Multiple Court Proceedings and Intimate Partner Violence
– A Dangerous Disconnect
Keynote Address - Integrated Approaches to Intimate Partner Violence: Learning and Innovating Together[1]

October 21, 2014
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Keynote Address Overview

Where there are allegations of intimate partner violence (IPV), more than one court proceeding, relating to the same people and the same allegations, can take place at the same time. Two of them are criminal proceedings and family law proceedings. Traditionally these proceedings have operated separately, with one court not even knowing about the existence of another court proceeding, let alone knowing about what happened in that proceeding. This fragmented approach has significant and adverse consequences for those alleging IPV, particularly women and children. Among the consequences is the lack of sharing of information about and decisions made about the risk of future violence. It can lead to inconsistent approaches and exacerbate conflict. This fragmentation has been rightly called a dangerous disconnect as it can increase the risk of harm; there is an urgent need for coordination of the separate court proceedings and their outcomes. Providing meaningful access to justice in these cases requires using innovative approaches to such coordination that lead to not just consistent solutions, but the most effective solutions possible within the legal frameworks that apply.

Such coordination between courts and judges now happens when there are court proceedings relating to the same issues, involving the same people, in different provinces, territories and countries. This court-to-court coordination can and should be used as a model for coordination between courts and judges when there are multiple proceedings relating to IPV taking place in different courts <u>within</u> a province or territory. Cross-border parental child abduction cases provide an example of the coordination process used in cross-border cases. It involves the sharing of information between courts in different provinces, territories or countries, about the status of each proceeding, and any orders which have been made. This is a necessary step, but such information sharing is not enough.

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[1] Canadian Observatory on the Justice System's Responses to Intimate Partner Violence National Conference, October 20-22, 2014, Wu Conference Centre, University of New Brunswick, Fredericton, N.B.

[2] Donna Martinson, a retired judge, has been a Justice of the British Columbia Supreme Court and a Judge of the British Columbia Provincial Court. Before becoming a judge she practiced criminal law, both as Crown and defence counsel, and family law. She taught criminal law at UBC's law school and family law at the University of Calgary's law school. She is now an Honorary Visitor at the University of British Columbia, Faculty of Law, and an Adjunct Professor at Simon Fraser University's School of Criminology. She chairs the Canadian Bar Association United Nations Convention on the Rights of the Child Sub-Committee, a part of the National Children's Law Committee.

The over-arching goals of court-to-court coordination are and must be to ensure that the decisions of each court are based on complete and reliable information and to ensure that the overall outcomes are timely and just. Another aspect of the coordination process is therefore judicial communication directly between the judges assigned to the case in each place. Such judicial communication involves joint court management of the two cases, often using a joint court hearing with everyone participating. The case management: 1) focuses on the effective, timely resolution of both court proceedings; 2) canvasses the possibility of a settlement of some or all of the questions at issue; and 3) often leads to early and effective resolutions by bringing everyone together at the outset and identifying and discussing all of the issues. The judges do not jointly make decisions about the unresolved issues; they are decided separately by the court that has the jurisdiction to do so (though the scheduling of the hearings or trials are discussed during the management process). There are judicial communication safeguards in place to protect both fair process rights and the integrity of the individual proceedings. The Toronto Integrated Domestic Violence Court provides an example of how multiple proceedings within one court can be effectively managed using one judge to case manage all of the proceedings. The management process can be adapted to meet local needs and conditions.

While there are differences between criminal cases and family law cases that must be respected, there are many similarities that support coordinating both court processes and court outcomes. Not only do the different cases involve the same people, the same allegations of IPV, similar legal questions and evidence, the same kinds of solutions, and the same kinds of services, but the solutions in each are often reached by agreement. They have the common goal of reaching just, equality based outcomes that both address the public interest in protecting the safety of victims of violence and instill public confidence in the justice system. In both criminal and family law proceedings, judges, lawyers and other dispute resolution professionals are legally required to use contextual legal analysis to achieve fair and equality based outcomes. To do so, they must have: 1) comprehensive and up-to-date knowledge about IPV and its impact; 2) an in-depth knowledge about legal equality principles; 3) the ability to (a) identify inequality by understanding the social context of the people involved – their lived reality, and (b) to remedy that inequality; and 4) the ability to assess allegations of IPV with "informed impartiality" – an understanding of one's own perspectives, convictions and prejudices and the ability to address them.

Recent access to justice reports, initiated by the legal profession itself, have identified an access to justice crisis in Canada and have made numerous far-reaching and forward looking recommendations about how to remedy the crisis. Though the reports consider individual civil and family processes, the recommendations apply to and support the coordination of multiple court proceedings. They emphasize the need to: improve collaboration and coordination throughout the justice system; respond holistically; and provide multidisciplinary services. They also recommend: concentrating on outcomes – results that are just; and putting the public first, focusing on the needs of the people who use the system. High level implementation strategies are being

discussed across the country. There are also a number of promising initiatives taking place across Canada which specifically deal with multiple proceedings in IPV cases.

In the access to justice implementation discussions, emphasis must be placed on the requirements of a justice system that is effective in IPV cases both generally, and when there are multiple processes. Such a system must provide people with legal information and advice and produce timely, cost effective results. However, there is a danger of focusing too much on that "access" component of access to justice, and not enough on "justice". Meaningful access to justice requires more than just providing access to any lawyer, or any judge. The justice part of access to justice requires that those lawyers and judges dealing with family law cases and criminal law cases have the interest in, aptitude for, and the professional experience and expertise required to deal with the complexities of, and multifaceted nature of, IPV cases. It also requires that funding and resource priorities be significantly adjusted so that there is not a disproportionate amount of public money spent on protecting people charged with crimes from being wrongfully convicted and imprisoned, at the expense of ensuring the safety, security and well-being of those people, mostly women and children, who suffer the adverse consequences of IPV. Both are important and achievable societal goals.

I will elaborate on the points I have raised, focusing on violence against women and children, using these headings:

1. Challenges caused when multiple proceedings operate in silos
2. My personal epiphany – applying court-to-court coordination principles in cross-border cases to multiple proceedings within a province or territory
3. Looking for opportunities for change, not obstacles to change
    a. Barriers identified by some lawyers and judges
    b. General features common to criminal and family proceedings
        i. Common legal questions, including the risk of future violence
        ii. The same people involved in both
        iii. Common evidence, including expert evidence
        iv. Common use of Judicial case management
        v. The same support services and resources needed in both
    c. Common features relating to outcomes
        i. Most outcomes in each reached without a contested trial or hearing
        ii. Just, equality based outcomes are a common goal
    d. Decisions (outcomes) in both criminal proceedings and family law proceedings require contextual legal analysis
        i. Comprehensive up-to-date knowledge about IPV
        ii. Understanding equality principles
        iii. Identifying and remedying inequality
        iv. Making decisions with informed impartiality – understanding and addressing one's own perspectives, convictions and prejudices
    e. Applying contextual legal analysis to IPV cases
4. Promising general access to justice developments within the legal profession
5. Promising developments when there are two or more proceedings
6. How to innovate together.

Keynote Address

My topic is addressing dangerous disconnects created when there are both family law proceedings and criminal law proceedings taking place at the same time, and relating to the same people. I am very happy to be here in Fredericton, speaking about the topic. I am not so sure that my husband Ken was as happy about my trip when he dropped me off at the Vancouver airport on Sunday morning. He said: "We are both retired. Remind me again why you are going to Fredericton when we could be getting on a plane together to walk on a lovely, warm beach somewhere?"

He does very much support my volunteer work, knows why I do it, and does quite a lot of it himself; he was just being mischievous. But here's the answer I would have given him had he been serious. There are two reasons. First, I think that lawyers and judges can and must do a much better job of coordinating processes and results when both criminal law cases and family law cases are taking place at the same time.

Second, In Fredericton I am going to have the chance to think more about how to do that by collaborating with people from various parts of the justice system, including front line people, working directly with women and children who are impacted by IPV. They are professionals who have already learned a great deal about how to integrate processes and services throughout the justice system to better protect women and children from violence. They have both the passion for and expertise to work with the legal profession to make the kinds of major changes needed.

There are sometimes several different court processes dealing with the same people and taking place at the same time. In addition to criminal proceedings and family proceedings there can be child protection proceedings and immigration/refugee proceedings. Youth justice proceedings add yet another dimension. Though I have been asked to focus specifically on criminal proceedings and family proceedings, the principles I will discuss also apply to child protection and other proceedings.

Each criminal and family law proceeding operates separately – in silos - with little or no communication between them. This can lead to conflicting court orders dealing with the risk of future harm, based on incomplete or erroneous information. And it can result in dangerous situations in IPV cases.

I will say at the outset that my remarks in this respect focus on violence by men against women and children. I know that: 1) men can be victims of violence by women and by other men; 2) women can be victims of violence by other women; and 3) violence occurs in relationships involving other sexual minorities. These are unquestionably important issues. The ultimate goal is equality for everyone. But of course to have

equality for everyone we need to have equality for women and children. I consider the issues relating to the nature of, extent of and impact of violence against women and children to be by far the most pressing.

1. Challenges caused when multiple proceedings operate in silos

I have been involved in developing education programming for judges and lawyers throughout most of my career. The National Judicial Institute in Ottawa[3] is responsible for most judicial education in Canada. After I retired from full time judging, I was asked to help that Institute develop some programming for judges on domestic violence.

I wanted to know more about the challenges faced by women and children generally in IPV cases, and those they faced when there was more than one court proceedings in particular. I met Dr. Margaret Jackson, the Executive Director of the FREDA Centre for research on violence against women and children, who became a faculty member for the Institute's domestic violence program. She arranged for me to meet with many people, representing many organizations, all of whom work on a day-to-day basis with women and children in IPV situations and who advocate for their equality rights. I met with them separately, and then Dr. Jackson and I, along with Dr. Catherine Murray, organized a round table discussion. Those consultations led to a report which was used to help inform the Institute's domestic violence programming.[4]

I learned a great deal about IPV and the courts, but will focus on what I learned about many of the challenges created when there are multiple court proceedings. The group agreed that that absence of coordination is a significant concern for women, creating a dangerous disconnect that increases the risk of harm to women and children. There is little or no information sharing between courts. Lack of coordination leads to inconsistencies and gaps in orders relating to contact. This consensus statement makes the conflicting orders point very well: [5]

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[3] https://www.nji-inm.ca

[4] ***National Judicial Institute Domestic Violence Program Development for Judges – April 2012, British Columbia Community Consultation Report***, prepared for the National Judicial Institute National Judges Conference: Managing the Domestic Violence Case in Family and Criminal Law, October 29 – November 2, 2012, Vancouver, British Columbia.

http://fredacentre.com/wp-content/uploads/2012/10/The-Hon.-D.-Martinson-National-Judicial-Institute-April-2012-B.C.-Community-Consultations-on-Family-Violence-Report.pdf

[5] Previous note, at p. 5.

> “Criminal courts order no contact, child protection authorities say the children will be apprehended if there is contact and family court focusses on the view that contact is in the best interests of children and grants unsupervised access.”

The participants in the consultations made several other comments about the challenges created by multiple proceedings:

- Criminal cases are often given priority, which can cause significant delay and adversely affect a timely resolution;

- Immigration proceedings for immigrant women, especially those without status, add another layer of complexity; Judges often are not aware of immigration consequences of orders;

- Multiple proceedings cause increased stresses which may escalate the conflict and can result in an increased risk of harm;

- 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”, aaespecially while taking care of children;

- Inaccessibility of legal advice exacerbates the problems;

- Litigation harassment and abuse, a significant problem, can be compounded with multiple proceedings;

- The more often women are required to be in the same place as their partners, the more opportunities there are for abusive behaviour; and

- There are added challenges for particularly marginalized, vulnerable women who also face other challenges such as obtaining day care, affordable housing, health care, access to education and the like.

2. My Personal Epiphany – Applying Court-to-Court Coordination Principles in Cross-border Cases to Multiple Proceedings within a Province or Territory

I must confess that, like many other lawyers and judges, I accepted through most of my career that it was both normal and inevitable to have separate criminal and family law systems operating in silos. I don't say that proudly. I was always very interested in women's equality issues generally and those relating to violence against women and children in particular. But, I didn't think about how they fit together. This is so even though I have spent significant time working as crown counsel, a defence counsel, a criminal law teacher and a judge in the criminal law system. I was also a family law lawyer, family law teacher and family law judge in the family law system. I had the epiphany near the end of my judging career. It came about because of the work I was doing on parental child abduction, when children are taken by one parent to either another Canadian province or territory or to another country.

a. Communication between courts and judges in cross-border child abduction cases

The Canadian Judicial Council decided to create a group of Supreme Court/Court of Queen's Bench judges, one from each province and territory, to work together to help Canada deal more effectively with parental child abduction cases. The Council of Chief judges for the Provincial Courts wanted to participate so it also designated judges from most provinces and territories. I was asked by my Chief Justice to be the British Columbia Supreme Court judge on that group. The group is called the Canadian Network of Contact Judges, ("the Network Judges"). (For more information about the Network Judges, see: ***The International Hague Network of Judges: Canadian Judicial Initiatives***,[6] written by Justice Robyn Moglove Diamond, Chair of the Network. See also my paper, ***The Canadian Approach to Direct Judicial Communication – Making Concurrent Proceedings Operate Effectively***. [7])

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[6] International Family Law Journal, [2013] IFL 307.

[7] Prepared for: ***Cross Border Child Custody Disputes – Judicial Networking and Direct Judicial Communication,*** Judicial Officers Pre-Institute, Association of Family and Conciliation Courts, May 28, 2014, Toronto, Ontario; and for *Judicial Networking and Communication: What Canadian Judges and Lawyers Involved in Cross Border Child Custody Cases Should Know,* and *Bridging the Gap – Promoting Better Coordination of Family, Child Protection and Criminal Proceedings in Cases of Family* Violence, National Family Law Program, July 13-18, 2014, Whistler, B.C. (This paper is an updated version of a paper by the same name prepared for the National Judicial Institute Atlantic Courts Education Seminar for Federally Appointed Judges: Martinson J., *Cross-Border Child Abduction and Other Relocation Issues*, Moncton, New Brunswick, Canada, November 1, 2011.)
http://fredacentre.com/wp-content/uploads/2010/09/The-Hon.-D.-Martinson-The-Canadian-Approach-to-Direct-Judicial-Communication.pdf

I was particularly interested in that work because I discovered that both in Canada and world-wide, most of the parents who take children without the legal authority to do so: 1) are women who have moved from their homes to another place, met someone, have children; 2) say that they and their children are experiencing IPV; 3) feel they are unsafe; 4) don't think they will be protected in the place they are living; and so 5) take the children and go back home. (For more information see ***Cross Border Parental Child Abduction – Social Context Issues***.) [8]

When parents leave in this manner it often results in two separate court cases taking place at the same time. One occurs in the place they left, and the other occurs in the place to which they went. Two different judges then deal with the issues that arise, one in each jurisdiction. Ordinarily each of those court proceedings would continue in its own silo. One judge may not even know that a judge in another place is dealing with the same family. As you can imagine, this creates significant problems, not the least of which is that judges could make contradictory orders about safety without knowing the full picture.

The Network Judges set up a process through which the two courts in the different places can communicate directly with each other. They also created judicial communication guidelines and step-by-step procedures to assist. The process involves the sharing of information between courts about the status of each proceedings, and any orders which have been made. This is a necessary step, but such information sharing is not enough.

The over-arching goals of court-to-court coordination are and must be to ensure that the decisions of each court are based on complete and reliable information and to ensure that the overall outcomes are timely and just. Another aspect of the coordination process is therefore judicial communication directly between the judges assigned to the case in each place. Such judicial communication involves joint court management of the two cases, often using a joint court hearing by video or telephone, with everyone participating. The case management: 1) focuses on the effective, timely resolution of both court proceedings; 2) canvasses the possibility of a settlement of some or all of the questions at issue; and 3) often leads to early and effective resolutions by bringing everyone together at the outset and identifying and discussing all of the issues. The judges do not jointly make decisions about the unresolved issues; they are decided

[8] The Hon. Donna Martinson and Melissa Gregg, prepared for *Cross Border Child Custody Disputes – Judicial Networking and Direct Judicial Communication*, Judicial Officers Pre-Institute, Association of Family and Conciliation Courts, May 28, 2014, Toronto, Ontario. http://fredacentre.com/wp-content/uploads/2010/09/The-Hon.-D-Martinson-and-M-Gregg-Cross-Border-Parental-Child-Abduction-Social-Context-Issues.pdf

separately by the court that has the jurisdiction to do so (though the scheduling of the hearing or trials are discussed during the management process). There are judicial communication safeguards in place to protect both fair process rights and the integrity of the individual proceedings.

Let me give you an example of such communication in a case in which I was involved as a judge of the British Columbia Supreme Court, called ***Hoole v. Hoole***.[9] The mother, father and child had been living in British Columbia for some time. The mother was concerned about safety issues and took the child to Oregon, where she had roots. The mother went to court in Oregon claiming custody and obtained a temporary protection order. The father went to court in B.C. and got an interim custody order, and wanted the child returned to B.C.

In the ***Hoole*** case I communicated with the judge in Oregon and we set up a joint court telephone hearing. At that hearing the Oregon judge was in her courtroom with the mother, her lawyer, and the father's Oregon lawyer. In the B.C. courtroom I had the father, the father's lawyer, and the lawyer the mother had hired in B.C. Everyone participated in discussions about each of the issues. In the end, the parents were able to reach an overall agreement. In my opinion the process was very effective and enhanced access to justice for the people involved.

I learned through my work with the Network Judges that U.S. judges in child abduction cases are required, when a protection order is involved, to contact the court in the other jurisdiction.[10] I also found out that judges and courts communicate this way in cross-border bankruptcy cases.[11] Nova Scotia has a court rule allowing such cross-border judicial communication in all kinds of cases where there are court proceedings in different jurisdictions.[12]

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[9] 2008 BCSC 1248
http://www.canlii.org/en/bc/bcsc/doc/2008/2008bcsc1248/2008bcsc1248.html
[10] *Uniform Child-Custody Jurisdiction and Enforcement Act*, 1997.
[11] *Guidelines Applicable to Court to Cross-Border Cases* developed by the American Law Institute https://www.google.ca/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=guidelines%20applicable%20to%20court%20to%20court%20communications%20in%20cross%20border%20cases
[12] Nova Scotia Civil Procedure Rule 86.

b. Coordination between courts and judges within a province or territory

i. Applying the cross-border coordination model

Suddenly a light came on for me. If courts and judges can coordinate and communicate when there are two court proceedings taking place at the same time in different places, why can't they communicate when there are two different proceedings taking place within our provinces and territories? The process developed in the cross-border context can be used as a model.

The court-to-court coordination within a province or territory would involve the sharing of information between courts about the status of each proceeding, and any orders which have been made, including those relating to the risk of future violence. But court-to-court coordination would and should go beyond the administrative sharing of that kind of information. As with cross-border cases the over-arching goals of court-to-court coordination are and must be to ensure that decisions of each court are based on complete and reliable information about IPV and its impact, including the risk of future violence, and to ensure that the overall outcomes are timely and just.

Like cross-border coordination, such judicial communication would involve joint court management of the two cases, often using a joint court hearing with everyone participating. The case management would: 1) focus on the effective, timely resolution of both court proceedings; 2) canvass the possibility of a settlement of some or all of the questions at issue; and 3) could lead to early and effective resolutions by bringing everyone together at the outset and identifying and discussing all of the issues.The intent of the judicial communication is not to have a family law judge make decisions for the criminal law judge or vice versa, or to have the judges make joint decisions,(though the scheduling of those hearings/trials would be discussed at the management hearing). The same judicial communication safeguards would be in place to protect both fair process rights and the integrity of the individual proceedings.

(For more information on this topic, see: ***Judicial Coordination of Concurrent Proceedings in Domestic Violence Cases***;[13] ***The Canadian Approach to Direct Judicial Communication – Making Concurrent Proceedings Operate Effectively***[14]

[13] The Hon. D. Martinson, prepared for Managing the Domestic Violence Case in Family and Criminal Courts, National Judicial Institute Intensive Education Program for Judges, October 29 to November 2, 2012, Vancouver, British Columbia.
http://fredacentre.com/wp-content/uploads/2012/11/MartinsonPaper_5e.pdf

[14] Above, note 7.

and ***Can We Do a Better Job of Coordinating Family and Criminal Proceedings in Domestic Violence Cases****?*[15])

I thought that the Network Judges could become leaders in making coordination and communication between or among judges happen in their individual provinces and territories, using the model developed for cross-border cases. I made that suggestion to them. In May 2014, they passed a resolution supporting such communication. That resolution says that the Network Judges support: 1) the extension of judicial communication from communication between judges in different jurisdictions to communication between judges within a province or territory; 2) adapting the existing judicial communication guidelines and the step-by-step procedures to apply to such communications; and 3) taking the matter back to their courts for consideration. I believe that one important reason that the Network Judges passed this resolution was that I was able to explain to them all of the challenges I learned about during the consultations I have described.

ii. Other approaches to court-to-court coordination within a province or territory

Though using the cross-border court-to-court coordination model is an important option, there will be other innovative approaches that would likely work in particular locations, taking into account local conditions. There is no one way of coordinating, so long as the over-arching goals I have identified are met. For example, I discuss the innovative and effective Toronto Integrated Domestic Violence Court model, below, under the heading: 5. Promising developments when there are two or more proceedings.

3. Looking for Opportunities for Change, not Obstacles to Change

a. Barriers identified by some lawyers and judges

When thinking about making the kinds of changes necessary to achieve such coordination, some lawyers and judges may raise concerns about the differences between criminal and family law cases, and about the importance of maintaining the integrity of the individual processes. They may suggest that as a result coordination is not workable.

[15] The Hon. D. Martinson, prepared for Managing the Domestic Violence Family Case, November 17 – 19, 2010, National Judicial Institute, Quebec City, Quebec, National Judicial Institute Library.

They may, for example: point to the fact that each has a different nature and purpose; argue that, unlike family law cases, the focus in criminal cases is on constitutionally protected rights of accused persons, including the protection against self-incrimination; point to the different burdens of proof – beyond a reasonable doubt in criminal cases and the balance of probabilities in family law cases; highlight the fact that different evidence laws may apply; note the different requirements relating to pre-trial dispute resolution; and emphasize the different potential consequences, particularly the potential loss of liberty in criminal cases. (For more information about the differences between criminal law cases and family law cases, see ***Judicial Coordination of Concurrent Proceedings in Domestic Violence Cases***[16].)

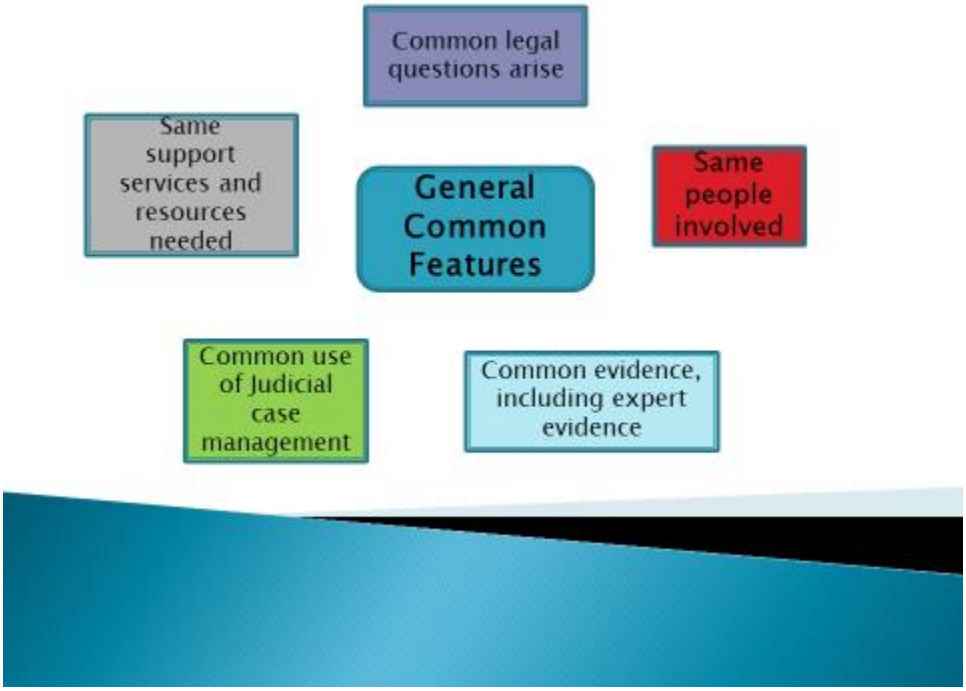
There are differences. But there are many similarities which support coordination. There can be judicial case management of proceedings and coordination of outcomes while at the same time maintaining the integrity of the individual proceedings. Such an approach would assist in instilling public confidence in the justice system.

In our medical system it is unlikely that most people would support, or have confidence in, a fragmented approach to the practice of medicine. That is, in situations where more than one medical professional is involved in a person's healthcare, people would not likely support a system in which each professional operated separately, without information about the existence of other professionals, let alone about what they are doing and why they are doing it. People would prefer to ensure that the medical approaches were coordinated and consistent and that the outcomes of each professional's involvement support the person's overall health. Similarly, it is unlikely that most people would support, or have confidence in, a legal system that operates in silos in the way I have described.

[16] Above, note 13 at pp. 16-18.

b. General Features common to criminal and family proceedings

This slide identifies features common to criminal and family proceedings that support coordination.



I will consider each, in turn.

i. Common legal questions including whether there is a risk of future violence

There are a number of legal questions that arise both in criminal law proceedings and in family law proceedings:

(a) Is the claim of IPV proven?
(b) If so, what was the impact of the IPV?
(c) Is there a risk of future harm? How is the question of risk determined?
(d) Should the resolution (outcome) prevent or allow contact with the woman of the children. If there is to be contact, what kind of contact is appropriate?
(e) How should children's rights to participate in the proceeding be invoked?

Though the questions are common, they may arise at different stages of the proceedings. For example, in a criminal proceeding the question of the risk of future harm may arise at a judicial interim release (bail) hearing and at a sentencing hearing (if there is a conviction), but not at the trial to determine guilt or innocence. The same

question in a family law proceeding would be relevant to both best interests of children decisions and decisions relating to temporary and long term protection orders for both women and children.

The last question, (e), raises the issue of how children's rights to participate should be implemented throughout each proceeding. Children have significant rights to participate in both judicial and administrative proceedings that affect them, based on Canada's obligations under the *United Nations Convention on the Rights of the Child.*[17] Children are of course deeply affected by proceedings dealing with IPV. As a "questioner", who identified herself as a front line worker, said so compellingly at the conference address last evening, "Children's voices in these cases must be both heard and respected."

ii. The same people involved in both

The people who are involved in and impacted by the decisions are the same in each proceeding - the woman alleging the violent conduct, the child or children and the person who is "accused" of the violent behaviour. This may seem like a trite observation, but it is a significant consideration when different courts are making decisions and orders about them in isolation. (Of course in criminal proceedings crown counsel represents the state).

iii. Common evidence, including expert evidence

In both proceedings, evidence will be required to prove that the violent conduct occurred. That evidence will be the same in each proceedings, or at least overlap significantly. There may also be expert evidence in both proceedings and the issues may be the same or overlap. Determining the risk of future harm is an issue that lends itself to such expert evidence.

iv. Common use of Judicial case management

In the traditional approach to civil law court proceedings, it was the lawyers or the parties themselves who decided when and how often a case would come before the court. In family law cases, legislation and court rules often provide for case management by a judge. Such management is focused on reaching solutions in an effectively, timely and affordable way. It can involve such practices as: identifying the

[17] See Dr. Nancy Bell and the Hon. Donna Martinson, ***Legal Professionalism and Access to Justice – Lawyers as Champions for Children***.
http://ethicsincanada.files.wordpress.com/2014/02/d-martinson-and-n-bell-legal-professionalism-and-access-to-justice-lawyers-as-champions-for-children.pdf

real issues and determining how they should be resolved; considering the possibility of settling some or all of the issues; limiting court appearances to those which are necessary; and assisting people to prepare for trial if a trial is needed.

In criminal cases, as Dr. Jackson and I have noted,[18] judges can, and do, to varying degrees, become involved in both pre-trial case management and pretrial dispute resolution efforts in criminal cases. One important example is the approach taken in problem solving courts. The National Judicial Institute published, in September 2011, ***Problem Solving in Canada's Court Rooms – a Guide to Therapeutic Justice.***[19] The Guide describes initiatives, often led by judges, which, "have resulted in the establishment of courts and courtrooms dedicated to addressing some of the root problems — mental health issues, addiction, limited anger- and risk-management skills, poverty, and social marginalization — behind criminal activity."[8] The Guide describes both initiatives setting up separate courts and ways in which judges can use a problem solving approach in "regular" courtrooms. The Canadian Council of Chief Judges passed a resolution in April 2011 supporting both the use of the problem solving approach and the importance of judicial education to assist judges in effectively using it.[9]

Effective use of case management in individual proceedings is a necessary first step toward the effective coordination of multiple proceedings.

v. The same support services and resources needed in both

Court procedures cannot produce just outcomes without the necessary support services. This includes services to support women and children who allege IPV. The same kinds of services are required whether there is one proceedings or more than one proceeding.

c. Common features relating to outcomes

The slide which follows identifies two common features relating to outcomes: resolution without a trial or hearing; and common goals.

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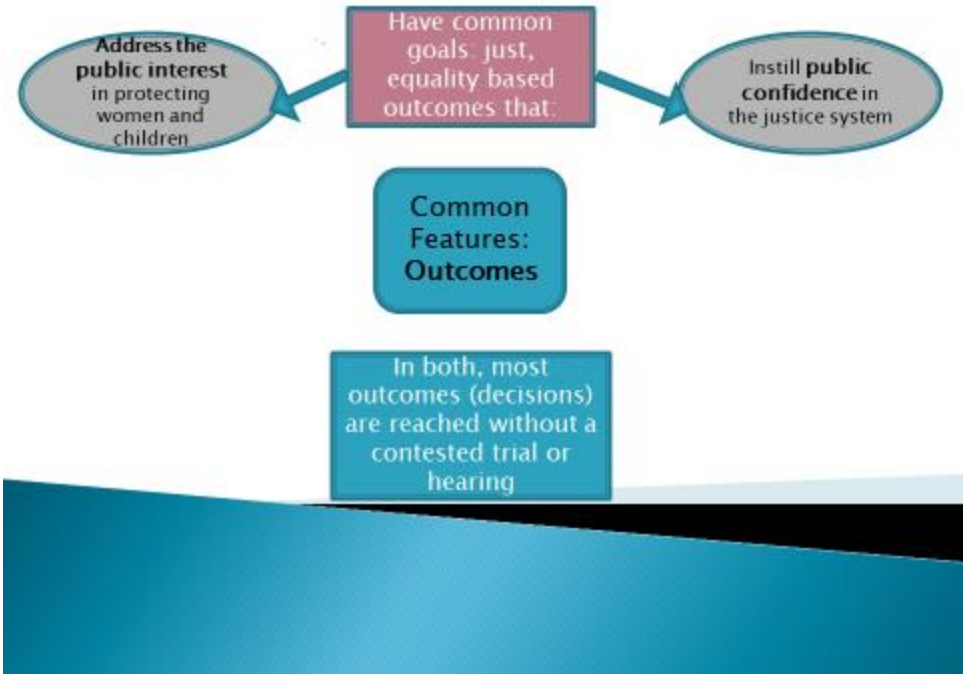
[18] The Hon. Donna Martinson and Dr. Margaret Jackson, ***Judicial Leadership and Domestic Violence Cases – Judges Can Make a Difference***, at pp. 6-7. http://fredacentre.com/wp-content/uploads/2010/09/NJI-Final-Judicial-Leadership-and-Domestic-Violence-Cases.pdf

[19] Written for the National Judicial Institute by Susan Goldberg, NJI Library, www.nji.ca



I. Most outcomes in each reached without a contested trial or hearing

When there are both criminal and family law proceedings, the outcome of one or both of the proceedings may be the result of a decision by a judge after a contested (disputed) trial or hearing. Most often, however, each of the two cases, criminal and family, is resolved without a decision by a judge. In family law cases it is usually by way of a settlement between the parties. In criminal cases there can be a guilty plea to the original charge or a different charge, or the charge can be withdrawn, stayed, or referred to "alternative measures" for various reasons.

Unfortunately, such resolutions now often take place later rather than earlier in the course of the proceedings. The resolutions are usually reached in isolation, without considering the other proceeding. Early and coordinated case management, along with cooperation between the people involved in each of the two proceedings, including lawyers representing clients in each, could lead to earlier, coordinated results that are both effective – the best results possible – timely and cost efficient.

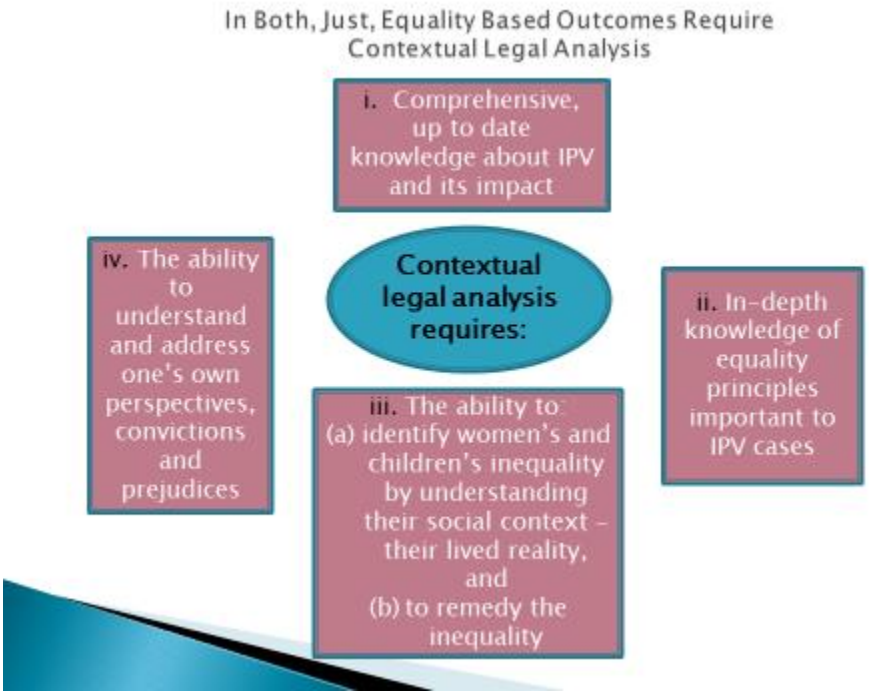
ii. Just, equality based outcomes are a common goal

It is sometimes said that the family and criminal systems are different because criminal law involves the public interest, and family law proceedings are private, involving specific families. I respectfully disagree; both the family justice system and the criminal

justice system do and must address the significant public interest in protecting women and children; there is a strong public interest in sending a message that our family justice system will not tolerate IPV. It is equally important that there is public confidence in the justice system. A justice system which does not give the necessary attention to cases involving the very significant societal issue of IPV and its impact will not instill that confidence.

d. Decisions (outcomes) in both criminal proceedings and family law proceedings require contextual legal analysis

The last slide deals with what is known as contextual legal analysis, which is an analysis required by law to ensure just, equality based outcomes. It applies to all legal processes, including, for our purposes, family law and criminal law proceedings. This slide sets out four essential components of contextual legal analysis, and I will discuss each of them.



i. Comprehensive and up-to-date knowledge about IPV

As Dr. Carmen Gill said in her opening remarks this morning, we need a common comprehensive approach in all IPV cases which recognizes their complexity and multi-faceted nature. Achieving this objective requires judges and lawyers who have

specialized expertise and knowledge and who participate in continuing professional development.[20] (For more information about the importance of having specialized judges in the family law context, together with case management, see both: Professor Nicholas Bala, Dr. Rachel Birnbaum and Justice Donna Martinson, ***One Judge for One Family: Differentiated Case Management for Families in Continuing Conflict***; and Hon. Donna Martinson, ***One Case-One Specialized Judge: Why Courts Have an Obligation to Manage Alienation and Other High-Conflict Cases*.**[21])

ii. Understanding equality principles

Lawyers and judges need much more than a passing understanding of equality principles found in both domestic law, including the ***Charter of Rights and Freedoms*** and international human rights laws. ***Charter*** values must inform the interpretation of all Canadian laws. International human rights laws applicable to Canada must inform the interpretation of both the ***Charter*** and all other Canadian laws.

While all ***Charter*** values apply to women and children, some are particularly relevant to IPV cases:

- Section 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

- Section 28. Notwithstanding anything in this *Charter*, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

- Section 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

These are some of the international human rights laws that apply to IPV cases:

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[20] For further discussion on this requirement see: The Hon. Donna Martinson and Dr. Margaret Jackson, "Changing Judicial Roles – the Importance of Judicial Education" in ***Judicial Leadership and Domestic Violence Cases – Judges Can Make a Difference***, above, note 18, at p. 11.

[21] ***One Judge for One Family: Differentiated Case Management for Families in Continuing Conflict*****,** **(**2010) 26 Can. J. Fam. L. pp. 395-450; ***One Case-One Specialized Judge: Why Courts Have an Obligation to Manage Alienation and Other High-Conflict Cases*****,** Vol. 48 No. 1 Family Court Review, January 2010, pp. 180-189.

- United Nations Declaration on the Elimination of Violence against Women:
- United Nations Convention on the Rights of the Child:
- United Nations Convention on the Elimination of all Forms of Discrimination Against Women;
- United Nations Convention on the Elimination of all Forms of Racial Discrimination;
- United Nations Convention on Persons with Disabilities; and
- United Nations Declaration on the Rights of Indigenous Peoples.

iii. Identifying and remedying inequality

Knowing about equality law is necessary because it is the standard against which we measure inequality. More, however, is legally required. Judges and lawyers must be able to identify inequality and know how to remedy it by having an in depth understanding of the social context – the lived reality - of the women and children in question. Dr. Gill also emphasized this need to have knowledge of context. Understanding context includes being informed about the discrimination women and children have faced and continue to face generally and in IPV cases in particular.

Canada's Chief Justice, Beverley McLachlin, when speaking about judging in a diverse society,[22] eloquently explained the importance of a contextual analysis, stating that, "…the judge understands not just the legal problem, but the social reality out of which the dispute or issue before the court arose".[23]

She expanded upon the words social reality this way:[24]

> …
> "Judges apply rules and norms to human beings embedded in complex, social situations. To judge justly, they must appreciate the human beings and situations before them, and appreciate the lived reality of the men, women and children who will be affected by their decisions." (emphasis added)

Understanding this lived reality of women and children requires ongoing, comprehensive education. Such education is provided by the National Judicial Institute.

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[22] ***Judging: the Challenges of Diversity***, Remarks of the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, Judicial Studies Committee Inaugural Annual Lecture, June 7, 2012, Edinburgh, Scotland: http://www.scotland-judiciary.org.uk/Upload/Documents/JSCInauguralLectureJune2012.pdf

[23] Above, note 22 at p. 13.
[24] Above, note 22 at p. 14.

What the Chief Justice said about the need for contextual legal analysis applies to all legal analysis, including that engaged in by lawyers. It also applies to all other professionals in the justice system who make decisions about IPV. For example, it applies to those professionals who mediate or arbitrate and those who conduct parenting assessments; they must make decision/recommendations or facilitate agreements that comply with the law.

iv. Making decisions with informed impartiality - understanding and addressing one's own perspectives, convictions and prejudices

Equality and contextual analysis are inextricably linked to impartiality. People sometimes say that they cannot participate in education programs, particularly those focusing on equality issues, because they need to be and be seen to be impartial. But, being impartial doesn't mean knowing nothing.

In the presentation mentioned above, Chief Justice McLachlin spoke about this important connection between equality and contextual analysis, and impartiality. She said that not only must judges understand lived reality, but they must make decisions with what she calls "informed impartiality". This, she stated, requires an understanding that there are subjective elements to judging, making the point that judges can have biases: [25]

> "Like everyone else, judges possess preferences, convictions and – yes – prejudices."

She noted that informed impartiality requires that decision makers have the ability to identify their own preferences, convictions and prejudices and to address them by being introspective, open and empathetic.[26]

Acting with informed impartiality is a requirement for all legal and other professionals in IPV cases. It is particularly important when decisions about the credibility of allegations of IPV are being made. Providing thoughtful and comprehensive reasons for decisions that are reached, particularly when credibility must be decided, is an essential part of making decisions with informed impartiality. The process of doing so requires the decision maker to think carefully about how and why decisions are made.[27] It also provides accountability to the people for whom the decision is being made; they will not

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[25] Above, note 22 at p. 7.
[26] Above, note 22 at p. 11.
[27] The Hon. D. Martinson, "The Requirement for Reasons for Decisions", ***The Family Law Act and Family Violence: Independent and Impartial Parenting Assessments***, at pp. 19-21. https://www.cle.bc.ca/PracticePoints/FAM/13-TheFLAandFamilyViolence-IndependentandImpartialParentingAssessments.pdf

only know why a particular decision was reached, but will also be able to challenge the decision through the appeal process if they wish to do so.

d. Applying contextual legal analysis in IPV cases

Contextual legal analysis provides, in IPV cases, an equality based understanding of what is relevant in particular cases, both generally and with respect to the issue of the risk of future harm. For example it provides information about: why patterns of abusive behaviour, including subtle forms of coercion, are relevant to allegations of violence; how violence against women can have a significant and often long-lasting impact not only upon the women involved, but also upon children; and, more broadly, the ways in which violence conduct can continue after separation and how it can adversely impact upon parenting. (For further information about relevant social context information see ***The Family Law Act and Domestic Violence: Judges Can Make a Difference*.**[28] In it, Dr. Margaret Jackson and I discuss several important areas in which contextual information is important.[29] See also the information provided in this respect in the community consultations referred to above.[30])

As noted in the previous section, contextual legal analysis plays an important role in the way in which decision makers decide issues of credibility. Making decisions with informed impartiality requires decision makers to take great care not to rely on the false and unsubstantiated beliefs and assumptions (often called myths and stereotypes) that continue to exist about women when they make allegations of IPV. I described some of them in a presentation called ***Credibility Assessment– Ensuring that the Justice System is Accountable to Women***:[31]

Examples of false and unsubstantiated views and assumptions about women and credibility:

- Women commonly make false allegations of abuse against men;
- Women falsely allege violence just so they can get legal aid;
- It is common for women to allege abuse so as to alienate the children from their father;

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[28] Above, note 18
[29] Above, note 18 at pp. 13-25.
[30] Above, note 4 at pp. 8-21.
[31] PowerPoint presentation at a Webinar: ***Equality Values in Family Law,*** presented by West Coast Leaf and the Trial Lawyers Association of B.C., February 27, 2014. http://fredacentre.com/wp-content/uploads/2010/09/The-Hon.-D.-Martinson-Credibility-Assessment-Ensuring-that-the-Justice-System-is-Accountable-to-Women-March-31-2014.pdf

- Women with disabilities are less credible;
- Women exaggerate abuse;
- A credible woman would disclose violence early;
- A credible woman would report the assault to the police;
- Violence against a woman by a man has nothing to do with his parenting ability;
- There is now domestic violence gender symmetry - women are just as "guilty" as men;
- Abuse stops once relationship ends so there is no future risk of harm; and
- Violence is not a significant problem in family law - "I don't have cases where violence is involved".

(For a recent academic discussion on this issue, see: ***Myths and Stereotypes in Family Law: Exploring the Realities and Impacts of Custody and Access/Shared Parenting***.[32])

Contextual legal analysis is also important when existing laws are being interpreted and the creation of new laws is being considered. In both criminal cases and family law cases, judges and lawyers must examine existing laws and principles of evidence to ensure that the laws and evidence principles themselves comply with ***Charter*** and other equality values designed to both protect women and children and to ensure equality to them. At a broader policy level, contextual legal analysis is required to ensure that proposed laws, principles of evidence and court processes comply with ***Charter*** and other equality values.

Understanding the social context of IPV aids in decision making in the ways I have described, but it can never take the place of an actual analysis of the facts of a particular case. There can be no starting presumptions, based on social context information, either generally, or with respect to the credibility or lack of credibility of a particular person in a particular case. A case by case analysis is required.

[32] Prepared by The FREDA Centre for Research on Violence Against Women and Children, February 2014.
http://fredacentre.com/reports/reports/ (see VAW and the Law)

4. Promising General Access to Justice Developments within the Legal Profession

Recent access to justice reports, [33] initiated by the legal profession itself, have identified significant access to justice challenges in Canada and have made numerous far-reaching and forward looking recommendations about how to remedy them. Though the reports consider individual civil and family processes, the recommendations apply to and support the coordination of multiple court proceedings.

The National Access to Justice Committee's final report, ***A Roadmap for Change*****,** for example, finds that the **"**…family justice system is too complex, too slow and too expensive…and too often incapable of producing just outcomes that are proportional to the problems brought to it or reflective of the needs of the people it is meant to serve."[34] The National Action Committee was conceived of by the Supreme Court of Canada and chaired by Justice Tom Cromwell.

Chief Justice McLachlin told a room full of some 500 family law lawyers in July 2014 at the National Family Law Program[35] that we have an access to justice crisis in Canada. In speaking about the crisis, she emphasized that many people have done outstanding work in the access to justice field. The people in this room will be among them. However, more needs to be done.

It is encouraging to me that these comprehensive reports have been done, that many significant recommendations have been made, and that discussions are taking place across the country to implement them. Among the many recommendations in ***A Roadmap for Change*** that would apply to and support new approaches to multiple proceedings are these:

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[33] ***Access to Civil and Family Justice, A Roadmap for Change*****,** Final Report of the National Action Committee on Civil and Family Justice**,** October 2013;
http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf
***"equal* justice, *balancing the scales"*,** Interim Report, the Canadian Bar Association, August 2013, file:///C:/Users/Donna/Downloads/Equal-Justice-Report-eng.pdf
"equal* justice, *balancing the scales"*,** Final Report**,** the Canadian Bar Association, December 2013. ***http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/CBA_equal_justice.pdf
Futures – Transforming the Delivery of Legal Services in Canada, August 2014.
http://www.cbafutures.org/cba/media/mediafiles/PDF/Reports/Futures-Final-eng.pdf

[34] *A Roadmap for Change,* above, note 33 at p. 01.

[35] Canada's Federation of Law Societies' National Family Law Program, July 13-18, 2014, Whistler, B.C.

- Collaborate and Coordinate:[36]

> "We also need to focus on collaboration and coordination. The administration of justice in Canada is fragmented. In fact, it is hard to say that there is a system – as opposed to many systems and parts of systems…
> …
> We can and must improve collaboration and coordination across and within jurisdictions, and across and within all sectors and aspects of the justice system (civil, family, early dispute resolution, courts tribunals, the Bar, the Bench, court administration, the academy, the public, etc.)…"
>
> We can and must improve collaboration, coordination and service integration with other social service sectors and providers as well.

- Focus on Outcomes:[37]

> "…We should not be preoccupied with fair processes for their own sake, but with achieving fair and just **results** for those who use the system… (emphasis in original)
> …
> Providing justice – not just in the form of fair and just process but also in the form of fair and just outcomes – must be our primary concern."

- Put the Public First:[38]

> "The focus must be on the people who need to use the system…
> Litigants and especially self-represented litigants are not, as they are too often seen, an inconvenience; they are why the system exists.
> …
> Until we involve those who use the system in the reform process, the system will not really work for those who use it…"

- A significant shift in culture:[39]

> "We need a fresh approach and a new way of thinking. In short, we need a significant shift in culture to achieve meaningful improvement to access to justice in Canada – a new culture of reform."

[36] Above, note 33 at p. 07.
[37] Above, note 33 at p. 09.
[38] Above, note 33 at p. 07.
[39] Above, note 33 at p. 06.

- Promote Case Management in All Appropriate Cases[40]

> "Overall, judges, tribunal members, masters, registrars and all other such court officers should take a strong leadership role in promoting a culture shift toward high efficiency, proportionality and effectiveness through the management of cases…"

- Have more research to promote evidence based policy making.[41]

The Canadian Bar Association report, "***reaching equal justice*****,"** says that a holistic approach to justice is needed. Access to justice should be tailored to the individual person and that person's situation:[42]

> "…responding holistically to both legal and non-legal dimensions so that access is meaningful and effective."

.

The Canadian Bar Association released another related report in August 2014, ***Futures – Transforming the Delivery of Legal Services in* Canada.**[43] It suggests that no idea, institution, or model should be sacrosanct. It says that the key for the future for the legal profession will be innovation.

A Roadmap for Change deals with the question of specialized judges for family law cases. It specifically recommends specialized judges, those who either have or are willing to acquire, the necessary expertise, ideally judging in a unified family court. The recommendation highlights the importance of judicial education on "family violence":[44]

> **4.5 Courts Should Be Restructured to Better Handle Family Law Issues**
>
> "... The judges presiding over proceedings in the court should be specialized.
>
> They should have or be willing to acquire substantive and procedural expertise in family law; the ability to bring strong dispute resolution skills to bear on family cases; training in and sensitivity to the psychological and social dimensions of family law cases (in particular, family violence and the impact of separation and divorce on children); and an awareness of the range of family justice services available to the families appearing before them."

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[40] Above, note 33, at p. 16.
[41] Above, note 33 at p. 10.
[42] Final report, above, note 33, at p. 59.
[43] Above, note 33.
[44] Above, note 33 at p. 19.

While the ***Roadmap for Change*** recommendations relate specifically to having specialized judges in family law proceedings, as family law is the focus of the report, the arguments in favour of specialized judges also apply to judges who deal with criminal law cases involving IPV. I agree with Professor Rosemary Cairns Way's description of the kind of experience and expertise required in criminal law cases generally. She is a Professor of Law at the University of Ottawa and a former academic advisor at the National Judicial Institute. Her comments apply with even more force to criminal law cases involving IPV:[45]

> "…Criminal law is where the state and the individual citizen come into direct conflict, and, criminal law requires a depth of expertise on a range of constitutional rights as well as empathy for the human condition. It requires a sophisticated understanding of disadvantage and inequality which characterizes most of those caught up in the criminal justice system as accused, victims and members of the broader community…"

There are some specialized judges in Canada who work in Unified Family Courts. There are some specialized judges who work in domestic violence criminal law courts. That specialization improves the effectiveness of the processes used and the outcomes reached in the individual proceedings. In addition, having specialized judges in each court enhances the ability of those judges to work together effectively in cases where there are multiple proceedings to create the best outcomes possible for the people involved.

Another important area that the access to justice reports identify is the question of the lack of diversity within the legal profession. They refer to both the lack of diversity of the people within the profession, and the lack of diversity of the areas of law in which lawyers prefer to practice. There is more focus on "business" law than there is on areas of the law that are more relevant to vulnerable people who need legal assistance, including those who experience IPV. A discussion of this issue is beyond the scope of this presentation. Steps are being taken by the legal profession, to correct this imbalance.

5. Promising Developments When There are Two or More Proceedings

The access to justice reports to which I have referred also say that we need access to justice champions. In the second half of the morning we are lucky to be able to hear from three such champions whose work dealing with our topic of multiple proceedings and IPV is most impressive. They are from three different sectors.

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[45] ***Deliberate Disregard: Judicial Appointments under the Harper Government*****,** Working Paper Series, Faculty of Law, University of Ottawa, WP 2014 – 08, June 2014, at p. 23.

Claire Farid, a senior policy lawyer with the Federal Department of Justice, played a leadership role, working with her provincial and territorial partners, in the preparation of an excellent report on the issue of multiple proceedings, called ***Making the Links in Family Violence Cases: Collaboration Among the Family, Child Protection and Criminal Justice Systems*.**[46] The comprehensive report discusses the prevalence of family violence and its particularly negative impact on women and children. It explains the nature of multiple proceedings and the problems they create when they operate in silos, and suggests that this is a significant justice system issue. It identifies and deals with important challenges that arise including privacy concerns - what should and should not be disclosed/shared to keep women and children safe. It considers promising practices across the country. One such practice is the creation of a court coordinator program, developed here in New Brunswick, in Moncton.

Dr. Linda Neilson needs no introduction here because she is from, and is very well known in, Fredericton. She is an academic who has over many years worked effectively and tirelessly on IPV issues. Her work includes the creation of a Domestic Violence Bench Book for judges, published by the National Judicial Institute. She has taken the academic lead in Canada on the topics being dealt with at this conference by, among other things: identifying the important adverse consequences of the lack of coordination when there are multiple proceedings in IPV cases; advocating for the need to urgently address them; and providing specific and very helpful suggestions to assist lawyers, judges and others in dealing with the challenges that can arise. See, for example, ***Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection) A Family Law, Domestic Violence Perspective.***[47]

Justice Geraldine Waldman, a judge of the Ontario Court of Justice, was instrumental in the creation of Toronto's Integrated Domestic Violence Court. Creating the Court was a bold and important step in addressing challenges relating to multiple proceedings when those proceedings take place within one court institution. The process used involves one judge managing both the criminal and family proceedings and another judge dealing with any contested hearing or trials required. The process used to set up the Court and the objectives set for the Court are very useful to others considering coordination initiatives. The Office of the Chief Judge engaged in community consultation and set up advisory committees. The objectives identified are these:

1. Allow better informed judicial decision-making: The judge should have more comprehensive and current information concerning issues involving the family.

[46] http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mlfvc-elcvf/index.html
[47] http://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhan-renfo/index.html

This should allow the judge to more fully understand the family, its ongoing needs and the progress each member is making. The judge, for example, should be able to more fully evaluate safety concerns, compliance with orders, and progress in parenting concerns relating to access.

2. Eliminate conflicting or inconsistent orders: Conflicting court orders create confusion, which can impact on compliance and enforcement. The existence of conflicting orders also undermines litigants' confidence in the justice system and can create safety concerns. Elimination of conflicting orders should make the expectations of the court system clear to all participants, and consequently supports compliance.

3. Provide consistent handling of multiple matters relating to a single family by a judge who is knowledgeable in the area of domestic violence. Single judge case management has been shown to be an effective approach to resolving family disputes. The judge develops an understanding of the case and the litigants, and can support them in moving though the litigation with appropriate orders and expectations. Judges with expertise in both family and criminal law and in the issues relating to domestic violence should be able to better understand the needs of the litigants and to direct the litigation in a manner that is appropriate for the concerns of the community and the issues facing the litigants.

4. Provide a better connection to social services and other community resources. Having a community resource coordinator allows the court to develop and maintain a connection to community resources and to connect the families to resources that are appropriate to their needs. This should allow for a more comprehensive and expeditious response to the issues facing various family members, and facilitate monitoring of progress, which supports the court in appropriate decision-making and should expedite resolution.

5. Reduce costs for both the justice system and the parties by reducing the number of appearances in court and trips to court. Those involved will only have to attend one court location. The coordination of appearances should reduce the number of attendances. Consolidation of resources and monitoring should also add to efficiencies that will benefit both the family and the justice system.

(For more information about the Integrated Domestic Violence Court, and a positive evaluation of it, see: Dr. Rachel Birnbaum, Professor Nicholas Bala, and Dr. Peter Jaffe, ***Establishing Canada's First Integrated Domestic Violence Court: Exploring Process, Outcomes and lessons Learned***.[48] See also the discussion about the appropriateness of using integrated domestic violence courts in Canada by Professor Jennifer Koshan, in ***Investigating Integrated Domestic Violence Courts: Lessons from New York***.[49])

[48] In print, Canadian Journal of Family Law.
[49] (2014) Vol. 51, No. 3, Osgoode Hall Law Journal.

Coming from British Columbia, I will mention the recent and very helpful approach incorporated in B.C.'s new ***Family Law Act***[50] which:

- requires judges, lawyers and parents to consider specific factors relating to domestic violence and risk;
- includes the requirement that judges, lawyers and parents must, when determining the best interests of a child, consider other civil and criminal proceedings affecting the safety, security and wellbeing of the child;
- requires dispute resolution professionals, including lawyers, to screen for family violence in all family law related cases, not just those involving parenting issues; and
- requires all mediators, arbitrators and parenting coordinators to take a minimum of 14 hours training in screening for domestic violence.

6. How to Innovate Together

The access to justice discussions taking place across the country have a focus much broader than IPV. We need to place and keep access to justice for women and children in these cases at the forefront of the discussions. I will conclude by emphasizing two points that are at the top of my personal priority list moving forward.

My first priority involves professional qualifications. Meaningful access to justice requires more than just providing women and children with access to any lawyer, or any judge. The justice part of access to justice requires that lawyers and judges who do this work have the interest in, aptitude for, and professional experience and expertise (including the willingness to engage in professional development) required to deal with the complexities of, and multifaceted nature of, IPV cases.

My second priority relates to funding and resource priorities in providing legal assistance to people who need the help of the courts. People charged with crimes have, and should have, constitutionally protected rights to not be wrongfully convicted and to not inappropriately lose their liberty. But, women and children also have constitutionally entrenched rights to be protected from violence – to not be murdered or otherwise physically, psychologically or emotionally harmed

In my respectful view, we have completely lost our sense of proportion in our allocation of energy, legal assistance and other resources for each. It almost seems like we start with providing everything the criminal justice system thinks it needs, including providing judges and often high paid lawyers for trials that can last months or even years. Only if there happens to be money left over do we consider providing the legal assistance, and

[50] (SBC 2011) C. 25.

the many other services and resources, necessary to effectively protect the legal rights of women and children. Even then we discuss unbundling services, so they obtain a lawyer for only part of their case. We cancel court challenges programs designed to protect and enhance those rights. We significantly underfund people, lawyers and others, who advocate for women and children.

I have worked in many parts of the criminal justice system, including working as a defence lawyer, for over forty years. It is my considered opinion that we can change approaches to criminal proceedings so that they are much more cost effective, and still protect well the important constitutional rights of people charged with crimes. We can and must also meet our important obligations to protect the safety and security of women and children dealing with intimate partner violence.

I look forward to collaborating and innovating with you to try to make these changes happen.