violence.<sup>29</sup>

The goal of the *FLA* was to “...ensure the greatest possible protection of the child’s physical, psychological and emotional safety.”<sup>30</sup> The *FLA* reflects social science research that “violence—even if directed exclusively at the spouse—can still be harmful to a child,” and includes the indirect exposure of children to violence as a mandatory consideration in section 38.<sup>31</sup> The modifications to the legislation by having family violence seen as a factor to assess the best interests of the child brought it into line with other jurisdictions in Canada and abroad.<sup>32</sup>

Despite many positive changes to the legislation, we are advised that many Indigenous women and communities were not given the opportunity to take part in the consultations leading to it. It is noteworthy that the best interests of the child test in the *FLA* does not include preservation of a child’s culture or heritage or provide a mechanism for judges to consider what the best interests of the child might look like using an Indigenous worldview. These omissions remain a significant weakness of the *FLA*.

Despite many positive changes to the legislation, we are advised that many Indigenous women and communities were not given the opportunity to take part in the consultations leading to it.

## Expanding the Definitions

Prior to the enactment of the *FLA*, BC family law did not specifically define family violence, nor did the legislation direct the court's attention to the issue of violence. Now the *FLA* defines "family violence" broadly in section 1 as:

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
  - i. intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
  - ii. unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
  - iii. stalking or following of the family member, and
  - iv. intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence.

The *FLA* now makes the impact of family violence a mandatory consideration when determining the best interests of a child under section 37. Pursuant to section 38, when assessing family violence, the court must consider:

- a) the nature and seriousness of the family violence;
- b) how recently the family violence occurred;
- c) the frequency of the family violence;
- d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- e) whether the family violence was directed toward the child;
- f) whether the child was exposed to family violence that was not directed toward the child;
- g) the harm to the child's physical, psychological and emotional safety, security, and well-being as a result of the family violence;
- h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- i) any other relevant matter.

In addition to expanding the types of behaviours which qualified as family violence, the *FLA* also expanded the concept of who could be the subject of family violence. Any person in one's immediate family, including the person's current or former spouse, whether married or common-law, parents and guardians of the person's child, persons who live with or are related to the person, and the person's child can be the subject of family violence. The legislation also recognizes that a child may be impacted whether the violence is directed specifically towards the child or towards another family member.

In their analysis of early *FLA* cases decided between 2013 and 2015, Susan Boyd and Ruben Lindy found that the definition of family violence had made a positive step towards "encouraging judges to take a more nuanced view of the type of conduct that constitutes family violence."<sup>33</sup> Despite the willingness of the courts to recognize an expanded concept of family violence, one of Boyd and Lindy's critical insights was that once identified, family violence did not necessarily lead to protective orders. They found that decisions tended towards an assumption that shared parental responsibility and even shared parenting time were appropriate goals even where abuse was present. They concluded:

*In some cases, it is assumed that the child is too young for family violence to have had a significant impact, or that the violence was not directed at the child, whereas the research shows that clear harm – specifically, emotional and behavioural problems – can result even for infants and toddlers who witness family violence. Similarly, some judgements indicate that because the violence happened in the past, it is not necessary to take the violence into account when making determinations about parenting orders, showing unwarranted optimism that violence ceases upon separation or that abusers readily change their behaviour. Other cases have read in a "friendly parent" rule and emphasis "maximum contact" even though a deliberate decision was made not to include these Divorce Act norms in the FLA. This approach... ignores that section 37(3) of the FLA emphasizes that a child's safety is to be protected to the greatest extent possible in any agreement or order.<sup>34</sup>*

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Here drawing a parallel with the laws against sexual assault is again informative. Writing about her “Unfounded” investigation for the Globe and Mail, Robyn Doolittle wrote “[o]ne of the most surprising things I learned while investigating the handling of sexual assault complaints in the criminal justice system is that Canada already has some of the most progressive laws in the world—and it’s been that way for two decades... In Canada, the laws aren’t the problem. It’s the willingness to enforce them.”<sup>35</sup> Similarly, many of the challenges women face are posed not by the *FLA* but the manner in which stereotypes and myths about what it means to be a woman and mother inform legal practice and decisions. These presumptions are not made explicit in law but are embedded in all our societal institutions and interactions. The power of these social and cultural norms has a direct impact on women’s lives in spite of any formal legal structures that are put in place.

The *FLA* has changed our laws, but our culture has not yet followed suit. Changing the way that we understand violence, power, resistance, and safety is a crucial next step for BC’s legal system professionals.

### Access to Justice Gap for Family Law

Ironically, at the same time that the laws governing how family violence should be dealt with in family cases were strengthened, access to lawyers to ensure that women could benefit from these new protections atrophied. In 2002, BC experienced dramatic cuts to its legal programs, with Legal Services Society (now Legal Aid BC) funding cut by 40 per cent over three years. These cuts were felt unevenly with the programs accessed by women, like family law, experiencing deeper cuts. Despite the sanctioning of the Attorney General by the Law Society, cuts continued, with the last BC family law clinic funded by legal aid closing in 2009.

In 2014, just one year after the *FLA* came into force, West Coast LEAF, a gender equality organization based in Vancouver BC, concluded that;

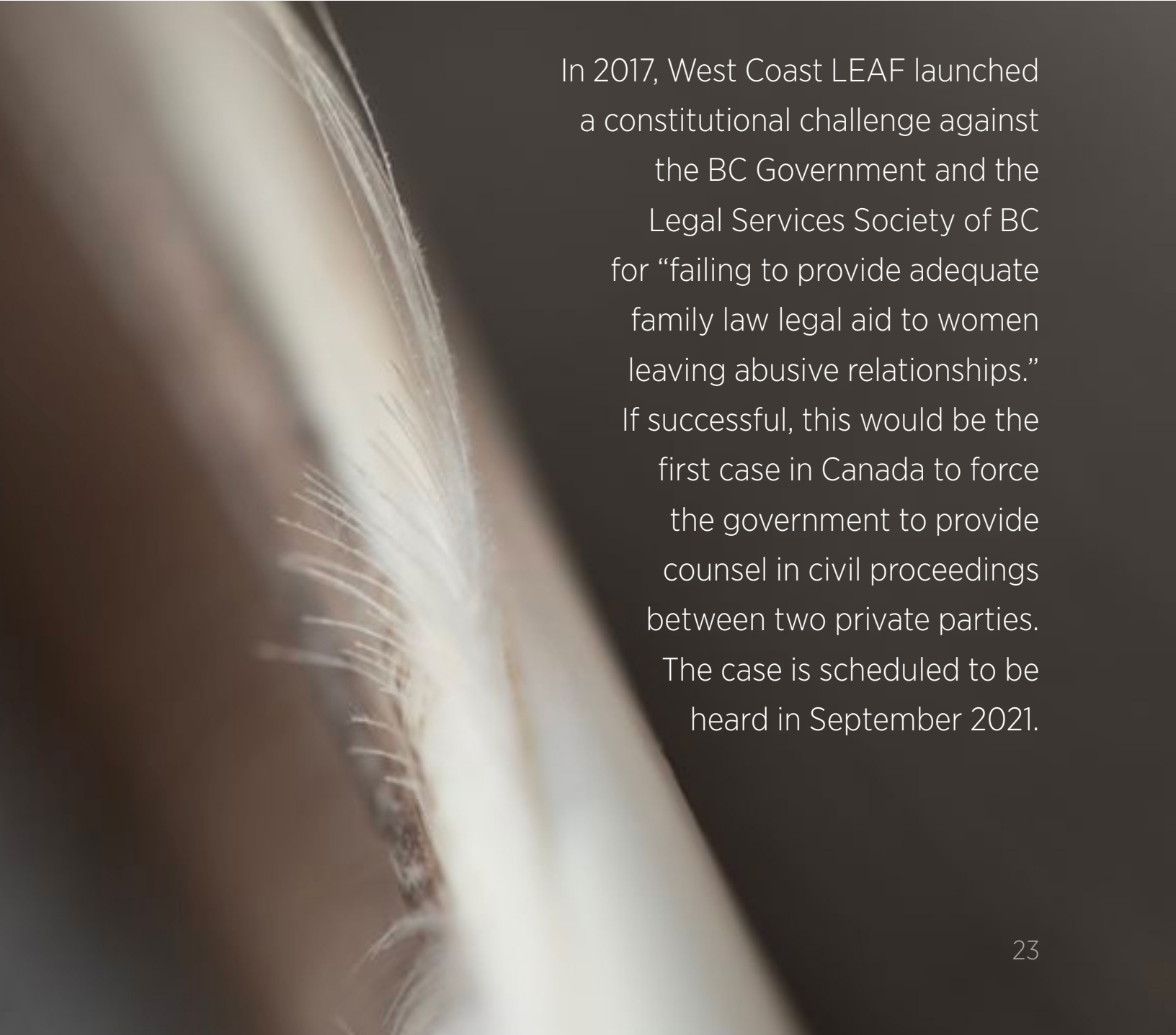
*British Columbia has veered way off course when it comes to ensuring access to justice in family law. The biggest and most urgent crisis in BC’s justice system is the lack of public family law services and the consequent exclusion of women from access to justice.*<sup>36</sup>

Three years later, in February 2017, the Canadian Bar Association’s BC Branch stated in “An Agenda for Justice” that, “The CBABC calls for adequate funding to ensure that people who qualify financially for family law legal aid (71 per cent of whom are women) receive representation for services that promote family security and financial stability.”<sup>37</sup> Women in rural communities who qualify for legal aid still have a difficult time accessing it; in some communities there are no lawyers who take on legal aid files, and they can wait sometimes between seven and eight weeks for a lawyer to be assigned to their file.

Until earlier this year, Legal Aid BC specifically asked in its applications whether a client had experienced physical abuse and if it was reported to police in its assessment for family law legal aid.

This was only changed to asking about all forms of family violence when anti-violence workers pointed out that this was contrary to the *FLA* definition of family violence. All experiences of family violence are devastating, and prioritizing physical violence only serves to satisfy the myth of a hierarchy of violence.

In 2017, West Coast LEAF launched a constitutional challenge (*Single Mothers' Alliance v BC*) against the BC Government and the Legal Services Society of BC for “failing to provide adequate family law legal aid to women leaving abusive relationships.”<sup>38</sup> If successful, this will be the first case in Canada to force the government to provide counsel in civil proceedings between two private parties. The case is scheduled to be heard in September 2021.



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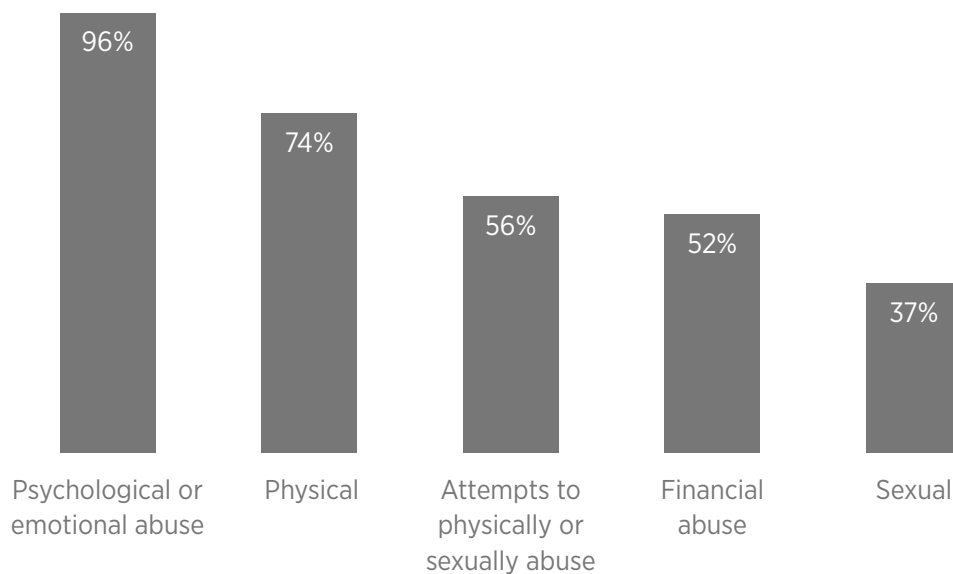




# What the Legal System Ignores

**I**N this section, we describe women's experiences of feeling unsafe in the legal system. In the context of discussing improvements to the legal system, women spoke of the violence they experienced and of significant disregard for their safety by legal system professionals. While women frequently indicated their stories of physical violence were met with poor responses, our conversations also highlighted that non-physical violence receives even less attention in the legal system. We wanted to relay more of our findings on the non-physical violence that women described because of the emphasis that women placed on how difficult it was to be believed and obtain help from the legal system for those experiences. Our findings are consistent with previous research and academic literature, and where possible we have included this to show how they are mutually reinforcing. This section of the report provides the foundation for the sections that follow where we detail how the legal system often increases danger for survivors.

What types of violence were inflicted on you by the person in your family law matter?



The chart above documents our survey findings from 27 respondents; the women surveyed indicated 96 per cent of the women and 87 per cent of their children experienced psychological or

emotional abuse.<sup>39</sup> Women consistently felt that the police, lawyers, and judges they interacted with did not understand the impacts of non-physical violence and did not understand the safety risks they were facing. These responses were consistent with academic research on the use of coercive control and controlling behaviour and how these actions “do not receive priority response and may not even be recognized as controlling by the courts.”<sup>40</sup>

## Non-Physical Violence

A recurring theme from our conversations with women was the way in which perpetrators of abuse frequently used non-physical forms of violence, but that the legal system rarely provided protection from these types of violence. This is consistent with a system that is frequently sceptical of allegations women bring forward of violence in post-separation contexts, or otherwise.<sup>41</sup> The non-physical forms of violence that were regularly described included: emotional and psychological abuse, which can include: “intimidation, harassment, coercion or threats to other people, threats of property, unreasonable restrictions on financial or personal autonomy; stalking and intentional damages to property.”<sup>42</sup> The highest predictor of future risk is violence is when the abuse involves patterns of coercion, and is controlling.<sup>43</sup> Considering that even women with documented evidence of physical abuse faced barriers in regard to being believed, women who experienced types of abuse that did not leave physical evidence faced severe barriers in being viewed as “credible” survivors’ of violence. Yet, factors of coercive control are known to be “more predictive of intimate homicide than the severity or frequency of... physical violence.”<sup>44</sup>

### Psychological and Emotional Abuse

Some women who had experienced psychological violence as well as physical violence explained that the impact of the psychological abuse was longer lasting in many cases, harder to have others recognize, and harder to recover from. The family court system frequently fails to respond to psychological and emotional abuse, and may require women to engage with their abuser, and award the abuser parenting time even when there is evidence of the violence.

Women consistently felt that the police, lawyers, and judges they interacted with did not understand the impacts of non-physical violence and did not understand the safety risks they were facing.

- One woman explained that the psychological abuse was constant. “Every single day, every time you do a drop off of your kids, every time you have to engage with that person, it’s not just the big things ... it’s the day-to-day, where every time you do a drop off you get called ‘a fucking bitch’.”
- One woman described her ex punching holes above her head and not feeling safe but being told by police that because he had not physically injured her it was not abuse.
- One woman stated that she felt her lawyer didn’t believe her, and she had no physical evidence to show what happened.
- “The psychological abuse was even worse than the physical.”

## Stalking

Many of the women experienced stalking by their ex-partner which was overlooked by police, their lawyers, and the court.

- One woman said, “in my experience, stalking is actually more traumatic than non-injurious physical assault... this is not recognized by our legal system.”
- Another woman stated the depths that her ex went to in order to harass her: “Mine stalked, harassed me, he put a GPS tracker on my car. He smashed the door frame... broke into my car, deleted texts.”

## Threats

A pronounced theme in our interviews with women was the prevalence of threats made by their abusive partners to cause harm to them and/or their children, including death threats. Women talked about reporting the threats to police and not having any charges laid and explaining the threats to lawyers and not having the threats taken seriously or being told about options for protection orders.

Many women had evidence of the threats because they were made in text messages, emails, and voicemails, yet overwhelmingly women described threats not being taken seriously by police, lawyers, or judges. In many cases the women receiving threats said their partner had never

“The psychological abuse was even worse than the physical.”

physically abused them in the past, which made it more difficult to have the abusive behaviour acknowledged. One woman said, “My ex is extremely crafty — he would never hit you. He would never touch you, just so he could say ‘I’ve never laid a hand on [her]’.”

In cases where one person makes threats to cause bodily harm or death to another, the criminal process is supposed to respond.<sup>45</sup> Making out a charge of uttering threats does not require Crown counsel to prove that the accused person intended to carry out the threat; it is the intention to instill fear in the recipient that is relevant. Nonetheless, serious threats were frequently ignored by both the criminal and family law systems. In some cases where charges were laid against their partner, women often felt that the prosecution of their matters did not lead to them being in a safer position.

One woman in a focus group explained that she tried to bring up three death threats that her ex had made to her during a Family Case Conference, and the judge told her that was not relevant.

The prevalence of non-physical violence asked us to ask about this in our follow up survey for research participants so we could gain a better understanding of the types of violence they had experienced.

Did your partner ever threaten to kill you, your children, or themselves?



One woman in a focus group explained that she tried to bring up three death threats that her ex had made to her during a Family Case Conference, and the judge told her that was not relevant.

Our survey respondents expanded on the threats:<sup>46</sup>

- “This was the way I was terrorized over many many years. He once told me exactly how he would kill me and make it look like an accident.”
- “Husband told my son that he would kill him.”
- “My husband threatened suicide once he knew that I was not returning to the relationship.”
- “Threatened to kill himself if I left him.”
- “Made threats on multiple occasions, each type of threat [to kill me, our child, himself].”
- “Threats to kill me if I told anyone about the abuse or if I left.”
- One woman’s son told her, “Daddy said he’s going to kill you.”
- “He would constantly talk about me going missing, being taken hostage.”
- “If I can’t have you no one will.”
- “You’ll just be one more skank on the highway of tears.”
- “He was very meticulous... [in his threat of how he would kill me].”

Many women were threatened by their partner that if they left them, they would commit suicide. The Supreme Court of BC has recognized that a suicidal threat by a partner may constitute family violence when it is used as a psychological weapon, and particularly when children are aware of the threat.<sup>47</sup> Suicidal ideations from abusive partners are also correlated with domestic homicide.<sup>48</sup>

Many women who said they had experienced serious threats to their life also described sharing custody of their children, or their ex-partner having full custody of their children. Past inquiries into domestic homicide have highlighted the disconnects in the legal system between lawyers, police, and judges put women and children at increased risk.<sup>49</sup> One woman we talked to said, “I had the chief of police tell me ‘you need to leave town — you are at a high risk of domestic homicide,’” yet her partner was granted sole custody of her children by the family court.

**ACCESS TO GUNS:** In more rural areas of BC, where hunting was common, women often explained that their partners had firearms in their possession. In some cases, women had been threatened while their partners held these firearms against them.

Violence towards family members through abuse of the family pets or livestock was also common:

- “I have a recording of him saying ‘sign the truck over or I’ll shoot all the horses’.”
- “He shot two of my dogs to keep me in line.”
- One woman said her husband tried to kill their daughter’s dog in front of her daughter.

## Financial Abuse

Financial abuse was another common theme, with the abusive partner withholding money as a way of controlling their partner. This often occurred during the relationship in the form of the abusive partner not allowing the other to have access to the family earnings, or by one partner controlling all of the finances.<sup>50</sup> Financial abuse often continued for women when the relationship broke down, for example by her ex-partner not paying for any child support or spousal support, taking the woman’s names off of family property, and controlling the shared and joint assets.<sup>51</sup> In a Court Watch Project conducted by the BC Society of Transition Houses (BCSTH) in 2018, the most commonly observed motions related to financial support of children, spouses, and the disclosure of financial documents.<sup>52</sup>

- One woman explained that, “My ex has millions and I have nothing. He told me ... he would make sure I never had a pot to piss in, that I’d never get to see the kids again. He’s never not gone through with a threat.”
- One woman’s husband took all the money from their joint accounts, including the proceeds of the sale of their family home. She was not able to recover that money, despite having retained a lawyer, and she was required to pay spousal support to him to financially support him after their relationship broke down.
- One woman explained how vulnerable the financial abuse left her, “When you don’t have money you have no power, and so if the abuser cuts you off the accounts or they do something to control money, you’re left in a situation where you’re extremely vulnerable...”
- “I’m not going to talk to a lawyer [about the separation agreement], until I have one more month of knowing I can pay for groceries.”
- “He has control over whether I can pay the lawyer”
- One woman explained how she would have to consider her actions around how he would respond, including one day when, “I stood up for myself and he removed \$4,000 [from her account].”

Many women described being stay-at-home moms during the relationship, which their partner had encouraged. One advocate told Rise, “A lot of our clients are stay-at-home moms who were

encouraged not to work and then boom all of a sudden you have no [recognized] skill set, [and] no ability to get back into the workforce.” One woman said: “For ...years my ex manipulated me into not working because he wanted to know where I was, control where I was, and I didn’t see it like that.” Financial abuse often escalated for women when they left their partner which directly impacted their family law proceedings.

After leaving their partner, many women experienced being cut off of any income they may have had, and having their names taken off of the family company, joint accounts and family assets. Many participants had a very difficult time affording a lawyer or could not access counsel at all. In these situations, women had to decide between having the necessities of life, including shelter and food for their children, or trying to engage with the legal system.

Some women described not knowing that they were experiencing financial abuse while it was occurring. Others, who could identify the abuse as financial, and had evidence of it, were still misunderstood by their lawyers or the courts. One woman explained how difficult it was to present her evidence of financial abuse, despite having the bank documents:

*I had pages and pages of bank documents to show that I used to have the investments and finances, and now I’m in negative credit. How is it possible? I paid for everything, and everything is in my name. I took on all the debt and he’s going to court for half my assets.*

## Litigation Abuse

Litigation harassment is often used within the family court structure by the abusive party to continue exercising power after a relationship has ended.<sup>53</sup> While litigation abuse is not specifically identified as family violence under the in the *FLA*, we include it here given its pervasive harm. Research literature suggests it is “often coercive fathers who pursue custody and/or contact provisions aggressively and tenaciously through family courts as part of their ongoing harassment of their former partners.”<sup>54</sup>

Litigation harassment can be particularly challenging to detect since it often relies on legitimate legal processes and remedies that can appear normal to the court, particularly at the start of proceedings. However, litigation harassment involves an abusive party intentionally using the court system to control or exhaust the opposing party. Perhaps ironically, the well documented lack of access to counsel in BC makes litigation harassment even harder to detect since it can be difficult to differentiate whether the inappropriate use of court processes in a given case is caused by malicious intent, a genuine inability to navigate the legal system without assistance, or both.

Both case law and academic literature have identified numerous acts that may be associated with litigation harassment, and many of these acts were clearly identifiable in our conversations with



women. Some of the key behaviours include: initiating multiple proceedings, using custody as a means of control, choosing to represent oneself despite having the ability to afford counsel in order to have direct contact with the survivor, and draining the survivor's economic resources or legal aid hours. Further, abusive litigants may intentionally eliminate the survivor's ability to hire a lawyer by contacting all of the lawyers in the area and sharing confidential information about the case, thereby "conflicting out" the lawyer from being able to represent the woman. In the following section we outline some of women's experiences of litigation abuse, including their observation that there is little recognition of the ways in which abusive partners use legal process to maintain control, and therefore few consequences for those who perpetrate this form of harassment.

### Multiple Proceedings

A recurring theme was the need to respond to multiple court applications initiated by the abusive party, often requiring responses in short order and without the assistance of counsel. Women described the overwhelming time, energy, and resources it took to respond to litigation abuse, despite the applications lacking merit, their ex's non-compliance with court rules, and much of the content being false. One unrepresented woman in a focus group described:

*[T]he system works really well for the person in power because they have control. They set a court date, and you have to be there. You can't not show up. And every crazy little thing they bring up — you have to respond [to]. For years, I didn't respond to his attempts to get me riled up, and all of a sudden he was in heaven because I had to engage with everything.*

Women spoke of the stress that continuous litigation caused in their lives. Many described how it was very difficult, and in some cases traumatic. One participant described the experience as their partner using the court system to "maintain a level of ... terror."

In some cases, even where women were successful in court, that success had the effect of potentially increasing the abuse they were experiencing. One woman explained, "Whenever I go to court and have a slight edge, like when I was successful in getting an increase to my child support, there are definitely consequences... stalking and

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intimidating behaviour.” Extensive use of the legal system is a socially acceptable way that abusive partners can continue to exert control over their ex-spouse after the relationship has ended.

## Using Custody as a Means of Control

Many of the court proceedings women described were centred around their abusive ex-partner maintaining control over them, and many abusive partners were seeking sole custody of the children.<sup>55</sup> The abusers know the importance of the child to the mother, and use threats of taking away the child to “punish her for leaving or to force her to return.”<sup>56</sup> In 2012, Elizabeth, Gavie and Tolmie found “Fighting tenaciously for children may be a contraindication to shared custody because coercive control ‘is often signalled by efforts to win custody by a father who has had little previous involvement in parenting.’”<sup>57</sup> During our key informant interview, Linda Coates, a psychologist with the Centre for Response-Based Practice, similarly explained that, “People often do not understand that for some dads, custody is about control.”

Women gave numerous examples of their partners wanting custody of the children upon the breakdown of the relationship even though they had done little parenting within the relationship and this was widely perceived as a tactic of control. One woman said: “[h]e hadn’t exercised his access in years. He wouldn’t phone... (he used) every excuse in the book why he couldn’t take his kids for the weekend...he refused to take them.” There are also examples of ex-partners engaging in extensive litigation abuse to avoid having to make child support payments, often successfully.

## Unrepresented Litigants

People may be unrepresented in family court for a variety of reasons. In a 2013 study conducted by the National Self-Represented Litigants Project, by far the most consistently cited reason for being unrepresented was the inability to afford counsel.<sup>58</sup> Numerous studies in BC attest to both the widespread inability to access family lawyers and the high numbers of unrepresented litigants in BC courtrooms.

However, research on litigation harassment also indicates that in some cases abusers chose to represent themselves, despite having the financial capacity to afford a lawyer. Abusive ex-spouses may choose to represent themselves because it provides them “with the opportunity to personally question and intimidate their former partners in a public forum in which such aggression is sanctioned.”<sup>59</sup> In a 2005 report to the Canada Department of Justice, Jaffe, Crooks and Bala explained, “In many cases, perpetrators are self-represented, heightening the possibilities for abuse through berating a former partner in cross-examination.”<sup>60</sup> In her role at Rise, Supervising Lawyer Vandana Sood dealt with a file where the opposing party earned well over \$100,000 a year but did not hire a lawyer. Ms. Sood explained that “when he found out that our client, who was unable to work in Canada, had accessed a free student clinic he became adamant that he should also be entitled to free legal services. He was intensely controlling and wanted to be able to deal directly with his ex

rather than having to communicate with her counsel which made him very angry. And so he tried to insist to the court at each appearance that he did not know who we were or why we were there, and that his ex-spouse was self-represented.”

## Conflicting Out

Perpetrators frequently “conflict out” lawyers from assisting their former partner to preclude women’s access to experienced and knowledgeable counsel. Lawyers are required to run a conflict check for each potential client who may seek their legal advice or representation because lawyers are not permitted to represent or provide legal advice to two people that may be adverse in interest (for example, opposing parties in a family law matter). Generally, once a single lawyer in a firm is “conflicted out” of taking a file, the whole law firm is conflicted out. Unsurprisingly, a 2014 research paper by West Coast LEAF, which also engaged in conversations with women around BC, identified this as a particular problem for women in small communities where there may be only a small number of family lawyers.<sup>61</sup>

Many of the women we spoke to in 2019 similarly cited conflicting out counsel as a common tactic. The abuser would call all of the lawyers in the community, which in many small communities is fewer than five, and in a brief phone call would take away the woman’s ability to be represented by that lawyer. One woman asked, “How is that legal, that he can talk to every single one of you, how is that legal?” When one woman tried to explain what had happened, and how her partner had made it so she couldn’t have access to a lawyer, she said, “[the] judge wouldn’t listen to me, nobody would listen.”

Women gave numerous examples of their partners wanting custody of the children upon the breakdown of the relationship even though they had done little parenting within the relationship and this was widely perceived as a tactic of control.

## Draining of Economic Resources

Litigation abuse often has a direct impact on women’s financial security, and their ability to participate in the legal system. Some common tactics women described included making numerous calls to a woman’s lawyer and setting multiple court appearances to drain her legal aid hours or financial resources. One woman spoke of how her ex would repeatedly call her lawyer which reduced her minimal allotted legal aid time. She stated, “He calls my lawyer’s office all the time. And I get billed for that time. So, every time he called I got billed for that and it eats away at my legal aid.” Multiple court appearances had other costs as well, including the significant cost of having to take time off work and paying for child care.

Lawyer Adrienne Smith explained that the constraints of legal aid make it difficult for women to continue to be represented through the litigation harassment. Smith explained that it is usually “the woman who gets legal aid funding and the man who controls the family assets and just burns through people’s legal aid entitlements... until they don’t have any hours left, with ... annoying applications ... and then the legal aid funding runs out.”

In addition to running up legal costs, women also gave examples of their ex-partners making complaints against them or anyone assisting them in their matter. Participants reported that ex-partners frequently called income assistance and falsely reported that the survivor was ineligible for assistance, or sought to have the survivors’ names removed from the child tax benefit. Further, when abusive parties engaged in litigation abuse they often made professional complaints against lawyers and judges – anyone who assists the targeted party. These complaints often delayed access to economic resources or tried to enlist child protection authorities.<sup>62</sup>

If women are awarded support orders and their ex-spouses do not adhere to the order then women are forced to spend more time and money to try and enforce the orders, and many women abandon this process. Child support can often be delayed or avoided through inadequate disclosure of income. The Family Maintenance Enforcement Program may be unable to collect or may refuse to collect if the court order is not drafted clearly. Women often have to go back to court to make minor clarifications to court orders or any time the income of the payor changes. As recently stated by the Supreme Court of Canada, in *Michel v Graydon*:

*The Guidelines calculate child support payments solely from the payor parent’s income. At any given point in time, therefore, the payor parent has the information required to determine the appropriate amount of child support owing, while the recipient parent may not. Quite simply, the payor parent is the one who holds the cards. While an application based regime places responsibility on both parents in relation to child support (D.B.S., at para. 56), the practical reality is that, without adequate disclosure, the recipient parent will not be well positioned to marshal the case for variation.*<sup>63</sup>

Rise lawyer Taruna Agrawal commented that the existence of litigation abuse highlights the need for women to have access to legal aid lawyers with sufficient hours to resolve their family law matter. Agrawal said, “If women had lawyers, the lawyer would at least take some of the heat and respond to the application. This is still not an ideal situation since the opposing party can continue to bring applications, but I do think that having a lawyer keeps the woman from being attacked personally and that should minimize the [impact of the] abuse.” Additional legal aid hours would also make it more difficult for legal aid hours to be drained with preliminary and unnecessary court applications.

## Lack of Awareness of Litigation Abuse

Rise hosted a roundtable discussion on litigation abuse with senior lawyers, front-line advocates, and a woman who herself experienced litigation abuse. The main recommendation was for further education, and a specialized family court or specialized judges. At the roundtable we also learned that appointing one judge to hear a client's matter can be an important mechanism for identifying and responding to litigation abuse.

One woman in a focus group described all of the paperwork she was asked for by her ex-husband's lawyer, "I've done so many (financial statements), and even now, I'm homeless and don't have any money, like what do you want from me?"

A family law case involving litigation abuse can exhaust women survivors of violence financially and emotionally, and lead many to give up their claims for property and support. Women spoke of the vulnerable position they were in while going through their court matters, and that often their abusive ex-partner successfully used the court to put them in a dangerous position. One woman who has a non-removal order for the Lower Mainland described how she cannot leave because her ex argued that she was going to try and kidnap the children. She explained her untenable situation as follows: "[I] keep thinking 'well maybe I'll just go back [to him] because it was never this bad'." Many participants felt that their interactions with the legal system put their safety in greater jeopardy than they had been in during the relationship they were ending. The cumulative impact of the legal process including travelling to and from court, sitting with their abusers in courtrooms, and being required to regularly interact and consult with their abuser as part of parenting orders took an overwhelming toll.

The *FLA* does contain a section dealing with the misuse of court process.<sup>64</sup> Further, the *FLA* provides for conduct orders where the court may prevent a person from making a future court order without the permission of the judge. From our conversations with practitioners, we learned these provisions of the *FLA* are rarely used.<sup>65</sup> The legal threshold for judges to make such conduct orders is understandably high, but unfortunately this means that women may have to suffer litigation harassment for lengthy periods before the opposing party's behaviour meets the legal test.



One woman in a focus group described all of the paperwork she was asked for by her ex-husband's lawyer, "I've done so many (financial statements), and even now, I'm homeless and don't have any money, like what do you want from me?"



## Few Consequences to Litigation Abuse

Litigation abuse in BC has been researched for over 20 years, and women we spoke to told us that the legal system is still manipulated as a tool of abuse in some cases. Women shared numerous examples of times when their abusive partners were able to breach court orders, file countless meritless applications, and delay matters with no consequences. Further, many women spoke of their ex-partners failing to file financial disclosure. Women spoke of being served in court, or the night before court repeatedly by their ex-partners who were often self-represented. This allowed them no time to prepare a response to the contents of the affidavit which often contained untrue information. One woman said this was her ex's "favourite thing to do... [because] there are no repercussions," and it was a way of controlling her. She indicated that she was required to attend court repeatedly in response to notices she was served with the night before and her ex-partner was never reprimanded for this behaviour.

**THIS SECTION DESCRIBED** the failure of the family law system to meaningfully identify and respond to forms of non-physical violence, including many behaviours that could be described as coercive and controlling violence. Women are seeking assistance from a system that is not primed to recognize or respond to behaviours that are frequently identified as "red flags" or are "merely" predictive of more lethal forms of violence. If the legal system does not interpret abusive behaviours as causing risk, it cannot respond by providing safety. The next part of our report details how the legal system often disregards women's experiences of violence by relying on myths and stereotypes, and as a result may actually increase the level of risk they face.



## Seeking Help

**C**anadian expert, Dr. Peter Jaffe, has identified four stages that women experience when reporting a history of domestic abuse in family court:

*First, not being believed; then being believed, but having the violence minimized; then being told that the violence is an adult issue and not relevant for the children; and, finally, recognition of the impact of the violence but being told to get over it and become a co-parent and put the past behind them.*<sup>66</sup>

Throughout our work on this project we learned that not only is the legal system ineffective in responding to the pervasiveness of family violence in BC, in many cases it actually exacerbates the risk to women and children who are trying to gain safety. Through our conversations with women around BC we identified several key themes:

1. Women's experiences of violence are frequently not believed by police, lawyers, and judges.
2. If legal professionals do believe that violence has occurred it is minimized.
3. As a result of family violence either not being believed, or being minimized, women are frequently told by their lawyers, and in some cases directly by judges, not to bring up evidence of family violence.
4. Many women, front-line workers, and legal professionals believe that judges frequently emphasized ensuring the child's relationship with a father over safety considerations, echoing what Boyd and Lindy found several years earlier in their caselaw review.

There is enormous pressure on women to "look reasonable" which means that women are discouraged from asking for the orders that would make them and their children safe, in favour of asking for what will make them look reasonable. The pressure to just get along and be reasonable was present in both the litigation process and in dispute resolution processes such as mediation and family or judicial case conferences. This process of downplaying safety needs in order to avoid being labelled as selfish or alienating has the effect of erasing family violence. Further, there is a prevalent myth that once the relationship has ended so has the violence.<sup>67</sup> There is a lack



First, **not being believed**; then being believed, but having **the violence minimized**; then being told that **the violence is an adult issue and not relevant for the children**; and, finally, recognition of the impact of the violence but being told to **get over it and become a co-parent and put the past behind them.**

of recognition of the ongoing safety concerns that are present for many women and the escalation of risk that often occurs when an abusive relationship has ended.

The failure to take women’s claims of family violence seriously is unsettling in light of decades of studies, statistics and research about the pervasiveness of family violence directed against women. The most dangerous time for abused women is in the first twelve months after separation. Almost half (49 per cent) of women killed by their spouses are killed within two months of separation, often when they return home to retrieve their belongings, and another 32 per cent are killed within two to 12 months after separation.<sup>68</sup>

There is also significant overlap between spousal violence and child abuse with the majority (70 per cent) of child witnesses to violence by a parent against another adult in the home also reporting having been physically or sexually abused during childhood.<sup>69</sup> Children who witness parental violence are “more likely to have suffered the most severe forms of physical abuse.”<sup>70</sup>

With these statistics in mind, one would expect that courts—both in the design of their physical spaces and their procedures—should seek to provide or enhance safety for survivors of family violence. Instead, cases involving family violence tend to be treated as unusual or outliers. Processes are designed for “normal” cases with a small number of exceptions and off-ramps introduced where victims can convince legal professionals of abuse rather than being designed in a way that recognizes that family violence is common and needs to be taken into account at every stage.

## Not Being Believed

Women’s experiences of violence are subject to deep-rooted myths and stereotypes in society broadly, and more acutely in the legal system.<sup>71</sup> A recurring theme in our conversations with women is how difficult it is for women to have law enforcement and legal professionals believe them when they tried to explain the violence they experienced from their partner. Below are some comments about lawyers, but women shared similar experiences with police officers and judges:

- “My lawyer told me I presented horribly in court and to let it go because ‘nobody is going to believe you – it sounds like you’re exaggerating.’”
- “I had a really good lawyer... he didn’t quite believe me in terms of the family violence... [despite this] he explained the law to me and was sympathetic.”

Of those who sought police support, women from a range of socioeconomic backgrounds spoke of their challenges in having police respond effectively or in a timely manner. Low-income women explained the police would often simply not respond to their call, particularly if they had made calls to the police in the past for safety from their abusive ex-partner. Whereas middle to upper-class women told us that often when the police did respond, they did not believe the woman’s account or didn’t take the violence reported seriously. Several middle-class women described that their husbands have a very good reputation in the community, and the police did not believe that those men could be violent to their partner and children.

## Calls to Police Often Lead to Worse Situations for Women Experiencing Violence

During our meetings with women and advocates across BC we heard that many women with lived experiences of violence did not feel safe calling the police. There is a significant underreporting of violence, including interpersonal violence and sexualized violence by all victims in Canada, and particularly for Indigenous women.

Many of the women faced risks calling the police that far outweighed not being believed.

**EX-PARTNERS AS POLICE:** Several women we spoke to had abusive ex-partners that were in the police force. This made it extremely difficult to get help from the police force, both during the relationship and upon breakdown of the relationship when they were most at risk.<sup>72</sup> One study in the United States found that the rate of domestic violence by police was up to 15 times higher than that of the general public, with 40 per cent of police in one survey stating they were violent with their spouse or child in the previous six months.<sup>73</sup> The same research found that the epidemic is starkly ignored by both police departments and the courts, and in Canada, a civilian is “7 times more likely to be sentenced to prison time than a cop when convicted of domestic violence.”<sup>74</sup>



“Once you’ve been victimized or been the victim, it falls on you to prove it, but you don’t just prove it once. It’s like continuing... over and over and over again. It’s never just a one-time deal; say your story and walk away....”

Many of the participants explained that calling the police was at best ineffective, and at worst had actively harmful and violent consequences for themselves. Some described being themselves arrested by the police after they reached out for safety.<sup>75</sup> Others described being the ones removed from their homes by police after being assaulted by their ex-partner. And still others reported being threatened with having their children removed if they were to call again. These factors put women in a dangerous position when they are contacting the police and may partially explain the significant underreporting of violence to police, particularly among populations already experiencing social stigma and marginalization.<sup>76</sup> The risks to the safety of women and children are exacerbated by the fact there is a housing crisis across most of BC, with a shortage of affordable, adequate housing in many communities.<sup>77</sup>

It should come as no surprise that Indigenous women who report violence to law enforcement are more likely to be arrested, detained and charged than non-Indigenous women.<sup>78</sup> Indigenous women in our focus groups explained that law enforcement are more likely to be a threat to them than to provide safety or protection. For Indigenous women, interactions with the police are more likely to leave them charged with a criminal offence, interacting with the Ministry of Child and Family Development, and experiencing violence at the hands of the officers. A 2015 Report by the UN Committee for the Elimination of Discrimination Against Women (CEDAW) found rampant police bias against Indigenous women.<sup>79</sup>

Providing credible evidence of family violence is “among the most significant challenges faced by survivors of family violence when they come to court.”<sup>80</sup> As one woman explained, at each phase of the process, the substance of women’s statements about family violence are viewed through a lens of disbelief and incredulity. Abuse allegations create special challenges for judges. Ideally, specific evidence is provided to demonstrate the patterns of domination and control in the relationship, the cumulative effects of violence on the woman and her children, and the social context in which the abuse occurred.<sup>81</sup>

Women are routinely encouraged to keep evidence of the violence they experience, but key informants explained that when women are in traumatic or high stress situations they are not thinking like lawyers, and are not necessarily keeping all the records of the violence. Amber Prince, lawyer, explained “I always say to women, anytime that they have any kind of independent evidence of abuse that can be

very helpful. Things like ... threatening text messages.” However, Prince went on to explain that retaining the evidence is often difficult given the position the women are in. In the absence of corroborating evidence, it can be very challenging for women to prove their allegations, as family violence happens largely out of sight. The legal determinations often come down to a “she said, he said” situation. Where allegations of violence cannot be proved through “objective” evidence, our collective tendency to minimize the prevalence of violence risks skewing the court’s search for truth.

While evidence of women contacting the police may be of assistance to the court in corroborating their narrative, women may not go to the police when there is an incident of violence for many reasons. As one advocate explains, “...it would be useful to call the police and have a police record, and document[ed] injuries, but she’s not usually thinking ‘I’m going to need this in a custody battle someday’, and by the time they are in a custody battle all of the abuse has happened already.” Even where violence is reported to the police it does not mean that there will be an investigation or charges.

Indigenous and racialized women face systemic discrimination and racism that, may remove reporting violence to law enforcement as a viable or even safe option. In “Red Women Rising: Indigenous Women Survivors in Vancouver’s Downtown Eastside” DJ Joe writes: “Women risk our lives to report, and even then we aren’t taken seriously.”<sup>82</sup>

Women in our research described the impossible position they were in when the police did not believe they had experienced violence. One advocate explained that, in her community, where women had called law enforcement to report violence occurring with some frequency, they were prejudiced if they made repeated reports of violence. She went on to say, “it seems that a lot of the time, the RCMP don’t take the women seriously. If they’ve had to call a few times and if the woman’s gone back to her spouse then the RCMP take them less and less seriously.”

Many women also shared that police did not want to get involved in “family issues.” One woman who had called the police on several instances was told that if she reported her husband again the police would charge her with mischief. “I had one female officer, she was actually the one that tore me apart and told me to ‘grow up.’ It was really rude.”

It should come as no surprise that Indigenous women who report violence to law enforcement are more likely to be arrested, detained and charged than non-Indigenous women. Indigenous women in our focus groups explained that law enforcement are more likely to be a threat to them, than to provide safety or protection.

Many women had bad experiences with the police when they tried to report the violence they were experiencing, and they said they would not call the police again in the future. Further, women described that the process of giving their statement was also traumatic because they had to relive the events. Often the questions police asked discredited their experiences. Several women described requesting that their support workers be with them in the room while they were giving their statement to the police, but were not permitted to do that. Not having support in police interviews left women feeling isolated, vulnerable and unsupported.

When women do come forward it may be long after the violence occurred. Any physical evidence may be lost, making it even more difficult to proceed. One of the women in a focus group explained that she reported the violence to the police because she was concerned her husband was going to kill her. She explained,

*I finally came forward after [over a decade of violence] and just went to the police just because I needed to tell somebody. I couldn't not tell somebody. I couldn't let it go any longer. They couldn't do anything though because it's your word against his. Other than you know – one assault charge that he was arrested for... there's no proof.*

Many women did not feel it was worth calling the police based on their past experiences:

- “Why would I call the cops?”
- “I’d rather phone the Hell’s Angels than call the police.”

Violence reported to the police is higher in rural areas than in cities, with “rural crime rates for [intimate partner violence] being 1.7 times higher than in urban areas.”<sup>83</sup> Women in small communities also face more significant barriers to having the police provide safety, as the smaller number of police in rural areas means reduced responses.<sup>84</sup> In addition, the police working in remote communities are often at the beginning of their career, with limited experience. We understand from the women in our research that they often felt that the police in their communities had racist views and pre-determined ideas of who the complainants were.

When the legal system fails to properly respond to violence that women and children are experiencing, it increases the danger. If the system fails to impose consequences, or take steps to deter the abuser, then the abuser knows they can act with impunity.

In our conversations with women, many had positive experiences in getting help and safety from the police. This included when police responded quickly, acted professionally, and took the safety of women and children seriously. Given the frequency with which police respond to family violence, many are experts in recognizing signs of abuse. One woman described how the police saved her life by helping her to flee an abusive partner. She explained that they went above and beyond to help her and her family after they noticed the red flags in her description of what was going on in her home.





In rural areas women described the following barriers to seeking safety from police:

- wait times;
- lengthy distances between their homes and police;
- no vehicles and no transit system;
- everyone knows everyone — for example the officer may know her ex and there is a lack of anonymity when accessing help (women may be seen accessing police or other services and this information may be shared or even reported back to their ex-spouse);
- no cell service to call for help;
- junior officers in rural areas with limited understanding of gender-based violence;
- high turnover of police officers; and
- police-reported intimate partner violence higher in rural areas.

Positive interactions women described with the police include:

*The police were the ones who charged my partner with assault, I might not have made that decision, even though it was the right decision to make. That was better because it was [the police] who made the charges and not me.*

*I had a police officer come up to me the day after I gave birth in the hospital, they [made] a peace bond application on my behalf, but it had to be me that had to ask for it.*

*My ex-husband came to tell me that I cannot be in the house. He called the police. The police came and did not arrest me. I was so grateful. The police handled it in a quiet way. I did get help [from the police] and felt support[ed].*

*I was in the hospital, the cop came to the hospital and he was sensitive, he was even apologetic for my situation, called me afterwards to tell me what was going on, called me multiple times just to say we're keeping an eye out, 'I don't want you to worry.'*

## Blaming the Victim

Our conversations indicated that women are frequently in a Catch-22 situation. When they report violence they are often told they have no evidence, and that it is “he said-she said.” However, when they do collect evidence, this can also seriously backfire. Key informants in our research explained that when women retain evidence of the abuse they have experienced they are, “sometimes just seen as being petty and vindictive.”

Women spoke of having the recordings they made of the family violence used against them, “if you record [the violence against your kid]... then you are the crazy one.” Evidence can be found through a variety of sources including medical reports, phone and text messages, emergency response tapes, criminal records, interviews from former spouses and other family members, and client logs. Repeatedly we heard of women who had the evidence to show the abuse took place, but it was not helpful to their legal matter.

When women did not have any supporting evidence to show that the violence was current or ongoing, women explained it was especially difficult to explain why their child did not want to spend time with their father. It was also mentioned that in an instance where the violence was not concurrent with the court case, the response from the opposing counsel was that, “Well it's not happening now... you're coaching him [your child] to say this.”



# Alienation

## **Fifty-six per cent of our survey respondents were accused of alienating their children.**

In a recent paper Elizabeth Sheehy and Susan Boyd analysed decisions involving claims of parental alienation and family violence that were reported across Canada, with the exception of Quebec, between 2014 and 2018. Sheehy and Boyd found that:

*judges are more likely to focus on alienating behaviours than [intimate partner violence] when determining custody and access. [Intimate partner violence] is rarely condemned or related to children's best interests in the way that alienation is.<sup>85</sup>*

Once again, the women and key informants we spoke to corroborated what academics have already found through reviews of family law judgments. The women we spoke to were very aware of the risk of appearing as though they were alienating their children from their abusive ex-partner, and as a result, the women in our research often went out of their way to not bring up their experiences of violence or to restrict their partner's access in any way.<sup>86</sup> Many women echoed Sheehy and Boyd and explained that scrutiny of their own reaction to being abused, or any steps that they had taken to protect the children from violence seemed to “overshadow men's violence such that women became alienators for not suppressing their own fear.”<sup>87</sup> One woman attending a Family Case Conference relayed her experience of being accused of alienating by a judge:

*We sat there for this case conference and I was immediately accused of parental alienation and making up all the violence. I was so terrified. I had no idea what to say or anything, and the judge said at one point that my daughter was looking for attention.*

In a recent pan-Canadian review of alienation cases, Linda Neilson found that mothers who were found to be engaging in alienation were treated differently than fathers in a statistically significant number of cases. Mothers were more likely than fathers to be on the receiving end of “draconian” orders, for example having children forcibly removed from their care as opposed to being required to attend counselling. Neilson also found that alienation was becoming an effective defense to allegations of family violence:

*Claims of domestic violence and turning to experts for help were commonly cited as evidence of mothers' attempts to alienate children from fathers...[C]ourts accepting alienation theory in cross claim cases [where both domestic violence and alienation were cross claimed] are placing protective parents [primarily mothers] in a horrifying double bind: if the parent insists on presenting evidence of domestic violence or child abuse in order to protect the children she risks her efforts being categorized as attempts to alienate the children from the other parent. She may even face loss of primary care or even contact with her children. She thereby places her children at risk. If the protecting parent fails to present such evidence to the court, she also places the children at risk because the court making the custody and access order will have no*

*knowledge of potential risks to children. It is likely that many protective parents are choosing the second option rather than risking loss of the children.<sup>88</sup>*

Women spoke of being terrified they would appear to be alienating their children in the court’s eyes.

- “I’m worried about the safety of my kid. He won’t address that he has a mental illness. I can’t force him to communicate with me. So, then I’m in the position of having to withhold her which puts me and her in danger. Very easy for me to look like the bad one. I am creating [the appearance of] a child alienation situation.”
- “[My lawyer] kept telling me I was alienating my son. I’m like ‘my kid is 12, and he hates his dad.’”
- “They are making a decision that is [about] my life. I have anxiety from this situation. My son and I have gone through the trauma together. This idea that I am alienating him from his dad has become like a drama.”
- “If you say no to visitation then they view you as obstructive, even if you are afraid of the father being able to have visitations.”

## Stereotypes and Myths Against Women Who Have Experienced Violence

Women are disproportionately affected by family violence, yet their experience of violence remains rife with myths and stereotypes.<sup>89</sup> These myths and stereotypes are particularly challenging in family law, because, “there is a persistent idea that women make up abuse conveniently around relationship breakdown as some way to have an advantage, or as some way of a vindictive strategy to get more out of the legal system.” Ultimately, the discrediting of women’s experiences significantly impacts the safety of women and their children.

Stereotype	Experiences of the research participants
<p><b>Women exaggerate violence against them</b></p>	<p>“In fact, I’m often not telling the full gory story because of the shame from being in an abusive relationship.”<sup>90</sup></p> <p>One woman in a focus group said she wished it was obvious that women, “aren’t in it for revenge.” Many women explained that bringing forward false allegations would not be worth it, and they knew how this could backfire.</p> <p>“We are smart enough to know that that is one of the barriers against getting our kids back. As soon as we have an abusive spouse, we don’t get our kids back. So, we would not use that as an excuse!”</p>

Stereotype	Experiences of the research participants
<p><b>Women don't want dads to see their kids because they are vindictive</b></p>	<p>The majority of the women in our research emphasized that they wished their children could have safe relationships with their fathers, but that it was often not a possibility given the father's violence, and the father's failure to create a safe and supportive relationship with the child.</p> <p>"Her kids may want to see the dad in a way that undermines her safety. It is not the case of the women undermining access. That is so [infrequent] compared to the [number of] women who feel incredible guilt about denying the [other] parent, even though the parent has been abusive. The reality is so different than the stereotype."</p> <p>One woman explained that her only "saving grace" was that she had been believed when she told the court her kids had refused to go, not that she was refusing access.</p> <p>One woman said, "I went out of my way for years to make every effort for them to have a dad, as much of an asshole as he is, he's their dad."</p> <p>Another woman mentioned, "As terrified as I am for myself... I invited him over, because they won't go with him. So, I'm trying to reunite the kids with their dad, and he just takes the opportunity to abuse me and them. What do you do? The courts says, 'play nice'."</p>
<p><b>If women are experiencing violence, they will report it to police and the police will respond appropriately</b></p>	<p>"[The police] were asking why I was there [at the police station] on that day and said maybe I was offended he [my ex] had a girlfriend."</p> <p>"When you do call the cops, they often don't do anything, and then it angers your abusive partner more because they know you called the police."</p> <p>"It seems like a lot of the time the police don't take women seriously. If they've had to call a few times and if the woman's gone back and the police knows that the woman's gone back, then the police take them less and less seriously."</p> <p>"... she called [the police] and ...when she said he had not hit her yet, the police did not come. But when he came home, he beat her up. There needs to be something in place for women in these abusive situations, we should not already have a broken nose for the police to believe us. It should not have to escalate to the point of violence for the police to set in."</p>
<p><b>Women are just trying to get more money and property</b></p>	<p>"It is just money. I will go without rather than take him to court to pay what he was not paying."<sup>91</sup></p>



# “Why Can’t Everyone Just Get Along?”

The ways that women’s experiences of violence are often minimized and disbelieved are extensive. In this section we outline the impact that not being believed has on women and children’s safety. We begin by discussing how courts frequently grant generous access to violent fathers, and how this creates harmful situations for mothers and children. Decisions about parenting arrangements often emphasize the importance of time with both parents over considering whether, in cases where family violence is present, there may be risks to children associated with that violence. Family lawyers advise their clients not to disclose family violence or to only speak of specific incidents, sometimes due to lack of training, but also because raising family violence can backfire. As a result, there is significant pressure on women to self-censor and omit their safety concerns in the hopes that they will be seen to reasonable and credible.

## Shared Parenting with Abusive Fathers is Frequent

Under the FLA, the “best interests of the child” is the only measure that is to be considered when courts determine custody, and the statute sets out numerous mandatory considerations in s. 37. The outcome of many contested custody cases is a shared parenting arrangement,<sup>92</sup> and we heard that this is also the case even where family violence is present. These arrangements frequently place women and children in a complex and potentially dangerous circumstance.

*Child custody decisions embody two erroneous and interrelated assumptions: abuse of the mother is not believed to make men bad fathers, just bad partners; and contact with fathers, even abusive ones, is assumed to be in the best interests of children.<sup>93</sup>*

As Chambers, Zweep, and Verrelli, write in their recent article on the tragic paternal filicide in the *Cotton v Berry* case,

*Abusive, coercive, and controlling fathers ‘continue to be given primary or shared custody in an alarming number of cases’.<sup>94</sup> At least in part, this is because the*

*fathers' rights movement has succeeded in convincing courts — and the court of public opinion — that men are essential in children's lives, even men who have a history of coercion and/or violence towards their female partners.*<sup>95</sup>

Boyd and Lindy found in their review of BC case law that “many decisions tend[ed] towards an assumption that shared parental responsibility, and even parenting time, [was] an appropriate arrangement or goal.”<sup>96</sup> This assumption has persisted in spite of the fact that the *FLA* explicitly states that no arrangement is presumed to be in the best interests of the child. Recent research conducted by Elizabeth Sheehy and Susan Boyd found that overall, “men’s violence — even stalking behaviour — is cast as accidental or unintentional, with transitory impact; in its aftermath, women who argue with or resist difficult, frightening men are considered equally implicated in domestic conflict.”<sup>97</sup>

According to a Court Watch Report by the BCSTH and Pro Bono Students Canada in 2018, one Vancouver judge repeatedly imposed the hegemonic/dominant family structure as the preferred default for all families who appeared in her court.<sup>98</sup> The report indicates, “Judge K... was determined for all couples to “co-parent” and “make it work” and would constantly repeat such concepts in almost all of her cases. This included a case which involved abuse where she stated that, “...the children probably miss their father” and encouraged the parents to reconcile.”<sup>99</sup>

Additionally, many women and their advocates shared concerns that judges are not as educated about family violence and its impacts as they need to be.<sup>100</sup> The Honourable Donna Martinson and Dr. Margaret Jackson wrote in 2016,

*First, both family law lawyers and defence counsel indicated that some lawyers and judges do not appear well informed about family violence and its impact generally in either family law or criminal law proceedings. They also do not seem knowledgeable about “red flags” for future risk, and therefore can miss both the significance of the violence and any important indicators of future risk. Second, and related to the first, was a concern in family law proceedings that there can be an overemphasis on the importance of keeping families together at the expense of the safety and security of women and children; in this respect, claims of violence can be minimized, particularly if it is non-physical violence. Third, there was also a concern raised by family law lawyers that even when family violence is considered, it can be set aside as not being relevant to the children’s safety, security and well-being.*<sup>101</sup>

The women we spoke to explained that the court often failed to give very much weight to the evidence of the abuse, and often split parenting time evenly between the parents in spite of abuse. Women are expected to essentially “just get along” with their ex now that the relationship has ended, putting themselves and their children in potentially dangerous situations.<sup>102</sup> One woman in a focus group said,

*I had document after document after document [showing evidence of abuse] ... and it all came down to [the court saying] 'the kids need a father in their life'... but he hadn't been in their life for years, and when he was in their life he abused all of us.*

In the survey that Rise distributed to family law lawyers, one lawyer responded that:

*There is a disconnect between family violence and parenting rights. My experience has been that one parent can harass, intimidate, and scare the other parent and even breach protection and conduct orders and still have full rights and responsibilities to a child of the relationship.*

Despite the *FLA*'s emphasis on the best interests of the children, many women felt that in practice, "it's more about the rights of the parents than it is about the best interests of the kids." One participant added that "Courts find 'well, you can be a parent half of the time' but they would never be employed in any capacity to work with children because of the documented history of abuse. They wouldn't even be seen to have the capacity to lifeguard."

One woman shared that the judge found that "...even if [she] could conclude that family violence had occurred it was between the parties and now that they are separated it doesn't affect the child anymore..." Another said that it was insulting to fathers to say that an abusive partner was a good parent. The practice of presuming that 50/50 or shared parenting time is always in the best interest of the children is not consistent with the actual wording of the *FLA*, and was one of the primary reasons that women gave to explain why they feared the court system.<sup>103</sup>

## Impact of Shared Parenting on the Children

The violence that women experienced had serious consequences for the health and safety of themselves and their children. The harm to children who witness domestic violence has been well researched.<sup>104</sup> Several women we spoke to had children who avoided social interaction because of the trauma they had experienced. Women spoke of their kids having eating disorders, anxiety, and requiring medication for their depression. Many of the children were in counselling, however for some there was no counselling available in their communities, or none that the protective parent could afford. Below are quotes from women about the impact court-ordered contact with an abusive parent had on their children.

- "My daughter, every time she was forced to go have a supervised visit, would come home and pee the bed and throw up and scream and have temper tantrums... And the courts didn't care — every time I recorded — I'd take her to the doctors, I'd take her, you know, talk to the supervisor, ask for witnesses, try to get Social Services to come into my house to witness these things."

- “My son is being re-traumatized every time he has to see his dad.”
- Many women talked about how difficult it was to get their child to go see their abusive parent, but that they feared the consequences if their child was not present for their visit. “We would have to bribe her to get into the vehicle to go on these visits with her dad.”
- “Like mine would frickin’ scream, she’d shake. And you’re heartbroken. You’re [thinking] like, ‘I have no choice but to send you there.’”

## “You Have to Look Reasonable”: Minimize and Silence the Violence

Research from the last two decades shows that when women do bring up matters of family violence in court this often negatively impacts their case and puts them in a worse position.<sup>105</sup>

The women we spoke with confirmed that they were often told by their lawyers not to say anything regarding the violence because it would make them “look bad.” Some women talked of their lawyer refusing to have conversations about family violence, even when the survivor tried to bring it up and wanted to discuss it with their lawyer. Generally, women spoke of how their lawyers would try to get them to focus the conversation on property division and childcare arrangements, not recognizing the importance of understanding how the violence impacted parenting.

One woman described meeting with her lawyer for the first time, and how the lawyer treated the information she was providing about her abusive partner: “I had a lawyer roll her eyes at me and tell me that I was playing the victim and that I was just making up a sob story, and that she sees women like me every day. She told me, ‘Do you want to embarrass yourself in court? Do you want people to laugh at you?’” This woman indicated that she had medical records of times when her husband had broken bones in her son’s body, and physically assaulted her. When she tried to explain further her lawyer told her to “just go back to the legal things.”

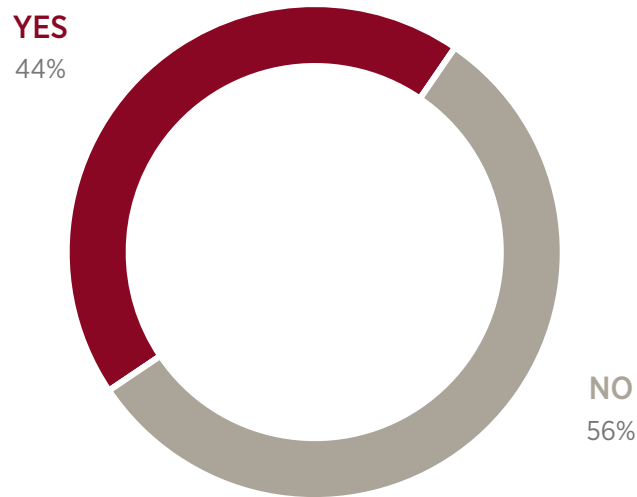


“I had document after document after document [showing evidence of abuse] ... and it all came down to [the court saying] ‘the kids need a father in their life’... but he hadn’t been in their life for years, and when he was in their life he abused all of us.”



Almost half of our survey participants were advised by their lawyer to not bring up the family violence in court.

Were you ever advised by your lawyer to NOT bring up family violence?



**What information or advice did your lawyer give you about raising family violence in your proceedings?**

- “She advised me that judges don’t tend to see stalking or minor assaults as egregious.”
- “The first one wanted to make sure I was disclosing everything I could, but the second one kept telling me that it wasn’t relevant.”

**If your lawyer advised you to not bring up family violence, did they explain why?**

- “He said judges don’t like it. They want the parties to be “nicey nice” and friendly.”
- “They said if it (the violence) didn’t happen in the last three months the judges would not care, and it would not be relevant information.”
- “They felt it could be used against me.”
- “Well basically that the courts don’t really view it... or believe a lot of women coming out of violence, so what’s the point? It is about the child so it doesn’t matter how bad this guy was to you or what he did to you in front of your children doesn’t matter. For us to be told ‘well you’re not together anymore.’”
- “It’s easier not to.”
- “My lawyer advised me to not call MCFD as it would look like retaliation” (after the children came back from their dad’s house with bruises and saying their dad hit them).



# Processes that Increase the Dangers of the Legal System

Our conversations with women revealed that when leaving abusive relationships, their safety was often further jeopardized when they met with their lawyers, spoke with judges, and attended court. The impacts of the family court system to women were often devastating to their safety, health, and financial security.

## Family Dispute Resolution

One of the goals of the *FLA* is to increase the use of out-of-court dispute resolution, including through “counselling, parenting coordination, mediation, arbitration, collaborative family law.”<sup>106</sup> Ideally out-of-court dispute resolution processes are less costly and more efficient than litigation. However, these processes all pose challenges for women who have experienced family violence.<sup>107</sup>

The BC Family Mediation Violence Against Women (VAW) Project recently undertook an extensive review of mediation in family violence cases and potential outcomes for women.<sup>108</sup> Some of their key findings included the need for family dispute resolution professionals to consistently screen for violence, and the need for culturally and linguistically appropriate screening tools.

Women in focus groups described their experiences with mediation, Family Case Conferences (FCCs) (Provincial Court), and Judicial Case Conferences (JCCs) (BC Supreme Court). Many women described feeling that they had to go to FCCs and mediation, because it would otherwise reflect badly on them; however, the processes were unsafe for them, and not beneficial.

- “I was really scared ... about having a family case conference, because he was still really abusive. And so I asked if there [was] anyway around it. And my lawyer explained, ‘technically yes’, but in practice, it doesn’t work because it will just make you look unreasonable and bad and unless there [are] multiple assault convictions it is unlikely [to get out of the FCC].”
- “I found that we go into the case conference, and the judge has to get the two sides to agree to something. So, he’s gotta get them to agree to something, which is really



“My fears around mediation [are that] he is extremely manipulative, very articulate, so then I’m the one who looks unstable, so many times in the relationship he accused me of being emotionally abusive.”

challenging, uses up most of your time — let’s face it — to get even the smallest thing. So then, you’re going to another case conference and, of course, the order is not followed. So, that was my experience. The order that was entered into was not followed while the judge has no power to enforce. So, another order was made and it’s not followed, which is what happened and then it was just this big circle...it was a terrible experience all around, and the one that suffered the most was the child, really...it was just a lot of wasted time, I found. A lot of wasted time and energy because all of this works you right up and you’re frustrated.”

- “I had to explain why I wasn’t going to agree and settle [on shared custody]. I basically had to sit there and list in front of him all the behaviours that he did which were reasons why I would not settle for an equal co-parenting plan. That really was shitty, because that risks everything. Increases risk of violence against me, and violence against himself. What kept me back back then... was fear of him killing himself and what impact that would have on the kids.”

# Protection Orders

The *FLA* created a new remedy for victims of violence who wished to end contact with their abuser called “protection orders.”<sup>109</sup> Protection orders are available to a broad range of family members and the scheme is intended to be accessible, clear, and effective. Survivors of violence can seek protection orders under the *FLA* to minimize their risk of future harm from a violent family member.<sup>110</sup> Protection orders relate to safety, and if they are breached a criminal charge can be laid and enforced under s. 127 of the *Criminal Code*. By making the breaches enforceable under the *Criminal Code*, the BC government sought to respond to recommendations from reports including *Keeping Women Safe* and *Honouring Christian Lee* which emphasized a consistent enforcement approach for protection orders outside of civil law.<sup>111</sup>

Despite the potential benefits offered by protection orders, key informants and women with lived experiences of violence identified numerous challenges arising from the *FLA*'s protection order regime. The challenges include:

- Courts refusing to hear *ex parte* applications for protection orders despite the legislation allowing it.
- Courts granting very short-term protection orders, despite the legislation providing for a one-year default. The short-term orders, sometimes only a few weeks long, force women to come back and reapply for safety.
- Service of protection orders remains a challenge, despite the fact that the province will now pay for process servers (and the availability of this funding and the process to secure third-party service does not seem to be widely known).
- Police and the criminal law system do not take family protection orders seriously or lack knowledge about how to enforce them.
  - One family law advocate described a situation where the client could not get a protective order. The advocate explained, “I just had a woman in my office last week. She won’t leave [her relationship] because she tried to get a protection order and the police basically blame her [for being in an abusive relationship]. So, she stays.”

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## Protection Order Service

In December of 2016, the BC Ministry of Justice announced that the government was going to use “professional process servers for delivery of protection orders at no cost to applicants, in all regions of the province.”<sup>112</sup> This was a change to the existing system which required applicants who obtained their protection orders on an *ex parte* basis to hire a professional process server or find family and friends who were willing to serve the order. In 2015, approximately 1,800 *FLA* protection orders were issued and approximately 1,000 of those were made when the respondent was not present in the courtroom, therefore requiring service.<sup>113</sup> Proper service is essential for protection orders to be made enforceable by police, and for any breaches of protection orders to be prosecuted by Crown counsel.<sup>114</sup>

The Court Watch Project carried out by BCSTH found that judges were not advising parties of the option to have the protection order served using a government-funded process server.<sup>115</sup> All of the cases observed involved abuse or current criminal investigation in the family situation, “most with recent threats made against the Mother and/or child(ren)’s lives.” They suggested making brochures available and providing them proactively to those attending court.

“So, I was granted a family protection order and I am still waiting for him to get served almost six days later... I’ve been told the order does not go into effect until the other party knows about it, but the police are just like ‘well, you’re out of town now so we’re not in a rush to serve him.’ He has access to illegal firearms and numerous weapons... I’m terrified. I’ve also been waiting for Legal Aid to get back to me.”

# Ministry of Children and Family Development

Several women spoke of receiving fines or being threatened with fines for denying access of their child to their abusive ex-partner, despite that being the recommendation from MCFD social workers, in response to sexual and physical abuse allegations. Women explained that they frequently acted on the recommendations of MCFD, but that MCFD did not support them in their family law disputes, for example by providing letters explaining their involvement and directions. One woman was told by MCFD not to drop her kids off at her ex's house, but her lawyer said that if she did not drop off her kids with her ex then she would be accused of parental alienation by the other party.

One woman spoke of the experience of her eldest daughter, who spoke up about the violence she was experiencing at the hands of her father. The mother explained that MCFD knew of the abuse she had experienced, and she was diagnosed with post-traumatic stress disorder as a result of the abuse. Despite this, she was court-ordered to spend time with her dad, and every time she did, she came back physically hurt.

One advocate told us of a particularly high-risk case where, “There has been police involvement, there have been assaults with a weapon to the head, he is very violent, yet she got a call from MCFD last week saying, ‘you need to produce your children for a visit here with him.’”

## Child Removal is Threatened Due to Violence, Poverty, and Lack of Housing

Women who are experiencing violence, poverty, or lack of safe housing, frequently find themselves under the scrutiny of MCFD and risk having their children apprehended while being provided with no supports. When child protection cases come to court, women's circumstances are often seen as individual failings and poor choices rather than a response to systemic inequality. There may be little recognition of the impossible position many women in poverty face when they are living with an abusive partner and there is no available or affordable housing.<sup>116</sup>



“I was told that if I had not kicked him out (because of the abuse), they [MCFD] would take the kids away from me.”





One mother talked about the impact of a social worker telling her she would never see her kids again. She told the focus group, “she should never have said that – women overdose after things like that. What if you were suicidal and killed yourself after that meeting?”

Many women described how their fear of MCFD involvement discouraged them from reporting the violence they were experiencing. Many discussed the danger of MCFD apprehending their children because they could not find housing that met MCFD’s criteria. Judith Mosoff and her colleagues analyzed 84 reported cases that resulted in continuing custody orders (CCOs) between 2002-2015.<sup>117</sup> Mosoff found that a number of permanent child removals in her study started as a result of the mother reporting domestic violence.<sup>118</sup>

Some women we spoke to had very positive experiences working with social workers at MCFD, where they felt supported and their social worker understood the dynamics of their situations which often involved intersecting oppressions. However, many more women feared MCFD involvement, and believed that MCFD would blame them for their experiences of violence. One woman told the participants at the focus group:

*Don't ever call the Ministry on a child issue ... because when they start to be involved they aren't going to leave you alone, and it takes a risk. They have more power than the lawyer. Don't let them come into your situation. You don't know what kind of a social worker you are going to deal with. They have so much power. It's the system in Canada, nobody can change the system not even the lawyers.*

The general feeling women had towards MCFD was fear, because social workers could have such a significant impact on their lives by potentially removing their children. People working within MCFD have an obligation to provide support and services to children and families, but they are also required to be “potential witnesses against the mother in child protection proceedings.”<sup>119</sup> Mosoff concluded there is “rarely... a witness adverse to the mother’s interest [who] did not start out as someone providing assistance, making receipt of services often necessary for successful parenting – a double-edged sword.”<sup>120</sup>

Many women described experiences of seeking help from MCFD for abuse their children were experiencing, only to have the focus shifted on their own actions. Women felt that any vulnerabilities were often turned against them and that they could not ask for help. One woman described:



*My son was a very difficult baby. At that point we didn't know he had autism, or any behaviour issues. I went to the ministry and asked them if there was childcare available. I just needed a break. Within two months they had him in foster care. They took him away so quickly because I asked for childcare.*

Child apprehension and MCFD involvement often have an intergenerational impact. Many women with lived experiences described how they themselves had entered the child protection system as children and became involved again after having children of their own.

One mother talked about the impact of a social worker telling her she would never see her kids again. She told the focus group, “she should never have said that – women overdose after things like that. What if you were suicidal and killed yourself after that meeting?”

## Colonialism & MCFD

Canada's long-standing colonial history of apprehending Indigenous children has led to an estimated 60 per cent of children in care in BC being Indigenous, with the most recent cycle of apprehensions sometimes referred to as “The Millennium Scoop.”<sup>121</sup> Another way of putting the crisis into perspective is that today there are “three times more Indigenous children forcibly removed from their parents and placed into foster care than at the height of the residential school era.”<sup>122</sup>

In West Coast LEAF's 2019 report on the child welfare system, 64 parents who had experiences with MCFD provided their stories and expertise.<sup>123</sup> West Coast LEAF identified ongoing cyclical colonialism, gaps in supports and services, and a lack of accountability as the three main factors undermining prevention-based child welfare.

The problem with framing systemic problems in the language of “lifestyle choices” was described succinctly by Marlee Kline:

*Altogether, the characterization of battering and alcohol and drug dependency as personal problems reinforces the placing of blame for child neglect on the deficiencies of individual mothers and obscures the roots of the difficulties First Nation mothers face in more systemic oppressive relations including historical and continuing colonialist and racist practices.<sup>124</sup>*

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls found Canada's child welfare laws and agencies were a “tool of genocide of Indigenous Peoples,” and that child apprehensions “[disrupt] the familial and cultural connections that are present in Indigenous communities, and, as such, [deny] the child the safety and security of both.”<sup>125</sup> In rural areas, MCFD has not sought to ensure that there are foster parents available to care for children within their existing communities, so they have to move the children to an area where there is an available family. We heard that many women do not have vehicles and live in areas where there is no public transport, so they had very limited opportunity to see their children once they were

removed from their community. One Indigenous woman said, “they come to see me, they don’t know our language, they don’t know nothing. So every visit, I take Native food and we talk about our language.”

Our analysis of child protection issues and MCFD are limited as these were not the focus of our project; however, fear of child protection was frequently raised as a barrier to disclosing intimate partner violence in our conversations with women. We endorse the recent report by West Coast Leaf on Indigenous Guidance on Prevention-Based Child Welfare.<sup>126</sup>

## Getting to Court

Getting to the courthouse is difficult for many women, particularly in rural communities. Women’s safety is seriously impacted by the lack of public transit, which can force them to rely on hitchhiking to get to the courthouse.

One advocate described how “Our transportation... is really hurting us. We don’t have Greyhound anymore which means that when we have a family that comes through, we have to find somebody to transport them out of town in our own vehicles.” In some communities, variable weather can lead to unsafe road conditions that make it dangerous for the transition house staff who drive women to safe homes or court appearances. One Indigenous woman explained that traveling from her rural First Nation reserve can be especially difficult, with the only option being to take the health bus. However, in order to get a seat on the health bus, the woman would need to have a medical appointment in the city. Some women require overnight accommodations either before court or afterwards depending on the length of their commute, and if court runs longer than one day, the litigants and witnesses often need to find overnight accommodation for the duration of the court hearing, which can be unpredictable.

## Courthouses

Courthouses are where survivors must ultimately go to seek legal remedies for the violence they experience, but courts are not designed in ways that promote safety. Many women we spoke to described having safety concerns related to being in the same building with their ex-partner. Women described court as “intimidating and unpleasant” and expressed that they feared being harmed before or after court. They felt there were no safety protocols in place to protect them.

In our survey to survivors, 42 per cent indicated they had safety concerns in the courthouse and/or courtroom, and 62 per cent explained they had safety concerns either before or after court hearings. Many women described having their partner follow them out of the courthouse and to

their car. In some cases, women even described being followed once they were in their car and driving. Women we spoke to wished there was something in place for them to increase their safety attending court, being in the courthouse, and walking to their cars. Some of the women explained that their concerns were alleviated by having a sheriff or another person accompany them, much like safe walk programs on campuses, but many did not have this option.

The experience of sitting in a courtroom with their abuser was also described as traumatic for many of the women. This fear was especially pronounced in small communities because there was often no waiting area, and all court matters were scheduled for 9:30 a.m. This left women sitting in the courtroom with their abuser, often for the whole day, while waiting for their matter to be called. Women often did not know that it was possible to be paged when their matter was called, so they sat in the courtroom. Women said that a private waiting area, where they did not need to see their ex, would have made them feel safer.

Courthouses are not designed for unrepresented litigants, and many women expressed that they really felt the weight of this when they represented themselves in court. Women described feeling out of place, whether or not they had retained a lawyer. Many women spoke of observing casual banter between lawyers, court staff and judges that made them feel especially out of place in the formal setting. Overall, women wished they knew more about what was expected of them in court, how to prepare, and how court processes worked. For many people experiencing trauma, it is stressful to not know what to expect.

Women recommended that courts establish programs to help people “navigate the courtroom.” Women explained that the court process would be more empowering if there were people in it who cared about helping them take the first steps towards advancing their legal matters.

One woman described her experience as follows: “It is hard to just walk in and fill out an application after you’ve been broken down, bruised or punched, or if you are crying or hiding from somebody who you’re afraid might find you there.” Pat Sinclair, a Stopping the Violence Counsellor with Vernon Women’s Transition House Society, explained that having a person to help women go through family

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Overall, women wished they knew more about what was expected of them in court, how to prepare, and how court processes worked.

court and family law issues would help them figure out what is needed, and liaise between them and their lawyer.

Women described how difficult it was to appear in court unrepresented, and to be asked repeatedly by the judge why they didn't have counsel. One woman explained that having someone there to support her would have helped.

*Is there not any other resources where I can have some kind of support person even just to stand with me? I'm terrified. Like, I don't know if this guy's going to come out and frickin' hurt me. He's unpredictable. And, when I'm standing there in front of a judge, being yelled at by a judge, because I don't have anybody, it's just hard.*

The family justice system must consider its own role in perpetuating women's experiences of violence. One way to address the concerns raised by participants in our research would be to develop a court navigators program across the province to assist unrepresented litigants in feeling supported and welcomed into otherwise alienating and potentially dangerous spaces. Access to justice should include designing systems and facilities that meet the service needs of the public.

## Supervised Visits

Supervised visits are ordered in some cases where family violence has been established. However, women across BC indicated that access to a supervisor is often not possible. There is little in the way of organized processes or funded programs that facilitate supervised visits, particularly in remote areas. In many instances, supervision is done by family members, but women explained that family members may also have safety concerns for themselves. Women described "burning out" all of their friends and family due to the high level of support they needed to get through the family court process, including supervising visits. There is a high demand for supervision, but not enough supervisors. Some women described that in instances where supervised visits had been set up, their abusive ex-partner would refuse to visit the children. Further, women explained that when the other parent did not visit the child in the supervised forum, there were no consequences.

One front-line worker who had acted as a supervisor because of the lack of resources available said:

*in every situation where I provided supervision, the abusive partner tried to make it difficult for me to continue to supervise. He wanted me to quit, he would act aggressively towards me, demean or belittle me, or even push against the rules — like feeding the child foods they were allergic to — in order to create conflict and stop me from going. I knew if I didn't go though, my client would have to go or the children were unsupervised and so I kept going.*

Some women have raised concerns that where no supervisors are available courts will simply order unsupervised access or terminate the requirement for supervision rather than prevent visits between the child and the violent family member.

## Health Impacts of the Court Process

In our survey, 80 per cent of the women said the court process had an impact on their health; 62.5 per cent said they developed a new health problem while their legal matter was proceeding.

A significant theme that emerged through the focus groups was the impact that the court system had on women's health. Many women described physical health problems that they still live with years later, that they attribute to the stress of the court process and the continuing abuse. There were a number of women whose mental health had such a decline that it rendered them permanently disabled and unable to continue working. One woman developed PTSD and explained “[I] had experienced trauma before, but the high stakes and forced proximity of the court process was too much for me.” An advocate described that in her decade of experience “the women who had the worst abusers all had significant complex health issues such as multiple sclerosis, cancer, and heart conditions.”



“Is there not any other resources where I can have some kind of support person even just to stand with me? I’m terrified. Like, I don’t know if this guy’s going to come out and frickin’ hurt me. He’s unpredictable. And, when I’m standing there in front of a judge, being yelled at by a judge, because I don’t have anybody, it’s just hard.”

## Financial Impacts of the Court System



“So I’m a full time single mom and I work about 45 hours a week...So there’s lots of times where I’m like ok what’s more important, them eating, or me taking him back to court [for not paying child support].”

Even where women were successful in obtaining court orders for support, these orders were frequently ignored, leaving them financially worse off than when they started the court proceeding. Many women described never being paid for child support, and that even after their matter was registered with the Family Maintenance Enforcement Program (FMEP), they were not properly remunerated.<sup>127</sup>

This occurred both when FMEP was unable to collect the funds, and when FMEP was unable to enforce the court order because of the way the order was drafted. One woman discussed that FMEP would not enforce the payment for extracurricular expenses if the individual activities were not listed in the original court order, so she would have to go back to have the order changed. She explained,

*You pretty much have to list every single extra-curricular that exists on the planet if you’d ever want it covered or you’d have to go back to court to specify that.*

One woman who does not qualify for legal aid explained that she was always balancing whether she should go back to court with her abusive ex-partner and what would be the highest cost:

*So I’m a full time single mom and I work about 45 hours a week...So there’s lots of times where I’m like ok what’s more important, them eating, or me taking him back to court [for not paying child support]. It’s like you have to pick and choose sometimes. To me how is it right that somebody has a child and just can choose not to be engaged and do what they want to do and not have to pay.*

Some women talked about the incredible expense required to access the legal system. For example, one woman said she was charged triple the amount she expected and had to sell her house to pay her legal costs. As one woman explained, “[I] lost my house, I spent over \$50,000 on a lawyer and you know basically what I ended up with was a consent order.” Another woman explained how she had spent all her money on lawyers to go through the legal proceeding. It was

not uncommon for women to describe losing their life savings, their RRSPs, and their house in order to pay for their family law proceeding. Many were forced to claim bankruptcy, sometimes with abusive ex-partners who have never paid child support.

There are numerous secondary costs to going through the court process including child care, travel, and the cost of taking time off work. One woman discussed how difficult it was to find the time to do the paperwork required during the legal proceedings, while raising her children and working three jobs:

*I used to have to travel to [court], that was extra daycare, extra baby-sitters...  
Financially it becomes the burden of the full-time parent.*

Women going through family court may face severe financial strain, particularly if they have had to leave their community to access safety or if it is not safe for them to return to work. Poverty presents many barriers for women who are experiencing family violence and going through the family court system.

**THE LEGAL SYSTEM AND ITS COLLATERAL PROCESSES** can increase the risk of harm to women trying to escape family violence. Supposed supports like police and MCFD can actually decrease a woman's safety and increase the likelihood that her abuser will be emboldened or that she will lose her child, particularly in the context of colonization and multi-generational child apprehensions. Women's safety may be further compromised when they need to travel long distances for court and when they are required to interact with their ex-spouse in courthouses. There are few resources available to help women manage their safety when parenting orders put them into regular contact with their ex-spouse. The family law process also contributes to negative impacts on women's health and financial well-being.





## Key Recommendations and Future Research



**A**ddressing access to justice and safety for survivors of family violence will require system-wide change including mobilization of government resources, changes in how legal processes are designed, and willingness on the part of legal professionals to learn about family violence. Our overarching recommendation is that robust family violence education and training be provided to all professionals in the family court system. The rare positive experiences that women shared with us as part of this project all centred around working with people who understood the dynamics of family violence. The calls for increased family violence education echoed through all the conversations we held with women and key informants. We therefore recommend training to be extensive, mandatory, and draw on the expertise of front-line advocates, community organizations, and, most importantly, women with lived experiences of family violence.

Our second broad recommendation is for a specialized family court system where judges can develop expertise in family law and family violence. Care must be taken to ensure that in designing family courts, we do not replicate existing danger points described earlier in this report. The family court system must be created with an eye to safety first and in consultation with front-line, women-serving agencies.

We have identified three areas particularly in need of further study. First, further research is required into how police respond to family violence, including an empirical analysis of how often protection orders are being enforced through criminal charges when breached. Identifying promising practices for police responding to violence could have a significant impact on women at an early stage of their legal proceedings.

Another area of research in need of further consideration concerns analysis of how judges respond to family violence during family law proceedings. In addition to reviewing cases that have already been decided, this will require court watch programs and review of transcripts to understand, among other things, the ways in which lawyers and judges may be telegraphing to women that they should not raise family violence as part of their case.

Lastly, we identified significant correlation between the process of going through the family court system and experiencing negative health impacts. Over half of the women who responded to our survey developed new health problems while going through the court process. Gaining a better understanding of the significant public health impacts for women navigating the family court system will help clarify overall societal costs associated with a system that perpetuates or adds harm to those required to engage its processes.

## Mandatory Family Violence Education

Given both the pervasiveness of family violence, and the fact that the time when many women are at greatest risk will often coincide with the time they are going through the court system, it is truly surprising that education for everyone in the family law system is not yet mandatory.<sup>128</sup> Pursuant to the *FLA*, all legal dispute resolution professionals are required to take family violence into account when advising their client, yet they are under no obligation to receive training in how to do this, nor are there standards or guidance produced about what such training should contain.

Over the past three years, we were frequently asked why, despite legislation that intentionally centres family violence, family lawyers can be required to assess violence without training, judges can hear cases about women and children at risk without specialised knowledge, and law schools can teach family law without thoughtful discussions about the dynamics of family violence. We have no good answers to these questions. There is no reason why change cannot be prioritized. During the COVID-19 pandemic, gender-based violence was clearly identified as the public health crisis that it has always been; however, unlike the novel coronavirus, recognition of family violence

has not mobilized widespread systems change.<sup>129</sup> By failing to take responsibility for educating its own, the legal system exacerbates the problems associated with family violence.

With education from experts in family violence, including front-line workers, we can head towards a safer response and a significant reduction in family violence.

## Lawyers

*“People are not expecting kindness in the legal system. Not only is the system not perceived as kind, but we [lawyers] are the gatekeepers of this legal information. We know the law and they don’t know the law. For the lawyers this is their file, and for the people this is their life.” — Zara Suleman, lawyer*

Lawyers need access to more comprehensive education on family violence. During our project we determined that even for lawyers who are interested, there are relatively few opportunities in BC for comprehensive family violence education. To work in the field of family law, lawyers need to understand how to screen for family violence, respond to violence that women are experiencing in a way that increases safety, and navigate the court system with their client in a way that limits the opportunities for an abusive ex-partner to use the court process, or court itself, to further inflict violence. In our survey to family law lawyers we asked whether they had received any family violence education and we found that of the 18 respondents, 10 indicated yes and 8 indicated no.

Many women recounted positive experiences they had working with their lawyers. Positive experiences included: feeling like they could communicate with their lawyer, the lawyer displaying compassion and a willingness to help, and feeling that their lawyer was “on their side.” Unfortunately, many more women spoke of negative experiences they had with their lawyers. Negative experiences that were recounted most frequently were: feeling rushed by their lawyer; not being taken seriously; and that their lawyer was not a safe person to disclose to because the lawyer did not understand their experiences.

In response to the demand for more training, we are creating further training materials specifically for lawyers as part of this project, which we hope will inform interested members of the legal profession about how to increase safety for their clients. However, we recognize that this will not be enough, and that many community organizations have far greater expertise than we do when it comes to working with clients who have been marginalised by different systems of oppression. Voluntary training for the lawyers who seek it out will not be sufficient to transform the system, which is why we recommend mandatory training for family law practitioners. Training should be developed collaboratively with front-line organizations and women with lived experience, and should focus on recognizing and responding to non-physical forms of violence as well as lawyers’ unique role in ensuring client safety throughout the legal process. Training should also address the need for developing plain language skills to ensure that clients can actively participate in and be knowledgeable about their own cases.

## Judges

Family violence is complex, multi-faceted and not always intuitive, but the judges who hear family law cases do not receive mandatory education to help them understand it. As Rosemary Cairns-Way and the Honourable Donna Martinson explain in *Judging Sexual Assault: The Shifting Landscape of Judicial Education in Canada*, “[m]andatory education for judges of any kind is relatively recent and in the 1990s the view was that by making education mandatory for judges, judicial independence would be jeopardized.”<sup>130</sup> At that time, “judicial education about discrimination and inequality was controversial.”<sup>131</sup>

In *Shifting Landscape* Cairns-Way and Martinson examine questions surrounding judicial education, particularly regarding sexual assault.<sup>132</sup> They argue that the Canadian Judicial Council’s “continued insistence that judicial education be controlled, supervised, and implemented by judges is inadequate.”<sup>133</sup> The authors recommend that judges, lawyers, legal academics, and community members with relevant experience and expertise collaborate to create public education that will enhance women’s equal treatment.

The past few years have also seen movement on judicial education following the Justice Camp Inquiry. Justice Robin Camp is the judge known for making controversial comments during a criminal trial involving a rape allegation he presided over, including: “why couldn’t [she] just keep [her] knees together,” and “sex and pain sometimes go together [...] — that’s not necessarily a bad thing.”<sup>134</sup> His comments, which ultimately led to an inquiry and his resignation, were discovered “almost by accident”<sup>135</sup> by four law professors who obtained and analyzed the transcripts after hearing about the case on appeal. Cairns-Way and Martinson describe the Camp Inquiry as, “perhaps the most significant recent example of judicial acknowledgment that continuing education is essential, particularly in the context of sexual violence.”<sup>136</sup>

Despite the high-profile response to the Camp Inquiry, it would be wrong to conclude that there are just a few bad apples making blatantly sexist decisions who give the rest of the legal system a bad name. Gender-bias and myths about family violence are as prevalent as the myths about sexualized assault. Nearly half of the women we surveyed were told that they should not bring up the family violence in court, partly because “[j]udges don’t like to hear about that.” An approach to family law that silos women’s experiences of family violence by treating those experiences as less than integral to achieving a just result in all

Individual people can make a difference. Our research found that when women did have positive experiences in family law and the court system, it was often due to the compassion and knowledge of individual actors.

the circumstances of the case is at best a disservice to the administration of justice and, at worst, continues the perpetration of violence through indifference.

There are also questions regarding the responsibility of the judiciary to inquire about family violence and safety where lawyers have not brought these issues forward. The Honourable Donna Martinson and Dr. Margaret Jackson discussed the role of courts in addressing family violence in a paper discussing the need for family law reform in British Columbia.<sup>137</sup> The authors call on judges to not act passively and instead employ an “equality-based approach.” They define the equality-based approach as a “...fundamental constitutional value that is relevant to every area of law and practice.”<sup>138</sup>

As recommended by the Honourable Donna Martinson and Dr. Margaret Jackson in their work, judges in family law would benefit from having knowledge about:

- i. the complexities of family dynamics, including the nature of, causes of, and implications of family violence;
- ii. assessing for the presence of family violence;
- iii. the impact of behaviours and attitudes on children;
- iv. the impact of behaviours and attitudes on parents and their ability to effectively parent;
- v. the multiple causes that underlie continuing conflict in families, including personality disorders, other mental health issues, substance abuse, and patterns of controlling behaviour, and their implications;
- vi. child development theory, and in particular how children can be adversely affected by conflict between their parents;
- vii. risk assessment methods and their benefits and limitations;
- viii. the significance of hearing from children, as well as the short and long term consequences of not hearing from them; and
- ix. when expertise is required and if it is, the nature of the expertise required.<sup>139</sup>

It is essential that the legal profession receives education on matters of social context. As one woman in our focus group described:

*What I found with all the judges and lawyers that I've had... I would say [it all comes] down [to] their personal experiences. It's not even about us, it's about, how did they grow up, what is their core beliefs? What are their family beliefs? Did their father beat their mother, did their mother beat their father? I don't know. But somehow, they're coming away with something and they've already got some preconceived thing.*

## Law Students

The legal profession needs to assess the way family law is taught in law schools and require that family law curricula cover family violence. There is currently no requirement that law students receive any training in family violence or interpersonal violence when they study family law, although some instructors do choose to include it. Tanya Thakur, a family lawyer who recently graduated from law school in BC, commented “I walked away with a cursory understanding of the topic. I feel like we could have delved more into the power dynamics that characterize violent relationships, and how to adapt our practice to serve clients with abusive spouses.”

If we want law students to become lawyers who can effectively advocate for their clients, they need to understand the dynamics of conflict and interpersonal violence. As law professor Gillian Calder told Rise, “We do a wonderful job at law school in educating people’s brains, but not such a good job of educating their whole selves - education that is required for them to be really good advocates.” Classes often focus on substantive law principles with little attention to the realities of the people going through the court system. Calder’s approach is to use methods that allow students to understand the complexity of a problem before being expected to solve it.

## Limits of Education

The women we interviewed emphasized the importance of family violence education, but they also cautioned that any education provided will be limited. Women described the difficulty of evoking empathy in people without firsthand experiences. One woman said,

*When I’m listening to you say “you want to teach the lawyers,” I’m sadly a little bit cynical because — even if you’re empathetic, that’s all theoretical. And if you haven’t been there and know that your children [and] your life, [are so impacted by] that judge [who] is listening to the other person lie, and you have to be quiet and keep it together. You can’t interrupt, you can’t say ‘that’s not true,’ you have to just wait until they let you have time to talk. If they do.*

There is currently no requirement that law students receive any training in family violence or interpersonal violence when they study family law.

A research participant who recommended family violence training commented, “theoretical is good... but, something to actually make people feel.”

## Creating Safety in Courts

The family court system and our legal processes are not designed to ensure the safety and well-being of participants. Families who have experienced family violence must physically attend courthouses, with very few exceptions, although opportunities to attend court virtually may increase in the wake of COVID-19. Being physically present with an abusive ex can exacerbate safety risks for women. Furthermore, the adversarial nature of the court process, coupled with the fact that there is no comprehensive understanding of family violence, creates a process that can be re-traumatizing for many survivors of violence. Amber Prince, a lawyer and advocate for women, described the need for more resources and a system that works to not re-traumatize people.

### Unified Family Law Courts

The unified family court model streamlines family law services by bringing all family law matters into a single court that acts as a one-stop shop.<sup>140</sup> They have several important features which include unification, specialization, ease of navigation, and a full range of family law services. In addition to trial courts, unified family courts can include space for additional types of dispute resolution procedures including mediation and case conferences, and house a full range of social, community and educational supports.<sup>141</sup>

BC is one of the few jurisdictions left in Canada without a unified family court system, resulting in many family law matters being split between the Provincial and Supreme Courts. This increases complexity for parties and poses a barrier to accessibility to the family law system. John-Paul Boyd, a family law arbitrator and mediator in BC and Alberta, writes that “report after report has commented on the barriers that inhibit access to justice, and prominent among them is the labyrinthine complexity of a judicial system involving two courts with concurrent but incongruent

The adversarial nature of the court process, coupled with the fact that there is no comprehensive understanding of family violence, creates a process that can be re-traumatizing for many survivors of violence.



jurisdiction, with different rules, process and forms.”<sup>142</sup> The introduction of properly resourced unified family courts in BC could have a significant impact on women’s safety. Carolyn D. Schwarz has suggested that unified family courts are more successful than traditional courts at addressing the needs of survivors of domestic violence and reducing harmful impacts on women and children.<sup>143</sup>

## Specialization of Judges and Court Staff

One of the critical features of unified family courts is that they are staffed with legal and non-legal professionals equipped with specialized knowledge and skills to work with parties experiencing relationship breakdown.

The need for specialized judges, who are willing to acquire expertise in substantive and procedural aspects of family law as well as receiving ongoing training in the social context surrounding family law, including family violence and the impacts of family breakdown on children, is widely recognized.<sup>144</sup>

However, in BC’s current system, judges are expected to hear high conflict cases and make determinations on the best interests of children with potentially no background or interest in family law or training in the dynamics of family violence.

Decision-makers must have all the information to properly identify family violence when it exists and to assess the risk of future harm resulting from that violence. In our interview with the Honourable Donna Martinson, she explained that through her work, she and Dr. Jackson have emphasized that understanding family violence is not “intuitive... [it] requires specialized skills and knowledge and it also requires an in-depth understanding of the equality principles relevant to women and children which are at play in these cases.”

In a report on the need for criminal courts that work for survivors of violence in BC, Darcie Bennett found that participants cited specialized staff as an important requirement for effective engagement with courts.<sup>145</sup>

While we may be some time away from seeing a unified family court system in BC, there could still be opportunities to designate particular list days for cases involving family violence, which could allow for some accommodations to benefit the safety of the parties.

## Continuity

A consistent refrain from the women we spoke to was that the family court system has “no teeth” and people can fragrantly disregard family court orders with no consequences. One barrier to the effective and speed resolution of matters involving family matters is the reality that these cases are unlikely to be resolved with finality over a few days of trial. Family law proceedings are by their nature longer-term matters, in which material changes to a party’s circumstances may necessitate

returning to court many times over. This is especially so where, as described above, an opposing party may be using the court process as a means of continuing to harass or intimidate their ex, or as a means by which to deplete her resources. Returning to court and appearing before different judges every time takes a huge toll. Greater continuity in judges could help ensure that abusive patterns of behaviour are recognized and responded to more quickly and effectively. Lawyers should make use of tools that already exist within the *FLA* and court rules to request that one judge be assigned to their case, where appropriate.

## Sharing of Information About Risk

It is common for matters with family violence to be addressed in both criminal and family court, but having concurrent proceedings can create a “dangerous disconnect” that increases risk for family violence.<sup>146</sup> There is clearly tension between the need to have relevant information about risk available, and the importance of respecting due process and the right to be presumed innocent until proven guilty.<sup>147</sup> At the same time, serious risks arise when both systems operate completely in a vacuum. The following quotes from women we interviewed reflect this well:

- “There are some cases where the courts make us feel like the criminal cases are unrelated from the family law cases... it is very confusing.”
- “Criminal court is over here, and the family court is over here, and there is no communication [between them, but] if someone is willing to physically assault their partner to the point that they’re in hospital, are they really safe to be watching their four-year-old child, you know?”

In the 2018 Court Watch Project, the authors found that the violence and abuse that was present in family law cases often coincided with ongoing criminal charges, including three out of 10 cases of violence where the fathers were in custody at the time of the report. Women said that evidence from criminal court was frequently not available or admitted in family court. Having separate systems required women to attend multiple court appearances. Ultimately, this disconnect must be addressed in some way if courts are to be able to ensure safety.

Different jurisdictions in Canada have implemented a variety of models of specialized courts dealing with family violence, and it is beyond the scope of this project to make specific recommendations about the best way to do this. Any attempt to create a BC model for information-sharing should include consultation with anti-violence workers and women-serving organizations in their community as well as provincial umbrella organizations like the BC Society of Transition Houses, and the Ending Violence Association of British Columbia to ensure that women’s safety is understood and prioritized.

## Safe Spaces

In her report *Courts that Work*, Darcie Bennett, along with a number of anti-violence workers and women's organizations developed recommendations for improving the criminal court system for women who had experienced intimate partner violence. They found that it is important for courthouses to create safe spaces in order to ensure women do not have to interact with their abusers, as well as taking into account safety for women attending and leaving the courthouse.<sup>148</sup>

## Child Care

With the recent interest in developing a national and provincial child care strategy, serious consideration should be given to providing child care at the courthouses to ensure children's safety during a time of extreme stress for not just for mothers leaving abuse, but families generally. In the alternative, space should be designated for "children's rooms" where children can wait with a parent outside of the courtroom. Mothers are sometimes chastised for bringing their children to courthouses, but many don't have an alternative if they are the sole caregiver. Facilities at courthouses could decrease stress for parents and children.

## Courthouse Navigators

Anecdotally, some courthouses currently have individuals who are assisting parties by directing them to their courtrooms and answering questions. With COVID-19 protocols in place we are seeing that many courts have adapted their protocols to ensure that court users are directed to where they need to be and to answer questions about accessing the courthouse. We encourage these protocols to be expanded and adopted as a service standard for courthouses across the province. Many women reported that having the assistance of a navigator at the courthouse would enable them to feel better able to engage with the legal system as a whole.

Returning to court and appearing before different judges every time takes a huge toll. Greater continuity in judges could help ensure that abusive patterns of behaviour are recognized and responded to more quickly and effectively. Lawyers should make use of tools that already exist within the *FLA* and court rules to request that one judge be assigned to their case, where appropriate.

## Plain Language Communications

Lawyers, judges, and courthouse staff need to place stronger emphasis on the use of plain language. Courts should develop signage and guides for their own protocols that explain to court users what to expect when accessing the courthouse. For instance, on family list days many litigants would be well-served by clear signage explaining the limitations of list days; how to check in at their courtroom; that they can wait outside the courtroom and be paged when their matter is called; the location of safe waiting places; and signage at entries explaining that if someone feels at risk in the courthouse they can ask a sheriff for assistance, including an escorted walk to their car and/or a nearby bus stop.

## Women's Safety During Hearings

COVID-19 has shown that a public health crisis can motivate change and creativity in the use of virtual proceedings and family violence should be treated with similar resolve. We encourage future conversations about the use of virtual processes to promote victim safety and well-being including the possibility of either the victim or violent family member attending via video from another room or location to reduce contact.

# Additional Recommendations

In addition to these broad recommendations concerning the need for training and education for legal system professionals and ensuring safety for court users, the following recommendations outline further improvements to the family court system in BC.

## User-Centred Procedures and Rules

- Legal procedures and rules of court should be designed with a focus on the needs of the end-user. Some work has been done to orient some of the legal processes towards self-represented litigants, but much more work still remains. The user-focused approach to design taken by the Civil Resolution Tribunal is a starting point for thinking about accessibility across all aspects of our legal system. It is time for legal processes to better reflect the needs of the people whom they are intended to serve.
- Legal procedures should be designed with family violence in mind, and the ability to create safety should be present from the earliest stages of a family law case. Too often, cases involving family violence are seen as unusual, or outliers that simply don't fit well into the "normal" model. In fact, statistics gathered over many decades show that family

violence is a common occurrence and so staff, lawyers, and judges should be able to respond effectively at every stage of family law file.

## Standardization of Information and Services

- Information about available services should be communicated more clearly to litigants. For example, many women were unaware that they could request that protection orders be served using government-funded process servers.
- Where possible, information should be standardized to reduce arbitrariness and complexity. For instance, the DARS picklists are extremely useful for lawyers, advocates and self-represented litigants; the development of appropriate clauses for women experiencing violence should be encouraged and such picklists made easily available. Many women leaving abuse struggle to have child support orders enforced by FMEP and courts should ensure that drafting is standardized so that all orders are enforceable. Services like the Comprehensive Child Support Services Pilot Project K should be expanded province-wide.<sup>149</sup>
- Information for the public must be made available in multiple languages.
- Access to services should not depend on where the user resides and use of technology could help to bridge some of the existing gaps.

## Government

- The BC Government made many significant improvements in BC family law when it adopted the *FLA*; however, changes to the law were not backed up with the necessary commitment of resources to ensure that the law could be accessed by people who need its protection.
- Family law legal aid needs to be strengthened. Currently individuals on income assistance can still earn too much to be eligible for legal aid coverage in BC and services like duty counsel and the Family Law Line fall far short of filling the gap in services. Eligibility for legal aid should ideally be linked to a living wage but failing that should be linked to one of the many statistics available that determine when families have fallen into poverty. Areas of coverage and length of coverage should also be expanded so that recipients are able to achieve some measure of resolution, and not be left with numerous unaddressed issues when their legal aid hours run out. Splitting up legal issues that should be heard together and leaving matters half addressed does not improve efficiency or safety, and we have heard from many women who chose to give up their financial entitlements when they realized that they would not be able to access counsel to fight for them.

- The current inability of women in smaller communities to find counsel who will take legal aid results in these communities being severely underserved. Women have reported in some communities it can take months to have a lawyer appointed to a woman's urgent family law matter. A strategy to ensure that there is adequate legal representation for everyone in BC needs to be created and implemented in collaboration with provincial anti-violence organizations and front line service providers.
- Services that support victims of violence and perpetrators of violence also need to be expanded, including those with a focus on Indigenous women and newcomer women, who are particularly poorly served by existing services. During this project we heard that many women, particularly women from communities that have experienced systemic oppression, are choosing to stay in abusive relationships rather than engage with services that offer very limited support.
- Personal security is dependent upon housing security and a provincial strategy on housing is critical for women fleeing violence. Our research findings highlight the impact of the intersection between family law and housing. Not surprisingly, the lack of affordable and available housing in BC was a frequent refrain heard from participants. Further, in many areas there are not even safe homes or transition homes for women to go to if they need to leave their family home suddenly. Pamela Cross, a prominent expert in Ontario states, "location affects every aspect of people's lives: education, housing, employment, health care and more."<sup>150</sup> The problems relating to housing are particularly pronounced in rural areas. The intersection between the family law mobility provisions and housing should be further explored, considering many communities within BC have zero vacancy.<sup>151</sup> One woman explained that she remained in an abusive relationship for an extra two and a half years due to needing housing and feeling she could not afford a place in her community. There was also no full-time work available for her, and she would not have been able to get by without the help of her parents and the government.

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## Future Suggested Research

### How Police Respond to Family Violence

Our project did not set out to explore the role of police with survivors of family violence; however, a high volume of women spoke of the significance their interaction with the police had on their safety and it became a major theme in our findings. As a result, we recommend further research to better address the intersection of policing and domestic violence. How do initial interactions with the police influence future family law matters and willingness to report further violence? What happens when police take family violence matters seriously, and work with women to create safety?

When the criminal justice system does not respond to reports of family violence, what happens? When women report breaches of protection orders, how many of the breaches are prosecuted versus stayed? Members of law enforcement may be able to inform future research by explaining what practices they currently use in responding to family violence and what challenges they have yet to address.



## How Judges Respond to Family Violence

We recommend further analysis of how judges interact with and understand the experience of survivors of family violence through family court proceedings. This includes review of case law, but also extends to comments and instructions given to parties by judges that may not be captured in the final reasons for judgment. Countless women and legal professionals recounted to us the ways that judges dismissed family violence in court, which had significant impacts on the rest of the legal proceedings, including the positions ultimately taken by counsel. It is essential that the way judges treat family violence is given greater attention, particularly given that many litigants do not have the financial means to appeal.

## The Role Sheriffs Have on Increasing Safety in Courthouses and Best Practices

One of the most promising findings from this project was the positive role that sheriffs can play in cases involving family violence. We therefore recommend future research be conducted with sheriffs throughout BC to better understand how their work can impact the safety of people involved in family court proceedings, including professionals working in the courthouse and litigants.

Many women had positive experiences where sheriffs assisted them, without being prompted, to have protection from their abuser. There seems to be a great potential for using the expertise of sheriffs in a more systematic way within family court proceedings. Family law lawyers, judges, and court staff should work with sheriffs to develop protocols for cases where family violence is alleged. Women should be encouraged to consider asking for assistance from sheriffs as part of their safety planning. Below are some of the positive experiences women described:

- “Sheriffs always made me feel safe and would always make sure to walk me in and out. Even made him move a few times so I wouldn’t have to walk past him.”
- “Sheriffs made me feel safe.”
- “There was one sheriff who recognized I appeared very uncomfortable at the [court counter]. He stayed with me until I was no longer required to be at the same hallway/window as my ex.”
- “A really nice sheriff once handed me a tissue. He hadn’t realized I was already grateful for his presence as I was still at that time really struggling.”



# Conclusion

This project has highlighted the significant systemic reform that is needed if the family law system is to effectively address family violence. BC's *FLA* is progressive on paper, and it includes an expansive definition of family violence, but it does not provide protection from the entrenched biases, myths and stereotypes that inform legal and law enforcement responses to survivors of family violence. These biases, coupled with the lack of investment in education and resources that would support women's safety mean that after eight years, the promises of the *FLA* largely remain illusory. In our research we had the opportunity to interview over 100 survivors of family violence from across BC, who had gone through the family court system since the passing of the *FLA* in 2013. From their experiences, we know there is still a long way to go in creating a legal system that enhances safety, and in fact, the one currently in place often increases the danger that women face.

Our research found that women's experiences of violence, particularly non-physical violence, are often minimized or completely discounted and that myths and stereotypes surrounding family violence and biases against women are pervasive in family court. These biases frequently lead judges to view women as vindictive when they raise allegations of family violence. The fundamental lack of knowledge about family violence by all actors within the family law system has led to a culture where family violence is frequently not even raised in court — either because professionals do not have the skills to identify and understand it or due to concerns that alleging family violence may make women look vindictive, not credible, and unreasonable in the eyes of the judge. Women told us that in some cases lawyers advised them not to raise issues of violence even when there was significant evidence including medical records and police reports. Expert interviews, a survey to lawyers and survivors, caselaw research, and a review of secondary sources all point to the need for significant changes in the structure, process, and culture of family law and family courts in the province.

A starting point for making significant improvements would be the implementation of mandatory family violence education for lawyers, judges, and police. This education should be created in collaboration with experts on family violence including front-line advocates, community organizations and women with lived experiences of family violence and the family court process. Further, there needs to be some form of specialization for family court so that people are guaranteed to have their family court matters heard by judges knowledgeable about family violence. Courts and



As one woman said, “somewhere along the way, there are specific people who made [the family court process] possible... [Someone] helped me.”

family law processes should be designed to support people going through family law matters, with a recognition of the dangers that may be caused by engaging in any type of legal process. We recommend immediate consultation on the creation of a specialized family court with all stakeholders, including women with lived experiences of violence.

While we wait for systemic change to the family law system, there is much to be done by individuals. Overwhelmingly, survivors described the significant need for lawyers to improve their practices to better facilitate safety for survivors of violence, and for judges to adapt their approach to family law files that involve allegations of violence. Conversely, individual police officers, advocates, transition home workers, counsellors, court staff, lawyers, and judges who responded with understanding and care had the power to make a tremendous positive impact.

Looking forward, Rise will continue to work on implementing the recommendations that have come from this research. Our staff at Rise is experienced in providing education in family law and family violence, and we hope to continually work with community partners and women with lived experience to improve our own approach to family law and develop new resources to share.

There was incredible support for our project from survivors and women-serving organizations throughout BC. In almost every focus group or interview, survivors told us that they were thankful that this work was being done, and that they had participated in hopes that another woman would not have to go through what they had been through in the family court system. While this report has outlined the significant failings of our current system, we hope that readers can also feel the momentum from survivors and advocates pushing for change. Individuals within the system who respond effectively to family violence can save lives. As one woman said, “somewhere along the way, there are specific people who made [the family court process] possible... [Someone] helped me.”

# Endnotes

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- including threats respecting other persons, to commit suicide, to report you to MCFD, or threats against pets or property ii. unreasonable restrictions on, or prevention of, a family member's personal autonomy iii. stalking or following of the family member iv. intentional damage to property. For children the question was worded including intimidation, harassment, coercion or threats, and it was responded to by the mother. We did not interview children as part of our research. When asked about the violent family member's relationship to them, almost all survey participants indicated "husband." In our focus groups the perpetrators of violence that were described were all male.
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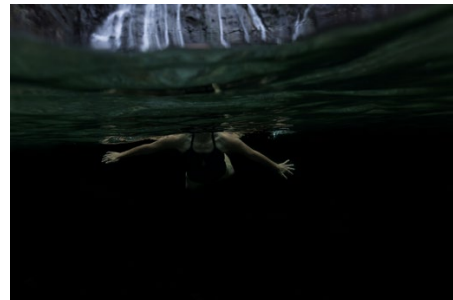
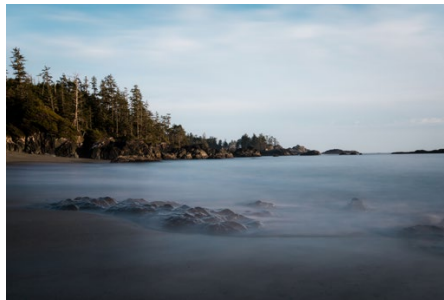
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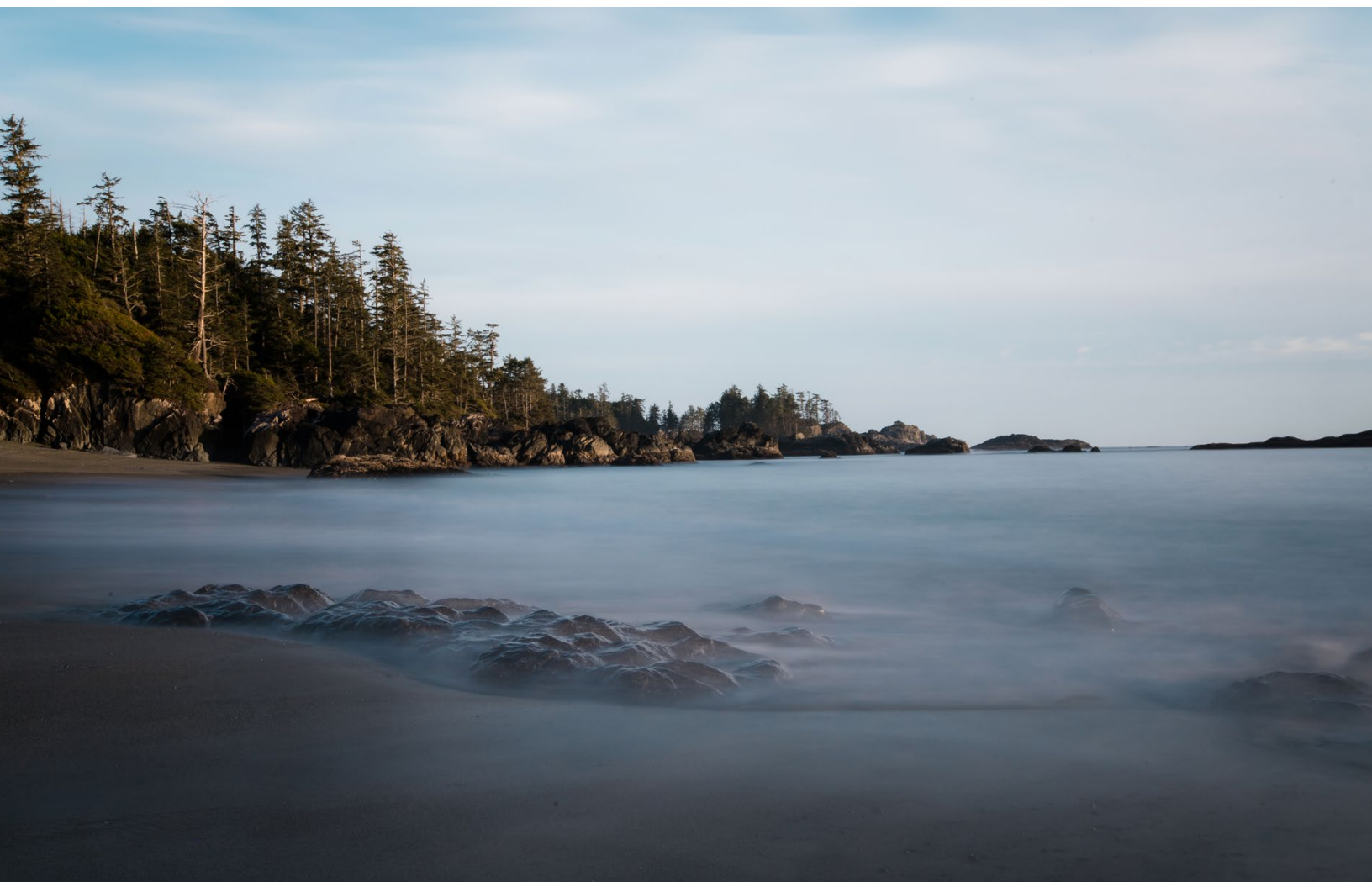
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## ABOUT THE PHOTOGRAPHER



**MELODY CHARLIE** Born and raised in Ahousat and proudly calling Nuuchahnulth home, I have been capturing light beams and beings since the early 1990s. Having worked most of my life in healing, I am naturally drawn to the strengths and medicines of Indigenous beings across Turtle Island. Culture, songs, ceremony and learning my language offered some much needed healing after the loss of my children's father. Losing him became a journey of finding me. Finding me led to the strengths and stories of First Peoples, through the lens, straight to the heart and back to our roots. [melodycharlie.com](http://melodycharlie.com)





Rise Women's Legal Centre is a community legal centre striving to create accessible legal services that are responsive to the unique needs of self-identifying women, particularly those who are survivors of violence, abuse and unequal power dynamics.

For more information about Rise, visit [womenslegalcentre.ca](https://womenslegalcentre.ca)

Rise Women's Legal Centre respectfully acknowledges that our work takes place on the traditional, ancestral, and unceded homelands of the **Skwxwu7mesh** (Squamish), **Tsleil-Waututh** (Burrard), and **xʷməθkʷəjəm** (Musqueam) Nations