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Alberta's Family Violence Laws: Intersections, Inconsistencies and Access to Justice

By: Jennifer Koshan, Irene Oh and Kristin McDonald

November is Family Violence Prevention Month in Alberta. Law has an important role to play in prevention efforts through the ways it defines family violence, which may have educative and normative influences on the public. Law can also contribute to prevention in more material ways by providing remedies to enable victims to protect themselves and their children and by requiring perpetrators to seek counselling and other programming. But laws are only useful where they are accessible. This post describes and analyzes all of the Alberta laws and government policies pertaining to family violence, paying particular attention to the intersections and inconsistencies between them and how these might impact victims, perpetrators, children and their access to justice. While the map of laws in a single province is complex in itself, there are also federal laws relevant to domestic violence that add to this complexity – for example, for families seeking remedies under the *Divorce Act*, RSC 1985 c 3 (2nd Supp), and for First Nations victims of violence living on reserve, who may not have access to provincial protection order remedies (see here). The research set out in this post is part of a larger project on domestic violence and access to justice, funded by SSHRC and the Law Foundation of Ontario's Access to Justice Fund, which is mapping legislation and government policies relevant to domestic violence across Canada. We will eventually make our research available on a website that is aimed at trusted intermediaries, those who provide services to victims and perpetrators in domestic violence cases. We also hope that this research is useful to litigants, lawyers, judges, policy-makers and other professionals who work in this area. The Alberta research is also available in a chart format that is attached above.

Legislation and Regulations Relevant to Domestic Violence

(a) Civil Protection Order Legislation

Alberta's *Protection Against Family Violence Act*, RSA 2000, c P-27 (*PAFVA*), is civil protection order legislation that was passed in 1999 and enables "family members" who experience "family violence" to obtain emergency and Queen's Bench protection orders. Family members are defined in section 1(1) to include spousal and adult interdependent partner relationships, relationships where the parties are the parents of children, persons related to each other by blood, marriage or adoption, and persons residing together where one of them has care and custody over the other pursuant to a court order. The *PAFVA* does not apply to persons who are in intimate relationships but do not reside together (see *Lens v Sculptoreanu*, 2016 ABCA

111, and for a previous post on that decision see here). Family violence is defined in section 1(1) to include physical and sexual violence, forced confinement and stalking, but does not include emotional / financial abuse or reasonable force applied by a parent to discipline a child. Protection orders are available on an emergency basis when family violence has occurred, the claimant believes that the respondent will continue or resume the family violence, and immediate protection of the claimant and other family members is required by reason of seriousness or urgency (see section 2(1) and the relevant factors in sections 2(2) and (2.1); procedures relating to actions under the *PAFVA* are governed by the *Alberta Rules of Court*, Alta Reg 124/2010 and the *Protection Against Family Violence Regulation*, Alta Reg 80/1999). Emergency protection orders (EPOs) can provide for no contact and exclusive occupation of the family home, amongst other conditions (s 2(3)), and as discussed in a previous post, orders do not affect title or ownership interests (s 9). The *Children First Act*, SA 2013, c C-12.5, will amend the *PAFVA* to allow the Regulations to provide for the enforcement of protection orders from other provinces and territories in Alberta, but this section has not yet been proclaimed (see section 14(f.1)). The *PAFVA* creates an offence for failing to comply with a protection order and allows peace officers to arrest a person they reasonably believe to have breached a protection order (sections 13.1 and 13.2).

Part 2 of the *PAFVA* enables the Minister to establish a Family Violence Death Review Committee to review incidents of family violence resulting in deaths and to provide advice and recommendations to the Minister respecting the prevention and reduction of family violence (for a previous post on this Committee's work see here). Section 18(1.1) of the *PAFVA* requires the Committee to consider recommendations made by the Child and Youth Advocate under section 15.4 of the *Child and Youth Advocate Act*, SA 2011, c C-11.5 when a child dies who was receiving intervention services at the time of their death under the *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12 (*CYFEA*), and the death arises from the same incident as that considered under the *PAFVA*. This is a good example of a positive intersection between Acts. The *Fatality Inquiries Act*, RSA 2000, c F-9, is also relevant in this context, and requires the medical examiner to be notified and to conduct an investigation where death occurs as a result of violence (sections 10(2)(c) and 19).

(b) Family Law

The *CYFEA*, Alberta's child protection legislation, considers domestic violence in determining appropriate interventions. Section 1(3) of the *CYFEA* names "exposure to domestic violence or severe domestic disharmony" as a basis for intervention, but under section 2(f), "intervention services should be provided to the family in a manner that supports the abused family members and prevents the need to remove the child from the custody of an abused family member." Domestic violence and severe domestic disharmony are not defined, but judges may consider whether an order under the *PAFVA* was in place in making that determination (see e.g. *Alberta (Child, Youth and Family Enhancement Act, Director) v. D.M.*, 2016 ABPC 133). The *CYFEA* also provides that "if the child is an aboriginal child, the uniqueness of aboriginal culture, heritage, spirituality and traditions should be respected and consideration should be given to the importance of preserving the child's cultural identity" (section 2(p)). Under section 4 of the

CYFEA, "any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director," and this duty to report applies notwithstanding that the information founding the belief is confidential or its disclosure is prohibited (for example under the *Freedom of Information and Protection of Privacy Act* and *Residential Tenancies Act*, discussed below), unless the information is based on solicitor-client privilege (*CYFEA* sections 4(2) and (3)). The *CYFEA* also applies to adoptions, and under the *Adoption Regulation*, Alta Reg 187/2004, section 13(3) and Form 6, information about abuse is to be provided in a medical report about the child who is the subject of an adoption application.

The *Family Law Act*, SA 2003, c F-4.5 (*FLA*), explicitly includes family violence as a consideration when determining the "best interests of the child" for the purposes of guardianship, parenting and contact orders (section 18(2)(b)(vi)). Whether there are civil or criminal proceedings that are relevant to the safety or well-being of the child is also a factor going to their best interests (section 18(2)(xi)). Under section 18(3), family violence is defined to include "behaviour by a family or household member causing or attempting to cause physical harm to the child or another family or household member, including forced confinement or sexual abuse, or causing the child or another family or household member to reasonably fear for his or her safety or that of another person" and – like the *PAFVA* – does not include reasonable force applied to a child for discipline purposes. Unlike the *PAFVA*, however, the *FLA* does not include stalking in its definition of family violence, and it explicitly exempts acts of self-protection or protection of another person. This inconsistency in definitions may make it confusing for those seeking or applying remedies under the different Acts. For example, stalking by a family member was added to the *PAFVA* in 2006 and may now lead to an EPO where the other requirements of the Act are met, but stalking is not, on the face of the *FLA*, relevant to the best interests of the child for the purposes of parenting and contact orders. Similarly, when someone uses force to protect themselves or their children, this is not family violence relevant to the best interests of the children under the *FLA*, but it may fall within the definition of family violence in the *PAFVA* and lead to mutual EPOs (or mutual restraining orders made during the EPO confirmation hearing, see here). Breaches of no-contact orders can have serious consequences, and it is not appropriate for such orders to be made against persons who are protecting themselves or their children.

Apart from its relevance to guardianship, parenting and contact orders, family violence is not otherwise explicitly mentioned in the *FLA*, but the Act does allow for exclusive possession orders to be made in relation to the family home as part of a support order, including an order restraining a spouse or adult interdependent partner "from entering or attending at or near the family home" (section 68(1)). The grounds for making a restraining order do not explicitly include violence but do include "the needs of any children residing in the family home" (section 69(b)). Exclusive possession orders under the *FLA* have effect notwithstanding a subsequent order in favour of one of the spouses or adult interdependent partners for the disposition of the family home (section 70). The order may be registered with the Registrar of Land Titles, in which case the other spouse or adult interdependent partner may only dispose of or encumber the interest with consent in writing of the spouse or partner in possession, or by order of the court (section 71). Similar provisions allowing for exclusive possession orders for the family home and

the precedence and registration of such orders exist in the *Matrimonial Property Act*, RSA 2000, c M-8 (*MPA*), which only applies to married and formerly married spouses at present (see sections 1(e) and 19). Both Acts also provide for exclusive possession of household goods (see *FLA* section 73 and *MPA* section 25).

Alberta does not currently mandate any type of alternative dispute resolution (ADR) for family law or child welfare matters. The duty of a lawyer in the context of the *FLA* is to inform parties of various types of dispute resolution, and courts "may appoint a mediator or a neutral third party to assist the parties in resolving all or part of the matters in issue before the court" (section 5(1)(b); see also section 97). Under the *CYFEA*, a child, their guardian, or a person with a significant connection to a child may, with the agreement of the director, enter into alternative dispute resolution with the director regarding any decision made by the director with respect to the child (section 3.1). While ADR may be used in the child protection context, Guidelines for Child Protection Mediation provide limits where domestic violence is a factor in the relationship. Alberta's *Arbitration Act*, RSA 2000, c A-43, does not make explicit mention of domestic violence, but arbitrations may be used in the family law context in Alberta. There are no requirements under any of these Acts for mediators, arbitrators or other dispute resolution professionals to obtain training on or to screen for domestic violence.

The *International Child Abduction Act*, RSA 2000, c I-4, provides for the application of the Hague *Convention on the Civil Aspects of International Child Abduction* in Alberta, which allows courts to order the prompt return of children who have been wrongfully removed from their habitual residence. Article 13(b) of the Convention has a "grave risk" exception, which can be invoked in 'prompt return' applications where a parent alleges that the child would be exposed to an unreasonable and grave risk of physical and psychological harm or otherwise be placed in an intolerable situation if the court ordered the child's return to their habitual residence. Alberta case law provides that to successfully invoke the Article 13(b) exception, it is necessary to establish that the country of the child's habitual residence would be unwilling or unable to protect the child from further harm (see *DR v AAK*, 2006 ABQB 286). In a recent case interpreting the grave risk exception where the mother obtained an EPO in Alberta covering herself and her children and sought to block their return to the US, the court ordered the children's return to their habitual residence in the US, but with conditions to ensure their safety (see *JP v TNP*, 2016 ABQB 613).

Another statute that is relevant to interjurisdictional custody disputes is the *Extra-Provincial Enforcement of Custody Orders Act*, RSA 2000, c E-14, section 4 of which permits a court to make any order or vary a custody order made by a court or tribunal outside of Alberta, when the Alberta court is satisfied that a child would suffer serious harm if they remained in or were restored to the custody of the person named in the extra-provincial custody order.

The *Maintenance Enforcement Act*, RSA 2000, c M-1, provides for the enforcement of maintenance orders in the family law setting, and includes payments required by Queen's Bench Protection Orders made under the *PAFVA* – another good example of a positive intersection between Acts.

The *Adult Guardianship and Trusteeship Act*, SA 2008, c A-42, does not explicitly refer to domestic violence, but it provides for guardianship orders on an urgent basis for adults who lack the capacity to make decisions about personal matters, where it is necessary for someone to make decisions on their behalf to prevent death or serious physical or mental harm to the adult (section 27). The Act also provides for applications by the Public Guardian for protection orders in relation to adults subject to guardianship orders who are at risk of serious harm, and for the revocation of guardianship, trusteeship and co-decision making powers if someone who has been appointed with these powers is failing to comply with their duties in a way that subject the adult in question to physical or mental harm or financial losses (sections 74 and 75). Co-decision makers or guardians who cause serious mental or physical harm to an assisted or represented adult are guilty of an offence under the Act (section 86). The Act could thus be used as an alternative to the *PAFVA* to protect adults with diminished capacity against some of the harms of family violence, either by obtaining a guardianship order for an adult to prevent abuse or by challenging the actions of co-decision-makers or guardians who are themselves abusive – although the provisions in the *PAFVA* would be easier and quicker to invoke in emergency situations.

(c) Landlord Tenant / Housing Laws

The *Residential Tenancies Act*, SA 2004, c R-17.1, Part 4.1, sections 47.1-47.7 (*RTA)* was amended in 2016 to include explicit provisions regarding domestic violence (see Bill 204, *Residential Tenancies (Safer Spaces for Victims of Domestic Violence) Amendment Act*, amending the *Residential Tenancies Act*, and see a previous post on Bill 204 here). Similar provisions apply in the *Mobile Home Sites Tenancies Act*, RSA 2000, c M-20, which was also amended by Bill 204. These laws allow victims of domestic violence to terminate their residential tenancy agreements without any penalties imposed by early termination (*RTA*, section 47.3(4)(b)).Victims must obtain a certificate from a designated authority – including health practitioners, social workers, police, shelter and victim support workers (see section 47.4(4)) – confirming that there are grounds for terminating the tenancy in that the tenant has been subject to domestic violence or has obtained an EPO, restraining order, peace bond or other no-contact order and there is a risk to the safety of the tenant and / or their children if the tenancy continues (section 47.4(2)). "Domestic violence" is defined the same as family violence under the *PAFVA*, but also includes psychological or emotional abuse and applies to dating relationships in addition to those relationships covered by the *PAFVA* (section 47.2(2)). This means that there may be some circumstances where a victim is not entitled to apply for an EPO yet is eligible for early termination under the *RTA* – but would need other proof of domestic violence to obtain a certificate. Ideally, the definitions of domestic / family violence would be harmonized under the different Acts.

Landlords may only apply to set aside a termination notice on the ground that the notice and the certificate were not properly served on them (section 47.3(7)), and must ensure that any information they receive under the Act from or about a tenant who is a victim of domestic violence is kept confidential unless they are authorized to disclose that information (section 47.7).

Other provisions in the *RTA* may also be relevant in domestic violence situations, including tenants' covenants not to perform illegal acts, not to endanger persons or property on the premises or to damage the premises (section 21). A landlord may apply to terminate a tenancy where these covenants are breached, including where one tenant assaults another (section 30). This power on the part of landlords was not changed by the recent amendments. Furthermore, there must be mutual consent between a landlord and tenant before changing or adding to locks giving access to the residential premises (section 24).

As noted earlier, *PAFVA* states that "[a] protection order does not … affect the title to or an ownership interest in any real or personal property held jointly" or solely by the offender (section 9). Where a victim is granted exclusive occupation of a residence under *PAFVA*, and is not on the lease, a landlord cannot evict them "on the sole basis that they are not on the lease (*PAFVA* section 9(2)). In these circumstances, upon the occupant's request, the landlord must advise the occupant of the status of the lease, any notice of claim against the leaseholder, and the occupant's option to assume the responsibilities of the leaseholder (section 9(3)). For further discussion of the interplay between protection orders and residential tenancies legislation, see the ebook Landlords, Tenants and Domestic Violence.

Alberta's *Social Housing Accommodation Regulation*, Alta Reg 244/1994 (*SHAR*), enacted under *Alberta Housing Act*, RSA 2000 c A-25, provides for a point system to determine priority for need and allocation of subsidized housing (Schedule A, section 2C(1)). Under the *SHAR*, applications for housing are made by "households," which include individuals, their spouse or adult interdependent partner, and their dependants (section 1(1)(i)). Households applying for social housing that require accommodation as a result of an emergency situation, including family violence (which is not defined in the *SHAR*), are allocated a certain number of points; however, no points may be awarded if the household repudiated or committed a breach of a tenancy agreement, abandoned the premises, or if the tenancy was otherwise terminated as a result of a contravention of the *RTA*. It would appear that victims of domestic violence must rely on the new early termination provisions in the *RTA* to avoid running afoul of the *SHAR*.

(d) Social Welfare Law

Under the *Income and Employment Supports Act*, SA 2003, c I-0.5 (*IESA*), applications for social assistance are made for "household units", which means a person and their cohabiting partner, dependent children or both, or a person who is single and without a cohabiting partner and dependent children (sections 1(f) and 5). Persons are deemed to be "cohabiting partners" where they are either living with or financially interdependent on their spouse, adult interdependent partner, or person with whom they have a natural or adopted child (*Income Support, Training and Health Benefits Regulation*, Alta Reg 122/2011 (*ISTHBR*), section 1(2)). Financial interdependence is not defined, and it is unclear how these provisions apply in the case of persons in abusive relationships where there continues to be financial interdependence. The Director may refuse to provide assistance or discontinue, suspend or reduce the assistance provided when, in their opinion, an applicant or recipient refuses to make reasonable efforts to pursue compensation, income or financial resources they are entitled to or eligible for (*IESA*, section 15). This is an important intersection between family legislation and social assistance

legislation, which appears to make victims of family violence ineligible for benefits when they fail to pursue support from their (ex)partner – which they may do to avoid abusive contact. On the other hand, where a person entitled to assistance has a right to apply for or receive support under an Act, order or agreement for themselves or their dependent children, the Director may apply for and enforce support for that person or their children (*IESA*, section 29).

The *ISTHBR* provides specific allowances to individuals dealing with abusive situations, including for moving and household start up, telephone services, and transportation, as well as to individuals residing in recognized emergency shelters as a result of escaping abuse (Schedule 4, sections 13, 14, 20, and 24(2)(a)(iii)(D)). For sponsored immigrants who are eligible to receive income support and benefits, the usual provisions requiring assessment of the sponsor's assets and financial resources do not apply where the sponsored immigrant was abused or abandoned by their sponsor (*ISTHBR*, sections 28(2) and 54(2)).

Similar assistance is provided for moving and emergencies for persons with severe disabilities receiving social assistance and experiencing abuse under the *Assured Income for the Severely Handicapped General Regulation*, Alta Reg 91/2007 (Schedule 3, sections 9(2) and 11), which is made under the *Assured Income for the Severely Handicapped Act*, RSA 2000, c A-45. Abuse is not defined in this *Regulation*.

(e) Legal Representation

There is no stand-alone Legal Aid legislation in Alberta; jurisdiction over legal aid is set out in the *Legal Profession Act*, RSA 2000, c L-8. Legal Aid coverage for domestic violence related matters changes over time, but Legal Aid currently has an Emergency Protection Order Program and provides some coverage for family and criminal law matters.

Under the *Child and Youth Advocate Regulation*, Alta Reg 53/2012, made under the *Child and Youth Advocate Act*, a lawyer can be appointed to represent a child in situations where the child wishes to apply for an order under the *PAFVA* or is receiving any intervention services under the *CYFEA*, which could include representation for family violence related issues.

(f) Compensation and Victims' Rights

Bill 2, An Act to Remove Barriers for Survivors of Sexual and Domestic Violence, recently added section 3.1 to the *Limitations Act*, RSA 2000, c L-12, in 2017, completely removing the limitation period for claims of sexual assault and battery and removing it in cases involving sexual misconduct or assault and battery in specific circumstances, including the domestic violence context. These changes will make it easier for victims of domestic violence to obtain compensation from their abusers.

The *Victims of Crime Act*, RSA 2000, c V-3 (*VCA*), also provides for financial compensation for victims of crime. It does not reference domestic violence explicitly but applies in the context of violent crimes. However, a victim who is convicted of a criminal offence arising from the events that resulted in the injury, or who fails to report the offence to a police service within a reasonable period of time, is not eligible for financial benefits under the Act (sections 12(2) and

12.2). This intersection between criminal and victim compensation laws can create barriers to compensation for victims who have valid reasons for failing to report domestic violence to the police – including in circumstances where they are trying to protect themselves or their children.

The *VCA* also sets out general principles that apply to the treatment of victims, provides for the payment and use of victim fine surcharges, and sets out information to be provided to victims (see also the *Corrections Act*, RSA 2000, c C-29, section 14.3, which provides that victims of crime are entitled to information about offenders from correctional institutions or probation officers, including the offence for which the offender was found guilty, the date the sentence begins and its length, and any conditions contained in the sentence that relate to the victim.)

The *Insurance Act*, RSA 2000, c I-3, does not explicitly mention domestic violence, but it provides for recovery by innocent persons for loss or damage to property that is caused by a criminal or intentional act or omission of an insured or any other person (section 541). This provision may provide relief to victims of domestic violence whose partners damage their property and who would otherwise be excluded from coverage because of the criminal or intentional nature of the damage.

(g) Employment Legislation

In 2017, Alberta passed a new *Occupational Health and Safety Act*, SA 2017, c O-2.1 (*OHSA*), which places obligations on employers and supervisors to ensure that their workers are not subjected to and do not participate in harassment or violence at work, including domestic violence (sections 3 and 4). "Violence" is defined to mean "whether at a work site or work-related, … the threatened, attempted or actual conduct of a person that causes or is likely to cause physical or psychological injury or harm, and includes domestic or sexual violence" (section 1(yy)). Workers also have an obligation to "refrain from causing or participating in harassment or violence" (section 5). An employer of 20 or more workers is required to establish a health and safety program that includes "identification of existing and potential hazards to workers at the work site," including harassment and violence (section 37(1)(b)). Alberta's *Occupational Health and Safety Code* Alberta Regulation 87/2009, (as amended) enumerates workplace violence as a hazard and requires employers to develop policies and procedures on potential workplace violence (Part 27). The Code provides that when an employer is aware that a worker is likely to be exposed to domestic violence at work, the employer "must take reasonable precautions to protect the worker and any other persons at the work site likely to be affected" (section 390.33).

In 2018, Bill 17, the *Fair and Family-friendly Workplaces Act*, RSA 2017, c E-9, amended the *Employment Standards Code*, RSA 2000, c E-9 (*ESC*), to include domestic violence leave of up to 10 days per calendar year (section 53.981(1)). Similar to the amendments to the *RTA*, the definition of domestic violence includes dating relationships and psychological / emotional abuse (section 53.981(2)). Domestic violence leave is unpaid and is available for obtaining medical attention, victim or legal services, law enforcement assistance, counselling, and relocation.

(h) Privacy Legislation and Other Provisions on Confidentiality / Disclosure

Alberta's *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 (*FOIPPA*) does not mention domestic violence explicitly. It does, however, create obligations and restrictions on public bodies around the collection, use and disclosure of personal information that could be relevant in the domestic violence context. The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy, but disclosure is not unreasonable where it is necessary for law enforcement purposes or where there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party (sections 17(4)(b) and 2(b)). A public body may also disclose personal information if it reasonably believes the disclosure will avert or minimize the risk of harm to the health or safety of a minor or an imminent danger to the health or safety of any person (section 40(1)(ee)). At the same time, public bodies may refuse to disclose personal information to an applicant, including personal information about the applicant themselves, if the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health (section 18). Public bodies must also collect personal information directly from the individual that the information is about, with some exceptions, including where the information is collected in a safety emergency where direct collection could reasonably be expected to endanger the mental or physical health or safety of the individual or another person (section 34(1)(c)(2)).

Alberta's *Personal Information Protection Act*, SA 2003 c P-6.5 (*PIPA*) governs the collection, use and disclosure of personal information by "organizations", which are defined to include corporations, as well as individuals, acting in a commercial capacity (section 1(1)(i)(v)). As discussed in a previous post, *PIPA* may apply to landlords and employers. Like *FOIPPA*, *PIPA* does not mention domestic violence explicitly, but it creates obligations for organizations that could be relevant in the domestic violence context. Organizations may collect, use and disclose personal information "only for purposes that are reasonable" and "only to the extent that is reasonable for meeting the purposes for which the information" is collected, used or disclosed (sections 11, 16 and 19). An organization may collect, use and disclose personal information about an individual without their consent where a reasonable person would consider that the collection, use or disclosure of the information "is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent" (sections 14(a), 17(a) and 20(a)). Information may also be used or disclosed where reasonable for the purposes of an investigation or a legal proceeding (sections 17(d), 20(f) and (m)) or where necessary to respond to an emergency that threatens the life, health or security of an individual or the public (sections 17(i) and 20(g)). Organizations may refuse access to personal information in several circumstances, including where the information was collected for an investigation or legal proceeding (section 24(2)(c)), and must refuse such access where the disclosure of the information could reasonably be expected to threaten the life or security of another individual (section 24(3)).

There are important intersections between the *CYFEA* and *FOIPPA*. For the purposes of protecting the identity of the person who reports a child as being in need of intervention, if there is a conflict or inconsistency between the *CYFEA* and *FOIPPA*, the *CYFEA* prevails (*CYFEA* sections 4 and 162.1(3)). More generally under the *CYFEA*, the Minister and any person

employed or assisting the administration of the Act may disclose or communicate personal information that comes to their attention only in accordance with *FOIPPA* (*CYFEA* section 126).

The *CYFEA* also provides for confidentiality of information provided during alternative dispute resolution, but confidentiality is waived to the extent that the disclosure is necessary to protect the survival, security or development of the child or to report a child in need of intervention (section 3.1). No person shall publish the name or a photograph of a child or their parent or guardian in a manner that reveals that the child is receiving or has received intervention services, unless publication is in the child's best interest or necessary for the proper administration of justice (*CYFEA* section 126.2). Publication bans may also be made with respect to deceased children in certain circumstances (section 126.3). Courts may exclude any person – including the child or their guardian – from all or part of proceedings relating to the child's intervention if the Court considers that person's presence to be unnecessary, and the evidence or information presented to the Court may be seriously injurious or prejudicial to the child or it would be in the interest of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the courtroom (section 24).

Under the *Family Law Act*, courts have discretion to prohibit the publication or broadcast of any report of a proceeding that may identify a child to protect their well-being (section 100).

The *Children First Act* also allows for exceptions to *FOIPPA.* In order to enable or plan for services or benefits to children, service providers may collect, use and disclose personal information about the child or their parent or guardian in some circumstances (section 4), and government departments may disclose anonymized data about a child, youth, or guardian to PolicyWise for Children and Families to facilitate research and policy recommendations (section 5).

As noted earlier, under the *RTA,* landlords must ensure that any information they receive under the Act from or about a tenant who is a victim of domestic violence is kept confidential, unless they are authorized to disclose that information, which would likely include protected disclosures under the *CYFEA* and *PIPA* (*RTA*, section 47.7).

The *Public Interest Disclosure (Whistleblower) Protection Act*, SA 2012, c P-39.5, provides some protections for employees who make disclosures of wrongdoings under the Act. It defines "wrongdoing" broadly as inclusive of the definition in any other relevant Act and any harm presenting "substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent in the performance" of employment obligations (section 3(b)(i)).

(i) Miscellaneous Legislation and Regulations

The *Election Act*, SA 2000, c E-1, allows for a Chief Electoral Officer to contact emergency shelters to determine if there are a "sufficient number of electors residing at the shelter" to warrant a mobile poll at the shelter (sections 30(4), 120(1)(c) and 122(2)). The definition of "emergency shelter" in the Act includes shelters for those escaping domestic violence (section 1(1)(k.1)).

Under the *Witness Security Regulation*, Alta Reg 62/2012, services provided by a law enforcement agency to protect a person from domestic violence are explicitly mentioned as an

alternative method of providing protective services under the *Witness Security Act*, SA 2010, c W-12.5.

Special Forums for Domestic Violence Issues

In Alberta, there are 8 specialized domestic violence courts: in Calgary, Edmonton, Fort McMurray, Grand Prairie, Lethbridge, Medicine Hat, Pincher Creek, and Red Deer (see the Alberta Court Calendar, 2018). These courts hear criminal matters related to domestic violence, are staffed by specialized personnel, and provide services and treatment options. Domestic violence matters are blended with other matters in Airdrie, but a specialized Crown prosecutor consults with the RCMP domestic violence coordinator before court (see Irene Hoffart and Brigitte Baradoy, *Addressing Family Violence in Airdrie*, 2017*)*.

Crown and Police Policies

The *Domestic Violence Handbook for Police and Crown Prosecutors in Alberta* explains the policies governing police and Crown conduct in domestic violence cases. Crown prosecutors also have a *Domestic Violence Guideline*, which is to be used in conjunction with the *Handbook*. Prosecution of *PAFVA* offences occurs in the Provincial Criminal Court, and prosecutors are to transfer criminal domestic violence matters to Domestic Violence Court if there is one in the jurisdiction (*Handbook* at 143). Under the *Guideline*, the safety of the victim and any children is to be "at the forefront" of prosecutorial decision-making, and prosecutors are "to be alert to the unique nature of domestic violence, the dysfunctional dynamics of the relationships that result in such violence, and the special needs of the victims and witnesses." In cases involving "recanting or hostile victims," charges are not to be withdrawn or stayed "solely at the request of the victim;" instead, prosecutors are to consider "the proper administration of justice, including whether there is a reasonable likelihood of conviction and the public's interest in the effective enforcement of the criminal law" as well as "the safety of the victim" (*Guideline*). Where the detention of the perpetrator in custody is not appropriate, prosecutors "are advised to seek imposition of conditions which would assist in stabilizing the domestic situation and reducing the possibility of further violence" (*Handbook* at 14). Other matters dealt with in the *Guideline* and *Handbook* include compelling the testimony of and pursuing criminal charges against the victim, seeking witness warrants, removing and pursuing breaches of no contact orders, assessing mutual charges, case management and risk assessment, use of peace bonds, expert and child witnesses, and support for victims.

The police companion to the *Handbook* is the *Domestic Violence Police Guidelines*. The police are to check the welfare of the alleged victim when a domestic violence communication occurs and must respond to the victim's location (*Handbook* at 63). Police are also directed to contact Human Services "in every case where children are involved in the relationship, have been exposed to, or witnessed domestic violence" (*Police Guidelines* at 19). A comprehensive investigation must occur in domestic violence cases, and if police have "reasonable grounds to believe that an offence has been committed," a charge is to be laid and "every reasonable effort" must be made "to locate and apprehend the suspect" (*Handbook* at 64-66 and 69). The police are required to consult with the local Crown before laying mutual or dual charges, and if they are releasing a person accused of domestic violence before appearing in court, conditions to protect

the alleged victim must be considered (*Handbook* at 69-70 and 72). Other matters dealt with in the *Handbook* and *Police Guidelines* include the need for coordination and collaboration, safety planning, interviewing victims / witnesses, breaches of no contact orders, firearms, training, monitoring and supervision, and providing support to victims, including those who are Aboriginal, immigrants, English language learners, sexual and gender minorities, and have disabilities.

Investigators of domestic violence in Alberta are required to complete a Family Violence Investigation Report (FVIR) in order to establish potential risk factors that could increase risk to the victim, which are utilized at bail hearings to inform the judge of the offender's likelihood of resorting to further violence. The risks the victim faces by reporting the violence and/or choosing to leave the relationship must be discussed with them in detail, so they understand the potential for further violence (*Handbook* at 157).

Alberta Justice also has *Best Practices for Investigating and Prosecuting Sexual Assaults*, which includes a section on sexual assault in the context of domestic and intimate partner violence (at 157). Interestingly, domestic violence is defined more broadly here than under the *PAFVA*, to include psychological abuse in "current or former dating relationships, common-law relationships, married relationships and persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time" (at 152 and 157). This document also outlines special considerations for LGBTQ victims, including how "[v]ictims of sexual assault/abuse in intimate relationships may be facing elements of control not experienced by heterosexual victims of intimate partner assault" such as fear of being "outed" as not heterosexual, facing ostracism from their community for reporting violence, disbelief or discrimination from authorities, and barriers to accessing services due to their partner accessing the same services (at 93 and 152-153).

Other government policies

Alberta adopted a *Framework to End Family Violence* in 2013, which includes the goals of providing a legislative and policy framework to support ending family violence and a strong justice response to family violence; facilitating collaboration among individuals, families, communities and other sectors, including the courts; and supporting the provision of coordinated and integrated supports and services at the community level for victims and perpetrators (at 10 and 24).

Conclusion

The large number of laws and policies that are relevant to domestic and family violence in Alberta may surprise some readers, but this mapping exercise shows the vast array of issues that can arise in this context and the intersections between different areas of law. Of particular note, there are inconsistencies throughout provincial legislation and policies in terminology and definitions of "domestic" and "family" violence. These inconsistencies are likely a result of amendments to legislation that have occurred over time. Many of these amendments are to be applauded, as they require domestic violence to be considered and addressed in a broader range of contexts than was previously the case, including residential tenancies and employment.

However, it would be helpful for the government to harmonize the terminology and definitions of domestic and family violence so that litigants can have a clearer picture of their rights and responsibilities and are not caught in the gaps between legislation.

The government might argue that the differences are intended – for example, courts have noted that the *PAFVA* restricts the liberty of perpetrators subject to EPOs as a basis for interpreting the definition of family member and family violence narrowly (see e.g. *Lens v Sculptoreanu*, cited above). Yet, several other provinces and territories do include emotional and financial abuse and dating relationships in their protection order legislation, and Alberta would do well to extend the *PAFVA* in this direction so that it is consistent with the *RTA*, *OHSA* and *ESC*. The government should also proclaim the relevant provisions in the *Children First Act* to allow the inter-jurisdictional enforcement of protection orders and remove other barriers to seeking remedies under the relevant legislation, including those that require victims of domestic violence to report to the police or other authorities or to pursue compensation from their abusive partners. These amendments would contribute to the ability of law to prevent family violence and to provide remedies where it does occur.

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