



The Alberta Council of Women's Shelters (ACWS) Legal Matters Podcast, Episode 1: Changes to the Divorce Act

FAQ

1. Why is the Alberta Council of Women's Shelters producing a legal podcast for advocates, justices, and family lawyers?

We know that when a woman is leaving or has left a relationship that it is when she has the greatest likelihood of being killed. We also know that the best way to protect the child in these cases is to protect the mother.

2. What are the standout changes to the Divorce Act relating to families and domestic violence?

While some of the significant changes include addressing jurisdictional & cross-jurisdictional issues; the relocation of children; enforcement of child support, duties of legal advisors and dispute resolution, ACWS is particularly interested in the changes in language that impact women and their children experiencing domestic violence which include

- a) eliminating "custody and access" and replacing it with parenting order, contact order, decision making responsibility and parenting time;
- b) significantly improved definition of family violence that does not require a criminal conviction and includes psychological and financial abuse.

3. What are some elements of the new Divorce Act relating to families experiencing domestic violence that shelters and lawyers are watching closely?

We are keenly interested in supporting and monitoring the assessments that are made such as

- a) An assessment as to whether nature, seriousness and frequency of abuse is likely to continue
- b) If there is a pattern of coercive and controlling behavior that also indicated that the abuse will likely continue
- c) If the child has been directly or indirectly exposed to family violence or if it has been directed at the child. Violence is not restricted to physical acts but should also consider emotional, psychological harm or the risk of harm to the child.

4. How has the role of legal professionals changed?

Legal professionals have a new responsibility to conduct assessments, screen for domestic violence, and apply a best interest of the child test.

5. What role do shelter workers have in supporting legal professionals to deliver their new responsibilities under the revised Act?

Shelters and lawyers should and can collaborate for the best outcomes for all.

- a) Shelter workers can inform the courts of the impact of domestic violence on families.
- b) Shelter staff are trained in danger assessment to assess the likelihood of femicide. These assessments also support women's understanding of the risks they face.
- c) Shelter staff can provide support in developing safety plans for women at risk.

6. What kind of training can shelters provide to legal professionals?

ACWS has developed training for legal professionals that will be delivered in partnership with LESA ([register here](#).) Judicial education is also needed, and ACWS is looking for opportunities to present at judicial education conferences. There needs to be an update in the post-secondary legal curriculum to expand the understanding of domestic violence and the community resources that are there, such as ACWS and shelters. Shelters can also be a valuable sounding board and provide support on specific cases.

7. What conditions need to be in place for Alternative Disputes Resolution (ADR) or mediation if it is to be effective in addressing domestic violence cases?

Research shows it may not be effective when there is a stark power imbalance—it is critical that the lawyers involved in ADR or mediation have a thorough understanding of the dynamics of coercive controlling violence (Power and Control via the Duluth model), and have community connections (e.g., women's shelters) to gain frontline perspectives on a given case. There is no cookie-cutter approach when entering mediation or ADR. Women's safety, regular risk assessment and management, while empowering survivors to guide the intervention are key factors to understanding when and how to implement this approach.

8. Can't there just be an online screening tool to help lawyers fulfill this part of their responsibility?

While online screening tools might augment a lawyer's work under the new act, they should not replace a conversation with the client. Tools need to be chosen with care and be based on evidence. ACWS can provide advice on the tools that are currently available. Some were not designed with a thorough understanding of the dynamics of abuse which may indicate a danger of femicide. It is critical that the use of any 'tools' be in companion with working with an expert at the local women's shelter with an understanding of risk assessment tools and skills in appropriate safety planning

9. What are some actions that ACWS recommends out of the new Divorce Act?

ACWS sees an urgent need to align the provincial legislation with the new federal Act, as well as increased training for the legal community generally and alliances with shelters to support women and children living with abuse

We also see less of an oppression-lens on how coercive control is defined, therefore some of the definitions miss the gender dynamics at work. Recognizing the ways that coercive controlling violence is gendered allows professionals to better recognize the signs and assess risk.

References and Further Reading:

Gazal-Ayal, Oren, and Ronen Perry. "Imbalances of Power in ADR: The Impact of Representation and Dispute Resolution Method on Case Outcomes." *Law & Social Inquiry* 39, no. 4 (2014): 791–823. doi:10.1111/lsi.12063. Online: <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/abs/imbalances-of-power-in-adr-the-impact-of-representation-and-dispute-resolution-method-on-case-outcomes/B02FFE84EA2FE5F961A90907BF82F794>

Koshan, Jennifer, Janet Mosher and Wanda Wiegers, "Mandatory Dispute Resolution Coming Back to Alberta, But What About Domestic Violence Cases?" (August 30, 2019), online: ABlawg, http://ablawg.ca/wp-content/uploads/2019/08/Blog_JK_JM_WW_ADR.pdf