Violences faites aux femmes
Arcand, Suzanne, Damant, Dominique

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Over the past 30 years, intimate violence against women has shifted from a silenced problem to one that is now institutionally recognized across a variety of social service settings (Horlick-Jones, 2005), including criminal justice (Bennett, Goodman and Dutton, 2000; Goodman, Dutton, and Bennett, 2000; Mills, Grauwiler, and Pezold, 2006; Robinson, 2006; Williams and Grant, 2006), general and couples counseling (Johnson, 1995; Samuelson and Campbell, 2005; Seith, 2001), child welfare (Findlater and Kelly, 1999; Puldo and Gupta, 2002; Shepard and Raschick, 1999; Spath, 2005), health care (Van Hook, 2000), and the family law system (Ellis and Stuckless, 2006; Garrity and Baris, 1994; Johnson and Campbell, 1993; Stewart, 2001). Identifying women who have been abused, particularly women who have been severely abused or at high risk of future abuse is now routinely described as necessary to ensure services are appropriate and, most importantly, establish safety for abused women and their children.

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VIOLENCES FAITES AUX FEMMES

(Bennett, Goodman, and Dutton, 2000; Goodman, Dutton, and Bennett, 2000; McCloskey and Grigsby, 2005; Puldo and Gupta, 2002; Samuelson and Campbell, 2005; Seith, 2001; Shepard and Raschick, 1999; Van Hook, 2000). A variety of specialized assessment tools and procedures have even been developed to aid professionals in identifying women who have been abused and who could be at risk of future harm (Bennett, Goodman, and Dutton, 2000; Puldo and Gupta, 2002; Robinson, 2006; Williams and Grant, 2006). In the midst of this now increased surveillance a critical question emerges: does this focus on identifying abused women result in improved services and needed safety?

The research described in this chapter examines this question through investigation of the routine abuse assessment procedures of professionals within the Canadian family law system. Understanding how these professionals screen for the presence of intimate violence is crucial, as the ability to recognize abused women is necessary to ensure that custody arrangements provide distance and safety from former abusive partners. The findings reported in this chapter describe how professionals screen for abuse and how this information is employed in custody decision-making processes.

CANADIAN FAMILY LAW: PROFESSIONAL PRACTICES

The Canadian family law system is a complex mix of national and various provincial and territorial statutes as well as public and private programs and services. Few cases are decided within the courts (Shaffer and Bala, 2003), as the majority of custody arrangements are negotiated privately through lawyers, facilitated by mediators in cooperation with parents (Neilson, 2001), or resolved through custody assessors’ recommendations (Lee, Beauregard, and Hunsley, 1998; Leverette, Crowe, Wenglensky, Dunbar, 1997). Within Canada, custody and access are areas of shared jurisdiction with a national divorce act and a different statute in each province and territory. Although statutory provisions are distinct, there are important commonalities, in that all stipulate that children best interests are the primary consideration within negotiation and decision-making processes (Grant, 2005), and each jurisdiction primarily uses the terminology of custody or, to lesser extent, guardianship and parental authority. The national Divorce Act contains no criteria to define best interests, other than children should have as much contact as possible with both parents so long as this is in the children’s best interests. Some provincial legislation contains a list of criteria to guide decision-making and some, but not all of these, contain specific provisions to consider violence from one parent
toward the other and the children as a consideration (Jaffe, Lemon, and Poisson, 2003). Despite these differences and the lack of clarity, research suggests that professionals are recognizing intimate violence and the need to engage in routine abuse screening (see for example Austin, 2000; Beaman-Hall, 1996; Bow and Quinnell, 2001; Irving and Benjamin, 1995; Landau, 1995; Lee et al., 1998; Maxwell, 1999; Neilson, 2001; Powell and Lancaster, 2003).

Investigation into abused women’s experiences suggests that professionals’ attempts to engage in abuse screening and provide safe custody outcomes are problematic. Through this research, women report that their claims of abuse are minimized in custody processes and then ultimately ignored as they are pressured to accept often difficult and sometimes dangerous custody arrangements (Neilson, 2000; Ontario Association of Interval and Transition Houses, 1998; Shalansky, Erickson, and Henderson, 1999; Sinclair, 2000; Taylor, Barnsley, and Goldsmith, 1996; Varcoe and Irwin, 2004). Research into custody and access arrangements are also described as difficult for many abused women, as the typical result is a standard arrangement of sole custody to the mother with liberal access provided to the father, with safety precautions or restrictions offered in only a minority of situations involving violence (Bourque, 1995; Neilson, 2001; Rosnes, 1997; Schnall, 2000; Shaffer, 2004; Shaffer and Bala, 2003).

In an effort to understand how lawyers practice in situations involving violence against women, Neilson (2001) conducted interviews with parents involved in custody disputes and surveys with family law lawyers. Based on these combined findings, Neilson reported that many surveyed lawyers were not routinely asking women if they had been abused and, even when lawyers were aware that women had been abused, this information was often systematically removed from negotiation processes and legal documents. Neilson suggests that this occurs through a siphoning process wherein lawyers, as experts on the law, shift through women’s experiences deciding what legal entitlements and rights will be accepted by the courts and by other lawyers (see also Beaman-Hall, 1996; Robertson, 1997; Smart, 2002).

Only a third of the lawyers in the Neilson (2001) study reported including women’s allegations of abuse in legal documents. When allegations were included, these were framed as concerns about the well-being of children and not as concerns about the safety of women. Neilson’s surveyed lawyers also reported that they seldom advise clients to seek restrictions on or termination of access. Overall, the result of these lawyering practices is standard custody settlements with sole custody to the mother with liberal access to the father or, in some cases, joint legal custody with primary residence to the mother (Neilson, 2001).
Unlike lawyers who represent clients’ interests, custody mediators act as neutral process facilitators to empower former partners to negotiate within a cooperative atmosphere in an effort to arrive at jointly designed, voluntary agreements (Irving and Benjamin, 1995, 2002; Landau et al. 1997). Some mediation literature suggests that there is no role for mediation practice in situations involving violence, as the process itself poses danger to the non-abusive partner (Grillo, 1991; Kelly, 1995; Maxwell, 1999). Other literature, however, indicates that screening protocols aid mediators not only in identifying situations in which abuse has taken place, but to decide if the violence is too severe to proceed or determine what modifications to the mediation process, such as individual caucusing as opposed to face-to-face negotiation and agreements that include neutral exchange sites, supervised exchanges, and supervised access, need to be in place to keep victims safe (Irving and Benjamin, 1995; Landau, 1995; Maxwell, 1999; Neilson, 2001; Newmark et al., 1995; Pearson, 1997; Thoennes, Salem, and Pearson, 1995).

Two studies examined mediation outcomes in cases involving violence where mediators used abuse protocols, such as screening modified mediation practices (Magana and Taylor, 1993; Mathis and Tanner, 1998). Although both studies determined that mediators were able to identify cases involving violence through abuse screening and divert the more serious cases of violence into shuttle mediation (partners in separate rooms), only a limited number of the final mediated agreements included safety mechanisms. However, even the agreements with safety provisions stipulated that these were temporary, which requires these abused women to return to mediation and justify the extension of these mechanisms (see also Hahn and Kleist, 2000; Hart, 1990).

A recent review of 200 mediation reports within a court-mandated program found similar results (Johnson, Saccuzzo, and Keon, 2005). Although mediators identified the presence of abuse in 40% of family situations, they failed to recognize violent situations even in cases where there were clear indications of abuse. These researchers suggest that the mediators were more likely to recognize violence in situations where the abuse was more severe and included involvement in the criminal justice system. Custody arrangements in these cases were also problematic, as outcomes for situations involving abuse and those that did not were joint legal custody. Further, these arrangements contained few provisions for supervised access or other safety modifications.

Custody assessors prepare written reports that evaluate the parenting abilities, family relationships, and the best interests of children in families involved in custody disputes (Lee et al., 1998; McGill, Deutsch, and Zibbell, 1999; Vandenberg, 2002). Most of the assessment literature outlines
procedures that should be followed by assessors and delineates what should be in assessment reports. Central in the identification of best practices is the recommendation to thoroughly and objectively investigate allegations of sexual and physical abuse (Austin, 2000; Bow and Quinnell, 2001; Lee et al., 1998; Powell and Lancaster, 2003). A survey by Bow and Boxer (2003) asked 148 masters- and doctoral-level clinical psychologists specializing in child custody assessment about their practices in situations involving domestic violence. Seventy-six percent of these assessors suggested that the allegations greatly or extremely affected their work and that they supported allegations of violence in an average of 57% of cases. Despite this focus on investigating and attending to allegations of abuse, these custody assessors also reported that they favor joint legal custody, as children’s best interests are served by contact with both parents after separation or divorce. Other surveys of custody assessors’ views revealed a similar pattern with 73% (of 198 assessors) in one study favoring joint legal custody (Bow and Quinnell, 2001) and 46% (of 201 assessors) in another (Ackerman and Ackerman, 1996/1997).

Taken together, this research suggests that despite documented evidence of screening, information about intimate relationship violence appears to have little to no impact on final negotiated outcomes, as the majority of custody arrangements result in some form of unrestricted access or joint legal custody without safety provisions (Bow and Boxer, 2003; Johnson, Saccuzzo, and Koen, 2005; Magana and Taylor, 1993; Mathis and Tanner, 1998; Neilson, 2001; Shaffer and Bala, 2003). Given this, it is necessary to explore if and how family law lawyers, mediators, and assessors screen for intimate partner violence and then examine the actual practices and procedures in which they engage once this information has been revealed. What specific questions are being asked to gather information about abuse and what images do professionals hold about battered women? What information about abuse is taken as significant and how is it made relevant or not to custody recommendations and decision-making?

**METHODOLOGY**

The chosen design for this study is institutional ethnography, which is a method designed by Smith (1986) to uncover how the practices within various institutional settings are constraining individuals’ lives. Institutional ethnographers take the standpoint of a group that is marginalized in a particular setting. Research begins with these experiences as a problematic and the aim is to explicate the routine practices through which individuals’ lived experiences are marginalized. This study begins in the standpoint of
women who experience relationship violence and access the family law system to obtain distance, safety, and independence from former partners. The overall research objective is to document the professional practices through which women’s experience of violence is understood and whether and how these influence custody arrangements.

**DATA COLLECTION, SAMPLE, AND ANALYSIS**

Participation was sought through Internet searches of professional associations, such as the Ontario Family Mediation website, the Ontario Department of Justice website, The Ontario College of Social Workers and the Ontario Association of Social Workers, and Internet searches of lawyer’s websites. Additional participants were recruited through a simple snowball technique through which already interviewed participants were asked if they could supply names of other potential participants. Professionals were asked if and how they screen for violence in the lives of their women clients and what images and understandings they hold about domestic violence and abused women. Last, a series of questions focused on the routine practices and processes they follow once they determine that a woman has been abused.

In-depth interviews with 16 Canadian family law professionals, six family law lawyers, three mediator/lawyers, three mediators, two mediator/assessors, and two custody assessors were conducted. All of the lawyers were in private practice. Mediators varied in terms of primary professional background, as some were lawyers, others held social work degrees, and one was a psychologist. Mediators who were social workers also stated that they performed other roles in and around the family law system, such as parenting coordinators, child/family assessment counselors, marriage and divorce counselors, and facilitators of parent support and education groups. All of the custody assessors, except one psychologist, were social workers. Most of the mediators and assessors were in private practice but some worked within public court services. All interviewed professionals were women, except for one male lawyer. The majority of these individuals practiced within Ontario, while two, one mediator and one assessor, practiced in British Columbia. They also varied in years of experience, as some had only 2 to 3 years of practice experience, while others were in practice for 25-30 years.

As interviews were completed, they were transcribed and read carefully. Interviewing and data analyses were iterative. As one interviewee supplied information about a particular practice or procedure, subsequent participants were asked about these same processes. Analysis of the interview transcripts
began with careful listening to each recorded interview and highlighting of important pieces of text within the transcripts. The constant comparison method was used to move between highlighted text pieces within and across the transcripts (Seale, 1999).

**FINDINGS**

**Screening for Abuse**

All of the interviewed professionals clearly stated that knowing whether a woman had been abused is important and informative to the work they perform. For some, screening for intimate violence simply meant asking women if they had been abused. For the majority of interviewed professionals, however, screening involved a detailed process of asking multiple questions about specific violent incidents. The purpose is to find out as much detail as possible, including what abuse occurred, when, how often, what instruments were used, what belittling or emotionally abusive words were said, and what injuries resulted.

Through discussion of these screening practices, professionals revealed that they make clear distinctions about what constitutes an abusive relationship and what does not. This difference was based on assessment of the frequency and severity of specific incidents, especially physically violent acts. The designation of “true violence” seemed to be saved for “real situations” of domestic violence, including persistent patterns of slapping, hitting, kicking, derogatory name calling, belittling, threatening with weapons, and so on. Some of these interviewed professionals held the category of “seriously abused women” or “truly violent relationships” for the very worst situations, referring as one mediator/assessor did to “reports in the newspaper of women being murdered by their partners” or, as in the case of one mediator/lawyer, “asking women if they feel that their lives are in danger.” Women’s experiences that do not fit these rather extreme patterns or levels could be dismissed as lesser forms of abuse. Emotional abuse was described as important, but then also dismissed as very prevalent, as many professionals simply stated that “that is just the way that it is during separation/divorce.”

Some interviewed professionals also spoke of searching for other patterns of behavior beyond just severity. One group focused on the behavior or demeanor of women. The expectation is that women who are “truly abused” will behave in particular ways, for example, crying, looking down at the floor, hesitating in speaking, deferring to partners, speaking softly, and being frightened and hesitant to reveal any information:
It’s really hard to describe the different levels. It’s kind of intuitive and I just know that it is there when I pick up the signs, and they avoid talking about it is sometimes a sign, if their eyes are averted when I ask questions. If they hesitate a lot and take a lot of time before they speak. And I just look for these signs and symptoms (Mediator/Lawyer 002).

I look for the emotionality with which they first resist telling me and then finally tell me. Be leery if they reveal too much too fast. So by the second or third interview, there should be someone crying and telling you that they do not want to talk about this, that it hurts too much. And be able to say, yes I know, we will take time and help me to know, and I think that this is probably the first time you are telling any one. They often don’t tell anyone, especially family (Assessor 001).

It is clear from the above quotations that these professionals expect abused women to fit a particular image of a victimized woman. The danger is that women who do not exhibit these victim behaviours will not be recognized as abused women.

Another group described searching for patterns around the timing of the abusive behaviour. If abusive actions occurred largely around the time of separation/divorce or seemed somehow more severe during that time, then some professionals stated that they named these behaviours as separation violence or characterized the relationship as high conflict:

At the point of separation, somebody threw something or somebody hit someone, not a long-standing pattern of woman abuse. So I don’t see a lot of that of the extreme type but I do see a lot of high conflict (Mediator/Assessor 002).

Because divorce is very stressful, pretty high conflict time and some people are able to manage that and some people are into a physical way of dealing with it and they just become physical just at that time and at no other time would they be physical, and then there are other times when the relationship has had some or other form of intimidation and violence and threat in the form of outright violence throughout the relationship, and that is the reason for the relationship ending and becomes high conflict then… some people can look quite pathological when they are going through a divorce. They are really quite okay people, they are just going through a really difficult time. They can look a little off but they are basically intact people. Other people are not, and it takes really careful assessing skills to see whether or not because of the situation or because it is characteristic for them (Mediator/Assessor 001).

Divorce and the negotiation of custody and access are constructed as emotional events, which somehow seem to create violent behaviors. These incidences of violence are named as “separation violence” or “high conflict”
with limits placed on what could be considered abusive either through the way in which minor physical pushing was normalized or emotional abuse in the context of separation/divorce was discounted.

Still others, namely lawyers, reported that as individuals, they recognized violence against women as a broad, multidimensional construct, including emotional, physical, and financial forms of abuse. This group described struggling to bring this broader understanding into a system that only accepts more evident or severe physical abuse as indicative of an abusive relationship:

*I like the expression wife assault; I use assault because courts hear abuse and they do not accept that as assault. I know that the feminist community has been saying abused women and in fact, when I was first in practice, it was battered women, but they have been using that for a long time because they want to include psychological abuse and emotional abuse and financial abuse, and I understand that but I have a different job, which is that I have to convince unbelieving judges that this really happened and it is really unacceptable. I have to talk about wife assault, because I think that that is an expression that gets a judges attention and gets them to believe [...] with emotional and psychological abuse that did not include any physical assault, many family law lawyers would encourage their clients not to make a case or attempt to make a case on the basis of that because they would convince their clients of two things: the difficulty of proof and the fact that judges will minimize and even dismiss it. And I regret to say that they would be right* (Lawyer 001).

Ultimately, even this group must also focus on severe incidents of physical violence, as this is the accepted construction of abuse within the family law system.

**Professional Practices**

Professionals described their screening practices as a means to identify relationships in which violence had occurred and to determine if this abuse was serious enough to warrant changes to what would be their otherwise normal custody decision-making procedures. Many spoke of colleagues who did not engage in this practice. In contrast, they described their practices as being concerned with the welfare and safety of abused women. What emerged through these interviews’ discussions, however, is that these screening practices are simultaneously a means to identify abusive relationships and a method to ensure that these complex situations involving fear, danger, isolation, emotional abuse, and lack of evidence, are bracketed and efficiently managed. The following sections detail how this occurs through the routine practices and processes of each professional group – lawyers, mediators, and assessors.
In interviews, many of the lawyers described the work they do as convincing judges that a woman’s experiences of abuse are relevant and important to determinations about child custody. They described how they pulled out specific incidence of severe physical and emotional violence from women clients’ stories and then worked to connect these to legal issues. In attempts to do this, they were constrained by a legal discourse of “what judges are prepared to listen to” and “what a policy or legislative framework based on children’s best interests and the no-fault divorce” will allow.

What this means is that in order to make women’s experiences of abuse relevant and actionable, legal documents needed to contain a “thick description” of violent incidents:

First we set out her history, the history of the marriage, the history of the relationship, and the history of that abuse; we would detail the extent of that abuse and the form of it, whether it is physical abuse or sexual abuse or to what degree of emotional or psychological abuse that we could… and we would detail what that is about. And we go, in her instance, in terms of her history, how frequent and how severe it is. Then we discuss the injuries. Then we look at what kinds of evidence to support those allegations that might exist (Lawyer 003).

I would put stuff in the affidavit that says specifically, “he called me a fucking bitch.” And you put these words in the court papers to be as shocking as possible, you just want to make it as shocking as possible: “He called me a slut in front of the children or he threatened to go get his gun and shoot me in front of the kids”… you want to put those things in and give as many specific examples as possible and not just “He abused me.” Not just “I am afraid of him,” but “I am afraid of him because he has done this on March 29th: he took out a knife and held me against the wall and stabbed me with it” (Mediator/Lawyer 002).

The first thing I do is get a very detailed sense of what has happened. I need to know if it was an incident 10 years ago, a history of incidents, and what happened most recently, and does it look like it will happen again. And I need to get a lot of details because if I end up going to court… the court sees these allegations all of the time, and that sounds really sick but I remember one of my early cases, I had a client whose husband threw a beer bottle at her head and he missed. The judge was trying to send them to mediation and I was appalled because the judge was trying to push the clients into mediation. So I find that, like any other issue, the more detail you have the more persuasive it is, and therefore you really need to get into in some depth with your clients (Mediator/Lawyer 001).

The function is to make these abusive moments relevant for constructing legal arguments for restraining orders and/or to explain the necessity for limitations or restrictions to access. These are not usual outcomes for child custody cases. The norm is as much access as possible for the non-custodial
parent (i.e. liberal as opposed to restricted or limited access). In order to construct arguments against these norms, lawyers must work to convince judges that the abuse has been severe enough, that there is objective evidence to back these claims of violence, and that what is being asked for is “reasonable” given the severity and level of the violence.

Lawyers then described how, once judges and other lawyers have been convinced of the seriousness of the allegations, they have to connect these abusive acts to harm to the children. This is the only means through which women’s experiences of abuse can be made relevant to custody decision-making, if the abusive behaviour occurred in front of the children or that the behaviour is so frequent that children will be exposed to continued conflict and violence during access exchange times:

*So what you have to do is that any argument that you put forward has to directly relate to parenting. So you do not have to say – I am not suggesting that the parent has hurt the children but the fact of abuse between the parents is only relevant as it relates to custody and access if it affects the children. That is often a difficult thing for the client to understand* (Mediator/Lawyer 001).

Legal arguments about custody have to be made in reference to the impact of abusive behaviour on the child or children and/or impact on future parenting. This was clearly and succinctly stated by one of the lawyers: “to make the judge believe that abusing the mother in front of the kids is tantamount to abusing the kids” (Mediator/Lawyer 002). Violent behaviour experienced by the mother is directly bracketed by this requirement to focus only on harm to the child or children. These lawyers then are screening for violence and inserting thick descriptions of specific abusive incidents into legal documents and negotiation processes, yet the information is bracketed as decisions about custody have to do with parenting only, and not judging or intervening in the relationship between the parents.

All of the interviewed mediators discussed screening as a means to know if mediation would be an appropriate process in a particular family situation and then, if yes, to know what specialized mechanisms were needed to keep women safe during the process. Interviewed mediators stated that once these decisions have been made and the safety mechanisms are in place, they proceed with the main business of the mediation process – negotiation of child custody. Any discussion of abuse must then be kept out of the mediation session because bringing these into the discussion could be dangerous, but also because allegations of abuse disrupt the mediation process:

*When you have a person that is stuck in their past and they cannot get beyond that, then they are not ready for mediation. Because in order to mediate you have to be thinking about moving forward. And if you are so*
stuck there, two things are going to happen: she may get angry and she may become unreasonable in her anger, which may cause all kinds of problems in the mediation, or, and most likely, she will be so unfocused that she doesn’t really know what she really wants or needs (Mediator 002).

I need them to feel comfortable and if they are frightened and if they are flooded by emotions and they can’t think straight in the process then it’s useless for them. Then I don’t want to put them through it. It is way too difficult for someone who is actually terrified – women or men… yeah and then you look at that and then you say, “Well, is that going to be a problem for you? Is that going to get in the way? I mean is that going to be a problem that gets in the way?” If there have been threats of violence then we want to make sure that that doesn’t contaminate the mediation for sure (Mediator/Assessor 001).

One of the reasons we made sure we developed the protocol is, in the early days, when we were still feeling our way around this process, the lawyer had not seen fit to disclose to us anything about that and when we were going through the process and I am trying to apply a little bit of pressure for a settlement, all of a sudden this lady started to scream and say that she had been abused and beaten up badly by this person (Mediator/Lawyer 003).

Past relationship violence must be bracketed, kept from entering into the negotiation process, as the allegations or abused women’s anger and fear can emerge and distract or even completely derail the mediation process and the possibility of reaching a resolution.

Once screened and assessed, intimate violence is regarded as separate from the parenting issues that are the main “work” of the process and the primary goal, which is the development of a custody agreement:

Well, we don’t usually talk about it during a mediation. Usually, we talk about what they are trying to focus on. No, we don’t usually discuss it when we are doing the work. We discuss it before in terms of what impact that is going to have and just acknowledge that I am screening for it... well, I guess when I am mediating I really have a job to do, to get them to work on what they are supposed to be working on, and the past is there but I can not change the past, and I do not want them going to the past because I am trying to move them into the future. And I try to get present focused and if you need some time out to calm down about what you are talking about then that is okay, but let’s not try to treat this as such as big deal (Mediator/Assessor 001).

Violence against women is again bracketed as mediators largely regard women’s allegations of abuse as potential interruptions that have to be managed so as not to thwart the mediation process. Any suggestion that allegations of violence should enter and be an important consideration with regard to parenting issues was not discussed by these mediators. In fact, interviewed mediators were clear in stating that the role of the mediator
is not to judge behaviour, but to facilitate and manage a fair process. Past relationship violence is “de-emphasized” and “not treated as such a big deal,” as concern is focused only on the management of behaviour occurring within mediation sessions.

For interviewed assessors, screening for and investigating allegations of violence was described as the main work of writing custody reports. Assessors described asking directly about family violence and then carefully searching for collateral evidence of this abuse:

*I just gather a history, a chronological history of the relationship and the breakdown of the relationship, if there was violence or conflict during the relationship and then what broke down the relationship and whether there was violence or conflict at that time, and what has been going on since that time, and whether the violence or conflict has been going on into the post-separation period. What they have done to keep themselves safe and what their current concerns are, and then what their concerns are around their children, and then I will investigate it and see if their concerns are valid. And if in my mind I feel that the concerns are valid then I will come up with recommendations around that. And if I feel that their concerns are rather exaggerated then I will make recommendations that reflect the level of concern and that are useful and accurate* (Mediator/Assessor 001).

Assessors directly investigate the history of family relationships and any allegations of violence to determine “if the concerns are valid or exaggerated.” Like lawyers in determining legal relevance, assessors described how they determine if the concerns and experiences of abused woman are severe enough to warrant bringing these into final custody recommendations and reports. If assessors focus on physical abuse and/or severe acts of abuse as being valid and dismiss other allegations as being less severe or exaggerated, then many women’s concerns can be dismissed and bracketed from entering into custody decision-making processes.

Once the information is collected, assessors built this into a custody report. Although each assessor’s description of their individual practices differed slightly, there was overlap in their accounts of how they structure the final custody report. Assessors describe beginning each report with a section entitled, “History of the Relationship.” This section contains the information about abuse and violence. This is followed by other sections that describe the relationships between each parent and child, outline the views of the children, and assess parental capacity:

*I would go through their individual history and standard protocol about their individual history – specific questions I ask everyone, and then the history of the marriage, and I ask specific questions about the marriage and the allegations and about what happened, and I get examples. And then I do an assessment of parenting capacity, and that can be done a number of*
different ways but one is a fairly structured interview where I ask the same questions of everybody and various things about parenting (Mediator/Assessor 002).

This section, parental capacity, is the last and most important section, wherein the ability to do the job of everyday parenting is assessed. This controlled flow of information physically separates past relationship violence from parenting issues. This is accomplished as though what happened within the history of a relationship between two parents, including abuse of one parent by the other, does not overlap and impact concerns about parenting, particularly something called “capacity to parent.” In the end, one assessor stated that the effect of this is that custody decisions are based on who can do the job – feed the children, get them to school on time, and so on. Allegations of abuse are included in the final report, but then neatly bracketed with the “History of the Relationship” section.

CONCLUSION

A limitation of design and findings described in this chapter is the reliance on qualitative interviews and analysis. Thus, the findings are not a comprehensive examination of professionals’ practices, but rather in-depth information gleaned from a smaller number of interviews. A further limitation is that sampling occurred through Internet searches and snowball sampling. The sample is not representative of all family law professionals, but those that agreed to be interviewed. As the majority of interviewees practice within Ontario, the resulting description of practices is limited to this jurisdiction.

The strength of the analysis is that it provides in-depth data to document the ways in which screening for intimate relationship violence by family law professionals results, simultaneously, in the recognition of some women’s experiences and the silencing and bracketing of other women’s. These two contradictory outcomes exist because of the ways in which professionals conceptualize their understandings of what constitutes a “truly violent” or “severely abusive” relationship and how custody decision-making processes largely ignore past relationships between parents to focus on resolution of future parenting arrangements.

In hearing women’s experiences, these professionals begin questioning processes: “Is this dangerous? Is this severe? Is this real violence?” The focus is on specific behaviours perpetrated by an abuser or the demeanor of women in response to this behaviour. This questioning begins in intimate moments of women’s lives and pulls specific incidents of abuse moments
from the context of women’s lives, and then treats these as facts that can be submitted to some objective framework or patterns that constitute a violent relationship. If professionals understand intimate violence in narrow ways as mostly extreme physical violence, then they will miss the complexity of women’s experiences, which includes emotional violence, isolation, and psychological fear. Worse, if women’s experiences do not fit within these narrow confines, professionals can minimize the allegations and then dismiss these as irrelevant to custody decision-making (Bennett, Goodman, and Dutton, 2000). This focus on severe physical harm results in only the most severely and obviously abused women being identified and offered safety mechanisms or processes (Phegan, 1994/1995).

Fully understanding women’s experiences of violence requires contextualized knowledge that begins in how women themselves articulate their experiences – the daily lived reality of abuse and the pain, fear, and anger of violent relationships. The purpose of this contextualized knowledge is to present more holistic versions of women’s experiences and, as described by one lawyer, make judges see the situation through the “eyes of the victim.” Bringing knowledge of women’s lived realities into the family law system also provides a more meaningful understanding of past family relationships from which decisions about future parenting arrangements can be made.

The movement toward increased screening and recognition of violence against women has not been accompanied by an expansion of resources to deal with these now identified situations (Bennett, Goodman and Dutton, 2000; Van Hook, 2000; Robinson, 2006) or by changes in legislation that would provide professionals with the ability to respond appropriately to women’s concerns. Many of the professionals interviewed for this research spoke of the difficulty of working with situations involving intimate relationship violence, including the need to change what are “normal” procedures, by providing extra time to make women comfortable enough to disclose abuse. Beyond this, professionals revealed that much of their practices in situations involving abuse were focused on identifying abused women and then findings ways to ensure women’s allegations and safety concerns from impacting or contaminating efficient resolution of custody arrangements. Bracketing women’s experiences is necessary as the overall focus is of the Canadian family law system is not on past relationships between parents, but on future parenting arrangements that are believed to be in children’s best interests. In this way, established professional practices have not shifted along with the increased focus on identifying abused women.

In practice, children’s welfare has been understood to require continued and significant contact with both parents, except in situations involving severe violence or direct abuse of the child or children (Ackerman
and Ackerman, 1996/1997; Beaman-Hall, 1996; Vandenberg, 2002). The result is that the safety of adult women is not considered relevant within custody decision-making processes unless the abuse has been severe or also puts children directly at risk of harm. Professionals must minimize and then dismiss women’s experiences that do not reach this threshold. If professionals engage in practices to identify abused women, then these professionals must also be accountable in taking the time to fully understand women’s situations. Additionally, change in legislation is required to shift away from the notion that children’s best interests can be determined in the absence of considering the safety and well-being of the parents who care for them on a daily basis. If women are placed at risk through custody arrangements that do not specify any safety mechanisms or cannot be enforced, then their children are also at risk.

Overall, intimate relationship violence screening is a means for family law professionals to identify situations involving woman abuse, so that women’s complex experiences could be bracketed and efficiently managed toward resolution. The cost of these practices can be high for individual abused women, as they are kept in close contact with former abusive partners and placed at greater risk of experiencing continued abuse.

**Bibliography**


Varcoe, C. and L. Irwin (2004). “If I killed you, I would get the kids’: Women’s survival and protection work with child custody and access in the context of woman abuse,” *Qualitative Sociology*, vol. 27, no. 1, pp. 77-99.