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MAKING MATTERS WORSE: AN ANALYSIS OF PARAGRAPH 22(2)(i) OF THE *CHILD AND FAMILY SERVICES ACT*

Sophie Fiddes*

ABSTRACT

The 2017 amendments to Nova Scotia's *Child and Family Services Act* were made with the purported purpose of better protection of children. This paper assesses the amendments to paragraph 22(2)(i) and the addition of subsection 24(2) to the *Act* that changed the law in relation to children who are exposed to intimate partner violence. This paper argues that the amendments have had a negative effect on children and their families, resulting in an increase of children in temporary care since 2017. The paper concludes that intimate partner violence would be better addressed by placing domestic violence considerations in the best interests of the child analysis as well as increasing funding and expanding services for families.

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INTRODUCTION

In 2017, the Government of Nova Scotia amended the *Children and Family Services Act* (“*CFSA*”).¹ This paper will discuss amendments to paragraph 22(2)(i) and the addition of sections 24A to the *CFSA*. The original version of paragraph 22(2)(i) stated that a child was in need of protection where “the child has suffered physical or emotional harm caused by being exposed to *repeated* domestic violence by or towards a parent or guardian and the child’s parent or guardian fails to obtain services or treatment to remedy or alleviate the harm.”² Paragraph 22(2)(i) now reads:

A child is in need of protective services where the child has been exposed to, or has been made aware of violence by or towards (i) a parent or guardian, or (ii) another person residing with the child and the parent or guardian fails or refuses to obtain services or treatment, or to take other measures to remedy or alleviate the violence.³

Subsection 24A(4) makes the failure to report that a child may be in need of protection to the agency punishable by a fine of up to \$2,000, or imprisonment up to six months, or both.⁴ The purported purpose of the amendments was to provide further protection of children.

This paper will argue that despite the Legislature’s intention to enact amendments to “improve matters by intervening earlier and strengthening families,” changing the language of the domestic violence provision makes it an ineffective tool to achieve this goal.⁵ The amendments directly contradict the *CFSA*’s commitment in its preamble to a “least invasive” intervention as it results in a highly intrusive model where even a single incident with a child present can result in a report. The amendments have had a negative effect on children and their families including a notable increase in children in temporary care since 2017 (up between 11–16

¹ *Children and Family Services Act*, SNS 1990 c 5, s 22(2) [*CFSA*].

² *An Act Respecting Services to Children and their Families, the Protection of Children and Adoption* (Final Unofficial Version: Royal Assent Received: 2017) [emphasis added].

³ *CFSA*, *supra* note 1.

⁴ *Ibid.*

⁵ Rollie Thompson, “Brief to the Law Amendments Committee on Bill 112, Amendments to the Children and Family Services Act” (16 November 2015) at 8, online (pdf): *Nova Scotia Legislature*

<https://nslegislature.ca/sites/default/files/pdfs/committees/62_2_LACSubmissions/20120151/20151116-112-015.pdf> [perma.cc/PW2K-D9ZY] [Thompson (2015)].

percent).⁶ In many cases, it adds to the risk that a victimized, loving, and committed parent (usually a woman), will fear that involving protective services will result in losing her children, or being unable to protect them.

This paper begins by reviewing the research on women's exposure to intimate partner violence ("IPV"), the impact of exposure to IPV on children, the intersection of violence and other oppressions, the challenges associated with addressing such violence in the child protection context, and the controversies and issues surrounding current child welfare practice. It will then review the Recent Canadian research into how IPV provisions impact child protection practice.

Other jurisdictional responses to this issue are then explored, including a comparison of case law in Nova Scotia and Ontario. This paper will conclude that "strengthening families" in the IPV context would be better addressed by placing domestic violence considerations in the best interests of the child analysis, and by increasing funding and expanding services for families to access.

I. RESEARCH METHODOLOGY

The paper's focus is the legislative response to children's exposure to IPV in the child protection context. A range of reports, journal articles, websites, podcasts, legislation, and case law, were used to examine the issue.

II. TERMINOLOGY

There are many terms that define the paper's subject. In the past, the term "domestic violence" was used to describe abuse in personal relationships. However, it has been recognized that abuse can exist in all types of personal relationships irrespective of marital status, gender identity, sexual orientation, or type of intimate relationship.⁷ This paper thus employs the more inclusive term "intimate partner violence" used in the literature today to describe the various forms of abuse that can

⁶ Rollie Thompson, "Child Protection in Nova Scotia: Community Services Committee" (3 September 2019) at 3, online (pdf): *Nova Scotia Legislature* <https://nslegislature.ca/sites/default/files/pdfs/committees/cs/subm/cs_20190903.pdf> [perma.cc/M88Q-XG9F] [Thompson (2019)].

⁷ Maureen Sayres Van Neil, "Overview of Intimate Partner Violence" in Rahn Kennedy Bailey, ed, *Intimate Partner Violence: An Evidence-Based Approach* (Los Angeles: Springer Cham, 2021) 1 at 2–3.

take place in intimate partner relationships including physical, psychological, emotional, sexual, and financial.⁸ These forms of abuse are commonly employed as a means of coercing, controlling, or dominating the victim.⁹

III. CHILDREN'S EXPOSURE TO IPV

Children's exposure to domestic violence is a significant and concerning social issue in Canada. It has been estimated that children witness more than half of IPV incidents in Canada.¹⁰ Children's exposure to IPV is one of the two most frequently occurring categories of child maltreatment.¹¹ 34 percent of annual investigations identify exposure to IPV as the primary category of maltreatment.¹² The coronavirus pandemic has worsened this issue, where measures taken to control the disease's spread have resulted in the isolation of families, an increase in IPV, and pressure on and lack of access to services.¹³ Given the harmful impact that exposure to IPV has

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Catherine Kaukinen, Rachel Powers & Silke Meyer, "Estimating Canadian childhood exposure to intimate partner violence and other risky parental behaviours" (2016) 13:2-3 *J Child Custody* 199 at 210–211.

¹¹ Public Health Agency of Canada "Canadian Incidence Study of Reported Child Abuse and Neglect: Major Findings" (2008) at 2, online (pdf):

<<https://cwrp.ca/sites/default/files/publications/CIS-2008-rprt-eng.pdf>>

[perma.cc/EFK3-5J78]. This is the most recent national data available regarding Canadian children who come to the attention of child welfare authorities. Lack of data is currently a significant issue facing child welfare. This has been attributed to the difference in legislation and organizational structure of service delivery in Canadian provinces. Most provinces also experience problems with their ability to measure and report, resulting in limited recent knowledge about the needs of families and children in Canada. For more, see

"Understanding Social Work and Child Welfare: Canadian Survey and Interviews with Child Welfare Experts" (2018) at 78, online (pdf): *Canadian Association of Social Workers*

<https://www.casw-acts.ca/files/documents/CASW_Child_Welfare_Report_-_2018.pdf> [perma.cc/WQL7-F73H].

¹² *Ibid.*

¹³ The Alliance for Child Protection in Humanitarian Action, "Technical Note: Protection of Children During The Coronavirus Pandemic (Version 1)" (March 2019) at 3, online (pdf): *UNICEF*

<[https://www.unicef.org/media/65991/file/Technical%20note:%20Protection%20of%20children%20during%20the%20coronavirus%20disease%202019%20\(COVID-19\)%20pandemic.pdf](https://www.unicef.org/media/65991/file/Technical%20note:%20Protection%20of%20children%20during%20the%20coronavirus%20disease%202019%20(COVID-19)%20pandemic.pdf)> [perma.cc/3HKL-6WMJ].

on children's development, efforts to protect children from exposure must be effective and far reaching.¹⁴

One of the most challenging IPV policy issues is how to effectively protect children. Under *Article 19* of the *United Nations Convention on the Rights of the Child*, Canada has an obligation to protect children from domestic and family violence.¹⁵ In Canada, child welfare is an area of provincial jurisdiction with each province having its own legislation and institutional structure resulting in child protection regimes varying from province to province.

IV. LITERATURE REVIEW

The Complexities of Addressing IPV: Barriers to Reporting

There are significant complexities involved in addressing IPV. First, many IPV survivors are hesitant to report the abuse to authorities. If they do share, the survivor may minimize or rationalize the extent of the abuse that they suffered.¹⁶ This can be a result of feelings of embarrassment, lack of trust, and fear that the professional that they are sharing with cannot handle the information.¹⁷ Rise Women's Legal Center has shown that survivors of violence have not been believed or have been disregarded when sharing their experiences.¹⁸ In the same study, Rise found that some professionals do not want to hear about the abuse, and actively tell their clients not

¹⁴ David A Wolfe et al, "The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique" (2003) 6:3 *Clinical Child & Family Psychology Rev* 171 at 182 [Wolfe et al].

¹⁵ *Convention on the Rights of the Child*, GA Res 44/25, UNGAOR, 4th Sess, Supp No 49, Un Doc A/44/49 (entered into force 20 November 1989, ratified by Canada 13 December 1991) at Article 19.

¹⁶ Peter Jaffe, Claire Crooks & Nick Bala, "Making Appropriate Parenting Arrangements in Family Violence Cases: Applying the Literature to Identify Promising Practices" (2005) at 22, online (pdf): *Public Safety Canada* <<https://www.publicsafety.gc.ca/lbrr/archives/cnmcs-plcng/cn000032847123-eng.pdf>> [perma.cc/BFR4-DPQY] [Jaffe, Crooks & Bala].

¹⁷ Peter Jaffe, Claire Crooks & Samantha Poisson, "Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes" (2003) *Juvenile & Family Crt J* 57 at 62 [Jaffe, Crooks & Poisson].

¹⁸ Zara Suleman, Haley Hrymak & Kim Hawkins, "Are We Ready to Change? A Lawyer's Guide to Keeping Women and Children Safe in BC's Family Law System" (May 2021) at 11, online (pdf): *Women's Legal Centre* <<https://womenslegalcentre.ca/wp-content/uploads/2021/07/Are-We-Ready-to-Change-Rise-Womens-Legal-May-2021.pdf>> [perma.cc/6CP5-AK6Q] [Suleman, Hrymak & Hawkins].

to talk about it or report it to the court.¹⁹ This negatively impacts a survivors' ability to depend on the justice system to keep them safe or offer them protections in the future.²⁰ The survivor may also choose not to report the violence due to the fear that she will lose custody of her children, face reprisal from the abuser, fear that she will not be believed or the desire to keep her family together for her children's sake. There is also a fear that criminal proceedings will affect the abuser's ability to financially support the family. Other factors such as lack of self-confidence or feelings of self-blame and vulnerability from being caught in the cycle of abuse can also contribute to their decision not to report abuse.

Individuals from different groups also face additional barriers to reporting. Aboriginal women, immigrants, and visible minority women experience additional factors that exacerbate their situation including stereotyping, racial discrimination, social isolation, lack of service access, and marginalization.²¹ Indigenous women are over three times more likely to be a victim of spousal violence than their non-Indigenous counterparts.²² Despite this, reserve communities in particular lack access to relevant information and resources for women who have experienced IPV.²³ Indigenous women are especially unlikely to report the violence to the police given prior experiences of "being seen as criminal, being blamed, being seen as a victim or causing it themselves," and, for mothers, fears that child protection will become involved and apprehend their children.²⁴ Given that Indigenous children make up over half the number of children that are in care, such fears are warranted.²⁵ Indigenous women also report that they frequently experience "dual arrests" when they do call the police to report IPV. When the police arrive, they arrest Indigenous women for drug possession, public intoxication, or other factors that are unrelated to

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Public Health Agency of Canada, "Breaking the Links Between Poverty and Violence Against Women: A resource guide: The reality of poverty and violence" (2008), online: *Family Violence Prevention Resources - Women* <<https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/prevention-resource-centre/women/breaking-links-between-poverty-violence-against-women-resource-guide.html#toc>> [perma.cc/E8MJ-DJND] [Public Health Agency of Canada].

²² *Ibid.*

²³ *Ibid.*

²⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, "Reclaiming Power and Place: The Final Report on the National Inquiry into Missing and Murdered Indigenous Women and Girls" (2019) at 629, 632.

²⁵ Government of Canada, "Reducing the number of Indigenous Children in Care" (2016), online: *First Nations Child and Family Services* <<https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851>> [perma.cc/3GA3-EF7Z].

their call, rather than addressing the violence.²⁶ These factors raise formidable obstacles to Indigenous mothers reporting abuse or seeking treatment. If they do decide to report or seek treatment, the newly punishable mandatory reporting duty will likely result in child protection being called and her children being apprehended.

Women of visible minorities and women who are immigrants or refugees also face unique barriers. A person's immigration status under the federal *Immigration and Refugee Protection Act* can impact their ability to access provincial services such as social assistance, housing, and particularly special benefits for IPV survivors, which are only available to those who have a particular immigration status.²⁷ Further, immigrant and refugee women may be dependent on their husbands both financially and in terms of their status in Canada and, as such, may be hesitant to call the police for fear that the offender or they themselves could be removed from Canada.²⁸ Such factors make it increasingly difficult for them to be able to leave the relationship and act as significant barriers to reporting.

LGBTQ2S+ IPV survivors are also less likely to report the violence to authorities or access shelters or support services than cisgendered or heterosexual survivors.²⁹ This has been attributed to a lack of appropriate assistive agencies and services, fear of stigmatization, and a limited understanding of IPV within LGBTQ2S+ communities.³⁰ For survivors who have not yet come out, the fear of outing themselves may act as a barrier to confiding in family, friends, or the police for support, further alienating them in the abusive relationship.³¹ For survivors of IPV with disabilities, their limited access to resources such as law enforcement due to mobility limitations, social isolation, attitudinal and physical barriers of service agencies, and fear of retaliation from the perpetrator particularly because of their

²⁶ *Ibid.*

²⁷ Jennifer Koshan, Janet Mosher & Wanda Wiegiers, "Domestic Violence and Access to Justice: A Mapping of Relevant Laws, Policies and Justice System Components Across Canada" (2020) CanLII Docs 3160 at 3.8.8.

²⁸ Public Health Agency of Canada, *supra* note 21.

²⁹ Kevin Ard & Harvey Makadon, "Addressing Intimate Partner Violence in Lesbian, Gay, Bisexual and Transgender Patients" (2011) 26:8 J of General Internal Medicine 930 at 930 [Ard & Makadon].

³⁰ Jenna Calton, Lauren Cattaneo & Kris Gebgard, "Barriers to Help Seeking for Lesbian, Gay, Bisexual, Transgender and Queer Survivors of Intimate Partner Violence" (2015) 17:5 Trauma, Violence & Abuse 585 at 586.

³¹ Ard & Makadon, *supra* note 29 at 931.

dependence on abusive partners to meet their basic needs in some cases are barriers to reporting.³²

Finally, socioeconomic factors play a role in addressing IPV given that there is a strong correlation between IPV and poverty. Poverty marginalizes women, increases their risk of victimization, limits their choices, and prevents access to the means for women to leave abusive relationships.³³ Families involved in the child protection system are often experiencing poverty and rely on social assistance for economic support. One recent study revealed that in the majority of maltreatment investigations (98 percent), social workers did not make a referral to welfare or social assistance programs because families were already connected to such resources.³⁴ When children are apprehended, parents living in poverty lose crucial social assistance, such as the Canada Child Benefit, plunging them deeper into poverty making it increasingly difficult to prove to child services that they can provide for the needs of the child, including adequate housing.

The mandatory requirement to obtain services or treatment or to take other measures to remedy or alleviate the violence after a single incident of IPV in paragraph 22(2)(i) overlooks these significant and overlapping barriers that many women face in grappling with the violence that they are experiencing.

Impact of Children's Exposure to IPV

Children are commonly exposed to IPV in Canada. While most research under-reports actual exposure levels, it's clear that exposure is widespread with around 125,000 children experiencing IPV in their homes each year.³⁵ Such exposure is especially concerning given that IPV and child abuse are related occurrences, with 70 percent of child witnesses to violence by a parent against another adult in the home also reporting physical or sexual abuse during childhood.³⁶ These statistics likely

³² Caroline Muster, "The Silenced Voices of Hidden Survivors: Addressing Intimate Partner Violence Among Women With Disabilities Through a Combined Theoretical Approach" (2021) 36:2 *J of Women & Social Work* 156 at 157.

³³ Public Health Agency of Canada, *supra* note 21.

³⁴ Barbra Fallon & Melissa Van Wert, "Poverty and Ontario's Child Welfare Involved Population" (2017) 1–2, online (pdf): *Canadian Child Welfare Research Portal* <<https://cwrrp.ca/sites/default/files/publications/en/181e.pdf>> [perma.cc/6PK4-7FZ8].

³⁵ Martin Andresen & Shannon Linning, "Beginning to Understand the Economic Costs of Children's Exposure to Intimate Partner Violence" (2014) 5:4 *Intl J Child, Youth & Family Studies* 588 at 588.

³⁶ Statistics Canada, *Family Violence in Canada: A Statistical Profile, 2015*, by Marta Burczaya & Shana Conroy, catalogue No 85-002-X (Ottawa: Statistics Canada, 16 February 2017) at 3.

underestimate the actual occurrences of children's exposure to IPV given that it is notoriously under-reported making it difficult to get a complete picture of both IPV and family violence and quantify children's exposure to both.³⁷

Researchers have connected witnessing IPV to significant emotional and physical problems in children. Witnessing IPV can result in emotional and physical problems in children, including depression, low self-esteem, withdrawal, aggression, rebellion, hyperactivity, delinquency, and post-traumatic stress disorder.³⁸ Such effects from witnessing abuse can be equally harmful to those suffered by children that have been physically, sexually, or emotionally abused.³⁹

The problems associated with being exposed to IPV manifest in each child differently. Both indirect exposure to violence, such as overhearing the violence, and direct exposure to violence, such as seeing the violence or being harmed while trying to intervene, can be equally harmful.⁴⁰ Some children may not be negatively affected by exposure.⁴¹ A number of factors can contribute to how the violence impacts children, including the frequency, duration and severity of the violence, the age and stage of development of the child, and whether the child has a strong bond with and support of adults who do not engage in abuse.⁴² Individual traits can also impact a child's resilience after negative experiences including optimism, self-esteem, intelligence, creativity, humor, and independence.⁴³ While some children experience long-term psychological damage, others recover faster once the violence ends and they have a safe and stable relationship with the non-abusive parent.⁴⁴

Research shows that different outcomes for children who are exposed to violence can be attributed to their ability to manage external traits, such as family support and neighbourhood stability.⁴⁵

³⁷ Those who experience IPV often do not report for a variety of reasons including fear of stigma, shame, the belief that the abuse is a private matter, fear of Court system intervention or lack of trust in the criminal justice system.

³⁸ Jaffe, Crooks & Bala, *supra* note 16. See also Kendra Nixon et al, "Do Good Intentions Beget Bad Policy? A Review of Child Protection Policies to Address Intimate Partner Violence" (2007) 29:12 Children & Youth Services Rev 1469.

³⁹ *Ibid.*

⁴⁰ Wolfe et al, *supra* note 14.

⁴¹ Jaffe, Crooks & Bala, *supra* note 16.

⁴² *Ibid.*; Thompson (2019), *supra* note 6.

⁴³ Jaffe, Crooks & Bala, *supra* note 16.

⁴⁴ *Ibid* at 9.

⁴⁵ *Ibid.*

Children are not simply passive witnesses to IPV. Children who live with violence tend to interpret, predict, and assess their role in causing the violence, and worry about the consequences, problem solving, or steps necessary to protect themselves from the violence physically and emotionally.⁴⁶ Research has also refuted myths about children who are exposed to IPV. One such myth is that IPV has no impact on younger children. Research has counteracted this, with one recent study finding that children exposed to IPV during early childhood (children aged zero to five) had increased odds of being developmentally vulnerable in areas such as social competence and emotional maturity.⁴⁷ Another common myth that has been disproved is that not witnessing the physical assault means that the child will not be impacted by the IPV. Rather, it has been found that indirect exposure to IPV such as seeing the initial effects, experiencing the aftermath, or hearing about the event can have an adverse effect on children's development.⁴⁸

Finally, apprehending children from the non-abusive mother can lead to serious and lasting negative effects on children.⁴⁹ The negative consequences of witnessing violence are compounded when children are separated from their mothers, by increasing their fears of abandonment and further traumatizing them.⁵⁰ Children benefit from remaining in their homes, if that can be done safely.⁵¹ Removal of the source of IPV from the child's home is a preferable solution.⁵² However, since perpetrators tend to fail to comply with orders or agreements that achieve this, the "best practice" when the child and targeted parent have a close bond, is that the

⁴⁶ Alison Cunningham & Linda Baker, "What About Me? Seeking to Understand a Child's View of Violence in the Family" (2004) at 3, online (pdf): *Centre for Children & Families in the Justice System* <<https://www.acesdv.org/wp-content/uploads/2014/06/What-About-Me.pdf>> [perma.cc/YD4M-KGPP].

⁴⁷ Janelle Boram Lee et al, "Early Childhood Exposure to Intimate Partner Violence and Developmental Vulnerability at Kindergarten: Linking Canadian Population-Level Administrative Data" (2022) 7:3 *Intl J of Population Data Science* at 1.

⁴⁸ George W Holden, "Children Exposed to Domestic Violence and Child Abuse: Terminology and Taxonomy" (2003) 6:3 *Clinical Child & Family Psychology Rev* 151 at 154.

⁴⁹ "Failure to Protect" Working Group, "Charging Battered Mothers with 'Failure to Protect': Still Blaming the Victim" (2000) 27:3 *Fordham Urban Law J* 849 at 857.

⁵⁰ Kendra Nixon, "Leave Him or Lose Them? The Child Protection Response to Women Abuse" in Leslie M Tutty & Carolyn Goard, eds, *Reclaiming Self: Issues and Resources for Women Abused by Intimate Partners* (Halifax: Fernwood Publishing, 2002) 64 at 64 [Nixon].

⁵¹ Linda C Neilson, *Responding to Domestic Violence in Family Law, Civil Protection and Child Protection Cases*, Canadian Legal Information Institute, 2nd ed (2020), 2017 CanLIIDocs 2 at 17.6.5 [Neilson].

⁵² *Ibid.*

targeted parent resides with the child somewhere safe, such as in an effective IPV recovery program.⁵³

Impact of IPV on Parenting: Mothers and Fathers

Another important impact of violence to assess is its impact on mothers. This is important given that the “safety and well-being of the children is usually linked to the safety and well-being of the mother.”⁵⁴ Indeed, a supportive relationship between mother and child can provide a crucial protection against the risks of exposure to IPV.⁵⁵

The research focuses on women more than men because survivors of IPV are overwhelmingly female. In Canada, women made up 79 percent of police reported IPV victims in 2019.⁵⁶ Women who are abused often face significant physical and mental health risks including depression, PTSD, social isolation, and physical injury.⁵⁷ Women who experience IPV are subject to a combination of coercion, defined as “the use of force or threats to compel or dispel a particular response,” and control, that is “structural forms of deprivation, exploitation, and command that compel obedience indirectly by monopolizing vital resources, dictating preferred choices, microregulating a partner’s behavior, limiting her options and depriving her of supports needed to exercise independent judgment.”⁵⁸ A woman’s experience with abuse also differs based on identity. Race, sexual orientation, immigration status, class, disability status, and location impact women’s experiences “reinforcing their disempowerment and dictating their needs.”⁵⁹

As a result of the coercion and control women who experience IPV face, it is understood that it can be very difficult for women to leave violent and controlling relationships. Fears associated with attempts to leave the relationship include fear of increased violence against them or their children if they try to leave, fear of poverty

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Pamela Whitney & Lonna Davis, “Child Abuse and Domestic Violence in Massachusetts: Can Practice be Integrated in a Public Child Welfare Setting?” 4:2 *Child Maltreatment* 158 at 159–160.

⁵⁶ Statistics Canada, *Family Violence in Canada: A Statistical Profile, 2019*, by Shana Conroy, Catalogue No 85-002-X (Ottawa: Statistics Canada, 2019) at 29.

⁵⁷ Neilson, *supra* note 51 at 3.1.

⁵⁸ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford: Oxford University Press, 2007) at 228–29.

⁵⁹ Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* (New York: New York University Press, 2012) at 71–72 [Goodmark].

or lack of financial ability to leave, personal shame, loss of support from one's community, or fear of the police, courts or child protection agencies.⁶⁰ It is particularly difficult for minority women to leave given the additional barriers they face, such as fear of isolation within their cultural communities, family, cultural, or religious expectations to make their relationships last or keep their issues private, a lack of culturally competent support services, or lack of trust in law enforcement and government systems.⁶¹ Research shows that the majority of women trying to leave abusive relationships are subject to numerous forms of abuse including emotional, physical, psychological, and financial abuse.⁶²

If they do leave, family law and child protection systems are often not favorable to them given that, by fleeing with their children, they are pushing back against judicial beliefs of how abused women “ought to act” given the societal beliefs regarding the harms of child abduction.⁶³ This leaves women with a dilemma. Either they remain in the abusive relationship, thereby exposing their child to the abuse and risking intervention of the child protection system as a “bad mother” who cannot protect her child, or they fight for custody or flee, leading to doubts surrounding their experience of abuse or questions regarding their motives for leaving.⁶⁴

Several studies have also found that there is no evidence that experiencing IPV has a negative impact on a mother's parenting abilities.⁶⁵ Rather, abused women are generally nurturing and committed parents.⁶⁶ A study of mothers' perceptions on the impact of abuse reported that they focused their energy on preventing the abuse from impacting their mothering, attempting to make up for their partner's violence, and shielding their children from it.⁶⁷ The study found that the women placed mothering

⁶⁰ Critical Components Project Team, “Keeping Women Safe: Eight Critical Components of an Effective Justice Response to Domestic Violence” (2008) at 14–15, online (pdf): *Women's Shelters Canada* <https://endvaw.ca/wp-content/uploads/2015/12/8_critical_components_of_effective_justice_response.pdf> [perma.cc/3RZY-VBNM].

⁶¹ *Ibid.*

⁶² Jaffe, Crooks & Poisson, *supra* note 17 at 57.

⁶³ Goodmark, *supra* note 59 at 70.

⁶⁴ *Ibid.*

⁶⁵ Cecilia Casanueva et al, “Quality of Maternal Parenting Among Intimate-Partner Violence Victims Involved with the Child Welfare System” (2008) 23:6 *J Family Violence* 413 at 418–419; Sullivan et al, “Beyond Searching for Deficits: Evidence that Physically and Emotionally Abused Women are Nurturing Parents” (2001) 2:1 *J Emotional Abuse* 51 at 61.

⁶⁶ *Ibid.*

⁶⁷ Einat Peled & Inbal Barak Gil, “The Mothering Perceptions of Women Abused by Their Partner” (2011) 17:4 *Violence Against Women* 457 at 464.

at the top of their priorities, before their other roles as partners or friends and that “all their actions and thoughts as mothers focused on one aim: full and absolute provision of their children’s need- physically, emotionally and educationally.”⁶⁸ From a service provider’s perspective, some have observed that although mothers did their best in the circumstances, the energy required to try to manage the violent partner’s demands, violent incidents and the mental and emotional effects of violence left mothers with little energy to engage with her children in the usual or intended manner.⁶⁹ This suggests that mothers’ perceptions of their parenting abilities may not accurately reflect the reality, despite the importance placed on caring for their children.

While there has been less scrutiny of the parenting capabilities of men who perpetrate violence against their partners, research has shown that abusers are problematic fathers and perpetrate high levels of child abuse.⁷⁰ Abusers commonly use their children as part of their strategy to undermine and harm the child’s mother through directly and indirectly abusing their children, including lying to and manipulating the children, weaponizing the children, threatening mothers with taking their children from them, and disparaging mothers to lift themselves up in order to supersede the mother as the primary caregiver.⁷¹ Indeed, one recent Canadian study comparing fathers’ perspectives on co-parenting for those with and without a history of IPV found that the former had “overwhelmingly negative evaluations of ex-partners,” characterizing them as bad mothers and blaming them for the difficulties they have faced with co-parenting.⁷²

⁶⁸ *Ibid.*

⁶⁹ Nicole Letourneau et al, “Supporting Mothering: Service Providers’ Perspective of Mothers and Young Children Affected by Intimate Partner Violence” (2011) 34:3 *Research in Nursing & Health* 192 at 196 [Letourneau et al].

⁷⁰ Cathy Humphreys et al, “More Present than Absent: Men Who Use Domestic Violence and Their Fathering” (2018) 24:2 *Child & Family Social Work* 321.

⁷¹ Laura Monk & Erica Bowen, “Coercive Control of Women as Mothers via Strategic Mother-Child Separation” (2021) 5:1 *J of Gender-Based Violence* 23.

⁷² Thompson-Walsh et al, “Are We in this Together? Post Separation Co-Parenting Fathers with and without a History of Domestic Violence” (2017) 27:2 *Child Abuse Rev* 137 at 137.

V. EVIDENTIARY COMPLEXITIES AND CHALLENGES IN COURT PROCEEDINGS

There are also significant evidentiary issues associated with IPV claims, as they are notoriously difficult to prove. Without physical evidence, such as physical injuries, there tends to be a lack of corroborating evidence available since survivors are often the only ones who can attest to the perpetrators' behavior.⁷³ When survivors do disclose the abuse, there may be gaps in their story or inconsistencies in their memory due to the trauma that they have experienced from being abused.⁷⁴ Even mild traumatic brain injuries can significantly effect memory, including causing confusion, poor recall, and inability to link parts of the story resulting in inconsistent narratives.⁷⁵ Post-traumatic stress disorder, a common result of IPV can also cause dissociative flashbacks and prolonged emotional responses to reminders of the original event, making it more difficult for survivors to testify.⁷⁶ For many survivors, disclosing the abuse in court can be especially difficult given the public setting and the abusive partner's presence in the court room while they are being instructed to detail his abuse.⁷⁷ Such issues often undermine the survivor's credibility, leaving them unheard by the justice system.⁷⁸

Abuse allegations can also backfire for survivors if the allegations cannot be substantiated or are viewed as "malicious."⁷⁹ Accusations that the mother is trying to alienate the children from the father could result in the survivor losing custody to the perpetrator or the state.⁸⁰ This is a common issue in Canada, with almost half of parental alienation cases involving assertions of IPV.⁸¹ The assertions of parental

⁷³ Jaffe, Crooks & Bala, *supra* note 16 at 25.

⁷⁴ Deborah Epstein & Lisa Goodman, "Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences" (2019) 167:2 U of Pa L Rev 399 at 408.

⁷⁵ *Ibid* at 408.

⁷⁶ *Ibid* at 410.

⁷⁷ *Ibid*.

⁷⁸ Amelia Mindthoff, Deborah Goldfarb & Kelly Behre, "How Social Science Can Help Us Understand Why Family Courts May Discount Women's Testimony in Intimate Partner Violence Cases" (2019) 53:3 Fam LQ 243 at 244.

⁷⁹ *Ibid* at 148.

⁸⁰ *Ibid*.

⁸¹ Linda C Neilson, "Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?" (2018) at 9, online (pdf): *Muriel McQueen Fergusson Centre for Family Violence Research* <<https://fredacentre.com/wp-content/uploads/Parental-Alienation-Linda-Neilson.pdf>> [perma.cc/BC5U-H7HJ].

alienation are advanced by the alleged IPV perpetrator in 78.6 percent of cases.⁸² This is particularly troubling given Sheehy and Boyd's finding that in cases where both alienation and IPV claims are made, judges are more likely to concentrate on the alienating behaviors than on the IPV when deciding custody and access.⁸³ This places the burden on mothers to illustrate that they are able to cooperate with fathers even when IPV has been confirmed which may be "terrifying and retraumatizing" for the mother.⁸⁴

Perpetrators may also engage in a variety of litigation tactics in court proceedings to manipulate lawyers, service providers, and the courts to benefit themselves and to further control and harass the survivor.⁸⁵ The perpetrator may threaten to contact child protection, appeal court orders, allege unlawful conduct by the targeted partner, and minimize or rationalize the abuse.⁸⁶ In court, perpetrators may employ coercive tactics to intimidate the survivor into minimizing the nature of the abuse. Such tactics may be subtle and difficult to spot, including things as small as an intimidating look. The recent shift to conducting proceedings virtually as a result of the COVID-19 pandemic has provided further issues. While virtual platforms may make it easier for judges to spot intimidating looks due to the close-up nature of virtual platforms, they also make it more difficult to know what else is happening in the room.

Assessing parenting abilities in IPV cases presents another difficulty. Research shows that perpetrators are skilled at appearing calm to judges and often present with no obvious mental health problems.⁸⁷ Conversely, survivors can suffer from a variety of challenges as a result of the abuse, and may appear upset, distrustful, or suspicious of professionals connected to the court proceedings.⁸⁸ This can have a negative effect on the court's perceptions of the parent's attitude and parenting abilities.⁸⁹ It can also

⁸² *Ibid.*

⁸³ Elizabeth Sheehy & Susan Boyd, "'Penalizing Women's Fear' Intimate Partner Violence and Parental Alienation in Canadian Child Custody Cases" (2020) 42:1 J Soc Welfare & Fam L 80 at 88 [Sheehy & Boyd].

⁸⁴ *Ibid* at 89.

⁸⁵ Neilson, *supra* note 51 at 7.4.

⁸⁶ *Ibid.*

⁸⁷ Jaffe, Crooks & Poisson, *supra* note 17 at 63.

⁸⁸ *Ibid.*

⁸⁹ Sheehy & Boyd, *supra* note 83 at 81, 86–87; Susan B Boyd & Ruben Lindy, "Violence Against Women and the BC Family Law Act: Early Jurisprudence" (2015) 35:2 Canadian Family Law Quarterly 101 at 105.

result in court decisions where the fundamental issues of survivors' and their children's safety and perpetrator's accountability are not addressed.⁹⁰

VI. RESPONDING TO IPV CLAIMS

Under the *CFS A*, the court can make a “protection-intervention order” where the court is satisfied that a person is causing or is likely to cause harm to a child.⁹¹ It mandates that the person stops living with the child and not to contact or associate with the child in any way.⁹²

While contravening such orders is an offence under the *CFS A*, carrying a punishment of a fine up to \$5,000, imprisonment for up to one year, or both, the orders are not easily enforceable.⁹³

Enforcement requires filing an application for contempt.⁹⁴ This introduces further expense and delays enforcement of the order, keeping children and survivors in danger. The danger during this period may be heightened given that the public disclosure of the violence leading to the order risks triggering retaliation and further abuse.⁹⁵ This reflects women's lived experience in Nova Scotia. For example, Ginger, a Nova Scotian woman who escaped her abusive relationship to a transition house with her daughter expressed her frustration at spending significant amounts of time in court to obtain orders that were not subsequently enforced.⁹⁶

Outside of the *CFS A*, Emergency Protection Orders (“EPOs”) can also be put in place to protect an individual or child under Nova Scotia's *Domestic Violence Intervention Act*.⁹⁷ EPOs can order conditions that are beneficial to survivors, such as giving the survivor or other family members “exclusive possession of the home regardless of legal rights of possession or ownership” or requiring the police to seize any weapons that the perpetrator may have.⁹⁸ An EPO supersedes any pre-existing

⁹⁰ *Ibid.*

⁹¹ *CFS A*, *supra* note 1, s 30(1).

⁹² *Ibid.*, s 30(2).

⁹³ *Ibid.*, ss 30(1)–(6).

⁹⁴ *Ibid.*, s 90.

⁹⁵ Suleman, Hrymak & Hawkins, *supra* note 18 at 30–31.

⁹⁶ “Somebody Must Say These Things: Chapter 3: Children” (2021) at 00h:16m:34s, online (podcast): *Transition House Association of Nova Scotia* <<https://thans.ca/somebody-must-say-these-things/>> [perma.cc/3QEH-C2AD] [Transition House Association of Nova Scotia].

⁹⁷ *Domestic Violence Intervention Act*, RSNS 2001, c 29, s 6(1).

⁹⁸ *Ibid.*, s 8(1)(a).

custody orders, except for those under the *CPSA*.⁹⁹ This further emphasizes the importance of orders made under the *CPSA* in protecting children, particularly in cases where the perpetrator has custody of the children.

VII: CONTROVERSY: HOW TO BEST PROTECT CHILDREN?

Including IPV as an indicator that a child may need protection is controversial. First, the inclusion puts increased responsibility on child protection workers. This can lead to a significant increase in caseloads in an already overburdened system which in turn results in lower quality assistance in each case.¹⁰⁰

Another frequently cited concern is the risk that abused women will be re-victimized by having their children removed from their custody because of the abuse. Related to this is the danger that survivors will refrain from seeking help from support services based on the fear that they will lose custody of their children.¹⁰¹ Such concerns are rooted in abused women's fear that they will be blamed for failing to protect their children rather than holding the perpetrator accountable.¹⁰²

Second, the punishable duty to report transforms the relationship between shelter workers and abused women, forcing workers to report abuse to the agency, rather than fully acting as women's allies and advocates.¹⁰³ Broad mandatory reporting

⁹⁹ Nova Scotia Community Services, "Child Welfare Policy Manual" (1 March 2017) at 156 [Nova Scotia Community Services].

¹⁰⁰ Cheryl Farris-Manning & Marietta Zandstra (Foster Life Inc), "Children in Care in Canada: A Summary of Current Issues and Trends with Recommendations for Future Research" (2003) at 6, online (pdf): *Canadian Child Welfare Research Portal* <<https://cwrrp.ca/sites/default/files/publications/en/ChildrenInCareMar2003Final.pdf>> [perma.cc/K53S-U9VB]; Angelique Jenney et al, "Children and Women first? Voices from the front lines of domestic violence on the impact of child welfare reporting" (2006) at 4, online (pdf): *Ontario Association of Interval and Transition Houses* <http://www.oaith.ca/assets/files/Publications/children_and_women_first.pdf> [perma.cc/E5XB-4C5D] [Angelique Jenney et al].

¹⁰¹ Ellen R DeVoe & Erica L Smith, "Don't Take My Kids: Barriers to Service Delivery for Battered Mothers and Their Young Children" (2003) 3:3-4 *J Emotional Abuse* 277 at 298.

¹⁰² Ellen Pence & Terri Taylor, "Building Safety for Battered Women and Their Children into the Child Protection System" (2003) at 76, online (pdf): <<https://praxisinternational.org/wp-content/uploads/2015/12/buildingsafety.pdf>> [perma.cc/VW55-FQM7].

¹⁰³ Carole Echlin & Larry Marshall "Child Protection Services for Children of Battered Women: Practice and Controversy" in Peter Jaffee, Einat Peled & Jeffrey Edelson, eds,

requirements in other jurisdictions have resulted in reshaping the child welfare system's focus from providing services to undertaking intrusive investigative activities which put a drain on support services.¹⁰⁴ Notably, after significant advocacy during the development of the amendments, lawyers were excluded from the duty to report in order to uphold solicitor-client privilege. However, other professionals and officials, such as physicians, psychologists, and teachers, are included in the duty to report, irrespective of whether the information reported is confidential or privileged under subsection 24(2).

Despite the drawbacks, the inclusion of IPV as grounds for determining if a child is in need of protection has the potential to lead to improved delivery of services, and allow for more children and mothers to access services where IPV is an issue.¹⁰⁵ There is also research that shows that children in Canada are seldom taken into care on IPV grounds alone where there is no other need for protection.¹⁰⁶

VIII: CANADIAN RESEARCH ON CHILD WELFARE PRACTICE IN THE IPV CONTEXT

Numerous Canadian studies that have analyzed child protection policy in the IPV context have found that where there are interventions, they are commonly focused on abused women, their failure to protect their children, and are aimed at holding women accountable for fixing the situation, as well as failing to intervene with aggressors.¹⁰⁷ Alaggia et al's review of Ontario's child welfare policies in IPV cases reported serious concerns about the policies' impacts, including abused women's reluctance to disclose or seek services for their families, isolation between professionals from different sectors, increased demand for services, increased

Ending the Cycle of Violence: Community Responses to Children of Battered Women (Thousand Oaks: Sage, 1994) 170 at 172.

¹⁰⁴ Frank Ainsworth, "Mandatory Reporting of Child Abuse and Neglect: Does it Really Make a Difference?" (2002) 7:1 *Child & Family Social Work* 57 at 62.

¹⁰⁵ Angelique Jenney et al, *supra* note 100.

¹⁰⁶ Black et al, "The Canadian Child Welfare System Response to Exposure to Domestic Violence Investigations" (2008) 32:3 *Child Abuse & Neglect* 393 at 395.

¹⁰⁷ Nixon, *supra* note 50; Susan Strega et al, "Fault Lines: Connecting Father Absence and Mother Blame in Child Welfare Policies and Practice" (2005) 30:7 *Child & Youth Services Rev* 705 at 707; Susan Strega, "Failure to Protect: Child Welfare Interventions when Men Beat Mothers" in Ramona Alaggia & Cathy Vine, eds, *Cruel But Not Unusual: Violence in Canadian Families* (Waterloo: Wilfrid Laurier University Press, 2006) 237 at 239 [Strega].

surveillance of mothers, and decreased accountability for perpetrators.¹⁰⁸ Likewise, in considering the impact of the IPV provisions on child protection practice in Alberta, Nixon found that workers often saw abused women as incompetent mothers and engaged in “mother-blaming.”¹⁰⁹ Nixon’s study also highlighted that workers commonly failed to include men in their intervention plan.¹¹⁰ Rather, workers directed their interventions on the abused women, placing the burden of alleviating the abuse on them and continuing to do so even when women did “everything that an abused woman ‘should do’ [such as] living apart from her abusive ex-partner, attending counselling and calling the police when her ex-partner assaulted her.”¹¹¹ Similarly, an investigation into child welfare intervention in British Columbia found that intervention was focused on accusing mothers of failing to protect children from violence, which was predicated on the problematic assumptions that mothers “have some control, i.e., the mother could protect the child,” that “leaving will put an end to the violence,” and that “leaving is the mother’s responsibility.”¹¹² Finally, in examining child protection practice in situations of IPV in New Brunswick, Profitt found that despite a shift in vision in child protection, women still bear most of the responsibility for shielding their children from exposure and intervention with men is “less purposeful and consistent” than intervention with mothers.¹¹³ It was found that where a father, step-father, or boyfriend uses intimidation, coercion and violence against the mother, child protection workers tend to look to the woman being abused to control the violence, leaving the man increasingly absent from the file and the case,

¹⁰⁸ Ramona Alaggia et al, “In Whose Best Interest? A Canadian Case Study of the Impact of Child Welfare Policies in Cases of Domestic Violence” (2007) 7(4) *Brief Treatment & Crisis Intervention* 275 at 276.

¹⁰⁹ Nixon, *supra* note 50.

¹¹⁰ *Ibid* at 71.

¹¹¹ *Ibid* at 71–72.

¹¹² Strega, *supra* note 107 at 252.

¹¹³ Norma Profitt, “Research Report: In the Best Interests of Women and Children: Exploring the Issue of ‘Failure to Protect’ in the Acadian Peninsula” (2008) at 78, online (pdf): *Canada Commons* <

due to the institutional organization of workers policing mothers, rather than intervening with male offenders.¹¹⁴

IX: THE REQUIREMENT OF ACCESSING SUPPORT SERVICES IN NOVA SCOTIA

Individuals can voluntarily participate in services identified by the agency under a memorandum of understanding or on a mandatory basis under *CFS/A* proceedings.¹¹⁵ However, mandatory participation in counselling presents a host of issues. Mandated clients may feel “forced” into services and view contact with practitioners as “unwanted intrusions into their lives.”¹¹⁶ This can result in a breakdown of the relationship between mandated clients and counsellors from the outset, with counsellors rejecting a parent who does not consent to work with them. Due to the mandated nature of the services under the *CFS/A* such a breakdown means that a parent’s chance of having their child returned or unsupervised access is limited.

The 2017 amendments are also problematic because they expanded the definition of a child in need of protection without an increase in the funding or availability of services for women and their children. At the same time, the amendments make it mandatory for parents to access services to deal with IPV based child protection concerns. This has been a long-standing issue even prior to the amendments, both in relation to the ethical issues of mandatory counselling and in relation to the availability of such services.

Research conducted in 2011 assessing sources of support in Nova Scotia, New Brunswick, and PEI found that there is a lack of programs, training, and resources to help mothers who have survived IPV in these regions and that more support is required.¹¹⁷ Service providers described spending the majority of their time reacting to the crisis of the IPV situations, rather than planning better services for mothers and children.¹¹⁸ They attributed this to the lack of resources available, making it impossible to address more than the immediate IPV occurrence.¹¹⁹

¹¹⁴ *Ibid.*

¹¹⁵ Nova Scotia Community Services, *supra* note 99 at 156.

¹¹⁶ Peter De Jong & Insoo Kim Berg, “Co-Constructing Cooperation with Mandated Clients” (2001) 46:4 *Social Work* 361 at 361.

¹¹⁷ Letourneau et al, *supra* note 69.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

Women who have experienced IPV need significant support, including emotional, affirmational, and informational support to connect them with appropriate services. Economic solutions are crucial to assisting women, given the connection between IPV and poverty which can trap women in abusive relationships. Specifically, services such as assistance with arranging new housing, childcare, and transportation are helpful.

Research has shown that providing safe, affordable housing and flexible financial assistance to survivors is extremely effective in supporting women and their children.¹²⁰ The Washington State Coalition Against Domestic Violence's Domestic Housing First project found that providing housing and financial assistance to cover transportation, childcare, education and employment related expenses led to 96 percent of participants maintaining housing, 84 percent saying that the program increased their safety, and 76 percent only needing minimal services after the final follow up.¹²¹ This was despite the serious challenges that they faced including unemployment, lack of language skills, past evictions, criminal histories, and substance abuse.¹²²

When available, women find these services helpful. For example, Ginger, the aforementioned woman who escaped her abusive relationship to a transition house with her daughter in Nova Scotia, spoke of the support she experienced at the shelter, where she went from being isolated in her relationship to being surrounded by "what felt like a whole community of people supporting her."¹²³ Her daughter, Jordan, who was an infant when they escaped to the transition house, spoke of how the service providers at the shelter became second mothers to her and created a space where she felt safe and supported.¹²⁴

There should also be an increase in funding and availability of child protection measures and services directed at perpetrators, especially given the importance of

¹²⁰ Leigh Goodmark, "Decriminalizing Domestic Violence: Economic, Public Health and Community Solutions" (2019), online: *University of Minnesota* <<https://genderpolicyreport.umn.edu/decriminalizing-domestic-violence/>> [perma.cc/RC7K-5ZCB].

¹²¹ "Washington State Coalition Against Domestic Violence: Evidence from Pilot Project" (2015), online: *Washington State Coalition Against Domestic Violence* <<https://wscadv.org/projects/domestic-violence-housing-first/pilot-project/>> [perma.cc/5PBR-49P2].

¹²² *Ibid.*

¹²³ Transition House Association of Nova Scotia, *supra* note 96.

¹²⁴ *Ibid.*

perpetrator accountability, and targeting an abuser's propensity to commit IPV.¹²⁵ Nova Scotia has a variety of support services directed at perpetrators. New Leaf provides programs for perpetrators including group work, case conferencing, counselling, and high-risk file management.¹²⁶ It is committed to providing a comprehensive program to men who abuse their partners, through their various programs. The New Leaf approach involves group counselling under the guidance of counsellors, bringing together men who have similar shared experiences, allowing them to feel understood. New Start is another counselling service for perpetrators, helping them to "move away from abuse and towards respect."¹²⁷

The effectiveness of such services can often depend on the perpetrators' willingness to consistently attend and constructively engage in the programming.¹²⁸ For instance, in one case the father who was involved with New Leaf three separate times, but failed to take responsibility for the circumstances that brought him to the programming, shut down and became argumentative, loud, and angry during the sessions.¹²⁹ However, even if programming is not effective, group attendance can be a way to monitor for safety, especially in high-risk situations.¹³⁰

Most programs do not evaluate their outcomes, making it more difficult to determine their effectiveness. However, a national program directed at abusers evaluated their outcomes and found that the program led to a significant improvement with regards to fathers' reactivity to children's misbehavior and respecting the mother's commitment and judgment.¹³¹

¹²⁵ There is a lack of services available for perpetrators of IPV in Nova Scotia. There are currently only six Men's Intervention programs in Nova Scotia that provide group and individual counselling for men who have been abusive in their relationships. Given the prevalence of IPV, and the importance of these services for better protecting victims this small number of programs fall short of constituting an effective service-based response.

¹²⁶ "About Us: Services and Programs" (2021), online: *New Leaf* <<https://www.newleafpictoucounty.ca/about-us-services-and-programs.html>> [perma.cc/RT9Q-MA85].

¹²⁷ "Our Mission & History" (2018), online: *New Start* <<https://www.newstartcounselling.ca/mission>> [perma.cc/RBD4-PY2E].

¹²⁸ Joan Pennell & Erika Brandt "Men Who Abuse Intimate Partners: Their Evaluation of a Responsible Fathering Program" in Tod Augusta Scott, Katreena Scott & Leslie M Tutty, eds, *Innovations in Interventions to Address Intimate Partner Violence: Research and Practice* (New York: Routledge, 2017) 227 at 228.

¹²⁹ *Nova Scotia (Community Services) v L.M.*, 2018 NSFC 23 at paras 127, 133, 140.

¹³⁰ Pennell & Brandt, *supra* note 127.

¹³¹ Katreena Scott & Victoria Lishak, "Intervention for Maltreating Fathers: Statistically and Clinically Significant Change" (2012) 36:9 *Child Abuse & Neglect* 680 at 683.

In Nova Scotia, the comments of perpetrators who fully commit to attending services suggest that they find it effective. One participant that attended over 50 sessions with New Leaf stated that it helped him “regain control and sense of self” during life event struggles and crises, taking him from feeling “angry, hopeless, helpless and alone” to feeling “supported, understood and newly instilled with a positive approach to life.”¹³² He said that the programming helped him realize “that [he] is not a monster.”¹³³ Another participant commented that it “gave [him] the tools to allow him to love himself and others again” and has helped him work towards the most important relationship in his life, the one with his child.¹³⁴ Moreover, a participant in New Start stated “I am now able to recognize and identify abuse and abusive behaviors. I am equipped to avoid repeating past mistakes.”¹³⁵

Given the effectiveness of support services for children, survivors, and targeting perpetrators’ violent behavior, and the language of paragraph 22(2)(i) which encourages families to access such services, Nova Scotia should prioritize funding and expanding support services to better assist families who have experienced IPV, rather than intrusive measures. The Standing Together to Prevent Domestic Violence Grants, which have begun to provide grants of \$25,000 over one year, or \$75,000 over two years to community groups and organizations to prevent IPV and support survivors and their families represents a positive step in the right direction.¹³⁶ However, this funding is insufficient to support a fulsome service based response, given the increase in survivors who require support and the cost of providing such services.

¹³² “In Our Own Words: My Self Awareness Journey- A.S.” (2020), online: *New Leaf* <<https://www.newleafpictoucounty.ca/inourwords>> [perma.cc/8JP2-8GQG].

¹³³ *Ibid.*

¹³⁴ “In Our Own Words: I Can Only Speak for Myself - Blue Eagle” (2020), online: *New Leaf* <<https://www.newleafpictoucounty.ca/inourwords>> [perma.cc/8ZWK-ZBC3].

¹³⁵ “What Others Say” (2018), online: *New Start* <<https://www.newstartcounselling.ca/what-others-say>> [perma.cc/N85F-AFKW].

¹³⁶ “Standing Together to Prevent Domestic Violence: Grant Recipients 2020” (2020), online: *Government of Nova Scotia* <<https://novascotia.ca/standingtogether/grant-recipients-2019.asp>> [perma.cc/3HZK-9CZT].

X: LEGISLATIVE RESPONSES TO IPV IN CANADA

Legislative Response in Nova Scotia

Nova Scotia's 2017 *CPSA* amendments were quickly the subject of criticism.

In his submissions to the Law Amendments Committee (the "Committee"), Professor Rollie Thompson warned that the changes did not comply with the principles of "least intrusive intervention" in the preamble to the *CPSA*.¹³⁷ He highlighted the two most significant changes in relation to IPV and the problems associated with them. First, the amendments eliminated the requirement that there be a repetition of violence in order for a child to be apprehended.¹³⁸ Now, one incident can provide the basis for a report or investigation.¹³⁹ Second, the amendment broadens the provision to include children who have "been made aware of violence." As Professor Thompson points out, this equates awareness to direct exposure, and suggests that where a child is "made aware of a single incident of violence toward his or her mother at another location and at another time, without limitation or explanation, this will support a finding that a child is in need of protective services."¹⁴⁰ While indirect exposure can be as equally harmful as direct exposure, the vague wording of simply being "made aware" of the occurrence of violence is unnecessarily broad and unclear.

The Transition House Association of Nova Scotia ("the Association") also made submissions to the Committee warning that this language made the responsibility for the safety and wellbeing of the children the "sole responsibility of the non-offending parent" and "holds the victim wholly accountable for her victimization and that of her children."¹⁴¹ As such, the Association suggested that the language be changed to reflect the responsibility of child protection to fall on the predominant initiator of the abuse, reflecting the "differential position of the victimized parent in these cases."¹⁴² The association suggested the addition of the duty to report "... may not be construed

¹³⁷ Thompson (2015), *supra* note 5 at 2.

¹³⁸ *Ibid* at 7.

¹³⁹ *Ibid*.

¹⁴⁰ *Ibid*.

¹⁴¹ "Submission to the Law Amendments Committee Re: Bill 112, Changes to the Children and Family Services Act" (2015) at 2, online (pdf): *Transition House Association of Nova Scotia* <https://nslegislature.ca/sites/default/files/pdfs/committees/62_2_LACSubmissions/20151116/20151116-112-011.pdf> [perma.cc/T2M8-54UX] [Transition House Association of Nova Scotia].

¹⁴² *Ibid* at 3.

to hold a victim responsible for failing to prevent the crime against the victim.”¹⁴³ Such changes would allow child protection to properly assess the “dangerousness of the offending parent, the safety of the children, and to preserve the family unit as much as possible.”¹⁴⁴ Such language would also challenge assumptions that women who have been subjected to IPV “should have known the negative impact the abuse would have on their children and should have known or found out the solution to these issues and immediately left their partner.”¹⁴⁵

The broadening of the IPV and mandatory reporting provisions in the amendments have the effect of expanding the reporting obligations of professionals and others that work with families including doctors, teachers, day care, and transition house workers under sections 23 to 25 of the *CFSA*.¹⁴⁶ It requires more children and more families to be reported if the professional has “reasonable grounds to suspect” any of the grounds in the broadened clauses including 22(i).¹⁴⁷ The wording of section 24 was also amended to include an additional duty to report not only based on what has or is happening, but also if the child is or may be about to suffer abuse in the future. This necessitates a judgment call about the future from professionals or officials which “significantly broadens their reporting obligations.”¹⁴⁸ The amendments to section 24 also make the failure to report where there are reasonable grounds to suspect abuse now a punishable offence by criminal prosecution, with the possibility of jail time.¹⁴⁹ Such changes are problematic as they overlook a woman’s right to autonomy and privacy and suggest that a woman who is surviving IPV is incompetent or a victim, rather than understanding that the woman is making choices in relation to her view of the situation and based on what she desires to do.¹⁵⁰ Moreover, strict reporting requirements result in women opting not to contact police or accessing other services when experiencing IPV, fearing that their children will be apprehended.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ Thompson (2015), *supra* note 5 at 8.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ “Final Report: From Rhetoric to Reality Ending Domestic Violence in Nova Scotia” (1995) at 98, online (pdf): *Law Reform Commission of Nova Scotia* <<https://lawreform.ns.ca/wp-content/uploads/2020/04/domestic-violence-final-report.pdf>> [perma.cc/FC5C-4EBA].

When Bill 112 (which resulted in the Amendments to the *CFSA*) returned to the House for the third reading debates, MPP Leonore Zann echoed many of the concerns advanced to the Committee, arguing that the new provision precludes child protection and IPV agencies from determining who the initiator of the abuse is in order to plan for the safety of the children, preserve the family unit, and prevent holding survivors responsible for failing to prevent the crimes against them.¹⁵¹ Despite the concerns advanced to the Committee, the provisions were not adjusted and the Amendments are the law today.

The concerns expressed over the amendments to the *CFSA* have merit. A four year review of the 2017 amendments by the Nova Scotia College of Social Workers concluded that they have “contributed to greater inequity and inequality and needs serious revisions.”¹⁵² Specifically, the College found that the practical effect of the amendments was to “create a very low threshold for intervening in the family based on vague definitions of a child in need of care” while also “failing to provide services for pathways to safety and wellbeing.”¹⁵³

The amended *CFSA* is particularly troublesome in conjunction with other policies including Nova Scotia’s “Pro-Arrest, Pro-Charge and Pro-Prosecution Policies,” which while initially adopted to help improve women’s safety and deter IPV, has resulted in tearing families apart.¹⁵⁴ The punitive outcomes brought about by the policy harm survivors, perpetrators, and children, particularly in instances where the families wish to stay together.¹⁵⁵ For families and children, the impact of the pro-arrest policy in conjunction with the *CFSA*’s mandatory and now punishable reporting requirement means that if the police are called to a IPV dispute, not only are the police required to arrest and lay a charge on the “dominant aggressor” but if children are present they must also report it to child protection services. As a recent

¹⁵¹ Nova Scotia, Legislative Assembly, *Hansard*, 68th Leg, 2nd Session, No 2967 (11 December 2015) at 7124.

¹⁵² “Children and Family Services Act: 4-Year Review” (March 2021) at 30, online (pdf): *Nova Scotia College of Social Workers* <<https://nscsw.org/wp-content/uploads/2021/03/CFSA-Review-Submission-Final.pdf>> [perma.cc/QLT3-3W7L] [Nova Scotia College of Social Workers].

¹⁵³ *Ibid* at 10.

¹⁵⁴ Nancy Ross & Cary Ryan, “A Review of Pro-Arrest, Pro-Charge and Pro-Prosecution Policies: Redefining Responses to Domestic Violence” (January 2021) at 26, online (pdf): <<https://dalspace.library.dal.ca/bitstream/handle/10222/80242/2021%20A%20Review%20of%20Pro-Arrest%20Pro-Charge%20and%20Prosecution%20Policies.pdf?sequence=1&isAllowed=y>> [perma.cc/RW6W-5UA8].

¹⁵⁵ *Ibid* at 22.

review of the pro-arrest policy points out, some survivors are seeking safety only in the moment, for example for their partners to be removed for one night and do not want prolonged state involvement.¹⁵⁶ However, calling the police can result in charges and loss of employment for their partner resulting in unwanted punitive outcomes that harm survivors and their children.¹⁵⁷

Legislative Response Outside of Nova Scotia: British Columbia, Ontario, and the Yukon

While other jurisdictions have recently amended their legislation to address IPV, none are as vague or as broad as the 2017 *CFSA* amendments. British Columbia's *Child Family and Community Services Act* has recently been amended to specify that a child can be emotionally harmed by living in a situation where there is IPV and to clarify that the presence of IPV increases the risk of physical harm to a child.¹⁵⁸ However, unlike Nova Scotia where the definition of emotional abuse was removed from the legislation, the BC amendments still specifically defines emotional harm as when a child demonstrates "severe anxiety, depression, withdrawal, or self-destructive or aggressive behavior."¹⁵⁹

Ontario legislation does not explicitly include IPV as an indicator that a child is in need of protection or in its definition of emotional harm.¹⁶⁰ Family violence is only considered under supervision of access.¹⁶¹ Concerns associated with IPV can instead be raised under risk of, or actual physical harm and risk of, or actual emotional harm.¹⁶² Again, unlike Nova Scotia, Ontario's emotional harm grounds are still specifically defined as "when a child *demonstrates* serious anxiety, depression, withdrawal, self-destructive or aggressive behavior or delayed development."¹⁶³ Despite its omission in the *Child and Youth Family Services Act*, the Ontario legislature has acknowledged that IPV is an important factor to consider in weighing the best interests of the child in the *Children's Law Reform Act*.¹⁶⁴

The Yukon takes a different legislative approach. The Yukon's *Child and Family Services Act*, makes the best interests of the child the foremost consideration in making

¹⁵⁶ *Ibid* at 23.

¹⁵⁷ *Ibid*.

¹⁵⁸ *Child, Family and Community Services Act*, RSBC 1996, c 46, s 13.

¹⁵⁹ *Ibid*.

¹⁶⁰ *Child and Youth Family Services Act*, SO 2017, c 14, sched 1.

¹⁶¹ *Ibid*, s 107.

¹⁶² *Ibid*, s 74(2)(f)(1).

¹⁶³ *Ibid*, s 2(f) [emphasis added].

¹⁶⁴ *Children's Law Reform Act*, RSO 1990, c 12, at s 24(2).

decisions or taking action under the *Act*.¹⁶⁵ Family violence is listed as one of the factors under the best interests of the child, rather than as a ground for a child in need of protection.¹⁶⁶ This transfers the focus from the woman's "failure" to protect her child from the abuse, towards providing services and supporting the child in the future.¹⁶⁷ The Yukon's approach provides one example of a different legislative response that works to protect children on this issue.

Federal Legislative Response

The Canadian government amended the federal *Divorce Act* to reflect the recognition that IPV is dangerous and harmful to children.¹⁶⁸ The recent changes provide an excellent example of how provincial provisions should be worded. Subsection 16(3) now provides factors for courts to consider in determining the best interests of the child, including family violence and its impact on the "ability and willingness of any person who *engaged in the family violence* to care for and meet the needs of the child."¹⁶⁹ Including language directed at the perpetrator recognizes concerns that interventions to protect children rarely consider aggressors of family violence.

The amendment also provides a non-exhaustive list of additional factors related to family violence for the court to consider.¹⁷⁰ In providing the rationale for the changes, Parliament recognized the growing evidence that violence (including coercive and controlling violence; violent resistance, which is generally a response to coercive violence and meant to protect themselves or another person; situational couple violence; and separation instigated violence) has unique and interrelated impacts and effects, that courts should consider in determining the best interests of the child and must be considered by courts in determining the best interests of the child.¹⁷¹ These changes came into effect in March, 2021.¹⁷² While the amendments represent a step in the right direction, amending the language of the legislation alone may not be a fulsome solution. Recent research from British Columbia, based on the

¹⁶⁵ *Child and Family Services Act*, SY 2008, c 1.

¹⁶⁶ *Ibid*, s 4(1)(j).

¹⁶⁷ Neilson, *supra* note 51 at 17.2.

¹⁶⁸ The Government of Canada, "Divorce Act Changes Explained: Best Interests of the Child: Factors to be Considered: Family Violence (section 16(3)(j))" (2020) at 94, online (pdf): *Department of Justice* <<https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/dace.pdf>> [perma.cc/Q2VV-3YMS]; *Divorce Act*, RSC 1985, c 3 (2nd Supp).

¹⁶⁹ *Ibid* [emphasis added].

¹⁷⁰ *Ibid* at 98.

¹⁷¹ *Ibid* at 99.

¹⁷² *Ibid*.

BC *Family Law Act* that has similar language to that of the amended *Divorce Act* has found that courts are still not prioritizing safety concerns.¹⁷³

XI: CASE LAW

The Case Law: Nova Scotia

The reported case law under the amended paragraph 22(1)(i) and the provision prior to the amendment is limited because many matters are resolved at settlement conferences. However, the reported case law that has ruled on the need for protection as a result of exposure to IPV both prior to and following the 2017 amendments, reflects many of the concerns raised in the literature. An assessment of case law both prior to and following the amendments to Nova Scotia's *CFSA* illustrate that the amendments have been inconsequential in shifting judicial attitudes towards IPV in child protection cases and have been coupled with a lack of support services to support the mandatory service seeking provisions. In assessing judicial treatment on this issue, it is crucial to keep in mind that decisions are dependent on the facts and circumstances of each case that often involve overlapping grounds for protection.

Some Nova Scotia child protection cases involving IPV have recognized the complexities. Other cases make mothers, and their inability to control the abuser and prevent the violence the central focus, rather than holding the perpetrator accountable. The case law reflects this theme both prior to and following the 2017 amendments to the *CFSA*. Some of the evidence relied upon and judicial treatment in such cases reflects a troubling approach to effectively responding to IPV.

The following case law from prior to the amendments are illustrative. In *D. (S.A.) v Nova Scotia Minister of Community Services*, the parents had been in an abusive relationship for many years, and the children had been harmed by their exposure to the IPV. Both the mother and father had separately engaged in extensive services over a long period of time including specialized IPV parenting courses, counselling, and intervention services. However, the father returned to the home, and the violence continued. In reaching his decision for permanent care and custody, the trial judge noted that the mother “would have to know that the angry father could cause trouble,

¹⁷³ Hayley Hrymak, “Creating Safety in BC Courts: Key Challenges and Recommendations” (2022) at 16, online (pdf): *Rise Women's Legal Centre* <<https://womenslegalcentre.ca/wp-content/uploads/2022/10/RISE-court-house-safety-Oct-13-2022.pdf>> [perma.cc/VJ6U-3RN6].

yet she let it happen.”¹⁷⁴ On appeal, the Court criticized these comments, stating that holding one parent accountable for the other parent’s violence could constitute a “palpable and overriding error” and that the mother had acted as appropriately as possible in the circumstances.¹⁷⁵ However, the trial judge’s decision for permanent care and custody of the children was upheld as this issue was not central to the trial judge’s reasoning.¹⁷⁶

In *H. (P.) v Nova Scotia (Minister of Community Services)*, the trial judge relied on evidence from a parental capacity update assessment, that the mother had “failed to protect her daughter on several occasions from the effects of IPV.”¹⁷⁷ Similarly, in *R. (S.) v Nova Scotia (Minister of Community Services)*, the court made comments that the mother’s new relationship was “reminiscent of [her] earlier inability to control relationships and their deleterious effect on the household.”¹⁷⁸ Such comments are unhelpful, given that they focus on the survivor rather than the perpetrator. It is only the violator who can prevent IPV. If the targeted parent could prevent it, there would hardly be need for protection.¹⁷⁹

In *Nova Scotia Minister of Community Services v Z. (S.)*, the Court relied on evidence considered in the previous cases involving the mother, including that the mother “tended to minimize the impact of violence on herself” when the reality is otherwise and that she “tends to blame herself for some of the violence, saying for instance that she provoked [the perpetrator].”¹⁸⁰ Although the decision for protection was fully warranted in this case, the mother’s commentary illustrated many of the reporting complexities highlighted by the literature.

The limited case law following the 2017 amendments to the *CFSA* have illustrated many of the concerns in the literature, demonstrating a shift in focus from providing services to intrusive investigative activities, and even a deterioration in the quality of services. In *Nova Scotia Minister of Community Services v A.L.*, the children had been exposed to IPV and the parents were “willing to do whatever [was] required in terms of services designed to address the child protection concerns” to have the children returned to their care, in accordance with the 22(2)(i) requirement that

¹⁷⁴ *D. (S.A.) v Nova Scotia Minister of Community Services*, 2014 NSCA 77 at para 73.

¹⁷⁵ *Ibid* at para 91.

¹⁷⁶ *Ibid* at paras 90–92.

¹⁷⁷ *H. (P.) v Nova Scotia (Minister of Community Services)*, 2013 NSCA 28 at para 53.

¹⁷⁸ *R. (S.) v Nova Scotia (Minister of Community Services)*, 2012 NSCA 46 at para 54.

¹⁷⁹ Neilson, *supra* note 51 at 17.4.

¹⁸⁰ *Nova Scotia Minister of Community Services v Z. (S.)*, 1999 Carswell NS 264 at para 3(8), 179 NSR (2d) 240 (N.S. Family Court).

parents obtain services, treatment or take other measures to alleviate violence.¹⁸¹ However, at the time of the placement hearing, the Minister had not arranged any services for the parents to help them gain insight into or address the child protection concerns, nor any services for the children to help address their trauma.¹⁸² Justice Jesudason commented that the lack of services was “less than desirable” and observed that it resulted in the parties focusing “on an adversarial process instead of their sole focus being on working together to address the child protection concerns in a positive way for the children’s benefit.”¹⁸³ This commentary is an additional example of blaming the survivor. Moreover, this case represents the inherent contradiction in having a provision that requires parents to access services, while simultaneously having an agency that is not providing services to parents willing to partake in those services for the sake of their children.

Despite such cases, it is important to note that there are cases where supportive services have been made available, and the parent is willing to participate in them, the parent can work to address the IPV child protection concerns and have children returned to their care.¹⁸⁴

The Case Law: Ontario

The Ontario case law provides an interesting comparison to Nova Scotia’s given that the Ontario legislation does not explicitly mention IPV. Despite this, the Ontario Superior Court has recognized that violence or abuse against a spouse is clearly a factor to be considered in child protection cases.¹⁸⁵ The Ontario Superior Court has recognized IPV concerns under the protection indicators of emotional and physical harm.

In *Children’s Aid Society of Toronto v C. (S.A.)*, Justice Zuker heard expert evidence and examined the case law and literature on IPV in child protection cases.¹⁸⁶ He recognized the severe emotional impacts on children from witnessing violence, including generating feelings of guilt, self-blame, depression, insecurity, and low self-esteem which can be detrimental to a child’s development.¹⁸⁷ In order to protect

¹⁸¹ *Nova Scotia Minister of Community Services v A.L.*, 2019 NSSC 236 at para 64.

¹⁸² *Ibid* at para 65.

¹⁸³ *Ibid* at para 69.

¹⁸⁴ *Nova Scotia Community Services v K.H.*, 2020 NSFC 6 at paras 98, 124–125.

¹⁸⁵ *Children’s Aid Society of Ottawa v J.(L.)*, 2014 ONSC 1675 at 17–18.

¹⁸⁶ *Children’s Aid Society of Toronto v C. (S.A.)*, 2007 ONCA 474 at 3–4.

¹⁸⁷ *Ibid* at para 114; Such impacts were also recognized by Justice Sherr in *Jewish Family and Child Service v K.(R.)*, 2009 ONCA 903.

children from such effects, the Court will look for evidence that the abused parent understands the cycle of abuse and has “broken the pattern” by seeking counselling, leaving the relationship and moving to a safe location.¹⁸⁸ A parent’s continual “failure” to leave the abusive relationship has been relied on as a reason to place the children in extended care.¹⁸⁹

Exposure to IPV has also been recognized as creating a risk of physical harm. In *Children’s Aid Society of Niagara Region v TP and RG*, Justice Quinn held that a pervasive pattern of exposing a child to domestic abuse is sufficient to warrant a finding that a child is at risk of physical harm and is thus in need of protection.¹⁹⁰ Such a pattern can include the mother repeatedly choosing partners who are physically abusive towards her, thereby prolonging the child’s exposure to IPV.¹⁹¹

Taken together, both the Nova Scotia and Ontario case law reflect the consideration of IPV as a factor in child protection proceedings, irrespective of its explicit inclusion in the legislation. They also demonstrate judicial ignorance about IPV. Given the negative impacts of the amendments in Nova Scotia a consideration of IPV under the best interests of the child analysis may better protect children. Including language similar to that of the *Divorce Act* which places a focus on the willingness of the perpetrator of violence to care for and meet the needs of the child, would be helpful in alerting the courts to the importance of shifting the focus towards the abuser and their inability to protect the child from the abuse. This coupled with more thorough judicial education on this topic, as discussed subsequently as well as an increase in funding for voluntary support services would be helpful to alleviate the issues identified in the case law.

XII: ADDRESSING JUDICIAL COMMENTARY

Some judicial commentary suggests that there is a need for mandatory judicial education to avoid misconceptions informing judicial decisions. It is crucial that judges, particularly family court judges who preside over child protection and family violence cases, are well versed in the issues and challenges presented by IPV. Judges

¹⁸⁸ *CCAS v IB et al*, 2020 ONSC 5498 at para 165.

¹⁸⁹ Nova Scotia College of Social Workers, *supra* note 152 at 13; *The Children’s Aid Society of Ottawa v K.D. and D.A.*, 2021 ONSC 7147 at para 63.

¹⁹⁰ *Children’s Aid Society of the Niagara Region v T.P.*, 2003 CarswellOnt 10462 at para 68, 120 ACWS (3d) 622 (Ontario Superior Court of Justice).

¹⁹¹ *Children’s Aid Society of Algoma v J.B.*, 2019 ONCJ 6 at paras 47–49.

who do not take such issues into account, risk exacerbating the issue, as children may suffer by being separated from the targeted parent or being prematurely taken into care. It is critical that judges are aware of the dynamics of IPV, including when, why, and how violence occurs, the impacts that violence has on children and women and their ability to testify, and the link between IPV and the ability to parent.¹⁹² Judges must also ensure that court orders and the consequences for breaching them are clear and enforced, given perpetrators' propensity to disregard court orders.¹⁹³ If judges are aware of such issues, it is clear that they can develop a court that effectively deals with IPV cases. Judges are well placed to be able to effectively contribute to making a difference in protecting children exposed to IPV.

Two recent developments reflect recognition of these issues and steps in the right direction towards improving judicial awareness of this issue. First, the proposed amendments to the *Judge's Act* to establish seminars for the continuing education of judges including on matters related to IPV and coercive control are currently being considered in the Senate.¹⁹⁴ The proposed amendments came about through a private member's bill known as Keira's law, named after four-year-old Kiera Kagan who was found dead with her father in an apparent murder-suicide. In the years leading up to her death, Kiera's mother experienced an escalation in abusive behavior by her ex-husband and brought forward evidence of the abuse to a judge but was ignored.¹⁹⁵ The Bill has received a significant amount of support, particularly given that it is a private member's Bill. Second, the Federal Government has also recently announced funding for the National Judicial Institute for judicial training on IPV and family

¹⁹² The Honourable Donna Martinson & Margret Jackson, "Judicial Leadership and Domestic Violence Cases: Judges Can Make a Difference" (2012) at 31, online (pdf): *Canada Commons* <https://coherent-commons.s3.amazonaws.com/artifacts/file/file/6fc2a96d-841e-4850-92e4-75c2a2ee245e.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA23B6R4NTRHS5NZ3%2F20230515%2Fus-east-2%2Fs3%2Faws4_request&X-Amz-Date=20230515T023209Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=c938762db648f063b7b53fc80a61ef506cecf5e6f7d594e7425a695b6eea374d> [perma.cc/Y6G2-PMBC].

¹⁹³ *Ibid* at 20.

¹⁹⁴ Bill C-233, *An Act to Amend the Criminal Code and the Judges Act (violence against an intimate partner)*, 1st Sess, 44th Parl, 2021, (third reading in progress at the Senate).

¹⁹⁵ Farrah Merali, "Keira Kagan's legacy lives on in bill to expand education for judges on domestic violence", *CBC News* (12 February 2022), online: <<https://www.cbc.ca/news/canada/toronto/keiras-law-introduced-in-house-of-commons-1.6348729>> [perma.cc/EU4X-KDHK].

violence in the family justice system through the Justice Partnership and Innovation Program.¹⁹⁶

XIII: CONCLUSION

This paper has argued that the 2017 amendments to the IPV section in Nova Scotia's CFSA are not achieving the goal of better-protecting children. The amendment places responsibility on mothers to control or prevent the violence to their children and has advanced punishable mandatory reporting requirements leaving women and their children worse off if they attempt to access services to protect themselves. A child's exposure to IPV can cause negative emotional and developmental issues, although its impact differs in each child. There are significant complexities in addressing this issue, including the overlap of poverty, substance abuse, and the various evidentiary issues that IPV presents in court proceedings. However, when support services are well funded and delivered properly, they are extremely effective in addressing some of those complexities and assisting women and their children in leaving abusive relationships.

The case law reveals that the issue continues to be a lack of availability of services and that there continues to be a need for increased judicial education on the complexities of IPV.

Given the drawbacks of the amendments, which have significantly broadened paragraph 22(2)(i), while leaving the provision vague by failing to define crucial terms within it such as "violence" or being "made aware of" violence, further amendments to the CFSA are needed. The provision should be amended and carefully worded to reflect "the differential position of the victimized parent," as the Transition House Association of Nova Scotia originally suggested.¹⁹⁷ The punishment for failing to report should also be removed.

Although there are cases that will certainly require intervention from children's services, protecting children from IPV can most effectively be addressed by voluntary

¹⁹⁶ "Improving access to justice for Canadians through judicial training on intimate partner and family violence in the family justice system: News Release" (6 December 2022), online: *Department of Justice Canada* <<https://www.canada.ca/en/department-justice/news/2022/12/improving-access-to-justice-for-canadians-through-judicial-training-on-intimate-partner-and-family-violence-in-the-family-justice-system.html>> [perma.cc/3D9Y-DQTL].

¹⁹⁷ Transition House of Nova Scotia, *supra* note 141 at 3.

access to family support services supported by the state. Such services require an increase in funding and expansion of services, for both survivors of abuse and their children. Importantly, these services must include “hard services” that provide housing, and economic support that assist in protecting children and giving women the ability to leave violent and abusive relationships. “We owe our children—the most vulnerable members of any society—a life free from violence and fear.”¹⁹⁸ Addressing problematic legislative changes that further victimize and harm our children and their mothers can assist in fulfilling our duty to do just that.

¹⁹⁸ Nelson Mandela, “World Report on Violence and Health: Foreword” (2002) (Geneva: World Health Organization).