Divorce Law, Family Violence and the BIC: Evaluation of Canada's New *Divorce Act* 2021.*

Desmond Ellis, La Marsh Centre for Child and Youth Research, Faculty of Health, York University, North York, Ontario, Canada, M3J 1P3

Taryn Nepon, Ph D

Correspondence: desellis@yorku.ca

Abstract

The claim that Canada's new *Divorce Act* will make an historic contribution to the BIC is investigated in this paper. Support for this claim was grounded in a comparison with Canada's first two *Divorce Acts*, 1968 and 1985. Comparison with statutory provisions in selected U.S. States and a textual analysis of the 2021 *Divorce Act* strongly suggested additional amendments, notably one giving extra weight to family violence as a BIC factor and others dealing with historical (past conduct) violence and the appropriateness of litigation/adversarial adjudication in high parent- conflict cases. The paper ends with a Discussion and Conclusion.

Key Points for the Family Court Community

- A broad definition of family violence significantly increases the weight given to family violence in family law legislation.
- The inclusion of "coercive and controlling behavior" in the definition of family violence will reveal a strong independent adverse effect of the entrapment of mothers on the BIC.
- Historical (past conduct) violence should be included as a determinant of parenting plans because it has serious adverse proximal and distal effects on the health and wellness, safety and security of children.
- Proceedings that increase the intensity of mutual feelings of hostility between parents are inappropriate for high parent-conflict cases.

Keywords: Divorce law; Family violence; Best interests of the child; Coercive and controlling behavior; high parent-conflict.

Divorce Law, Family Violence and the BIC:
Evaluation of Canada's New *Divorce Act* 2021.

England's first divorce act (*Matrimonial Causes Act 1857)* is regarded as a "watershed moment" [landmark] in the legislative reform of divorce law because it replaced a tripartite system of divorce involving Assizes (peripatetic judges holding courts in counties), the Ecclesiastical Court and the House of Lords by a secular court permitted to grant a divorce on the sole ground of adultery (Kha, 2018: Stone, 1993). One hundred and sixty-four years later the Bill C-75 amended Canadian *Divorce Act* came into force on March 1, 2021. This Act does not call for significant structural changes such as the creation of a Canada-wide unified family court system but Justice Minister Raybould described it as "an historic occasion for family law in Canada". In the present context, the Minister means the *Act* makes a monumental positive contribution to the best interest of the child (BIC).

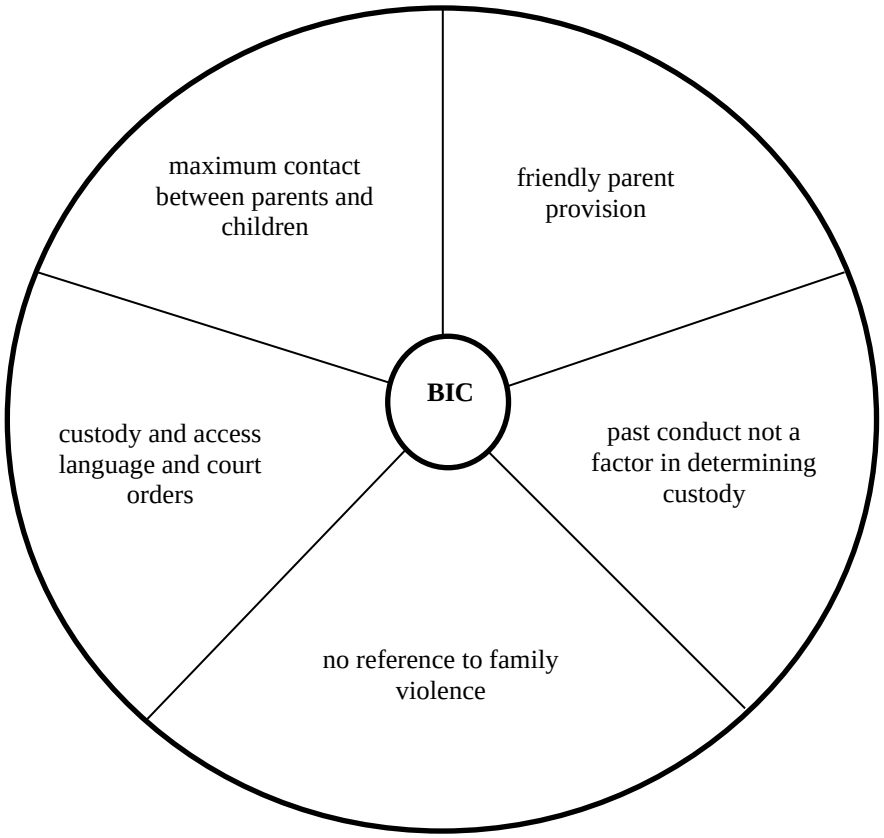
OBJECTIVES

The claim for historic status can be assessed via comparisons of the contribution made to the BIC by the 2021 *Divorce Act* with Canada's first and second divorce acts - 1968 and 1986 and with the family laws (statutory provisions) enacted in a collectivity of States in the United States. Notwithstanding the outcomes of these comparisons, a textual analysis of the current Canadian *Divorce Act* may suggest amendments and clarifications that will increase the contribution it makes to the BIC and consequently to its historic status. These are the objectives of the paper described in the pages that follow.

BIC WHEELS

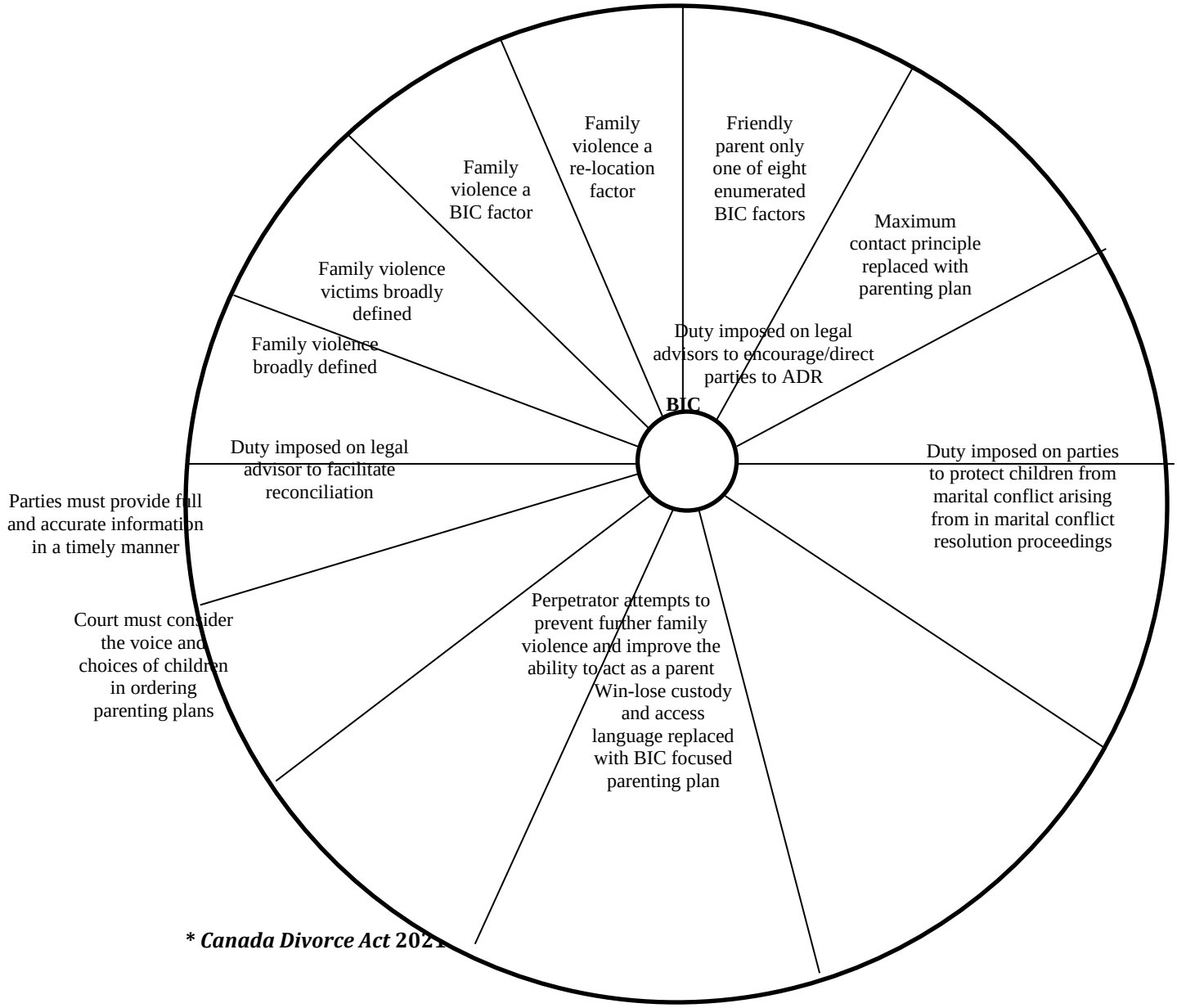
The BIC wheels described here are derived solely from family law legislation. More specifically, they are derived from lists of enumerated factors identified in *Divorce Acts* in Canada and statutory provisions in the United States. The BIC Wheel derived from Canada's first and second *Divorce Acts* (1968 and 1985) is described in Figure 1.

Figure 1: BIC WHEEL*



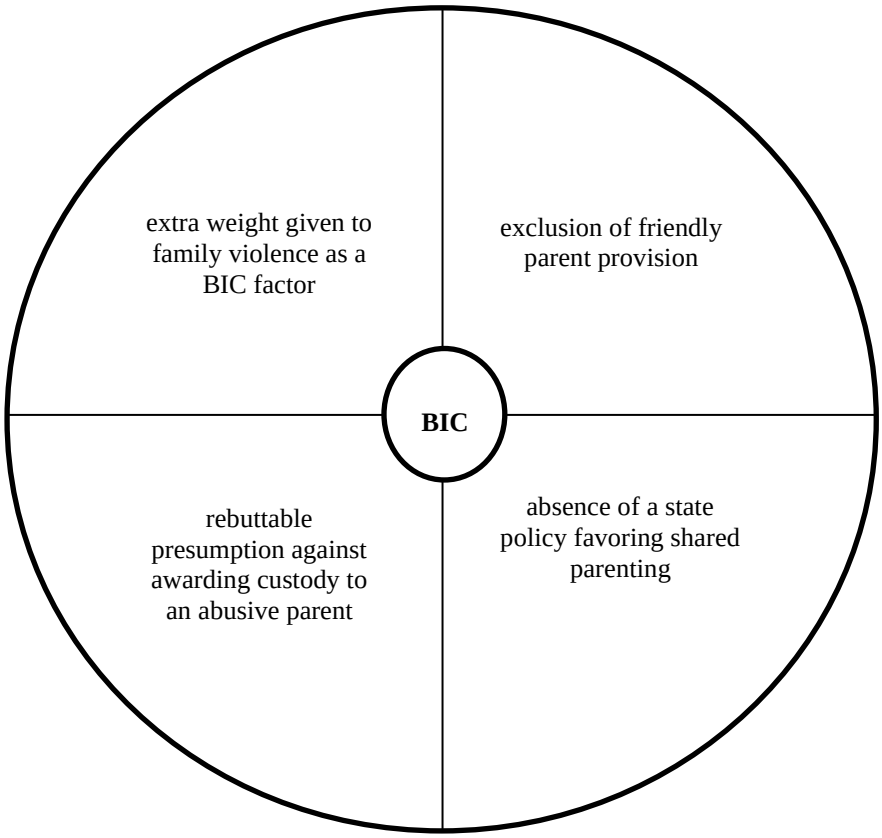
*** Canada Divorce Acts, 1968 and 1986**

Figure 2: BIC WHEEL*



* ***Canada Divorce Act*** **2021**

FIGURE 3: BIC WHEEL*



*** Selected States in the U.S. Garvin.2016; Lemon, 2001;Saunders, 2017**

Historic status may be claimed for *Divorce Act* 2021 not only on the ground that it will make a significantly greater contribution to the BIC than the 1968 and 1985 *Divorce Acts* but also on the ground that provides a model for family laws aimed at settling conflicts associated with marital dissolution in all ten Canadian provinces.

The validity of any attempt made to claim historic status for the Canadian *Divorce* Act 2021 on the basis of a comparison between BIC 2 and BIC 3 requires

careful specification. First, while both BICs share the ultimate objective of promoting the BIC, they differ with respect to their jurisdictions (States in the United States and Canada) and their foci –family court judges in the former and legal advisors, the parties and family courts in the latter.

Second, while the unit of comparison is clearly identified in BIC 2 the unit of comparison in BIC 3 varies with the each of the factors included in it. For example, findings reported by Saunders (2017) reveal 12 rebuttable presumption States, 16 domestic violence- given- greater- weight States and only 7 rebuttable presumption *plus* greater weight States. In the *2019 Shared Parenting Report Card* (National Parents Organization, 2019) 25 States were reported to be friendly parent States and 13 were identified as policy statement States. In these States, friendly parent and policy statements tend to be given greater weight in determining the BIC than the rebuttable presumption against awarding custody to abusive parents (Saunders, 2017; 2-3; Garvin, 2016). Consequently, BIC 3 only applies to States in which all four factors are present and rebuttals to the rebuttable presumption against awarding custody to abusive parents tend not to prevail.

As there are no Canadian provincial policy statements favoring the award of custody to perpetrators of historical violence and/or coercive and controlling behavior and adverse friendly parent effects are mitigated by its inclusion as only one of eight factors determining the BIC, claims for historic status for the *Divorce Act* 2021 is contingent upon subsequent amendments that include greater weight being given to historical family violence in determining the BIC and the rebuttable

presumption against awarding shared parenting time, decision making and unsupervised contact to perpetrators of frequent, serious and recent family violence against a parent and directly or indirectly against a child.

Additional amendments and clarifications that may help the new *Divorce Act* achieve historic status are addressed in the Critical Evaluation segment that follows.

CRITICAL EVALUATION

Past conduct

Bill C-75 amendments to the *Divorce Act* did not include an amendment to the past conduct provision in the 1985 *Divorce Act.* Amendment 16(5) states "In determining what is in the BIC, the court shall not take into consideration the past conduct of any person unless that conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order". This amendment ignores findings based on the analysis of individual and aggregate level data by researchers using different samples, study designs, qualitative and quantitative methods indicating that historical family violence against a parent has significant adverse proximal and distal effects on a child's physical, emotional and psychological safety, security and well-being. The literature on family violence published during the past 30 years is replete with findings supporting this conclusion (American Family Physician, 2020; Edelson, 1999; Hamby, Finkelhor, Turner and Omrod, 2010; Hilton 1992; Jaffee, Wolfe and Wilson, 1990; Jaffee, Lemon and Poisson, 2003;Monat and Chandler, 2015; Office of Women's Health, 2005; Pingley, 2017; Wolfe, Crook, McIntyre-Smith and Jaffee, 2003; Zolotar, 2007).

These findings warrant a judicial case-specific approach conducted in the shadow of a high degree of social science researcher consensus on the substantive and statistically significant adverse direct and vicarious effects of historical family violence on a child. To this end *The Court shall consider credible evidence of a pattern of on-going physical, sexual violence and coercively controlling behavior and the absence of credible evidence of a perpetrator parent's attempt to prevent future violence and improve their ability and willingness to care for and meet the needs of the child in determining parenting plans.*

This amendment integrates three sections of the 2021 *Divorce Act:* Sections 16 (2) – Court shall give primary consideration to the child's physical, emotional and psychological safety, security and well being; Section 16 (3)-best interests of the child- and 16 (4) –when dealing with family violence the Court shall consider seven specific factors including " Any steps taken by the person engaging in family violence to prevent further family violence [and] improving their ability to care for and meet the needs of the child.

ALTERNATIVE DISPUTE RESOLUTION

Section 7.3 states " to the extent that it is appropriate to do so, parties to a proceeding are required to try to resolve matters that may be the subject of an order under the Act through a family dispute resolution process [instead of litigation]. A judge may also direct parties to participate in ADR in the absence of provincial legislation excluding this option. Clearly, ADR is emphasized in the 2021 *Divorce Act*. However, neither appropriateness nor dispute resolution process are defined. Dispute resolution proceedings include lawyer negotiations, family arbitration and

divorce mediation. Collectively they account for about 95% of marital dissolution cases, with litigation accounting for the remaining 5% of (usually) higher conflict cases (Braver and O'Connell, 1998: 89; Maccoby & Mnookin, 1992:137). We shall focus on the appropriateness of divorce mediation as an alternative to participation in litigation/adversarial adjudication in cases involving historical family violence because it is the only ADR proceeding claimed to be more dangerous and unfair for female intimate partner participants than litigation/adversarial adjudication (Ellis, 2021).

One of the earliest claims " [divorce] mediation not only fails to protect women from subsequent violence but also their continued victimization" was made by Lerman (1984:7). In 1989 the authors of a report on promoting the safety of women claimed mediation is a "dangerous option" 22). Hart (1990:317) stated that mediation "endangered battered women " who participated in divorce mediation". Krieger (2002) draws attention to "the dangers of mediation in domestic violence cases". Zorza (2010; 1-19) asserts that divorce mediation increases dangers to women. Law professors Mosher, Koshan and Wiegers claim that mediation does not "prioritize safety" for mothers participating in divorce mediation (Balakrishnan, 2019:1).

The "dangerous" claim originally made by Lerman (1974) is repeated by many of the researchers, family court professionals and professional organizations that claim that divorce mediation is an inappropriate forum for divorce cases involving domestic violence (Lundrum, 2003; Kaganis and Piper, 2915). A noteworthy attribute of these claims is the absence of evidence indicating that adversarial adjudication is safer than divorce mediation in the presence of male partner violence (Kelly, 2004:3).

For example, none of the references (n=325) cited in the above two sources refer to empirical findings supporting this claim. On the other hand, when "safer" is defined in terms of the probability of post separation-divorce violence, the findings reported below provide credible evidence supporting the conclusion that the inappropriate clause is more validly applicable to litigation/adversarial adjudication than to divorce mediation.

Watson and Ancis report findings (2013:174-180) indicating that intimidation/harassment and the use of coercive control tactics by male partners continued "during legal proceedings". Similar findings were reported by (Elizabeth, Gavey, & Tolmie, 2012:472-473; Fitch and Easteal, 2017; Hrymak, 2021; Kaye, Stubbs and Tolmie, 2003; 65; Laing, 2017:12-15; Susser, 2000; ver Steeg, 2003:162-163; Vollans, 2010).

Findings indicating that participation in adversarial family court proceedings is positively associated with post-separation/divorce violence and abuse against women- especially against mothers when children are being exchanged- are reported by a number of researchers, including (Harrison, 2008; Humphrey and Thiara, 2003; Macdonald, G.S.; 2016; Shepard, 2010; Orenstein and Rickne, 2013; Zeoli, Rivera, Sullivan and Kubiak, 2013). Ellis (2016:10-11) reported a finding supporting the proposition that the risk of femicide will be greater among recently separated/divorced couples participating in adversarial adjudicative proceedings. This proposition was derived from a deductive conflict theoretic explanation of femicide.

Findings related to safety are not reported for divorce mediation because they could not be found or, when found, did not include post-divorce violence and coercive control as outcomes or findings are not based on comparisons with litigation/adversarial adjudication participants. For example, Johnson, Saccuzzo and Koen (2005) did not include these outcomes among the "poor outcomes" for the domestic violence participants in their sample and findings reported by (Beck, Walsh, Mechanic, Figueredo and Chen, 2011) are not based on a comparison between participants in divorce mediation and litigation/adversarial adjudication. More generally, the concept of "*post divorce mediation family violence*" is rarely if ever referred to in the literature on marital dissolution, marital conflict resolution and family violence.

The findings reported here provide credible evidence supporting the following amendment: *Referral to divorce mediation proceeding should be the first step taken to settle conflicts associated with marital dissolution and referral out of this proceeding should be made only if there is credible evidence indicating that the proceeding to which the parties are referred is safer, fairer (power balanced) and provides greater access.*

POWER

The unfair/power imbalanced claim states male partner violence results in power imbalances favoring male partner participants in divorce mediation but not in litigation/adversarial adjudication. Since 1974, this claim has been stated by a large number of researchers and family law professionals (Narine, 2017). Kaganis and Piper (1994:266) are included among researchers in this group. They state divorce mediation is inappropriate in cases involving male partner violence because "violence

is an expression of power…and mediators are unable to "identify and interpret" its subtle manifestations. Archer-Kuhn (2018), Fidler, Bala, Birnbaum & Kavassalis (2008) Koch and Pincolini-Ford (2006) assert that adversarial adjudication is appropriate in [normal conflict level) cases involving domestic violence because the use of violence results in power imbalances favoring perpetrators. Hart (1990:317-320) identified *fear* caused by male battering as the mechanism underlying the power differential favoring male partners in divorce mediation….. and "the most skilled mediator cannot offset sharp disparities of power between batterers and battered women". Knowlton and Mulhauser (1994) claim " prior to the [violent] incident the parties may have been able to approach the mediation table on equal ground…. after the violent event, the intimacy of the relationship will never again hold such equality". Agusti-Panareda (2004) states the greater wealth, resources and knowledge possessed by men and the inability of mediators to equalize the distribution of these power resources renders divorce mediation an inappropriate proceeding for resolving conflicts between men and women generally and husbands and wives in particular.

None of the claims referred to here are based on a comparison of power imbalances in divorce mediation and litigation/adversarial adjudication. One relevant starting point for such an investigation is a publication in which law professor Galanter (1974) asked the seminal question "Why do the "haves" come out ahead in court proceedings? His answer was " because of their ability to hire lawyers [who] regardless of the rightness of the merits [legal rights] of their case, permit them to prevail more often than "have-nots". Findings reported by Pelletier and Patterson

(2019) reveal gender differences in income locating male litigants among the "haves" and female litigants among the "have-nots" in a context where the average bill for high-conflict cases is $40,104 (Canadian Bar Association, 2018). Lawyer capability has been found to have a significant impact on the outcomes of court proceedings (Mlller, Keith and Holmes, 2015; Sandefur, 2010) and income differences favoring fathers enables them to hire more capable lawyers than mother litigants. Consequently, fathers may be more likely than mothers to obtain the parenting plans they requested. In this forum, gender differences in income create power imbalances favoring fathers.

Currently between 60% and 85% of litigants- one or both- participating in adversarial family court proceeding are self-represented mainly because they cannot afford to pay for lawyer representation (MacFarlane, 2013; Shepard, 2010). Imbalances in power favoring father litigants are significantly greater in cases where only the father can afford to pay for legally representation or when both parties are representing themselves and the father perpetrator of historical violence is entitled to cross-examine the mother who experienced his violence.

In her description of the 'Theory of the Adversarial Approach " ver Steeg (2003:161-162) refers to the assumption "the parties bring equal skill and power, in the form of an attorney and economic support, to bear upon their case". However, she continues, "the parties are not evenly matched in this regard, and *there is no mechanism in place to compensate for the mismatch*". This conclusion does not apply to divorce mediation where multiple power balancing mechanisms are in place especially when the definition of mediation includes third party facilitation of

negotiation between the parties (Ellis and Anderson, 2005:81; Gewurtz, 2001; Kelly, 1995; Mayer, 1987; Newmark, 1995; Nuemann, 1992; Rimmelspach, 2001).

Negotiation itself levels the playing field because agreements between interdependent parties are *jointly* determined and the mediator role includes facilitating the process of jointly determining negotiated outcomes. Moreover, power imbalances can be balanced by making safety and power-balancing accomodations that vary with four levels of risk as it is assessed by a risk assessment instrument (e.g. DOVE) (Ellis and Stuckless, 1996:664-665). Alternatives to face-to-face mediation include shuttle mediation, presence of advocates and Zoom (computer based) mediation. Professionally certified mediators can also balance power imbalances using interventions derived from an inductive, cross-cultural interpersonal process theory of power.

The theory created by Gulliver (1979) and modified by Ellis and Anderson (2005:1135-167) interrelates four variables: Resources (anything that, in context can be used in exercising power); Use of resources (willingness and ability to use resources effectively/persuasive strength); Outcomes (positive, negative or zero-sum); External factors (factors in the wider society that augment, deplete and modify resources available to parties involved in conflicts, e.g. the patriarchy). Power is defined as *a relationship in which differences in the parties' resources and in their willingness and ability to use them effectively are reflected in the reliability of achieving desired outcomes (*Ellis and Anderson, 2005:140-141).

Analysis of over 30 mediator power balancing interventions suggested by Adler and Silverstein (2000), Bennett and Herman (1996), Gewurtz (2001), Haynes (1988)

Moore (1996), Stulberg and Bridenback (1981) indicate that all or most of them can be subsumed under Resources assessed by a Resource Differential Questionnaire (RDQ) and Use of Resources (Power Observation Grid-POG). RDQ and POG can be effectively deployed by any well-trained, power theory –informed professional mediator conducting "impasse mediation" (Johnston & Campbell, (1988). In this specific connection Koch and Pincolini-Ford (2006:16) simple state- without citing evidence- the absence of male partner violence in high-conflict cases means " there is a relatively equal balance of power between the two parties". Consequently power - balancing interventions by mediators conducting "impasse mediation" are unnecessary.

Compared with the plethora of power balancing interventions in divorce mediation it is difficult to conceive of any steps that can be taken to decrease power imbalances between lawyers or self-represented litigants participating in litigation/adversarial adjudication. In this specific connection Koch and Pincolini-Ford (2006:16) simple state- without citing evidence- the absence of male partner violence in high-conflict cases means " there is a relatively equal balance of power between the two parties"

The findings reported here provide credible evidence supporting the following amendment: *Referral to a divorce mediation proceeding should be the first step taken to settle conflicts associated with marital dissolution and referral out this proceeding should be made only if there is credible evidence indicating that the proceeding to which the parties are referred is safer, fairer (power balanced) and provides greater access.*

EDUCATION

Section 7.7 (2) (a) imposes a duty on lawyers to encourage clients to attempt to resolve matters through an alternative to litigation " family dispute resolution process". Section 7.7 (2) (b) requires them to "inform clients about "family justice services" known to the legal advisor. In their response to the Bill C-C-78 amendments to the *2021 Divorce Act,* the Canadian Bar Association (3018:10-11) states "Many legal advisors are unaware of the availability and methodology of out of court dispute resolution processes and would not be able to provide complete advice to their clients about those processes". Findings from a Department of Justice (2019`) survey of 739 non-randomly selected family law practitioners in Canada indicate that 46% report not being familiar with supports and services [including alternative dispute resolution proceedings] available in their community (p.7). Hrymak (2020:9) found that 96% of the survivors of family violence in their sample answered no to the question "Did your lawyer connect you with community resources"?

As family law practitioner (FLP) understanding of ADR proceedings and knowledge about their availability in the community was not revealed in either survey the duty imposed on legal advisors by the Court to "inform and encourage" is grounded in the unstated assumption they are fully informed about these matters an amendment that assumes they are not fully informed is called for (Canadian Bar Association, 2018:10). To this end a duty should be imposed on legal advisors *to educate themselves about the dynamics underlying different kinds of ADR proceedings and the availability of resources and support services in the local community.*

HIGH PARENT-CONFLICT

During the past 30 years concerns about the proximal and distal adverse effects of parental conflict on the health and wellness of children have been expressed in a great number and variety of social science publications (American Bar Association, 2000; Archer-Kuhn, 2018; Braver and O'Connell, 1998; Dalton, Carbon and Olesen, 2003; Elrod, 2001; Ellis, 2000; Emery, 1999; Fidler, Bala, Birnbaum & Kavassalis, 2008; Johnston, 1994; Johnston and Roseby, 1997; Kelly 2003; Saini and Birnbaum, 2007). Elrod (2001:497) cites findings indicating that children exposed to high levels of parent conflict " bear an acutely heightened risk of repeating the cycle of conflicted and abusive relationships as they grow up and try to form families of their own".

One frequently recommended way of decreasing the aforementioned risks is to refer divorcing high-conflict parents to settlement proceedings that promote the BIC by decreasing the frequency and intensity of parental conflicts and educating parents in ways of settling conflicts non-violently. An evaluation of proceedings claimed to be appropriate for high-conflict parents experiencing divorce (Ellis, 2021) led to the conclusion that referral to litigation/adversarial adjudication was inappropriate because it tends to increase the intensity of conflict and models confrontation and argument –a metaphor for war (Lakoff and Johnson, 1980; 4) - as a legally normative way of settling conflicts (Menkel-Meadow, 2003). Sources and findings cited by Elrod (2001:501-504) support the conclusion that participation in litigation by high-conflict parents is inappropriate because it has on-going adverse effects on "the child's physical, emotional and psychological, safety, security and well-being" under BIC section 16 (2) of the *Divorce Act, 2021.*

Under section 7.2 a parent is required to protect any child from conflict arising from the proceeding. Under the following recommended amendment the court would impose a *duty on legal advisors to advise high-conflict parents that it would be in the best interest of the child (ren) for them to participate in alternative settlement proceedings that do not increase the intensity of mutually hostile feelings between them.*

DISCUSSION: SHADOW AND SUBSTANCE

This paper started with the description of the *Matrimonial Causes Act 1857* that created a landmark structural change in family law in England. In Canada, landmark structural change in the delivery of legal family law services to Canadians involves the creation of unified family courts (UFC). During the 1970"s there were 4 UFC's in Canada. Today 39 UFC's are located in all 10 Provinces (Government of Canada, 2019). Increasingly, the UFC is the family court context in which family lawyers representing client-litigants will practice in the shadow of the *Divorce Act* 2021. The contribution made by this Act to the BIC will tend to vary with two substantive factors.

First, the degree to which beliefs held in common by family court judges are undermined by including family violence as a BIC factor. Three judicial beliefs or tenets identified by Meier (2003:680) are: allegations of family violence by mothers are implausible; the truth about historical family violence is unknowable or mutual and irrelevant to future parenting plan orders. In Canada, (Boyd, 2019:3) found that shared judicial beliefs undermined the effects of including family violence as a BIC factor in British Columbia's current *Family Law Act* .

Second, the speed with which Federal and provincial shared jurisdiction family courts (Superior and Provincial) in all Canadian Provinces are replaced with UFC's. About 80 judges sit in Toronto Region family courts. Together with my honors sociology students we observed a sub-set of family court judges sitting in the six family courts in the Greater Toronto Area during seven academic years. Although there was some variation across courts, all of them rendered judgments under extreme time pressure to clear daily dockets. Similar findings are reported by Rachlinski and Wistrich (2017) for family relations courts in the U.S. Research conducted in the Hamilton Unified family Court (Ellis,1996) led him to conclude that judges who are appointed to USC's tend to be persons who demonstrated an understanding of family violence, render judgments in a context that provided them with greater resources and more time to seriously review cases involving family violence and deal with all matters relating to marital dissolution in the same court (Hofford, 1995; 216-218; Garvin, 2016; 180; Lemon, 2001:664).

CONCLUSION

The shadow of the *Divorce Act 20*21 plus the substantive change -replacement of separate jurisdiction family courts with unified family courts - will make a greater contribution to promoting the BIC than either shadow or substance alone, especially if both serve to undermine judicial beliefs minimizing the adverse future effects of family violence on children.

REFERENCES

Adler, R.S., & Silverstein (2000) When David meets Goliath: Dealing with power differentials in negotiation. *Harvard Negotiation Law Review,* 8, 217-247.

American Bar Association (2000) High conflict custody cases: Reforming the System for Children. Family Court Review, 39, 146-157. Conference Report submitted by Sarah Ramsey.

American Family Physician (2020) *Domestic violence: The effects on children.* American Academy of Family Physicians, Leawood, Kansas.

Archer-Kuhn, B. (2018) Domestic violence and high conflict are not the same: A gendered analysis. *Journal of Social Welfare and Family Law,* 40, 216-223.

Balakrishnan, A. (2019) Province should be cautious using ADR for domestic violence cases. *Law Times,* (13August).

Beck., C.J., Walsh, M.E., Mechanic, M. B., Figueredo, A.J., Chen, M-K. (2011) *Intimate partner abuse in divorce mediation: Outcomes of a long-term multi-cultural study.* Final report submitted to the Department of Justice, Washington, D.C. Award # 2007-WG-BX-0028.

Bennett, M.D. & Hermann, M.S, (1996) *The art of mediation:* Notre Dame, IN: National Institute for Trial Advocacy, Notre Dame Law School.

Birnbaum, R. (2002) Breaking down the silos: Working together in the interests of children. *Canada's Child,* 5. Child Welfare League of Canada. www.cwlc.ca/files/file/pubs/CCSpring2002.pdf

Birnbaum, R., & Bala, N. (2010) Toward the differentiation of high conflict families: An analysis of social science research and Canadian case law. *Family Court Review,* 48, 4-3-416.

Boyd, S. B. (2018) *Violence against women and children and child custody law: between a rock and a hard place.* Retrieved from: https://www.bwss.org/wp-ccontent/uploads/2018/02/BWSS-Talk-Susan-Boyd.pdf

Braver, S.L. & O'Connell, D. (1998) *Divorced Dads: Shattering the myths.* New York: Penguin

Dalton, C., Carbon, S., & Olesen, N. (2003) High conflict divorce, violence and abuse: Implications for custody and visitation decisions. *Juvenile and Family Court Journal,* (Fall), 11-33.

DeKeseredy, W., Dragiewicz, M., & Schwartz, M.D. (2017) *Abusive endings: Separation and divorce violence against women.* Oakland, CA: University of California Press.

Department of Justice (2004) Interventions *in high-conflict divorces.* Government of Canada. Ottawa, Canada.

Dobash, R.E., & Dobash, R. (1979) *Violence against wives.* New York: Free Press.

Edelson, J.E. (1999) The overlap between child maltreatment and woman battering *Violence Against Women,* doi.org/10.1177/107780129952003.

Elizabeth, E., Gavey, N., & Tolmie, J. (2012) Gendered dynamics of power in disputes over post-separation care of children. *Violence Against Women,* 8, 448-459.

Ellis, D. (2020) Safety planning, retaliatory male partner violence and Coercive control: An empirical test of a safety paradox. (ms submitted for review).

Ellis, D. Lewis, T., & Nepon.T (2020) Effects of historical coercive control, historical violence and lawyer representation on post-separation male partner violence against mother litigants participating in adversarial family court proceedings. *Violence Against Women,* doi.org/1177/1077801220921939.partner violence.

Ellis, D. (2019) *Managing domestic violence: A practical handbook for family law practitioners.* Lexis-Nexis: Toronto.

Ellis, D. (2016) Marital separation, conflict resolution and lethal male partner violence. *Violence Against Women,* DOI 10.1177/1077801216644985

Ellis, D. & Anderson, D. (2005) *Conflict resolution: An introductory text.* Toronto: Emond Montgomery.

Ellis, D., & Stuckless, N. (2006) Domestic violence, DOVE and divorce mediation. *Family Court Review,* 44, 658-671.

Ellis, D. (1996) *Family mediation pilot project.* Final report submitted to the Attorney General of Ontario, Toronto, Ontario, Canada.

Elrod, l. (2001) Reforming the system to protect children in high conflict custody cases. *William Mitchell Law Review, 28, 495-551.*

Emery, R.E. (2001) Child custody, mediation and litigation: Custody, contact and co-parenting twelve years after initial dispute resolution. *Journal of Consulting and Clinical Psychology,* 69, 323-332.

Emery, R. (1999) Marriage*, divorce and children's adjustment.* Thousand Oaks, CA: Sage.

Fidler, B., Bala, N., Birnbaum, R., & Kavassalis (2008) *Challenging issues in child custody disputes: A guide for legal and mental health professionals.* Toronto: Thompson Canada [Google Scholar].

Fitch, E., & Easteal, P (2017) Vexatious litigation in family law and coercive control: Ways to improve legal remedies and better protect victims. *Family Law Review,* 7, 103-115.

Folberg, J., & Milne, A. (1988) (Eds.) *Divorce mediation: theory and practice.* New York: Guilford Press.

Garvin, Z. (2016) The unintended consequences of rebuttable presumptions to determine child custody. *Family Law Quarterly,* 50, 173-192.

Galanter, M. (1974) Why the "haves" come out ahead: Speculations on legal change. *Law and Society,* (Fall).

Gewurtz, L.G. (2001) (Re) designing mediation to address power imbalances. *Conflict Resolution Quarterly,* 19, 135-162.

Goodmark, L. (1999) From property to personhood: What the legal system should do for children in domestic violence cases. *West Virginia Law Review,* 254-275.

Gulliver, P. (1979) *Disputes and negotiations: A cross-cultural perspective.* New York: Academic Press.

Hamby, S., Finkelhor, D., & Ormrod, R., (2010) The overlap of witnessing violence with child maltreatment and other victimizations in a national survey of youth. *Child Abuse and Neglect.* Doi:10.1016/jchiabu.2010.03.ooi.

Hart, B.J. (1990) Gentle jeopardy: The further endangerment of battered women and children in custody mediation. *Mediation Quarterly,* 7, 317-330.

Harrison, C. (2008) Implacably hostile or appropriately protective? Women managing child contact in the context of domestic violence. *Violence and Victims,* 14, 381-405.

Haynes, J.M. (1988) Power balancing. In J. Folberg & A. Milne (Eds.) *Divorce mediation: Theory and practice.* (pp.278-296). New York: Guilford Press.

Hilton, Z. (1992). Battered women's concerns about their children witnessing wife assault. *Journal of Interpersonal Violence,* 7, 77-86.

Hofford, M. (1995) *Family violence in child custody statutes: An analysis of state codes and legal practice.* The Family Violence Project of the National Council of Juvenile and family Court Judges. *Family Law Quarterly,* 29, 197-227.

Hrymak, H. (2021) *Why can't everyone just get along? How BC"s family law system puts survivors in danger.* Report prepared for RISE Women's Legal Centre, Vancouver, B.C.

Humphrey, C., & Thiara, R. (2002) *Routes to safety: Protection issues facing abused women and children and the role of outreach services.* Bristol, England, Women's Aid.

Jaffee, P. G., Lemon, N.K. & Poisson, S.E. (2003) *Child custody and domestic violence.* Thousand Oaks, CA: Sage

Jaffee, P. G., Wolf, D.A., & Wilson, S.R. (1990) Children of battered women. *Developmental and Clinical Psychology, Volume 21 (March). Thousand Oaks, CA: Sage.*

Johnston, J. (1994) High conflict divorce. *The Future of Children, 4*, 165-182.

Johnston, J.R. & Campbell, L.E. (1988) Impasses *of divorce: The dynamics and resolution of family conflict.* New York: Free Press.

Johnston, J., & Roseby, V. (1997) *In the name of the child: A developmental approach to understanding and helping children of violent and conflicted divorce.* New York: Free Press.

Johnson, N.E., Saccuzzo, D.P., & Koen, W.J. (2005) Child custody mediation in cases of domestic violence: Empirical evidence of a failure to protect. *Violence Against Women,* 11, 1022-1053.

Kaganas, F., & Piper, C. (2015) Michael Freeman and the rights and wrongs of resolving private law disputes. In A. Diduck, N. Peleg & H. Reece (Eds.) *Law in society: Reflections on children, family and culture and philosophy*, (pp.362-393). Martinus Nijhoff: Amsterdam. NL.

Kaye, M., Stubbs. J., & Tolmie, J. (2003) Domestic violence and child contact arrangements. *Australian Journal of Family Law,* 17, 1-41.

Kelly, J. (2004) Family mediation research: Is there empirical support for the field? *Conflict Resolution Quarterly,* (2004), 22,3-35.

Kelly, J. B., Johnson, M.P. (2008) Differentiation among types of intimate partner: Research update and implications for interventions. *Family Court Review,* 46, 476-499.violence

Koch, D., & Pincolini-Ford (2006) Parenting co-ordination in domestic violence cases. *Juvenile and Family Justice,* 15, 16-18.

Krieger, S. (2002) The danger of mediation in domestic violence cases. *Cardozza Women's Law Journal,* 235,240-41.

Lakoff, G., & Johnson, M. (1980) *Metaphors we live by.* Chicago; IL*: University of Chicago Press.*

Landau, B., & Wolfson, L.H. (2018) (Eds). *The family dispute resolution handbook.* Toronto: Lexis Nexis; 6th Edition.

Laing, L (2017) Secondary victimization: Domestic violence survivors navigating the family law system. *Violence Against Women,* 17, 1314-1335.

Lemon, N. K. D. (2001) Statutes creating rebuttable presumptions against custody to batterers: How effective are they? *William Mitchell Law Review,* 28, 602-678

Lerman, L. (1984) Mediation of wife abuse cases: The adverse impact of informal dispute resolution on women. 7 *Harvard Women's Law Journal,* 57.

Lundrum, L. (2003) The ongoing debate about mediation in the context of domestic violence: A call for empirical studies of mediation effectiveness. *Cardozo Journal of Conflict Resolution,* 12, 425-469.

Maccoby, E., & Mnookin, R. (1992) Dividing *the child: Social and legal dilemmas of custody.* Cambridge, MA: Harvard University Press.

Macdonald, G.S. (2016) Domestic violence and private family court proceedings: Promoting child welfare or promoting contact? *Violence Against Women,* 22, 832-852.

MacFarlane, J. (2013) *The national self-represented litigants project: Identifying and meeting the needs of self-represented litigants.* Final Report. University of Windsor Law School, Windsor, Ontario Canada.

Meier, J.S. (2003) Domestic violence, child custody and protection: Understanding judicial resistance and imaging solutions. *American University Journal of Gender Social Policy and Law,* 11, 657-730.

Menkel-Meadow, C. (1996) The trouble with the adversary system in a post-modern, multicultural world. *William and Mary Law Review, 38, 5-44.*

Miller, B., Keith, L.K., & Holmes, J.S. (2015) Leveling the odds: The effect of quality legal representation in cases of asymmetrical capability. *Law and Society Review,* 49, 209-239.

Monat, S.M., & Chandler, R.F. (2015) Long-term physical health consequences of adverse childhood experiences. *The Sociological Quarterly, 56*, 723-752.

Moore, C.W. (1996) *The mediation process: Practical strategies for resolving conflict.* (2nd edition) San Francisco, CA: Jossey- Bass.

Narine, A. (2017) *Power imbalances in mediation*. Harvard Law School, Cambridge, MA.

National Parents Organization (2019) *Shared Parenting Report Card 2019.* Newton. MA.

Office of Women's Health (2017) *Effects of domestic violence on children.* U.S. Department of Health and Human Services, Washington, D.C womenshealth.gov

Ornstein, P., & Rickne, J. (2013) When does intimate partner violence continue after separation? *Violence Against Women,* 19, 617-633.

Ontario Association of Interval and Transition Houses (1989) *Stop violence against women: Background report.* Toronto, Ontario, Canada.

Pelletier, R., & Patterson, M. (2019) The *gender wage gap in Canada: 1998 to 2018*. Centre for Gender Diversity and Inclusion, Statistics Canada, Ottawa, Canada.

Pingley, T. (2018) *The impact of witnessing domestic violence on children: A systemic review.* M.A. Thesis. St. Catharine's University. https://sophia.stkate.edu/msw_papers.

Rachlinski, J.J., & Wistrich, A.J. (2017) Judging the judiciary by the numbers: Empirical research on judges. *Annual Review of Law and Social Science,* 13, 1-44.

Saini, M., & Birnbaum, R. (2007) Unraveling the label "high conflict": What factors really count in divorce and separated families. *Journal of the Children's Aid Societies,* 51, 14-20.

Sandefur, R. (2010) The impact of counsel: An analysis of empirical evidence. *Seattle Journal for Social Justice,* 9,51-85.

Saunders, D.S., & Oheme, K. (2007) *Child custody and visitation decisions in domestic violence cases: legal trends, risk factors and legal concerns.* Report prepared for the National Online Resource Center on Violence Against Women, Harrisburg, PA.

Shepard, R.T. (2010) The self-represented litigant: Implications for the bench and bar. *Family Court Review,* 48, 607-618

Straus, M., Hamby, S.L., Boney-McCoy, S., & Sugarman, D.B. (1996) The revised Conflict Tactics Scales (CTS2): Development and preliminary psychometric data. *Journal of Family Issues,* 17, 283-316.

Stulberg, J., & Bridenback, M (1981) Citizen dispute settlement: A mediator's manual. Talahassee, Florida: Supreme Court of Florida.

Susser, K. (2000) Weighing the domestic violence factor in custody cases: Tipping the scales in favor of protecting victims and their children. *Fordham Urban Law Journal,* 27, 875-907.

Sturge, C & Glasser, D. (2000) Contact and domestic violence-the expert's court report. *Family Law,* 2, 615-629.

Tolmie, J. (2018) Coercive control: To criminalize of not to criminalize. *Criminology and Criminal Justice,* 18, 50-66.

Ver Steeg, N. (2003) Yes, no, maybe: informed decision -making about divorce mediation in the presence of domestic violence. *William and Mary Journal of Women and Law,* 9, 145-206.

Vollans, A. (2010) *Court-related abuse and harassment: Leaving an abuser can be harder than staying.* Vancouver: YWCA.

Watson, I.B. & Ancis, J.R. (2013) Power and control in the legal system: from marriage/relationships to divorce and custody. *Violence Against Women,* 19, 166-186.

Wilmot, W.W., & Hocker, J.L. (2001) *Interpersonal Conflict.* New York: McGraw Hill.

Wolfe, D.A., Crook, C.V., McIntyre-Smith, A., & Jaffee, P. (3003). The effects of children's exposure to domestic violence: A meta-analysis and critique. *Clinical Child and Family Psychology Review,* 6, 171-187.

Zeoli, C.M., Rivera, E., Sullivan, C.M., & Kubiak, D. (2103) Post-separation abuse of women and their children: boundary setting and family court utilization among victimized mothers. *Journal of Family Violence,* 28, 547-560.

Zolotar, A. (2007) *Intimate partner violence and child maltreatment: Overlapping risk.* Department of Family Medicine, University of North Carolina, Chapel Hill, N.C. doi01093brieftreatment/mhm021.

Zorza, J. (2010) Child custody practices of the family courts in cases involving domestic violence. In M.T. Hannah & B. Goldstein (Eds.) *Domestic violence, abuse and child custody: Legal strategies and policy issues.* (pp.1-32). Civic Research Institute, Kingston, New Jersey, 08528.