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Domestic Violence and Child Custody Proceedings: Children's Voices in Family Evaluations

Simon Lapierre | Alexandra Vincent | Michèle Frenette

School of Social Work, University of Ottawa, Ottawa, Ontario, Canada

Correspondence: Simon Lapierre (simon.lapierre@uottawa.ca)

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ABSTRACT

This study was part of a larger research project, which investigated post-separation violence, father-child relationships and children's participation in child custody and child protection proceedings. It was funded by the Social Sciences and Humanities Research Council of Canada, and it was approved by the University of Ottawa's Research Ethics Board. This article presents findings from a secondary data analysis. The data were initially gathered through two independent studies conducted in Quebec. The final sample for this study included 23 custody evaluation reports, which had been produced in the context of family court proceedings, in cases where there had been domestic violence. A feminist critical discourse analysis was conducted using NVivo. Overall, the research findings reveal that children's voices have been marginalised in the family evaluation process, as the evaluators gave little or no consideration to the children's wishes and feelings in their reports. In some cases, children's wishes and feelings have been dismissed and seen as irrational, particularly when the evaluators have concluded that they had been influenced by their mothers' alienating behaviours. The research findings also show that family evaluators tend to interpret what children's needs are with little or no consideration to their perspectives, wishes and feelings. These research findings raise important questions regarding custody evaluators' understanding of children's experiences in the context of domestic violence, and the place that is given to their voices in this process. The findings will be discussed in relation to children's rights and the International Convention on the Rights of the Child.

1 | Introduction

Domestic violence is a recurrent issue in family court proceedings (Jaffe et al. 2003; Morrill et al. 2005), even though violence is often misinterpreted as 'high conflict' (Archer-Kuhn 2018; Haselschwerdt et al. 2011; Lapierre et al. 2020). In Canada, decisions regarding parenting and contact arrangements should always be based on the children's best interest and, according to the most recent version of the Divorce Act, this requires judges to consider family violence and its impacts (Dalphond and Nag 2019; Lux and Gill 2021; Martinson and Jackson 2021; Neilson and Boyd 2020). According to Martinson and Jackson (2021),

> The Divorce Act's family violence provisions are, overall, focused on ensuring a common understanding of the depth and breadth of the nature of family violence, including direct and indirect exposure of children to it, as well as the harmful impact it can have on the safety, security and well-being of women (as family members) and children.
>
> (4)

Similar changes were made to the Civil Code in the province of Quebec (Fortin and Laurin 2023).

There has also been, over the last few years, a willingness to encourage children's participation in family court proceedings, in accordance with the children's rights recognised in the United Nations International Convention on the Rights of the Child (Martinson and Raven 2020; Martinson and Tempesta 2018). This is also reflected in the most recent version of the Divorce Act (Martinson and Jackson 2021). According to Martinson and Jackson (2021), 'In keeping with children's status as full rights bearers, the court must consider the child's views and preferences, giving due weight to the child's age and maturity' (p. 14).

This article investigates children's participation in family courts proceedings, in cases where they have experienced domestic violence. Drawing on findings from a study conducted in Quebec (Canada), it focuses on children's participation in custody evaluations, which are frequently used to inform judges on children's best interest. This article is divided into four sections, starting with a review of the literature on family court, custody evaluations and domestic violence, and children's participation and children's rights. The following section exposes the research methodology. The third section presents the main findings, followed by the discussion and some recommendations.

2 | Literature Review

2.1 | Family Court, Custody Evaluations and Domestic Violence

Several studies have demonstrated, over the last four decades, the negative impacts of domestic violence on children's safety and well-being (Holt et al. 2008; Mullender et al. 2002; Øverlien 2010). In this regard, recent scholarships have highlighted the need to move beyond an incident-based understanding, which focuses on children's exposure to violent incidents perpetrated towards their mothers, and to acknowledge a wider range of coercive and controlling behaviours that affect both women and children (Callaghan et al. 2018; Katz 2022; Øverlien 2013). Moreover, while research in this area has primarily focused on abused women's ability to protect and care for their children (Lapierre 2008; Radford and Hester 2006), research evidence shows that men's recourse to violence towards their partners is also a parenting choice and raises serious concerns regarding these men's parenting abilities (Bancroft et al. 2011; Jeffries et al. 2016; Lapierre et al. 2022). According to Jeffries et al. (2016), these fathers tend to lack empathy and respect, to have rigid, authoritarian and coercive parenting attitudes, to use manipulation and psychological abuse, to be possessive and to have a strong sense of entitlement. They are also poor role models for their children. It should also be noted that perpetrators can use father-child relationships and family court proceedings to maintain their control over their ex-partner (Bancroft et al. 2011; Jeffries et al. 2016).

In family court proceedings, judges frequently rely on custody evaluations to inform them on family dynamics, parenting abilities, and children's best interest, including in domestic violence cases (Haselschwerdt et al. 2011; Jaffe et al. 2008; Jeffries et al. 2016). In Quebec (Canada), custody evaluations can be mandated by the court or initiated by the parents. They are generally conducted by psychologists or social workers, who can be employees in child welfare agencies or in private practice. When the evaluations are conducted by professionals in private practice, the costs are covered by one parent or shared between both parents.

Custody evaluations are conducted over several weeks. During this period, the evaluators typically meet with the child and both parents, including parent–child meetings, and submit recommendations regarding child custody and contact arrangements. They conduct their evaluations according to their specific mandate, which is different from one case to the other, and generally follow broad professional guidelines that were published several decades ago. It should be noted that these guidelines make no reference to domestic violence, so the attention given to this issue depends on their specific mandate and their personal sensibility to this issue. However, the recent legislative changes mentioned above encourage these professionals to take domestic violence into account in their custody evaluations (Dalphond and Nag 2019; Lux and Gill 2021; Martinson and Jackson 2021; Neilson and Boyd 2020).

Despite evidence that domestic violence affects both women's and children's safety and well-being, this issue is still misunderstood in family court proceedings (Feresin and Santonocito 2023; Hardesty et al. 2015; Haselschwerdt et al. 2011; Jaffe et al. 2003; Jeffries et al. 2016; Stark 2009). As mentioned above, professionals involved in family court proceedings often fail to identify violence or misinterpret it as 'high conflict' (Archer-Kuhn 2018; Haselschwerdt et al. 2011; Lapierre et al. 2020). In this context, the power imbalance and the dynamics of control and domination are not taken into account, which is likely to lead to inadequate and unsafe contact arrangements. In a study conducted with 23 custody evaluators in the United States, Haselschwerdt et al. (2011) reported that the participants' perspectives on domestic violence aligned with either a feminist or a family violence theoretical framework. While feminist custody evaluators established clear distinctions between controlling violence and conflict-based violence, the other group interpreted all situations as situational couple violence, which also implies that there is no power imbalance between the parents.

Even though there is no presumption for joint custody in Canadian legislations, judges and professionals involved in family court proceedings generally operate from the ideas that children need to maintain contact with their fathers, and that parents ought to collaborate and work together after separation (Jaffe et al. 2003, 2008, 2009; Macdonald 2016). In some cases, this means that they prioritise father-child contact over women's and children's safety and well-being (Macdonald 2016), As pointed out by Jaffe et al. (2009), this approach is not appropriate in domestic violence cases:

> For the majority of separating families, this collaborative approach will best serve their children. However, cases involving domestic violence require a paradigm shift, with a greater focus on making a parenting plan that protects victims and children, and less emphasis on speedy, cooperative outcomes.
>
> (169)

Moreover, scholars have raised concerns regarding the influence of 'false allegations' and 'parental alienation' discourses in custody evaluations (Lapierre et al. 2020; Meier 2009, 2020; Saunders 2015). While the concept of 'parental alienation' has been highly contested (Barnett 2020; Lapierre et al. 2020; Meier 2009; Rathus 2020), it generally refers to situations where a child rejects a parent without justification, due to the other parent's 'alienating' behaviours. This is particularly problematic in the context of violence and abuse, where women may have well-grounded reasons to want to limit children's contact with their fathers. They can express concerns regarding their children's safety and well-being, request supervised visitations, or even oppose father-child contact. Some children may also refuse to see their fathers (Holt 2015; Lamb et al. 2018; Lapierre et al. 2022). However, it is in these circumstances that women can be seen as 'hostile' (Harrison 2008), and they can even be accused of 'engaging in parental alienation' (Barnett 2020; Feresin and Santonocito 2023; Lapierre et al. 2020; Meier 2020; Rathus 2020). It should be noted that perpetrators can raise issues regarding their ex-partners' 'alienating' behaviours in order to shift the focus away from their own violent and controlling behaviours (Lapierre et al. 2023).

In this regard, Saunders (2015) argues that 'one form of bias or misinformation is indicated by evaluators' uncritical use of parental alienation theories' and that 'false assumptions may be made that allegations, especially from mothers, are likely false and do not need to be investigated and that parents must cooperate with each other and communicate directly' (81). According to Haselschwerdt et al. (2011), 'the contrast between feminist and family violence evaluators' discourse on false allegations and parental alienation is possibly due to family violence evaluators' conceptualisation of domestic violence in custody disputes as situational couple violence only' (1714).

2.2 | Children's Rights and Children's Participation

Over the last few decades, there has been a growing number of studies that have investigated children's experience and perspectives on domestic violence, demonstrating that children are both able and willing to talk about their situations (Øverlien and Holt 2019). Research findings show that children are generally aware of the perpetrators' violent and controlling behaviours (Callaghan et al. 2018; Katz 2022; Mullender et al. 2002; Øverlien 2013), and that they develop their own strategies to cope with these situations (Callaghan et al. 2017; Katz et al. 2020). These studies have challenged the idea that children living with domestic violence are 'silent' or 'passive' victims.

Children's participation is also one of the rights mentioned in the United Nations' (1989) Convention on the Rights of the Child, which was ratified by Canada in 1991. As mentioned above, children are now recognised as full rights bearers; the family courts must therefore consider their views and preferences, giving due weight to their age and maturity (Martinson and Jackson 2021). Steps have been taken to include children's voices in child custody proceedings (Bala and Houston 2015; Martinson and Tempesta 2018).

Despite these provisions, several authors argue that children's participation is often limited in practice (Elliffe et al. 2020; Morrison et al. 2020; Tisdall 2016, 2018). In a study conducted in Scotland, Morrison et al. (2020) use the metaphor of 'borders' to understand why, despite progressive legislation, children's participation in custody proceedings has remained problematic:

> Courts seek to keep children out of the contestation and out of the courts, as potentially harmful to the children, constructing the case as an adult, parental dispute. While aiming to be protective, it does not sufficiently take into account children's participation rights. If children's views are asked for by the court, the most frequent way is through an expert instructed by the court. As children have no control over what is submitted to the court by this expert, children's views risk being lost in translation rather than transmitted as the children would precisely wish.
>
> (412)

Moreover, Martinson and Tempesta (2018) argue that 'with the exception of judicial meetings with children, children's views are most often presented to courts indirectly through adult third parties without the participation of children in the rest of the decision-making process' (159). Furthermore, Martinson and Raven (2020) emphasise the need for a right-based approach:

> Obtaining views in court processes is now common. However, less attention has been paid to the equally important requirement that the views be taken seriously and given due weight in accordance with children's age and maturity. The latter requires a much broader focus on children in court processes than has traditionally been the case.
>
> (512)

3 | Research Methodology

This study is part of a larger research project, which investigates post-separation violence, father-child relationships, and children's participation in child custody and child protection proceedings. It is funded by the Social Sciences and Humanities Research Council of Canada, and it was approved by the UNIVERSITY's Research Ethics Board.

This article presents findings from a secondary data analysis (Ruggiano and Perry 2019). The data were initially gathered through two independent studies conducted in Quebec, under the first author's leadership. The first study, which focused on custody evaluations in domestic violence cases, included semi-structured interviews with women who had experienced domestic violence and an analysis of custody evaluation reports. The second study investigated the links between domestic violence and 'parental alienation', combining policy and case-law analysis, semi-structured interviews with key informants, and multiple case studies with women who had experienced domestic violence and who had been seen as 'engaging with

parental alienation'. These case studies involved individual semi-structured interviews with women and an analysis of relevant documents, including custody evaluation reports, child protection reports and court decisions.

The findings from this study are from analysis of a sample of custody evaluation reports that were gathered through these two studies. All these reports had been produced in the context of family court proceedings, in cases where there had been domestic violence. In all these cases, the violence had been identified by the women and corroborated by other sources (shelter workers, police officers, etc.). Only cases involving at least one child aged 4 years or older were selected, because it was recognised that participation may be more complex when children are under 4 years old. Only two reports were excluded due to the children's age.

The final sample for this study included 23 custody evaluation reports, which involved 45 children in total. The average age for the children when the reports were produced was 8.31 years (mean = 8). These reports were produced in 5 regions between 2010 and 2019.

A feminist critical discourse analysis was conducted using NVivo. Critical discourse analysis provides a critical perspective on unequal social arrangements, which are constructed and sustained through the use of language, and the ultimate goal is social transformation (Wodak and Meyer 2015). Therefore, feminist critical discourse analysis is primarily concerned with critiquing discourses that sustain a patriarchal social order and providing an understanding of the complex workings of power and ideologies that maintain a hierarchically gendered social order (Azzopardi 2015; Lazar 2005, 2007). According to Fairclough (1989, 1995), critical discourse analysis considers three inter-related dimensions of discourse: (a) the object of analysis, including texts and talks; (b) the processes by which the object is produced and received by human subjects; and (c) the socio-historical conditions that govern these processes. With the goal of linking the micro-analysis of text to the macro-analysis of social context, each of these dimensions requires different but intersecting levels of data analyses. Data analysis was conducted in three stages, which reflected these three dimensions. The data were first coded according to the main themes that emerged from the documents. Second, the content of each report was analysed based on the quotes selected in the coding process. This enabled us to better understand the place that had been given to children's experiences, wishes, and feelings, the consistencies with the recommendations, and the process by which the discourses had been produced and reproduced by these professionals. Counter-examples were also identified. Third, the content of these reports was brought together and located in the broader social and political context, which highlighted the socio-historical conditions that govern these processes. Some quotes were translated into English for the purpose of this article.

4 | Research Findings

This section presents the main research findings, which reveal that children's voices have been ignored or marginalised in the evaluation reports that were analysed, as the evaluators gave little or no consideration to the children's experiences, wishes, and feelings in their reports. It will also highlight the fact that, in some cases, children's views were dismissed and sometimes even seen as irrational and that children were not seen as credible by the evaluators.

4.1 | Little or No Consideration to the Children's Experiences, Wishes and Feelings

Overall, the custody evaluation reports did not provide a good understanding of these children's experiences of domestic violence and abuse. They did not include a clear description of the perpetrators' coercive and controlling behaviours, or an explanation of what it had been like for these children to live with domestic violence on a daily basis. In fact, several reports made no reference to domestic violence, as these situations were mainly considered through the 'high conflict' lens. This was illustrated by the repetitive use of the word 'conflict' throughout the documents. For instance, the following recommendations clearly illustrate the 'high conflict' lens adopted by the evaluator:

> Both parents commit to be respectful in the language they use when talking to the children about the other parent, understanding that the words they use can minimize or exacerbate the conflict, and they commit to respect the children in their comments.
>
> (R4, 6-year-old, 9-year-old and 9-year-old children)

Even when there were mentions of physical or sexual abuse towards the children, limited information was included in the reports. In this regard, the following quote reveals how this evaluator had addressed the child's disclosure of physical and sexual abuse, just before the father-child evaluation meeting, totally dismissing the child's experiences, wishes and feelings:

> Before the meeting, the child asked me if she could talk to me, alone. I went with her in the other office. She whispered in my ear and told me that she wanted to explain why she did not want to see her father. Counting on her fingers, she explained that she did not want to see her father because he had pulled her arm, put her in a cupboard, screamed at her, and touched her vagina. She seemed relieved to have mentioned this to us. [...] I mentioned that this meeting will be a good occasion to discuss these issues with her father. Despite her resistance, we asked the child to follow me in the office where her father was.
>
> (R8, 6-year-old child)

The research findings also reveal that, overall, the custody evaluators gave little or no consideration to the children's wishes and feelings in their reports. Some reports made no reference to the children's wishes and feelings regarding custody arrangements, parenting time or any other matters that affect their lives, which raises the question of whether the evaluators had really

consulted them in the process. It should be noted that this was not only true for the younger children, but also for the older ones.

Some reports showed that the evaluators had consulted the children regarding custody arrangements or parenting time, as they made some references to the children's wishes and feelings in the documents. Most of these evaluators had nonetheless put forward recommendations that were inconsistent or even in contradiction with the children's wishes and feelings. It was the case, for instance, when a 12-year-old child had asked to continue to live full-time with his mother, but the evaluator recommended joint custody. In another case, the two 9-year-old children had asked to spend 3 days per week with one parent and the four remaining days with the other parent, explaining that in the past they had found it too long to be 7 days without seeing their mother. Despite these children's clear wishes and feelings, the evaluator recommended that the children spend one entire week with one parent, and the following week with the other parent.

In another report, the evaluator mentioned that the 9-year-old child had expressed that she wanted to spend less time with her father, due to her father's violent behaviours towards her:

> The child told us that she would like to stay with her father every other weekend instead of every other week. We then asked her to tell us why she wanted that, and she explained that her father was mean, that he would threaten her and tell her that if she did not do this or that, he would slap her in the face.
>
> (R3, 9-year-old child)

The evaluator nonetheless totally dismissed the child's experience, wishes and feelings, stating that this child's relationship with her father was 'satisfactory' and 'acceptable', as was her brother's and sister's relationships with their father:

> The three children all have a satisfactory and acceptable relationship with their parents.
>
> (R3, 9-year-old child)

The evaluator than recommended to maintain the joint custody with equal parenting time for both parents.

Some evaluators also acknowledged the children's wishes and feelings regarding other matters that affected their lives, such as the choice of schools or summer camps, or their parents' behaviours, as illustrated in the following quotes:

> The child shared with me some requests that she has for her father. So, she would like that her father demonstrates more interest in her and her brothers, that he pays more attention to them than to his girlfriend, that he stops hurting them, and that he stops laughing at her. According to the child, her father would not take anything seriously, and he does not listen to her when she asks him to stop laughing.
>
> (R2, 9-year-old child)

> We have asked the child if he had wishes that he would like to realize. The child told us that he would like that his parents stop arguing that his father stop telling mean things to his mother in front of him.
>
> (R4, 8-year-old child)

Even though these children had clearly expressed their wishes and feelings, the evaluators did not account for them in their recommendations. So, even when the evaluators explore and acknowledge the children's wishes and feelings, it is not a guarantee that they will be reflected in their recommendations.

4.2 | Dismissing Children's Experiences, Wishes and Feelings as Irrational: The 'Conflicted' and 'Alienated' Children

In some cases, the children's experiences, wishes, and feelings were dismissed by the evaluators because they were seen as irrational. The research findings show that this was more likely to happen when the evaluators had suspected or concluded that the children had experienced 'conflicting loyalties' or had been influenced by their mothers' 'alienating' behaviours, which appeared to be dominant discourses in this area.

In several reports, the evaluators concluded that the children had experienced 'conflicting loyalties' in relation to their parents, and this was seen as an issue preventing them from freely expressing their wishes and feelings. While these evaluators provided little or no evidence to support the conclusion that these children had actually experienced 'conflicting loyalties', this idea was used to show that these children were unwilling or unable to express their wishes and feelings, or that it would be inappropriate or harmful to ask them to do so. For instance, the following quote illustrates the evaluator's opinion that the child's attitude towards her father did not reflect how she really felt about him:

> The child seems trapped in the maternal relationship, which could make her fearful of the desires or needs that she could express. [...] She seems instrumentalized, as her attitude towards her father does not reflect how she really feels.
>
> (R8, 6-year-old child)

In this context, the evaluators made recommendations that were inconsistent with the children's wishes. For instance, one 11-year-old child had expressed that she wanted to see her father every other weekend, but the evaluator recommended to move gradually towards joint custody:

> This child is not only caught in conflicting loyalties, but we believe that if this situation continues, she is likely to develop alienating thoughts towards her father. We noticed that she uses a language similar to her mother's language, and she tends to minimize the relationship with her father, and even to take her distance from him. It is therefore essential to

> reestablish contact between both children and their father, and this as soon as possible.
>
> (R5, 8-year-old and 11-years-old children)

This tendency was exacerbated in situations where the evaluators suspected or concluded that the children had been influenced by their mothers' 'alienating' behaviours. In these cases, the 'alienated' children were seen as irrational, and their accounts were seen as not reflecting their 'true' experience, wishes and feelings. For instance, in this report, the evaluator dismissed the child's wishes and feelings on the basis that he had been influenced by his mother:

> He also talked about his experIence with Youth Protection Service, saying that his father was declared nonviolent by them, and that the workers said that they had met him in school, which is false. In this regard, the child has the same discourse as his mother. He said that he would feel safer if his father was to undergo therapy.
>
> (R1, 13-year-old child)

This was particularly problematic in situations where the children had disclosed physical or sexual abuse, and when they had expressed being scared of their fathers.

4.3 | Children's Credibility

The research findings reveal that, overall, children are not seen as credible sources of information in family court proceedings. Furthermore, notions such as 'conflicting loyalties' and 'parental alienation' negatively affect their credibility, leading evaluators to conclude that they are irrational or that their accounts do not reflect their 'true' experiences, wishes and feelings. For instance, the following quote shows that the evaluator did not consider that this 9-year-old child was credible, due to perceived inconsistencies in her accounts., which were interpreted as indicators of 'conflicting loyalties' in a 'high conflict' family dynamic. In this regard, it should be noted that the child's different wishes and feelings were not necessarily contradictory or irreconcilable:

> The child expresses contradictory views regarding her relationship with her father. Sometimes, the child says that she wants to live with her mother and spend every other weekend with her father. At other moments, she says that she wants quality time with her father, feeling that she was left out when her father spends time with her brothers. Finally, she says that she does not want to see her father, but she wants to go on holiday with him. Such inconsistencies are frequent when a child of this age experiences conflicting loyalties between her parents, due to a high conflict family dynamic.
>
> (R3, 9-year-old child)

The research findings suggest that, in general, it was difficult for the children to be seen as credible in family court proceedings. On one hand, the evaluators seem to expect children to have an intact and detailed account of the violent dynamic. The evaluators did not deem the children credible if they were not able to provide a clear account with sufficient details, as illustrated in the following quotes:

> The children have not seen violence between their parents, but they report their mother's account. These children's accounts regarding the fact that their father was violent towards them seem unlikely. The child only speak about one incident where his father would have squeezed his head.
>
> (R14, 4-year-old and 9-year-old children)

> She said that her father is getting nicer when she spends time with him. In the past, he was hurting them, and her mother was protecting them. Questioned on what she remembers, she would not say anything. (R9, 7-year-old child).

On the other hand, children who could provide more information regarding their fathers' violent behaviours seem to raise suspicion, particularly if they had not directly witnessed all these behaviours. In these circumstances, the evaluators were likely to suspect or conclude that the children had been influenced by their mothers' 'alienating' behaviours:

> When he arrived in our office, without being questioned on this specific issue, he talked about his father's violence towards him and towards his brothers and sisters. He reported examples where he was not present, and therefore was not able to explain what happened. He mentioned that it is his mother who told them about these events. He said that his older brothers often hit him. He said, 'with daddy it is going better, but he still hits us'. When questioned about this issue, he said that he did not have any examples or memories.
>
> (R9, 15-year-old child)

> During the interview, he talks about the family, about his brothers. He says that his father was not part of the family, that they separated because his father was hitting them. He made references to situations where he had injuries on his neck, and where he had punched him in the stomach. [...] But he would say that he did not see it directly.
>
> (R9, 8-year-old child)

4.4 | Children's Needs According to Custody Evaluators: Maintaining Father-Child Contact

The research findings show that, overall, the custody evaluations and their recommendations are not based on the children's experiences, wishes, and feelings, as children's voices

seem to have little or no influence on the evaluators' recommendations. Instead, these evaluations and recommendations are based on the children's needs, as interpreted by the evaluators. In many cases, the evaluators' interpretation of the children's needs does not reflect these children's wishes and feelings.

For instance, one 12-year-old child expressed some concerns regarding his father's behaviours, which was not described as satisfactory. He also clearly stated that he wished that his father would have shown more kindness and would have provided more support in his schoolwork. Despite this acknowledgment of the child's wishes and feelings, the evaluator concluded that the main problem in this family was the deterioration of the children's perception of their father, which was seen as unjustified. According to the evaluator, the children needed to be less immature and more resourceful with regard to their schoolwork, and to develop their ability to face adversity without being anxious, which was totally different from the wishes and feelings that had been expressed by the child:

> In general, the child tends to be sensible to signs of affection, and he can have strong reactions in this context. This contributes to the fact that he experiences difficulties in the relationship with his father, and that he thinks that he does not receive enough attention and affection from his father. He fears with too much intensity his father's critiques and anger. He wishes that his father would show more kindness. He also wishes more support in his schoolwork.
>
> (R10, 12-year-old child)

In this context, the evaluator's recommendation contradicted the child's wishes and feelings. It is not only that the evaluator did not recommend for the father to provide more support with schoolwork, as requested by the child, but he also recommended for the mother to provide less support, so that the child could become more autonomous:

> The mother should significantly reduce her support regarding her sons' homework, with the objective that they become more autonomous. She can expect some resistance from them at the beginning, but she should keep going in order to foster their development.
>
> (R10, 12-year-old child)

Overall, the evaluators interpretations of the children's needs tended to focus on the children's relationships with their fathers. In most cases, the evaluators insisted to maintain father-child contact, even though it did not reflect the children's wishes and feelings. The following quote illustrates the importance that the evaluators gave to father-child relationships:

> Our view is that we should not support the breakdown of the relationships, in terms of the child's attachment, filiation and origins. On the contrary, we need to be careful in order to introduce a mechanism that will support and reactivate the father's affective and relational communication with the child.
>
> (R6, 9-year-old and 12-year-old children)

Even in the few reports where the evaluators acknowledged the children's wishes and feelings and found their accounts credible, the evaluators still focused on these children's need to spend time with their fathers. This emerged as a dominant discourse in this area. For instance, in this report, the evaluator expressed serious concerns regarding the father's behaviours, based on the children's accounts, but he still insisted that the children's need to see their father:

> We have concerns regarding the father's impulsivity, and how he spoke to the children when we were present, which demonstrates that he is unable to restrain himself. The separation is recent, and it appears necessary to stabilize the children's situation. They still need their father, and, in this regard, it is important that the father quickly mobilizes his resources to access help him manage his emotions and his impulsivity.
>
> (R22, 4-year-old and 7-year-old children)

4.5 | Counter Examples

The research findings also identified counter examples, in accordance with the feminist critical discourse analysis. These counter examples demonstrated resistance to the dominant discourses that have been presented above. In these examples, the children's voices were given more weight in the custody evaluation process. In these cases, the evaluators were able to gain a better understanding of the children's experiences. In this quote, the evaluator acknowledged that the child's behaviours were potentially adequate reactions or strategies in the context of domestic violence, even though he referred to a 'conflictual family dynamic':

> The child finds it difficult to accept the father's attitude, and to cut the contact with him could be a clear indication of her adaptation to the conflictual family dynamic. Moreover, the child's attempt to distance herself from her father could be considered as a sound estrangement strategy, as an attempt to avoid conflicting loyalties or as a way to protect her mother, who is the parent representing stability and safety for this child.
>
> (R23, 7-year-old child)

In these circumstances, the evaluators considered the children's wishes and feelings, and took them into account in their assessment of the children's needs and in their recommendations. These evaluators did not seem to prioritise father-child relationships over the children's wishes and feelings. For instance, this quote is from a report where the evaluator took the child's wishes and feelings into account in the recommendations regarding custody arrangements and parenting time:

> Regarding the father's access, the arrangements that he proposes present discontinuities in the child's routine, and the sleeping arrangements would almost represent a joint custody. We do not believe that this is in the child's best interest. [...] Therefore, we value quality time during the day. This will enable the child to do activities with his father, which is what he enjoys the most.
>
> (R1, 8-year-old child)

In the following quote, the evaluator acknowledged that the child was scared of his father, and raised concerns regarding the potentially negative impacts of father-child contact:

> The child is scared of his father, and he starts to manifest anger because he is forced to see him. More than exacerbating the child's difficulties, we are worried that maintaining father-child contact would crystallize the child's negative feelings towards his father.
>
> (R7, 6-year-old child)

This evaluator therefore recommended a temporary suspension of father-child contact in order to ensure the child's safety and well-being:

> We recommend to temporarily suspend father-child contact to give the child some time to restore his psychic state, which is fragile at the moment.
>
> (R7, 6-year-old child)

Finally, two reports demonstrate that the evaluators considered the children's experiences, wishes and feelings in the custody evaluations, which had implications for their participation in this process. For instance, this evaluator recognised that it might have been difficult for the child to express his wishes and feelings, given the potential for reprisals by the father. This evaluator took this into account and recommended supervised contact arrangements:

> The child needs to be protected and to be safe, and he did not want to be left alone with his father. The child cannot easily express his views if he is scared that it will turn against him. We understood that he would have a lot more to say.
>
> (R12, 8-year-old child)

It is also interesting to note that, in another case, the evaluator respected the 9-year-old child's request that he did not share his wishes and feelings with his parents:

> The child did not want his views to be shared regarding the custody arrangements. This should be respected given that he made it a clear request and that he found it very important.
>
> (R2, 9-year-old child)

5 | Discussion

While domestic violence is a recurrent issue in family court proceedings (Jaffe et al. 2003; Morrill et al. 2005), several scholars have shown that judges and professionals involved in these proceedings have a limited understanding of this issue (Feresin and Santonocito 2023; Hardesty et al. 2015; Haselschwerdt et al. 2011; Jaffe et al. 2003; Jeffries et al. 2016; Stark 2009). The research findings presented above also reveal that custody evaluators often fail to adequately identify domestic violence and its impacts on both women and children, and they tend to look at these situations through the 'high conflict' lens. This dominant discourse leads to the minimisation of men's behaviours and the misinterpretation of women's and children's reactions, therefore reproducing the patriarchal social order. These findings may reflect the influence of a family violence theoretical framework amongst custody evaluators, even though some reports seem to reflect a feminist framework and a better understanding of power and control (Haselschwerdt et al. 2011). As pointed out by Archer-Kuhn (2018), 'differentiating situations of domestic violence and situations of high conflict will help to clarify appropriate supports for all families and provide direction for social service and legal professionals for collaborative practice' (p. 230).

The research findings also reveal that, more specifically, the custody evaluators pay limited attention to children's experiences, wishes and feelings, which reflects a more general marginalisation of children's voices in a society dominated by adults. Overall, the reports did not provide a description of what it had been like for these children to live with domestic violence, even though research evidence shows that children are able and often willing to talk about their experiences (Callaghan et al. 2018; Katz 2022; Mullender et al. 2002; Øverlien 2013). Moreover, most reports did not mention the children's wishes and feelings and, even when they were mentioned, they were not reflected in the evaluators' recommendations.

According to these findings, custody evaluators seem to base their recommendations on their own interpretation of the children's needs. In many cases, the evaluators' interpretation of the children's needs did not reflect the children's wishes and feelings. Instead, the evaluators emphasised the children's needs to maintain father-child relationships, despite these men's violent and controlling behaviours and despite these children's wishes and feelings. Some children had expressed serious concerns regarding their fathers' behaviours, disclosing physical and sexual abuse. These findings beg an important question, which had been raised by Macdonald (2016): Are family court proceedings promoting children's welfare or father-child contact?

Overall, these findings raise serious concerns, given that judges often rely on custody evaluations to decide what is in the children's best interest, and that these evaluations have been seen as a mechanism to include children's voices in family court proceedings (Bala and Houston 2015; Martinson and Tempesta 2018). The research findings suggest that this is not an effective mechanism to include children's voices in these proceedings. More generally, it highlights the limitations of children's indirect participation in child custody proceedings, as children's views are generally presented indirectly, through third parties (Martinson

and Tempesta 2018). As mentioned by Morrison et al. (2020), 'as children have no control over what is submitted to the court by this expert, children's views risk being lost in translation rather than transmitted as the children would precisely wish' (412).

An issue that seems to limit children's participation in family court proceedings relates to the children's lack of credibility. However, the research findings suggest that it is very difficult for children who have experienced domestic violence to be seen as credible when they talk about their fathers' violent and controlling behaviours. On one hand, children are expected to have an intact and detailed account of the violent dynamic. On the other hand, children who are able to provide more information raise suspicion, particularly if they have not directly witnessed all their fathers' violent behaviours.

Furthermore, the research findings raise serious concerns regarding the evaluators' recourse to contested notions such as 'conflicting loyalties' and 'parental alienation' to justify the exclusion of children from child custody proceedings. Indeed, while these evaluators provided little or no evidence to support the conclusion that these children had actually experienced 'conflicting loyalties' or 'alienation', these notions were used to show that these children were unwilling or unable to express their wishes and feelings, or that it would be inappropriate or harmful to ask them to do so. Over the last three decades, several scholars have challenged 'parental alienation' discourses for their tendency to discredit and blame abused mothers (Barnett 2020; Feresin and Santonocito 2023; Lapierre et al. 2020; Meier 2020; Rathus 2020), and these findings demonstrate that they also discredit children. The recourse to these contested notions should be questioned, particularly in light of a recent report published by the United Nations' Rapporteur on Violence against Women and Girls, which 'examines ways in which family courts in different countries refer to 'parental alienation' or similar pseudo-concepts in custody cases, ignoring histories of domestic violence, which may lead to the double victimisation of victims of such violence' (Alsalem 2023, 2).

In this regard, Martinson and Jackson (2021) explain that 'there can be a reluctance to listen to children at all when there is an allegation of alienation' and that 'their view and preferences can be inappropriately minimised or ignored' (15). Therefore, they argue that courts should avoid an approach that 'puts the cart before the horse':

> An ultimate issue to be determined by the court is whether there is in fact 'alienation'. Yet, decisions are sometimes made early in the court process that a child is not capable of forming their own views based on concerns about alienation, made in the absence of the child's input about alienation, before there has been a judicial assessment of the reliability of expert and other evidence about alienation, and before there has been a judicial finding of alienation based on all of the evidence. This can lead to a premature conclusion that the child cannot form their own views because of alienation.
>
> (15)

Given that children's participation is one of the rights mentioned in the United Nations' (1989) Convention on the Rights of the Child, efforts should be made to improve children's participation in child custody proceedings and to ensure that children's experiences, wishes and feelings will be taken into account in the determination of their best interest. At this stage, it should be recognised that custody evaluations are not an effective mechanism to ensure children's participation and to include their voices in these proceedings. While it seems necessary to review the evaluators' training, role and mandate, and to implement regulations that will ensure children's participation in the evaluation process, opportunities for more direct participation should also be created (Martinson and Tempesta 2018; Morrison et al. 2020).

6 | Conclusion

There has been, over the last few years, a willingness to encourage children's participation in family court proceedings, in accordance with the children's rights recognised in the United Nations International Convention on the Rights of the Child (Martinson and Raven 2020; Martinson and Tempesta 2018). Drawing upon an analysis of custody evaluation reports, the findings that have been presented in this article reveal that custody evaluations are not an effective mechanism to ensure children's participation and to include their voices in these proceedings. Therefore, it seems necessary to review the evaluators' training, role and mandate. There should be mandatory domestic violence training for all custody evaluators, so that they can conduct effective screening and better understand the perpetrators' behaviours and the impacts on both women and children. This evidence-based training should focus on children's rights and challenge problematic discourses. In addition to these efforts to improve custody evaluations, we should explore more effective ways to implement children's more direct participation in family court proceedings.

Author Contributions

Alexandra Vincent: conceptualization, investigation, writing – original draft, methodology, validation, visualization, software, formal analysis, project administration. **Michèle Frenette:** conceptualization, investigation, writing – original draft, methodology, validation, visualization, software, formal analysis, project administration. **Simon Lapierre:** conceptualization, writing – original draft, investigation, funding acquisition, methodology, validation, visualization, writing – review and editing, software, formal analysis, project administration, supervision, data curation, resources.

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This research was approved by the University of Ottawa's Research Ethics Board.

Conflicts of Interest

The authors declare no conflicts of interest.

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