

**MAPPING DOMESTIC VIOLENCE LAW
AND POLICY IN ALBERTA:
INTERSECTIONS AND ACCESS TO JUSTICE**

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Domestic violence is a social problem governed by numerous laws, policies, and justice system components at the federal, provincial, and territorial levels. These laws and policies can overlap and intersect in ways that create challenging access to justice issues for litigants in domestic violence matters, particularly marginalized women who are survivors of violence. This article analyzes the laws, government policies, and justice system components that apply to domestic violence in Alberta as one step towards enhancing access to justice in this context. It also recommends specific law reform measures, government oversight, and action by the courts and other legal actors to deal with problematic intersections and gaps that compromise access to justice. The focus is on law and policy prior to the COVID-19 pandemic, although significant legal and policy developments related to the pandemic are noted.

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I. INTRODUCTION

Domestic violence is a social problem that is governed by numerous laws, policies, and justice system components at the federal, provincial, and territorial levels.¹ These laws and policies overlap and intersect in ways that create challenging access to justice issues for litigants in domestic violence matters. Given that women are the primary victims of domestic violence, these challenges are gendered, with heightened and unique issues faced by some groups of women.² For example, First Nations women living on reserves encounter particular problems in light of jurisdictional complexities,³ as do immigrant women with precarious status.⁴

Alberta has shown some commitment to these issues. The government adopted the *Framework to End Family Violence* in 2013, which includes the goals of providing a legislative and policy framework to support ending family violence and a strong justice response to family violence; facilitating collaboration amongst various actors, including the courts; and supporting the provision of coordinated and integrated supports and services at the community level.⁵ Significant progress on domestic violence related legislative reforms was made by the New Democratic Party (NDP) while it was in power from 2015 to 2019, and the United Conservative Party (UCP) recently introduced new legislation that will allow those at risk of domestic violence to seek information about the criminal history of their partners, as well as some COVID-19 related measures for survivors.⁶

Laws and policies are, of course, only one component of preventing and responding to domestic violence, but they are nevertheless a critical component. Law has an important role to play in prevention efforts through the ways it defines domestic violence, which may have

¹ The terms domestic violence, family violence, and intimate partner/interpersonal violence are sometimes used interchangeably in the literature as well as in the laws and policies that this article analyzes. Domestic and intimate partner/interpersonal violence cover violence in intimate partner relationships, while family violence may include violence in a broader set of relationships (for example, child and elder abuse). My main focus is violence between adult intimate partners. It is important to note that none of these terms reflect the gendered nature of this social problem. Domestic violence can also affect men and transgender/gender diverse persons, but gendered pronouns are used in this article in light of the statistics in note 2.

² The most recent Statistics Canada study of police-reported family violence reports that in 2018, 79 percent of intimate partner violence victims were female, and intimate partner violence was the most common type of violence experienced by women that year. Alberta has the third highest rate of intimate partner violence amongst the provinces at 400 per 100,000 population (with Saskatchewan at 655 and Manitoba at 592; the national average is 322). See Shana Conroy, Marta Burczycka & Laura Savage, *Family Violence in Canada: A Statistical Profile, 2018* (Ottawa: Statistics Canada, 2019) at 29, 39 (Tables 2.1 and 2.7). See also Melina Buckley, *Evolving Legal Services: Review of Current Literature* (Ottawa: Canadian Bar Association, 2013) at 8; Mary Stratton, *Alberta Legal Services Mapping Project: An Overview of Findings from the Eleven Judicial Districts* (Canadian Forum on Civil Justice, 2011) at 30, finding that gender, ethnicity, Indigenous status, disability, and economic disadvantage may affect litigants' experience of civil legal problems and need for legal services.

³ See e.g. Stratton, *ibid* at 83; Wendy Cornet & Allison Lendor, *Discussion Paper: Matrimonial Real Property on Reserve* (Indian and Northern Affairs Canada, 2002); Mary Eberts & Beverley K Jacobs, "Matrimonial Property on Reserve" in Marylea MacDonald & Michelle Owen, eds, *On Building Solutions for Women's Equality: Matrimonial Property on Reserve, Community Development and Advisory Councils* (Ottawa: CRIAW, 2004).

⁴ See e.g. Janet E Mosher, "Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by Their Intimate Partners" (2015) 32:2 Windsor YB Access Just 149 at 152.

⁵ Government of Alberta, *Family Violence Hurts Everyone: A Framework to End Family Violence in Alberta* at 10, 24, online: <open.alberta.ca/publications/6466378>.

⁶ See Parts II.A–B.

educative and normative influences on the public.⁷ Law and legal actors can also contribute to prevention in more material ways by providing remedies to enable survivors to protect themselves and their children, by requiring offenders to seek counselling and other programming, and by tackling the systemic issues that enable and perpetuate domestic violence.⁸ But laws are only useful when they are accessible.

Access to justice often focuses on legal processes and access to legal representation, but it can also include attention to the substance of laws and legal outcomes.⁹ Access to justice is best conceptualized “from the perspective of those most affected, and especially of those marginalized by social institutions such as law.”¹⁰ In the domestic violence context, survivors may encounter additional barriers to accessing the complex array of laws and legal systems they face as a result of trauma and vulnerability to ongoing abuse, including misuse of the legal system by abusers.¹¹ We might expect, at a minimum, that laws are made known and are fair substantively and in their enforcement by legal actors, with a primary focus on the safety of victims, including children. While some attempts at documenting domestic violence laws and policies have been previously made,¹² until recently there has been no comprehensive mapping of laws that pertain to domestic violence in Canada or its provinces and territories.¹³ There has also been little attention to the intersections between these laws and possible inconsistencies, conflicts, and gaps that may compromise access to justice and safety.

⁷ Although laws can be helpful in preventing domestic violence, it is difficult to measure their impact on rates of violence because legal changes may result in more survivors coming forward to seek legal remedies. For a discussion see Leslie Tutty & Jennifer Koshan, “Calgary’s Specialized Domestic Violence Court: An Evaluation of a Unique Model” (2013) 50:4 *Alta L Rev* 731 at 751. Alberta’s rate of intimate partner violence dropped 1 percent between 2017 and 2018, a period during which some new laws were passed in Alberta, but not much can be made of this statistic. See Conroy, Burczykca & Savage, *supra* note 2 at 39, Table 2.7.

⁸ For a discussion of batterer treatment programs, see Tutty & Koshan, *ibid* at 752–53.

⁹ Jennifer Koshan, Janet Mosher & Wanda Wiegiers, “The Costs of Justice in Domestic Violence Cases” in Trevor Farrow and Les Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020), longer version available, online: <ssrn.com/abstract=3598277> [Koshan, Mosher & Wiegiers, “Costs of Justice”].

¹⁰ *Ibid* at 2, citing Action Committee on Access to Justice, *Meaningful Change for Family Justice: Beyond Wise Words — Final Report of the Family Justice Working Group* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013) [*Meaningful Change*]; Canadian Bar Association, *Reaching Equal Justice: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, 2013); Trevor CW Farrow, “What is Access to Justice?” (2014) 51:3 *Osgoode Hall LJ* 957.

¹¹ Kayla Gurski & Tiffany Butler, “Shifting Toward a Trauma-Informed, Holistic Legal Service Model for Survivors of Violence: The Calgary Legal Guidance Family Law Program” in Tod Augusta-Scott et al, eds, *Innovations in Interventions to Address Intimate Partner Violence: Research and Practice* (New York: Routledge, 2017) 139 at 140–41; Koshan, Mosher & Wiegiers, “Costs of Justice,” *supra* note 9, n 117; Jennifer Koshan, Janet E Mosher & Wanda A Wiegiers, *Domestic Violence and Access to Justice: A Mapping of Relevant Laws, Policies and Justice System Components Across Canada*, 2020 CanLIIDocs 3160 (mapping domestic violence laws across Canada).

¹² See e.g. Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, *Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems, Annex 4: Family violence responses by jurisdiction — Alberta* (Ottawa: Department of Justice Canada, 2013) at 38, online: <www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mlfvc-elcvcf/vol2/p5.html> [*Making the Links*]; Linda C Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, Family, Child Protection)* (Ottawa: Department of Justice Canada, 2013); Centre for Public Legal Education Alberta, “WillowNet: Abuse and the Law in Alberta” (2018), online: <www.willownet.ca/>. See also Stratton, *supra* note 2 (documenting the legal services needs of Albertans, including persons surviving domestic and sexual violence).

¹³ See Koshan, Mosher & Wiegiers, “Costs of Justice,” *supra* note 9 (mapping domestic violence laws across Canada).

This article will analyze the laws, government policies, and justice system components that apply to domestic violence in Alberta as one step towards enhancing access to justice in this province. Part II maps these laws, policies, and system components in different areas, including: protection order laws; criminal laws, policies, and courts; family laws, including those applying between individual parties and in the child protection context; adult guardianship laws; residential tenancy and housing legislation; social assistance laws; employment legislation; limitations legislation; insurance law; and privacy laws. Part II also identifies intersections amongst Alberta laws and draws comparisons between Alberta's laws and those of other Canadian jurisdictions. While domestic violence laws and policies have become more expansive and explicit over time, creating greater possibilities for protective remedies, there are also more intersections and resulting complexities in the legal landscape. Part III focuses on access to justice and examines how laws and policies may intersect in ways that create burdens, inconsistencies, and gaps, compromising the objectives of legal and policy initiatives.¹⁴ This part also discusses the need for law reform and government oversight to deal with these problematic intersections, education of justice system and related professionals on domestic violence laws and policies, and further research on how domestic violence laws and policies are being implemented and applied.¹⁵ My focus throughout is on law and policy prior to the COVID-19 pandemic, although significant legal and policy developments related to the pandemic are noted.¹⁶

II. ALBERTA LEGISLATION, POLICIES, AND JUSTICE SYSTEM COMPONENTS PERTAINING TO DOMESTIC VIOLENCE

A. PROTECTION ORDERS

I. CIVIL PROTECTION ORDER LEGISLATION

Alberta's *Protection Against Family Violence Act*¹⁷ was enacted in 1999 specifically for the purpose of making no-contact orders more accessible to victims of family violence.¹⁸ Similar domestic violence protection order legislation exists in most other provinces and territories across Canada, except Ontario and Quebec.¹⁹

The *PAFVA* enables "family members" to obtain emergency protection orders (EPOs) on a without notice basis where "family violence" has occurred, the claimant believes the

¹⁴ See Buckley, *supra* note 2 at 8 (noting how "[l]egal problems have an additive effect," especially for low-income and disadvantaged persons); see also Koshan, Mosher & Wieggers, "Costs of Justice," *ibid*; Mosher, *supra* note 4.

¹⁵ While this article cites to leading cases on the interpretation of domestic violence-related legislation, a future study will provide a more comprehensive review of domestic violence case law at the intersection of different areas of law in Alberta and across several provinces.

¹⁶ For a discussion of government and judicial responses to domestic violence during the COVID-19 pandemic across Canada, see Jennifer Koshan, Janet Mosher & Wanda Wieggers, "COVID-19, the Shadow Pandemic, and Access to Justice for Survivors of Domestic Violence" (2021) 57:3 *Osgoode Hall LJ* 739 [Koshan, Mosher & Wieggers, "Shadow Pandemic"].

¹⁷ RSA 2000, c P-27 [*PAFVA*].

¹⁸ See Alberta Law Reform Institute, *Protection Against Domestic Abuse (Report No. 74)* (Edmonton: Alberta Law Reform Institute, 1997) at 1.

¹⁹ See Koshan, Mosher & Wieggers, "Costs of Justice," *supra* note 9 at n 65. For a discussion of civil protection legislation across Canada, see Linda Neilson, *Enhancing Civil Protection in Domestic Violence Cases: Cross Canada Checkup* (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research, 2015).

respondent will continue or resume family violence, and the order is required because of seriousness or urgency to provide for the immediate protection of the claimant and other family members.²⁰ Queen’s Bench Protection Orders (QBPOs) are available on an application to the Court of Queen’s Bench when a justice determines that the claimant has been the subject of family violence.²¹ Family relationships covered by the definition of “family member” in the *PAFVA* include current and former spouses, adult interdependent partners, others residing (or formerly residing) in intimate relationships, persons who are parents of one or more children, persons who reside together where one of them has court-ordered care and custody over the other, and generally, persons related by blood, marriage, adoption, or adult interdependent relationships, as well as children in the care and custody of those persons.²² Unlike other jurisdictions with civil protection order legislation, the *PAFVA* initially excluded same-sex relationships, which were added as “adult interdependent relationships” in 2003.²³

The *PAFVA*’s definition of “family member” excludes persons who are in intimate relationships but do not reside together — for example, those in dating relationships. In *Lenz v. Sculptoreanu*, the Alberta Court of Appeal found that the *PAFVA* “was designed and intended to address one subset of abusive relationships — violence among prescribed family members.”²⁴ Noting that the *PAFVA* “seriously abridges the liberty of persons,” the Court held that “its application should be restricted to its intended familial context.”²⁵ The *PAFVA*’s narrow focus on defined “family members” differs from civil protection legislation in some other provinces and territories, which covers persons in dating or other intimate relationships whether or not they have ever lived together.²⁶ Recommendations have been made to expand the scope of the *PAFVA* in a similar way, but so far, these recommendations have not been acted on by the government.²⁷

Under the *PAFVA*, “family violence” is defined to include acts, omissions, and threats to cause injury or property damage that intimidate or harm family members, as well as physical confinement, sexual abuse, and stalking.²⁸ The definition explicitly excludes the use of reasonable force against a child as a means of correction by their parent or guardian —

²⁰ *PAFVA*, *supra* note 17, s 2. For a decision that found the “urgency” requirement was not met where the applicant had left the family residence 6 weeks earlier, see *Siwiec v Hlewka*, 2005 ABQB 684 at para 20 [*Siwiec*].

²¹ *PAFVA*, *ibid*, s 4.

²² *Ibid*, s 1(1)(d).

²³ The *PAFVA*, *ibid*, was amended by the *Adult Interdependent Relationships Act*, SA 2002, c. A-4.5 [*AIRA*] in June 2003, and section 3 of the *AIRA* defines adult interdependent partners. For a discussion of the ideology underpinning the initial version of the *PAFVA*, see Jennifer Koshan & Wanda Wiegiers, “Theorizing Civil Domestic Violence Legislation in the Context of Restructuring: A Tale of Two Provinces” (2007) 19:1 *Can J Women & L* 145.

²⁴ *Lenz v Sculptoreanu*, 2016 ABCA 111 at para 30 [*Lenz*].

²⁵ *Ibid*. See also para 28, where the Court cites *Siwiec*, *supra* note 20 at para 17, for the point that the “Legislature intended EPOs to be an extraordinary remedy reserved for situations of imminent familial domestic violence.”

²⁶ See e.g. *Domestic Violence and Stalking Act*, CCSM c D93; *Intimate Partner Violence Intervention Act*, SNB 2017, c 5 [*IPVIA*]; *Family Abuse Intervention Act*, SNU 2006, c 18; *Family Violence Prevention Act*, RSY 2002, c 84.

²⁷ See Leslie Tutty et al, *Alberta’s Protection Against Family Violence Act: A Summative Evaluation* (Calgary: RESOLVE Alberta, 2005) at 31; Lana Wells et al, *How Public Policy and Legislation Can Support the Prevention of Domestic Violence in Alberta* (Calgary: Shift: The Project to End Domestic Violence, 2012) at 39.

²⁸ *PAFVA*, *supra* note 17, s 1(1)(e). For a broad interpretation of this definition, see *MM v BM*, 2017 ABQB 532 (finding that abuse of pets and hacking of electronic accounts would fall within the definition of family violence).

another unique aspect of Alberta's legislation.²⁹ The *PAFVA* also differs from the civil protection order legislation in a majority of Canadian jurisdictions in that it does not include emotional abuse in its definition of family violence, nor does it include coercive control (though it does reference "controlling behaviour").³⁰ Recommendations have been made to expand the scope of the *PAFVA* to include these forms of abuse but have yet to be adopted.³¹ As discussed below, more recent legislation pertaining to domestic violence in Alberta does include emotional abuse, which creates inconsistency in access to remedies.³²

EPOs can be granted by provincial court judges and justices of the peace on an application by the victim or by someone on her behalf — for example, peace officers and child protection workers — without notice to the respondent.³³ Until recently, victims had to apply for EPOs in person while these other actors could apply by telecommunication, but the COVID-19 pandemic led the government to permit telecommunication applications by victims as well.³⁴ The judge hearing the application must consider several factors, including the history of family violence; the existence of immediate danger to persons or property; the best interests of the claimant and her child(ren); and the claimant's need for a safe environment to arrange for longer-term protection from family violence.³⁵ Circumstances that do not preclude granting an EPO include that a no-contact order has been granted previously and complied with; the respondent is temporarily absent from the residence; the claimant is temporarily residing in an emergency shelter or other safe place; and the claimant has previously returned to the residence and lived with the respondent after occurrences of family violence.³⁶ These considerations were added in 2006 in response to an evaluation report of the *PAFVA*, which showed that the legislation was sometimes being construed overly narrowly by judges.³⁷

EPOs must be reviewed by a justice of the Court of Queen's Bench within nine working days after the granting of the EPO.³⁸ At the Queen's Bench hearing, additional evidence may be heard, and the EPO can be revoked, confirmed, or replaced with a QBPO.³⁹ It is not

²⁹ Reasonable corrective force applied to one's child is also excluded from criminal liability under the *Criminal Code*, RSC 1985, c C-46, s 43. For a discussion of this exclusion, see Koshan & Wiegers, *supra* note 23; Wells et al, *supra* note 27 at 164.

³⁰ *PAFVA*, *supra* note 17, s 2(2)(b.1). For jurisdictions that include emotional abuse or coercive control, see *Family Law Act*, SBC 2011, c 25, Part 9 [BC *FLA*]; *Victims of Family Violence Act*, RSPEI 1988, c V-3.2; *Family Violence Protection Act*, SNL 2005, c F-3.1; *Protection Against Family Violence Act*, SNWT 2003, c 24; *Domestic Violence and Stalking Act* (MB), *IPVIA*, *Family Violence Prevention Act* (YK), and *Family Abuse Intervention Act* (NU), all *supra* note 26. Coercive control refers to a pattern of abuse used to isolate, control, demean, and intimidate victims. See Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (New York: Oxford University Press, 2009). The BC *FLA* and New Brunswick's *IPVIA* explicitly include coercive control in the definition of family violence (BC *FLA*, ss 1, 38(d); *IPVIA*, *supra* note 26, s 2(1)(a)).

³¹ See Tutty et al, *supra* note 27 at 30; Wells et al, *supra* note 27 at 38–39.

³² See e.g. the discussion of the *Residential Tenancies Act*, SA 2004, c R-17.1 [RTA] in Part I.E.

³³ *PAFVA*, *supra* note 17, s 2(1), 6; *Protection Against Family Violence Regulation*, Alta Reg 80/1999, s 3.

³⁴ Alberta Community and Social Services, *Ministerial Order No 2020-011* (7 April 2020), amending *Protection Against Family Violence Regulation*, *ibid*, s 4. There is anecdotal evidence that this amendment led to some confusion. See Koshan, Mosher & Wiegers, "Shadow Pandemic," *supra* note 16 at 791, n 207 and accompanying text.

³⁵ *PAFVA*, *supra* note 17, s 2(2).

³⁶ *Ibid*, s 2(2.1).

³⁷ See Koshan & Wiegers, *supra* note 23 at 174–75, citing Tutty et al, *supra* note 27.

³⁸ *PAFVA*, *supra* note 17, s 2(6).

³⁹ *Ibid*, s 3(4).

unusual for courts to grant mutual restraining orders at such hearings.⁴⁰ This approach may be a response to the lengthy hearing lists in family law chambers, but has potentially serious consequences that will be discussed in Part III.

Both EPOs and QBPOs can be made for up to one year, and may provide for a number of conditions, most commonly including no contact or communication with the victim of family violence and her children; non-attendance at various places (such as her workplace, home, or the children's school); and exclusive occupation of the residence for a specified period.⁴¹ QBPOs may include additional conditions relating to the parties' finances and property, for example requiring that the respondent pay the claimant's moving and accommodation expenses; restraining either party from dealing with property the other party has an interest in; and granting either party temporary possession of personal property.⁴² While financial abuse is not explicitly included in the *PAFVA*, these remedies may respond to some aspects of financial abuse.

The *PAFVA* clarifies that exclusive occupation orders made as a condition of EPOs or QBPOs do not affect title or ownership interests in property, and a landlord may not evict the claimant solely because she is not a party to the lease. A claimant with an exclusive occupation order also has the ability to take over the lease from the respondent.⁴³ There is no case law where this section has been interpreted and applied, but it appears to give claimants with exclusive occupation orders the ability to remain in residential premises as a "tenant" with all of the rights and responsibilities that status entails, although it is unclear if they are permitted to change locks to keep the perpetrator out of the premises and who is responsible for the payment of rent.⁴⁴

Pursuant to an amendment made in 2011, the *PAFVA* now creates an explicit offence for failing to comply with a protection order and allows peace officers to arrest without warrant a person whom they reasonably believe to have breached a protection order.⁴⁵ Prior to this time, breaches of the *PAFVA* were subject to charges under section 127 of the *Criminal Code*, which creates the offence of disobeying a court order without lawful excuse where no other punishment is expressly provided by law.⁴⁶ The 2005 evaluation of the *PAFVA* revealed that breaches were rarely handled as criminal,⁴⁷ and there are no statistics available on how often the offence provisions in the *PAFVA* are utilized. The *PAFVA* has not been evaluated since 2005, which leaves a gap in assessing the impact of this and other amendments, as well as in assessing the usage of the *PAFVA* generally and in comparison to other protection orders and criminal responses. Judicial decisions involving the *PAFVA* are rarely written up and reported, which also makes enforcement difficult to track.

⁴⁰ For a recent example, see *SL v AAHI*, 2020 ABCA 172.

⁴¹ *PAFVA*, *supra* note 17, ss 2(3), 2(3.1), 4(2).

⁴² *Ibid*, s 4(2).

⁴³ *Ibid*, s 9.

⁴⁴ See Jonnette Watson Hamilton, "Reforming Residential Tenancy Law for Victims of Domestic Violence" (2019) 8 Annual Rev Interdisciplinary Justice Research 245.

⁴⁵ *PAFVA*, *supra* note 17, ss 13.1, 13.2.

⁴⁶ *Supra* note 29, s 127.

⁴⁷ Tutty et al, *supra* note 27 at 74. The report did not recommend the creation of an offence for breaches in the *PAFVA*, but did recommend the addition of explicit police powers for arrest for breaches (*ibid* at 40).

There is no specific provision concerning costs in the *PAFVA*, and Alberta courts have been reluctant to make discretionary costs awards against claimants where their EPOs are not confirmed. In *Lenz*, the Court of Appeal found that it would be inappropriate “to create any impediment which would cause vulnerable victims to avoid seeking an EPO when they are at immediate risk of family violence, merely for fear that they may later have to pay adverse costs.”⁴⁸ This is an important holding for victims’ access to remedies under the *PAFVA*.

The *PAFVA* was amended in 2013 to establish a Family Violence Death Review Committee (FVDRC) to review incidents of family violence resulting in deaths and to provide advice and recommendations to the government respecting the prevention and reduction of family violence.⁴⁹ Although the FVDRC is empowered by the *PAFVA*, it defines family violence more broadly than that legislation and includes deaths in the context of dating relationships.⁵⁰ The most recent annual report of the FVDRC, released in January 2021, found that between 2010 and 2019, there were 165 family violence deaths in Alberta, with 15 such deaths in 2019.⁵¹ Consistent with national statistics, family violence deaths in Alberta are gendered, with women outnumbering men as homicide victims and men far outnumbering women as perpetrators of murder-suicides.⁵² In a series of more in-depth case reviews released between 2017 and 2019, the FVDRC made several recommendations related to legislation, policy, and legal processes, many of which called for better integration, coordination, collaboration, and information-sharing between different components of and actors within the justice system, as well as enhanced access to services and supports for Indigenous persons, members of marginalized groups, and persons living in rural and remote areas.⁵³ The NDP government responded to FVDRC reports in writing and implemented some of its recommendations, including the amendment of the *Occupational Health and Safety Act* to recognize family violence as a workplace hazard.⁵⁴ However, the UCP has not responded to FVDRC reports since it took power in Alberta in spring 2019.⁵⁵

⁴⁸ *Lenz*, *supra* note 24 at para 45.

⁴⁹ *PAFVA*, *supra* note 17, Part 2. See also the *Fatality Inquiries Act*, RSA 2000, c F-9, s 10(2)(c), which requires the medical examiner to be notified where death occurs as a result of violence.

⁵⁰ Family Violence Death Review Committee, *2019/2020 Annual Report* (Edmonton: Community and Social Services, 2020) at 11, online: <open.alberta.ca/dataset/9f534972-af61-44fe-8449-9d894e335bec/resource/27125e6d-eedb-462b-9f15-e8b58e37c68b/download/css-family-violence-death-review-committee-annual-report-2019-2020.pdf> [FVDRC, *Annual Report*]. See also *Case Review Public Report No. 7*, note 53 below, involving a murder-suicide in a dating relationship.

⁵¹ See FVDRC, *Annual Report*, *ibid* at 11.

⁵² *Ibid* at 13.

⁵³ See Family Violence Death Review Committee, *Case Review No. 2 Public Report* at 4, online: <www.humanservices.alberta.ca/documents/family-violence-death-review-committee-case-review-2-public-report.pdf>; *Case Review Report No. 3* at 4–5, online: <www.humanservices.alberta.ca/documents/css-fvdr-c-case-review-report-3.pdf>; *Case Review Public Report No. 4* at 4, online: <www.humanservices.alberta.ca/documents/css-fvdr-c-case-review-report-4.pdf>; *Case Review Public Report No. 6* at 6, online: <www.humanservices.alberta.ca/documents/css-fvdr-c-case-review-report-6.pdf>; *Case Review Public Report No. 7*, online: <open.alberta.ca/dataset/1630db5e-a4b1-4f4d-951f-a596082fb694/resource/8a7c6ee6-48d4-474f-9ff3-6816a09d3306/download/css-fvdr-c-case-report-no-7.pdf>; *Case Review Public Report No. 8*, online: <open.alberta.ca/dataset/e2408c46-6d74-42dd-a3e9-41d937ef2bd9/resource/8100d5df-e450-4102-90bd-db8fc72d21cb/download/css-fvdr-c-case-report-no-8.pdf>.

⁵⁴ SA 2017, c O-2.1 (discussed further in Part II.F, below). This amendment was made in response to Family Violence Death Review Committee, *Case Review Public Report No. 1*, online: <www.human-services.alberta.ca/documents/family-violence-death-review-committee-case-review-public-report.pdf>.

⁵⁵ See Government of Alberta, “Family Violence Death Review Committee,” online: <www.alberta.ca/family-violence-death-review-committee.aspx>. The last FVDRC report the government responded to was *Case Review Report No. 6* in May 2018.

An amendment to the *PAFVA* that was never proclaimed would have enabled the regulations to provide for the enforcement of protection orders from other provinces and territories in Alberta.⁵⁶ Case law indicates that absent such an amendment, protection orders from other jurisdictions are not enforceable in Alberta.⁵⁷ For a contrasting example, British Columbia provides for the enforceability of protection orders made in other jurisdictions as well as mechanisms for avoiding conflicts between protection orders.⁵⁸ This is an important access to justice issue. No-contact orders may be granted in a variety of legal contexts, and extra-jurisdictional and conflicting orders are a real possibility. Where there are no mechanisms for the enforcement and priority of these orders, safety issues can arise for survivors of domestic violence and their children.

2. COMMON LAW RESTRAINING ORDERS

Even though one of the motivations behind the *PAFVA* was to make it easier for survivors of family violence to obtain protection orders, the practice of seeking common law restraining orders in circumstances of family violence has not disappeared. Restraining orders are made pursuant to the inherent jurisdiction of superior courts, which is confirmed by the *Judicature Act*.⁵⁹

In *Lenz*, the Court of Appeal noted that restraining orders are not restricted to “family members” in circumstances of “family violence” — for example, they are available to persons in dating relationships who are not covered by the *PAFVA*.⁶⁰ Applicants for restraining orders must establish a reasonable and legitimate fear for their or their children’s safety or property, or that the respondent’s conduct threatens their reputation or privacy, or is vexatious or harassing.⁶¹ Restraining orders thus have potential breadth and utility beyond the circumstances permitted under the *PAFVA*, including in cases involving financial or emotional abuse. However, applications for restraining orders are generally more cumbersome and less immediate than EPO applications, although fee waivers are available for both.⁶²

⁵⁶ *Children First Act*, SA 2013, c C-12.5, s 19(5), would have amended the *PAFVA*, but that section was automatically repealed after it had not come into force several years after proclamation. See *Statutes Repeal Act*, SA 2013, c S-19.3, s 3.

⁵⁷ See *DH v TH*, 2018 ABQB 147. Courts in Alberta generally enforce extra-jurisdictional custody and access orders. See *Extra-Provincial Enforcement of Custody Orders Act*, RSA 2000, c E-14. See also the *International Child Abduction Act*, RSA 2000, c I-4, implementing the *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Can TSA 1983 No. 35 (entered into force 1 December 1983) in Alberta and allowing courts to order the prompt return of children who have been wrongfully removed from their “habitual residence,” subject to a grave risk exception that may include domestic violence considerations.

⁵⁸ *BC FLA*, *supra* note 30, ss 189, 191.

⁵⁹ RSA 2000, c J-2, s 8. Section 13(2) of the *Judicature Act*, dealing with injunctions, has also been interpreted to provide superior courts with jurisdiction to grant restraining orders. See e.g. *RP v RV*, 2012 ABQB 353 at para 20; *MM v BM*, 2017 ABQB 532 at para 143.

⁶⁰ *Lenz*, *supra* note 24 at paras 25–30.

⁶¹ *Boychuk v Boychuk*, 2017 ABQB 428 at paras 36–37. See also *ATC v NS*, 2014 ABQB 132 (granting mutual restraining orders to former intimate partners based on threats to each other’s reputations).

⁶² Restraining orders can be obtained *ex parte* in urgent circumstances by filing an originating application with the Court of Queen’s Bench or, if a proceeding has already been commenced, by filing a family application (see *Alberta Rules of Court*, Alta Reg 124/2010, rules 12.33(1)–(2); see also Form FL-14 (Application for a Restraining Order Without Notice in a Family Law Situation)). For fee waivers, see *Alberta Rules of Court*, *ibid*, rule 13.37.

3. FAMILY LAW PROTECTION ORDERS⁶³

Family law provides another source of protection orders. Under the *Family Law Act*, exclusive possession orders may be made in relation to the family home as part of an order providing for child or spousal support and can include an order evicting a spouse or adult interdependent partner and restraining them “from entering or attending at or near the family home.”⁶⁴ Factors relevant to whether an exclusive possession order should be made do not explicitly include family violence, but “the needs of any children residing in the family home” are a factor.⁶⁵ Because family violence is relevant to the best interests of the child under the *FLA*, it is arguably relevant to exclusive possession orders.⁶⁶ If the family home is leased, the spouse or adult interdependent partner to whom exclusive possession is granted is deemed to be the tenant.⁶⁷ This provision is even clearer than the *PAFVA* that the party obtaining an exclusive possession order becomes a tenant, leading to corresponding rights and obligations under residential tenancy legislation.

Similar provisions allowing for exclusive possession orders for the family home, evicting and restraining spouses and adult interdependent partners, and deeming the remaining spouses as tenants, are found in the *Family Property Act*.⁶⁸ The *FPA* also includes a provision allowing *ex parte* applications for exclusive possession where the conduct of the respondent spouse poses a danger of injury to the applicant spouse or adult interdependent partner or a child residing in the family home.⁶⁹ The *FPA* came into effect in January 2020 and extended these provisions to adult interdependent partners; previously similar provisions in the *Matrimonial Property Act* applied only to spouses.⁷⁰

4. CRIMINAL CODE PROTECTION ORDERS

Although the *Criminal Code* does not contain a specific offence of domestic violence, it allows no-contact orders to be made as a condition of the interim release of an accused person⁷¹ and as a condition of a probation or conditional sentence order for a domestic violence-related offence.⁷² Peace bonds are another form of no-contact order, available in circumstances where the applicant fears on reasonable grounds that another person will cause

⁶³ The *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12, s 30 [*CYFEA*], provides for restraining orders regarding children who might be physically or emotionally injured (including by exposure to domestic violence), but because my focus is on intimate partner violence, I do not discuss these orders in detail.

⁶⁴ SA 2003, c F-4.5, s 68(1) [*FLA*]. Applications are heard by the Court of Queen’s Bench (s 3(2)(c)).

⁶⁵ *Ibid*, s 69(b). Compare to Prince Edward Island’s *Family Law Act*, RSPEI 1988, c F-2.1, s 25(4)(f), where family violence is an explicit consideration for exclusive possession of the family home.

⁶⁶ *FLA, ibid*, ss 18(2)(b)(vi), 69. A discussion of family violence and the best interests of the child test is discussed in Part II.C.

⁶⁷ *Ibid*, s 72.

⁶⁸ RSA 2000, c F-4.7, ss 19, 21, 22, 24 [*FPA*]. Both *Acts* also provide for exclusive possession of household goods (*FPA, ibid*, s 25; *FLA, supra* note 64, s 73).

⁶⁹ *FPA, ibid*, s 30(2).

⁷⁰ *FPA, ibid*, ss 3, 3.1; *Matrimonial Property Act*, RSA 2000, c M-8 (now repealed). The definition of adult interdependent partners (AIPs) is found in the *AIRA, supra* note 23, and the *FPA* creates conditions precedent to the application of the *Act* to AIPs in s 5.1.

⁷¹ *Criminal Code, supra* note 29, ss 501(3)(d), (e), 515(3)(a). In 2019, the *Code* was amended to create a presumption in favour of denying interim release where the accused is charged with a violent offence against their intimate partner and has been previously convicted of the same (see s 515(6)).

⁷² *Ibid*, ss 732.1(3)(a.1), 742.3(2)(a.3). Bill C-247, *An Act to amend the Criminal Code (controlling or coercive conduct)*, 2nd Sess, 43rd Parl, 2020 (first reading 5 October 2020) would add the offence of coercive control to the *Criminal Code* if it is passed.

personal injury to them or their intimate partner or child or will damage their property.⁷³ Peace bonds require the defendant “to keep the peace and be of good behaviour” for up to 12 months, and courts must consider whether, in the interests of safety, to include conditions prohibiting the defendant from being at specified places or communicating with their intimate partner or child.⁷⁴ Peace bonds are commonly used in domestic violence courts in Alberta where the offence is relatively minor and there is a low risk of reoffending, if the accused is willing to accept responsibility for the offence and undergo offender treatment.⁷⁵ This remains a controversial approach to domestic violence cases, with some commentators arguing that it fails to take domestic violence sufficiently seriously, while others emphasize that some victims prefer a non-criminal response and point to the disproportionate impact of criminalization on Indigenous and racialized people.⁷⁶

In summary, there is a wide range of protection orders available in domestic violence cases, with varying scope as to who is protected and in what circumstances, and in terms of application procedures and conditions available. While legitimate questions have been raised about the efficacy of protection orders and the role of the police in enforcing these orders, they remain a concrete remedy that can provide some material benefits.⁷⁷ However, the possibility of different orders made in relation to different proceedings is a real one, giving rise to the potential for conflicts between orders and resulting safety issues.⁷⁸

B. CRIMINAL LAWS, POLICIES, AND JUSTICE SYSTEM PRACTICES

As noted above, the *Criminal Code* does not specifically prohibit domestic violence, but it does include several applicable offences. The *Code* is administered provincially, and in domestic violence cases there are policies and system components that guide the conduct of various legal actors. The *Domestic Violence Handbook for Police and Crown Prosecutors in Alberta* explains the policies governing police and Crown conduct in domestic violence cases.⁷⁹ The police are also governed by *Intimate Partner Violence Police Guidelines*.⁸⁰ Of particular note is that police must check the welfare of the alleged victim when a domestic

⁷³ *Ibid*, s 810. Peace bonds can also be granted in more specific circumstances: fear of forced or underaged marriage, fear of commission of a sexual offence, and fear of commission of a serious personal injury offence (*Ibid*, ss 810.02, 810.1, 810.2). Common law peace bonds are also available where the specific circumstances in ss 810–810.2 are not met. See *R v Penunsi*, 2019 SCC 39 at paras 15–18. See also *Sjogren v Alberta (Chief Firearms Officer)*, 2016 ABPC 141 (a domestic violence case contrasting *Criminal Code* and common law peace bonds).

⁷⁴ *Ibid*, ss 810(3), (3.2).

⁷⁵ Tutty & Koshan, *supra* note 7 at 745. See also *R v Penunsi*, *supra* note 73 at para 37 (recognizing that peace bonds are “an important tool used to protect women leaving abusive relationships”).

⁷⁶ See e.g. Tutty & Koshan, *ibid* at 751, 753; Koshan & Wiegiers, *supra* note 23 at 169–70.

⁷⁷ See e.g. Koshan & Wiegiers, *ibid*. More generally, see Jane K Stoeber, ed, *The Politicization of Safety: Critical Perspectives on Domestic Violence Responses* (New York: NYU Press, 2019).

⁷⁸ See e.g. Donna Martinson & Margaret Jackson, *Risk of Future Harm: Family Violence and Information Sharing Between Family and Criminal Courts* at 7, online: <www.fredacentre.com/wp-content/uploads/2016/01/Observatory-Martinson-Jackson-Risk-Report-FINAL-January-14-2016.pdf>; Neilson, *supra* note 12 at 124.

⁷⁹ Alberta Justice and Solicitor General, *Domestic Violence Handbook for Police Services and Crown Prosecutors in Alberta* (Edmonton: Alberta Justice Communications, 2014), online: <open.alberta.ca/publications/9780778541523> [*Handbook*].

⁸⁰ Alberta Justice and Solicitor General, *Intimate Partner Violence Police Guidelines*, (Edmonton: Alberta Ministry of Justice and Solicitor General, 2020), online: <open.alberta.ca/publications/intimate-partner-violence-police-guidelines> [*Police Guidelines*].

violence communication occurs and must respond to the victim's location.⁸¹ They are also directed to contact child protection services "in cases where children have been exposed to or witnessed" intimate partner violence.⁸² A comprehensive investigation of domestic violence allegations must occur,⁸³ and if police believe there are reasonable grounds that an offence was committed, they must lay charges, although they are also directed to identify the primary aggressor and are required to consult with the local Crown before laying mutual charges.⁸⁴ If police release a person accused of domestic violence, they must consider conditions to protect the alleged victim.⁸⁵ Other matters dealt with in the *Handbook* and *Police Guidelines* include the need for coordination and collaboration, safety planning, handling breaches of no-contact orders, training, monitoring and supervision, and providing support to victims, including those who are Indigenous and marginalized.⁸⁶

Crown prosecutors also have a *Domestic Violence Guideline*, which is to be used in conjunction with the *Handbook*.⁸⁷ The safety of the victim and any children is to be "at the forefront" of prosecutorial decision-making.⁸⁸ Where the detention of the perpetrator in custody is not appropriate, prosecutors are advised to seek interim release conditions that "assist in stabilizing the domestic situation and reducing the possibility of further violence."⁸⁹ Charges are not to be withdrawn or stayed solely based on the victim's request; instead, prosecutors must consider "the proper administration of justice, including whether there is a reasonable likelihood of conviction and the public's interest in the effective enforcement of the criminal law" as well as "the safety of the victim."⁹⁰ The *Domestic Violence Guideline* and *Handbook* also include discussions of compelling the testimony of the victim, removing and pursuing breaches of no-contact orders, case management and risk assessment, and the use of peace bonds.

Alberta has eight specialized domestic violence courts (DV courts) — in Calgary, Edmonton, Fort McMurray, Grand Prairie, Lethbridge, Medicine Hat, Pincher Creek, and Red Deer⁹¹ — and prosecutors are to transfer domestic violence matters to the DV court if there is one in the jurisdiction.⁹² Although DV courts deal only with criminal matters, one of their rationales is to recognize that domestic violence matters often involve complex and ongoing issues which require special consideration in order to protect victims and hold offenders accountable.⁹³ Each DV court has a somewhat different model, but they generally

⁸¹ *Handbook*, *supra* note 79 at 63.

⁸² *Police Guidelines*, *supra* note 80 at 27. The duty to report children in need of protection under the CYFEA, *supra* note 63, will be discussed below.

⁸³ *Handbook*, *supra* note 79 at 64–66.

⁸⁴ *Ibid* at 69–70 (with primary aggressor defined at 104 as "the individual who was the principle excessive aggressor rather than the individual who initiated the violence"); *Police Guidelines*, *supra* note 80 at 16.

⁸⁵ *Handbook*, *ibid* at 72.

⁸⁶ *Ibid* at 142; *Police Guidelines*, *supra* note 80 at 31–34.

⁸⁷ Alberta Justice, *Domestic Violence Guideline*, online: <open.alberta.ca/publications/attorney-general-guidelines-for-the-crown-prosecution-service>.

⁸⁸ *Ibid* at 1–2.

⁸⁹ *Handbook*, *supra* note 79 at 14.

⁹⁰ *Domestic Violence Guideline*, *supra* note 87 at 1–2.

⁹¹ Alberta Courts, *2021 Court Calendar and Indigenous Court Worker and Resolution Services Programs* (Edmonton: Alberta Queen's Printer, November 2021), online: <www.qp.alberta.ca/documents/court/2021_Court_Calendar.pdf>. See also Justice and Solicitor General, *Alberta's Domestic Violence Courts* (Edmonton: Policy and Planning Branch, 2015) at 6–7.

⁹² *Handbook*, *supra* note 79 at 143.

⁹³ *Alberta's Domestic Violence Courts*, *supra* note 91 at 3–4; Jennifer Koshan, "Specialised Domestic Violence Courts in Canada and the United States: Key Factors in Prioritising Safety for Women and Children" (2018) 40:4 J Soc Welfare & Fam L 515.

hear domestic violence matters on a separate docket and are staffed by at least some specialized personnel.⁹⁴ In Calgary, for example, the DV court hears both docket matters and trials, and prioritizes early intervention, treatment, and monitoring, with a community-based organization called HomeFront providing support to complainants and liaising with Child and Family Services, the Crown, Calgary Police Services, defence counsel, and probation officers.⁹⁵

A 2015 white paper found that most Alberta DV courts lack sufficient oversight, coordination, and information-sharing with other government and community agencies, resulting in potential risks to families' health and safety.⁹⁶ Lack of communication between criminal and civil systems was noted as a particular concern.⁹⁷ While Calgary's DV Court was seen as a model to follow, it was also found to be missing the key attributes of informed, consistent judicial decision-making, and domestic violence training and education.⁹⁸ Along the same lines, in 2018 the Family Violence Death Review Committee recommended better coordination and information-sharing between courts, as well as the implementation of Integrated Domestic Violence courts (IDV courts) in Alberta.⁹⁹ IDV courts hear criminal and family matters in the same courtroom in a one judge-one family model, and currently Toronto has the only such court in Canada.¹⁰⁰ While greater integration or coordination between criminal and family courts and the civil protection order system may be beneficial — for example, to avoid conflicting orders and to enhance safety planning — information-sharing may also have adverse consequences for some victims, as Part III will discuss.

Another criminal justice-related law, passed in 2019, is the *Disclosure to Protect Against Domestic Violence (Clare's Law) Act*.¹⁰¹ This law is intended to provide information that a person at risk of domestic violence could use in deciding to avoid or leave a relationship with someone who may be violent, although the details have been left to regulations that have not yet been developed. The first such law came into effect in Saskatchewan in June 2020, but the RCMP refused to enforce the law in light of what they see as their obligations under federal privacy legislation.¹⁰² In addition to privacy concerns, whether the legislation will only require disclosure of criminal records or will require broader disclosure (for example of police reports) is a critical issue, because in spite of pro-charging and pro-prosecution policies, there is continued evidence of both undercharging and overcharging in domestic

⁹⁴ See Jane Ursel, Leslie Tutty & Janice Lemaistre, eds, *What's Law Got to Do with It? The Law, Specialized Courts and Domestic Violence in Canada* (Toronto: Cormorant Books, 2008).

⁹⁵ See Tutty & Koshan, *supra* note 7 for an evaluation of the Calgary DV Court.

⁹⁶ *Alberta's Domestic Violence Courts*, *supra* note 91 at 3, 11–12.

⁹⁷ *Ibid* at 2–3, 12.

⁹⁸ *Ibid* at 7, 15–16.

⁹⁹ *Case Review Report No. 3*, *supra* note 53 at 5. In its response, the Government of Alberta suggested that “there are currently several courthouses throughout Alberta that have Integrated Family Violence Courts.” See *Minister's Response to the Family Violence Death Review Committee's Third Case Review Report* at 4, online: <www.humanservices.alberta.ca/documents/css-fvdr-govt-response-case-review-3.pdf>. However, this is inaccurate (see note 100 and accompanying text).

¹⁰⁰ For an evaluation of the Toronto IDV Court, see Rachel Birnbaum, Michael Saini & Nicholas Bala, “Canada's first integrated domestic violence court: Examining family and criminal court outcomes at the Toronto IDVC” (2017) 32 J Family Violence 621; more generally see Koshan, *supra* note 93. SA 2019, c D-13.5.

¹⁰¹ See *The Interpersonal Violence Disclosure Protocol (Clare's Law) Act*, SS 2019, c I-10.4; *The Interpersonal Violence Disclosure Protocol (Clare's Law) Regulations*, RRS c I-10.4 Reg 1. See also Molly Hayes, “RCMP in Saskatchewan not Following Clare's Law that Can Warn about Violent Partners, Citing Privacy Issues,” *The Globe and Mail* (8 September 2020) online: <www.the Globeandmail.com/canada/article-rcmp-hasnt-adopted-law-that-warns-about-violent-partners/>. For a discussion of privacy legislation, see Part II.I.

¹⁰²

violence cases, often in relation to persons who are Indigenous, racialized, or poor.¹⁰³ Another concern is that women who obtain disclosure about their partners' violent histories, or who could have done so, might be blamed if they do not leave and they later sustain abuse.¹⁰⁴ Supports for women who might be in a relationship with a potentially abusive partner, along with training of police and other justice system actors, are therefore key requirements for the successful implementation of this legislation.¹⁰⁵

C. FAMILY LAWS

In addition to providing for no-contact and exclusive possession orders, Alberta's family legislation makes explicit reference to domestic violence in some circumstances and is indirectly relevant in others.

The *FLA* explicitly includes family violence as a consideration when determining the "best interests of the child" for the purposes of guardianship, parenting, and contact orders.¹⁰⁶ More specifically, courts must consider family violence and its impact on the child's and other family members' safety, the child's general well-being, the abuser's ability to care for and meet the child's needs, and whether it is appropriate to require the parents to co-operate on issues affecting the child.¹⁰⁷ It is an error of law for courts to fail to consider family violence in this context.¹⁰⁸ Courts must also take into account any civil or criminal proceedings that are relevant to the child's safety or well-being, which makes EPOs and criminal consequences of family violence relevant to parenting decisions.¹⁰⁹

"Family violence" is defined to include behaviour that causes or attempts to cause physical harm to the child or another family member, or causes them to reasonably fear for their or another person's safety, as well as forced confinement and sexual abuse.¹¹⁰ Similar to the *PAFVA*, family violence under the *FLA* exempts a guardian's use of reasonable force against their child as a means of correction, and it does not include emotional or financial abuse or coercive control.¹¹¹ Unlike the *PAFVA*, however, the *FLA* does not include stalking in its definition of family violence, and it explicitly exempts acts of self-protection or protection of another person.¹¹²

This inconsistency in definitions may be confusing for those seeking or granting remedies under the different Acts. For example, stalking by a family member may lead to an EPO, but

¹⁰³ See e.g. Tutty & Koshan, *supra* note 7 at n 3.

¹⁰⁴ For discussions of women-blaming in domestic violence cases, see e.g. Deborah Epstein & Lisa A Goodman, "Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing their Experiences" (2018) 167 U Pa L Rev 399; Melanie Randall, "Domestic Violence and the Construction of 'Ideal Victims': Assaulted Women's 'Image Problems' in Law" (2004) 23 Louis U Pub L Rev 107.

¹⁰⁵ For further discussion see Jennifer Koshan & Wanda Wiegiers, "Clare's Law: Unintended Consequences for Domestic Violence Victims?" online (blog): <ablawg.ca/wp-content/uploads/2019/10/Blog_JK_WW_Bill17.pdf>.

¹⁰⁶ *FLA*, *supra* note 64, ss 18(1), 18(2)(b)(vi).

¹⁰⁷ *Ibid*, s 18(2)(b)(vi).

¹⁰⁸ See *HG v RG*, 2017 ABCA 89.

¹⁰⁹ *FLA*, *supra* note 64, s 18(2)(b)(xi).

¹¹⁰ *Ibid*, s 18(3). Whether family violence was present is to be established on a balance of probabilities (s 18(4)).

¹¹¹ *Ibid*, s 18(3)(a).

¹¹² *Ibid*, s 18(3).

it is not explicitly relevant to the best interests of the child for the purposes of parenting and contact orders — although it could be read in, and could be seen to affect the appropriateness of an order that would require the parents to co-operate. At the same time, parents must “use their best efforts to co-operate with one another in exercising their powers, responsibilities and entitlements.”¹¹³ This “friendly parent” provision may create difficulties for victims of domestic violence who are trying to protect their children from violence. For example, some victims of domestic violence seeking to protect their children from abuse have been improperly branded by courts as “alienating” and have lost parenting time.¹¹⁴ Moreover, even though the *FLA* does not include an explicit “maximum contact” provision, the courts have read this principle into the Act, and this may also negatively influence parenting orders even where there is family violence.¹¹⁵ A preferable approach is that of British Columbia, which provides that a denial of parenting time or contact with a child is not wrongful where the guardian reasonably believed the child might suffer violence if contact was exercised.¹¹⁶

For married parties in Alberta, upcoming amendments to the *Divorce Act* will add family violence as a factor relevant to the best interests of the child for the purposes of parenting orders.¹¹⁷ These amendments, which come into force in March 2021, will define family violence broadly to include psychological and financial abuse and coercive control.¹¹⁸ Some provinces are taking steps to align their family legislation with the revised *Divorce Act*’s approach to family violence, and this is an excellent opportunity for Alberta to review the *FLA*.¹¹⁹

Issues regarding domestic violence are not otherwise mentioned in Alberta’s *FLA*. However, in the context of support orders, courts may consider conduct that “arbitrarily or unreasonably precipitates, prolongs or aggravates” the need for spousal support, which could include circumstances related to domestic violence.¹²⁰ In the case of property division, one of the factors relevant to whether it would be unjust and inequitable to divide family property equally is whether a spouse or adult interdependent partner has dissipated property to the

¹¹³ *Ibid*, s 21(1)(c).

¹¹⁴ See e.g. Linda Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research and Vancouver: The FREDACentre for Research on Violence Against Women and Children, 2018); Elizabeth Sheehy & Susan B Boyd, “Penalizing Women’s Fear: Intimate Partner Violence and Parental Alienation in Canadian Child Custody Cases” (2020) 42:1 J Soc Welfare & Fam L 80.

¹¹⁵ See e.g. *DAF v SRG*, 2020 ABCA 25 at para 21. For critiques of assumptions about maximum parenting time, see e.g. Linda C Neilson & Susan B Boyd, *Interpreting the New Divorce Act, Rules of Statutory Interpretation & Senate Observations*, online: <www.fredacentre.com/wp-content/uploads/2020/03/Dr.-Linda-Neilson-and-Professor-Susan-Boyd-Interpreting-the-New-Divorce-Act-March-8-2020-Rules-of-Statutory-Interpretation-and-Senate-Observations.pdf>.

¹¹⁶ BC *FLA*, *supra* note 30, ss 40(4), 62. Even British Columbia’s legislation may not go far enough in responding to family violence, however. See Susan B Boyd & Ruben Lindy, “Violence Against Women and the B.C. *Family Law Act*: Early Jurisprudence” (2016) 35 Can Fam LQ 101.

¹¹⁷ 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*, 1st Sess, 42nd Parl, 2019, cl 12 (assented to 21 June 2019), SC 2019, c 16 [Bill C-78]; *Divorce Act*, RSC 1985, c 3 (2nd Supp), s 16.

¹¹⁸ Bill C-78, *ibid*, cl 1(7); *Divorce Act*, *ibid*, ss 2(1), 16(3).

¹¹⁹ See e.g. Bill 205, *An Act respecting Certain Family Law Matters concerning Children and making consequential amendments to other Acts*, 4th Sess, 28th Leg, Saskatchewan, 2019 (assented to 16 March 2020); Bill 207, *An Act to Amend the Children’s Law Reform Act, the Courts of Justice Act, the Family Law Act and other Acts respecting various family law matters*, 1st Sess, 42nd Leg, Ontario, 2020 (assented to 20 November 2020).

¹²⁰ *FLA*, *supra* note 64, s 59. The *Maintenance Enforcement Act*, RSA 2000, c M-1, s 1, provides for enforcement of support orders and includes QBPOs made under the *PAFVA*.

detriment of the other person, which may bring in considerations of financial abuse.¹²¹ While the limited relevance of domestic violence may seem reasonable in that financial remedies are needs-based rather than fault-based, it is also important to recognize that many victims of domestic violence — especially those who are leaving relationships characterized by coercive control — may settle issues of property and support that relinquish their entitlements. Also relevant in this context is the *Dower Act*, which sets out several rights for married spouses in relation to homestead property.¹²² Although the *Dower Act* does not refer to family violence explicitly, it may protect against financial abuse by providing spouses with the right to withhold their consent to disposition of the homestead by their partners.¹²³

The *CYFEA*, Alberta’s child protection legislation, considers domestic violence in determining appropriate interventions.¹²⁴ The *CYFEA* names “exposure to family violence or severe domestic disharmony” as a basis for intervention, but it also indicates that families should be provided with intervention services in a way that supports family members who have been abused and prevents the need to remove children from their custody.¹²⁵ For Indigenous children, “the importance of respecting, supporting and preserving the child’s Indigenous identity, culture, heritage, spirituality, language and traditions” must be considered in determining appropriate interventions.¹²⁶ These provisions are significant in light of the reality that women may be reluctant to report domestic violence for fear of having their children placed in state care — particularly Indigenous and African-Canadian women, who have been disproportionately subject to child apprehensions.¹²⁷ This fear is related to the duty to report children in need of intervention, which binds police, service providers, and others who become aware of children’s exposure to family violence.¹²⁸ At the same time, these actors may “normalize” domestic violence for some Indigenous families, leading to a failure to report real safety issues.¹²⁹ Amendments to the *CYFEA* in 2019 changed the standard for intervention by amending the language throughout the Act from “the survival, security or development of the child” to “the *safety*, security or development of the child” and it remains to be seen what impact this change will have in cases involving family violence.¹³⁰

¹²¹ *FPA*, *supra* note 68, s 8(1).

¹²² RSA 2000, c D-15.

¹²³ *Ibid*, s 2. The Alberta Law Reform Institute (ALRI) is currently reviewing whether the *Dower Act* should be reformed or repealed. See ALRI, “Dower Act,” online: <www.alri.ualberta.ca/portfolio-items/dower-act/>.

¹²⁴ *CYFEA*, *supra* note 63. The *CYFEA* also applies to adoptions, and the *Adoption Regulation*, Alta Reg 187/2004, requires that information about abuse is to be provided in a medical report about the child who is the subject of an adoption application (see s 13(3) and Form 6).

¹²⁵ *CYFEA*, *ibid*, ss 1(3)(ii)(C), 2(1)(i). “Domestic violence” and “severe domestic disharmony” are not defined in the *Act*.

¹²⁶ *Ibid*, s 2(1)(j)(iii). Section 53.1 also requires that the appropriate First Nation be notified of proceedings for children of Indigenous descent. See also *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 (governing the provision of child and family services for Indigenous families and defining the best interests of Indigenous children to include family violence and its impact on the child (s 10(3)(g)).

¹²⁷ See Patricia A Monture, “A Vicious Circle: Child Welfare and the First Nations” (1989) 3:1 CJWL 1 at 2–3. More recently, see Mosher, *supra* note 4 at 175–76.

¹²⁸ *CYFEA*, *supra* note 63, s 4. The duty to report applies even where the information founding the belief is confidential or its disclosure is prohibited, unless it is based on solicitor-client privilege (s 4(2), (3)).
¹²⁹ This was one of the findings of the FVDRC in *Case Review Public Report No. 8*, *supra* note 53 at 3. The report recommends “that the Government of Alberta engage the federal government with the goal of adequately resourcing designated First [Nations] agencies in Alberta” (at 8).

¹³⁰ *CYFEA*, *supra* note 63, s 1(2) [emphasis added], amended by Bill 22, *An Act for Strong Families Building Stronger Communities*, 4th Sess, 29th Leg, Alberta, 2018, cl 32 (came into force 28 February 2019).

Another important family-related law at the federal level is the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.¹³¹ The *FHRMIRA* authorizes First Nations to develop their own laws for the possession of family homes and the division of property interests on reserves.¹³² For Nations without their own family property laws, the *FHRMIRA*'s provisional rules apply, and allow on-reserve victims of family violence to obtain emergency protection orders from designated judges and exclusive occupation orders for the family home from superior court judges.¹³³ Currently, no judges have been designated in Alberta, so in urgent situations, victims of family violence living on-reserve are left with the option of EPOs under the *PAFVA*.¹³⁴ However, while provincial orders might provide for no contact, they cannot cover possession of the family home on reserve lands in light of federal jurisdiction over those lands.¹³⁵ This illustrates the complexity of overlapping laws for Indigenous peoples. Despite its intent to close a legislative gap, the *FHRMIRA* may offer less protection to Indigenous victims of family violence living on-reserve than for those living off-reserve.¹³⁶

In terms of process for family disputes, the 2010 *Alberta Rules of Court* require parties in civil and family disputes who seek a trial date to provide certification that they participated in an alternative dispute resolution (ADR) process, unless they have an order waiving this requirement.¹³⁷ This mandatory ADR requirement was suspended from 2013 to 2019 by the Alberta Court of Queen's Bench, but it was resurrected in September 2019 for a one-year pilot period that was extended until further notice in September 2020.¹³⁸ Family litigants can satisfy the mandatory ADR requirement by participating in mediation or arbitration, a court-annexed dispute resolution process, or judicial dispute resolution (JDR).¹³⁹ Exemptions from mandatory ADR or JDR are within the discretion of a justice, and although they include "a compelling reason why a dispute resolution process should not be attempted by the parties," they do not explicitly include domestic violence.¹⁴⁰ There is no duty on courts to make inquiries about or screen for domestic violence, and it is unclear whether domestic violence will be sufficient to obtain an exemption, or in what circumstances.

¹³¹ SC 2013, c 20 [*FHRMIRA*].

¹³² *Ibid.*, s 7. In Alberta, the only First Nations that have enacted laws under *FHRMIRA* to date are the Tsuut'ina Nation and Salt River First Nation #195. See Indigenous Services Canada, *List of First Nations with Matrimonial Real Property Laws Under the Act*, online: <www.sac-isc.gc.ca/eng/1408981855429/1581783888815>. First Nations can also enact laws dealing with family property under the *First Nations Land Management Act*, SC 1999, c 24, s 20(1)(c) or their inherent right to self government. Information about these laws is not readily available.

¹³³ *FHRMIRA*, *ibid.*, ss 16, 20. *FHRMIRA* also governs the division of family property on reserve and permits orders to restrain the "improvident depletion" of a spouse or partner's interest or right in the family home. *Ibid.*, s 32.

¹³⁴ *List of First Nations with Matrimonial Real Property Laws Under the Act*, *supra* note 132.

¹³⁵ See *Derrickson v Derrickson*, [1986] 1 SCR 285; *Paul v Paul*, [1986] 1 SCR 306.

¹³⁶ See Elysa Darling, *Assessing Matrimonial Real Property Law on First Nation Reserves: Domestic Violence, Access to Justice, and Indigenous Women* (LLM Thesis, University of Calgary, 2019), online: <prism.ucalgary.ca/bitstream/handle/1880/111047/ucalgary_2019_darling_elysa.pdf?sequence=4&isAllowed=y>.

¹³⁷ *Alberta Rules of Court*, *supra* note 62, rules 4.16(1)–(2), 8.4(3), 8.5(1)(a). Under the *CYFEA*, *supra* note 63, s 3.1, ADR for decisions regarding children in need of protection is permitted but not required.

¹³⁸ Alberta Court of Queen's Bench, "Notice to the Profession & Public – Enforcement of Mandatory Alternative Dispute Resolution Rules 8.4(3)(A) and 8.5(1)(A)"; "Extension of the Enforcement of Mandatory Alternative Dispute Resolution Rules," online: <albertacourts.ca/qb/resources/announcements/extension-mandatory-ADR-rule?utm_source=Announcement+from+the+Court+of+Queen%27s+Bench+of+Alberta&utm_medium=newsletter&utm_campaign=Announcement+from+the+Court+of+Queen%27s+Bench+of+Alberta>.

¹³⁹ *Alberta Rules of Court*, *supra* note 62, rule 4.16(1).

¹⁴⁰ *Ibid.*, rule 4.16(2).

Litigation may raise concerns in family violence cases due to the possibility of abusers using the legal system to harass and further control their victims.¹⁴¹ However, there is also extensive literature discussing the problems with requiring ADR in a context where there may be serious power imbalances and ongoing coercive control.¹⁴² This is especially so where, as is the case in Alberta, ADR professionals are not required to screen for or complete training on domestic violence. And while family lawyers have a duty to inform parties of various types of dispute resolution, they are under no duty to screen for domestic violence.¹⁴³ A recent study by the Calgary Domestic Violence Collective found that many family lawyers and mediators in Alberta do not screen for domestic violence.¹⁴⁴ In contrast, some other provinces require dispute resolution professionals to take domestic violence training and to screen for family violence in family disputes before proceeding.¹⁴⁵ Others make exceptions to ADR requirements for cases involving domestic violence.¹⁴⁶ If mandatory ADR or JDR is maintained in Alberta, similar provisions should be implemented.

D. ADULT GUARDIANSHIP LEGISLATION

The *Adult Guardianship and Trusteeship Act* does not explicitly refer to domestic violence, but it provides for remedies to assist adults with diminished decision-making capacity.¹⁴⁷ Guardianship and trusteeship orders are available on an urgent basis for adults lacking capacity to make decisions about personal or financial matters where it is necessary for someone to make decisions on their behalf to prevent death, serious physical or mental harm, or serious financial loss.¹⁴⁸ The Public Guardian may apply for protection orders for adults subject to guardianship or trusteeship orders who are at risk of serious harm.¹⁴⁹ The Act could therefore be used as an alternative to the *PAFVA* to protect adults with diminished capacity against some of the harms of family violence. Although the *PAFVA* would be quicker to invoke in emergency situations, the *Adult Guardianship and Trusteeship Act* is broader than the *PAFVA* in providing some protection against emotional and financial abuse.¹⁵⁰

¹⁴¹ See e.g. Koshan, Mosher & Wiegiers, “Costs of Justice,” *supra* note 9, n 117.

¹⁴² See Wanda Wiegiers, Jennifer Koshan & Janet Mosher, “Domestic Violence and Alternative Dispute Resolution in Family Law Disputes,” online (blog): <ablawg.ca/wp-content/uploads/2018/11/Blog_JK_FV_ADR_Nov2018.pdf>.

¹⁴³ *FLA*, *supra* note 64, ss 5(1)(b), 97. Federally, the 2019 amendments to the *Divorce Act*, *supra* note 117, do not provide for screening or training requirements either (ss 7.3, 7.7(2)(a)).

¹⁴⁴ Katrina Milaney & Nicole Williams, *Examining Domestic Violence Screening Practices of Mediators and Lawyers* (Calgary: Calgary Domestic Violence Collective, 2018). See also Pamela C Cross et al, *What You Don't Know Can Hurt You: The Importance of Family Violence Screening Tools for Family Law Practitioners* (Ottawa: Department of Justice Canada, 2018), online: <www.justice.gc.ca/eng/rp-pr/jr/can-peut/can-peut.pdf>; Linda Neilson, “At Cliff’s Edge: Judicial Dispute Resolution in Domestic Violence Cases” (2014) 52:3 Family Ct Rev 529.

¹⁴⁵ See e.g. *Family Law Act Regulation*, BC Reg 347/2012, ss 4–6; *Family Arbitration*, O Reg 134/07, ss 2, 4.

¹⁴⁶ See e.g. *Notice to Mediate (Family) Regulation*, BC Reg 296/2007, s 13; *The Queen’s Bench Act, 1998*, SS 1998, c Q-1.01, s 44.01(6)(c); *Family Law Modernization Act*, SM 2019, c 8 (not yet in force).

¹⁴⁷ SA 2008, c A-42, ss 27, 48.

¹⁴⁸ *Ibid.* The Act also provides for co-decision making orders in s 13.

¹⁴⁹ *Ibid.*, s 74.

¹⁵⁰ *Ibid.*, s 75.

E. RESIDENTIAL TENANCY AND HOUSING LAWS

Alberta amended the *RTA* in 2015 to permit victims of domestic violence to terminate their tenancy agreements with 28 days notice without the usual financial penalties for early termination.¹⁵¹ The threshold requirement is that the tenant believes their safety or that of their children or a protected adult who lives with them is at risk because of domestic violence if the tenancy continues.¹⁵² Domestic violence is broadly defined to include physical, sexual, psychological, and emotional abuse, forced confinement, stalking, and threats that create a reasonable fear of property damage or personal injury, and covers violence within a range of relationships, including spousal, cohabiting, dating, parental, family, and caregiving relationships.¹⁵³

To enable early termination, a designated authority must issue a certificate confirming that there are grounds for the termination, which can include an EPO, QBPO, restraining order, peace bond, or other court order restraining contact with the tenant, or a professional opinion that the tenant has been subject to domestic violence and there is a risk to their safety or those in their care if the tenancy continues.¹⁵⁴ The Regulations elaborate that the professional opinion must be based on factors including a previous history of domestic violence, safety concerns related to a present crisis, legal proceeding, or separation, past conduct, or threats directed to the tenant or another person.¹⁵⁵ Similar legislation has been passed in other Canadian jurisdictions, and these statutes differ considerably in whether and how domestic violence must be verified and in the procedures used to terminate tenancies.¹⁵⁶

It is interesting to compare the *RTA*'s use of "domestic violence" with the *PAFVA*'s focus on "family violence." Dating relationships are included in the *RTA* but not in the *PAFVA*, and the *RTA* includes emotional and psychological abuse but these are excluded from the *PAFVA*.¹⁵⁷ Some tenants will therefore be eligible for early termination of their tenancies under the *RTA* even though they do not qualify for protection orders under the *PAFVA*, although they will require professional verification of the abuse.¹⁵⁸ While the breadth of the *RTA* is positive for victims of domestic violence, these differences may cause confusion and create barriers to accessing remedies.

Under the revised *RTA*, landlords must ensure that any information they receive from or about a tenant who is a victim of domestic violence is kept confidential, unless they are authorized to disclose that information for law enforcement purposes, health or security reasons, or with the consent of the tenant.¹⁵⁹ Early termination applies to all the tenants in the

¹⁵¹ *RTA*, *supra* note 32, s 47.3(4)(b); *Termination of Tenancy (Domestic Violence) Regulation*, Alta Reg 130/2016.

¹⁵² *RTA*, *ibid*, s 47.3(1). "Protected adult" includes assisted, represented, or supported adults as defined in the *Adult Guardianship and Trustee Act*, *supra* note 147, ss 1(1)(j)–(l).

¹⁵³ *RTA*, *ibid*, s 47.2.

¹⁵⁴ *Ibid*, s 47.4(2). Designated authorities include health practitioners, social workers, police, and shelter and victim support workers (see s 47.4(4)).

¹⁵⁵ *Termination of Tenancy (Domestic Violence) Regulation*, *supra* note 151, s 3(b)(iii).

¹⁵⁶ See Koshan, Mosher & Wieggers, "Costs of Justice," *supra* note 9 at 17–18. For cross-jurisdictional comparisons in Canada, see Watson Hamilton, *supra* note 44. For international comparisons, see Lois Gander & Rochelle Johansson, *The Hidden Homeless: Residential Tenancies Issues of Victims of Domestic Violence* (Edmonton: Centre for Public Legal Education Alberta, 2014).

¹⁵⁷ *RTA*, *supra* note 32, ss 47.2(1)–(2).

¹⁵⁸ *Ibid*, s 47.3.

¹⁵⁹ *Ibid*, s 47.7; *Termination of Tenancy (Domestic Violence) Regulation*, *supra* note 151, s 4(1).

same residential premises, and landlords may disclose to other tenants the fact that a notice for early termination of tenancy was served and the termination date specified.¹⁶⁰ The termination may thus bind the perpetrator of domestic violence; however, that person and the landlord are free to enter into a new tenancy relationship, as are any other tenants affected by the termination.¹⁶¹

Other provisions in the *RTA* may also be relevant in domestic violence situations. Tenants must not perform illegal acts, endanger persons or property on the premises, or damage the premises,¹⁶² and a landlord may apply to terminate a tenancy where these covenants are breached, including where one tenant assaults another.¹⁶³ This power on the part of landlords was not affected by the recent amendments, which do not protect victims of domestic violence from eviction based on the perpetrator's violence (unless they obtain an EPO under the *PAFVA*) or allow a landlord to remove the perpetrator from the tenancy agreement at the victim's request.¹⁶⁴ Furthermore, there must be mutual consent between a landlord and tenant before changing locks giving access to residential premises, which may make it difficult for a victim to lock out the perpetrator if he is also a tenant.¹⁶⁵ While the amendments make it easier for victims of domestic violence to leave residential tenancies, they do not make it easier for them to stay in their homes.¹⁶⁶

There are also intersections between the *Residential Tenancies Act* and social housing legislation. Alberta's *Social Housing Accommodation Regulation* provides for a point system to determine priority for need and allocation of subsidized housing.¹⁶⁷ Under the *SHAR*, applications for housing are made by "households," which include individuals, their spouse or adult interdependent partner, and their dependants.¹⁶⁸ Households applying for social housing that require accommodation as a result of an emergency situation, including family violence, are allocated a certain number of points that determine priority, and points may be withheld if the household repudiated or breached a tenancy agreement, abandoned the premises, or their tenancy was otherwise terminated as a result of contravening the *RTA*.¹⁶⁹ It would thus appear that victims of domestic violence must rely on the new early termination provisions in the *RTA* to avoid running afoul of the *SHAR*.

F. SOCIAL ASSISTANCE LAW

The *Income and Employment Supports Act* is also relevant for survivors of domestic violence and their children facing economic insecurity.¹⁷⁰ As with the *SHAR*, applications for support are made for "household units," which means a person and their cohabiting partner,

¹⁶⁰ *Termination of Tenancy (Domestic Violence) Regulation*, *ibid*, s 4(2). See also the *RTA*, *ibid*, s 45.3.

¹⁶¹ *RTA*, *ibid*, ss 47.3(5),(6). See Watson Hamilton, *supra* note 44 at 264.

¹⁶² *RTA*, *ibid*, s 21.

¹⁶³ *Ibid*, s 30. Similar provisions apply in the *Mobile Home Sites Tenancies Act*, RSA 2000, c M-20, which was also amended to allow early termination of leases.

¹⁶⁴ *RTA*, *ibid*, ss 47.3–47.4.

¹⁶⁵ *Ibid*, s 24. See also Watson Hamilton, *supra* note 44 at 261.

¹⁶⁶ Watson Hamilton, *ibid* at 260. For a Canadian project examining a "safe at home" model, which would require the perpetrator to leave the family home and give the victim the option to stay, see Patricia O'Campo et al., "Solutions Network: Safe at Home," online: <maphealth.ca/safe-at-home/>.

¹⁶⁷ Alta Reg 244/1994, Schedule A [*SHAR*], made under the *Alberta Housing Act*, RSA 2000, c A-25.

¹⁶⁸ *SHAR*, *ibid*, s 1(1)(i).

¹⁶⁹ *Ibid*, s 2. Family violence is not defined in the *SHAR*.

¹⁷⁰ *Income and Employment Supports Act*, SA 2003, c I-0.5 [*IESA*].

dependent children or both, or a person is who single.¹⁷¹ Under the Regulations, “cohabiting partners” are persons either living with, or financially interdependent on, their spouse, adult interdependent partner, or co-parent of a child.¹⁷² Financial interdependence is not defined, and it is unclear how these provisions apply in the case of persons in abusive relationships where there continues to be financial interdependence. The Director may refuse, discontinue, suspend, or reduce assistance when, in their opinion, an applicant or recipient refuses to make reasonable efforts to pursue compensation, income, or financial resources to which they are entitled.¹⁷³ This is a problematic intersection between family legislation and social assistance legislation, as victims of family violence may be ineligible for benefits when they fail to pursue support from their (ex)partner — which they may do to avoid abusive contact. On the other hand, where a person entitled to assistance has a right to apply for or receive support for themselves or their dependent children, the Director may apply for and enforce support on their behalf.¹⁷⁴

The *Income Support, Training and Health Benefits Regulation* provides allowances to individuals dealing with abusive situations, including for moving and household start up, telephone services, and transportation.¹⁷⁵ Similar assistance is provided for persons with disabilities experiencing abuse under the *Assured Income for Severely Handicapped Act*.¹⁷⁶ For sponsored immigrants who are eligible to receive income support and benefits, the usual provisions requiring assessment of the sponsor’s assets and financial resources do not apply where the sponsored immigrant was abused or abandoned by their sponsor.¹⁷⁷

G. EMPLOYMENT LEGISLATION

Alberta’s *Occupational Health and Safety Act* was revamped in 2017, and it now obliges employers and supervisors to ensure that their workers are not subjected to and do not participate in harassment or violence at work.¹⁷⁸ Consistent with the recommendation of the FVDRRC noted above, “violence” is defined to include domestic and sexual violence.¹⁷⁹ A health and safety program must be established by employers with 20 or more workers, and harassment and violence are amongst the hazards to workers that must be identified in the program.¹⁸⁰ Alberta’s *Occupational Health and Safety Code* was amended at the same time, and requires employers to develop policies and procedures for potential workplace violence.¹⁸¹ The Code provides that when an employer is aware that a worker is likely to be exposed to domestic violence at work, the employer “must take reasonable precautions to protect the worker and any other persons at the work site likely to be affected.”¹⁸²

¹⁷¹ *Ibid*, ss 1(f), 5.

¹⁷² *Income Support, Training and Health Benefits Regulation*, Alta Reg 122/2011, s 1(2)(a.2).

¹⁷³ *IESA*, *supra* note 170, s 15(1)(c).

¹⁷⁴ *Ibid*, s 29.

¹⁷⁵ *Income Support, Training and Health Benefits Regulation*, *supra* note 172, Schedule 4, ss 13, 14, 20.

¹⁷⁶ SA 2006, c A-45.1; *Assured Income for the Severely Handicapped General Regulation*, Alta Reg 91/2007, Schedule 3, ss 9(2)(d), 11.

¹⁷⁷ *Income Support, Training and Health Benefits Regulation*, *supra* note 172, ss 28(2), 54(2). For a discussion of the legal challenges faced by abused women who are sponsored immigrants, see Koshan, Mosher & Wiegers, “Costs of Justice,” *supra* note 9 at 25–28.

¹⁷⁸ SA 2017, c O-2.1, ss 3–4 [*OHSA*].

¹⁷⁹ *Ibid*, s 1(yy).

¹⁸⁰ *Ibid*, s 37(1)(b).

¹⁸¹ Alta Reg 87/2009, Part 27.

¹⁸² *Ibid*, s 390.3.

The same year, the *Employment Standards Code* was amended to include domestic violence leave of up to ten days per calendar year.¹⁸³ The leave is unpaid and is available for obtaining medical attention, victim or legal services, law enforcement assistance, counselling, and relocation. The definition of domestic violence used in the *Employment Standards Code* is the same as in the *RTA*, which — as noted earlier — is broader than the definition of “family violence” in the *PAFVA* in covering dating relationships and psychological or emotional abuse. Unlike the *RTA*, however, there are no verification requirements for the abuse under the *Employment Standards Code*, nor are there specific confidentiality obligations for employers. To take advantage of the leave, the employee must have been employed by the same employer for at least 90 days and must give their employer “as much notice as is reasonable and practicable in the circumstances.”¹⁸⁴

These two sets of amendments introduced important provisions designed to prevent and respond to domestic violence in the workplace, as well as to allow workers some time off from work to deal with the many repercussions of violence. Similar provisions are now in place in many other Canadian jurisdictions, some of which provide for paid domestic violence leave and much longer periods of absence.¹⁸⁵

H. COMPENSATION AND VICTIMS’ RIGHTS

The *Limitations Act* was amended in 2017 to remove the limitation period for civil claims of sexual assault and battery, and for claims involving sexual misconduct or assault and battery in specific circumstances, including those where the plaintiff was in an intimate relationship with, or was dependent financially, emotionally, physically or otherwise, on the defendant.¹⁸⁶ While civil lawsuits against ex-partners for assault and battery are uncommon, there are a few reported cases in Alberta, and this number may increase now that the limitation period has been removed.¹⁸⁷

The *Victims of Crime and Public Safety Act* provides for limited financial compensation for victims of crime, and while it does not reference domestic violence explicitly, it applies in the context of violent crimes.¹⁸⁸ A victim who is convicted of a criminal offence arising from the events that resulted in the injury, who fails to report the offence to the police within a reasonable period of time, or is found to have directly or indirectly contributed to their injuries may not be eligible for financial benefits.¹⁸⁹ This exclusion fails to consider the reasons victims may have for failing to report domestic violence to the police, including

¹⁸³ RSA 2000, c E-9, s 53.981(1).

¹⁸⁴ *Ibid*, ss 53.981(3), (5).

¹⁸⁵ Koshan, Mosher & Wiegers, “Costs of Justice,” *supra* note 9 at 20. See also Canadian Labour Congress, “How Does Domestic Violence Impact People at Work?” online: <canadianlabour.ca/how-does-domestic-violence-impact-people-work>.

¹⁸⁶ RSA 2000, c L-12, s 3.1. For similar provisions in other jurisdictions, see Koshan, Mosher & Wiegers, “Costs of Justice,” *supra* note 9 at 20.

¹⁸⁷ See e.g. *Jagodnik v Oudshoorn*, 2015 ABQB 456.

¹⁸⁸ RSA 2000, c V-3. The *Act* was amended in 2020 to limit financial compensation to “victims who suffer a severe neurological injury” (see ss 12(2)(b), 12.2(1)(a)). The *Act* also provides for death benefits for victims’ families and sets out principles for the treatment of and provision of information to victims (see ss 2, 4, 12.1, 12.3). See also the *Corrections Act*, RSA 2000, c C-29, s 14.3 (providing that victims are entitled to corrections information about offenders, including the offence they were convicted of, the dates of the sentence, and any sentence conditions relating to the victim).

¹⁸⁹ *Victims of Crime and Public Safety Act*, *ibid*, ss 12(2), 12.2; *Victims of Crime Regulation*, Alta Reg 63/2004, s 4.

protection of themselves and their children and fear of child intervention and immigration consequences.¹⁹⁰ It also shows the importance of having appropriate police and Crown policies in place to avoid inappropriate mutual charges in domestic violence cases.

The *Insurance Act* does not explicitly mention domestic violence, but it allows recovery by innocent persons for loss or damage to property that is caused by a criminal or intentional act or omission by an insured or any other person.¹⁹¹ This provision may provide relief to survivors of domestic violence whose partners damage their property and who would otherwise be excluded from coverage because of the criminal or intentional nature of the damage.

I. PRIVACY LEGISLATION

Alberta does not generally recognize the tort of privacy, but it established a tort for the non-consensual distribution of intimate images in 2017 that provides some protection of privacy in the domestic violence context.¹⁹² Similar legislation exists in a number of other provinces.¹⁹³

Alberta's *Freedom of Information and Protection of Privacy Act* does not mention domestic violence explicitly.¹⁹⁴ It does, however, create obligations and restrictions on public bodies around the collection, use, and disclosure of personal information that could be relevant in the domestic violence context. The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy; however, disclosure will not be unreasonable where necessary for law enforcement purposes or where there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party.¹⁹⁵ A public body is also permitted to disclose personal information if it reasonably believes the disclosure will avert or minimize an imminent danger to the health or safety of any person.¹⁹⁶ Disclosure is also permitted in accordance with other legislation, such as the duty to report children in need of protection under the *CYFEA*.¹⁹⁷ At the same time, public bodies may refuse to disclose personal information to an applicant, including their own personal information, if the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health.¹⁹⁸

British Columbia is the only jurisdiction to explicitly reference domestic violence in its privacy legislation at present. British Columbia's *Freedom of Information and Protection of Privacy Act* allows public bodies to collect and disclose personal information where it is "necessary for the purpose of reducing the risk that an individual will be a victim of domestic

¹⁹⁰ See Koshan, Mosher & Wieggers, "Costs of Justice," *supra* note 9 at 25.

¹⁹¹ RSA 2000, c I-3, s 541.

¹⁹² *Protecting Victims of Non-Consensual Distribution of Intimate Images Act*, RSA 2017, c P-26.9.

¹⁹³ See Koshan, Mosher & Wieggers, "Costs of Justice," *supra* note 9 at n 106.

¹⁹⁴ RSA 2000, c F-25 [*FOIP Act*]. See also the *Children First Act*, *supra* note 56 (allowing those providing programs or services for children to collect, use, and disclose personal information about a child, their parent, or guardian from or to another service provider for the purposes of providing services or benefits to a child).

¹⁹⁵ *FOIP Act*, *ibid*, ss 17(4)(b), 2(b).

¹⁹⁶ *Ibid*, s 40(1)(ee).

¹⁹⁷ *Ibid*, s 40(1)(f).

¹⁹⁸ *Ibid*, s 18(1)(a).

violence, if domestic violence is reasonably likely to occur.”¹⁹⁹ The requirement to collect personal information directly from the individual concerned is subject to an exception where “the information is collected for the purpose of . . . reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur.”²⁰⁰ While these provisions are similar to those in Alberta’s *FOIP Act* in seeking to reduce harm, it is useful that they explicitly reference public bodies’ obligations in cases involving domestic violence, and Alberta may wish to consider amending its legislation to do so.

In the private sector, Alberta’s *Personal Information Protection Act* governs the collection, use, and disclosure of personal information by “organizations,” which are defined to include corporations and individuals acting in a commercial capacity.²⁰¹ Like the *FOIP Act*, the *PIPA* does not explicitly reference domestic violence, but it creates similar obligations for organizations that could be relevant in this context.²⁰² For private actors such as landlords and employers, knowledge of personal injury or property damage — if it was seen to meet the definition of “personal information” — could likely be used or disclosed where necessary to respond to an emergency that threatened someone’s life, health, or security.²⁰³ This information could also be disclosed for investigation purposes.²⁰⁴ Explicit reference to domestic violence might also be useful in this legislation, which would allow consideration of information-sharing in the more specific circumstances presented by domestic violence.

J. LEGAL REPRESENTATION

A significant access to justice issue in cases involving domestic violence is the availability of paid legal representation. Legal aid coverage for domestic violence related matters is not legislatively mandated and therefore may change over time.²⁰⁵ Legal Aid Alberta currently has an Emergency Protection Order Program, which provides legal support to victims in some Alberta cities to obtain or confirm protection orders; there is no cost for this service and there are no financial eligibility requirements.²⁰⁶ Legal Aid Alberta may also provide coverage for family law matters (including custody, access, and parenting orders and child protection cases), civil matters (including income supports and government benefits, adult guardianship, and immigration and refugee claims) and criminal law matters, subject to eligibility requirements.²⁰⁷ As noted above, lawyers are not required to screen for or take

¹⁹⁹ RSBC 1996, c 165, ss 26(f), 33.1(1)(m.1).

²⁰⁰ *Ibid*, s 27(1)(c)(v).

²⁰¹ SA 2003, c P-6.5, s 1(1)(i)(v) [*PIPA*].

²⁰² See also Order F2008-029, 2009 CanLII 90966 (AB OIPC) (finding that a domestic violence organization was authorized by the *PIPA* to disclose the complainant’s personal information to child welfare authorities).

²⁰³ *PIPA*, *supra* note 201, ss 17(i), 20(g).

²⁰⁴ *Ibid*, s 1(1)(f).

²⁰⁵ In Alberta, jurisdiction over legal aid is set out in the *Legal Profession Act*, RSA 2000, c L-8, s 4.

²⁰⁶ Legal Aid Alberta (LAA), “Family Violence Matters,” online: <www.legalaid.ab.ca/services/Family-violence-matters/>. LAA also implemented special measures related to EPOs during the COVID-19 pandemic. See LAA, “Legal Aid Alberta sends extra help to victims of domestic violence as applications for emergency protection orders rise,” online: <www.legalaid.ab.ca/featured-home-page/legal-aid-alberta-sends-extra-assistance-to-help-victims-of-domestic-violence-as-applications-for-emergency-protection-orders-rise/>.

²⁰⁷ LAA, “Family Law,” online: <www.legalaid.ab.ca/services/family-law/>; LAA, “Civil Law,” online: <www.legalaid.ab.ca/services/civil-law/>; LAA, “Adult Criminal Law,” online: <www.legalaid.ab.ca/services/adult-criminal-law/>. LAA also provides legal support for complainants in sexual assault matters, but there is no similar support for complainants in domestic violence matters. See LAA, “Legal

training on domestic violence in Alberta, although some legal clinics with domestic violence programs include this sort of training for their lawyers and other staff.²⁰⁸

III. DISCUSSION OF INTERSECTIONS AND RECOMMENDATIONS

Good progress has been made on domestic violence law and policy in Alberta in the last 20 years. The sheer number of laws discussed in Part II shows the vast array of issues that can arise in this context, recognizing the breadth of impacts of this systemic social problem. Many of the government's responses are in line with the *Framework's* goals of providing a legislative and policy framework and strong justice response to family violence and should be applauded.

However, there are several issues that have arisen from this accumulation of laws and policies. Foremost are the inconsistencies throughout Alberta legislation in terminology and in definitions of “domestic” and “family” violence. These inconsistencies are likely a result of legislative initiatives that have occurred during different time periods by different governments. When reviewing these initiatives together, it is apparent that the government should harmonize the legislation so that litigants have a clearer picture of their rights and responsibilities and are not caught in gaps, inconsistencies, and conflicts between laws.

To take an earlier example, the *PAFVA* references “family violence” and defines it more narrowly than “domestic violence” in the *RTA* and *Employment Standards Act*. Protection orders under the *PAFVA* therefore cannot provide verification for some of the forms of abuse that allow victims to terminate their tenancies early, requiring victims to engage with multiple legal systems and related actors. Another example is that someone using force to protect themselves or their children is properly excluded from “family violence” under the *Family Law Act*, but may fall within the definition of family violence in the *PAFVA*, allowing an abuser to obtain an EPO against the actual victim as an element of their ongoing abuse. The EPO may then have an inappropriate influence on family law proceedings — perhaps affecting judicial perceptions of the victim's parenting or her likelihood of being a “friendly parent.” More broadly, no-contact orders and breaches of these orders can have serious consequences, and it is inappropriate for the *PAFVA* to leave open the possibility for orders against those who are protecting themselves or their children. Mutual protection orders are also inappropriate in cases involving protective or resistant force and should never be made in the interests of efficiency; they may influence family law proceedings and leave victims at risk of illegitimate legal consequences.

Aid Alberta Adds New Way of Assisting Sexual Assault Complainants in Complex Legal Territory,” online: <www.legalaid.ab.ca/news/legal-aid-alberta-assisting-sexual-assault-complainants-complex-legal-territory/>.

²⁰⁸ See Gurski & Butler, *supra* note 11 (referring to the family violence program at Calgary Legal Guidance, which includes social workers as well as lawyers). See also Calgary Legal Guidance, “Family Law Program (Family Violence),” online: <clg.ab.ca/programs-services/family-law-program/>; Edmonton Community Legal Centre, “Family Law Program,” online: <www.eclc.ca/programs-services/family-law-program/>. The New Brunswick Domestic Violence Death Review Committee recently recommended that the Law Society of New Brunswick include a mandatory course for articling students and lawyers on domestic violence. See Office of the Chief Coroner, *Recommendations from the Domestic Violence Death Review Committee 2018* (Fredericton: Government of New Brunswick, December 2019), Recommendations 8 and 9.

The government might argue that some of these legislative differences were intended. For example, the *PAFVA*'s potential restriction of the liberty and housing of respondents may be a rationale for keeping eligibility for EPOs narrow.²⁰⁹ Early termination under the *RTA* may also affect the housing interests of perpetrators, which may explain a verification requirement here but not in the *Employment Standards Code*. However, several other provinces and territories do include emotional and financial abuse and dating relationships in their protection order legislation, and Alberta would do well to similarly extend the *PAFVA*. This is not just a matter of consistency with the *RTA* and *ESC*, though those intersections are important. Narrow, incident-based definitions of domestic violence that exclude coercive controlling violence, and exclude some relationships, may fail to provide access to protective remedies to victims and children who are at serious risk.²¹⁰

For the same reasons, emotional and financial abuse and coercive control should be relevant considerations under family legislation when making decisions on parenting time. Alberta should follow the lead of other provinces to harmonize the definition of family violence in the *FLA* with the amendments to the *Divorce Act*. This broad approach to defining family violence is recommended by a wide range of literature, whether academic, professional, or community-based.²¹¹

The government should remove the other barriers to seeking remedies discussed in Part II, including those that require victims of domestic violence to report to the police or other authorities or to pursue compensation from their (ex)partners. These amendments would recognize the legal consequences survivors face in reporting violence to the authorities, including child protection and immigration consequences, and the safety risks that continued contact with the abuser poses. Similarly, verification requirements, such as those for terminating leases early, can create barriers and delays that pose risks to victims' safety and should be reconsidered.²¹² Other barriers to resolve include amending the *PAFVA* to allow the inter-jurisdictional enforcement of protection orders, and the designation of judges under the *FHRMIRA* so that First Nations victims of violence have full access to emergency protection orders on reserves. Domestic violence leave from employment should also be paid, to permit victims to access services and supports without financial penalty.

Even if definitions of domestic violence and other barriers are addressed legislatively, it must be recognized that law on the books and law in practice can significantly diverge, creating further access to justice and safety issues for women and children.²¹³ Courts and other legal actors may interpret legislation differently or be faced with differing laws and mandates in different legal regimes, resulting in the possibility of inconsistent and conflicting orders.²¹⁴ Some attempts have been made to minimize this possibility — for example, where an application has been made under the *FLA*, “a party may not make another application that

²⁰⁹ See *Lenz*, *supra* note 24.

²¹⁰ Mosher, *supra* note 4 at 155.

²¹¹ See e.g. *Meaningful Change*, *supra* note 10 at 35; Martinson & Jackson, *supra* note 78 at 13–15; Neilson & Boyd, *supra* note 115 at 4–6; LEAF (Women's Legal Education and Action Fund) *Brief on Bill C-78* at 2–4, online: <www.leaf.ca/wp-content/uploads/2018/11/LEAF-Brief-on-BILL-C-78-.pdf>.

²¹² Ontario does not require third-party verification of abuse in its *Residential Tenancies Act, 2006*, SO 2006, c 17, ss 47.1–47.3.

²¹³ Gurski & Butler, *supra* note 11 at 151. See also Boyd & Lindy, *supra* note 116.

²¹⁴ Koshan, Mosher & Wiegiers, “Costs of Justice,” *supra* note 9 at 29.

is substantially the same” to the same or another court.²¹⁵ Courts are also obliged to consider any civil or criminal proceedings relevant to the safety or well-being of the child when making parenting decisions.²¹⁶ However, a British Columbia study found that judges do not typically ask for information about other proceedings despite a similar provision in that province’s *FLA*.²¹⁷ Courts rely on litigants to bring issues to their attention and courts may assume a level of knowledge that most litigants lack, especially if the litigants are not represented. The intersection of laws and policies on domestic violence heightens the need for legal representation and adequate provision of legal aid — though lawyers may not always be aware of other proceedings either.²¹⁸

While this article has focused on legislation, it is evident that judges, lawyers, and other justice system professionals require ongoing education on domestic violence dynamics, laws, policies, and their impacts — particularly on women and others experiencing intersecting inequalities — to ensure they approach domestic violence issues contextually and without exacerbating barriers to accessing justice.²¹⁹ Screening for domestic violence should occur before ADR or JDR is required, and by courts and lawyers more broadly.²²⁰ The Alberta Court of Queen’s Bench recently announced a Family Court Docket system in Calgary and Edmonton, which presents an important opportunity to screen for domestic violence as part of the triage process (although screening is not mentioned in the announcement).²²¹ Cases where there is domestic violence may also be appropriate for case management by a single judge, including where there are multiple proceedings involving different legal areas.²²²

Another possible response is the integration of criminal and family matters in IDV courts, which the Family Violence Death Review Committee recommended the government should explore.²²³ These courts can result in some access to justice advantages by providing a one-stop-shop for the resolution of multiple domestic violence related issues, as well as avoiding the potential for conflicting orders. They can also respond to safety concerns through the monitoring of offenders and by coordinating services for victims.²²⁴ However, IDV courts do not deal with all domestic violence related legal issues — for example, child protection matters are typically excluded.²²⁵ Moreover, they may lead to adverse consequences. Some studies suggest that IDV courts might increase the rate of shared parenting orders, including for unsupervised access, and hence the potential for safety issues.²²⁶ Having one judge hear some family and criminal matters may also create due process concerns, and where abusers

²¹⁵ *FLA*, *supra* note 64, s 4(1).

²¹⁶ *Ibid*, s 18(2)(b)(xi).

²¹⁷ See Martinson & Jackson, *supra* note 78 at 43. The *Alberta Rules of Court*, *supra* note 62, Schedule A, Division 2, Family Law Forms require litigants commencing family law actions to list other proceedings, but these forms may not always be completed.

²¹⁸ Martinson & Jackson, *ibid* at 7, 50.

²¹⁹ *Ibid* at 6–7, 32; Koshan, Mosher & Wieggers, “Costs of Justice,” *supra* note 9 at 29–30.

²²⁰ See e.g. *Meaningful Change*, *supra* note 10 at 35; Milaney & Williams, *supra* note 144; Cross et al, *supra* note 144.

²²¹ Alberta Court of Queen’s Bench, *Launch of Family Docket Court in Calgary and Edmonton*, online: <albertacourts.ca/qb/resources/announcements/launch-of-family-docket-court>.

²²² Martinson & Jackson, *supra* note 78 at 48, 52; see also Nicholas Bala, Rachel Birnbaum & Justice Donna Martinson, “One Judge for One Family: Differentiated Case Management for Families in Continuing Conflict” (2010) 26:2 *Can J Fam L* 395.

²²³ See *supra* note 99 and accompanying text.

²²⁴ See Koshan, *supra* note 93 at 519–20; Elizabeth L MacDowell, “Vulnerability, Access to Justice, and the Fragmented State” (2017–18) 23 *Mich J Race & L* 51 at 89.

²²⁵ Koshan, *ibid* at 520.

²²⁶ *Ibid* at 528.

believe they are not being treated fairly this may lead to heightened safety risks for victims.²²⁷ In addition, information-sharing in IDV courts may present an increased risk of victims being reported to child protection authorities, with those matters heard by a different court, and this risk may reinforce victim reluctance to report domestic violence.²²⁸ Research also shows that while IDV courts are routinely evaluated, these studies do not assess how IDV courts respond to or potentially exacerbate the circumstances of marginalized litigants.²²⁹ Any consideration of IDV courts in Alberta should include these issues when approaching questions of system design and evaluation. The same is true of Unified Family Courts (UFCs), which integrate family law matters into one court with specialized judges.²³⁰ While UFCs were in the process of being implemented in Alberta, and could have had some access to justice impacts, the government recently suspended this plan.²³¹

Short of formal integration of courts, the Family Violence Death Review Committee called on courts to develop better information-sharing methods, a recommendation reiterated in other studies.²³² Similar to the advantages of IDV courts, information-sharing may help avoid conflicting orders and facilitate risk assessments and safety planning (provided that responsibility for assessments and planning is discussed and clearly delineated). Information sharing can also reduce costs and delays, provide decision-makers with more fulsome information, and lead to better provision of services and better legal outcomes.²³³ The Alberta courts recently received provincial government funding that could assist with the technology for information-sharing.²³⁴ But again, it must be acknowledged that information-sharing can have adverse consequences for victims, forcing them into some legal systems unwillingly and leading to potentially adverse outcomes in child protection, immigration, and other matters — consequences that may be borne by marginalized women especially.²³⁵ Information-sharing can also facilitate litigation-based abuse and harassment by domestic violence perpetrators.²³⁶ Concerns regarding privacy, due process, and solicitor-client privilege dictate that information-sharing would need to follow the legislative requirements for collection, use, and disclosure discussed above.²³⁷ In light of the complex interplay of the benefits and risks flowing from information-sharing between courts — and possibly other government actors as well — the relevant parties must develop protocols to minimize the sorts of adverse consequences discussed here.²³⁸

²²⁷ MacDowell, *supra* note 224 at 90.

²²⁸ *Ibid.*

²²⁹ Koshan, *supra* note 93 at 520.

²³⁰ Currently, family law matters are heard by both the Provincial Court and Court of Queen's Bench in Alberta, depending on the issue. On UFCs, see John-Paul Boyd, "The Unified Family Court: A Road-Tested Justice Strategy for Alberta," *LawNow* (5 November 2014), online: <www.lawnow.org/unified-family-court-justice-strategy-alberta/>.

²³¹ See Michelle Bellefontaine, "Alberta Family Lawyers Puzzled by Suspension of Unified Family Court Project," *CBC News* (21 February 2020), online: <www.cbc.ca/news/canada/edmonton/alberta-family-court-1.5470821>.

²³² *Case Review Report No. 3*, *supra* note 53 at 5. See also *Making the Links*, *supra* note 12 at 17; Martinson & Jackson, *supra* note 78 at 16, 48.

²³³ Martinson & Jackson, *ibid* at 16, 31–32; Mosher, *supra* note 4 at 170.

²³⁴ See letter from Fraser CJA, Moreau CJQB, and Matchett CJPC to the CBA Alberta Branch and the Law Society of Alberta (6 May 2020), online: <www.albertacourts.ca/docs/default-source/pc/steps-taken-by-the-courts-during-the-pandemic---letter-to-cba-and-lsa.pdf?sfvrsn=a5d09f80_2>.

²³⁵ Mosher, *supra* note 4 at 162, 176.

²³⁶ *Ibid* at 157–59.

²³⁷ Martinson & Jackson, *supra* note 78 at 26, 40, 44–45.

²³⁸ For examples of information sharing protocols, see Koshan, Mosher & Wieggers, "Costs of Justice," *supra* note 9, n 107. See also *Making the Links*, *supra* note 12.

This discussion reveals the importance of governments and courts monitoring domestic violence related legislation, amendments, and other initiatives to ensure they are working as intended and do not create barriers or adverse consequences for victims and their children. The Alberta government should establish ministerial oversight over domestic violence matters to anticipate and avoid the sorts of problematic intersections, gaps, and conflicts discussed here. These actions could be accomplished through a new *Framework to End Family Violence*, on which the Alberta government could take some guidance from the federal government's *Strategy to Prevent and Address Gender-Based Violence* (the federal Strategy).²³⁹ The federal Strategy commits funding and other resources to the prevention of gender-based violence, development of knowledge and inter-departmental responses, supports for survivors and children (including housing, mental health supports, and legal aid), and improvement of the legal and justice system responses to violence (including programming on judicial education). The federal Strategy is itself only a first step, however, and the United Nations Special Rapporteur on violence against women has called for a Canadian national action plan, including "a holistic legal framework with a clear elaboration of prevention measures [and] integrated services delivery."²⁴⁰ UN Women has created a Handbook for national action plans on violence against women that provides several principles: taking a human rights based approach; recognizing gendered violence as sex discrimination; identifying the various forms of gender-based violence (including domestic violence); addressing the root causes and impact of violence; and accounting for multiple and intersecting forms of disadvantage.²⁴¹ In January 2021, status of women ministers from across Canada agreed to develop a national action plan to end gender-based violence, due in part to the urgency COVID-19 has created in this realm.²⁴²

Alberta's action plan should follow the UN Women's principles and sets measurable goals, including the following legal and policy reforms for domestic violence specifically:

- Align the definition of family violence in the *PAFVA*, *FLA*, *RTA*, and *ESC* and ensure all of these statutes include coercive controlling violence.
- Review the *PAFVA* to evaluate its application in practice; amend the *PAFVA* to include interprovincial enforcement of protection orders.
- Designate judges to grant EPOs under the *FHRMIRA*.
- Remove other barriers to domestic violence remedies, including requirements for verification under the *RTA* and reporting under the *Victims of Crime and Public Safety Act*. Also, amend the *Employment Standards Code* to provide for paid domestic violence leave.

²³⁹ See Women and Gender Equality Canada, *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence*, online: Government of Canada <www.canada.ca/en/status-women/news/2017/06/its_time_canadasstrategytopreventandaddressgender-basedviolence.html>.

²⁴⁰ United Nations Office of the High Commissioner, "End of mission statement by Dubravka Šimonović, United Nations Special Rapporteur on Violence against women, its causes and consequences – Official visit to Canada," online: <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22981&LangID=E>.

²⁴¹ UN Women, *Handbook for National Action Plans on Violence Against Women* (UN Women, 2012) at 11–15, online: <www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/7/handbooknationalactionplansonvaw-en%20pdf.pdf?la=en&vs=1502>. See also Caroline Bettinger-López, "Developing a National Plan of Action on Violence against Women and Gender Violence" in Stoever, *supra* note 77 at 362.

²⁴² Julie Ireton, "After Decades of Talk, National Action Plan to Protect Women Finally in the Works," *CBC News* (3 February 2021), online: <www.cbc.ca/news/canada/ottawa/agreement-to-develop-national-action-plan-end-violence-against-women-canada-1.5898226>.

- Exempt domestic violence cases from mandatory ADR or JDR.
- Develop information sharing protocols for domestic violence cases that enhance safety and avoid adverse consequences.
- Require and provide resources for training for justice system professionals on domestic violence laws, policies, and their impacts, and require screening by these actors (including justices of the peace, judges, and lawyers). Mandatory training for law students and articling students should also be considered, and judicial education on domestic violence should be made more transparent.
- Consider implementing UFC or IDV courts, with attention to design, monitoring and evaluation (including impacts on members of marginalized groups).
- Provide better access to legal representation for litigants in family violence cases, including independent legal representation for complainants in criminal domestic violence proceedings.

An action plan for domestic violence requires commitments beyond laws and the legal system, including the provision of adequate government funding for community-based resources such as shelters and anti-violence organizations. It also necessitates dedicated government resources to address the inequalities that can lead to and exacerbate domestic violence, such as poverty, income inequality, and lack of housing and childcare, which have only been exacerbated by the COVID-19 pandemic. This article has focused on changes that can be made within the existing legal system, but we should also be open to exploring new ways of handling domestic violence cases and the multitude of issues they present, always prioritizing the perspective and safety of those most affected and seeking to avoid adverse consequences and further marginalization by law.