

STUDY PAPER ON

UNDERSTANDING ECONOMIC ABUSE THROUGH FAMILY BUSINESSES IN FAMILY LAW



Study Paper on Understanding Economic Abuse through Family Businesses in Family Law

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The British Columbia Law Institute was created in 1997 by incorporation under the provincial *Society Act*. Its purposes are to:

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 - promote improvement of the administration of justice and respect for the rule of law, and
 - promote and carry out scholarly legal research.
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Introductory Note

Study Paper on Understanding Economic Abuse through Family Businesses in Family Law

The British Columbia Law Institute has an ongoing commitment to undertaking law reform projects that consider how the law impacts the lives of children and families in British Columbia. In recent years, we have published reports that review the law of parentage in Part 3 of the *Family Law Act*, the pension division provisions in Part 6 of the *Family Law Act*, and that consider ways to modernize the *Child, Family and Community Service Act*.

Family violence is an ongoing concern across Canada, and economic abuse is a form of family violence that is not as well defined or understood in legal literature or case law.

This study paper looks at the relationship between economic abuse and family businesses in family law. It seeks to clarify the nexus between family violence and family businesses by exploring ways in which family businesses are vulnerable to economic abuse. It also highlights common behaviours that can occur.



Edward L. Wilson
Chair,
British Columbia Law Institute
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EXECUTIVE SUMMARY

An overview of economic abuse through family businesses

Economic abuse is one form of family violence. Where there is a family business, it can be used to perpetrate economic abuse. When these families experience breakdown, economic abuse becomes especially relevant to support and division of assets/debts. There is a myriad of challenges on family breakdown, many of which engage family businesses. It is important that legal actors can identify this kind of violence to ensure just and fair legal outcomes. However, at present, this issue is not well defined or understood in legal literature or case law.

The goals of this study paper

This paper is intended to increase understanding of economic abuse through family businesses, and how it presents and is addressed in family law cases. This objective is achieved through an analysis of this type of violence, and the legal reaction to it. BCLI attempts to answer the following questions: What is economic abuse? What is the relationship between economic abuse and family businesses? How are family law cases addressing economic abuse through family businesses? What are the challenges to addressing this type of violence?

These questions are answered through a descriptive analysis of social science, legal research, case law, and key informant discussions. These tools aim to give the reader a basic understanding of the issue and its challenges.

Summary of the study paper

This study paper is organized into six chapters, each focusing on a distinct aspect of the topic.

Chapter 1 introduces the subject, outlining the purpose of the study and the methodology employed.

Chapter 2 provides an understanding of economic abuse and its connection to family businesses. It explores why businesses are vulnerable to economic abuse and highlights common behaviours that occur within this context.

Chapter 3 considers legal context relevant to future chapters. First, the chapter explores the legislative history of the *Family Law Act* and the legislative intent in its creation. Second, it examines principles and values that underpin family law generally and how they interact with situations of family violence.

Chapter 4 offers an overview of the legal frameworks currently employed in family law cases to address economic abuse within family businesses. It examines the intersection of family and business law, with a focus on how these legal mechanisms have been applied in relevant cases.

Chapter 5 discusses the challenges in addressing economic abuse in family businesses. These challenges are drawn from case law analysis and insights gained through discussions with key informants.

Chapter 6 concludes the paper by summarizing the key observations and proposing potential areas for further research and analysis.

Chapter 1: Introduction

Framing the issue

Family violence has been identified as a significant and ongoing crisis in Canada.¹ It can happen to anyone, regardless of socioeconomic status, education, race, sexual orientation, gender identity, or family configuration.² Research demonstrates that women are disproportionately affected by family violence. Forty-four percent of women³ in Canada have reported experiencing some kind of violence in their intimate relationships.⁴

Family violence is often understood as physical and sexual violence.⁵ However, this understanding is incomplete.⁶ Social science, and increasingly law, has come to understand family violence through the lens of coercive control.⁷

¹ Government of Canada, “The Government of Canada issues statement to urge everyone to ‘Come Together, Act Now’ to end gender-based violence in Canada” (25 November 2024), online: <<https://www.canada.ca/en/women-gender-equality/news/2024/11/the-government-of-canada-issues-statement-to-urge-everyone-to-come-together-act-now-to-end-gender-based-violence-in-canada.html>>; Mass Casualty Commission, “Final Report of the Mass Casualty Commission Recommendations” online (pdf): <<https://masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-List-of-Recommendations.pdf>>; Kevin Dougherty, “Criminalizing coercive control”, *National Magazine* (9 December 2024), online: <<https://www.nationalmagazine.ca/en-ca/articles/law/in-depth/2024/criminalizing-coercive-control>>.

² Department of Justice Canada, “HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisors” (2021), online (pdf): <<https://www.justice.gc.ca/eng/fl-df/help-aide/docs/help-toolkit.pdf>> [HELP].

³ Gendered language is used because it was used in the research. It did not include statistics for non-binary or trans people.

⁴ Government of Canada “Fact Sheet: Intimate Partner Violence” (July 2024), online: <<https://www.canada.ca/en/women-gender-equality/gender-based-violence/intimate-partner-violence.html>>.

⁵ Ministry of Attorney General, “Family Law Act Modernization Project: Care of and Time with Children & Protection from Family Violence Discussion Paper – Chapter 5: Family Violence & Protection Orders” (January 2024) at 5-7, online: <<https://engage.gov.bc.ca/app/uploads/sites/121/2024/01/Chapter-5.pdf>> [Discussion Paper].

⁶ Evan Stark, “Rethinking coercive control” (2009) 15:12 *Violence Against Women* 1509 at 1510.

⁷ *Divorce Act*, RSC 1985, c 3 (2nd Supp.) 183 at s 2(1). See also: Parliament of Canada, “Bill C-332” online: <<https://www.parl.ca/DocumentViewer/en/44-1/bill/C-332/third-reading>>.

Coercive control is defined by two elements - coercion (e.g. threats, intimidation, fear) and control (e.g. subordination, enforced dependency, power over).⁸ In practice, this looks like someone “making demands and tacitly or explicitly threatening harm for failure to comply.”⁹ This behavioural pattern over time has significant impacts on a victim/survivor, who often must subjugate their own wants, needs, and values to maintain safety. As time passes, victim/survivors often have less autonomy or ability to resist the violence.

A person without resources is in a much weaker position to resist violence. Resources take many forms, for example relationships, a profession, self-confidence, or material resources. For this reason, a person can “wear down resistance by limiting and depleting these resources.”¹⁰ Economic abuse is a key piece in breaking a victim/survivor’s resistance. “[E]conomic abuse is an effective control tactic because it limits [someone’s] economic resources, thereby restricting their autonomy/space for action and ability to combat the abuse.”¹¹

When there is a family business, the business can become a tool of coercive control. How this looks will change as the relationship changes. During the relationship, the victim/survivor may be forced to work for the company without pay. During separation, a victim/survivor may be fired from the company or removed as a shareholder or director without their knowledge or consent. After separation, a person may move money and assets out of the business to personal accounts or trusted third parties to defeat the victim/survivor’s access or claims. All of these behaviours represent economic abuse. The conduit for these behaviours is the family business. The purpose of these behaviours is to control and dominate the victim/survivor.

It is within this context that we arrive at the topic of this study paper.

⁸ Evan Stark, “The Coercive Control Context” (2021) at 6, online (pdf): <https://www.flcourts.gov/content/download/851821/file/PP%20Evan%20Stark%20March%202021.pdf>.

⁹ Adrienne E Adams et al, “The Revised Scale of Economic Abuse (SEA2): Development and Initial Psychometric Testing of an Updated Measure of Economic Abuse in Intimate Relationships” (2020) 10:3 *Psychology of Violence* 268 at 269 [Adams 2020].

¹⁰ *Ibid.*

¹¹ *Ibid.*

Purpose and scope

The legal community and victim/survivors are increasingly sharing stories of how family businesses are being used to perpetrate economic abuse in family law cases. Despite the prevalence of these stories, the problem is currently vague, undefined, and largely below the radar of scholars and organizations. Very few papers have been published.¹² Case law involving a family business and family violence is equally hard to locate.¹³ Very few of the cases specifically identify that a family business is being used for economic abuse.

The purpose of this study paper is to investigate (1) the connection between economic abuse and family businesses, and the implications of this connection on family breakdown, and (2) the legal response.

We attempt to achieve this purpose by asking and answering the following questions: What defines economic abuse? How does economic abuse relate to family businesses? How are family law cases handling economic abuse in the context of family businesses? What challenges exist in addressing this form of violence?

The scope of this paper is limited by several parameters. First, the analysis is focused on British Columbia—though sources from other locations are referenced where helpful. Second, our investigation only considers family law cases. The scope is also impacted by the extremely limited literature and research on this topic. This has implications for our analysis.

Methodology

This study paper relies primarily on two sources of information to inform its analysis.

Case Law

We reviewed a sample of relevant cases, which were determined to have three main features: (1) reference to the BC *Family Law Act* and, if possible, the BC *Business*

¹² See for example: R McKay White, "Access to Justice for Victims of Economic Exploitation" (2024) 61:3 Alta L Rev 549. This author expressed similar challenges in locating relevant materials.

¹³ Searches were conducted on LexisNexis and CanLII between April and August of 2024. An example search string: All of Canada ("domestic violence" OR "intimate partner violence" OR "family violence") AND (("financial" OR "economic") /5 ("abuse" OR "violence")) AND "family" /1 (business OR corp* OR company).

Corporations Act, (2) allegations of family violence; and (3) the presence of a family business.¹⁴ This was not intended to be a comprehensive survey of all relevant Canadian decisions. The cases selected are instructive examples of this issue.¹⁵ Case law research has inherent limitations. Only a small subset of cases are reported. Reported cases only contain information the judge deems relevant for their determinations. For example, several cases report allegations of family violence with no further information or analysis. Finally, case law analysis is potentially triggering for families represented by these cases. Using people's most traumatic experiences to draw legal conclusions poses a risk of harm.

Key Informants

A key informant is an individual who has donated their time and knowledge for the benefit of this research. For this study, we spoke to fifteen different organizations and individuals, including:

- Family law lawyers;
- Business lawyers;
- Tax lawyers;
- Accountants;
- Bankers;
- People with lived experience (victim/survivors, both spouses and adult children);
- Government agencies;
- Advocacy organizations.

Key informants were asked standardized questions with the liberty to provide further information they deemed relevant. Interviews lasted roughly one hour and

¹⁴ These criteria exclude cases that may indeed be relevant. For example, *Fornwald v Fornwald*, 2023 BCSC 1322 has indicators of economic abuse through family businesses. See para 48, where the court states: "After separation, in approximately 2015, Mr. Fornwald began to divert family business assets, revenue, goodwill and business to PC Crane, a company he owned solely. During the period PC Crane was growing as a business, Mr. Fornwald told Ms. Uberall that there was little business or money. Ms. Uberall was unaware family business assets were being transferred to Mr. Fornwald's own business, PC Crane, over a period of five years." However, this case does not mention family violence.

¹⁵ For example, some instructive cases from BC include: *GKD v CSD*, 2021 BCSC 367; *Hokhold v Gerbrandt*, 2014 BCSC 1875; *KRW v PMM*, 2023 BCSC 981; *Leclerc v Leclerc*, 2015 BCJ No 290; *Loss v Walters*, 2024 BCSC 1012; *MWB v ARB*, 2013 BCSC 885; *Singh v Singh*, 2018 BCSC 1513; *Wang v Mitchell*, 2024 BCSC 988; *YZ v AC*, 2019 BCSC 1564. Instructive cases from other jurisdictions include: *Dobson v Green*, 2012 ONSC 4432; *KK v MM*, 2021 ONSC 3975; *Lakhtakia v Mehra*, 2022 ONSC 201; *OCW v TKM*, 2022 ONCJ 82; *RSK v AMA*, 2013 ONSC 1148.

were conducted over Zoom. Confidentiality is a key aspect of the key informant model. This encourages open dialogue on experiences, roadblocks, and barriers. BCLI's independent status is another key element. Key informants confirmed that they were more willing to share concerns and issues with an independent research organization. There are inherent limitations with the key informant model. The information shared is the perspective of the individual. For example, personal experiences are not factually verified or reviewed for biases. Nevertheless, key informants are an important supplement to other research sources, as they provide real world experience to ground legal and social science theory.

Family Law Act Modernization Project

The BC Ministry of Attorney General is conducting the *Family Law Act* Modernization Project with the primary goal of reviewing the provisions of the *Family Law Act* ¹⁶ to determine whether amendments are needed to reflect the many societal changes that have happened since it came into force in 2013.¹⁷

BCLI has undertaken several projects that align with the work being undertaken by the Ministry. These are independent projects that consider similar subject matter. Phase 1 of the Ministry's project reviewed property division, pensions, and spousal support. BCLI contributed through its examination of part 6 of the *Family Law Act* on pension division.¹⁸ Phase 2 of the Ministry's project is focused on care of children, family violence, and protection orders. BCLI has undertaken work on parentage, in reviewing part 3 of the *Family Law Act*.¹⁹ Similarly, this study paper considers the issue of family violence in the context of family businesses. Both the pension division and parentage reviews were multi-year projects focused on making

¹⁶ *Family Law Act*, SBC 2011, c 25.

¹⁷ Ministry of Attorney General, "Family Law Act Modernization Project Phase 2: Care of and Time with Children & Protection from Family Violence What We Heard" at c 5, online (pdf): <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/legislation-policy/fla/family_law_act_modernization_phase_2_what_we_heard_report.pdf> [Consultation].

¹⁸ *Family Law Act*, *supra* note 16 at ss 110-145. See British Columbia Law Institute, *Report on Pension Division: A Review of Part 6 of the Family Law Act*, Report 91 (2021), online (pdf): <<https://www.bcli.org/wp-content/uploads/2021/03/2021-03-16-Pension-Division-report.pdf>>.

¹⁹ See British Columbia Law Institute, *Report on Parentage: A Review of Parentage under Part 3 of the Family Law Act*, Report 95 (2024), online (pdf): <https://www.bcli.org/wp-content/uploads/2024-07-25_BCLI-Report-on-Parentage_FINAL-FORMATTED.pdf>.

recommendations for legislative reform. In contrast, this project is a study paper, which explores an emerging topic in law without making recommendations.

The *Family Law Act* Modernization Project has included consultation with the broader community on the effectiveness of the *Family Law Act* on family violence.²⁰ This feedback has been incorporated into our analysis.

²⁰ Consultation, *supra* note 17.

Chapter 2: Understanding economic abuse in the family business context

Introduction

This chapter is intended to provide a working knowledge of economic abuse, and how it is perpetrated through family businesses. In this section, we consider the social science framework for understanding economic abuse.²¹ Next, we explore why businesses are vulnerable to economic abuse. Finally, we take example behaviours from the social science research and identify parallel behaviours found in the reviewed case law or shared by key informants.

Forms of economic abuse

In 2008, Adrienne Adams et al. (Adams) created an oft-cited Scale of Economic Abuse. They defined economic abuse as any behaviour that seeks to “control a [person’s] ability to acquire, use, and maintain economic resources, thus threatening [their] economic security and potential for self-sufficiency.”²² In its first iteration, Adams divided economic abuse into economic control and economic exploitation. In 2019 Adams revised the Scale of Economic Abuse by creating new categories – economic exploitation and economic restriction.²³ The reason for this shift was twofold. First, to more accurately identify behaviours that are violent, as opposed to simply poor financial management.²⁴ Second, to more accurately capture the nature of economic control as “abusers mak[ing] economic decisions unilaterally and impos[ing] them on the victim through fraud, force, coercion, or manipulation”.²⁵ Research has since identified Adams’s framework as among the most employed in the literature on economic abuse globally.²⁶

²¹ We have chosen to use social science definitions because legal definitions are inconsistent or lacking in this area.

²² Adrienne E Adams et al, “Development of the Scale of Economic Abuse” (2008) 14:5 Violence Against Women 563 at 564 [Adams 2008]. This sentence was altered to make it gender neutral.

²³ Adams 2020, *supra* note 9 at 269.

²⁴ *Ibid.*

²⁵ *Ibid* at 270.

²⁶ Surviving Economic Abuse, “Economic abuse: a global perspective” at 13-15, online (pdf): <https://survivingeconomicabuse.org/wp-content/uploads/2022/11/SEA_Economic-Abuse-A-Global-Perspective.pdf> [Global Perspective].

| Term | Definition and Examples |
|-----------------------|--|
| Economic Exploitation | <p>Economic exploitation “involves forcibly, coercively, or fraudulently using a partner’s economic resources for one’s own advantage”.²⁷</p> <p>The most common examples of this category include:²⁸</p> <ul style="list-style-type: none">• Spending money on personal expenses, while requiring that a victim/survivor’s money be used for necessities and household expenses.• Forcing a victim/survivor to pay the other person’s bills.• Stealing a victim/survivor’s property. |
| Economic Restriction | <p>A person limits “access to and use of a range of economic resources including income, financial information, and property.”²⁹ This renders the victim/survivor dependent on the other person for money, financial information, and resources.³⁰</p> <p>The most common examples of this category include:³¹</p> <ul style="list-style-type: none">• Dictating how a victim/survivor can spend money.• Controlling money such that a victim/survivor is forced to ask the other person for it.• Concealing financial information. |

²⁷ Adams 2020, *supra* note 9 at 270.

²⁸ *Ibid* at 273.

²⁹ *Ibid* at 270. These behaviours have been identified as economic abuse in the case law, see for example: *Sattar v Shahid*, 2024 BCSC 2350 at para 15.

³⁰ Adams 2020, *supra* note 9 at 270.

³¹ *Ibid* at 273. See also: *CL v MC*, 2025 BCSC 248.

Adams's research confirmed that individuals who experienced high levels of psychological and physical violence were also at high risk of economic abuse.³² This finding is echoed by Statistics Canada, reporting that "the large majority (84%) of spousal violence victims had also experienced emotional or financial abuse."³³ Adams also confirmed that the prevalence of economic abuse is similar to physical and psychological abuse.³⁴ In other words, economic abuse is not rare, isolated, or unpredictable. It is another tool people use to exert coercive control.

Role of family businesses in enabling economic abuse

The connection between family businesses and economic abuse is not well understood. At present, the literature and discussion of this issue is scant. For this reason, we relied on key informants and case law to guide our understanding of this relationship. These sources revealed three characteristics that make family businesses uniquely vulnerable to economic abuse.

Power imbalance

In most fact patterns and key informant interviews, the person behaving violently was identified as possessing the skill central to the business (i.e., plumber, doctor, etc.).³⁵ This person's actions and choices directly impact the business's health. The skilled spouse is in a position of power because they (1) decide whether work is completed and what jobs are accepted,³⁶ (2) possess knowledge the other spouse does not, for example, the value of parts or reasonable length of time for a service, (3) control information about the work that is completed, for example, for billing of

³² *Ibid* at 276.

³³ Shana Conroy, "Spousal violence in Canada, 2019" (6 October 2021), online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00016-eng.htm>>.

³⁴ Adams 2020, *supra* note 9 at 276.

³⁵ See for example: *DW v RC*, 2020 BCPC 5; *GKD v CSD*, 2021 BCSC 367; *Hokhold v Gerbrandt*, 2014 BCSC 1875; *KK v MM*, 2021 ONSC 3975. Consider also this point made by the court regarding arguments that the spouse with the trade or skill contributes to a different level: *Fornwald v Fornwald*, 2023 BCSC 1322. At para 105, the court states: "The argument put forward by Mr. Fornwald relies upon outdated notions which underestimate and devalue the contributions of partners (primarily women) who do work that is less physical or less visible (keeping the books as opposed to renting out and caring for the cranes), or unpaid work in the home (keeping the household, maintaining the properties). The argument rests upon stereotypes which undervalue contributions and work historically identified as "women's work"."

³⁶ See for example: *DW v RC*, 2020 BCPC 5; *Goertzen v Goertzen*, 2022 SKQB 3; *GKD v CSD*, 2021 BCSC 367.

time and parts,³⁷ (4) hold the important relationships, for example, work directly with the customer and/or vendor.³⁸ In many cases, the skilled spouse ‘is’ the business. If the skilled spouse decides not to continue working, the other person cannot continue to carry on the business. On relationship breakdown, the skilled spouse continues to run the business, and the other spouse is excluded.³⁹ This power imbalance renders the victim/survivor dependent on the skilled spouse both to continue to operate the business, but also to be forthright in record keeping and disclosure. Dependence is a key tool of coercive control.

High level of control

In a perfect world, a business exists to create profits for its shareholders. All the parties involved in the business make decisions based on the best interests of the business and its financial health. Families start businesses for many different reasons:

- Flexibility;
- The ability to write off expenses;
- Creating an income for both spouses;
- To earn income in more tax efficient ways.

While the spouses are together, the business may be used to write off family expenses, such as gas or a portion of the family home as an office. The spouses may also agree to engage in behaviours that decrease their tax burden.

Once the relationship breaks down, the business continues to meet the needs of the individual spouse who remains in control. The level of control an owner wields over a company is significant.⁴⁰ An owner can make any number of decisions that directly

³⁷ See for example: *RSK v AMA*, 2013 ONSC 1148.

³⁸ *Leclerc v Leclerc*, 2015 BCJ No 290.

³⁹ See for example: *DW v RC*, 2020 BCPC 5; *GKD v CSD*, 2021 BCSC 367; *Hokhold v Gerbrandt*, 2014 BCSC 1875; *KK v MM*, 2021 ONSC 3975. This exclusion extends to money generated by the business, and the financial records/disclosure, etc.

⁴⁰ *DW v RC*, 2020 BCPC 5 at para 24. The court stated: “R.C. is the sole shareholder of his corporation and is able to manipulate its earnings and expenses to suit himself. R.C. is the sole employee of the company. Therefore the company gross earnings reflect exactly the same income earning capacity that R.C. had before he incorporated. I recognize that he does have legitimate corporate expenses that must be paid in order for him to earn that living, but the salary paid to R.C. in no way reflects the income R.C. actually derives from the operation of the corporation.”

affect the health of the business.⁴¹ Decreasing the viability of a company may impact the wage or income of the owner, which forms the basis for support payable to children or the spouse. Damaging the business also decreases the value of the business as an asset, decreasing the value for division.⁴²

Easy to hide, difficult to prove

Business requires a myriad of daily decisions. These decisions cannot always be identified as right or wrong. Rather, they are a matter of discretion within a wide window. Moreover, where a person using violence carries on the business independently, there will seldom be records or documentation as to why a particular business decision was made.

Where an individual wishes to decrease the profitability of a business, discretionary decisions have incredible power.⁴³ They can significantly alter the business's bottom line. For example, in the regular course of business, the following decisions could significantly impact profitability and viability:⁴⁴

| | |
|-----------|---|
| Inventory | <ul style="list-style-type: none">• How much inventory to carry;• What kind of inventory to carry;• What manufacturers or vendors to align with;• Where to source inventory, including what currency to purchase in; |
|-----------|---|

⁴¹ *Valastiak v Valastiak*, 2010 BCCA 71 at para 13. The court stated: "He used the bank account of the business as if it were his own piggy-bank. He used it to pay his personal expenses. He transferred money from the company account to his own bank account. He claims that he can account for all the money out and all the money in and that most of it had to do with the restaurant, but that just is not what the evidence shows. In my view, Ms. Valastiak should be compensated for the loss of this asset, which I conclude was caused by Mr. Valastiak's mismanagement of the business. It is impossible to determine what he took and it is impossible to determine the value of the business." Multi-shareholder situations can further complicate situations, see for example: *MMA v SMAR*, 2024 BCSC 552.

⁴² *DW v RC*, 2020 BCPC 5 at para 24.

⁴³ *Kassian v Kassian*, 2019 SKCA 101 at para 36. The court stated: "For example, the value of an active business may be affected by a downturn in the economy but may also be affected by the myriad of operational decisions made over time by the spouse in possession of the business. A trial judge should carefully consider all of the factors that have caused an increase or decrease in value when determining which valuation date to use."

⁴⁴ See for example: *STM v CGH*, 2023 BCPC 110 at paras 825-826. This case did not deal extensively with family violence, however. Much of this list was obtained through conversations with key informants with lived experience.

| | |
|---------------------|---|
| | <ul style="list-style-type: none">• Whether or not to manufacture inventory independently;• How to price inventory which is resold to customers;• How to price inventory which is used as part of a service, for example, shop supplies;• Whether to count inventory on a regular basis to ensure accuracy. |
| Accounting | <ul style="list-style-type: none">• What method of inventory valuation to use;• If an accounting system is used at all;• What rate items are depreciated at. |
| Accounts Receivable | <ul style="list-style-type: none">• Whether to extend credit to customers;• How much credit to give to which customers;• How long accounts receivable are allowed to age;• Whether accounts receivable are actively collected;• What actions are taken on overdue accounts;• How much time elapses before writing off a bad debt. |
| Accounts Payable | <ul style="list-style-type: none">• When to pay invoices;• What method is used to pay invoices, for example, personal credit card, business credit card, check, or wire transfer. |
| Debt | <ul style="list-style-type: none">• Whether the company has debt;• What debt is used for, for example, capital assets, inventory, or paying wages;• How much debt is carried;• Whether personal guarantees are used to secure debt;• If debt is systematically paid down;• Whether historical shareholder loans are paid out or not. |
| Retained Earnings | <ul style="list-style-type: none">• Whether the company maintains retained earnings;• How much money is kept in the company versus paid out;• If dividends are paid, and at what level. |
| Employees | <ul style="list-style-type: none">• Whether to have employment contracts;• How many employees to have;• What to pay employees and what benefits to include;• Who to hire, retain, or fire. |

| | |
|----------|---|
| Services | <ul style="list-style-type: none">• Whether to have skilled employees perform services, and if so, what to charge for those services;• What level of competency is required for employees providing services;• What tools are used to provide services;• What jobs to accept or refuse;• What companies to align with, or provide exclusive services for;• How much insurance is carried for services. |
|----------|---|

As stated above, in a normal business, these decisions are made with an eye to profit for the shareholders. In a family business, these decisions can be made with very different goals in mind.

For example, a person using violence may:

- write off a large bad debt in a year where the company has low revenue;
- purchase too much of one kind of inventory knowing the company will struggle to recover the cost;
- submit a bid, knowing it is too low, and the company will suffer losses;
- align with a less popular product manufacturer, thereby decreasing the customer base;
- fail to proactively collect accounts receivable;
- carry out inventory counts and write off significant obsolete items that the company carried for years;⁴⁵
- fail to pay a debt which is associated with a personal guarantee signed by the victim/survivor.

These actions align with the concept of economic restriction in the Adams model. However, they can also be argued as reasonable business decisions. For example, submitting a very low bid could be seen as trying to obtain work and remain competitive. It would be extremely difficult to prove that a person actively intended to decrease revenue or harm the business, and thus indirectly harm the victim/survivor.

⁴⁵ *YZ v AC*, 2019 BCSC 1564. This action was deemed properly made by the court, and was carried out by the victim/survivor in this case.

Common economic abuse tactics in family business settings

The research identified common patterns of economically abusive behaviour where a family business was present. Most of the tactics below attempt to restrict a victim/survivor's access to assets, money, or financial information. These constitute economic restriction as identified in the Adams model of economic abuse.⁴⁶ This makes sense. We previously observed that the person using violence is most often the party in control of the company after separation. Therefore, economic abuse will frequently consist of (1) trying to deprive the victim/survivor of their entitlements relating to the family business, or (2) decreasing income for determining support.

Refusing to sell an asset. People may refuse to sell a business or business asset to defeat a victim/survivor's ability to access funds. This tactic often requires court applications by the victim/survivor.⁴⁷ If an asset is eventually sold, the price is usually significantly decreased due to the delay.⁴⁸

Selling assets without the victim/survivor's consent. Individuals often sell businesses or business assets without the knowledge or consent of the victim/survivor.⁴⁹ The one party keeps the money, and the victim/survivor is deprived the benefit of the sale. In one case, the person claimed the asset had gone missing but insisted on dividing the debt.⁵⁰

Selling assets at a loss or giving them away. Individuals may sell the business or business assets at a loss or give them away. This tactic is often used where a person is seeking to defeat the victim/survivor's claim by transferring the business to a

⁴⁶ Adams 2020, *supra* note 9 at 270.

⁴⁷ *MWB v ARB*, 2013 BCSC 885.

⁴⁸ *Leclerc v Leclerc*, 2015 BCJ No 290. Violence was not clearly identified in this case.

⁴⁹ *Lakhtakia v Mehra*, 2022 ONSC 201.

⁵⁰ *KRW v PMM*, 2023 BCSC 981. At paragraph 198, the court stated: "I find that the respondent is responsible for the "disappearance" of the Champion Boat. He is either in possession of it, knows where it is, or has sold it and retained or benefited from the proceeds. Furthermore, he has failed to cooperate with the orders made by this Court relating to the claimant's efforts to locate and sell the boat. Instead, he and B.L. have concocted a story in an effort to minimize the respondent's liability and to frustrate the claimant's interest in a significant item of family property that could have been sold to pay the associated loan. The respondent is not credible and his financial disclosure is completely unreliable. As stated earlier, I infer that this is deliberate and part of his attempts to frustrate the claimant's interests. In my view, these are circumstances that are properly considered under s. 95(2)(f) and (i) of the *FLA* in determining whether it would be significantly unfair to divide family debt equally."

friend or associate. The person may continue to work for the transferred company.⁵¹ In one case, the business was transferred to the person's brother. The court concluded that the person using violence remained the beneficial owner.⁵²

Forging signatures and falsifying documents. People may alter business documents or create false business documents to defeat the victim/survivor's claim. This most often happens with banking⁵³ and financial documents⁵⁴. However, in one case, the person created a false pre-nuptial and loan agreement to limit the victim/survivor's entitlement.⁵⁵ People also forge the victim/survivor's signature to add or remove the victim/survivor as shareholder⁵⁶ or director.⁵⁷

Transferring money out of the company. People may transfer money from the company and move it to trusted third parties,⁵⁸ or personally held businesses and accounts.⁵⁹

Declaring bankruptcy. A person may use bankruptcy, either corporate or personal, to defeat a victim/survivor's claim.⁶⁰

⁵¹ *GKD v CSD*, 2021 BCSC 367 at paras 104-106.

⁵² *Lakhtakia v Mehra*, 2022 ONSC 201.

⁵³ *Singh v Singh*, 2018 BCSC 1513. *Wang v Li*, 2024 ONSC 2352.

⁵⁴ *Singh v Singh*, 2018 BCSC 1513.

⁵⁵ *KRW v PMM*, 2023 BCSC 981.

⁵⁶ *Lakhtakia v Mehra*, 2022 ONSC 201 at paras 157-183.

⁵⁷ *KRW v PMM*, 2023 BCSC 981. At paragraph 171, the court stated: "I do not accept the respondent's allegation that the claimant removed herself as director for the inexplicable reason of denying herself access to the Company's bank account. Rather, I accept the claimant's testimony that she had never seen the documents that removed her as a director and did not have knowledge of that action being taken. It is more likely that the respondent removed her as a director so as to deny her ability to access the Company's bank account." See also paragraph 182: "In any event, the respondent re-instated the claimant as a director of the Company in October 2019. Again, the claimant was not advised of this step being taken. The respondent likely re-instated her in order to preserve her liability as a director for the Company's debts. The respondent has not explained how the Company's tax or accounting debts is a personal debt owed to the respondent by the claimant."

⁵⁸ *Droit de la famille — 22274*, 2022 QCCS 638.

⁵⁹ *YZ v AC*, 2019 BCSC 1564. See also: *Fornwald v Fornwald*, 2023 BCSC 1322 at para 48. This case had no mention of violence.

⁶⁰ *Singh v Singh*, 2018 BCSC 1513.

Excessive write-offs. People often make inappropriate write offs. This may include luxury items, or items of a clearly personal nature.⁶¹ It may also include individuals who simply use the company as a “piggy-bank.”⁶²

Failing to keep proper or accurate business records. The person operating the business has considerable power over accounting and other business records. They may entirely omit transactions, for example failing to record personal withdrawals⁶³ or do ‘cash’ deals. They may fail to complete required documentation that provides information about the company’s financial picture, for example, failing to file tax returns.⁶⁴ In one case, the person ran all their business transactions through a third party’s accounts.⁶⁵

Denying ownership of a family business. People may disclaim ownership as a tactic to avoid division. This may include denials of the existence of the company all together,⁶⁶ or claims that other parties are the actual owners of the company.⁶⁷

Attempting to harm the victim/survivor’s business. Where the family business is owned and operated by the victim/survivor, the person using violence may attempt to harm that company. This usually involves the person damaging key

⁶¹ *STM v CGH*, 2023 BCPC 110 at paras 825-826. This case did not deal extensively with family violence, however.

⁶² *Valastiak v. Valastiak*, 2010 BCCA 71 at para 13. See also: *Leclerc v Leclerc*, 2015 BCJ No 290, in which the person wrote off 1.4 million dollars in personal expenses to the company.

⁶³ *Singh v Singh*, 2018 BCSC 1513.

⁶⁴ *OCW v TKM*, 2022 ONCJ 82 at para 54.

⁶⁵ *Goertzen v Goertzen*, 2022 SKQB 3.

⁶⁶ *GKD v CSD*, 2021 BCSC 367.

⁶⁷ *OCW v TKM*, 2022 ONCJ 82. At paragraph 50, the court stated: “Despite claiming that he was the real owner of the restaurant and worked there 5 to 6 days each week, C. demonstrated a remarkable lack of knowledge about the business. He didn’t know: a) The name of the business on the lease. b) When his business was incorporated. c) The name of his landlord. d) The name of his accountant or where his accountant was located. e) How much he paid monthly for rent. f) Why regular rent payments were not reflected in his bank statements. g) Where important equipment for the restaurant was purchased or rented from and how much he paid for it - such as his steam table and cash register. h) Where he obtained supplies. i) Where he purchased his produce. j) How much he paid for various expenses, such as phone or hydro.”

relationships⁶⁸ necessary for the victim/survivor's business, for example, telling customers negative things about the victim/survivor.⁶⁹

Claiming an inability to continue to operate the business. People often claim they are unable to work. The most common explanation is an unproven medical claim. Some examples include: a shoulder injury,⁷⁰ high blood pressure and eczema,⁷¹ and general “medical reasons”.⁷²

Non-disclosure and breaching court orders for disclosure.⁷³ People using violence often control business information and refuse to produce the disclosure necessary to obtain a fair result.⁷⁴ Breach of court orders is a risk factor in continuing violence.⁷⁵

Conclusion

In this chapter, we sought to understand economic abuse and how it is perpetrated through family businesses. Informed by case law and key informants, we described

⁶⁸ *Dobson v Green*, 2012 ONSC 4432. At paragraph 17, the court stated: “The respondent had already been advised to cease and desist in holding himself out as representing KPM and to stop interfering with the KPM business with MacIssac, but he continued to communicate with them. Indeed, the respondent tried to renegotiate a new agreement with MacIssac without the knowledge of any KPM officials. This resulted, in February of 1994, with the termination of the agreement between KPM and MacIssac.” See also: *MW v NLMW*, 2021 BCSC 1273. At para 172, the court stated: “I find that the respondent’s call to his credit card company in July 2019 alleging that the claimant’s ink purchases were unauthorized was financial abuse constituting family violence. Given the timing, it was clearly a reaction in anger to the claimant leaving the family home with D.W., and was intended to cause issues for her in her existing business relationships.” Other conduct, including putting assets solely in the respondent’s name, were not found to be family violence.

⁶⁹ *Loss v Walters*, 2024 BCSC 1012 at para 106.

⁷⁰ *VSJ v BLO*, 2022 ONCJ 506 at para 182.

⁷¹ *RSK v AMA*, 2013 ONSC 1148 at para 18.

⁷² *OCW v TKM*, 2022 ONCJ 82 at para 35.

⁷³ See for example: *Dobson v Green*, 2012 ONSC 4432; *Droit de la famille — 22274*, 2022 QCCS 638; *GKD v CSD*, 2021 BCSC 367; *KK v MM*, 2021 ONSC 3975; *MWB v ARB*, 2013 BCSC 885; *RSK v AMA*, 2013 ONSC 1148; *Singh v Singh*, 2018 BCSC 1513; *VSJ v BLO*, 2022 ONCJ 506; *YZ v AC*, 2019 BCSC 1564.

⁷⁴ See for example: *Droit de la famille — 22274*, 2022 QCCS 638; *GKD v CSD*, 2021 BCSC 367; *Goertzen v Goertzen*, 2022 SKQB 3; *KK v MM*, 2021 ONSC 3975; *KRW v PMM*, 2023 BCSC 981; *OCW v TKM*, 2022 ONCJ 82; *RSK v AMA*, 2013 ONSC 1148; *Singh v Singh*, 2018 BCSC 1513.

⁷⁵ HELP, *supra* note 2 at 16.

why and how family businesses are vulnerable to use for coercive control. Finally, we considered common tactics used in such situations.

This analysis revealed three key findings. First, economic abuse is an often overlooked form of family violence, which is characterized by control, exploitation, and restriction. In situations where a family business is present, economic restriction is a primary tool of economic abuse. Second, a person can use the business to exert economic restriction in two ways: (1) by damaging or destroying the business as an asset, therefore decreasing what is available for property division; and (2) by reducing income through the business to decrease support payable. Third, there are commonly used tactics that may be used by such people to achieve these outcomes.

In the following chapters, we will explore how the law is responding to these behaviours in family law cases.

Chapter 3: Legal history and context

Introduction

This chapter explores two recurrent themes that arose in our research. The first is the legislative intention behind certain elements of the *Family Law Act*. The second is often unspoken values and principles that underpin family law generally, and how these interact with family violence.

While these issues are not always directly included in the legislation or case law, our analysis is incomplete without them. Thus, this chapter seeks to set a foundational understanding of the broader context of family law to support our analysis in the rest of the paper.

Legislative intention and the Family Law Act

Prior to the *Family Law Act*, the law dealing with family breakdown was the *Family Relations Act*.⁷⁶ It was enacted in 1978. This legislation was designed to respond to pressing social and legal issues of that time, which differ from today's prevailing issues. For example, elevated levels of separation and divorce were new phenomena in the late 1970s. This was due to the advent of no-fault divorce in the *Divorce Act, 1968*.⁷⁷ The *Family Relations Act* was concerned with responding to the legal issues that arose in the wake of no-fault divorce, such as division of family property. But the act did little to address such contemporary matters as legal issues relating to same-sex couples, unmarried couples, or other family models.⁷⁸

This law did not contain the words 'violence' or 'abuse'. At the time, our understanding of such things was drastically different from today. For example, take the concept of marital rape. Prior to 1983, it was not legally possible to rape your spouse.⁷⁹

⁷⁶ *Family Relations Act*, RSBC 1996, c 128. British Columbia, Ministry of Attorney General Justice Services Branch, *White Paper on Family Relations Act Reform: Proposals for a new Family Law Act* (Victoria: Ministry of Attorney General Justice Services Branch, 2010) at 1 [Paper on FLA Reform].

⁷⁷ See a historical discussion here: Kristen Douglas, "Divorce Law in Canada" (modified 27 March 2001), online: <<https://publications.gc.ca/Collection-R/LoPBdP/CIR/963-e.htm#:~:text=The%20Divorce%20Act%20of%201968,were%20adultery%2C%20cruelty%20and%20desertion>>.

⁷⁸ *Family Relations Act*, *supra* note 76. Paper on FLA Reform, *supra* note 76 at 1.

⁷⁹ Shannon Brennan & Andrea Taylor-Butts, "Sexual Assault in Canada" (2008), online: <<https://www150.statcan.gc.ca/n1/pub/85f0033m/85f0033m2008019-eng.htm>>.

The *Family Relations Act* was not only limited in its ability to address family violence. The property division scheme was also seen to have considerable faults.⁸⁰ Judges had wide discretion, resulting in unpredictable outcomes.⁸¹ In addition, the law did not address property division for unmarried couples. This resulted in a long line of cases in which women were forced to resort to equity⁸² to claim on family assets. In one particularly tragic case, a woman went all the way to the Supreme Court of Canada after being denied by lower courts any share in a farm she spent 19 years building.⁸³ This law also contained a clause specifically excluding business assets from family division in some circumstances.⁸⁴

All of these factors had a hand in shaping the modern *Family Law Act*.

The *Family Law Act* replaced the *Family Relations Act* in 2013. At the time, the Ministry of Attorney General drafted the *White Paper on Family Relations Act Reform*.⁸⁵ This document outlined the proposed reforms and feedback received from the larger community.

⁸⁰ Ministry of Justice “Family Law Act Section Notes - Part 5 – Property” at 7, online (pdf): <<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/legislation-policy/fla/part5.pdf>> [Section Notes].

⁸¹ Paper on FLA Reform, *supra* note 76 at 79.

⁸² See: Cornell Law School, “Equity” online: <<https://www.law.cornell.edu/wex/equity>>. Equity originated in Britain, where there were courts of law and courts of equity. “A court will usually award equitable remedies when a legal remedy is insufficient or inadequate. For example, courts will generally award equitable relief for a claim which involves a particular or unique piece of real estate, or if the plaintiff requests specific performance.” See: *Sperring v Shutiak*, 2023 BCCA 54 at para 13. See also: *Fornwald v Fornwald*, 2023 BCSC 1322. At paragraph 105, the court states: “Initially, courts dealt with this issue as unjust enrichment claims to assign value to the contributions of women...The family law regime, including that under the *FLA*, has expressly remedied this situation through a presumptive equal division of family assets and debt. Spousal support regimes, both federal and provincial, likewise address this presumption.”

⁸³ *Pettkus v Becker*, [1980] 2 SCR 834. This case was later revealed to have involved economically abusive behaviours like hiding assets. Ms. Becker tragically ended her own life. See: Dave Brown, “Lawyer’s manuscript reveals true sting in beekeeper’s case”, *Ottawa Citizen* (20 July 2013), online: <<https://ottawacitizen.com/news/ottawa%20&%20area/lawyers-manuscript-reveals-true-sting-in-beekeepers-case>>.

⁸⁴ *Family Relations Act*, *supra* note 76 at s 59: “Excluded business assets (1) If property is owned by one spouse to the exclusion of the other and is used primarily for business purposes and if the spouse who does not own the property made no direct or indirect contribution to the acquisition of the property by the other spouse or to the operation of the business, the property is not a family asset. (2) In section 58 (3) (e) or subsection (1) of this section, an indirect contribution includes savings through effective management of household or child rearing responsibilities by the spouse who holds no interest in the property.” See also: *Zemtsova v Shevaley Estate*, 2025 BCCA 114.

⁸⁵ Paper on FLA Reform, *supra* note 76 at 6.

On the topic of family violence, the *Paper* indicated the goal to “increase the court’s ability to deal with family violence.”⁸⁶ In basic terms, there was a desire to make protection a priority. This was especially the case for children.

The *Paper* discussed the proposed definition of family violence.⁸⁷ Interestingly, the *Paper* contains the term ‘financial abuse.’ However, this term did not make its way into the legislation.⁸⁸ Economic abuse is included as a subset of psychological abuse.

Our understanding of violence has evolved since the definition was created in 2013. Indeed, the Ministry of Attorney General has since acknowledged: “[a]t the time the definition was developed, physical abuse was sometimes the only form of abuse that was recognized as family violence.”⁸⁹ At the time of its coming-into-force, the definition contained in the *Family Law Act* was very progressive, especially considering some of the prevailing social views of the time.

With respect to property division, there was considerable work to do. In crafting the property division scheme for the *Family Law Act*, the legislature was attempting to fix the problems of the *Family Relations Act* by creating a clear and predictable scheme for asset division.⁹⁰ The *Family Law Act* provides a simple framework for married and unmarried couples. The parties are generally entitled to equal division of family property and family debt. The simplicity of this scheme not only makes it easier for courts to interpret the correct outcome but also encourages individuals to divide their property independently as part of out of court processes.

Given the frequency in which cases ended up in court under the *Family Relations Act*, the new act limited judicial discretion, with the hope this would discourage people from ‘trying their hand’ with the courts to achieve a more favourable outcome.⁹¹ As a result, section 95, which allows for discretion and deviation from the equal division rule, sets a very high standard.⁹²

This paper investigates the intersection of these two topics, property and family violence. The *Family Law Act*, however, does not address this intersection. Until very

⁸⁶ Paper on FLA Reform, *supra* note 76 at 6.

⁸⁷ *Ibid* at 45.

⁸⁸ *Ibid*.

⁸⁹ Discussion Paper, *supra* note 5 at 5-7.

⁹⁰ Section Notes, *supra* note 80 at 7.

⁹¹ *Jaszczewska v Kostanski*, 2016 BCCA 286 at paras 41-44.

⁹² See for example: *Ibid* at para 44.

recently, Part 5 on property division did not contain reference to family violence.⁹³ The relationship between family violence and property is unclear, and has presented challenges for the court. This study paper explores this lack of clarity. Section 95 has presented interpretive challenges in cases of economic abuse and family businesses because it contains two elements which are seen as legislative intention in the shift from the old regime to the *Family Law Act*. Namely, (1) the narrowing of discretion in property division, and (2) the absence of family violence as a consideration for property division.⁹⁴

Starting in 2016, a line of BC Court of Appeal cases analysed section 95 and its interpretation. Much of the court's discussion focused on the changes from the *Family Relations Act* to the *Family Law Act*. Where legislation is unclear, the court is permitted to resort to external evidence about the intention of the legislature in making the law.⁹⁵ In the reviewed case law, the courts repeatedly referred to legislative intention when interpreting the law.

The two elements of legislative intent have been problematic for courts trying to reconcile what relationship, if any, exists between family violence and property division. Significant unfairness is a very high standard.⁹⁶ Further, on the one hand, section 95 describes behaviours akin to economic abuse as grounds for unequal division. On the other hand, the legislature chose not to include family violence as an enumerated basis for consideration.⁹⁷ Further, section 95 includes a bad faith requirement. This is different from the definition of family violence in the *Family Law Act*, which explicitly states that intent to harm is not required, though this is a more recent addition.⁹⁸

⁹³ Discussion Paper, *supra* note 5. At 5-1 it states: "Family violence was also recently included as a factor a court must consider under Part 5 – *Division of Property* when determining the ownership of pets when spouses separate."

⁹⁴ This reasoning is set out in the case of *He v Guo*, 2022 BCCA 355 at para 35: "This approach, in my view, accords with the approach of the legislative assembly, which opted to include references to family violence elsewhere in the *Family Law Act* – for example, s. 37(2)(g) and (h) explicitly require family violence to be considered when assessing the best interests of a child. To interpret s. 95(2)(i) as including family violence when the conduct at issue lacks any sort of economic impact would be contrary to the balance struck by the legislature."

⁹⁵ *Quebec (Attorney General) v Canadian Owners and Pilots Association*, 2010 SCC 39. At paragraph 18, the court states: "The purpose of a law may be determined by examining intrinsic evidence, like purposive clauses and the general structure of the Act, as well as extrinsic evidence, such as Hansard or other accounts of the legislative process."

⁹⁶ *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras 41-44.

⁹⁷ *He v Guo*, 2022 BCCA 355 at para 35.

⁹⁸ *Family Law Act*, *supra* note 16 at s 1.

These dynamics have resulted in much consideration by the courts. Ultimately, as we will explore in the coming chapters, outcomes of several relevant cases are built around honouring these intentions.

Family violence and underpinning values in family law

In reviewing family law legislation and case law, certain themes and values become apparent. While not explicit, it is helpful to clearly identify and name these values so we can consider their implications for legal outcomes. In addition, we will consider how these values interact with situations of family violence.

Forward Focus

Family law is forward looking. This value is expressed subtly in several places. One example is in the commentary which accompanied the reform proposals for creating the *Family Law Act*. In the *Paper*, the Ministry of Attorney General asked lawyers if the law should consider family violence and its impact on children. At the time, some lawyers shared their concerns that bringing up violence in family court could “act as a focal point for conflict and could over-emphasize the past rather than focusing parents on planning for the future.”⁹⁹

This extends to the legislation itself. Section 38 sets out the required considerations where family violence is present in cases involving care of a child. This section includes a broad list of considerations for the court, including “how recently the family violence occurred.”¹⁰⁰ This consideration is a relevant and logical one. However, in much of the reviewed case law, this factor was overemphasized, revealing a misunderstanding of how coercive control develops and changes over time.¹⁰¹ As stated by one scholarly article, “Judges are future-focused and perhaps overly optimistic that past violence will stay in the past.”¹⁰²

In situations of family violence, correct identification of coercive control requires (1) consideration of the history of the relationship and its unique dynamics, and (2) an understanding that methods of coercive control change over time. In other words,

⁹⁹ Paper on FLA Reform, *supra* note 76 at 42.

¹⁰⁰ *Family Law Act*, *supra* note 16 at s 38.

¹⁰¹ *Lakhtakia v Mehra*, 2022 ONSC 201 at para 388.

¹⁰² Elizabeth Sheehy & Susan B Boyd “Penalizing women’s fear: intimate partner violence and parental alienation in Canadian child custody cases” (2020) 42:1, *Journal of Social Welfare and Family Law* 80 at 81.

violence cannot be understood without considering the entire relationship and its unique features.

The first element is the link between past violence and the present. Victim/survivors establish risk based on past experiences of violence. Coercive control is typified by violent people “making demands and tacitly or explicitly threatening harm for failure to comply...[t]hreats deemed credible based on the abusers’ past behaviour compel victims to comply, subordinating their own interests, desires, and values.”¹⁰³ In this way, the history of violence is linked to victim/survivor’s current fear and responses. This passage from the Ontario Superior Court in the case of *Ahluwalia v Ahluwalia*, summarizes the issue well.

*In family relationships, the conditions of terror, fear, coercion, and control are often created through **years of psychological abuse punctuated with relatively few acts of serious physical violence**. In practice, **a perpetrator need only administer one hard beating at the beginning of a marriage to create an imminent threat of daily violence**... It follows then that a surgical focus on the mechanical elements of the physical assaults, for example, will not be adequate to understand and appreciate the true nature of the harmful conduct.*¹⁰⁴

The second element is the changing nature of coercive control over the course of a relationship. This is where problems arise for the purposes of our study paper.

Scholars have identified that patterns of coercive and controlling behaviours will change over time as the spouses and their circumstances change.¹⁰⁵ As the person loses control, the dynamic of violence will shift.¹⁰⁶ Post separation violence often moves from physical and psychological violence to economic and litigation violence.¹⁰⁷ When a person is no longer living with their victim, the main points of

¹⁰³ Adams 2020, *supra* note 9 at 269.

¹⁰⁴ *Ahluwalia v Ahluwalia*, 2022 ONSC 1303 at para 59 [emphasis added].

¹⁰⁵ Centre for Research and Education on Violence Against Women and Children at the University of Western Ontario, “Enhancing Judicial Practice by Integrating Coercive Control” (24 September 2024) at 15, online (pdf): *GBV Learning Network* <<https://gbvlearningnetwork.ca/webinars/recorded-webinars/2024/docs/Webinar-Sep-24.pdf>>.

¹⁰⁶ As noted by Rebecca Glenn, “2019 Churchill Fellowship to study service responses to women experiencing or escaping domestic financial abuse USA, Canada, UK” at 14, online: <<https://www.churchilltrust.com.au/fellow/rebecca-glenn-nsw-2019/>>, stating: “economic abuse can escalate or start, post-separation, as a result of the perpetrator no longer having the physical proximity to exert other forms of control and abuse.”

¹⁰⁷ *Ibid.*

contact are financial ties, children, and the litigation.¹⁰⁸ Where there is a family business, this is another continuing point of control between the spouses. It makes sense that a person will have to alter how they perpetrate violence as life's circumstances change.

Where the history of a relationship is not considered or understood in context with the present, it is easy to lose the thread of violence from, for example, physical violence to economic abuse. In this way, the court's desire to encourage the parties to look to the future and not dwell on past wrongs is in conflict with the need to pay attention to subtle and shifting signals over the course of the relationship in order to provide a meaningful analysis of family violence.

Conduct is generally not relevant

Family law legislation is 'no fault'. It does not generally consider conduct or misconduct of the parties in its outcomes. This value is directly enumerated several times in the legislation. For example, section 37 on care of children specifically limits the courts' consideration of conduct of a parent, stating it is only relevant if "it substantially affects" a factor in the best interests of the child analysis.¹⁰⁹ With respect to spousal support, section 166 of the *Family Law Act* specifically states that "the court must not consider any misconduct of a spouse, except conduct that arbitrarily or unreasonably (a) causes, prolongs or aggravates the need for spousal support, or (b) affects the ability to provide spousal support."¹¹⁰ As we will explore further below, conduct is generally not considered relevant to property division. While the *Family Law Act* does not explicitly state this, the case law has.¹¹¹

Again, the inclusion of this limitation makes sense. The purpose of the law is to assist parties in obtaining predictable outcomes on family breakdown. Focusing on conduct poses a risk of "expand[ing] litigation, creating trials within trials on collateral issues unrelated to the property and financial support claims properly brought under the legislation. It would expand, not streamline, litigation."¹¹²

Interestingly, Australia has recently drafted amendments which address family violence and property division in that country. Information released on the amendments states, "the economic effect of family violence must be considered, where relevant, when making decisions about property and finances after separation. The amendments also make clear that economic or financial abuse may

¹⁰⁸ *Ibid.*

¹⁰⁹ *Family Law Act*, *supra* note 16 at s 37.

¹¹⁰ *Ibid* at s 166.

¹¹¹ *He v Guo*, 2022 BCCA 355.

¹¹² *Ibid* at para 36.

constitute family violence. This might include where a person has controlled all of the finances or spending.”¹¹³ In other words, these amendments require that family violence be taken into account when dividing assets. The changes are set to come into force in June of 2025.¹¹⁴

Family law does not compensate for family violence

Family law addresses (1) financial inequalities resulting from the breakdown of the relationship, such as support, (2) fair division of property between the spouses, and (3) safe care of children (among other things). Family law largely does not consider conduct in determining outcomes on these matters. Not only that, family law does not compensate a victim/survivor for misconduct or family violence through its mechanisms either.

This principle is summarized well by the Ministry of Attorney General, stating:

*BC’s [Family Law Act] is “no fault” legislation, meaning the court does not make decisions that penalize a party for blameworthy behaviour. The [Family Law Act] is similar to the Divorce Act, where spousal conduct, including family violence, must not be considered in spousal support or property division decisions (other than companion animal property division issues).*¹¹⁵

This issue is being explored in the Ontario case of *Ahluwalia v Ahluwalia*, which created a tort of family violence (this was overturned on appeal, and the case is currently being heard at the Supreme Court of Canada). The trial judge stated that existing torts used to address family violence are inadequate because they focus on single and specific incidents of violence rather than addressing the complex reality of coercive control.¹¹⁶ The judge decided that family violence is its own wrong and awarded money to the victim to right that wrong.¹¹⁷ Beyond tort law, the judge also

¹¹³ Australian Government, “Family law (property) changes from 10 June 2025 Fact sheet for separating couples” online (pdf): <<https://www.ag.gov.au/sites/default/files/2025-01/factsheet-for-separating-couples-%28property%29-family-law-amendment-act-2024.PDF>>.

¹¹⁴ *Ibid.*

¹¹⁵ Ministry of Attorney General for BC, “Factum of the Intervener, Attorney General for British Columbia” at para 13, online (pdf): <https://www.scc-csc.ca/pdf/case-documents/41061/FM110_Intervener_Attorney-general-of-British-Columbia.pdf>.

¹¹⁶ *Ahluwalia v Ahluwalia*, 2022 ONSC 1303. At paragraphs 59-60, the court states: “In terms of liability and damages, a narrow focus on the intentional torts of battery or assault committed on specific days or at specific times will obscure the lived reality of family violence... The problems associated with trying to frame cases involving long-term family violence into the rubric of existing intentional torts is most clearly demonstrated through the relative paucity of damage awards in spousal assault cases.”

¹¹⁷ *Ibid.*

identified that family law does not address the wrongs of family violence. In fact, akin to the *Family Law Act*, the *Divorce Act* specifically limits considerations of family violence.¹¹⁸

*The family violence the Mother endured at the hands of the Father is not compensated through an award of spousal support. Indeed, the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) specifically prohibits me from considering “misconduct” when making a spousal support award: s.15.2(5). On the rare and unusual facts before me, the Mother is entitled to a remedy in tort that properly accounts for the extreme breach of trust occasioned by the Father’s violence, and that brings some degree of personal accountability to his conduct.*¹¹⁹

A judge cannot award spousal support or divide property unevenly to compensate someone for family violence. Spousal support “is compensatory rather than fault driven. As such, spousal support awards are not meant to censure particularly egregious conduct during the family relationship that calls out for aggravated or punitive damages.”¹²⁰

Similarly, property division is meant to provide for a fair division of assets on breakdown of the relationship. Unless the violence can be shown to have impacted the financial status of the parties, it is not relevant to this analysis.¹²¹ In other words, a person can engage in economically abusive behaviours, but if they do not have implications to the party’s assets for division, it cannot be considered. To do otherwise, “amounts to an award akin to damages for misconduct or, at a further extreme, punitive damages for misconduct.”¹²² Said another way, the family law framework considers family violence if it is relevant to the issues of family breakdown, however, it does not penalize the violence itself.¹²³

Conclusion

This chapter has explored the history of the *Family Law Act*, and the legislative intent present behind the words of the law. It has also explored values underpinning family law that exist in legal reasoning and their interactions with family violence.

¹¹⁸ This case was referring to the *Divorce Act*, *supra* note 7. However, BC’s *Family Law Act* contains similar language.

¹¹⁹ *Ahluwalia v Ahluwalia*, 2022 ONSC 1303 at para 5 [emphasis added].

¹²⁰ *Ibid* at para 44.

¹²¹ *He v Guo*, 2022 BCCA 355.

¹²² *Ibid* at para 37.

¹²³ *Ibid*.

This discussion has sought to provide the context required to understand the following two chapters.

In the chapters that follow, it is important to keep in mind the vast strides taken in the development of the *Family Law Act* and its inclusion of family violence. It is important to understand that the values explored above make sense in those cases where family violence is not present, but rather former spouses are engaging in conflict over past wrongs. In such instances, it is logical to direct the parties to focus on the future. It also makes sense to ignore irrelevant conduct, and to keep such conduct from influencing determinations on support or assets.

This acknowledgement does not limit us in observing, that in situations of family violence, these elements are not always serving victim/survivors. The following chapters will explore this in further detail.

Chapter 4. Current legal framework

Introduction

In chapter 2, we outlined economically abusive behaviours that commonly occur through family businesses. This chapter considers the law currently utilized to address these behaviours in family law cases. We focus on family and business law, as these were the primary areas of law referenced by the reviewed case law and key informants.

Family law in BC

Family law governs the breakdown of spousal relationships. In BC, family law is divided between provincial and federal jurisdiction. In general, the provincial *Family Law Act* applies to unmarried couples, while the federal *Divorce Act* applies to married couples. The exception is property division, which is governed by the *Family Law Act* for both married and unmarried couples. For this reason, we will focus on the *Family Law Act*. Family law jurisdiction is divided between Provincial and Supreme Courts. Property division can only be carried out by the Supreme Court. Thus, when this study paper (1) refers to the court, it is referring to an upper-level court, and (2) refers to judges, it is generally referring to federally appointed judges.

Family Law Act

Definition of family violence

Section 1 of the *Family Law Act* generally defines family violence as physical, sexual, and psychological violence. It does not include the words ‘economic abuse’. The act does describe economically abusive behaviours, including “threats respecting...property”, “unreasonable restrictions on...a family member’s financial ...autonomy” and “intentional damage to property”.¹²⁴ However, these are included as part of psychological abuse.

It is unclear to what extent this definition captures economically abusive behaviours through family businesses. Much of the reviewed case law did not identify these behaviours as economic abuse. Thus, there is no attempt to fit the behaviours within the definition of family violence. One case specifically identified business related conduct as violence and framed it within the legislative definition.¹²⁵ In that case, the person removed and threatened to destroy equipment the victim/survivor needed

¹²⁴ *Family Law Act*, *supra* note 16 at s 1.

¹²⁵ *Loss v Walters*, 2024 BCSC 1012 at para 106.

to run their campsite business. These behaviours fell squarely into threats to and intentional damage to property.

Looking to the common tactics discussed in Chapter 2, many could fit within the current *Family Law Act* definition. For example, any action intended to damage the business, or its profitability, could be seen as intentional damage to property, such as giving away assets or excessive write offs. Actions intended to limit the victim/survivor's access to resources and information could be interpreted as unreasonable restrictions to financial autonomy, such as keeping inaccurate or improper records, or non-disclosure.

Part 5: Property Division

Under Part 5 of the *Family Law Act*, family property and debt are generally divided equally on separation.¹²⁶ The legislation divides property in half regardless of contribution or use.¹²⁷ This creates a simple, predictable, and easily understandable scheme for people separating.¹²⁸

The *Family Law Act* includes businesses in its definition of family property. It states that a “share or an interest in a corporation, [or] an interest in a partnership, an association, an organization, a business or a venture” is family property for division between the spouses.¹²⁹ It does not define a family business. The reviewed case law did not consider or identify what makes something a “family business”. For example, a family business may be a corporation, sole proprietorship, joint venture, or even a partnership with the spouse or a third party. Legal structure is not consistently identified in the case law. Further, a family business may have both spouses as shareholders and directors. It may have only one spouse as shareholder, but both as directors (and vice versa). It may have one spouse as the sole director and shareholder. It may have multiple other family members or friends as part of the ownership. Again, the shareholder and director structures were not always clearly outlined in the case law. There is no clear pattern of identifying factors that make something a family business.

¹²⁶ *Family Law Act*, *supra* note 16 at s 81: “each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.” See also Section Notes, *supra* note 80 at 3.

¹²⁷ *Family Law Act*, *supra* note 16 at s 81(a).

¹²⁸ There is considerable historical context to how and why we have ended up with this scheme, which is covered by other authors. See for example, Melanie Kraft & Adam Prewer, *Unpacking Family Law for Practitioners* (Toronto: Lexis Nexis Canada, 2022) at 35-41. See also: Section Notes, *supra* note 80 at 3.

¹²⁹ *Family Law Act*, *supra* note 16 at s 84.

Part 5 sets out when and how family property is to be valued for division. People may purposely decrease the value of a business to reduce the amount owing on asset division. Section 87 of the *Family Law Act* sets out that family property (including a family business) is divided based on the fair market value on the day of the court hearing.¹³⁰ This gives a person an extended period to decrease the value of the business. Any original value held in the business, once gone, cannot be recovered. While this issue was not discussed in the reviewed case law,¹³¹ numerous key informants expressed frustration that a person often had years to cripple and destroy the business. Key informant lawyers and those with lived experience shared that by the time of trial, most of the value of the company had already been lost. The operation of section 87 in delaying valuation was seen as a motivating factor for people using violence to ruin the company prior to trial.

Part 5 contains several interim tools and mechanisms to preserve assets and provide some security to the person experiencing economic abuse through a family business. These provisions can help counteract the violence until the parties reach trial, and a final determination on property division. For example, Section 89 permits interim distribution of property to help pay for litigation or litigation related expenses, such as obtaining evidence or experts. Victim/survivors could use this mechanism where multiple applications are required to obtain disclosure or an expert is required (e.g., forensic accountant). Section 91 is another example. This section restrains a person from disposing of any property,¹³² which could be used to protect a victim/survivor against several of the listed behaviours, such as transferring assets or money out of the company or selling business assets. This provision was used in the case law to restrict the use of company funds for personal expenses.¹³³ Another case granted a

¹³⁰ Valuation date is an issue that can be argued. See for example: *Fornwald v Fornwald*, 2023 BCSC 1322. At paragraph 16 the court stated: “Under s. 87, all family property and debt is to be valued according to its fair market value at the date of the hearing. The court may set a valuation date at another date if it is found, per s. 95(1), it would be significantly unfair to value an asset or debt at the trial date. This may be the case, for example, if a party has significantly reduced or increased an asset or debt during the separation period, to their own advantage or based solely on their own effort.”

¹³¹ This issue was mentioned in *Kassian v Kassian*, 2019 SKCA 101 at para 36. The court stated: “For example, the value of an active business may be affected by a downturn in the economy but may also be affected by the myriad of operational decisions made over time by the spouse in possession of the business. A trial judge should carefully consider all of the factors that have caused an increase or decrease in value when determining which valuation date to use.”

¹³² CM Huddart, TL Brown, & A Andrew, *British Columbia Family Law Practice* (LexisNexis, 2024) at 1056.

¹³³ *Leclerc v Leclerc*, 2015 BCJ No 290 at para 156.

restraining order to prevent the person's interference with the victim/survivor's management and operation of the family business.¹³⁴

Section 95 is an important tool available to a victim/survivor to rectify the impacts of economic abuse through a business. This section permits a court to grant unequal division of family property where there is significant unfairness.¹³⁵ Section 95 operates as an exception to the general rule that family property and debt are divided equally.¹³⁶ In situations of economic abuse through a family business, a victim/survivor could use section 95 to argue that unequal division is necessary to achieve a fair outcome, for example, where a person has incurred debt, wrongfully converted company assets, or purposefully destroyed the company.¹³⁷ To trigger section 95, there must be something "objectively unjust, unreasonable, or unfair in some important or substantial sense...[t]here must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division."¹³⁸

Section 95 invites the court to consider a range of factors in establishing if a situation is significantly unfair. Family violence is not included in this list of factors. In the Ministry of Attorney General's consultation on property division for the *Family Law Act* Modernization Project, they did not receive recommendations to add family violence to this provision.¹³⁹ However, one factor does describe behaviour that could include economic abuse: whether a spouse (who is not acting in good faith), (1) decreases the value of family property, or (2) disposes of or transfers property to defeat the other person's interest.¹⁴⁰ On its face, this wording appears to apply to many of common tactics used for economic abuse, including transferring

¹³⁴ *Singh v Singh*, 2018 BCSC 1513 at para 57. The court also ordered "Mrs. Singh and Raj immediately disclose the name, location, and account number of any account they have opened up on behalf of RPC 2011; to immediately turn over any and all passwords, checks, credit cards, ATM cards, or documents associated with existing bank accounts for RPC 2011; to immediately return any and all company funds impermissibly funneled into any secret bank accounts, and refrain from ongoing diversion of funds into such accounts; to immediately close any and all secret bank accounts which they opened; and from contacting any RPC 2011 business partners or interfering with counterclaimants' relationship with such partners; until further order of the court."

¹³⁵ See for example: *Jaszczewska v Kostanski*, 2016 BCCA 286.

¹³⁶ *Family Law Act*, *supra* note 16 at s 81.

¹³⁷ *He v Guo*, 2022 BCCA 355.

¹³⁸ *Singh v Singh*, 2020 BCCA 21 at para 134.

¹³⁹ Ministry of Attorney General, "Family Law Act Modernization Project Phase 1 Property Division and Spousal Support What We Heard" at 3, online (pdf): <https://engage.gov.bc.ca/app/uploads/sites/121/2023/02/FLA-Modernization-Phase-1-WWHR-FINAL.pdf>.

¹⁴⁰ *Family Law Act*, *supra* note 16 at s 95.

the business or assets, excessive expenses, denying ownership in a company, or declaring bankruptcy. Interpretation of this section will be explored in the next chapter.

Part 9: Protection from Family Violence

Section 183 of the *Family Law Act* governs protection orders. Generally, a protection order is about physical safety. The section is focused on separation between the person engaging in violent behaviour and their victim. A secondary focus is on communication between the parties. Limiting physical proximity can be useful for some forms of economic abuse. But if the economic abuse is being carried out through a business, these tools are less effective.¹⁴¹ In the reviewed case law, nearly all protection orders focused on safety associated with physical violence.¹⁴² While the definition of family violence is not limited to physical violence,¹⁴³ judges have exercised caution in identifying non-physical violence as family violence for the purposes of this section.¹⁴⁴ Conduct orders have been suggested as a more appropriate option in non-physically violent circumstances.¹⁴⁵

As part of the *Family Law Act* Modernization Project, the Ministry of Attorney General conducted consultation on various aspects of the act, including protection orders. Feedback on this issue provided further insight into why protection orders may be less effective in situations of economic abuse through a family business. For example, participants stated that they did not apply for a protection order because “violence other than physical violence is often not acknowledged by the justice system...and judges, police [and] lawyers are not sufficiently educated about family violence.”¹⁴⁶ Feedback also indicated that orders did not address financial aspects of family violence, stating, “orders need to consider how the protected family member will access bank/credit cards...as well as preventing the restrained party from

¹⁴¹ In the case of *Dobson v Green*, 2012 ONSC 4432, the violent person was able to continue to harass and negatively impact the victim/survivor’s business despite interventions from the court.

¹⁴² West Virginia has a protection order specific to financial exploitation. However, it is specific to certain vulnerable populations and does not appear to apply to general instances of economic abuse between spouses. See: WomensLaw.org, “Legal Information: West Virginia” (1 April 2024), online: <<https://www.womenslaw.org/laws/wv/restraining-orders/financial-exploitation-protective-orders/basic-info-and-definitions/what>>.

¹⁴³ *BHC v FGJP*, 2017 BCPC 378 at para 7; *Morgadinho v Morgadinho*, 2014 BCSC 192 at para 59.

¹⁴⁴ *AB v CD*, 2020 BCCA 11 at para 175.

¹⁴⁵ *Ibid* at para 188.

¹⁴⁶ Consultation, *supra* note 17 at c 5 p 11.

cutting off the at-risk family member's utilities, lease or mortgage payments, financial access and other accounts."¹⁴⁷

Part 10: Court Processes

Non-disclosure is a primary issue in economic abuse. Several sections of the *Family Law Act* are designed to combat non-disclosure. For example, section 212, "provides the court with authority to order disclosure of information by parties."¹⁴⁸ Section 213 provides a basis to "compel disclosure, including making an order based on an attributed income, ordering payment of security or a fine, or payment to the other party for expenses incurred as a result of the non-compliance."¹⁴⁹

Despite the strong wording of these provisions, case law and key informants reveal unique challenges with non-disclosure. For example, if a person refuses to disclose information, a court is still required to make attributions based on facts and evidence.¹⁵⁰ This puts a burden on the non-violent spouse to provide as much information as possible to give the court a reasonable basis to set a number for income or an asset value.¹⁵¹ This can be extremely difficult if the victim/survivor

¹⁴⁷ *Ibid* at c 5 p 14.

¹⁴⁸ Huddart, Brown, & Andrew, *supra* note 132 at 1232.

¹⁴⁹ *Ibid* at 1233.

¹⁵⁰ *KK v MM*, 2021 ONSC 3975 at para 833: "M.M. submits that K.K. must be benefitting from having many of his personal expenses covered by his corporations, thereby effectively deducting unreasonable expenses from his income and concealing money available to him for the payment of child support (ss. 18(1) and 19(1)(f)(g)). She relies on his bank account statements to argue that his 2019 and 2020 monthly expenses were commensurate with an annual income of \$400,000. Her submissions are largely based on speculation about the interpretation of certain entries in the bank statements. Such speculation is not an appropriate basis upon which to impute income. Any income imputed to K.K. must be grounded in the evidence."

¹⁵¹ See also *He v Guo*, 2022 BCCA 355 at para 23: "Failure to disclose assets may lead to serious consequences in family litigation." In *Wu v Sun*, 2011 BCCA 239, Justice Donald observed at paragraph 41: "I am not the first to observe that non-disclosure is the Achilles heel of family assets litigation. Strong measures are justified in discouraging it. However, one cannot make something out of nothing. The right note of caution was sounded by Madam Justice Baker in *Palanca v. Palanca*, 2005 BCSC 1014:

[127] Counsel for Mrs. Palanca submitted that the court could draw an adverse inference against Mr. Palanca's estate in relation to the existence of family assets in the Philippines because Mr. Palanca failed to comply with court orders relating to accounting and disclosure. I accept that Mr. Palanca did not meet his obligations in this regard, but an adverse inference is not an adequate substitute for evidence about specific assets, the ownership of those assets, whether the assets were used for a family purpose, or otherwise met the definition of family assets, or the value of the family assets, sufficient to allow for the making of a compensation order that is more than a guess."

does not have access to records or banking. It also means there is a considerable risk that individuals will be rewarded for providing as little disclosure as possible. Case law and key informants made it clear that there are few, if any, risks to non-disclosure. Even where court orders existed for disclosure, breaches were infrequently met with a significant fine or other punitive action.¹⁵²

Section 222 of the *Family Law Act* governs conduct orders. Two explicit purposes of conduct orders are to manage difficult behaviours, and to prevent the court process from being abused.¹⁵³ In most of the reviewed cases, conduct orders were only about communication. These are standard and used in cases even where family violence is not present.¹⁵⁴ Key informants did not share examples of conduct orders being used to control or limit economically abusive behaviours.

Part 4: Care of and Time with Children

In contrast to Part 5 of the *Family Law Act*, which deals with property division, Part 4 specifically includes family violence as a consideration in cases involving the care of children. Since economic abuse is a form of family violence, express mention of family violence in Part 4 means that economic abuse through a family business should be included in considerations to the care of children, where relevant.

Section 37 of the *Family Law Act* addresses the best interests of the child, which is identified as the only consideration in determining the care of a child. In situations of family violence, the section directs the court to consider the “child's safety, security or well-being, [and] whether the family violence is directed toward the child or another family member.”¹⁵⁵ The court must also consider whether the person is impaired in their ability to provide care to the child, and whether requiring cooperation between parents would result in safety concerns.¹⁵⁶

¹⁵² Few cases included a consequence for non-disclosure. In the case of *GKD v CSD*, 2021 BCSC 367, the violent person hid an entire business. This was deemed sufficient for section 95 (unequal division of property) to apply. One case did specifically reference using fines for non-disclosure, see: *Zhang v Xiong*, 2023 BCSC 915 at para 23. Multiple key informant family lawyers from different communities in BC stated they had never been granted fines or other remedies for non-disclosure despite applications under the *Family Law Act*. One lawyer identified receiving such fines, with the most common value being \$500.

¹⁵³ *Family Law Act*, *supra* note 16 at ss 222(b)-(c).

¹⁵⁴ For example, picklists are lists of standard orders. These lists usually include communication conduct orders. See: “What is the Family Law Picklist?” (last modified 31 May 2024), online: <<https://www.courthouselibrary.ca/how-we-can-help/our-legal-knowledge-base/what-family-law-picklist>>.

¹⁵⁵ *Family Law Act*, *supra* note 16 at s 37(2)(g).

¹⁵⁶ *Ibid* at s 37(2)(h)(i).

Section 38 specifically provides how family violence is to be assessed by the court. The language of the section is mandatory, and requires the court to consider: “(a) the nature and seriousness of the family violence; (b) how recently the family violence occurred; (c) the frequency of the family violence; (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member; (e) whether the family violence was directed toward the child; (f) whether the child was exposed to family violence that was not directed toward the child; (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence; (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring; (i) any other relevant matter.”¹⁵⁷

The above provisions do not include mention of economic abuse or enumerate considerations that explain the relationship between economic abuse and the best interests of a child. Few cases drew the connection between economic abuse and considerations under Part 4. This will be explored in the next chapter.

Business law in BC

The *BC Business Corporations Act*¹⁵⁸ and *Canada Business Corporations Act*¹⁵⁹ govern how businesses are created, maintained, and operated on a provincial and federal level, respectively. These pieces of legislation do not refer to family violence or outline the relevance of family violence to business disputes. Despite this, business law has been employed in family law cases to combat economically abusive behaviours. This section focuses on the *BC Business Corporations Act*, as it was most referenced in the case law reviewed and by key informants.

BC Business Corporations Act

The *BC Business Corporations Act* contains many provisions which may be useful to a person dealing with economically abusive tactics. It contains considerable options for accessing information and documentation.¹⁶⁰ It also has several provisions which govern liability, limits on liability, and potential indemnity.¹⁶¹ Many of these sections could be useful to a victim/survivor where economic abuse is present, assuming the victim/survivor has standing.

¹⁵⁷ *Family Law Act*, *supra* note 16 at s 38.

¹⁵⁸ *Business Corporations Act*, SBC 2002, c 57.

¹⁵⁹ *Canada Business Corporations Act*, RSC, 1985, c C-44.

¹⁶⁰ For example: *Business Corporations Act*, *supra* note 158 at ss 46, 49, 147, 148, 185, 196, 248, Part 4.1.

¹⁶¹ For example: *Ibid* at ss 87, 89, 154, 157.

However, there is no mention of these options being employed, either in the case law reviewed or by key informants. Rather, both focused exclusively on oppression and derivative action. As such, these will form the topic for this section.

Oppression Remedy

The oppression remedy¹⁶² is available where actions of the company are unfair or 'oppressive' towards a shareholder.¹⁶³ This remedy is based on the notion that business decisions will be made for "legitimate business reasons," which may not be the case in situations of economic abuse.¹⁶⁴

BC's legislation is narrow in permitting who may make an application of this kind. Namely, only shareholders and "appropriate persons" can do so.¹⁶⁵ In other provinces, directors and creditors are specifically named in the legislation.¹⁶⁶ This narrow definition may be a problem for many victim/survivors who want to use this section.

The test for oppression is based on two factors:

- 1) Have the reasonable expectations of the shareholder been violated?¹⁶⁷
- 2) Is the conduct unfair or oppressive?¹⁶⁸

There are different notions of the nature of conduct. For example, some cases stated that it must be "coercive, an abuse of power or suggestive of bad faith."¹⁶⁹ This phrasing can create complications for victim/survivor of family violence, as we have seen under section 95. Other cases state that motive is not relevant, rather it is the

¹⁶² See: John P Ferber, Megan A Filmer, & Bruce W MacDougall, eds, *British Columbia Company Law Practice Manual – 2019 Update*, vol 2 (Continuing Legal Education Society of British Columbia, 2019) at 17-27 to 51 [BC Company Law Practice Manual]. See also *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69.

¹⁶³ This may include: business conduct; how directors are exercising their duties; acts or resolutions of the company.

¹⁶⁴ BC Company Law Practice Manual, *supra* note 162 at 17-28.

¹⁶⁵ Appropriate persons are limited to persons with interests similar to that of a shareholder. This class has been deemed to be small. See *Lee v International Consort Industries Inc.*, 1992 CanLII 1076 (BCCA).

¹⁶⁶ See: BC Company Law Practice Manual, *supra* note 162 at 17-29.

¹⁶⁷ This appears to be a highly contextual analysis. See: BC Company Law Practice Manual, *supra* note 162 at 17-32.

¹⁶⁸ This may be a broader question, beyond whether there is a simple violation of the company's articles or the act more generally. See: BC Company Law Practice Manual, *supra* note 162 at 17-32.

¹⁶⁹ *Ibid* at 17-34.

impact that matters.¹⁷⁰ This is closer to the definition of family violence in the *Family Law Act*.

This remedy seeks to address only harm to the party as a shareholder. It is not interested in harm related to other roles a person may hold within a company.¹⁷¹ With respect to economic abuse through family businesses, certain conduct relevant to this issue has already been determined as oppressive:¹⁷²

- Refusal to provide a shareholder access to financial information as required by the legislation;
- Creating inaccurate financial statements;
- Failing to comply with the legislation on proper record keeping;
- Incorrectly removing a director at a director's meeting;
- A shareholder trying to remove another director as a shareholder;
- Blocking a shareholder from participating in the running of the company;
- Unfair differences in shareholder dividend or salary amounts;
- A majority shareholder drawing a large salary without approval;
- Contracts and payments made to relatives of the approving shareholder or directors;
- Loans to other companies owned by only one shareholder;
- A shareholder taking an opportunity away from the company and giving it to an entity not at arm's length;
- A shareholder using corporate funds for personal expenses;
- A shareholder shutting down the business and starting another one without participation from the other shareholder;
- A shareholder moving corporate funds into a personal account;
- Termination of a shareholder as an employee, where it is part of a pattern of oppressive conduct.

The court has the power to make specific orders to deal with oppressive conduct. For example:¹⁷³

- Specific remedies such as ordering payments;
- Buy-outs of the individual's shares;
- Appointment of a receiver or an inspector;

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid* at 17-33. For example, as a director or an employee.

¹⁷² *Ibid* at 17-37 to 42.

¹⁷³ *Ibid* at 17-48 to 50.

- Liquidation or dissolution of the company.

Oppression is not appropriate where all the shareholders suffer from the same losses, such as where someone destroys a business and is not taking any side benefits. This action harms all the shareholders and so is not unfair to one person over another.¹⁷⁴

Authors have expressed that the oppression remedy is often granted when dealing with a closely held corporation, and one shareholder unfairly transfers money or assets out of the company.¹⁷⁵ Indeed, in the one case from our sample where oppression was established, these factors were present. The husband had withdrawn \$1.4 million from the company to cover personal expenses.¹⁷⁶ However, overall, oppression was rarely used or discussed in the reviewed cases or by key informants.

Derivative Action

As we have seen in previous chapters, people using violence may make decisions based on their own interests over that of the company. For example, purposely sabotaging revenues, taking income owed to the company, or falsifying records. When this occurs, a company can sue to rectify these wrongs. Obviously, a company cannot act on its own. For the derivative remedy, a “shareholder or director of a company” can ask the court to start a legal proceeding to:¹⁷⁷

- enforce on behalf of the company a “right, duty, or obligation” owed to it;
- “obtain damages” for the breach of any “right, duty, or obligation”.

A person must seek permission from the court to start legal proceedings for the company. This requires certain pre-requisites to obtain.¹⁷⁸

Unfortunately, a derivative action may end up being of little help to a victim/survivor. Consider a common remedy - repaying a company for an inappropriate transaction. If the person using violence oversees the company, there

¹⁷⁴ Ludmila B Herbst, KC, “Harm to the Company vs. Harm to the Shareholders – Is there a Narrowing Gap?” (Materials delivered at the Continuing Legal Education Society of British Columbia’s Shareholders Disputes’ Disputes 2024 Conference, Vancouver, 13 November 2024) at 3.1.11.

¹⁷⁵ *Ibid*, at 3.1.13 to 3.1.16.

¹⁷⁶ *Leclerc v Leclerc*, 2015 BCJ No 290.

¹⁷⁷ BC Company Practice Manual, *supra* note 162 at 17-52. Who may bring an action is quite limited and specific. See 17-54 for more information.

¹⁷⁸ *Ibid*, at 17-53.

is no barrier to the person misappropriating the funds again.¹⁷⁹ Only one case in our sample used derivative action. Despite the victim/survivor's success in that case, the other person ultimately defeated their claim by putting the company into bankruptcy.¹⁸⁰

Conclusion

In this chapter we considered the law currently employed to address economic abuse through family businesses. We reviewed the family law and, to a lesser extent, business law, being utilized to tackle these behaviours.

This analysis revealed two key findings. First, both family and business legislation contain numerous provisions which could provide more support to victim/survivors experiencing this kind of violence. However, the mechanisms available within family and business law are not being fully applied. For example, in business law, only two provisions have been referenced in our research. Second, other areas of law, like employment law or criminal law, were generally not mentioned in the reviewed case law or by key informants.

In the next chapter, we will explore potential challenges to victim/survivors in accessing justice and receiving fair outcomes.

¹⁷⁹ Herbst, *supra* note 174 at 3.1.13 -3.1.16, stating: "Granting as a remedy for a corporate (as opposed to a shareholder) claim an order that the wrongdoer compensate or return funds to the company controlled by the wrongdoer could be counterproductive, as the wrongdoer could again obtain the benefit or misuse the funds (*1043325 Ontario Ltd. v. CSA Building Sciences Western Ltd.*, 2016 BCCA 258 at para. 80, leave application dismissed 2017 CanLII 1335 (S.C.C.)."

¹⁸⁰ *Singh v Singh*, 2018 BCSC 1513.

Chapter 5: Potential challenges in addressing economic abuse through family businesses

Introduction

In our research, four challenges repeatedly appeared in most of the narratives around economic abuse and family businesses. Namely, (1) a lack of identification of this problem as economic abuse/family violence, (2) access to justice issues, (3) failure to include economic abuse in the family violence analysis for care of children, and (4) economic abuse not being identified as reaching the significantly unfair threshold to deviate from equal property division. In this chapter, we will explore these challenges to victim/survivors and consider possible reasons for these challenges.

It is important to keep in mind that this area is novel and emerging. As such, there is no hard research on why these challenges are appearing or their cause. For this reason, this chapter does not make recommendations or draw conclusions. As such, we have focused on offering observations from the reviewed case law and key informant narratives.

Challenges in identifying economic abuse

Lack of defined term

Research has established that globally, economic abuse is the least legislated and least understood form of family violence.¹⁸¹ In BC, the *Family Law Act* does not explicitly or independently identify economic abuse in its definition of family violence.¹⁸² The federal *Divorce Act* includes the term financial abuse but does not define it.¹⁸³ A bill suggesting changes to the *Criminal Code of Canada* to address coercive control includes descriptions of behaviours that are economically abusive. However, the bill does not use a specific term.¹⁸⁴ Overall, the case law and legislation

¹⁸¹ Global Perspective, *supra* note 26 at 94.

¹⁸² *Family Law Act*, *supra* note 16.

¹⁸³ *Divorce Act*, *supra* note 7.

¹⁸⁴ Bill C-332, *An Act to amend the Criminal Code (coercive control of intimate partner)*, 1st Sess, 44th Parl, 2024.

do not appear to favour or define a term relating to economic abuse.¹⁸⁵ This is in part why this study paper has leaned on social science.

As part of the *Family Law Act* Modernization Project, the Ministry of Attorney General conducted consultation on various matters relating to family violence. With respect to the definition of family violence, the Ministry received feedback that the definition should be amended to add economic abuse and provide clear guidance as to what constitutes economic abuse.¹⁸⁶

Australia has recently introduced amendments which specifically require consideration of family violence when dividing assets in family law cases. The amendments include a detailed and explicit definition of ‘financial abuse’.¹⁸⁷

Legal actor’s ability to understand and identify family violence

There is no requirement for lawyers to have training in family violence or how to identify more nuanced forms of violence, like economic abuse.¹⁸⁸ The *Family Law Act Regulation* requires various dispute resolution professionals, such as mediators, to obtain at least 14 hours of family violence training.¹⁸⁹ This does not include lawyers. Family violence is not part of standard law school curriculum. At present, none of

¹⁸⁵ For example, in searching legal dictionaries and Halsbury’s on LexisNexis the term “economic abuse” produces no results. The term “financial abuse” produces very few results.

¹⁸⁶ Consultation, *supra* note 17 at c 5 p 6.

¹⁸⁷ Australian Parliament, “Family Law Amendment Act 2024” (2024), online: <<https://www.legislation.gov.au/C2024A00118/latest/text>>. It states:“(2A) For the purposes of paragraph (2)(g), examples of behaviour that might constitute economic or financial abuse of a family member include (but are not limited to) the following: (a) unreasonably denying the family member the financial autonomy that the family member would otherwise have had, such as by: (i) forcibly controlling the family member’s money or assets, including superannuation; or (ii) sabotaging the family member’s employment or income or potential employment or income; or (iii) forcing the family member to take on a financial or legal liability, or status; or (iv) forcibly or without the family member’s knowledge, accumulating debt in the family member’s name; (b) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or the family member’s child (including at a time when the family member is entirely or predominantly dependent on the person for financial support); (c) coercing a family member (including by use of threats, physical abuse or emotional or psychological abuse): (i) to give or seek money, assets or other items as dowry; or (ii) to do or agree to things in connection with a practice of dowry; (d) hiding or falsely denying things done or agreed to by the family member, including hiding or falsely denying the receipt of money, assets or other items, in connection with a practice of dowry.”

¹⁸⁸ Law Society of British Columbia, “Code of Professional Conduct for British Columbia” (1 January 2013), online (pdf): <lawsociety.bc.ca/Website/media/Shared/docs/publications/mm/BC-Code_2024-03.pdf>. See section 3.1-1, which requires competency for practice.

¹⁸⁹ *Family Law Act Regulation*, BC Reg 347/2012.

the BC law schools appears to offer a course specifically on family violence.¹⁹⁰ Supreme Court judges do not require training in family law or family violence to adjudicate on family law cases.¹⁹¹ Thus, training in this area is left to individual professional's initiative and discretion.

As part of the *Family Law Act* Modernization Project consultation, the Ministry of Attorney General reported considerable feedback on legal actor's understanding of family violence:

*[M]ost respondents agreed on the importance and need for more education on family violence, including the prevalence and impacts of family violence and what behaviours constitute coercive control and other forms of family violence. It was also suggested that continuous education and training in screening for family violence be made mandatory for family dispute resolution professionals and judges. There were comments that the existing definition often isn't understood or followed; that judges and lawyers don't seem to understand what different forms of psychological and emotional abuse look like in practice or the impact this violence has on all family members.*¹⁹²

BC lawyers are required to screen for family violence. This requirement is grounded in both legislation and case law.¹⁹³ However, while the legislation requires screening, it does not indicate how such screening must be done.¹⁹⁴

In 2018, Justice Canada released a study regarding screening for family violence in family law cases.¹⁹⁵ This study found that most lawyers do not have a formal

¹⁹⁰ On review of the calendar course offerings for the University of British Columbia, University of Victoria, and Thompson Rivers University, there did not appear to be any specifically on this topic.

¹⁹¹ The amendment to the *Judges Act*, RSC, 1985, c J-1 does not require judges to receive training. Section 60(2) states: "In furtherance of its objects, the Council *may*...(b) establish seminars for the continuing education of judges, including seminars on matters related to sexual assault law, intimate partner violence, coercive control in intimate partner and family relationships and social context, which includes systemic racism and systemic discrimination" [emphasis added]. There is a positive undertaking to learn about sexual assault. See s 3(b).

¹⁹² Consultation, *supra* note 17 at c 5 p 9.

¹⁹³ *Family Law Act*, *supra* note 16 at s 8. See also: *Colucci v Colucci*, 2021 SCC 23 at para 69.

¹⁹⁴ Key informant lawyers did not use a standardized screening tool. Some key informants with lived experience stated that the screening by their lawyer consisted of a single question on the intake form, stating "Have you experienced family violence?" with a yes or no answer option.

¹⁹⁵ Pamela C Cross et al, "What You Don't Know *Can* Hurt You: The importance of family violence screening tools for family law practitioners" (February 2018), online (pdf): <<https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/pdf/can-peut.pdf>>.

screening process and “rely on ‘gut instincts’ or on voluntary disclosures.”¹⁹⁶ Key informant lawyers echoed this finding. Those interviewed did not use a standardized screening tool. Most indicated that they incorporated questions into their intake, both on paper and through conversation.

Evidence shows that the use of screening tools dramatically increases the identification of family violence. The Justice Canada study reported two such examples.

- Mediators using a specific screening tool “found that 66.7% of the mediation cases reported physical partner abuse on the behaviourally-specific screen (asked about specific behaviours indicative of abuse, such as ‘has the other partner ever hit or kicked you?’) while mediators using the standard screening tool used by the clinic (which examined court records and asked about history of conflict and comfort with mediating) reported [intimate partner violence] in only 21.3% of the cases.”¹⁹⁷
- In a child welfare setting, “practitioners saw a 300% increase in the number of abused women identified during the intake process with the introduction of [family violence] screening questions.”¹⁹⁸

A further concern with the “gut instinct” approach is the fact that “few lawyers have had formal education or training on the topics of domestic violence and/or screening.”¹⁹⁹ Lawyers “may miss important red flags, rely on inaccurate stereotypes about who is a victim of [family violence], not understand that many [family violence] survivors do not self-disclose, be unfamiliar with how a survivor would present herself, and not know the appropriate language to use to solicit accurate responses about [family violence].”²⁰⁰ The Justice Canada study concluded that legal training on family violence cannot be simply general. It must include training on how to competently use screening tools.²⁰¹

¹⁹⁶ *Ibid* at 65. See also: Nadine Badets & Bianca Stumpf, “Identifying and responding to family violence in family law cases: Results from the 2019 Survey of Lawyers and Quebec Notaries on Family Law and Family Violence in Canada” (June 2023), online (pdf): <https://www.justice.gc.ca/eng/rp-pr/jr/irfvflc-rrvfardf/pdf/RSD2023_RIB_2019_Family_Violence_Survey_EN.pdf>.

¹⁹⁷ Cross et al, *supra* note 195 at 27.

¹⁹⁸ *Ibid* at 26.

¹⁹⁹ *Ibid* at 65.

²⁰⁰ *Ibid*.

²⁰¹ *Ibid* at 66.

The research cited above shows that general questions missed roughly half the individuals who had experienced physical violence, which is the most easily identified and understood form of family violence. Given that economic abuse is poorly defined and understood, it is likely at a much higher risk of being missed.

Treatment of victim/survivors claiming family violence

Research has identified that victim/survivors who raise family violence concerns in family law litigation receive worse outcomes and are in a weaker legal position.²⁰² Several scholars and key informants expressed that family violence claims are not well received by the court,²⁰³ and are more likely to be detrimental to the victim/survivor than the person using violence.²⁰⁴ Consultation feedback to the Ministry of Attorney General as part of the *Family Law Act* Modernization Project stated:

*Survivors reported being told not to mention family violence because they would risk losing their children, it would make the separation harder, or the courts were unlikely to recognize it. Others commented that the courts put a higher priority on the abusive parent having a relationship with the child than the child's well-being and need for protection.*²⁰⁵

Research echoes this, indicating that nearly 50% of lawyers advise their clients not to raise family violence concerns.²⁰⁶ This is another potential reason that economic abuse is not identified in family law cases. Lawyers may avoid using family violence terminology to explain these behaviours if they believe it will be detrimental to their clients in legal proceedings.

²⁰² Deanne Sowter, "Ethical Discretion: The Complexities for a Lawyer Reporting a Child in Need of Protection" (2022) 100:1 Can Bar Rev 40 at 62. Deanne M Sowter, "Intimate Partner Violence and Ethical Lawyering: Not just Special Rules for Family Law" (2024) 102:1 Can Bar Rev 130 at 136 [IPV and Ethical Lawyering]. See also: Elizabeth Sheehy & Susan B Boyd, *supra* note 102 at 82.

²⁰³ Haley Hrymak & Kim Hawkins, "Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger" (January 2021) at 52, online (pdf): <<https://static1.squarespace.com/static/64220f300321233050a209ec/t/65de3b22be93725ee19fa396/1709062949128/Why+can%27t+everyone+just+get+along.pdf>>.

²⁰⁴ Key informants expressed considerable concern about the legal system's ability to address family violence. See: Jennifer J Freyd, "Institutional Betrayal and Institutional Courage" (10 March 2024), online: *University of Oregon* <dynamic.uoregon.edu/jjf/institutionalbetrayal/>.

²⁰⁵ Consultation, *supra* note 17 at c 5 p 23-24

²⁰⁶ Hrymak & Hawkins, *supra* note 203 at 51. See also: Jennifer Koshan, "Challenging Myths and Stereotypes in Domestic Violence Cases" (2023) 35:1 Can J Fam L 33 at 46.

Challenges accessing justice

Our research identified two main challenges for victim/survivors seeking to access justice. The first, as shared by key informants, is the cost of litigation and the limited access to resources. The second, as gleaned from the case law, is the difficulty in addressing the issues presented by this type of violence within one legal area, such as family or business law.

These practical barriers to victim/survivors accessing justice are another potential reason this issue is overlooked in the case law. If a victim/survivor is unable to even access the courts, it is unsurprising that the topic is not more prevalent in the jurisprudence. Further, given that this issue is infrequently seen by the judiciary, it is also not surprising that a clear and concise framework has not been developed.

Lack of resources

Individuals being economically abused usually lack financial resources, which are required to access justice.²⁰⁷ Most lived experience key informants stated they were unable to access or return to court due to costs. Even without a lawyer, key informants found the legal system financially inaccessible. For example, many cited the cumulative costs of filing fees, taking time off work, parking expenses, childcare fees, and the threat of the other party being awarded costs.

Challenges in accessing justice through multiple areas of law

Economic abuse through a family business touches on multiple legal areas. To properly address economically abusive tactics, a victim/survivor may be required to navigate multiple legal systems. For example, to achieve justice, a victim/survivor may have to resort to:

- business law to address being removed as a shareholder or director without knowledge or consent;

²⁰⁷ *Fornwald v Fornwald*, 2023 BCSC 1322. In this case, Mr. Fornwald surreptitiously transferred business assets (tangible and intangible) to a solely owned corporation, leaving Ms. Uberall to pay litigation bills out of her existing assets. While this case did not mention family violence, paragraphs 111 and 112 summarizes the realities for victims of economic abuse. “The parties had a relationship that lasted approximately 16 years, perhaps longer. At the time of trial, Ms. Uberall was 70 years old and living off of income from Canada Pension Plan, Old Age Security and her Air Canada Pension, earning \$30,530 per year. The amounts she lives on are modest, at best. Over the years since separation, Mr. Fornwald has maintained a comfortable lifestyle and healthy income at levels equal to, or above his lifestyle during the marriage. He regularly travels and eats out with his new partner. He owns recreational vehicles worth several times over Ms. Uberall’s annual income. He is employed by a business he owns (PC Crane) and can continue to work into the future. Conversely, Ms. Uberall is in a very different position. She does not enjoy the fruits of the family enterprise in which she was a co-venturer.”

- business law to address non-arm's length transfers or transactions;
- employment law to address being unfairly terminated;
- family law to address how economic abuse impacts the safety of children;
- family law to seek division of the family business;
- tort law to address the family violence itself;²⁰⁸
- criminal law to address any instances of fraud²⁰⁹ or theft²¹⁰ (for example).

Lawyer key informants did not have multiple relevant practice areas. In other words, a family law lawyer may be unlikely to mount claims under the *Business Corporations Act* due to a lack of competency in that practice area.²¹¹ Likewise, business lawyers may be unlikely to mount a tort claim for the same reason. In short, victim/survivors may be required to employ multiple lawyers over multiple practice areas to access the necessary remedies.

A self-represented litigant may have difficulties navigating different legal systems, which operate under different pieces of legislation, use different forms, and have different rules. For example, a family law claim is brought to court as an action, while a derivative claim is brought as a petition. The employment standards system is tribunal based, and completely distinct again from family or business law.²¹²

Challenges connecting economic abuse to care of children

Part 4 of the *Family Law Act* requires the court to consider family violence when determining the best interests of the child. As discussed, there are concerns associated with legal actors understanding of family violence.²¹³ Further, scholars

²⁰⁸ *Ahluwalia v Ahluwalia*, 2022 ONSC 1303 at para 5.

²⁰⁹ Government of Canada, "About Family Violence" (modified 17 May 2024), online: <<https://www.justice.gc.ca/eng/cj-jp/fv-vf/about-apropos.html#fin.>>.

²¹⁰ *Ibid.*

²¹¹ Lawyers are ethically required to only practice in areas in which they are competent. See: Law Society of BC, "Chapter 3 – Relationship to Clients – annotated" at 3.1-2, online: <<https://www.lawsociety.bc.ca/for-lawyers/act-rules-and-code/code-of-professional-conduct/chapter-3-%E2%80%93-relationship-to-clients/>>.

²¹² Government of British Columbia, "Make a complaint", (modified 16 December 2024), online: <<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/complaint-process>>.

²¹³ *KMN v SZM*, 2024 BCCA 70 at para 120.

have indicated that research findings “consistently show... judges failing to [make decisions in the best interests of children]...where there is family violence.”²¹⁴

Where economic abuse is the primary form of violence, it is unlikely that it will be considered in the best interests analysis. As discussed previously, legal actors seldom identify economically abusive behaviours through family businesses as family violence.

Of the cases reviewed, a few linked economic abuse through a family business to the wellbeing of the children. For example, in one case, the court identified the person’s refusal to sell a commercial property as jeopardizing the “children’s safety, and economic security”.²¹⁵ In another case, the person claimed the company boat had disappeared, leaving the victim/survivor liable for the debt with no means to pay. The court found this behaviour to have had a “significant impact on the children’s economic security”.²¹⁶

The Ontario case of *Lakhtakia v Mehra*²¹⁷ is instructive in understanding this issue, especially if we are mindful of the values previously discussed. In this case, the court focused on acts of physical violence, which included instances of strangulation,²¹⁸ and threats to throw the child from a window.²¹⁹ The court stated: “I note that the family violence occurred over 7 years ago. It was specific and time limited. The

²¹⁴ IPV and Ethical Lawyering, *supra* note 202 at 152. Citing: Susan B Boyd & Ruben Lindy, “Violence Against Women and the B.C. Family Law Act: Early Jurisprudence” (2016) 35 Can Fam LQ 101.

²¹⁵ *MWB v ARB*, 2013 BCSC 885 at paras 205-206.

²¹⁶ *KRW v PMM*, 2023 BCSC 981 at para 83.

²¹⁷ *Children’s Law Reform Act*, RSO 1990, c C12, s 18(1). The Ontario *Children’s Law Reform Act* specifically lists financial violence as a form of family violence.

²¹⁸ Strangulation is significantly correlated with increased risk of lethality. See: HELP, *supra* note 2 at 17.

²¹⁹ *Lakhtakia v Mehra*, 2022 ONSC 201 at para 384. The court listed the instances as: “* On November 9, 2014, the respondent twisted the applicant’s arm and pushed her against a wall when she found text messages between him and his mistress. * On November 12, 2014, the respondent said “you will get the flavour of what it feels to lose a loved one”, pushed her down with his knee, and left the residence with 10-month old N for 3 hours before returning. The applicant was distraught and repeatedly texted the respondent. * On November 14, 2014, the respondent grabbed her neck with his two hands and pushed her against the wall choking her, then removed N who was sleeping from her bed, and carried N towards the window of their apartment and threatened that he would throw N down from the 15th floor. * On November 27 or 28, 2015, outside of a Montana’s restaurant in Brampton, Ontario the respondent told the applicant that if she did not agree to a divorce she would face dire consequences and that she would never get to see N again.”

parties had a 6 year marriage. Based on the evidence presented at trial, I would describe the impact on N [the child] as minimal.”²²⁰

This case included numerous behavioural indicators for economic abuse, including those with implications for the child. For example, the person: ²²¹

- committed a fraudulent share conveyance to falsely impute income to his spouse;²²²
- claimed his income for determining support was roughly \$100,000 to \$200,000, when the court found it to be more than \$7,000,000 per year;
- provided inaccurate and contradictory documents regarding his ownership and role in multiple businesses, causing his own expert to resign prior to trial.²²³

The judgement identifies these behaviours as unacceptable and deceptive. The court stated, “[i]t bears repeating about how many ways the respondent has breached court orders, misled the court and others and generally been deceptive about his true conduct.”²²⁴ However, these behaviours were not identified as economic abuse or as family violence. As a result, they were not considered in the court’s determination on family violence with reference to the child.

In the reviewed cases, very few specifically identified that a family business was used for economically abusive purposes. Unless these behaviours are identified as violence, they cannot be included in an analysis on care of children.

Challenges establishing that economic abuse creates significant unfairness for the purposes of property division

This paper has explored the property division scheme in the *Family Law Act*, including the intention behind its creation, underlying values, and how certain sections operate. The 50/50 no-fault model has many virtues. It is simple and easy to understand for non-lawyers. It is predictable, providing separating couples with

²²⁰ *Lakhtakia v Mehra*, 2022 ONSC 201 at para 388.

²²¹ This is an Ontario case, and unlike the BC *Family Law Act*, the Ontario *Children’s Law Reform Act* specifically lists financial violence as a form of family violence. *Children’s Law Reform Act*, RSO 1990, c C12, s 18(1)

²²² *Lakhtakia v Mehra*, 2022 ONSC 201 at para 75.

²²³ *Ibid* at paras 55-71.

²²⁴ *Ibid* at para 397.

the ability to plan and estimate their financial picture post separation. Finally, the high threshold for deviation from this scheme discourages people from “trying their hand” at court to achieve a more favourable outcome.

In some respects, the model has a protective function for victim/survivors. It protects against stereotypes regarding the value of different types of work. For example, that bookkeeping is less valuable to a business’s success than employing the trade.²²⁵ It also acknowledges that family members may contribute to the success of a business even if not directly involved in that business, for example, by giving up a career to care for the children while the other spouse is free to build the business. The 50/50 model captures this reality and protects against interpretation otherwise. The high threshold for deviation from this scheme may also be protective in discouraging litigation abuse.

As noted, there is some room for deviation from this scheme. Section 95 of the *Family Law Act* allows for unequal division of family property where equal division would be significantly unfair.²²⁶ This section creates a narrow space for conduct to be considered for the purposes of property division. This is an acknowledgement by the legislature that at times conduct can change the parties economic position enough that it is unfair to apply the normal regime. Section 95 enumerates conduct similar to economic abuse, yet does not explicitly include family violence.

Several BC Court of Appeal cases have tried to clarify this issue, revealing three requirements.

First, conduct is only relevant if it impacts the “economic characteristics of the spousal relationship”.²²⁷ Examples of this include: “relative contribution of spouses

²²⁵ *Fornwald v Fornwald*, 2023 BCSC 1322. At paragraph 105, the court states: “The argument put forward by Mr. Fornwald relies upon outdated notions which underestimate and devalue the contributions of partners (primarily women) who do work that is less physical or less visible (keeping the books as opposed to renting out and caring for the cranes), or unpaid work in the home (keeping the household, maintaining the properties). The argument rests upon stereotypes which undervalue contributions and work historically identified as “women’s work”. Initially, courts dealt with this issue as unjust enrichment claims to assign value to the contributions of women...The family law regime, including that under the *FLA*, has expressly remedied this situation through a presumptive equal division of family assets and debt. Spousal support regimes, both federal and provincial, likewise address this presumption.”

²²⁶ *Jaszczewska v Kostanski*, 2016 BCCA 286 at para 17.

²²⁷ *Singh v Singh*, 2020 BCCA 21 at paras 137-138. The court stated: “Ruth Sullivan, in *Sullivan on the Construction of Statutes*, 6th ed. ... sets out three requirements for this rule of statutory construction to apply: first, the specific items in the list must belong to a single identifiable class; second, this class must be narrower in scope than the general words that follow the list; and third, the rule cannot be invoked if the specific class inferred from the list has nothing, apart from those items, to apply to. Applying these requirements to the provision at issue, if the rule applies, the class cannot be any factor ‘that may lead to significant unfairness’ as this would

to the acquisition, preservation, maintenance, or improvement of family property during the relationship.”²²⁸

Second, intention to harm is not sufficient. Even if a person engages in economically abusive behaviour designed to harm the victim/survivor’s financial health, it is not relevant unless there is a “negative financial consequence”.²²⁹ Given our understanding of the no-fault model of family law, this logic makes sense. Section 95 is intended to correct economic unfairness, not to compensate the victim/survivor for the violence.²³⁰ This logic also makes sense when we consider the legislature’s intentional omission of family violence as an enumerated consideration.

Third, while intention to harm is not sufficient for the application of section 95, it is required. Where a person behaves in an economically abusive manner, but the intention is not specifically to harm the victim/survivor, section 95 does not apply. For example, in one case the person (1) transferred money out of the family business to a solely owned company, then swore a false affidavit to conceal this,²³¹ (2) blocked his spouse from accessing banking records,²³² and (3) removed his spouse as a director without her knowledge or consent.²³³ Section 95 was not employed because the person “believed he was asserting rights to which he was properly entitled as the original founder of the business”.²³⁴ Even though the

violate the second requirement as set out by Sullivan. The other factors enumerated in s. 95(2) suggest consideration of aspects of the relationship between the spouses, including its duration, the terms of any agreement, as well as the characteristics of family assets and debt and how the spouses have influenced their value. One of the considerations in s. 95(2)(g) includes an analysis of a spouse’s good faith or motive. These factors are broad. **Nevertheless, in my view, they all relate to a limited class, namely, the economic characteristics of a spousal relationship** [emphasis added]. See also: *He v Guo*, 2022 BCCA 355 at para 32.

²²⁸ *Singh v Singh*, 2020 BCCA 21 at para 139. See also: *He v Guo*, 2022 BCCA 355 at para 32.

²²⁹ *He v Guo*, 2022 BCCA 355. At paragraph 34 the court states: “there is nothing in s. 95 that indicates family violence should be awarded special consideration absent impact on (to use the words of *Singh*) the economic characteristics of a spousal relationship.”

²³⁰ *Ibid* at para 37.

²³¹ *YZ v AC*, 2019 BCSC 1564 at paras 161-163.

²³² *Ibid* at para 27.

²³³ *Ibid*.

²³⁴ See for example: *YZ v AC*, 2019 BCSC 1564. At paragraph 146 the court stated: “Rather, I accept that he believed he was asserting rights to which he was properly entitled as the original founder of the business. His view, as he explained it, was that A.C. was incrementally wresting control of his companies from him and he was merely fighting back. Even if, as A.C. argues, his belief in that regard was not a reasonable one, I am not prepared to conclude that he did not honestly hold it. I also accept that Y.Z. may have resorted, at times, to duplicitous tactics in the prosecution of that litigation but I do not find that any such misconduct rises to a level that could justify an unequal division of the family assets in this action.”

behaviour was described as “duplicitous” by the court, it was not sufficient to justify unequal division.²³⁵

The legislation, coupled with this judicial framework, create certain challenges for victim/survivors.

The reviewed case law was not clear as to what constitutes a negative financial consequence. One case appeared to state that a tangible financial loss must be incurred for the conduct to be relevant.²³⁶ Another case postulated that a court may need to consider how economic abuse limits a victim/survivor’s options when dividing property. Further, it recommended considering violence in making property division orders to ensure such orders do not “exacerbate or prolong the family violence that a party experiences.”²³⁷ In other words, some cases examined only the directly measurable change in asset value, while other cases viewed a negative financial impact as encompassing more intangible elements like loss of options. This lack of consistency creates uncertainty for victim/survivors seeking to employ section 95.

Even if we overlook the lack of clarity as to what constitutes a negative financial consequence, additional problems can arise for victim/survivors in substantiating such claims. Victim/survivors may lack the documentation necessary to prove and quantify financial consequences due to non-disclosure.

The bad-faith requirement in section 95 may also create challenges. Victim/survivors may struggle to prove actions as intentionally designed to harm. As discussed previously, business decisions often exist within a wide margin of discretion. It may be very difficult to prove the motive behind a particular business decision. Further, if legal professionals do not have sufficient understanding of family violence, they may struggle to identify a single behaviour as part of the broader pattern of coercive control.

Conclusion

This chapter has considered four recurrent challenges in the family law jurisprudence in addressing economic abuse through family businesses. These challenges range from legal to practical in nature.

This analysis revealed two key findings. First, it is extremely challenging for an individual experiencing this kind of violence to access justice. A person being economically abused, by definition, lacks the resources necessary to pursue legal

²³⁵ *Ibid.*

²³⁶ *He v Guo*, 2022 BCCA 355.

²³⁷ *Loss v Walters*, 2024 BCSC 1012 at paras 108-110.

remedies. In addition, remedies for this kind of violence are spread across multiple legal areas, often with different rules and frameworks. Second, the law is struggling to accurately identify this type of violence. This has implications for legal analysis regarding care of children and property division.

Chapter 6: Conclusion

Summary of study paper

This study paper has taken the first step in considering the relationship between family businesses and economic abuse. This topic is novel and emerging. Thus, it is not possible to draw hard conclusions or create recommendations. However, we have attempted to share our observations and draw attention to potential roadblocks in the legal system in addressing this problem. We have also sought to increase awareness and understanding of this issue, and how it presents and is addressed in family law cases.

Over the last five chapters, this paper has answered several questions: What is economic abuse? What is the relationship between economic abuse and family businesses? How are family law cases addressing economic abuse through family businesses? What are the challenges to addressing this type of violence?

We have answered these questions using the limited information available. However, this issue is still largely unconsidered by the academic and legal community. Given this, much of our discussion was based on observations drawn from the case law and key informant interviews. More research and information is needed to draw firm conclusions and to make recommendations about how best to support victim/survivors in accessing justice.

Key takeaways and next steps

Our research has revealed a few key takeaways.

The current legislation includes tools for victim/survivors experiencing this kind of violence. While there is certainly room for improvement with legal frameworks, as we have seen, family law, business law, employment law, torts, and criminal law all have potential tools and remedies. However, these tools are generally not being accessed or applied.

Feedback in the *Family Law Act* Modernization Project consultation reveals concerns about the legal system's capacity to effectively address family violence, including this issue. Our research echoes these concerns. Key informant lawyers expressed doubts about the system's ability to deliver fair outcomes for clients experiencing this type of violence.

Victim/survivors shared unfavourable views of the family law system. Key informants with lived experience struggled with many of the challenges outlined in chapter 5. Moreover, they did not understand that family law would largely not consider their former partner's conduct in determining case outcomes. They did not

understand that family law would not penalize or provide compensation for family violence. This resulted in feelings that the legal system ignores and condones violence.

The above lead to a final takeaway - this topic requires further investigation and consideration by the legal profession. Beyond the lack of information generally, over the course of our research, clear information gaps presented themselves.

First, there was minimal information on how this problem impacts diverse communities. For example, few of the cases or key informants could provide intersectional lenses (e.g., Indigenous, 2SLGBTQIA+). Thus, an important place of continuing study is how differing groups are uniquely impacted by this problem.

Second, there was limited information on how economic abuse through family businesses impacts children. The case law presented only adult perspectives. As an area of law that seeks to protect children's best interests, it is imperative to understand this perspective.

Further research and consideration of these topics will provide important foundational information necessary to guide change.

Glossary

| | |
|------------------|---|
| Coercive Control | Coercive Control is a pattern of behaviour in intimate partner relationships or with family members that traps and intimidates a victim/survivor. ²³⁸ |
| Economic Abuse | Economic Abuse “involves behaviours that control a [person’s] ability to acquire, use, and maintain economic resources, thus threatening [their] economic security and potential for self-sufficiency.” ²³⁹ This term encompasses all forms of violence with economic consequences. |
| Family Business | Family Business is not defined in the <i>Family Law Act</i> . However, business interests are included in the act’s definition of family property as any “share or an interest in a corporation, [or] an interest in a partnership, an association, an organization, a business or a venture” held by either spouse. ²⁴⁰ |
| Family Debt | Family Debt refers to debts that fit within the <i>Family Law Act</i> ’s definition. ²⁴¹ |
| Family Property | Family Property refers to property that fits within the <i>Family Law Act</i> ’s definition. ²⁴² |
| Family Violence | Family violence refers to behaviour that fits within the <i>Family Law Act</i> ²⁴³ and |

²³⁸ Lisa Ha, “Brief overview of coercive control and the criminal law” (last modified 13 May 2024), online: <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd17-rr17/p4.html?wbdisable=true>>.

²³⁹ Adams 2008, *supra* note 22 at 564. This sentence was altered to make it gender neutral.

²⁴⁰ *Family Law Act*, *supra* note 16 at s 84.

²⁴¹ *Ibid* at s 86.

²⁴² *Ibid* at s 84.

²⁴³ *Ibid* at s 1.

| | |
|-----------------------|--|
| | <i>Divorce Act</i> ²⁴⁴ definitions of family violence. |
| Litigation Abuse | Litigation Abuse is the use of litigation as means “to maintain contact, domination and control over former partners. Perpetrators repeatedly engage legal systems (family courts, appeal courts, child protection agencies, police, civil protection systems, access to information processes) in the crusade to maintain contact and to coerce, control, harass, undermine and dominate their intimate and former intimate partners.” ²⁴⁵ |
| Person using violence | Person using violence refers to a person who is alleged to have engaged in family violence (as defined by the <i>Family Law Act</i> and <i>Divorce Act</i> .) |
| Victim/survivor | Victim/survivor refers to someone who has experienced family violence as defined by the <i>Family Law Act</i> or <i>Divorce Act</i> . “The term is not intended to convey a lack of agency of the person victimized; it recognizes people’s strengths and resilience.” ²⁴⁶ |

²⁴⁴ *Divorce Act*, *supra* note 7.

²⁴⁵ Linda C Neilson, “Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases”, 2nd ed (Ottawa: Canadian Legal Information Institute, 2020) at 7.4.1, online: <<https://canlii.ca/t/ng>>.

²⁴⁶ HELP, *supra* note 2 at 4.

Appendix

Resources on Screening for Family Violence

- The Continuing Legal Education Society of BC offers a course entitled: Family Violence Screening Training for Litigators and DR Professionals
- Western University offers a webinar entitled: An efficient family violence screening tool for mediators: The MASIC-S

Resources on Risk Assessments

- Legal Services Society of British Columbia & Ending Violence Association of British Columbia, “Is Your Client Safe? A Lawyer’s Guide to Family Violence” (February 2012), online (pdf): <https://api2.legalaid.bc.ca/resources/pdfs/pubs/Is-Your-Client-Safe-eng.pdf>.
- Linda C Neilson, “Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection): A Family Law, Domestic Violence Perspective”, 2nd ed (30 June 2012), online: https://publications.gc.ca/collections/collection_2014/jus/J2-395-2014-eng.pdf.
- Gabrielle Davis, Loretta Frederick, & Nancy Ver Steegh, “Practice Guides for Family Court Decision-making in Domestic Abuse-related Child Custody Matters” (2018), online (pdf): <https://www.bwjp.org/assets/compiled-practice-guides-may-2018.pdf>.

Training & Resources on Family Violence

- The Justice Institute of BC offers a course entitled: Family Violence: Impact on Separation and Divorce.
- Department of Justice Canada, “HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisors” (2021), online (pdf): <https://www.justice.gc.ca/eng/fl-df/help-aide/docs/help-toolkit.pdf>.
- Western University Continuing Studies offers a Practice Certificate in Gender Based Violence Skills.

Resources on Economic Abuse

- Meseret Haileyesus et al, “The State of Economic Abuse in Canada: Championing Financially Strong Futures for Survivors” (2023), online (pdf):

<<https://ccfwe.org/wp-content/uploads/2023/10/The-State-of-Economic-Abuse-Report.pdf>>.

- R McKay White, “Access to Justice for Victims of Economic Exploitation” (2024) 61:3 Alta L Rev 549.
- (Australia) Vivien Chen, “Hidden Risks of Economic Abuse Through Company Directorships” (2024) 47:1 UNSWLJ 105.
- (United Kingdom) Surviving Economic Abuse, “Economic abuse: a global perspective”, online: <https://survivingeconomicabuse.org/wp-content/uploads/2022/11/SEA_Economic-Abuse-A-Global-Perspective.pdf>.
- (United Kingdom) Hogan Lovells & Surviving Economic Abuse, “Legal rights and remedies for economic abuse” (March 2022), online (pdf): <<https://survivingeconomicabuse.org/wp-content/uploads/2022/03/Final-SEA-Report.pdf>>.



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