The Family Dispute Resolution Institute of Ontario Brief Regarding the Study of Intimate Partner Violence in Canada

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Summary of Recommendations

- The study should centre its inquiry around the best interests of children, as children are deeply and negatively impacted by family violence.
- The study should include the diverse experiences of intimate partners and families, including trans, gender fluid and other non-hetero-normative persons.
- Survivor-informed trauma training is crucial for professionals who provide services to families.
- Changes should be made to Family Law processes, including:
  - The redaction of sensitive information from Family Court filings.
  - The names of parties and any child associated with the file in Family Court proceedings should be anonymous.
  - All members of the justice system should receive survivor-informed, trauma-informed, family violence training.
  - Programs should be developed and funded so that professionals who provide services to families can develop specialized, trauma informed expertise.

The Family Dispute Resolution Institute of Ontario and Our Expertise in Intimate Partner Violence

The Family Dispute Resolution Institute of Ontario ("FDRIO") is a federally incorporated not-for-profit that provides certifications, networking, and advocacy for Ontario family mediators, family arbitrators, parenting coordinators, financial professionals, coaches, mental health professionals, and other professionals who serve family law clients. Our members predominantly serve clients through forms of family law alternative dispute resolution.

We have created a comprehensive set of Standards of Practice including Guidelines for Screening for Power Imbalances and Family Violence (including but not limited to coercive control), for the benefit of our members and the public.

We only accredit mediators, arbitrators, and parenting coordinators who have been trained to screen for power imbalances and violence. In our view, this is crucial as we understand from the Ontario Domestic Violence Death Review Committee ("DVDRC") Reports that 67% of intimate-partner related homicides and homicide-suicides occur during actual or pending separation.[1] This renders our members' clients, especially their women-identified clients, at significantly higher risk of being killed than other members of the population.

Further, our members deal with family disputes not only between former intimate partners, but also between a variety of other familial relationships. Family violence that takes place outside of an intimate partner context is not reflected in the DVDRC reports, though our members have experience in family violence experienced in these non-intimate partner contexts as well. As such, we find it critical that the professionals we accredit are enabled to

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[1] Office of the Chief Coroner, *Domestic Violence Death Review Committee 2018 Annual Report* [Online: https://www.ontario.ca/document/domestic-violence-death-review-committee-2018-annual-report]

understand and respond to indicators, and/or disclosures, of intimate partner or family violence.

Given the above, we are uniquely qualified to provide insight on the topic of family violence, including intimate partner violence (IPV) and controlling and coercive behavior, as it relates to families, and the many members of society who are impacted by it.

Domestic / Family Violence

We use the more expansive and all-encompassing language of "family violence" rather than intimate partner violence.

Similarly, we adopt the definition of 'family violence' from S.2(1) of the *Divorce Act*[2].

Screening for Family Violence

As noted above, we only accredit professionals who provide alternative dispute resolution services to families, i.e., mediators, arbitrators, and parenting coordinators, who have taken screening training.

Our FDRIO *Screening Guidelines*[3] for family mediators define and explain screening as:

> " […] a process by which [family dispute resolution] professionals identify, assess and manage power imbalances in their processes, including a risk of harm arising from family violence. It is the responsibility of family mediators to ensure that they incorporate reliable screening protocols into their [family dispute resolution] processes. Screening should be done to assess readiness to proceed and ability to participate safely and effectively, and must include such sources of power imbalances as coercion and control, a history of violence, addiction, substance abuse, mental health, and other matters as mediators may deem appropriate."

Screening in family alternative dispute resolution is particularly unique because the screener meets each party involved in a family law matter and identifies their vulnerabilities, appropriate referrals for each party, and how to safety plan for them. This contrasts with other risk assessments of family violence in which only one party is questioned and supported.

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[2] R.S.C 1985

[3] Institute of Ontario (FDRIO), "Family Mediation Screening Guidelines", online: *Family Dispute Resolution Institute of Ontario* <https://www.fdrio.ca/certifications/mediation/family-mediation-screening-guidelines/>.

Correlates of Family Violence

Though we cannot pinpoint the causes of family violence with certainty, we can look to the number of factors associated with, and trends within family violence, and to helpful research.

Ontario Domestic Violence Death Review Committee ("DVDRC") Factors

Between the years 2003 –2018, of the 329 cases which involved 470 deaths, the latest DVDRC Report (2018) Executive Summary states:

> "Approximately 71% of all cases reviewed from 2003-2018 involved a couple where there was a history of domestic violence and 67% of the cases involved a couple with an actual or pending separation.
>
> The other top risk factors were:
>
> - o a perpetrator who was depressed (50%)
> - o obsessive behaviour by the perpetrator (46%)
> - o prior threats or attempts to commit suicide (44%)
> - o a victim who had an intuitive sense of fear towards the perpetrator (43%)
> - o victim vulnerability (43%) *This risk factor has been tracked since 2017.*
> - o perpetrator displayed sexual jealousy (39%)
> - o prior threats to kill the victim (36%)
> - o excessive alcohol and/or drug use (40%)
> - o a perpetrator who was unemployed (39%)
> - o history of violence outside the family (33%)
>
> In 70% of the cases reviewed, seven or more risk factors were identified."[4]

Typologies of Intimate Partner Violence

Kelly & Johnson set out four typologies of IPV. Dahya summarized each of these typologies, in the following table:

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[4] https://www.ontario.ca/document/domestic-violence-death-review-committee-2018-annual-report/executive-summary

Table 1 [5]

Kelly & Johnson[6] IPV Typology	Characteristics	Mnemonic(s)	Gender (a)symmetry	Likelihood of (de-) escalation post-separation
Situational Couple Violence (SCV)	"Where one or both partners engage in negative behaviour towards the other but there is no fear of either by the other"[7]	Poor conflict-management habits, control is not the goal; the higher the frequency, the higher the detriment.	Roughly symmetrically perpetrated by all genders studied.	de-escalation. *but note Ellis's disagreement with this point.[8]
Separation Instigated Violence (SIV)	"Violence instigated by the separation where there was no prior history of violence in the intimate partner relationship or in other settings"[9]	A few uncharacteristic, disorienting, episodes of violence; shock-induced violence.	Roughly symmetrically perpetrated by all genders studied.	Commences upon separation, de-escalates after a few episodes.
Coercive Controlling Violence (CCV)	This is the most dangerous and lethal category. • Causers-of-harm ("CoHs") use a mixture or all of the tactics on the Duluth Wheel of Power and Control. • Most domestic homicides are perpetrated by	Control is the goal.	Overwhelmingly perpetrated by men, misogynistic attitudes prevalent among CoHs.	Escalation – lethality risk to survivor, children, pets, and others; potential suicide risk if control cannot be re-established by the causer-of-harm.

[5] Adapted from Raheena Dahya, *Coercive Controlling Violence: A Primer For Family Lawyers*, Law Society of Ontario, November 5, 2019, pg. 5; and The Redwood's witness brief, *Further Submissions Regarding Bill C-247 In Addition to the Speaking Notes of Raheena Dahya for The Redwood Statement to the House of Commons' Standing Committee on Justice and Human Rights Regarding the Creation of a Criminal Offence of Coercive Controlling Violence Per Bill C-247* [online: https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11108103/br-external/Redwood-e.pdf].

[6] Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions (2008)*, Family Court Review, Vol. 46 No. 3, July 2008 476 – 499.

[7] Department of Justice, *What You Don't Know Can Hurt You: The Importance of Family Violence Screening Tools For Family Law Practitioners*, February 2018 [online: https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/can-peut.pdf], pg. 9.

[8] Kelly & Johnson, *Supra* 6, wrote: "[s]ituational Couple Violence is less likely to escalate over time than Coercive Controlling Violence, sometimes stops altogether, and is more likely to stop after separation[.]"- pg. 486. However, 11 years later, Desmon Ellis wrote, when discussing conflict-instigated violence (CIV), a term analogous to Kelly & Johnson's Situational Couple Violence, wrote: "The assertion that, compared to CCV and VR, CIV is "more likely to stop after separation" is simply wrong." – Desmon Ellis, *Managing Domestic Violence: A Practical Handbook for Family Lawyers*, Toronto: LexisNexis 2019, chapter 2, pg. 13.

[9] Kelly & Johnson, Supra 6, pg. 487.

Kelly & Johnson[6] IPV Typology	Characteristics	Mnemonic(s)	Gender (a)symmetry	Likelihood of (de-) escalation post-separation
	coercive-controlling CoHs. • "In heterosexual relationships, Coercive Controlling Violence is perpetrated primarily by men."[10]			
Violent Resistance (VR)	"[...]in attempts to get the violence to stop or to stand up for themselves, [violent resistors] react violently to their partners who have a pattern of Coercive Controlling Violence[...]"[11]	Short-lived (un)equal and opposite reaction to CCV; the other side of the CCV coin.	Overwhelmingly perpetrated by women, particularly those feeling trapped in a CCV relationship.	Escalation from CCV CoH; killing of s COH can be the result of inability to safely separate by the VR.

Ecological Model

Johnson & Dawson adopt to Heise's 1998 multi-faceted 'ecological model' of understanding IPV. The model presents 4 levels in which IPV factors exist. They write:

"Heise […] identifies factors associating with [IPV] that fall within each level:

1. *Personal history factors*, such as witnessing marital violence as a child, being the victim of child abuse, and/or having an absent or rejecting father;

2. *Microsystem factors*, such as male dominance in the family, male control of financial resources, alcohol abuse, and marital or verbal conflict;

3. *Exosystem factors*, such as low socio-economic status, unemployment, isolation of the woman and the family, and delinquent peer associations; and

4. *Macrosystem factors*, such as male entitlement or ownership of women, masculinity linked to aggression and dominance, rigid gender roles, and the acceptance of interpersonal violence and physical chastisement."[12]

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[10] *K*elly & Johnson, *Supra 6*, pg. 482.
[11] *K*elly & Johnson, *Supra 6*, pg. 479.
[12] Holly Johnson & Myrna Dawson, *Violence Against Women in Canada: Research Policy and Perspectives*, Don Mills: Oxford University Press 2011, pg. 15.

Gender Asymmetry in Severity of Lethality of Family Violence

Statistics Canada points out that:

> "[…] homicide data have consistently shown that women victims of homicide in Canada are more likely to be killed by an intimate partner than by any other type of perpetrator […]. Among solved homicides in 2019, 47% of women who were victims of homicides were killed by an intimate partner, compared with 6% of homicide victims who were men."[13]

Similarly, the Canada's Department of Justice explained:

> "Most women killed by their spouses are killed after leaving the relationship or while attempting to leave. Nearly half (forty-nine percent) of all spousal homicides occur within two months of separation, often when the woman returns to the family home to retrieve belongings. Another thirty-two percent occur between two and twelve months of separation, and nineteen percent occur more than a year after separation. Almost half of spousal homicides are followed by a suicide (thirty-nine percent), or attempted suicide (six percent). Separation significantly elevates the risk of homicide for abused women, but not abused men."[14]

Toxic Masculinity and Internalized Misogyny

As is clear from the research, models, factors, and theories discussed above, the severity and lethality of family violence is evidently gendered, rendering women in an actual or pending separation far more likely to be severely injured or be killed than a man. Johnson and Dawson discuss a number of theories that attempt to explain this behaviour. We refer to their work.[15]

It is our view that the concept of 'toxic masculinity' must be dealt with in tandem with the concept of 'internalized misogyny'. Aiken and Velker differentiate the concepts:

> "When traditional gender roles are distorted, the idea of masculinity becomes toxic. Men using aggression and deception without the consent of their partner is normalized. Internalized misogyny occurs when a woman adopts sexist thoughts and behaviours and applies them, to herself and other women […]"[16]

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[13] https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00003-eng.htm

[14] Department of Justice Government of Canada, "Best Practices For Representing Clients in Family Violence Cases", (29 March 2002), online: <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/bpfv-mpvf/viol2a.html>.

[15] Johnson & Dawson, *Supra* 12, Chapter 2, theoretical debates

[16] Laura Aiken & Erica Velker, Rape Culture: The Correlation Between Adherence to Traditional Gender Roles, Internalized Mysogyny, and Rape Myth Acceptance in College Women Ages 18-20, Brenau University ProQuest Dissertations Publishing, Degree Year 2019, pg. 6. [online: https://www.proquest.com/openview/b993a65e4b44944e130dc905394fe5e7/1?pq-origsite=gscholar&cbl=18750&diss=y]

The two concepts both transmit cultural concepts that can result in harm against another person.

Recognizing Gender Fluidity, the Trans- experiencing, and Non-heteronormative Relationships

Owing to the disproportionate risk of family violence against women, the discussion surrounding the gendered nature of family violence risks ignoring or further marginalizing the experiences of gender fluid and trans- people, as well as non-traditional (or simply non-western) family structures and non-hetero-normative intimate partners.

For example, Statistics Canada pointed out:

"While many studies […] have shown that people who identify as lesbian, gay or bisexual are at increased risk for victimization in general, there is little quantitative research on the extent and nature of violence which takes place within same-sex intimate relationships in Canada […]."[17]

While there is the notion of the 'traditional' family structure that centers around a Western-centric concept of the hetero-normative, nuclear family, it is important that other family structures are explored and considered. For example, many collectivist cultures place incredible importance on grandparents, including living with them, which places such families outside of this traditional Western notion.

Families come in all forms including LGBTQ2+ intimate partners and parents, mixed race families, multi-generational families with both immigrant and generational cultural differences, to name a few.

Using Models, Theories, and Factors to Screen and Safety Plan for Families Experiencing Family Violence in Family Dispute Resolution

We encourage our members to use the information above to inform their screening practices. Many screening training providers actively use some or all the factors, theories, or models explained above.

In our experience, it is useful to assess parties to a family law matter using these models and theories, as they provide heuristics through which we can assess any potential family violence within the family dynamic of the parties. In particular, when we receive disclosures of a pattern of violent resistance, it indicates that coercive control may be at play in the parties' family dynamic. This information is crucial to deciding whether an alternative dispute resolution process is appropriate for potential parties and how to appropriately safety plan for them.

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[17] https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00005-eng.htm

Recommendations

Given our unique experience in interacting with families experiencing violence, we make the following recommendations:

Best Interests of the Child

We encourage the study to centre its inquiry around the best interests of children. As can be seen, in part from the discussion above, children are deeply and negatively impacted by family violence. At all times, the best interests of the child should be the overriding factor around which responses to family violence are centred.

Recognizing Diverse Relationships and Families

We urge the study to include the diverse experiences of intimate partners and families. This includes gender-fluid, trans-, non-heteronormative, monogamous, and non-monogamous relationships. To that end, we recommend that the study hold focus groups with Canadians, Canadian residents, and non-status folks, to understand their experiences of family, family violence, and family safety.

Survivor-informed Trauma Training

In our view, it is crucial that *any professional* who provides services to families should do so in a trauma-informed manner. We believe that trauma training that is informed by survivors of family violence is the most effective.

Family Law Norms

While it is outside of our scope to comment on the practice of law from a lawyering perspective, we do interact with the family law system. We recommend the following practices be altered so as to protect families experiencing violence, especially the children within these family systems:

a) Redact all sensitive information in family law filings from the publicly available version of the files, such as SIN numbers, health records (including mental health records).

b) Anonymize party names in case law. While we respect that legal information should be part of the public record, when it comes to families, this information can be abused by those with harmful intentions, including school bullies who use the information to harm children who are the subject of family law files.

Similarly, where family violence is alleged, the details of which can be deeply upsetting and humiliating, allowing that information to be listed in the public record can cause the survivor of harm to suffer reputational damage in their career, with their children's caregivers, conservative members of their community or religious groups, et cetera. The mere knowledge that such information will be put in the public record may be enough to discourage a survivor from seeking legal protections available.

Anonymization by referring to parties' initials only, or even using numbers instead of names as the Landlord and Tenant Board do, could be options.

c) Ensure all members of the justice system that interact with families are required to, and receive, survivor-informed, trauma-informed, family violence training so that they understand the issues at play. Critically, because 67% of IPV-related deaths occur during actual or pending separation, such training, can have life-saving outcomes.

d) Similarly, develop, employ, and fund training to build specialized expertise among those in the family justice system to address matters relating to family violence. Such specialized expertise could be used to provide dedicated justice system personnel, dedicated court time, and increase and improve upon integrated domestic violence courts. We refer you to the action items and critical components of an effective response by the Critical Components Project Team in British Columbia.[18] We recommend that all specialized professionals receive the same screening training that FDRIO certified mediators, arbitrators, and parenting coordinators receive.

We thank the committee for the opportunity to make submissions on these issues, and we would be pleased to provide further input as the committee deems appropriate.

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[18]Critical Components Project Team, Keeping Women Safe: Eight Critical Components of An Effective Justice Response To Domestic Violence, British Columbia: 2008 [online: https://endingviolence.org/files/uploads/KeepingWomenSafe0416.pdf].