

**CONSTRUCTING ABUSE: THE EXPERIENCES OF MOTHERS  
AND COURT ORDERED CHILD CUSTODY AND ACCESS ASSESSMENTS**

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**Abstract**

This study looks at one aspect of child custody and access within the context of family violence; that is, how the presence of abuse within a parental relationship is considered in court ordered child custody and access evaluations.

The personal accounts of three women as related to me in personal open-ended interviews were examined along side the respective custody and access evaluations as prepared by psychologists. It is through this qualitative case study approach that I hoped to gain some perspective and insight into some of the real life issues and obstacles that women everywhere are facing.

Among the number of things that these women faced, perhaps most evident was the tendency of evaluators to disregard the existence of intimate violence whether it occurred before separation or continues to occur in other forms (i.e., intimidation, harassment) and fail to see it as a risk for children.

Apparent also was how different standards were applied to levels of parental involvement and skills, with fathering tending to be more highly valued.

In summary, the study suggests that the rights of fathers to continue to have relationships with their children given priority over the needs of women to protect themselves and their children from further violence.

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## INTRODUCTION

My interest in the topic of child custody in relation to violence against women began with my employment with the B.C. Ministry of the Attorney General, Corrections Branch, in a north-central community in British Columbia. Working as a court officer for nine years, I supervised individuals on probation and also assisted separating and divorcing families in my role as a family court counsellor. I think this gave me a unique perspective of both the criminal and family justice systems.

In the early 1990's, I took part in a Province wide initiative within the criminal justice system known as Violence Against Women In Relationships (VAWIR); one aspect of my involvement was as a trainer to familiarize employees to the new VAWIR policies within the Corrections Branch. These policies stressed the criminal nature of intimate violence, and called for rigorous prosecution, offender accountability and treatment. This led to collaborative efforts amongst the key players, such as Crown Council, RCMP, Victim Services, Probation Officers, therapists and so on, and the formation of committees to more directly address this type of violence in our communities.

Consequently, our office began to receive many new cases as the numbers of men on bail and probation supervision for assaulting women increased. Surprisingly however, most of these men would eventually be granted access and at times even custody of their children. A violent history did not seem to preclude men from having continued access to women and children through family court orders. To me, this was a disturbing paradox; one arm of the justice system was promoting the need to protect women and make offenders accountable, while the other was seemingly dismissing

women's stories of abuse and placing serious limitations on their safety.

Through the use of a feminist case study, I examine how the pervasiveness and serious nature of intimate violence can be so systematically ignored in the context of child custody and access determinations. Given that approximately one million Canadian women each year are beaten by intimate partners (British Columbia Task Force on Family Violence, 1992), it is not surprising that the courts are frequently faced with allegations of intimate violence; one estimate is that this occurs in as many as half of all contested child custody disputes (Johnson and Campbell, 1993; Magana & Taylor, 1993; Walker & Edwall, 1987). Furthermore, as only a small portion of custody cases are ever disputed it is likely that these represent the "worst problems" (Boyd, 1995). Put differently, "men who are emotionally, physically and sexually abusive may be over-represented in the group of men who fight for custody" (Taylor, Barnsley, and Goldsmith, 1996, p.25). Yet still, "...women are being portrayed as liars who will do anything to get custody of their children, including fabricating claims of paternal abuse." (Fineman, 1995, p.119). Many women also continue to be subjected to abuse following separation (Cohen, 1991; Thoennes, N., Salem, P., and Pearson, J., 1995). In fact, it is not uncommon for women to be at even greater risk as they try to end an abusing relationship (Pagelow, 1990; Chesler, 1991; Phillips, 1994; Taylor, G. 1992; Taylor & Quinby, 1994; Taylor R., 1994). One study on 'woman killing' (or 'intimate femicide') found most cases to be related to separation or threat of leaving (Lynn and O'Neill, 1995) .

Assessors who become involved in custody allegations may also be in danger (Gardener, 1989). Gardener (1989), in his book on "Family Evaluation in Child

Custody", writes that he is "getting out" of this field while "still alive" (p.25). It has also been my experience that when the interests of children involve exposing obsessively controlling and violent parents, most often fathers, such behaviour can be easily directed toward the assessor. I suspect that even when assessors may personally believe what women tell them about abuse, they may be ill prepared or unwilling to substantiate these claims within a legal system whose rules may make such a task daunting, if not impossible. This may explain why many women have "found repeatedly that investigators claim neutrality and impartiality as a justification for ignoring evidence of abuse" (Taylor et. al., 1996, p.71).

The Canadian Advisory Council on the Status of Women (1994) has also raised serious concerns about the appropriateness of custody and access assessments. They suggest that assessments on families with histories of abuse should be the "exception rather than the rule" (p. 32-33). Though their usefulness for battered women is questionable, custody assessments continue to be a critical source of information for family court judges. Increasingly, where custody or access is disputed, the Courts are requesting assessments (Hysjulien, C., Wood, B., and Benjamin, G.A.H., 1994). Caplan and Wilson (1990) observe that, "assessments by mental health professionals in child custody matters in divorce cases has become a major enterprise..." (p.121). Although judges rely heavily on these reports in making their rulings (Caplan & Wilson, 1990; Hysjulien et al 1994; Wilkinson, 1981), the consequences of custody recommendations on parents and children are almost entirely unknown (Caplan & Wilson, 1990).

While many feminist scholars and advocates have concerned themselves with women's experiences within the legal system (Chesler, 1991; Kaser-Boyd & Mosten,

1993; Pagelow, 1990; Taylor, 1992; Taylor & Quinby, 1994, Taylor et. al., 1996), there appears to be a lack of any systematic empirical assessment of the custody evaluations themselves, not only for the typical cases (no alleged abuse), but particularly for those families whose needs are further compounded by issues of abuse (Thoennes, et al., 1995). It is this need for a closer look at custody and access assessments when violence against women is disclosed, and my own personal need to understand and make a meaningful contribution that has guided my research. I hope to add to the knowledge which will help to ensure safe and equitable parenting arrangements for women leaving abusive relationships.

## **CHAPTER ONE: LITERATURE REVIEW**

My research focuses on child custody assessments in the context of intimate violence against women. To do this, I found it necessary to examine the broader social and legal context within which these assessments occur. This includes a closer look at the ways in which the family courts reinforce and exacerbate gender bias against women. More to the point, the legal system has been criticised for adopting a rhetoric of gender-neutrality, while operating on patriarchal ideals and disregarding the cultural and economic realities of women's lives. The outcome is that many abused women continue to be primary caretakers of children, while popular trends in child custody law (such as maximum parental contact and joint custody) may lead the courts to systematically ignore their claims of abuse in favour of fathers' rights.

Only recently have experts begun to question the validity and appropriateness of child custody assessments. Women's advocates, on the other hand, have long witnessed how these assessments have only prolonged the plight of women attempting to distance themselves from abusive ex-partners.

### **Women's Initial Contact with the Legal System**

Violence against women and children is far from being a recent phenomenon. Women and children were once considered the legal property of fathers and husbands who, as owners, could do with them as they liked (Clark, 1989-1990). In Canada, the law prohibiting husbands from beating their wives is about a century old (in 1998 corporal punishment of children is still permitted under the Criminal Code), yet violence against women in families has only recently come to be studied and publicized (Lynne

and O'Neill, 1995; Carasco, 1995), and recognized as a crime and a social ill rather than a private family matter (Clarke, 1989-1990; Ministry of Attorney General of B.C., 1993).

It was through the efforts of the feminist movement of the 1970's that "a long silence" on family violence came to an end (Lynne and O'Neill, 1995). As women began to speak out it was revealed that approximately one million Canadian women each year are abused by intimate partners (British Columbia Task Force on Family Violence, 1992). The Ministry of the Attorney General of British Columbia (1993) has estimated one in eight women living in a relationship with a man will be assaulted by their partners each year. In 1990, reportedly an average of two Canadian women a week were killed by a partner (Ministry of Attorney General of British Columbia, 1993); between 50 and 62 per cent of the women murdered in Canada are killed by husbands or boyfriends (British Columbia Task Force on Family Violence, 1992). The Ministry of the Attorney General of British Columbia (1992) further estimates that up to 70,000 children in B.C. have witnessed the abuse of a parent. This is usually the mother as over ninety percent of perpetrators are male (Lynne and O'Neill, 1995). Furthermore, "in homes where mothers are battered, children are abused at a rate 1,500 times higher than the average" (Canadian Advisory Council on the Status of Women, 1994, p.22). Evidently, the most lethal time for battered women is when they attempt to leave their abusive partners (Kaser-Boyd & Mosten, 1993), and the abuse and risk of harm to victims often escalates at the time of separation (Chesler, 1991; Kaser-Boyd & Mosten, 1993; Thoennes, N., Salem, P., and Pearson, J., 1995; Taylor, G., 1992; Taylor, R., 1994; Pagelow, 1990).

Yet, when a woman ends an abusive relationship, the onus is on her to prove why the legal system should act to offer her protection. To do this she must demonstrate to the court that her claims are not malicious. Intimate violence against women in relationships is often well-hidden until the time of separation; hence, when it is disclosed in the midst of a custody dispute it is viewed with suspicion (Kaser-Boyd & Mosten, 1993). Most disturbing is a trend within the Canadian Judiciary which "... has singled out mothers who raise allegations of abuse by fathers, to mistrust" (Bourque, 1995, p.23).

Women who are isolated and immobilized by the trauma of abuse may be seen as poor parents. The effects of abuse-related trauma on personality functioning can put a woman at an immediate disadvantage in a custody dispute. For instance, it is not uncommon for victims to have developed a pathological means of coping with the abuse, such as alcohol or drug abuse, or a passive-aggressive response style (Kaser-Boyd, and Mosten 1993; National Clearing House on Family Violence, 1993). The effects of post-traumatic stress stemming from abuse can also mimic those of schizophrenia, depression, and other serious mental disorders (Hysjulien, C., Wood, B., Andrew, G., Benjamin, H., 1994; Jaffe, P., Wolf, D., and Wilson, S., 1990). Hence the woman may end up with a pathological diagnostic label (Kaser-Boyd & Mosten, 1993) and lose credibility in the eyes of the court. The trauma related disorders usually remain until the threat of violence is checked (Hysjulien et al., 1994), and can be compounded by the escalating fear that victims experience following separation (Taylor R., 1994). Indeed, they are often exacerbated by the growing realization that women will not be able to protect their children from an abusing parent. This may come at a time when the



woman's own parenting abilities may be under judicial scrutiny, and her children's needs are likely at a peak (Jaffe et al., 1990).

A mother, who after separation is finally free to confront her abuser, may choose not to out of fear of losing custody to him. In fact, women are often deterred from disclosing abuse by their own lawyers (Taylor R., 1994); this arises out of the 'friendly parent rule' (subsection 16 (10) of the Canadian Divorce Act), which looks at the parent's willingness to facilitate contact with the non-custodial parent (Department of Justice Canada, 1993). "This provision has aptly been called 'the silencer' " (Boyd, 1989, p.143). A mother who is cautious or reluctant with regard to access risks being labelled a 'vengeful' and 'unfriendly' parent who is not acting in the child's best interests (Smart, 1989; Taylor et. al. 1996).

Another problematic piece of legislation for abused women is Subsection 16(9), that deems a person's past conduct relevant to proceedings only as far as it relates to one's ability to parent (Department of Justice Canada, 1993). Clearly, judges most often decide that intimate violence against women is not an example of a 'past conduct' type of behaviour relevant to issues of child custody despite studies showing many negative effects common to children who have witnessed violence (Jaffe, 1990).

### **Ideologies of Equality, Gender Relations, and the Law**

The traditional view of the justice system as objective, neutral and free from bias is coming under increasing public scrutiny. It has been shown that in a custody dispute the average man is more likely to gain ground in the adversarial proceedings than the average woman (Maccoby and Mnookin, 1992). In 1992, Canadian provincial and



federal governments set out to examine this bias. Two of the major reports confirmed that while gender bias against men does occur, the vast majority of examples of gender bias reflect discrimination against women (Law Society of B.C., 1992; Department of Justice Canada, 1992). The Department of Justice Canada (1992) suggests that some women are disadvantaged in even more complex and compounding ways:

the effects of gender bias are more deeply felt by women who are most marginalized by our society, including women of colour, non-English speaking women, aboriginal women, poor women, lesbian and disabled women. (p.17)

These women are especially vulnerable due to their isolation (Godin, 1994; Law Society of British Columbia, 1992), family obligations, sense of shame, financial dependence, language barriers, lack of support network and other cultural factors may act to prevent them from accessing the courts altogether (Ministry of Attorney General of B.C., 1992). It is likely that abused women face many of the same barriers.

Recent so-called egalitarian practices in the law have only served to further marginalize women. Since the early 1970's contemporary feminists and legal scholars have challenged the supposed objectivity of the law and its unfair treatment of women. In 1982, the government responded by legislating formal gender equality under the law through Section 15 of the Canadian Charter of Rights and Freedoms (Carasco, 1995). However, neutralizing the law (as a way to counter a patriarchal system) has in many ways failed to meet the needs of women, illustrating the "elastic capacity of the legal system to absorb reforms initiated by the women's movement and turn them into patriarchal ends" (Boyd, 1989, p.114). Women are still not assured true equity as defined by equality of outcome (Carasco, 1995). This is because the concept of formal or `gender` equality "...allows the system to pretend that social inequalities between

men and women do not exist " (Taylor et. al. , 1996, p.23). Boyd (1989) points out:

The problem is not simply that "equality" is an empty concept into which both progressive and regressive forces in society may insert content according to their political whims. Rather, the concept of equality, as it has developed in western liberal democracies, assumes that the subjects whose statuses are being compared are similarly situated in society.... it is dangerous for women to be offered an equality model 'based only on rights achieved by men and on a male life-style.' Such a model renders invisible important differences, whether biological, sociological or a combination thereof, between men and women. (p.112)

In this way, the legal reforms perpetuate the very biases they aim to eradicate. The concept of "gender equality" in family law places greater, and often irreconcilable, demands on women. This is because judges may now be taking for granted that spouses are equal though they may still hold some antiquated notions about the 'family'. For women this could mean facing two conflicting sets of expectations. That being so, "... although socioeconomic structures reinforce women's primary responsibility for child care, gender-neutral family laws tend not to acknowledge the continuing gendered nature of care giving" (Boyd, 1997, p.18). In other words, women are no longer seen to be primarily responsible for raising children, and the domestic labour associated with this, despite evidence that they are (Boyd, 1997). Accordingly, women may be expected to undertake extra work within the home, despite being seen to have an equal opportunity to make a an equal living. Women who cannot meet either set of expectations in their entirety are clearly disadvantaged (Boyd, 1989). For instance, while the courts may applaud the traditional stay-home mothers, these women may be penalized for their consequent lack of financial independence; on the other hand, mothers who secure paid employment may risk losing custody due to their

reduced time spent with the children, in spite of their pre-separation child care labour (Law Society of British Columbia, 1992). This shows how women must juggle multiple roles, while their care giving work in domestic spheres is rendered invisible (Boyd, 1997; Fineman, 1995; DeVault, 1991).

Conversely, fathers stand to gain more ground under the rhetoric of equality as they are now more likely to be seen as 'equal' participants in child rearing. While low priority is given to the work of caring and nurturing by women (Smart, 1989), men are able to more easily demonstrate that they care about their children without engaging in many aspects of child care (Boyd, 1997). Fathers who take on full-time employment are generally not seen to be abdicating their responsibilities to children (Boyd, 1997). This is in part due to the "ability of fathers to act as individuals without such acts being construed as in conflict with their children's interests"; women, on the other hand, are not afforded this privilege rather, "as long as women are primarily responsible for child care, their interests as individuals rather than as mothers will appear as antagonistic to those of their children" (Boyd, 1989, p.143). As such, it is also more acceptable for fathers to offer a "mother substitute" (such as a girlfriend, mother, or sister) to stay home with the children. In this way, men are also more apt to conform to the highly desirable ideals of the nuclear family "... complete with stay-at-home female care" (Boyd, 1991, p.91).

Court practices reflect a double standard of parenting with lesser demands on fathers, and in broader terms - patriarchal norms. To this end, Fineman (1995) writes:

In the family context, the basic ideological construct is patriarchy - a decidedly anti-Mother perspective reflecting power relationships in which pater consistently trumps mater and the law assists in this endeavour" (p.88)

There is little doubt among feminists that the powerful image of the heterosexual male-dominated 'nuclear family' serves to disadvantage women who deviate from this norm. This was clearly evident even when women were presumably granted custodial preference under maternal presumption. That is, prior to the neutralization of family law, under the 'tender years doctrine' women were regarded more suitable to parent young children of tender years (under seven years of age). However, while mothers had more grounds to claim custody of young children they could just as easily be deemed 'unfit', and 'fitness' of mothers was largely determined by gendered role expectations. Namely, "sexual indiscretions" (i.e, sexual orientation, adultery, promiscuity) provided grounds for denying mothers custody under the 'tender years' doctrine (Fineman, 1995); but women could also be deemed unfit if they left the child in the care of another person or worked outside the home (McBean in Boyd, 1989).

Such paternalistic ideals are still alive and well today. Legislators are still seen as being more concerned with protecting the institution of marriage, than a healthy family lifestyle (Andrup, 1995), or the reality of various other types of nurturing units of "caretaker and dependant" in our society (Fineman, 1995). Although the traditional patriarchal family structure can now be linked to a range of personal and family problems, including spouse and child abuse (Fineman, 1995; Spakes & Nichols-Casebolt, 1994), it is still held up to us as an ideal (Boyd, 1991), and the only healthy model of family (Baker, 1995). According to Lynn and O'Neill (1995) this narrow definition of family "... serves to normalize family violence, in that it assumes men are heads of households with authority over women and children" (p.274). This is consistent with the views of other feminist theorists such as Catherine MacKinnon (in

Koshan, 1997), who argues that the family is "... a unit of male dominance, the location of male violence, and hence the primary site of women's oppression" (p.91).

Yet, women who do not conform to the idealized norm of middle-class, white, and heterosexual mothers may still experience difficulty obtaining custody (Canadian Advisory Council on the Status of Women, 1994). This tendency is perhaps most evident in the excessive and unjustified scrutiny of lesbian mothers in the context of custody disputes (Millbank, 1997). The next section also shows that women who deviate from the preferred model of family may not be granted adequate public support to escape abusive relationships and pursue custody litigation, making it all the more difficult for women to protect and assert custodial claims to their children.

### **Socio-economic Circumstances of Women's Lives**

The real life circumstances of women may be invisible against ideals of equality and popular conceptions of family. The rhetoric of 'equality' in the context of patriarchy serves to obscure power differentials between men and women as measured in terms of access to resources, public support and money. In turn, this reinforces the cycle of violence as "power inequities are generally a prerequisite for violence, and violence produces further inequities" (Lynne and O'Neill, 1995, p.275). This also has far reaching implications for women seeking custody. An abused woman may not have the necessary financial or emotional resources to ever undergo litigation (Canadian Advisory Council on the Status of Women, 1994). If she does, most often her lower socio-economic status will be reflected (presumably negatively) in custody evaluations and affect her ability to secure adequate legal representation (Drewitt, 1991). Indeed, it

is believed that many women are losing custody because they are unable to conform to the traditional ideals of motherhood and are economically unstable relative to fathers (Phyllis Chesler, in Drakich, 1989).

Nowhere are the differences in power between divorcing spouses as conspicuous as in the maldistribution of wealth. As Langer (1994) observes, "while men of every class tend to exercise economic control, women risk becoming poor or poorer upon separation and divorce" (p.67). In addition, the number of women living and raising families in poverty is growing (Callahan, 1993; Langer, 1994; Baker, 1995; Schmitz, 1995). A 1988 Canadian survey evaluating the Divorce Act reported that divorced or divorcing women have incomes averaging 62% of that of men, and 46% of the women and children in the survey were below the poverty line compared to about 10% of the men (Department of Justice Canada, 1990). Furthermore, women in Canada are 28% more likely to live in poverty than men (Casper, McLanahan, and Garfinkel, 1994). Given the greater likelihood of women having child custody (Department of Justice Canada, 1992), comparisons of the average earnings of men and women only partially reflect post-marital gender inequalities. Research supports the existence of a strong link between motherhood and poverty. In Canada, "... 91.4 per cent of non-employed single mothers with children under seven years of age were poor" (Callahan, 1993, p.181). Moreover, women's average earnings fall significantly with each additional child, and raising children reduces their entry into higher paying occupations; conversely, a similar analysis for men shows no significant correlations between number of children and earnings (Kerr, 1992).

The poverty of women and children has been linked to public policies and



practices which, as in previous centuries, tend to protect the earnings of men. In the 1990s, the average wages of women still have far to go to measure up to men's wages. This reflects social policies which rely on the male-headed family model to remedy female and child poverty (Callahan, 1993), and women to bear the costs of child rearing (Boyd, 1989). So too, despite the changing nature of families, "legal discourse continues to recognize marriage as a primary source of support for women" (Langer, 1994, p.77).

Such traditional views of the 'family' are linked to the current Canadian political trends of privatization and downsizing. Bourque (1995) argues that in family case law this movement is evidenced by the re-privatization of families following separation and divorce which can be detrimental for women:

For separated and/or divorced women with children, these privatizing tactics serve to perpetuate and even create situations whereby women/mothers and their children remain bound to their former male partners, and to a large extent, subject to their control. Through the re-privatisation of family, women's forced dependence is manifested economically, socially, emotionally, and physically and translates into serious limitation on women's freedom. (p.3)

Women who detach themselves from the heterosexual nuclear family structure, and are no longer supported through their familial relationships with men, can face a unique form of discrimination (Fineman, 1995). This is clearly evidenced in the public marginalization of single mothers. As noted by Gavigan (1996) single motherhood is "...treated as deviant and pathological in our current social system and not deserving of the supports accorded to the traditional nuclear family" (p.380). The blaming of unmarried mothers obscures the failure to protect and meet the needs of female headed families. Furthermore, as suggested by Clarke (1989-1990) such

marginalization keeps the problem of violence against women hidden:

It is therefore not surprising that our systems fail to offer services women define as necessary. This would require an acceptance of the premise that harm occurs within the private sphere as a result of the behaviour of males. Once such behaviour is designated as harmful, the right to private dominion over women enjoyed by men as a permanent feature of their private and public reality might be called into question. This is why men are loathe to acknowledge the nature, extent, and seriousness of private sphere violence against women and children. This is also why they are loathe to open the public purse to support victims of private violence and to eliminate its causes. (p.426)

Indeed, a look at the quality of living conditions that women can expect upon leaving abusive relationships is not encouraging (Langer, 1994). The post-separation poverty of women and children reflect the gap between the prevailing myth that 'families', or male providers, ought to and will take care of women and children who are rendered dependent, and the unwillingness of individual men to accept financial responsibility. Though women and children are left to rely on the generosity of former male partners, men are not held publicly accountable.

There are many clear examples of this within family law governing spousal support and child maintenance. For example, despite clear gendered inequities between separating spouses, spousal support is rarely requested and even more rarely incorporated into an Order (Department of Justice Canada, 1990). If awarded at all, increasingly it is only for a fixed period, even though from an economic perspective these awards are usually insufficient in relation to demonstrated needs (Department of Justice Canada, 1990). Furthermore, given the generally temporary nature of spousal support awards, a woman's share of the assets upon break-up must often supplement her low or nil income, while the man, still employed, retains his share as well as all of



his income (Carasco, 1995).

Clearly, another factor contributing to poverty of single mothers is insufficient child support (Schmitz, 1995). Most men without custody, even after paying child support, are left with incomes well above the poverty line "... while a majority of women with custody of children have, after receiving support, incomes putting them below the poverty lines for various family sizes" (Department of Justice Canada, p.132). In addition, the amount of support per child declines significantly as the number of dependent children (and presumably associated costs) increases (Department of Justice Canada, 1990), and the courts are not ordering men to pay within their abilities:

While men in the under \$6,000 per year income group pay an average of 48% of their income in support, men in higher groups are only paying 13-17 percent... In the period 1977 to 1985, support payments were found to comprise no more than 20 percent of total income for approximately 85 percent of payers. (Department of Justice, Canada, p.85)

Moreover, when men pay little or no child support, there are no state provisions in Canada to compensate women. Also, the contributions of fathers paid to poor women are often eroded through regressive welfare practices. In fact, much of child support monies are funnelled back into the public purse (so as to reduce social expenditures), despite the fact that family maintenance programs in Canada are mandated to ensure that family breakdowns do not impoverish women and children. Under maintenance enforcement programs, women on income assistance may be forced to pursue abusive ex-partners which can represent more risks than financial gains. Women are also more likely to be challenged for custody as men "... are instructed by their lawyers to obtain custody in order to avoid child support payments ." (Winner, 1996, p.185 )

As well, poor women seeking independence from abusive and controlling partners, may do so only to find that their lives regulated by way of a restrictive and moralistic social service system (DeVault, 1991; Gavigan, 1996), and social policies which are not only "clearly inequitable" but "frequently harmful" (Spakes & Nichols-Casebolt, 1994, p.363). This phenomenon has been observed by Clarke (1989-1990) who argues that "certain aspects of [the] legitimization of the male right to dominate women and children in the private sphere spilled over into the public sphere" (Clark, 1989-1990, p.425), and likewise by DeVault (1991) who writes:

... social welfare provisions can be seen as part of a transition from private to public patriarchy ... with reproduction increasingly subsidized and controlled by the state instead of by individual men as family heads. (p.185)

As such, mothers on social assistance may find that the focus of their oppression has merely shifted.

Put simply, the control and abuse of women extends far beyond acts of individual men. The effect of the power dynamics of abuse in the private sphere may not differ much from those created by the withholding of public resources. It is evident that many women face stigma and financial hardships following separation and divorce, making it all the more difficult for abused women to secure personal safety. Thereby, when these women step out of intimate relationships they do not suddenly stand equal in relation to their formerly abusive male partners. This supports Boyd's (1997) contention that women and men generally cannot be assessed on the same level: "Women and men in equal positions may receive equal treatment in courts, but they are rarely in the same position" (p.267). To this effect, the Canadian Advisory Council on

the Status of Women (1994) concludes:

Merely changing the language of the law will not address many of the fundamental issues surrounding custody and access unless other conditions, guarantees, services, and supports are made available (p.3).

Even under the very best legislation women are not likely to receive just treatment until the legal system takes into account the realities of women's lives and women are granted access to appropriate support services, adequate financial resources, child care, and so on. Until such time, many women may be forced to endure unsatisfactory and abusive relationships. Langer (1994) has found that the post-separation outcome of increased economic dependence places women at greater risk for physical abuse.

Likewise, Newmark, Harrell, and Salem (1995) write:

In this society, men have social and economic advantages in earnings, employment, and occupational status that may contribute to a female victim's economic dependence on the abuser and reduce her resources for coping with the crisis [of separation] and providing for the children. (p.32)

Women, who, despite immeasurable odds are able to escape abusive relationships and resort to court, may do so only to find that they (and/or their children) must continue to endure contact with their offenders. This occurs because we have not yet found the means of ensuring that women and children are not harmed by the legal process.

Alternately, "what has resulted is a legal system that empowers fathers" (Fineman, 1995, p.83). In contrast,

the ability of custodial mothers to cope with the social, economic, and emotional burdens of caring for children is undermined when they do not have the authority to make the decisions necessary to undertake these responsibilities. (Canadian Advisory Council on the Status of Women, 1994, p.49)

That is, under the current custody and access regime, women are ascribed the undervalued roles of caretakers and nurturers while decision-making powers are

reserved for men. The next section shows how women's resources are further undermined through such public regulation of their relations with children.

### **Court Practices and Child Development**

Canadian 1990 divorce statistics show that mothers were awarded custody in 73.3% of cases, compared to 12.2% for fathers (Baker, 1995, p.300). This is consistent with what appears to be a global phenomenon that women are generally responsible for most of the unpaid domestic labour, including child care (DeVault, 1991; Nichols-Casebolt, A., Krysik, J., & Hermann-Currie, R., 1994). It is not, however, that women actually 'win' custody battles more often, but rather it is that fathers tend to contest them less (Chesler, 1991); men are successful 50%-70% of the time when custody is disputed (Chesler, 1991; Taylor and Quinby, 1994). It may be that fathers are disputing custody less often as current trends in child custody law grant men decision-making powers without requiring them to engage in the daily care of children.

The rights of men to exert legal power over women and children dates back to the English common law of the early nineteenth century, when the law assumed that men by nature were better suited to protect and provide for children (Warshak, 1996). It was only in the twentieth century that mothers gradually acquired so called 'rights' to children under the "tender years doctrine" and only if they were deemed fit (Canadian Advisory Council on the Status of Women, 1994). According to Boyd (1989) this reflected growing 'social patriarchy' as women were more or less granted obligations (which rendered them less equipped for public life) rather than rights. In any case, as the pendulum swung away from the father's near-absolute right to custody there was an

emergence of studies (see, e.g., R.S. Benedek & Benedek, 1977, and Hoorwitz, 1983, in Hodges, 1991) cautioning that estrangement from a parent could be damaging to a child's self-esteem. When in the late sixties social science began to concern itself with the role of fathers, it was "assumed that a father's influence accrued by virtue of his presence" and hence that developmental problems resulted from his absence (Drakich, 1989, p.73). Uncritical representations of fatherhood gave the impression that "... if a child has an active father, he or she really does not need a mother" (Drakich, 1989, p.75).

Much of the earlier studies have now been shown to be methodologically flawed (Drakich, 1989), and criticized for not taking into account various multidimensional variables (Kelly, 1993). Nevertheless, such research has aided the fathers' rights movement in swaying media to boost the image of fatherhood. The public is now told more so than ever through popular media that men are increasingly participating in family life (Drakich, 1989). Drakich (1989) argues that the growing conception of the nurturing and participant father is a "statistical fantasy" built up on symbolic change rather than reality, and deliberately "constructed by men and for men to further entrench their rights to children and their power over women" (p. 69). Indeed, what has evolved in the child custody arena, is a post-separation gendered division of child care labour in the context of egalitarian rhetoric. That is, fathers continue to be in the picture, having parenting rights (and control over the lives of women) without an increased participation in the daily tasks and responsibilities of child care (Boyd, 1995; Drakich, 1989; Gordon, 1988).

For example, In British Columbia there is now a growing trend toward joint



custody; it is the exception rather than the rule that joint custody is not awarded on an interim basis (The Law Society of B.C., 1992). Joint legal custody may grant fathers tremendous power irrespective of minimal involvement in child rearing. In fact, "there is a danger that as paternal rights increase, maternal responsibilities grow heavier..." (Boyd, 1989, p.147). Similarly, Delorey (as quoted in Fineman, 1995) in her article on 'Joint Legal Custody' writes:

Joint legal custody gives rights and responsibilities to mothers, but it gives rights without responsibilities to fathers. Mere legal control of children is simply an assignment of power, and when this type of power is given to fathers, judges are merely reinforcing patriarchal power. (p.83)

This trend masks the reality that joint legal custody is "simply another term used for the traditional sole maternal custody arrangement" (Drakich, 1989, p.87), with added legitimization for male authority. Such authority in the hands of an abusing parent could be lethal. Pagelow (1990) writes that joint custody,

can become an abuser's ticket to unlimited legal access to his victim and their children... When joint custody is imposed or involuntarily accepted by one of the parents, the divorce does not provide a way out of violence and an end to domination after all. (p.359)

Nonetheless, even in the case of an abusing parent, it is still most often assumed that children are entitled to be raised by both parents (Walker & Edwall, 1987); this generally translates into liberal paternal access orders. Bourque's (1995) study of case law shows that:

A child's supposed 'need' for or 'right' to a father, irrespective of the quality or quantity of his parenting, has superseded virtually all other considerations. (p.6)

More specifically, in cases involving disclosures of 'wife abuse' and/or child sexual and/or physical abuse, Bourque (1995) has found that: "paternal rights to children

override both the 'best interests of the child' and the welfare of the mother" (p.12).

Likewise, many other experts contend that fathers who have had minimal involvement in parenting are granted rights to the children, while assaultive behaviour is often not a determining factor in custody, or seen as "harmful" to its victims (Chesler, 1991; Clark, 1989-1990; Taylor, R., 1994; Walker & Edwall, 1987). To this effect, Phillips (1994), in his therapeutic practice with assaultive men, concludes:

So eager have we been to engage fathers in parenting that even minimal 'progress' and the most inconsequential acts....have been inflated to sometimes amazing degrees. (p.18)

As such, men are not held accountable for their abusive conduct. On the contrary, women's advocates in this field have come to believe that:

... children are a reward given to the man to make him feel better. What's lost is the fact that it is the man's responsibility to change - it is not the woman's or child's responsibility to make it easier for him.  
(Taylor, et. al., 1996, p.71).

Indeed, if the courts are weighing risks against the benefits of contact with an abusive parent, it is evident that the final judgement overwhelmingly reflects a belief that children benefit from contact more often than not. The Canadian Department of Justice (1993) review of case law suggests that only in the most exceptional circumstances will a court deny a parent access rights. A Canadian study evaluating the Divorce Act found that access was denied to a parent in 2.4% of all cases in 1988 (Department of Justice Canada, 1990). This confirms the contention of Taylor et.,al. (1996) that:

Abusive, vindictive and unfit fathers, who are more likely to fight for custody and increasing amounts of access are often successful in court. When women raise concerns that they and/or their children are being abused and argue for custody - or no parental access - these concerns are often dismissed. ( p.28)

On rare occasions judges presumably accept women's testimonies of abuse and

restrict paternal access in ways which may protect the child. That is, supervised access was ordered in one percent of all custody cases in Canada in 1988 (Department of Justice Canada, 1990), and is problematic even in those cases. Supervision of access is a limited solution in that "... it is very hard to get, is short term, and often does not involve appropriate supervision" (Canadian Advisory Council on the Status of Women, 1994). Moreover, the assumption that a victimized child will feel safe with his or her perpetrator in the presence of a third party minimizes the emotional effects of abuse; in effect, it also "... gives the system a way of pretending to acknowledge men`s violence, while ensuring that their rights aren't seriously threatened" (Taylor et. al. 1996, p.31).

It is becoming more apparent that efforts to preserve the parent-child relationship at all costs can severely compromise the rights of the children to a non-violent life (Phillips, 1994; Taylor, 1992). We now know that children who are exposed to inter-parental violence do not need to be direct targets of parental aggression to be victimized and suffer significant short and long term effects (Jaffe et al. 1990; Pagelow, 1990). Children are traumatized by witnessing wife abuse and exhibit symptoms of 'post traumatic stress disorder' much the same as the victimized parent (Jaffe et al. 1990). These children may also be at greater risk for exposure to violence as direct victims. A significant overlap between wife abuse and child abuse has been noted (Jaffe et al., 1990; Walker & Edwall, 1987), especially in discordant households where behaviours are exacerbated by alcohol and drug use (Salzinger, S., Feldman, R.S., Hammer, M., & Rosario, M., 1991). These children, who are in a sense "doubly victimized", are directly abused in 40-60% of the homes where spousal assault is also present (Pagelow, 1990). The risk of harm is even greater at the time of parental separation as they become "the



next most vulnerable targets" (Pagelow, 1990).

Moreover, Walker & Edwall (1987) suggest that these children are also at greater risk for sexual abuse as the profiles of male batterers are very similar to those of sex-offenders. Yet, Dr. S. Penfold, professor of psychiatry at U.B.C., has noted that when child sexual abuse allegations cannot be proven in child custody cases they are 'oversimplified', and it is readily assumed that the mother is lying (Penfold, n.d.), in spite of research showing that the prevalence of false allegations of sexual abuse are extremely rare (Faller, 1991), and portrayed much higher than is the case (McIntosh & Prinz, 1993). Nevertheless, allegations of paternal sexual abuse have become so suspect in custody disputes (as being a vindictive mother's way to manipulate the system and block access) that lawyers are advising women against making a disclosure for fear that it may backfire (Law Society of British Columbia, 1992). Indeed, women's advocates are finding that in increasing numbers:

the courts are going even further and saying that mothers who allege sexual abuse which is found to be unproven, are bad for their children. These mothers are losing custody. The tragic result of this confusion and bias is that the cycle of abuse is allowed to continue. (Taylor, et. al., 1996, p.78)

Therefore, a woman stands to lose custody when child protection authorities say that a child's disclosures of sexual abuse is unsubstantiated. This is a serious concern in view of the contention that the custody connection muddies the perception of social workers as well (Larcombe, 1995). McGraw and Smith (1992) found that child protection authorities pre-judged and categorically dismissed valid complaints of child sexual abuse when they occurred in the context of custody and access disputes. Even where child sexual abuse allegations are proven in the context of a custody dispute, the

mandate of child protection workers is unclear in such cases (Larcombe, 1995). There is also a lack of consensus among the judiciary on the handling of these cases (Zarb, 1994) meaning that there are no clear legislative guidelines preventing judges from granting custody and access to men who sexually abuse their children.

### **Child Custody Assessments**

In a custody dispute, child custody assessments (also known as 'Section 15 Reports') are used to assist the Court to come to an informed decision with regard to whom the child (or children) shall live with, how much time is to be spent with each parent and any other disputed issues with regard to parenting. Typically, unless the assessor is a family court counsellor (in the public sector), mental health professionals can be hired privately by the parents legal counsel to conduct these assessments as part of their private clinical practice. Assessors in private practice may have varying educational backgrounds most often in psychiatry, social work, and psychology (Leonoff and Montague, 1996).

Extremely influential to child custody proceedings, these assessments are beginning to generate more attention and critical analysis. The legal community in B.C. has questioned the validity of assessment reports (Law Society of British Columbia, 1992). Studies on expert witnesses in the field of psychology and psychiatry suggest that these professionals "...often fail to reach reliable or valid conclusions, and the accuracy of their judgement does not necessarily surpass that of the lay person" (Penfold, n.d., p.3). Likewise, in their review of methodology by mental health professionals in this field Hysjulien, Wood, Andrew, and Benjamin (1994) concluded

that

Little descriptive, clinical, or anecdotal data are available on how to conduct [custody] evaluations and almost no empirical validation of approaches has occurred. (p.484)

Furthermore, the ultimate effects of custody recommendations on parents and children are almost entirely undocumented (Caplan & Wilson, 1990). There is very little research dedicated to following-up, to see how the parenting plan is working some time after the judge has accepted the assessor's recommendations and made his ruling (Austin and Jaffe, 1990). As such, "the assessors themselves may never know the outcome of their recommendations and their impact on the lives of the men, women and children involved" (Taylor et al, 1996, p.75).

In addition, empirical research into how custody assessments meet the needs of families with histories of violence is badly lacking (Thoennes et al., 1995). However, problems have been identified in more broadly focussed studies as well as by feminist scholars and advocates. An example of the former, is a finding in Caplan and Wilson's (1990) extensive survey of assessors; that is, that less than one-third of assessors believed that adults rarely lie when they say their ex-spouse has sexually assaulted or hit them. Presumably, this suggests a widely held belief among assessors that adults frequently lie about sexual assault and other physical abuse.

The theme of 'denial' (and minimization) has also been noted by feminists scholars and those who work with and advocate for abused women. Chesler (1991) asserts that assessors tend to "... minimize male violence and pathologize the normal female response to it " (p.412). Assessors are also being criticized for not drawing a connection "between 'wife battering' and parenting ability, despite evidence about the

cycle of violence and the harm caused to children..." (Canadian Advisory Council on the Status of Women, 1994, p.49). Not surprisingly, women who have undergone assessments "question the expertise of the assessors" (Taylor et. al., 1996); they are finding that assessors may know little about the dynamics of abuse, though their reports can be very influential (Ministry of Attorney General of British Columbia, 1992).

Overall, advocates for women such as transition house workers, report that abused women are finding assessments to be inadequate, superficial, misleading and damaging to their case: for instance, women who have talked openly about their abuse were labelled by assessors "... as overly emotional, unstable, or hysterical, and vindictive and obsessed with hating their ex " (Taylor et. al. , 1996, p.73). Women's advocates have also come to believe that the courts are overly optimistic about assessors abilities to substantiate allegations of child physical and/or sexual abuse when in reality children are extremely reluctant to talk to strangers about such issues (Taylor et. al. ,1996). That is, assessors generally do not spend enough time with children to develop a trusting relationship. They also point to a problem of accountability, in that women are being advised by their lawyers not to challenge unsatisfactory (or inaccurate) assessments in court proceedings; so as not to appear difficult or unreasonable (Taylor et. al. 1996).

Yet, despite potential limitations, most judges accord considerable weight to the views expressed by assessors (Wilkinson, 1981). Although it is being said that "a more cautious attitude is emerging" with respect to assessments, Canadian cases of recent jurisprudence still suggest "... that assessments continue to play an important role in custody and access cases" (Leonoff and Montague, 1996, p.89). It has been estimated

that when child custody assessments proceed to court, the outcomes are in line with the evaluator's recommendations over 85% of the time in Canada and the U.S. (Hysjulien et al., 1994; Caplan & Wilson, 1990).

Despite this, surprisingly little attention has been paid to the child custody assessor's personal views and methodologies, even though assessors are most likely not operating "... on a value-free basis" (Caplan and Wilson, 1990, p.132). Presumably, assessors as well as report users (i.e., judges and lawyers) may be as susceptible to socio-cultural influences (and gendered assumptions) as anyone else. The biases of assessors, however, can be easily obscured by a rubric of scientific objectivity:

... because child custody assessments, like all psychological assessments, are often regarded by people outside the mental health field as objective and scientific rather than as they really are: projects which often involve the assessor's strong feelings, conflicts, sensitivities, intuitions, and prejudices. (Caplan and Wilson, 1990, p. 121)

In other words, the assessor's personal values, judgements and biases can be imparted in the guise of expert opinion.

Inherent biases may also be legitimized by the indeterminate nature of the "best interest of the child" criterion which governs all legal decisions concerning child custody in Canada. Although the 'best interests' test is a central concept in family law, its meaning is largely undefined. For instance, the Divorce Act, Section 16 (8) states that the best interests of the child are "determined by reference to the conditions, means, needs and other circumstances of the child." In the absence of clearer guidelines, the interpretation of best interests is open to discretion and speculation based on the personal values of the assessor (Walter, Isenegger, and Bala, 1995)

In short, we know that judges often rely heavily on the reports of assessors



though they may reflect views about intimate violence and paternal abuse which are harmful to women and children. This data may be uncritically accepted as 'objective' and factual evidence with little regard for the personal biases of assessors or the validity of their methods. Indeed, this is what has led me to scrutinize assessment reports for their implications to the personal safety of women. Specifically, using the testimonies of women in my study to guide the analysis, I examined how assessors handled issues of intimate abuse.

Hence, I initiated my project with in-depth interviews of women who have revealed their experiences of abuse by their ex-partners in the context of child custody assessments. I later examined the information generated from my discussions with women in relation to what assessors stated in the corresponding reports. Given the concerns expressed in the literature, I posed the following research question to guide the study:

***How are women (and children), and their experiences of abuse by their ex-partners, constructed in the context of court ordered custody and access assessments?***

Additionally, the research project was undertaken with the intent to:

- (1) examine the degree to which women's accounts were incorporated into the assessments;
- (2) assess the assessments as a means of providing the court with information leading to the protection of women (and their children) from abusive ex-spouses;
- (3) make findings available to women's support groups, lawyers, evaluators, relevant government agencies and to other individuals or agencies upon request.

## **CHAPTER TWO: METHODS**

My inquiry began with a personal need for a clearer vision to guide my own work as an assessor. I hoped to be able to contribute to the efforts of others in the struggle to make more visible and to ultimately end patterns of male battering. I approached my study with the belief that this could only be achieved with the explication of women's stories through a feminist lens. A feminist perspective serves to validate these personal experiences and reveals the broader political underpinnings of women's lives.

### **Feminist Theory**

Feminist theory is the basis for empirical feminist research. Feminism, however, does not itself supply the method which typically would vary with the researcher's field of study; hence, "feminism supplies the perspective and the disciplines supply the method" (Reinharz, 1992, p.243). Typically, feminist theories and methodologies are characterized by both diversity and common intersecting themes (Reinharz, 1992). Some of the themes or key aspects distinguishing my methodology as 'feminist' would be (1) the use of feminist theory; (2) criticism of non-feminist scholarship; (3) transdisciplinary analysis; (4) the aim to create social change; and, (5) the utilization of multiple research methods (i.e., as discussed in the 'research methods' section).

#### **(1) Use of Feminist Theory**

In most types of research it would generally make sense to inform one's analysis and strategies leading to solutions from the perspective of those most impacted. Perhaps, in no other types of research is this as crucial as it is to feminist

research in its principle aim to validate and learn from women. To this end, feminist researchers often choose to interview women (as I have) to gain an understanding of women's thoughts and ideas from their own perspective. The importance of this is that women and their lived experiences have traditionally been excluded from social science research or defined from a male point of view. According to Reinharz (1992) the key elements of feminist research are:

Making the invisible visible, bringing the margin to the centre, rendering the trivial important, putting the spotlight on women as competent actors, understanding women as subjects in their own right rather than objects for men. (p.248-249)

Bringing women and their lived experiences to the fore also serves to validate them as legitimate sources of knowledge. Contrary to traditional mainstream research, feminist scholars are legitimizing the notion of experience or "other ways of knowing" (Maguire, 1987, p.88). As such, feminist research often deviates from contemporary and 'mainstream' social science regimes out of necessity so as to center the everyday life experiences of women. Maguire (1987) suggests that "by focusing on the everyday realities of ordinary women, feminist research acknowledges those experiences, however diverse, as valid" (p.88).

## (2) Criticism of Non-feminist Scholarship

My research also involves feminist criticism of non-feminist scholarship (i.e., psychological assessments) and processes in child custody law. A feminist perspective serves as an antidote to legal discourse which often ignores and downplays the politics of gender in child custody while reinforcing patriarchal ideals. Highlighting the 'voices' of



women helps to counter the many aspects of our legal system which is said to be "... very much a product of male influences and ideas" (Carasco, 1995, p.84).

### (3) Transdisciplinary Research

Feminist researchers also commonly engage in interdisciplinary studies, or critique the work of disciplines outside their own field of study. Likewise, though my own educational background is in social work, I examined the documents of psychologists in the context of the discipline of family law. Indeed, Reinharz (1992) argues that "many feminist scholars have pointed to the need to 'ignore' disciplinary boundaries in the name of altering the production of knowledge " (p.159). While this may be viewed as a limitation from a more conventional standpoint, feminists researchers are drawn to and endorse cross-disciplinary research (Reinharz, 1992). Reinharz (1992) points out:

As 'connected knowers' we live in two worlds and find ways of bridging or blending disciplines. Feminists seem not to feel alienated from fields other than the one(s) in which we have been educated. (p.250)

### (4) Creating Social Change

Most feminist scholars also find common ground in their desire to bring about social change. They quite intentionally aim to link personal experiences with the broader common political struggles of women to improve social conditions. Indeed, "... the purpose of feminist research must be to create new relationships, better laws, and improved institutions" (Reinharz, p.175). The link to social action "... makes much feminist research practical as well as scholarly" (Reinharz, 1992, p.252). Feminist researchers do not simply aim to create "knowledge for knowledge's sake" but rather

"knowledge which contributes to women's liberation" (Maguire, 1987). In the words of Reinharz, feminist research:

...constructs abstract empirical analysis of gender, it develops grand theory, and attempts to transform gender relations and the societies in which we live. (p.252)

Moreover, change is often in the form of collective correction. Typically, "...projects build on each other in order to obtain increasingly accurate, imaginative, and useful answers to persistent problems". (Reinharz, 1992, p.246).

Feminist scholarship in its sum also effects change through the shifting of dominant and oppressive discourses. To this end, I wanted to gain a better understanding of how the discourse surrounding child custody law has evolved over time. I drew from Susan Boyd's (1989 and 1991) theoretical framework which is informed by socialist feminist theories, and concepts of gender and ideology. Boyd (1989) asserts that, "a multidimensional understanding of the relationship between gender relations, capitalist society, and law is ... enhanced by recent work on ideology ." (p.127). Gavigan and Smart (in Boyd 1989) contend that this approach allows for a more complex and comprehensive understanding "... than a straightforward equation of male oppression of women, through law or otherwise " (p.128). Likewise, Olsen (in Boyd, 1989) supports that we must move toward "... an analysis which investigates the complex interplay of ideologies bearing on particular issues such as child custody" (p.129).

Such an analysis also counters tendencies to oversimplify the problems which women face in child custody in terms of private negotiations between spouses. Where there is violence against women, it encourages us to look beyond the obvious patterns

of battering. In effect, gendered power inequities within and outside the family are to a large extent maintained by cultural stereotypes and ideological assumptions. So too, strategies for change must be thought of in terms of ideology as observed by Kathy Ferguson (in Reinhartz, 1992) in her study of bureaucracy:

since the organizational society is maintained in part by creating and perpetuating the appropriate ideology, one that both reflects and distorts the reality it describes, a different form of understanding is in some ways also a form of action. (p.192)

As related to gender and the law, Boyd (1991) also speaks about social change in terms of ideology:

The law as a discursive site has a particular ability to empower or disempower.... so that once an ideology is embedded in a particular field of judicial discourse ...it becomes particularly difficult to dislodge. However, counter discourses resisting a particular dominant ideology may cause it to shift over time. (Boyd, 1991, p.104)

Hence, if the law is a site for competing discourses, then it can also be a site for "shifting of subjectivities" (Boyd, 1991, p.113). In other words, presumably the law is, at least in part, a site for social change.

Feminist research in its explication of women's lived experiences can contribute to new emerging feminist discourses which seek to empower those who nurture (usually mothers) in our society and those most vulnerable to abuse (usually women and children). Smart (in Boyd 1989) contends:

We must deconstruct notions like the 'best interest of the child' [which have come to be synonymous with 'father's rights'], or the ideology of the new fatherhood to ensure that legal and social policy does not relegate caring and nurturing by women to the lowest priority whilst redefining women's objections as individual pathologies or selfish vested interest. (p.25)

In order to give rise to competing discourses, we are urged to "...listen to others,

reflect, and theorize in order to achieve some distance from [the dominant] ideological influence[s]" (Iris Young quoted in Boyd, 1991, p.97). As such, Young (in Boyd, 1991) observes that we must "continue to work with the notion of experience" (p.96-97).

## **Research Methods**

It is not unusual for feminist researchers to combine many methods "so as to cast their net as widely as possible in search of understanding critical issues in women's lives" (Reinharz, 1992, p.201). So too, I have chosen two feminist research methods to gather data; that is, open ended in-depth interviews of women and a 'feminist content analysis' of corresponding custody and/or access assessment reports. My approach is also consistent with qualitative 'case study' research as defined by Reinharz (1992) in that it:

focuses on a single case or single issue, in contrast with studies that seek generalizations through ... compilations of a large number of instances. (p.164)

My study generated large amounts of data though it is based on a small number of cases. There are three other aspects of 'case study' research that are congruent with my study. That is, case studies also distinguished by: the use of "multiple sources of evidence" or data ( Robert Yin, in Rubin and Babbie, 1993, p.391), and by an "inductive element" which means that they rely on "inductive reasoning" (Merriam, 1988, p.11). Lastly, case studies can be "combined in order to examine the relation between cases and particular social structures or processes." (Reinharz, 1992, p.169). Likewise, the stories of women in the study were compared as they related to each other and to the interpretations found in the custody assessments.

The reports of assessors provided a "text for research" (Reinharz, 1992, p.146).

These reports offered an abundance of 'untouched' data and an opportunity for richer interpretation. Reinharz (1992) notes that there are two advantages in using documents or 'cultural artifacts':

First, they possess a naturalistic, 'found' quality because they are not created for the purpose of the study. Second, they are non-interactive.. [and] not affected by the process of studying them as people are. (p.147)

Combining methods (i.e., the documentary analysis with in-depth interviews) enabled me cross-check data and conduct a more complex and in-depth analysis than a single method design would have in this case.

Triangulation of data, or the use of multiple sources of data collection, is a one means of strengthening 'internal validity' or the degree to which findings can be said to match reality. However, such measures of validity can be deceptive when applied to qualitative research methods which are premised on the notion that ".. reality is holistic, multidimensional, and ever-changing," (Merriam, 1992, p.167). Arguably, internal validity in qualitative case studies is enhanced by the fact that the data is based on the realities (or perspectives) of real women. Moreover, although the diversity within individual women cannot be overlooked, the experiences of violence against women are experiences which women predominantly share as a group. Generally speaking, feminist theories (emerging from years of frontline practice) would suggest that these experiences are also shaped by larger social structures in society that affect women differently than men; to this extent, the accounts of abused women also reflect the realities of women as a sex.

However, "the logical focus in case studies is not on statistical generalization to

other cases" (Rubin and Babbie, 1993, p.392). In fact, feminist researchers contend that an emphasis on statistical generalizations can serve to obscure "... phenomena important to particular groups, including women" (Reinharz, 1992, p.174). Conversely, feminist researchers have shown that a case study of one individual woman can be "extremely instructive in demonstrating the relation between individual lives and societal arrangements" (Reinharz, 1992, p.170). This is so as qualitative research "...is not seeking to isolate laws of human behaviour. Rather, it seeks to describe and explain the world as those in the world interpret it..." (Merriam, 1988, p.170). Therefore, it would not matter if a single case is selected in a random or purposeful manner: "one selects a case study approach because one wishes to understand the particulars in depth" (Merriam, 1992, p. 173). In this way, the case study method provides "... an opportunity for the intensive analysis of many specific details that are often overlooked with other methods" (Theodorson's definition in Reinharz, 1992, p.164). So that ultimately findings are most relevant for their insight value.

Thus, generalizability of findings ('external validity') with qualitative case study research cannot be measured in the same way as with quantitative research. Rather, one case studied in great detail can be compared to other such studies, and so "... in attending to the particular, concrete universals can be discovered" (Merriam, p.175). This is based on the assumption that

... the case being studied is typical of cases of a certain type, so that through intensive analysis generalizations may be made which will be applicable to other cases of the same type. (Theodorson's definition in Reinharz, 1992, p.164)

Moreover, "analytical generalizations" can be made in showing how the findings of case studies relate in a consistent manner to a particular theory (Yin in Rubin and Babbie,



1993). Indeed, case study is a tool used by feminists researchers to generate theory (Reinharz, 1992). With the accumulation of consistent findings, what one learns from studying the particular can then be transferable to other situations in other contexts.

Therefore, as put forth by Lincoln and Guba (in Merriam, 1988) it may be more fitting to think of qualitative studies in terms of "consistency" and "dependability". That is, in Merriam's (1992) words:

rather than demanding that outsiders get the same results, one wishes outsiders to concur that, given the data collected, the results make sense - they are consistent and dependable. (p.172)

Furthermore, Merriam (1992) suggests that researchers can enhance consistency (or 'reliability') in their findings by: "... explaining the assumptions and theory underlying the study, by triangulating data, and by leaving an audit trail " (p.183), so as to enable others to replicate the study. These measures have been incorporated into my study.

## **Interviews**

After my research proposal was approved by the UNBC ethics committee I proceeded with the study. Using *purposeful* or *judgemental* sampling (Rubin and Babbie, 1993) I selected five women for the study based on a pre-determined criteria (Appendix VI). Women were asked to self-identify through response to an advertisement (Appendix II) which was circulated at the Munroe Transition House (which also houses a Vancouver based advocacy group that assists women with issues of custody and access), and over twenty other Women's Centres and Transition Houses in British Columbia. I contacted staff in those facilities asking them to inform women about the study. Women interested in the project were asked to contact me by

phone.

I made contact with about eight women. Of those, five met the criteria and were sent an information package consisting of: a letter of introduction (Appendix I), consent to participate and release information (Appendix III), and an interview sample guide (Appendix IV). The information package was a way to ensure that potential participants had a clear understanding of the nature of the study, confidentiality issues, and their right to withdraw from the study at any time (Rubin and Babbie, 1993).

All five women wished to proceed with the study. I arranged an in-person meeting and travelled to Vancouver and Vancouver Island to meet the women in their communities. I met the women at various locations according to their personal preferences: transition house, women`s centre, home residence, and workplace. During our initial meeting I spend time discussing with each participant the purpose of the research. To address ethical issues and confidentiality, I reviewed (and signed with the women) the consent to participate and release information (Appendix III). Women were assigned a coded identification number and asked if they wished to use a pseudonym for the taped recordings and handwritten notes.

I initiated the interviews with open-ended questions and generally followed the lead of the women. I shared the Interview Guide (Appendix IV) to suggest some topical areas to help women recall experiences, but left it up to them to tell me their story as they wished. I approached my study with the view that the women were the true experts on their lived experiences and my role was to listen and to record their accounts as accurately as possible.

I did not at any time doubt the honesty and integrity of any of the women. In

terms of their ongoing litigation, the women had nothing to gain from talking to me. I believe that all of the women wanted to tell me their story in the interest of helping others. Some took time out of very demanding work and child care schedules and spent up to three hours with me. For most of them, it was obvious that retelling their stories was an emotional and painful undertaking. One woman became physically ill for the first time as she recalled some issues around her abuse that she had seemingly repressed. It was reassuring to know that she, and the other participants, were all connected with or aware of support services. Perhaps, even more reassuring was the undeniable personal strength and resiliency that these women projected. Subsequent to the interviews two of the women maintained periodic telephone contact with me to keep me informed of significant changes.

## **Participants**

In order to preserve the anonymity of women their demographics are reported in general terms as opposed to individual profiles. All of the women interviewed resided in the Vancouver B.C. area and on Vancouver Island. The ages of the women varied from about mid-twenties to late thirties. One woman was unemployed (and on income assistance), others were engaged in part-time or full time work in the following roles: office administrator, social worker, child-care worker, and business executive. Some of the employed mothers had to rely on some form of public assistance to supplement their incomes. All of the women appeared to be struggling financially, even those earning a better income were financially drained by ongoing litigation.

With the exception of one mother, all had been married to or had lived common-

law with their ex-partners. They each had one to three children; the youngest child at the time of interviews was a preschooler, and the oldest were in their teens. Two of the mothers had sole custody, one had a joint custody arrangement, one had custody of one child while the father custody of the other, and in one case the father had sole custody.

All of the women reported being subjected to various forms of abuse ranging from intermittent to chronic violence over the course of their relationship with their ex-partners; women described how they were coerced and isolated, as well as brutally beaten and raped. One woman's abuse was more atypical in that it did not involve any direct physical violence, but rather sophisticated forms of emotional abuse (causing the mother embarrassment in her high profile public life) and an occasion in which the father intentionally endangered her life. As well, four of the women described ongoing post-separation abuse in the form of threats, stalking, and harassment. One mother reported having been sexually assaulted during access exchanges whereby the father would, for example, grab her breast in public.

All five women believed that their ex-partners were physically and/or sexually abusing the children. The children have either made disclosures or have displayed behaviours commonly associated with the trauma of physical and/or sexual abuse. Many of the children also witnessed the their mothers subjected to abuse by their fathers.

## Analysis

At the onset of my study, I did not anticipate that some of the women would have had multiple assessments prepared on their case. Later, it became evident that the sheer volume of data generated by the five cases far exceeded the scope and limitations of my study. Although I was undeniably influenced by the stories of all of the five women that I interviewed, I was unable to include all five cases in my written analysis. Ironically, it became necessary for me to reduce the volume of data so as to allow for a more in depth case study analysis.

I conducted my analysis on the three cases which involved custody assessments as prepared by psychologists (and excluded the remaining two cases involving assessments by Family Court counsellors). The three selected cases provided me with five custody and access reports. These five reports have been conducted between 1993 and 1996, by three male registered PhD psychologists as part of their clinical practice in Vancouver B.C. The reports ranged from thirteen to thirty-three pages in length. The general basic format for all the reports included an introduction and relationship history, personal background information, and the results of psychological testing on each parent, as well as the results of child interviews and/or observations, information from collateral sources, and a summary and recommendations for custody and/or access. In all the cases the information of collateral sources was for the most part limited to friends and family. Typically there was very little or no community input from RCMP, schools, transition houses, day care staff, and other sources who may have been able to substantiate 'domestic' violence and its impact on the children.

The data gathered from my interviews with women was analysed through an

'open method' of qualitative analysis as described by Kirby and McKenna (1989). The tape recording of the interviews were transcribed verbatim. I read and reread the material and listened to audiotapes. In the process, I focused on what women said and noted the common themes as they emerged from the data at hand. This reflects an 'inductive' process, or one that moves from particular instances to general principles (Rubin and Babbie, 1993). As such, all of the available material was considered rather than only that which corresponded to predetermined categories.

A similar process was used in my analysis of the assessment reports. I examined from a feminist perspective how assessors presented their data in the reports. That is, I looked at how the so-called dominant ideology was communicated and the types of messages this conveyed about women. I also focused on how assessors handled issues of abuse. I contrasted this with the participant's own accounts, as well as with what is known in the literature about the dynamics of abuse and its effects. Given the generally systematic denial of abuse that I found, I became just as concerned with what was left out in the reports as with what was said in them. As well, I found myself asking how assessors may have said things differently. That is, "would it have made more sense for assessors to look for other explanations?", and "did the assessors fail to look at their data in other meaningful ways?". For example, if a mother was constructed as vindictive and malicious, I looked to see if the data would also support a conclusion that she acted responsibly and reasonably under the circumstances. Another strategy that I used was gender flipping which showed how double standards were used in assessing men and women. That is, I looked to see if men and women were assessed differently on certain criteria.



In reporting my analysis, I used as many direct quotes as possible so as not to homogenize the experiences of the individual women in the study. In order to protect the anonymity of the participants, given names were substituted by the generic use of mother, father, child/children in all the quotations. Also, to protect the identity of subjects, I structured my analysis by common themes as opposed to reporting on individual cases or profiles. As well, caution was exercised so as not to identify the assessors or other parties named in the assessments.

## **Limitations**

Among the potential limitations is that the time frame and scope of the study did not allow for follow-up with the report writers or assessors themselves. It would have been useful to ask assessors questions about their methodology, as well as their personal beliefs and values. A more unanticipated limitation that arose was that despite advertising for participants throughout B.C., of the five reports examined three were completed by one assessor. However, this may be mitigated in so far as my focus was not on the individual assessors but the broader framework from which they work.

By far, the most crucial limitation was that I was unable to obtain a well diversified sample. While the findings of this study do represent some 'poorer' women, I am concerned about the exclusion of women from other marginalized groups such as non-white, immigrant, disabled, and lesbian mothers; indeed, research on child custody and the mentally disabled, and lesbian mothers shows that these groups of women face undeniable discrimination within the courts (Mosoff, 1997; Millbank, 1997). This loss may be off-set to some degree considering that even the experiences of the more

privileged women are not usually in the centre of dominant culture. Thus, while the experiences of the women in this study cannot be said to be representing the 'truth' for all women, I have attempted to make use of a methodology that would function to centre the experiences of marginalization which are generally common to women as a group. Hence, my analysis may show how the experiences of women intersect along gender lines, perhaps to the exclusion of other variables such as race, class and sexual orientation. I am optimistic that despite such limitations, my research will contribute to the discussion on how violence is constructed vis-a`-vis the legal system's failure to adequately support and protect women and children.

## CHAPTER THREE: DATA ANALYSIS

This chapter examines women's experiences of abuse within their relationships and their subsequent revelations of this abuse to assessors. The accounts of women are discussed in relation to the meanings and understandings constructed in the context of the corresponding child custody assessments. Although I rely on specific case examples, the aim of the analysis is to go beyond the practices and beliefs of individual assessors (and not to deny the existence of nurturing fathers) and to critique the assessment reports through a feminist lens to uncover ideological assumptions and biases which can result in harmful outcomes for women (and children) who are trying to escape abusive relationships. The emerging themes were clustered into three sections, that is, how assessors: reported issues of abuse, interpreted the children's best interests, and assessed for parenting abilities.

### **Reporting of Abuse: Minimization, Disbelief and Mother Blaming**

My analysis reveals an apparent unwillingness on the part of assessors to accept women's allegations of abuse. While male violence was by and large minimized, trivialized or discounted entirely in the reports, the effects of abuse were instead accentuated as individual problems in women's functioning. Through a number of negative inferences women were seen to be dysfunctional, unrealistic, vengeful and 'bad mothers' for trying to limit their abusive ex-partner's access to their children.

#### **(1) Minimization of Abuse**

The interviews with the mothers reveal how assessors failed to acknowledge the

nature, the extent, and the very existence of the violence that these women and their children faced. Issues of abuse were generally scattered throughout the reports without any reference to the dynamics of abuse and its detrimental effects. The mothers' reports of abuse were typically kept to a minimum. The following is an example of how the extent of intimate violence was represented in one case:

[The mother] says that [the father] struck her for the first time when she returned his engagement ring. After that she says that he pushed her around and once pushed her out the door (Int.2; Rep.1; p.3).

In this case, years of denigration and assaults that the mother experienced were essentially reduced in the report to the two sentences above. There was no reference to injury or trauma as reported by the mother of the same incident (i.e., being "pushed out the door") in the study:

He pushed me down and I started bleeding and I was holding on to my daughter ... I'm pregnant and she's like almost two ... she was crying and very upset. And that was another thing, too, my daughter used to get in between the two of us ... she would try to protect me (Int.2; p.11-12).

The failure to note the context and the effects of abuse of a mother who was over five months pregnant at the time, with a two year old in her arms, or the physical injuries she sustained, were characteristic of the custody evaluations reviewed. Nor was there any mention in the reports of the possibility of trauma to children who witnessed such abuse despite the fact that it is well known that children can be severely traumatized even when they have not been directly subjected to abuse (Jaffe, 1990). Likewise, the reports filtered out the women's stories of their emotional and physical scars:

I had black eyes, fat lips and I had bumps on my head. He'd punch me in the stomach, things like that, and a lot of sexual stuff too. (Int.2; p.4)  
I never cried in front of him. I tried not to. Because he used to like to see the marks that he left on me, on my neck, on my body.... And I realized he

was getting enjoyment from hurting me (Int.2; p.9).

In contrast to these vivid and disturbing accounts, the assessments contained no statements that could have made such abuse understandable to the court from the victim's point of view. Abuse was simply not measured in terms of the woman's experience. Instead, references to violence were limited to phrases such as 'hitting' or to a particular incident, thereby negating the ongoing disruption to the women's lives. In fact, "It is not uncommon for a woman to be battered but to never actually be hit " (Owston, p. ix, 1993). Seeing violence in terms of "hitting" is reminiscent of pre-1965 Canada when under the Criminal Code a man could be incarcerated for 'wife assault' only if she suffered bodily harm (Baker, 1990). Assessors appeared to be operating from a very narrow definition of abuse which contrasts sharply with standard broader definitions of abuse, such as:

'Violence' is fundamentally violation of the person, and ... includes loss of dignity, control, and safety as well as feelings of powerlessness and entrapment. ... These violations include: ongoing or repeated or physical, psychological, economic, sexual, and or verbal assaults: persistent threats of such assaults; and witnessing of such assaults against mothers, children, other relatives, friends, pets, or cherished possessions. ( Lynn and O'Neill, 1995, p.275)

In general, assessors failed to acknowledge more complex forms of violence, such as living under the constant threat of physical force:

He controlled everything. He controlled what I ate, where I went, everything. The money, even ... he'd pick me up, take me to work. It was awful (Int.2; p.3).

And even now, he still needs to know where I live and everything and he doesn't need to know because we meet in a public place. He follows me and he's known every single place where I live, so I always have that fear ... [that] he'd come in and kill all of us. He'd really hurt us badly (Int.2; p.1).

The assessments failed to account for patterns of abuse of power and control such as

the above which were played out in less visible ways than 'hitting'. Typically there were no references made to the continuing authority and control over women's lives that paralleled forms of pre-separation abuse which women had experienced. This reflects a belief that when the relationship ends so does the man's potential to be violent, or that violence is more or less 'situational' rather than an individual trait of the perpetrator, or a facet of this relationship with a particular woman. If assessors do not comment on power and control tactics used by abusive men, it follows that they will fail to note systematic power differentials between men and women. This failure to report ongoing abuse contrasts with the assertion by experts that the risk of harm for women and children often escalates at the time of separation (Chesler, 1991; Pagelow, 1990; Kaser-Boyd & Mosten, 1993).

Even when women reported ongoing abuse following separation such as verbal harassment and threats, stalking, break and enter, damage to property, physical assault (during child access exchanges), and so on, the evaluators faulted both parents for their inability to "cooperate". One report cautions that both parents "will have difficulty controlling their behaviour" (Int.1; Rep.1; p.14, 30, 31). Similarly, another claims that both parents are having problems "suppressing their hostility" (Int.2; Rep.2; p.20). Ultimately, women were not named as victims. Despite empirical evidence that shows more than 90 percent of perpetrators of violence in families are men (Lynn and O'Neill, 1995), violence against women is framed in neutral terms such as "parental interpersonal conflict" and "discord" (Int.2; Rep. 2; p.18, & 20).

This neutral approach can be compared with references made to mothers' "temper" and "assault" on the father (Int. 2; Rep.1; p.14, p.30), where there were



incidents of the mother being violent. There was no further query as to whether, for example, it may have referred to an isolated incident where she was defending herself. The following evaluation implies that female violence against men is simply the flip side of male violence against women, suggesting that women provoke male violence:

She denies that she was the one to start a physical fight and says she hit him only once... (Int.2; Rep.1; p.3).

No consideration is given to the possibility that so-called female violence may entail a much different set of dynamics; for instance, that when women strike out, it is more typically a response to violence rather than an act aimed to control and instill fear.

Thus, by not taking into account gendered power imbalances, the woman's experiences of victimization can be diminished, and their reactions to abuse distorted as a type of personal deficiency. This is also evident in assessors' tendencies to penalize mothers who may be isolated or connected to a less conventional social network. For instance, one woman explains how her ex-partner kept her from establishing normal social relationships:

I had just come to Vancouver, so I didn't really know anybody and I didn't have my family here. And people at work liked me and they wanted me to go out with them, but [my husband] would get very upset about that....And I did a few times and it would become an altercation. And they were kind of aware of that at work. But people will only help you out so many times... (Int.2; p.3).

The reader is not told about this, rather the assessor notes:

I am concerned about [the mother] who demonstrates her current absence of a typical social support network by giving as collateral witnesses two workers at a women's transition house (Int.2; Rep.2; p.20).

This assessor does not concern himself with accounting for why this woman has had to rely on transition house workers for support; presumably this is not a factor in

determining the 'best interests' of the children. Nor does the assessor address why these individuals would not be useful and informative collateral witnesses. Similarly, in another assessment the following comment is made:

I also have the impression, although it is somewhat difficult for me to confirm, that [the father] has a stronger network of community resources than does [the mother] (Int.1; Rep. 1; p.30).

One wonders why an evaluator may fail to form an 'impression' as to why a woman might be isolated while being content to have impressions of the father which are "difficult to confirm". A feminist reader looking at these assessments might well question the contrast between transition house workers who are viewed as not being adequate collateral sources compared to vague 'impressions' which may lead a judge to make certain decisions in favour of the father.

Furthermore, the assessor's 'impressions' that fathers typically have wider social networks are consistent with research which shows that perpetrators of violence generally have wider social and institutional support than their female partners (Lynn and O'Neill, 1995), and that 'isolation' of their female partners from friends and family is often the abusive man's most powerful weapon (Owston, 1993). Nevertheless, in the reports reviewed, women's isolation is not seen to be indicative of abuse, but used to illustrate a personal deficiency. Similarly, other commonly identified trauma related disorders, such as bulimia, are for the most part treated as emotional disorders of the mothers and are not linked to her experiences of abuse.

Furthermore, the many ways in which women were coerced and victimized in their relationships were ignored. For instance, assessors failed to take note of economic abuse which was clearly evident in two of the cases. In one case, despite the

mother's reporting that the family assets were in the neighbourhood of \$400,000 which would indicate that affordability was not a factor, she related:

... he had two dressers - one had nine drawers and the other had six ... and he had them all to himself. I'd ask if I could use them as well and after a couple of years he'd let me use one drawer to put my socks and underwear in. Other than that my clothes stayed in paper bags in the closets. And the children, same thing, they weren't allowed dressers (Int.1; p.9).

Similarly, another woman reported:

He never let me keep any [of my] pay cheques. I was getting concerned... I wanted to buy things for [the child] like a crib... and he didn't allow me to do that (Int.2; p.13).

He demanded my pay cheque and I told him I wanted to keep this one. He said 'no' and he started to choke me (Int.2; p.14).

Even when money was to be used for some basic necessities for the children, women's access to the family income (including some women's own wages) was controlled by their partners. Furthermore, this economic violence was perpetuated with physical abuse or the threat of it.

Similar patterns are seen with regard to sexually abusive behaviour. Ironically, while assessors noted women's current consensual sexual relationships, there was no reporting of women's past experiences of unwanted sexual contact and lack of freedom to consent to sexual activity with the father:

... it didn't matter if I was awake or asleep he would just demand it [sexual activity] and that was all there was to it. 'No' just wasn't part of his vocabulary (Int.1; p.72).

... he would do kinky stuff with me and I couldn't deal with it, so I found if I threw up on him he'd leave me alone. But then he'd throw me in the tub and everything would keep going (Int.2; p.5).

To reiterate, not naming male power and control as problematic served to minimize the

profoundly disruptive nature of various types of violence. The degradation and devaluing of women, including crimes of sexual assaults, were apparently beyond the scope of the inquiry. In the reports I reviewed, male dominance and aggression was accepted as normal, or at the very least, as conduct which does not compromise one's ability to parent. In each of the reports referred to above in this section, the fathers were recommended for custody.

## (2) Disbelief

I wish to God that somebody would have said, you know, 'I believe that he is abusive' (Int.2; p.11).

Typically, men's denial of abuse allegations is unchallenged, while the stories of women (and supporting testimonies of others) appear to be categorically dismissed. In the reports, women's accounts of abuse were seemingly retold from the perpetrator's point of view. The following is the account of one woman:

I didn't give him the answer that he wanted to hear... he flipped... he took the door and smashed it through both walls... through one wall and the adjoining wall... he was screaming, screaming at the top of his lungs that if I didn't get out of bed this minute he'd pour all this paint thinner on me, light it on fire, and at this point, you know, he's just destroyed the bedroom.... They [the children] are all in the bedroom with me. And if I didn't get up he was going to do that (Int.1; Rep.1; p.12).

Consistent with batterer's tendencies to deny and minimize their conduct (Ptacek, 1988), what is reported is that the parents' "... separation occurred over the paint brush", rather than the mother's fear for herself and the children's safety (Int.1; Rep.1;p.4). The report also fails to mention that three young children witnessed this incident (and the associated risks and emotional trauma). Furthermore, blame is

projected away from the batterer:

As noted earlier, [the father] denied any such actions and there did not seem to be any history of violence reported by any of the other individual[s] who provided information about [the father] (Int.1; Rep.1; p.19).

[The father] also feels that there are instances where [the mother] has exaggerated or fabricated complaints... I do see at least an element of this in [the mother's] approach to the situation and a number of allegations that she has made. I think this does raise questions about her basic judgement (Int.1; Rep.1; p.30).

This shows how the denial of the abuser is used to construct him as the victim. The burden of proof is with the mother and her credibility is viewed with suspicion.

The type of 'evidence' that the evaluators looked for to substantiate abuse was clearly unattainable for women. This is illustrated where an assessor takes note of affidavits of friends and neighbours, which state that the alleged abuser:

... had a violent temper ... put holes in the ceilings and the walls... could be heard to break household items... [and that the mother sustained]... physical injuries... black eye, bruising... (Int 2; Rep.2; p.4-5).

Despite this, the assessor subsequently concludes that, there is: "... no evidence that [the father] is physically abusive" (Int 2; Rep.2; p.19). Furthermore, the assessor also dismisses other indicators which would support the mother's safety concerns. In this case, the assessor administered a psychological test (i.e., MMPI-2) to the father and obtained a personality profile of a man who "feels angry and hostile much of the time", and "may lose control and be physically abusive" (Int.2; Rep.2; p.14). Yet, the report still fails to note that the father may have a potential anger problem which might affect his ability to parent.

Such skewed reporting can also be seen when assessors recount the information provided by references in support of each parent; in the previous example,

testimony in support of the mother is discounted, while the father's personal affidavits are used to help substantiate a diagnosis of her possible personality disorder (Int.2; Rep.2; p.11). Likewise, in a different assessment, references for the mother are categorically disqualified:

The three other individuals to whom I spoke clearly had difficulty maintaining neutrality and objectivity. Generally, they rallied around [the mother]. In a general sense, however, their comments related more to the marriage and breakup rather than the current situation.... it seems to me that they are not doing [the mother] any favours in helping her to reconcile her feelings if they continue with these attitudes (Int.1; Rep. 2; p.27)

In contrast, the statements of the father's personal references, including those of the paternal grandparents, are reported as fact:

None of these individuals [i.e., references for the father], including his parents indicated that they have ever observed any abusiveness or aggression in him (Int.1; Rep.1; p.28).

Moreover, negative identifying information is provided only on the mother's references; for example, one individual is said to have been diagnosed with depression, unemployed for two years and allegedly was wrongfully dismissed from her last job. Other than discrediting the informant who was supportive of the mother, this information does not relate to the matter of determining what is in the best interests of the child.

Furthermore, in the assessments, significant collateral sources were often not contacted. In one case, while the mother's file is requested from her therapist, the records of a father who attended an anger management program were not sought. He apparently dropped out of the program early, telling the evaluator that it was "... not geared to his needs". In fact, the anger management counsellor had contacted the mother to warn her that she may be at risk of harm from him, yet this information did not



make its way into the report.

In another case, involving allegations of child sexual abuse, a day care provider was not contacted, as noted by the mother:

[The child] was with her for a long time and she was the one that had recorded him having problems ... [the psychologist] just never interviewed [her] even with letters asking him to (Int.3; p.52).

And while the child's therapist of one and a half years was briefly contacted in this case, the report gives far more prominence to the father's personal references. Five pages are devoted to his friends and relatives (including the "girl-friend of the father's friend") who have little or no direct knowledge of the child, while the child therapist's observations are limited to two paragraphs. Also, the credentials of some of the father's references are made known, whereas those of the child's therapist are not cited. Moreover, the therapist's observations, that the child saw the father as "intimidating" and that the child exhibited "... behaviour consistent with a child who has been molested," were excluded in the summary of the report, while comments of the father's personal references are restated (Int 3; Rep.1; p.27).

This shows how the views of qualified female professionals with first-hand information carry less weight than the denial of abusers and those supporting them. These reports reveal a process that has little regard for the experiences and voices of victims. In the reports I reviewed, little importance was given to women's accounts of abuse even when there was corroborating evidence.

### 3) Mother Blaming

Assessors generally directed blame at the mothers when the women showed

abuse-related symptoms or attempted to protect their children. Such a pattern is consistent with some of the findings in the literature. For instance, in her discussion of the criminal justice system, Clark (1989) asserts that typically victims are blamed when the problems of violence against women and children cannot be dealt with. Likewise, according to Lynn and O'Neill (1995), within the family context, "The source of blame for violence is deflected away from the individual family members who perpetrate it to those toward whom it is directed" (p.272).

This is one of the things that women have learned from their assessments. For one mother who has been abused there seems no way for her to present herself which will alter what she perceives as the assessor's pre-judgement of her situation:

If you go in there (to the psychologist's interview) and you're distraught, you're a wreck, and if you go in there and you're not distraught, you're a wreck. He's already made up his mind (Int.1, p.38).

After undergoing two assessments, this woman expresses the feeling of being placed in a 'catch-22' situation that she cannot win; if she appears upset she may lose her children, if she doesn't appear upset she may also lose her children. Her perception is that the accounts which she provides will be secondary to her demeanor.

Furthermore, the mother's reactions to abuse are viewed as the actual problem rather than the perpetrator's conduct. When blame is transferred onto the mother, it serves to effectively dismiss her reported concerns. This can be shown in a number of inferences in the reports; specifically, that women:

- 1) have personality traits that lead to more aggression in fathers
- 2) are unrealistic about their concerns
- 3) are angry and resentful

4) create anxiety in children over father contact

5) act to alienate fathers.

For example, one report identified the mother's passive nature as a causative factor which accentuated the father's "dominance":

[The father] is an outgoing, self-confident man, ambitious and businesslike in his approach.... It is not difficult for me to see how [the mother] sees [the father] as domineering. I think, however, that part of this dynamic between them is how passive and unassertive she can be. If one partner tends toward self-confidence problems and passiveness, then any characteristic of dominance in the other is magnified and accentuated (Int. 2; Rep. 1; p.12) .

The father's "dominance" is framed in positive terms and accepted as normal. The implication here is that the problem lies with the mother's personal failings or so called "self-confidence problems". The assessment does not consider that being abused may have eroded this woman's feelings of self-worth. Rather, blame is shifted from the abuser to the victim, and the need for any specific interventions, such as treatment for the batterer or safety measures for the victim are overlooked.

Indeed, when women voiced concerns to evaluators, they were seen to be unrealistic about their perceived risk of harm to themselves and their children:

Probably because of her protectiveness and distrust of [the father], the [mother's] sense of risk for [the child] may also have been heightened. It may be that her sense of anger or abandonment has also reinforced these attitudes in her mind (Int.3; Rep.1; p.29).

[The father] also feels that there are other instances where [the mother] has exaggerated or fabricated complaints... I do see at least an element of this in [the mother's] approach to the situation and a number of allegations that she has made. I think this does raise questions about her basic judgement (Int.1; Rep.1; p.30).

Although current literature reports that women are actually more likely to down-play

incidents of violence (Lynne and O'Neill, 1995), the above depictions of mothers in the reports I analysed, imply that women will lie about abuse in order to gain custody.

Women were also seen by assessors to be acting out of anger and resentment and their own self-interest rather than a desire to protect their children:

I had the impression that [the mother] still harboured considerable resentment, possibly due to a feeling of abandonment or denial at a time when she was quite physically and emotionally vulnerable (Int. 3; Rep.1; p.7).

I detected what seems to be a level of anger or resentment with regards to [the father] and which I do feel plays at least some role in the current situation (Int 3; Rep.1; p.4).

The language in this document reveals how the portrayal of the 'angry' and 'resentful' mother is not supported by any factual data; rather phrases such as "I detected", "seems to be", "possibly due" are used. Furthermore, the mother's accounts of her interviews with the assessor would suggest that this view of her may have been elicited by the assessors line of questioning:

All [the psychologist] wanted to know was about our past relationship... his first two interviews were about our past relationship. After that he didn't want to have any other interviews with me... I couldn't believe he was asking about our past relationship. I don't know what it had to do with anything... it was way past. (Int.3; p.47).

Interestingly, this assessor shows a selective interest in the past without exploring the mother's current child-related issues. In turn, this leads to guessing and conjecture in the report which is clearly detrimental to the mother.

One wonders if the line of questioning differed with fathers because in the reports men were never seen to be acting out of any unresolved emotional needs. On the contrary, one assessor quite explicitly stated his belief that "genuine" concern for

the child's best interest was motivating the father:

I was initially sensitive to the possibility of being conned but concluded eventually that he is genuine in his desire to parent and do the best for the children (Int.2; Rep.1; p.7).

We are not told by what evidence the assessor arrived at the belief that the father did not "con" him. Indeed, it is difficult to comprehend how this could be the case when this father battered this child's mother. His "genuine" desire to parent is overshadowed by the effects such violence would have had on the children's well being. Despite this, the assessor manages to convey a sense of a person who wants to do the "best" but does not state whether the father can articulate what this entails.

Moreover, children's reluctance to see fathers was believed to be promulgated by their mothers:

[The mother] and others did comment that the children do not seem to want to be at their father's and that they complained while they were there.... [this] may be fostered by some of the concern and attention that they receive when they make these comments. I think it is also possible that the children try to protect their mother and perhaps are sensitive to her needs (Int.1; Rep.2; p.25).

[The child] has very strong emotional ties to his mother and is probably aware of her own strong feelings with respect to this situation (Int.3, Rep.1; p.12).

The expressed concerns of the children were not seen as a factor worth consideration, and somehow it is further evidence of the mother's manipulation or lack of parenting skills. Somehow, "strong emotional" ties to the mother is cast in a negative light rather than one which is positive for the child. Similarly, the complaints of the children were blamed on the protective responses of the mother rather than on substandard parenting or abuse from the father.

This fixation on the mother serves to blur the boundaries between victims and

abusers. Even where a child discloses paternal sexual abuse, his refusal to have any contact with his alleged offender is equated with fear of the mother rather than of the father. Repeated throughout one report is the evaluator's assertion that it would be unsafe for the child to react favourably toward the father because of his mother's reactions:

[The child] tends to ally his feelings with those of his mother. Because he is sometimes put in a position of making choices, he feels at risk when doing so and probably tends to take the safest way out, which is to avoid contact with his father (Int.3; Rep.1; p.29).

It seems to me that [the child] opts for the 'safer' route, which is to maintain allegiance with his mother, thus adopting her views of the situation (Int.3; Rep.1; p.30).

By using such highly charged terms as 'safest' and 'at risk', the reader's (i.e., judge's) perception may be skewed. What is implied is that the court may need to act in its protective capacity against the mother since she appears not to be able to allow her child his or her own feelings about the father. The report does not explain why the child's allegiance with the mother is not a healthy bond and the implication is that it is unhealthy not to choose the father's point of view. If the child is showing any concern for the mother's reaction, it is equated with fabrication of abuse. Furthermore, it is implied in this case that the mother may have played a questionable role with regard to disclosures of sexual abuse:

It seemed to me from the comments made that [the child] had a very active part in the discussions [with the mother] (Int 3; Rep.1; p.6).

I also noted that individuals who had done the assessments were unable to obtain the specificity of disclosure reported by [the mother]" (Int.3; Rep.1; p.11).

Again the assessor finds fault with the process of the sexual abuse investigation, abuse



investigators and the mother rather than doubting the father's innocence.

Indeed, mothers are generally not trusted to facilitate any sort of meaningful paternal relationships as evidenced by the following excerpts from the reports:

[The mother] told me that she also tries to support [the father's] image although I also had the impression that her actions and perhaps emotional responses give [the child] a different impression (Int.3; Rep.1; p.30).

There is also the concern that [the mother] will create distress in the children by creating suspicion and a feeling of alienation from their father (Int.2; Rep.1; p.31).

I had the impression that [the mother] is protecting [the child] from what she feels are likely to be the consequences of contact with [the father] and that [the father] feels that [the mother] is turning [the child] against him through her actions (Int 3; Rep.1; p.28).

Again, "impressions" and "concerns" are expressed without any concrete examples of how these mothers actually do this. Ironically, mothers are faulted for discouraging good paternal relations when the father's own efforts have been questionable. One of the mothers quoted above revealed that the father "had not been part of the children's lives and he wasn't even visiting" for about two and a half years after the separation (Int.1; p.17-18). In the other case noted above, the father is said to have generally visited at his "convenience" and voluntarily stopped exercising access for several months in protest of Court ordered supervision of access. In fact, the evaluator personally excuses this father's failure to comply with the Court ordered access arrangement:

The father was also concerned that this would be interpreted as a lack of desire to remain involved with [the child]... I told him I would not make any negative inferences from this decision as I felt that he was attempting to be sensitive to [the child's] feelings and attempting to act in [the child's] best interest (Int. 3; Rep.1; p.3).

The evaluator does not tell us how failing to show up for visitation is acting in the child's best interests (especially when the assessor highlights the importance of father presence throughout the report) but, again, it is a powerful and leading opinion. What this shows is that the father has a choice whether or not to exercise access. Paternal access appears to be an inherent right that fathers can choose to claim at any time, though the mothers are obligated to facilitate it at all times. Any attempts to limit paternal contact were seen as acts of self-interest for which mothers could be harshly penalized even if they were trying to protect children or themselves. Women risk losing custody when they are not supportive of fathers regardless of whether they had been parentally uninvolved or abusive. Indeed, evaluator comments suggest that when mothers are guarded with access, fathers are recommended for custody:

I did feel that [the father] was more supportive of [the mother] than the reverse (Int.1; Rep.1; p.31).

Although [the father's] abilities are not without question, I think he is probably in a better position to provide [sole custody].... Firstly, my indications are that [he] is likely to be more willing to provide access to [the mother] than the reverse (Int.1; Rep.1; p.32).

Thus, women were suspected of alienating fathers when the men themselves had made little or no effort to be part of the child's life. Furthermore, far from displaying an understanding of the complex dynamics of intimate violence, or child abuse, assessors were critical of women who sought protection. The practice of mother blaming may effectively act to silence women. Clearly, women who spoke out risked losing custody to an abusing parent.

## **Determination of the Best Interests of the Child**

The previous sections discussed how assessors may minimize and ignore violence committed by fathers against mothers or their children, and blame mothers for what may be the effects of violence. These disturbing trends have led me to question how the “best interests of the child” was interpreted in the reports.

Generally speaking, in custody assessments “... the mental health professional’s first responsibility is to the welfare of the children” (Hodges, 1991, p.125). Likewise, as indicated in the literature review, the best interests of the child presumption is the fundamental criterion governing legal decisions concerning child custody. Yet, for the most part, ‘the best interests’ are vaguely defined in the legislation. In the words of a Canadian justice of the Supreme Court, the Honourable Claire L’Heureux-Dube (1998):

The wide discretion offered by this standard is seen to invite judges to rely on their own values and attitudes in making custody and access determinations, as opposed to seeking to elicit the interests of children from their own point of view. (P.387)

As is the case with the Judiciary, this test also gives broad discretion to assessors.

There is always the potential for the needs and rights of the parent to be accorded higher status than the real interests of the child. Indeed, this has been recognized by Leonoff and Montague (1996) in their guide to custody assessments as they caution that “...there is always a readiness to displace the focus to the side of the parents” (p.17).

In the reports I analysed, the determination of best interests of the child was generally seen in terms of maximum paternal contact. Assessors drew attention to the child’s need for a father even when children showed reluctance to have paternal

contact. It was evident that the recommendations of assessors were based on a belief that the interests of children is linked to the preservation of the family unit despite the realities which led to the parent's separation. Rather than acknowledging male violence and its effects, the assessments pointed to the need to reconstruct family ties. To this end, mothers were expected to concede to ongoing social relations with abusive ex-partners, and children who may have been violently traumatized were said to be reacting to the family breakdown rather than exposure to parental violence.

#### 1) Parental Conflict and Child Maladjustment

All of the women in the study indicated that their children witnessed and/or were exposed to direct physical or sexual abuse. There is empirical evidence that the most common effects of violence on children are synonymous with the psychiatric diagnosis of post-traumatic stress (Jaffe, 1990). Generally speaking, post traumatic reactions may include a wide range of symptoms such as low self-esteem, depression, engaging in harm, eating disorders, dissociation and so on (Lynn and O'Neill, 1995). Corresponding to this type of symptomology, women reported their children's functioning to be characterized by academic delays, anxiety, obesity, developmental regression (e.g., children over the age of six were said to be soiling their pants, bed-wetting, sucking their thumbs), aggression, excessive clinginess, fear of being left alone, flat affect, and so on.

Although the reports were purportedly to determine the best interests of the child, none of the reports assessed for the impact of the violence on children. Generally speaking, maladjustment of children was not seen to result from any effects of violence:

Like in many custody or access situations, the difficulties between the parents probably are an important factor in difficulties that the children face (Int.3; Rep.1; p.4).

...it appears that the situation has become extremely polarized and that there is very little trust existing between the parents ..... there appears to be both covert and overt feelings that [the child] sometimes has to bear the brunt of (Int.3; Rep.1; p.28).

[The mother] and others did comment that the children do not seem to want to be at their father's and that they complained while they were there. I suspect that this largely represents a 'transitional behaviour' which is not uncommon in these situations (Int.1; Rep.2; p.25).

One would expect that children's feelings would be taken into account with respect to their 'best interests'. Yet, when children exhibit stress over contact with a father it is assumed to 'really mean' something else. In most cases, troublesome symptoms were linked to factors of divorce and acrimonious parental relations. This interpretation even extended to possible signs of child sexual abuse:

There was also a concern about the children's focus on various anatomical functions and sexual behaviours. I do feel that the children are having an adjustment reaction to the divorce and separation, and that they express this in various ways according to their personalities (Int.1; Rep.2; p.25).

Not surprisingly, one mother concluded:

[The psychologists] set it up so it (i.e., child sexual abuse) was a problem between us [the parents] (Int.3; p.52).

In the cases analysed, it was clear that ignoring the existence of intimate violence and child abuse creates risk for children who must then continue to have contact with an abusive parent.

## 2) The Ideology of Fatherhood

A child's "need" for a father appears to override all other considerations including risk of abuse. The child's right to a relationship with both parents was stressed in the two cases where the father did not have sole custody:

... the children would best be served by reasonable contact with both parents. Both parents will need to work together... This will become more important as the children get older (Int.1; Rep.1; p.32).

...it is important for the children to understand and believe that each of their parents is a worthy individual with whom they share a common genetic heritage (Int.1; Rep.2; p.27).

It is important, from my perspective, for [the child] to have as positive an image of each parent as is possible, and this will need to be supported by both individuals (Int.3; Rep.1; p.30).

Interestingly, the same argument is not made where the mother is the access parent. In that case, positive adjustment of the child is related to her relationship with the primary care-giver (i.e., the father) without consideration to the importance of a maternal bond (Int.1; Rep.1; p.13). Likewise, parental alienation was identified as a concern only where it was suspected that the father was being estranged; in which case, assessors stressed the children's need for a father:

The best outcome for [the child] would be for his parents to come to an understanding that will allow him to continue to maintain contact with his father (Int.3; Rep.1; p.30).

[The child's] current reaction and attitudes aside, I do feel it of potential benefit for him to have continuing and long-term contact with his father (Int.3; Rep.1; p.30).

... in the absence of contact with his father, it is possible [the child] will replace the lack of experience either with overidealization or anger. Particularly, during early adolescence, this can have a significant impact on the development of his own self-concept (Int.3; Rep.1; p.30).



Though the assessor was unable to rule out child sexual abuse with any degree of certainty, unsupervised paternal contact is recommended in this case. Moreover, the value of paternal contact is not demonstrated in terms of the qualities that the father has to offer as a parent, rather it is his presence alone that is seen to be critical. The assumption seems to be that the father's absence will have a negative impact on this child's development.

No specific research is cited to support this conclusion, so that pertinence to special populations (e.g., children who have witnessed or experienced direct abuse) is questionable. Moreover, the reports do not appear to draw from any empirical research which is not in line with the highly valued outcome of maximum paternal contact. For instance, Johnston and Kline (1989) found that children of couples involved in lengthy custody battles showed better overall adjustment when they had less frequent access to one of the parents. In fact, the accounts of women, and my analysis of the assessments, would strongly suggest that assessors lacked an understanding of the dynamics of intimate violence despite an abundance of literature on this topic.

The fundamental value of paternal presence is reaffirmed, at the exclusion of the mother. The above noted report leaves the impression that this child will not need a mother for his future development because of the overemphasis on the father versus no mention of positive outcomes of mother contact. Likewise, the mother felt herself devalued by the evaluation process:

I walked with [the child] into the inner office and [the psychologist] just looked at me like, 'What are you doing here?' And [the child's] counsellor said 'Make sure you go with him. He's a child with transitions [problems], he'll be traumatized.' And [the psychologist] said to [the child], 'You're a big boy now, you don't need your mother in [there]... [I was] totally

discounted... totally undermined (Int.3; Rep.1; p.49).

Generally speaking, fears that children may suffer the loss of fathers appears to override concerns for their safety. Evaluators tend to value paternal contact above most other needs and rights of the child. It is implied that mothers will fabricate claims (or get their children to lie), or that contrary to social science research, the effects of abuse of the mother or child are not serious enough to warrant sacrificing paternal rights. In either case, the best interests of the child are compromised in favour of paternal rights.

### 3) Cooperation, Communication and Co-parenting

Although women informed assessors of former and/or ongoing abuse by their ex-partners (e.g., stalking, harassment, break and enter, damage to property, and physical assaults, and so on) their recommendations pointed to the need for cooperation, communication and co-parenting. The assessors remarked:

Both parents, particularly [the mother] will have to resign themselves to the fact that they will always be the children's parents and thus will have an important role to play in their children's lives. I would encourage them to bury the past and to try and develop at least a cordial relationship so that the children will not feel the type of pressure they are currently experiencing (Int.1; Rep.2; p.27).

Both parents will need to work together to ensure that the children will benefit from their contact with them. They will need to develop a mechanism for problem solving....Some education around the issues of co-parenting or children of divorce would be beneficial. I expect the children will settle down once the general issue is settled... (Int.1; Rep.1; p.33).

I would recommend that [the parents] be ordered into some form of mediation with a goal of making their communication more business-like and less emotional (Int.2; Rep.2; p.20).

I also think it will be important for both parents to work towards a better

level of understanding and communication (Int.3; Rep.1; p.32).

Such solutions may be entirely reasonable in cases where violence and intimidation is not a factor, but for these women such views may place severe limitations on their physical and psychological security and their ability to protect their children. It is also difficult to reconcile these recommendations with what is known about the dynamics of abusive relationships. Women are encouraged to associate with ex-partners and enter negotiations and mediate with no regard for their fear and personal safety. This is despite overwhelming evidence that the separation and divorce process can be the most dangerous and 'lethal' time for abused women.

The assessor's recommendations appear to be based more on general ideological assumptions about parental relationships than individual case evaluations of potential risks or benefits to the child. Assessors' remarks show that parents are routinely expected to put their distress aside:

Like in many custody or access situations, the difficulties between the parents probably are an important factor in difficulties that the children face... it is my usual recommendation to the parents to put their differences and distrust aside to the maximum extent possible and to concentrate on being parents to the child or children involved (Int.3; Rep.1; p.4).

The reason for litigation in this case was the child's disclosure of paternal sexual abuse. The above clearly reflects a view that the child's allegation of sexual abuse is false and that the mother should let go of her concerns. Not surprisingly, there is no inquiry into how this would actually benefit the child.

In fact, it is difficult to imagine how association with abusers can be in the child's best interest without steps to preserve safety. Emphasis on cooperative parenting

can render separation and divorce as a means rather than an end to patterns of male battering and control. For example, one woman who has been unable to protect herself from a chronically abusive ex-partner is encouraged to live in proximity to him in order to facilitate access arrangements:

It is therefore important for these parents to consider living reasonably close so that such an arrangement can be made without the prohibition of long driving distances (Int.2; Rep.1; p.13).

Another case suggests that women's disassociation from abusive ex-partners may carry stigma:

It did seem fairly clear to me that [the father] did not really figure in [the mother's] future and that she saw the relationship between them as something she would like to avoid. It seems to me that she sees herself as entering a new phase in her life and that she simply would like to leave the rest behind her. To this extent, I did see [the father] as being more realistic about the children's need for parental involvement (Int.1; Rep.2: p.26).

This so called "new phase" was the mother's desire to live her life free of violence. The phrase chosen by the assessor -- "to leave the rest behind her"-- certainly minimizes the issues she is currently facing. One wonders how realistic it is to recommend cooperative measures given the experiences of this mother:

He's stalking me. He's breaking and entering. He's hit my car. And they are telling me I need to be nice to this man. They are demanding it (Int.1; p.25).

I'm living in safe houses. I'm hiding from him.... [there's a] restraining order in effect and they're still trying to do an evaluation, still trying to get you to co-parent (Int.1; p.95).

This shows the lack of fit between the recommendations of assessors and everyday realities of women. This woman, the victim of a crime, is now expected to engage in a "cordial relationship" with the perpetrator of that crime because they have children

together. Her current safety issues are completely disregarded in order that the father not be deprived of his rights.

Indeed, the accounts of women in this study certainly challenge assessor's views that maximum paternal contact and the preservation of family ties is in the children's best interest. For the most part, the reports encouraged women to associate with abusive ex-partners in order not to deprive children of their fathers. Such conceptions are strangely at odds with much of the literature on male battering and children who witness violence. Despite the likelihood that for battered women, the patterns of violence and dominance will most likely prevail within a scenario of co-parenting, the recommendations of assessors were geared toward reestablishing what most closely resembles the traditional 'nuclear' family (i.e., male-headed). Unfortunately, these type of solutions can serve to minimize the criminal nature of male violence, and shift the problem of intimate violence onto the private realm of the family (rather than the courts and the state). Shielded from public intervention and redress, the family is expected to settle 'problems' like wife abuse amicably through parent education, mediation, communication and other measures which are not effective when there are serious power disparities between the parents.

### **Assessment of Parenting Abilities**

This section reveals how the parenting abilities of women were assessed. The first part illustrates that while assessors may turn a blind eye to men's violence, little remains private for women who undergo custody assessments. Her subsequent partners, sexuality, and image all seem to draw more attention than her actual

parenting. Secondly, though women's personal lives are closely scrutinized, child care labour and nurturing of children goes unnoticed. Fathers, on the other hand, are able to demonstrate caring through small symbolic gestures and by finding fault in the mother's parenting.

### 1) Unjustified Scrutinization of Mothers

Women were subjected to scrutiny of their personal lives where there was the potential of a new father figure and had to demonstrate that future partners will not pose a threat to the children. Subsequent to entering new relationships, one participant was required to undergo a custody assessment on two occasions (Int 1, p.34). She recalls of her last evaluation:

Not only did he insist I get evaluated again, ... but [the father] got the judge to agree to evaluate the guy! And I was [only] dating him (Int 1; p.44).

This is evidence of how the evaluation process can enable men to continue to exert authority over the lives of women through their legal entitlement to children. The father was able to disrupt the mother's new relationship, tie her up with court proceedings, and in the end, have at hand an in-depth psychological evaluation on her new partner. In the absence of a common-law relationship or any specific child related concerns, the evaluation details five pages of personal information on the mother's new partner, including his psychological profile and details of his intimate relationship with the mother. In fact, the report contains much more data on the person that the mother is dating than on the father himself.

Similarly, a former partner of another mother is interviewed at the request of the



father. Apparently, he and the father had collaborated to prove the mother 'unfit'.

Meanwhile, the father's former common law partner of nine years is not interviewed to see if there was a similar pattern of abuse as experienced by the mother (Int.2; Rep.2; p.12).

This shows once again a lack of sensitivity to the paternal control over women's lives and the readiness of the evaluators to act in a protective capacity against the mother. Mothers also tended to be more closely scrutinized on standards unrelated to parenting. For no clear reason, assessors reveal the mother's sexual relations through the eyes of the children:

[The child] identified a number of people whom he calls 'uncles' but it seems that they are his mother's long-term friends rather than actual relatives.... He told me that his Uncle Fred sometimes stays with his mother and in the morning [he] sometimes goes to her bed for a cuddle (Int.3; Rep.1; p.10).

During my home visit, [the child] was showing me around the home and did tell me that this man... sometimes sleeps in his mother's bedroom (Int.1; Rep.1; p.11).

While no conclusions are drawn, this type of remark may lead a judge to question the mother's moral fitness. Apparent also is a double standard as the sexual lives of fathers remain private. Unlike men, women were also judged on their appearance and lifestyle choices:

I also had some concerns about some of the mother's attitudes or adjustment factors. She described herself at one point as always looking younger than her age and it appears to me that there is an indication that this is a factor in her lifestyle. It may be reflected in her relationship with a much younger man and in her general style of presenting herself and the children. [The mother] tended to dress in a much younger style and with reference to particular fashions (Int.1; Rep.1; p.31).

[The mother] seems to prefer younger men and my feeling is that this may

also reflect her level of maturity (Int.1; Rep.2; p.26).

Stereotypical assumptions regarding the mother are used to illustrate her fitness as a parent, with little attention to her nurturing relationship with the children. Her image and appearance is regarded as a factor in the custody recommendation, while male violence is not. Evidently, it is also not acceptable for women to deviate from the traditionally narrow conceptions of the family. One wonders if the lifestyle attributed to the mother would be even consequential to the assessment if it were true of the father (e.g., a man's romantic involvement with a younger woman).

## 2) Undervaluing of Maternal Care

I was never given credit for all the time I carried the entire burden of raising the children (Int 1; p.110).

In the reports I analysed, child care is generally taken for granted when performed by the mother. This bias was most explicit in the case of the single mother raising a special needs child. She described a number of tasks beyond the daily child care, such as seeking out specialists, attending team-meetings, transporting the child, following up on goals, ensuring consistency, attending workshops, educating herself, and so on. The mother worked closely with specialists, such as occupational therapists, community health nurse, play therapists, pre-school educators, and so on. At one time, the child was hospitalized and after the mother consulted "about fifteen doctors" he was finally correctly diagnosed. In order to become a more effective parent, she took behavioural modification training and parenting workshops. She indicates also having to advocate on the child's behalf:

Perhaps because of [the child's] special needs, it appeared to me that [the mother] was highly protective of [the child] and perhaps of her relationship with him (Int 3; Rep.1; p.3).

Also, where the evaluator could have drawn positive attention to the mother's efforts, wording which may carry stigma is chosen. For instance, it is said that the child,

...is currently living in a one-parent family, in which there are no siblings (Int.3; Rep.1; p.32).

This has a very different impact than simply saying that the child is living with his mother and is well cared for. The father had been living with a new wife and child, thus the maternal "one parent family" contrasts sharply with the father's ability to offer more than a so-called alternative family arrangement for the child. So that no matter how competent the mother, she could not stand match the image of the 'nuclear family'.

Women may be set up to meet unrealistic expectations with little recognition for the child care tasks that they perform. Another mother is said to be providing a less structured home environment:

I had the impression that ... [the father's] home was more orientated around concrete activities....[and] was a little more organized.... [that his home] has a bit more inherent order to it (Int.1; Rep.1; p.26 & 29).

In this particular case, the father (who was unemployed) cared for the children during the day while the mother worked for pay. After work the mother would pick up the children, and attend to them (and their special needs) till the next day. She described it as such:

When they're with him he is harming them, threatening them, scarring them, putting their lives at risk and they're coming home basket cases. So all I was doing was putting a band-aid on them overnight just to send them to go get beat up again (Int.1; p.49).

The level of parental care was assessed on equal basis despite the fact that father has

respite each evening. There is no mention of the extra burdens that the mother carried. Unlike the father, she maintained paid employment and performed additional child related tasks, such as transporting the children to and from the father's, providing more meals during the day, assisting with school work in the evenings, and so on. Additionally, she must prepare the children for the visits and deal with their emotional difficulties afterwards. She is inconvenienced almost on a daily basis to facilitate access and subjected to the harassment of the father during the exchanges, saying "He would use the daily visits to drop them off and pick them up to harass me." (Int 1; p.76) Yet, the father is recommended for sole custody over the mother, because it is said that "... he would be more willing to provide access." (Int 1; Rep.1; p.32). Hence, her labour which sustains the parenting arrangement and allows for her ongoing victimization is for the most part rendered invisible.

Likewise, in another case, the father is recommended for sole legal custody though the mother may have done the majority of the child care:

He lets me have her every single day from Monday to Friday... I'm doing the child-care work for him and he doesn't have to pay for it and it looks good [for him] but it's amazing because I'm actually having her more than he is (Int.2; p.19).

Although women may be the primary caregivers while the decision making powers are reserved for men. The custodial rights that fathers are granted can be used by them to effectively control almost every aspect of the mothers' lives.

Women's role in child care seems so ill defined that it can be easily diminished by the comments of fathers. For example, in the case of the special needs child, the assessor repeats the father's concern that mother failed to have the child tested at a

particular children's hospital. The validity of the father's concerns are never cross-checked with the professionals who are involved with the child. The effect was to make more visible that which the mother may have failed to do rather than the positive aspects of her caring activities.

Conversely, fathers are able to demonstrate caring without engaging in child care (Boyd, 1997), and through small symbolic gestures. One evaluator observed:

Perhaps as an example of [the father's] sensitivity to [the child], I found a reference in the [father's] affidavit ..., which I found interesting .... [the father] expressed his opinion that it was not appropriate for the [child] to be picked up by the stranger as apparently suggested by [the mother], in order to have him transported between residences (Int.3; Rep.1, p.4).

While the mother disputes ever saying this it was nonetheless reported without any cross-referencing with her. It shows the lengths to which evaluators will go to illustrate paternal caring by using unsubstantiated affidavit material in the absence of more concrete examples. In contrast, there is little regard for the mother's opposing view:

... the father was showing up consistently and then inconsistently.... If there was golf or tennis or anything like that, he would split. Sometimes he wouldn't see the child for a month then he would sort of make up a whole bunch of time in a row..... [If] it was convenient for dad he'd be there (Int.3; p.19).

Indeed, women felt that they had little meaningful input into the reports:

There was never any verifying information... whatever [the father] said, I wasn't given that information until the report was finished... and I think that is the most critical part... that's a controlling kind of thing (Int.1; p.82).

To sum up, despite the strong emphasis on equality when it comes to 'parental rights', there are lower expectations of men in relation to child-care. Whereas the child care labour and nurturing of women receives less attention than possible maternal deficiencies. In many respects, the assessors tended to underrate and devalue

mothering. In contrast, even the most minor interest expressed in the children by fathers was noted while their histories of violence were minimized or discounted.



## CHAPTER FOUR: CONCLUSIONS

It may well be that the potential for custody and access assessments to be useful in resolving complex disputes is good. Ideally, such a report can provide the court with insightful and valuable information based on meaningful input by each of the parties and collateral sources, including (indeed, especially) allowing the children to have a voice, and with the aim being to help ensure a safe and reasonable parenting arrangement. For the women who participated in this study however, each having left an abusive relationship, this was not the case. The reports did not lead to safer outcomes for them and their children. As one of the women said:

As far as I'm concerned, Section 15 reports [custody and access assessments] are the worst thing a judge can order in an abusive relationship. I don't see how it can help. All it is... is detrimental (Int.1; p.83).

Perhaps most damaging for abused women undergoing assessments is the almost total omission of their realities and lived experiences. Of the findings of this study, the most obvious and disturbing were the inconsistencies between the women's stories as they related them to me in the interviews and the ways in which they were reported by assessors. In the reports reviewed, women's accounts of verbal, economic and sexual abuse, as well as ongoing patterns of intimidation and control, were by and large minimized, fragmented, trivialized and ultimately dismissed.

Clearly, assessors refrained from engaging in any analysis of gendered power imbalances in their reports. Instead they operated from rather narrow definitions of abuse thereby excluding the less obvious patterns of battering. Nothing was said about women's experiences of denigration and control by their ex-partners, or the ongoing

disruption to their lives. Rather, references were made to 'intra-parental' conflict and abuse-related problems were often blamed on women. Isolated women, or women seeking protection and associating with transition houses, for example, were seen as having personal deficiencies. Similarly, mothers were faulted if children showed signs of distress, and typically children were said to be reacting to the post-separation parental conflict rather than any violence-related trauma that they may have suffered.

Mothers who voiced concerns about paternal contact were evidently not trusted to facilitate a meaningful relationship with fathers. The fundamental value of fathering was consistently reaffirmed without much qualification as to the nature of the parent-child relationships. When abusive men sought custody they were favoured over women as the better parent. No consideration seemed to be given to the effects of men's violent behaviour on their ability to parent. Overall, the reports impart tacit expectations of women to go along contently and silently with the status quo while offering superficial remedies aimed at co-operation and co-parenting, in effect, condoning the violence and lending support to abusive men to continue to exercise unjustified authority over their lives.

Indeed, many of the inferences drawn were at odds with much of the social science literature on the nature of family violence, and the detrimental effects of even indirect exposure to violence on children. We know from social science literature that risk of harm for abused women (and children) is more likely to escalate following separation (Pagelow, 1990; Chesler, 1991; Kaser-Boyd, and Mosten, 1993). We know that children can suffer significant short and long term effects from witnessing abuse (Jaffe et al., 1990). It is also evident that the trauma related disorders of victims can

remain until the threat of violence is checked (Hysjulien et al., 1994). Presumably this is until women and children are able to disassociate and obtain relief from abusers.

All this makes the failure to identify these cases as requiring special measures to preserve safety all the more difficult to justify. It is also hard to see where the children's best interests were taken into account. It would seem that the dominant influences guiding assessors stem from the idealization of the traditional two parent family and may also be based on what is known of children from non-violent homes. The accounts of women in the study juxtaposed with the corresponding custody reports point out the need for some major revisions in our thinking. Surely when there is past or ongoing physical, sexual, or emotional abuse within a family, no access to the abusing parent is warranted until the physical and psychological security of the injured parties can be ensured.

Although it is the role of judges to make such decisions in custody disputes, assessors are in a position to help the court identify cases where special measures may be warranted. At the present time, however, assessors are only required to meet academic standards which do not necessarily guarantee knowledge and skills in the area of family violence. Indeed, this study strongly suggests that, in order to protect women and children from ill effects, more concrete guidelines are needed as to who should be making these assessments and what standards should apply. More specifically, mandatory training on the dynamics of power and control and the effects of violence should be essential for anyone conducting these assessments.

Assessors must also examine their own philosophical orientation vis-a-vis these issues and the implications of their methodologies. This study suggests that the

frameworks used in the evaluation process reflect rules designed to ensure male privacy and dominance. Assessors who may genuinely feel themselves to be fair and impartial may in fact be reproducing patriarchal norms and stereotypes. In contrast, from a feminist perspective this could not conceivably lead to any equitable and safe outcomes for women. Rather, only by understanding women's personal experiences (starting from their own point of view) within the broader social and political context we can arrive at meaningful solutions. Granted, assessors cannot alter the social conditions which are linked to abuse and disempowerment of women, they nonetheless have considerable power to sensitize the courts to gendered power imbalances, both within the 'private' sphere of the family and the larger social context. A shift from blaming mothers to accounting for how social systems may be failing to protect women can form the basis needed to carry out a well-grounded investigation. While it is essential that women are informed, supported and adequately represented in court, ultimately it is our understanding of women's realities that will largely determine the fate of those most directly concerned, the children.

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## **Appendix I - Letter of Introduction to Participants**

This letter is to provide you with more information about myself and why I am contacting you. My name is Sonya Charlesworth. The research I am doing is concerning child custody and access evaluations, and how they affect the lives of women (and their children) who have been abused by the father. This information will be used to meet a thesis requirement project toward a Master's degree in Social Work at the University of Northern British Columbia.

Where custody and access is disputed, judges are increasingly requesting custody evaluations. These reports can be very influential documents in matters of child custody, and we know little about what the implications of these reports are for women who have been victims of domestic violence.

This research project will attempt to explore this topic from the women's point of view. The method of research that I have chosen is going to involve at least one in-person interview (1-2 hours) and two shorter telephone interviews. I have selected a number of questions to guide the interview (See Interview Guide Sample); participants may choose the extent to which they wish to follow this guideline. The attached "Consent to Participate in the Interview and Release Information" notes how I will be recording, storing, and later disposing of the information gathered from these interviews. I will also be using data from the actual custody and access report and court orders themselves which the participants will be asked to provide.

The participation of women in this project is strictly voluntary; women may withdraw from the study at any point. As well, efforts will be made to protect the identities of those who volunteer to participate in this study.

If you are interested in taking part in this study, or would like more information, I can be reached at (250) 992-7186. You may call me collect at this number if required.

Sincerely,

Sonya Charlesworth

## **Appendix II - Advertisement for Project Participants**

I am planning to do a research project for a Master's degree thesis on the experiences of women who have been victims of violence and undergone Court ordered custody and access evaluations. If you are interested in more information about participating in this project please call me. My name is Sonya Charlesworth and I can be reached at 250-992-7186 (please call collect).

### Appendix III - Consent to Participate and Release Information

Researcher: Sonya Charlesworth, Graduate Student, Social Work Program, University of Northern British Columbia Telephone: 250-992-7186

The UNBC Research Ethics Committee has approved this project. If you have any concerns and enquiries about this request please contact Dr. W.R. Morrison, Dean of Research and Graduate Studies at 960-5555, or toll free at 1-800-667-8622.

I agree to participate in interviews regarding my experiences with a Court ordered custody and access evaluation under the following conditions:

1. The researcher has my approval to tape-record the interview (and/or take notes) with the understanding that this can be stopped at any time during the interview at my request.
2. I understand that I may at any time ask questions, choose which information to share, or stop the interview.
3. The researcher has my permission to use the information from this interview, including lengthy quotations, in her thesis report, publications and presentations. As such, while I will not be named, someone familiar with me may be able to identify me based on this information.
4. The researcher will make reasonable efforts to protect personal information which may identify me. She will store the tapes, transcripts, consent form and other personal information in a locked and secure place. Any documents which name me will be stored separately and only the researcher will have access to these. Upon completion of the final thesis report all identifying information will be destroyed.
5. The researcher will provide me with a copy of the written transcript of my interview. I will have an opportunity to review and discuss the transcript with the researcher to ensure the accuracy of information.
6. I can telephone the researcher collect at any time if I have questions or concerns about my participation in the project.

The participant and the researcher have discussed this consent form and agree to the above conditions.

Name of Participant \_\_\_\_\_  
 Signature of Participant \_\_\_\_\_  
 (Date) \_\_\_\_\_  
 Signature of Researcher \_\_\_\_\_  
 (Date) \_\_\_\_\_

## **Appendix IV - Interview Guide**

### ***Relationship History:***

How would you describe your relationship with the father prior to the separation?

What was the reason for your separation?

How was the day to day care of the children managed in your home prior to the separation?

What was the father's involvement in parenting up to the time that you went to Court?

### ***Initial contact with the Courts:***

How did the two of you end up in Court?

Who filed the application?

Who requested that a Custody and Access report be prepared?

### ***The Investigation and Report:***

What did you expect the custody evaluation to be like?

What was it like?

What were your circumstances at the time of the custody evaluation? (relating to childcare, income, health, safety, and so on).

What emotional support did you have?

Did you have a lawyer? If no, why not?

How had your lawyer helped to prepare you for the evaluation?

What did your lawyer advise you to do or say?

What were your concerns at the time?

How did you feel about speaking about these to the evaluator?

How did you describe your concerns to the evaluator?

How were the concerns that you expressed to the evaluator presented in the report? (e.g., accurate/misinterpreted; sketchy/detailed, etc.)

To your knowledge what efforts were made by the evaluator to corroborate your story?

What collateral sources were used in the report? (i.e., personal friends, family members, counsellors, transition houses, physicians, and so on).

What collateral sources do you feel that the evaluators should have contacted? Why?

Can you describe how the father was portrayed in the report?

Based on your knowledge of him, how accurate is this description?

How did you feel about the report/recommendation?

What aspects of the report did you like? Is there anything that the evaluator could have done differently? Describe?

### ***The Court Order:***

How closely did the Judge follow the recommendation in the custody evaluation?

How do you see the resulting Court order affecting your life since then?

How have your children responded to the custody/access arrangement as ordered?

Have you been back to court since this order was made? Why?

What has the relationship between you and your ex-spouse been like since this order was made?

**Appendix IV cont'd*****Summary Questions:***

Would you say your overall experiences with the Court process were mostly positive or negative? Why?

What kind of impact do you think the report had in helping you to protect yourself (and your child/ren) from further incidents of abuse?

What recommendation would you have for those doing custody evaluations? For the women/victims of violence undergoing custody evaluations?

Is there anything you would like to add to what we have discussed today? Is there something that we might have skipped that you feel is important?

**Appendix V - Participant Information**

Name:

Pseudonym:

Identifier Code:

Instructions regarding contacting the individual:

Phone no. (home) \_\_\_\_\_ (work) \_\_\_\_\_

Message no. \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Arrangements for reviewing and discussing transcripts:

Participant has requested a copy of the following information: