



**PUBLIC INTEREST LAW CLINIC
FACULTY OF LAW**

MURRAY FRASER HALL
2500 University Drive NW
Calgary, AB, Canada T2N 1N4
Telephone: (403) 220-7329
Fax: (403) 282-8325
E-mail: koshan@ucalgary.ca

July 8, 2024

Government of Alberta

Tanya Fir, Minister of Arts, Culture & Status of Women, culture.minister@gov.ab.ca

Searle Turton, Minister of Children & Family Services, cfs.minister@gov.ab.ca

Mickey Amery, Minister of Justice, ministryofjustice@gov.ab.ca

Dear Honourable Ministers:

Please find attached a Submission from the Public Interest Law Clinic at the University of Calgary Faculty of Law. The submission is made in conjunction with the Alberta Government's development of a new 10-year strategy to end gender-based violence in Alberta.

Although Alberta has made good progress in its response to gender-based violence in some areas, we respectfully submit that the law and legal procedures on family violence in Alberta are in need of reform. More specifically, our submission details why the definitions of "family violence" in Alberta legislation should be broadened to include coercive control, emotional and financial abuse, and children's direct and indirect exposure to family violence, and why the exemption of corrective force against children should be removed. These amendments would align with modern understandings of family violence and contribute to access to legal remedies for survivors of violence in this province, primarily women and children.

We also respectfully submit that the government should reconsider its decision to reject the conditions for federal funding support for Unified Family Courts in this province. These Courts would contribute to a specialized judiciary better placed to handle cases involving family violence and would enhance access to justice for survivors of family violence.

We would be pleased to meet with representatives of the relevant Ministries to elaborate on our submission and the rationales for our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to be "JK" or similar initials.

Jennifer Koshan

Professor and Research Excellence Chair, Faculty of Law
Advisory Board member, Public Interest Law Clinic

cc. Diana Batten, Critic for Child & Family Services, Calgary.Acadia@assembly.ab.ca

Irfan Sabir, Critic for Justice, Calgary.Bhullar.McCall@assembly.ab.ca

Julia Hayter, Critic for Status of Women, Calgary.Edgemont@assembly.ab.ca

Submission on Family Violence Law to the Ministers of Arts, Culture and Status of Women, Children and Family Services, and Justice

Public Interest Law Clinic of the University of Calgary Faculty of Law

Written by Jennifer Koshan, Ampee Minhas, Athina Pantazopoulos & Sasha Reid

July 8, 2024

Introduction

This submission is made in response to the development of a new 10-year strategy to end gender-based violence in Alberta, part of Alberta's participation in the National Action Plan to End Gender-Based Violence (NAP).¹ As noted in Pillar 3 of the NAP, a Responsive Justice System is an important part of any such strategy. Although Alberta has made good progress in its response to gender-based violence in some legal areas, we respectfully submit that the law and legal procedures on family violence in Alberta are in need of reform. More specifically, we submit that the definitions of "family violence" in the *Family Law Act* and *Protection Against Family Violence Act* should be broadened to include coercive control, emotional and financial abuse, and children's direct and indirect exposure to family violence, and to remove the exemption of corrective force against children.² These amendments would align with modern understandings of family violence and contribute to access to legal remedies for survivors of violence. We also respectfully submit that the government should reconsider its decision to reject the conditions for federal funding support for Unified Family Courts (UFCs) in this province.³ UFCs would contribute to a specialized judiciary better placed to handle cases involving family violence and would enhance access to justice for survivors of family violence.

This submission begins in Part I with brief biographies of the institutional and individual authors. Part II provides background on family violence, the relevant family violence laws in Alberta and a comparison of Alberta laws with those in other jurisdictions, and discussion of UFCs. Part III provides our recommendations for reform of Alberta laws and legal procedures on family violence, and Part IV elaborates on the basis for our recommendations: legal certainty and access to justice, judicial efficacy and expertise, increased protection for survivors, and avoidance of constitutional challenges. In Part V we offer a brief conclusion.

¹ National Action Plan to End Gender-Based Violence (November 2022), online: <https://www.canada.ca/en/women-gender-equality/gender-based-violence/intergovernmental-collaboration/national-action-plan-end-gender-based-violence.html>; Canada-Alberta transfer payment agreement on the implementation of the National Action Plan to End Gender Based Violence (July 2023), online: <https://www.canada.ca/en/women-gender-equality/gender-based-violence/intergovernmental-collaboration/bilateral-agreements/alberta-agreement.html>.

² *Family Law Act*, SA 2003, c F-4.5; *Protection Against Family Violence Act*, RSA 2000, c P-27. Family violence is also a relevant consideration under the *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12, but that legislation is beyond the scope of our submission.

³ Janet French, "Federal government withdraws offer of 17 Alberta family court judges when province won't meet terms" (April 19, 2024), online: CBC, <https://www.cbc.ca/news/canada/edmonton/federal-government-withdraws-offer-of-17-alberta-family-court-judges-when-province-won-t-meet-terms-1.7178300>.

I. Who We Are

The Public Interest Law Clinic of the University of Calgary Faculty of Law was established in 2015 to give the community a stronger voice in, and more influence on, the direction of public law and policy in Alberta and Canada through legislative reform and strategic litigation.⁴

Jennifer Koshan is a Professor at the University of Calgary Faculty of Law and Research Excellence Chair in Family Violence.⁵ She gratefully acknowledges the University’s Research Excellence Chair program for its funding support of her research on family violence.

Dr. Sasha Reid is a developmental psychologist who also serves as an expert advisor for Justice for Girls, a non-profit organization dedicated to promoting social, economic, and environmental justice, alongside a commitment to ending violence in the lives of women and girls.⁶ Dr Reid, Ampee Minhas, and Athina Pantazopoulos contributed to this submission while they were upper year law students at the University of Calgary and clinical students at the Public Interest Law Clinic. Reid and Minhas were also students in Professor Koshan’s Gender-Based Violence and the Law course in Winter 2024.

II. Background

In November 2022, the federal government announced a new National Action Plan to End Gender-Based Violence.⁷ The Minister of Women and Gender Equality (WAGE) has developed bilateral agreements with all of the provinces, including Alberta in July 2023.⁸ Alberta is now engaged in the development of a 10-year strategy to end gender-based violence and support survivors.⁹ One of the five pillars of the NAP is a Responsive Justice System, and our submission focuses on the need for reform of selected Alberta laws and legal procedures dealing with family violence.¹⁰ First, we provide some context.

In the 2023 report “*On the Front Lines*,” the Alberta Council of Women’s Shelters (ACWS) documented a significant uptick in domestic abuse incidents across Alberta, noting an unprecedented 59,215 calls for assistance received by service providers from April 2022 to March 2023.¹¹ This figure represents the highest number of requests recorded by the ACWS in

⁴ For more information see <https://law.ucalgary.ca/clinics/public-interest-law>.

⁵ For more information see <https://law.ucalgary.ca/contacts/full-time-faculty/profiles/jennifer-koshan>.

⁶ For more information see <http://www.justiceforgirls.org/>.

⁷ National Action Plan, *supra* note 1.

⁸ Canada–Alberta transfer payment agreement, *supra* note 1.

⁹ See Government of Alberta, online: <https://www.alberta.ca/gender-based-violence-engagement#:~:text=Get%20informed,no%20matter%20where%20they%20live>.

¹⁰ In addition to our submissions about the definition of family violence in the *Protection Against Family Violence Act*, *supra* note 2, there are other needed reforms to that legislation, including the definition of “family member” and review procedures under the Act, but they are beyond our scope here. For discussion see Jennifer Koshan, “Preventive Justice? Domestic Violence Protection Orders and their Intersections” (2023) 35:1 Canadian Journal of Family Law 241.

¹¹ Alberta Council of Women’s Shelters, *On the Front Lines: Striving to End Domestic Violence and Abuse Together*, (2023), online: ACWS, https://acws.ca/wp-content/uploads/2023/11/ACWS-DataRelease2023_FINAL.pdf, at 3.

the last decade.¹² Notably, women accounted for 98.5% of those served in domestic violence shelters during this period, highlighting the gendered nature of this crisis.¹³ It is also well recognized that children’s direct and indirect exposure to domestic or intimate partner violence (IPV) is a form of family violence.¹⁴

This gender disparity aligns with findings from the latest Statistics Canada study on police-reported family violence from the year 2022, which revealed that women and girls comprised 78% of the victims of IPV.¹⁵ Statistics Canada also reported that the rate of police-reported family violence was nearly twice as high for girls as for boys in 2022, and from 2014 to 2022, family violence against children and youth increased by 38%, with a 43% increase for girls and a 27% increase for boys.¹⁶ In addition to the gendered nature of family violence, marginalized women and girls may experience such violence at higher rates, including those who are Indigenous, racialized, young, disabled, and 2SLGBTQ+.¹⁷

Family violence is a factor that is incorporated in the legal frameworks surrounding family law and protection order law in Alberta. It is explicitly made a consideration in the assessment of the best interests of the child for the purposes of parenting and contact orders under the *Family Law Act*, and it is the basis for issuing protection orders under the *Protection against Family Violence Act*. The legislative definition of family violence thus significantly shapes the considerations of decision-makers in these critical areas and in turn, whether appropriate legal remedies are available, underlining the importance of a comprehensive approach to family violence within legal assessments.

In Alberta, the *Family Law Act*’s section 18(3) defines family violence to include behaviors by a family or household member that either cause physical harm, attempt to cause physical harm, include forced confinement or sexual abuse, or instill a reasonable fear for personal safety.¹⁸ However, it specifically excludes the use of force for correcting a child by a guardian within

¹² *Ibid* at 14.

¹³ *Ibid* at 12.

¹⁴ Dianne Lalonde, Jassamine Tabibi & Linda Baker, “Trauma- and Violence- Informed Approaches: Supporting Children Exposed to Intimate Partner Violence” (March 2020) Learning Network Issue No #31, online: Centre for Research & Education on Violence Against Women & Children, https://gbvlearningnetwork.ca/our-work/issuebased_newsletters/issue-31/Newsletter_Issue_311.pdf.

¹⁵ Statistics Canada, “Trends in police-reported family violence and intimate partner violence in Canada, 2022” (21 November 2023), online: <https://www150.statcan.gc.ca/n1/daily-quotidien/231121/dq231121b-eng.htm>.

¹⁶ *Ibid*.

¹⁷ See e.g. Loanna Heidinger, *Intimate Partner Violence: Experiences of First Nations, Métis, and Inuit women in Canada, 2018* (2021), online: Statistics Canada, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00007-eng.htm>; Adam Cotter, *Intimate partner violence: Experiences of visible minority women in Canada, 2018* (2021), online: Statistics Canada, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00008-eng.htm>; Laura Savage, *Intimate Partner Violence: Experiences of women with disabilities in Canada, 2018* (2021), online: Statistics Canada, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00006-eng.htm>; Brianna Jaffray, *Experiences of violent victimization and unwanted sexual behaviours among gay, lesbian, bisexual and other sexual minority people, and the transgender population, in Canada, 2018* (2020), online: Statistics Canada, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00009-eng.htm>.

¹⁸ *Family Law Act*, *supra* note 2, s 18(3).

reasonable limits.¹⁹ It also does not explicitly include psychological and financial abuse or coercive and controlling violence, nor does it include a child's direct or indirect exposure to family violence as part of the definition. Similarly, the *Protection Against Family Violence Act* defines family violence without inclusion of psychological and financial abuse or coercive and controlling violence and it specifically excludes reasonable corrective force against children.²⁰ Alberta is the only Canadian jurisdiction to exclude disciplinary force towards children from its definition of family violence in family and protection order legislation.

In 2021, the Federal *Divorce Act* was amended to include a broad, comprehensive definition of family violence as relevant to the best interests of the child for the purposes of parenting and contact orders.²¹ This new evidence-based definition²² encompasses a wide spectrum of abusive behaviours beyond physical harm, including physical, sexual, psychological, and financial abuse, as well as specific references to children's direct or indirect exposure to such conduct. Notably, the definition explicitly includes conduct that constitutes a pattern of coercive and controlling behaviour.

Across Canada and internationally, there is a growing understanding of the need to integrate coercive control into the legal definitions of family violence.²³ It is also well recognized that children can be victims of coercive and controlling violence either directly, or by being exposed to such violence.²⁴ Key to the concept of coercive control is the idea that patterns of abusive behaviour may accumulate over time to impact the autonomy and safety of the survivor, as contrasted with the traditional focus on discrete incidents of physical violence.²⁵ Adapting the definition of family violence to coincide with our modern understanding of its various manifestations is an important step towards removing barriers to justice. Most other provinces have now aligned their family legislation with the *Divorce Act*,²⁶ including British Columbia,²⁷

¹⁹ It also excludes acts of self-protection or protecting others, which is an appropriate exclusion for victims seeking to protect themselves or their children. See *ibid*, s 18(3)(b).

²⁰ *Protection Against Family Violence Act*, *supra* note 2, s 1(1)(e).

²¹ *Divorce Act*, RSC 1985, c 3 (2nd Supp), s 2(1).

²² See Government of Canada, *Legislative Background: An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act (Bill C-78 in the 42nd Parliament)*, (28 December 2022), online: Justice Canada, <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/c78/03.html>; House of Commons Debates, 42nd Parl, 1st Sess, no 332 (4 October 2018) at 1120 (MP Randeep Sarai), online: Hansard, <https://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-332/hansard>.

²³ See e.g. Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (New York: Oxford University Press, 2007); Evan Stark and Marianne Hester, "Coercive Control: Update and Review" (2019) 25:1 Violence Against Women 81; Charlotte Barlow and Sandra Walklate, *Coercive Control* (Routledge, London, 2022).

²⁴ See e.g. Emma Katz, *Coercive Control in Children's and Mothers' Lives* (Oxford University Press, 2022).

²⁵ Janet Mosher, Shushanna Harris, Jennifer Koshan, and Wanda Wieggers, "Submission to Justice Canada on the Criminalization of Coercive Control" (October 30, 2023), online: SSRN, <https://ssrn.com/abstract=4619067>.

²⁶ See Jennifer Koshan, Janet Mosher and Wanda Wieggers, "A Comparison of Gender-Based Violence Laws in Canada: A Report for the National Action Plan on Gender-Based Violence Working Group on Responsive Legal and Justice Systems" (1 August, 2023) at 13-14, online: SSRN, <https://ssrn.com/abstract=3995519>.

²⁷ See, *Family Law Act*, SBC 2011, c 25, s 1.

Saskatchewan,²⁸ Manitoba,²⁹ Ontario,³⁰ New Brunswick,³¹ and Nova Scotia,³² reflecting a concerted effort throughout most Canadian provinces towards a more nuanced and harmonized legal recognition of family violence. Many provinces and territories with protection order legislation also include coercive control and/or psychological and financial abuse in their definitions of family violence.³³

Other Alberta legislation also appropriately provides for expansive definitions of family violence or “domestic violence.” Recent amendments to Alberta’s *Residential Tenancies Act* and *Employment Standards Code* include remedies for survivors of domestic violence, and unlike the *Family Law Act* and *Protection Against Family Violence Act*, they define that term broadly to include emotional and psychological abuse.³⁴ The lack of consistency across definitions of familial violence in Alberta may cause confusion and uncertainty as to whether legal remedies are available and may even lead to conflicting orders in some circumstances. For instance, because the *Protection Against Family Violence Act* defines “family violence” more narrowly than “domestic violence” in the *Residential Tenancies Act*, protection orders cannot provide verification for some of the forms of abuse – such as emotional abuse – that allow survivors to terminate their tenancies early.³⁵ Survivors therefore may need to engage with multiple legal systems and professionals to obtain protective remedies, illustrating how these discrepancies undermine the prevention of violence and protection of survivors and children.

Despite the momentum across Canada towards acknowledging the multifaceted nature of family violence, Alberta’s legislative frameworks remain a notable exception. The *Family Law Act* and *Protection Against Family Violence Act* in Alberta focus predominantly on physical violence, significantly overlooking the concepts of emotional and financial abuse and coercive control as well as children’s exposure to these and other forms of family violence. These omissions are particularly concerning given that a substantial majority, 76% of Albertans reporting domestic violence and seeking shelter or resources in 2022, sought assistance for non-physical forms of violence, including verbal, emotional, or psychological abuse.³⁶ Alberta’s narrow legal approach to family violence does not capture the intricate dynamics of domestic abuse. Specifically, it overlooks how often non-physical abuse precedes or coincides with physical violence, creating a cycle where each form of abuse intensifies the overall harm.³⁷ It also fails to recognize the harms that flow from coercive and controlling violence even when it does not occur alongside physical abuse.³⁸ For effective risk assessment and safety planning, legal actors should be obliged to

²⁸ See, *The Children’s Law Act, 2020*, SS 2020, c 2, s 2.

²⁹ See, *The Family Law Act*, CCSM c F20, s 1.

³⁰ See, *Children’s Law Reform Act*, RSO 1990, c C.12, s 18(1).

³¹ See, *Family Law Act*, SNB 2020, c 23, s 1.

³² See, *Parenting and Support Act*, RSNS 1989, c 160, s 2.

³³ Koshan et al, Comparison, *supra* note 26 at 4-5.

³⁴ *Residential Tenancies Act*, SA 2004, c R-17.1, ss 47.1–47.7; *Employment Standards Code*, RSA 2000, c E-9, s 53.981. These laws could also be usefully expanded to include coercive and controlling violence. For a discussion of best practices in these and other laws, see Koshan et al, Comparison, *supra* note 26.

³⁵ Comparison, *ibid* at 74-75.

³⁶ Alberta Council of Women’s Shelters, *supra* note 11, at 3.

³⁷ See Adam Cotter, *Canadian Centre for Justice and Community Safety Statistics, Intimate partner violence in Canada, 2018: An overview* (2021), online: Statistics Canada, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00003-eng.htm>.

³⁸ See Mosher et al, *supra* note 25 at 6-9.

consider how various forms of violence interact and converge – an understanding and acknowledgement of coercive control and its impact (primarily on women and children) is necessary to that understanding.³⁹ Alberta also stands alone in exempting corrective force used by parents against children from the definition of family violence, failing to align with modern views of children’s physical and emotional security.⁴⁰

The lack of legal recognition for the full spectrum of family violence in Alberta underscores an urgent need to expand both the understanding and legal frameworks addressing this issue within the province. The gaps in Alberta’s definition of family violence not only undermine the protection of individuals experiencing certain forms of violence but also place Alberta at odds with the evolving legal landscape across the country. This discrepancy in the standards of family violence protection particularly affects survivors (including children) in families where the parties were not married or seeking a divorce, who must rely on the *Family Law Act* rather than the *Divorce Act*. The result is an inconsistent and fragmented legal framework that fails to adequately protect survivors of violence in non-marital relationships. Consequently, this situation could provoke constitutional challenges under sections 7 or 15 of the *Canadian Charter of Rights and Freedoms*, spotlighting the critical need for legislative reform.⁴¹

Given this context, we respectfully submit that the Alberta *Family Law Act* and *Protection Against Family Violence Act* must be amended as follows: (1) to add financial and emotional abuse, coercive control, and children’s exposure to family violence within its definition of family violence, and (2) to delete the exemption for parents’ corrective force against children. These changes would not only bring these laws into harmony with the *Divorce Act* and similar family and protection order statutes across provinces and territories, but will better protect survivors by recognizing the full spectrum of abuse beyond just physical violence. As we argue in Part IV, these revisions will improve legal certainty by ensuring that the definition of family violence is consistent across legislation, as well as improve judicial efficacy by providing guidance on how the definition should be interpreted. By expanding the definition of family violence to capture its modern dimensions, Alberta will be in a position to better protect survivors from harm, and avoid potential constitutional challenges that may arise from an unequal application of the law. Overall, broadening Alberta’s *Family Law Act* and *Protection Against Family Violence Act* is a critical step necessary for achieving a more equitable and responsive legal system that fully recognizes the complexities of family violence.

We also respectfully submit that the government should accept the conditions for federal funding support for the establishment of Unified Family Courts (UFCs) in Alberta. UFCs streamline family law matters into a single superior court with enhanced jurisdiction,⁴² contributing to

³⁹ See: Jennifer Koshan, “Bill C-332 and the Criminalization of Coercive Control” (18 March 2024), online: ABlawg, <https://ablawg.ca/2024/03/18/bill-c-332-and-the-criminalization-of-coercive-control/>.

⁴⁰ See e.g. Jennifer Koshan and Wanda Wieggers, “Theorizing Civil Domestic Violence Legislation in the Context of Restructuring: A Tale of Two Provinces” (2007) 19 *Canadian Journal of Women & the Law* 145; Lana Wells et al. “How Public Policy and Legislation Can Support the Prevention of Domestic Violence in Alberta” (Calgary: Shift: The Project to End Domestic Violence, 2012) at 164.

⁴¹ *Canadian Charter of Rights and Freedoms*, Part 1 of *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

⁴² John-Paul Boyd, “The Unified Family Court: A Road-Tested Justice Strategy for Alberta” (November 5, 2014), online: Law Matters, <https://www.lawnow.org/unified-family-court-justice-strategy-alberta/>.

access to justice for survivors and a specialized judiciary that is better placed to handle the complexity of cases involving family violence. Research supports the importance of judicial expertise on family violence, as we elaborate in Part IV.⁴³

III. Recommendations

We recommend that the Government of Alberta:

- 1) Amend the definition of “family violence” in the *Family Law Act* to align with the definition of “family violence” in the *Divorce Act*. This could involve adopting the same definition or creating an equivalent definition which explicitly includes coercive control, psychological abuse, and financial abuse, as well as direct or indirect exposure of children to family violence;
- 2) Remove the exemption of “reasonable force” for the purpose of corrective action as currently outlined in section 18(3)(a) from the definition of “family violence” in the *Family Law Act*;
- 3) Amend the definition of “family violence” in the *Protection Against Family Violence Act* to be consistent with the definition in the *Family Law Act* as per recommendations 1 and 2.⁴⁴
- 4) Establish Unified Family Courts in Alberta to support the specialization of the judiciary in family violence matters and to enhance access to justice.

IV. Rationales for Recommendations

a. Legal Certainty and Access to Justice

Harmonizing the definitions of family violence within Alberta and across all legislative frameworks in Canada is an essential step toward ensuring legal certainty, consistent and equitable application of the law, and enhanced access to justice.

Family violence in Canada is addressed through a number of intersecting legislative frameworks. Federally, if the issues pertain to the issuance of parenting and contact orders for parties who were married and are seeking a divorce, family violence is addressed through the *Divorce Act*. Provincially, in the context of parenting orders outside of a divorce, family violence will be considered under the *Family Law Act*, and under the *Protection Against Family Violence Act* for the issuance of protection orders. As noted above, family violence is also relevant in the context of landlord-tenant relations under the *Residential Tenancies Act* and in the context of employment leave under the *Employment Standards Code*. Unfortunately, in each of these pieces of legislation, family or domestic violence is defined differently and is subject to an array of various and inconsistent interpretations.

The patchwork of definitions for family violence across Alberta’s legal frameworks introduces significant legal uncertainty, undermining access to justice for victims. In the context of family

⁴³ See e.g. Donna Martinson and Margaret Jackson, “Family violence and evolving judicial roles: Judges as equality guardians in family law cases” (2017) 30 Canadian Journal of Family Law 11.

⁴⁴ The addition of a “self-defence” exception in the *Protection Against Family Violence Act*, as per the *Family Law Act*, would also be a useful amendment to avoid inconsistency.

violence, access to justice includes both procedural and substantive notions of fairness and safety for survivors and children.⁴⁵ By harmonizing the definitions of family violence in Alberta’s *Family Law Act* and *Protection Against Family Violence Act* with the broader federal definition in the *Divorce Act*, a singular, coherent understanding of family violence can be established. This alignment would ensure that victims receive consistent legal protection, regardless of the specific context in which they seek legal remedies. Furthermore, legal certainty through harmonization supports the broader principle of access to justice by making the law more predictable, ensuring that legal decisions are based on clear, consistent standards, rather than differing interpretations of various definitions.

b. Judicial Efficacy and Expertise

The variation in family violence definitions within Alberta laws and between Alberta and federal legislation complicates legal proceedings for survivors and burdens the judicial system, as courts grapple with these inconsistencies. Courts in Alberta have already encountered the challenges posed by the current definitions of family violence and there are inconsistent judicial decisions in this area. For instance, in *Gray v Gougen*, counsel for the applicant mother highlighted the modern understanding of family violence as reflected in the amendments to the *Divorce Act*, urging the court to adopt this broader definition under the *Family Law Act*. Although sympathetic, the Court deferred the responsibility for such a legislative change to the Provincial Legislature, stating: “While I am sympathetic to the Applicant’s suggestion...I do [not] believe that it is open to me to expand the clear definition of family violence set forth in the *Family Law Act*. That is a matter for the consideration of the Provincial Legislature.”⁴⁶ In contrast, in *ST v KT*, another case involving the *Family Law Act*, the Court applied the *Divorce Act* approach to family violence, stating that “[t]he definition of “family violence” in the *Divorce Act* includes psychological abuse and financial abuse. If the parenting application had been brought under the *Divorce Act*, psychological and financial abuse would have been possible considerations for the court. The recognition of psychological abuse and financial abuse as forms of family violence under the *Divorce Act* is significant.”⁴⁷

Cases like these illustrate the difficulty for the judiciary when faced with differing legislative definitions of family violence – for example, some of which recognize psychological and financial abuse and coercive control and some of which do not. Harmonizing definitions across legislation would significantly reduce this type of inconsistency and enhance judicial efficiency. Courts would need to spend less time interpreting and reconciling differing definitions, which would lead to faster case resolutions and more efficient allocation of resources.

Unified Family Courts would also improve judicial efficiency by providing a dedicated court with expertise on family law issues, including those related to family violence. Family law and family violence are complex areas of law in which generalist judges may not have adequate expertise, aptitude, or interest.⁴⁸ Judicial expertise on family violence is also linked to the

⁴⁵ Jennifer Koshan, Janet Mosher & Wanda Wiegers, “The Costs of Justice in Domestic Violence Cases” in Trevor Farrow and Les Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (UBC Press, 2020) 149; Martinson and Jackson, *supra* note 43 at 12.

⁴⁶ *Gray v Gougen*, 2022 ABQB 273 at para 115.

⁴⁷ *ST v KT*, 2021 ABPC 167 at para 81.

⁴⁸ Martinson and Jackson, *supra* note 43 at 13.

obligation of judges “to ensure fair and just outcomes” and access to justice for survivors of family violence.⁴⁹ This is the case not just for matters that go to hearing, but also for judicial dispute resolution processes.⁵⁰ As recognized in a recent report on family violence from British Columbia, legislative change must be accompanied by other changes to the family law system in order to change “underlying attitudes and assumptions” about family violence.⁵¹ A harmonized, broader definition of family violence and enhanced judicial expertise will also contribute to better protection of survivors, as we address in the next section.

c. Increased Protection Against Family Violence

The value of adopting a broad definition of family violence is evident when examining the outcomes in jurisdictions that have already done so, like British Columbia.

British Columbia adopted an expansive definition of family violence in their *Family Law Act* in 2013.⁵² By providing a broader understanding of what constitutes family violence, the Act has enabled judges to more accurately and effectively address the complexities involved in parenting matters, particularly concerning the best interests of children within family law contexts. For example, a broadened understanding of family violence in British Columbia was found to positively influence judges’ readiness to recognize and affirm the presence of family violence in their rulings.⁵³ The obligation for judges to consider the intricate, evolving, and frequently concealed aspects of family violence, especially its impact on children, has strengthened the courts’ focus on children’s safety, security, and well-being in family law matters.⁵⁴ This approach aligns judicial decision-making more closely with the realities of family violence, ensuring more informed and protective outcomes for affected children.

Adopting a broader definition of family violence to include emotional and financial abuse, coercive control, and children’s direct and indirect exposure to family violence could also address systemic biases in the family law system based on gender and intersecting inequalities.⁵⁵ For example, a broader definition of family violence may help courts to distinguish between protective parental actions and allegations of parental alienation.⁵⁶ By recognizing the non-

⁴⁹ *Ibid* at 12.

⁵⁰ *Ibid*.

⁵¹ Haley Hrymak and Kim Hawkins, “Why Can’t Everyone Just Get Along? How BC’s Family Law System Puts Survivors in Danger” (January 2021), online: Rise Women’s Legal Centre, <https://www.womenslegalcentre.ca/wp-content/uploads/2021/01/Why-Cant-Everyone-Just-Get-Along-Rise-Womens-Legal-January2021.pdf>.

⁵² *Family Law Act*, SBC 2011, c 25.

⁵³ Susan B Boyd & Ruben Lindy, “Violence Against Women and the B.C. Family Law Act: Early Jurisprudence” (2016) 35:2 Canadian Family Law Quarterly 101.

⁵⁴ *Ibid*; See also Deanne Sowter and Jennifer Koshan, “Judging Family Violence: Recommendations for Judicial Practices and Guidelines in Family Violence Cases” (December 20, 2021), online: ABlawg, http://ablawg.ca/wp-content/uploads/2021/12/Blog_DS_JK_Family_Violence_Dec_2021.pdf.

⁵⁵ Martinson and Jackson, *supra* note 43.

⁵⁶ The tendency to frame the actions of women in situations of family violence as “parental alienation” in Canadian Courts is well documented. See e.g., Linda C Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research, 2018); Elizabeth Sheehy & Susan B Boyd, “Penalizing women’s fear: intimate partner violence and parental alienation in Canadian child custody cases” (2020) 41:1 Journal of Social Welfare and Family Law 80; Jennifer Koshan, “Family Violence and Family Law in Alberta: The Need for Legislative Reform and Expansive Statutory Interpretation”

physical aspects of abuse, such as intimidation, degradation, isolation, and control, a broader definition could also help circumvent the problem of systemic biases that act as barriers to justice for women in family law contexts by countering the skepticism and discrimination women often face when raising concerns about family violence.⁵⁷ The need to eliminate discriminatory myths and stereotypes about survivors of gender-based violence has been recognized by the Supreme Court of Canada and appellate courts in family law cases.⁵⁸ Adopting a broader definition of family violence, including coercive control and its impact on children, explicitly equips the judiciary with essential tools to better evaluate and respond to the reality of family violence in such a way that the safety and well-being of survivors and their children are prioritized.

A broader definition of family violence will also better protect survivors and children in protection order proceedings. Protection orders are often the first remedy sought by survivors who experience or are at risk of family violence, but the current exclusion of emotional and financial abuse, coercive control, and children's direct and indirect exposure to family violence from the definition of family violence limits the availability of this preventive remedy.⁵⁹ The *Protection of Family Violence Act* also contains judicial review procedures that safeguard against any concerns that a broad definition of family violence may be over-used.⁶⁰

Children's safety and security are also important considerations in modern understandings of family violence. The "reasonable corrective force" exception within Alberta's *Family Law Act* and *Protection Against Family Violence Act* allows parents and caregivers of children to apply physical force against a child with legal impunity. The *Family Law Act* makes the application of such force an express exception to family violence,⁶¹ while the *Protection Against Family Violence Act* excludes such force from the definition of "family violence."⁶²

These exceptions are contrary to well-documented evidence that corporal punishment is a form of child physical abuse that undermines the safety and well-being of children. Research shows that even "mild" corporal punishment and physical abuse more traditionally viewed as extreme are part of the same spectrum of behaviour and that the patterns of escalation in violence experienced by victims of intimate partner violence apply in equal force to children experiencing physical abuse.⁶³

This issue has seemingly been recognized across other provincial and territorial jurisdictions across Canada; as noted above Alberta is the only province where such an exception exists. In their current form, the Alberta *Family Law Act* and *Protection Against Family Violence Act* are insufficient to protect children and youth from physical abuse, even if it is framed as "reasonable

(November 3, 2021), online: ABlawg, http://ablawg.ca/wp-content/uploads/2021/11/Blog_JK_Family_Violence_Family_Law_Alberta.pdf.

⁵⁷ See Jennifer Koshan, "Challenging Myths and Stereotypes in Domestic Violence Cases" (2023) 35:1 Canadian Journal of Family Law 33; Martinson and Jackson, *supra* note 43 at 34-35.

⁵⁸ See e.g. *R. v. Kruk*, 2024 SCC 7; *K.M.N. v S.Z.M.*, 2024 BCCA 70.

⁵⁹ Preventive Justice, *supra* note 10.

⁶⁰ *Protection of Family Violence Act*, *supra* note 2, s 3.

⁶¹ *Family Law Act*, *supra* note 2, s 18(3)(2).

⁶² *Protection Against Family Violence Act*, *supra* note 2, s 1(1)(e).

⁶³ See e.g. Mary Bower Russa & Christina M. Rodriguez, "Physical discipline, escalation, and child abuse potential: psychometric evidence for the Analog Parenting Task" (2010) 36:4 Aggressive Behavior 251.

correction”. The exceptions in both Acts that allow for physical force to be used against a child are not in keeping with modern understandings of family violence,⁶⁴ and pave the way for problematic perpetuations of gender-based violence given the disproportionate level of family violence against girls.

d. Constitutional Challenges

Family violence issues inherently encompass equality considerations because family violence is a form of gender-based violence experienced disproportionately by women and girls, especially those experiencing intersecting inequalities.⁶⁵ Under section 15 of the *Charter*, every individual has the right to the equal protection and equal benefit of the law without discrimination. As a result, the Alberta government is bound by the *Charter* to ensure that provincial legislation does not create unequal legal protection for one group of people based on their personal characteristics. Many of these characteristics, or grounds of discrimination, are enumerated in section 15, and other analogous grounds have been confirmed in case law. The overarching test for section 15 is whether the challenged law (1) creates a distinction based on enumerated or analogous grounds, on its face or in its impact; and (2) imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.⁶⁶

In the case of Alberta law, the more restrictive definition of family violence set out in the *Family Law Act* as compared to the federal *Divorce Act* creates an unequal application of the law that is dependent on whether parties in a situation of family violence are undergoing a divorce. Where the family member who is victim of family violence is married to the perpetrator of violence and is seeking a divorce, the definition of family violence in the *Divorce Act* would apply. Where the family member is not married to the perpetrator of violence or is not seeking a divorce, the narrower definition in the *Family Law Act* would apply. These different standards constitute unequal treatment under section 15 of the *Charter* based on marital status or family status.⁶⁷ The exception for reasonable corrective force towards children in the *Family Law Act* and the *Protection Against Family Violence Act* also denies equal protection of the law on the basis of age and family status. And because women and girls are the disproportionate victims of family violence, these deficiencies in the legal definitions of family violence constitute gender discrimination as well.

The narrow definitions of family violence in the *Protection Against Family Violence Act* and the *Family Law Act* also have the potential to infringe the right to security of the person of survivors and children under section 7 of the *Charter*. Our focus in this submission is on section 15 equality rights, however.

⁶⁴ Report of the independent expert for the United Nations study on violence against children (29 August 2006), UN General Assembly A/61/299.

⁶⁵ Martinson and Jackson, *supra* note 43 at 12-13.

⁶⁶ *Fraser v Canada (Attorney General)*, 2020 SCC 28 at para 27; *R. v. Sharma*, 2022 SCC 39 at para 28.

⁶⁷ For discussion of the division of powers issues implicated in this argument, see Jennifer Koshan and Jonnette Watson Hamilton, “The Right to Support for Adult Children with Disabilities” (February 22, 2019), online: ABlawg, http://ablawg.ca/wp-content/uploads/2019/02/Blog_JK_JWH_Ryan_Pitchers_Feb2019.pdf.

i. Marital Status

Marital status was accepted by the Supreme Court of Canada as a prohibited ground of discrimination under section 15 in 1995 in *Miron v Trudel*.⁶⁸ This recognition was justified because unmarried partners constitute an historically disadvantaged group in our society, and for a number of reasons, including social, financial, and religious factors, marital status is often beyond an individual's effective control. In her concurring judgment, Justice Claire L'Heureux Dubé stated that “the consequences of excluding unmarried persons from the benefits or protections of the law will generally be experienced more severely by the dependent spouse, who is still all too often female.”⁶⁹ This consideration is especially relevant in situations of coercive control and family violence, where the controlling or abusive party may be dictating the form of the relationship.

The *Family Law Act*, in its impact, creates a distinction based on marital status in its current form. The narrow definition of “family violence” limits courts in their consideration of emotional and financial abuse and patterns of coercive and controlling behaviour when making determinations for parenting orders. This can result in situations where survivors are forced to have ongoing contact with abusive ex-partners and may be put in dangerous situations where coercion is allowed to continue despite the presence of family violence. As the Honorable Kelvin Goertzen (Minister of Justice and Attorney General for Manitoba) indicated in his presentation to the Legislative Assembly of Manitoba when amending their own family law legislation, unequal definitions of “family violence” may push individuals seeking legal intervention to make choices that they would not otherwise make to ensure that they are able to benefit from the broader definition in federal legislation.⁷⁰ And not everyone has such choices. This distinction is discriminatory because it exacerbates existing disadvantages experienced by victims of domestic violence in unmarried partner relationships, who are disproportionately women.

ii. Family Status

Both the *Family Law Act* and the *Divorce Act* stipulate that family violence is a factor relevant to determining the best interests of the child for the purposes of parenting and contact orders. However, the disparate definition of family violence between the two Acts has the potential to impact the rights of children in situations of family violence. This would constitute a distinction based on family status, as children whose parents are unmarried or not seeking divorce and are governed by the *Family Law Act* would not benefit from the consideration of emotional or financial abuse, coercive control, or children's exposure to family violence in determining their best interests in parenting arrangements. This denial of equal benefit and protection of the law exacerbates disadvantage, given that children are a historically disadvantaged group.⁷¹ This is

⁶⁸ *Miron v. Trudel*, [1995] 2 SCR 418.

⁶⁹ *Ibid* at para 107; see also the reasons of Abella J in *Quebec (Attorney General) v. A*, 2013 SCC 5.

⁷⁰ Manitoba, Legislative Assembly, *Hansard*, “Bill 17—The Family Law Act, The Family Support Enforcement Act and The Inter-jurisdictional Support Orders Amendment Act”, 42nd Leg, 4th Sess, Vol 61 (1 June 2022), online: Government of Manitoba, https://www.gov.mb.ca/legislature/hansard/42nd_4th/vol_61/h61.html#_Toc105059855.

⁷¹ *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4 at para 225 (Deschamps J, dissenting but not on this point); *R. v. C.P.*, 2021 SCC 19 at para 85.

especially so for children whose parents are not married, a principle that is also recognized in the *Convention on the Rights of the Child*.⁷²

While family status has not to date been recognized by the Supreme Court of Canada as an analogous ground under section 15, lower courts, including the Court of King's Bench in Alberta, have considered that there is a strong argument to be made in favour of its recognition. In *Thibaudeau v. Canada*,⁷³ the majority of the Federal Court of Appeal and minority at the Supreme Court of Canada found that the fact that family status was included as a prohibited ground of discrimination in most human rights statutes in Canada (including the *Alberta Human Rights Act*⁷⁴) confirmed that it was analogous in nature to section 15's enumerated grounds. Additionally, in *D.W.H. v. D.J.R.*, Justice Bensler cites a number of lower court decisions in which family status is accepted as an analogous ground.⁷⁵ Family status arguably does meet the test for recognition as an analogous ground set out in *Corbiere*,⁷⁶ and the matter is not definitively closed as the Supreme Court is open to considering family status in a future case.⁷⁷ Children's lack of access to protection from family violence due to a narrow legal definition thus constitutes discrimination based on their family status.

iii. Age

The exception for disciplinary force towards children in the *Family Law Act* and the *Protection Against Family Violence Act* definitions of family violence also constitutes discrimination. Only children are permitted to be subjected to corrective physical force with legal impunity, creating a distinction in legal treatment based on their age and relationship to the perpetrator (i.e. their family status). While a similar provision in the *Criminal Code* was found to be constitutionally sound by a majority of the Supreme Court twenty years ago, understandings of family violence and of equality have evolved since that time.⁷⁸ As recognized in a United Nations report on violence against children, "No violence against children is justifiable."⁷⁹ We respectfully submit that if the matter were to be reconsidered today, courts would be likely to find that defences or exceptions to the legal definition of assault or family violence that exclude children would amount to a violation of section 15 of the *Charter*. The exacerbation of children's vulnerability and status as a historically disadvantaged group would likely prevail in this context.

iv. Gender

Because women and girls are the disproportionate victims of family violence, the deficiencies in the legal definitions of family violence highlighted throughout this brief also constitute gender

⁷² *Convention on the Rights of the Child*, Canadian Treaty Series 1992 No 3, article 2.

⁷³ *Thibaudeau v Canada*, [1994] 2 FC 189 at 211; [1995] 2 SCR 627 (McLachlin and L'Heureux Dubé, JJ, recognizing separated or divorced custodial parents as an analogous ground).

⁷⁴ *Alberta Human Rights Act*, RSA 2000, c A-25.5.

⁷⁵ *DWH v DJR*, 2011 ABQB 608 at paras 26-30.

⁷⁶ *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203.

⁷⁷ See *Fraser*, *supra* note 66 at para 123; Jennifer Koshan, "Intersections and Roads Untravelled: Sex and Family Status in *Fraser v Canada*" (2021) 30:2 Constitutional Forum 29.

⁷⁸ *Canadian Foundation for Children, Youth and the Law*, *supra* note 71, upholding s 43 of the *Criminal Code*, RSC 1985, c C-46.

⁷⁹ *Supra* note 64, para 1.

discrimination. This characterization is supported by recent Supreme Court of Canada case law recognizing gendered adverse effects discrimination and discriminatory treatment of women who are victims of gender-based violence.⁸⁰ Narrow definitions of family violence perpetuate and exacerbate the inequalities faced by women and girls, particularly those who are marginalized based on Indigeneity, racialization, disability, and other intersecting grounds.

V. Conclusion

The Alberta government has a crucial opportunity to amend its definitions of family violence as part of its 10-year strategy to end gender-based violence. Taking action on this critical issue would ensure that Alberta's laws are consistent with each other and that Alberta does not fall behind other jurisdictions in its prevention of family violence and protection of survivors. We would be pleased to meet with representatives of the relevant Ministries to elaborate on our submission and the rationales for our recommendations. We urge you to consider the legal reforms we have outlined here for the benefit of children, families, and survivors of family violence in Alberta.

⁸⁰ See *Fraser*, *supra* note 66; *Kruk*, *supra* note 58.