

Dealing with Coordination Problems among Courts in cases of Domestic Violence

By Célyne Lalande and Sonia Gauthier

Introduction^{1,2}

On May 11 and 12, 2015, the Interprovincial Forum on Judicial Treatment of Domestic Violence (hereinafter the “Forum”) was held in Montréal. Bringing together various specialists of intra-family violence from political circles, research as well as judicial and psychosocial field workers, the general purpose of the Forum was to reflect together on issues relating to judicial treatment of situations involving domestic violence. The event was organized under the scientific direction of Sonia Gauthier, by the Groupe de recherche et d'analyse sur le traitement sociojudiciaire de la violence conjugale (GRATS), whose work is part of the larger framework of the realization done by the Trajetvi team. The first day of the Forum focused on judicial processing mechanisms for domestic and family violence in Canada. On the second day, participants examined certain problems at the intersection of various law courts and protective justice system in situations involving domestic violence. The present document is a summary of the second day.

The specific goals of the second day of the Forum were to identify coordination problems among family law systems, youth protection and criminal justice system in domestic violence situations; to describe possible strategies to manage those problems; and to discuss solutions that have already been deployed to solve the problems. These objectives in view, speakers came from different regions of Canada, and presented initiatives and research on these

themes. The day ended with a round table and discussion in which everyone was invited to participate.

This summary is structured around three main themes. First, a brief overview of the linkage difficulties between courts in situations involving domestic violence is proposed. This overview is followed by a description of the promising practices that could help overcome these problems. Third the challenges associated with these promising practices are discussed. These three parts are succeeded by questions that were raised during the day. Lastly, the conclusion highlights a few possible emerging solutions.

1. Linkage difficulties among courts dealing with cases of domestic violence, and consequences of these difficulties

Because of the fragmentation³ of the Canadian justice system, people struggling with domestic and family violence (DV and FV) sometimes must cope with its different area (family law, youth protection, criminal law) concomitantly. In Quebec, despite a number of reports and recommendations from important stakeholders⁴ suggesting the creation of partially unified courts for handling such matters, this avenue has not been taken because neither the provincial nor the federal government seems inclined to transfer some of their competencies to the other level of government.

¹ The authors would like to express their warmest thanks to the members of GRATS for revising this text.

² See: <http://trajetvi.ca/recherche/traitement-sociojudiciaire-de-la-violence-conjugale> under the “Réalizations” tab to access the presentations used during the day and complementary resources on this theme.

³ By fragmentation, we mean the fact that in Canada it is not possible for a single court to deal with family law, youth protection and criminal issues.

⁴ For example, the Ferland Report (Government of Quebec, 2001b) and the La Sablonnière Report (Court of Quebec, 2005).

This fragmentation has many negative consequences, including communication and coordination difficulties, which can, in particular, lead to inconsistency among court orders. Owing to this, people struggling with DV sometimes receive inadequate or contradictory information from those working on their cases. Furthermore, they can be required to repeat their story many times to different people, which can be emotionally exhausting and painful. The involvement of different courts in DV cases can also have negative consequences on the justice system and society in general: high financial costs and loss of trust, for example. An even more serious element that needs to be considered, this phenomenon can contribute to increasing the risk of aggression faced by victims and their children. Indeed, as some of the participants pointed out at the Forum, the absence of communication among the courts and resulting inconsistencies have in the past contributed to spousal homicide and filicide.

Given these facts, it is not surprising that the issue of coordination among the different courts involved with families experiencing DV are of concern to governments and to all those dealing with such social problems. Proof of this can be seen, for example, in the work done by the Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation and the resulting report (Department of Justice of Canada, 2015). This can also be seen through the holding of events, such as the violence against women summit that was held in British Columbia in 2012. Informed by these experiences and past reflection, some of the actors who participated in those undertakings had the generosity to share their knowledge on the second day of the Forum.

1. Promising practices to resolve linkage problems among courts in DV contexts

Several possibilities to resolve coordination problems among courts dealing with situations involving DV were presented during this day. In summary six main options were discussed, coordination and collaboration among resources and practitioners; procedures requiring litigants to provide information about related proceeding and orders; protection order registry; information-sharing protocols; the “one family, one judge” model,⁵ which can be applied in different ways; and integrated assessment centres. Some of those means were presented briefly at

the Forum, while others were discussed in greater depth, in particular because there were specialists on these issues and practitioners active in these initiatives in attendance. In the following paragraphs, we describe the mechanisms that were mostly discussed. These are: coordination and collaboration mechanisms, protocols favouring partnerships and self-reporting procedures.

Regarding the issue of coordination among the courts, a number of options for ensuring the success of such mechanisms were mentioned. It should be noted that while it is true that establishing an integrated court is a possible avenue for solving coordination problems among the court cases of families experiencing DV, it is not the only option. The other possibilities invoked included coordination provided by one or more court workers (as is done in Moncton), case coordination by automatic computerized case cross-referencing, coordination by case management (when a single judge takes charge of all the proceedings in a family case, all the way to the trial) and coordination of services offered to an individual who must appear before more than one court. These different options are deployed in different ways in Canadian provinces and specialized courts (SC) dealing with DV or FV. Only coordination by automatic cross-referencing is not yet used in Canada because no computer system allowing this type of action is available.

With respect to coordinating human resources, having a judicial coordinator in a SC seems to be a useful option to promote the creation and maintenance of high-quality relationships among those involved (police officers, prosecutors, victim services caseworkers, probation officers and caseworkers practising with the accused). Another useful mechanism presented during the day include possible collaboration between judges of different Canadian provinces when there are concomitant cases involving members of a single family. This mechanism, established following cases of interprovincial child abduction, is coordinated by a Pan-Canadian Judicial Council, which brings together judges from each Canadian province and territory.

To promote collaboration among stakeholders, numerous intervention protocols, adapted to regional realities, have already been developed. These protocols may concern confiscation of firearms, measures to be taken when a victim does not want to have contact with the accused, etc. These protocols have been instituted in a number of Canadian communities, and their essential purpose is to ensure the safety of victims during times known to be dangerous, such as spouse separation. Despite the existence of these protocols, a number of participants in the Forum called for the creation and development of

⁵ “There is a spectrum of how broadly “one family – one judge” can be interpreted. It ranges from one judge for a private family law case, to one judge for all related civil cases, to one judge for all related civil and criminal cases” (Justice Canada, 2013).

information-sharing protocols specific to situations in which the life of one or more members of a family struggling with DV or FV is in danger.

In addition to the various mechanisms described, which were essentially tools that had to be managed by practitioners and court workers, there was also discussion of procedures related to family members experiencing DV situations. These procedures are designed to encourage such people to reveal to courts the fact that they are involved in a number of judicial and related proceedings at the same time. They are implemented in Quebec (c. C-25, r 13, s. 18) and Ontario (SO, 2009, c 11) in the form of legislation requiring self-reporting when there are cases and related orders concerning parties applying to family court for child custody.

2. Challenges facing all the mechanisms discussed

The presentations and discussions that took place on the second day of the Forum shed light on a number of difficulties limiting or hindering the implementation of the promising practices that were analyzed. At the present stage, we have much more knowledge about the challenges to be overcome in this area than we do about solutions. Given the objectives of the Forum, it is important to take these limitations into account for new projects that could be implemented. This is why these challenges are outlined in the following lines. Specifically, these are structural, technical and intervention-related challenges.

Structural challenges

In the first place, numerous structural challenges were identified. In particular, the importance that governments get involved in coordination among the courts dealing with DV situations was highlighted by a number of participants. According to what was reported, such involvement could take several forms: investment favouring better management of the problem; agreements to make it possible to overcome constitutional difficulties related to the distribution of powers; or development of policies improving the framework for the practices of the field workers involved. While the development of provincial policies seems to be a promising avenue, the state of the relationship between the federal government and some of the provinces, as well as the present state of the Canadian economy, are constitutional and financial obstacles to the other options.

A second type of structural challenge discussed concerns the tension created by professional frameworks that delimit the practice of a number of field workers with respect to confidentiality. As noted, while all are

favourable to better communication among the courts, it remains difficult to clearly identify the parameters within which confidential information about concerned people and families should be shared. These difficulties arise when we take into account the importance of protection of privacy, ensuring that private information is not misused, and, above all, not endangering women and children who are victims of violence.

Technical challenges

Secondly, technical challenges limiting the circulation of information among courts were also identified. These are intimately related to the high number of DV cases dealt with by the courts. Indeed, the sheer volume of DV situations that are dealt with by the courts in some districts makes it difficult to organize information-sharing among stakeholders. To this challenge is added the fact that the way information is gathered on people and families involved in various cases differs from one court to the next. For example, in family court, the parents' names are in the records; in criminal court, it is the offender's name; and in youth court it is the child's name. Yet, a single name has to appear at least twice for cross-referencing among cases to be possible. In order for this, at present, searches have to be done one by one through all of the cases before the various courts. This operation can take several hours for a single family, and becomes virtually impossible in large cities. For these various reasons, coordination in the processing of the cases involving a single family is frequently impossible, and stakeholders do not know that different court proceedings are going on simultaneously.

Challenges related to intervention

The third category of challenges raised concerns the knowledge and competencies of those involved in a given family's court cases when DV is involved. In particular, in-depth, shared understanding of concepts such as *domestic violence* and the *child's greater interest* seem essential. Yet, depending on the practitioner's level of training and experience, this shared vision is not always present.

Moreover, translating knowledge into appropriate action requires great expertise. For example, with respect to assessment, it is important that practitioners are able to identify, from the very beginning of processing of DV cases, the type and dynamic of violence in the families in question. More thorough understanding of the situation makes it easier to ensure that interventions are adapted to the needs of the members of such families. It was mentioned that current failures to differentiate types of DV and to correctly assess the level of danger of situations

lead to inappropriate responses by the various courts. The result is sometimes disproportionate reactions to minor, isolated incidents in a couple where there is no dynamic of abuse; inappropriate criminalization of DV victims when they resist against violence, and insufficient reactions to coercive DV.

Concerning collaboration and partnerships, it was noted that it is important to take into account all actors involved in order to fully define and understand the problem that has to be managed. It follows that partnerships have to include psychosocial and penal⁶ practitioners intervening with victims (mainly women and children) as well as those who work with perpetrators. To get to that level of collaboration, it is necessary that the actors concerned are well aware of their roles and those of their partners, that they are knowledgeable about the issues and tensions that each person has to manage,⁷ and that they trust one another.

Another important element concerns the skills that all of the practitioners involved should possess in order to identify and manage dangerous situations appropriately. Minimum skills include the ability to identify imminent and immediate risk. There are assessment tools that can be used to do this,⁸ but it is important that practitioners be trained to use them appropriately.

Lastly, with respect to human resources management, it was noted a number of times that the turnover of staff in organization involved in the socio-judicial treatment of DV is a challenge because such changes entail that there are always new workers to be trained, which takes a lot of human resources. Given the necessity of specialization mentioned several times, and the professional training to acquire such degree of expertise, staff turnover unquestionably has a negative effect on appropriate treatment of the cases under discussion. This is why initial training is crucial. Indeed, training proves to be another important aspect favouring better intervention. However, according to many participants of the Forum, the present training programs for psychosocial and penal field workers practising in DV and FV do not make it possible to acquire the level of expertise required to deal with such situations appropriately. In particular, it was pointed out that there was not enough training on themes linked to DV, FV and

how to deal with them in the various university departments concerned.

Thus, intervention targeting people experiencing DV whose situations involve more than one court raises many challenges. These challenges are all the greater when there are no efficient coordination mechanisms able to smooth or overcome some of the difficulties.

Questions

Finding ways to help people struggling with domestic violence without harming them, whether they are victims, children who have been exposed, or perpetrators, has been at the center of the participants' discussion and concerns during that second day of the Forum. More precisely, the difficulty to find a harmonious path between the need to fulfil the duty of professional secrecy in order to establish solid trusting relationships with the people in question, and the importance that certain pieces of information are shared in order to protect those people was highlighted. In response to this concern, it was pointed out that in Quebec there is the *Act to amend various legislative provisions as regards the disclosure of confidential information to protect individuals* (S.Q. 2001a, c. 78; known as Bill 180 in intervention circles), which provides a framework for information sharing and lifts professional secrecy when necessary to prevent acts of violence that could cause death or serious injury. However, the remarks by some participants indicate that field workers are more or less familiar with this legislation.

Furthermore, it was reported that mechanisms for sharing information between various courts can sometimes be harmful to female victims. This can be seen in cases where, for example, difficulties resulting from DV are at issue (e.g., various mental health problems). Revealing such problems could reduce the credibility of such women in the eyes of certain stakeholders. This seems to be especially true in youth protection cases in which initial applications for assistance go against women experiencing DV because it is considered that their status as victims contradicts their ability to protect their children. To overcome this difficulty, some participants emphasized the importance that the actions taken and procedures developed the negative consequences of cross-referencing between courts are in accord with the realities of women who are victims of DV and children who are exposed to it.

⁶ Police officers, prosecutors and judges in criminal courts, as well as correctional officers.

⁷ For instance, caseworkers practising with perpetrators have to cope with tension between confidentiality, which is primordial to the therapeutic relationship, and victim protection, which can take the concrete form of social control of the authors of violence.

⁸ On this, see Millar, Code and Ha (2009).

Conclusion

Despite the challenges discussed at the Forum, it is important to draw attention to the advances in knowledge about DV and FV situations, and also to the integration of that knowledge into field workers' practices. These advances are reflected for example by the creation of new legislation, such as the *Family Law Act* recently adopted in British Columbia (Government of British Columbia, 2015). Indeed, that act includes a section dealing specifically with risk factors associated with DV and FV situations, and orders judges and parents to take these into account when they are determining the child's greater interest. In Quebec, there has been the recent establishment of the Carrefour sécurité en violence conjugale, an organization created to improve the safety of people experiencing DV through promotion of better assessment of risk situations and through the creation of intra and intersectoral regional measures involving the various actors concerned by this type of intervention. Thus, while it is true that the challenges inherent to coordinating the actions of the courts are better known than the solutions, a number of avenues are now emerging.

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Célyne Lalonde is a PhD student at the Université de Montréal's School of Social Work, and a student member of Trajetvi and the Centre de recherche interdisciplinaire sur la violence familiale et la violence faite aux femmes (CRI-VIFF).

Sonia Gauthier is a professor at the Université de Montréal's School of Social Work, and a researcher at both Trajetvi and the CRI-VIFF.

The collection of summaries is under the direction of Marie-Marthe Cousineau, Lise Gervais and Sylvie Gravel.