



# Caught in the Middle

Children's Involvement in the Court Process  
as it Relates to Intimate Partner Violence

## Literature Review

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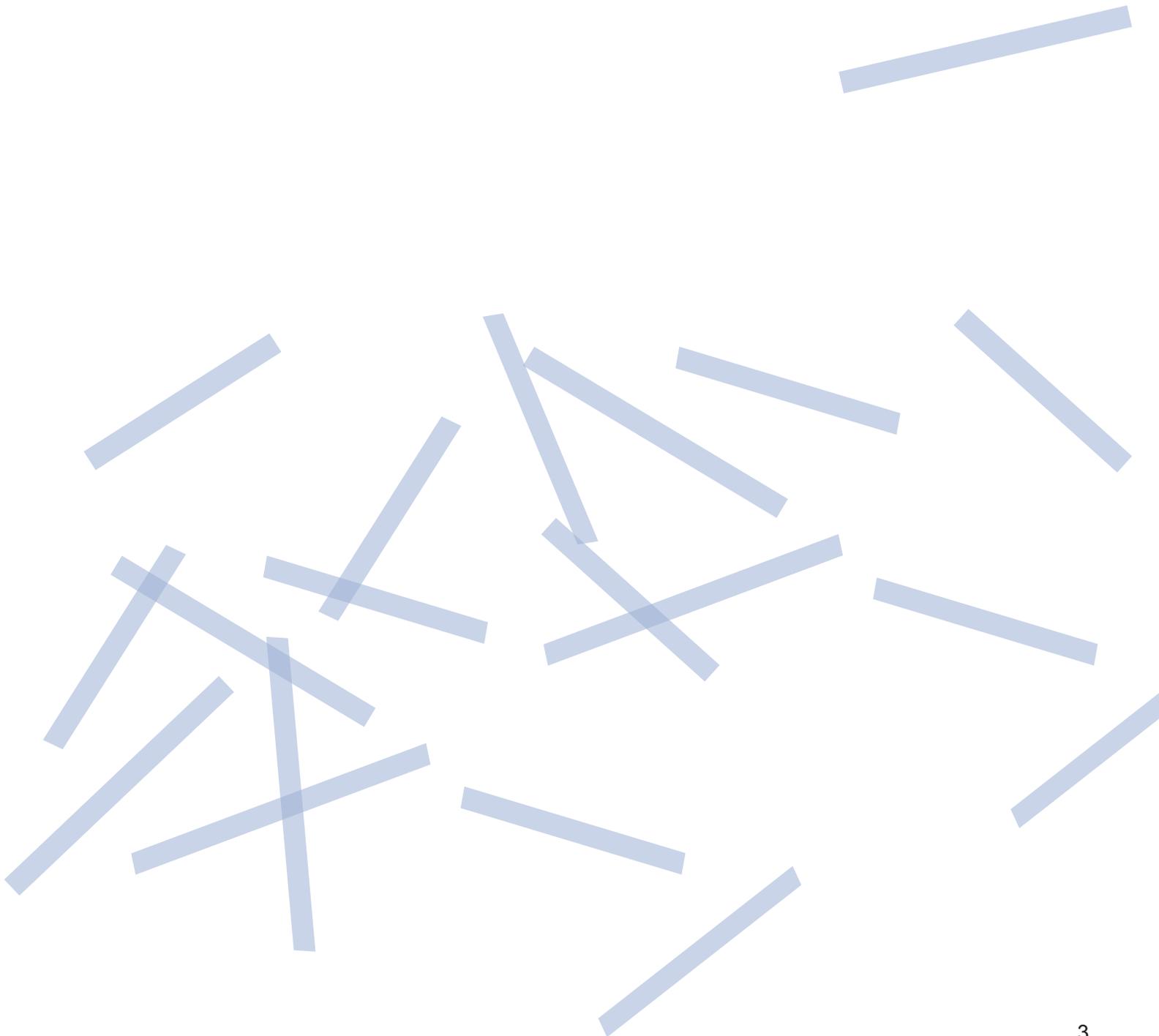
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# Executive Summary

This literature review provides an extensive overview of children’s involvement in the court process at it relates to intimate partner violence (IPV). First, an overview of IPV in Canada and children’s exposure to IPV is provided to highlight the pervasiveness of these issues and to contextualize the need for increased responses to better address them. As the purpose of this review is to examine the intersection between criminal and family courts and their impact on children who are exposed to IPV in the home, several issues related to problematic issues and the processing of IPV cases and their impact on parents and children in Canada are discussed. The reasons for these problematic issues, include the following: differing mandates of family and criminal courts systems; a lack of integration and communication between the courts; stipulations surrounding high conflict or abusive relationships; the exclusion of children’s voices; as well as issues surrounding accessibility are also identified. Since the use of parental alienation as a crossclaim to claims of IPV in family courts can re-victimize women and children who are victims of IPV, a specific section addresses the use of parental alienation in child custody and access decisions.

Several recommendations with respect to improving the processing of IPV cases in courts are discussed in the latter half of the review, with a specific focus on promoting the Children’s Rights Perspective in the court process as well as establishing integrated court systems to better address IPV and children’s exposure to IPV. Some examples of integrated court systems found in Toronto, New York, Massachusetts, and London (England) are provided to highlight their successes in handling cases of IPV. Following this, a discussion on Manitoba’s new and enhanced supports for victims of IPV in the justice system is offered. This review concludes with future directions for research: greater inclusion of children’s voices, the experiences of IPV and the court systems among marginalized individuals and groups, as well as more literature dedicated to understanding how family and criminal court systems process IPV cases.



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# Introduction

In Canada, intimate partner violence (IPV) is a troubling reality. According to the latest statistics, between 2009 and 2014, 4% of Canadians (approximately 760,000 individuals) reported being physically or sexually victimized by a current or former spouse (Statistics Canada, 2016). The Prairie provinces have the highest rates of IPV in the country; Manitoba, has the second-highest rate of police-reported IPV in Canada, with a police-reported rate nearly double the Canadian rate (Statistics Canada, 2016). IPV is especially concerning for women as it accounts for the most common form of violence perpetrated against women in Canada (Statistics Canada, 2019).

Also troubling is children's exposure to this type of violence. Children's exposure to IPV occurs in a variety of ways including directly seeing or hearing the violence of one parent against another, indirectly witnessing violence by seeing injuries or hearing about what has happened to their parent, or witnessing police intervention (Sinha, 2012). Children may also see or hear conflict and violence during visits or access exchanges or be used by an abusive parent as a form of abuse by undermining the other parent or using children to relay messages and threats (Ahlf-Dunn & Huth-Bocks, 2016).

It is unclear how many victims of IPV are mothers but the largest proportion of women who are abused are of child-bearing age (Statistics Canada, 2019). According to the most available statistics, in 2011 there were 9.8 million mothers<sup>1</sup> in Canada, and of these 4.1 million had children under the age of 18 (Statistics Canada, 2012). Canadian data indicates that over half (52%) of victims of spousal violence reported that their children heard or saw the assaults (Sinha, 2012). Further, exposure to IPV is now the most common form of substantiated child maltreatment investigated by Canadian child protection services authorities – of an estimated 85,440 substantiated cases, 34% (or 29,259 cases) involved children's exposure to IPV (Trocmé et al., 2010). Separation of the parents does not reduce the likelihood of children being exposed to IPV; instead, research suggests that children are more likely to be present during violent episodes directed at previous spouses or partners than current spouses or partners (Sinha, 2012). There is a general consensus that exposure to IPV (including post-separation assault) is detrimental to children's wellbeing and can place them at risk for negative physical, emotional, behavioural, cognitive and social developmental outcomes (for example see Kitzmann et al., 2003; Levendosky et al., 2013; McTavish et al., 2016). While the negative impact of children's exposure to IPV is well documented, much less is known about how the intersection between criminal and family courts may potentially contribute to negative outcomes.

In cases of IPV, multiple court systems are often involved, creating a complex, costly, and time-consuming process for the involved parties and their children. Navigating the criminal and family court systems at the same time can be challenging as these sectors do not have the same mandates or procedures (Croll, 2005). These differences can lead to delays, and conflicting orders, and can allow for dangerous situations to arise. For example, criminal court may restrict a parent from access to their child at the same time that family court demands it. This inconsistent consideration of children's interests can force them and their parents into remaining in contact with the perpetrating parent, placing them at an increased risk of experiencing more violence (Cashmore, 2011).

<sup>1</sup> Includes biological, adoptive, and stepmothers.

Over the last decade, legal advocates and advocates for both abused women and their children have demanded better integration between family and court systems in cases of IPV, arguing that these systems do not meet their best interests. Despite recent changes made to Canada's *Divorce Act* (Bill C-78) that requires courts to consider the presence of family violence, including children's direct or indirect exposure to violence, in divorce, custody, and child support cases, there is anecdotal evidence to suggest that these issues are not being considered in the court process (May, 2018).

This literature review examines the intersection between criminal and family courts in Canada and the impact on children who are exposed to violence in the home. This review also discusses the processes and structures that are in place in the family and criminal court systems to address IPV and the ways in which they either facilitate or exclude children's interests and circumstances in cases that involve both systems. Subsequent sections address the numerous impacts on women survivors and their children who are involved in both the criminal court and family court process, as well as the various issues found in the processing of IPV and children's exposure to IPV in both systems. In the latter half of the review, recommendations to improve the processing of IPV cases in courts and future directions for research are offered.

# Overview of Intimate Partner Violence in Canada

Intimate partner violence (IPV) refers to any form of violence inflicted by a past or present partner that results in physical, sexual, or psychological distress, including acts of physical aggression, sexual coercion, psychological abuse, and controlling behaviours (Krug et al., 2002). Other forms of IPV can include emotional, financial, social, and spiritual abuse, as well as acts of coercive control through the use of threats, humiliation, intimidation, and stalking behaviours to harm, punish, or frighten the victim (Krug et al., 2002; Johnson & Dawson, 2011).

IPV is a gendered social issue that has been, and continues to be, a widespread problem in Canada. In 2017, IPV accounted for nearly one-third (30%) of all police-reported incidents of violent crime (Burczycka et al., 2018). IPV was the most common form of violence experienced by Canadian women, with women accounting for eight out of 10 (79%) victims of police-reported IPV incidents that year (Burczycka et al., 2018). The Prairie provinces account for the highest rates of IPV; Manitoba has the second-highest rate of IPV in Canada, with a police-reported rate nearly double that of the Canadian rate (Statistics Canada, 2016). In Manitoba, the risk for women to experience IPV is four times higher compared to men (Statistics Canada, 2016), and women living in rural or remote areas are at the greatest risk for experiencing IPV (Burczycka, 2017).

While IPV often occurs during the relationship, research finds that this violence can continue post-separation, and that the most dangerous time for women to experience IPV is when they leave an abusive relationship (Zeoli et al., 2013). Findings indicate that the prevalence of violence is nine times higher for separated women and four times higher for divorced women in comparison to married women (Brownridge et al., 2008).



Related research finds that involvement in the court systems – whether through civil or criminal courts – can also compound or increase women’s experiences of post-separation violence (Johnson & Dawson, 2011). Abusive fathers will often use the criminal justice system and/or court processes as an additional tool to abuse, harass, and control their female victims (Sowter, 2019). This can include an abusive parent making false reports to child welfare, as well as attempts to manipulate the court in order to obtain the outcome they desire (Sowter, 2019). These findings highlight the increased risk of violence during the period of separation and supports previous research, which suggests that, for many women, IPV does not end with the separation from their abusive partner (Zeoli et al., 2013).

Although women experience greater rates of IPV and injuries as a result of violence, it is important to note that men also experience various forms of IPV victimization, including: physical, sexual, emotional, and coercive acts of abuse (Government of Canada, 2009). Between 2009-2014, 4% of Canadian men and 4% of Canadian women reported being victimized by a current or former partner (Statistics Canada, 2016). Overall, women were more likely than men (34% versus 16%) to experience severe violence (sexual assault, beaten, choked, threatened with a gun or knife), and men were slightly more likely than women (15% versus 13%) to report emotional or financial abuse. Women also tend to report more physical injuries (40% versus 24%) than men as a result of IPV. Both men and women reported emotional impacts as a result of the abuse but women were more likely than men to experience long-term symptoms, including Post Traumatic Stress Disorder (22% versus 9%) (Statistics Canada, 2016). However, other studies have also found that men experience significant psychological and physical symptoms as a result of IPV including emotional distress, depression, anxiety, suicidal ideation, social isolation, and PTSD (Hines & Douglas, 2009; Kar & O’Leary, 2010; Lupri & Grandin, 2004). A recent study conducted in the Prairie provinces involving 45 abused men revealed the range of IPV experienced, including physical, emotional, and sexual violence; as well as the emotional consequences that result from such experiences of violence (Fraehlich et al., 2020).



# Overview of Children's Exposure to IPV

Data collected on children's exposure to violence in the home suggest that it is common for a child to be exposed to violence when their parent is a victim of IPV. According to Statistics Canada, 52% of adults who had reported experiencing IPV in 2010 indicated that their children had witnessed or heard assaults on them (Nixon et al., 2013; Sinha, 2012). Children's exposure to IPV can take many forms. For instance, children may be directly exposed to IPV through seeing and/or hearing the violence between parents or caregivers (Alaggia et al., 2007). In other cases, they may be exposed to violence indirectly, i.e., being told about the violence, seeing the aftermath of violent episodes (including physical injuries and/or broken furniture), witnessing police intervention, or moving to a temporary residence (Alaggia et al., 2007; Sinha, 2012). As aforementioned, exposure to IPV can have significant negative physical, emotional, behavioural, cognitive, academic, and social developmental outcomes on children (Kitzmann et al., 2003; Levendosky et al., 2013; McTavish et al., 2016; Vu et al., 2016). Children exposed to IPV may also be at-risk of experiencing Post-Traumatic Stress Disorder (PTSD) (Scheeringa & Zeanah, 2001). Although the evidence is not conclusive, some researchers purport exposure to IPV to be harmful because of the potential for the intergenerational transmission of violence—some children may be put at risk of either becoming future perpetrators or future victims (Black et al., 2010; Cannon et al., 2009; Franklin & Kercher, 2012).

Perhaps even more concerning is the substantial overlap that has been noted between witnessing IPV and children experiencing physical, sexual, and emotional abuse themselves (Chan, 2011; de la Vega, 2011; English et al., 2005; McGuigan & Pratt, 2001; Zeoli et al., 2013). For example, Edleson and colleagues (2007) estimate that in 30% to 60% of families in which either IPV or child maltreatment is present, it is likely that both forms of abuse are actually being committed. Therefore, children exposed to IPV who are also experiencing maltreatment have an even higher likelihood of suffering the negative consequences.

As alluded to earlier, separation of the parents does not reduce the likelihood of children being exposed to IPV, as perpetrators will often continue to abuse their former female partner post separation (Brownridge et al., 2008; DeKeseredy, 2011; DeKeseredy & Schwartz, 2009). In fact, data from the 2009 General Social Survey (GSS) indicates that children are more likely to be present during violent episodes directed at previous spouses or partners than current spouses or partners (64% versus 42%; Sinha, 2012). When an abusive relationship has ended, children may be the only remaining connection between the parents, which could be

used as an opportunity for the abuser to gain access to the victim (Brownridge et al., 2008; Hayes, 2017). Hayes (2017) found that threats to harm children, likely as a means of indirect abuse towards the partner, had a higher likelihood of occurrence when the parents were separated, compared to when the relationship was still intact. Continued abuse may be more likely when a child is involved and court systems order access to the child by the offending parent without considering circumstances of IPV (Hayes, 2017).

# Court Systems and Intimate Partner Violence in Canada

Over the last few decades, there has been a significant shift in legal and court system responses to the issue of IPV in Canada (Beaupré, 2015). In Canada, there are distinct court systems that exist to deal with criminal, civil, and family matters separately (Beaupré, 2015; Koshan, 2014). Although Canada does not have any nationally legislated offences specific to IPV, special consideration is given to the harm that comes from IPV in section 718.2(a) (ii) in the Criminal Code of Canada, making it an aggravating factor for sentencing purposes when an offence involves the abuse of an intimate partner (Beaupré, 2015). Between 2005/2006 and 2010/2011, almost 6 in 10 (57%) of 335,000 completed cases of police-reported violent offences in Canada's criminal courts involved an offence linked to intimate partner violence (Beaupré, 2015). While allegations of IPV are primarily dealt with in the criminal court system, the family law court is required to consider family violence and IPV before making decisions in divorce, child custody, and child support cases (House of Commons of Canada Government Bill C-78, 2018). Elaborating on these points, the following sections aim to describe and discuss the differences in the family and criminal courts and the role that both play when IPV has been identified.

## Overview of Family Court

The family justice or law system is responsible for regulating the rights and responsibilities of family members upon the breakdown of the family unit – dealing with matters pertaining to separation, divorce, access and custody of children, child and spousal support, adoption, child protection, division of family property, and other issues related to the family (Government of Canada, 2019). In 2012/2013, family law cases addressing issues such as divorce, child custody, access and support, etc. accounted for over one-third (34%) of all active civil court cases in Canada (318,000 compared to 922,411) (Allen, 2014).

Prior to changes made to the *Divorce Act* in 2019, there were no measures in place to address IPV and, therefore, family courts were not required to take the history of IPV into consideration when making custody and access decisions regarding children (Department of Justice, 2019). With the recent proposed changes to Canada's *Divorce Act* in the enactment of Bill C-78<sup>2</sup>, courts are now required to maintain the best interests of the child as the only consideration for parenting decisions and all other actions involving children (Department of Justice, 2019). These changes now require courts to consider the presence of family violence – including children's direct or indirect exposure to violence – prior to making decisions in divorce, child custody, and child support cases (House of Commons of Canada Government Bill C-78, 2018). Similar legislation is found

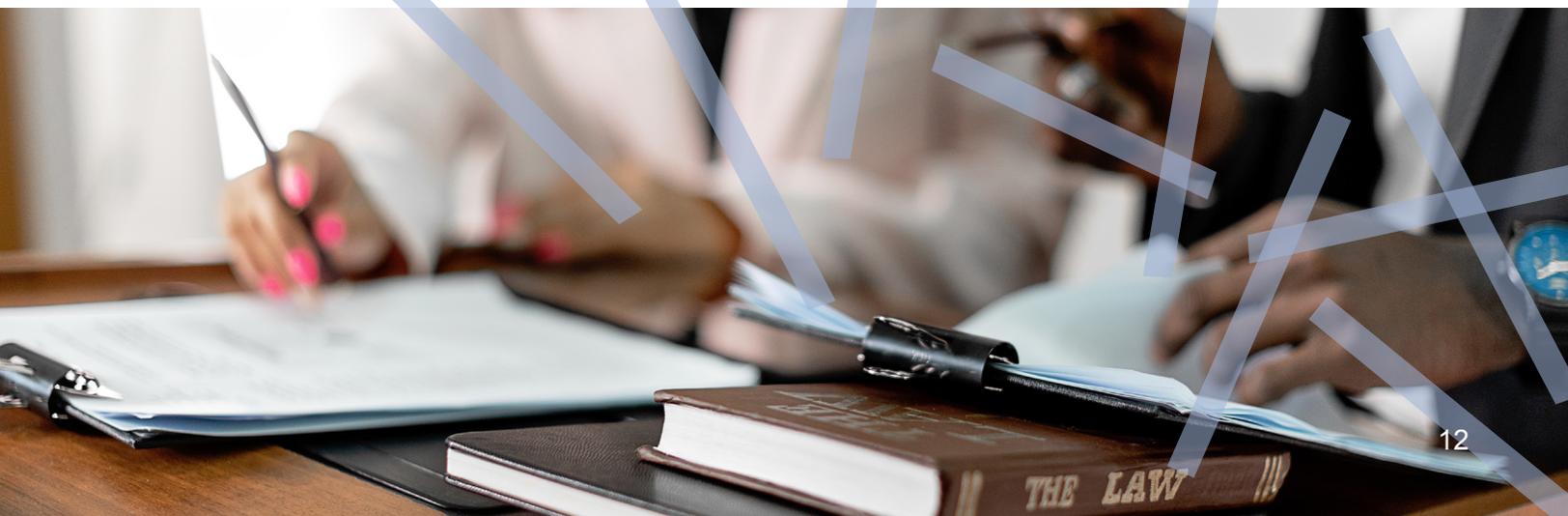
<sup>2</sup> An Act to amend the *Divorce Act*, the *Family Orders and Agreements Enforcement Assistance Act* and the *Garnishment, Attachment and Pension Diversion Act* and to make consequential amendments to another act (House of Commons of Canada, First Reading, May 22, 2018).

in Manitoba's Family Maintenance Act, which requires courts to consider the effect of IPV on children before making decisions related to custody (May, 2018). Such legislation is significant because a large proportion of cases brought to the family court system are incidents of family violence. Results from Bertrand and colleague's (2016) survey on the practice of family law in Canada finds that lawyers report that family violence is an issue in 21.7% of their cases on average, while judges indicate that it is an issue in 25.3% of the cases coming in front of them.

## Overview of Criminal Court

As mentioned previously, most cases of IPV are dealt with in the Canadian criminal court system. Criminal courts handle all matters related to allegations of IPV, including physical assaults, sexual assaults, criminal harassment, and child maltreatment. The court process begins when an incident of IPV is reported to the police and a charge is laid against the perpetrator. By the time a case is brought to and completed in the courts, the violent incident initially reported by police may differ from the final charge(s) processed by the criminal court (Beaupré, 2015). The main reason for this is because the Crown attorney has the authority to decide which of the charges will be tried; and in the process of doing so, they may also request changes to charges as a result of plea negotiations, lack of evidence to prove the initial charges, evidence of additional crimes which were not initially charged, and/or withdrawal of the complaint by the victim (Beaupré, 2015). The literature indicates that IPV is one of the most common incidents of violent crime handled by the criminal courts, and approximately 60% of IPV cases processed from 2005/2006 to 2010/2011 resulted in a guilty verdict on at least one charge (Beaupré, 2015). The most common sentences for those convicted of perpetrating IPV in Canada include probation and short-term custodial sentences (Beaupré, 2015).

In Canada, there are several specialized court systems which deal specifically with processing cases of family violence and IPV, including the Winnipeg Family Violence Court. Established in 1990, the Winnipeg Family Violence Court was the first specialized family court in Canada to deal with cases of spousal, child, and elder abuse. The main goals of this court were to expedite court processing, increase rigorous prosecution, and complete cases of IPV with more appropriate sentences than that of non-specialized courts (Ursel, 1994). Today, IPV cases are not heard in an actual court, but instead undergo a specialized prosecutions process, including a system where less serious IPV offences are diverted away from the traditional court process and into treatment-based programming (i.e., restorative justice programs). The Thompson Domestic Violence Court is another specialized court which provides rehabilitative services to offenders who have been charged with incidents of IPV (Manitoba Courts, 2020).



## Other Institutional Responses

Police and Victim Services also play a significant role in IPV cases (Cho & Wilke, 2010; Sullivan, 2011). In Canada, there are various types of victim services offered by governments, police services, courts, volunteers, non-governmental organizations (Office of the Federal Ombudsman for Victims of Crime, n.d.). The overarching goal of victim services is to assist the victim throughout their contact with the police, courts, lawyers, and other criminal justice system organizations (Office of the Federal Ombudsman for Victims of Crime, n.d.). Police-based victim services are typically provided after a victim's first point of contact with police. When a police detachment does not have victim services available at their detachment, police may refer the victim to another victim services agency for additional information, support, referral services, and court orientation (Office of the Federal Ombudsman for Victims of Crime, n.d.). Court-based victim services provide support to individuals who have become involved in the criminal justice process as either victims or witnesses with the goal of trying to make the court process less intimidating (Office of the Federal Ombudsman for Victims of Crime, n.d.). The provincial and federal governments provide funding for community-based victim services programs, which provide emotional support services, information, referrals, and court orientation to victims (Office of the Federal Ombudsman for Victims of Crime, n.d.). There are also government-run and funded domestic violence victim services which are not community-based programs. In Manitoba, specialized domestic violence victim services are both funded and run by the provincial government. Although distinct, all victim services aim to help the victim understand their rights and any legal processes involved, as well as discuss safety and protection planning as necessary.

In some provinces, there are designated family court support workers who provide direct support to victims of IPV who are involved in the family court process. For instance, the Province of Ontario offers the Family Court Support Worker Program to help provide victims with information about the family court process, help with preparing for family court proceedings, referring victims to other specialized services and community supports, as well as help with safety planning and court accompaniment (Ontario Ministry of the Attorney General, 2020). Supports are also offered for child victims and witnesses. The Government of Manitoba has recently created a new hybrid victim services position specifically for IPV survivors facing Family Court. This victim services position is designed to offer support for victims of IPV who are also involved in the family court process (Government of Canada, 2014). For families who are involved in both criminal and family court, this extra support will go a long way, as victim services workers in Manitoba are typically involved only in the criminal court process (Manitoba Justice, n.d.).



# Problematic Issues and Processing of IPV Cases

Over the last few decades, legal advocates have raised concerns about how the criminal justice system and court procedures can further victimize women and children who have experienced IPV (Johnson & Dawson, 2011; Sheehy, 2002). In cases of IPV, multiple sectors of the justice system are often involved, creating a complex, costly, and time-consuming process for the involved parties and their children. Historically, family and criminal courts have operated completely separate from one another, even when the same people and accusations are involved in both systems. Because these sectors do not have the same mandates or procedures, navigating the criminal and family court systems at the same time can be challenging for victims of IPV (Croll, 2005). For example, the criminal court may restrict a parent from access to their child at the same time that the family court demands it. This lack of integration between the two court systems can lead to delays and conflicting orders, sometimes resulting in an increased risk of harm and violence for women and their children (Martinson, 2014; Rossi et al., 2016; Zeoli, 2013). This section discusses some of the issues related to the processing of IPV cases in the criminal justice system and family courts, and the impacts that the lack of coordination among these systems has on women and children who are victims of IPV.



# Challenges Within the Court Systems

Parents and children who experience IPV face several challenges when navigating both the criminal and family court systems that can compromise their safety. Some of these challenges include: differing mandates of family and criminal court systems, a lack of communication between the family court and criminal court, a lack of integration among the two courts systems, stipulations surrounding high conflict or abusive relationships, the exclusion of children's voices, as well as issues surrounding accessibility. The use of parental alienation theory in custody and access decisions is another problematic issue which puts women at a greater risk for losing their children and puts children at a greater risk of experiencing violence (Saunders et al., 2016; Smith, 2016). The following sections discuss such issues within the criminal and family court systems.

## Differing Mandates of Family and Criminal Court Systems

When access to children is involved in IPV cases, criminal and family courts often have contradicting requirements that have the potential to increase violence and risk of re-victimization (Hardesty & Ganong, 2006; Rossi et al., 2016). While the criminal court may recognize the seriousness of IPV that occurred between the victim and the perpetrator as a criminal act and order specific conditions on the accused (i.e., no contact orders which prohibit an accused from appearing at the victim's home, workplace, and school), the family court may find it beneficial for children to maintain a relationship with the abusive parent and, therefore, order conditions that allow access (Government of Manitoba, 2019). The different priorities and conflicting orders of the current court systems can result in precarious and/or dangerous situations for the non-offending parent and children caught in the middle of the two systems (Birnbaum et al., 2016; Zeoli et al., 2013). This is particularly problematic for high-conflict relationships where it may not be safe for the IPV victim to be around the abusive parent. If the abuser has access to the children, the victim may have no choice but to interact with them to fulfill his allotted visitation times (Zeoli et al., 2013). If she does not, she may be viewed as uncooperative or unfit and may be at risk of losing custody of her children.

## Lack of Communication

One of the most problematic court issues in relation to IPV and family breakdown is the lack of communication between the criminal and family court systems. Despite the fact that both courts have equal power, and even deal with the same parties, there is no mechanism in place for the courts to communicate between one another—nor is there a framework for collaborative decision making (Tutty et al., 2011). This lack of communication can result in a myriad of challenges for families navigating both systems. For instance, the process can be long, stressful, and arduous, seeing as families are required to continually recount their stories during multiple hearings on different days (Department of Justice, 2013). Furthermore, because each court only re-



ceives partial information regarding the circumstances of each case, decisions are often made without full consideration of the family’s situation (Department of Justice, 2013). There is also no coordination regarding how long orders from each court will remain in effect, which can lead to gaps in protection measures (i.e., a peach bond may expire before a civil restraining order is implemented) (Department of Justice, 2013).

According to Bream and Buchanan (2003), communication between the family and criminal courts, as well as other agencies such as Child Protective Services (CPS), could greatly improve case outcomes—particularly in those where victims of IPV and their children may face future harm. This sentiment has been mirrored in the wake of devastating tragedies, such as the case of six-year-old Christian Lee, who died at the hands of an abusive father in a murder-suicide. The Representative for Children and Youth (2009) report on the case, titled Honouring Christian Lee, cited an absence of communication between the child welfare system and criminal justice system as a detrimental factor in the case, ultimately leading to the child’s untimely passing. Thus, a lack of communication between these systems has not only proven detrimental for families, but deadly.

## Lack of Integration

In addition to the lack of communication between the criminal and family courts, there is also a lack of integration. The criminal court is often unaware of ongoing proceedings occurring in the family court—and vice versa. This is largely because each court uses separate databases, which are housed in different systems (Department of Justice, 2013). There are currently no jurisdictions in Canada that have the technological capacity to undertake the necessary “systemic matching” to identify when multiple proceedings concerning the same parties are co-occurring (Department of Justice, 2013). Thus, without an integrated approach, judges making decisions surrounding custody and access cases involving IPV may be unaware of the entirety and severity of the violence (i.e. a criminal issue), and as such, they may enforce conflicting orders that place victims of IPV at a greater risk of harm (Martinson, 2014).

A lack of integration and coordination also exists amongst actors working within the systems themselves. For instance, a case of IPV may involve police, probation officers, attorneys, judges, women’s shelter advocates and even hospital staff—all of which deal with the same case in silos. The lack of collaboration between stakeholders involved in cases of IPV can prove dangerous for victims, seeing as each actor is forced to make decisions with incomplete information. Integrated systems that facilitate coordinated responses can deliver improved outcomes for families. The example set by non-profit organization HomeFront in Calgary, which coordinates major systems involved in IPV responses including the justice system, police, and community partners, provides promise for comprehensive strategies. Consultations with stakeholders in the system revealed that their coordinated response had a largely positive impact—not only for victims of IPV, but also for staff amongst the systems they worked with (Tutty, 2011).

## High Conflict Cases or Abusive Relationships

When dealing with cases involving conflict, it is important to differentiate between alleged ‘high conflict’ situations and IPV. High conflict cases are those that are marked by anger, a lack of trust, and a lack of conflict resolution between the two parties (Koch & Pincolini-Ford, 2006). In these cases, the balance of power between individuals is generally equal, and safety is not an issue of concern (Archer-Kuhn, 2018). Examples of high conflict scenarios include disputes regarding the division of assets or conflicting parenting styles. IPV, on the other hand, is an intentional pattern of physical, sexual, emotional or coercive abusive inflicted on one partner, by another (Koch & Pincolini-Ford, 2006). In these cases, there is an unequal balance of power and safety is of the utmost concern (Archer-Kuhn, 2018). Making the correct distinction is imperative, seeing as labelling situations of IPV as high conflict can distract parties from the actual issue—which is not merely a disagreement, but a matter of safety and security. This can also result in unhelpful interventions, such as relationship-building classes, which can be unproductive for perpetrators and harmful to victims who are forced to participate alongside abusers (Battered Women’s Justice Project, 2019). Unfortunately, studies indicate that this mischaracterization continues to be a problem within the legal system (Bream & Buchanan, 2003; Jaffe et al., 2003).

The lack of understanding surrounding the differences between these two types of situations likely plays a large role in why the court systems often do not adequately address IPV in their rulings. As discussed throughout this review, family courts often fail to consider, or lack information about IPV in determinations of child custody and access (Jaffe et al., 2004; Kernic et al., 2005). In their study on child custody determinations among couples with a history of IPV, Kernic and colleagues (2005) found that in less than one fourth of cases with a substantiated history of IPV, the court was made aware of this history. This lack of information sharing or knowledge regarding IPV and abusive relationships has significant impacts on the ways in which custody and access decisions are determined in the family court system. If courts characterize a relationship as high conflict rather than as abusive, there is a risk that they will deem an abusive parent as a ‘good’ parent and grant them access or custody of the child, even when there is an increased risk of danger and/or violence to the non-perpetrating parent and child. Considerations of high conflict versus abusive relationships have significant impacts on women and children who are more frequently victims of violence, and therefore, there needs to greater integration and collaboration between the criminal court and family court systems. While there have been improvements in information sharing when cases include the same people and allegations, more coordination between courts needs to be considered.

## Exclusion of Children’s Voices

Prior to amendments made to the *Divorce Act* (Bill C-78) in 2018, there was a greater concern for the rights of parents than with the responsibilities that parents have to their children. As a result, the perspectives and experiences of children were not generally taken into consideration by the courts when making decisions that would directly affect their lives and potentially the relationships they would have with their divorced parents (Eichler, 2016). Despite the belief that it is in the child’s ‘best interests’ to have adults responsible for making decisions for them, this procedure often excludes children’s voices and wishes from important court judgments (Fotheringham et al., 2013). For instance, when making decisions about living preferences and arrangement, most judges and courts do not require children to appear in-person and testify (Cashmore & Parkinson, 2009). While excluding children from the court process appears to protect their emotional well-being, research

has found that direct judicial interviews with children may have positive outcomes: children – especially older ones – can have their exact wishes heard, rather than through a court evaluator, and seeing the judge, court, and lawyers directly may even be beneficial for some (Cashmore & Parkinson, 2009; Parkinson et al., 2006).

Excluding children from the court process and important decision-making processes can leave children in precarious custody and child access arrangements (such as being forced to spend time with an abusive parent). Research partnered with the Calgary YMCA finds that in cases of IPV and child custody and access disputes, 66% of the children disliked their current access agreements, and 89% of children preferred an alternate one (Fotheringham et al., 2013). Further findings from this study show that when children were adequately supported and able to voice their concerns in court, they presented with less mental health concerns. Their non-offending caregivers also reported less stress from having their child participate in the process (Fotheringham et al., 2013). Others studying children’s exposure to IPV also have found that children desire to have their voice heard in the court process (Holt et al., 2008).

## Complex Court Systems

An additional issue related to access is the lengthy and confusing court process, presenting challenges for both professionals and victims attempting to navigate these systems (Jaffe et al., 2003). For individuals experiencing IPV who are involved in both systems, delays in one system (criminal court) can have a significant impact on the other system (family court). As noted above, criminal court cases can be lengthy and the actual criminal incident(s) may not be spoken of, in order to preserve evidence. Unfortunately, this delays the family court process and prohibits certain evidence from entering family court (Neilson, 2017).

Intricate court processes can also present issues for professionals working within the systems (Jaffe et al., 2003). IPV is a complex issue that is inconsistently understood by various actors within the courts. These discrepancies are particularly salient for judges, who vary in their knowledge of the issue and weight awarded to IPV during rulings (Jaffe et al., 2003). Some abusers, and their lawyers, take advantage of these knowledge gaps to search for a judge who would be most amenable to their case. This practice, sometimes referred to as “judge shopping”, is considered an abuse of the court in Canada (HMC Lawyers, 2018). Victims reports corroborate that abusers often utilize various legal strategies, such as intentionally triggering delays until a certain judge was set to preside over the case, to improve their outcomes (Jaffe et al., 2003).

Additionally, a recent study from Saxton and colleagues (2018) stated that victims of IPV often felt confused, frustrated, and anxious within the complex court system. Victims noted that the systems were hard to navigate and that receiving adequate responses from police officers or lawyers was a matter of “luck” (Saxton, 2018). Participants in the study also noted that even if they did have a good lawyer, they still felt the family court process was confusing and difficult. These concerns can be especially salient for women who are forced to self-represent in court due to financial constraints (Cross, 2012). Saxton et al. (2018) noted that changes were needed to make the system to more accessible—nothing that victims should not have to rely on “luck” in order to have positive experiences.

## Adversarial Court Systems

Contributing to the problematic response of courts in cases involving IPV is the current adversarial model that is utilized by the legal system. The use of the adversarial model has been critiqued for numerous reasons—most notably because it is ill equipped to resolve disputes involving children (Murphy, 2009). In adversarial proceedings, the successful parent is the one who is able to effectively assign blame, or portray the other parent as unfit (Murphy, 2009). However, under this standard, the prevailing parent may not be the one that is best suited to act as the child’s primary caregiver. The adversarial system can also detrimentally impact children, with Murphy (2009) noting that children involved in cases with high levels of conflict were more likely to have their wellbeing negatively impacted. These considerations are particularly salient when examining custody and access cases involving IPV, where abusers may utilize the adversarial process in order to belittle their victims in court and gain access to children.

Instead, service providers assert that a mandatory mediation or conciliation model—whereby an impartial third-party mediator helps family members resolve issues is—best for custody and access cases (Manitoba Justice, 2019). In cases of IPV, a mediation model where both parties are not present in the room can be effective. Mediation can help identify points of agreement between parties, refer parties to other services such as counselling, and can decrease costs, delays, and psychological harm (Manitoba Justice, 2019). Such a model can prevent harms caused by the adversarial system. This model is further supported by Bream and Buchanan (2003), whose study found family support services, such as a family support worker or family resource officer, was preferred by children and victims of abuse rather than an adversarial court process (Manitoba Family Law Reform Committee, 2018).

Unfortunately, most cases involving custodial issues are not immediately referred to mediation-type models. In seeking less adversarial, and potentially less traumatizing, methods some regions have adopted a different approach. For instance, the Family Law Modernization Strategy in Manitoba will implement a “first-in-Canada” family dispute resolution model over a three-year period (Manitoba Justice, 2019). The strategy seeks to expand mediation and alternative dispute resolution services for families, while enhancing support services for victims of IPV and their children (Manitoba Justice, 2019).

## Parental Alienation

One of the most troubling issues found in the criminal justice system’s responses towards intimate partner violence is custody courts’ failure to protect children when mothers allege the father is abusive. A significant contributor to this issue is the application of the pseudo-scientific theory of parental alienation in custody courts (Meier et al., 2019). Introduced as parental alienation syndrome (PAS) by psychiatrist Dr. Richard Gardner in 1985, the theory suggests that in cases where mothers allege that a child is not safe with their father, they are doing so illegitimately in an effort to alienate the father from the child (Smith, 2016; Meier et al., 2019). Based on gender stereotypes, the application of parental alienation often results in the dismissal of women’s reports of IPV and child abuse, and can lead to many protective parents (usually mothers) losing custody to the abusive parent (usually fathers) (Meier, 2020). Although parental alienation has since been discredited as a syndrome, there is evidence to suggest that it is still being used within the family court system and custody disputes to discredit victims of IPV who are claiming victimization and alleging child abuse (Meier, 2020). The following section provides an in-depth discussion about parental alienation, focusing on its history, the prevalence/use of parental alienation theory in Canadian courts, the impact on women and children, as well as recommendations for addressing this issue.

# Impacts on Women

The differing mandates and procedures, as well as the lack of coordination among the family courts and criminal courts, has a significant and often detrimental impact on women who are abused by their intimate partners. Perpetrators may use these systems as another mechanism to control female victims, while family court decisions regarding custody and child access can increase the risk of violence and abuse for women. Another issue related to family court procedures is the fact that women may lose custody of their children unnecessarily. The following sections provide an in-depth discussion about the ways in which these issues specifically impact women.

## Another Way to Control and Victimize Women

As mentioned earlier, perpetrators will use the justice system as a mechanism to continue abusing former partners. Within recent literature on IPV, increasing attention has been paid to acts of “coercive control” which describe the non-physical ways that perpetrators can abuse their victims (Dawson et al., 2019; Stark, 2007). This form of violence, which is disproportionately enacted by men against women, involves acts that utilize intimidation, isolation and control to eliminate a victim’s sense of freedom and enforce obedience (Stark, 2007). This usually includes the deprivation of basic liberties such as money, food and access to communication or transportation (Stark, 2007). Acts of coercive control are also deeply dependent on entrenched societal inequalities and rely on women’s vulnerability in patriarchal structures (Stark, 2007). This further leads to the regulation of stereotypically female behaviours such as cooking, cleaning, and childcare. Ultimately, such abuse aims to enforce a state of subordination for victims through the loss of rights, resources, and dignity (Stark, 2007).

Prolonged exposure to acts of coercive control can be extremely damaging and may impact a victim’s sense of safety more than fights or assaults, even if physical violence is a factor (Stark, 2007). After the dissolution of a relationship, perpetrators may use the legal system as a tool through which to continue coercive abuse—often exploiting the system to further intimidate and harass their victims. For example, abusers may use legal proceedings to humiliate or traumatize their victims by weaponizing issues such as mental health challenges or past substance abuse (Vollans, 2010). Many violent partners further choose to self-represent in court as way of maintaining direct contact with their victims and berating them in cross-examination (Cross, 2012; Vollans, 2010). Additionally, the court process may be used as a means of exerting financial control by attempting to increase the victim’s legal costs (and thus, drain their financial resources) or by withholding child support (Vollans, 2010).



## More Violence/Abuse

One of the main impacts resulting from the lack of integration among the criminal and family courts is the increased risk of violence and abuse for women. After the dissolution of an abusive relationship, women and children already remain at a heightened risk of violence. However, the disconnect between the criminal and family court systems, which deal with the criminal aspects of IPV, and custody and access decisions, respectively, further place victims at risk of future harm. This is largely because family courts may not recognize the danger posed to victims through custody and access arrangements. For example, when courts grant an abusive parent custody and/or child access, it can provide the opportunity for further violence to occur (Brownridge et al., 2008; Government of Manitoba, 2019). In fact, child access and custody arrangements are often used as a tool for perpetrators to continue their abuse, with Zeoli et al. (2013) noting that abusive fathers are likely to manipulate custodial arrangements to exert control over the mother's schedule. However, transitions from one parent to another also provide the proximity for even more dangerous circumstances (Jaffe et al., 2003). Cross (2012) states that such arrangements present the opportunity for verbal abuse, threats, insults, assault, or even homicide. For instance, one study in Ontario noted that 25% of women had their lives threatened during access arrangements (Jaffe et al., 2003). Alternatively, the denial of child access by the court may also anger the abusive parent and result in more violent behaviours (Brownridge et al., 2008).

## Women May Lose Custody Unnecessarily

Another issue specific to the family court process is that women may lose custody of their child(ren) unnecessarily. In efforts to expedite the court procedure, the case may be moved quickly into third-party mediation with no litigation. For the sake of efficiency and practicality, the family court wants a “friendly parent,” who will be agreeable, co-operative, and maintain a relationship with the abusive parent in order to move the case quickly. If a parent (usually the mother) does not co-operate, she can be labeled as “unfriendly” and this may increase the risk for her losing custody and access to her children (Jaffe et al., 2009; Saunders et al., 2016).



# Impacts on Children

The lack of coordination between the two court systems can further pose significant risks to children. As mentioned previously, the family law system and criminal law system often work in silos, even when dealing with the same people and same allegations. With these systems working independently of one another, opportunities to share vital, even lifesaving, information may not be possible (Representative for Children and Youth, 2009). Families can also receive inconsistent or conflicting orders that may place children in harmful situations with an abuser (Department of Justice, 2013). Unfortunately, the uncoordinated response amongst the criminal law system, family law system, and child protection system, has been identified as a contributing factor to family homicides in 10 different inquiries, coroner's reports, and domestic violence death reviews (Department of Justice, 2013).

Additionally, in cases involving IPV, it can be difficult for judges to determine the correct custody and access decisions—an issue largely attributed to a lack of guidance surrounding child protection practices, known as the best interests of the child, in the legal system. While the Supreme Court of Canada does offer general guidelines surrounding the best interests of the child in *Young v Young* and *Gordon v Goertz*, they contain no provisions specific to cases where IPV is a factor (Canadian Bar Association, 2021). Therefore, without clear direction of what does, and does not, constitute the best interests of the child under such circumstances, decisions have been left to the discretion of legal professionals. Generally, the family law system has understood the best interests of the child as maintaining the maximum amount of contact with both parents following the dissolution of relationship or marriage (Hughes & Chau, 2012). However, there are many reasons why this 'maximum contact' principle can be harmful—especially if a parent has a history of dangerous behaviour that may pose a risk to the child.

The court process can have many adverse impacts on children. They may find themselves in uncomfortable situations (i.e., having to speak in court against a parent), in which they are frustrated, not listened to, and even put at risk of experiencing or witnessing more violence (Cashmore, 2011). More importantly, children may be placed in unsafe situations because of longstanding assumptions embedded in court systems. For example, the assumption of a family court judge that an abusive partner may still be a good parent is not always a reality and an IPV offender may be granted access to their children, creating a volatile and/or unsafe situation for children and their non-offending caregiver. On the other hand, criminal court orders could possibly over-restrict an accused's access to their children, denying an otherwise healthy relationship. Cases involving child protection agencies add another layer of complexity and most separation/divorce proceedings are delayed when there is active protection work required for children (Croll, 2015). This delay is a result of the family court and criminal court systems working independently of one another – their differing mandates and procedures, in addition to the lack of communication between the two systems slows the process for involved parties and their children (Croll, 2005; 2015). In these scenarios, the child's best interests may not be met. The following sections discuss the impacts on children related to the processing of IPV cases in criminal and family courts.

## Greater Risk of Violence (Children Killed During Visits)

As noted above, non-offending parents are at an increased risk of violence following parental separation. This is also true for children. This is because when an abusive relationship has ended, children may be the only remaining connection between the two parents, and as a result, the perpetrating parent could use them as an outlet for 'revenge,' or for gaining access to the victim (Brownridge et al., 2008). Hayes (2017) found that threats to harm children, likely as a means of indirect abuse towards the partner, had a higher likelihood of occurrence when the parents were separated, compared to when the relationship was still intact.

This risk of violence is increased when a child is involved and court systems order access to the child by the offending parent without considering the circumstances of IPV. Although legislation requires IPV to be considered in divorce, custody, and child support cases, there is anecdotal evidence to suggest that justice officials are unwilling to listen to domestic violence complaints in custody cases (May, 2018). Further, judicial officials may be more likely to deny protection orders to IPV victims who are already involved in family court disputes because of the belief that such allegations should be dealt with in the same family court process (May, 2018). As a result of the lack of consideration of IPV in child custody and access decisions, a family court judge may determine that an abusive parent is still a good parent and grant them access to their children, placing a child and their non-offending parent in unsafe and/or volatile situations (Croll, 2015). Abusive parents will often use this as an opportunity to increase abuse against their victim and to maintain power by threatening violence against their child(ren) and abduction (Fotheringham, et al., 2013). An examination of Canadian filicides found a troubling increase in cases involving both a prior history of family violence and the dissolution of a relationship or marriage (Dawson, 2015). Additionally, data from Statistics Canada indicates that of the 66 children and youth involved in family-related murder-suicides between 2001 and 2011, 76% of the perpetrators were experiencing marital or relationship problems, and within that group, 53% were involved in custody disputes (Sinha, 2013).

## Emotional Toll – Forced to Spend Time with an Abusive Parent

A significant and related issue to the processing of cases is that the court may force a child to spend time with an abusive parent. It has been found that family courts tend to favour contact with both parents – even when it may not be in the child's best interest (Neilson, 2014). Indeed, harmful parenting agreements are made even when there are serious concerns about child safety (Neilson, 2014). For example, MacDonald (2017), found a pro-contact stance in the UK child and family court even when there were findings of IPV with clear evidence, or when children opposed a father's contact due to violence exposure. Family courts consider it problematic when children do not want contact with an abusive parent and have attempted to change the child's attitude. Although the court proclaims that they put the best interests of children first, children's voices are only truly heard or taken seriously when they agree with the views of adults involved (MacDonald, 2017). Therefore, if a child does not want contact with the abusive parent, but adults involved encourage it, the court may urge the child into spending time with the abuser (Caffrey, 2013; Holt, 2011). MacDonald (2017) argues that this may be because the court systems inherently reflect normative family values and system – meaning that if parents are no longer together, the children should at least have amicable relationships with both.

These longstanding assumptions embedded in court systems often force children to spend time with an abusive parent, increasing the risk of violence and/or harm. Neilson (2014) recommends interim custody with

protective provisions to allow safe contact between the perpetrator and their children – the only caveat being that when interim custody is chosen, it is based on the ‘best interests’ model, which usually means leaving the child near their school, neighbourhood, and friends. This strategy may also place the child with the abusive parent, because often the victim has relocated, with the intentions of becoming stable prior to applying for custody. When later applying for custody, judges are reluctant to uproot the child from their community, school, and current resources. Appeals of interim custody are seldom heard because judges prefer the evidence to be presented during a full trial. In addition, whoever has interim custody at the beginning of a custody trial has a large advantage. Research indicates that often the abusive parent is granted interim custody when mediation or pre-trial agreements are in place. Perhaps most alarming, even in house arrest sentencing cases, an abusive parent can gain interim custody if the victim of IPV has not been able to remove the children from the home yet (Neilson, 2014).

## Emotional Toll – Kept from Non-Perpetrating Parent

Children who are ‘caught in the middle’ of the criminal and family court systems may also suffer emotional distress if they are kept from the non-perpetrating parent. Several legal factors can impact a child’s time with their non-perpetrating parent including the above-noted maximum contact principle utilized by family courts, claims of parental alienation on behalf of a perpetrating parent, or the non-perpetrating parent being labelled as ‘unfriendly’. Additionally, the child’s non-perpetrating mother may even lose custody, seeing as abusive fathers are twice as likely to seek sole custody than non-abusive fathers (Przekop, 2011). The trauma of being separated from the non-perpetrating parent can cause a great deal of early life stress in children. This can lead to adverse effects including cognitive, emotional, and behavioural challenges and even increased vulnerability to substance abuse and depression (Smith & Pollak, 2020; McFarlane et al., 2005). Furthermore, if children simultaneously face abuse while away from the non-perpetrating parent they can further suffer from cognitive and physical development challenges including, but not limited to, eating or sleeping disorders, mood disorders, depression, withdrawal, detachment, destructive behaviours, school problems, and suicidal ideation (Przekop, 2011). Since these circumstances interrupt healthy child development, future academic and career success, along with relationships and interpersonal skills can also be impacted (Przekop, 2011).

## Formerly Abusive Parents

Abusive partners may enter batterer intervention programs—either voluntarily or through court mandated orders—that can have positive impacts on their behaviour. In these cases, criminal court orders, such as a no-contact order and/or restraining order, can possibly over-restrict an accused’s access to their children. Researchers have developed several recommendations when allowing an abusive parent to begin repairing and re-starting a relationship with their children (Dalton et al., 2003; Jaffe et al., 2009). The recommendations include the following: completion of a batterer treatment program, taking full responsibility for abuse and the impact it has on a family, presenting remorse for the abused spouse and children, and allowing children to refuse visits with the abusive parent (Dalton et al., 2003; Jaffe et al., 2009). When these recommendations are met, therapeutic supervision and supervised access with trained professionals can begin. Courts should allow the abusive parent to return to court and demonstrate changed behaviour and gain more access to the children (if no longer deemed a risk to children) with the knowledge that any new allegations of stalking, harassment, or threats will affect the custodial arrangement. Thus, in cases when a child is kept from a parent that is no longer deemed a risk, their best interests may not be met.

# Impacts on Male Victims/Survivors

Comparatively, little empirical research has been conducted on male survivors of intimate partner violence and their experiences in family and criminal courts in Canada. RESOLVE (2020) conducted a recent study on the experiences of male survivors across the Prairie Provinces (Fraehlich et al., 2020). The study involved interviews with 45 men living in Manitoba, Saskatchewan, and Alberta, including those living in urban, rural, and northern communities. Forty-one service providers who work with male survivors across the prairies, including IPV support services, victim services, and domestic violence court case workers, also participated in interviews. In addition to physical and emotional abuse, participants noted experiencing “legal” or “systems” abuse, which involved men’s partners manipulating or lying to the police, court personnel, or child welfare agencies. For example, some participants claimed their partner lied in the context of men’s attempts to gain custody or access to their children. Some participants also expressed fear of losing custody of their children or being denied access, perceiving that courts are biased against fathers. The consequences of these experiences on the participants were devastating and impacted all areas of their lives including their physical and mental health, their employment/school, their relationships, and their parenting.

## Parental Alienation

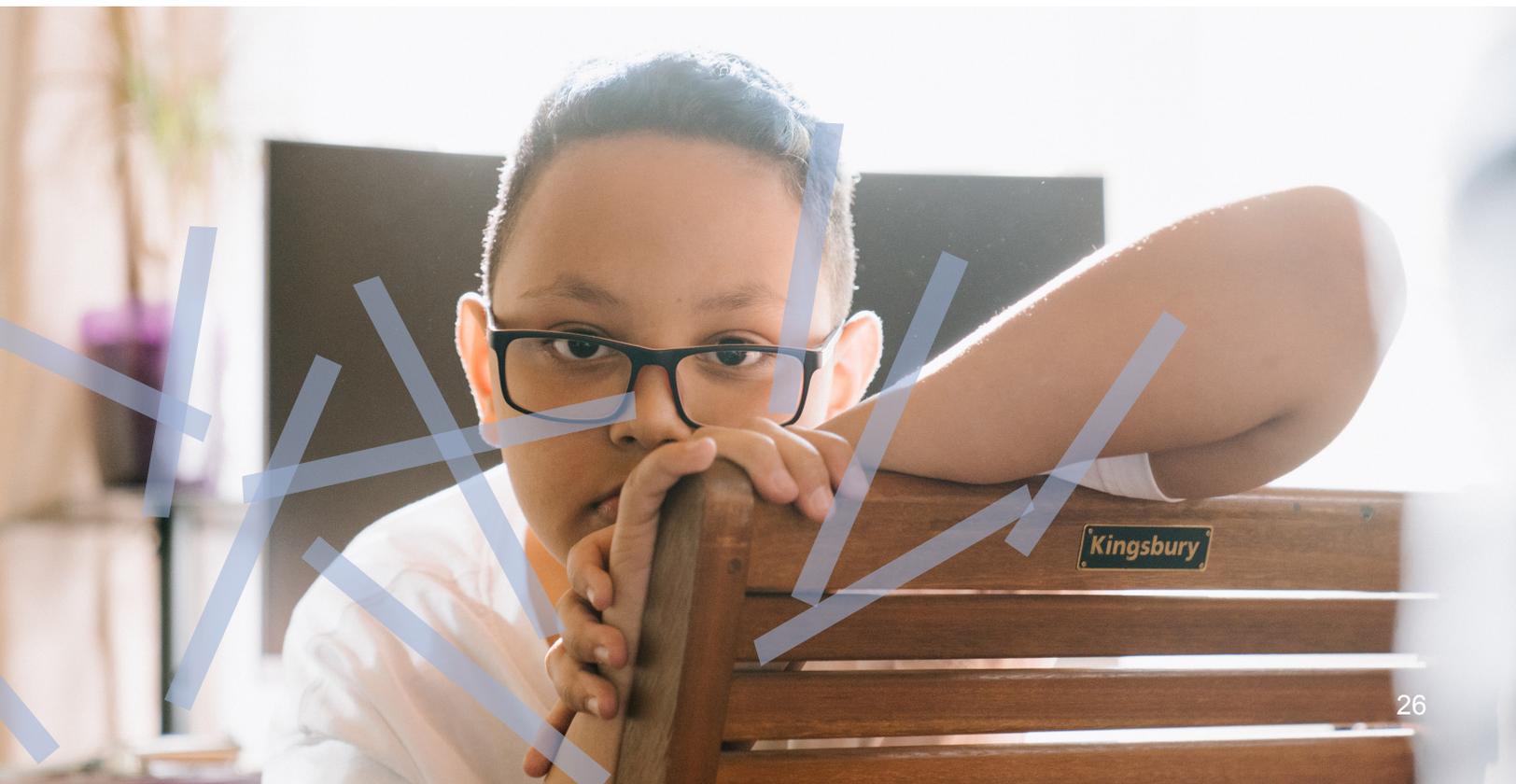
### History/Definition

Parental alienation was first introduced in 1985 by Dr. Richard Gardner to explain the behaviours of some children and families involved in child custody litigation that he witnessed throughout his practice as a child psychologist (Smith, 2016). Classifying parental alienation as a syndrome, Gardner assumed that a distinctive set of behaviours in children – including extreme but unjustified hostility, fear, ambivalence, and disrespect – towards one parent was due to psychological manipulation or “brainwashing” caused by the other parent in order to prevent an ongoing relationship after separation or divorce (Smith, 2016, p. 67). Taking a gendered perspective, Gardner assumed that a mother used parental alienation to project her own negative feelings of an ex-partner onto her children, and argued that, in severe cases, the child should be separated from their mother and placed into the home of the father in order to successfully move forward with a father-child relationship (Smith, 2016). Often framing men as victims of parental alienation, Gardner argued that mothers use this as a tactic to increase the chances of gaining custody in courts (Smith, 2016).

## Prevalence/Use of Parental Alienation

Parental alienation syndrome (PAS) has since been discredited as it was explicitly based on negative and gendered stereotypes of women (Meier et al., 2019). Despite this, there is evidence to suggest that the derivative phenomenon of parental alienation is still widely used by professionals and parents accused of violence in ways that are virtually identical to that of parental alienation syndrome (Dalton, Carbon, & Olesen, 2003; Kelly & Johnston, 2001; Meier et al., 2019). Today, parental alienation is still being used within the family court system and custody disputes to discredit mothers' reports of IPV and child abuse, and in some cases, it even results in the mother losing custody of her child to the abusive father (Meier, 2020).

Through conducting an analysis of over 2000 published court opinions (spanning from January 2005 to December 2014) from cases of child custody and access decisions across America, Meier and colleagues (2019) found that 669 cases involved a claim of parental alienation made by one parent against another; and 312 of these cases comprised of cross-abuse-and-alienation claims. Of the 312 cross-abuse-and-alienation claims, 222 (71%) involved mothers accusing fathers of abuse (including claims of IPV, child physical abuse, child sexual abuse, combined IPV and child abuse, combined child abuse and child sexual abuse) and fathers accusing mothers of alienation (Meier et al., 2019). Further findings from this research highlight the gendered outcomes of courts disbelieving female victims and ruling in favour of the alleged male perpetrator because of claims of parental alienation. For instance, when fathers cross-claimed alienation to mothers' abuse claims, courts were more than twice as likely to disbelieve the mother over the father (Meier et al., 2019). For child abuse specifically, Meier et al. (2019) found that courts were almost four times (3.9) more likely to disbelieve mothers' claims of abuse when fathers cross-claimed alienation. Fathers' alienation crossclaims also significantly increased the rate of courts' removals of custody from mothers – 60% of cases for mothers' claims of domestic violence; 59% for child physical abuse; 68% for child sexual abuse; 79% for domestic violence and child abuse (Meier et al., 2019). Even when the courts believed that a father was abusive towards the mother, if they also believed that she was alienating, there was still a chance that she would lose custody to the abusive father (Meier et al., 2019).



Although work on the use of how parental alienation is applied specifically in the Canadian courts is limited, Simon Lapierre and colleagues (2020) have investigated this subject in Quebec. They found that although parental alienation as an actual syndrome has been rejected more generally, the concept itself is actually legitimized in the province. Throughout its early years, parental alienation was solely argued in family court, but it is now commonly found in child protection cases as well (Lapierre et al., 2020). The study acknowledges that this may be a finding limited to Quebec, as the province has undergone changes to the child protection system in recent years. Researchers therefore strongly suggest that parental alienation should not even be suggested in IPV cases, since the definitions of both are frequently muddled in this province (Lapierre et al., 2020). More research on the effect of parental alienation and its use in cases of IPV is needed from a Canadian perspective.



## Impacts on Women and Children

The use of parental alienation in courts and custody access decisions has a significant and often detrimental impact on women and children who experience IPV and other forms of abuse. In family law cases, parental alienation ‘experts’ often advise courts to ignore: the views of children; evidence to indicate the child’s well-being in the care of their preferred parent; evidence of negative behaviours or IPV perpetration on the part of the parent claiming parental alienation; as well as input from children’s therapists (Neilson, 2018). For women who claim IPV victimization and/or child abuse, their claims are often dismissed because of a lack of hospital records or police reports to validate the occurrence of violence (Neilson, 2018). Instead of recognizing the fact that IPV often goes undetected and/or unacknowledged by some professionals (such as police, hospital staff) and evidence to suggest that many women are fearful of disclosing the abuse, the court often believes that women are making false claims of IPV and abuse to alienate their former partner (Harris, 2014; Meier et al., 2019; Neilson, 2018). These factors can force both the mother and the child to have unwanted contact with the abusive father (Smith, 2016). This can result in the abusive father maintaining coercive control over the mother, and it can also result in children ending up in the care of the abusive parent and estranged from the innocent parent (Smith, 2016). Not only does this greatly affect the children’s relationship with their mother, but it also puts children at risk of experiencing violence themselves as studies have shown that half of men who batter their spouse also physically abuse their children (Saunders et al., 2016).

Further, when abusive fathers accuse mothers of parental alienation, it diverts focus from the abusive father and places mothers in the spotlight by claiming that they are emotionally abusing or manipulating their children (Bala & Fidler, 2010). Mothers are trying to protect their children from an abusive parent, and instead, their claims of abuse are being perceived as alienating the child. This allegation re-victimizes women who have experienced violence and also contributes to a victim potentially losing custody of her child (Nichols, 2014; Smith, 2016). It also discredits children’s genuine feelings of alienation towards their father as a result of fear from experiencing and/or witnessing abuse (Neilson, 2014). Research also indicates that abusive fathers may alienate their children from their mother, who is a victim of violence herself (Bala & Fidler, 2010).

# Recommendations on How to Address Parental Alienation

While some authors and parental alienation ‘experts’ contend that parental alienation demonstrates scientific validity, academic researchers, child experts, and experts working in domestic and family violence court fields adamantly refute this claim (DeKeseredy et al., 2017; Emery, 2005; Meier & Dickson, 2017; Van Horn & Groves, 2006). The concept of parental alienation has also been highly criticized and rejected by the medical community, despite Gardner’s attempts to have the term approved by the American Psychological Association (Smith, 2016). There are several reasons as to why the concept of parental alienation is largely refuted among experts and the medical community, including: a lack of empirical evidence confirming its occurrence, gender bias in the application of parental alienation claims, the deflection of attention from the alleged abusive parent in favour of projecting blame onto the primary parent when children have poor relationships with them, neglecting the consideration of the ‘best interests of children’ criteria outlined in the legal system, as well as the silencing of women and children through disregarding evidence of family violence and of negative parenting in court procedures (Balmer, 2018; Harris, 2014; Milchman, 2017; Neilson, 2018).

Despite the numerous criticisms surrounding parental alienation, this concept continues to be used by ‘expert’ witnesses in custody cases and access decisions, largely in defense of ‘reunification’ between the alleged abusive parent and their child (Warshak, 2015). The use of parental alienation has significant and detrimental outcomes for women and children experiencing IPV and other forms of abuse. Academic researchers, child protection experts, and experts working in the fields of domestic violence and family violence courts recommend that family courts listen and consider children’s views on contact with perpetrators of family violence more respectfully and to pay greater attention to children’s and mother’s concerns about safety (Meier & Dickson, 2017; Neilson, 2018). Family and criminal courts also need to hold perpetrators of IPV and child abuse accountable for their actions, rather than accusing victims of making false accusations of violence (Western University, 2019). This involves ensuring that perpetrators accept responsibility, apologize, and make amends for their violent behaviours prior to insisting on parenting rights (Lamb et al., 2018).

## Recommendations to Improve Processing of IPV Cases in Courts

Based on the discussions provided throughout this literature review, there are several issues related to the current processing of IPV cases in the criminal court and family court systems. One significant issue related to the court’s processing of IPV cases is the discounting of children’s voices and perspectives, as well as the non-protection of children from parental abuse, despite international recognition of children’s rights outlined in the United Nations Convention on the Rights of the Child (Martinson & Tempesta, 2018). In addition to the exclusion of children’s voices, perspectives, and knowledge from the court process is the issue of a lack of integration and communication between the two court systems (Martinson, 2014). In efforts to address these problematic issues, researchers and experts working in related fields have provided some recommendations

for improving the processing of IPV cases in both criminal and family courts, including the need for greater inclusion of children's voices and perspectives (see Birnbaum, 2006; Birnbaum et al., 2016; Fotheringham et al., 2013) as well as the need for better integration and collaboration of the criminal court and family court (see Croll, 2005; May, 2018). The following sections further discuss both recommendations to improve the processing of IPV cases in courts. First, the need for promoting the Children's Rights Perspective is discussed. In terms of improving on the integration of court systems, specific examples of successes found in Toronto, New York, Massachusetts, and in London, England are provided. Following this, a brief discussion of new and enhanced initiatives for victims and families experiencing IPV in Manitoba is offered.

## Promoting the Children's Rights Perspective

As discussed, one significant issue related to the processing of IPV cases in courts is the exclusion of children's voices and perspectives, as well as the non-protection of children from parental abuse, despite an international recognition of children's rights that are outlined in the United Nations Convention on the Rights of the Child (Martinson & Tempesta, 2018). The current exclusion of children's voices from the court processes disregards an international promise to protect children and fulfill their rights and to consider their 'best interests.' Such exclusion can leave children in precarious custody and child access arrangements (such as being forced to spend time with an abusive parent), and can result in children running away, attempting suicide, or being killed by an abusive parent (Neilson, 2018). From these issues, children's perspectives and views are important in court decisions regarding custody and child access, especially in cases of IPV. Research also finds that children experiencing IPV want to have a voice in the process (Fotheringham et al., 2013; Holt et al., 2008).

The Children's Rights Perspective promotes the belief that children should be involved in decisions that affect their lives (Fotheringham et al., 2013). This perspective states that the inclusion of children's voices and perspectives in decisions that affect them can work as a protective factor and increase their feelings of personal control and enhance resiliency (Boshier & Steel-Baker, 2007; Douglas et al., 2001; Fotheringham et al., 2013). Those advocating for the Children's Rights Perspective argue that children's involvement in the family court process makes their voices, perspectives, and 'best interests' visible (Birnbaum, 2006; Fotheringham et al., 2013). To involve children's voices and promote their 'best interests,' lawyers working in the family court system act as advocates for children and convey their wishes, views, and knowledge to the family and the court (Birnbaum, 2006; Fotheringham et al., 2013). Such a model has proven to be effective in Ontario, because clinicians and lawyers collaborate to ensure that there is a strong voice provided for the child to guarantee that their rights and best interests are considered (Birnbaum & Moyal, 2003). It is clear that to improve the processing of IPV cases courts, there needs to be a greater recognition and inclusion of children's views, voices, and knowledge. The promotion of the Children's Rights Perspective is one way to ensure that children are included and protected throughout the court process.



# Integrated Court Systems

The two arms of the judicial system (criminal court and family court) potentially involved in IPV cases have often been referred to as working in silos because of their independent operations and the lack of coordination between them (e.g., Martinson, 2014). However, two independent judicial bodies (i.e., criminal and family courts), with two different mandates does not necessarily preclude them from working together or from effectively meeting the needs of children. For example, in the case of child abduction, cross border custody disputes are conducted in a way that allow judges (from all courts) to be aware of all ongoing legal matters despite operating in separate court systems simultaneously (Martinson, 2014). This system demonstrates that communication is possible through different court systems. Having the court systems work as one, or at the least, in unison, could help give victims justice while maintaining confidence in the public's view of the justice system (Martinson, 2014). Providing judges' awareness of the entirety of a case allows them to understand the significance of IPV in a given case while also being able to come to the best possible resolution. The following sections provide examples of successes related to integrated court systems found in Toronto, New York, Massachusetts, and in London, England.

## Toronto

Extensive work has been done around the world, including within Canada, to develop programs and systems to address the intersection of criminal and family courts. For example, the first Canadian Integrated Domestic Violence Court (IDVC) was introduced in 2011 in Toronto with the goal of alleviating some of the judicial divide in IPV cases. This court has one judge that hears both criminal and family court cases in cases where IPV is significant issue. The idea is that the judicial process will be quicker and resolved more consistently when the two court systems are integrated. Birnbaum and colleagues (2016) examined the efficiency of IDVC cases by comparing their operations and outcomes to previous court cases. Improvements were found not only in the efficiency of the court cases, but also in the result for parenting orders and follow-through. Integrating cases to allow for criminal and family matters to be discussed as one appeared to have an impact on offender's completing counselling and may have led to more parental involvement from both parents' post-separation. Despite its noted benefits, the IDVC only hears cases every other Friday and access is available only to Toronto residents.

Unfortunately, this is the only specialized court of its kind in Canada; however, there are numerous regions and cities throughout the United States that have adapted the approach (Hill & Kleist, 2008; Katz & Rempel, 2011; Moore, 2009). Koshan (2014) highlights the use and function of specialized domestic violence courts by examining how New York's integrated domestic violence court contains important lessons for the development of similar systems across Canada. Through interviews with research participants who were regularly involved with the IDVC, several encouraging elements of the system were revealed. Firstly, interviewees overwhelmingly indicated that the specialized court was more practical logistically and led to less retelling of the same instances or stories over and over (Koshan, 2014). It was also noted that there was better communication between individuals who would not otherwise see each other if the setting was not integrated (Koshan, 2014).

## New York

Most relevant to this research, though, and perhaps most importantly overall, was the many responses describing how New York's IDVCs better represented the needs of children as the court had a fuller picture of visitation situations (Koshan, 2014). Given this specialized environment, it also meant the court could make more informed decisions about custody and access for children who were often known to have been exposed to IPV. In looking to this article and New York's model for an idea of how to implement a similar system of IDVC in Canada or even Manitoba, the author makes it clear that the process would not be a quick one. All provinces and jurisdictions would first need to adapt unified family courts (UFCs) – currently, only select provinces within the country operate them. This is a requirement for integrated domestic violence courts to operate successfully, as there needs to be an integration of criminal, civil, and family matters at a court level that supersedes simple provincial jurisdiction (Koshan, 2014). IDVCs also require a number of changes within the entire system: staffing must be increased to accommodate the new system, existing personnel must be trained on IPV matters, and other systems outside of the courts may need access to information (Child Protective Services, for example; Koshan, 2014). Additionally, IDVCs will be immensely more successful if they are engaging on a community level – this would not only lead to more involvement and awareness about the issues of IPV but would make the system itself seem more approachable for victims (Koshan, 2014). However, this added component does lengthen the process of establishment.

## Massachusetts

In Massachusetts, the Quincy District Court's Domestic Violence Prevention Program has been implemented, with the goal to integrate court roles and processes that are traditionally separate. Additionally, the program focuses on providing empowerment and support to victims, as well as enforcement of court orders given to offenders. The Quincy Program has not only led to higher numbers of women seeking help and appearing at court hearings, since its inception in 1987, but there has also been a marked decrease in domestic homicides in the county (Maytal, 2008). Maytal (2008) does point out, however, that the Quincy Program is focused primarily on helping victims of IPV through the criminal court process, rather than dealing with family court matters. The approach still integrates many components to the criminal justice system that victims may find confusing or daunting to understand. Clerks are available specifically to help them fill out and comprehend protection order forms and the District Attorney's office holds daily meetings with victims to explain the formal process once they decide to press criminal charges (Maytal, 2008). These components make the Quincy Program an approachable aspect to the criminal justice system that has proven to aid in reduced domestic assaults and deaths.

## London, England

Research conducted by Marianne Hester and colleagues (2008) on integrated domestic violence courts in London, England also find successes related to the processing of IPV cases. The authors identify that these types of court systems are attempting to not only streamline the course of action for families, but also provide what is called "therapeutic jurisprudence" (Hester et al., 2008, p. 3). This term refers to the court recognizing how both IPV victims and their families are affected by the legal process and aiding them as much as possible – whether it be through provision of Victim Services workers, advocacy provision, or access to relevant

services. Indeed, the study done by Hester and colleagues (2008) to investigate the effectiveness of IDVCs reflected that, despite the small number of cases used, both court staff and judges involved found the process useful and efficient. Johnsen and Robertson (2016) point out that on a basic level, adopting therapeutic jurisprudence recognizes the fact that IPV cases are complex and involve sensitive, family incidents. Additionally, utilising this process in Canada has often resulted in family mediation or conferencing, rather than a long and drawn-out family court process (Johnsen & Robertson, 2016). It is true that mediation and conferencing are not appropriate for all families facing IPV, but there have been other noted benefits of therapeutic jurisprudence as well. Families who have experienced singular incidents of IPV, for instance, may be reunited more quickly than if they encountered the traditional court process. Additionally, many other studies on therapeutic jurisprudence and sexual offenders and persons suffering from mental illness, have found the process to be linked with decreased rates of recidivism when combined with due process (Babb & Wexler, 2014; Bain, 2012; Cucolo & Perlin, 2012). Therefore, it is not impossible to suggest that taking this approach may also lead domestic abusers to better outcomes.

Though the integrated domestic violence court approach is widely used and often beneficial, other research has critiqued this method and suggested different approaches. MacDowell (2011) points out that both criminal and civil – in this case, family – courts are designed to have different methods and outcomes. It is true that when merging two very different systems together, some integrity of each individual one may be lost; thus, there is a valid argument for the importance of court fragmentation. MacDowell's (2011) work states, however, that a better solution could be found in reforming the current processes of both criminal and civil courts to better fit the needs of IPV victims. For instance, emphasizing the functions within the family court system that recognize the rights and needs of children, as well as strengthening the mechanisms that allow victims to choose civil action rather than criminal processes, if they so desire. When it comes to criminal court, MacDowell (2011) firmly suggests that proper justice and accountability be served, not solely to hold individual offenders responsible to the victim, but to social norms in general.

## Manitoba's New Supports for Victims of IPV in the Justice System

In November 2020, the Manitoba provincial government announced new and enhanced initiatives to ensure that victims and families affected by IPV get the support they need earlier and prior to criminal and family courts (Manitoba Government, 2020). Recognizing that victims experience further barriers to justice through being forced to navigate challenging court systems, the government has expanded Domestic Violence Support Services to provide greater support for victims whose current or former partners are involved in restorative justice proceedings related to IPV. In this, the two restorative justice workers who provide victim-focused, one-on-one support are now assigned to all IPV diversion files in Winnipeg (Manitoba Government, 2020). These efforts will help to repair harms, address the circumstances that contributed to the violence, and empower victims and perpetrators of violence self-determine their healing process and break the cycle of violence (Manitoba Government, 2020). In addition to providing one-on-one restorative supports, the Manitoba Government has also introduced more group programming, including a new online workshop on healthy relationships (Manitoba Government, 2020). This workshop will provide support for victims whose matters are proceeding through restorative justice and will cover topics such as the impacts of trauma, methods for staying safe, and self-care (Manitoba Government, 2020).

These supports follow the launch of the Family Resolution Service, which was established earlier this year to provide trauma-informed supports to families going through separation and divorce. This service provides family guides/domestic violence specialists to families experiencing IPV to ensure that they are receiving adequate support, navigation, and referral services (Manitoba Government, 2020). These specialists work

alongside mediators who can proactively intervene in family conflict, support healthier relationships, and provide safety planning (Manitoba Government, 2020). The Family Resolution Service is integrated with Manitoba Justice's victim services branch to ensure that victims receive coordinated services throughout their experiences within the criminal and family court systems, as well as beyond the conclusion of their legal involvement (Manitoba Government, 2020).

In addition to these supports, the government is also in the process of launching the Protection Order Designate Training Program, which will enable staff in organizations across Manitoba to help victims of IPV apply to the courts for protection orders (Manitoba Government, 2020). Taken together, all of these supports will provide greater wrap-around responses for victims and survivors of IPV who are going through both the criminal and family court systems. These supports ensure that victims and survivors are being connected to early, targeted services, as well as victim services, community supports, and/or the criminal justice system; and they further ensure that individuals receive continued and ongoing support throughout their experiences with the criminal and family court systems (Manitoba Government, 2020).

# Future Directions for Research

The current review has examined and integrated findings from numerous studies concerning the issue of IPV and the various ways in which IPV is handled throughout the criminal and family court systems. As a result, several gaps have been identified with respect to how both court systems intersect to address IPV – especially in terms of the inclusion of children's voices within IPV research, as well as the lack of attention given to marginalized individuals and groups navigating the court systems. On this basis, it is evident that several areas warrant attention in future research directed toward better understanding children's involvement in the court process as it relates to IPV. Focusing specifically on the inclusion of children's voices in IPV research, as well as the lack of research dedicated to understanding marginalized individual's experiences of IPV and involvement in the court systems, this section provides suggestions on future directions for research. The need for greater research and literature on how family and criminal court systems process IPV cases is also discussed.

## Inclusion of Children's Voices

As discussed throughout this review, determining children's views, perspectives, and knowledge is imperative. Future research and literature published within this field should strive to include children's voices in IPV research – especially in studies examining parental alienation. Based on the research that has been conducted (see Carson et al., 2018; Lamb et al., 2018), it is evident that children want their voices and perspectives heard with respect to IPV. When professionals working within these fields (i.e., family lawyers, mediators, and judges) do not understand IPV and its impacts on children (such as being forced to spend time with perpetrator, as well as the risk of child harm and child abuse), they further silence mothers and fail to investigate women and children's concerns about parenting and safety (Jeffries et al., 2016; Neilson, 2018; Saunders et al., 2013). In cases where IPV is cross claimed with an allegation of parental alienation, this lack of understanding of IPV and inclusion of children's voices often results in the punishing of mothers (and children) through forcing them to remain in contact with the perpetrator (Western University, 2019).

Due to these reasons, future research should further investigate children's voices and perspectives with respect to IPV and in cases where parental alienation is raised as a crossclaim. Inclusion of their voices and knowledge is imperative and can help to improve court responses towards children who experience IPV. Such research can stop children from being forcibly removed from their preferred parents and from being forced into unsafe homes and parenting relationships with an abusive parent (Neilson, 2018). The inclusion of children not only protects them from violence, it also protects the non-offending parent from further abuse.

## Experiences of IPV and the Court Systems Among Marginalized Individuals and Groups

It is also important to note that the area which requires perhaps the most development not only within the literature, but also with respect to processes behind IPV in the criminal and family court systems is the ways in which these systems respond to IPV among marginalized populations. Numerous studies have reflected the lack of attention paid to the most vulnerable and marginalized groups who face the court systems, regardless of whether IPV is involved (Guarnieri, 2007; Hightower & Anker, 2015). As a result, IPV survivors who experience multiple forms of discrimination and marginalization are at an even greater disadvantage when they are forced to navigate the court systems (Koshan, 2014).

When discussing the possible implementation of integrated domestic violence courts in Canada, Koshan (2014) argues that Indigenous people and their experiences of colonization, discrimination, and marginalization must be considered within the system. Consideration of these experiences is crucial as Indigenous women, men, and children are disproportionately affected by issues such as IPV and family violence, and research has shown that the Canadian court systems do not adequately address these issues (Koshan, 2014). Hightower & Anker (2015) refer to the ways Indigenous people specifically are marginalized by the court system in general – suggesting that most legal processes are rooted in colonization and are therefore not designed to fit with traditional Indigenous practices and values. Indeed, the effects of colonization have led Indigenous people to have a deep mistrust of large, authoritative systems – a mistrust that is frequently passed down through generations (Health Council of Canada, 2012). Given the high numbers of Indigenous women in Canada that are survivors of IPV, it is crucial to put more emphasis on their opinions and experience with the court systems (Blagg et al., 2015; Kuokkanen, 2015). Another issue, as pointed out by The Aboriginal Justice Implementation Commission (2001), is that traditionally, Indigenous people do not turn to the court or legal systems to solve issues, even in centres where a court system is present. In situations where Indigenous peoples do become involved in court, resolution often does not come in a manner that is familiar and/or explained to them. An example of this is found in David Tanovich's (2008) research on racism and racial injustice within Canadian criminal justice system. Tanovich (2008) points out past criminal trials that have an all-white jury, though the offender is Indigenous. Additionally, he refers to the importance of anti-racist training for legal and criminal justice workers.

Tutty and Koshan's (2013) work on Calgary's specialized domestic violence court, found a number of interviewees – whether justice personnel, IPV survivors, or IPV offender – expressed concern about whether the system was able to adequately address the needs of marginalized individuals. Language barriers for newcomer populations, treatment options for Indigenous peoples, and accessibility for persons with disabilities are some examples of the issues brought up by interview participants (Tutty et al., 2017). The literature points to the way minority groups are improperly represented in the justice and legal systems point to the importance of further research on this topic.

# How Family and Criminal Court Systems Process IPV Cases

While research has been conducted on how the family court system and the criminal court system process cases of IPV separately, little is known about how these two courts intersect in practice in cases of IPV and their resulting impacts on victims of IPV and children. Despite recent legislative changes made to include a specific consideration of IPV in family courts and in decisions surrounding custody and child access decisions, anecdotal evidence suggests that these changes are not being met with sufficient changes/improvements in practice (May, 2018). Further research is needed to investigate these changes, along with the ways in which the current system of family and criminal courts process and respond to cases of IPV. Until we know more about the nature of these court processes, including their impact on women and children, these issues cannot be effectively understood or addressed. Therefore, future research and literature dedicated to understanding how family and criminal court systems process IPV cases is needed.

## Conclusion

This literature review provided an extensive overview of children's involvement in the court process as it relates to IPV. Through examining the intersection between criminal and family courts and their impacts on women and children who experience IPV, it is clear that a lack of integration, communication, and consistency exists within these two systems in their processing of IPV cases. These issues often re-victimize non-offending parents and their children who are experiencing IPV and can have numerous detrimental outcomes, including: an increased risk of violence through forced and continued contact with the perpetrating parent; mothers unnecessarily losing custody of their child(ren); as well as the silencing of children's voices, wishes, and concerns. As shown, these issues become even more pronounced when crossclaims of parental alienation are used by the perpetrating parent in cases of IPV (Neilson, 2018).

Despite the current lack of integration, communication, and congruence found between the family and criminal courts in their processing of cases of IPV, there is evidence to support the fact that these two can work together to better address and protect the needs of women and children in cases of IPV. Through promoting the Children's Rights Perspective, as well as by implementing integrated court systems, it has been shown that the court systems can work as one, or at least in unison, to improve their responses towards children who are exposed to IPV (Martinson, 2014). The ways in which the family and criminal court systems process cases of IPV has significant impacts on children's safety, protection, and well-being, and therefore, it is important to understand how these systems can intersect and improve their processes for addressing the violence that children experience in the home.

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