

ARTICLE

“ONE FAMILY, ONE JUDGE”: TOWARDS A NEW MODEL FOR ACCESS TO JUSTICE FOR FAMILIES FACING VIOLENCE IN BC

By Juliana Dalley*

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INTRODUCTION

Spouses and children victimized by domestic violence face exceptional barriers in access to family justice in British Columbia (BC).¹ A multifaceted socio-legal problem, domestic violence implicates criminal, civil, and family law simultaneously. Thus, in taking steps to ensure her safety and the safety of her children, a battered woman may become implicated in multiple, concurrent legal proceedings taking place in different jurisdictional spheres.² Reporting an incident of violence to the police can trigger a prosecution in provincial criminal court, a custody dispute in provincial or Supreme Court, divorce and matrimonial property proceedings in Supreme Court, and child protection proceedings in provincial court.³ These proceedings are driven by fundamentally different concerns, will likely be handled by different lawyers, and will be heard by different judges. The confusion and overlap that result from this fragmentation can create gaps in safety planning, lead to conflicting court orders, and can enable the offender to exercise control by manipulating the court process. Such fragmentation can lead to continued violence and, in the worst of circumstances, to tragedy.⁴

* Juliana Dalley is a third-year JD student at the University of British Columbia. She would like to acknowledge and thank Professor Susan Boyd for her thoughtful comments on an earlier draft of this paper. She would also like to thank the *Appeal* Board, including her editor, Cynthia Khoo, and her external reviewer, for challenging her to strengthen the arguments raised in this paper.

1 This paper uses the terms “family violence”, “domestic abuse”, and “domestic violence” to include physical and sexual violence, as well as emotional and financial abuse, perpetrated by an intimate partner or parent.

2 This paper invokes gendered language to reflect the fact that family violence is a gendered phenomenon, with over 80 percent of survivors of family violence being women: *Statistics Canada, Family Violence in Canada: A Statistical Profile* (2009), online: <<http://www.statcan.gc.ca>> at 5. However, this is not to suggest that women in heterosexual relationships are the only victims of domestic violence or to diminish the significance of the barriers to access to justice faced by same-sex couples experiencing violence, but rather to reflect the systemic, gendered nature of the harm occasioned by family violence. Indeed, more research on violence in same-sex relationships is needed to understand the causes of such violence and how it might be reduced: Jessica Stanley et al, “Intimate Violence in Male Same-Sex Relationships” (2006) 21:1 *Journal of Family Violence* 31 at 31.

3 See *Family Relations Act*, RSBC 1996 c 128; *Divorce Act*, RSC 1985, c 3; *Child, Family and Community Service Act*, RSBC 1996, c 46.

4 The murder of 6-year-old Christian Lee, his mother Sunny Park, and his maternal grandparents by Peter Lee in 2007 is one well-known example, and will be discussed in further detail in Part II of this paper. See Mary Ellen Turpel-Lafond, *Honouring Christian Lee — No Private Matter: Protecting Children Living with Domestic Violence* (Victoria: BC Representative for Children and Youth, 2009).

Spouses and children who experience domestic violence face both substantive and procedural legal barriers in accessing family justice. These barriers must be seen as interrelated. Therefore, eliminating them necessitates coordinated, systemic law reform. After an extensive community consultation process, BC recently introduced a new piece of family law legislation that attempts to alleviate some of the substantive legal barriers to family justice in the context of family violence.⁵ Although this legislation represents important steps in addressing these problems, without reform of the system in which this new law will be administered, these changes will not effectively address some of the underlying structural barriers faced by survivors of domestic violence. I argue that the implementation of an integrated domestic violence court (IDVC) system would help to address some of the structural barriers faced by survivors of domestic violence in navigating the court system.⁶ The IDVC is a specialized court where one judge decides almost all legal matters relating to one family, that arise in the context of family violence, whether they are family, civil, or criminal proceedings. This structure renders the court system more accessible to survivors of violence while reducing the opportunity for information gaps, conflicting orders, and other barriers to arise. These changes may go some way towards improving access to justice; however, it would be incorrect to suggest that legal change alone can end family violence. This paper acknowledges the systemic causes of family violence as rooted in structural inequalities created by patriarchy that break down along lines of gender, but also of race, class, age, sexuality, and other facets of social identity.⁷ Ending family violence therefore necessitates community-based support and advocacy alongside deeper social changes that remedy structural inequalities facing women and other marginalized groups.

I begin by discussing historical trends in domestic violence law reform, both inside and outside Canada, and the emergence of the IDVC in other jurisdictions as a solution to structural problems in access to justice for victims of domestic violence. I then analyze how adopting the IDVC model in BC would address some of these barriers, focusing on the issues of protection orders, custody, and access. While noting that issues of constitutionality and respect for the diversity of Canadian families, including indigenous families, must be recognized and accommodated in any court structure, this paper concludes that implementing IDVCs in BC would increase the availability and effectiveness of family law remedies to survivors of domestic violence, with the overall result of improving the safety of families. IDVCs, if structured appropriately and with regard to issues of constitutionality and diversity, represent a potential model for law reform in BC.

5 Bill 16, *Family Law Act*, 4th Sess, 39th Leg, British Columbia, 2011 (assented to 24 November 2011), SBC 2011, c 25. Bill 16 was introduced on November 14, 2011, into the BC Legislative Assembly and received Royal Assent on November 24, 2011. It will come into force in March, 2013. I discuss these reforms in Part II of this paper.

6 The barriers associated with access to family justice cannot be fully understood without mention of the erosion of access to legal aid in family law proceedings over the last several years in BC. Although the issue of access to legal aid is beyond the scope of this paper, it must be recognized as one of the many interlocking structural barriers that weakens access to justice for survivors of family violence: see Alison Brewin, *Legal Aid Denied: Women and the Cuts to Legal Services in BC* (Canadian Centre for Policy Alternatives and West Coast LEAF, 2004).

7 This paper draws on both feminist and sociological theories of family violence. Common to both theories is the premise that violence is a means of exercising power and control. While structural inequalities such as class, age, race, ethnicity, and sexuality all impact how power and control are exercised, feminist theory helps to explain how these inequalities affect men and women differently in the context of family violence: see Kristin Anderson, "Gender, Status and Domestic Violence: An Integration of Feminist and Family Violence Approaches" (1997) 59:3 *Journal of Marriage and the Family* 655.

I. THE ORIGINS OF THE IDVC

A. Domestic Violence Law Reform in the Twentieth Century

The emergence of specialized domestic violence courts in the 1990s can be seen as the culmination of decades of activism by women's advocates and allies to transform societal discourses on domestic violence. The western legal tradition has a long history of toleration, and outright complicity, in spousal abuse; as the family was considered to be deeply "private," as opposed to "public," western states treated such abuse as a private matter that did not concern the state or broader society.⁸ By the 1980s, women's advocates and allies had successfully convinced states of the need to treat domestic violence like other crimes. However, these gains were in tension with movements against the over-incarceration of groups, including racialized and indigenous people, who were overrepresented in the criminal justice system.⁹

This activism nevertheless had profound effects in the criminal justice sphere in North America. In 1994, the United States federal government passed the *Violence Against Women Act* ("VAWA"), which offered funding to states that introduced new legislative and enforcement measures to combat domestic violence.¹⁰ In Canada, several provinces introduced new law enforcement practices, including mandatory arrest, charging, and prosecution policies.¹¹ Eventually, specialized domestic violence criminal courts emerged in both Canada and the United States, following the specialized justice trend in dealing with mental health and poverty-related crimes. These courts attempted to address the difficulties in achieving positive results within the traditional court system and have seen some success in improving safety, reducing recidivism, and promoting the perception that domestic violence is taken seriously by the justice system.¹² Some research has even suggested that specialized criminal court procedures could help reconcile the goal of criminalizing domestic violence with that of promoting alternative, rehabilitative justice for Aboriginal families by offering access to culturally grounded treatment and counselling services aimed at breaking cycles of intergenerational violence.¹³

Legislatures also struggled to reform the family justice system to better reflect the challenges of handling disputes where family violence is the underlying issue. In the 1980s and 1990s, some Canadian jurisdictions introduced legislation to improve access to civil legal remedies for domestic violence, such as emergency protection orders. These laws were intended to be more comprehensive, easier, faster, and less costly for women

8 Deborah Epstein, "Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System" (1999) 11:3 *Yale JL & Feminism* 4 at 10.

9 Jane Ursel, *Report on Domestic Violence Policies and their Impact on Aboriginal People* (2001), online: Research & Education for Solutions to Violence & Abuse (RESOLVE) <<http://www.umanitoba.ca/resolve/research/research%20day/AJL.pdf>> at 1.

10 Anat Maytal, "Specialized Domestic Violence Courts: Are they Worth the Trouble in Massachusetts?" (2008) 18:1 *Public Interest L Rev* at 197-198.

11 See e.g. Jane Ursel and Christine Hagyard, "The Winnipeg Family Violence Court" in Jane Ursel, Leslie M. Tutty and Janice leMaistre, eds, *What's Law Got to Do With It? The Law, Specialized Courts and Domestic Violence in Canada* (Toronto: Cormorant Books, 2008) at 96.

12 *Ibid* at 104, 117-118.

13 Ursel, *supra* note 9 at 3. Ursel's research focused on outcomes from the Winnipeg Family Violence Court in Manitoba, a specialized domestic violence criminal court established in the 1990s. In her report, she recommends expanding alternative sentencing frameworks for Aboriginal offenders permitted by section 718.2(e) of the *Criminal Code*, RSC 1985, c C-46.

to access than previously available remedies.¹⁴ Some provinces also reformed their custody and guardianship laws in the late 1990s to take into account the importance of considering family violence when structuring parenting orders, reflecting growing recognition of the significant negative impacts of violence on child development even where the children involved were not directly subjected to violence.¹⁵ Finally, some provinces entered into agreements to transfer authority for child and family services to Aboriginal communities, moving closer to restoration of their inherent responsibility for family support and child protection.¹⁶ Since family violence is one of the factors that can trigger child protection proceedings, the greater involvement of Aboriginal communities in child welfare represented an important step towards dealing with family violence more holistically.

However, there were still gaps in the legal system for battered spouses in obtaining family justice remedies after these reforms were implemented. For example, studies showed that civil protection orders were not always as easy to obtain, nor as effective, as hoped; similarly, in the family law realm, some judges continued to order access or even joint custody of children in the absence of full information about the history of the parties.¹⁷ This state of affairs can put both the battered spouse and the child's safety at risk by allowing the abusive parent to continue victimizing the family on the pretext of access.¹⁸ Thus, governments and advocates began searching for ways to improve the handling of domestic violence in the family law sphere, as well as enhance coordination between the family and criminal justice spheres.

Following the approach taken by specialized criminal courts, IDVCs emerged in the United States. They proceeded from the view that the “one family/one judge” model could provide more informed judicial decision-making, greater consistency in court orders, and greater accessibility for survivors of violence.¹⁹ The District of Columbia established one of the first IDVCs in 1996, with several other jurisdictions following suit.²⁰ As of January 2011, sixty New York counties, covering 90 percent of the state's residents, offer IDVC services.²¹ In contrast, only one jurisdiction in Canada offers an urban IDVC; this court, established in Toronto in 2010, will be discussed in detail at Part I(C) of this paper.

14 Karen Busby, Jennifer Koshan & Wanda Wieggers, “Civil Domestic Violence Legislation in the Prairie Provinces: A Comparative Legal Analysis,” in Jane Ursel, Leslie M. Tutty and Janice leMaistre, eds, *What's Law Got to Do With It? The Law, Specialized Courts and Domestic Violence in Canada* (Toronto: Cormorant Books, 2008) at 198.

15 BC was not among this first wave of provinces to amend its custody law: Peter Jaffe, Claire Crooks & Nick Bala, “Domestic Violence and Child Custody Disputes: The Need for a New Framework for the Family Court,” in Jane Ursel, Leslie M. Tutty and Janice leMaistre, eds, *What's Law Got to Do With It? The Law, Specialized Courts and Domestic Violence in Canada* (Toronto: Cormorant Books, 2008) at 256. BC's recent amendment of its parenting and guardianship law will be discussed in Part II.

16 Office of the Auditor General of British Columbia, *Management of Aboriginal Child Protection Services* (2008), online: Office of the Auditor General of British Columbia <<http://www.bcauditor.com/pubs/2008/report3/management-aboriginal-child-protection-services>> at 20.

17 Jane Ursel, Leslie Tutty & Janice LeMaistre, “The Justice System Response to Domestic Violence” in Jane Ursel, Leslie M. Tutty and Janice leMaistre, eds, *What's Law Got to Do With It? The Law, Specialized Courts and Domestic Violence in Canada* (Toronto: Cormorant Books, 2008) at 14-15.

18 *Ibid.*

19 “Integrated Domestic Violence Courts: Overview,” online: New York State Courts, Office of Policy and Planning <http://www.nycourts.gov/courts/problem_solving/idv/home.shtml> [“Integrated Domestic Violence Courts: Overview (New York)”].

20 Emily Sack, *Creating A Domestic Violence Court: Guidelines and Best Practices* (San Francisco: Family Violence Prevention Fund, 2002) at 55.

21 “Integrated Domestic Violence Courts: Overview (New York),” *supra* note 19.

B. What Is an IDVC?

While there are several variants on the general model, a typical integrated court includes several common features. Many of these relate to the handling of matters inside the courtroom. One central feature is the establishment of a dedicated courtroom for each proceeding related to a single family, which is presided over by a single judge. This is the major innovation of the IDVC model. It reduces information gaps and diminishes the potential for offenders to manipulate the court process to extend control over their former partners and children by allowing one judge to gain comprehensive information on a particular family and insight into their circumstances.²² Depending on the jurisdiction, a single judge may make most or all of the orders that are necessary to address the family's legal issues, including granting orders of protection, imposing bail conditions and sentences, providing for spousal and/or child support, and structuring parenting arrangements.²³ The presiding judge hears each proceeding sequentially in order to keep matters distinct, and ensure that the correct evidentiary and procedural rules relevant to each type of proceeding are applied. Furthermore, the judge can monitor the offender's compliance with her or his orders through mandatory review appearances, which enhances accountability of the offender and increases the survivor's safety. Lastly, specialized judicial training in both operational legal matters and in the dynamics of domestic violence, including its impact on children, enhances the judge's ability to adjudicate family violence-related conflicts effectively.²⁴

Another set of features relates to the provision of support outside the courtroom. The provision of comprehensive services and resources for families through the IDVC is a common feature, which can improve accessibility for survivors of violence.²⁵ A designated resource coordinator may make referrals to community resources for the family and may work with a victim advocate to ensure that the family receives coordinated services, including crisis assistance, counselling, legal assistance, and services for children.²⁶ Advocates provide support both inside and outside of the courtroom. This support is crucial in ensuring that the client is informed of the process at all times, which in turn promotes her safety and her ability to obtain remedies in the justice system.²⁷ Advocates can assist in filing court documents, attend the relevant proceedings with the client, and help her develop and maintain an effective safety plan throughout the process.²⁸ Meanwhile, the resource coordinator may also make referrals for the offender to take part in counselling, treatment programs, and parenting classes, and can monitor and report on his compliance to the presiding judge.²⁹ Integrated courts in the United States have focused not only on streamlining court procedures for survivors of violence, but have also adopted a more holistic approach to court-based problem-solving. This approach seeks to address the root problems of domestic violence, and provides solutions that promote the safety and well-being of families.

22 Carolyn Schwarz, "Unified Family Courts: A Saving Grace for Victims of Domestic Violence" (2004) 42:2 Fam Ct Rev 304 at 306.

23 Centre for Court Innovation, "Fact Sheet: Integrated Domestic Violence Courts: Key Principles," online: Centre for Court Innovation <<http://www.courtinnovation.org>> at 1.

24 *Ibid* at 3.

25 See e.g. Sack, *supra* note 20 at 9-10; see also Schwarz, *supra* note 22 at 306 (discussing the Unified Family Court, a type of IDVC that handles some, but not all, criminal matters).

26 Centre for Court Innovation, *supra* note 23 at 2.

27 Sack, *supra* note 20 at 9-10.

28 *Ibid*.

29 Centre for Court Innovation, *supra* note 23 at 2.

C. The IDVC in Canada

Building on the American model, Ontario established Canada's first IDVC in June 2011 in Toronto. The Toronto court was developed through consultation with Crown Counsel, judges, criminal and family law lawyers, victim advocates, police, probation officers, parenting skills providers, and a number of community organizations.³⁰ Its goals were to promote informed, consistent adjudication conducted with knowledge of the dynamics of domestic violence; to eradicate conflicting civil and criminal orders within families; to connect court users to community services and resources; and to increase efficiency in the use of court resources.³¹ The Toronto court's founders consulted with judges and staff from the Integrated Court in Buffalo, New York, and ultimately adapted the American model to suit differences in Canada's constitutional and judicial system.³² As such, the court is part of the Ontario Court of Justice (Provincial Court) and, as of March 16, 2012, handles "all matters relating to the criminal and family cases, including short trials."³³ However, the court cannot adjudicate divorce, matrimonial property, or child protection proceedings.³⁴ Similarly to courts in the United States, matters are not merged but are heard in sequence, with different evidentiary and legal standards applied as is appropriate to each particular proceeding.

The Toronto court's problem-solving approach to family violence appears to have both advantages and disadvantages for survivors of family violence. In the view of one of the court's presiding judges, the court's structure helps protect family members from further violence by allowing them to obtain court recognition of agreements more easily and expediently because of the increased coordination between proceedings.³⁵ For example, if the parties, through lawyers, reach an agreement on contact or access, any criminal bail orders or peace bonds in place can be appropriately modified without delay by the presiding judge, thereby reducing confusion and conflict.³⁶ However, the emphasis on dispute resolution and reaching agreements will not always be appropriate in the circumstances and could, conversely, allow for the offender to exercise control over family members.³⁷ Furthermore, participants are no longer required to consent in order to participate in the Court. The removal of the requirement for offender consent may improve the safety and autonomy of battered spouses, but adopting a problem-solving approach in the absence of the battered spouse's consent may also lead to further

30 Geraldine Waldman, *The What and Why of the Proposed Domestic Violence Court*, online: Family Lawyers Association of Ontario <http://flao.org/wp-content/uploads/2011/03/Integrated_Domestic_Violence.pdf> at 2.

31 *Ibid* at 3-4.

32 *Ibid* at 2.

33 Practice Direction regarding the IDVC at 311 Jarvis Street, Toronto (signed February 28, 2012 by Annemarie E Bonkalo, Chief Justice, and Faith Finnestad, Regional Senior Justice, Toronto, Ontario Court of Justice), online: Ontario Court of Justice <<http://www.ontariocourts.ca/ocj/legal-professionals/practice-directions/integrated-domestic-violence-court/>>. Originally, consent from the victim and offender was required to transfer the proceedings to the IDVC.

34 Divorce and matrimonial property division are not handled because they are under the jurisdiction of the Superior Court of Justice: see *Divorce Act*, *supra* note 3, ss 2-3. It is not clear why child protection cases are not handled by the Toronto integrated court, as child protection is within the jurisdiction of the Ontario Court of Justice under the *Child and Family Services Act*, RSO 1990 c 11, s 3. One possible explanation is that child protection was excluded from the pilot project's mandate given its focus on dispute resolution: "Integrated Domestic Violence Court: Overview," online: Ontario Court of Justice <<http://www.ontariocourts.ca/ocj/integrated-domestic-violence-court/overview/>> ["Integrated Domestic Violence Court: Overview (Ontario)"].

35 Brahm Siegel, "Ontario's IDVC Safeguards Women's Rights" (December 12, 2011), online: Huffington Post Canada <<http://www.huffingtonpost.ca>>.

36 *Ibid*.

37 Nancy ver Steegh, "Differentiating Types of Domestic Violence and Implications for Child Custody" (2005) 65:1 La L Rev 1379 at 1403-1404.

victimization if the offender is able to manipulate the process. Finally, it is not clear whether Toronto's problem-solving IDVC provides access to specialized programming and services for marginalized groups such as indigenous and immigrant women and same-sex families, which could diminish access to the court and the services that it offers.³⁸

Toronto's IDVC is currently being evaluated and no results have been released yet. This paper therefore looks to research from other jurisdictions to determine whether the IDVC might serve as a model for reform in BC. While some general conclusions may be drawn from other jurisdictions, these findings must be scrutinized in light of particular factors relevant to law reform in BC, including court structures, Aboriginal self-government, and the province's cultural and linguistic diversity.

D. Outcomes of IDVC Implementation

While there are several lenses through which one might examine the outcomes of implementing IDVCs, the focus of this paper is on access to the family justice system for family members facing violence. Although there is limited empirical evidence on family justice outcomes in IDVCs, the available evidence suggests that integrated courts are seeing some level of success in achieving their mandates of enhancing safety and increasing the accessibility of family justice remedies.³⁹ However, access and underutilization have been problematic in some jurisdictions, pointing to the need for strong case identification procedures and increased public awareness of the courts. Moreover, since there is little to no information on the impact of IDVCs on access to justice for marginalized groups, there are some limitations to relying on this data as a model for BC without further research due to the province's multicultural context.⁴⁰

Initial evidence from the Coordinated Domestic Violence Intake Centre in Washington, DC reflected a 50 percent increase in the number of applications for civil protective orders over a six-month period after the establishment of the Intake Centre as well as a substantial increase in the entry of child support awards in domestic violence cases.⁴¹ In 2001, approximately 300 new petitions for civil protection orders were filed in the DC court each month, reflecting a high caseload for this court.⁴² On the other hand, when success rates of applications for civil protective orders in New York's IDVCs were recently compared to success rates in traditional civil/family court, there was no statistically significant difference in outcomes: an applicant had an equal chance of obtaining an order in either court.⁴³ Although this appears to be a discouraging finding, it does suggest that concerns about judicial bias against offenders in IDVC are not substantiated. Moreover, examining the substance of the orders in question might have revealed that the orders in IDVCs are better crafted to reflect the circumstances of each family.

38 In addition to cultural barriers, lack of confidence communicating in English can be a significant barrier to accessing the court system. The BC Representative for Children and Youth notes that "[w]ithout the availability of someone who can speak the language of an immigrant woman, a program or service will not be able to meet its goals of doing all it can to assist her." Turpel-Lafond, *supra* note 4 at 62.

39 Many stakeholders have called for better information gathering and tracking in order to better evaluate IDVCs: Sack, *supra* note 20 at 16-17.

40 In 2006, 27.5 percent of British Columbians were foreign-born: Statistics Canada, *Canadian Demographics at a Glance* (2008), online: Statistics Canada <<http://www.stats-can.gc.ca>> at 45.

41 Epstein, *supra* note 8 at 32.

42 Sack, *supra* note 20 at 55.

43 Erika Rickard, "Civil Protective Orders in Integrated Domestic Violence Court: An Empirical Study" (2010) unpublished, archived at Digital Access to Scholarship at Harvard, online: <<http://nrs.harvard.edu/urn-3:HUL.InstRepos:4772900>> at 9-10.

Although the established court systems in New York and DC see high rates of utilization, some more recently established courts have experienced underutilization. For example, a pilot IDVC established in the London borough of Croydon, in the United Kingdom, was accessed by only 5 families, whose matters comprised 17 hearings, over the course of its first year.⁴⁴ Researchers determined that this was due in part to restrictive and misunderstood eligibility criteria, and a lack of awareness and understanding of the role of the court.⁴⁵ While the data set was too limited for systematic analysis of outcomes, interviews with court users revealed that parties felt positively about the concept of the court. Despite some court users having reservations about how their own cases had been handled, most fully endorsed the idea of the court and appreciated the benefits intended for survivors of domestic violence.⁴⁶ While the researchers did note several serious shortcomings of the Croydon IDVC, including limited access to advocates and offender treatment programs, they observed some advantages, including greater access to special protective procedures for victims, greater availability of witness protection workers, and expedited resolution of cases through the use of anti-delay measures.⁴⁷

Although there are limitations to relying on data from other jurisdictions, including differences in our legal systems and issues with respect to family diversity in BC, there is an empirical basis for the establishment of IDVCs in BC that translates in spite of these differences. Thus, we can nevertheless learn from experiences in other jurisdictions. The American and British IDVCs tell us that IDVCs must be structured with victims in mind; access to advocacy services, information, and other forms of victim and family support appear to be crucial to the success of an IDVC.

II. THE IDVC AS A MODEL FOR REFORM IN BC

A. The Situation in BC: Family Law Reform in Context

BC's recent passage of the new *Family Law Act* represents the culmination of a long process of community consultation on family law reform in the province.⁴⁸ Taking the experiences of other jurisdictions into account, this paper suggests that the implementation of an IDVC would complement the legislative changes that have already been introduced in BC and would reflect concerns raised by the community at the consultation stage. Though it may prove impossible to implement the IDVC model in its ideal form because of federalism and jurisdictional concerns, the procedural innovation offered by the IDVC would, alongside existing legislative reforms, address more holistically the concerns identified by community organizations and service providers, thereby creating a system that is better designed to handle legal disputes arising from family violence.

To provide a sense of context around the new *Family Law Act*, this paper will track the process of family law reform in BC, particularly in the area of family violence. This process began when the Family Justice Working Group was asked to report to the

44 The evaluators recommended that the Court's eligibility criteria, which required concurrent, ongoing civil and criminal proceedings, be relaxed to allow civil cases to remain eligible for the duration of the civil order, rather than only up until the date that the final order is made in order to enable the IDVC to handle breaches: Marianne Hester, Julia Pearce & Nicole Westmarland, *Early Evaluation of the Integrated Domestic Violence Court*, Croydon (UK: Ministry of Justice, 2008) at 34.

45 *Ibid.*

46 *Ibid* at 30.

47 *Ibid* at 17, 22-23, 39.

48 "White Paper on *Family Relations Act* Reform: Proposals for a new Family Law Act" (July 2010), online: Ministry of the Attorney General <<http://www.ag.gov.bc.ca/>> at 8-9 ["White Paper"].

Justice Review Task Force on directions for family justice reform in the early 2000s.⁴⁹ This report, published in 2005, found that the family law system as a whole would have to change substantially to respond to the dynamics of family violence by shifting towards a more accessible system geared towards consensus-based dispute resolution.⁵⁰ In reflecting on access to family justice services, the Working Group suggested that it would be “critical” to provide a needs-assessment to parties at the point of access, where trained front line workers could identify safety concerns and provide referrals to families in crisis.⁵¹ In their vision, “high-conflict” families, identified through this needs-assessment process, would be administratively earmarked and assigned to a judge who would hear all subsequent applications in the case.⁵²

The Working Group further recommended that BC establish a Unified Family Court System, as most other provinces have done. Unification addresses the problem of divided, overlapping jurisdiction, where some family law issues are dealt with in superior court while others are dealt with in provincial court. This Unified Family Court would be staffed by a specialized judiciary, which would receive additional training in family dynamics, child development, gender bias, and family violence, among other areas.⁵³ Although the IDVC model was not specifically examined by the Working Group, its recommendations reflect many of the characteristics of IDVCs, including integrated service provision; an assigned judge to rule on all of one family’s proceedings and subsequent applications; and a specialized, trained judiciary.⁵⁴ These reforms were animated by the goals of achieving greater sensitivity in decision-making and reducing barriers for high-needs families.⁵⁵

Following the report, in 2006, the BC Ministry of the Attorney General announced an official consultative review of the *Family Relations Act*, which had not been substantially revised since its original enactment in 1978.⁵⁶ Its goals were to modernize the *Family Relations Act* to keep pace with changing social values, including perspectives on family violence, and with research reflecting the impact of family violence on children.⁵⁷ A Discussion Paper centering exclusively on the issue of family violence was prepared, reflecting a commitment to some of the Working Group’s recommendations on family violence.⁵⁸ However, the scope of the consultative review was limited to the *Family Relations Act* only, and it therefore did not touch on reforming the wider system in which BC’s family law is applied and administered.

Others, including community-based groups and advocates, called for reform of the system in which family violence cases are handled in BC.⁵⁹ Significantly, in the wake

49 Family Justice Working Group, *A New Justice System for Families and Children* (2005), online: BC Justice Review Task Force <www.bcjusticereview.org> at 5.

50 *Ibid* at 6.

51 *Ibid* at 34-35.

52 *Ibid* at 115.

53 *Ibid* at 102.

54 *Ibid* at 115, 119.

55 *Ibid* at 34-35.

56 “*Family Relations Act* Review: Background and Context” (February 2007), online: Ministry of the Attorney General, Judicial Services Branch <<http://www.ag.gov.bc.ca/legislation/pdf/Chapter1-Background.pdf>> at 1. See also White Paper, *supra* note 48 at i.

57 *Ibid*.

58 “*Family Relations Act* Review: Family Violence” (April 2007), online: Ministry of the Attorney General, Judicial Services Branch <<http://www.ag.gov.bc.ca/legislation/pdf/Chapter9-FamilyViolence.pdf>>.

59 See e.g. West Coast LEAF, “Submission of West Coast Women’s Legal Education and Action Fund (West Coast LEAF) to the Ministry of the Attorney General Justice Services Branch Civil and Family Law Policy Office: *Family Relations Act* Review: Phase III Discussion Papers” (December 2007), online: West Coast LEAF <<http://www.westcoastleaf.org>> at 5-6. See also Turpel-Lafond, *supra* note 4 at 1-2.

of the murders of 6-year old Christian Lee, his mother Sunny Park, and her parents by Christian's father, Peter Lee, the BC Representative for Children and Youth undertook a report to determine if there were any systemic failures that permitted these murders to take place.⁶⁰ The Representative's overall finding was that the lack of a system-wide domestic violence response across criminal law, child welfare law, and family justice sectors, and the absence of a thorough and fully informed assessment of the risk of harm and lethality posed by Peter Lee, placed Christian and his family in grave danger without an adequate safety plan in place.⁶¹

The Representative identified several specific junctures where the presence of an IDVC could have helped prevent these acts of extreme violence from occurring. In concluding that the system had indeed failed Christian, the Representative recommended that the Ministry of the Attorney General review and enact necessary changes to improve the administration of justice in criminal and family matters involving domestic violence.⁶² To this end, the Representative recommended establishing specialized domestic violence courts to handle criminal domestic violence matters and amending the *Family Relations Act* to define domestic violence and to specify how it might be considered in the context of the relationships between the parties.⁶³

While the White Paper put forward for review by the Ministry of the Attorney General in 2010 reflected some of these concerns, the wider system in which these new laws would be applied and administered was never considered for reform.⁶⁴ Although some community organizations pointed out that even the most progressive legislation would be meaningless if it were inaccessible to women,⁶⁵ the scope of the review remained limited to the legislative framework. Thus, in accordance with largely positive feedback from the community on the substance of the proposed changes, Bill 16 was introduced in the Legislative Assembly and became law on November 24, 2012. It will come into force in its entirety on March 18, 2013.⁶⁶ I will discuss some significant legislative changes involving the availability of remedies in family violence disputes, and will discuss where IDVCs may play a role in enhancing their accessibility and effectiveness.

i. Civil Protection Orders

The *Family Law Act* introduces new civil protective legislation. When the relevant provisions come into force, an applicant ("the at-risk family member") will be able to obtain a protection order against another family member if they demonstrate, on a balance of probabilities, that family violence against them is "likely to occur."⁶⁷ In turn, family violence is defined quite broadly in the Act. It includes not only attempted or actual physical or sexual abuse but also psychological or emotional abuse of a family member, including "unreasonable restrictions on personal or financial autonomy."⁶⁸ These changes represent positive steps for domestic violence law reform in BC. However, there is a possibility that, given this broad legislative scope, BC courts will follow other

60 Turpel-Laford, *supra* note 4 at 5.

61 *Ibid* at 3.

62 *Ibid* at 58-59.

63 *Ibid*.

64 "White Paper," *supra* note 48 at i-iii.

65 See e.g. West Coast LEAF, "Response to the White Paper on *Family Relations Act* Reform: Submission to the Ministry of Attorney General Justice Services Branch, Civil and Family Law Policy Office" (October 2010), online: West Coast LEAF <<http://www.westcoastleaf.org>> at 1.

66 BC OIC 386 / 2012, BC Reg 131/2012, deposited June 19, 2012.

67 Bill 16, *supra* note 5, s 183.

68 *Ibid*, s 1.

jurisdictions by narrowing the focus of the inquiry to specific acts or incidents instead of looking at the entire context of the relationship between the parties. For example, in jurisdictions such as Saskatchewan and Alberta, in order to obtain an emergency order without notice, a family member must demonstrate a “high level of seriousness or urgency.”⁶⁹ In applying this test, judges have limited their focus to discrete, isolated incidents of threats or physical violence rather than taking account of the cumulative effect of past violence or ongoing controlling conduct of the offender.⁷⁰ The courts’ refusal to engage in a more contextual risk assessment is a significant barrier for survivors of violence as this type of violence is typical of many battering relationships and can escalate in severity without intervention.⁷¹ However, an IDVC could address the limitations that survivors of violence in other provinces have experienced in accessing civil protective orders. An IDVC may be more likely to grant a needed protective order by putting the entire history of the parties’ relationship before a single judge who has specialized training in understanding the dynamics of domestic violence. This would enhance the accessibility of these progressive legislative provisions. Heightened coordination between the criminal justice system and the family justice system could also result in better enforcement of these orders.

ii. Parenting Arrangements

The *Family Law Act* also introduces much-needed changes to its parenting and guardianship provisions. Canadian courts have long struggled with applying the “best interests of the child” test in parenting disputes where domestic violence is an underlying factor.⁷² This arises from the inconsistency between the notion, on one hand, that a continued relationship with both parents is generally in the best interests of the child and, on the other hand, a concern for the safety of family members experiencing violence.⁷³ Under the new framework, the best interests of the child are the only criteria in making a parenting or guardianship order, and such an order is not in the best interests of a child unless it protects the child’s physical, psychological, and emotional safety, security, and well-being to the greatest extent possible.⁷⁴ Furthermore, the best interests of a child are determined under the new law with reference to the impact of family violence on the child’s safety, security or well-being; the ability of the person responsible for family violence to care for the child; the appropriateness of arrangements requiring the child’s guardians to cooperate; risks to the safety of the child; and any civil or criminal proceedings relevant to the safety of the child.⁷⁵ Equality-seeking organizations have applauded these provisions for recognizing the negative impacts of family violence on children.⁷⁶

While these legislative changes are an improvement from the previous *Family Relations Act*, which reflected the ambivalence and lack of understanding of domestic violence present in the 1970s and early 1980s, they will not offer the greatest protection to

69 Busby, Koshan and Wieggers, *supra* note 14 at 209.

70 *Ibid* at 209-210.

71 Ver Steegh, *supra* note 37 at 1388.

72 Jaffe, Crooks and Bala, *supra* note 15 at 255. See also Joan Meier, “Domestic Violence, Child Custody and Child Protection: Understanding Judicial Resistance and Imagining Solutions” (2003) 11:2 Am U J Gender Soc Pol’y & L at 676, for discussion of the American context.

73 *Ibid* at 255.

74 Bill 16, *supra* note 5, ss 37(1), 37(3).

75 Bill 16, *supra* note 5, ss 37(2)(g), (h), (i), (j).

76 West Coast LEAF, *supra* note 65 at 3. It should be noted that, while it expressed support for the provisions, West Coast LEAF did further recommend that the threat of deportation be included in the definition of family violence, and that a presumption that violence does not support a child’s safety, security, and well-being be included.

families unless judges are made aware of all the relevant facts regarding the family's circumstances. The implementation of an IDVC system alongside these reforms would enhance the ability of survivors to obtain the benefit of these progressive provisions in the context of an inaccessible legal system. Additionally, without the knowledge of possible bail orders or peace bonds prohibiting contact, a family court judge may still neglect to structure a parenting order to minimize the opportunity for the offender to have contact with his former partner. In so doing, the fragmentation between the criminal and civil processes may still place women and children in danger by enabling the offender to exercise control over the court process.

B. IDVCs Increase Safety of Families

In light of the above findings, while provincial law reform has given some strong direction to the courts in managing disputes involving domestic violence, survivors of violence may still face difficulty in obtaining safety-related remedies. In the absence of full information about the relationship between the parties, a judge may still make inappropriate or insufficient orders for the protection of battered family members. On the other hand, much research on IDVCs suggests that they can increase the safety of family members throughout their involvement with the justice system; the following sections will present this research and illustrate its findings. The court system is rendered all the more important in protecting women and children because the most lethal time for a woman (and her children) is just before, during, and just after separation, and it is at this time that she will likely access the justice system most intensively.⁷⁷ Several functions of the IDVC promote safety and would complement BC's recent family law reforms that support a similar goal.

i. Information-Sharing

The information-sharing function of the integrated court maximizes the justice system's ability to protect family members. As Emily Sack recommends, best practice requires an integrated information-sharing system across civil and criminal cases to provide the most information possible to judges when making decisions, to allow for follow-up on compliance and violations, and to help to keep victims informed.⁷⁸ Indeed, the BC Representative for Children and Youth explained in her report on the death of Christian Lee that because the child protection, family, and criminal justice systems had functioned independently of one another and did not share information effectively, several opportunities for meaningful intervention were lost.⁷⁹ For example, even though Peter Lee's bail order prohibited contact with Christian's mother, there was no order in place prohibiting contact with Christian. Christian's father used the pretext of access to Christian to continue to intimidate, harass, and stalk Christian's mother, Sunny Park. Before her murder, Sunny advised the Ministry of Children and Family Development (MCFD) and her husband's bail supervisor that she was afraid of her husband and wanted Christian listed as a no-contact person; when contacted by Peter Lee's bail supervisor, however, the MCFD refused to recommend that Christian's name be added to the order.⁸⁰ Finally, Sunny advised her family lawyer of her husband's threatening behaviour, and her lawyer advised her to stay away from the family home.⁸¹ Although

77 Battered women are five times more likely to be murdered while trying to separate from their abusive partners: Grace Kerr and Peter Jaffe, "Legal and Clinical Issues in Child Custody Disputes Involving Domestic Violence" (1999) 17 CFLQ 1.

78 Sack, *supra* note 20 at 15.

79 Turpel-Lafond, *supra* note 4 at 3.

80 *Ibid* at 24, 35, 59-60.

81 *Ibid* at 28.

Sunny subsequently filed for divorce and applied for a protection order, the police were not informed of this order and therefore could not provide effective protection and enforcement.⁸² The conflicting information given to Sunny by different parties likely contributed to her confusion about what to do, which resulted in her not having an effective safety plan.

The Representative concluded that “had there had been a coordinated system linking the efforts made by criminal justice, child protection and family justice professionals, each would have had the benefit of all available information.”⁸³ This would have ensured that Sunny was not given conflicting information, and would have helped these agencies and service providers to assist Sunny in developing an adequate safety plan.⁸⁴ The IDVC’s centralization of services, personnel, and information reduces the potential for these kinds of oversights to occur. This centralized structure would also facilitate the enforcement of protection orders granted under the new *Family Law Act*, in accordance with new provisions that allow for a police officer, having reasonable and probable grounds to believe that a person has contravened a term of a protective order, to take action to enforce the order, using reasonable force if necessary.⁸⁵ Some have called enforcement the “Achilles’ heel” of the civil protective order process, because without enforcement, a civil protective order offers little protection and may even lead the victim to have a false sense of security.⁸⁶ However, information-sharing between agencies would facilitate enforcement of the statutory scheme, thereby enhancing its effectiveness.

ii. Consistency in Orders

The IDVC also reduces the opportunity for conflicting orders to arise between criminal and family court. Conflicting orders are not only a source of confusion but pose a substantial safety risk for survivors of domestic violence. For example, an offender may be awarded access to the children in family court even though no-contact and no-go orders have been imposed in criminal proceedings. The *Family Law Act* partly addresses the problem of conflicting orders by providing for supremacy of safety-related orders over other types of orders under section 189.⁸⁷ However, this does not sufficiently address the problems that can result when orders are not made with full information about all ongoing legal proceedings. While section 189(2) tells the parties which order is legally enforceable, there is no jurisdiction to vary orders made under the *Criminal Code*. Thus, this change does not fully resolve the issue of conflicting bail orders, peace bond terms, or terms of a conditional sentence.

The suspension of orders that are not directly related to safety could also have negative impacts where these orders are important, in an indirect way, to maintaining safety. For example, suspension of a conflicting parenting order and child or spousal support order could jeopardize the victim’s financial security. As a battered woman may experience significant financial dependency on her abuser, a child or spousal support order can be her “key to freedom” and security by ensuring that she does not need to return to her abuser for financial reasons.⁸⁸ Furthermore, there is always the risk that battered spouses without legal representation will be confused by conflicting orders, and will not understand their rights. Similarly, an offender may not understand, or may claim he did

82 *Ibid.*

83 *Ibid* at 34.

84 *Ibid* at 34.

85 Bill 16, *supra* note 5, s 188(2).

86 Epstein, *supra* note 8 at 12.

87 Bill 16, *supra* note 5, s 189.

88 Epstein, *supra* note 8 at 11.

not understand, his obligations in circumstances where orders made in two different proceedings conflict. Having one judge make all necessary orders reduces confusion and enhances safety. This, in turn, allows families access to the advantages of the criminal court, including mandated treatment programs funded by the government, and incarceration where necessary. These features function in tandem with civil/family court, where the judge can make orders with a view to the best interests of the child, which could include provision of support for the child's mother.

iii. Judicial Specialization

Having judges trained in the dynamics of domestic violence is central to the IDVC's potential to empower survivors of family violence. Specialized judges can adjudicate disputes from a safety-based, problem-solving perspective with a view to making appropriate orders for each family. For example, IDVC judges could be trained to recognize different types of violence in relationships, which would assist them in making the appropriate orders. Nancy ver Steegh points out that custody decisions have traditionally been based on the "fiction that families with a history of domestic violence are all alike."⁸⁹ Rather, she demonstrates that the motivation behind the violence—whether it is part of a pattern of escalating coercion and control, or whether it involves situational, isolated incidents of conflict—matter a great deal in custody determinations.⁹⁰ While consensual dispute resolution processes and orders to attend parenting courses may be appropriate for couples experiencing situational violence, such processes can be dangerous where coercion and control are present in the relationship.⁹¹ The statutory framework now present in the *Family Law Act* is a good starting point. Nevertheless, in order to best protect survivors of violence, it will be necessary for judges to understand the nuances of family violence and their bearing on the application of family law.

With special training, judges will be able to apply the law in a more holistic manner with a view to making all necessary orders to promote the children's best interests, to ensure safety, and to promote offender accountability. This matters because the *Family Law Act* does not direct judges in how to structure parenting orders to protect, to the greatest extent possible, the child's physical, psychological, and emotional safety, security, and well-being.⁹² However, a specialized judge, with full knowledge of the circumstances of the family and with proper training, might be better able to craft parenting orders that reduce the potential for renewed violence while maintaining the parent-child relationship where appropriate. Since families are at a heightened risk of violence during access visits, eliminating contact between spouses through carefully structured pick-up and drop-off plans can protect the mother while maintaining the parent-child relationship.⁹³

C. Should IDVCs Be Implemented in BC?

Despite the many advantages of implementing IDVCs in BC, several practical and normative problems should be noted. First, creating a court with the necessary jurisdiction to handle all of the functions of an effective IDVC would be a significant challenge given the structure of Canadian federalism and issues concerning Aboriginal self-government. At the moment, BC is one of only three provinces without a Unified Family Court, meaning that some matters are dealt with in provincial court while other

89 Ver Steegh, *supra* note 37 at 1379.

90 *Ibid* at 1379-1380.

91 *Ibid* at 1403-1404, citing Michael Johnson & Janel Leone, "The Differential Effects of Intimate Terrorism and Situational Couple Violence: Findings from the National Violence Against Women Survey" (2005) 26:3 *Journal of Family Issues* 322 at 347.

92 Bill 16, *supra* note 5, s 37(3).

93 Epstein, *supra* note 8 at 11.

matters may only be addressed at the BC Supreme Court. This is because under the constitutional division of powers, the federal government has jurisdiction over divorce while the provinces have jurisdiction over civil and private matters arising in the province.⁹⁴ Moreover, section 96 of the *Constitution Act, 1867* has been interpreted to prevent either a province or Canada from giving jurisdiction over divorce or matrimonial property to a provincially appointed judge.⁹⁵ As such, when the Working Group called for the implementation of Unified Family Courts in BC, as described in Part II(A) of this paper, they recommended placing all matters under the jurisdiction of the BC Supreme Court. This recommendation was not followed and the jurisdictional split thus continues under the new *Family Law Act*.⁹⁶

A significant disadvantage of following the superior court model in implementing an IDVC is that it would preclude concurrent criminal proceedings from being pursued summarily.⁹⁷ Adopting such a model would thus limit the scope of an integrated court considerably. Ontario's IDVC was therefore established as a part of the Ontario provincial court system.⁹⁸ While provincial courts have the advantage of being more accessible to unrepresented litigants, they have the disadvantage of being unable to adjudicate divorce proceedings or make orders with respect to property. Even after the *Family Law Act* reforms, custody determinations in the context of divorce will still be governed by the problematic "friendly parent" rule and the principle that a child should have "as much contact with each spouse as is consistent with his or her best interests."⁹⁹ This can lead to inappropriate and dangerous custody orders if a mother, trying to protect her children by denying access to an abusive father, is deemed an "unfriendly parent." Yet, an IDVC established at the provincial level in BC would be unable to adjudicate divorce proceedings. It would therefore be difficult to achieve the plenary criminal and family jurisdiction that makes many of the American IDVCs so effective.

Another problem with implementing integrated courts concerns creating a structure that respects the autonomy of indigenous communities while offering protection to indigenous women and children. This issue would presumably arise in the area of child protection. Whenever the authorities are made aware of family violence involving children, there is the potential for the MCFD to become involved. Indeed, researchers observed a slight increase in the number of government reports to local child protection authorities when the IDVC was implemented in Washington, DC.¹⁰⁰ The possibility of increased MCFD involvement in BC raises troubling questions about family autonomy, and the loss of identity and community.¹⁰¹ Since evidence suggests that Aboriginal families experience violence at higher rates¹⁰² due to the legacies of colonialism and residential schools, any shift towards an integrated court model must ensure sensitivity to this complex dynamic.

94 *The Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3, ss 91(26), 92(13), 92(16).

95 Family Justice Working Group, *supra* note 49 at 86.

96 Bill 16, *supra* note 5, ss 192-193.

97 The *Criminal Code* classifies offences by their severity and, consequently, the sanctions attached to them. Hybrid offences, such as assault, may be pursued either summarily or by indictment, depending on the circumstances. Indictable offences usually carry more severe penalties: see e.g. s 266 of the *Criminal Code*, RSC 1985, c C-46. Accused persons can, in most cases, elect that their trials be held in provincial court: *Ibid*, s 554.

98 See "Integrated Domestic Violence Courts: Overview (Ontario)," *supra* note 34. The lack of legislative reform of federal divorce law, and the constitutional inability of a provincial integrated court to adjudicate divorces, leaves a significant legislative gap for families.

99 *Divorce Act*, *supra* note 3, s 16(10).

100 Epstein, *supra* note 8 at 34-35.

101 Marlee Kline, "Child Welfare Law, 'Best Interests of the Child' Ideology, and First Nations" (1992) 30 Osgoode Hall LJ 375 at 388-418.

102 See Statistics Canada, *Family Violence in Canada: A Statistical Profile* (2011), online: Statistics Canada <<http://www.statcan.gc.ca>> at 11.

One possibility may involve, through the coordinated service provision function of the IDVC, connecting at-risk families with parenting assistance through Aboriginal agencies as an alternative to protection or apprehension proceedings wherever possible. If this were not possible in a given case, child protection matters could be dealt with holistically in an IDVC with the involvement of Aboriginal agencies and communities.¹⁰³ However, it is important that the system is structured such that women are not deterred by the fear of child apprehension from seeking to protect their families by accessing the family justice system. Thus, great sensitivity and potentially policy reform on the part of the MCFD may be necessary to ensure that an integrated court promotes holistic solutions and does not become a tool of further marginalization through child apprehension.

Finally, other scholars have raised theoretical and normative critiques of the concept of IDVCs. For example, Elizabeth MacDowell contends that blaming fragmentation for the problems associated with adjudication of family disputes where violence is an underlying factor constitutes a misdiagnosis altogether.¹⁰⁴ Moreover, she argues that the consolidation of decision-making power in civil and criminal law into one body is not preferable given their fundamentally different purposes and characters.¹⁰⁵ She suggests that instead of trying to address the problems of conflicting orders and the under-informed victim programmatically by creating integrated courts, these issues should be addressed systematically by reforming the existing systems to offer multiple layers of protection to victims.¹⁰⁶ She correctly suggests that the legislative frameworks bear much of the responsibility. Indeed, the absence of statutory provisions relating to family violence in parenting law (as in the *Divorce Act*) is a significant legislative gap that legislatures must take steps to address, as BC has recently done.¹⁰⁷

However, statutory reform alone will not address the broader barriers to access to family justice that are created when a victim must engage with multiple, uncoordinated systems at once. Indeed, it is the very fact that the purposes and natures of criminal law and civil/family law are so different that calls for greater integration to bring about a more victim-centred approach to dealing with domestic violence in the courts. As Epstein has suggested, a law is “only as good as the system that delivers on its promises.”¹⁰⁸ MacDowell’s critique misses the bigger picture of victim safety when one considers the information-sharing and centralizing functions of the IDVC structure as a whole. This feature is, arguably, its most important innovation. Ultimately, BC can learn from critiques of the shortcomings of the integrated court model in other jurisdictions to create a well-crafted IDVC that reflects the particular circumstances of families facing violence in British Columbia. The available evidence suggests that IDVCs might even be better able to reflect the experiences of racialized and otherwise marginalized families, including indigenous families who face overrepresentation in the criminal justice and child welfare systems, through a more holistic and therapeutic style of jurisprudence.¹⁰⁹

103 Child protection proceedings are within the jurisdiction of provincial court: *Child, Family and Community Service Act*, *supra* note 3, s 1.

104 Elizabeth MacDowell, “When Courts Collide: Integrated Domestic Violence Courts and Court Pluralism” (2011) 20 *Tex J Women & L* 95 at 110-111.

105 *Ibid* at 97-99.

106 *Ibid* at 111, 129.

107 Bill 16, *supra* note 5, ss 37-38.

108 Epstein, *supra* note 8 at 4.

109 Ursel, *supra* note 9 at 3.

CONCLUSION

Over the past decade, BC has seen significant changes in domestic violence law reform. Driven by changing social values, including a deeper understanding of the personal and social harm caused by violence against women and children, and by particular tragedies, such as the deaths of Christian Lee and his family, BC has attempted to make its family law more receptive to the unique struggles of families facing violence. While important legislative changes have been made, these changes will not be as effective as possible without reform of the system in which they are administered and applied. As such, the implementation of IDVCs—in which all of a family’s proceedings are consolidated and presided over by one judge with specialized training in domestic violence—would enhance the accessibility of family law remedies to victims of domestic violence. Despite the existence of practical challenges and normative critiques of the integrated court model, such courts would ultimately enhance the safety of women and children during family breakdown by promoting information-sharing and access to needed community services for families in crisis. As such, they appear to be a positive model for reform in BC as the province ushers in a paradigm shift in mediating family law disputes. However, implementation of this model must be attentive to unique circumstances facing Aboriginal families and other marginalized communities so that the IDVC does not become a tool of further oppression. Finally, it is crucial to recognize that legal reform alone will not end family violence. Rather, deeper, systemic change will be required to promote equality and thereby reduce family violence in BC and in Canada.