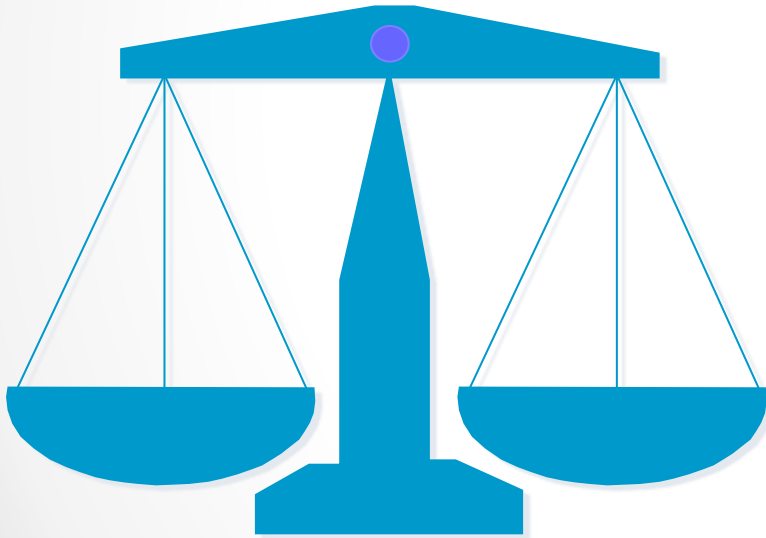


Custody Decision-Making When Coercive Control is An Issue



SVN International Conference
October 30, 2025
Hon. Victor Reyes
District Judge

Learning Objectives

At the end of this segment, you will be better able to:

- Develop an Understanding of Judicial Perspectives on identifying Coercive control in custody and visitation cases and addressing it by using court processes and issuing orders that safeguard children and victims;
- Implement strategies to identify the presence and effects of Coercive control in a custody proceeding, using a definition of Coercive control that is broader than physical abuse and incorporates coercive, controlling behavior that harms children and parents;
- Understanding the Legal Standards By which Courts Make their Decisions relying on Canadian Law

Small Group Questions

- What are examples of good co-parenting behaviors?
- How might a perpetrator behave as a parent?
- How might a perpetrator's violence affect a victim's parenting skills?

Addressing Coercive control in Parenting Decision Making Cases:

Why Do the System Actors need to get it right?

Why is it so for System Actors difficult to get it right?

What Does It Even Mean to Get It Right?

Why we need to get it right

- Strong link between Coercive control and physical and sexual child abuse (median co-occurrence of 41% and a range of 30% to 60%).
(Evan Stark, Rethinking custody evaluation in cases involving Coercive control, Journal of Child Custody: Research, issues, and practices, 6(3/4) (2009))
- Children who witness violence and coercive control by one parent toward the other experience at least the same level of serious effects as those who were direct targets of the abuse.
 - Include: aggressive behavior, anxiety, health problems, depression, cognitive deficiencies, etc.(UNICEF, Behind Closed Doors: The Impact of Coercive control on Children (2006); Edelson, Jaffe, and others)

Why we need to get it right

- Where there is a history of Coercive control, child contact is the most common context for re-assault during the post-separation period.
(Stark, 2009)
- Each child's experiences, perceptions, and responses are unique. Any intervention should be tailored to that child's particular risk set and situation.
(NCJFCJ, A Judicial Guide to Child Safety in Custody Cases (2008))

Why it is so difficult

- Pressure to ignore or minimize abuse:
 - Judges: cases increase in complexity (who to believe, how to interpret behavior), strain resources
 - Attorneys: representation more challenging; hesitant to raise the issue with courts/evaluators
 - Victims: as in other civil and in criminal contexts, multitude of reasons not to raise the issues

Why it is so difficult

- A fundamental family law value: Joint decision making is best, even after separation—equal access, both parents involved
 - Corollary: parents who seek sole decision making or to restrict other parent's residential parenting time are not acting in the best interest of their children; parents seeking shared parenting are doing so and should be favored in awarding decision making
(“friendly parent” provisions)

Canadian Best Interest Standards

Parent's Responsibilities to the Child

- Maintaining a loving, nurturing and supportive relationship with the child;
- Seeing to the daily needs of the child, which include housing, feeding, clothing, physical care and grooming, health care, daycare and supervision, and other activities appropriate to the developmental level of the child and the resources available to the parent;
- Consulting with the other parent regarding major issues in the health, education, religion and welfare of the child;
- Encouraging the child to foster appropriate inter-personal relationships;

Canadian Best Interest Standards

Parent's Responsibilities to the Child

- Making the child available to the other parent or spending time with the child as agreed by the parents or ordered by the court and so as not to cause unnecessary upset to the child, or unnecessary cost and inconvenience to the other parent;
- Exercising appropriate judgment about the child's welfare, consistent with the child's developmental level and the resources available to the parent;

Canadian Best Interest Standards

Parent's Responsibilities to the Child

- Providing financial support for the child
- Section 31 (3), Newfoundland Children's Law Act. Several years ago, amendments to the Ontario Children's Law Reform Act were passed by the legislature, but have never been proclaimed into force. Among the amendments is a provision specifically addressing violence, which is very similar to the Newfoundland provisions: **"In assessing a person's ability to act as a parent, the court shall consider the fact that the person has at any time committed violence against his or her spouse or child, against his or her child's parent or against another member of the person's household."** Section 77, revising section 24(3) of the C.L.R.A

Best Interest Factors

- **Factors to be considered**
- **(3)** In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
 - **(a)** the child's needs, given the child's age and stage of development, such as the child's need for stability;
 - **(b)** the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
 - **(c)** each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
 - **(d)** the history of care of the child;
 - **(e)** the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
 - **(f)** the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

Best Interest Factors

- **(g)** any plans for the child's care;
- **(h)** the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- **(i)** the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- **(j)** any family violence and its impact on, among other things,
 - **(i)** the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
 - **(ii)** the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- **(k)** any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Factors relating to family violence

- **(4)** In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
 - **(a)** the nature, seriousness and frequency of the family violence and when it occurred;
 - **(b)** whether there is a pattern of coercive and controlling behaviour in relation to a family member;
 - **(c)** whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
 - **(d)** the physical, emotional and psychological harm or risk of harm to the child;

Past Conduct

- **Past conduct**
- **(5)** In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.
- Divorce Act of 1985

Factors relating to family violence

- **(e)** any compromise to the safety of the child or other family member;
- **(f)** whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
- **(g)** any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
- **(h)** any other relevant factor.

Assumptions Underlying Value that Joint Decision

Making is Best

- Parental involvement is safe for both parents
- Parent-child relationships are safe and healthy; parents are child-focused
- Parents communicate effectively
- Any abuse of a parent is unrelated or does not significantly affect the parents' relationships with the child

These are eroded when there is CC...

The Assumption	Effects of DV
Parental involvement is safe for both parents	Post-separation abuse often increases Mahoney (1991); Bancroft & Silverman (2002); Langford, Isaac & Kabat (1999).
Parent-child relationships are safe and healthy; parents are child-focused	Child exposure to DV affects relationships with both abusive and non-abusive parents; abusers use children to maintain power and control after separation Bancroft & Silverman (2002); Jaffe et al. (2006);

The Assumption	Effects of DV
Parents communicate effectively	Abuse and threats of abuse may make such communication impossible: “a mother who avoids phone contact with an abusive former partner might be seen to be neglecting her duties for information sharing about the children’s activities; however, within the context of spousal violence, this same behavior can be understood as an attempt to protect herself and her children from further harassment and abuse.” Jaffe et al. (2006)
Abuse of a parent is unrelated/does not significantly impair parent/child relationship	Abuse can significantly impair victim’s parenting: Stark (2009); Jaffe and Crooks (2005); Bancroft and Silverman (2002) Children may resist relationship with abuser due to hypervigilance/fear: Drozd and Olesen (2004);

Why it is so difficult?

- Abuse may be difficult to identify:
 - Stereotypes of abusers are often wrong
 - Abusers present well/elicit sympathy (research by Peter Jaffe, Claire Dalton, Lundy Bancroft)
 - Victims may present poorly (because of the abuse) or be hesitant to disclose
 - Effects of DV often counter intuitive (children often express love for the abusive parent, victims stay in relationships/accommodate abusers)

Need for training on fundamentals of DV
Need for effective, objective screening tools

Why it is so difficult

- Misconceptions about DV:
 - Parents (mainly mothers) fake abuse to gain an advantage
 - If DV is not alleged (or not alleged until later in the proceedings), it is not present
 - Parents (mainly mothers) actively alienate the other parents from their children
 - Even if there is abuse against a parent, if there is no direct abuse of the child, it shouldn't affect custody

The Misconception	The Truth
Parents fake abuse to gain an advantage	Research shows false allegations not prevalent; in fact, non-custodial fathers most likely to fabricate: Trocme and Bala (2005); Thoennes & Tjaden(1990); Bala & Schuman (2000)
If DV is not alleged (or alleged late), it is not present	Victims (and attorneys) hesitant to raise issue; judges, evaluators may not ask the right questions: Frederick (2008);
Parents alienate the other parents from their children	PAS has been discredited: Never listed in DSM by American Psych. Assn.; NCJFCJ Guide
Abuse of parent not relevant to custody decision	Children significantly affected by "exposure": Jaffe et al. (2006); Wolfe, et al. (2003); Edelson (1999); and others

Overview of the Research on False allegations to gain an “advantage” in custody

- Rate of intentionally false allegations of child abuse or neglect by a parent to gain an advantage in a custody dispute is low; 2%-12%.
- Mothers are responsible for fewer false allegations than their male counterparts.
- One study of 7,600 child welfare investigations in Canada:
 - 903 cases involved a custody dispute
 - 12% involved a report of child abuse that was intentionally fabricated
 - noncustodial fathers were the *most likely* to fabricate abuse claims in cases involving a custody dispute
- A California study of 120 high-conflict cases concluded that women in custody disputes are “no more likely to allege un-substantiated abuse against their child’s other parent than are men.”

Decision-Making

Understanding Victim Behavior

In study of custody cases with documented abuse, frequent failures of evaluators to consider the evidence in the decision-(Silverman, Mesh, Cuthbert, Slote & Bancroft, 2004)

Research on Custody Evaluators

In 21% of cases with documented DV by father, joint legal/primary physical to father

Underlying beliefs: mother alienates, false allegations, DV irrelevant, friendly parent concerns

Reliance on mental health testing to assess for DV

Documentation not factor

New Research on Custody Evaluators

Mother's demeanor matters!

Hostility plus DV allegation = 5x more likely to award sole to father

Hostility but documentation of abuse= 3x more likely

Severity/type of violence not predictive of recommendations

Psychologists more likely to believe DV irrelevant than other professionals

Gender of evaluator/theoretical orientation often predictive of recommendations

Research on Custody Evaluators:

Daniel Saunders, presentation at the NCJFCJ Annual Conference, “New Research on Child Custody Evaluations and Coercive control: Implications for the Bench (2011); discussing “Custody Evaluations in Cases with Coercive control” research by Michael S. Davis, Chris O’Sullivan, Kim Susser, and Marjory Fields (National Institute of Justice); “Custody Evaluators’ Beliefs About Domestic Abuse in Relation to Custody Outcomes” research by Daniel Saunders, Kathleen Faller, and Richard Tolman (National Institute of Justice); and “The Effect of Coercive control Allegations on Custody Evaluators’ Recommendations” research by Jennifer Hardesty, PhD (University of Illinois at Urbana-Champaign).

Addressing Coercive control in Decision Making Cases

- Battered Women's Justice Project
Conceptual Framework
- Parenting Arrangements That Account
for Coercive control

Coercive control in the Custody Context

How we define “Coercive control” makes all the difference:

- Must it be physical abuse?
- Must it meet the criminal law definition or the protection order definition to affect custody decision-making?

Coercive control in the Custody Context

In the decision-making context, with a focus on the well-being of the children and parents, a broad definition of DV should apply:

“Coercive Control” (Evan Stark and others):

- More than physical or sexual assault
- Tactics to intimidate, humiliate, degrade, exploit, isolate and control a partner

Coercive control in the Custody Context

“An important point found in the recent conceptual efforts in the IPV literature is to appreciate that when there has been coercive, controlling psychological dynamics involved ... even with infrequent or minor, physical violence, **then the issue will always be highly relevant to issues of safety and crafting an appropriate parenting plan**”

William G. Austin & Leslie M. Drozd, Intimate Partner Violence and Child Custody Evaluation, Part I: Theoretical Framework, Forensic Model, and Assessment Issues, Journal of Child Custody, 9:4, 250-309 (2012)

High-Conflict or Coercive control

- The term “high conflict” is used to refer to litigation that family courts find to be persistent and contentious.
- The phrase is also used to refer to cases involving Coercive control, even though “violence” is different from “conflict.”
- Responses to “violence” require a very different approach than responses to “conflict.”

Differentiated Custody Interventions



Spousal Violence

Assess for
risk of homicide

Understanding the
impact of violence on
victims and children exposed

Thorough assessment
of history of all forms
of abuse/collateral sources

Documentation of
coping strategies and
previous interventions

Children's coping
strategies

Factors
that promote
ongoing conflict

History/source of
conflict

Identification of less
or non- toxic parent

Children's needs

Parents' skills

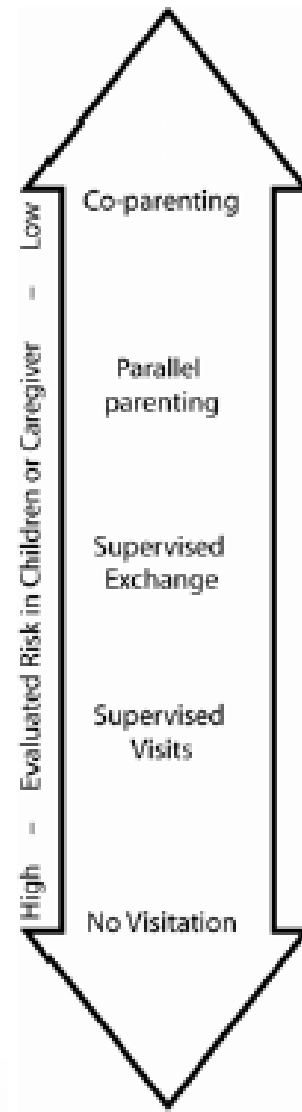
Parents' ability to cooperate
and promote relationship

Developmentally
appropriate parenting
plan and contact schedule

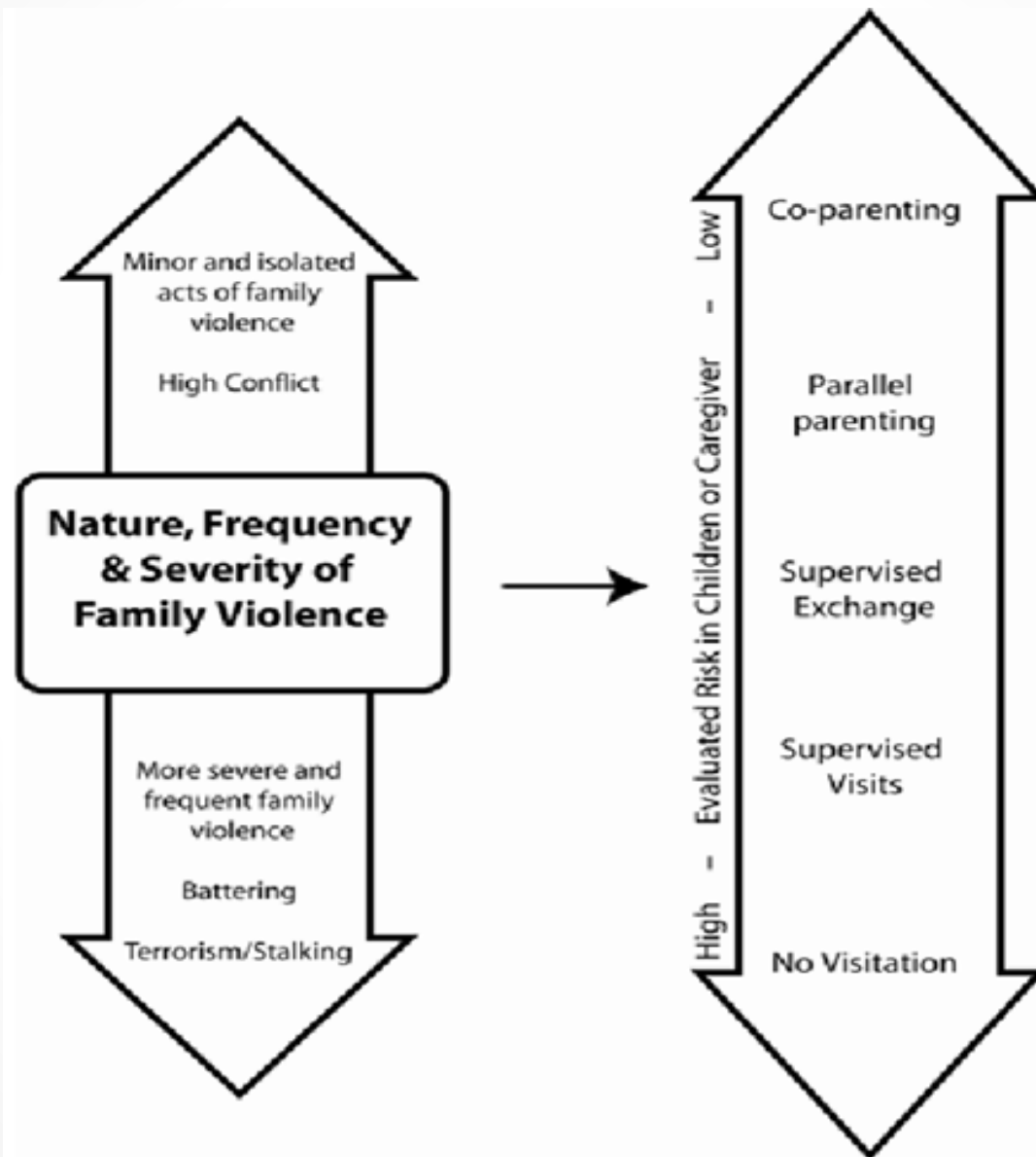
High Conflict

Normal Conflict

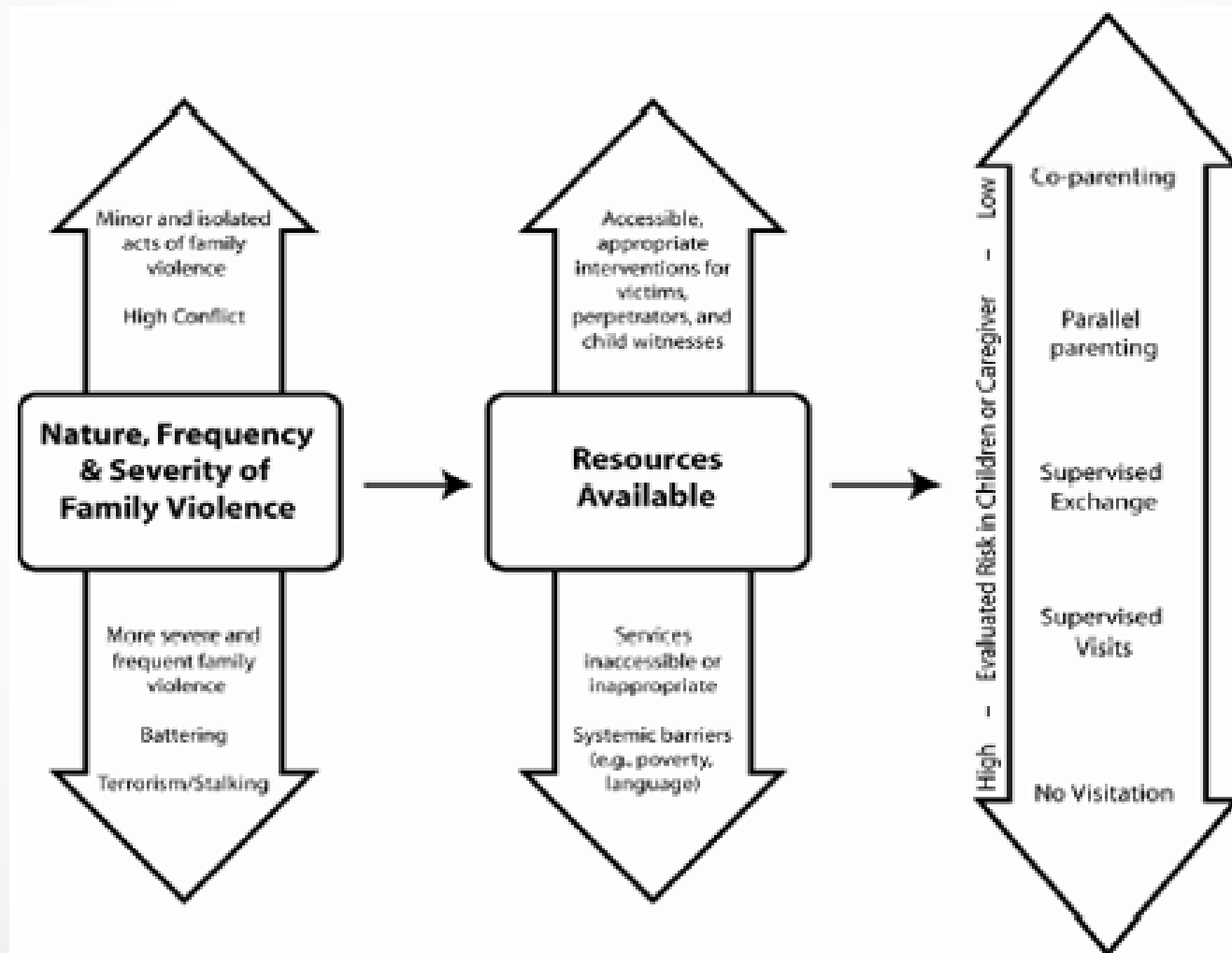
Parenting Arrangements After Divorce



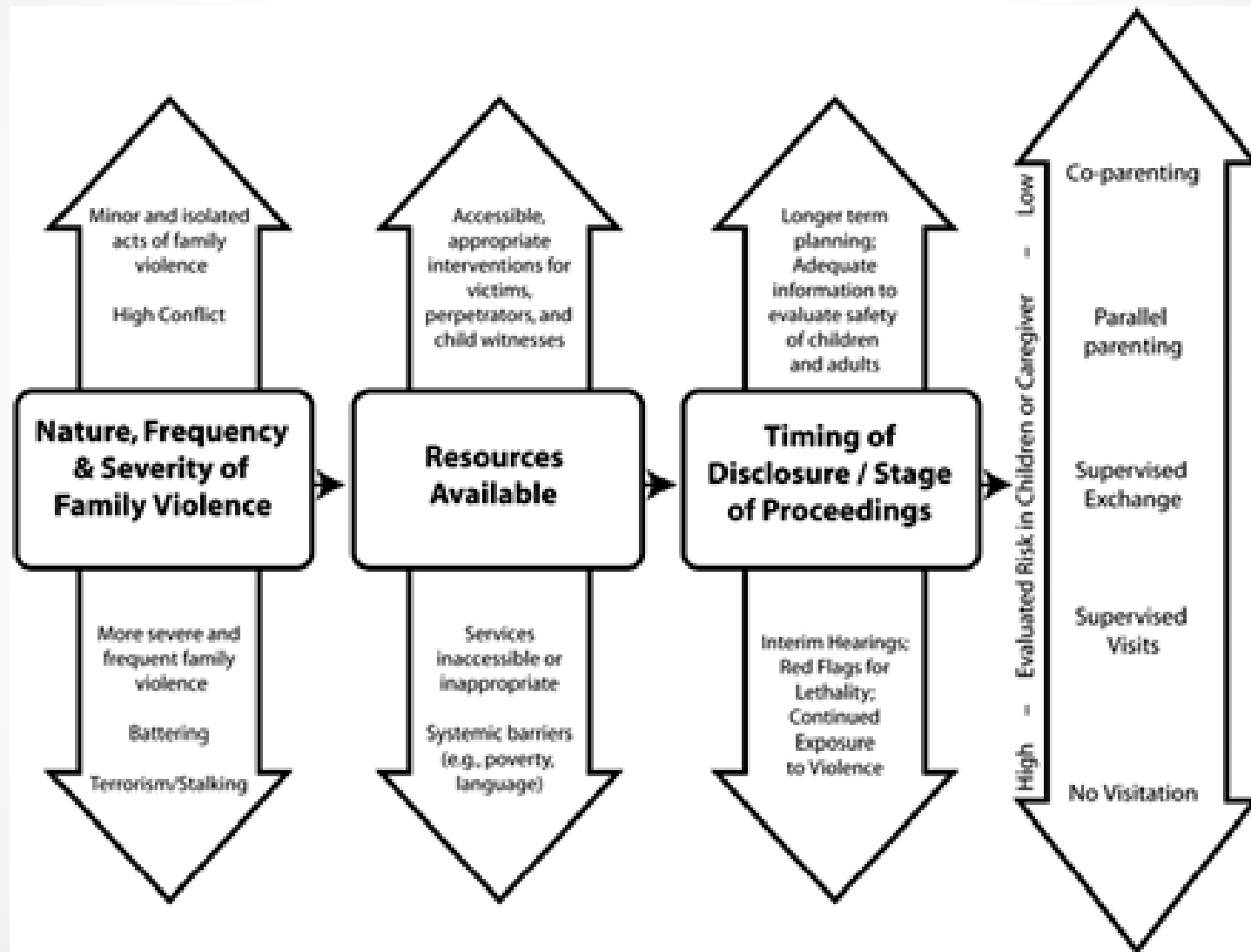
Parenting Arrangements After Family Violence



Parenting Arrangements after Family Violence



Parenting Arrangements After Violence



- **Making appropriate parenting arrangements in family violence cases: applying the literature to identify promising practices.**
- **Prepared by:**
- Peter G. Jaffe, Ph.D., C.Psych.
- Claire V. Crooks, Ph.D., C.Psych.
- and Nick Bala, LL.B, LL.M.
- **Presented to:**
- Family, Children and Youth Section Department of Justice Canada

Conflicting Paradigms

SAFETY vs. ACCESS

High-Conflict	Coercive Control
Mutual conflict as a means of resolving disputes Power and control	Power and control

Custody Implications

CONFLICT CASES	ABUSE CASES
Children survive divorce most successfully with ongoing access to both parents	Joint custody permits the abuse to continue and may be dangerous
The conflict stops when the parties separate	Danger increases at separation
A parent who resists joint custody is “unfriendly”	A victim engages in protective behavior
Mediation is appropriate and desired	Mediation is inappropriate or must be used carefully
The unfriendly parent is not the appropriate custodian	The abuser is not the appropriate custodian

Visitation Implications

CONFLICT CASES

Conflict stops at separation

Supervised visitation or no contact order is punishment

“Friendly” parent will facilitate contact

Children need ongoing contact with both parents

ABUSE CASES

Danger increases at separation

Visitation requires careful consideration

Protective measures are appropriate and necessary

Ongoing contact may be harmful, if not dangerous

Tools to bolster safety

- Supervised visitation with a center that specializes in Coercive control visits
- Supervised exchanges
- Compliance review hearings
- Contempt proceedings
- No contact between parent and child

Implications for Practice

- Differentiate between High Conflict and Coercive control
- Increase your knowledge of trauma and ability to identify normal responses to trauma
- Realize that trauma symptoms are often misdiagnosed as mental illness
- Recognize that accusations about the mental health status of a primary caregiver may be a red flag for mental health/substance abuse coercion
- Keep in mind that trauma can affect appearance in court and our assumptions about credibility and that having a mental health condition does not preclude good parenting

Implications for Practice

- Be aware that so long as the non-offending parent is under siege, the children are as well
- Support attachment to the non-offending parent to promote positive child development & help children heal from traumatic effects of abuse
- Safe, secure relationships & social support promote resilience and can counter the negative effects of exposure to Coercive control
- Consider ways to make the court room less intimidating and re-traumatizing

Identifying Coercive control:

Screening

Critical Questions:

- Who should screen?
- When should screening take place?
- How to screen?
- What should be done with the information?

Identifying Coercive control: Screening

A work in progress—some thoughts on best practices:

- Who should screen?
 - DV Advocacy Programs (confidential, need victim consent to disclose)
 - Court Personnel (including mediators)
 - Interviews: typically not confidential, but information readily available to court—need informed consent?
 - Docket reviews: but lack of record doesn't mean no abuse
 - Dr. Peter Jaffe: multi-method, multi-informant approach, increased scrutiny as abuse uncovered
- When should screening take place?
 - Ongoing screening at each intervention point is crucial
 - Victims may not disclose until later in proceedings and only to a trusted practitioner

Identifying Coercive control: Screening

- How to screen:
 - BWJP Custody Project screening and interview guides
 - Explain screener's role, purpose of screening, confidentiality status, and use of the information
 - Use broad definition of DV including coercive control
 - If DV identified—assess risk, make referrals
- What should be done with the information?
 - If information given to judge:
 - Ensure not ex parte
 - Use as a supplement, not substitute, for judicial decision-making
 - Lack of DV identification early should not foreclose party's ability to later allege DV and have it fully considered by the court
 - Use to assess appropriateness of ADR, parenting classes, other early interventions

CANADIAN BEST INTEREST FACTORS	WHAT DO WE KNOW?	HOW DOES DV SHAPE THAT?
The wishes of the child's parents regarding the child's care.	What are the parents' wishes?	Any fears or worries? Past/current arrangements? How does safety factor in? Are wishes realistic?
The wishes and concerns of the child , as expressed to the court Section C	What are the wishes and concerns of the child?	Impact of abuse on child? Impact of trauma on child? Fears, concerns, anxieties? Interference with daily life?
The child's interactions and relationships with parents and siblings	What do the child's interactions/rel'ps look like?	Interference with authority? Undermining relationships?
The child's physical, developmental, and emotional needs	How adjusted is the child to home, school, community? What are the child's needs?	Isolation? Interference with activities? Threats to basic needs? Fears, concerns, anxieties?

The parents' level of conflict, ability to cooperate, and willingness to allow association	What is the level of conflict? Can the parents cooperate to meet the child's needs? Is either parent reluctant to allow association with other?	Is safety a factor in conflict? Will history of coercive control allow healthy co-parenting? Is reluctance to allow association due to protectiveness or fear?
The parents' physical and mental health, history of child abuse or neglect, Coercive control, or child abduction	What is each parent's physical and mental health? What is each parent's history of abuse or neglect of a child, Coercive control against the child or parent, or abduction of a child?	Short- or long-term effect of DV on parenting ability? High co-occurrence of DV and child abuse—any indication? Will unsupervised contact endanger the child? Will exchanges offer opportunities for violence?

Hierarchy of Goals for Parenting Plans

(adapted from
Jaffe et al. (2008))



Addressing the Violence: Parenting Arrangements

Once the nature, context, and implications of the Coercive control has been determined, there is an array of potential parenting arrangements

Co-parenting

Parallel Parenting

Supervised Exchange

Supervised Visitation

No Visitation

How do Judges decide which is appropriate?

Addressing the Violence: Parenting Arrangements

Co-Parenting:

- Not appropriate:
 - Abuse, physical or coercive control
- Requires:
 - Good communication, trust, respect, child-focus and ability to resolve difficulties

Addressing the Violence: Parenting Arrangements

Parallel Parenting:

- Not appropriate:
 - Ongoing abuse, physical or coercive control
- Requires:
 - Each parent has a positive contribution to make in time spent with children, but direct parent-parent contact provokes acrimony

Addressing the Violence: Parenting Arrangements

Supervised exchange:

- Not appropriate:
 - Current threat of abuse, physical or coercive control
 - Not a substitute for true supervised visitation
- Requires:
 - Benefit to contact with both parents
 - Court orders with specificity re: time/place, rules of conduct
 - Monitoring of behavior
 - Appropriate supervisor and location for exchanges

Addressing the Violence: Parenting Arrangements

Supervised visitation:

- Not appropriate:
 - Lack of benefit to contact with abusive parent/distressing to child
 - Inadequate supervision available (non-neutral, untrained in DV dynamics, etc.)
- Requires:
 - Benefit to contact with both parents
 - Court orders with specificity re: time/place, rules of conduct
 - Monitoring of behavior
 - Appropriate staffing/location for visitation
 - \$\$

Addressing the Violence: Parenting Arrangements

No Visitation:

- Not appropriate:
 - Custodial parent's refusal to make child available is unjustified (after comprehensive, DV-informed assessment)
- Requires:
 - No meaningful parent-child contact seems possible: no remorse or willingness to change by abusive parent
 - Failure of abusive parent to abide by court orders/standards for visitation and other conduct

The Abusive Partner of DV as Parent

- Rigid, authoritarian, bullying
- Engenders fear
- Lacks empathy – child's needs not recognized
- Sense of entitlement
- Lacks respect {boundaries}
- Control over child, parent & family relationships – even after separation
- Child as pawn or vehicle to control/punish/communicate

Assessing Change in Abusive Partners

Abusive Partners can change – but how can you tell?

- Does the abusive partner FULLY acknowledge what has happened?
- Does the abusive partner take responsibility or still blame the victim?
- Can the abusive partner articulate the impact of the DV on the adult victim and children
- Is there a commitment to learn new skills and attitudes – have these been demonstrated since last appearance?

Bancroft & Silverman (2002) The Batterer as a Parent (Sage)

The Impact of DV on Victim's Parenting

- Impact may be short or long-term
- Impact may occur pre- or post-separation
- Physical & emotional pain/suffering
- Feeling demeaned, belittled and/or undermined as a parent
- Credibility & authority as parent compromised
- Compensating parenting style (pronounced compared to usual couple)
- True potential as parent may be compromised by abuse, disruptions, litigation and poverty (situational or enduring problem?)
- May engage in protective behaviors

Dynamics Between Victim & Perpetrator

- Role model for unhealthy relationships
- Gender roles
- Constrained sense of community – limited access to support (problems undermine access to potential resources)
- Children may be protective or abusive
- Loyalty conflicts (betrayal in disclosure)

The Potential Impact of DV on

Infants, Children & Adolescents

- Effects may be direct or indirect (e.g. disrupt parent – child relationship)
- Effects may vary by severity of DV, age, gender, siblings, role in family, presence of other risk/protective factors
- Effects may be immediate and visible or delayed and subtle
- Healing facilitated by safety, stability and access to informal and/or formal supports

Custody Dispute Dilemmas

- Accurately assessing abusive partner, victim, & children
- Arguing for orders that meet parent/child needs
- Coercive control but no visible/measurable impact on children
- Children aligned with victim/primary caretaker {alienation allegations?}
- Children aligned with batterer {wishes vs. best interests}
- Role of extended family {helpful or harmful?}

Learning Points

- The 4 step Framework helps focus you on the best interests of the child in Coercive control custody cases.
- After determining that DV is an issue and determining the context of the violence, link the abuse to parenting and then account for the violence in decisions and actions.

Thank you!

Have a great conference!

Safe travels.

Contacts

- Hon. Victor Reyes
 - healingjudges@gmail.com