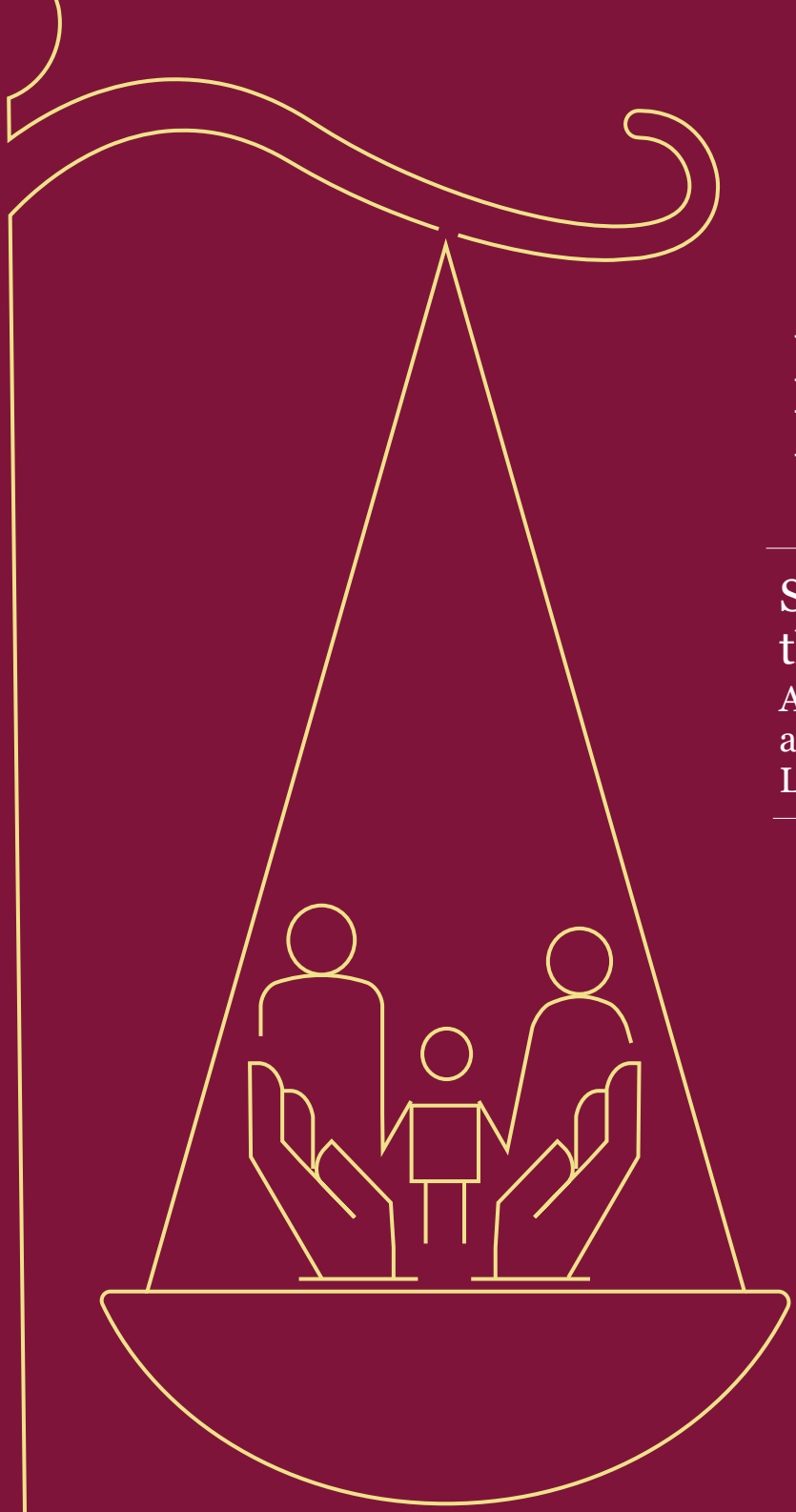

Family Violence & Family Law Brief

Supporting Survivors through Court Reform:

Assessing the Role of Integrated and Specialized Courts for Family Law in British Columbia

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ALLIANCE OF CANADIAN RESEARCH CENTRES
ON GENDER-BASED VIOLENCE

Supporting Survivors through Court Reform:

Assessing the Role of Integrated and Specialized Courts for Family Law in British Columbia[1]

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At Simon Fraser University, we live and work on the unceded traditional territories of the Coast Salish peoples of the xʷməθkwəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and Səl̓ílwətaɬ (Tsleil-Waututh) Nations.

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ALLIANCE OF CANADIAN RESEARCH CENTRES ON GENDER-BASED VIOLENCE

Supporting Survivors through Court Reform:
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Introduction

In British Columbia, one family can face multiple proceedings at a time in family, criminal and child protection courts, which have largely operated in silos (Birnbaum et al, 2014; Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013; Martinson & Jackson, 2016; Martinson & Jackson, 2017). The lack of coordination across multiple court systems can create various issues for parties involved, especially in family violence cases. Some issues include inconsistent orders that leave gaps in protection (Birnbaum et al, 2014; Croll, 2015; Koshan, 2018; Martinson & Jackson, 2016), a lack of a fulsome view of the case during decision-making (Martinson & Jackson, 2017), re-traumatizing experiences for survivors who must repeat their stories to multiple judges (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013; Koshan, 2018; Martinson & Jackson, 2016), and many more, which will be explored in this brief. Integrated and specialized courts have shown promise in addressing these issues.

It is especially important to consider the impact of the court system on women's health when developing integrated and specialized court systems. According to a survey on BC family courts, 80% of women indicated that going through the court system had impacted their health (Hrymak & Hawkins, 2021). In addition, 62.5% of women in the same BC survey indicated that they had developed a new health issue during family court proceedings (Hrymak & Hawkins, 2021). Some women also faced health issues that affected them long after the initial court proceedings, including leaving some women permanently disabled (Hrymak & Hawkins, 2021). Negative impacts on women's emotional and physical health when navigating family courts can also include feelings of anger, guilt, frustration, anxiety and isolation, which can lead to requiring medical treatment and counselling to address symptoms such as panic attacks, ulcers, headaches, and depression (Bridgman-Acker, 1998). Reforms to the court systems are needed to address these issues, and this brief assesses the role of integrated and specialized courts in alleviating these negative impacts on women navigating the court system, especially in family violence cases.

This brief examines existing court models that address domestic violence in BC and discusses the primary issues that remain. Then, this brief provides an overview of different court models from other jurisdictions and describes the benefits and disadvantages of each model. Finally, this brief analyzes key elements that have been successful in developing integrated court systems, as well as ongoing issues and concerns with integrated and specialized courts.

What court models currently exist in BC?

Several jurisdictions in BC have developed specialized domestic violence courts, including in Duncan, Nanaimo, Kelowna, Penticton, and Surrey. Recently, there has also been the development of the Early Resolution and Case Management model in Victoria and Surrey.

Domestic Violence Courts in BC

Duncan/Cowichan Valley

The earliest domestic violence court in BC is located in Duncan of the Cowichan Valley and was established in 2009 (Provincial Court of British Columbia, 2015a). This court adopts a "collaborative, therapeutic approach" to coordinate information and services for criminal cases involving domestic violence (Provincial Court of British Columbia, 2015a). The Duncan domestic violence court is for sentencing offenders who plead guilty to domestic violence offences (Provincial Court of British Columbia, 2015a). Service providers meet each week to facilitate access to information and services for victims and offenders (Provincial Court of British Columbia, 2015a). The goals of this court are to help offenders understand underlying problems to their criminal behaviour, while still holding them accountable, and to better connect victims and offenders to community-based services (Provincial Court of British Columbia, 2015a).

Nanaimo

The Nanaimo domestic violence court, established in 2013, is similar to the Duncan domestic violence court. Court processes used in the Nanaimo domestic violence court were developed by local communities and judges based on the "Keeping Women Safe" 2008 BC research project (Provincial Court of British Columbia, 2015b). The police submit files to the Crown prosecutor within two weeks of responding to a domestic violence complaint, and the prosecutor immediately contacts complainants and refers them to services (Provincial Court of British Columbia, 2015b). If children are involved, the prosecutor also liaises with the Ministry of Children and Family Development (Provincial Court of British Columbia, 2015b). In "high risk" cases, the Inter-Agency Case Assessment Team meets to discuss a safety plan (Provincial Court of British Columbia, 2015b).

Once the matter comes to court, free or low cost services are available to accused persons and complainants, including:

- Duty counsel;
- Native Courtworkers;
- Counselling; and
- Referrals to drug/alcohol programs, mental health treatment, relationship counselling.

(Provincial Court of British Columbia, 2015b)

There are sometimes lengthy adjournments to complete counselling programs, and much of the work is done outside the courtroom (Provincial Court of British Columbia, 2015b).

Kelowna & Penticton

In the Kelowna and Penticton domestic violence courts, specific days are scheduled for domestic violence cases (Provincial Court of British Columbia, 2015c). These cases are given early trial dates to proceed without delay, which is meant to ensure the safety of victims and the public, provide a therapeutic rather than punitive approach to encourage accepting responsibility and seeking treatment, as well as reducing victim recantation and witness-related issues (Provincial Court of British Columbia, 2015c). Up to eight trials are set for a domestic violence trial day due to uncertainty over whether trials will occur (Provincial Court of British Columbia, 2015c). For instance, sometimes the defendant has already plead guilty, or the

complainant is unwilling to testify so trial cannot move forward (Provincial Court of British Columbia, 2015c). In these early trials, the complainant is the only prosecution witness scheduled for the trial date (Provincial Court of British Columbia, 2015c). If trial continues and more witnesses are needed, the next trial date will be set within 30 days (Provincial Court of British Columbia, 2015c).

Benefits of these courts according to Okanagan Regional Administrative Judge Robin Smith include:

- Better trial certainty;
- Fewer applications to change bail orders (which often occurs when trials delayed);
- Faster resolution for families; and
- Additional police resources dedicated to domestic violence investigations.

(Provincial Court of British Columbia, 2015c)

These courts also operate alongside a Domestic Violence Unit (DVU), which includes a team of two police officers, a Ministry of Children and Family Development child protection worker, and a community-based victim service worker from the Elizabeth Fry Society (Provincial Court of British Columbia, 2015c). They all work in the same office to facilitate communication, triage cases promptly, co-ordinate safety planning, and liaise with the designated Crown prosecutor responsible for domestic violence trials (Provincial Court of British Columbia, 2015c). The DVU also meets monthly with representatives of Community Corrections (probation), the Women's Shelter, the Ministry of Social Development, and others to formulate safety plans for the highest risk cases (Provincial Court of British Columbia, 2015c).

Surrey

Since 2016, the Surrey domestic violence court has operated as a domestic violence remand court with a dedicated Crown counsel team and resources from the judiciary, sheriffs and Court Services Branch of the BC Ministry of Justice to expedite domestic violence criminal cases (Provincial Court of British Columbia, 2016). This court hears all bail, guilty pleas, and sentencing hearings involving family violence that are estimated to take under 30 minutes, and these matters are heard in one courtroom (Provincial Court of British Columbia, 2016).

Benefits of this domestic violence remand court include removing the large number of cases from the general remand courtroom to allow more time for remaining cases and to avoid repeated adjournments (Provincial Court of British Columbia, 2016). Other goals of this court are to group domestic violence cases together so that judges and lawyers can use an informed, consistent, problem solving approach to domestic violence issues, as well as making victim services workers and domestic violence counsellors more accessible to survivors (Provincial Court of British Columbia, 2016). Through this court, specialized police domestic violence teams, anti-violence committees and counselling providers can better coordinate and offer integrated services (Provincial Court of British Columbia, 2016).

Each domestic violence court mentioned above focuses on criminal proceedings and not family law, though similar community support services may be accessed by parties in family law cases involving family violence.

Victoria & Surrey – Early Resolution and Case Management Model

This new model, established in December 2020, tries to resolve disputes by agreement as a first step in the court process, rather than as an alternative to court (Provincial Court of British Columbia, 2020). The

goals of the Early Resolution and Case Management Model are to assess each family's needs and help them navigate the court process where necessary (Provincial Court of British Columbia, 2020). Parties are referred to assessment, mediation, and parenting education earlier in the process, so that even if no agreement is reached, it helps narrow the dispute and make it easier to proceed to court (Provincial Court of British Columbia, 2020).

Parties may also attend a family management conference with a judge as the first step in court proceedings, rather than appearing in a busy, adversarial courtroom (Provincial Court of British Columbia, 2020). This way, fewer cases are scheduled for court and more time is available for those who require hearings, which can be scheduled sooner (Provincial Court of British Columbia, 2020). Family management conferences are informal conferences with a judge. The conference judge may:

- Grant conduct orders to manage interaction between the parties;
- Make case management orders to help prepare for trial;
- Issue some "interim" (temporary) orders;
- Grant final orders, if the parties agree;
- Refer the parties back to mediation;
- Adjourn parties to another conference; and
- Have the matter set for a trial.

(Provincial Court of British Columbia, 2020)

There are different procedures depending on the type of matters involved. "Family law matters" include applications for child support, spousal support, guardianship, contact with a child, and parenting arrangements (including parental responsibilities and parenting time), and these matters must go through the early resolution requirements (Rule 5.01(1), BC Provincial Court (Family) Rules). Other family law matters include protection orders, priority parenting matters (defined in Rule 5.01(1)) and enforcement of court orders and filed agreements (Rule 5.01(1), BC Provincial Court (Family) Rules). Time-sensitive matters like protection orders and "priority parenting matters" proceed directly to a court appearance with a judge and do not need to go through the early resolution process. This category of "priority parenting matters" includes:

- Consent to medical, dental or health-related decisions for the child;
- Applying for the child's passport, permit, license, benefit etc. where delay would risk a child's emotional, physical, psychological safety, security or well-being;
- Required consent for child to travel that was wrongfully denied;
- Relocation; and
- Wrongful removals of the child.

(Rule 5.01(1), BC Provincial Court (Family) Rules)

For matters where the early resolution procedures do not apply, they will be set for a hearing before a judge, as explained above. However, other matters between the same parties will go through the early resolution process (Provincial Court of British Columbia, 2020).

The Early Resolution and Case Management process does not apply to:

- Child protection matters; and
- Matters brought to Provincial Court by the Ministry of Children and Family Development or a Delegated Aboriginal Agency.

(Justice Services Branch, Ministry of Attorney General, 2020)

Primary issues in BC

Existing domestic violence courts in BC have focused on criminal proceedings rather than family court, and they do not integrate the two systems. Some BC domestic violence courts, including in Nanaimo, Kelowna, and Penticton, do have procedures for liaising with the Ministry of Child and Family Development if the case involves child protection matters as well. The Early Resolution and Case Management model is focused on family court proceedings. It does not involve a specialized team for cases involving family violence, and is not integrated with other systems such as criminal or child welfare proceedings. Despite positive steps towards developing a specialized, coordinated approach in BC courts, there continues to be a lack of integration between family, criminal, and child welfare proceedings, which creates a number of issues.

Parties may need to attend multiple hearings and explain their story to different courts multiple times, which can be re-traumatizing (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013; Koshan, 2018; Martinson & Jackson, 2016). The court may also only have a partial view of the situation, resulting in inconsistent or ineffective orders (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013). Judges have raised concerns that lawyers in family law proceedings may not be fully aware of related criminal proceedings or court orders (Martinson & Jackson, 2017). This is problematic, as courts generally do not have an "inquisitorial" system where the judge is seeking evidence (Martinson & Jackson, 2017). Instead, judges typically make decisions based on the evidence presented, and there is limited time for judges to ask more questions (Martinson & Jackson, 2017).

Inconsistent orders can arise if there are multiple proceedings, especially due to different or contradictory objectives in each court. For instance, family courts may prioritize maximizing contact between parties (Birnbaum et al, 2014; Martinson & Jackson, 2016) while the criminal system may focus on protecting victims and children (Koshan, 2018). Inconsistent orders can lead to gaps in protection for situations involving family violence. For example:

- The peace bond may expire before a protection order is granted in family court;
- A criminal release may frustrate the effects of existing family or child protection order; and
- Restrictive bail orders may impede family counselling, supervised visits, etc., especially considering that bail orders can last for a long time – about 6-10 months – which may make it difficult to move forward with the family court case.

(Croll, 2015)

Inconsistent orders may also create confusion for parties (Croll, 2015). For instance, an accused may unintentionally violate a criminal no contact order even though the family court order allows for access (Birnbaum et al, 2014). Parties may be unaware that criminal orders take precedence as a matter of law (Birnbaum et al, 2014). In other cases, the accused may take advantage of the confusion by making contact with the complainant when it is uncertain whether the accused is breaching an order (Croll, 2015).

The lack of coordination across different court systems can also result in duplicated efforts and inefficiencies as a result (Birnbaum et al, 2014; Croll, 2015; Martinson & Jackson, 2016). Family and child proceedings can be delayed as a result of criminal proceedings as well (Croll, 2015; Koshan, 2018; Martinson & Jackson, 2016).

Applications in different courts can also perpetuate harassment and abuse of ex-partners (Koshan, 2018; Martinson & Jackson, 2016). These issues can personally affect parties involved, such as putting increased stress on survivors and family members due to multiple processes and exposing them to greater risk of conflict (Martinson & Jackson, 2016). These effects can have huge impacts on communities that are already facing other forms of marginalization (Croll 2015).

Beyond the lack of coordination across systems, a 2012 report by Pivot Legal's Jane Doe Advocates' Group raised important concerns with domestic violence courts, including:

- Marginalizing issues of violence against women and gender-based violence;
- "Decriminalizing" violence against women through strong focus on therapeutic interventions and/or a lack of appropriate, evidence-based therapeutic options for men who abuse;
- Under-resourcing of programs offered through courts; and
- Intensifying concerns with traditional criminal justice interventions, especially women's loss of control in the process.

To find ways of addressing these concerns, this brief explores court models from other jurisdictions to determine key elements for supporting survivors through court reform.

Court Models

Benefits, disadvantages, impacts and examples

This brief will explore various one judge-one family models, court coordinator models and the Early Resolution and Case Management model.

One judge – one family

Under this model, there is one judge for each family law case. The 2013 *A Roadmap for Change* report prepared by the Action Committee on Access to Justice in Civil and Family Matters recommends this model to provide the same judge for all pre-trial motions, conferences and hearings in family cases. There are variations of this model, which are discussed below.

A. One judge for civil and criminal cases – integrated domestic violence courts (IDVs)

While the same judge hears criminal and family matters, the cases are treated separately using the applicable rules on evidence and standard of proof, which may differ across criminal and family cases.

Advantages:

- Parties do not need to repeat events to multiple judges, which can be re-traumatizing;
- It ensures that the number of proceedings is appropriate, and prevents "paper abuse" through multiple applications in different courts;
- Judges can monitor parents and hold them accountable when orders are breached;
- The judge becomes familiar with particular family dynamics with a more holistic view of the case, and can therefore better recommend programs and services; and

- The judge can go beyond simply issuing orders and can consistently encourage appropriate behaviours, which may motivate behavioural change.

(Birnbaum et al, 2014; Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013)

Disadvantages:

- The judge may not have specialized knowledge on the dynamics of family violence;[2]
- There are concerns about fairness and due process, based on the perception that judges may be unduly influenced by evidence from another proceeding involving the same family that is inadmissible in the current proceeding; and
- The one judge system may not be possible with limited resources at smaller centres.

(Birnbaum et al 2014; Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013; Koshan, 2018)

Examples

Toronto Integrated Domestic Violence (IDV) Court

The Toronto IDV Court addresses domestic violence cases, with criminal matters heard first, then family matters (Birnbaum et al, 2014). A range of experienced parties are involved in the process, including:

- One to two judges with significant experience in criminal and family matters with domestic violence issues;
- A dedicated Crown attorney;
- Both criminal and family legal aid counsel; and
- Community resource workers such as a Community Resource Coordinator, Victim Witness Services Court Worker, and Family Support Worker for support and community referrals.

(Birnbaum et al, 2014)

The Toronto IDV Court also provides access to the Family Law Information Centre and a Dispute Resolution Officer for consultation, to narrow the issues, and prepare the case for court (Birnbaum et al, 2014).

In a study on the Toronto IDV Court, Birnbaum et al (2014) found that while the variety of services were generally viewed positively, there were concerns that there were too many services provided in an uncoordinated way. Another concern may arise when a community resource worker has statements from the accused but the worker has no confidentiality with the Crown, information which may then influence the Crown's decision (Birnbaum et al, 2014). Koshan (2018) also notes that in this court, there have been many joint parenting outcomes but low rates of protection orders and other no contact provisions, as well as limited use of supervised access. As these cases all involved a history of domestic violence, these outcomes raise concerns about whether safety is being prioritized (Koshan, 2018).

[2] For example, in the Andrew Berry case in Canada, the father killed his children on Christmas in 2017, which raised questions about whether the judge adequately considered family violence when determining a contact order allowing him access to the children (Koshan, 2018).

Alberta Court of Queen's Bench

The Alberta Court of Queen's Bench uses a case management system, which differs from the Toronto IDV Court. Upon application by one of the parties, a single judge may be designated to hear all applications related to an action other than the trial. Case Management Counsel then provides support to parties and judges by narrowing or resolving issues, directing parties to appropriate services and procedures, and helping to discourage unnecessary or inappropriate applications (Alberta Courts, 2021; Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013).

American jurisdictions: New York, Idaho, and Vermont[3]

Several of the American domestic violence courts operate in similar ways to the Toronto IDV. In New York, Idaho[4] and Vermont, the integrated domestic violence courts similarly involve coordination between the courts and victim services, which has led to better judicial monitoring and accountability amongst parties (Birnbaum et al, 2014; Cissner et al, 2016; Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013; New York State Unified Court System, 2020; State of Idaho, Judicial Branch, 2014).

B. One judge for all civil cases

Instead of hearing both criminal and civil cases, one judge hears all civil cases relating to the same family under this model, which often includes matters of divorce, custody, support, child protection, and civil protection. To coordinate the courts, there are memos of understanding between the criminal and civil courts, with criminal courts deferring to family courts for no-contact orders (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013).

Advantages

- May be easier to implement in existing non-integrated court systems;
- Alleviates some, but not all concerns about the one judge-one family model that the judge may be considering inadmissible evidence when making decisions; and
- Deferring to no-contact orders in family court may cover types of violence that do not rise to the level of criminal sanction.

(Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013)

Disadvantages

- Remaining concerns about fairness and due process when information is shared between different court systems, based on the perception that judges may be unduly influenced by evidence from another proceeding involving the same family that is inadmissible in the current proceeding; and
- Risks that the judge does not have specialized knowledge on family violence.

[3] See, for example, the Bennington County Integrated Domestic Violence Docket, discussed in Birnbaum et al, 2014 and the Windham County Integrated Domestic Violence Docket, discussed in Cissner et al, 2016.

[4] The Idaho DV court has even created mentorship program to assist in creation of DV courts in other states, and has hosted site visits for other states.

(Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013)

Examples

Coconino County in Arizona – Integrated Family Court (IFC)

The IFC in Arizona also offers a variety of specialized family services, including drug testing, anger management, domestic violence assessment and treatment, counselling, divorce education for children, parent education and more. Parties also have access to self-help centres with extensive assistance for completing legal forms, including direct access to the judicial assistant and the IFC judge to answer questions and determine next steps. This model focuses on front-end case management and alternative dispute resolution. Among the evaluation results, it was determined that the IFC had increased predictability, eliminated conflicting orders for families, and reduced the number of high-conflict cases (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013).

State of Kentucky

The domestic violence courts in Kentucky also have one judge for all civil cases, with support from a case specialist (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013). This example is described further in the following section, "Court coordinator models."

Court coordinator models

Under this model, there are individual courts for family, criminal or child protection matters, which are heard by different judges, but the proceedings, evidence and court-related services would be organized by a court coordinator. One example would be the Moncton Domestic Violence Court, which is described in more detail below.

Some integrated courts, including several one judge-one family models also have a court coordinator. For example, in Idaho, the Statewide Domestic Courts Manager acts as the single point of contact for all domestic violence courts across the state. They coordinate and support the Idaho domestic violence courts by providing technical assistance, education and training on domestic violence and the court system.

Examples:

Moncton, New Brunswick

The Domestic Violence Court in Moncton has a similar structure to the Toronto IDV Court and involves a dedicated Judge, Court Coordinator, Police (RCMP), Police-based Victim Services, Crown Prosecutors, Defence, Legal Aid, Department of Public Safety (Victim Services), Probation Services, Addiction and Mental Health Services, and Child Protection Services (Gill & Ruff, 2010). A key role in the Moncton DV court is the Court Coordinator, who is meant to preserve judicial independence by:

- Providing administrative support, including updates on procedures;
- Liaising and facilitating coordination between different parties and organizations
- Acting as the contact person for parties and organizations;

- Monitoring domestic violence cases;
- Developing educational programs for specialized training on domestic violence; and
- Developing new community partnerships.

(Gill & Ruff, 2010; Martinson & Jackson, 2016)

State of Kentucky

In the State of Kentucky domestic violence courts, each judge is additionally supported by a "case specialist," a court employee who acts as a neutral source to community services and researches each case coming before the judge (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013). The case specialist searches for both civil and criminal cases to see if there are related proceedings, which helps facilitate coordination with the criminal proceedings (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013). To conduct these searches more easily and accurately, litigants in civil cases and the accused in the criminal case submit an intake form to the case specialist with their date of birth and social security number as identifiers (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013). During the intake process after a report of domestic violence, the police, prosecutor, a victim services representative and the civil court clerk all meet to coordinate the civil and criminal processes (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013). The goal is to have a better understanding of the context when issuing court orders (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013). For instance, when a batterer is seeking a civil protection order against the victim, the case specialist can look for prior orders concerning the batterer, which may indicate that the batterer has been subject to other previous protection orders by other different victims, information which can be provided as additional context for the judge (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013).

Early Resolution and Case Management Model

As discussed previously, the Early Resolution and Case Management Model used in Victoria and Surrey, BC is meant to incorporate more out-of-court processes early on in the process for family law cases, including mandatory mediation unless the matter is urgent. While this model is fairly new and has not been evaluated yet, we will briefly outline some perceived advantages and disadvantages.

Advantages:

- Encouraging parties to resolve family disputes through agreement, which may not require court proceedings and therefore limiting costs;
- Timely decision-making;
- Providing early information and ongoing case management; and
- Even where issues are not resolved, they can be clarified and narrowed so that parties can better prepare for court.

(Ministry of the Attorney General, Government of British Columbia, 2020)

Disadvantages:

- Mandatory mediation may pose risks to women facing family violence, as it can put them in an unfair negotiating position and may increase risks of harm throughout the process (Martinson & Jackson 2017). Martinson & Jackson (2017) note that women should be able to make informed

choices about whether to participate in mediation or other out-of-court processes; otherwise mandatory mediation can act as a barrier to women's access to courts.

What has worked and why?

Key elements:

Early screening and ongoing collaboration

The different court models have revealed the importance of triaging cases at early stages. This involves providing early screening for safety and urgent matters, as well as making referrals with ongoing assessments. Early screening and ongoing collaboration reduces overlaps and gaps in services, but it also requires appropriate education, awareness, and training on family violence. Some models[5] have demonstrated the importance of having a dedicated coordinator to liaise between criminal courts, family courts and community services. The coordinator should have specialized knowledge about the cases, community supports and family violence (Birnbaum et al, 2014). The role is especially important considering that lawyers often do not provide risk-related information from other proceedings outside of their own (Martinson & Jackson, 2016). For example, it is uncommon for a family lawyer to bring in information on related criminal proceedings. It is also uncommon for family lawyers to provide risk-related information to the Crown, though there is a process for obtaining information from the Crown (Martinson & Jackson, 2016). Similarly, it is uncommon for judges to ask for risk-related information, as they are expected to act as neutral arbiters (BC Fifth Justice Summit 2015; Martinson & Jackson, 2017).

Streamlined sharing of information

The literature suggests developing a comprehensive information-sharing database to facilitate coordination across different courts (Birnbaum et al, 2014; British Columbia Fifth Justice Summit, 2015; Martinson & Jackson, 2016). This can include a software system that would allow data sharing about other proceedings between and among courts (British Columbia Fifth Justice Summit, 2015). In BC, drawing on the practices at the Downtown Community Court in Vancouver, courts can facilitate early dialogue with the Office of the Privacy Commissioner to develop and implement information sharing practices (British Columbia Fifth Justice Summit, 2015).

Martinson & Jackson (2016) also recommend simplifying and modifying court rules to allow for easier sharing of information. This can include providing better access to searchable online court services and developing rules to regulate the sharing of pleadings and disclosure across proceedings (British Columbia Fifth Justice Summit, 2015; Martinson & Jackson, 2016). Court forms should also use plain language and tick boxes that require parties to provide information about other court proceedings before filing applications (Martinson & Jackson, 2016). Notably in BC, there are requirements in the *Family Law Act* under s. 37(2)(j) that judges, lawyers, and parents must consider other criminal and civil proceedings when deciding the best interests of the child, with attention to the child's safety, security, and wellbeing.

[5] See for example, the Court Coordinator role in the Moncton Domestic Violence Court and front-end case management with case specialists in the domestic violence courts in the State of Kentucky (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013; Gill & Ruff, 2010). Both are described in earlier sections of this brief.

To fulfill these requirements and facilitate information sharing across different courts, Martinson & Jackson (2016) emphasize the importance of creating a system for cross-referencing files rather than the current practice of ad-hoc cross-referencing.

Specialized knowledge on family violence

The literature has emphasized the need for specialized training on family violence when developing a domestic violence court system. For courts with one judge per family, there should be dedicated and specially trained judges and other court personnel available, along with judicial case management support (British Columbia Fifth Justice Summit, 2015; Koshan, 2018; Martinson & Jackson, 2016). Specialized family law judges should have substantive and procedural expertise in family law, strong dispute resolution skills, training in and sensitivity to psychological and social dimensions of family law cases, including the impact of family violence on children (Birnbaum et al, 2017), and awareness of various family justice services available to families (Action Committee on Access to Justice in Civil and Family Matters, 2013).

For family law in particular, these specialized judges should focus on expanding their judicial oversight beyond being a neutral arbiter (Martinson & Jackson, 2017). This is due to the fact that judges in family law are often involved in case management and informal dispute resolution (Martinson & Jackson, 2017). Therefore, judges in family law must guide parties through the process, which is different from the traditional adversarial approach, with formal decisions being made primarily through hearings and trials (Martinson & Jackson, 2017). Judges require ongoing training on some of the issues women face in the family law system, whether those processes are in or out of court (Martinson & Jackson 2017). For instance, family law judges should be asking whether there is family violence or criminal charges in related proceedings before making an order, especially considering the fact that lawyers may not raise the issue or may provide a version of events that omits or minimizes family violence (British Columbia Fifth Justice Summit, 2015; Martinson & Jackson, 2017).

In addition, the BC *Family Law Act* is designed to encourage out-of-court processes before it reaches court, so that when the case does end up in court, it often involves pressing matters such as family violence (Martinson & Jackson, 2017). This heightens the need for specialized training on family violence for family court judges (Martinson & Jackson, 2017). It is particularly important for judges and professionals in family law to have specialized family violence training, as myths and assumptions about a woman's credibility still exist in family law processes, especially in cases involving family violence (Martinson & Jackson, 2017). For example, when women raise issues of violence, they are often not believed or have their experiences of violence minimized in favour of co-parenting between the survivor and abuser (Martinson & Jackson, 2017). Given this context, specialized knowledge should strive to understand the challenges of disclosing family violence and the link between family violence and effective parenting (Martinson & Jackson, 2017). This can include providing time and space for women to "tell their stories" (Martinson & Jackson, 2017).

It may be helpful to have court coordinators develop and provide training on family violence for judges. For example, the Court Coordinator in the Moncton Domestic Violence Court provides education on domestic violence for those involved with the DV court (Gill & Ruff, 2010). The Statewide Domestic Courts Manager in Idaho also provides education and training on domestic violence and the court system (State of Idaho Judicial Branch, 2014). When developing specialized training, courts should work with community organizations that understand the dynamics of violence against women, with mandates to end violence against women (Bennett, 2012). Finally, for legal professionals, the Law Society can develop

a specialization in family law to ensure proper training and awareness of family violence issues (British Columbia Fifth Justice Summit, 2015).

Judicial monitoring

Court models with a single judge have provided effective monitoring on compliance of court orders (Koshan, 2018; Martinson & Jackson, 2016). The literature has recommended that judges should expand their judicial oversight role in domestic violence cases, beyond acting as a neutral arbiter (British Columbia Fifth Justice Summit, 2015; Martinson & Jackson, 2017). For example, in the Moncton Domestic Violence Court in New Brunswick, judges would impose monitoring sessions after sentencing, or sometimes before sentencing in high-risk cases (Gill & Ruff, 2010). A study on the Moncton court found that judges played an important role in emphasizing appropriate behavior (Gill & Ruff, 2010).

Legal representation and victim advocacy support

Beyond restructuring court systems, it was key for parties to have legal representation and other victim advocacy support services available, including for children (Koshan, 2018; Martinson & Jackson, 2016; Martinson & Jackson, 2017). Considering the numerous family law litigants who ended up representing themselves, they are often not aware of how to find information on other proceedings, in addition to existing stresses from navigating the legal system without legal assistance (Croll, 2015).

Victim advocacy services were also integral to parties involved in the process. For instance, survivors responded positively to assistance and resource referrals from community resource workers in the Toronto IDV Court (Birnbaum et al, 2014). To support parties involved, it is also important to set up coordinated appearances in one location so that parties do not need to attend multiple courts at different times (Birnbaum et al, 2014; Martinson & Jackson, 2016). The literature also recommends developing a unified family court that includes the strengths of the provincial system, such as simplified rules, forms, and dispute resolution processes that fit the needs and limited means of family law participants (Action Committee on Access to Justice in Civil and Family Matters, 2013).

Ongoing issues and possible responses

Lack of specialized family court judges

Despite the benefits of developing specialized training and education, there is a current lack of specialized family court judges. As a result, judges in family law cases may not be properly identifying relevant family violence factors and impacts (Martinson & Jackson, 2016; Martinson & Jackson, 2017).

Courts remain non-integrated in BC

Despite efforts in BC to develop a specialized approach and to link domestic violence courts with community services and other agencies such as the Ministry of Child and Family Development for child protection cases, there continues to be a lack of systematic coordination across different court systems in family, criminal, and child protection (Martinson & Jackson 2016). Potential problems may still arise due to this lack of integration, including imposing bail conditions without considering for the best interests of

the child or well-being of the family unit, which is only considered the family law context (Croll, 2015). For instance, this could lead to a criminal release that frustrates the effects of existing family or child protection orders (Croll, 2015). There may also be inadequate or delayed assessments of past or ongoing custody and criminal proceedings when making decisions in child protection cases (Croll, 2015). Even where an integrated domestic violence court has been implemented, such as in Toronto, further clarity is needed on procedural rules, court jurisdiction and accessing online databases (Birnbaum et al, 2014). In addition, the Toronto IDV Court focuses on criminal and family matters, and does not incorporate the child welfare or immigration systems, even if cases may overlap in these systems as well (Birnbaum et al, 2014).

Limited resources

The one judge-one family system may not be possible with limited resources, especially at smaller centres. However, jurisdictions without the resources to implement IDV courts can develop information sharing protocols to avoid inconsistent orders in different courts, while being mindful of the risks of information sharing (Koshan, 2018). For example, direct judicial communications have been used in international child abduction cases and could be useful for coordination involving the same parties within a jurisdiction as well (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013; Martinson & Jackson, 2016). These communications have also included safeguards for ensuring procedural fairness, as judges are directed to focus on the process and not the merits of the case (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013; Martinson & Jackson, 2016). These information-sharing protocols, as a starting point, can assist in coordinating courts without requiring significant resources for developing an integrated court system.

Fairness and due process

With integrated court systems, there is a concern that judges may be unduly influenced by evidence they hear in one case regarding a family that is not admissible in another case affecting the same family (Birnbaum et al, 2014). When developing coordination efforts, the literature has highlighted the need to protect the right to be presumed innocent and the right against self-incrimination (Martinson & Jackson, 2016). To address this issue, judges can consider the merits of each case separately and decide each case based on the evidence presented, in accordance with the standard of proof required in that proceeding (Birnbaum et al, 2014). The literature notes that judges regularly, in both criminal and civil courts, hear evidence that they find inadmissible, and then proceed to decide without referencing that evidence (Birnbaum et al, 2014).

Unintended consequences – child welfare involvement

There may be unintended consequences from integrated courts, including over-zealous child welfare involvement, which may negatively impact marginalized groups. It is primarily poor, racialized or otherwise marginalized mothers who disproportionately come to the attention of child welfare authorities (Koshan, 2018). For example, in *Children's Aid Society of Huron County v R.G.* [2003] OJ No 3104, 124 ACWS (3d) 712 (OC.J), during the mother's parental capacity assessment, she was also subject to criminal charges related to why her children were apprehended (Croll, 2015). To avoid prejudicing her criminal matter, she did not fully participate in the child protection proceedings, which negatively affected her case (Croll, 2015). In addition, an acquittal of a criminal matter does not always carry over in

the child protection matter, due to different standards of proof (Croll, 2015).

Issues of court jurisdiction in Canada

Another potential issue is that in the Canadian context, matters may be heard by different courts. Most criminal matters are heard in provincial court, which creates challenges for matters that must be heard at the superior court level, such as *Divorce Act* proceedings or cases dealing with property matters (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013). This may create difficulties for models with one judge per family, as the judge would only be able to make decisions in one level of court, but not both. The Toronto IDV Court has addressed this particular challenge by limiting its mandate to include only family matters that may be heard by the provincial court, though of course this does not cover all types of family law cases (Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, 2013).

Other challenges

There are a number of additional concerns that should be addressed when developing an integrated court system. In some cases, there can be privacy concerns regarding the sharing of risk-related information that can compromise women's safety (Martinson & Jackson, 2016). There may also be limitations on lawyers and judges, such as confidentiality requirements that may prohibit disclosure (Croll, 2015). In response, there should be systemic changes to the court system itself to allow for better access to information, as lawyers and judges may be limited in their ability to provide adequate information due to professional requirements of confidentiality. There are also technical challenges in the institution where records may be subject to human error, making it difficult for accurate searching and cross-referencing of files (Croll, 2015).

From the perspective of litigants, it can be difficult for those who are self-represented to find information on other proceedings when court records are not integrated (Martinson & Jackson 2016). It can also be expensive for litigants who may need lawyers for both family and criminal matters (Birnbaum et al, 2014). In addition, it can take longer to hear both cases, which can be time-consuming for all parties involved (Birnbaum et al, 2014).

Conclusion

While several BC jurisdictions have developed specialized domestic violence courts for criminal matters, they have not been structurally integrated with other related courts such as family or child protection courts. This can be problematic for survivors as there can be gaps in protection and siloed courts can facilitate abuse through litigation if not properly monitored across different court systems. Integrated and specialized court systems in other jurisdictions have shown promise for addressing these issues, though they require certain features to succeed, including streamlined sharing of information, specialized training and knowledge on family violence, active judicial monitoring and safeguards to protect privacy and due process. The BC courts may want to consider reforms discussed in this brief to better support survivors, as they are likely accessing multiple court systems.

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