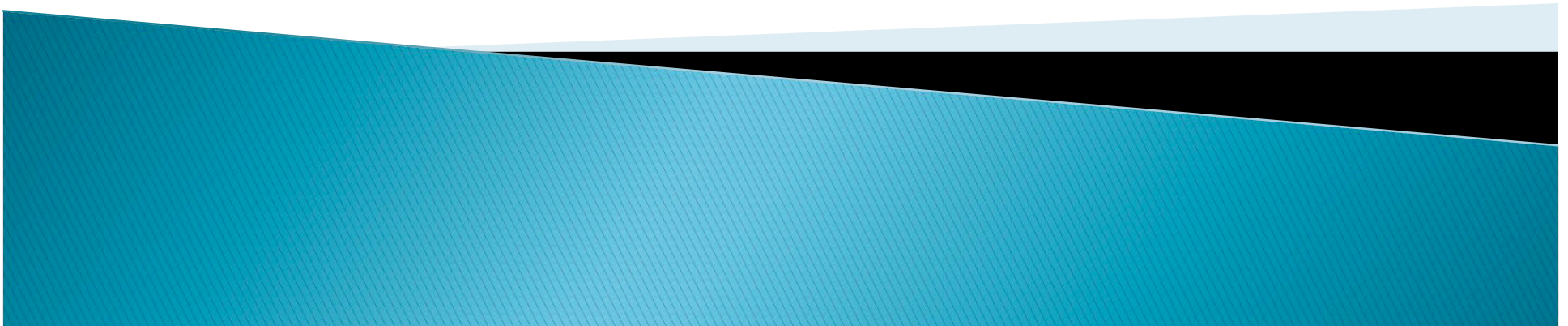


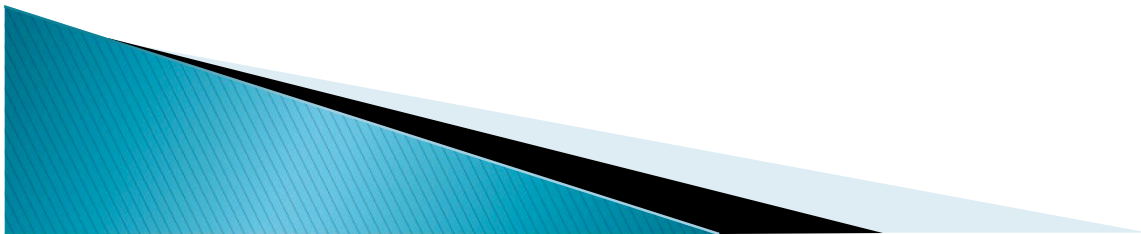
# Concurrent Court Proceedings – Judicial Coordination and Harmonization

FREDA National Research Day  
November 9, 2012  
Donna Martinson

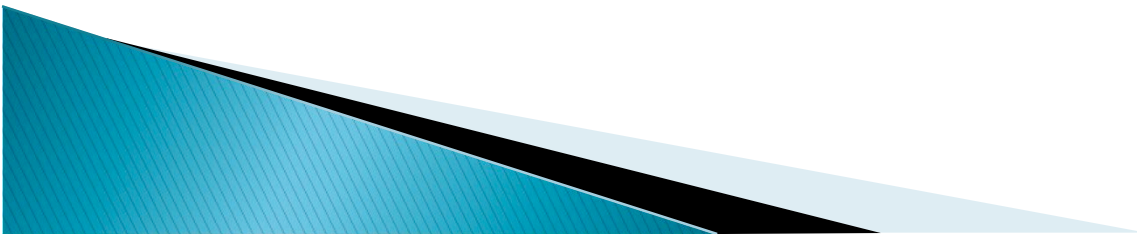


# Outline

- I. Introductory Comments
- II. Traditional Approach
- III. Challenges Caused by the Traditional Approach
- IV. Focusing on Similarities
- V. Toronto Integrated DV Court
- VI. Direct Judicial Communication
- VII. The Future – Promising Steps

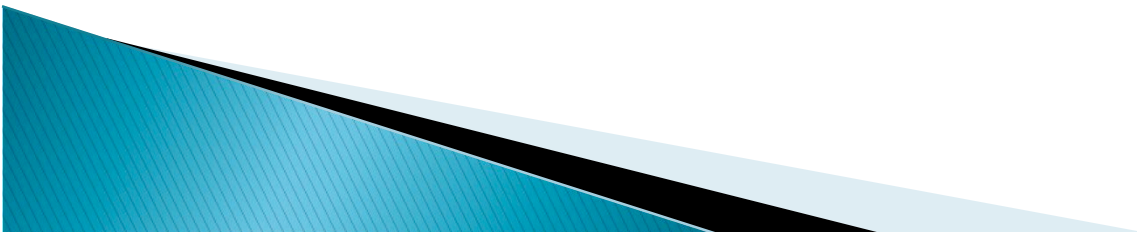


# I. Introductory Comments



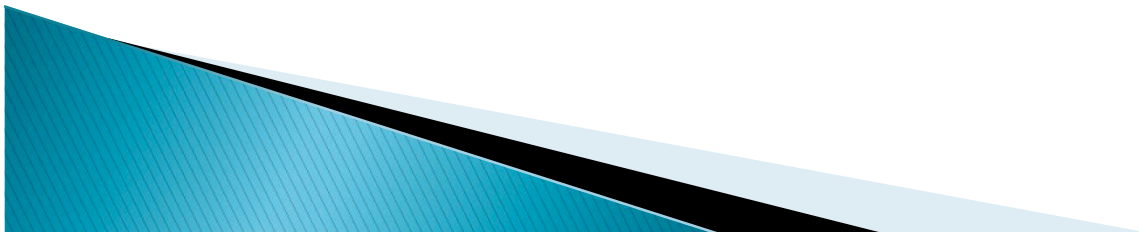
## II. Traditional Approach – A focus on Difference and Integrity of Individual Processes

- ▶ Different nature and purpose
- ▶ Focus in criminal cases on constitutionally protected rights of accused person
- ▶ Different burden of proof
- ▶ Different laws of evidence
- ▶ Different requirements re pre-trial dispute resolution
- ▶ Different consequences of conduct



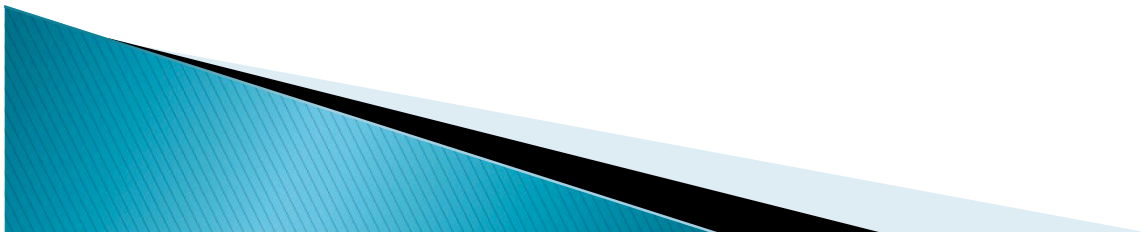
### III. Challenges Caused by Traditional Approach

- ▶ NJI B.C. Community Consultation
  - With Dr. Margaret Jackson and Dr. Catherine Murray, Simon Fraser University
  - Purpose to obtain information from people and organizations who deal with issues of violence against women in their daily work
- ▶ Advised that lack of coordination is a significant concern for women



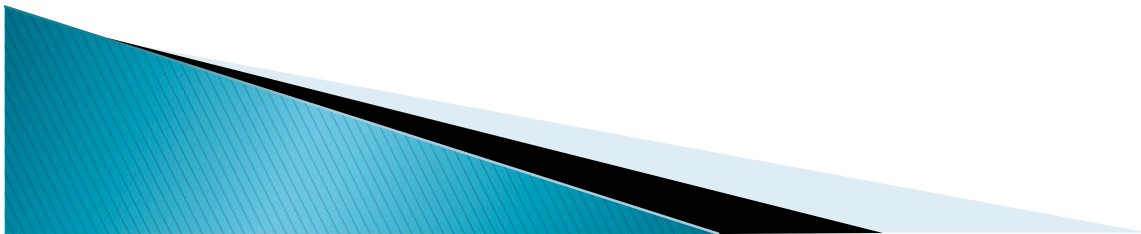
### III. Challenges (Cont'd)

- is a dangerous disconnect that increases risk of harm to women and children
- little or no information sharing between courts
- lack of coordination leads to inconsistencies and gaps in orders relating to contact
- Criminal cases often given priority
  - which can cause significant delay, and
  - adversely affect a timely resolution



### III. Challenges (Cont'd)

- immigration proceedings for immigrant women, especially those without status:
  - adds another layer of complexity
  - Judges often are not aware of immigration consequences of orders
- Multiple processes cause increased stresses which:
  - may escalate the conflict
  - which can result in an increased risk of harm



### III. Challenges (Cont'd)

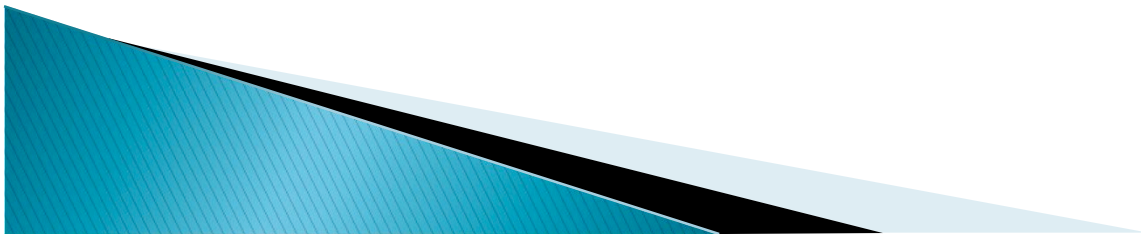
- women are required to “tell their stories” over and over, often to a series of judges both among and within proceedings
- women feel forced to “drop” charges because they “can’t do it any more”, especially while taking care of children
- the more often women are required to be in the same place as their partners, the more opportunities there are for abusive behaviour.





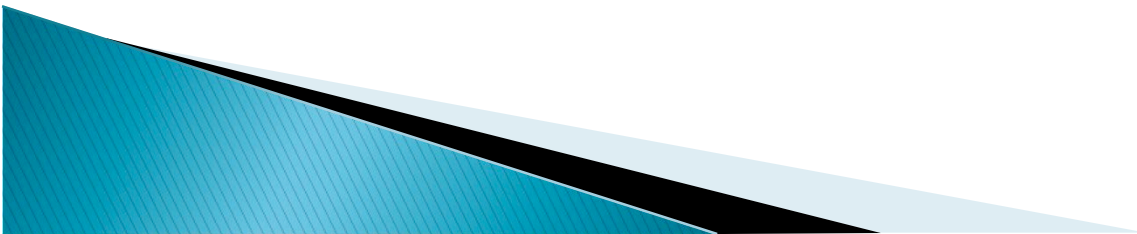
### III. Challenges (Cont'd)

- inaccessibility of legal advice exacerbates the problems
- litigation harassment and abuse, a significant problem, can be compounded with multiple proceedings
- added challenges for particularly marginalized, vulnerable women who also face administrative challenges such as obtaining day care, affordable housing, health care, access to education and the like.



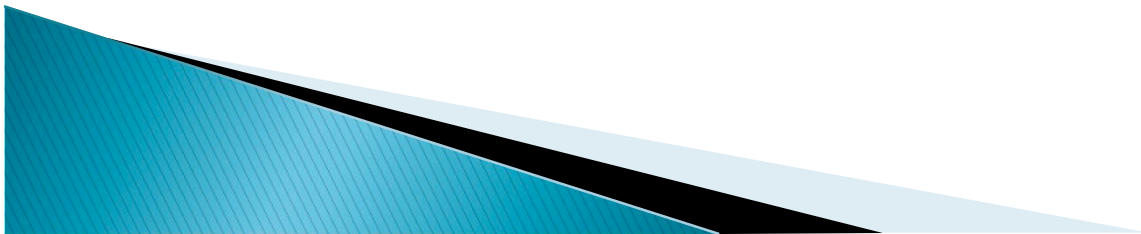
## IV. Focusing on Similarities

- ▶ Both proceedings:
  - involve the same people
  - require judges to make contact orders
  - raise considerations of future risk
  - are often resolved by agreement
  - May involve a professional report



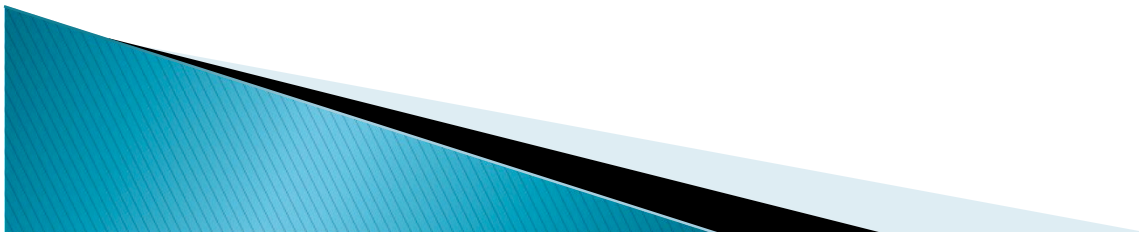
## IV. Focusing on Similarities (Cont'd)

- have as an objective the fair and timely resolution of disputes
- use case management to achieve effective, timely resolution
- require the court to make decisions that impact upon the same family, and
- use services that can help the person found to be violent.



## V. Toronto Integrated DV Court

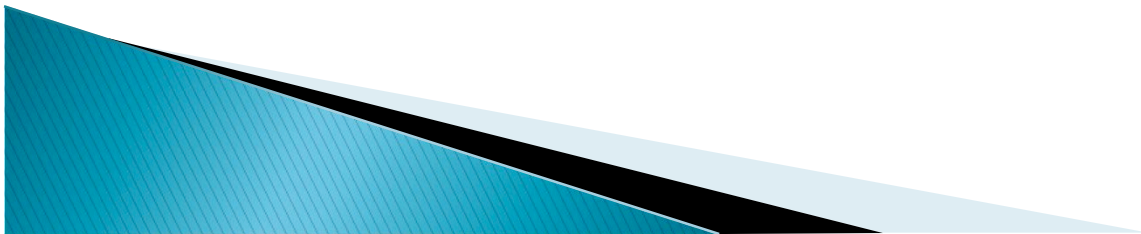
- ▶ Bold steps taken by Ontario Court of Justice
- ▶ Recognized that:
  - *The two courts [family and criminal] operate as independent silos with virtually no sharing of information between them and very little ability to communicate...*
- ▶ Based on the One Judge Per Family Approach
- ▶ Led by Judges
- ▶ Involved significant “community” involvement



## VI. Direct Judicial Communication

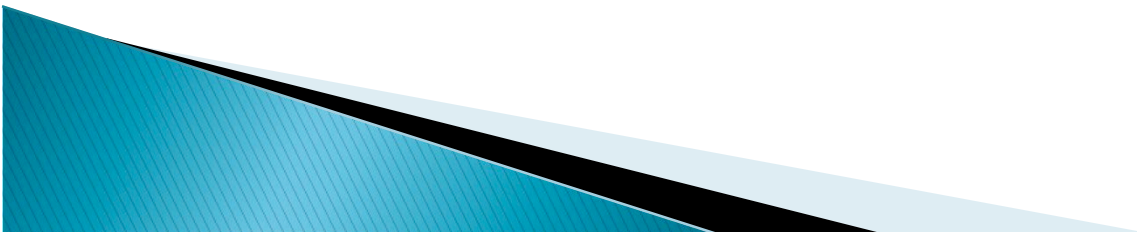
Use in cross-border cases:

- ▶ concurrent proceedings in different jurisdictions with the same parties.
- ▶ involves communication between judges:
  - with the knowledge of the parties
  - often in a joint hearing – with the parties and their counsel present



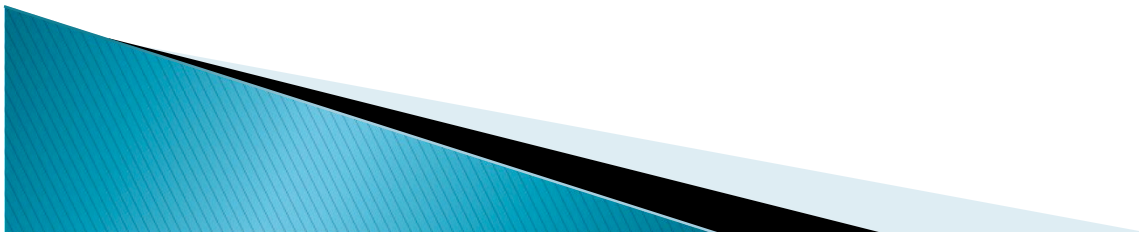
## VI. Direct Judicial Communication (cont'd)

- for the purpose of coordinating and harmonizing the proceedings
- ▶ The purpose is to reach a resolution of all the outstanding issues in a:
  - just,
  - timely, and
  - cost effective way
- ▶ The communications do not relate to the merits of each case



## VI. Direct Judicial Communication (cont'd)

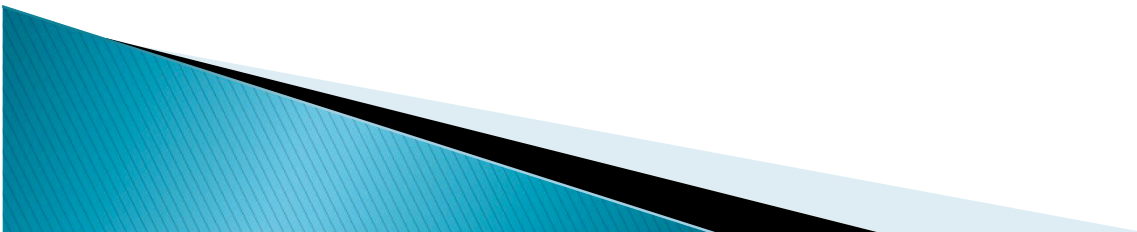
- ▶ there are safeguards:
  - usually takes place in Court
  - the parties are notified
  - is a record of the proceedings
  - the parties and their counsel participate



## Nova Scotia's Rule 86

- ▶ Rule 86 of the Nova Scotia Supreme Court *Civil Procedure Rules* governs judicial communication in cross-border cases in that province
- ▶ Provides a comprehensive scheme
- ▶ Permits both joint conferences and joint hearings with a judge in another jurisdiction.

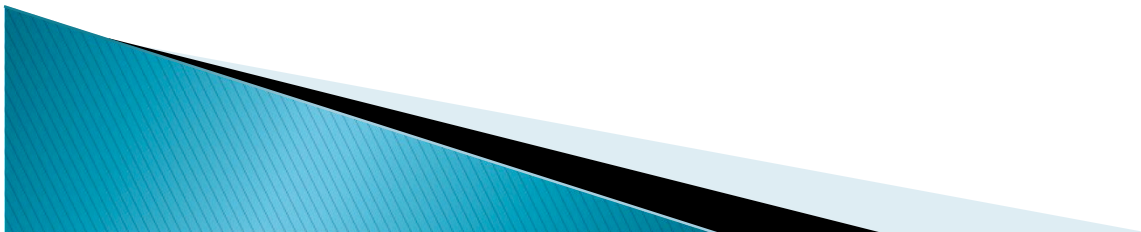
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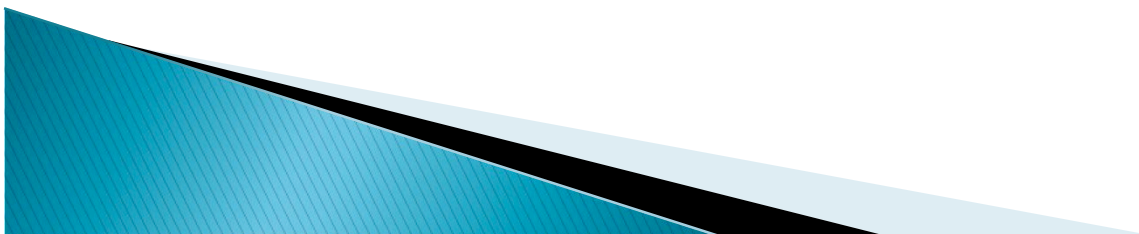
## B.C. Guidelines

- ▶ British Columbia Supreme Court 2004 guidelines for such communication: *Guidelines Applicable to Court to Court Communication in Cross-Border Cases.*
- ▶ Developed in the context of bankruptcy and insolvency litigation and used regularly in those cases.
- ▶ Apply to ALL cross-border cases.



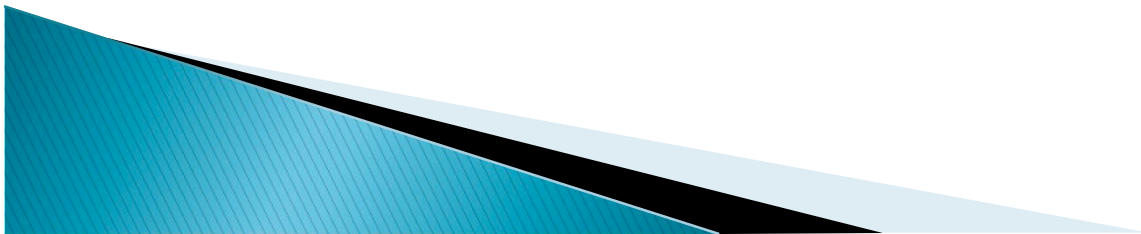
## Cross-border Child Abduction Cases

- ▶ The Canadian Judicial Council:
  - Approved the establishment of the Canadian Network of Contact Judges
  - Includes a Judge from each Province/Territory
  - Mandate is to include judicial networking and collaboration
  - Similar network has been established for Provincial Courts



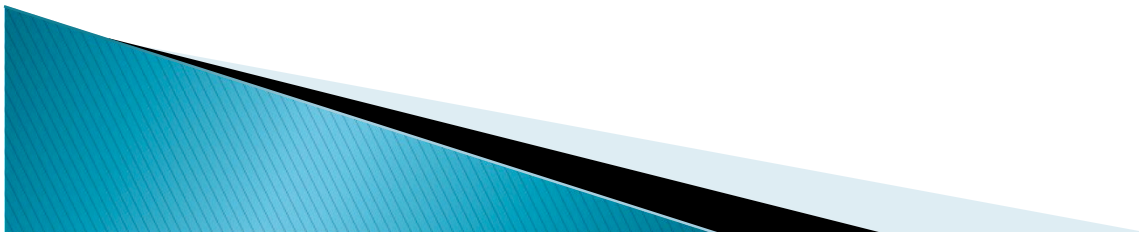
## Cross-border Child Abduction Cases

- ▶ The Network of Contact Judges:
  - has established protocols in each province for dealing with cross-border cases
  - has created Guidelines for judicial communication which apply:
    - internationally, and
    - in communication between provinces/territories
  - uses Network Judges to facilitate communication



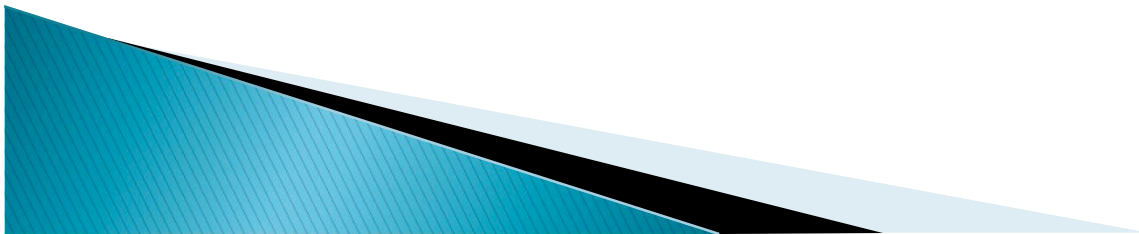
## VI. Direct Judicial Communication Within A Province or Territory

- ▶ Judicial Communication should also apply within a province or territory.
- ▶ Legal authority is found in *Hoole v. Hoole*, 2008 BCSC 1248:
  - ...[the principles] *also apply to situations like that found in British Columbia where different courts within a province have concurrent jurisdiction.*



## Federal Department of Justice Intersection of Family and Criminal Justice System Responses

- ▶ 2009 Conference on the issues of the intersection
- ▶ Deputy Minister of Justice acknowledged that the “*family and criminal justice systems continue to operate very much in separate silos*”
- ▶ Created a Federal Provincial – Territorial Working Group to examine “*issues relating to the intersection of different justice system responses to family violence.*”



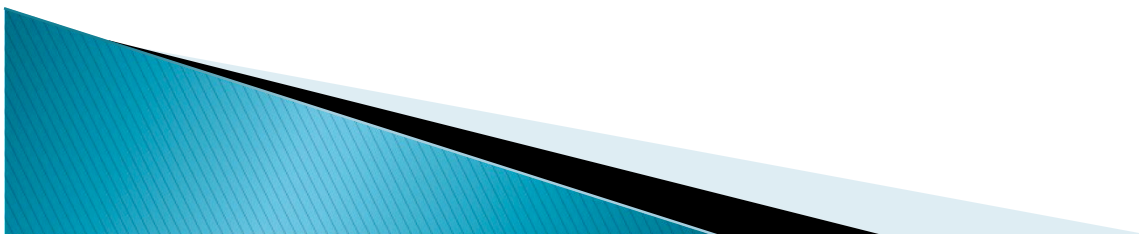
# Canadian Network of Contact Judges

- ▶ Network, at its February 2013 annual meeting, will:
  - consider the broad questions of communication between judges within a province/territory; and
  - consider ways in which the existing network, with judges designated for each court in each province/territory, could facilitate communication between both courts and judges.



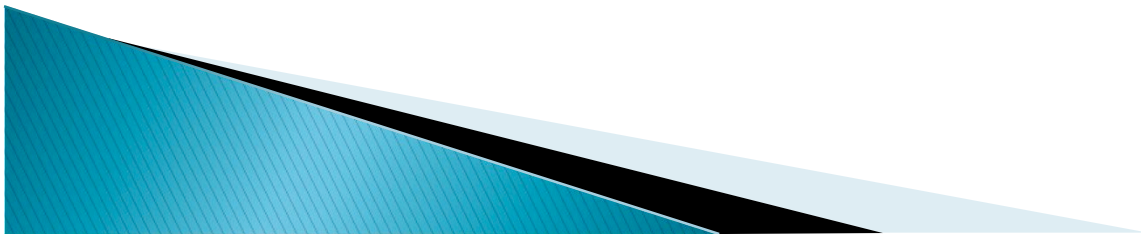
## National Judicial Institute

- ▶ *Problem-solving in Canadian Court Rooms – A Guide to Therapeutic Justice*, 2011
  - says that a problem solving approach also recognizes the importance of coordination between criminal proceedings and child protection proceedings.
- ▶ NJI Courts – *Managing Criminal and Family Law Domestic Violence Cases*, October 29–November 2, 2012.



## United Nations Update Model on Strategies to Combat Violence Against Women

- ▶ Calls on countries to take into account the importance of linking and harmonizing criminal law with other areas of the law, such as:
  - Family law
  - Divorce and issues of child custody
  - Labour law
  - Health Law
  - Immigration Law
- ▶ Purpose – to make sure civil law does not make women more vulnerable to violence.





## Suggestions for Lawyers

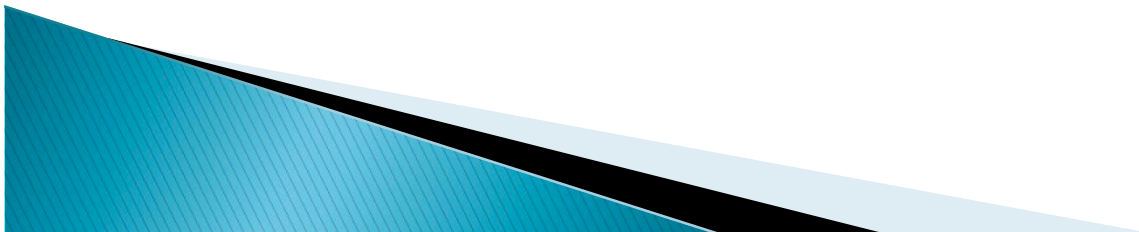
- ▶ Dr. Linda Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems*, June 2012
- ▶ Very helpful look at the legal issues that arise in these cases.

<http://www.crvawc.ca/documents/final%202012%20footnotes%20July%20For%20Western%20Final%20report%20for%20Justice.pdf>



## Integrity of the Process

- ▶ It is without question important to maintain the integrity of the individual processes
- ▶ At the same time, court to court and judicial communication can help achieve:
  - effective solutions that
  - ensure the integrity of the way the court processes as a whole impact upon the family in question.



## Integrity of the Process

“A broader view of the meaning of integrity of the processes can lead to the ongoing integrity of the family itself...”

The Honourable Judge Rosemary Gallagher,  
Provincial Court of British Columbia

