Bill C-233: The Need for Judicial Education on Intimate Partner Violence

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May 2022

About Luke's Place Support and Resource Centre

Luke's Place is an award-winning non-profit organization solely devoted to improving the safety and experience of women and their children as they proceed through the family law process after fleeing an abusive relationship. Luke's Place is named after Luke Schillings, a 3½ year old boy who was murdered by his father on his first unsupervised access visit, after his mother had sought, but was unsuccessful in obtaining, an order for supervised access.

Since 2003, Luke's Place has been delivering family court support services to women who are leaving abusive relationships. We also work at the provincial and national levels, doing research, training and law reform advocacy on the issue of violence against women and the law. The Ministry of the Attorney General designed the Family Court Support Worker (FCSW) program based on our service delivery model and contracts Luke's Place to train FCSWs and moderate their online resource hub.

INTRODUCTION

The purpose of this paper is to provide some context for our oral testimony to the Status of Women Committee on Bill C-233.[1] In particular, this paper is meant to supplement and expand on oral testimony given by Luke's Place Legal Director Pamela Cross to the Committee on May 10, 2022.

In general, Luke's Place supports Bill C-233 in its current form. Our position is largely focused on the proposed amendments to the *Judges Act*, which would see the inclusion of intimate partner violence (IPV) and coercive control in the list of possible topics for judicial education. We will briefly address the proposed amendments to the *Criminal Code of Canada* in the form of electronic monitoring at the end of this paper.

As in all our work, Luke's Place brings an intersectional, gender-based analysis focused on the lived realities of women in all their diversity and gender-diverse people to the development of our paper. We understand that other factors such as race, Black identity, Indigenous identity, ethnicity, religion, gender identity or gender expression, sexual orientation, citizenship, immigration and refugee status, geographic location, social condition, age, Deafness and disability influence women's experiences. This is true in the context of violence against women, family violence and family law. We recognize the devastating effects settlers' colonialism has had on Indigenous women and communities. Any discussion of violence against women must consider these ongoing impacts as well as the actions and absence of actions by governments and individuals that continue to perpetuate them.

In this paper, we use gender-specific language to refer to those who are harmed by violence within the family and those who cause that harm. We believe it is important to acknowledge that, in Ontario and Canada, women in all their diversity and gender diverse people are overwhelmingly those who are subjected to abuse, and men are primarily those who engage in abusive behaviour. We also acknowledge the diversity of women and families in this country and the continued adverse impacts of misogyny, homophobia, transphobia and heteronormative culture.

[1] A copy of Pamela Cross' Oral Submissions can be found online: https://lukesplace.ca/submission-to-standingcommittee-status-women-billc-233/

Intimate Partner Violence in Canada

The extent and pervasiveness of violence against women within the family is well-established in Canada and around the world. While this paper is not the place for a fulsome discussion of IPV, we wish to note some key points to illustrate why this issue requires attention:

- A woman is killed approximately every six days by her partner or former partner.[2]
- IPV is under-reported to police, so much of it is unidentified. Of that which is reported, women are 3.5 times more likely to be victims than men.[3]
- In 2018, 77% of homicide victims killed by a current or previous spouse or intimate partner were women.[4]
- In 2018, 44% of women aged 15 and over who had been in an intimate partner relationship reported being subjected to some kind of psychological, physical or sexual abuse in the context of an intime relationship in their lifetime.[5]
- Children are profoundly affected by intimate partner violence. Witnessing violence is as harmful as being subjected to this violence directly.[6]
- The aftermath of IPV cost $7.4 billion in 2009.[7]

IPV does not simply end when a relationship does. Ontario's Domestic Violence Death Review Committee reports routinely note that pending or recent separation is a high-risk factor for domestic violence.[8] Given that a women's first point of contact with the family law system is often at separation, all of those involved in that system must understand the risk of harm at the time of separation and play a role in its mitigation.

There is no "one size fits all" when it comes to the impact of IPV on a survivor. The trauma resulting from the violence can have long-lasting effects on not only a survivor's mental and emotional well-being, but her physiological makeup.[9] Exposure to violence and trauma may also produce a wide array of behavioural responses depending on the victim. Many of these responses may not conform with prevailing assumptions about how a "typical" victim will behave. These behaviours can include difficulty recalling details surrounding the violence, emotional

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[2] https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2019001/article/00016-eng.pdf?st=BUkWyqtT

[3] https://women-gender-equality.canada.ca/en/gender-based-violence-knowledge-centre/intimate-partner-violence.html

[4] https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2019001/article/00016-eng.pdf?st=BUkWyqtT

[5] Ibid

[6] https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/publications/effects-domestic-violence-children-hurt.html

[7] https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_7/p0.html#sum

[8] https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/DVDRC%202018%20Annual%20Report.pdf

[9] Neilson, L "Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases, 2nd ed, 2017 CanLIIDocs at 5.2, online: https://www.canlii.org/en/commentary/doc/2017CanLIIDocs2#!fragment/zoupio-_Toc43126676/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgBYBmARgCYAbAIDsAgJQAaZNlKEIARUSFcAT2gBydRIiEwuBluVrN23fpABlPKQBCagEoBRADKOAagEEAcgGFHE0jAAI2hSdjExIA

detachment, difficulty regulating emotions, and distorted perceptions. The list of possible reactions to trauma is long and will look different across survivors.[10]

IPV and the Family Court System

The family law system in Canada is not always an understanding and safe place for women who have been subjected to IPV. Women often report feeling unsafe and unheard throughout the court process.[11] They face a number of barriers simply getting to the courtroom and, once there, they are often met with a legal system that does not understand their experiences or hear their concerns. These challenges navigating the legal system are compounded by the fact that the woman is also suffering the affects of trauma, which makes the process that much harder.
In the family law system, if a woman makes an allegation of IPV, she may be told that this violence is not relevant to parenting, she may be blamed for not adequately protecting the children, or she may even be disbelieved and viewed as trying to gain a tactical advantage in the litigation. A woman's experience of violence may be minimized throughout the court process by not only her legal advocate, but the judge tasked with making a decision about the safety and well-being of her children.[12] Women are encouraged to continue engaging with the abuser so as not to be viewed as unreasonable, which opens the door for continued abuse and poses significant safety concerns for the woman and children.[13]

Between 2018 and 2019, Rise Women's Legal Centre in British Columbia collected information from women, front line workers and experts in B.C. about family violence and the legal system.[14] Through this research, the authors found that the legal system tends to neutralize the impact of family violence on women and children and fails to respond in a way that considers a woman's lived experience of this violence. The authors specifically observed various myths that permeate the family law system in B.C. These myths are listed below and are ones we have also encountered in our work with women in Ontario.

- "Family violence ends after separation."[15] As a result of this misconception, orders get made that require a woman to continue engaging with the abuser.[16] Family courts tend to focus on encouraging families to "move on" and not to focus on the past, but for a

[10] *Supra* note 9 at 5.2.5. See also Dragiewicz and DeKeseredy, "Study of the Experiences of Abused Women in the Family Courts in Eight Regions in Ontario" (2008) online: https://lukesplace.ca/wp-content/uploads/2020/07/Study-on-the-Experiences-of-Abused-Women-Lukes-Place-2018.pdf at pages 11 to 14, 21-22.
[11] Suleman, Hrymak and Hawkins, "Are we Ready to Change? A Lawyer's Guide to Keeping Women and Children Safe in BC's Family Law System" (May 2021) online: https://womenslegalcentre.ca/wp-content/uploads/2021/05/Are-We-Ready-to-Change-Rise-Womens-Legal-May-2021.pdf at pg. 15.
[12] Hrymak and Hawkins, "Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger" (January 2021) online: < https://womenslegalcentre.ca/wp-content/uploads/2021/01/Why-Cant-Everyone-Just-Get-Along-Rise-Womens-Legal-January2021.pdf> at pg. 48.
[13] See Cross, P "When Shared Parenting and the Safety of Women and Children Collide" (2016), online < https://lukesplace.ca/wp-content/uploads/2013/01/When-Shared-Parenting-and-the-Safety-of-Women-and-Children-Collide.pdf>; *Ibid* at pg. 48.
[14] *Supra* note 11 and 12.
[15] Suleman, Hrymak and Hawkins*, supra* note 11 at pg. 9.
[16] *Ibid*.

woman who continues to be subjected to abuse, there is no before and after.[17] The violence never ended and is continuing to have a tremendous impact on both her and the children. In fact, separation and the months that follow are often the time that is most deadly for women and children, not less. The violence may simply look different after a woman leaves because the abuser may no longer have as much access to the woman and children.

- "Violent husbands can still be good fathers and therefore shared or 50-50 parenting is always in the best interests of the children."[18] There is a strong preference in the family law system for joint and shared parenting orders. A woman is often on an uphill battle when trying to convince a court that joint and shared parenting is not in the best interests of the children. In cases involving IPV, this focus on making shared parenting work may detract from focusing on the safety and wellbeing of the woman and children.[19] Shared parenting means frequent contact between the woman and the abuser, which provides a venue for ongoing abuse and places the children at risk of being used as a conduit for this abuse.[20]

- "Psychological or emotional violence is not as serious as physical violence."[21] When violence is not physical, a woman often finds herself in an incredibly difficult position when trying to prove the existence of this abuse in court. There is a misconception that the most serious kind of family violence is physical, when in fact women report that emotional and psychological abuse can be more harmful, with longer-lasting effects. In our experience, women report wishing that the violence was physical so that it would be easier to prove in court.

- "Violence is, at least partially, the responsibility of the non-violent family member."[22] As noted in the research paper, this misconception can play out in a variety of ways, including in cases that involve competing allegations of parental alienation where the focus shifts away from the family violence to the woman's willingness to foster a relationship between the child and the abusive family member.[23] In these cases, it seems the court loses sight of the violence and the pervasive impact it can have on the children.

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[17] Cross et al, "After she Leaves: A Resource Manual for Women's Advocates" (2022) at pg. 58 (a copy of which can be provided on request).
[18] Suleman, Hrymak and Hawkins, *supra* note 11 at pg. 9; Hrymak and Hawkins, *supra* note 12 at pgs. 48-50.
[19] Boyd and Lindy, "*Violence Against Women and the B.C. Family Law Act: Early Jurisprudence*" (2015) Canadian Family Law Quarterly 35 at 27.
[20] See Cross, P "When Shared Parenting and the Safety of Women and Children Collide" (2016), online < https://lukesplace.ca/wp-content/uploads/2013/01/When-Shared-Parenting-and-the-Safety-of-Women-and-Children-Collide.pdf>; Cross, P "No to shared parenting presumptions", The Lawyer's Daily (March 2022) (a copy of which can be provided on request).
[21] Suleman, Hrymak and Hawkins, *supra* note 11 at pg. 9.
[22] Suleman, Hrymak and Hawkins, *supra* note 11.
[23] *Ibid.*

Rise Women's Legal Centre also identified some of the stereotypes that work against women going through the family court process. These stereotypes are not unique to B.C. and are ones we see across Ontario in how the legal system responds to IPV. Application of these stereotypes works to discredit the woman and results in court orders that are unsafe for both the woman and her children:

- "Women exaggerate violence against them." The idea that a woman is likely to fabricate IPV to gain a tactical advantage is simply false. Research has consistently shown that women under-report as opposed to over-report abuse.[24]

- "Women don't want dads to see their kids because they are vindictive." This stereotype goes hand in hand with the idea that a woman is exaggerating or inaccurately reporting the abuse. A woman is seen as unreasonable instead of protective. Research very clearly demonstrates the risk of harm to a child from direct and indirect exposure to family violence.[25]

- "If women are experiencing violence, they will report it to police and the police will respond appropriately." There may be many reasons why a woman does not report abuse to police, including but not limited to financial dependency on the abuser, distrust of police, fear of losing the children, fear of increased violence, shame and isolation.[26] We also know that women respond in very different ways to abuse. Trauma produces a wide range of behavioural responses making it impossible to determine the veracity of abuse allegations based solely on a women's demeanor and behaviour following the abuse.[27]

- "Women are just trying to get more money and property."[28] In fact, the opposite is often true in cases of IPV, with women at times not pursuing financial claims in order to avoid ongoing litigation with the abuser.

Reliance on inaccurate assumptions about IPV has devastating consequences for women and children. Women continue to be victimized and re-traumatized by the very justice system from which they sought refuge in the first place. Instead of parenting orders based on the best interests of children, orders get made that place the children at ongoing risk of harm.

Amendments to the Divorce Act, RSC 1985, c 3 (2nd Supp) do not solve the problem

In March 2021, significant changes were made to the *Divorce Act* that make it mandatory for a judge to consider IPV, or "family violence" as it is referred to in the legislation, when making decisions about what parenting arrangements would be in the best interests of a child. These changes also introduced an expansive definition of family violence that goes beyond physical to

[24] E.g. see https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/problem-canada.html

[25] E.g. "Children Experience Coercive Control: What you Need to Know" Learning Network, Issue 37 (March, 2022), online https://www.vawlearningnetwork.ca/our-work/issuebased_newsletters/issue-37/Issue_37.pdf.

[26] Cross, *supra* note 17 at pgs. 28 and 29.

[27] Neilson, *supra* note 9 at 5.2.5.

[28] Hrymak and Hawkins, *supra* note 12 at pgs. 46 and 47.

include patterns of coercive control when deciding what parenting arrangements will be best for a child post-separation.

Many heralded these amendments as a way to cure the problems in the family court system when it came to cases involving IPV. While Luke's Place supported these amendments overall, we had our doubts as to what impact they would have if they were not adequately paired with education initiatives for the legal community on the nature and effect of IPV.

At the time of these amendments, Luke's Place made a series of recommendations in partnership with the National Association of Women and the Law as part of a national coalition of women's equity organizations. Among our recommendations at that time was that all of those involved in divorce proceedings, including decision makers, be provided with education and resources on the complexities of family violence.[29] We knew at the time that the proposed amendments to the *Divorce Act* were only going to result in a meaningful change in legal decisions if they were paired with an educational component.[30] Without this education, we anticipated that harmful myths and misconceptions about the realities and dynamics of family violence would still influence family law processes and decisions.

This appears to be the reality in B.C., which amended its provincial *Family Law Act* in 2013 to include a greater focus on family violence. These amendments included an expansive definition of family violence and a requirement that it be considered in the best interests of the child test. Rise Women's Legal Centre investigated the legal system's response to family violence post legislative amendments to determine, among other things, whether the changes in the law meaningfully impacted women's experiences through the family court process. They found that, overall, women's experiences had not meaningfully changed:

> *…The reality is that everything we heard from women across the province has been said many times before; the family law system may have changed its legislation, but it did not change its underlying attitudes and assumptions, which are frequently built upon a foundation of preconceived myths and stereotypes about the dynamics of interpersonal violence.*[31]

Similar results were found by Susan Boyd and Ruben Lindy who sought to investigate the impact of the revised *Family Law Act* on parenting decisions where allegations of family violence were made.[32] Boyd and Lindy found that a number of problematic assumptions about family violence continued to be made. These assumptions included that shared parenting was

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[29] Bill C-78: An Act to Amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act, Brief by Luke's Place Support and Resource Centre and National Association of Women and the Law, (2018) online: https://lukesplace.ca/wp-content/uploads/2018/11/NAWL-Lukes-Place-Brief-on-C-78-final-for-submission-2.pdf at pg. 11; See also our Discussion Paper on Bill C-78 (2018), online: https://lukesplace.ca/wp-content/uploads/2018/11/NAWL-and-Lukes-Place-Discussion-Paper-on-Bill-C-78-final-for-submission.pdf at pg. 23.

[30] *Ibid*.

[31] Hrymak and Hawkins, *supra* note 12 at pg. 9.

[32] Boyd and Lindy, s*upra* note 19.

beneficial for children even where family violence has been found and that violence is no longer a concern after separation.[33]

What we learn from this research, and from the case law seen post-amendment to the *Divorce Act*, is that legislation is not going to solve the problem on its own.

SUPPORT FOR JUDICIAL EDUCATION ON INTIMATE PARTNER VIOLENCE AND COERCIVE CONTROL

Education is key for the promotion of equal access to justice

Access to justice means more than simply access to a courtroom. It requires access to a decision-maker who is fully informed and attuned to the complexities that exist in situations of IPV.
As made clear above, changes to legislation will have little impact or meaning unless they are paired with education for those tasked with applying it. Judges are being put in the difficult position of having to consider IPV when making a decision without necessarily having been given the tools and resources they need in order to do so effectively. As a result, while we see some excellent decisions that clearly reflect a deep understanding of the legislation and of IPV, we also continue to see decisions that lack that understanding. When a judge does not fully understand the complex nature of family violence and its harmful, long-lasting effects, decisions get made that can put women and children at risk. Stereotypes and misconceptions about the violence and the victim remain alive, and women who have been subjected to subtle, non-physical forms of violence continue to be disbelieved and re-traumatized, or worse, vilified, throughout the family law process.

Luke's Place made this educational need clear to Parliament at the time the amendments to the *Divorce Act* were being considered.[34] Despite our recommendation at the time, as well as calls for judicial education by other Violence Against Women organizations,[35]there appears to be no formal plan for such education by the judiciary.
The need for judicial education on the issue of IPV and coercive control is just as important as the need for education on sexual assault law and social context which now forms part of the *Judges Act*. Training is needed to combat the harmful stereotypes that may exist with respect to both the victims of intimate partner violence and the forms that this violence may take.[36]
Reliance on these stereotypes and myths impact all aspects of the case from credibility assessments of the woman to decisions about what parenting arrangement is best for the children. If judges do not understand the complexities of intimate partner violence and the impact of trauma, they will be unable to effectively make decisions that keep women and children safe post-separation.

In their article "Family Violence and Evolving Judicial Roles: Judges as Equality Guardians in Family Law Cases" authors Donna J. Martinson and Margaret Jackson discuss at length the role of judges in adjudicating family law cases and how this role has changed with changing family

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[33] *Ibid* at pg. 45.
[34] *Supra* note 29.
[35] Our Brief, *supra* note 29, was endorsed by 30 other VAW organizations.
[36] See also Epstein and Goodman, "Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences", 167 U. Penn. L. Rev. 399, online https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3055&context=facpub. at p. 453.

law legislation.[37] The authors raise a concern that despite the legislative amendments to B.C.'s *Family Law Act*, as discussed above, not all judges are getting the relevant information about family violence that they are required to consider when making a decision. They raise a concern that judges do not have the specialized knowledge and skills needed to identify family violence and assess its impact on the family.[38] The authors compared results from two prior research projects in which they sought information from community organizations and justice sector personnel about, in part, the specialized knowledge and skill of the judiciary in handling cases involving family violence. One study was completed before the changes to B.C.'s *FLA* and the other was completed after. The results were similar despite the legislative amendments. In both studies, participants reported a need for judges to have more understanding of the challenges relating to disclosure of family violence and the need for greater awareness of the link between family violence and ability to parent.[39]

Judicial education is even more pressing given the reality that many women are unrepresented throughout the family court process. This is particularly concerning in cases of IPV, where the woman is experiencing trauma while also having to navigate a complex legal system in order to keep herself and her children safe. She may not understand her legal rights, know where to turn for support or how to properly prove the abuse in court. Judges have an important role to play in these cases to ensure that they are facilitating and promoting equal access to justice as is required under the *Statement of Principles on Self-Represented Litigants and Accused Persons* authored by the Canadian Judicial Council.[40] Judges need to take an active role to ensure that the woman understands the process, procedures, and the law and is provided with information about agencies that may be able to assist her with her case. Judges are not able to satisfy this obligation unless they are able to recognize IPV and understand its effects on the entire court process.

Bill C-233 does not detract from judicial independence

Judicial independence is an important part of our justice system. Judges must make decisions based only on the law and facts before them. However, to do so effectively and competently, judges require ongoing education about the very law they are applying and the context in which they are applying it. Setting clear expectations for judges around the kind of education they need in order to properly apply the law does not detract from their independence. Instead, it simply promotes competency and consistency on the bench.

Bill C-233 is not ground-breaking when it comes to its suggested amendments to the *Judges Act* around education. In fact, as mentioned above, the *Act* was amended in 2021 to include a requirement for judicial education for new judges on sexual assault law and social context and a

[37] Martinson and Jackson, "Family Violence and Evolving Judicial Roles: Judges as Equality Guardians in Family Law Cases" 2017 CanLIIDocs 3962, online: https://www.canlii.org/en/commentary/doc/2017CanLIIDocs3962?zoupio-debug#!fragment/zoupio-_Tocpdf_bk_9/(hash:(chunk:(anchorText:zoupio-_Tocpdf_bk_9),notesQuery:'',scrollChunk:!n,searchQuery:'%22judicial%20education%22',searchSortBy:RELEVANCE,tab:search))

[38] *Ibid* at pg. 19.

[39] *Ibid* at pg. 61 and 62.

[40] "Statement of Principles on Self-represented Litigants and Accused Persons", Canadian Judicial Council (2006), online: < https://cjc-ccm.ca/sites/default/files/documents/2020/Final-Statement-of-Principles-SRL.pdf>, as endorsed by the Supreme Court of Canada in *Pintea v. Johns*, 2017 SCC 23.

suggestion for judicial education on these topics for existing judges. The amendments also set out a particular process for how the educational seminars on sexual assault and social context should be created and what topics should be covered. Concerns were raised at the time these amendments were proposed about their impact on judicial independence. These concerns were outweighed by the importance of ensuring that judges have the necessary background and training to make decisions in cases involving sexual assault. Public confidence in the legal system required that judges have this specific training to put an end to any continued reliance on stereotypes and myths about complainants.

We understand that a Memorandum of Understanding was recently signed by Chief Justice Richard Wagner and Justice Minister David Lametti recognizing the judiciary's autonomy over education. We think there is a way for Bill C-233 to co-exist with this Memorandum through the permissive language as found in the *Judges Act*. In particular, the use of the term "may" in s. 60(2) and "should" in s. 62.1(1) make it clear that the ultimate decision on what educational seminars to provide lies with the judiciary.

SUGGESTED AMENDMENTS TO MAKE BILL C-233 EVEN STRONGER

While we generally support Bill C-233's proposed amendments to the *Judges Act*, we suggest that the language of this Bill could be stronger by clarifying how the educational seminars should be created and topics that could be included. We recommend the inclusion of a provision that sets suggested requirements for the creation and content of the training similar to s. 60(3) in respect of seminars related to sexual assault law and social context.

In particular, we suggest that there be consultation in the creation of seminars with groups or organizations that have expertise on intimate partner violence, including but not limited to groups or organizations that work directly with survivors.

Additionally, to be effective, we submit that seminars must at minimum include information on the following categories:

- the dynamics of IPV, including typologies and abuse behaviours:

  Judges need this information in order to properly recognize IPV in the cases they are deciding. Understanding the diverse forms this abuse can take is crucial for the court to make orders that keep women and children safe.

- the gendered nature of intimate partner violence, in particular as it relates to coercive control:

  Violence is a highly gendered issue. Women are far more likely to be victimized than men. This is simply the reality. Any educational programs on IPV must recognize this reality so as to not perpetuate the gender inequality that exists within our legal system. Luke's Place Legal Director Pamela Cross urged decision-makers in the family court process to understand IPV as an issue effecting women and to craft parenting orders through this lens:

> *To make effective and appropriate custody and access decisions in families where violence is present, courts need to abandon the so-called gender-neutral framework and replace it with a framework that puts intimate partner violence against women on a continuum with varying degrees of severity, frequency and impact. This will lead to better decision-making with respect to possible sanctions for the abuser, determinations about whether parent-child contact is appropriate and, if so, what it should look like, and parenting plans that are healthy for children and parent-child relationships.*[41]

- the impact of intersecting social identities on the lived experiences of intimate partner violence:

> Some survivors not only grapple with the effects of IPV, but systemic discrimination and oppression on the basis of race, Black identity, Indigenous identity, ethnicity, religion, gender identity or gender expression, sexual orientation, citizenship, immigration and refugee status, geographic location, social condition, age, Deafness and disability. This systemic inequality and oppression can have a profound impact on a women's experience of IPV. A lack of understanding of social context can result in judicial decisions that re-traumatize and perpetuate oppression.

- the harmful effects of violence on children:

> Children are harmed by both direct and indirect exposure to IPV. This harm can manifest itself in a number of different ways and can have significant, long-lasting effects. This is particularly true of children who have been exposed to or subjected to coercive control.[42]

- the impact of violence and trauma on a victim's presentation throughout the court process:

> Trauma can have a significant impact on a woman's ability to navigate the family court system. This trauma can present itself in a number of different ways.[43] Judges, who are tasked with, among other things, assessing a woman's credibility, need to understand the impact that trauma may have on how the woman may be presenting in court or conducting her case. Judges also need to understand the impact of trauma on children before they are able to make decisions about the child's safety and wellbeing.

It is only with this basic level of information that a judge can begin to meaningfully apply the legislation and make decisions that are consistent with the best interests of children.

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[41] Cross, *supra* note 20 at p. 6.
[42] See "Children Experience Coercive Control: What you Need to Know" Learning Network, Issue 37 (March, 2022), online https://www.vawlearningnetwork.ca/our-work/issuebased_newsletters/issue-37/Issue_37.pdf.
[43] Neilson, *supra* note 9; Epstein and Goodman, *supra* at note 36.

Finally, we submit that Bill C-233 should include an amendment to s. 3(b) of the *Judges Act* to require that new judges undertake to participate in continuing education on matters related to IPV and coercive control. This obligation already exists in respect of sexual assault law and social context. Without this addition, there is no way to guarantee that judges are, in fact, being educated on this important issue.

A CALL FOR MORE RESEARCH ON ELECTRONIC MONITORING IN CANADA

We are not opposed to electronic monitoring as a mechanism for promoting the safety of victims/survivors of IPV. There is no doubt that this form of electronic tracking can provide women with an added level of security from an alleged abuser who has been released on bail.

This could increase both a woman's actual safety and security and her feelings of safety and security – she is likely to feel much more at ease knowing that the alleged abuser's location is being tracked by the police.

But we need to do more before we codify electronic monitoring. In order to avoid unintended negative consequences, let's take the time to find out more about when and how it will be used and whether it is appropriate in all circumstances. For example:

- How will a judge decide between ordering electronic monitoring as a condition of bail as opposed to keeping the accused in custody?
- If an accused is dangerous enough to require electronic monitoring, is he not dangerous enough to be kept behind bars?
- What will be done with the data collected from the monitoring? How will it be stored? Who can access it? When will it be destroyed?
- What happens if a woman declines to participate? What impact will this have on the case against the accused and how the woman is subsequently treated by the police if the accused attacks her?
- What happens when the technology fails or there is a widescale power outage?
- What happens if the accuser finds a way to outsmart the technology?
- Will the device work in remote and rural parts of Canada?
- What will police response time be in remote and rural parts of Canada?
- Are there any potential unintended consequences, especially for women from marginalized communities?

We know that Quebec has just recently implemented tracking bracelets in cases involving IPV. Instead of rushing to introduce this technology across the country, we suggest that Parliament monitor the situation in Quebec in order to learn more about the effectiveness of this measure and determine if there are any unintended, harmful results to the women and children it is designed to protect.