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Judicial Approaches to Curb Litigation Abuse

by Julie Saffren & Eugene M. Hyman

In any court, judges have both the authority and duty to facilitate the orderly administration of justice. At the same time, judges must ensure litigants have access to the courts and are treated fairly by a neutral arbiter. Unfortunately, abusive litigation tactics occur regularly in our courts, especially in domestic violence matters, where abusers may attempt to weaponize the justice system. Litigation abuse misuses the court system and interferes with the orderly conduct of court proceedings. It places additional burdens on DV victims, subjecting them to emotional stress, harassment, and intimidation. Victims may incur additional and unnecessary legal fees and unjustified delays. Returning to court may jeopardize their employment. These are just some of the harms of litigation abuse. The companion articles contained in this issue of **DVR** make those harms clear.

It is important to remember that judges already have tools at their disposal they can and should use to prevent litigation abuse. These tools are part of their inherent authority to ensure the administration of justice, and are in addition to any specific statutes or court rules

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When the Family Court Becomes the Continuation of Family Violence After Separation: Understanding Litigation Abuse

by Robert Nonomura, Nick Bala, Kennedy Beacock-McMillan, Andrew Au-Yeung, Peter Jaffe, Lisa Heslop & Katreena Scott

Social science research and survivor advocacy have established that abusive partners often use the family court process as a tool for exercising continuing coercive control over a former partner. Such actions cause ongoing harm to survivors and their children and waste the time and resources of the family justice system. However, it is not always clear when “litigation abuse” is occurring, and understanding how these behaviors are an aspect of family violence (FV) is not yet widespread among lawyers and other family justice professionals.

The expanded definition of FV in the *Divorce Act* (See Government of Canada, “Strengthening and Modernizing Canada’s Family Justice System,” <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/01.html>) and legislation like Ontario’s *Children’s Law Reform Act* (Children’s Law Reform Act, RSO 1990, c C.12, <https://canlii.ca/t/5563b>, retrieved on 2023-01-11), creates the need (and opportunity) for justice system professionals to be able to identify and respond effectively to cases

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In This Issue . . .

This Special Issue of **DVR** focuses on “litigation abuse” (sometimes called “legal abuse” or “paper abuse”) – the abuse that occurs during the separation process when abusive partners seek to retain power and control by weaponizing the court system against the victim. As this issue goes to press, the 5th Circuit (U.S. v. Rahimi) declared that firearm prohibitions for abusers subject to restraining orders are unconstitutional. **DVR** will address this important case in the next issue.

~ D. Kelly Weisberg, Editor, **DVR**

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involving litigation abuse. The focus of this [Report] is to:

- Contextualize litigation abuse as a type of FV and coercive control more specifically and to discuss the forms that it takes;
- Explain its connection to other forms of post-separation violence;

Recognizing litigation abuse and appreciating its negative impacts on partners and children, and preparing appropriate strategies to challenge litigation abuse, will help professionals to better understand the effects of litigation abuse on victims of FV and develop trauma-informed approaches to their work.

- Discuss the systemic factors involved in this form of abuse and explore how to support victims of litigation abuse; and
- Explore the legal responses to litigation abuse.

There are a range of litigation tactics that may be abusive, including: making or threatening to make claims that are without legal merit; introducing evidence that is untrue; introducing evidence that is not legally relevant

but is intended to embarrass a former spouse; deciding to be a self-represented litigant despite being able to afford a lawyer with the intent of directly confronting a former spouse; and dragging out proceedings. The salient concern with all these behaviors is not simply with the “abuse” of the legal system. The concern is with the ways that a person with a history of abuse is *using* mechanisms within the

legal system to continue to control and harass a victim.

Litigation abuse often arises in a situation where there was coercive controlling violence during the relationship. While the physical violence may end when the parties stop living together, the coercive control continues using the litigation process. Determining whether or not litigation abuse is occurring may be challenging, especially at the early stages of a proceeding. The context, the

history of a relationship, and patterns of behavior are all to be considered. Douglas (2018, p.85) notes: “engagement with the legal system may be experienced by one party as abuse at the same time that the other party justifies their engagement as a right.”

Recognizing litigation abuse and appreciating its negative impacts on partners and children, and preparing appropriate strategies to challenge litigation abuse, are critical steps to achieving justice in the family court system and for promoting the health of FV survivors and their children (Cross, 2016; Douglas, 2018; Douglas & Fell, 2020). This [Report] outlines some critical problems that litigation abuse poses for individuals escaping FV. These considerations will help professionals to better understand the effects of litigation abuse on victims of FV and develop trauma-informed approaches to their work. In some cases, there are legal remedies that lawyers can use to effectively address litigation abuse, but even if there are not effective remedies, it is important for lawyers representing victims to be aware of the effect of litigation abuse on survivors.

Litigation Abuse as Coercive Control

Separation and divorce are psychologically, emotionally, and financially

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Editor: D. Kelly Weisberg, Ph.D., J.D.
Associate Editors: Julie Saffren, J.D.
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Contributing Editors: Anne L. Perry, J.D.
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straining though many separating couples can make reasonable and fair arrangements for economic and parenting issues without involving the courts.

If there has been violence in a relationship, however, court and professional involvement will generally be needed to protect the vulnerable and allow for a fair resolution of issues. When there has been coercive control during a relationship, after separation the perpetrator will often use the family litigation process in an abusive way not simply to gain the upper hand in negotiations or court proceedings, but to continue to dominate their target (Lux, 2021; Stark, 2013; Stark & Hester, 2019). Litigation abuse can be understood as “an enactment of coercive control through legal processes” (Gutowski & Goodman, 2022). When coercive control is manifested in the

by men. Men are, for example, more likely than women to decide to self-represent because they want to have the opportunity to cross-examine their former partner (Birnbaum, Saini & Bala, 2018).

The family law system presents opportunities for coercive control to continue through court proceedings themselves. The emotional, precarious, and high-stakes circumstances of separation and divorce mean that legal proceedings provide an expedient — and “legally permissible” — means of amplifying distress and maintaining control over an ex-partner. By recognizing the contextual factors of power and control that motivate litigation abuse, courts stand a better chance of not becoming a vehicle for the coercive and controlling tactics of an abuser.

If it is identified, there are a number of potential legal responses to litigation

Most of these legal responses are retrospective, in that they can be invoked only after there has been litigation abuse and generally do not directly prevent on-going litigation abuse. However, justice system professionals can have an important role in warning those who are engaging in litigation abuse that their conduct may have future consequences. Lawyers for victims may do this in correspondence, and judges may give warnings at case conferences. Judges may also take abusive litigation conduct into account in making cost orders at interim proceedings, sending a clear message to those abusing the litigation process. Lawyers for abusers can also have a significant role in warning their clients that they may forfeit parenting rights or suffer financial consequences if they do not change their behavior.

Douglas (2018) reported on a study based on interviews with 65 mothers who experienced FV in Australia that highlights the many ways in which the family court system is used to further FV. The examples of litigation abuse in the sidebar, (see p. 44) reflect ways that abusers use the courts to exercise control over their ex-partners and children.

Tactics intended to prolong litigation, such as unreasonable adjournment requests, were experienced by many participants (Douglas, 2018). For example, an abuser would request a six-month adjournment to drag out litigation and mediation processes, only to arrive unprepared (or seek additional adjournment) once the date arrived (Douglas, 2018). Understood within the context of FV, it is important to recognize when these behaviors are not merely the result of carelessness or ineptitude. Rather, they are strategies that impose psychological, financial, and emotional distress and to maintain an omnipresence in the lives of survivors (Katz, Nikupeteri, & Laitinen, 2020; Nonomura, Poon, Scott, et al., 2021).

Likewise, spurious and dishonest claims served not only to prolong litigation, they also stymied the mothers’ efforts to move forward from an abusive relationship (Douglas, 2018; Nonomura, Sandhu, Gill et al., 2022). Adding the partner’s relatives as parties to litigation added unnecessary

Litigation abuse can be understood as “an enactment of coercive control through legal processes.” It is a way, more commonly perpetrated by men, to weaponize the power of the legal system against an ex-partner.

form of litigation abuse, it is difficult to address because the abuser uses aspects of the legal system that are central to its functioning. Litigation abuse exploits the principles of due process, access to justice, and adversarial court proceedings as a way to weaponize the power of the legal system against an ex-partner (Douglas, 2018; Kennedy, 2021; Morissette, 2019).

Like other forms of family violence, litigation abuse is a gendered phenomenon. Women may misuse the court process or take unreasonable positions in settlement discussions and may, for example, make unfounded allegations of abuse against fathers though unfounded allegations of abuse are often the result of misperception or misunderstanding rather than deliberate fabrication (Bala, Mitnick, Trocmé & Houston, 2007). However, litigation abuse as an aspect of a post-separation pattern of coercive control that started during cohabitation is more commonly perpetrated

abuse. Perhaps the most significant is that the court may regard this as a form of family violence to consider in making decisions about parenting time and responsibilities, or, as a factor in allowing the victim to relocate with the children. If a court finds that litigation abuse has occurred, this may affect an award for “costs,” requiring a party who has behaved “unreasonably” in the course of litigation to pay part or all of the legal fees and litigation costs of the other party. A person who has been the subject of repeated, unmerited court applications may make an application to have another person declared a “vexatious litigant,” preventing the person who has abused the legal process from bringing further court proceedings. In limited circumstances the courts may make a restraining order to prohibit certain types of behaviors associated with the court process, such as a prohibition on posting abusive information related to the proceedings on the Internet.

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financial stress on them, strained the survivor's family relationships and/or humiliated the survivor (Douglas, 2018; Morissette, 2019). Douglas's (2018) research also noted that abusers will sometimes include their own relatives in the conflict, with each one filing separate, spurious claims against the survivor to overwhelm and financially exhaust her.

Responding to a survivor's application with a counterclaim is an especially potent form of litigation abuse because of the ways they can further magnify the marginalization and burdens faced by FV survivors. One example is when a mother seeks child support, or retroactive child support, the father seeks sole or shared parenting time even though he has had little role in caring for the child. Another example is when abused mothers applying for restraining orders encounter cross-applications by their abusers alleging that the violence was bi-directional (Douglas, 2018; Lux, 2021). These allegations derail legal proceedings and create unnecessary financial costs that survivors must then defend (Morissette, 2019). Allegations of "parental alienation" may have similar impacts of intimidating survivors into withdrawing their own applications for restraining orders, especially if they already fear not being believed (Cross, 2016; Douglas & Fell, 2020; Gutowski & Goodman, 2020; Sheehy & Boyd, 2020).

Ultimately, abusive litigation tactics can overwhelm a survivor's capacity to cope. What bears emphasizing is how vulnerabilities present within the specific context of the case; and these often involve disproportionate power and financial resources (Douglas, 2018; Nonomura, Sandhu, Gill, et al., 2022). As with other coercive and controlling strategies, litigation abuse is part of a pattern of behaviors that undermine, discredit, harass, and intimidate survivors — as well as disrupt their relationship with their children. With litigation abuse, the "entrapment" of coercive control is also buttressed by the power of law itself: survivors find themselves (1) compelled by law to interact with their abusers; (2) subjected to the secondary victimization of invasive

questioning (or false counter-allegations); and (3) rebuked for attempting to protect their children from a coercive and controlling co-parent (Stark, 2007; Stark & Hester, 2019; Cross, 2016).

Relatedly, it is essential to recognize how conventions and deeply ingrained beliefs about gender, culture, class, ethnicity, religion, and disability can lead to variance in how litigants' credibility, parental competency, or risks of harm are perceived (Nonomura, Sandhu, Gill et al., 2022). These forms of social marginalization are targeted and magnified in the context of FV. And both abusers and survivors are aware that these systemic biases exist, with abusers often exploiting them to discourage an ex-partner's resistance (by, for instance, threatening retaliatory false reports of child maltreatment or immigration services) (Rights of Women, 2016). Against the backdrop of the "Millennial Scoop" and the disproportionately high incidence of Indigenous and Black children in admissions into care at many [children's aid societies] in Ontario, these threats can instill a high degree of intimidation (Ontario Human Rights Commission, 2018, p. 2). [Canadian cases are omitted.]

How to "Know" and "See" Litigation Abuse: An Ongoing Challenge

The misuse of family legal proceedings is problematic. However, establishing that there has been litigation abuse is often challenging. Identifying actions as litigation abuse requires consideration of a broader context of the behavior. Despite the growing availability of resources (e.g., Justice Canada's HELP toolkit), mechanisms for recognizing family violence and responding effectively are not yet widely applied in legal proceedings across Canada. What one judge may see as a high conflict couple engaged in aggressive litigation, another judge may recognize as litigation abuse, as it reflects a larger pattern of unequal power and strategic domination. Courts and legal professionals seeking to assess the presence of litigation abuse are often left to rely on an intuitionism akin to United States Supreme Court Justice Potter Stewart's (in)famous statement about obscenity, saying that he would not attempt to define it, "but I know it when I see it."

For legal professionals to "see" legal abuse in a litigant's case, it is vital to "know" how power and control are operating within the wider context of the relationship. The Ontario Family Violence and Family Law Community of Practice (CoP) explored this challenge in a meeting in the spring of 2022. The CoP recognized that litigation abuse escapes easy definition because awareness of context is critical and coercive control is exerted as a process of abuse (Chambers, 2021; Department of Justice, 2019). The appropriateness or abusiveness of a litigant's actions during family court proceedings are only understood by examining historical factors within the relationship. For instance, choices made out of fear for an ex-partner's violence (toward oneself or the child) need to be distinguished from those aimed at overwhelming or exhausting the ex-partner, no matter how uncooperative or "unfriendly" the former actions may appear on the surface. For legal professionals, recognizing the presence of litigation abuse involves "connecting the dots" to identify patterns of abuse over time.

One way that the courts can support this process is by promoting the use of a "one family—one judge" model for families involved in ongoing litigation (Bala, Birnbaum, & Martinson, 2010). This would ensure a coordinated and informed approach to questions such as:

- The identification of the relevant issues;
- The ways children will participate, including the appointment of an independent lawyer for the child;
- Whether a parenting assessment is needed and if so, what qualifications the assessor should have;
- How the relevant facts required by family law legislation will be obtained and presented as evidence;
- The appropriateness of alternate dispute resolution processes, including judicial dispute resolution; and
- Interim and "final" decision making, including making parenting plans.

This need is well recognized and requires promoting the use of a systemic

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early identification system which would identify for management by one judge all cases which raise issues of family violence. The family rules already contain circumstances where a case can be managed by one judge; however, these rules could be amended to provide that in high conflict cases a judge of their own volition or upon application by one of the parties be able to appoint one judge as case manager to hear all conferences and motions with respect to that case (Martinson & Jackson, 2017).

Future Steps

The post-separation context of an abusive relationship is a high-risk situation for continued threats, assaults, and harassment. While the increased risk of serious physical violence during the post-separation period is often correctly recognized, it is also important to address how changing contexts of a relationship alter the tactics used by abusers. The growing legal recognition of coercive control as FV creates an opportunity for legal professionals and social scientists to contribute insights into a critical site of coercive and controlling power: the use of the legal system itself through litigation abuse (Douglas, 2018).

This [Report] provides an initial effort to examine this complex issue.... The concepts raised here serve only as a starting point for more in-depth coverage of this complex problem. We therefore “conclude” with a synopsis of ongoing issues and challenges highlighted by the CoP and the current literature.

Survivors Benefit From Having Good Advocates Who Can Help Synthesize Their Stories. As one CoP member said: “if lawyers and judges are fluent in recognizing abusive behavior, then [the abuse] is obvious.” Collaboration is therefore vital in order for legal professionals to recognize the presence of litigation abuse and to effectively confront the negative impact this form of family violence has on ex-partners’ and children’s well-being. Social science researchers and advocates likewise need the insights of lawyers and judges in order to develop relevant applied research projects, timely information resources, and realistic strategies to

Common Strategies and Tactics of Litigation Abuse*

Prolonging the litigation [by:]

- Unjustified adjournment requests;
- Deliberately dragging out mediation;
- Repeatedly firing and hiring new lawyers;
- Disregarding agreements and court orders.

Spurious and dishonest claims [such as:]

- Lying in court documents;
- Calling witnesses to give irrelevant testimony; and
- Filing specious complaints about judges, lawyers, and parenting assessors.

Aggressive “no holds barred” legal strategies [such as:]

- Submitting motions at a “fast and furious pace”;
- Consulting multiple attorneys as a means of “conflicting out” available lawyers for the partner;
- Pursuing legal actions to review prior orders, even immediately after an agreement or decision.

Reactive legal strategies [such as:]

- Cross-application of protection orders;
- Suing for defamation;
- Unfounded allegations of “parental alienation.”

* (Douglas 2018, p. 87; Family Court of Australia and Federal Circuit Court of Australia, 2013, p. 16; Marrero, 2018; Miller & Smolter, 2011; Neilson, 2015: 6.4.1)

support litigants experiencing litigation abuse.

“Winning” Is Not Always Enough.

A major factor in the effectiveness of litigation abuse is the dilemma that it presents to survivors. Spurious counter-allegations may ultimately be debunked, lawyers’ fees may ultimately be awarded to survivors, and meritless cases may ultimately be dismissed, but this comes at a high cost of time, emotional energy, and money for survivors and the courts. Moreover, further litigation is often needed to collect costs awarded, effectively providing abusers with further contact and financial leverage over survivors. Many survivors report that the pursuit of costs was ultimately not worth the continued stress and manipulation of fighting for them (Douglas, 2018).

A Family Law Case May Involve Different Judges Hearing Different Aspects of the Litigation, and This Can Obscure Patterns of Litigation Abuse. Involvement of many judges in a case over many years can undermine faith in the justice system both by the parties and the public. If judges

are unfamiliar with the full scope of a case and concurrent proceedings, they sometimes give more leeway to self-represented litigants than is safe or fair for the situation (such as in cases involving a self-representing litigant’s history of FV). . . . [M]ore use of single judge case management (a one family–one judge approach) would help courts to more effectively identify and sanction instances of litigation abuse.

Litigation Abuse Extends to Institutions and Services Beyond the Family Courts. Although this [Report] focuses on the family law system, abuse involving child protective services is also a significant concern. Threatening and making false allegations that may separate a parent from their child are powerful tools of abuse and control, and contrary to the best interests of the child. Likewise, the threats of making malicious reports to police or to immigration services carry particular gravity for individuals whose fear of incarceration or deportation

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may be heightened due to their position as racialized, Indigenous, and/or migrant people. A deeper intersectional understanding into litigation abuse is therefore vital to addressing the needs of all persons who enter the family courts.

There Is Need for More Research on the Identification of Litigation Abuse. This [Report] highlights some of the challenges in defining and recognizing litigation abuse. Gutowski and Goodman are among the first to develop a more comprehensive definition and developed a scale to try to measure this concept: the Legal Abuse Scale (Gutowski & Goodman, 2022). Hopefully researchers and practitioners can test this scale for its utility and begin developing a common understanding of the dimensions of litigation abuse. Doing so could enhance earlier identification and prevention of this form of FV.

All Legal Professionals Have a Responsibility to Obtain Relevant Information About FV Including Social Context Education. Family court judges are facing increasingly complex cases — often with parents without legal representation and need to have the most up to date research on the nature of family violence and its impact on parenting and children's well-being. Judges who are knowledgeable about FV would be better equipped to identify patterns of abuse and offer earlier protection to the child in family law proceedings. This need is especially urgent considering amendments to the Divorce Act and Children's Law Reform Act dealing with family violence, including litigation abuse and other forms of coercive control as factors in considering children's best interests.

The Canadian Judicial Council, in 2005, reinforced its support in the 1990s for credible, in-depth, and comprehensive social context education for judges by its recognition that such education must be an ongoing part of this education (National Judicial Institute Social Context Education Board of Governors, October 2009, p. 1). The kind of education required must be credible, both from the perspective of the judiciary and the public. Current

knowledge of social context, including the lived reality of women experiencing FV, together with up-to-date knowledge about equality principles applicable to family law, are essential components of a robust judicial education.

References

- Bala, N., Birnbaum, R. & Martinson, D. (2010). One judge for one family: Differentiated case management for families in continuing conflict. *Canadian Journal of Family Law*, 26, 395.
- Bala, N. Mitnick, M., Trocmé, N. & Houston, C. (2007). Sexual abuse allegations and parental separation: smokescreen or fire? *Journal of Family Studies*, 13, 26–56.
- Birnbaum, R., Saini, M. & Bala, N. (2018). Growing concerns about the impact of self-representation in family court: Views of Ontario judges, children's lawyers and clinicians. *Canadian Family Law Quarterly*, 37, 121–138.
- Chambers, L. (2021). What is coercive control? Submission for Bill C-247. Available at <https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11101619/br-external/ChambersLori-e.pdf>.
- Cross, P. (2016). When shared parenting and the safety of women and children collide. Oshawa, ON: Luke's Place Support and Resource Centre for Women and Children. Available at <https://lukesplace.ca/wp-content/uploads/2013/01/When-Shared-Parenting-and-the-Safety-of-Women-and-Children-Collide.pdf>.
- Douglas, H. (2018). Legal systems abuse and coercive control. *Criminology & Criminal Justice*, 18(1): 84–99. Available at <https://doi.org/10.1177/1748895817728380>.
- Douglas, H. & Fell, E. (2020). Malicious reports of child maltreatment as coercive control: Mothers and domestic and family violence. *Journal of Family Violence*, 35, 827–837. Available at <https://doi.org/10.1007/s10896-019-00128-1>.
- Family Court of Australia and Federal Circuit Court of Australia. (2013).
- Family Violence Best Practice Principles (Edition 3.1, April 2013).
- Gill, C. & Aspinall, M. (2020). Understanding coercive control in the context of intimate partner violence in Canada: How to address the issue through the criminal justice system? Research Paper for the Federal Ombudsman for Victims of Crime. Department of Justice. Ottawa, ON. Available at <https://www.victims-first.gc.ca/res/cor/UCC-CCC/index.html>.
- Gutowski, E. & Goodman, L. (2020). "Like I'm invisible": IPV survivor-mothers' perceptions of seeking child custody through the family court system. *Journal of Family Violence*, 35, 441–457.
- Gutowski, E. & Goodman, L. (2022). Coercive control in the courtroom: The Legal Abuse Scale (LAS). *Journal of Family Violence*. Available at <https://doi.org/10.1007/s10896-022-00408-3>.
- Hayes, M., Renzetti, E. & Grant, T. (March 13, 2022). Coercive control can be a life or death issue in relationships. But few people even know how to recognize it. *Globe and Mail*. Available at <https://www.theglobeandmail.com/canada/article-coercive-control-can-be-a-life-or-death-issue-in-relationships-but-few/>.
- Jeffries, S. (2016). In the best interests of the abuser: Coercive control, child custody, proceedings and the "expert" assessments that guide judicial determinations. *Laws*, 5(14), 1–17.
- Katz, E., Nikupeteri, A. & Laitinen, M. (2020). When coercive control continues to harm children: Post-separation fathering, stalking and domestic violence. *Child Abuse Review*, 29, 310–324. Available at <https://doi.org/10.1002/car.2611>.
- Kennedy, G. (2021). The Alberta Court of Appeal's vexatious litigant order trilogy: Respecting legislative supremacy, preserving access to the courts, and hopefully not to a fault. *Alberta Law Review*, 58(3), 739–760. Available at <https://albertalawreview.com/index.php/ALR/article/view/2646>.
- Lux, G. (November 12, 2021). The Divorce Act and invisible abuse: Coercive control in family law. *Law Now*, 46(1). Available at <https://www.lawnow.org/the-divorce-act-and-invisible-abuse-coercive-control-in-family-law/>.
- Marrero, V. (2016). The cost of rules, the rule of costs. *Cardozo Law Review*, 37(5), 1599–1692.
- Martinson, D. & Jackson, M. (2017). Family violence and evolving judicial roles: Judges as equality guardians in family law cases. *Can. J. of Fam. Law*, 30, 11.
- Miller, S. L. & Smolter, N. L. (2011). "Paper Abuse": When all else fails, batterers use procedural stalking. *Violence Against Women*, 17(5), 637–650. Available at <https://doi.org/10.1177/1077801211407290>.
- Morissette, Y.M. (2019). Querulous and vexatious litigants as a disorder of a modern legal system. *Canadian Crim. L. Rev.*, 24(3), 265–312. Available at [https://www.proquest.com/openview/4f542955d4483640bc1bdfc69c9c9cfd166/1?pq-origsite=gscholar&cbl=28146](https://www.proquest.com/openview/4f542955d4483640bc1bdfc69c9cfd166/1?pq-origsite=gscholar&cbl=28146).
- Neilson, L. (2018). Parental alienation empirical analysis: Child best interests or parental rights? Fredericton, NB: Muriel McQueen Fergusson Centre for Family Violence Research and Vancouver, BC: The FREDACentre for Research on Violence Against Women and Children. Available at <https://fredacentre.com/wp-content/uploads/Parental-Alienation-Linda-Neilson.pdf>.
- Nonomura, Robert; Poon, Julie; Scott, Katreena; Straatman, Anna-Lee; Jaffe, Peter. (2021).

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Coercive Control. Family Violence & Family Law Brief (3). London, Ontario: Centre for Research & Education on Violence Against Women & Children. ISBN 978-1-988412-48-1

Nonomura, Robert; Sandhu, Gursharanf; Gill, Vivek; Scott, Katreena; Jaffe, Peter; Poon, Julie; Straatman, Anna-Lee. (2021). Survivors' Views of Family Courts: Data from the Canadian Domestic Homicide Prevention Initiative with Vulnerable Populations (CDHPIVP). Family Violence & Family Law Brief (12). London, Ontario: Centre for Research & Education on Violence Against Women & Children. ISBN: 978-1-988412-51-1

Ontario Human Rights Commission. (2018). Interrupted childhoods: Onver-representation of Indigenous and Black children in Ontario child welfare. Retrieved from <http://www.ohrc.on.ca/en/interrupted-childhoods>.

Rights of Women: Coercive control and the law (2016). London, UK. Available at <https://rightsofwomen.org.uk/get-information/violence-against-women-and-international-law/coercive-control-and-the-law/>.

Robinson, A., Myhill, A. & Wire, J. (2018). Practitioner (mis)understandings of coercive

control in England and Wales. *Criminology & Crim. Just.*, 18(1), 29–49. Available at <https://doi.org/10.1177/1748895817728381>.

Stark, E. (2007). *Coercive control: How men entrap women in personal life*. Oxford University Press: Oxford UK.

Sheehy, E. & Boyd, S.B. (2020). Penalizing women's fear: Intimate partner violence and parental alienation in Canadian child custody cases. *J. of Soc. Welfare and Fam. L.* 42(1), 80–91. Available at <https://doi.org/10.1080/09649069.2020.1701940>.

Stark, E. (2013). Coercive control. In N. Lombard & L. McMillan (Eds.), *Violence against women: Current theory and practice in domestic abuse, sexual violence and exploitation* (pp. 17–34). London: Jessica Kingsley Publishers.

Stark, E. & Hester, M. (2019). Coercive control: Update and review. *Violence Against Women*. 25(1), 81–104. Available at <https://doi.org/10.1177/1077801218816191>.

Robert Nonomura is Assistant Professor, Department of Sociology, Western University, London, Ontario, Canada.

Nick Bala is Professor of Law, Queen's University, Kingston.

Kennedy Beacock-McMillan holds a M.A. in Sociology from Western University, and is currently

completing a Bachelor of Laws Degree at Queens University Belfast.

Andrew Au-Yeung is a research associate, Centre for Research & Education on Violence Against Women & Children.

Peter Jaffe is Professor Emeritus, Faculty of Education, Western University, London, Ontario, Canada, & Director Emeritus, Centre for Research & Education on Violence Against Women & Children.

Lisa Heslop is an associate at the Centre for Research and Education Violence Against Women and Children and a doctoral candidate in developmental psychology and education at the University of Toronto Ontario Institute for Studies in Education.

Katreena Scott is Professor & Academic Director, Centre for Research & Education on Violence Against Women & Children, Western University, London, Ontario, Canada.

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