

**NATIONAL JUDICIAL INSTITUTE**  
**DOMESTIC VIOLENCE PROGRAM DEVELOPMENT FOR JUDGES**  
**APRIL 2012 BRITISH COLUMBIA COMMUNITY CONSULTATION REPORT**

The Honourable Donna Martinson  
(Retired Judge of the British Columbia Supreme Court)

I. NATURE OF THE CONSULTATION

Canada's National Judicial Institute is responsible for developing education programming for Canadian Judges. It has developed, over many years, sophisticated programming, including programming on domestic violence, that has received international acclaim. It has done so at the direction of and with the support of the Canadian Judicial Council, which is the Council of all of the Chief Justices and Associate Chief Justices across the country. One of the key aspects of the National Judicial Institute's programming is known as the three pillars approach; programming is led by judges, and informed by (1) judges, (2) academics and legal professionals, and (3) other community members.

This consultation was based on the three pillars approach and was conducted in collaboration with Dr. Catherine Murray, Chair of the Department of Gender, Sexuality and Women's Studies at Simon Fraser University and Dr. Margaret Jackson, Director of the FREDA Centre, a centre for research on violence against women and children operated within the School of Criminology at Simon Fraser University.

Dr. Jackson and Dr. Murray assisted in identifying the participants. They were:

**Shabna Ali**, Executive Director, BC Society of Transition Houses; **Shashi Assanand**, Executive Director, Vancouver Lower Mainland Multicultural Family Support Services Society; **Dr. Darcie Bennett**, Executive Director, Pivot Legal Society; **Roberta Ellis**, Executive VP Human Resources, Work Place BC; **Anastasia Gaisenok**, Justice Education Society of BC, We Can End Violence Coalition of BC; the Honourable **Kirsti Gill**, Retired British Columbia Supreme Court Judge; **Ishama Harris**, Vancouver Rape Relief and Women's Shelter; **Pat Kelln**, President, Pacific Dawn – Disabled Women's Advocate; **Hilla Kerner**, Vancouver Rape Relief and Women's Shelter and Women's Equality and Security Coalition; **Dalya Israel**, Women against Violence against Women; **Angela MacDougall**, Executive Director, Battered Women's Support Services;

**Tracy Porteous**, Executive Director, Ending Violence Association of BC; **Wendy Potter**, Sexual Assault Service, BC Women's Hospital and Health Centre; **Shahnaz Rahman**, Family Law Director, Westcoast LEAF (met separately with **Kasari Govender**, Executive Director and **Laura Track**, legal counsel, Westcoast LEAF); and **Gisela Ruebsaat**, Legal Counsel, Community Coordination for Women's Safety, Ending Violence Association of BC.

I met individually with most of the participants through the month of April and corresponded with the others. Dr. Darcie Bennett, the Executive Director of the Pivot Legal Society, arranged to have me and Dr. Jackson attend a meeting of the "Jane Doe Advocates", a group of front line service providers from each of the organizations identified above, who meet monthly to discuss common issues and concerns. The consultation culminated in a Formal Round Table Discussion involving all of the people listed above. It was organized by Simon Fraser University, Faculty of Arts and Social Science, Department of Gender, Sexuality and Women's Studies in cooperation with Dr. Jackson and the FREDIA Centre, and chaired by Dr. Murray.

The National Judicial Institute is grateful to the organizers for their assistance and very much appreciates the time the participants have taken to share their expertise and experience.

## II. TOPIC COVERED IN THIS REPORT

This Consultation Report reflects the issues and concerns expressed during the consultations. It covers the following topics:

### A CONCURRENT PROCEEDINGS IN CASES INVOLVING VIOLENCE AGAINST WOMEN AND CHILDREN

Coordination of Concurrent Proceedings – a Key Issue for Women

A "Dangerous Disconnect" – Increasing Risk for Women and Children

Inaccessibility of Legal Advice Exacerbates the Problem

Litigation Harassment and Abuse

Disconnects in Other Parts of the Family Justice System

Added Challenges for Particularly Marginalized/Vulnerable Women

Barriers to Access to Justice – Reinforcing/Reproducing Gender Inequality

## B CREDIBILITY ASSESSMENT

### Judicial Education on the Dynamics of Domestic Violence

Why, When, Where and How Domestic Violence Occurs.

Impact of Domestic Violence

Linking Domestic Violence and Ability to Parent

Reasons Women Don't Report Abuse

False Allegations of Abuse

Cultural Considerations and their Impact

Making Challenges Encountered by Women with Disabilities More Visible

"Good Enough" English

Police Investigations – The Effective Gathering of Evidence

Understanding the Realities of Women's' Lives

## C RISK ASSESSMENT

## D EXPERT PARENTING REPORTS

Key Issues

Psychological Testing – Use and Misuse

When an Expert Report is Needed

Elements of an Effective Expert Report

## E COURT ORDERS AND THEIR ENFORCEMENT

## F USE OF LANGUAGE IN JUDGMENTS

## G ALTERNATIVE DISPUTE RESOLUTION

Challenges with respect to Dispute Resolution Generally

Judicial Dispute Resolution

Concerns about Parenting Coordinators

### III. INFORMATION PROVIDED DURING THE CONSULTATIONS

#### A. **CONCURRENT PROCEEDINGS IN CASES INVOLVING VIOLENCE AGAINST WOMEN AND CHILDREN**

##### 1. **Coordination of Concurrent Proceedings – a Key Issue for Women**

Lack of coordination with respect to court proceedings taking place at the same time (concurrent proceedings) is a significant concern for women in violent relationships. For one family there can be up to four legal proceedings taking place at the same time: criminal, family, child protection and immigration (which is often overlooked).

##### 2. **A “Dangerous Disconnect” – Increasing Risk for Women and Children**

There is a “dangerous disconnect” between or among proceedings that can put women and children at greater risk of future violence.

- There is no or almost no coordination or sharing of information between/among the courts, especially about factors relating to the risk of future violence.
- Often no information is given to one court about the existence of proceedings in another and judges are therefore unaware of the other proceeding(s); there is:
  - no institutional sharing of information;
  - no or few inquiries by the court in individual proceedings about the existence of other proceedings or their status; and
  - little or no information provided by the parties to the court in individual proceedings about other proceedings; information that is provided may not be accurate.
    - B.C.’s new ***Family Law Act***, which comes into force on March 18, 2013, requires the parties in cases involving parenting issues to provide the court with information about “any civil or criminal proceeding relevant to the safety, security or well-being of the child or other family member” (s. 37(2)(j)); this is a significant first step.

- Lack of coordination leads to inconsistencies and gaps in orders relating to contact.
  - Criminal courts order no contact, child protection authorities say the children will be apprehended if there is contact and family court focusses on the view that contact is in the best interests of children and grants unsupervised access.
  - There is little or no coordination with respect to the length of time a particular order is in effect, often leaving gaps.
  - The inconsistencies and gaps at best cause confusion about contact and at worst provide the opportunity for continued abuse.
- When there are concurrent proceedings, criminal cases are often given priority which can cause significant delay and adversely affect a timely resolution in other proceedings.
- For immigrant women, especially those without status, immigration proceedings can add yet another layer of complexity; Judges often are not aware of the immigration consequences of orders that they make.
- The more processes that are in place, the longer it takes and the more stressful it becomes, financially and emotionally; this disadvantages women further as they generally have less time and less money than men.
  - Women are required to “tell their stories” over and over, often to a series of judges both among and within proceedings.
  - Women can feel forced to “drop” charges because they “can’t do it any more”, especially while taking care of children.
  - The more often women are required to be in the same place as their partners, the more opportunities there are for abusive behaviour.
- The more processes that are in place, with the increased stresses, the more conflict may escalate, which can result in an increased risk of harm to women and children.

### **3. Inaccessibility of Legal Advice Exacerbates the Problem**

Lack of legal advice at all stages of the process is a significant concern.

- Many women, especially marginalized women, cannot afford a lawyer and are not eligible for legal aid.
- Male partners often have more money for a lawyer.
- Male partners get legal assistance for criminal proceedings,
- Without legal counsel it is even more difficult to navigate through concurrent proceedings, let alone deal with one proceeding.
- Front line support people without formal legal training end up giving legal advice.

### **4. Litigation Harassment and Abuse**

Litigation harassment and abuse can be a significant problem.

- Concerns, which can escalate the conflict and increase the risk of harm, include:
  - the continuation of controlling behaviour;
  - emotional and financial stress; and
  - delay.
- When there is only one court proceeding these problems increase when several judges deal with one case.
- The problems created are compounded when there are concurrent, unconnected proceedings.

### **5. Disconnects in Other Parts of the Family Justice System**

In addition to the lack of coordination between/among court proceedings women also experience a lack of coordination between or among other parts of the justice system such as police, crown counsel, probation services and the like.

- Problems are even more acute in rural areas.
  - There is limited access to judges, who “drop in”, resulting in several judges dealing with cases, and delay.

- When both family and criminal cases are on the court list in some rural areas, criminal cases are usually given priority; often there is not enough time for both proceedings to be heard so the family case is adjourned.

## **6. Added Challenges for Particularly Marginalized/Vulnerable Women**

While dealing with concurrent proceedings, women may also face a myriad of other issues which makes them even more vulnerable and less able to access justice; they may:

- face combinations of disadvantage, such as:
  - living in poverty, with all its consequences - disadvantages that disproportionately impact upon women; and
  - being one or more of the following:
    - an aboriginal woman;
    - a racialized woman;
    - a women with disabilities;
    - a senior woman;
    - an immigrant/refugee woman, and
    - a sexual minority.
- in addition to multiple court proceedings, have to deal with many other social and economic challenges, which can also include administrative challenges, such as obtaining:
  - an adequate standard of living, which includes access to accessible, adequate day care;
  - social assistance when required;
  - appropriate affordable housing;
  - adequate health care;
  - access to education; and
  - access to mental health support for challenges caused or contributed to by the violence.
  - For example, the Battered Women’s Support Services in Vancouver gets about 10,000 requests for services per year and about 80% deal with an “intersectional matrix of legal issues”; around 40% are immigrant women, 25% aboriginal women and the rest, “the rest of us.”

## **7. Barriers to Access to Justice – Reinforcing/Reproducing Gender Inequality**

All of these barriers to access to justice:

- contribute to the already existing problem that many women are unwilling to report abuse to authorities,
- create a “staggering burden” for women; and
- “reinforce/reproduce” gender inequality in the courts.

## **B. CREDIBILITY ASSESSMENT**

### **1. Judicial Education on the Dynamics of Domestic Violence**

Judges would benefit from more knowledge about the dynamics of domestic violence.

#### ***a. Why, When, Where and How Domestic Violence Occurs.***

There can be a “fundamental misunderstanding and lack of comprehension” about the nature of abuse and its consequences. Judges would benefit from more information about:

- emotional, financial, and psychological abuse of women and children;
- the dynamics of power and control;
- children’s exposure to domestic violence; and
- how and when violence occurs:
  - A “lock on the bedroom door” doesn’t “cut it” – can be a wrong assumption that abuse can only happen in the bedroom.
  - The absence of physical evidence does not necessarily mean that there has not been abuse.
- and the role of sexual violence in intimate relationships; this is often overlooked at all stages of the family/criminal justice processes.

### ***b. Impact of Domestic Violence***

Judges should know more about the fact that the existence of domestic violence can have a significant negative impact upon women and upon their ability to testify.

- Judges sometimes misinterpret women's behaviour on the stand (e.g., silence) and by doing that render them even more powerless than they already are because of the violence.

### ***c. Linking Domestic Violence and Ability to Parent***

More information about the critical link between domestic violence and the ability to parent is needed.

- Judges continue to say that though a father has been abusive to his wife he is still a good parent. There must be education on the significant and adverse connection between a person who is abusive to his partner, and his ability to properly parent.

### ***d. Reasons Women Don't Report Abuse***

Judges would benefit from learning more about the reasons why many women do not report assaults to the police. It was observed that some family court judges are unlikely to conclude that violence exists unless the police have been called and charges laid.

### ***e. False Allegations of Abuse***

More information is needed about false allegations of abuse, including:

- legitimate reasons why a women may report abuse of a child after separation such as:
  - the child feeling it is safer to report after separation and
  - the child feeling more threatened as the child must now see the father alone.
- and information about Canadian and other research with respect to false allegations showing they are not that prevalent, and it is more likely that a man will falsely deny abuse than it is that a woman will falsely report it.

### ***f. Cultural Considerations and their Impact***

There are numerous challenging issues facing people from other cultures, including:

- lack of awareness of the Canadian criminal justice system; being used to systems of justice that are very different;
- limited English language skills;
- the problems of interpretation; it is needed at all stages of the process. Yet:
  - it is often not available at all;
  - if it is, it is often of poor quality; and
  - there is little understanding of the impact on some women of having a male interpreter when they are required to describe violence.
- the fact that women are judged against “white middle class values/laws” which don’t fit immigrant populations.

There are significant implications of alleging violence for the many women without immigration status.

- New and proposed immigration laws will adversely impact upon women and make it even less likely that they will report the abuse.
- Concessions are not given for women experiencing violence, even though the government may say this. Instead, immigrant women will fall through the cracks.

Judges would benefit from a greater understanding of honour killing.

- The whole family/community rather than the individual plans the act
- There is a concern that “culture” may become a defence to acts of violence.

Information about family systems would be useful in custody cases where the best interests of children are at issue. For example:

- the mother and father often stay in father’s home with his parents; the mother is alienated in the process.
- Yet, our justice system looks at couples rather than family systems

### ***g. Making Challenges Encountered by Women with Disabilities More Visible***

There are particular issues facing women with disabilities, including education about the abilities of people with disabilities that are often overlooked in discussion about women's equality. For example:

- there can be a stigma that suggests they are less intelligent/capable;
- there are challenges with respect to accessing court, especially if the women's partner is relied upon for mobility; and
- there are concerns about women having to teach their children how to keep safe because court orders are not effective.

### **2. "Good Enough" English**

- Allowing "good enough" English to suffice, rather than providing adequate translators at the trial (and also at all other stages of the process).
- This is a significant concern; some courts wrongly conclude that if you can get by in English in your day to day life, you can also effectively communicate in a stressful situation, such as being in court..
  - There are many examples of women not knowing words in English.
  - Eg. there is no word for sexual assault in the Punjabi language.

### **3. Police Investigations – The Effective Gathering of Evidence**

- There are concerns about the way evidence that may impact upon the assessment of a women's credibility is collected and presented:
  - Police officers and crown counsel, in many cases, do not seek out evidence that is available.
  - More use could be made of, for example, out of court statements,
  - 911 calls
  - and "testimony screens".

### **4. Understanding the Realities of Women's Lives**

- Judges would benefit from more knowledge about the nature of and continued existence of gender inequality and its historical roots; some of the approaches

taken are viewed as a continuation of the historical and inaccurate view that all women's allegations of violence must be viewed with suspicion.

- As pointed out in the discussions about concurrent proceedings (repeated here for convenience):
  - Many women face combinations of disadvantage, such as:
    - living in poverty, with all its consequences - disadvantages that disproportionately impact upon women
    - being one or more of the following:
      - an aboriginal woman;
      - a racialized woman;
      - a woman with disabilities;
      - a senior woman;
      - an immigrant/refugee woman; and
      - a sexual minority.
  - Many women have to deal with, in addition to multiple court proceedings, many other social and economic challenges, which can also include administrative challenges, such as obtaining:
    - an adequate standard of living, which includes access to accessible, adequate day care;
    - social assistance when required;
    - appropriate affordable housing;
    - adequate health care;
    - access to education; and
    - access to mental health services concerning challenges caused or contributed to by the violence.
- Judges need to be able to put themselves in a woman's shoes so as to understand the background and other contextual factors that relate to her actions.

*"We are asking women to walk into the judge's house (where there are different rules, language, etc.). We need to flip it on its head and have judges walk into the women's worlds. It is important for judges to: understand what it's like for a woman to have her child turned over to someone who she is afraid of and who has hurt her; and recognize what's*

*being asked of women when they step into the justice system. Judges should try to meet them half-way.”*

- There is a real and/or perceived “disconnect” between judges and the communities they serve:
  - Judges often have a white male middle class perspective and have never experienced power imbalance and its implications.
  - Seen by some as a repercussion of colonialism.

### **C. RISK ASSESSMENT**

- There is often either no or a limited assessment of either the nature and extent of the violence or the risk of future harm:
  - Judges need to be informed about the dynamics of domestic violence and its consequences in order to properly assess risk.
  - There can be gaps in the information needed to effectively assess risk
    - This problem is exacerbated when several different judges deal with a particular case.
  - A standardized approach would be beneficial.
  - It is difficult to make appropriate decisions about sentencing in criminal cases and contact in civil cases without an understanding of the nature and extent of the violence and the risk of future violence.
  - In custody cases, granting unsupervised access without such assessments has the potential effect of “giving the court’s stamp of approval” to abuse of children.
- Risk is particularly acute for women with disabilities, who are often unable to protect themselves.

### **D. EXPERT PARENTING REPORTS**

## 1 Key Issues

- The over use and misuse of expert reports when there are allegations of violence and abuse was one of the most significant concerns raised in the consultations.
  - (Note that after these consultations, Westcoast Leaf released its report, *Troubling Assessments: Custody and Access Reports and their Equality Implications for B.C. Women*, June 2012, Shahnaz Rahman (Family Law Director) and Laura Track (Legal Director). Both Ms. Rahman and Ms. Track participated in the NJI consultations.
- Many experts do not have the necessary qualifications to assess cases where there are such allegations.
- There is often no “screening” for violence; this should be a requirement.
- Women’s concerns about violence and abuse have too frequently been ignored or minimized, or rejected completely by psychologists; often no or no adequate analysis is done to explain this result.
  - *In many of these reports, the evaluators appear to systematically minimize domestic violence against the women/mothers (or an attempt is made to “mutualize” it and deflect from core issues of power, control, abuse and dominance from a gendered perspective).*
- Allegations of violence can be used to inappropriately pathologize women.
- Some psychologists are not neutral, and have preconceived biased notions about parenting that favour father’s significant participating in children’s lives, even when domestic violence exists, and even when well-founded research shows that such contact puts children at risk:
  - There are numerous examples of lawyers telling clients that they should choose a particular psychologist because he favours fathers
  - Analyses of reports of these experts have confirmed this bias.

- There is an overuse and inappropriate use of psychological testing (see more below).
- There are inadequate protections in place to ensure the resulting report remains private.
- Guidelines with respect to the preparation of these reports are not adequate.
- Many judges place significant importance on the opinions of and the recommendations of the experts in contested cases, without analyzing the bases for them.
  - A judge should carefully evaluate the expert's qualifications, the effectiveness and fairness of the process by which the report was created, and the reasons given by the expert for reaching the opinion, to determine what weight (importance) if any, should be given to the opinion.
  - Deferring to an expert opinion without such an analysis would be tantamount to allowing the expert to usurp the role of the court.

## 2. **Psychological Testing – Use and Misuse**

Judges would benefit from a better understanding of what psychological tests are being used, and what conclusions can and cannot be drawn from them.

- They can measure some things such as intelligence, academic abilities, skills, personality, attitudes and behaviours but cannot go beyond that to provide objective evidence to support specific opinions about parenting.
- Yet, psychologists offer opinions about parenting matters based, to a greater or lesser extent, on test results.
- The testing can be used inappropriately to pathologize the mother.
- Judges should be aware of research such as that conducted by Dr. Allan Wade, a family therapist and researcher. He has raised concerns about the use and misinterpretation of psychological tests in custody and access reports; he concludes that some widely used tests are inappropriately used to claim that the person who has been abused is mentally ill and as a result not a competent parent.

- Judges should be aware that the effects of trauma, violence and abuse can have profound effects on the test results.
- Credible assessment tools such as the child abuse inventory are not used.

### **3. When an Expert Report is Needed**

Expert reports can be very useful in helping parents achieve an effective, long lasting settlement, and can assist the Court if a decision by a Judge is needed. At the same time they can be costly, time consuming and stressful. Before the parents agree to such a report, or before the Court orders such a report, even with the consent of the parents, questions such as these should be considered:

- What are the real issues in dispute? Is an expert opinion required to resolve them?
- If so, what is the specific purpose of the report?
- What type of expertise is required to effectively address the issues that arise?
- Does the expert being considered have the specific expertise needed?
- Does the expert have the appropriate cultural competence needed?
- Is the expert impartial, without any preconceived, biased notions about parenting roles?
- How will the views of the child be considered?
- Is psychological testing required? If so, what kind of testing and what is its purpose?
- What information will be provided to the expert and why?
- If translation is required, how will it be effectively provided throughout the process?
- How will privacy of the contents of the report be assured?
- What is the cost of the report? Is the cost reasonable? Who will pay? How and when?
- What period of time is required to complete the report?

### **4 Elements of an Effective Expert Report**

The expert report will neither assist the parents in reaching an agreement nor provide assistance to the Judge if it is not conducted fairly, in an open and transparent way. The expert's opinion based on that process must be perceived by both parents (and by the children when appropriate) as being fairly reached.

- Concerns were raised about the amount of time spent with collaterals for each side, how many collaterals are spoken to, how much time is spent with each parent, and the like.
- Some experts received significantly more affidavit information from one parent than the other.
- The question of cultural competence and the availability of interpreters arises here; it is difficult to have an expert watch a parent interact with children when that is done in a language other than the mother's first language.

In considering whether the opinion offered is helpful and effectively explained, these questions can be considered:

- What facts has the expert relied upon to reach the opinion?
- If, as is often the case, parents have differing views on key issues that impact upon the result, which view has been accepted, and what are the specific reasons why one is accepted and one is not? Are those reasons sound?
- If a mental health diagnosis is made with respect to one or both parents that is relevant to the result, is the basis for such a conclusion adequately explained, with reference to the specific medical basis for it? Is the diagnosis linked to the parenting issues in dispute? Is the conclusion about the diagnosis and its consequences well founded?
- Is a risk assessment appropriate, and if so, has a professionally sound assessment been conducted? Has a risk management plan been suggested?
- Has the expert appropriately considered the views of the child and explained what weight was attached to those views and why?
- Has the expert appropriately linked the opinion expressed to:
  - the specific purpose(s) for which the report was obtained,
  - the psychological testing, if appropriate,
  - the relevant facts, and
  - the relevant legal criteria relating to a child's best interests.
- Has the expert acted fairly and impartially overall?

## **E. COURT ORDERS AND THEIR ENFORCEMENT**

- Clear, easily understood, detailed orders are required, with an explanation of the consequences of breaching the order.
  - This would avoid inappropriate excuses such as “I am not paying her because I have supervised access only.”
- Enforcement of orders breached by men is a significant problem which can compromise women’s safety.
  - There is little or no monitoring and often little or nothing is done even if there is a breach.
- Situations which create/involve risk are fluid, and there can be legitimate reasons why a woman does not comply with an access order.
  - There are situations where protection of the children is paramount
  - Judges should not take the view that an order must be obeyed, no matter what the circumstances are.
  - The criteria for assessment in these circumstances set out in B.C.’s new **Family Law Act** which set out situations in which “denial is not wrongful” are helpful. (In effect March 18, 2013)

*Section 62 says denial of parenting time or contact is not wrongful in any of the following circumstances:*

- *The mother reasonably believed that:*
  - *the child might suffer family violence.*
  - *the father was impaired by drugs or alcohol at the time.*
- *The child was suffering from an illness and the mother has a written statement by a medical practitioner*
- *In the 12 months before the denial the father repeatedly, without reasonable notice or excuse failed to exercise parenting time*
- *The father:*
  - *Told the mother beforehand he would not come, and*
  - *Did not later give reasonable notice that he would come.*

## **F. USE OF LANGUAGE IN JUDGMENTS**

- In some judgments the judge does not “name what happened” in a violent situation, and uses language which excuses, shifts blame for, and minimizes the violence.
- The work of Dr. Allan Wade and Dr. Linda Coates is useful in this respect:
  - By studying actual judgments they have concluded that in the language used the judge has:
    - Concealed the violence
    - Mitigated the “perpetrators” responsibility,
    - Concealed the victims’ resistance and
    - Blamed or pathologized the victims
  - See *Telling it like it isn’t: obscuring perpetrator responsibility for violence crime*, Discourse and Society, Vol. 15(5): 3-3010.1177/095792650405031.

## **G. ALTERNATIVE DISPUTE RESOLUTION**

### **1. Challenges With Respect to Dispute Resolution Generally**

- While alternative dispute resolution options can be effective, they are strongly promoted for family law cases without sufficient consideration being given to the presence of domestic violence and its implications:
  - There is little or no screening for domestic violence
  - The professionals involved, including the lawyers, often do not have adequate training with respect to domestic violence.
- The approach to family violence found in British Columbia’s new Family Law Act, which comes into effect March 18, 2013, is supported. It, among other things, requires “dispute resolution professionals”, including lawyers to: (s. 8)
  - assess whether family violence may be present and
  - if it appears that family violence is present, assess the extent to which the family violence may affect:
    - the safety of the party or a family member, and
    - the ability of the party to negotiate a fair agreement.

## **2. Judicial Dispute Resolution**

- There is a concern that “many judges and lawyers do not understand the concept of gendered violence.”
- Many women “don’t even know or fully understand what a judicial case/settlement conference is and can end up agreeing to things out of intimidation.
- Many women go through the process because they have no other options; they cannot afford a lawyer and cannot get legal aid; they can give up other things for custody as it is used as a bargaining tool.
- There is a strong emphasis (a starting presumption) that joint parenting is best, without any information about the family dynamics generally and the existence of family violence in particular.
- Many women do not raise the issue of violence because they are afraid that they will be accused of trying to alienate the father from the children, rather than trying to protect them, and end up losing custody.
- There are serious risk considerations at judicial case conferences (as well as other dispute resolution options.) Some women cannot be in the same room as their abuser. No risk assessment is conducted. There is a potential for re-traumatization.
- There is often inadequate translation for people for whom English is a second language.
- Some judges do not try to assist the people who attend, but rather just send them out and tell them to settle.
- Some judges “threaten” people that if they do not do what is being recommended, that judge will hear the court application that will determine the issue.
- Women feel isolated in case conferences and yet are often not allowed to bring a support person into the conference.

## **3. Concerns about Parenting Coordinators**

- The appointment of a Parent Coordinator as part of a Settlement or Court Order can be helpful, particularly in cases where there may be ongoing conflict.
- But, there are issues that need to be addressed:
  - The person chosen (and it is not uncommon to choose a lawyer) often does not have qualifications relating to family violence:

- *The role of the parenting coordinator (psychologists, lawyers, clinical counsellors) is not well understood, nor are the requirements clear. Some have not been trained to deal with the types of issues that come up where there has been violence and abuse: parents cannot be assumed as equal in their role with regard to children's case.*
- Guidelines and practices are not made available.
- Parenting Coordinators are not inexpensive, and they have the potential to be very costly.
- Having a parenting coordinator could have the unintended effect of prolonging the dispute and creating more litigation.
- It is time consuming, costly and stressful to have to act to have a parenting coordinator removed.