SCHEDULE A

Capstone Research Paper

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I. Introduction

In recent years, the intersection between criminal law and family law has been widely discussed both domestically and globally. Researches are being conducted to investigate the challenges faced by legal professionals and litigants in concurrent proceedings and best practices to address the concerns. This paper examines 232 cases docketed over a four-week period at the Ontario Superior Court located at 393 University Ave, Toronto, Ontario. Justices were asked to take note of cases that have some sort of indication of domestic violence. I then randomly selected 28 cases that have such indication, and tracked them down in the criminal justice system

to see if the information from both courts parallel each other. The findings of this project are presented in this paper.

The structure of this paper will be as the following. The second part of the paper addresses intimate partner violence by first providing an overview of the scope of intimate partner violence in Canada using the statistics collected by Statistics Canada. It is followed by an examination of the data collected in this project, which suggests that nearly half of the family court cases in front of a Superior Court judge contain some indication of domestic violence. Three hypotheses are provided to explain the high percentage of cases that suggest violence. The third part of the paper presents the data regarding the 28 cases that I tracked down in the criminal court system. Cases are put into four categories according to the results, and each category is analyzed in detail. Additionally, I explore the extent to which having legal representation may affect how well the family court judge is informed about the concurrent criminal proceedings. The last part of the paper looks at self-represented litigants by first summarizing studies done on self-represented litigants in Ontario. I then move on to present the data collected in this project, and suggest that legal representation is especially needed in cases involving intimate partner violence.

II. Intimate Partner Violence

a) Defining Intimate Partner Violence

Intimate partner violence is defined by the World Health Organization as any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship. Such behaviour may include acts of physical aggression, psychological abuse, forced intercourse and other forms of sexual coercion and various controlling behaviours. Intimate partner violence exists in all countries, irrespective of social, economic, religious or cultural group.[1]

Intimate partner violence differs from non-intimate partner violence in several ways. For one, intimate partner violence is rarely a one-time event, and typically increases in frequency and severity over time.[2] In addition, intimate partner violence is especially harmful when children are involved. Many homeless women and children have been victims of intimate partner violence

[1] Heise L, G.-M. C. "Violence by intimate partners." In E. Krug, Dahlberg L.L., Mercy J.A., et al. (eds.). *World Report on Violence and Health*. World Health Organization (2002): 87-121 at p89
[2] Fagan, Jeffrey. "When Battered Women Kill." *Journal of Criminal Justice* 16.1 (1988): 74-8

and become homeless as a result of fleeing from an abusive relationship. Children who witness violence between adults are at higher risk of committing violent assaults and become victims of alcohol and drug abuse later on in life.[3]

It should be noted that it is increasingly recognized that intimate partner violence encompasses not only violent behaviours that would result in physical injury, but also psychological abuse that is traditionally overlooked by scholars. Psychological and emotional abuse often has long-term detrimental impact on the psychological and physical wellbeing of the victim. The key ingredient in intimate partner abuse is power control, and whether or not such control results in visible injuries is secondary to the psychological and emotional trauma the victim suffers.

b) Scope of Intimate Partner Violence in Canada

In 2011, intimate partner violence, including both spousal and dating violence, accounts for one in every four violent crimes reported to the police. In 2011, there were approximately 97,500 victims of intimate partner violence, representing a rate of 341 victims per 100,000 population.[4]

Although intimate partner violence can occur in same-sex relationships and women are sometimes perpetrators of such violence, according to Statistics Canada, nearly 80% of intimate partner abuse is perpetrated by men against their female partners.[5] According to police reports, although men and women in Canada are equally at risk of violent victimization, men are much more likely to be assaulted by a stranger or someone from outside of their family, while women are much more likely to be assaulted by someone they know.[6] In addition, some suggest that men are far more likely to initiate violence, while women are more likely to use violence in self-defence.[7] Such finding is consistent with studies worldwide.[8]

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3 Epstein, Deborah. "Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System." *Yale J.L. & Feminism* 11.3 (1999): 3-50 at p39 ["Effective Intervention"]

4 Sinha, Maire. "Family Violence in Canada: A Statistical Profile, 2011" *Canadian Centre for Justice Statistics, Statistics Canada* (2013) at P6 ["Family Violence in Canada"]

5 ibid at p7

6 Vaillancourt, Roxan. "Gender Differences in Police-Reported Violent Crime in Canada, 2008", *Canadian Centre for Justice Statistics, Statistics Canada* at p5

7 Kimmel, Michael. "Gender Symmetry in Domestic Violence: A Substantive and Methodological Research" *Violence Against Women* 8.11 (2002): 1332-63

8 Ellsberg, Mary, Megan Gottemoeller, and Lori Heise. "Ending Violence Against Women." *Population Reports* 27.4 (Dec. 1999) at p4

In 2011, intimate partners represented 45% of all those accused of victimizing women, which made them the most common perpetrators in violent crime against women.[9] In the same year, there were about 78,000 female victims of intimate partner violence, representing a rate of 542 victims per 100,000 women aged 15 years and older. This number is significantly higher compared to a rate of 139 male victims per 100,000.[10]

Based on police-reported data, women victimized by their intimate partners were most often (73%) the victim of physical assault. While in most instances (60%), these assaults were the least serious of the three levels of assault, 11% of these assaults were either aggravated assaults or assaults with a weapon. Physical assaults were also the most common form of violence involving male intimate partner victims. Intimate partner violence against women, however, was more likely than violence against men to involve sexual offences (3% versus less than 1%) and criminal harassment (8% versus 4%).[11]

It should be noted that police-reported data is limited to intimate partner violence that falls under offences in the *Criminal Code*. As such, other forms of violence such as financial and emotional abuse are not captured by such data. While the *Criminal Code* does not provide separate offences for intimate partner violence, assailants of violent acts against family members can be charged with the respective criminal offence, such as homicide, assault, sexual assault, or criminal harassment. In addition, the abuse of a spousal or child may be an aggravating factor at sentencing.[12]

According to the 2009 General Social Survey (GSS), 6% of Canadian women currently or previously living in a spousal relationship experienced spousal violence in the previous five years, similar to rates reported for men. This represented an estimated 601,000 women and 585,000 men that were either physically or sexually victimized by a legally married or common-law spouse (current or former).[13]

Due to the widespread criticism against law enforcement agencies regarding the arrest and prosecution of intimate partner violence perpetrators, many jurisdictions have now adopted and

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[9] Sinha, Maire. "Measuring Violence against Women: Statistical Trends" *Canadian Centre for Justice Statistics, Statistics Canada* (2013) at p14 ["Measuring Violence against Women"]
[10] *ibid* at p20
[11] *ibid* at p23
[12] "Family Violence in Canada" at p6
[13] "Measuring Violence against Women" at p24

implanted pro-charging and pro-arrest policing protocols in recent years to address the unique needs and circumstances faced by victims and perpetrators of intimate partner violence.[14]

It is estimated that 71% of intimate partner violence incidents reported to the police resulted in a criminal charge being laid against the accused. Interestingly, this is almost twice the proportion for non-intimate partner violence (39%). Among intimate partner violence incidents, 16% were cleared by means other than a charge. The most common reason for clearing the incident through other means included a request by the complainant not to lay charges, reasons beyond the control of the department, and departmental discretion. Overall, female victims of intimate partner violence were more likely than male victims to see charges laid or recommended (74% versus 61%). There was virtually no difference in the proportion of spousal and dating violence incidents ending in charges against the accused (72% and 71%).[15]

Fortunately, studies show that unreported incidents were generally less severe and less likely to involve physical injury, compared to those incidents of spousal violence that came to the attention of police.[16]

Similar to trends in overall crime, police-reported rates of family violence tend to be higher in the territories than in the provinces. In 2011, the Northwest Territories and Nunavut had rates that were about eight and twelve times higher than the national average. Provincially, the highest rates of family violence were recorded in Saskatchewan (583 per 100,000 population) and Manitoba (402) (Chart 1.3; Table 1.3). The lowest rates were recorded in Ontario (190), Prince Edward Island (227), Nova Scotia (246) and British Columbia (271).[17]

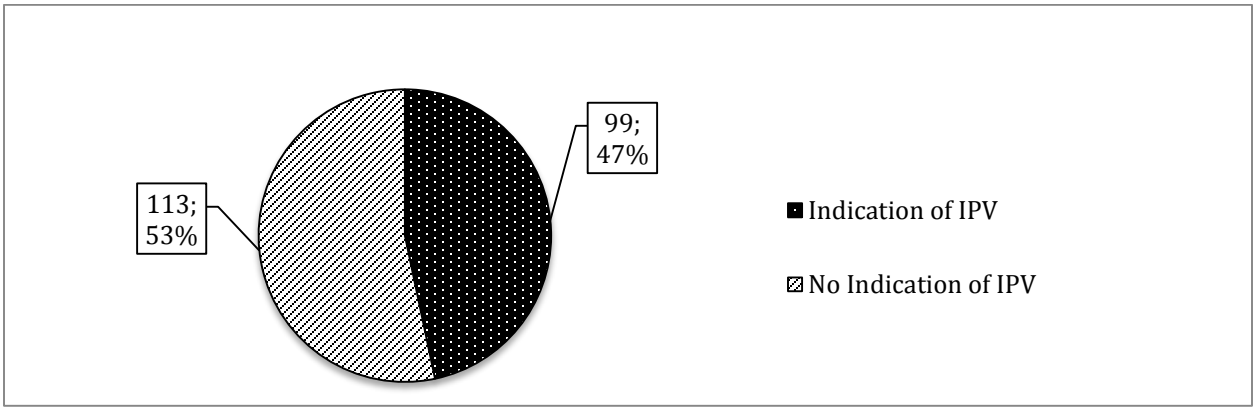
c) Findings from Data Collected at the Superior Court of Ontario

As shown in *Chart 1* below, out of the 232 docketed cases, 43% (99) have some sort of indication of intimate partner violence, while the rest 133 cases have no indication of domestic violence which constitutes of 57% of the total cases. In other words, almost half of the cases in front of a family law judge at the Superior Court of Ontario suggest various degrees of intimate partner violence.

[14] Garner, Joel, and Christopher Maxwell. "Prosecution and Conviction Rates for Intimate Partner Violence." Criminal Justice Review 34.1 (2009): 44-70 at p44
[15] *ibid* at p46
[16] "Family Violence in Canada" at p38
[17] *ibid* at p8

The percentage of cases that involve induction of various degrees of intimate partner violence is alarmingly and disturbingly high. Compared to both police- and self-reported data, the family court system seems to harbor a significantly larger number of parties who are embroiled in violent disputes. The high percentage may be attributed to the following factors.

***Chart 1*: Number and Percentage of Cases with Indication of Intimate Partner Violence**



First, justices sitting at the Superior Court were asked to take note of cases with "indication of domestic violence", which may include any type of intimate partner violence, including physical, emotional, financial and sexual abuse against one spouse. Such broad definition by nature captures more incidents than police-reported data, which are confined to violent incidents that are listed in the *Criminal Code*.

Secondly, cases with relatively high degrees of conflict tend to remain in the family court system because they cannot be resolved through out-of-the-court process. Almost all couples experience some degree of conflict and tension during separation, but when there are intimate partner violence issues involved, there tends to be conflicting allegations and high degree of tension. Such tension then makes it difficult for parties to resolve their legal issues through mutual agreement or alternative dispute resolution (ADR), such as mediation and arbitration. Although couples who are able to reach a resolution without the intervention of judges are not immune from intimate partner violence, on average cases that remain in the family court system tend to carry higher levels of hostility, which may in part or in full be attributed to the existence of intimate partner violence in couples' relationships. Therefore, it is not as surprising that almost half of the cases in front of a sitting family court judge have some degree of indication of intimate partner violence.

Lastly, because there is virtually no way for a family court judge to substantiate claims of intimate partner violence, we cannot rule out the possibility that some cases involving claims of intimate partner violence may contain false allegations. Allegations of criminal conduct may provide a significant advantage for the alleging party in family litigation, and some litigants assert untrue criminal allegations against a family member.[18] There is very limited research on the substantiation of claims of intimate partner violence in the family law context. The few studies that do exist suggest that about 50-75% of intimate partner violence allegations can be substantiated subsequently in some matter.[19] In other words, about 25-50% of the intimate partner claim in the family law context cannot be substantiated. Although the danger and harm of intimate partner violence is widely acknowledged, we cannot ignore the fact that that a notable proportion of allegations advanced by litigants in family court proceedings cannot be fabricated.

III. Integration between Family and Criminal Courts

a) Overview of Data collected

Out of the 99 cases that have some sort of indication of intimate partner violence, I randomly selected 28 cases to examine in detail. In the family files of 15 of the 28 cases, there is suggestion of the existence of concurrent criminal proceedings. The other 13 cases are either silent about the existence of any concurrent criminal proceedings, or suggest that there are no charges being laid in their family materials.

I then provided the names of the alleged accused to the staff at the criminal offices at both the Superior Court and Ontario Court of Justice, and asked them to find out if any of the names matched their criminal accused database. It turned out that only 6 of the alleged accused had charges substantiated by the criminal files at the OCJ that parallel the allegations in their family court files, and none at the SCJ. The summary of the results is presented in *Table 1* below.

As illustrated in *Table 1*, 5 of the 6 criminal files that were substantiated by documents found at the provincial criminal court fall under the category of cases whose family court materials suggest the existence of criminal charges. Alarmingly, in one case, the family court

[18] Schoonmaker,Samuel. "Criminal Law Or Family Law: The Overlapping Issues." *Family Law Quarterly* 44.2 (2010): 155-67 at p157

[19] Jaffe, Peter G., et al. "Custody Disputes Invovling Allegations of Domestic Violence: Toward A Differentiated Approach to Parenting Plans." *Family Court Review* 46.3 (2008): 500-22 at p506

judge believed that there are no criminal charges based on materials available to him or her, while actual criminal charges indeed exist. Out of the remaining 22 cases where no parallel criminal proceedings were found, 9 of them have indication in their family materials pointing to the existence of criminal charges, while the other 13 contain no such suggestion. As such, I divided the 28 cases into 4 groups, and I will examine 3 groups in detail in the following session.

***Table 1*: Number of Family Files with Indication of Criminal Charges and Number of Actual Charges Found in 28 Randomly Selected Cases**

		Family Court		**Total**
		Files suggesting criminal charges	**Files suggesting no or silent about criminal charges**	
Criminal Court	**Actual charges found**	5 (Group A)	1 (Group C)	6
	No actual charges found	10 (Group B)	12 (Group D)	22
Total		15	13	28

b) Group A: family files suggesting criminal charges, and actual criminal charges found

In this group of cases, there is some information in the family court files available to a family court judge pointing to the existence of some type of proceedings in the criminal court involving both parties, and there are actual proceedings found in the criminal court system. There are 5 cases in this category. After comparing the information presented in the family court files and actual proceedings in the criminal court, I found that the information available to a family court judge is more or less an accurate reflection of proceedings in the criminal court. The accused party tends to dispute the truthfulness of the allegations, rather than the existence or the nature of the criminal charges. However, despite the accuracy of the information, the information provided to a family court judge is often vague and brief, and only allows the judge to form a limited understanding of the concurrent criminal proceedings. In addition, when the complainant party has little or no knowledge of the concurrent criminal proceedings, the family court judge is forced to rely on the information provided by the accused party, who naturally has an interest in downplaying the criminal charges. Below is a brief summary of the cases.

In *S.P v K.P*, the family court materials indicate that the father was charged with domestic assault in September 2012 and spent 80 days in West Detention center. He subsequently pleaded guilty to the charge, and received 18 months conditional probation and counseling. In September 2014, the mother supposedly called the police again, and the father was subsequently arrested for assault and threatening. In his affidavit, the father does not dispute the charges or the disposition, but claims that he was assaulted by the mother and that the mother encouraged him to hit her. The criminal file of the father indicates that the he was indeed charged with assault and breach of bail conditions, and received conditional discharge with 18 months probation in September 2012. In this case, the family court judge ordered a restraining order in September 2014, preventing the father from contacting the mother and their 4 children. The order dated December 2014 provided that the mother has sole custody, and the father has supervised access to their children. Both parties were unrepresented.

In *S.B. v M.B.,* the parties married in August 2010 and separated in July 2014. There is one child of the marriage who was born in June 2013. In the Applicant Father's application material, he stated that "parties separated as a result of the Respondent attending at the police station and accusing the Applicant of assaulting her. The applicant was charged with assault and released on bail conditions which prohibit him from having any contact directly with the Respondent… The charges are yet to be resolved". He also attached his Promise to Appear. The Respondent Mother alleged verbal abuse by the father, and detailed the incident that resulted in the assault in an affidavit. The father's criminal file confirmed that he was indeed charged with assault in July 2014. Similarly in this case, the accused party does not deny or dispute the existence of the criminal charges, but rather claims that the allegations are fabricated and fraudulent.

In *S.N. v I.J.*, the family court materials indicated that the wife sought a restraining order, alleging psychological abuse by the husband. In particular, in June 2014, the husband allegedly threatened to kill the wife, and slapped her on the back of her head with an open hand. The wife called the police, but did not know whether he was charged. The husband denied the allegations in his family court materials, and was silent about his criminal charges. Files from the criminal court indicated that the husband was indeed charged with assault and uttering threat.

This case illustrates that in situations where the complainant does not know whether the accused party is charged or the details of the charges, there may be a lack of information for the family court judge. In this particular case, the complainant wife is an immigrant from

Bangladesh, and has no legal representation, while the husband has counsel. In such cases, the judge sitting in the family court has to rely on the information provided by the accused party, who naturally has an interest to downplay the criminal charges. Therefore, even though the family court judge is informed about the husband's arrest and the possibility of concurrent criminal proceedings, he or she has no way of knowing the precise nature of such proceedings without the accurate input from the accused party. Consequently, complainants who have difficulties of navigating the criminal justice system are at a significant disadvantage in their family court proceedings.

In some cases, especially those that do not involve children, one party's criminal charges seem play a limited role in the parties' family litigation. In P.A. v D.S., the family court files indicated that the mother was charged with domestic assault and uttering death threat in March 2013 when the parties separated. In July 2013, the charges were withdrawn. This is confirmed by the mother's information – she was indeed charged with domestic assault and uttering death threats, and the charges were withdrawn. Both parties were unrepresented. In this case, although the parties have two children, they are both adults, therefore custody was not an issue. Parties were seeking a number of financial reliefs including the exclusive possession of the matrimonial home. The criminal charges were only mentioned in passing by both parties, and do not seem to constitute a major part of either party's litigation.

The last case in this category is *A.B. v T.S*, in which the family court files indicate that the Respondent Mother was charged and was on bail. Release conditions stipulate no contact with the Applicant Father, which makes access to their children difficult for the accused mother. The criminal file of the accused mother indicates that she was charged with assault and assault with a weapon, and that proceedings were stayed in January 2015.

This case illustrates a typical problem experienced by parties who are involved in both family and criminal litigation. Release or probation orders made by a criminal judge may very well affect a party's family case especially when access to the children is an issue. Without effective communication between the family and criminal courts, orders made by a criminal judge may inadvertently jeopardize a party's claim in his or her family proceedings, especially given the importance placed on *status quo* in custody and access disputes.

c) Group B: family files suggesting criminal charges, but no criminal files found

There are 10 cases of which criminal proceedings alleged in the parties' family court materials are not found in the criminal court system. I was able to access the family files of 6 of these cases. These cases roughly fall into two categories: 1) cases where the accused parties have not filed any responding material; and 2) cases where both parties have voiced their positions and neither of them denies the existence of the criminal charges. None of the cases that I examined so far suggest any flat-out fabrication of the criminal charges.

D.R. v F.C. belongs to the first category. The Applicant Mother indicated in her Application that "after the April 2013 assault on me, I tried to make arrangements for the Respondent to see the children through a mutual friend because he is not allowed to talk to me and cannot enter the matrimonial home". She further indicated in her materials that "the restraining order that was issued in March 2013 expired this past March and was replaced with a peace bond that will expire on March 25, 2015". There is no explicit mention of any criminal charges in the mother's material, but it can be inferred from the information provided by her that the Respondent Father was criminally charged and his release conditions stipulated no contact with the Applicant Mother. It can also be inferred that the parties entered into a peace bond as a result of the charges. However, no evidence of the criminal charge was attached, and the Respondent Father has not filed anything yet. In this case the Applicant Mother seeks sole custody, and was allowed to travel with the children without the respondent father's consent on an interim motion in January 2015.

Similarly, in *N.M. v F.J.*, the Applicant Wife indicated in her family court materials that the Respondent Husband was charged with domestic assault, and that he was acquitted of the assault charge on April 10, 2014. After his acquittal, the Applicant Wife sought and subsequently obtained a restraining order prohibiting the husband from contacting her. The case went to trial on December 8, 2014, and the trial judge made a series of orders in favour of the Applicant Wife, including exclusive possession of the matrimonial home and cost against the Respondent Husband. The Respondent Husband was unrepresented throughout the course of the parties' proceedings, and did not file any responding material. He seemed to have denied allegations regarding the assault at trial, but not the existence of the charges. The Applicant Wife had legal representation.

These two cases illustrate that when one party in a family proceeding has difficulties voicing his or her positions, it becomes a serious problem when there are concurrent criminal

proceedings involving the same parties. The problem is amplified when the accused party is unrepresented. Without the accurate input from the accused party regarding the concurrent criminal proceedings, a judge sitting in the family court has virtually no way of knowing whether the allegations are fabricated. Unlike the accused party who tends to downplay the criminal charges, the complainant party may exaggerate the concurrent criminal proceedings. In both cases, the family court judge may have a difficult time acquiring accurate and unbiased information.

The remaining 4 cases that I reviewed all fall under the second category. In *X.L. v H.L.*, the parties married in May 2011 and have one child together. The Applicant Mother alleged in her Application that "in the evening of November 6, 2012, the applicant asked the respondent to sign the child benefit application form, the respondent without any valid reason refused. Parties then engaged in heated arguments and respondent assaulted the applicant. Applicant called the police. Respondent charged and removed from home". She further stated that "since the Respondent's criminal charged was resolved sometime last year, the respondent ahs only seen the baby sporadically". In the Respondent's answer, he indicated that the criminal charge against him was resolved by way of a peace bond. Therefore, the Respondent Father does not deny the existence of his criminal charges, and mentioned it in passing in his materials.

In *S.P. v T.B*., the father alleged that the mother removed their children by making unsubstantiated allegations against him to the police which resulted in his arrest. He was released on the same evening on a Promise to Appeal, and returned home to find that the children were gone. An information and his release documents were attached. The father was represented, but the mother was not. This case illustrates the possibility that parties may use criminal allegations as a tactic to advance their positions in the family proceedings.

In *O.K. v D.K.,* the parties were married in 1986 and have 2 adult children together. In her Application in February 2010, the Applicant Mother sought various orders including divorce, child support and spousal support. She alleged that the Respondent Father was abusive and mentioned that "as a result of his behavior, the Respondent has been charged with criminal harassment and assault. As a condition of his bail, he is not allowed to have any contact with me …". In his Answer, the Father did not deny the existence of his charges, and stated that "I was arrested at my home for assault and criminal harassment that allegedly took place in Feb 2009. I

signed to a Promise to Appear in which I agreed that I cannot communicate with the Applicant". No criminal document was attached.

Lastly, in *F.A. v S.A.*, the Applicant Mother brought an application seeking various orders, including spousal support and exclusive possession of the matrimonial home. The Respondent Father mentioned in his Answer that in August 2014, the Applicant Mother assaulted him. However, he did not mention any criminal charges against the Applicant Mother. In a subsequent affidavit filed by the Applicant Mother, she acknowledged that she was criminally charged in August 2014, and that she did not wish to comment on this as she was refuting the charges. No further information was provided.

Therefore, in cases where both parties addressed the criminal charges in their family materials, none of the parties denied the existence of such charges. In other words, it can be inferred from their materials that criminal charges do exist, and the lack of information is likely a result of administrative error when locating the files. It is alarming as it sheds light on the difficulties for legal professionals to access information in the criminal court system.

d) Group C: family files suggesting no criminal charges, but criminal charges found

I put this case in this category because on the docket sheet it is noted by the sitting judge that "wife called police Feb 2011 and husband was arrested; no charges laid". However, when I examined the court materials, there is indication that the father was arrested and was subsequently charged. In other words, although the family court materials implicitly indicate the existence of criminal charges, the family court judge was under the false impression that no charges were laid.

The parties have no children together and have been in a lengthy litigation since April 2011. In the Applicant Husband's application materials, he sought various orders including divorce, equalization of family property and spousal support. He claimed that he was abused emotionally, physically, psychologically and financially by the Respondent Wife. He stated that "she complained to the police officers that I assaulted her and I was arrested for the same [*sic*]. I did not assault, I have retained criminal counsel for my defence and I believe I will be acquitted at trial". In a further affidavit, the Applicant Husband provided more detail: "recently the Respondent laid a trumped up charge of an assault against me which is just presently before the courts. This was notwithstanding that after a verbal altercation some pushing and shoving by the Respondent on me, I called the police. I suspect the Respondent did this for the purposes of some

advantage in these proceedings, she indicated to me that if I was going to call the police she was going to tell them that I assaulted her". The Respondent Wife's responding materials did not mention the criminal charges. There were no further mentions of the criminal charges since the husband's application materials. No criminal document was attached.

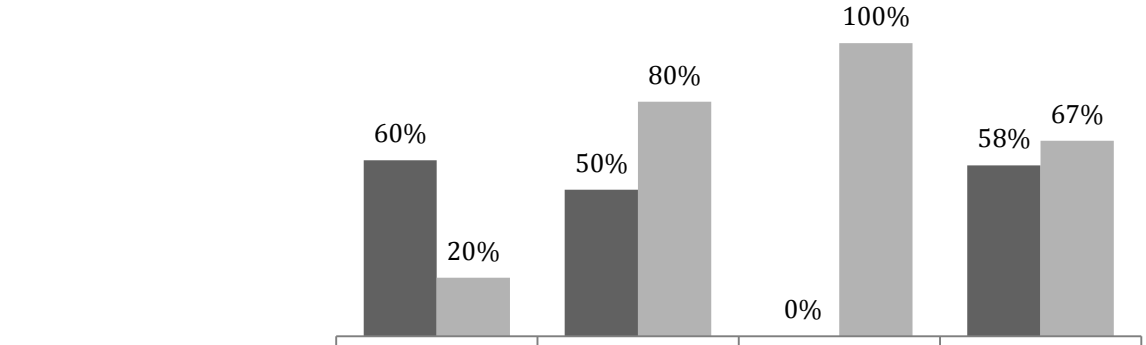
Therefore, the husband's criminal charges were mentioned briefly in passing in his family court materials. Although not explicitly stated, it can be reasonably inferred that the husband was criminally charged. The fact that the family court judge overlooked this piece of information suggests that without a systemic way for family court judges to acquire information regarding parties' concurrent criminal proceedings, it is extremely difficult to extract such information from hundreds of pages of the parties' family materials. Regardless of how diligent and careful judges may be, anyone can easily miss a small piece of information buried in the parties' voluminous court files, especially when it is only mentioned once briefly in passing. Therefore, there is an urgent and pressing need for a better way to properly inform the judges of any concurrent proceedings in other courts.

e) Legal representation

Lastly, I investigated the relationship between having legal representation and the category that the cases fall under, as illustrated in *Chart 2* below. In the 5 cases with substantiated criminal charges alleged in family files (Group A), 3 out of the 5 accused parties are represented, compared to 1 out of 5 complainants. In the 9 cases where family files point to the existence of criminal charges but no criminal charges were found (Group B), 5 out of the 10 accused parties had counsel, compared to 8 of the 10 complainants. In the one case where the family court materials suggest no criminal charges but criminal charges do exist (Group C), the accused was unrepresented while the complainant had legal counsel. Lastly, in Group D where there is no suggestion of criminal charges in the family court materials and no criminal charges were found, 7 out of the 12 accused parties were represented, compared to 8 out of 12 for the complainants.

Interestingly, the cases where there is misinformation between the family court and the criminal court (Group B and C) observe the lower percentages of legal representation for the accused parties (50% and 0% respectively), and higher percentage of legal representation for the complainants (80% and 100% respectively). Due to the small sample size in Group C, it is debatable whether the data is statistically significant. However, the low percentage of legal representation for the accused parties in Group B compared to that for the complainants in the

same group may suggest that self-represented accused parties are at a significant disadvantage are vulnerable to allegations of criminal charges.



	Group A	Group B	Group C	Group D
Accused Represented	3/5	5/10	0/1	7/12
Complainant Represented	1/5	8/10	1/1	8/12

***Chart 2*: Extent of Legal Representation in the 28 Cases**

Group A = family files suggesting criminal charges, and actual criminal charges found
Group B = family files suggesting criminal charges, but no criminal files found
Group C = family files suggesting no criminal charges, but criminal charges found
Group D = family files suggesting no criminal charges, and criminal charges not found

IV. Self-represented Litigants

a) Overview of Self-represented Litigants in Ontario

Despite the widespread recognition among legal professionals that an increasing number of litigants in civil proceedings do not have legal representation, there is very limited research on self-represented litigants in Ontario. Although a few reports exist that discuss the experience and needs of self-represented litigants, no formal studies have been conducted to systemically estimate the number and percentage of self-represented litigants in Ontario courts.

Surveys conducted by the Canadian Bar Association reveal that in one third of legal proceedings, one party is self-represented for at least part of the case. In at least 25% of the cases, both parties are self-represented during the course of their litigation. It should be noted

that substantial variation exists between courts, with lack of representation being more common in Provincial Courts.[20]

In her study, Dr. Julie Macfarlane finds that 64% of litigants in Ontario who were involved in applications under either the Family Law Act, the Children's Law Reform Act or the Divorce Act were self-represented at the time of filing, with the highest proportions of self-represented litigants found in two Toronto courthouses located at 311 Jarvis St (73%) and 49 Sheppard Ave (74%). Dr. Marfarlane observes that these numbers are likely an under-estimate as they do not capture the significant number of litigants who begin the legal proceedings with legal representation, but then become self-represented later on in the course of their litigation due to lack of funding or dissatisfaction with legal counsel.[21]

Both studies find that the majority of self-represented litigants cite financial constraints and high legal costs as the primary reason for their lack of legal representation[22], followed by dissatisfaction with counsel[23].

It is no surprise then that the studies find those with a higher income were significantly more likely to have a lawyer.[24] It is interesting that men with higher income are more likely to have legal representation than women who are in the same income group.[25]

b) Findings from Data Collected at the 393 University Superior Court of Ontario

According to the data collected for this project, in 41% of the 232 cases, both parties have legal representation. This percentage is the same for cases both with and without the indication of intimate partner violence (see *Chart 2*). Interestingly, the percentage of cases where both parties are unrepresented is higher in cases with indication of intimate partner violence (23%) than cases without such indication (15%). In other words, we observe a higher rate of legal representation in cases with indication of intimate partner violence. In particular, the proportion of cases where one party has legal counsel is higher in cases with indication of violence.

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[20] Bala, Nicholas, and Birnbaum, Rachel. *"*Experiences of Ontario Family Litigants with Self-Representation.*"* ["Experiences of Ontario Family Litigants"] <Available at: *http://www.probonostudents.ca/wp-content/uploads/2011/08/Jan-13-Birnbaum-Bala-Family-Litigants-Access-to-Justice-NJI-Feb-20121.pdf*>

[21] Marfarlane, Julie. "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants." (2013) at p33-34. ["The National Self-Represented Litigants Project"] <Available at: http://static1.squarespace.com/static/511bd4e0e4b0cecdc77b114b/t/5473a3cde4b07dc0643994be/1416864717309/Self-represented_project.pdf>

[22] *ibid* at p40; see also "Experiences of Ontario Family Litigants with Self-Representation" at p5-6

[23] "The National Self-Represented Litigants Project" at p44; "Experiences of Ontario Family Litigants" at p8-9

[24] "The National Self-Represented Litigants Project" at p40; "Experiences of Ontario Family Litigants" at p5

[25] "Experiences of Ontario Family Litigants" at p5

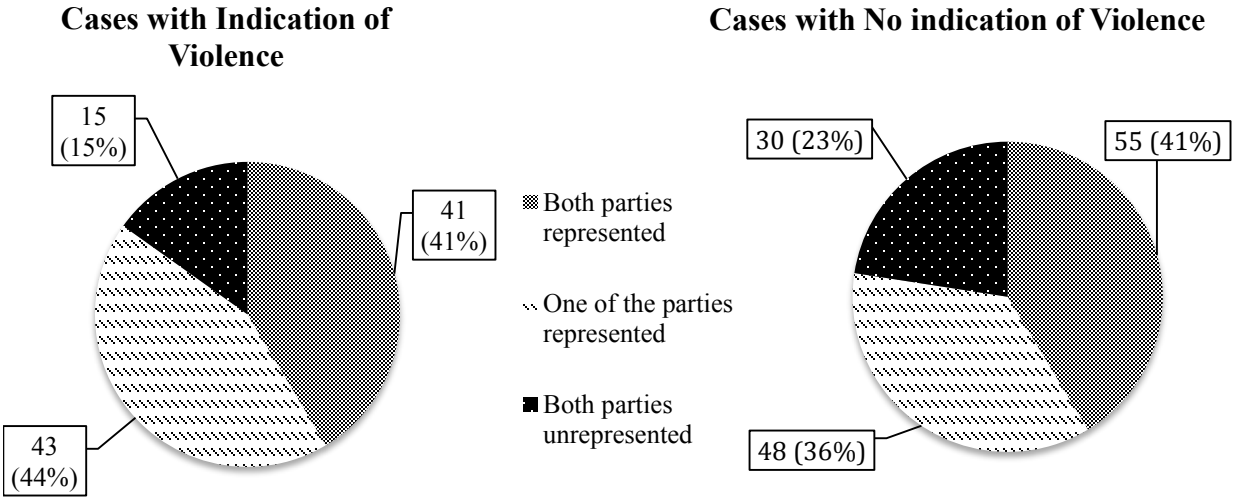

Chart 3: Percentage of Self-Represented Litigants

It should be noted that this data only capture the state of the litigant's legal representation at the particular point during their legal proceedings. As noted above, many unrepresented individuals had counsel at some point during their family court proceedings, usually at the start, therefore whether or not one has legal representation can depend on the amount of time one has been involved in the family court proceeding.

c) Legal Representation and Intimate Partner Violence

I have yet found any systemic studies examining the effect of intimate partner violence on the likelihood of having legal representation. Some suggest that in high-conflict cases, especially those involving intimate partner violence, clients have a lower tolerance for "incompetent" legal counsel which exemplifies any mismanagement or mistake by the lawyer. It then leads to a higher likelihood of the client firing his or her counsel and becoming unrepresented, given that dissatisfaction of legal counsel is one of the main reasons for litigants to represent themselves.[26] On the other hand, clients who are victims of intimate partner violence may wish to retain counsel for emotional support and to avoid any direct confrontation or communication with the abusive party.

[26] "The National Self-Represented Litigants Project" at p47

Regardless of the relationship between the rate of legal representation and the existence of intimate partner violence, many agree that legal counsel is especially needed in cases involving intimate partner violence.[27] Some suggest that cuts to legal aid has disproportionally affected women due to women's social and economic vulnerability, and has made it more challenging for women to leave abusive relationships.[28] The following reasons contribute to explain why legal representation is particularly crucial for victims of intimate partner violence.

First, there is a power imbalance in abusive relationships, which impedes the ability of the abused spouse to negotiate effectively on his or her behalf. Thus, an abused spouse is put at a tremendous psychological disadvantage when forced to negotiate with and be confronted directly by the abusive spouse, who has exercised control and power over them during the course of their relationship.

It is also widely acknowledged that in abusive relationships, violence tends to escalate during separation. Such violence then further influences the victim's ability to negotiate his or her legal issues. A study in the United States found that 30 percent of women suggested that they were fearful when negotiating child support payments, which caused them to either give up their requests or to settle for lower amounts than they believed they were entitled to.[29] Therefore, having legal counsel provides crucial support both emotionally and legally to spouses who are trying to escape an abusive relationship, especially considering the interests at stake where children are involved.

In addition, there is widespread misconception about victims of intimate partner violence amongst legal professionals, including judges and court staff. In particular, some argue that judges and clerks tend t perceive the victim's decision to stay in a violent relationship as "refusing" to leave without taking into consideration the complicities associated with abusive relationships. In addition, they may misinterpret the victim's behaviour as intentional when it may be induced by psychological trauma as a result of extended abuse.[30] Such misconceptions have more detrimental effects on self-represented litigants, who are forced to advocate on their

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[27] Buel, Sarah. "Domestic Violence and the Law: An Impassioned Exploration for Family Peace." *Family Law Quarterly* 33 (1999-2000): p719-45 at p722 and p725

[28] Sarophim, Jaime. "Access Barred: The Effects of the Cuts and Restructuring of Legal Aid in B.C. On Women Attempting to Navigate the Provincial Family Court System." *Canadian Journal of Family Law* 26.2 (2010): 451-72 at p454

[29] Goundry, Sandr. "Final Report on Court-Related Harassment and Family Law 'Justice'." *Ottawa: National Association of Women and the Law* (1998) at p32

[30] "Effective Intervention" at p39

own behalf and do not have the necessary means to communicate effectively.

Lastly, victims of intimate partner violence who have difficulties of navigating the justice system are further disadvantaged when there are concurring proceedings in both criminal and family courts. As noted above, some victims of intimate partner violence do not have a clear understanding of the court system, therefore do not have sufficient knowledge about the concurring proceedings in the criminal court. Without effective legal representation, they are further disadvantaged.