

From Research to Practice: A Framework for Making Appropriate Parenting Arrangements in Domestic Violence Cases

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This paper was written to assist policy makers and practitioners in dealing with the difficult issues that arise in making appropriate post-separation parenting arrangements in cases where there are domestic violence issues. There has been a movement in Canada and elsewhere to cease using the traditional legal concepts of “custody” and “access,” which tend to promote a “winner” and “loser” mentality, and to start using concepts such as “co-parenting” and “parenting time” and such tools as “parenting plans” to facilitate the making of cooperative arrangements. However, cases in which there are domestic violence issues demand a different approach, one that recognizes the need to promote safety and accountability.

In the majority of cases involving separating parents, cooperative co-parenting arrangements are the ideal because these arrangements maximize children’s ability to have the best of what both parents offer. At the same time, there is an extensive literature on “high-conflict” divorces, which focuses on couples that are unable to resolve their disputes without extensive court involvement. Within this high-conflict group, domestic violence allegations are present in the vast majority of cases (Jaffe, Austin, & Poisson, 1995; Johnston, 1994). Assessing the validity and context of these allegations provides a critical basis for appropriate post-separation parenting arrangements. In cases where there are findings of domestic violence, it may be appropriate for one parent to have more limited, supervised, or no contact with the children because of the potential harm they present to the children and the non-offending parent.

This paper is based primarily on a literature review of the areas of domestic violence, child custody and access disputes, and high conflict divorce. In addition, several leading researchers in the area were contacted with the request for copies of articles that are in press, to ensure the most up-to-date materials. The domestic violence literature was applied to the area of child custody and access within the context of the first author’s extensive experience as an assessor, mediator, researcher and educator in the area. Finally, a draft of this document was circulated to several leading social science and legal researchers for feedback and input to increase its utility.

Six main findings emerged from this literature review and analysis. These findings are:

1. Domestic violence has the potential to affect every domain of the functioning of children.

In general, children who experience domestic violence have higher rates of difficulties in a range of psychological, behavioural, social and academic spheres compared to children who do not experience violence. These negative effects emerge differently depending on children’s stage of development, and may continue to exert a negative impact into adulthood.

2. The impact of domestic violence on any particular child varies greatly and may be related to a host of risk and protective factors.

While many children are profoundly affected by domestic violence, others seem to fare quite well in similar circumstances. The resilience of some children has been conceptualized as the ability for protective factors to offset negative experiences. On the other hand, some children face multiple risk factors (including severe poverty, familial alcohol abuse and / or mental illness), which serve to exacerbate the impact of the violence that they experience. The characteristics of the violence (e.g., severity, chronicity, relationship of child to the perpetrator) may play a significant role in determining impact on children, though it is not uncommon for different children in the same family to be differentially affected by domestic violence.

3. Parental separation can heighten or reduce the impact of domestic violence on children, depending on the nature of the case and whether appropriate assessment and intervention strategies are used.

In different families where violence has occurred, separation may offer greater safety or greater danger for children and adult victims. If separation results in ongoing unsupervised contact with a perpetrator of domestic violence, the risk to children may continue or increase. Separation itself may be a risk factor for dangerous or lethal violence. In other families, separation offers children respite from ongoing violence, especially when safety planning and accountability become part of the process.

4. There is a critical need to move from a one-size-fits-all focus on co-parenting to a differential response focus in cases of domestic violence, including a comprehensive assessment by a social worker, psychologist or other mental health professional.

The prevailing culture in family law is one of promoting settlements that encourage parents to make arrangements premised on some form of post-separation shared parenting. Within this culture, parent education programs, collaborative law, and mediation are the preferred vehicles for resolving differences between parents. However, in a minority of cases, these approaches are not only inappropriate, but may place victimized parents and children at risk of ongoing harm. This harm is most likely to be associated with severe and frequent abusive behaviours associated with perpetrators who have been identified as “batterers.” A careful multi-informant, multi-method assessment by a trained psychologist or social worker is required in these cases to assess risk and serve as a foundation for appropriate parenting arrangements.

5. Assessment findings must be matched to appropriate interventions that take into account the timing of domestic violence disclosures, the investigative process, and the availability of resources.

Based on the assessment process, strategies to allow for safe contact can be properly considered. These strategies may include no contact with perpetrators of domestic violence, supervised access, supervised exchange, parallel parenting, and co-parenting. Matching strategies to the assessment findings requires an understanding of systemic issues such as stage of process and availability of community resources. The recommended interventions are only as strong as the community's ability to provide the indicated resources.

6. High conflict separations often involve conflicting allegations and pose special challenges for family courts and professionals, especially when there are domestic violence issues.

High conflict separations take up a disproportionately large amount of time in the family courts, and pose special challenges for judges, lawyers, assessors, mediators and police. Some high conflict cases do not involve domestic violence and may be attributable in part to parents with major personality disorders or personal hurt and rejection over historical events. One or both parents may stay engaged in litigation until they are emotionally and financially exhausted. In this paper, our concern is with the majority of high conflict separations that are characterized by conflicting allegations and denials of child abuse or spousal violence. While in some cases there is deliberate fabrication, not infrequently conflicting stories reflect differences in perception and understanding, and exaggeration and minimization are more common than outright lying. In cases where the police and criminal courts are involved, there is usually better documentation of abuse. In cases dealt with solely in the family court process there is a significant incidence of unfounded allegations, but even in this context the existing research indicates that a majority of allegations of spousal abuse are valid (Johnston et al, 2005). Although an investigation by a court appointed-assessor can help the court to determine what happened in a family and what arrangements are best for the child, ultimately it is for the judge to resolve factual disputes and determine what plan will best promote the child's interests.

These findings suggest the need for a range of parenting arrangements, including co-parenting, parallel parenting, supervised exchange, supervised access, and no contact. The descriptions, indicators, contra-indicators and considerations for each of these are covered at length together with case examples elsewhere (Jaffe, Crooks & Bala, 2006). The highlights of the indications and contra-indications are as follows:

Co-parenting. Co-parenting arrangements consist of both parents working cooperatively to make collective decisions, typically within a joint custody framework. Co-parenting requires two parents who are able to maintain a civil and child-focused relationship post-

separation. Co-parenting is contra-indicated by high conflict and/or a history of domestic violence, before, during or after the separation, or lack of a foundation of any relationship between the parents. These contra-indications are usually demonstrated by a clear history of poor communication, coercive interactions, inability to problem-solve, and a lack of child-centred focus by one or both parents. A serious mental health problem or substance abuse suffered by one or both parents would also contraindicate a co-parenting arrangement.

Parallel Parenting. In contrast to the cooperative nature of a co-parenting arrangement, parallel parenting describes an arrangement where each parent is involved in the children's lives, but the arrangement is structured to minimize contact between the parents and protect the children from exposure to ongoing parental conflict. A joint custody or sole custody framework may provide the context for parallel parenting. Parallel parenting assumes that each parent has a positive contribution to make in his or her time with the children, but any direct parent-parent contact may be harmful to the children due to ongoing acrimony. This acrimony may be based on mutual mistrust, personality conflict, or inability of one or both parents to move past the separation and focus on the future. Any clinical or legal finding that one parent poses a physical, sexual, or emotional threat to the children, or that there are concerns of violence towards the other parent, would contraindicate a parallel parenting arrangement.

Supervised Exchange. Supervised exchange involves transferring children from one parent to the other under the supervision of a third party. The supervision can be informal, for example by a family member, neighbour, or volunteer, or through the utilization of a public venue for the exchange. Supervised exchange provides a buffer in cases where the ongoing conflict cannot be contained by the parents at transitions, exposing the children to high levels of conflict. It is also useful when there is historical pattern of spousal violence and the victim may experience distress /or trauma coming into contact with the other parent. However, supervised exchanges do not minimize the risk of violence to a spouse if there are ongoing concerns about safety of children and their primary caretaker.

Supervised Access. Supervised access is a parenting arrangement designed to promote safe contact with a parent who is deemed to be a risk due to a range of behaviour from physical abuse to abduction of the child. It may also be appropriate where a child fears of a parent, for example because of having witnessed that parent perpetrate abuse or because of having been abused by that parent. Supervised access should only be undertaken if it is believed that a child stands to gain some benefit from a parent maintaining an ongoing role in the child's life. Supervision is usually only considered for what is expected to be a transition period while the parent proves that the supervision may not be required. At the other extreme, supervised contact may lead to termination of access based on dangers posed for the child and/or adult victim. Serious concerns demand more specialized centres and well-trained staff as opposed to volunteers. There are more extreme cases where the safety offered by the supervisor is not appropriate for the degree of risk and no contact may be a more appropriate plan.

No Contact. In extreme cases where a parent presents an ongoing risk of violence to the child or other parent, emotional abuse to the child, or abduction, no meaningful parent-child relationship is possible. When a parent has engaged in a pattern of abusive behaviour and has indicated no remorse or real willingness to change, termination of the parental relationship may be indicated. There are also cases where the abusive parent/spouse has changed over time but the level of trauma engendered historically in their family precludes a fresh start. No contact would be contraindicated when there is a solid foundation of a parent-child relationship and there is a demonstrated commitment to re-establish this relationship.

Three other factors are identified in this paper to provide critical context for considering these various parenting arrangements. First, the context of the violence is an important factor. For example, violence that was more severe, accompanied by a pattern of power and control, engendered fear, and was part of an ongoing pattern indicates the need for more restrictive access than historical, minor, isolated incidents of violence that were out of character for the perpetrator. Second, decisions about parenting plans are predicated on the resources available to the family within their community. For example, safe access to the parent that has perpetrated domestic violence may depend on successful therapeutic interventions and access to a specialized access centre. Third, the stage of the court proceeding has implications for evaluating allegations of domestic violence. For example, interim decisions based on minimal information may indicate the importance of initial safeguards pending a more thorough analysis of possible findings or court ordered assessments.

On the basis of our analysis, several policy and resource development implications emerge. These include the need for *legislation* to find the necessary balance between promoting co-parenting arrangements and recognizing domestic violence cases where more limited or no access by the perpetrator to the children may be appropriate. A second implication is that *resource and policy development* is needed to support a more sophisticated analysis and response to domestic violence cases.

Specific protocols are required to guide practitioners in managing cases with domestic violence allegations that fall into the area between public safety for children (i.e. triggering criminal or child protection proceedings) and private family law matters. Family courts rarely have the resources beyond parenting education and mediation services, and these more complex cases require a more sophisticated set of resources. These resources include: timely access to specially trained assessors with expertise in domestic violence; supervised access centres; treatment resources for individual family members (including perpetrators, victims, and children); and ongoing court monitoring which may be needed in cases of child-related disputes with histories of domestic violence. There must also be better coordination between the family court system, and police, prosecutors and the criminal justice system. A special challenge for the justice system and community social services occurs in cases when there are simultaneous family law, child protection, and criminal proceedings.

Building systemic capacity also requires *education and training for court-related professionals (e.g. lawyers, advocates, mediators, child custody assessors)*. Training programs have to be available to help court-related professionals recognize domestic violence in all its forms, and to permit them to provide differential service responses to meet the level of need in an individual family. When spousal violence is recognized, there needs to be a distinction between minor, isolated acts, and acts that occur as part of a pattern of abuse which engenders fear and poses a risk of future harm for victims and children.

Finally, there are significant *gaps in the existing research* that limit our ability to fully understand the dynamics of these cases and identify best practices. Specifically, there is a lack of long-term follow-up studies to match children's adjustment with specific arrangements post-separation within the context of domestic violence. In addition, most research has been conducted with families in the formal judicial system, and less is known about the future outcomes of those who are unwilling or unable to engage this system. Research in the divorce area has been criticized for looking at the outcome of biased samples.

A starting point for an enhanced understanding is a better integration of the divorce literature and the domestic violence literature; these two literatures have largely developed independently of each other, reflecting the separate professional lives of practitioners and researchers in these two related fields (Jaffe, Poisson, & Cunningham, 2001). The high conflict cases involving domestic violence represent a minority of all separating parents. Leading experts in the field have pointed out that these cases should not be guided by the literature and policies that are applicable to those parents not involved in cases with domestic violence issues (Johnston, 1994). Our goal in this paper is to assist policy makers and practitioners to apply the appropriate literature and policies to these difficult cases.

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