

Using Grounded Theory to Generate a Theoretical Understanding of the Effects of Child Custody Policy on Women’s Health Promotion in the Context of Intimate Partner Violence

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Women’s health is frequently influenced by social and structural factors, largely beyond women’s control, and often entrenched in public policy. Although health is acknowledged to be socially determined, the ways that social conditions affect health are rarely explicated. Grounded theory is a useful method for discovering

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how structural conditions influence patterns of behavior. We used grounded theory to generate a theoretical understanding of how justice system policy and services related to child custody influence health promotion processes of women and their children after leaving abusive male partners/fathers. In two diverse Canadian provinces, we interviewed single mothers who had left abusive partners as well as frontline workers and policymakers in the justice system. We identified the key dimensions of policy and services that influence the ways in which women and their children promote their health in the context of varying levels of ongoing intrusion as information, eligibility, accessibility, timeliness, human resources, safety, and diversity. In this article, the interplay between these policy and service dimensions and women's health promotion after leaving abusive partners is discussed and suggestions are made for strengthening "healthy" custody policy.

In our grounded theory study of health promotion after leaving an abusive male partner, we discovered, in our interviews with single mothers who had left their abusive partners, that the central barrier to health promotion was *intrusion* or unwanted interference in everyday life from continuing harassment, health problems, costs or system expectations related to seeking help, and negative changes in patterns of living after leaving (Ford-Gilboe, Wuest, & Merritt-Gray, 2005; Wuest, Ford-Gilboe, Merritt-Gray, & Berman, 2003). Families promoted their health by *strengthening capacity to limit intrusion*, a process that was orchestrated by mothers but involved children to varying degrees (Ford-Gilboe et al., 2005). Importantly, both *intrusion* and the process of *strengthening capacity* were influenced by social and structural conditions largely beyond women's control, and rooted in how public policy is written and implemented. In particular, policy and services of the justice system related to gaining and enforcing child custody orders profoundly influenced how women were able to promote their own and their children's health. Although historical, legal, and political environments are acknowledged as the overarching context that shapes women's health, research to explicate the ways that such conditions directly influence the health of women is scarce (Moss, 2002). Grounded theory is a useful research approach for understanding patterns of human behavior and the conditions under which these occur and vary (Stern & Pyles, 1986). Therefore, to fully understand the impact of the justice system on health promotion, we extended our grounded theory study by theoretically sampling documents and interviews with policymakers and frontline workers with regard to gaining and enforcing child custody agreements (Wuest, Berman, Ford-Gilboe, & Merritt-Gray, 2002). In this article, we offer a theoretical rendering of how the justice system influences the process of *strengthening capacity to*

limit intrusion that expands our understanding of the social determination of women's health. In doing so, we illustrate the strength of the grounded theory method for illuminating structural conditions that influence patterns of behavior. Furthermore, we discuss the implications of our theoretical findings for the development of public policy that promotes the health and safety of women and their children.

BACKGROUND

Intimate partner violence (IPV) affects one in four Canadian women (Statistics Canada, 1993). While the dominant socially sanctioned solution to IPV is leaving the abusive partner, abuse and harassment from the former-partner continue, and often escalate, after leaving (Campbell, Rose, Kub, & Nedd, 1998; Tjaden & Thoennes, 2000; Walker, Logan, Jordan, & Campbell, 2004; Wuest et al., 2003). The health effects of IPV are well documented (Campbell, 2002), but the long-term health effects after leaving are less well understood (Anderson & Saunders, 2003). Child custody is a central issue for women who wish to create a secure future for children who they fear have been adversely affected by exposure to IPV (Wuest, Merritt-Gray, & Ford-Gilboe, 2004). Separation assault, that is, "physical violence as well as other abusive acts (e.g., threats of physical violence, controlling behaviors, psychological abuse) used to make a woman reconcile or punish her for leaving" is well documented as interfering with custody proceedings (Hardesty, 2002, p. 598). Paradoxically, while seeking custody is vital to creating a healthy future for women and their children, it also may be dangerous to their health. In the post-leaving period, how women promote their health and that of their children is also affected by the legal system.

In many countries, including the United States and Canada, custody decisions have historically been guided by a series of doctrines in which IPV is not considered as relevant to decisions about fitness for parenting (Grant, 2005; Jaffe & Crooks, 2004). Rather than enhancing the capacity of the justice system to address matters of child custody in the context of partner violence, shifts in child custody policy have intensified a polarized conflict between father's rights groups, who argue that children must have access to both parents, and domestic violence advocates, who emphasize the safety risks to women and children inherent in allowing abusers to have access to children (Jaffe & Crooks, 2004). Canada is no exception. In the nineteenth century, the paternal doctrine that gave fathers absolute right to their children was replaced by a tender-years doctrine that gave custody to women who were morally fit mothers on the basis of the unique mother-child bond (Taylor, Barnsley, & Goldsmith, 1996). The introduction of no-fault divorce in 1968 changed this ruling assumption to one of legal equality between spouses, consequently increasing fathers' power to gain custody because there are "no rights to property, custody, and maintenance and no familial role based on

sex” (Chunn, 1995, p. 235). The tender-years doctrine also was challenged by fathers’ rights groups who, in response to publicity about nonpayment of child support, lobbied against limited access to their children (Goundry, 1998).

Under gender-neutral family law, custody decisions in Canada have been guided by the “best interests of the child,” a principle that the National Association of Women and the Law (NAWL, 1998) declared vague and vulnerable to judicial bias. A particular problem is the persistent failure to recognize that IPV is harmful to children and must be factored into judicial determination of the best interests of the child in custody and access arrangements (NAWL, 1998; Neilson, 2003). The primary caregiver presumption for determining the best interests of the child is seen as a guideline that is gender-neutral, yet addresses women’s reality, and values consistency and continuity of care for children (NAWL, 1998). The recent trend toward family mediation as a cost-effective, efficient alternative to litigation in custody disputes is a hazard when abuse is a factor (Goundry, 1998). Power imbalances between partners and problems with mediator neutrality and accountability may produce outcomes not in the “best interests of the child.”

Another area of uncertainty has been sole versus joint custody. Under the tender-years doctrine, sole custody ensured sole decision making for the child by the custodial parent. Joint custody refers not to the child’s residence but rather to the sharing of decision making (Baker, 1995). When the parental relationship includes IPV, joint custody increases the opportunity for continuing abuse (NAWL, 1998). In the 1990s, even sole custody allowed the noncustodial parent a share in decision making, offering potential for undermining the custodial parent (NAWL, 1998). Moreover, the Divorce Act necessitates maximum contact with the child for both parents and contains the “friendly parent rule,” requiring the court, when making custody decisions, to consider which parent will facilitate continuing contact with the other parent (Canadian Advisory Council on the Status of Women, 1994; Jaffe & Crooks, 2004). Abused women who have fled the family home with the children may be judged unfriendly because they technically have denied the father access to the children.

Although not accepted, the 1998 recommendation by the Special Joint Committee on Child Custody and Access to replace the terminology of “custody and access” with the term “shared parenting” in the Divorce Act raised further concerns for abused women seeking custody (Government of Canada, 1999). The Federal Provincial Territorial Family Law Committee’s Report (2002) asserted that “shared parenting” emphasizes parent’s, rather than children’s, rights, and advocated that the Divorce Act be amended to consider family violence in assessing the “best interests of the child” and recognize that maximizing parental contact must be balanced with safety. In December 2002, Bill C-22 was introduced in the Canadian House of Commons, which proposed changes to Divorce Law including the

following: (a) custody orders will be replaced by parenting orders that allocate parenting time and decision-making responsibilities, and (b) “best interests of the child” will be determined by considering such factors as family violence, criminal convictions relevant to the child’s safety, the child’s need for stability, and the history of care for the child (House of Commons Canada, 2002). Bill C-22 was shelved in 2004 before reaching its final reading (Grant, 2005). In an extensive critique of Bill C-22, Neilson (2003) identified that the proposed changes were unlikely to make things better for abused women and their children, and that some had potential to make things worse. Other countries, such as Australia and New Zealand, are struggling with similar issues, and some have made changes to their laws aimed at having IPV considered as a factor in assessing fitness to parent in custody litigation (Grant, 2005). In one Canadian province, a recently released Domestic Violence Action Plan calls for changes to the Children’s Law Reform Act that would require family courts to consider domestic violence when making custody and access decisions (Ontario Ministry of Immigration and Citizenship, 2004). Evaluation of the outcomes of these changes may inform amendments to Canada’s Divorce Act. In the meantime, policymakers, family court workers, lawyers, and social workers are working in this uncertain context, where little consideration is given to the implications of “abuser as parent.” Ultimately, women who leave their abusive partners shoulder the burden of responsibility for keeping their children safe.

RESEARCH METHOD

Our substantive theory of *strengthening capacity to limit intrusion* (Ford-Gilboe et al., 2005) was developed using constant comparative methods of grounded theory (Glaser, 1978; Glaser & Strauss, 1967; Stern, 1980). We interviewed 40 single mothers in two Canadian provinces (New Brunswick and Ontario) who had been living separately from their abusive partners for 9 months to 20 years, most having left in the previous 8 years.¹ Data were coded as collected and constantly compared, hypotheses were generated about emerging concepts and their relationships, and additional data were collected to “test out” these hunches—a process called theoretical sampling (Glaser, 1978). The key problem identified through constant comparative analysis was *intrusion*, or unwanted interference, from continuing harassment and abuse from the former-partner, health problems associated with past or current abuse, “strings attached” to seeking and obtaining help, and undesirable changes in patterns of living after leaving (Wuest et al., 2003). Women and their children promoted their health by *strengthening capacity*

¹ For a complete description of the initial study method and its findings see Ford-Gilboe, Wuest, and Merritt-Gray (2005) and Wuest, Ford-Gilboe, Merritt-Gray, and Berman (2003).

to limit intrusion in four areas important to them: *regenerating family*, *providing*, *renewing self*, and *rebuilding security* (Ford-Gilboe et al., 2005). In each of these four areas, the goal of *strengthening capacity* varies by level of intrusion. When intrusion is high, the goal is *surviving* on a daily basis; when intrusion is low, the goal is *positioning for the future* through strategic efforts to lead healthy, productive lives in the long term (Ford-Gilboe et al., 2005).

In grounded theory research, data are closely examined and compared for the influence of micro- and macroscopic structural conditions on the interactional process (Strauss, 1987). During the analysis of data collected from single mothers after leaving, we identified that structural conditions, particularly policies and services related to child custody, influenced variation in how the process of *strengthening capacity to limit intrusion* was enacted. As we have discussed elsewhere, in many grounded theory studies related to women's health, data collection is confined to the subjective experiences of women themselves, limiting researcher ability to illuminate the impact of structural conditions on the basic social process (Wuest et al., 2002). We addressed this limitation by purposefully extending our study to understand the impact of child custody policy and services on the basic social process by theoretically sampling data from the justice systems in both Ontario and New Brunswick. Use of a feminist perspective enhanced our attention to diversity and refocused the research process to be more participatory (Wuest, 1995; Wuest et al., 2002).

With permission from government ministries and agencies, we interviewed both frontline workers and policymakers involved in providing and developing child custody services and policy. Thirty-six interviews were conducted with comparably positioned persons in both provinces including family court staff, police officers, lawyers, social workers, sheriffs, and policy advisors. Additionally, we collected documents for analysis. We began by collecting publicly available information regarding custody policies and services, such as legislation related to child custody and enforcement, pamphlets developed for the lay public, annual reports, evaluation documents, and information available on government and advocacy websites. Once interviews were underway, we requested copies of forms and assessment tools used by service providers daily, and policy and procedure manuals that guided their work. In each setting, we further collected any materials available to women themselves. Policymakers also provided written documentation related to hiring criteria, ongoing training, internal evaluation, protocols guiding service, or all of these.

Data were collected in urban and rural locations in New Brunswick and in an urban area with a substantial multicultural population in Ontario. Using theoretical sampling, we choose informants who could best respond to questions arising from our analysis of interviews with single mothers. Recruitment involved seeking volunteers by explaining the study in person or by letter. After obtaining informed consent, interviews were conducted, field

Table 1 Definitions of custody policy and service dimensions

Dimension	Definition
Information	Sources of information (electronic, written) and the knowledge of helpers and women about issues relevant to seeking custody.
Eligibility	Criteria used to determine whether women qualify for services, including how these criteria are assessed and operationalized.
Accessibility	Ease and/or difficulty associated with contacting agencies and obtaining services.
Timeliness	Responsiveness of the system including wait time or delays in obtaining services.
Human Resources	Number and expertise of staff who provide services including: sensitivity to intimate partner violence (IPV) and responsiveness to women's situations and needs; continuity of staff; adequacy of staff resources for workload; extent of staff training/ongoing education related to IPV.
Safety	Procedures or policy that affect, or have the potential to affect, the immediate and long-term safety of women and/or their children.
Diversity	Extent to which services and policy are designed to consider the needs of diverse populations (e.g., women living in rural areas, those with disabilities including psychiatric disorders, immigrant or non-English-speaking women, etc.).

notes recorded, and supporting policy and procedure documents collected. We sought participants' reactions to what we had learned from interviews with women who had left abusive partners; information about procedures, policies, and laws guiding their work; perspectives on the challenges of their work, including issues related to serving diverse populations; and ideas about addressing challenges in their work. Field notes and documents were analysed for emergent categories: *information*, *eligibility*, *accessibility*, *timeliness*, *human resources*, *safety*, and *diversity* (Table 1). Categorizing data conceptually resulted in a theoretical explanation of the structural influence of custody policy on *strengthening capacity to limit intrusion* while protecting confidentiality of informants. This theoretical rendering exemplifies the utility of grounded theory for capturing significant structural conditions that influence patterns of human behaviour over time.

FINDINGS

We found that the conditions of justice system policy and services related to obtaining and enforcing child custody agreements influenced the process of *strengthening capacity to limit intrusion* by directly increasing intrusion, thereby interfering with the processes of *regenerating family*, *providing*, *renewing*, and *rebuilding security* such that women and children were forced into *surviving* day to day. After leaving, due to their scarce financial resources, most women had to learn to negotiate the unfamiliar, confusing public legal system in order to limit continuing intrusion by their former

partner and ensure their children's long-term security. The effects of relocation to new neighbourhoods and new jobs and schools, combined with the physical and mental health consequences of abuse on family members (Wuest et al., 2003), however, left mothers with limited energy and resources to withstand the legal process. Initially, most women in our study believed that if they told the truth, and "played by the rules," "things would work out." Over time, their assumptions about their former partners' goodwill with respect to the children, and the fairness of the legal system were eroded and often were replaced by disillusionment and anger. Custody policy and services not only affected how women promoted health but also increased the intensity of intrusion by legitimizing the former partner's continuing contact, harassment, and critique of women's legal position and competency to parent.

Regenerating Family

Regenerating family is a process of working toward replacing previously destructive patterns of interaction with constructive, supportive ways of getting along (Wuest et al., 2004). When intrusion is high and the focus is on surviving, women concentrate on supporting the family to pull together as a team by constructing a storyline and finding more functional ways to ensure everyday needs are met in a predictable way. When intrusion lessens, the focus becomes *living together differently*, purposefully developing and enacting new standards for getting along together that are different from those of the previous abusive family environment. Variation in how women are able to engage in *regenerating family* is influenced by dimensions of *human resources*, *safety*, and *timeliness* in the justice system.

Women initially construct a storyline to justify to themselves and others why they have left and are single parents (Wuest et al., 2004). Unless women have escaped from very dangerous situations, most storylines are constructed to allow ongoing contact between fathers and children because women believe fathers play an important role in children's lives, a finding supported by Hardesty and Ganong (in press). When custody negotiation is protracted and harassment of the mother by the former partner persists through unsafe visitation, threats related to custody, and attempts to influence children with conflicting and vindictive stories, however, the storyline shifts toward more limitations on father's access and possibly even exclusion. When *human resources* in the justice system fail to understand how these threats to child *safety* and lengthy delays in custody resolution affect women's stories, women may be judged as unreliable and always changing their minds about what they want, a situation that may jeopardize custody negotiation. Lack of *timeliness* in resolving custody issues often leads to intensifying conflict. Children's exposure to abusive interactions between parents also thwarts women's efforts to role model more constructive standards for relationships. While such action is necessary for the safety of the children, such experiences

further disrupt the process of building new standards of interaction by working against the climate of cooperation and nonviolence within the family that women are trying to create.

Children's perspectives regarding custody outcomes also evolve over time according to the degree and intensity of intrusion. Thus, when negotiations are not *timely*, children may increasingly feel caught between their parents, a situation that impedes the process of *regenerating family*. Although the principle guiding custody decisions is "the best interests of the child," there is little provision for hearing children's perspectives within the process. Bessner (2002) recommended to the Department of Justice Canada that children have access to independent legal representation in custody litigation under legal aid. In 2002, the Federal Provincial Territorial Family Law Committee released recommendations that called for jurisdictions to review legislation, procedures, and services to ensure that the courts and parents are aware of the child's perspective. In Ontario, a judge who deems that children's perspectives are integral to custody proceedings can request the appointment of a children's lawyer through the Attorney General's Office of the Children's Lawyer. Given that provincial policies related to how a child's perspective may be heard in custody decisions are unclear, judges, lawyers, and social workers lack protocols for how to implement such assessment, or who pays. Assessment through single contacts with children by judges or court social workers are unlikely to be accurate, yet more accurate home assessments may take up to 30 hours. Grant (2005) advised that, because children in families where abuse is a factor largely are unable to assess their situation, children's views should not be sought; rather, abuse of a partner should be interpreted as abuse of a child, and thus reason for not awarding custody. At present, how and if IPV is factored into custody decisions, and whether children's perspectives are considered, depend largely on *human resources*, that is, the decisions of individual judges, lawyers, and social workers, all of whom are subject to personal beliefs and ideals about parenting, divorce, family life, and sensitivity to the context of partner violence (Grant, 2005). Thus, lawyers often treat custody and access cases no differently when IPV is a factor, failing to address issues of safety and parenting responsibility (Neilson, 2001). Thus, women struggling with *regenerating family* face an uncertain trajectory related to custody negotiation, often choosing not to proceed if the threats to the evolving family relationships are too great. Additionally, women must consider the effects of custody negotiation on their ability to provide for the new family unit.

Providing

Providing refers to obtaining the material and economic resources, energy, and skills needed for daily existence (Ford-Gilboe et al., 2005). In the crisis

of leaving, most women in this study had left behind material belongings and had few financial resources. Additionally, years of abuse left them physically and emotionally drained. Hence, they engaged in *managing without*, struggling to identify and get what was needed for day-to-day survival, often compromising between what they needed and what was possible. Success in *managing without* enhanced family stability, allowing them eventually to take risks to get what they deserved by *managing as if* (Ford-Gilboe et al., 2005). Most women *managing without* were not receiving child support, because women feared that seeking financial support would lead to a custody battle that they were ill prepared to negotiate. Once they achieved some stability, however, seeking custody and child support became necessary risks for positioning for the future. Because financial resources were extremely limited for women, legal aid was important in seeking custody of their children.

Historically, legal aid for poor Canadians has been handled through the judicare system in which a low-income person receives a certificate to obtain the same services available to paying clients through a private lawyer (Addario, 1998). The extent to which legal aid supported women *in managing without* depended on their *eligibility* for services. When financial criteria were used to determine *eligibility* for legal aid, those who could not meet the stringent criteria often were unable to pursue custody negotiation while *managing without*. Even women with affluent backgrounds were often without financial resources to pay solicitors due to partners purposefully delaying property settlements. Even when women were deemed eligible, the number of hours of service available were often insufficient, particularly when the former partner's lawyer used legal manoeuvres that resulted in delays. In contrast, when a history of IPV, rather than financial need, was used to determine eligibility for legal aid, and the amount of service was based on the needs of the case, women were more likely to obtain the needed solicitor services under legal aid to seek child custody. Still, women worried about being disadvantaged by being represented by a legal aid lawyer when their former partners had privately-hired lawyers. While family court staff agreed that privately-hired lawyers devote more time and individual attention to clients, they emphasized that their own expertise in custody matters, especially when IPV is involved, may exceed that of private solicitors, particularly those with general practices in small communities. While *eligibility* for legal aid is a first step in addressing women's limited resources for seeking custody, other dimensions of child custody policy and services, such as *information* and *accessibility*, also affected the process of *providing*.

Women in our study consistently articulated the need for a central source of *information* about the full range of options under both criminal and family law, a finding supported by Jaffe, Zerwer, and Poisson (2002). Both provinces have established mechanisms for distributing free, accurate,

and readable legal information in pamphlet and online form, targeted for diverse groups including immigrant women. Additionally, mechanisms for personal consultation were available, on a drop-in basis in Ontario, and by appointment in New Brunswick. Despite these mechanisms, women in our study often did not find these resources and tended to acquire information and misinformation through family, friends, other single mothers, shelter staff, advocacy groups, various professionals, lawyers, and popular media. Misinformation and incomplete information lead to circuitous, and often futile, help-seeking efforts that drained women's already meagre energy, leaving them feeling poorly served and reinforcing *managing without*. At the same time, helpers felt that women sometimes made unreasonable demands and were often frustrated that information was not reaching abused women, but observed that women's stressed psychological state after leaving may prohibit accurate retention of the information. Additionally, they noted that other professionals, including those in the legal system or women's advocates, did not fully understand the domestic legal aid system, resulting in women getting misinformation from trusted sources.

Furthermore, *accessibility* of legal aid services has costs that impinge on the family's ability to provide for basic necessities. Services are delivered on weekdays from 9 to 5, necessitating women missing work and losing pay. When services operated on a first-come, first-served basis, women sometimes spent the whole day accessing what was needed, often incurring extra costs for child care. Less time, and, hence, less money, may be lost when women have appointments. Calls to book these appointments are often routed to voice mail, however, requiring women without telephone access at home or work to call repeatedly, hoping to reach a live person. Service providers readily identified the need for flexibility in access for women but lacked policy support. One social worker who previously had agreed to see clients alone after hours stopped this practice when her safety was jeopardized by a former partner. Access to services using public transportation is only available in cities. In rural New Brunswick, women may travel by car for up to 2 hours, often paying for rides from neighbours. One social worker ruefully observed that women have no difficulty "getting to the mall"; nonetheless, she routinely made back-to-back appointments with both the social worker and the solicitor for women who travelled a distance. In some jurisdictions, outreach service is offered to neighbouring communities or to women's shelters to increase *accessibility*. Despite these efforts to accommodate women, repeated visits to social workers and lawyers drain energy and financial resources for women *managing without*, often forcing women to make hard choices between necessities, such as needed food or medications, and custody litigation. Inability to get time off from work or to arrange transportation can result in women missing important appointments, leading family court staff and lawyers to view women as

unreliable, thus increasing the burden on women *managing without* and affecting the process of *renewing*.

Renewing Self

Renewing self involves personal restoration from the effects of IPV and realization of individual potential (Ford-Gilboe et al., 2005). Initially, women focus on *living better*, intending to help themselves and their children overcome the negative effects of violence in their lives, regain control, and attain personal potential, goals for which gaining custody of children is foundational. Intrusion from financial and material losses, harassment, and the day-to-day challenges of *managing without*, however, shift the focus to seeking immediate comfort and relief by *living free*, that is, expressing their emotions, needs, desires, and fears without concern for retribution from the former partner. Satisfaction with *living free* is often short-lived as women realize that life remains chaotic and on hold. When intrusion decreases and efforts shift back to *living better*, women focus on being “super-moms,” investing heavily in their parenting roles to the exclusion of personal needs. Paradoxically, focussing solely on children may exhaust mothers, leading to deterioration of mothers’ physical and emotional health; thus, women are challenged to achieve balance among their own and their children’s needs. Most women began to explore custody when physical and emotional reserves were scarce and life was chaotic. For those who persisted, eventual success in obtaining custody enhanced the process of *renewing* through external affirmation of their social worthiness to parent children, reinforcing *living better*. “Getting custody was the greatest feeling in the world.” Gaining a custody ruling was slow and difficult, however, and affected the process of *renewing self* by challenging women’s efforts to take control of caring for their children. Four dimensions of custody policy and services, *eligibility*, *diversity*, *timeliness*, and *human resources*, affected renewing most directly.

Measuring up to *eligibility* criteria for legal aid for custody increased intrusion for women and affected how the process of *renewing* unfolded. Regardless of the eligibility criteria, having to measure up implied that women’s claims were not legitimate, thereby undermining their fledgling sense of power and control. When criteria were financial, women were expected to substantiate their “need” with documentation such as income tax returns for the past 3 years, bank statements, and proof of monthly expenses, an impossible requirement for women who have fled with nothing. Inability to supply necessary documentation to meet financial criteria added to women’s sense of inadequacy, undermining their ability to parent. The complex standard assessment of income and assets is mystifying, often leaving rejected women with misconceptions about why they were deemed ineligible. Meeting criteria for having experienced IPV is equally

problematic. Although a more uniform screening standard for IPV has been recommended in New Brunswick (Neilson & Richardson, 1996), in practice, court social workers used varied approaches, including relationship inventories, danger assessment tools, or incident-based risk assessments that focus on indicators of control. Some who saw themselves as gatekeepers to the overburdened family court system interpreted the abuse criteria more narrowly to the detriment of those seeking service or perceived that some women misrepresent their situation as abusive to qualify for legal aid. Policymakers noted that clients very rarely lie about abuse to get service, an opinion supported by Neilson (2001). Because women must retell painful stories in order to qualify for services, intrusion from health problems such as insomnia, depression, and anxiety is often exacerbated, with the consequence that women may seek additional comfort and relief by *living free*. Additionally, being deemed ineligible further erodes women's sense of confidence, making it unlikely that they will consider using the appeal processes available to them.

The daunting process of completing forms and proving documentation adds to the intrusion. Although explanations about required forms are given when women seek legal aid, limited *human resources* in both provinces result in insufficient time to assist women with their completion. The dominant message of both policy and procedure is that this work is women's responsibility. Many women are too overwhelmed by the task to carry on. Some family court staff try to be flexible, especially when *diversity*, such as literacy or language, is an issue and most suggested that a policy of providing help in completing forms would likely increase the completion rate of legal aid applications. In New Brunswick, the cultural uniqueness of Aboriginal women is considered by having court social workers liaise with reserve social workers to facilitate completion of forms. In Ontario, where there is a larger multicultural population, staff acknowledged the paucity of services appropriate for immigrant women who are often ostracized by their relatives when they turn to the legal system. In some jurisdictions, interpreters must be supplied by women if they speak neither French nor English, a costly requirement if interpreters must be officially certified. More stable funding recently has been allocated to expand the availability of free interpretation services for abused women seeking help in many sectors, including in the legal system (Ontario Ministry of Immigration and Citizenship, 2004).

Even if women are able to complete forms, another barrier is producing documentation to support their claims of IPV, since many former partners had never been charged. As one woman observed, women are forced to endure the trauma of the criminal court system in order to have documentation for family court. Police reports of charges laid can be requested, although the abuser can refuse to allow them to be released. Requiring the arresting police officer to testify is one option for ensuring that records will be admitted as evidence in a trial. In New Brunswick, efforts are

made to obtain comprehensive documentation including past and pending criminal charges to support the mother's application for custody, reinforcing *living better*. Conversely, other provincial initiatives can interfere with obtaining such documentation. In Ontario, an early intervention initiative of the Attorney General's office premised on the belief that "victims want to reconcile with their partners" provides an opportunity for men, convicted of a criminal offence but judged as having a "low risk for re-offending," to receive a conditional discharge if they attend a partner assault program. The downside for women trying to document a pattern of abuse in a custody application is that the offender's criminal record is expunged one year after attending the program. These barriers to documentation can, in combination with lack of *timeliness* in the system, further erode women's capacity to promote health by *renewing*.

The *timeliness* of policies and programs designed to assist abused women seeking custody is thwarted by insufficient funding. Policymakers spoke of challenges in having proposed family court policies recognized as priorities for funding first within the justice department, and then by the larger government. These difficulties translate into insufficient funds to hire enough social workers, lawyers, and judges to meet the demands for family court services. The lack of long-term, sustainable funding for programs is a further challenge. For example, short-term federal funding that provided additional court social workers to deal with an influx of child support requests following the introduction of new child support guidelines benefited the timeliness of all family court services in the short term but was not sustainable.

For women seeking custody of their children, limited numbers of family court staff result in long delays that leave women and their children in limbo. In Ontario, if the woman has necessary documentation, *eligibility* can be determined immediately and a list of lawyers who will accept legal aid clients is provided. Timeliness, then, depends on how quickly a woman can locate a lawyer and the individual lawyer's schedule. In New Brunswick, women in shelters are considered urgent cases and are seen within 24–48 hours. However, women often wait more than a month to see the court social worker, another month to discuss completed forms and documentation, and, depending on the jurisdiction, up to 4 months to see a lawyer. Both provinces have systems in place to deal with situations where children are at immediate risk within 24 hours. Due to the limited family court staff and the need to concentrate on cases in progress, women's calls to solicitors seeking clarification or additional help may not be returned for as long as one week, a situation that leads to increased distress for women.

In neither province does family violence result in preference in getting court dates for custody hearings. Dates are assigned on a first-come, first-served basis resulting in the process taking up to 3 years. In New Brunswick, depending on the jurisdiction, women may wait 6 weeks to 6 months for a

court date after papers are filed due to limited numbers of family court judges. Thus, the process for obtaining custody from first appointment until court ruling may take from 3 to 12 months, depending on the jurisdiction. To avoid the prolonged uncertainty of waiting, some women will deny abuse and opt for a mediated settlement. Neilson (2001) noted that congestion in the courts due to limited numbers of family court judges led lawyers to advocate out-of-court settlements even in cases where spousal abuse was a factor. Court processes in Ontario take as long as 3 years. Unlike in New Brunswick, where interim custody orders are only sought in emergency situations, however, hearings for interim orders in Ontario are common; thus, women may at least have a temporary custody order. A prolonged legal process may hamper *renewing* by forcing women and children to relive the violence, endure public surveillance and uncertainty, and use precious energy responding to the requirements of the system, interfering with women's efforts to parent. A further challenge to women seeking custody is the sensitivity of the people working within the justice system to IPV.

Human resources have a significant impact on how *renewing* is affected by seeking custody. For example, one Ontario lawyer noted that judges may be more sympathetic to women who "look and act" like victims in court; "looking like a survivor" may work against a woman. On the other hand, women who recognized their need for professional help to deal with depression or anxiety risked having their help-seeking efforts used against them as evidence of their being an unfit parent. Women who are struggling with the demoralizing consequences of IPV are further marginalized by attitudes such as these from social workers, lawyers, and judges and constrained in their shift to *living better*.

Sensitivity of justice system staff is, in part, related to knowledge of IPV. Policymakers asserted that such sensitivity is a reflection of professional education and attitudes toward ongoing education. In both provinces, family court social workers have access to continuing education on IPV on an infrequent basis. Preparation of solicitors for family court work is lacking, with many learning about IPV "on the job." When a solicitor and court social worker work as a team as in some New Brunswick jurisdictions, they learn much from each other, resulting in more sensitive, responsive, efficient service. Lawyers lacking knowledge of IPV, who work in isolation, may have difficulty addressing the complexity of women's situations. When compensation to lawyers under legal aid is poor and lawyers are expected to do a lot in little time, quality service is not fostered. While family court judges take "sensitivity training" in Ontario, women in our study reported that some fail to grasp how IPV may affect a woman or fail to recognize that being an abuser may affect how a man parents. Funding for "skills-based education and practical tools" to assist Ontario judges to deal with court cases involving IPV is a step in addressing this problem (Ontario Ministry of Immigration and Citizenship, 2004). In both provinces, some women felt

belittled, degraded, and powerless when they were poorly treated by lawyers and the court. In contrast, legal service providers who helped women feel worthy of parenting alone, gave them hope, and supported their efforts to gain custody contributed to women's *renewing*. This increased capacity complements women's efforts to *rebuild security*.

Rebuilding Security

Rebuilding security is a process of creating a life characterized by safety and belonging (Ford-Gilboe et al., 2005). *Safeguarding* by surveying risks, setting limits on activities (including contacts with fathers) that put children at risk, and coaching children to deal with threatening situations become the survival focus of rebuilding security. It is difficult for families to begin to position for the future by *cautious connecting*, that is, purposefully developing a sense of personal belonging and connection with the larger community until child safety is assured. Success in *rebuilding security* varies according to the degree of intrusion from continuing abuse and harassment from the former partner (Wuest et al., 2003). Children may be used as vehicles for continuing harassment as fathers manipulate visitation and threaten to seek custody or to abduct children (Hardesty & Ganong, in press; Varcoe & Irwin, 2004; Wuest et al., 2003). Custody policy and services have an enormous impact on the process of *rebuilding security* because the legal process for seeking custody contributes to intrusion by supporting the former partner's rights as parents. The key dimensions to be discussed are *human resources*, *information*, *timeliness*, and *safety*.

In Canada, shifting philosophical and legislative positions on custody inform the work of *human resources* at both a policy and service level. The *information* that women and their former partners are given and understand about the custody process and probable outcomes is strongly influenced by the beliefs and understanding of the persons assisting them. Hence, a woman may have been advised that the court normally responds to the "primary caretaker doctrine" while the former partner has threatened her with the "friendly parent rule." In light of frequent changes and lack of *timeliness* of the legal process, lawyers and social workers are challenged to consider not only current decision-making patterns in courtrooms but also how those patterns may be influenced by recent task force reports or impending legislation. As a result, women in our study often felt "caught" by changing rules and silenced as large lobby and political groups engaged in powerful debate. The consequence of this uncertain legal context is that women cannot seek custody orders or variations to current orders with confidence that the court will consider ongoing harassment and manipulation by the former partner or make astute decisions genuinely in the "best interests of the child." The safety and security of their children is women's

first priority, making them unlikely to take legal action if they judge that the outcome actually may be worse for their children than their current situation. For example, a woman who lacks a custody order for her children who live with her may endure ongoing harassment, erratic visiting patterns, and questionable treatment of the children if she thinks that seeking custody might result in her having less ability to *safeguard* because the former partner will be given more access to and responsibility for the children.

Safeguarding is also influenced by the *information* women have about how the justice system can be helpful. When a former partner's behaviour is endangering children, women initially believe that protection orders offered through the justice system will keep their children safe. A common misunderstanding is that all protection orders can be enforced by police; in reality, some types of protection orders require a court ruling that a violation has occurred before police may act. Thus, misinformation leads to compromised *safety* of women and children.

Without a custody agreement, mothers have no recourse for dealing with former partners who visit unpredictably, put children at risk during visits, taunt mothers about their suitability as custodial parents, and threaten to seek custody of or abduct children. What seems like reasonable action to mothers for the *safety* of their children may be seen as antagonistic to the courts, ultimately threatening the mothers' ability to obtain or maintain custody. Abused women are in a double bind; without a custody order, fathers have as much legal right to access as mothers, and limiting access can jeopardize gaining future custody under the friendly parent rule. However, failure to protect children from visitation with fathers known by mothers to be abusive toward children may result in women being considered unfit parents and in children being taken into care. Thus, many women *safeguarded* by creating a safe environment for visitation, either opening their own homes, or using supervised access at financial cost and inconvenience that further threatened economic stability and the ability to *manage without*.

Family court social workers foster *safety* of children by encouraging women to record observed incidents of abuse and the child's behaviour and emotions following visits. When social workers support women's judgements to deny father's access as long as their reasons for believing the child is in jeopardy are documented, women's capacity to *safeguard* is strengthened. Nonetheless, lack of *timeliness* in custody litigation means that women's mental and physical health is jeopardized by the burden of collecting evidence while having to continuously negotiate the dilemma of child access. Documented evidence of immediate danger from the former partner is often sufficient for a protection order, providing legal support for women's *safeguarding*.

Information and *human resources* have a critical impact on ensuring that a custody agreement is readily enforceable. A broad custody agreement such as "reasonable access upon reasonable notice" results in ongoing

conflict over differences in interpretation that erodes women's capacity to move forward with *cautious connecting*. When lawyers attend to specificity such as time for pick-up and return, who transports child, what happens on holidays and special events, and even who pays for and has access to school pictures, the potential for visits to be safe and not disruptive to family life is enhanced. When legal experts consulted by women fail to address this specificity, a long-awaited custody agreement actually may become a continuing vehicle for harassment, necessitating another risky return to court for a custody variation that may not be supported by legal aid. Women in such situations find themselves in an extended period of *safeguarding*, such that their energy is not available for other priorities including job upgrading or helping children with schoolwork.

Incomplete *information* also jeopardizes the process of *rebuilding security* after a custody order is in place. Many women held the false expectation that a custody order would act as a deterrent to child abduction: "He [former partner] can't take her [daughter] now. The police will go and get her if he tries." Policymakers point out that a custody order only provides the mother with the possibility of legal remedy, an option unavailable without a custody order. A court order substantiating a breach of custody is necessary to direct the police to intervene. Evidence of a pattern of overholding children (not returning children on time) many times must be demonstrated to be successful in obtaining such an order. Overholding is extremely distressing because it is another means by which the former partner continues to threaten, taunt, and intimidate the woman. The system enhances this intrusion by placing the responsibility for documentation of overholding on the woman, who must devote extraordinary time and energy to safety planning in order to *safeguard* her children. Police observed that many women wrongly believe that reporting each incident of overholding to the police would result in documentation for court. No such record is available, leaving women frustrated with the perceived lack of support from the system.

A key issue for *safeguarding* is distinguishing between overholding and abducting the children. Policymakers indicate that some overholding is expected. Evidence of criminal intent by the noncustodial parent to prevent the custodial parent from accessing the child over a period of time, however, will result in the Crown Prosecutor laying a child abduction charge (e.g., the father has obtained passports and airline tickets for the children without the mother's knowledge). In such cases, police can intervene. Policymakers acknowledge that a gap exists for recourse where overholding is persistent but grounds for charges of abduction are not evident. Police generally will visit the home and ask the father his intentions, if the mother presents information that suggests the children may be at risk (e.g., mother telephones the former partner who sounds drunk and she can hear the children crying). Children are taken into protective custody if the investigating police

officer observes that the children are at risk. Such decisions are individual judgements based on knowledge and past experience; those officers who previously have been injured or had charges laid against them are cautious about acting without very compelling evidence.

When a custody agreement is repeatedly breached by overholding or abduction, women are in an extremely uncertain position that detracts from the family's ability to move beyond *surviving*. Efforts to document risks to children and breach of custody, while keeping children safe, take away from women's time for *renewing self* that is necessary for recovery. Engaging in further litigation requires additional investment of time and often money because legal assistance for a custody variation or emergency court actions is not always covered by domestic legal aid, ultimately interfering with women's capacity to *manage without*. Finally, the confusion and uncertainty of an ongoing custody disputes increased stress on children and mothers, further challenging the process of *strengthening capacity to limit intrusion*.

IMPLICATIONS FOR CHANGE

A central health promotion concern for mothers after leaving an abusive former partner is ensuring the safety and long-term security of their children by gaining custody. When justice policy and services related to child custody create persistent barriers, families have difficulty promoting their health by *strengthening capacity to limit intrusion*; they become mired in simply surviving day to day, and are unable to position themselves to promote their health in the long term. Thus, policy and services that are well designed to support women in addressing this health promotion concern are critical. In recent years, much attention has been directed toward improving laws, policies, resources, and services for separating families, particularly with regard to custody issues. However, the ways that IPV has been addressed in each sector varies greatly. We assert that when separation and divorce occur within the context of IPV, custody must be socially constructed as a health promotion issue, and not only as a legal dispute. Therefore, when developing and implementing custody policy and services related to separation and divorce, the complex implications of IPV must be considered and addressed.

Broadly, we propose that "healthier" custody policy may be achieved by ensuring that all laws, policies, resources, and services are developed or revised to address the unique issues present when IPV has been a factor in the separation or divorce. More specifically, we advocate the following:

1. *Acknowledge the effects of IPV on the safety of children and their mothers in custody negotiation and give priority to legal services for these families.* Prevention of physical and psychological harm to children and abusive treatment of mothers will be achieved only if IPV is acknowledged as

- relevant to the following: (a) resources made available to women seeking custody orders or variations, and (b) decision making about parenting capacity, rights, and responsibilities after separation. Given the complexity of custody litigation when IPV is a factor, all women require representation by a solicitor to ensure long-term security of children. In custody cases involving IPV, the long-term health and safety of women and children would be strengthened by requiring abusive fathers to provide that they are fit and capable parents before granting access to children, rather than reinforcing a doctrine of paternal rights.
2. *Create a single, readily accessible source of information regarding rights, responsibilities, and options within both civil and criminal justice processes to address custody and access issues when IPV is a factor.* Although there are excellent sources of information available in both provinces, women must consult with many sources to obtain a full understanding of the interplay between the criminal and civil system as related to IPV and custody, thus draining their already precarious resources.
 3. *Strengthen the consistency of information interpretation across sectors.* Not only must consistent accurate information be readily available to abused women, but it also must be congruent with the understanding of frontline workers and policymakers. Our findings reveal gaps at all levels, often related to evolving changes in laws and policies, that delay and confound womens' efforts to rebuild security for their children and others' efforts to support them.
 4. *Increase support services for women engaged in the public legal process.* Measuring up to *eligibility criteria* for services requires repeated disclosure of painful personal experiences or provision of documentation to support claims of financial need of both. Individual support to deal with personal consequences of repeated disclosure and to assist with acquiring essential documentation and completing forms are critical for timely resolution while mitigating distress and negative health consequences. Now such one-to-one support is not routinely provided and depends on the workload, judgement, and sensitivity of frequently overloaded frontline workers.
 5. *Modify policy and services to address diversity among abused women.* Neglect of *diversity*, particularly related to geographical location, mental and physical health, ethnicity, and language skills was evident in our data; treating all women the same is not adequate if the needs of all families are to be met. At present, only astute and sensitive frontline workers acting on their own initiative moved beyond usual practices to address the unique challenges of diverse groups and to ensure that diversity is not used against women. Outreach services, better understanding of the consequences of IPV, and availability of cultural interpreters are some ways to address *diversity*.

6. *Improve access to services through more flexible delivery.* Accessibility at present is inhibited by services being limited to business hours and centralized in urban centres. Reliance on voice mail further obstructs service delivery. Consequently, many women find their capacity to provide basic necessities for their children even more constrained by costs of transportation, child care, and lost employment hours.
7. *Develop standards for timely settlement of custody issues when IPV is a factor in separation.* Repeated or lengthy delays may place children in unnecessary peril. Moreover, lengthy negotiation keeps the family focussed on managing custody-related conflict with the former partner. Consequently, families are impeded in developing new standards of interaction, healing from abuse, or taking on new challenges such as employment or schooling to position for the future.
8. *Provide sustainable funding to ensure sufficient and well-prepared human resources.* Policies and services, no matter how well designed, require sufficient and informed *human resources* to be effective. Frontline workers require accurate understanding not just of their own service, but also of related services (counselling, housing, employment). Repeatedly, we encountered examples where excellent outcomes for families were the result of receiving timely service from well-informed compassionate frontline workers. But equally as often, women encountered long waiting times, poorly informed or insensitive helpers, and ineffective service. Particular problems are related to unpredictable funding that interferes with long-term, sustainable services, consistency of staff, adequate compensation, and appropriate in-service preparation.

CONCLUSION

This study of the effects of justice policy and services related obtaining and enforcing custody agreements in the context of IPV was conducted in Canada. The analysis conducted using grounded theory, however, resulted in the identification of theoretical dimensions of justice policy that make a difference for health promotion outcomes for women. These dimensions provide a useful framework for evaluating custody policy and services in other jurisdiction with respect to their capacity to support health promotion after leaving an abusive partner.

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