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The civil restraining order application process

Textually mediated institutional case management

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ABSTRACT ■ Although the civil restraining order is the most commonly sought legal initiative to combat intimate partner violence in British Columbia (BC), no known qualitative research has assessed the application process, and previous quantitative research presents mixed findings. Using interviews, observations, and textual analyses, this institutional ethnography critically analyzes the civil restraining order application process in the BC Provincial Court. Particular attention is paid to disjunctures between abused women's experiential knowledge and what becomes formally known to practitioners who manage their cases. Findings unveil that abused women's lived experience with violence is transformed and shaped into accounts in which their safety needs disappear. Court practitioners become immersed in textually mediated activity within a legal ruling apparatus that emphasizes timely completion of a large quantity of cases, with little or no commitment to quality solutions.

KEY WORDS ■ restraining order, protection order, application, institutional ethnography, family violence, domestic abuse, British Columbia (BC), civil court

Every day, individuals who are experiencing violence in intimate relationships apply for restraining orders through the British Columbia (BC) civil court. The family court registry under study receives about two applications per week. This is not surprising when considering spousal violence rates have not decreased since 1999 (Statistics Canada, 2005), and that each year over two and a half million women in Canada report abuse by a current or past intimate partner (Statistics Canada, 2001). Specifically, BC holds the highest rate of spousal violence among the Canadian Provinces (Morrow et al., 2004; Brownridge and Halli, 2001).

Despite being the most commonly sought legal action for females trying to combat male violence in BC, Canadian research has neglected civil restraining orders. No known qualitative studies have focused on the application processing of civil restraining orders in BC. Therefore, for local reflection, Canadian researchers have had to rely on quantitative data, or qualitative research conducted in other parts of the world.

Recent quantitative research demonstrates that restraining orders are effective for some but not for all, at some times but not at others, and in some regions but not in others (Davis and Smith, 1995). The questions of how and why restraining orders fail are left unanswered. As Lewis et al. (2000: 183) point out:

> what is striking about much commentary and research concerning legal responses to domestic violence is the absence of the main actors' voices … the lived experience of violence … Writers in this tradition fail to consider *any* aspects of the process as potentially positive and instead condemn the entire process, because the final assessment is judged to be negative.

A lack of focus on the application process, and contradictions in previous research about restraining order effectiveness, led to the following research questions. How is the work of the applicant and of the practitioners coordinated in the restraining order application process, and what outcomes do these concerted efforts produce for applicants? What are the institutional conditions for the variability of outcomes for those seeking protection orders against abusers?

To piece together 'how things work', and uncover which processes or actions lead to the known variability in successful outcomes, the experiences of two restraining order applicants, whom I call Lin and Robin, are at the heart of my inquiry. They were my major informants in providing accounts *as the work*[1] of applicants, beginning with the initiation at the court registry. Interviews with practitioners, courtroom observations, and examining the social organization written into the application itself, as a mediating 'text in action' (Smith, 1990b, 2001), allowed me to discover otherwise invisible features and work processes that compromise the most important intentions of the intervention.

I discovered disjunctures between applicants' everyday knowledge of living with violence and what becomes formally known to the court practitioners who manage each case. Beginning with the narrative written on the application form, actualities of abused women's experience are detached from the local context and specific circumstances within which it was produced, and the text loses its temporal specificity. As the process turns lived experience into a decontextualized phenomenon where aspects of experience are made invisible, practitioners have no way of assessing the applicant's risk and safety needs from her standpoint. I highlight how the subjective is replaced by the objective so that practitioners' actions may be prioritized to maximize efficiency to get the work done. As a result, the course of each application reflects legal and institutional case processing requirements more effectively than the safety needs of each applicant.

A method for examining process

Dorothy Smith's institutional ethnography (Smith, 1990b, 1999, 2005, 2006) was used to map the restraining order application process and examine how institutional and extra-local ruling relations penetrate, shape, and manage social relations throughout case processing. Institutional ethnography is a feminist inspired 'sociology for people' with unique epistemological/ontological grounding. Rather than explaining behaviors or cultures through particular theoretical frameworks, or developing theories using empirical data gathered as in conventional ethnographies, the analytic focus is on discovering and documenting the organization of activities and coordinated work processes through each subject's reality as directly experienced. The data collection process is itself where analysis takes place. The institutional ethnographer is oriented by the explicit social ontology toward developing and refining their understanding of the institutional processes that are under investigation, but they are not to be confined by any predetermined notions or theoretical categories.

Since the actual research method – not just the theory that guides it – is grounded in direct experience, the approach avoids displacing or suppressing women and subjects, as traditional epistemologies have.[2] The act of turning subjects into objects of study relies on the absence of gender and unique experience, in an attempt to eliminate the 'biases' of embodied subjectivities. Dorothy Smith argued that, in contrast, biases occur in a sociology that is *not* able to discover and analyze the ruling relations or forms of power that rule everyday life beyond what is directly observable (Smith, 1990a). For this reason, studying the social in isolation from relations with others is neither achievable nor sought by the institutional ethnographer. From their various positions in the process, practitioners and

applicants are experts in the local practices of their material lives. It is the assemblage of the situated events, and the knowledge of each involved practitioner, that gives rise to an understanding of the trans-local, where local activities are hooked into multiple sites (Smith, 1999). Their work knowledges (Smith, 2005) have both theoretical and ontological importance in making sense of ruling relations that are not fully knowable or understandable from any one position in the process.

It is up to the institutional ethnographer to develop a conceptual map containing these multiple perspectives, and to do this, centralizing the relevant textual documents is essential. Texts 'have a materiality separate from embodied consciousness, thereby providing a mediating link between people across time and place and making it possible to generate knowledge separate from knowers' (McCoy, 2007: 703). Formalized texts, such as the application, are standardized; they can be stored, copied, reproduced, and activated by practitioners at different times. To build an understanding of the degree to which social relations are mediated by the involved texts which instruct and guide practitioners to act on them in certain ways, it is essential to pay attention to what people do with the texts at various points in the process. Throughout my inquiry, the restraining order application remained central in discovering how the work of each embodied subject is organized and coordinated by the text. For example, safety, suffering and experience are redefined and reshaped by the application beyond the influence or awareness of the applicant herself.

It is important to note that while this discussion brings forward moments where applicant safety is compromised, it is not a critique of an individual practitioner's work, or an argument against the bureaucratic inefficiencies of which the court system under study is a part. As Grahame (1998: 348) clarifies, the critical perspective of institutional ethnography is 'not simply that life is problematic (troublesome, perplexing, difficult etc.), but rather that we can treat the world of everyday life as sociology's problematic (the complex of concerns, issues, and questions which generate a horizon of possible investigations)'. By treating social life this way, we are able to begin producing knowledge of how everyday activities are hooked into dominant forms of social organization and ruling discourses.

The discussion that follows begins with an overview of the possible directions an application can follow. Most of the ideological work of institutions is accomplished through document exchanges involving a highly specialized division of labor. Each application passes through 'processing interchanges', that is, the sequence of documentary practices or 'organizational occasions of action in which one practitioner receives from another a document pertaining to a case' (Pence, 2001: 204), and then does something further with the document. Each processing interchange where work activities intersect is illustrated in Figure 1.[3]

This research documents the social organization and work processes around the civil restraining order through the Provincial Family Court. Since victims of abuse by intimate partners are often reluctant to press criminal charges, and since court practitioners encourage those with a past or present familial relationship to follow the civil course, most domestic violence cases in BC proceed through civil court (Police Victim Services, personal communication). Individuals may obtain a criminal order (called a peace bond or 810 recognizance order), but these applications often follow a violent event to which police respond, especially male-to-male violence, assault by a stranger, and among individuals who do not have shared children or a familial connection. These two types of protection orders follow different legal procedures, and fall under different legislation. This article does not discuss police response to final orders. For more on police response to civil restraining orders in British Columbia, see Adams (2005).

Ellen Pence (1997, 2001) has used institutional ethnography to explore the *criminal* response to domestic violence in the United States as part of a larger project of developing a coordinated community response to domestic violence in Duluth, Minnesota. From Pence's research we have learned that the way experience is entered into the bureaucratic decision-making process alters what will become known to responders. Her inquiry begins with a call to 911 and proceeds with the response of those involved in processing the emergency response. In contrast, research discussed in this article applies institutional ethnography to an earlier moment and to a different response stream – the initial application process in the civil justice system.

Sequences of action: an overview of case processing

At the Family Court Registry front counter, one of the many duties of the *registry technician* is to provide applicants with civil restraining order application forms. The *Application to Obtain an Order* is a standard form also used for custody, guardianship, access, and maintenance applications. A second required form is an *Affidavit*, or a sworn statement of evidence. The *Reply* is the third form, used to serve notice to the party whom the application is filed against (the respondent).

All respondents must be served notice and appear for a hearing[4] before a restraining order will be granted. To serve notice, a sheriff must locate and serve the other party with the Reply form, and then allow the other party 30 days to submit a response. Once a Reply is received, the parties wait for the court practitioners to set a hearing date (two to six weeks later), appear in court often several times, and then wait for the order to be issued (shown as 'A' in Figure 1). Since, for many women, weeks or months is too

long to wait, a fourth form may be filled out – The *Ex Parte Family Application* – which effectively delays serving the respondent until after an interim protection order, or 'Ex Parte order', is granted. Ex Parte orders are interim restraining orders, and while they do not expire, applicants are only given a 'regular' restraining order after a hearing takes place with both parties present.

Registry technicians pass on submitted applications to *family clerks* who record the details and put together an application folder. They then pass the folder on to a *court clerk* who passes it on to a judge at a time they deem appropriate. The description below and Figure 1 illustrate the four possible application outcomes, as indicated with the letters A through D.

A: 'Non-urgent' applications follow 'normal' service procedures as described above.

Since restraining orders by nature tend to be urgent, about 90 percent of applications are filed as Ex Parte applications at the courthouse under study (Family Clerk, 2005, personal communication). The judge reviews Ex Parte applications and determines one of the following three courses:

B: Application is not urgent enough to proceed before notifying the other party. The applicant must serve the other party before a hearing will be granted.
C: The applicant is given a 5–10 minute 'Ex Parte hearing' either on that day, or is told to return. After the Ex Parte hearing, the judge determines the situation is not urgent enough and orders the applicant to serve the other party and return for a hearing with both present.
D: The applicant is given an 'Ex Parte hearing' and the judge determines the application is urgent enough to grant an Ex Parte restraining order prior to notifying the other party.

Every Thursday morning is Family Court's 'remand day', on which many cases are 'spoken to' in a short period. Individuals waiting to appear take a seat at the back of the courtroom and wait until their case is called. The courtroom is highly organized and its efficient functioning depends on the ongoing concerted actions of the judge, clerks (court, exhibit, transcript and other specialized clerks), judicial case managers, the registry switchboard, sheriffs, and lawyers. Figure 1 illustrates the coordinated efforts and specialized work roles of those involved in the application process.

Below is a list of research participants with their corresponding pseudonyms used throughout this article. Abbreviated names reflect their position title for ease in understanding coordinated roles.

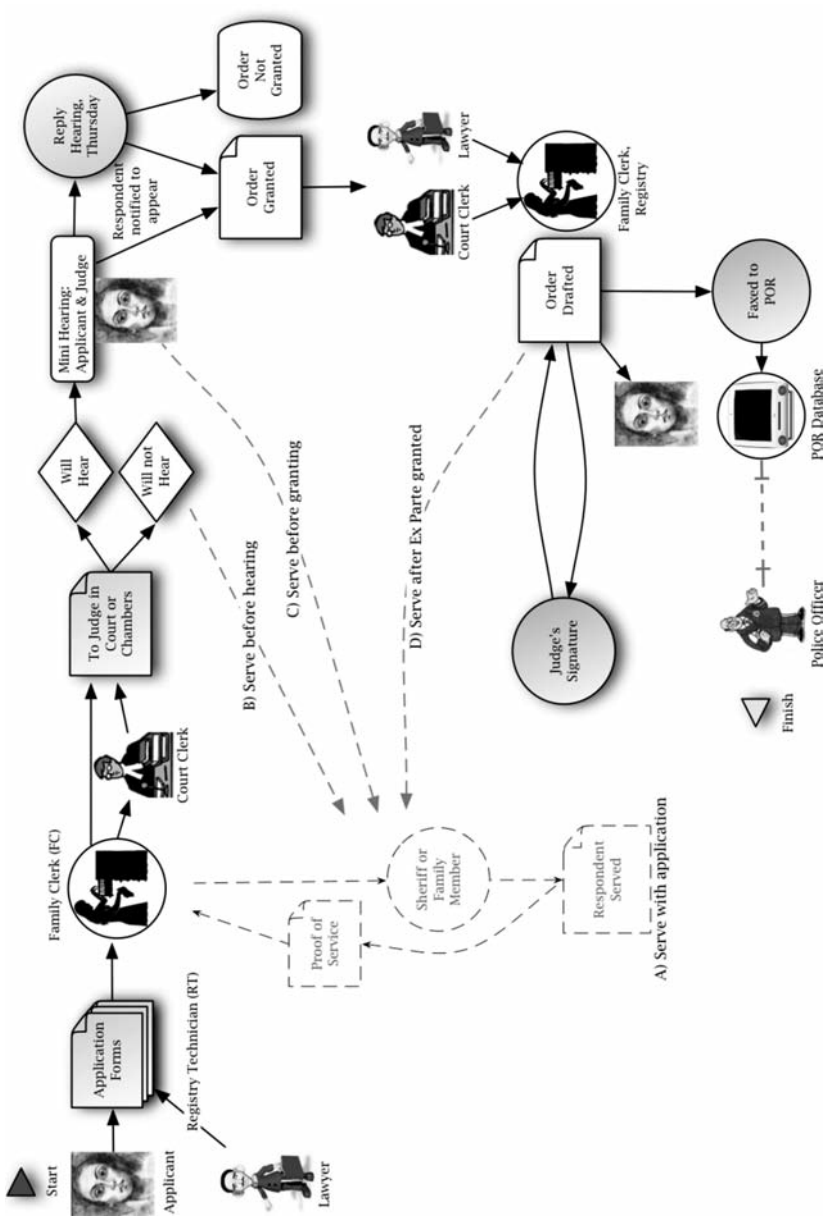

Figure 1 Sequences of action: civil restraining order application processing in BC

Family Court Registry:
- Registry Manager – RM
- Registry Technician – RT
- Family Clerk – FC

In-Court Practitioners:
- Provincial Court Judge – J1
- Lawyer/Duty Counsel – LAW1, LAW2
- Court Clerks – CC1, CC2

Applicants:

Robin is an Italian female in her 30s. She classified herself as lower class, and has one child.

Lin (*pronounced Leen*) is a Chinese Ukrainian female in her 30s. She classified herself as low-middle class, and has three children.

Initiating the application process

> When I first walked in there the first couple of times, I'm sure I was shaking the whole time. It was pretty scary, and I couldn't articulate what I wanted to say, I was so nervous. (Robin)

By the time applicants arrive at the courthouse, many have approached various other services first, and some submit several applications before they are successful. Since the judge makes a preliminary decision about whether or not to hear the Ex Parte application based on the narrative written on the application form, the transformation of what is happening in the applicant's life into a convincing textual description is the most important prerequisite in obtaining a restraining order. To remain 'neutral', front counter staff are not permitted to answer any legal questions, reveal which stream (civil or criminal) seems most suitable for each applicant, or offer advice about what applicants should include on the forms. They do, however, have to determine where to direct the individuals. RT explained the predicament:

> … this is the difficulty with where I work – is we can't tell them what to do … And it's difficult because you get the, you know, the distraught people, and you want to help them as much as you can, but … we're at a brick wall. We can't advise that way … I don't want to put words in their mouth.

Without meaningful answers to their questions, applicants make uninformed choices. For instance, if they do not provide enough detail about their situation, their order – if granted – may not be relevant to their situation. If they erroneously initiate a criminal application, they are not permitted to discontinue to begin a civil application. With limited help, *most* applicants hand in incomplete applications or provide incorrect information on the forms. FC stated, 'it's amazing how many people don't

actually know the birth date or how to spell someone's proper name. They hardly *ever* put in birth dates, and if they do write something, it is usually incorrect'. Birth dates and addresses are critical for court practitioners to properly identify the person to be restrained.

RT speculated that such errors are made because people feel hurried and lineups are long. Law2 believes the problem has more to do with illiteracy:

> A lot of the people who appear in court in these circumstances are either not literate or semi-literate. So filling out a form like this is very challenging … People don't normally say, I can't read, or I don't read very well. Or I can't write, or I don't write very well … So that's a concern that they would be in court without someone to help with [the forms].

The registry manager (RM) confirmed that applicants require different types of assistance because they come from a variety of backgrounds. When applicants lack critical information to complete the forms:

> They see it as a major obstacle rather than a benefit to help them. They have varying experience with this stuff, and for some, these forms are a real challenge. Others don't have as much of a problem … People do get panicked by [the forms], but as you can see it's just fill in the blanks. We recommend they hire someone to help them fill out the forms.

Robin recalled her experience with 'filling in the blanks': 'in normal conditions – like today – I could write an affidavit no problem. And feel confident that my point would get across clearly and objectively.' However, the day after she got her three-year-old son back from her ex-partner, overpowering emotions hindered her confidence and ability. A security guard helped track down a duty counsel appointed to youth court who happened to be there for a half-day.

> Robin: I'll never forget her [duty counsel] … She called her babysitter and said 'I'm gonna be late' and took an extra half-hour to help me do [the affidavit]. I just went 'blu-blu-blu-blu-blu' and she wrote it out. Cause I was a mess. I wasn't in good shape … I couldn't even read it. There were so many tears, like to read it over it was so hard; it was just like a sheet of water.

Transforming lived experience into institutional discourse

As soon as the application is submitted, the form becomes reified as a case which will 'stand in' for the applicant's lived experience throughout case assessment. In institutions it is text-based forms of knowledge and discursive practices that organize practitioners' work. In an institutional

ethnography, the text itself is not the primary object of investigation; rather it is what people do with the text, and how it enters into the regulation of their activities that is important. Like other institutional texts, the application forms contain largely unnoticed, unwritten instructions restricting what can be done through its processing. With these inscribed instructions, the dialogic texts enable 'coordination of activities across time and space, many times over, and with varying personnel' (Smith and Whalen, 1995: 4).

The application forms effectively standardize experience as accounts constructed within a governing conceptual frame suppress subjectivities. Categories on the forms preserve 'a definite form of words detached from their local historicity, from the specific circumstances and settings within which they are produced' (Smith and Whalen, 1995: 4). They provide for practitioners or the applicant herself to select, abstract, highlight, filter, route, and discard certain concrete particulars (McKendy, 1992).

The completed forms solicit a set of responses that are institutionally relevant but may not be relevant to the applicant herself. For example, when Lin checked off 'custody' on her application, the form highlighted that she wanted custody of her daughter, but discarded information about her actual situation that would have been pertinent to understanding the case. The category did not register how she has picked up all three of her children and run down the street in her bare feet to get them away from abuse; that she hides her children at friends' houses when 'things get really violent'; and that she shares a bedroom with her 14-month-old daughter to prevent sudden abduction in the night.

The application forms must be objective and abstract if they are to be comprehensible to all successive persons who activate them in the sequence of action. Yet as the process turns lived experience into decontextualized phenomena in which aspects of experience are made invisible, practitioners have no way of assessing the applicant's risk and safety needs from her standpoint. Practitioners who work on the forms are trained to read, write, and translate the specific set of particulars in institutionally recognizable ways and, as Wilson and Pence (n.d.) point out, are not required to make a fit between categories and actualities. It is in this discourse, an institutional concept and textual reality, that practitioners are not confronted with the actual risks women may be facing.

Duty counsel are family lawyers on rotating obligation to give legal advice to those appearing in court. Counsels assigned to Provincial Family Court are only available for family matters on Thursdays; any other day of the week, the office is closed. Moreover, on Thursday, which is the busiest day for family court, 'duty counsel could be helping 20 people with their court appearances that day, so they may only be able to give each person a few minutes of help' (FC). Law2 explains that priority is given to those who have scheduled hearings (on the daily list):

> [T]he policy is that we deal with people who have matters on the list first, and you know, these other people need to wait in the hallway until we've done the list, and then come out and help them with their paperwork.

Similar to other court practitioners, duty counsel are not permitted to direct applicants, or 'put words in their mouths'. However, some duty counsel suggest to them conditions in which they are more likely to be granted a restraining order. These conditions may not match those on which the applicants themselves are focused. 'It is especially difficult standing in the busy hallway, outside the courtroom when first meeting a person who is still in shock from something that likely happened the night before' (Law2) and there are only a few minutes to complete the form and start helping someone else. Law2 also explained that most people appearing on a Thursday are not there for urgent matters, but the few that are do not get the support they need, because 'there isn't time to let them calm down, let them get to know you, explain why you're asking them the questions, and probe [for] the right responses'.

Private lawyers, also used to operating within legal discourses, know what to include and omit when translating lived experience into legally sufficient evidence. They also have more time to extract the important pieces which, as Law1 affirmed, is essential.

> Law1: . . . women who have been dominated or subjugated a lot find it very difficult to tell you *anything* about what their husband has done. 'Cause they are totally, um, conditioned to keep it absolutely private.
>
> So they say, 'well, I want uh, I think I want a restraining order'. And you say 'why, like for what, what did he do?' And um, and often you get a response that goes, 'well, I can't really tell you'. Or, 'he won't let me tell you'. Then you have to find ways to get out of them what happened. 'Cause without that – that's the evidence. Right? You can't go to court and say, "she wants a restraining order".' 'Why?' 'She doesn't know.'

Violence decontextualized

Because the application form effectively separates lived experience from the application and final court order, practitioners can develop no more than a decontextualized, fragmented understanding of applicants' circumstances. As Peacock and Pence (2002: 64) point out, '[t]he system is designed to understand what generally "goes on" in these "cases" as opposed to what is actually going on in "this case"'. For example, RT generalized that applicants often appear to her as though they had been drinking or doing drugs the night before visiting the courthouse, and concludes that 'that is what the "family people" are like . . . I'm getting kind of bitter working up there

I guess'. In general, practitioners do not expect those appearing in Family Court to be skilled (J1), sophisticated (Law2), or familiar with the protocol (CC1).

Bitterness and blame likely arise out of the social distance created between practitioners and applicants by virtue of the authority of practitioners' job, employment status, and class (Ridzi, 2003). Alongside their peers or co-workers to whom they feel more closely aligned than they do to applicants, staff are experts acting on behalf of the government. Practitioners reflect institutional values and interests in their disapproval of certain behaviors (drinking, doing drugs, or continued contact with an abusive spouse). Some judges show great disappointment when a mother does not appear to have properly taken care of the children's needs, blaming her for the circumstances. J1 blames women who have relationships and children with abusive men:

> This is what happens when we don't educate our women better. I'm not even going to educate the men. It's the women that actually have the baby fallout, so, man, they better be plannin' ahead [laughs]. It's the old age question – why did you sleep with him? What were you thinkin'?

When women are blamed for their circumstances, they are also expected to take full responsibility for the solution by appearing in court in front of their abusers to re-tell their narratives. J1 made clear: 'she can't hide from that process . . . if you can't manage your own family, you can't tell us how we get to help'. Since all standardized cases reflect little difference in circumstance and severity, all cases, including the most severe, are reduced to a problem with family management.

J1 clarified that an important part of her assessment of who seems to be the instigator has to do with the parties' behavior in court and how they treat each other. The problem is that experience in the courtroom is not the same for both sexes. The incidents that both parties describe 'are embedded in, and part of a social organization that generates systematic differences and reciprocities of experience for women and men' (Smith, 1999: 219). It has been well documented that many abused women experience extreme emotional strain in the courtroom (Fischer and Rose, 1995; Ptacek, 1995; Wan, 2000; Winner, 1996). The first time Robin appeared in court, her body and voice were shaking uncontrollably. Lin's ex-partner was given the chance to 'cross-examine' her during the hearing. To Lin, her ex-partner's choice to invite an 'entourage of friends' was a deliberate intimidation tactic that brought down her confidence and made her 'feel stupid', but for practitioners, having him present was an important step in guaranteeing equality between the two parties.

Sheriffs are available to escort fearful applicants to the courtroom. Lin appreciated this arrangement, except that once the hearing was over, she

and her ex-partner were instructed to go downstairs together to the Judicial Case Manager's (JCM) office to set a date for a subsequent hearing. Lin recalled: 'We had to go there together – we have a restraining order – but we had to go to the JCM together! Yeah, figure that one out. I wasn't too happy about that.' Disregarding the applicant's safety once the hearing is over diminishes the protection order's worth and jeopardizes immediate safety.

Fortunately, for safety reasons, restraining order applicants are not expected to serve the respondent themselves, and instead a sheriff or process server does this. While the respondent may react after reading the court documents, this practice attends to the safety of the applicant at least while serving notice. With this policy, the applicant does not carry the burden of locating the respondent, she is not at risk delivering the papers, and there is less opportunity for the respondent to convince her to discontinue.

If applicants discontinue the process and fail to appear in court, their application is dropped with no follow-up. A number of researchers have noted that women seeking protection make several attempts to leave the relationships, and many in the process of leaving are coerced and threatened by their abusers to drop petitions for orders (Buzawa and Buzawa, 1996; Fischer and Rose, 1995; Jordan, 2004; Malecha et al., 2003). The high number of women who drop their applications has led practitioners to assume that 'most of the time the interim order is all they want. They don't care about the final order – they just wanna have the control for that period of time' (J1). It may be that the struggle for 'control' is an important step in some women's solutions. Ford (1991) found that the empowerment and confidence applicants gain simply by beginning the legal process for protection may be more important than obtaining a final order. Ford suggested that proper conceptualization of women's rational use of the justice system may help practitioners develop a more contextualized view of domestic violence.

All matters being urgent

Some families use the court system to manage difficult familial issues. This includes 'common couple violence' (Johnson and Leone, 2005), or applications filed as a 'vendetta' (Law2) against the other as a means to control access to the children, to secure an increase in maintenance payments (J1), or to have the legal option to phone the police if something undesirable, yet probably not life threatening, were to occur (Law2). In other cases, applicants are under significant threat and need urgent intervention. Sometimes a social worker has instructed them to get a restraining order with the threat of having their child(ren) taken away if they don't get one (Law2).

Irrespective of the number of applications filed as urgent, registry staff are under pressure to always question applicants' claims to keep the number of Ex Parte applications to a minimum. The family clerk (FC) does not like to process the applications, especially Friday afternoon, because she is wrapping up for the day, and knows the judge wants to go home. FC complained that some applicants 'wait four months before they decide they suddenly need to come in to court on Friday at 4:00. It's like, "oh yeah, big rush"'. The Ex Parte application itself deters applicants. Sections 2 and 3 read:

> To proceed in the absence of the other party is only done in the most **urgent** and **exceptional** circumstances … As noted above, ex parte applications are exceptional and usually only granted where circumstances have led to an emergency. Please outline any information that you consider relevant to the **continued** existence of an emergency … (Ministry of Attorney General, n.d.; bold in original)

J1 declared that too many women are receiving interim custody *through* Ex Parte orders,[5] and that 'they used to try to run the border with [their children]'. In other words, she saw women as obtaining Ex Parte restraining orders tactically in order to gain control over children, rather than as trying to escape violence. This decontextualized view also presumes that the struggle to gain control of the children is between a mother and father who begin on equal grounds, with the same level of power and ability, and the same desires and strategies to gain it. Presumably, there are women who seek a restraining order as a means to 'get back at' or manipulate the other parent, but it is extremely consequential to hold this general assumption about all urgent applications at the onset.

To hold the applicant accountable for claims made in the other party's absence during the Ex Parte hearing, some judges (including J1) request that the respondent receive a copy of the verbatim court transcript from the Ex Parte hearing. By requesting the transcript, the respondent can be equally prepared for the reply hearing knowing what was said about them. Because '… imagine how you'd feel – you know – and it's some demented person that's there telling stories that never happened' (J1). Once Ex Parte orders are granted,

> … you can't get back into court that fast [to hear from the respondent]. So it's a big problem when someone gets an Ex Parte order. It could be based on a pack of lies … it's always a tough call, cause what if it is a pack of lies? How would we know that? … It's taken a tremendous amount of effort and time for that responding party to get back and do anything about it … And the longer one party has say custody, or control, the more difficult that is to change at a later date. So it's a tactical advantage for somebody to try to get an Ex Parte order. (J1)

In this statement, J1 identifies the 'big problem' as the granting of an Ex Parte order, rather than the violence applicants may be enduring. Instead of interpreting the inability to accommodate such high numbers of urgent applications as an inadequacy in case processing, practitioners in the system attribute this difficulty as being the victims' problem (Wilson and Pence, n.d.).

Judges are faced with a real dilemma in determining whether or not to hear an urgent application because there is a contradiction in the way the system manages fairness and urgency. On the one hand, the lengthy application process (allowing time for serving notice and the reply) conforms to the principles of fairness, but on the other hand, it does not provide the expedient protection that most applicants require. The measure introduced to deal with urgent cases (Ex Parte) offers expedient protection but violates principles of justice in not hearing from both parties. In J1's view, Ex Parte orders actually exacerbate problems. Judges simultaneously and strategically work to balance providing fairness to both parties with providing immediate protection to those seriously threatened. In working through this systemic contradiction, they must also determine that by providing immediate protection, they are not going to 'add fuel to the fire' (Law2).

The significance of governing discourses and interpretive frames

Practitioners do not have the freedom 'to define and translate the realities of applicant experience in any way they see fit. Rather, they participate by activating specific ideals and concepts that have been operationalized and prescribed for them …' (Ridzi, 2003: 229) by the policy and legal ruling apparatus. Instead of working to develop the most appropriate safety plan for each applicant, the work process I observed required that all individuals be given the same advice and forms, and follow the same procedures. A registry technician's assessment of applicants' answers are informed by their understanding of what each court's jurisdiction is, what qualifies as a Family Relations Act (FRA) matter, and other specific guiding principles outlined in the *Family Court* policy manual. It reads:

> Family Court applies legislation that governs how matters arising from family breakdown are to be resolved. The Acts … set out *what* must be done, while the Provincial Court (Family) Rules (PCF Rules), the Provincial Court (PC(CFCSA) Rules), and the Provincial Court (Adult Guardianship) Rules (PC(AG) Rules) specify *how* to do it. (Ministry of Attorney General, 2004)

Registry technicians refer to the manual to decide 'what must be done', and 'how to do it', and they must not deviate from this governing discourse.

By examining the statements on the forms, evaluating each party's demeanor, and comparing two versions of the story, judges also evaluate whether the applicant is a fit enough mother to be granted custody, whether she fits that particular judge's frame of reference of 'victim', or whether she can be found equally at fault for the violence. Judges' decisions about each case are guided by their own set of ethics and politics about what is right and wrong, filtered through a ruling standpoint and guided by the governing Acts.

Robin realized after filling out her affidavit that there are particular details the judge is looking for. She identified what she now believes is the main concern of a judge assessing a restraining order application: 'Safety of the child. And I clued into that after I calmed down. It's about the safety of the child – as a primary – to get the judge to hear you.' Section 24 of the Family Relations Act (FRA) entitled 'Best Interests of Child are Paramount' supports Robin's realization. It reads:

> When making, varying or rescinding an order under this Part, a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances … (Provincial Court of BC, 2004)

The *Best Interest of the Child* legislation is often referred to by court staff, and was originally 'formulated to promote gender equality and make the laws more equitable between the sexes' (Zorza, 1995) in divorce proceedings. Aware that judges use this legislation as a chief directive in family law, Law2 encourages applicants to focus on their concerns for their children:

> I think for the most part [judges] are going to err on the side of protecting children … what's needed to keep them safe … So, I'm (pause) encouraging [applicants] to feel comfortable to tell the court what your concerns are for your children's safety and how you're addressing them in addition to getting this restraining order … where there's children, you do what you can to protect them, and hope that the adults grow up sometimes.

As guided by this legislation, mothers are not deemed as deserving of protection from violence as their children are. At another BC courthouse, FC recalled, judges will not hear any restraining order applications if the conflict is 'just' between two adults. J1 revealed her attitude about protecting children primarily: 'You know, because you're not thinking about that individual [applicant], you're thinking about a kid, and that's all you care about. So, you know, the rest of it is all sort of peripheral nonsense.' This directive may suffice in non-threatening divorce proceedings, but it is not appropriate in domestic violence cases, where both women and children's safety ought to be at the forefront of decisions made about the case.

> If an applicant has made a formal effort to stop the violence by contacting police or other authorities, and she writes this in the Ex Parte Application, she stands a much better chance of convincing the judge of the application's urgency.

For J1, if there's no back-up of anything, then it's not an emergency.

> Cause if it's really an emergency, the neighbors know, the police know, somebody knows that there's some terrible thing going on … if it's ongoing violence, the police have been involved and she's got the police reports. And then you know – ok, this is a big problem for these people.

If social workers from the Ministry of Children and Family Development have done an investigation, J1 explains, and the ministry tells a woman 'to get an order of no contact or they'll apprehend the kids – well, I'll pay attention to those. That strikes me as an emergency for that family (laughing)!' However, 'if they haven't written you a letter, I'm not interested. If you want to bring [the director here] with you – fine. Other than that, I'm not dealing with this.' Testimony from an outside source, or from someone in a 'neutral' position, is very important to judges in restraining order cases. Law2 confirmed:

> Of course the police involvement has to do with – how seriously are you taking this? Did you report this to the police? Because sometimes people come to court to get a restraining order, but they haven't taken it seriously enough to report it to the police, or you know, use the other services that are available to them to deal with the situation …

Strong reliance on police reports in court to determine severity is not always a reliable risk assessment. While in one study reporting rates were found to correspond with severity and frequency of abuse (Johnson, cited in Jordan, 2004), other studies have reported that there are usually many violent incidents before the victim reports to the police (Bunge and Levett, 1998; Jaffe and Burris, 1981), and abused women are more likely to be seen in the health care system (Campbell, 2004). Threatened and abused women, especially those who have experienced discrimination or mistreatment by police and other authorities, or fear reprisal from their abusers, develop strategies to conceal the violence from others. Some fear getting arrested themselves, either for the violence, for partaking in other illegal activity, or for not cooperating with police. For example, Lin's mother called the police to have them check on her daughter because she knew the violence had escalated, and she had not heard from Lin for a few days. The police arrived and began searching her apartment. Lin gave them a false name for her ex-partner, and was worried because, as she put it:

> I didn't know what they were there for, or what they were going to do … I said, 'you don't have a right to ask my son questions, you have to go through me. I know my rights'. And [the officer] said, 'or we could just arrest you …' I said, 'go ahead then. I'm eight months pregnant, let's go'.

On one afternoon when Lin started packing to move out, her abuser smashed a glass ashtray on his forehead. Instead of calling for help, she doctored him at home.

> Lin: … [As] soon as the bleeding stopped, I started to like pick out all the pieces of glass out of his head. And I stitched him up. I stitched him up myself. I gave him stitches, I bandaged it all up, and then I cleaned my floor, I cleaned all my walls. I bleached everything – no blood, no nothing. And I was like – I can't believe we just did this – I can't believe *I* just did this!
>
> JA: You didn't want to call anyone.
>
> Lin: No. I didn't want any more problems. If I would have called somebody, there would have been *way* more problems. More than I was willing to deal with... And plus I was thinking they were gonna take my kids away. But *noo* – I can't have my kids taken away.

After Lin's abuser raked his teeth across her foot breaking the skin and several bones in her foot, she sought an alternative to seeing her own doctor for the same reasons of uncertainty and mistrust.

> Lin: I didn't want to go to my doctor so I went to the [Capital Regional District] to have it checked out. 'cause he's got Hep C right? So I wanted to make sure I was ok. And I got tested and I was fine, but anyway. I was too scared to go to my doctor cause you never know what they're going to do about it.

Lin's choices to not involve police are rational, and do not reflect the seriousness of her circumstances at all. Thus, police reports are not necessarily a reliable indication of severity.

Institutional efficiency and specialized labor

To complete application work efficiently, I discovered, a specialized division of labor and regimented work pattern to simplify complex cases is paramount. This work pattern does not usually lead to quality completion of applications because piecemeal labor does not expose practitioners to the totality of experience: reasons that led the applicant to seek protection, what happened in her life in between hearings, what the outcome of the hearing was, and how her life changed with or without a restraining order.

By only observing portions of experience, practitioners do not get to know applicants in order to empathize or worry about her case outcome. From the point a restraining order application is submitted to the point it becomes a court order, a case changes practitioner possession from five to eight times.

Completing high volumes of piecemeal work holds more value in case processing than determining adequate solutions. When applicants are missing information, do not understand a process, or do not want to proceed the way a practitioner is suggesting, practitioners feel hostile toward the applicant because they are frustrated with delays in completing work. The problem is that the same level and type of assistance is available to all applicants regardless of need. Applicants may have difficulty understanding the language, experience different levels of threat, or feel varying levels of control over their circumstances. Despite such contrast, variation between applications has little to do with the differences in applicants' everyday problems of safety, and more to do with what is happening on an institutional level. Each application's course varies depending on courtroom availability, whether the attending judge is 'a nice judge', whether or not the lunch break is approaching, or how many other urgent matters are on the list already (CC1). For example, an application submitted in the morning has a better chance of being dealt with on that same day. If it is submitted later in the afternoon and the judge has gone home, or if the judicial case manager[6] determines there will not be enough time for the judge to review it, the applicant would need to return later. Some clerks hold onto the applications until there is a break in courtroom activity, some pass it up to a judge in the middle of a trial even though 'they are not supposed to' (J1), and others decide on a case-by-case basis.

> J1: … The clerks know what judges will even pay attention to them … [clerks] make a judgment call about the [applicant] who's there, and if they're persuaded, then they'll try to find a judge who they think may be persuaded. They don't *say* anything to the judge, but it's human nature to – if you feel for that person – you're gonna try to find someone to help them … Some judges [approve] every one they're asked to make. And some won't make any at all – some won't hear any of them, so don't even bother taking the file in there … maybe the clerk will look for the person who will do it – or *won't* do it, if they're already too busy (laughs).

The order in which duty counsel may assist applicants and the order in which matters are called throughout the morning in court are determined by an institutional priority ranking designed to get through as many matters as possible. This order has to do, for instance, with which lawyers have pressured the court clerk, which lawyers are only available at a certain time, which matters are already on the list, or whether or not there is a witness. Lawyers may take advantage of the lack of fixed order by requesting 'please

call my two files first because I have to be in Supreme Court by 10:30 today' or, 'can you hold onto that file until I get back around 11?' (CC1). Matters anticipated to take longer or which seem complicated have a lower priority and will be stood down and revisited.

Most lawyers are attentive to what judges feel are a priority and maintain a balance of pushing certain cases ahead, and avoiding being too pushy for others.

> Law1: The thing with trying to get something on really quick is that you can't use up much court time. If it looks like it's gonna be any length of time, [judges] just won't do it. So you have to show a really serious reason, and the more independent the witness, the more likely you are to get them to hear it. So if it's just the wife who wants to complain about her husband – not likely to get it. So can you see how much it's a matter of human nature? And using the rules to make a judge feel comfortable in considering your request.

J1 and Law2 believe the current system is not working well. They both expressed the view that it is misleading to tell the applicant and respondent to return to court the following Thursday when in reality there is no time for restraining order hearings on Thursdays.

> J1: You have 200 things on your list, and you're going through sorting people, and if there are consent orders, let's get the consents done so that they don't have to come back here. And you know, it's like a laundry day – you don't have trials … it could be that you got done your list early, and you could have had a trial, but you never know that ahead.

Judges are reluctant to arrange a hearing on a day other than Thursday because 'if it's not a real emergency, it's an inappropriate file to come in and interrupt everyone else's time that has a court date set' (J1) other days of the week. Short notice changes in court scheduling affect how practitioners are able to get their work completed efficiently. If applicants are told to return for a hearing on a day other than Thursday, the JCM will assess how much courtroom time they will need and tries to fit it into the schedule. S/he might respond by telling them:

> 'that'll be seven months down the road, cause we don't have 3 days to give you'. And so that's the unfairness of it all. Sure they can get back into the courtroom [every Thursday], but they can't get a hearing date. (J1)

Instead, applicants return each Thursday in hopes of resolving the situation in segments. Duty counsels encourage individuals to agree to certain terms or conditions outside the courtroom so that there is no need for a regular length hearing. Resolving matters in this fashion is considered a success in remand court, even though the larger issue may not have been meaningfully resolved.

Although the primary goal of the court is to be efficient, the time and resources spent on one case with numerous one-to-four minute long mini-hearings is likely greater than what is required to satisfactorily solve the problem at one time. Wilson and Pence (n.d.) found that most domestic violence cases included in their study require less than 10 hours of work input in total, but are currently taking months to complete.

Applications are complete when a court order has been issued. The court order is 'intrinsically dialogic in its reworking of terms that have already been given determinate, if essentially transitory, meaning elsewhere and elsewhen' (Smith, 1999: 136). The applicant's past and present knowledge of the everyday is replaced with conditions and clauses that will instruct those who respond to the order in the future. Family clerks begin with a court order template and, with the court clerk's notes and the standard clause 'cheat sheets' at their desks, fill in the parties' identifying information and addresses, the judge's name, the courtroom number, and the order's conditions. The *Rules of Court* book 'sets out all the forms and how things have to look' (Law1).

> J1: [W]e always have the: 'do not enter any residence where the applicant or the child reside', and um, 'not to have any communication, except by court order'. And so they're just basically standard clauses … I try not to make them particularly complicated.

The less a court order reflects individual case by case needs, the easier it is for practitioners to read, understand and activate the order.

Institutional time versus lived time

Once the forms are submitted to the registry with correct signatures, birth-dates, addresses, and narratives, the application 'enters into a time zone controlled, organized, and coordinated by processes that are negotiated by practitioners in the system' (Wilson and Pence, n.d.: 8). According to Wilson and Pence (n.d.), institutional time imposes on and overlays lived time. This time zone is that of trial scheduling, judicial workload, weekends and holidays, and specific days of the week designated for particular activity.

Many abusive relationships follow a pattern of bouts of conflict followed by periods of relative calm (Jaffe and Burris, 1981); hence, situations may become serious very quickly. While FC doubts the urgency when applicants arrive on Friday at four o'clock, abusive relationships do create sudden needs for protection that may be on Friday afternoon, or Tuesday at three in the morning. Lines of fault are observable between the everyday lives of applicants and the way the court system manages the efficient completion of applications. In this research, I found that throughout most of case

processing, institutional time does not coincide with lived time of women's needs for protection.

The Ex Parte application process is expedited in the interest of applicant safety; however, the forms follow a sequence of events that applicants have little control over. Applicants may wait several times in line, each time anywhere from five to 25 minutes to speak to a registry clerk, and wait time for an Ex Parte hearing varies from several hours to several days. To appear in front of the judge for numerous one to four minute hearings, and one 13-minute hearing, Lin has taken half and whole days off work on several occasions. Without knowing how long she will be waiting on Thursday, coupled with sudden notice to appear for subsequent hearings, it has been difficult to give her employer sufficient notice that she will be absent. What goes on in the waiting period once the respondent is served is an important safety consideration, as the applicant's lived time continues every day of the week, at all times of the day. During these hours, days and weeks she continues to live and manage her home life, her work, her children, her errands, and all her responsibilities that may or may not involve serious conflict with her abuser.

There is a false assumption that shortening the number of days permitted for the reply is deemed fairer for the respondent and safer for the applicant. In some cases a shortened period imposes more risk. For others who, for example, are waiting to get their child(ren) back after an ex-partner absconded with the child(ren), every minute matters. While J1 believes one week is a long time for a respondent to 'simmer' and become more agitated, Lin told me that it takes her ex-partner about a week to calm down. For her, it was the 'huge reaction' that took place shortly after he was served that was the most threatening. Many women seek court action immediately after they physically separate from the abuser. This is also the most dangerous time for many abused women (Bachman and Saltzman, 1995; Hart, 1996; McMahon and Pence, 1995; Schneider, 2000; Wilson and Daly, cited in Jordan, 2004).

A new analytic map

In general, the objectives of the civil justice system to maintain complete fairness and neutrality – for circumstances that are not fair or neutral – come into contradiction with what much of the literature has offered about domestic violence. In the civil court system, domestic violence is not contextualized as gendered, patterned, coercive, and ongoing. The legal system's value-neutral model in treating all individuals 'equally' gives the illusion that discrimination does not exist. Further, it assumes that discrimination *should* not exist, in that all applicants, with their range of circumstances and levels of threat, should follow an exact set of procedures.

While applications are supposed to follow the same procedures, they do not – and the variation in course more often reflects institutional case processing requirements than the unique safety needs of each applicant. The success of an application may have to do with which judge is present, whether a courtroom is available, whether the court clerk is convinced, whether the application is already on 'the list', whether the applicant has filed police reports, what time of day the applicant arrives, or how complex and therefore how much time the matter is anticipated to take. These institutional requirements, especially related to time and high volume processing, do not coincide with real lived time and women's needs for protection.

In principle, Ex Parte applications are reserved for only very urgent matters and most judges feel they approve too many of these orders. Yet, restraining orders that follow the encouraged 'lengthy procedure' are often not granted because judges assume there is no real threat if an applicant is able to wait so long to obtain one. The lengthy application process conforms to the principles of fairness, but it does not provide expedient protection. The Ex Parte, on the other hand, provides expedient protection but violates fairness by not hearing from both parties. Judges are faced with this systemic contradiction each time they evaluate a case.

My observations show that this system has much difficulty in accommodating lived experience with violence. Based on 'fairness' and maintaining a neutral stance, practitioners are not able to provide meaningful assistance to applicants. Without receiving the amount and type of assistance required, applicants make uninformed choices, hand in incomplete applications or provide incorrect information. As practitioners work on segments of many cases, they are not able to get to know the totality of individuals' circumstances and, consequently, develop a generalized understanding of what typically goes on in the cases they work on.

Civil restraining order applications vary considerably in their level of urgency, but the standardized applications also tend to reduce to equivalents. Categories on the application forms select and discard certain concrete particulars according to institutional requirements, and do not centralize safety needs. Similarly, when a court order is constructed, the applicant's past and present knowledge of the everyday is replaced with conditions and clauses that will instruct those who respond to the order in the future. The completed forms solicit a set of responses that are institutionally relevant but may not be relevant to the applicant herself. In fact, the less a court order reflects individual case by case needs, the easier it is for practitioners and police to read, understand and respond to the final order.

Early in the application process, individuals' pleas for help lose contextual and temporal specificity as they are translated into institutionally recognizable and actionable frameworks. These lines of fault are consequential in obtaining the kind of protection the applicant is seeking because, as lived

experience is transformed into decontextualized phenomena in which aspects of experience are made invisible, practitioners are not supplied with the real risks applicants face.

In sum, the objective of this article is not to make an argument against the fickleness of restraining order application outcomes, nor is it to provide new recommendations based on concrete findings. The aim has been to document and make accessible a new analytic map of how the concerted efforts of practitioners and applicants are organized and, further, to uncover how the observed variability in restraining order application success is produced through this particular social organization. Despite the discoveries here, building new knowledges, regions and spaces is ongoing and never absolute. The intended consequence is to facilitate greater freedom to navigate for advocates and people who enter in and expand the latitude even further. This is on the basis of developing a greater understanding about that which is otherwise unobservable from any one position. To solicit changes in any process, which is of course an overarching intention of any critical research strategy, one must first know *how* the crucial linkages are put together and organized.

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Notes

1 'Work' in this context expands on Marx's original materialist notion of labor. Here, an applicant or practitioner's work includes all physical, intellectual and emotional activities s/he is involved in that contribute to application processing. For example, an applicant's bus ride to the courthouse is 'work'. For more on Smith's 'generous concept of work', see Campbell and Gregor (2002).

2 To illustrate, traditional sociology typically examines phenomena housed in the ruling relevancies of bureaucratic, professional or legal discourses. For example, in using 'categories like "delinquency", the activities of individuals appear in an objectified form, grasped in a way which defines those activities in terms of the imperatives and procedures of the institutions concerned (e.g. the police and the courts)' (Grahame, 1998, p. 349).

3 Figure 1 was co-constructed with interviewed practitioners and applicants.

4 The equivalent terms *hearing* and *trial* are used interchangeably by practitioners and throughout this article.
5 Ex Parte restraining orders automatically grant interim custody to the protected party.
6 Judicial case managers, also known as trial coordinators, create and modify the trial schedule for each courtroom. The schedule is in constant flux to maximize daily courtroom time.

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