



Court-Related Abuse and Harassment

Leaving an abuser can be harder than staying

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INTRODUCTION

“Perpetrators may use litigation as a form of ongoing control and harassment. The family court litigation process can become a tool for batterers to continue their abusive behaviour in a new forum (Jaffe et al., 2003a). Litigation exacts a high emotional and financial price for abused women already overwhelmed with the aftermath of a violent relationship. Some authors have suggested that some batterers have the presentation and social skills to present themselves positively in court and convince assessors and judges to award them custody (Bowermaster & Johnson, 1998; Zorza, 1995). In many cases, perpetrators are self-represented, heightening the possibilities for abuse through berating a former partner in cross-examination.”

- Report presented to the Department of Justice Canada by Jaffe, Crooks & Bala¹

I am a front line worker. My role is to assist women with court processes once they have left abuse. Much of my work is helping women through the revolving doors of the legal system. In the weeks before writing this report, my very first client, Megan, had returned again with the latest in her courtroom saga². Despite a final order, her ex, Richard, refused to believe that his child support obligation needed to be maintained. He thought that as the child was now in school, these expenses should be reduced because of the 30 hours weekly the child now spent in class. This argument is clearly covered in the Federal Child Support Guidelines and has no merit.

The problem, though, is that this is part of a greater trend of court-related harassment. Richard repeatedly takes Megan to court, representing himself despite being able to afford a lawyer. She has had Legal Aid at times, but as this is a maintenance issue, Megan was denied this time. She wants peace between them for the sake of their child. She wants to avoid court, but Richard doesn't.

I saw Richard the first time he cross examined her; repeatedly questioning the time she spent at home caring for the children. He argued that Megan should be working instead. He told the Judge that Megan needed to “buck up and get with reality”; he had found many jobs for \$12 an hour she could take. Megan wasn't forced to go to work, but the Judge did suggest that she ‘find a number’ of what Megan thinks she'll earn. She told the Judge, well, “I hope to earn about \$40,000 a year in the next few years.” This became Megan's imputed income – but in the ensuing three years, she never topped \$20,000. Megan's maintenance was based on a number that was over twice what she was earning.

She made do with the support she got, as she didn't want to go back to court. However, once the spousal support was over, Richard returned to court to reduce the child support. When he took her to court the first time, Richard used the courts to seek to reduce his obligation and tried to have the Judge force Megan to find the type of job that he wanted for her. The Judge denied some of his requests, but the Judge gave him an imputed income for Megan that was clearly higher than what she was reasonably able to earn. This encouraged Richard to go to court again.

¹ http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2006/2005_3/pdf/2005_3.pdf

² The fact pattern is consistent, but the details are augmented to preserve my client's confidentiality.

For Richard, there was an incentive to go to court. The legislation sets out clear guide lines on obligations; however, those that disagree with the legislation can argue against it. Judges will listen to the arguments and will often meet part way between the request of the applicant and the respondent. The legislation is not followed explicitly - for instance in this situation, the spousal support should have been based on the amount she was actually making, not on her projected or desired income.

Now Megan is afraid of the Judge making a decision based on unrealistic circumstances, as the Judge did before. Richard is relying on the Judge to make a decision that is better than what the law explicitly states.

Richard is encouraged to go to court because he stands to pay less than what is mandated by law, while Megan is living in fear of court, has ulcers and doubts herself.

Megan thinks that it is unrealistic to expect a subsidy for hot lunches even though the parents can afford it, but she's worried that the Judge will find it reasonable for her to ask for a full subsidy. She said, "What if the Judge says that I should ask for the subsidy and that reduces the amount he has to pay?" She is afraid that the Judge will make a decision that isn't fair or ground in fact. Due to this fear, she makes her ex-partner an offer to reduce the child support by a third. She is relieved to be avoiding another day in court, but unfortunately, the children will have less than the Federal Child Support Guidelines say they should have for their food, shelter and clothing.

About this paper

The goal of this paper was to document the issue of court-related abuse and harassment and provide a set of recommendations based on the findings. In order to document the issue, I conducted a literature review and sent the preliminary findings to front line workers with a survey based on the themes within the literature review, along with a few observations of my own. The turnaround for feedback was two weeks. In total, there were 11 respondents. Given the short timeline I was afraid that there would be homogeneity of responses; however, I was stunned with the diversity of responses, including Northern BC, Thompson/Okanagan, the Downtown Eastside, Vancouver and the Fraser Valley.

The respondents worked as lawyers, advocates, community support workers, transition house staff and domestic violence workers. The workers themselves came from diverse backgrounds - there were respondents that were First Nations/Aboriginal, immigrants and visible minorities/of colour. I did not specifically ask about demographic information, and as such there is possibly more diversity than written here, as these are based on my own knowledge of individual respondents. There were four respondents that did not complete the full survey; however, everyone who participated completed a significant part of the survey and for quantitative evaluations, numbers will represent those who completed the section.

What is Court-Related Abuse and Harassment?

“If I don’t return the kids, what are you going to do? The police won’t do anything, [MCFD] social workers won’t do anything and I know you don’t have a lawyer.” - an advocate’s account of one abuser’s statement

Court-related abuse and harassment is the use of ongoing litigation through judicial and quasi-judicial systems to continue to harass and abuse. These situations may include:

- Using the court system improperly through multiple court applications – sometimes to different jurisdictions; or disingenuous applications for short leave or ex parte applications. As a tangent to that, some abusers will use the court process to abuse – filing long affidavits, particularly on long weekends or a day or two before court, to women who do not have lawyers or supports.
- Using the process to humiliate and traumatize her – advocates stated that they knew numerous women who would compromise everything to avoid court for those reasons. Often the abuser will use a history of mental illness or substance use against her; they may even make unsubstantiated allegations or will use cultural values against her (e.g. leveling accusations of adultery that didn’t occur, but would cause shame to the family).
- Manufacturing evidence or crisis – this may be trying to get into court on a short leave application only because he knows she is currently unrepresented. Abusers may also create evidence of abuse (he may start seeing the couples counsellor on his own, disclosing violent episodes she inflicts on him). One woman reported arguing with her husband and watching him yell louder and louder while hitting his arms against wall corners and scratching himself.
- Financially abusing her – some authors wrote that court-related abuse and harassment is a tool to delay child support or other maintenance; some responding advocates and other workers suggest the court processing time is used to liquidate assets or to cause her financial hardship. They also use this to drive up the costs of her lawyer – setting up and then failing to attend discoveries or making multiple offers (sometimes five to six offers weekly over months). One advocate said that “deliberately using up a victim’s legal aid time should be a criteria of court abuse”, because that is another common strategy of abusers.
- Isolating her from support workers/lawyers or threatening those that help her – lawyers are often threatened, in fact, one lawyer who had responded to the questionnaire explained that they had to go off record on a recent case like this because of the threat of physical violence. Advocates report having been contacted by the abuser and told that they shouldn’t be assisting the client; other times there is a more forceful threat made, including letters to senior management of their organization. One abuser even subpoenaed a lawyer to find out why she was not representing the woman anymore. Family members and friends may also face pressure by the abuser; they may also be used by the abuser to coerce her.

- Using public servants/services to harass her – police and child protection authorities are often used in this ploy. A strategy is to not knock or buzz her door when they are supposed to pick up their children, but to call police and say the mother is denying access. It takes up to 90 days for the victim to collect the paperwork to show that she was not denying access, but by then there can already be an existing order against her.

Child protection workers are called for false allegations of abuse – it has become such a major issue that MCFD has stated to women and their workers that they will not get involved when there is a custody dispute. Abusers have used the system to have their ex-partner’s Child Tax Benefits withheld, child care subsidies withheld and income assistance cheques scaled back.

- Undermining or obfuscating his abuse of her – abusers will portray themselves as a victim of the abuse, some will even injure themselves or wait until she defends herself and call the police to allege an assault. Conversely, they will push her to recant her testimony or have the charges dropped. Once she has recanted, he uses that in family court to prove she is a liar or will suggest to the social worker that she will not take herself out of a domestic violence situation with the children; but if he has the children, he will keep them safe.

“I was talking to a social worker about them trusting this woman’s ex – he’s clearly a heavy user, he has sores all over his face. The social worker said to me, ‘No, he says he’s got a skin condition’ and I realized that if she’d believe that, then she’d believe anything.” – Support worker

Using the courts improperly

“The psychological effect of this took its toll; the whole experience was devastating. Requests for appropriate restraints within the legal system were denied. I felt that there was no protection anywhere in the system for my interests or for those of my children; instead, judges informed me again and again that they would not interfere with my former husband’s access to the judicial system.” – Sociologist Jane Gordon, 1988

Overall, for women being abused through litigation, life becomes a collection of evidence and lawyer appointments. Dropping off and picking up children requires meeting in a public place, and the purchase of a small item to have a date-stamped receipt to prove that she was there. This amassed collection of receipts needs to be catalogued and retained for future court dates.

If he is picking up the child from her home, she must wait by the window for 30 minutes before to ensure that if he is there, she can promptly send the child out to avoid police cars outside her home. Emails around guardianship issues are meticulously read and re-read to ensure that she doesn’t sound too demanding or too unengaged.

At the same time, she must be absolutely flawless as a mother in case her ex-partner should hear that she's been working overtime, has too little food in the cupboard or is not attending all school events and decide that it is an issue that needs to be taken back to the courts. Friends and family tell her that she needs to "just do 'this' and it will be okay" or they tell her, "Well clearly he is being abusive, you just need to tell the Judge". One woman's child believes that she just hasn't done it right, so now he is setting his sights on law school, so he can fix it all for her.

"Although my women friends - many of whom describe themselves as feminists - tried to be supportive, their initial assessment that no judge would give him custody was inadequate. What they failed to grasp was that living in the grip of constant legal proceedings would change my and the children's life." - Jane Gordon, 1988

Abuse of the court process

There is no doubt that there are a number of custody and access files that grow to an obscene size. It is not unreasonable to say that, for those cases, the size is due to court applications being made³ combined with huge affidavits, correspondence, pictures and testimonials from witnesses, friends and family.

Suhanek and Stahly state, "Research assistants became adept at predicting whether a randomly selected file would reveal allegations of family violence by simply observing the size of the file - the fatter the file [which means more court involvement] the more likely family violence was within."

Women who are abused through the courts face dozens, in some cases well over 100, different applications from their ex-partner. The applications are to obtain, vary and overturn orders - then to Appeals court or to apply in a different jurisdiction. Some abusers intentionally misfile in the wrong court or use the courts closer to him instead of where the child lives (the jurisdictional court is the one in the city where the child resides). One advocate explained that a woman had asked the Judge to move it to the proper court (the one nearest to the child's home), but she was refused because she didn't work, so the jurisdiction would remain near the ex-husband's home.

All the responders reported that some abusers go back to make the same application, but without a material change in circumstances. A worker explained that one ex-partner went back after he had started dating another woman, saying that he was now settled down despite the relationship only being three months long at the hearing.

There are some remedies through the legal system for women facing continued acts of physical violence and control. For women who are abused and harassed through the court, if the abuse of the process is ever uncovered by a Judge, her ex-partner can be found to be a vexatious litigant. The Judge can then prevent him from going back to court again without permission of a Judge, and/or award the woman costs (the abuser will have to pay a portion of her court costs).

³ K.K v P.P, 2010 - 29 applications and two trials in what appears to be eight years. Despite the mother having been represented by counsel for much of the time, the applications were personally served on her each time, with the child often being present.

However, the woman will still have to endure the abuse for a lengthy period to prove the issue and enforcing a costs award is virtually impossible⁴. If the court-related abuse is not recognized for what it is a woman risks not only losing her children, but also enduring significant financial hardship and emotional stress.

Controlling her Through The Court Process – Threats and Humiliation

“Rather than doing it the hard way through the courts, which I abhor, we can do it between ourselves, and that way you can decide freely. And, Jane, you would avoid any humiliation on your part that you would lose. Because that is what is going to happen in court, you will be humiliated and others will think poorly of you for going to court.” - Pulkingham v Kruk, 2002 BCSC 1262

It is common knowledge that the most dangerous time for a woman is when she leaves an abusive relationship. Once an abuser recognizes that he has lost control, he will seek it out in other ways. By making a woman fear that she cannot protect her child, it can often coerce her return. In “The Impact of Wife Abuse on Custody and Access” (2004), Martha Shaffer suggests that abusers use the threats of custody as “weapons of intimidation and coercion”. Those that responded to the survey indicated that it is a common tactic by abusers to threaten to go to court for custody; one advocate stated that she thinks that almost all abusers threaten it, but only the worst ones follow through.

Aside from the threat of custody as a tool of coercion, many of my clients are terrified of court after leaving since their abusers threaten to tell the courts of all of the women’s problems or indiscretions. An advocate explained a situation where one woman was terrified because her ex-partner said he would tell the Judge she had severe post-partum depression and that would make her unfit. The fear was so real that she agreed to 50/50 shared custody on paper and no child support order, even though the child was with her at least 90% of the time. Having her child and keeping out of the courts was worth it for her.

Judge Richard Neely wrote that “the better a mother is as a parent, the less likely she is to allow a destructive fight over her children.” This is the crux of how abusers use the processes to abuse. Since the abuser recognizes the importance of the child in the mother’s life, he uses the threat of taking that away to punish her for leaving or to force her to return. Many women do return if he has access or custody. One advocate suggested that the opposite is also true – for some women, the fear of him having custody is so great that she will fight until the end to protect her child; this idea that a ‘good mother’ will choose peace is only within a specific context.

⁴ One common theme from many responders was that women were not actually receiving their cost awards, because abusers were filing for bankruptcy or even quitting their jobs to avoid paying costs. Advocates reported that women just didn’t want to keep fighting for the money either.

Manufacturing evidence

All respondents to the survey stated that they had abusers make false allegations of denial of access. For some it was an unproven allegation; however, others would create elaborate evidence of the denials, some would call the police if she did not answer the door right away; others would call police without even knocking. Some advocates reported that abusers would change exchange locations at the last moment, then call police or would have friends and family members write affidavits stating that she was not at the access exchange.

Some advocates disclosed more disturbing incidents. Some abusers engaged in self-harm and blamed the victim. Others would have friends or family write affidavits that were complete fabrications. One advocate reported that a Judge's order had actually been removed out of the file at the courthouse, but there was no way to assess how it went missing.

Financially abusing her through the court process

"My women lose the fuel to fight - why borrow the money if they'll never be able to get it back [from the sale of assets]." - Advocate

It is often referred to as 'custody blackmail' when the threat of seeking custody is used to reduce or eliminate support obligations. Richard Neely (1984) describes his experience as a lawyer, in an effort to eliminate his adulterous client's obligation for child support; they set out to convince the mother that they would seek custody (which the client did not want). The divorce was settled for Neely's client on the terms he wanted and the mother had her children, but without child support.

With the Child Support Guidelines, it seems that the hope of eliminating subjectivity from child support decisions would reduce custody blackmail; however, it has only augmented the fight towards the 40% threshold⁵ to stop the obligation.

Father's rights groups have opposed child support payments, citing that an inability to pay was preventing time with their children; however, Rosen, Dragiewicz and Gibbs (2009) found that it was "patriarchal privilege, rather than financial hardship, that is at issue when men are required to pay child support without maintaining control over their former spouse and the couple's children." As such, father's rights groups now encourage their members to gain that 40% of time with the children as a way to maintain control and to avoid the child support responsibility.

In fact, for some cases where the father has the child around 50% of the time, they will voraciously fight for child support in a way that I've never witnessed any of my female clients citing the need for 'equal quality of life between the homes'.

⁵ From the Federal Child Support Guidelines: Section 9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40% of the time over the course of a year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses;
- (b) the increased costs of shared custody arrangements; and
- (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

One advocate responded that once he has custody “the gloves are off” because abusers will aggressively fight for child support; whereas the mothers we assist will avoid asking for child support unless necessary.

Financial abuse can also involve use of litigation as a way to financially assault her, forcing her to drain her savings. Other partners may seek to go to court at times of vacation or holiday to ensure that she is not able to provide her children with gifts or opportunities.

For women who had some savings or assets when leaving the relationship, the expense of litigation ensures that she loses those assets. She will have to drain all of her savings to pay for a lawyer, as Legal Aid will not assist someone that has any assets that can be liquidated. One frontline worker stated that intentionally using up another person’s legal aid should be considered abusive because it is a common tactic that is working very well.

“He said, ‘What do you think court can do? The property is gone - where can you get the money from?’ and she knew he was right. The courts tell him to stop selling property, but he does it anyways [...] so even when she gets the order in the end, there will be no money left.” - Advocate

Some advocates mentioned that during the court process, ex-partners were often disposing of assets. The advocates also said some women face significant barriers in even applying to the courts for their portion of family properties because of the effects of financial abuse. Without knowing what properties there are and the values of those properties, it is nearly impossible to prove the properties exist to a court or to file a lien against the property before it can be liquidated by an abusive ex-partner seeking to avoid paying his portion.

“We had this client, she had to represent herself and even got to the end and had a final order and it was a good order, but it took over a year to get it. So by then most of the property was liquidated, but as soon as she won he filed for bankruptcy, so she has to start this whole new process. And the only reason she could do this is because she has no language or health issues, which other clients have that impedes their ability to self-represent.” - Advocate

While women who do not qualify for legal aid are the obvious targets of the financial aspect of litigation abuse, there are also negative financial consequences for low income women. Advocates noticed a rash of ex-partners demanding the Child Tax Benefit. One ex-partner thought he should get half since he had the child on Saturdays. There is also the impact of spending considerable time in court, which prevents women from meeting their reporting obligations for Income Assistance. Some of them are unable keep jobs because they are always in court or seeing advocates trying to get their case properly handled. It is particularly challenging for women who have just started at an entry level job to get time off for court dates.

“When you say financial abuse, for my women it’s not a lot of money, but they spend all their money on the bus fare to get to court and he doesn’t show up. For that little bit of money they have, these things matter.” - Advocate

Karen Czapanskiy (1990) states that abusive partners will use tactics to delay court in order to “starve the mothers into compromise.” By avoiding or putting off child support, they will either save money or force women into making a compromise. One advocate responded that the longer court drags on, the more women want to settle to have things finished.

Using systems to isolate her

“Her lawyer told her that he couldn’t stay on her file, because her ex-husband made a complaint about him to the Law Society. She has a very complicated case, and we can’t find another lawyer who will accept legal aid and take this on.” - Transition House staff

Isolation is a well known tactic of abusers and this strategy does not end once the relationship does. Abusers will try to have her court supports eliminated⁶. One transition house worker spoke of a client who was not able to access pro-bono services as her ex-husband, who had a lawyer that he was paying, made the rounds of local free services getting advice so that it would be a conflict of interest for these services to later help her. Advocates reported that they knew of lawyers, Judges, section 15 writers, doctors, friends, family members and even advocates themselves facing complaints.

“The ex-husband and his new partner wrote a complaint against me for helping my client - they googled me and saw that I was a single mom and wrote that I was ‘inappropriately helping this woman because I was too emotionally involved because I over-identified’. It was 30 pages including all their supporting materials and then they sent it to [fund-raising/finance department] - signed with their professional title.” - Advocate

A couple of advocates mentioned that Discoveries are being used as a tool of abuse. The abuser refuses to allow the woman to bring a support person into the room, and without a Judge to oversee the examination, she is at his mercy. The victims are too fearful of being alone with ex-partners and often lack resources to do a Discovery⁷ of their own. One advocate mentioned that some women have dropped out of the process because of the Discoveries.

Using MCFD, police and public programs to abuse

Abusive partners seek to continue to engage with their ex-partners and to abuse them through whatever means are available. One frontline worker from the Downtown Eastside was concerned that she would not have meaningful feedback for this research because her clients don’t engage in major court trials and multiple hearings. However, the situations she described were shocking in how resourceful the abusers were at finding other systems to exploit. Abusers who do not feel comfortable with the courts will work within systems they are familiar and comfortable with.

⁶ KWIATKOWSKI v KWIATKOWSKI, 2001 In their reasons Justice Ross states, “By way of example, he has reported five lawyers to the Law Society and two or three psychologists to their professional body in connection with these proceedings. He has made allegations against the petitioner’s new husband to his employer to try to get him fired.[...] The respondent has written to the Ombudsman and to the Prime Minister about this litigation. “

⁷ A discovery is a cross-examination of the other party, under oath, outside the courts and without the oversight of a Judge. The transcript is entered as evidence.

The Ministry for Children and Family Development

All the responders agreed that social workers with the Ministry for Children and Family Development place victims of abuse in a double-bind: they tell women to leave the abuser or face losing their children; however, once she leaves, they do not prevent the abusers from having access to the children. Women then fear being subjected to abuse during access exchanges, or worry they cannot protect the children when he has access visits with them.

“The social workers tell her to leave him and she does, then he tells the social workers lies. So he gets the kids in his care while the ministry waits for her to get it together - but now she has to rely on him for visits and he lies to the social worker about how often she visits or says she showed up drunk.” - Advocate

One worker reported that women will return to the abusers behind the social workers' backs in order to protect their children or to reduce the risk of being seriously injured or killed. This same worker said that in one case, the abuser told the social worker that his partner had returned to him and then custody of the child was given to him, as he promised to keep the child away from 'family violence situations'. Abusers use social workers as a way to coerce and threaten their victims; they may also manufacture evidence like telling social workers that she arrived at an access visit drunk, she failed to show up at all or that she was abusing him or the child.

Police

Respondents mentioned that abusers would use the police to continue the abuse and harassment. As mentioned earlier, police are used to manufacture evidence of denial of access. However, abusers will also use out-dated court orders (orders that have been replaced by new orders) to get the police to go to the mother's house on the pretext that she is not following the court order and denying access.

A couple of advocates reported that there are cases where there was no access order yet, but the abuser called the police and stated that he was being denied access. The police talked the woman into giving him access, even though she had safety concerns. The same workers found that women whose abusive ex-partners were refusing to return the children after a visit did not get help from the police, because they did not have enforcement orders.

There have been a number of respondents that also found that victims of abuse were being arrested following assaults - one woman was even arrested at the hospital for scratching her abuser in self-defense. Battered Women's Support Services saw this issue so many times that they created a manual⁸ for advocates on how to support victims of abuse who are arrested. Police are responding to the first complaint rather than who the primary aggressor in the situation was.

“She asked the officer, ‘So it is like first come, first served’ and he agreed and then asked her why she didn't go to the police first, she told him it was because she had to go to the hospital for treatment for her injuries - the officer agreed that she was the victim, but was putting the charges to crown anyways.” - Transition house worker

⁸ When Battered Women Are Arrested, 2008 - <http://www.bwss.org/wp-content/uploads/2010/06/whenbatteredwom-enearrested.pdf>

Income Assistance

Some advocates report that abusers call income assistance and falsely report that the victim is receiving money or is otherwise not entitled to income assistance. For women who are on income assistance, this delays the receipt of their cheques and affects their ability to meet the needs of themselves and their children. It also creates stress from having to disprove allegations, be investigated and be interviewed.

Undermining and/or obliterating his abuse of her

Appropriating the Language of Domestic Violence

“Most of my women barely tell me that they are being abused, and never tell friends or family - he’ll call radio shows and pick out a stranger in a bar to tell.” - Advocate

Allan Wade (2007) reported from a variety of researchers that victims of power-based crimes such as sexual assault and domestic violence are more likely to report a negative response from the system that is supposed to support them. This suggests that victims would be significantly more affected by the denial of their experiences and having blame placed on them than someone who was not a victim. This calls into question male reports of violence, which are typically called ‘underreported’ because it violates gender norms; however, the advocates reported that men have no issue reporting violence perpetrated against them.

“I had a guy come in and tell me that he had to move because his ex-wife was abusing him. He probably thought because I was a guy I’d believe him. He said they had an argument and she got a restraining order, she called him to come over, he went and then she called the police and had him arrested - he said he was in jail for four years. I know that the worst [abusers] don’t even get four years in jail for strangling a woman, for beating their kids or stabbing her...” - Front line worker

One advocate reported that an abuser had his wife charged for throwing a teddy bear at him as he verbally berated and mocked her. McHugh & Frieze (2006) report that in studies of domestic violence, women ‘abuse’ in retaliation to abuse; whereas, men report that they abuse to “get what they want.” This difference is important because it may also explain the reasons why men ascribe the label of abuse-victim to themselves: if they are told to do something by their partner and they don’t want to, they may see themselves as the victims of abuse.

For example, if she tried to get him to stop playing video games and help with housework, he would view that as abuse. In cases where abusers allege that they were the ones who were really abused, or that the abuse was mutual, the abusers seem to lack any fear of their ex-partners. This phenomenon is exemplified in a passage from a father’s rights website, Fathers For Life, addressing men who are victimized by their abusive wives:

“It is not reasonable to expect terrorists (that’s what abusers are) to act rationally. There is therefore not much point in expecting to be able to negotiate with terrorists. What is necessary in trying to get terrorists to make concessions or to have them live by equitable principles is to make them live by the law. A line needs to be drawn,

and terrorists need to have pointed out to them what the rules are by which they must guide their conduct. They need to learn what they can get away with and what not. They need to learn that they can't get away with as much as they wish to get away with."

When I explained the above passage to another advocate, she suggested that telling any of the women that we assist to "tell him what the rules are by which they must guide their contact and to make sure he knows what he cannot get away with" would result in the woman facing serious risk of physical harm. Plus, she may abandon support from an advocate because she would have lost all faith that the abuse she was facing was understood.

To be in an abusive relationship implies a sense of fear that she may be harmed by the person who is abusing her. In fact, often when we are assisting women who are in joint parenting situations with abusive ex-partners, we guide her to avoid using any language that could be 'telling' him to do anything in order to avoid provoking an attack, in an effort to maintain her physical safety. To suggest telling an abuser to 'do anything' is a risk and shows that the male 'victims of abuse' in these situations have no fear of provoking an attack.

The other issue is that abusers "cry abuse" in an effort to undermine or muddy the context. Bancroft (2009) calls this the "pre-emptive strike"; he states that the abuser accuses the victim of:

"Doing all the things that he has done. He will say that she was violent towards him and the children, that she was extremely "controlling" (adopting the language of domestic violence experts) and that she was unfaithful. If he has been denying her phone access to the children during their weekend visits with him, he will likely complain to the court that she is preventing him from calling the children during the week. If he has been highly inflexible about the visitation schedule, he will accuse her of inflexibility. These tactics can succeed in distracting attention from his pattern of abusiveness; in the midst of a cross-fire of accusations, court representatives are tempted to throw up their hands and declare the couple equally abusive and unreasonable."

It also allows him to undermine the effects of his abuse of her.

Undermining his abuse of her

"She had no idea what asking the Crown to drop the charges would do - none of [the clients] do. We try to explain and it's hard to believe that [women] are so easily fooled by someone [they] love" - Front line worker

Many women ask Crown Counsel to drop the assault charges against their partner. Advocates say that women are coerced into dropping charges by their spouse for a wide variety of well documented reasons.

While there are Violence Against Women In Relationships (VAWIR) policies in place intended to prevent women from being put in this position, it nonetheless continues to occur. This eliminates one positive proof of abuse from being used in court. Some

responders stated that it can also be used against a woman in court to show that she has a history of lying to the authorities and to show that she has ‘falsely alleged’ violence by him in the past (rather than proof that he can coerce or threaten her to the point that she fears police involvement will not protect her). Factors such as these are considered by the Judges and advocates feel that, when used, they are part of the reasons that Judges give custody or more access to the abuser.

An abuser will often use new girlfriends, wives or family members to prove that he is not abusive (or abusive anymore). There was one case of an anti-violence worker writing an affidavit on behalf of her abusive boyfriend stating that he is not abusive or engaging in any other abusive behaviours.

A couple of workers say that abusers often have a surprising amount of self-control. This is what prevents an abuser from assaulting a partner in public, in places where the bruises would be visible; or he ensures that his partner is isolated from supports before assaulting her. This self-control prevents him from assaulting the new partner while he continues the abuse against his ex-partner. There is also anecdotal evidence from one of the respondents, a transition house worker, who suggested that the new partners are sometimes abused, but blame it on the abusers’ ex-partners.

“I have met many women who tell me how abusive their ex-partner was. Then they tell me how awful his previous wife was, and that he might not have been this way if he hadn’t been so badly treated by a woman in the past. I challenge that.”
- Transition house worker

Why do abusers use the court to abuse and harass?

There are two main reasons why abusers use the court to abuse and harass their ex-partners: as a part of post-separation abuse and to enact revenge for leaving. Both are intertwined and present most of the time. The literature has three perceptions of why abusers use the court to abuse and harass: for financial reasons, as a part of a pattern of post-separation and abuse, and to enact revenge for her leaving.

The advocates reported that the financial component only existed with the other two components – one advocate stated that it was “just a perk” of the rest of the havoc he created. Delineating the two remaining reasons does not mean that they exist in isolation – many who responded to the survey did not describe differences between the two reasons or were frustrated by the questions that sought to differentiate between the two because they are inextricably linked.

“There’s a woman that was told by the [transition] house not to give him custody, but she did anyway. Ten years later, the kids were never out of her care – he was told by someone to get custody and then she’ll be sorry, but I guess he didn’t realize that meant actually having the kids. She knew he didn’t want the kids, so she was okay with the paper.” – Front line worker, describing an unusual case

Using the courts as a pattern of continued abuse

When discussing court-related harassment and abuse there are a number of factors that are intertwined and interconnected. Court-related harassment is inextricably linked to abuse – when a woman flees abuse, she may go to court seeking a restraining order or custody, or he may go to court first – alleging she has kidnapped the children.

Regardless of how they found their way to court, if he tells the court that he wants to see the children, he will almost certainly have some form of access or visitation. All the responders indicated that abusers will use these points of access to assault, harass, stalk or otherwise cause women fear – this is extremely difficult for women because they face competing interests of maintaining safety of themselves and their children and social pressures that time spent with their fathers is important to their child's well being.

Because the abuser is typically following the court process, Judges are reluctant to stop the court-related abuse or harassment until there is a proven pattern. Jane Gordon discussed that a Judge seemed to agree that her ex-partner should be prohibited from making more frivolous applications; however, he wouldn't make that order on that day.

Jaffe, Lemon & Poisson (2003) write of a woman whose ex-partner had taken her into court 42 times in the previous year before the courts stopped his behaviour. An advocate and support worker shared a story where one woman's ex-partner started with supervised access to the child once a week for a few hours. Over the ensuing six years, and despite reports from many victims of his violent outbursts (including work subordinates, an ex-partner and support workers), he managed to get sole custody and to have the child over 60% of the time.

Using the courts as a way to enact revenge

“Some attorneys who were interviewed as part of this study believed that abusive fathers are interested in asserting their rights, whether or not they are genuinely attached to their children. They claimed that fathers sometimes file for custody to retaliate against the mother for an arrest or for an order to provide financial support.” – Rosen & O'Sullivan (2005)

Many of the responding advocates agreed with this sentiment. One worker expressed concern that she sees cases where the abuser gets custody, but doesn't actually want the child. The child resides with the mother, until the father is angry with the mother and demands his rights as set out in the custody order. He returns the child to the mother when he settles down. The child returns upset, frustrated and acts out. It takes the child a long time to settle back into a normal schedule, only to be forced to go live with the father again the next time he becomes angry.

“He wrote, ‘I hope I get access so I can make [our child's] life miserable so you will want to kill yourself’ “ – An advocate

When abusers fight for custody for revenge, and then win, they will be encouraged to continue to use the system to abuse their ex-partners. Lundy Bancroft states, “If the abuser meets with periodic success in court, he may continue his pattern of abuse through the legal system until the children reach majority.”

Within all the research, court harassment is defined within the larger context violence against women in relationships and post-separation assault. Stahly writes of over 100,000 women leaving abuse that had been covered by an assessment of transition houses in California, 22% of abusive partners threatened court action for custody; of those, staff knew of 8% who followed through with the filing. Of those abusive partners who had filed, 6% of those won sole custody and 20% won joint custody.

Ironically, abusers who had not assaulted their children won sole custody 1.8% of the time and abusers who were physically or sexually abusive towards the children won sole custody 5.2% of the time. When confronted with these statistics the advocates were surprised that the numbers were so low.

“Only 8% filed? I thought it would have been higher” - Front line worker

“Only 22% threatened to go to court? I thought it would be way higher” - Transition house worker

I was surprised at how little concern there was that the literature stated that a person with substantiated evidence of physical or sexual abuse of the children was more likely to get some form of custody than an abuser who had not assaulted the children. In later interviews with frontline workers I reiterated that part of the questioning and the advocates stated that in BC “women are told by their lawyers not to even write in the abuse in the affidavits”. Unless there is proof of the allegations, she could be seen to be the “unfriendly parent” and lose custody.

The Judges treat allegations of abuse against the child as proof that the mother is ‘unfriendly’ and penalize her for alleging abuse by giving him custody or more access. Because children are reluctant reporters of abuse, unless there is an unusual or extreme case where the child reports to a third party who is believed by the Judge⁹; the Judge treats the abuse as though it did not happen or is unlikely to happen again¹⁰.

Abusers are aware that if they can get access or custody it can be a way to continue to abuse women. Once visitation between a child and the abusive parent takes place the child is vulnerable not just to physical abuse, but also to various forms of alienation and emotional abuse.

Jaffe, Lemon and Poisson (2003) explain that “many batterers engage in alienating and blaming behaviour” focused on the mother. They seek to undermine the mother (“I gave your mom \$800 this month, you tell her to use it to buy you video games”), blame the mother for the family break-up (“If your mom didn’t leave me, we would be a happy family”), excuse or mask their violence (“You didn’t see when your mom used to hit me”).

The children are often grilled for information on the mother’s life (Beeble, Bybee & Sullivan). Front line workers responded that in many court documents, they believed abusers use information that was gained from the interrogating their children.

⁹ One child told a teacher about his father assaulting him, the teacher’s evidence was dismissed because the mother had spent too much time at the children’s school and had influenced her testimony.

¹⁰ An Italian court has ruled that Canada would not protect a child because of a case where a Judge was going to give access to a father who gave anti-psychotic medications to the infant on a number of occasions.

Abusers find that the courts will allow them to continue to abuse with impunity

“When separation occurs, the abuser also transfers much of his control onto their children. He uses their children in a direct and deliberate fashion as pawns in an attempt to elicit a reconciliation with the mother or to sabotage the mother’s creation of a new life for herself and their children.” - Jane Vock et al.

In writing about “Legal bullying”, Lenkinski, Orser & Schwartz (2004) compare well-researched workplace bullying and with ‘legal bullying’ in family court. They found that research on workplace bullying supports zero-tolerance policies and codes of conduct to reduce the incidents of bullying and suggest that it would be useful to apply these policies to the family law sphere. One key part of these policies is acknowledging that abusers will abuse or bully using the courts when they “know that they can get away with it.”

Another concern is that Judges are reluctant to make long orders with very specific details, and without these details the litigation is open for interpretation. Chewter (2003) states,

“[T]his “wiggle room” is significant when coupled with data that suggest that access exchanges can become flashpoints for ongoing harassment and abuse. A “no contact” order that permits contact on such undefined terms as “as regards access” or “in relation to the children” is virtually unenforceable and provides no protection at all.”

Abusers may also intimidate the other justice system officials. Lundy Bancroft writes that some “custody evaluators have been afraid to release their recommendations” because they fear the abusers. One worker reported an ongoing engagement between a family and the reunification counsellor. After a range of troubling incidents, the client expressed to the counsellor that she was upset with how things were going forward and the counsellor blurted, “but we don’t want him to get angry.”

The worker was shocked to hear this – and advised her client to explain that his anger is second to the needs of the child. The counsellor refused to continue the court-ordered treatment she said she would provide. Instead of being told on the record, clearly and directly that his behaviours were unacceptable, if he returns to court, there will only be a record that the counsellor won’t continue assisting the family, without an analysis of why.

Victims of Court Related Abuse and Harassment

“For many women, the burden of battling their former partner, traversing a court system that is highly suspicious of allegations of violence, and coping with a visitation schedule that delivers their children to the arms of their abuser can be crushing... [and may] be compounded by such life stressors as poverty, racism, classism, disabilities, language barriers, undocumented status, and lack of access to needed services.” Jaffe, Lemon & Poisson, 2003.

Women with barriers

The literature was largely silent on the effects of intersecting oppressions on court related harassment and abuse. In my experience as a front line worker, I have seen cases where an abuser was more successful in using court-related abuse and harassment because of discrimination against the mother.

“She couldn’t get a lawyer and had to represent herself. Master [retracted] started yelling out to the courtroom, “Does anyone understand this woman?” Her English is actually really good, she just has an accent.” – Transition House worker

In the interviews and surveys I asked front line staff if immigration status (being an immigrant, relying on an abuser for sponsorship), cultural competency (not being able to understand the Canadian Legal system), socio-economic status of the victim or abuser, being First Nations, or classism impacted the experience of court-related abuse and harassment.

The only one that was unanimously ‘almost always a factor’ was the socio-economic status of the victim or the abuser. One worker said, “I have an ex-partner who has spent more on his legal bills than he does on his child support. Why is it that the Judges never factor in the amount of money he spends to avoid his support payments?”

Table 1: Barriers that affect court-related abuse

BARRIER	Never a factor	Sometimes a factor	Almost always a factor	Do not know/ NA
Immigration status	0	5	5	0
Cultural Competency	0	2	8	0
Socio-economic status of the victim	0	0	10	0
Socio-economic status of the abuser	0	0	10	0
First Nations/ Aboriginal victim	0	5	4	1
First Nations/ Aboriginal abuser	0	5	3	2
Classism against the victim	0	2	8	0
Classism in favour of the abuser	0	2	8	0

What was most interesting was all respondents felt that at least some of the time all of these factors would impact a victim’s experience of court related abuse and harassment. Other factors that respondents identified that had an impact were allegations or histories of mental illness or substance use.

The YWCA Vancouver report on Mothers Without Legal Status in Canada¹¹ states that abusers may seek out women who will be totally compliant because they will not leave Canada without their child, but they are here isolated and without any source of income.

When a woman has no historic barriers, the break-up of the relationship can bring about allegations or cause her to have barriers that are detrimental to her maintaining the children. For instance, even without a history of mental illness, an abuser will seek to have her hospitalized for mental illness.

When the relationship breaks down, she suddenly faces poverty – perhaps for the first time in her life – and this lack of resources is used against her in the courts. While she remained with her ex-partner she provided virtually all child care and related duties; however, once she leaves him, he alleges that she is a menace to her children and those around her. When coupled with socio-economic or class differences she is at a distinct disadvantage, even if prior to the breakdown of the relationship there was no perceived barriers that would affect her family law matter.

Women without barriers

Jane Gordon, whose article is referenced in this report a number of times, exemplifies that truly any woman can become a victim of court-related abuse and harassment. Despite being white, educated, professional, having English as a first language, and being the primary earner in the family prior to separation, she was still at a disadvantage in the courts when faced with court-related harassment.

While seeking cases through Canlii.org to seek out judgments that indicated court related abuse and harassment, I saw a wide variety of cases that involved people who appeared to have resources that would be expected of a family that was somewhat well off. At a meeting of advocates, one worker explained that when “there is more money, he will fight harder to keep it.”

Why Abusers Use the Courts and Legal Processes to Abuse

It is well documented that there is that there is a wide array of ways that abusers will seek to exert power and control. Abusers will physically assault, emotionally abuse and financially abuse a woman. They will also use her culture, religion, disability, language ability, immigration status and family against her. They will humiliate her, they will undermine her, and they will even humiliate themselves, if they believe it will have the desired effect on her¹². Another way to view this is that few abusers will see their abuse as such.

Their main reason that abusers use the courts and other processes to abuse is **because it works**. Abusers will use whatever tactics are required to coerce his victim back to him, to prevent her from going on with her life, or to enact revenge or prove that she was in the wrong.

¹¹ Mothers without status are women who are in Canada with their children and cannot leave with their children because of a family court order; however, because of immigration rules cannot legally work and cannot collect income assistance.

¹² A transition house worker described an incident where a woman's ex-partner started punching himself in the head after he won less than what he wanted in court – no one in the court room acknowledged the behaviour.

With court-related abuse and harassment an abuser can continue to act with impunity until he is stopped and Judges are reluctant to stop them. The abuser is emboldened to continue the fight.

Once a few judges do not stop the behaviour through some sort of sanction, the abuser accuses the first judge that does of being 'biased' and then maintains that subsequent judges are influenced by that 'biased' judge¹³. The abuser will return to the court believing that they were originally in the right.

"The social workers know he'll just keep escalating and then they will get in trouble - it's easier just to investigate her again." - Support worker about an abusive man's repeated reports about his ex-partner

The courts, and other social institutions with regulatory power over individual's lives, often lack an analysis of abuse and in doing so lend credence to the abusers accusations - and will often do the investigation to ensure that there are no complaints rather than admonish those that make fraudulent complaints¹⁴. For instance, one woman's ex-partner called the same Ministry for Children and Families intake office and spoke to seven different social workers, until the seventh agreed to follow up on his request that the mother be investigated.

The workers who discussed this topic were divided on why the social workers were engaging in this. Some felt that it would catch the interest of a social worker that had history with the family or has personal biases leaning in the direction of the abuser. Others thought that they might do so because of legitimate belief that they should intervene, while others seem to do it because it will appease the abuser or to prevent complaints against them by the abuser.

"I've been in court many times, by my clients and just seeing others in the court room, many abusive partners will arrive at first appearances telling the judge how awful she treated him, how abusive her behaviour is, how she cheated on him and how she is an awful mother. The Judges will often listen and explain and re-explain the legal process. He knows the process, he's told it every other time he's in front of a Judge" - advocate

Jane Gordon writes, "There is no protection against legal harassment. Legal aggression is rewarded by compassion; legal defense is punished by debt." There is reluctance by the Judiciary to prevent abusive behaviours in the court process. Almost all those that responded to the survey agreed that Judges do not exercise their discretion to prevent these behaviours.

In fact, few responders could think of a time they had seen a Judge stop an abuser from using the courts improperly. A few said that they had seen Judges threaten to do it "next time", but at the next hearing the Judge is either different or if it is the same Judge, they do not remember the threat.

¹³ It seems that this can be explained by a psychology term 'backfire' which suggests that introduction of facts against one's beliefs can actually reinforce their views.

¹⁴ The Child, Family and Community Service Act section 14 explicitly allows for those who make false reports to be fined \$10,000 and jailed for up to six months; however, no one has ever been charged with this.

Czapanskiy (1990) stated that Judges will say that they “lack authority to provide relief, despite the permissive language of the statute.” The respondents indicated indeed that they found B.C. Judges were not using the authority that they had to stop the litigation abuse.

It is my opinion that the most crucial reason an abuser uses the courts to abuse is often the letter of the law is the worst an abuser can expect in a courtroom. It is in his interest to go to court. Where both parties claim differing relief, the Judges often “split the difference” and meet at a halfway point between the two points of view¹⁵. The victims rarely ask for much beyond what the law will allow, and those that do are often chastised. A few of the responders indicated that the victims they assist are judged very harshly for alleging abuse; whereas the abusive spouse faces no such commentary from the Judge.

There is also a small contingent of abusers who use the court systems to abuse because they are generally litigious. In fact, while researching this article a brief search on Gene Keyes’ use of the media to attack his ex-partner led me to articles of his lawsuits against Pandora Publishing, a feminist magazine that refused to print his letter about father’s rights. I also found an article that referenced a decision made in the Federal Tax Court, where Keyes sought a percentage of the child tax credit for his 28% estimation of time with the children, despite his inability to pay the symbolic \$1 monthly child support payment.

One worker describes a situation where a woman has emails from her ex-husband’s former employer citing past litigation and fear of future litigation against his employer as a reason they cannot provide her with an affidavit. Her ex-husband also has a case against an airline and a civil claim for injuries - debilitating injuries that he healed from soon after the lawsuit was completed. For some abusers it seems that litigation is a strategy to get what they want in wide variety of situations.

For some abusers, court is a battle of wits. A transition house worker said, “Court abuse is a game, they love collecting the papers and evidence.” Others report that the abuser will mock his ex - “You get your court order, where will you get the money from?” (referring to the fact that he’s selling off property). When asked if abusers use court-related harassment to cause financial strain or to financially abuse, one worker said, “It’s definitely a perk for them.”

Others mentioned that an abuser collects judgments and reports that make negative claims about the woman and then show copies to school teachers, daycare workers, friends, family and even the woman’s employers. These same people become acutely aware of what the abuser is capable of, and they are reluctant to write affidavits or provide the woman with support out of fear of his reprisals.

One advocate spoke of women who would tell them that they knew they would be back in court soon. For instance, some victims knew that in August and November they would be served papers because the abuser would want to stop them from buying back to school clothes or Christmas presents for children. For one woman, it always happened just before the child’s birthday.

¹⁵ Jaffe, Lemon & Poisson (2003) state that in places where a Judge is required to “articulate their reasons for awarding sole or joint custody to batterers” the cases where judges ‘split the difference’ is reduced.

A lawyer told me of an incident where an abuser filed an ex parte application fearing that the child was being taken out of the jurisdiction – while his wife was at home cooking dinner and totally unaware that she had been planning to leave him. Once an order is made, judges are very reluctant to change them and the time frame associated with appeals does not accommodate the time needed for women to process their conflicting feelings about going to court, to then gather evidence, to get legal aid if necessary, and to find counsel. The abusers are able to lie and win because the victims are unable to mount an effective and timely response.

How Courts Encourage and Allow Court-Related Abuse and Harassment

It is a mainstream belief in Canadian society that women remain in abusive relationships because there is something wrong with them. Most women return to abusers or stay with abusers because they are aware of how little is done to enforce their safety and the safety of their children. Varcoe & Irwin (2004) write that “[w]omen who are abused actively make decisions about their lives, and consideration for their children figures predominately in those decisions... women both stay in and leave abusive relationships partly because of what they believe is best for their children.”

They identify that those same factors are central to the problems facing women leaving abuse; in turn they are also central to litigation abuse. The lobby for Father’s Rights have entrenched in our social psyche the belief that all children need their fathers¹⁶. (There is a paradox that we believe all children need their fathers, but that children should not see abusers and trust that this is ensured through our court system.)

The idea that children need their fathers is so entrenched that many women who are abused often believe that themselves. Some of the responding workers found that their clients would encourage their children to have access with their ex-partners or seek out resolution for joint-custody¹⁷. By the time women are harassed and abused through the process or face repeated victimization at access exchanges, there is a status quo for his visitation, supported by her.

Courts are extremely reluctant to undo those types of orders. Virtually all the responders agreed that there is little latitude within our courts to stop access to even the most egregious of abusers without consistent proof that he is continuing the abuse long after the relationship ends. The courts will provide direction - tell the parties how to behave properly with the children and during access - repeatedly before ceasing access.

An example of this is *Kruk vs. Pulkingham*, where there are four publicly accessible decisions¹⁸. The Judge stated that there was “constant strife and problems between the

16 The President of a Shared Parenting organization assisted a man who had stalked a girlfriend for 35 years, (despite that they had no children together, were never married and would not be covered under any family law act) by providing information about the victim to the stalker.

17 Dwayne Shoenborn and Peter Lee were given access to their children by the mothers, eventually the fathers killed their children.

18 <http://www.canlii.org/en/bc/bcsc/doc/2002/2002bcsc1262/2002bcsc1262.html>
<http://www.canlii.org/en/bc/bcsc/doc/2003/2003bcsc363/2003bcsc363.html>
<http://www.canlii.org/en/bc/bcsc/doc/2004/2004bcsc1681/2004bcsc1681.html>
<http://www.canlii.org/en/bc/bcca/doc/2006/2006bcc191/2006bcc191.html>

parties initiated and caused by the respondent's attitude and conduct, resulting in various orders being made, including that the respondent's access to the child be suspended, that the child be apprehended, that the respondent be held in contempt of court, that access be supervised and so on." The Judge went on to state that he believed that this was an "unhappy marriage dominated and controlled by the respondent, of violent anger and temper tantrums by him, of abusive conduct towards her, and of unexplained and bizarre conduct on his part. Once the child was born and grew older, the conduct included the child."

This abusive litigant was heard each time by the courts and it took a trial and four hearings, including to the BC Court of Appeal, to enforce a 50/50 shared custody - in the end the litigant told the courts it would be shared parenting or nothing at all, and the Court wrote "faced with the appellant's all or nothing approach to the problem this Court, to put it bluntly, said nothing." Despite saying this, access was not stopped by the court, although his ability to file further applications in the matter was reduced to requesting from a Judge the ability to file an application.

Without providing specific sanctions against those who use the courts to abuse and harass, victims will face this ongoing harassment. One worker pondered if it was a violation of Section 7 of the Charter of Rights and Freedoms, which states everyone has the right to "security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Lenkinski, Orser & Schwartz (2004) cite that in the literature on workplace bullying and harassment that "there is increasing recognition that bullying violates basic human rights. Bullying impinges on basic dignity, psychological and physical well-being, and the right to a private life."

The Impact of Court Related Harassment & Abuse

"Although my women friends were initially supportive, what I also came to recognize was that as events dragged on and on [...] there was less and less they could say in support. Indeed, some of them really became rather tired of hearing about my legal troubles."
- Jane Gordon

When dealing with court related abuse and harassment, being 'right' has nothing to do with the process of court. Those that use the court to continue to harass and abuse may not even care if they are right or not; it is the knowledge they are causing stress for the victim. The threat of and ability for abusive ex-partners to file is enough to cause ongoing stress. Some responders expressed concern that it affects the overall emotional well-being of the victim; who is often also a primary caregiver of children.

One advocate described a situation where the courts had ruled the abusive spouse vexatious and told him that he was required to apply for leave to file a lawsuit. He would still file lawsuits and the victim still needed to pay, out of pocket, each time for her lawyer to appear and explain to the judge that he was required to ask for leave. At these appearances, the abuser was nowhere to be found - but the financial burden on the woman was still enormous.

Jane Gordon found her name and workplace in the local papers; her ex had lobbied teachers, principals, church members, school boards, provincial health care systems, and

even their Member of Parliament to fight for joint custody. This was in spite of the fact that her ex-partner, a professor, could not even afford to pay the \$1 monthly child support - a symbolic gesture.

Perhaps the most important effect, and one that was not within the scope of this particular report, is the effect on the children. While preparing this report there was a young woman in the news for faking cancer and taking \$20,000 of donated money for her own personal use. In one of those articles she states that she was the subject of a custody battle. Currently, she is in contact with neither parent. Discussing this case with colleagues of mine, we realized that we've seen cases that could easily end up that way.

One transition house worker described a child of an abusive father who engages in litigation abuse. The child has had to go through repeated interviews with police, social workers and psychologists. The child is rewarded for saying negative things about her mother. The child is acutely aware of the power she holds in the relationship with her mother - and uses it to get her way. The worker has seen many other children like her having social problems and engaging in high risk behaviours as they get older.

How to fix the problem

Throughout the literature there were a variety of measures of litigation abuse and harassment. The Supreme Court of Canada in Lang Michener and Fabian has a list of seven criteria that determines if a litigant is vexatious. Chewter (2003) created a set of 10 criteria that when assessed with allegations of abuse, would indicate court related abuse. Lenkinski, Orser & Schwartz suggest that using a set of 10 behavioural criteria will show if actions constitute 'legal bullying'.

Between these three tests, there are seven general criteria that are in some agreement between at least two sets of lists. Only one factor was common between the three sets of criteria: that there is a multiplicity of applications by a party. This is supported by Suhanek & Stahly who found that in cases of family violence, "the father initiated twice as many filings as the mother."

I wrote 22 criteria based on the 27 items that the two authors and Supreme Court of Canada used to define court-related abuse or vexatious proceedings. Front line workers were asked if these were signs that court-related abuse may be occurring. It was also asked if victims of abuse who were not engaging in court related abuse had engaged in these behaviours because of other circumstances. The table (on page X) presents the criteria and the responses of the workers (two workers did not assess if their clients had engaged in those behaviours).

	Abusers doing the action				Victim of Abuse			
	Usually false	Sometimes true/ false	Usually true	Don't know/ NA	No clients have done this	Some clients have	Many clients have	Don't know/ NA
Who never had primary care seeks full custody	0	4	6	0	5	2	0	1
Will not provide parenting plan seeks custody	0	3	4	3	2	4	0	2
Claims irrelevant/ unsubstantiated infidelity	0	8	2	0	0	6	2	0
Self-represented by choice	1	2	6	1	0	7	1	0
Draws out litigation/ multiple adjournments	0	4	6	0	1	5	2	0
Changes lawyers a lot – particularly before court date	1	8	0	1	1	4	3	0
Repudiates agreements right after it's reached	0	5	5	0	3	3	2	0
Requests personal records w/o good reason	0	4	6	0	6	1	1	0
Many applications over short period of time	0	6	4	0	4	3	1	0
Alleges denial of access when no real lapse occurs	0	0	10	0	8	0	0	0
Claims relief in different jurisdictions/courts	3	5	0	2	4	2	2	0
Brings same motion repeatedly	0	2	5	3	4	3	1	0
Shows no material change in circumstances	0	4	6	0	2	5	1	0
Fails to obey court orders (including costs awards)	0	4	6	0	2	5	1	0
Doesn't comply with procedural requirements	0	5	5	0	2	5	1	0
Makes complaints to regulatory bodies (law soc)	0	6	4	0	0	7*	1	0
Wastes court time with irrelevant issues	0	4	6	0	3	3	2	0
Fails to disclose financial statements/assets	0	1	9	0	5	3	0	0
Flees country to avoid orders	0	6	1	2	5	3	0	0
Conceals assets	0	0	9	1	5	3	0	0
Makes unsubstantiated allegations of abuse	0	5	5	0	5	3	0	0
Makes applications that will not succeed	0	5	4	0	2	5	1	0

* "Usually I'm the one writing it for her" – Advocate; a number of responding workers stated that opposing lawyers or even judges are sometimes inappropriate to unrepresented women alleging abuse.

Respondents had a lot of feedback about the criteria above. For much of it, there is specialization based on a demographic – the worker who found that abusers do not typically self-represent by choice acknowledged that she works with women whose ex-partners have enough income to ensure constant representation; he knows he can wear her down by just outlasting her.

The advocates that found their clients would hide assets were speaking of extremely low-income women who would be afraid of income assistance taking the small gift she received. All victims who were applying for children that they never had primary care of were cases of MCFD involvement – where the child had been in care and they are now able to care for the children. The requests for personal information by victims were often cases where they were soliciting information from abusers’ treatment programs to assess their ability to safely be around the children.

Many of those who responded found that their clients experienced five of the behaviours listed as indicating court-related abuse:

- A parent who claims irrelevant/unsubstantiated claims of infidelity
- Self-represented by choice
- Draws out litigation/including multiple adjournments
- Changes Lawyers a lot – particularly right before a hearing/trial date
- Repudiates agreements right after they are reached.

The workers responded that women include infidelity as a reason that their husbands were frequently absent and failing to parent, and want to explain this to the Judge. The other four issues are all centered on issues of feminization of poverty – women are self-representing by “choice” because they will not sell the house that is their child’s primary home. Women are losing their legal aid lawyers as a consequence of actions taken by the abuser, or their allotted hours are finished before trial dates. Some women are simply abandoned by their legal aid lawyers days before trial.

Lastly, some victims are repudiating agreements reached in Judicial Case Conferences or other settlement agreements because they were unable to get legal counsel or cannot have a support worker with them at these case conferences.

In a variety of meetings amongst family law advocates, transition house workers and other supports for women leaving abuse, there is a consensus that women leaving abuse feel bullied, threatened and unsafe in Judicial Case Conferences. These women are making agreements under duress in an effort to either end the conference because they feel unsafe or because they do not understand what exactly they are agreeing to.

Based on the above there is no easy or quick fix to screening out those who use the courts to further abuse or harass. However, there are some cues that when combined with allegations of abuse or denial of access claims could provide insight that the case may be a part of a pattern of court-related abuse and harassment.

Recommendations

The goal of this report was to document and describe court-related abuse and harassment and provide recommendations on next steps. There are three key areas where steps need to be taken.

1. There is substantial research done that indicates that court related abuse and harassment is widespread.

a. There should be more training for social workers, police, employment and assistance workers, lawyers and Judges. They should be given gendered practice direction on how to identify those who are experiencing court-related abuse and harassment and how to respond appropriately.

b. Government funding can create specialized training for those in the Justice system (police, family justice counsellors, Judges and lawyers) on court-related abuse and harassment. Aside from reducing the occurrence of it, there would be associated cost savings to the justice system if preventative action is taken to reduce the longevity of court-harassment cases.

c. There needs to be more engagement between academics and front line workers to pass on information. I was overwhelmed by how much research was available on this topic and many other topics pertaining to abuse. These studies could be used by front line workers to help victims. Most organizations cannot afford journal subscriptions and even if they could, many workers do not have the time to seek out potentially relevant information. Engaging in some system of free flowing information is imperative if the goal of research is to affect those who are being victimized.

2. The issue of court-related abuse and harassment is documented. However, the victims of it remain isolated. As mentioned earlier, the victims who experience court-related abuse and harassment often feel unsupported by friends and family and a strategy of abusers is to eliminate other supports. Every victim's experience is both radically different in the details, but essentially the same.

It would be beneficial to have a variety of case studies completed that speak to the victims of court related harassment and abuse, but also analyze the court documents over time. The data collected would hopefully provide enough diversity that themes of abuse emerge. Then we could develop criteria that is true for a significant number of cases or could provide a series of exceptions to the guidelines recommended by other researchers.

It is particularly important to ensure that research focuses specifically on marginalized women: those who are at a socio-economic/class disadvantage, women of colour/immigrant women, First Nations/Aboriginal women and those with ability issues.

3. There is little research on the effects of these actions on children over time. I did find a news article about a teenager who had committed suicide. He had written a school essay speaking of “the other torture in my life”, referencing that his father is “still harassing us through court case after court case.”¹⁹

It would be useful to talk to the children who have become adults after all of this and to see how it impacted them to make specific recommendations to the courts about the effects of these judgments. It would also be useful to speak to front line workers who have been in the field for over 10 years – they often see children right after leaving the abusive home and what has happened after the child has been through these battles.

Conclusion

Socially, we assume that once a woman leaves an abusive relationship she is away from the abuse. We believe that in those occasions where abusers break restraining orders or otherwise engage in post-separation abuse, that the legal system will deal with it. To think that an abuser will use that legal system to re-victimize goes against fundamental views of justice that we collectively hold.

When describing the issue of court-related abuse and harassment to community members, and those outside the field, people were horrified that this occurs so often. However, I was surprised at how many people also stated that they knew someone who had experienced court-related abuse and harassment.

As this is an invisible form of abuse, more needs to be done to raise awareness for those that are in the family law field and those that work within the criminal justice and governmental systems that have regulatory power over individuals. It is not just to support the victims of violence, but also support our police officers who may be faced with confusing situations that could be more easily dealt with if they were properly trained on policy. It supports the Judges who face very difficult decisions, to be able to know the concepts so that they can give reasons that fit within what their discretion allows.

In order to facilitate this, current research needs to be targeted towards front line workers to help them understand the issue and their needs to be increased dialogue between front line workers and researchers so that researchers remain up-to-date about court related abuse and harassment.

Additionally, more research needs to be done to clearly articulate the issue and find common themes of how abusers use the systems to abuse; this needs to specifically target and address the experiences of marginalized victims of court related abuse and harassment. Through this research there would be documentation of how to assess and measure the possibility for court-related abuse and harassment. There also needs to be more resources for all different victims of court-related abuse and harassment through legal assistance, support and recognition of this type of abuse.

¹⁹ <http://www.post-gazette.com/custody/partone.asp> it was only after this article that the access arrangements for the two surviving boys were changed.

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