

Table of Contents for (citation and publication web link): Linda C Neilson (2020, 2nd ed.) [*Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases*](#) (Ottawa: Canadian Legal Information Institute, CanLII). This 1500+ page practice e-book updates and replaces the 2017 edition.

Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases

1 Introduction & Research Foundations

1.1 Introduction to the Human Rights Problem

1.2 Judicial Comments on the need for Educational materials on Domestic Violence

- 1.2.1 Problems with ascertaining validity, remarks of Hon. John F. McGarry
 - 1.2.2 The need to enhance understanding of the complex relationship between domestic violence and Indigenous Peoples, remarks of Hon. Heino Lilles
 - 1.2.3 Legal system complexity & the need for swift access to materials, remarks of Hon. Eugene M. Hyman
 - 1.3 Reviewers and Contributors
 - 1.4 A comment on the research foundations of this e-book
 - 1.5 Information not advice
 - 1.6 A comment on the need to take action
 - 1.7 Tools for professional action
-

2 Responding to Domestic violence cases: access to e-book materials

2.1 Screening and Disclosure

- 2.1.1 Disclosure Patterns
 - 2.2 Where to Look For Evidence
 - 2.3 Address Immediate Concerns
 - 2.4 How may social context information be used in a domestic violence context
 - 2.5 What conclusions may be drawn from absence of criminal charge?
 - 2.6 Types of Intimate-Partner Violence; how to distinguish among them
 - 2.7 Are there specific forms of domestic violence that I should be aware of?
-

- 2.8 More and more details are emerging over time. Does this indicate fabrication or exaggeration?
 - 2.9 The victim recanted assertions of domestic violence in an earlier case, does this prove that the original claims were false?
 - 2.10 The perpetrator is claiming my client is 'crazy' and/or is misusing alcohol or drugs.
 - 2.11 Where can one find information on the effects of domestic violence on children?
 - 2.12 How to interpret and respond to child preferences in domestic violence cases.
 - 2.13 Are domestic violence and child abuse connected? What if child protection was alerted and did not intervene?
 - 2.14 When and how should a child offer direct testimony?
 - 2.15 How does trauma affect child testimony?
 - 2.16 Are there behavioral patterns that are characteristic of perpetrators?
 - 2.17 The perpetrator is making one claim after another against my client and anyone who supports her, yet is failing to comply with legal obligations.
 - 2.18 What facts indicate risk and danger and why must both be assessed?
 - 2.19 What are the strengths and limitations of tools used to assess risk and danger?
 - 2.20 What if the targeted parent wants to revoke protection?
 - 2.21 My client claims to have been strangled but there are no marks or visible signs.
 - 2.22 Do intervention programs for perpetrators actually work?
 - 2.23 Where can I obtain information about civil protection orders?
 - 2.24 Where can I obtain information about risks associated with weapons in domestic violence cases?
 - 2.25 Does section 127 of the Criminal Code apply if my client breaches his or her civil protection order?
 - 2.26 Where can I find information on when civil personal protection orders should and should not be granted & on allowable terms and duration?
 - 2.27 Is a finding of reasonableness of fear required for a civil protection order?
 - 2.28 How does domestic violence affect child best interests?
 - 2.29 What parenting patterns are associated with domestic violence?
 - 2.30 Is targeted parent safety a best Interest of the child criterion?
 - 2.31 What risks should I think about in connection with parent child access?
-

- 2.32 Should Canada implement a presumption against contact with the
perpetrating parent in domestic violence cases?
 - 2.33 What does the law say about child best interests in domestic violence
cases?
 - 2.34 May judges take judicial notice of the negative effects of domestic
violence on children?
 - 2.35 How does domestic violence affect settlement?
 - 2.36 Where can I find information about custody & access options in these
cases?
 - 2.37 Where can I find information about enforcement of access?
 - 2.38 Is denial of parent-child contact ever appropriate?
 - 2.39 What should I consider in connection with police enforcement of
access?
 - 2.40 Where can I find information about contempt for denial of parent-child
contact?
 - 2.41 Where can I find information on variation or appeal of parenting orders?
 - 2.42 Where can I find information on relocation principles in domestic
violence cases?
 - 2.43 The other parent has ties to another country; where can I find
information on risk and prevention of child abduction?
 - 2.44 Where can I find information on child abduction within Canada?
 - 2.45 Where can I find information on international child abduction?
 - 2.46 Where can I find information about domestic violence in child protection
cases?
 - 2.47 Where can I find information on use of information from the criminal
case in a family law case?
 - 2.48 My client wants to introduce polygraph evidence.
 - 2.49 What considerations apply in connection with tape recordings, computer
and cell phone records?
 - 2.50 Can my client introduce hearsay evidence from children?
 - 2.51 What do I need to think about in connection with expert evidence?
 - 2.52 One of the parties is claiming parental alienation
 - 2.53 What considerations apply in connection with medical and counselling
records?
 - 2.54 What considerations apply in connection with judicial dispute resolution
& mediation?
 - 2.55 Where can I find information on use and misuse of cultural evidence?
-

- 2.56 My client is Indigenous. Do special considerations apply?
 - 2.57 My client has a mental disability. Do special considerations apply?
 - 2.58 My client has a physical disability. Do special considerations apply?
 - 2.59 My client is a member of a visible minority and/or is immigrating to Canada.
-

3 Social Context Use and misuse

3.1 The Costs of Domestic Violence

- 3.1.1 The Economic Costs:
- 3.1.2 The Damage to Children Costs:
- 3.1.3 The Failure to Take Effective Action Costs:

3.2 Introduction to use & misuse of social context information

- 3.2.1 How social context education can be useful
 - 3.2.2 Can social context education create bias?
 - 3.3 Use & misuse of information about domestic violence
 - 3.4 Related material
-

4 Obtaining Facts, Interpreting & Assessing Domestic Violence

- 4.1 Introduction
- 4.2 Terms and definitions
- 4.3 Domestic violence: disclosure & access to evidence issues**

- 4.3.1 Missing evidence is common
- 4.3.2 Obtaining information
- 4.3.3 Disclosure Patterns (Victims)
- 4.3.4 Disclosure Patterns (Perpetrators)
- 4.3.5 Where to look for evidence
- 4.3.6 Options to encourage complete presentation of evidence
- 4.3.7 What conclusions may be drawn from absence of any criminal charge?
- 4.3.8 When subsequent partners testify: no abuse or violence in the new relationship
- 4.3.9 Can mental health assessments determine the validity of a domestic violence claim?
- 4.3.10 When is an expert needed to interpret evidence of domestic violence?

4.4 Understanding & interpreting evidence of domestic violence

- 4.4.1 Introduction
- 4.4.2 Gender & Human Rights

- 4.4.3 Why do some statisticians say that men and women are equally violent?
- 4.4.4 What are the elements of domestic violence? Introduction
 - 4.4.4.1 Domestic violence includes
 - 4.4.4.2 Social context includes
- 4.4.5 The nature of abuse and violence in intimate relationships
- 4.4.6 Types of Intimate Partner violence
- 4.4.7 How does victim resistance violence differ from self-defense?
- 4.4.8 Post-Traumatic-Stress and Brain Injury induced domestic violence
- 4.4.9 Why does determining type of violence matter?
- 4.4.10 Why and how is domestic violence assessed differently from stranger violence?
- 4.4.11 How is targeted-person violence distinguished from perpetrator violence?
- 4.4.12 What evidence is needed for accurate assessment?
- 4.4.13 What sort of evidence indicates domination and coercive control?

4.5 Other distinctive features of domestic violence

- 4.5.1 Heightened risk
- 4.5.2 False Claims and Interpreting Victim Recant
- 4.5.2 Intimidation that only victims case perceive

4.6 Specific Categories of domestic violence

- 4.6.1 Men targeted by domestic violence
 - 4.6.1.1 Cautionary comments on gender and domestic violence
 - 4.6.2 Domestic violence specific to cultural context
 - 4.6.3 New forms of domestic violence
 - 4.6.4 Animal cruelty and domestic violence
 - 4.7 Related material
-

5 Understanding victims: harm, Behaviour & Evidence

- 5.1 Introduction
- 5.2 The impact of domestic violence on adult victim witness testimony**

 - 5.2.1 What is Battered Woman Syndrome?
 - 5.2.2 How domestic violence affects intimate partners
 - 5.2.2.1 The Special case of Brain Injury
 - 5.2.3 When domestic violators claim the targeted partner is 'crazy'
 - 5.2.4 What is post-traumatic stress (PTS)?
 - 5.2.5 How do trauma & post-traumatic stress affect victims?
 - 5.2.5.1 When details of domestic violence are disclosed over an extended period of time

5.2.5.2 How may lawyers and service providers use information about PTS?

5.2.5.3 Expert evidence: post-traumatic stress & the victim witness

5.3 Detection and prevention of intimidation in discovery proceedings and hearings

5.3.1 Attend to intimidation in legal proceedings

5.3.2 Prevent intimidation during discovery and hearings

5.3.3 Additional options to secure accurate victim witness testimony

5.4 Interpreting information from victims of domestic violence

5.4.1 When information about domestic violence is not presented during the trial

5.4.2 What if the targeted person has forgiven the past abuse and violence?

5.4.3 What about victims who keep returning to abusers?

5.4.4 What about victims who misuse alcohol or drugs?

5.4.5 What if the targeted parent has also been violent?

5.4.6 Can psychological assessments determine truth or falsehood of domestic violence claims?

5.4.7 What if there has never been a criminal charge?

5.4.8 When allegations are raised for the first time during custody and access litigation

5.4.9 New partner testimony: no violence in the new relationship

5.5 Related Material

6 Children: Impact of Domestic violence & Evidence of children

6.1 Introduction

6.2 Domestic violence: impact on children

6.2.1 Introduction

6.2.2 How can information about domestic violence and children help?

6.2.3 The extent of exposure

6.2.4 What constitutes exposure?

6.2.5 Abandoning myths about children: bad news

6.2.5.1 Myth: Domestic violence is between parents, it does not harm children

- 6.2.5.2 Myth: children who do not witness domestic violence directly are not affected
- 6.2.5.3 Myth: school age and adolescent children are most at risk
- 6.2.5.4 Myth: very young children are less affected
- 6.2.5.5 Myth: children in the same family will report similar experiences
- 6.2.5.6 Myth: Domestic violence and parenting are separate issues
- 6.2.5.7 Myth: Domestic violence is the sole issue negatively affecting children
- 6.2.6 Abandoning myths about children: good news
 - 6.2.6.1 Myth: all children exposed to domestic violence incur psychological damage
 - 6.2.6.2 Myth: older children cannot be helped
 - 6.2.6.3 Myth: children who are exposed to domestic violence should be removed from their parents
 - 6.2.6.4 Myth: children should have no contact with the domestic violator

6.3 Listening for evidence of child harm by age

- 6.3.1 Introduction & qualifying comments
- 6.3.2 Domestic Violator Litigation Tactic
- 6.3.3 Child response: pregnancy to birth
- 6.3.4 Child response: Infants and toddlers
 - 6.3.4.1 Responding to evidence: infants and toddlers
- 6.3.5 Child response: preschool
 - 6.3.5.1 Responding to evidence: preschool
 - 6.3.5.2 Accuracy of the perceptions of preschool-children
- 6.3.6 Child response: early school years
 - 6.3.6.1 Responding to evidence: early school years
 - 6.3.6.2 Accuracy of school-age child perceptions
- 6.3.7 Youth responses: adolescents
 - 6.3.7.1 Responding to evidence: adolescents
 - 6.3.7.2 Accuracy of adolescent perceptions and preferences
- 6.3.8 Interpreting children through a trauma informed lens
- 6.3.9 Child Posttraumatic Stress Disorder
- 6.3.10 Childhood victims of abusive head trauma
- 6.3.11 Does domestic violence in childhood produce adult violence?

6.4 Designing agreements & orders to limit child harm

- 6.4.1 Limiting harm

6.5 Evidence from and about children in domestic violence cases

- 6.5.1 Child disclosures
- 6.5.2 Child views and preferences
 - 6.5.2.1 When children express preferences to a parent or party
 - 6.5.2.2 Child preferences in domestic violence context
 - 6.5.2.3 Why children may say they wish to live with a domestic violator
 - 6.5.2.4 When children resist contact with violators
 - 6.5.2.5 Options: when a child asks to reside with a domestic violator
- 6.5.3 Child abuse claims in domestic violence cases
 - 6.5.3.1 The overlap: Domestic violence and child abuse
 - 6.5.3.2 Child abuse claimed for the first time in family litigation
 - 6.5.3.2.1 How may lawyers and service providers use information set out in Chapter 6.5.2.2 ?
 - 6.5.3.2.2 Academic concerns about judicial neutrality
 - 6.5.3.3 When child protection authorities were alerted but did not act
 - 6.5.3.3.1 Expert evaluation option
 - 6.5.3.3.2 Legal representation option
 - 6.5.3.3.2.1 Legal representation for a child: when to seek
 - 6.5.3.3.2.2 Legal representation for child: Domestic ___violence considerations

6.6 Evidence from children

- 6.6.1 Obligations to consider the views of children
- 6.6.2 Consideration of the views of children
- 6.6.3 Child testimony in domestic violence cases: Best Interest considerations
 - 6.6.3.1 Judicial analysis
- 6.6.4 Direct evidence from a child?
- 6.6.5 Responding to a request for direct evidence from a child
- 6.7 Assessing child competence to testify
- 6.8 Options if a child is to offer direct testimony

6.9 Interpreting child witnesses: evidence and demeanor

- 6.9.1 Post-traumatic stress: the cause
 - 6.9.1.1 Frequency
 - 6.9.1.2 Results
 - 6.9.1.3 Implications: child evidence & testimony
 - 6.9.1.4 Using PSTD information

- 6.9.1.5 What if expert evidence is not available?
 - 6.9.1.6 When is expert evidence relating to child disclosure patterns and or trauma or PTSD helpful?
 - 6.10 Legal representation for the child
 - 6.11 Alternatives to direct testimony from children
 - 6.12 Programs for children
 - 6.13 Associated materials
-

7 Perpetrator Characteristics & Litigation Tactics

7.1 Introduction

7.2 Responding to perpetrator rationalizations

- 7.2.1 Alcohol and drug rationalization
- 7.2.2 Loss of control rationalization
- 7.2.3 Stress and anger rationalization
- 7.2.4 Mental illness rationalization
- 7.2.5 Complex domestic violator issues: coordination of services
- 7.2.6 Relationship rationalizations

7.3 Identifying perpetrators

- 7.3.1 Psychological profiles of perpetrators
- 7.3.2 Listening for traits characteristic of perpetrators

7.4 Perpetrator litigation tactics

- 7.4.1 Using litigation to control or harass
 - 7.4.1.1 Potential cost options
 - 7.4.1.2 Appeal Options
 - 7.4.1.3 Agreements and orders that enable harassment & control
 - 7.4.1.4 Additional Options in response to excessive litigation
- 7.4.2 Responding to allegations of the targeted partner's unlawful conduct
- 7.4.3 When the perpetrator insists on mutual protection orders
- 7.4.4 When the perpetrator fails to honour the protection order
- 7.4.5 When perpetrators claim the targeted parent failed to support the perpetrator's relationship with the child
- 7.4.6 When the perpetrator refuses to disclose financial information or fails to honour financial and cost obligations
- 7.4.7 When a perpetrator points out that the victim recanted claims of family violence in the criminal case

- 7.4.8 When the parties present mirror claims
 - 7.4.9 When the perpetrator claims the other parent is 'crazy'
 - 7.4.10 When the perpetrator claims the targeted parent misuses alcohol or drugs
 - 7.4.11 When the perpetrator claims the other parent is equally violent
 - 7.4.12 Interpreting information when only one party is physically present
 - 7.4.13 When the perpetrator intimidates the other party in the meeting or hearing
 - 7.4.14 When the new partner offers good character evidence
 - 7.4.15 Claims made for the first time in litigation
 - 7.4.16 When the perpetrator offers evidence of child harm as 'proof' of poor parenting
 - 7.4.17 When the perpetrator seeks direct evidence from the child
 - 7.4.18 When the perpetrator claims 'poisoning' of the child's mind
 - 7.4.19 When the perpetrator manipulates denial of access
 - 7.4.20 When the perpetrator manipulates supervision of access
 - 7.4.21 When the perpetrator tests the limits of agreements or court orders
 - 7.4.22 When the perpetrator manipulates the benefits of maximizing contact
 - 7.4.23 When the perpetrator makes spurious child abuse claims
 - 7.4.24 When perpetrators enlist grandparents
 - 7.4.25 When perpetrators seek police enforcement of access
 - 7.4.26 When either parent threatens child abduction
 - 7.4.27 When the perpetrator seeks mediation or other settlement process
 - 7.4.28 When perpetrators make complaints against professionals (such as police, evaluators, therapists, supervisors of access, child protection authorities, mediators, lawyers, and judges)
 - 7.4.29 When the perpetrator threatens service providers, lawyers and judges
 - 7.4.30 When the perpetrator claims lawyer incompetence
 - 7.4.31 When the perpetrator claims judicial bias
 - 7.4.32 When perpetrators file retaliatory parallel claims in multiple courts
 - 7.4.33 When perpetrators tape or video-record the other parent
 - 7.4.34 When perpetrators agree to seek help as a tactic
 - 7.4.35 When the perpetrator is a police officer, lawyer or judge
 - 7.4.36 When perpetrators seek to gain advantage via the "Hague Convention"
- 7.4.4 Concluding comment

8 Risk & Lethality: Assessments for Safety

- 8.1 Chapter content
- 8.2 Terminology
- 8.3 Introduction
- 8.4 Confronting the homicide/suicide domestic violence myth

8.5 Incomplete evidence inhibits accurate assessment

- 8.5.1 Options to improve access to complete evidence
- 8.6 Risk and lethality: similarities & differences
- 8.7 Perpetrator characteristics associated with the onset of domestic violence

8.8 Responding to risk (the likelihood domestic violence will continue)

- 8.8.1 Facts associated with risk
- 8.8.2 Facts associated with continuing violence in some studies, not in others
- 8.8.3 Culture, vulnerability, social status and rural location can affect risk
- 8.8.4 What are the two most reliable predictors that domestic violence will continue?
- 8.8.5 When evidence suggests continuing risk

8.9 What is Risk Assessment?

- 8.9.1 Definition
 - 8.9.2 Limitations
 - 8.9.3 When circumstances change
 - 8.9.4 Benefits
 - 8.9.5 Research studies on validity of risk assessment tools
 - 8.9.6 Admissibility and use of risk assessment in family cases
 - 8.9.7 Weight
 - 8.9.8 Meaning of a "low risk" assessment
 - 8.9.9 Use of risk assessment tools
 - 8.9.10 When risk assessment evidence should not be used
 - 8.10 Evidence required for assessment of continuing risk
 - 8.11 Recording risk in judgments
 - 8.12 When should an expert be called in to assess risk?
-

8.13 When is expert assessment of risk not needed?

8.14 Potential for lethal outcome

- 8.14.1 Canadian homicide/suicide statistics
- 8.14.2 What factors indicate a potential for lethal outcome?
- 8.14.3 Sources of information about lethality
- 8.14.4 Additional facts associated with lethality
- 8.14.5 Strangulation: evidence matters
- 8.14.5.1 Options when there are no physical signs of strangulation
- 8.14.6 False positives: lethality indicators may not result in death
- 8.14.7 Does preventative action violate rights?
- 8.14.8 Facts that should not be taken into consideration
- 8.14.9 When is expert assessment of the potential for lethal outcome critical?
- 8.14.10 Responding to the potential for lethal outcome

8.15 When the protected person seeks revocation of protection

- 8.15.1 Options

8.16 Domestic violence intervention programs

- 8.16.1 Do intervention programs stop domestic violence?
 - 8.16.2 Failure to attend intervention programs is associated with increasing risk
 - 8.16.3 Monitoring can improve the results of intervention
 - 8.16.4 Promoting safety in connection with intervention programs
 - 8.17 Summary of practices to enhance safety: what works?
-

9 Civil Protection

- 9.1 Introduction

9.2 PART ONE: Civil Protection Principles

- 9.2.1 Civil Protection, Social context
- 9.2.2 Research-Informed Civil Protection Practice Principles
 - 9.2.2.1 Balancing competing rights; preliminary fundamental justice issues
 - 9.2.2.2 Collection of Evidence
 - 9.2.2.3 Keep in mind Perpetrator Litigation Tactics
 - 9.2.2.4 During the hearing
 - 9.2.2.5 Consider related material in this e-book
 - 9.2.2.6 Assess the Level of Risk and Danger

- 9.2.2.7 Secure case-specific information from other proceedings
- 9.2.2.8 Use simple language
- 9.2.2.9 Include prohibitions specific to social and cultural context
- 9.2.2.10 Prevent Financial Control
- 9.2.2.11 Leave no room for doubt
- 9.2.2.12 Address collateral needs
- 9.2.2.13 Provide for domestic violence intervention
- 9.2.2.14 Address access to weapons concerns
- 9.2.2.15 Exclusion of addresses
- 9.2.2.16 Terms to encourage accountability
- 9.2.2.17 Consider safety measures to protect children
- 9.2.2.18 Specify conditions for the parenting of children
- 9.2.2.19 Attend to the details
- 9.2.2.20 Examples of promising initiatives
- 9.2.2.21 Enforcement of civil protection by jurisdiction
- 9.2.2.22 Inter-provincial enforcement of civil protection orders
- 9.2.2.23 Weapons restrictions in family law cases
 - 9.2.2.23.1 Why should close attention be devoted to weapons in domestic violence cases?
 - 9.2.2.23.2 Weapons restrictions: overriding legal principle
 - 9.2.2.23.3 Statutory authority to restrict access to weapons in civil cases
 - 9.2.2.23.4 Limited authority to restrict access to weapons in other family law cases
 - 9.2.2.23.5 Concerns
 - 9.2.2.23.6 When to restrict access to weapons
 - 9.2.2.23.7 Options to enhance safety in connection with weapons
 - 9.2.2.23.8 Helpful educational resources from the United States
 - 9.2.2.23.9 Contents of- restrictions on weapons orders
 - 9.2.2.23.10 Weapons & aboriginal peoples
 - 9.2.2.23.11 What if statutory authority to restrict weapons is absent?
- 9.2.2.24 Prohibiting modern forms of domestic violence
- 9.2.2.25 Mutual civil restraining or protection orders
 - 9.2.2.25.1 Are mutual civil protection orders ever a good idea?
 - 9.2.2.25.2 What is the alternative to a mutual order?

- 9.2.2.25.3 What methods can be used to ensure orders are issued against the correct person?
- 9.2.2.26 Should resumption of cohabitation result in revocation of the civil protection order?
- 9.2.2.27 What if the respondent agrees to domestic violence intervention?
- 9.2.2.28 What if there is a concern about potential child abduction?
- 9.2.2.29 Failure to pursue, confirm or renew protection orders

9.3 PART TWO: Particular Types of Civil Protection

- 9.3.1 Restraining orders
 - 9.3.1.1 Jurisdiction
 - 9.3.1.2 Relevant domestic violence information
 - 9.3.1.3 Parties
 - 9.3.1.4 When orders can be made
 - 9.3.1.5 Requirements
 - 9.3.1.6 Reasonable Fear
 - 9.3.1.7 Should restraining orders be refused when violence was an isolated incident?
 - 9.3.1.8 What if there is no evidence of recent violent conduct?
 - 9.3.1.9 What if the perpetrator has completed an intervention program?
 - 9.3.1.10 What if other family or criminal remedies are available?
 - 9.3.1.11 What if the targeted person keeps returning to the abuser?
 - 9.3.1.12 What if the targeted adult demonstrates no fear?
 - 9.3.1.13 Content of orders
 - 9.3.1.14 Arrest clause
 - 9.3.1.15 Duration
 - 9.3.1.16 When an application to rescind is a perpetrator tactic
 - 9.3.1.17 Onus: setting aside restraining orders
 - 9.3.1.18 What if the protected party seeks to revoke the order?
- 9.3.2 Without-notice *ex parte* orders
 - 9.3.2.1 Court concerns
- 9.3.3 Domestic violence prevention statutes
 - 9.3.3.1 The statutes
 - 9.3.3.2 Constitutional issues: the arguments (civil)
 - 9.3.3.3 Constitutional issues: the rulings (civil)
 - 9.3.3.4 Domestic violence safety concerns relating to onus

- 9.3.3.5 When protection pursuant to a domestic violence prevention statute should be granted
- 9.3.3.6 Is a finding of reasonableness required?
- 9.3.3.7 Mutual orders
- 9.3.3.8 What if the perpetrator completes domestic violence intervention?
- 9.3.3.9 What if there are no recent incidents of domestic violence?
- 9.3.3.10 What if another protective order is in existence?
- 9.3.3.11 What if the applicant is resident in a secure shelter?
- 9.3.3.12 What if the applicant has repeatedly resumed cohabitation with the perpetrator?
- 9.3.3.13 Who may be protected by domestic violence statute orders?
- 9.3.3.14 What types of orders can be made?
- 9.3.3.15 What findings of fact are required to support an emergency order?
- 9.3.3.16 May emergency protection orders be granted on the basis of emotional or psychological abuse?
- 9.3.3.17 Duration of orders under statutes
 - 9.3.3.17.1 Orders of justices of the peace, magistrates, provincial court judges
 - 9.3.3.17.2 Orders of superior court judges
- 9.3.3.18 Terms of orders under statutes
- 9.3.3.19 Restrictions on weapons
- 9.3.3.20 Requirements for service
- 9.3.3.21 Potential child abduction
- 9.3.3.22 Enforcement clauses
- 9.3.3.23 Superior Court reviews and rehearing of emergency protection orders
- 9.3.3.24 Critical comments on limiting the jurisdiction of justices of the peace and provincial courts judges
- 9.3.3.25 Considerations on review of an emergency protection order
- 9.3.4 Exclusive possession of the family home (civil) Introduction
 - 9.3.4.1 Exclusive occupation of the home: considerations
 - 9.3.4.2 Marital homes on Indian reserves
- 9.3.5 Personal property: Introduction
 - 9.3.5.1 Directing police to accompany persons to obtain personal possessions
 - 9.3.5.2 Orders relating to particular items of personal property
 - 9.3.5.3 Family Pets and Farm Animals

9.3.5.4 Personal property on reserves

9.4 Legislation deficits

9.5 Additional reference materials

10 Evidence Issues

10.1 Introduction

10.2 Prior Bad Conduct Evidence

10.2.1 Why evidence of past conduct is critical in domestic violence cases

10.2.2 Prior bad conduct: criminal & family cases

10.2.3 Evidence of prior domestic violence admissible pursuant to statute

10.2.4 Prior abuse and violence: Weighing prejudicial and probative value

10.2.5 Evidence of past parenting

10.2.6 Prior conduct: when violators claim mutual violence or self-defense

10.2.7 Prior bad conduct: concluding comment

10.3 Considering criminal evidence and records in family law case

10.3.1 Disclosing & admitting criminal documents

10.3.1.1 Criminal documents: Privacy Interests of Complainants and Witnesses, domestic violence context

10.3.1.2 Considerations of admissibility of police & criminal records.

10.4 When violators challenge prior convictions or guilty pleas

10.5 Considering domestic violence after a 'not guilty' finding

10.6 When 'victims' refute a criminal conviction

10.7 Good character evidence

10.7.1 When violators present good public reputation evidence

10.7.2 When new partners testify: no violence in new relationship:

10.8 Polygraph Evidence

10.9 Tape-Recordings, Computer & Cell phone records

10.9.1 Admissibility

10.9.2 Special considerations, domestic violence context

10.9.3 Control over content considerations

10.9.4 When video, tape and other recorded evidence is helpful

10.10 Hearsay evidence from children

10.10.1 Out-of Court statements of children: Preferences

10.10.2 Child hearsay evidence: domestic violence and child abuse

10.10.3 Child hearsay evidence: Principled approach

- 10.10.3.1 The starting point
- 10.10.3.2 Considering hearsay exceptions
- 10.10.3.3 SCC Principles: Necessity & Reliability
- 10.10.3.4 Probative value & Prejudicial effect
- 10.10.3.5 Necessity
- 10.10.3.6 Reliability
- 10.10.3.7 Trustworthiness & Reliability Checklist
- 10.10.3.8 Cautionary Comments, reliance on hearsay evidence
- 10.10.4 Child Hearsay: Other rules for admission
- 10.10.5 Court ordered reports: Do different hearsay rules apply?

10.11 Expert Evidence in domestic violence cases

- 10.11.1 Judicial Gatekeeper Role
- 10.11.2 When is evidence from a domestic violence expert needed?
- 10.11.3 Parent-Child Evaluations
 - 10.11.3.1 When are courts ordering child-parent evaluations?
 - 10.11.3.2 Admissibility: Expert Child/Parent Evaluation
 - 10.11.3.3 Applying Supreme Court of Canada principles to Evaluation Evidence
 - 10.11.3.4 Assigning weight, evaluations: case law principles
 - 10.11.3.5 Reliance on facts in court-ordered evaluations for truth
 - 10.11.3.6 Expert Custody Evaluation: Social Science Controversy
 - 10.11.3.7 Legal Response to Social Science Controversy
 - 10.11.3.8 Action to enhance the quality of evaluations
 - 10.11.3.9 Is the evaluator a domestic violence expert?
 - 10.11.3.10 Ordering an evaluation in a domestic violence context
 - 10.11.3.11 Scrutinizing custody evaluations
 - 10.11.3.12 Related Material

10.12 Parental Alienation (PA) Introduction

- 10.12.1 Why is the concept pertinent to domestic violence cases?
- 10.12.2 New *Divorce Act* Provisions
- 10.12.3 When a child resists parental contact, does this indicate 'parental alienation'?
- 10.12.4 Does 'alienation' have a scientific basis?
 - 10.12.4.1 Parental alienation remedies harm some children.
 - 10.12.4.2 Parental alienation claims have a negative effect on legal responsibilities to assess child best interests

- 10.12.4.3 The views and preferences of children
- 10.12.4.4 Concluding & Qualifying Comments on Scientific Validity
- 10.12.4.5 United Nations comments on Parental Alienation
- 10.12.5 Legal Implications of lack of Scientific Foundation
- 10.12.6 Questioning admissibility and reliability of “expert” alienation evidence
- 10.12.7 Current judicial practices: Alienation
- 10.12.8 When parents do manipulate children
- 10.12.9 Suggested Change in Terminology: Manipulation
- 10.12.10 Considerations when a party claims parental alienation in a domestic violence case
- 10.12.11 Concluding Comments on Alienation

10.13 Hospital & Counselling records

- 10.13.1 Therapeutic & Medical records in domestic violence Context
 - 10.13.2 Relevance & Value
 - 10.13.2.1 When therapeutic and health records have limited value
 - 10.13.2.2 When therapeutic and medical records do have value
 - 10.13.3 Production of medical records (custody and access)
 - 10.13.3.1 Application of Charter values to health records
 - 10.13.3.2 British Columbia Halliday Option
 - 10.13.4 Imposing Conditions on viewing documents
 - 10.13.5 Production of therapeutic records: Child Protection
 - 10.13.6 Provincial and Territorial Rules on admission of Medical Reports
- 10.14 Related Material
-

11 Assessing child best interests in Domestic violence context

11.1 Introduction to Social, Domestic violence Custody & Access Context

- 11.1.1 New approaches and understanding
- 11.1.2 The overlap between domestic violence and child abuse
- 11.1.3 Do violators change character when alone with children?
- 11.1.4 In a nutshell: different approaches to domestic violence and non-domestic violence cases
- 11.1.5 Research: why domestic violence cases are assessed differently

- 11.1.6 Dispelling the myth that domestic violence and parenting are not related
- 11.1.7 How may lawyers and service providers use information about children & domestic violence?
- 11.1.8 Obstacles to accurate best interest assessment
 - 11.1.8.1 Over-representation of domestic violence in contested cases
 - 11.1.8.2 Incomplete evidence
 - 11.1.8.3 Lack of reliability of child preferences
 - 11.1.8.4 Confusing victim evidence and behaviour
 - 11.1.8.5 Perpetrator litigation tactics that create confusion
- 11.1.9 Listening to evidence with knowledge of how domestic violence affects children
- 11.1.10 Red flag evidence: violator parenting practices
- 11.1.11 Process: assessing best interest in domestic violence cases
- 11.1.12 Considering targeted parent safety
 - 11.1.12.1 Options to enhance custodial parent safety
- 11.1.13 Considering risks associated with contact for the child
- 11.1.14 Is a presumption that children should have no contact with violators warranted?
- 11.1.15 Should age and stage of child development be considered?

11.2 Legal context

- 11.2.1 Child custody and access: statutory framework
- 11.2.2 *Divorce Act*: best interest of the child as the only concern
- 11.2.3 Do statutory best interests provisions violate constitutional rights?
- 11.2.4 Maximizing Contact. *Divorce Act*
 - 11.2.4.1 New *Divorce Act* provision - allocation of parenting time
 - 11.2.5 New *Divorce Act* Provision – willingness to support the child’s relationship with the other spouse
 - 11.2.6 Provincial/territorial statutes: maximum contact and best interests
 - 11.2.7 Why best interests should be assessed twice
 - 11.2.8 Do provincial/territorial statutes require two assessments?
 - 11.2.9 What does the *Divorce Act* say about domestic violence?

11.2.10 What does provincial/territorial legislation say about domestic violence?

11.2.11 May judicial notice be taken of the effects of domestic violence on children?

11.2.12 Parental capacity and child best interests

11.2.13 Domestic violence and best interests of the child

11.2.14 Is prioritizing child safety consistent with best interests?

11.2.15 Alberta and British Columbia and Nova Scotia legislation: prioritizing safety in domestic violence cases

11.2.16 Parenting Time is the right of the child – not of a parent

11.2.17 When should children be forced to have contact with violators?

11.2.18 Is custodial parent safety relevant to best interests?

11.2.19 Additional Educational Resources

11.2.20 Closing comments

11.3 Related e-book material

12 Settlement & consent

12.1 Settlement in a domestic violence context: Introduction

12.2 When parents agree

12.3 Options to ensure safety and best interests are considered

12.4 Setting aside parental agreements

12.5 Setting aside or varying a consent order for custody and access

12.5.1 Evidence predating the consent order

12.5.2 Concluding Comments & Related E-book Material

13 Interim Custody & access

13.1 Introduction

13.2 Reminder: Child best interests in domestic violence context

13.3 Interim Custody, Statutes

13.4 Current practice: interim custody

13.5 Social context: when a parent flees domestic violence

13.6 Interim custody principles

13.7 The nature of status quo in domestic violence context

13.7.1 Status quo: child bond with the primary caregiver

13.8 Status quo acquired by wrongful means

13.9 Safety and welfare as an interim consideration

13.9.1 Assessing child safety and best interests in domestic violence context

13.10 Interim custody caveat: contested evidence

13.10.1 Disputed facts

13.10.2 Untested expert evaluations

1 13.10.3 Potential options in response to untested evidence

13.11 Ensuring cases proceed swiftly to trial

13.12 Interim orders: judicial monitoring

13.12.1 When evidence is not clear and there are reservations about both parents

13.12.2 When safety is a concern

13.13 Variation of interim custody orders

13.14 Appeals of Interim Orders

14 Custody & Access, Parenting & Contact Orders

14.1 Summary: chapter content

14.2 Reminders from Chapters 4, 5, 6, 7, 10 & 11

14.3 Custody

14.3.1 What child order is recommended in domestic violence cases?

14.3.1.1 Educational Resources: Child Best Interests in Family Violence Context

14.3.1.2 Canadian practice: Parenting orders in domestic & family violence context

14.3.2 Exceptions: custody awards to domestic violators

14.3.3 When domestic violators claim shared time, joint decision making custody

14.3.3.1 Is joint custody contraindicated?

14.3.3.2 Appeal court rulings on joint custody: high conflict

14.3.3.3 Appeal court exceptions: joint custody when parents are in conflict

14.3.3.4 Joint custody decisions: evidence not hope

14.3.3.5 Canadian judgments

14.3.4 Parallel parenting

14.3.4.1 What is parallel parenting?

14.3.4.2 Is parallel parenting useful in domestic violence cases?

14.3.4.3 What claims are made in favour of parallel parenting?

- 14.3.4.4 Are claims in favour of parallel parenting supported by research data?
- 14.3.4.5 Concerns about parallel parenting: Domestic violence context
- 14.3.4.6 Considerations: parallel parenting on domestic violence context
- 14.3.4.7 Precautionary measures
- 14.3.4.8 What are trial courts saying about parallel parenting?
- 14.3.4.9 What are appeal courts saying about parallel parenting?
- 14.3.4.10 Manitoba appeals courts: divided parental decision-making

14.4 Access

- 14.4.1 Unsupervised access, domestic violence
 - 14.4.1.1 What are the central contact/access consideration in a domestic violence context?
 - 14.4.1.2 What form of parenting order do experts recommend?
 - 14.4.1.3 What form of parenting is being ordered now in domestic violence cases?
 - 14.4.1.4 Child-centered decision-making
 - 14.4.1.5 Onus: parenting time and the best interests of the child
 - 14.4.1.6 How can violators establish that unsupervised access is safe?
 - 14.4.1.6.1 Additional proof to support a claim for unsupervised access
 - 14.4.1.7 Unsupervised access
 - 14.4.1.7.1 What if the custodial parent misuses the conditions?
 - 14.4.1.7.2 Unsupervised access: options for children
 - 14.4.1.7.3 Domestic violence evidence-based optimum practice
- 14.4.2 When the violator's parents claim access
- 14.4.3 Using parenting coordinators in domestic violence cases
 - 14.4.3.1 Parenting coordinators: Canadian appeal cases_
- 14.4.4 Supervised access
 - 14.4.4.1 Statutory authority
 - 14.4.4.2 What do experts recommend?
 - 14.4.4.3 Onus: restrictions on access
 - 14.4.4.4 Circumstances warranting supervised access
 - 14.4.4.5 Do experts have reservations about supervised access?
 - 14.4.4.6 Safety analysis prior to ordering supervised access
 - 14.4.4.7 Content of supervised access agreements & orders
 - 14.4.4.8 Guidance: Steps to obtain unsupervised access

- 14.4.4.9 Supervised access graduating to unsupervised access
- 14.4.4.10 Should supervision of access be time limited?
- 14.4.4.11 Who should not supervise access in domestic violence cases?
- 14.4.4.12 What if professional supervision is not available?
- 14.4.4.13 Choice of supervision centre
- 14.4.4.14 Who should pay for the costs of supervision?
- 14.4.4.15 Negative violator parenting during supervision
- 14.4.4.16 Evidence from supervisors of access
- 14.5 Applications to vary supervised to unsupervised
- 14.6 Safety Options on variation of supervised to unsupervised access

14.7 Suspension of access

- 14.7.1 When to consider
 - 14.7.2 Domestic Violence Context
 - 14.7.3 Case law: suspending access in domestic violence cases
 - 14.7.4 Suspension of access with continuing 'hope' provisions
 - 14.8 Termination of the parental relationship
 - 14.9 Educational Resources
 - 14.10 Related E-book material
-

15 Enforcement of access, variation and appeal

- 15.1 Introduction

15.2 Enforcement of access

- 15.2.1 The statutes
- 15.2.2 Offence provisions, denial of access
- 15.2.3 Reasons for denying access in domestic violence cases
- 15.2.4 When violators claim denial of access as a tactic
- 15.2.5 Is denial of access ever appropriate?
- 15.2.6 Reasons children may not want contact with a violator
- 15.2.7 Should children be forced to spend time with a parent who has engaged in domestic violence?
 - 15.2.7.1 When children resist contact
 - 15.2.7.2 Examples of cases when courts have not enforced access
- 15.2.8 When the allegedly abusive parent claims alienation
- 15.2.9 Introduction: Police enforcement of access
 - 15.2.9.1 Police enforcement: from a child perspective

- 15.2.9.2 Judicial concerns: using police to enforce access
- 15.2.9.3 When courts do endorse police enforcement
- 15.2.10 Contempt: denial of access in domestic violence cases
 - 15.2.10.1 Twin objections
 - 15.2.10.2 Contempt: applicable principles
 - 15.2.10.3 Choosing restraint or enforcement
 - 15.2.10.4 Less-onerous options to discourage denial of access
 - 15.2.10.5 When is contempt for denial of access not warranted?
 - 15.2.10.6 When denial of access claim is a litigation tactic
 - 15.2.10.7 Is child resistance a defense to contempt?

15.3 When violators fail to comply with financial orders

15.4 When violators fail to comply with civil protection orders

15.5 Variation of custody and access

15.5.1 The statutes

15.5.2 Principles: variation of custody and access in domestic violence cases

15.6 Appeal: Custody and Access

15.6.1 The Statutes

15.6.2 The importance of fresh evidence

15.6.3 Admission of fresh evidence on appeal

15.6.4 Appeal court deference to trial decisions

15.6.4.1 Impact of appeal principles on domestic violence cases

15.7 Related Material

16 Relocation and Child Abduction

16.1 Introduction

16.2 Terminology

16.3 Relocation Introduction

16.3.1 General considerations

16.3.2 Interim relocation & *status quo* in domestic violence context

16.3.3 Recommended location presumption, domestic violence context

16.3.4 Canadian relocation principles

16.3.4.1 Divorce Act and non-Divorce Act cases

16.3.4.2 Relocation principles, initial applications

16.3.4.3 Variation Relocation Principles

- 16.3.4.3.1 Step one, material change
- 16.3.4.3.2 After proof of material change, relevant facts & onus
- 16.3.4.3.3 Best Interest of the child criteria, Relocation
- 16.3.4.4 Reason for moving: Domestic Violence Context
- 16.3.4.5 Relocation: Quebec
- 16.3.4.6 Making custody conditional on relocation or restraining relocation
- 16.3.4.7 Willingness of custodial parent to remain in jurisdiction
- 16.3.4.8 Relocation restrictions, domestic violence context
- 16.3.5 Unilateral right to decide residence
- 16.3.5.1 Examples of orders: unilateral right to relocate
- 16.3.6 Provisions in relocation agreements and orders to enhance safety
- 16.3.7 Provisions in relocation orders to enhance parent-child contact
- 16.3.7.1 Provisions to reduce the risk of long-distance contact
- 16.4 Travel and relocating to non-*Hague* countries

16.5 Child Abduction: Social Context, Domestic Violence

- 16.5.1 Qualification
- 16.5.2 Risk of abduction
- 16.5.3 Which children are abducted?
- 16.5.4 Which parent abducts in domestic violence cases?
- 16.5.5 Why parents abduct children in domestic violence cases
- 16.5.6 Is the child in danger when a parent abducts?

16.6 Prevention of parental child abduction

- 16.6.1 Why prevention is better than enforcement
- 16.6.2 What evidence indicates risk of child abduction?
- 16.6.3 Provisions to discourage child abduction
- 16.6.4 When are more restrictive provisions warranted?
- 16.6.5 When travel to the other jurisdiction is to be allowed

16.7 After child abduction

- 16.7.1 Judicial orders in aid of locating the child
- 16.7.2 Refer to the following for related domestic abuse information:

16.8 Child abduction within Canada

- 16.8.1 Is unilateral relocation within Canada to escape domestic violence considered abduction?
- 16.8.2 Inter-provincial parenting enforcement statutes
- 16.8.3 Enforcement of custody orders from another Canadian jurisdiction

- 16.8.4 The “serious harm” exception
- 16.8.5 Does domestic violence establish risk of “serious harm” to the child?
 - 16.8.5.1 Domestic violence and “serious harm”: two lines of authority
- 16.8.6 “Material change in circumstances” exception
- 16.8.7 Enforcement considerations
- 16.8.8 Authority to include inter-provincial return provisions
- 16.8.9 Inter-provincial enforcement: child protection
- 16.8.10 Concluding Comment
- 16.9 Extradition: Child abduction
- 16.10 **International child abduction: Domestic violence and *the Hague Convention***

- 16.10.1 *Which jurisdictions adhere to the Hague Convention on International Child Abduction?*
- 16.10.2 International child abduction to and from countries that have not signed the Convention on Child Abduction
- 16.10.3 Source of International Law on child abduction
- 16.10.4 Current controversies: Domestic violence and the *Hague Convention*
- 16.10.5 Purposes of the *Convention*
- 16.10.6 Wrongful Removal or Retention
- 16.10.7 Onus
- 16.10.8 Duties of a court when responding to wrongful removal
- 16.10.9 Exceptions to return of the child
 - 16.10.9.1 The human rights exception
 - 16.10.9.2 Judicial discretion on proof of exception
- 16.10.10 The grave risk of harm to the child exception
 - 16.10.10.1 Grave risk of harm: Domestic violence and Convention perspectives
 - 16.10.10.2 Canadian domestic violence cases & grave risk to the child
 - 16.10.10.3 International cases: Domestic violence & grave risk
 - 16.10.10.4 Conclusion domestic violence and risk of harm
- 16.10.11 Returning the child: Domestic violence considerations
 - 16.10.11.1 Introductory comment
 - 16.10.11.2 Return options: Supreme Court of Canada
 - 16.10.11.3 Return measures: limitations

- 16.10.11.4 Examples of Canadian return provisions
- 16.10.11.5 Concerns about undertakings: Domestic violence context
- 16.10.11.6 Options to enhance safe return
 - 16.10.11.6.1 Options to enhance safety prior to return
 - 16.10.11.6.2 Provisions in return orders
- 16.10.11.7 Arguments for and against return conditions
- 16.10.12 Domestic violence & international child abduction: the future?

17 Domestic Violence & Child Protection

17.1 Introduction

- 17.1.1 The Challenge
- 17.1.2 Chapter Structure
- 17.1.3 Chapter Limitations
- 17.1.4 Helpful Resources
- 17.1.5 Terms and definitions

17.2 Legislative framework

17.3 Domestic violence research, sociolegal context

- 17.3.1 Children who are involved in child welfare cases
- 17.3.2 Implications of domestic violence for children
- 17.3.3 Is failure to protect a child from domestic violence a form of child abuse?
- 17.3.4 How domestic violence affects the targeted parent's parenting
- 17.3.5 Enhancement of safety by supporting family unit
- 17.3.6 Importance of community
- 17.3.7 Seeing through child eyes: what do children want?
- 17.3.8 What do children need?
- 17.3.9 Type of violence
- 17.3.10 Domestic violence considerations
 - 17.3.10.1 Qualifying comment: child views and preferences
- 17.3.11 Practical steps to maximize resources

17.4 Assessing risk

- 17.4.1 Assessing child risk: Domestic violence context
- 17.4.2 Assessing risk from violator parenting practices
- 17.4.3 Assess risk to each child separately

17.5 Current child protection policies

17.5.1 Controversy: Domestic violence as a child protection criterion

17.5.2 New approaches in child welfare cases

17.6 Domestic violence in child protection cases

17.6.1 Legislative Framework

17.6.2 Domestic violence & Child Protection Outcome Goals

17.6.3 Use and misuse of social context information

17.6.4 Considering Evidence from prior proceedings

17.6.5 Initial, preliminary hearings

17.6.6 Agreements and Consent Orders

17.6.7 Hearing: assessing the need for protection

17.6.7.1 General Principles

17.6.7.2 May judicial notice be taken of harm to children from domestic violence?

17.6.7.3 Assessing need for protection: considering type of Intimate Partner Violence

17.6.7.4 Assessing need for protection: Type of domestic violence & the child

17.6.7.5 Assessing need for protection: the targeted parent

17.6.7.5.1 When a targeted parent 'refuses' to obtain civil protection

17.6.7.6 Assessing need for protection: the violator

17.6.8 Removing the violator and preventing domestic violence as an alternative to protection

17.6.8.1 When preventative authority over violators is limited

17.6.9 Assessing the need for child protection: community

17.7 Court rulings on the need for protection: Cases

17.8 Avoiding terminology that re-victimizes

17.9 Reasonable child authority efforts in domestic violence context

17.9.1 Reasonable services in domestic violence context

17.9.2 Limitations on the duty to provide services

17.9.3 Reasonable services when targeted parent has a disability

17.9.4 Reasonable services: considerations

17.9.5 Least restrictive or intrusive measures

17.10 Supervisory orders

17.10.1 Supervision versus removal

17.10.2 Content of supervisory orders

- 17.10.3 Supervisory orders: targeted parent and child services
- 17.10.4 Assessing parental compliance with supervisory orders
- 17.10.5 Supervisory orders: binding domestic violators
- 17.10.5.1 Alternative methods to bind domestic violators
- 17.10.6 Domestic violators & supervision

17.11 When removal of the child is the best option

- 17.11.1 Removal orders (content)

17.12 Parental access following removal

- 17.12.1 Parental access prior to permanent/continuing order
- 17.12.2 Child age and stage of development
- 17.12.3 Supervised access
 - 17.12.3.1 Introduction
 - 17.12.3.2 Do experts have concerns about supervised access?
 - 17.12.3.3 Safety analysis prior to supervised access
 - 17.12.3.4 Suitability of parties for supervised access
 - 17.12.3.5 Commencement of supervised access
 - 17.12.3.6 Expectations: supervisory agencies
 - 17.12.3.7 What if professional supervision is not available?
 - 17.12.3.8 Problems with the evidence of supervisors
- 17.12.4 Long distance access via computer
- 17.12.5 Access following continuing or permanent order

- 17.13 Review hearings

17.14 Child views and preferences

- 17.14.1 Duty to consider
- 17.14.2 When should a child offer direct testimony?
- 17.14.3 Alternative: 'child voices' report
- 17.14.4 Admissibility and weight of child hearsay evidence
- 17.14.5 Assessing child competence to testify
- 17.14.6 Potential impact of domestic violence on child views
- 17.14.7 Potential options when the child is aligned with the violator

- 17.15 Separate legal representation

17.16 Experts: assessing assessors

- 17.16.1 When is a psychological assessment helpful?
- 17.16.2 When Alienation claims are made in child protection cases that also involve family violence

- 17.17 Placement with relatives or extended family members
- 17.18 Indigenous child protection
- 17.19 Parent education
- 17.20 What if the targeted adult neglects or abuses the child?
- 17.21 What if the targeted adult abuses alcohol or drugs?
- 17.22 What if the 'targeted' parent has also been violent?
- 17.23 What if the targeted adult has a mental health condition?
- 17.24 Judicial bias claims as a litigation tactic
- 17.25 Judicial dispute resolution/settlement conferences

17.26 Child protection mediation/family conferencing: statutes

- 17.26.1 Canadian statutes
 - 17.26.2 Evaluations of child protection mediation are positive
 - 17.26.3 Special provisions: mediation in domestic violence context
 - 17.27 Optimum practices: child protection & domestic violence
-

18 Judicial Dispute Resolution and Mediation in Domestic violence context

- 18.1 Chapter content

18.2 Judicial dispute resolution (JDR)

- 18.2.1 Definitions
- 18.2.2 Settlement processes: the controversy
- 18.2.3 JDR and domestic violence: the problems
 - 18.2.3.1 Considering power imbalance
 - 18.2.3.2 Considering expertise
 - 18.2.3.3 Considering susceptibility to settlement
 - 18.2.3.4 Considering non-disclosure
 - 18.2.3.4.1 Potential options to encourage disclosure
 - 18.2.3.4.2 Considering Mandatory Disclosure & Judicial Role
 - 18.2.3.4.3 Should judges ask questions about domestic violence during the settlement conference?
 - 18.2.3.4.4 Additional pre-JDR screening assessment options
- 18.2.4 When JDR may not be safe
- 18.2.5 What if the alleged violator denies the domestic violence?
- 18.2.6 JDR and cultural issues
- 18.2.7 Enhancing JDR due process and safety
- 18.2.8 Brief comment on child protection cases

- 18.2.9 Parental agreements
- 18.2.10 JDR outcome goals
- 18.2.11 Responding to non-JDR-mediated agreements
 - 18.2.11.1 Should mediators be required to disclose domestic violence?
 - 18.2.11.2 Assessing mediated agreements in domestic violence cases
 - 18.2.11.3 Should all future disputes be directed to mediation?

18.3 Mediation (non-judicial)

- 18.3.1 The elements of mediation
- 18.3.2 The Controversy: Mediation & domestic violence
- 18.3.3 Potential process problems
- 18.3.4 Education and training problems
- 18.3.5 Assessing the suitability of mediation in a domestic violence context
- 18.3.6 Research on mediation
- 18.3.7 Special conditions and safeguards
- 18.3.8 When should a domestic violence case be referred to mediation?
 - 18.3.8.1 Preliminary considerations
 - 18.3.8.2 Recommended practices prior to referral
 - 18.3.8.3 Considering the views of the targeted party
 - 18.3.8.4 Considering power imbalance
 - 18.3.8.5 Assessing the suitability of the mediation service
 - 18.3.8.6 Mediation and Culture
- 18.3.9 Safety provisions in referrals to mediation
- 18.3.10 Child protection mediation

18.4 Arbitration

- 18.4.1 Arbitration professional controversy
- 18.4.2 Ontario's response

19 Responding to Culture: use and misuse of cultural evidence

- 19.1 Contents
 - 19.2 Definition of culture
 - 19.3 Professional responsibilities with respect to culture
 - 19.4 Impartiality and equality in cultural context
 - 19.5 What is 'cultural awareness'?
 - 19.6 Step 1: appreciating the impact of culture on perception**
-

19.6.1 The influence of individualistic and collectivist culture on perception

19.7 Step 2: avoiding cultural generalization

19.7.1 Supreme Court of Canada on cultural generalization

19.8 Step 3: cultural misinformation about domestic violence

19.9 Use & misuse of cultural evidence about domestic violence

19.9.1 Misuse of cultural evidence

19.9.2 Proper use of cultural evidence

19.9.3 Culture of adults: Concluding comment

19.10 Cultural evidence relating to children

19.10.1 Supreme Court of Canada on cultural evidence and child best interests

19.10.2 Safety first

19.11 Preventing cultural misinformation

19.12 Sources of court information about culture

19.13 Qualifying experts on culture

19.14 Related materials; specific cultures

20 Indigenous peoples and domestic violence

20.1 Introduction

20.2 Terminology

20.3 Cultural Diversity

20.3.1 Educational Materials for Lawyers working with Indigenous Peoples

20.3.2 Indigenous Cultures & Family Violence

20.3.3 Implications: Education on Family Violence & Indigenous Culture

20.3.4 Heightened Risk

20.4 Non-disclosure of family violence

20.4.1 Family violence in indigenous context

20.4.2 Cultural obstacles to disclosure

20.4.3 Options to support disclosure

20.5 What conclusions can be drawn from absence of criminal conviction?

20.6 Domestic violence claimed for the first time in custody/access litigation

20.7 Assessing domestic violence: Indigenous context

20.7.1 High Risk of Severe Violence

20.7.2 Considering how Indigenous context affects risk

20.7.3 Responding to high risk: safety options

20.7.4 Civil protection orders: Indigenous context

20.7.4.1 Civil protection orders: weapons

20.7.5 Domestic violence intervention

20.8 What if the 'victim' has been violent?

20.9 Process and trial issues

20.9.1 Interpreting and responding to Indigenous 'victim' witnesses

20.9.1.1 Detection and prevention of in-court intimidation

20.9.2 When the targeted parent abuses alcohol or drugs

20.9.3 What if the targeted parent has mental health problems?

20.9.4 What if the domestic violator has mental health, alcohol or drug abuse problems?

20.10 Responding to obstacles to full participation in the legal system

20.10.1 Language obstacles (other than English and French)

20.10.1.1 Responding to language obstacles: law

20.10.1.2 Assessing need for interpretation

20.10.1.3 Choice of interpreter

20.10.1.4 Related materials on court interpretation

20.10.2 Cultural obstacles to full court participation

20.10.2.1 Responding to cultural obstacles

20.11 Community approaches: healing circles and family conferencing

20.11.1 Benefits

20.11.2 Concerns

20.11.3 Considerations: community healing approaches in domestic violence context

20.12 Responding to cultural evidence

20.12.1 Why specific cultural information is required

20.12.2 The relationship between culture and domestic violence

20.12.3 Misuse of cultural evidence

20.12.4 Positive use of cultural evidence

20.12.5 Responding to cultural evidence in a domestic violence context

20.13 Particular proceedings

20.13.1 Child protection in Indigenous context

20.13.1.1 Meaning of the term "Indians", Canadian Constitution

- 20.13.1.2 Shared Federal and Indigenous Jurisdiction
- 20.13.1.3 Applicability of provincial and territorial legislation
- 20.13.1.4 Evolving Indigenous child welfare practices
- 20.13.1.5 Duty to consider culture
- 20.13.1.6 Cultural considerations
- 20.13.1.7 Considerations specific to Domestic violence
- 20.13.1.8 When culture and other child best interests are in conflict
- 20.13.1.9 Promising options
- 20.13.2 Indigenous family law (custody and access and parenting) cases

20.14 Remedies

- 20.14.1 Civil protection orders
- 20.14.2 Custody and access remedies
- 20.14.3 Child protection
- 20.14.4 Child relocation and abduction
- 20.14.5 The family home and reserve lands
 - 20.14.5.1.1 When parties have joint entitlement
 - 20.14.5.1.2 Agreements between the parties
 - 20.14.5.1.3 Valuation for purposes of compensation
 - 20.14.5.1.3 Effect of compensation orders in domestic violence cases
- 20.14.5.1 Limited ability to seize reserve land
- 20.14.5.2 Importance of exclusive possession of the marital home
- 20.14.5.3 Historic Social implications of limited court authority
- 20.14.5.4 Court options: occupation of the marital home
 - 20.14.5.5.2 Civil Protection Orders.
 - 20.14.5.5.3 Occupation of the Family home remedies pursuant to the Family Homes on Reserves and Matrimonial Interests or Rights Act.
 - 20.14.5.5.4 Marital property remedies under the First Nations Land Management Act
 - 20.14.5.5.5 Helpful materials
 - 20.14.5.5.6 Family property remedies pursuant to Federal/First Nation self-government agreements
 - 20.14.5.5.6 Inherent self-government jurisdiction
- 20.14.6 Personal property located on reserves
- 20.14.6.1 Indians, band members, and child beneficiaries

- 20.14.6.2 Non-Indians and non-band members
 - 20.14.6.3 Weapons on reserve
 - 20.14.6.4 Personal property enforcement alternatives for non-Indians and non-band members
 - 20.15 Related materials
-

21 Mental and Physical Disability

21.1 Introduction to chapter

21.2 Assessing domestic violence when a party has a Mental or Physical Disability

- 21.2.1 Introduction
- 21.2.2 Enhanced risk: rates of domestic violence
- 21.2.3 Why few cases involving disability reach courts
- 21.2.4 Domestic Violence reported for the first time in family litigation
- 21.2.5 Assessing domestic violence in the context of disability
 - 21.2.5.1 Why considering special forms of domestic violence associated with disability is important
 - 21.2.5.2 Domestic violence behaviour associated with disability
- 21.2.6 Options to enhance assessment in disability cases

21.3 Process

- 21.3.1 Introduction to process issues
- 21.3.2 Barriers to court participation
- 21.3.3 Competence to offer testimony
 - 21.3.3.1 The controversy
 - 21.3.3.2 Avoidance of preconceived notions
 - 21.3.3.3 Competence: Canada Evidence Act
 - 21.3.3.4 Provincial Evidence Acts
 - 21.3.3.5 Interpreters_
 - 21.3.3.5.1 Legal Context
 - 21.3.3.5.2 Choice of Interpreter in domestic violence cases
 - 21.3.3.5.3 The Importance of translator/interpreter oath
 - 21.3.3.5.4 Practice Tips: Interpreters in court

21.4 Practices to avoid when a witness or party has a disability

21.5 When information about a disability is used to secure litigation advantage

21.6 Parental disability: intervention services in child protection cases

21.7 Remedies

21.7.1_Provincial and territorial legislation: adult disability and protection

21.7.2_Domestic violence prevention statutes & disability

21.7.3 Remedies when disability is a factor

21.8_Mental and physical requirements: on line resources

22 Minority / Immigration Status in domestic violence cases

22.1 Introduction

22.2 Assessment

22.2.1 Introduction: Domestic violence in social context

22.2.2 Domestic violence in immigration context

22.2.3 Obstacles to reporting domestic violence

22.2.3.1 Overriding disincentive to reporting domestic violence

22.2.3.2 When domestic violence is reported for the first time in family litigation

22.2.4 Forms of Domestic Violence: Minority & Immigration Status

22.2.5 Potential responses to forms of domestic violence associated with minority and immigration status

22.2.6 Options to enhance assessment

22.3 Process issues

22.3.1 Use and misuse of cultural evidence

22.3.1.1 Use and misuse of cultural evidence relating to parenting

22.3.1.2 Qualification of experts on culture in domestic violence cases

22.3.2 Judicial notice of social, 'racial' & immigration disadvantage

22.3.3 Language and the right to Interpretation

22.3.3.1 Unresolved interpretation issues

22.3.3.2 Increasing importance of Court Interpretation

22.3.3.3 Actions that can help to overcome language barriers

22.3.3.4 Translation resources (other than English / French)

22.3.4 When violators use immigration as a custody and access tactic

22.3.4.1 Considerations

22.4 Remedies

22.4.1 Specific prohibitions in civil protection orders

22.4.2 Potential for child abduction

22.4.3 Supervised access: language matters

22.4.4 Family courts & immigration status

- 22.4.4.1 Introduction
- 22.4.4.2 Limitations on family court authority: immigration context
- 22.4.4.3 When the targeted person is in Canada illegally
- 22.4.4.4 Permanent residents
- 22.4.4.5 Legally in Canada without permanent residence status
 - 22.4.4.6.1 How can family lawyers help
- 22.4.4.6 Humanitarian, protected person and refugee grounds
- 22.4.4.7 Immigration Child best Interest Considerations
- 22.4.4.8 Findings of mutual domestic violence

Supplementary Reference 1: Understanding the nature of domestic violence: assessing violence in context

Introduction

Does consideration of social context create bias?

The Ecological Model

The public/private divide

Domestic violence / abuse / other violence

Heightened Risk

Cumulative complexity, power and control

Why scrutiny of evidence of patterns of behaviour and control over time is necessary

Interpreting statistics on violence and gender

Developing research: distinguishing types of violence

Differential assessment of violence: Words of caution

The critical importance of context

Context: the violence of victims

Why 'domestic violence' and 'stranger violence' are interpreted differently

Context defined

Concept: Intimate-partner terrorism

Domestic violence without 'observable' action

Psychological harm

Interpreting statistics on violence

Explaining the relationship between statistics on violence and 'domestic violence'

Concluding comment

Supplementary Reference 2: Children and Domestic Violence

Introduction

Domestic Violence Witnessed by Children: The Extent

Domestic Violence and Children: The Complexity of Research on Domestic Violence & Child Abuse

Domestic Violence and Children: Impact on Children

Understanding Children's Worlds

Domestic Violence and the Fetus

Infants and Toddlers: Abandoning Old Myths

Infants & Toddlers: exposure to violence & the developing brain

Babies & Infants: Documented Patterns of Harm

Infants & Traumatized Children: Non-Verbal beings & Law

Pre-School

Pre-School – Implications for Interviewers

The School Years

Adolescents

Long Term Consequences

A Special Concern: Post-Traumatic Stress

Frequency of Post-Traumatic Stress Disorder (PTSD) in Children Exposed to Domestic Violence

Implications of Post-Traumatic Stress Disorder (PTSD) and Potential Impact on Child Witnesses

Assessment of Child Witnesses in the Context of Post-Traumatic-Stress & vulnerability

Domestic Violence and Child Witnesses in Family Court

Children in Court: Balancing Child Rights with Welfare – Process considerations

Impact of Testifying on Children

Process: Court Practices that have a Negative Impact on Children

Process: Deciding whether or not to allow testimony from a child in a family domestic Violence Case

Child Witnesses of Domestic Violence – Some Court Options

Role and Responsibilities: Questioning of Children

Supplementary Reference Bibliography: Effects of Domestic Violence on Children

Supplementary Reference 3: Perpetrators: Perpetrator Characteristics; Perpetrator Litigation Tactics

Introduction

Perpetrator Rationalizations

Alcohol and Drugs

Loss of Control

Stress and Anger

Mental Illness

Relationship Problems

Social Characteristics of Perpetrators

Childhood Abuse

Perpetrators in Public

Perpetrators in Private

Control

Entitlement

Lack of Empathy

Possessiveness

Manipulation

Denial, Minimization

Externalization, Projection of Responsibility

Claims of First-Time Occurrence

The Problem:

Legal System Considerations: Evidence Filters Criminal

Legal System Considerations: Evidence Filters, Family Law

Potential Solutions

Supplementary Reference 4: Mutual Claims

Introduction

Victim Violence

The History of Legal Responses

Victim Violence: The Frequency

Victim Violence: The Socio-Legal Context

Victim Violence: Options

Mutual Restraining Orders

Neilson, Domestic Violence Practice Manual, 2020 Table of Contents, page 40

Mutual Claims: Caution

Assessing Mutual Claims in Context