

# **The Construction and Transformation of High-Conflict Divorce Involving Children**

**by**

**Rachel Treloar**

M.A., University of Victoria, 2003

B.A., University of Victoria, 1981

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# Approval

**Name:** Rachel Margaret Treloar  
**Degree:** Doctor of Philosophy (Special Arrangements)  
**Title:** *The Construction and Transformation of High-Conflict Divorce Involving Children*

**Examining Committee:** **Chair:** Dr. Peter Liljedahl  
Associate Dean, Academics

**Jane Pulkingham**  
Senior Supervisor  
Professor  
Department of Sociology and  
Anthropology

---

**Olena Hankivsky**  
Supervisor  
Professor  
School of Public Policy

---

**Susan B. Boyd**  
Supervisor  
Professor Emerita  
Allard School of Law  
University of British Columbia

---

**Margaret Jackson**  
Internal Examiner  
Professor  
School of Criminology

---

**Felicity Kaganas**  
External Examiner  
Reader in Law  
Brunel Law School  
Brunel University

---

**Date Defended/Approved:** December 8, 2016

## Ethics Statement



The author, whose name appears on the title page of this work, has obtained, for the research described in this work, either:

- a. human research ethics approval from the Simon Fraser University Office of Research Ethics

or

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## **Abstract**

Despite a proliferation of research, policies, and interventions aimed at mitigating inter-parental conflict after separation, approximately 10 percent of divorcing parents contend with ongoing legal disputes. Most research, policy discussion, and intervention is based on outsider-expert understandings that tend to categorize divorces as well as parents enmeshed in “high-conflict” in polarized and individualized terms. The purpose of my study is to understand how mothers and fathers who have experienced a high-conflict divorce process make meaning of and navigate the experience. I seek insights about how varying social locations, tensions in broader social discourses of gender relations, and collective meanings and norms shape personal meanings and experiences of divorce as well as how positive change can occur. This interdisciplinary and qualitative study, undertaken from a critical-feminist perspective, employed in-depth interviews with 25 parents residing in British Columbia, who at one time experienced a high-conflict divorce and later identified surviving or navigating the experience as transformative. Three key themes emerged: the interrelationship of financial and child-related issues; the construction of expert knowledge and implications for justice and voice; and that positive personal change occurs over time when supported with personal, social, and material resources that address a parent’s needs and challenges. Gendered meanings were particularly apparent in participants’ accounts. My central thesis, which draws on relational autonomy and Fricker’s epistemic injustice, is that the dominant discourses upon which parents draw to make sense of the high-conflict divorce process and their personal experiences are socially constructed and embedded in broader power relations, especially in gender relations and encounters with experts, and further promulgated through neoliberal conceptions of autonomy and choice. This often results in parents not feeling heard, their concerns going unaddressed, and a lack of access to needed services. Nevertheless, individuals change, make sense of, and respond to their circumstances across the life course, thereby exercising agency. Since this process occurs in a social, political, and legal context that also changes over time and across generations, my thesis includes the social dimension of transformation. I conclude that policies and practices that provide the supports and resources identified by parents as helpful would promote agency, autonomy, and resilience in the face of difficult circumstances, facilitating personal transformation and family flourishing.

**Keywords:** high-conflict divorce; meaning-making; relational autonomy; epistemic injustice; expert knowledge; family law and policy reform

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## Glossary

Access	Although access may refer to each parent's time with their children, the term usually refers to the contact schedule of the non-resident parent (Canadian Bar Association, 2010). In my thesis I use this term when discussing disputes over the division of <i>time</i> with children. Although the current provincial statute in BC ( <i>Family Law Act</i> , 2011) does not use this term, it was in use at the time study participants separated or divorced.
Best Interests of the Child	The "best interests of the child" is a child rights principle derived from the UN Convention on the Rights of the Child (Article 3). <sup>1</sup> In the context of family law, its meaning is contested and varies somewhat across provincial and national legal and policy contexts. In child custody litigation the only legitimate concern is that of the "best interests" of children. BC's new <i>Family Law Act</i> (2011) states that the best interests of the child must be the only consideration of both courts and parents when determining legal arrangements and specifies the factors they must consider. Although parents in my study separated prior to the FLA coming into full effect, the notion is common across many jurisdictions. In England and Wales, for example, the <i>Children's Act</i> (1989) makes the welfare of any child the primary concern in any proceedings that involves them.
Collaborative Family Law (CFL)	In this form of ADR, each party has their own lawyer and both parties agree in writing to work together to resolve issues without going to court, as well as to open and honest communication. In some cases other professionals, such as divorce coaches and financial or child specialists, assist in the process. CFL is explained and discussed in more depth in Chapter 2.
Custody	Both the federal <i>Divorce Act</i> (1985) and the BC <i>Family Relations Act</i> (1996) used the terms custody and access when specifying parental rights and responsibilities. The <i>FLA</i> (2011) moves away from the concept. I use the term to refer to the responsibility for decision-making, as well as for the care and residence of children. Custody is generally specified either as sole (one parent) or joint (both), but it remains a vague and poorly defined concept. Under the <i>FRA</i> (1996) there was also overlap between the concepts of custody and guardianship that made it difficult to separate these concepts in practice.

<sup>1</sup> See: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Discourses	Discourses are culturally produced patterns of language that create and sustain taken for granted beliefs, expectations, and understandings about what “should be” in society. Discourses engender particular truths, values, and meanings, thus cannot be conceived apart from the discursive practices that define them (Vivian, 2004). Individuals take up discourses in order to explain or make sense of their circumstances. As Mills (2003) puts it, “we categorize and interpret experience and events according to the structures available to us” (p. 56) and in doing so we sustain and reinforce these discourses. Although discourses do structure and order our lives and relationships, they can also be a site of conflict and resistance. Drawing on Foucault, who argued that where there is power there is resistance, Mills (2003) points out that discourses always contain internal contradictions and are not entirely cohesive. This enables people to redefine ‘truth’ and develop new meanings.
Dominant Discourses	‘Dominant discourses’ refer to discourses that are established and circulated by decision-makers and experts, but rarely include the perspectives of those who have less power to determine prevailing norms and rules for living.
Meaning-making	For the purpose of this study, meaning-making refers primarily to the manner in which people make sense of their circumstances by actively constructing meaning. Hence, knowledge is constructed, whether by researcher, by research participants, or “experts.” Making sense of a high-conflict divorce is an iterative process that involves looking backward and forward in order to make sense of events and circumstances. This process is dynamic, ongoing, and social. It is also distinct from meaning-making that is construed primarily in psychological (i.e., therapeutic or individual) terms, or as a cognitive process. Rather, meaning-making occurs on both personal and collective levels, which are recursive. Social movements also actively make meaning, thus conflicts can occur where interpretation is contested (Kurzman, 2008). In this way, by studying people’s understandings of the world, we can gain insight into collective understandings (and vice versa).

Parental Alienation	This crude term may be used to describe a child's rejection of one parent post-separation in favour of the other. Although fathers' rights advocates and some professionals describe parental alienation as a medical syndrome <sup>2</sup> that requires legal and psychological intervention, a more balanced view promoted by Johnston (2005) and others, <sup>3</sup> suggests that a combination of factors are responsible for a child's rejection of a parent.
Parenting Coordinator	Under the current statute in BC, a parenting coordinator is a dispute resolution professional who: (1) meets the requirements set out in the <i>FLA</i> (2011) regulations; and (2) once an agreement or order is made may assist the parties in implementing it where there is an agreement or court order that they do so ( <i>FLA</i> , Div 3). Typically this method involves consensus-building. However, if that is unsuccessful the parenting coordinator may make a binding decision.
Socio-legal	Socio-legal research is inherently interdisciplinary in its approach to analyzing law and the relationship between law and society. Studies can be normative or empirical and research methods are drawn from across the social sciences and humanities (see also Chapter 2).

<sup>2</sup> As developed by Richard Gardner (1987) and others. See: Gardner, R. (1987). *The Parental Alienation Syndrome and the differentiation between fabricated and genuine child sex abuse*. Cresskill, NJ: Creative Therapeutics.

<sup>3</sup> See, for example: Drozd, L., & Olesen, N. (2004). Is it abuse, alienation, and/or estrangement? A decision tree. *Journal of Child Custody*, 1(3), 65–106; Johnston, J., & Kelly, J. (2004). Commentary on Walker, Brantley, and Rigsbee's (2004) A critical analysis of Parental Alienation Syndrome and its admissibility in the family court. *Journal of Child Custody*, 1(4), 77–89; Meier, J. (2009). A historical perspective on parental alienation syndrome and parental alienation. *Journal of Child Custody*, 6(3–4), 232–257.

# Chapter 1.

## Introduction

This interdisciplinary thesis seeks to explore how mothers and fathers who have experienced a high-conflict divorce process<sup>1</sup> involving children navigate the experience and make meaning of it retrospectively. In particular, I seek insights about how varying social locations, tensions in broader social discourses<sup>2</sup> of gender relations, and collective meanings and norms shape personal meanings and experiences of divorce as well as how positive change occurs in this context. By using in-depth interviews to explore how the post-separation/divorce process may lead to self-transformation, this study is intended to provide insights into how divorce conflict may be navigated more successfully and how parents differentially express agency in this context.

My central thesis, which builds in particular on the concepts of epistemic injustice (Fricker, 2007) and relational autonomy (Boyd, 2010; Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011), is that the dominant discourses upon which parents draw to make sense of the high-conflict divorce process and their personal experiences are socially constructed and embedded in broader power relations, especially in gender relations and encounters with experts, and further promulgated through neoliberal conceptions of autonomy and choice. Furthermore, categorizing and then pathologizing parents as “high-conflict” individualizes broader social tensions and problems, which not only obscures the complexity of some parents’ circumstances but often results in parents

<sup>1</sup> While I anticipated that most participants would have been legally married, it was not a criterion for participation (see Chapter 3 for a detailed description of study criteria and participants). I use the term “divorce” throughout this thesis both for readability and consistency with previous research. However, “separation and/or divorce” would be more accurate. Further, while separation and divorce are often understood as events that have a particular legal meaning, I generally use the terms to refer to a process (e.g., high-conflict divorce process).

<sup>2</sup> See the Glossary for definitions of discourse and dominant discourse.

not feeling heard and lacking access to services that can assist them. Transformation occurs as individuals change, make sense of and respond to their circumstances across the life course, thereby exercising their agency. As well, over time many study participants came to understand that certain aspects of their divorce dispute were interlinked with broader social and structural issues. Since this process occurs in a social, political, and legal context that also changes over time and across generations, my thesis includes the social dimension of transformation.

Empirical research is needed in order to understand parents' experiences as they make their way through this high-conflict process; how broader social debates, discourses, and norms are implicated in their meaning-making; and how, despite the many challenges they face, some do retrospectively perceive that the experience positively changed them. It is anticipated that the insights generated from my research will be of value to policymakers and practitioners and parents themselves. This research, undertaken from a critical and feminist approach, employed in-depth interviews with 25 parents<sup>3</sup> residing in British Columbia (BC) who had experienced a high-conflict divorce involving the living arrangements and/or access to children, and regarded surviving or navigating the experience as having changed them in a positive sense.

In this chapter, I first introduce the problem I intend to address, followed by the background and context that frames my study. Next, I provide the research questions and an overview of the research design. A discussion of the rationale and significance of my study follows, including key literature upon which I develop my arguments. Finally, I provide an overview of the organization of my thesis.

## **Problem Statement**

In the last several decades, there has been considerable academic, policy, media and public attention paid to the problem of high-conflict divorce, as well as to developing policies and practice interventions to mitigate parental conflict post-

<sup>3</sup> All participants described the relationship with the other parent as heterosexual.

separation. Johnston and Roseby (1997) define a high-conflict divorce<sup>4</sup> as involving long, bitter, and protracted disputes, about 10% of which last throughout children's growing up years.<sup>5</sup> They suggest that these disputes are fuelled not only by personal and interpersonal difficulties, but also by the rhetoric of lawyers, child welfare professionals, and social networks. Furthermore, Birnbaum and Bala (2010) contend that gender-based advocacy and Internet support groups play a role in "socializing' parents after separation" (p. 407), thus contributing to the number of divorces categorized as "high-conflict." However, although there is scant literature about how parents themselves make meaning of their circumstances in light of these discourses and debates, in my estimation there is no literature that examines how parents overcome these difficulties and make sense of their experiences retrospectively.

## Background and Context

Canada has both federal and provincial/territorial laws that play a role following family dissolution, due to the complex structure of the Canadian Constitution. The federal *Divorce Act* (1985) regulates divorce for those who are legally married and also comes into play in situations where child custody, access, child support, and spousal support are raised as part of a divorce application. Outside of the context of a divorce application, provincial or territorial laws also regulate child custody, access, child support, and spousal support claims. However, the division of family property is exclusively regulated by provincial and territorial statutes, even when divorce is involved.

Although BC has recently enacted a new *Family Law Act* (2011), which has been in full effect since 2013, all of the participants in my study ended their marriages or partnerships prior to that time (i.e., under the former *Family Relations Act* (1996)). For that reason, and because participants' language and experiences are grounded in the former statute, I do not discuss recent law reforms in depth in this thesis. The *Family*

<sup>4</sup> The authors are referring to the dynamics of high-conflict divorce. These dynamics may also be present in common-law and same-sex separations where children are involved.

<sup>5</sup> Stewart (2001) estimated that at least 4700 Canadian children each year find themselves in the middle of acrimonious disputes over their living arrangements. Unfortunately, no current statistical data is available on the number of children (or parents) affected.



*Law Act* (2011) clearly lays out new norms and procedures for resolving family law issues, which include an explicit emphasis on out of court dispute resolution, the costs of which are typically shared between the parties. Significant changes include the elimination of the terms “custody” and “access” in favour of a broad definition of guardianship that specifies how “parenting time” will be shared and responsibilities allocated. A list of factors that the parents and the court must consider when determining a child’s best interests, clear rules to guide relocation, and an expansive definition of domestic violence are among the legislative changes. The Act does not make presumptions as to the preferred form of parenting arrangements, although the default position is one in which each parent is a guardian with full parental responsibilities (Treloar & Boyd, 2014). Although the stated purpose of the new legislation was to put children first, keep families safe, and reflect social change,<sup>6</sup> there is also an embedded assumption that both parents will remain involved and maintain parental authority unless it is clearly unsafe to do so (Treloar & Boyd, 2014). Nevertheless, during legislative debates the allocation of public funds and issues of personal responsibility for family problems also seemed to be a key impetus for the new statute. Notwithstanding a number of improvements found in the new legislation, as detailed in this thesis, in the context of high-conflict and complex divorces the reforms fall short of what is needed and may not significantly reduce conflict between parents.

While no data currently exists that provides precise numbers of parents and children affected by high-conflict divorces, it is possible to estimate these numbers based on extant (although regrettably rather dated) data. According to Ambert (2009), 69,088 divorces involving 36,252 children occurred in Canada during 1998.<sup>7</sup> No provincial breakdown was provided. Statistics Canada (2011) provides data on divorces for the period 1981–2008; however, these figures only apply where legal divorces<sup>8</sup> were granted and this data does not include the number of children involved. The total number

<sup>6</sup> British Columbia, Legislative Assembly, Official Report of the Debates of the Legislative Assembly, 28 (17 November 2011) at 8845 (Hon. S. Bond), online: Debates of the Legislative Assembly (Hansard). See: <https://www.leg.bc.ca/documents-data/debate-transcripts/39th-parliament/4th-session/h11117a#8845>

<sup>7</sup> Since many divorces occur early in marital unions, couples who divorce tend to have few (or no) children (Ambert, 2009).

<sup>8</sup> The 2006–2008 figures include same-sex marriages.

of divorces in Canada for 2008 was 70,226, and the total number for BC was 8903 (Statistics Canada, 2011). Older data indicates that during the year 2000, custody of 3826 children was determined by court order during divorce proceedings in BC, whereas in 2003 custody was decided by court decision for 3219 children (BC Ministry of Attorney General, 2006). Although Ambert (2009) suggests that the numbers of dependent children involved in divorce are likely similar today, to my knowledge, no comparable data is available.

In 2006, the provincial Justice Services Branch (BC Ministry of Attorney General, 2006) commissioned data from Statistics Canada (based on the 1996 and 2001 Census years) in an attempt to determine the total number of children affected by separation and divorce in BC. This data indicated that in 1996, there were 228,340 children either living in lone parent families as a result of separation or divorce, or in couple families where one or both parents were previously separated or divorced. In 2001 this figure increased to 247,495. Moreover, the data suggests that in 2001, 21% of children in BC were living in homes affected by separation or divorce; however, since data on informal separations by married couples is not included, the actual numbers are likely higher (BC Ministry of Attorney General). Extrapolating from 1996 divorce statistics and estimates that 10% to 15% of divorces are “high-conflict,” Stewart (2001) determined that at least 4,700 Canadian children are affected by acrimonious disputes over their living arrangements each year. This estimate does not include children whose parents were in a common-law relationship. Following Ambert (2009), if numbers of divorces involving children have remained fairly constant, then it is likely that similar numbers of children (and their parents) are affected by divorce conflict.

In a 2012 Statistics Canada study of court files from 2010–2011, 80% were uncontested. Among the contested files, only 2% went to a full trial. Although no data was collected to indicate whether (or how) settlement occurred, the remainder were likely settled by the parties reaching an agreement, either on their own or with the assistance of third parties prior to a trial (Kelly, 2012). Therefore, although we know that 2% of divorce cases went to trial, the 10–15% figure discussed above may be a more accurate number for high-conflict divorces. Indeed, not all high-conflict disputes enter the legal process and some parents may give up early on (e.g., after a judicial case

conference or interim hearing) because of the cost or other difficulties. Furthermore, of the 2% that went to trial, it is likely that some issues were resolved prior to trial. Thus, once the more intractable issues are adjudicated, families may settle into new arrangements and routines. In 2011 Statistics Canada (Sinhar, 2014) conducted a study of 1055 parents who were separated or divorced. Parents reported that the child's primary residence was with the mother 70% of the time, with the father 15% and shared between both parents' homes 12%. Although all of this data provides an interesting and complex portrait of families lives post-separation, it is, nevertheless, incomplete.

Researchers across a number of jurisdictions, including England and Wales (Ministry of Justice, England and Wales, 2011) and Australia (Parkinson, 2011)<sup>9</sup> note an increase in the number of legal disputes over children's living arrangements, including those that are acrimonious in nature (Birnbaum & Bala, 2010; Smart, 2003). This increase is despite a proliferation of research, policies, and interventions aimed at mitigating interparental conflict after separation. Parkinson (2011) attributes this increase in conflict, both at the individual case and the policy level, to fathers' demand for more involvement with their children following separation. With respect to conflict at the policy level, he notes that "with politicization often comes an oversimplification of the issues. Complex problems are reduced to propositions that may readily be articulated within an adversarial political framework" (Parkinson, 2011, p. 5). Such oversimplification and polarization stand in the way of reaching consensus among stakeholders (Parkinson, 2011). It may not be possible to reach consensus without a similarly concerted effort to address broader tensions and attention to policies that would support mothers and fathers with real choices long before separation. Although some of these tensions concern gender, the research often neglects the broader complexities that play a role in this context.

Consistent with a social constructionist epistemological perspective, I define gender as a social construct that prescribes appropriate roles and behaviour. Thus, gender difference is also socially constructed. Since power and hierarchy underlie social

<sup>9</sup> Parkinson (2011) also notes increases in child custody litigation in the US, France, Germany, and Denmark.

constructs, gender is legitimized by social structure. Nevertheless, although each individual is situated differently within these broader power relations, an intersectional approach complicates matters by drawing attention to complexity (Hankivsky, 2014). People do change, and their social location (place within overall power relations) also changes over time and circumstances. Gender is significant in the experiences and understandings of participants in my study, often in combination with concerns about finances and child care responsibilities; however, study participants' meanings and experiences are also shaped by age, generation, labour force participation, culture, and dominant discourses about divorce, and my study pays careful attention to these factors. As discussed in Chapter 2, I use a relational autonomy lens to assist my analysis because it contextualizes people's experiences and enables exploration of the implications of these experiences for parents' autonomy in a relational sense. This lens shifts the focus from gender polarization to social relations and arrangements, and to their different implications for parents in my study, while also considering the power relations inherent in such arrangements.

Patricia Hill Collins (2000) contends that tackling one process or relation of power (e.g., gender) on its own will not address other power relations (e.g., socio-economic inequities, age, or race), including those that exist within groups. In some instances (and for some individuals), socio-economic circumstances, ethnicity, or generation may play a greater role than gender, whether in terms of legal outcomes or the meanings individuals make of their circumstances. While I am attentive to that possibility and I consider it in data analysis (Chapter 3), I also recognize that gender does not stand apart from generation or socio-economic circumstances. My study attends to the complex role gender plays in family life, the fluidity of lives and meanings over the life course, and social change. Therefore, analysis of individual-level experiences must be integrated with attention to context, including power relations and social structures (such as capitalism and neoliberalism). In the next section, I introduce the contemporary social, economic, political and legal context in which these individual and social conflicts play out.

## Contemporary Social, Economic, Political and Legal Context

Although divorce is often thought of as an interpersonal or family problem, the economic, social, political and legal context in which families are made, practised (Morgan 2006, 2011) and dissolved fundamentally influences the experiences of parents who have gone through a high-conflict divorce. For participants in my study, the backdrop was that of an increased governmental focus on individual responsibility for resolving post-separation disputes, alongside significant cuts to funding for programs and resources that families need, and turn to, as they move through the legal process and attempt to deal with what are often complex family issues.

Marked reductions were made to public spending in Canada beginning in the late 1970s, with social programs especially affected (Christie, 2000). Significant federal and provincial policy changes occurred between 1990 and 1996. In particular, the federal Canada Assistance Plan (CAP) was capped in 1990, which ended cost sharing with the provinces for a number of income security and social service programs and especially impacted the provinces of BC, Ontario, and Alberta (Pulkingham & Ternowetsky, 1996). In 1996, the CAP was replaced with the Canada Health and Social Transfer (CHST),<sup>10,11</sup> impacting transfers from the federal government to the provinces and having a corollary effect on welfare income benefits and social and legal services provided by the provinces, and at the same time moving away from a universal to an income-tested federal child benefit system (Pulkingham & Ternowetsky, 1997). These key policy shifts led up to changes that followed the 2001 election of a BC provincial Liberal government. Significant provincial cuts were made to a wide range of programs and services that support families, with a particular focus on community agencies, agencies serving women, welfare reforms, child care resource and referral agencies, and legal aid. These cuts significantly constrained access to the family justice system for middle- and low-income families, few of whom can afford legal representation in the first place (Track, 2014; Treblicock, Duggan, & Sossin, 2012; Treloar, 2015). Mothers, who because they

<sup>10</sup> The CHST was a combination of tax and cash transfers for health and social programs and was allocated on an equal per capita basis.

<sup>11</sup> In 2004, the CHST was restructured to create the Canada Health Transfer (CHT) and Canada Social Transfer (CST), and there have been further changes since. See: <https://www.fin.gc.ca/fedprov/his-eng.asp>

generally undertake a greater role in child care, have lower incomes, and are the primary users of these services, were particularly affected by these cuts.

In combination, the scaling back of responsibility for programs and services that families need and may depend on to successfully navigate the divorce process (i.e., the privatization of costs) and the concomitant privatization of responsibility, reflect a neoliberal approach (Treloar 2015, 2016; Treloar & Boyd, 2014; Treloar & Funk, 2008, 2011). I define neoliberalism as a social, economic, and political framework that is underpinned by a philosophy of liberal individualism that emphasizes a free market and state withdrawal from responsibility for social wellbeing. This approach stands in contrast to a welfare state ethic of justice, which regards access to the justice system as foundational to democracy,<sup>12</sup> thus central to social citizenship<sup>13</sup> (Sommerlad, 2015). From a social justice perspective, I maintain that there must be a fair distribution of benefits and burdens across society and that it is the responsibility of the state to ensure their just distribution. Where this distribution impacts on rights that are central to democracy, such as the right to assert or protect one's rights (as well as those of one's dependants), dignity or well-being, then the state has a responsibility to ensure that those with heavier burdens can do so. This means ensuring that law and policy processes are fair and inclusive (i.e., just and accessible) as well as responsive to structural inequalities. However, on a more practical level, justice requires resources as well as a vision.

While neoliberalism generally refers to a form of political rule that is based on free-market capitalism, Rose (1996) uses the term to describe the devolution of responsibility and monitoring of regulated choices that translate the goals of authorities into what are perceived to be "free" choices for individuals. Thus, "advanced liberalism," or neoliberalism, involves governing from a distance (Rose, 1996). In practical terms, neoliberalism involves public spending cuts, deregulation, and privatization and is

<sup>12</sup> See Chief Justice Beverley McLachlin's keynote address on this issue: Ciccocioppo, L. (February 14, 2011). "There is no justice without access to justice: Chief Justice Beverley McLachlin." University of Toronto Faculty of Law. Retrieved from <http://www.law.utoronto.ca/news/there-no-justice-without-access-justice-chief-justice-beverley-mclachlin>.

<sup>13</sup> Although Sommerlad writes in the context of the similarly reconstructed justice system in England and Wales (i.e., the *Children and Families Act*, 2014 and legal aid cutbacks), she is also critical of the erosion of state responsibility for "private law" under neoliberalism.

accompanied by the language of “individual responsibility” and “responsible” choices (for a discussion of family law in this context see Cossman, 2002; Maclean, Eekelaar, & Bastard, 2015). These changes are often promoted as increasing the autonomy of parents (e.g., through encouraging the use of out of court dispute resolution), although paradoxically this shift of responsibility and any related costs may have the opposite effect, contributing to parents’ difficulties and limiting their choices.

Although the 2008 global economic crisis and other factors have made things worse for many young families, throughout the decades in which my study participants separated and raised their families, the underlying neoliberal framework and government approach to personal and family life has had a considerable bearing on the experiences of parents post-separation, particularly if they found themselves with ongoing difficulties but lacking the means to address them.

Alongside the privatization of responsibilities that attends neoliberal restructuring, Canadian families and gender relations are seeing gradual changes, with some signs of gender convergence (Milan, Keown, & Urquijo, 2011). A small number of fathers are becoming primary caregivers (Doucet, 2006), and while time use surveys suggest many fathers are now spending more time on childcare and domestic activities (Milan et al., 2011), these surveys also find that even when both parents are employed full-time, mothers spend almost double the number of hours on child care (49.8 hours vs. 27.2). In Canada, breadwinning is still valued over caregiving. This not only raises questions about the gender division of responsibilities between parents but also raises the issue of work-family balance (Duxbury & Higgins, 2012). While a minority of parents may benefit from and even flourish under neoliberal economic governance structures, in combination, these conditions are likely to contribute to the challenges parents face and may even contribute to marital and family difficulties and tensions. Little is known about how separated parents manage these challenges, especially when family law litigation is involved or ongoing. Among those with low incomes (especially when child support goes unpaid or is at issue), work-life balance might remain especially “illusory.”

The consensus among scholars and practitioners is that divorce is often difficult for all involved and can have significant implications for the quality of life and health of all

family members (e.g., Hughes & Waite, 2009; Lorenz, Wickrama, Conger, & Elder, 2006), especially where there is ongoing (or unresolved) conflict and litigation (Pleasence, Balmer, Buck, O'Grady, & Genn, 2004; Treloar & Funk, 2008, 2011). A UK study by Buck, Balmer, and Pleasence (2005) also indicates that legal conflicts disproportionately affect those who are vulnerable and already excluded from full social participation (e.g., low income), therefore *reinforcing* rather than alleviating their vulnerability. Thus, unresolved legal problems, in further perpetuating social problems, ultimately add to overall social costs (Buck et al., 2005). Divorce can also result in material deprivation or significant financial stress, especially for mothers (Boyd, 2003; Pulkingham, 2006; Wickrama et al., 2006). Yet divorce can also be a positive process for many people, allowing for greater autonomy and a reconstruction of identity (Day Sclater, 1999). Very little is known about how parents navigate a high-conflict divorce and the supports and resources they draw on to do so. Moreover, the agency of parents in such circumstances remains to be fully explored. Thus research reflects a general tendency to focus on the conflict and solutions to stop it rather than furthering our understanding of how individuals navigate these difficulties and make positive changes in their lives.

## **Making Sense of High-Conflict Divorce: Study Rationale and Significance**

In order to better understand how parents navigate the process of a high-conflict divorce and make sense of their experiences in ways that are personally transformative, my study asks two key questions:

1. How do individual mothers and fathers come to make meaning of and know themselves through the process of a high-conflict divorce?
  - a. How are individual interpretations influenced by social relations and discourses (i.e., of motherhood/fatherhood and of responsibility, rights, and care).
  - b. How do collective meanings drawn from extra-legal discourses shape personal meanings and experiences of conflict in such situations and influence the take-up of legal norms?



2. How does high-conflict divorce become transformed into a positive experience?

- a. What personal relations/processes facilitate this process?
- b. What social relations/processes facilitate this process?
- c. What challenges are encountered and how are they overcome?

I adopt a critical and feminist analytic approach and a qualitative research design to explore how parents make sense of their experiences of a high-conflict divorce process and the interpretive resources they draw on to do so. The critical feminist approach used is grounded in a relational ontology and social constructionist epistemological perspective. My study was conducted using in-depth semi-structured interviews with 25 parents (18 mothers and seven fathers) who have experienced a high-conflict divorce process. Metaphors provided during participant interviews were used as an additional data generation strategy.

My view of shared understandings about high-conflict divorce involving children not as “social reality” but rather as conflicting interpretations, needs, and agendas invites the possibility of interrogating these knowledge claims and considering alternative ways of seeing, positioning, and acting in ways that take into account human relationality and care. At the same time, I seek to ensure that relations of power and inequality are made visible and reflected in policy and law reforms. Although my research will contribute to some of the debates I outline in this chapter (discussed in more depth in Chapter 2), my primary goal is to make a constructive contribution to divorce research, professional practice and policy that will better support families through the process of separation and divorce.

My thesis involves four interwoven arguments, which I detail later in this section, each of which is based in a distinct and partially overlapping corpus of literature. Although many of the scholars whose work has influenced the development of my thesis draw on one or even two of the other bodies of literature, none, to my knowledge, have integrated all of them, certainly in the Canadian context. Neither has this collective literature been applied to high-conflict post-separation parenting disputes specifically. In addressing this issue, I both extend and create new interconnections between significant

conceptual and theoretical ideas within these four groupings of literature, which primarily concern gender, power-knowledge, neoliberalism, and adult development.

First, in exploring the gender dimension, including the way in which gender intersects with other social locations in high-conflict post-separation disputes concerning children, I draw on the extant feminist literature, particularly from socio-legal family research. Here I am particularly indebted to the extensive scholarly work of Boyd, Collier, Day Sclater, Fineman, and Smart, which I briefly detail below and discuss in more depth in Chapter 2. Although each of these authors complicates gender analysis in one or more ways, I build on this literature by examining how individual, social and structural problems intersect in participants' experiences of high-conflict divorce, with the intention of contributing additional nuance and context.

Second, in examining the construction of expert knowledge and related issues of power, justice, and voice, I again turn to the work of these feminist socio-legal academics. As well, I draw from the field of social epistemology and political philosophy, especially the ideas of Fricker (2007) and McNay (2003, 2014), with McNay's later (2014) work addressing the more political aspects of agency and power and Fricker's work (2007) focusing on ethics and social (and legal) justice. Less explicit in my thesis but still influential in the early development of my arguments concerning power and knowledge is the governmentality scholarship (e.g., Rose, 1996).

A third body of literature critiques neoliberalism, and again Rose's work influenced the initial development of my ideas. I link this with relational autonomy theory (e.g., Boyd, 2010; Mackenzie & Stoljar, 2000; Nedelsky, 2011), which also provides scope for examining the interrelationship of financial and child-related disputes, especially as they are related to gendered understandings of money and care, and their gendered consequences post-separation.

A final contribution to my thinking is the idea of adult development across the life course (e.g., Gilleard & Higgs, 2016; Mayer, 2009). Life course research involves an interdisciplinary perspective, with sociology as a key disciplinary "anchor" (Mayer, 2009). Although different disciplines vary in their definition of the concept of life course (e.g., developmental psychologists might use the term "life span development" in a similar

way, even if their focus is slightly different), as Gilleard and Higgs (2016) point out, their work can still be fruitfully linked. Consensus is now emerging regarding the meaning of the term “life course.” According to Mayer (2009), specific to the life course perspective are the following criteria: (1) human lives change throughout the lifetime, (2) human lives are studied across multiple cohorts and domains, and in their collective contexts (e.g., couples, families, cohorts); (3) life course development is understood and analyzed as the result of personal characteristics, cultural frames, social structures and individual agency. Here, I am especially influenced by my training as a family counsellor, which involves assumptions about individual agency and the ideas that personal change (“growth”) over time is “normal” and worthy of pursuit. Although I now have a more critical view of agency and understanding of the social and structural conditions needed to support resilience and change on the individual level, here I draw on understandings about life course development that are tempered by feminist critiques of neoliberal approaches to personal development (also known as “therapy culture”), such as those provided by Harris (2016) and literature on motherhood in the context of the life course (e.g., Gilligan, 1982; Hartrick, 1997; May, 2003, 2008; Oberman & Josselson, 1996), rather than a particular model or theory of adult development. Nevertheless, I conceptualize this as a psychosocial process in that individual trajectories involve both personal agency and social and structural factors.

Next, I discuss the interrelated arguments which together comprise my thesis. Each of these arguments is significant in the way I make sense of the complexity of high-conflict divorce disputes, and each must be addressed in solutions for change. I regard the potential for transformation as occurring not only on a personal level but also on a broader socio-political and legal one. First, building especially on the scholarship of Boyd (e.g., 1989, 1991, 1996, 2013), Collier (e.g., 2001, 2005, 2006, 2010), Day Sclater (1999), Fineman (e.g., 1988, 1995a, 2005), Kaganas and Day Sclater (2004), and Smart (1991, 2003, 2006), I further develop the argument that gendered ideologies—often originating in expert knowledge and circulating in society—may be contradictory and do not accurately depict the everyday experiences and realities of most mothers or fathers as they attempt to resolve complex legal disputes post-separation. Also building on my earlier work (Treloar, 2015, 2016; Treloar & Boyd, 2014; Treloar & Funk, 2008, 2011), I argue that this is especially true in the contemporary neoliberal context, which shifts the

responsibility for resolving even complex legal disputes back to parents while also reducing the services and supports they need to do so. As the aforementioned feminist scholars have demonstrated, ideologies of (good) motherhood now involve putting children first, and, in the case of lone mothers, assuming financial responsibility for their own household, even when this responsibility was one for which they had little or no preparation. Furthermore, although at one time a good father was primarily a breadwinner, post-separation a “good” father is now also expected to share parenting (Boyd, 2010, 2011). Indeed, many fathers now wish and expect to do so.

Also, as Australian research (Natalier & Hewitt, 2014) has shown, gendered meanings of money play a role in such situations. Here, I build on the relational autonomy theoretical perspective (Boyd, 2010; Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011) to illuminate the individualist and relational conceptions of autonomy that underlie such meanings and explore the gendered consequences. For example, although a couple may have agreed on the division of paid work and care pre-separation (Pateman, 1988), following separation these arrangements can become contentious and potentially have differential consequences for fathers and mothers (Boyd, 2003; Pulkingham, 2006). Fathers may be less accustomed to undertaking the primary care of children for extended periods of time and their employment situation may not be conducive to a shared care arrangement. Mothers who started families in the 1970s through the 1990s, a time where the ideology of intensive mothering (Hays, 1996) was prevalent and many women who could afford to stay home or work part-time did so, could find themselves at a distinct financial disadvantage post-separation, especially given extant legal and social post-separation norms. In these circumstances, I suggest that the combination of gendered ideologies, legal conflicts, financial difficulties, and complex family issues may over a prolonged period have significant health and financial repercussions for some parents. I also integrate the socio-legal literature regarding access to justice (e.g., Currie, 2007; Pleasence et al., 2004) to build on my earlier work on post-separation disputes, mothers’ health, and neoliberalism (Treloar & Funk, 2008, 2011).

The second key argument that I make in my dissertation as a whole extends Miranda Fricker’s (2007) concept of epistemic injustice to make the case that expert

discourse and other forms of socially constructed knowledge in combination with (often gendered) stereotypes that circulate about parents who are enmeshed in a high-conflict divorce fail to provide an accurate or complete picture of the complex circumstances parents in such circumstances face. This not only results in epistemic injustice, a type of injustice in which a person is wronged as a knower, often because of common stereotypes that reduce their credibility but may also lead to unjust outcomes. Here, I also draw on Fricker's concept to develop my earlier work (Treloar, 2015; Treloar & Boyd, 2014), which was informed by a broad body of feminist and access to justice literature, to argue that material inequities between and among parents, particularly in the contemporary neoliberal context, may further contribute to perceptions of being unheard and unjust outcomes. The cost of obtaining a legal resolution of their disputes, particularly where there is an imbalance of power and resources, may leave parents in a high-conflict or complex divorce with a sense of being failed by the justice system. This then raises an important and underexplored question, which I grappled with in my work as a divorce counsellor and has been raised but not fully resolved by Smart (2006) in relation to mothers, of how some parents exercise agency and reconstruct their identities to be self-authorizing subjects who can speak about their experience and are heard.

This question leads to the third argument I develop in my thesis, which concerns how transformation occurs and is apparent on the individual level. In this argument, I again build on previous feminist socio-legal scholarship on gender, power, and justice, as detailed above. In particular, I incorporate Boyd's application of relational autonomy theory to family law (2010). I also draw on Day Sclater's (1999) psychosocial analysis of post-separation disputes that takes into account discourse, emotion, and subjectivity and Harris's (2016) cogent arguments concerning law, neoliberalism, and therapy culture. Ridgeway (2011) argues that at times of uncertainty men and women draw on existing cultural frames of gender that are carried into new strategies and responses, which explains why gender inequality persists. While this argument is in some ways helpful, it sheds little light on how some parents exercise their agency and manage to move on in their lives despite these difficulties, and perhaps *because* of them. Thus I also draw from the scholarship on agency and neoliberalism, especially that of Wrenn (2015), who distinguishes between "real" and inauthentic or neoliberal agency, in order to avoid individualizing (and therefore limited) explanations and solutions. I develop the argument

that agency and personal transformation occur over time, often interlinked with adult life course development and supported by adequate social and material resources.

In this thesis, I also argue that transformation of knowledge about high-conflict divorce is needed on a social and structural level. In developing my fourth argument, concerning how difficult debates and polarized positions within the family law field can be transformed, I am especially indebted to the work of Day Sclater (1999) and Fricker (2007). Here, I also build on Medina's (2011, 2013) arguments concerning the value of epistemic friction in knowledge construction. Further, since neoliberal understandings of subjectivity and autonomy are embedded in legal, policy, and professional discourses, I extend the work of Kaganas and Day Sclater (2004), who contend that parents' meanings are made not only on a personal level but also within this broad matrix of discourses. As I argue throughout my thesis, complex personal, interpersonal, social and structural problems intersect in the lives and experiences of parents who navigate a high-conflict divorce process. Further, epistemic resources, necessary for meaning-making and agency, are not equally distributed across groups or society more generally. Consequently, the problems of high-conflict post-separation disputes involving children cannot be solved on a single level.

My central argument, then, is that the dominant discourses upon which parents draw to make sense of the high-conflict divorce process and their personal experiences are socially constructed and embedded in broader power relations, especially in gender relations and encounters with experts, and further promulgated through neoliberal conceptions of autonomy and choice. This often results in parents not feeling heard, their concerns going unaddressed, and a lack of access to services that can assist them, thus contributing to their abandonment by the same state that seeks to shape their choices, as well as the potential for further injustice. At the same time, and in some ways surprisingly, the fact that mothers and fathers change and develop across the adult life course, both as individuals and as parents, is absent from expert discourses. Not only do individuals change and respond to their circumstances, thereby exercising their agency, but they do so in a social, political, and legal context that also changes over time and across generations. Hence, my thesis includes the social dimension of transformation. Policies and practices that provide the supports and resources identified by parents as

helpful would be far more useful than pathologizing and shaming parents in difficult circumstances. With these in place, real agency (Wrenn, 2015), autonomy, and resilience in the face of difficult circumstances make personal transformation and family flourishing more possible.

## **Organization of Thesis**

In the next chapter (Chapter 2), I provide an overview of the existing literature that is relevant to understanding how high-conflict divorce is socially constructed, key debates, and what is known about parents' experiences in context. This includes research on motherhood and fatherhood, both generally and in the context of divorce, and additional literature that illustrates the contested nature of high-conflict divorce research that is important to an understanding of how parents make meaning of their circumstances. Following that discussion, I provide an overview of relational autonomy theory. I then briefly explain the importance of Alternative Dispute Resolution<sup>14</sup> (ADR) in the BC legislative and policy context and assess its utility for parents currently involved in complex and high-conflict divorce processes. Finally, I define and discuss two key concepts in my work: agency and transformation.

In Chapter 3, I guide the reader through my research journey. I begin with an overview of the methodological approach and theoretical orientation. Next, I review the research design and methods used, including data generation strategies, a description of the research participants, and data analysis. I then discuss the ethical considerations involved in my study and situate myself in my research, and lastly, I explore some of the limitations of my study. As I make sense of my findings in Chapters 4, 5, and 6, I integrate additional literature within the body of each chapter.

Chapter 4 is the first of three chapters in which I present key findings. Here I present findings concerning the interrelationship of financial and child-related issues. First, I address the way in which struggles over finances post-separation tap into broader

<sup>14</sup> See Glossary.

issues of gender and power, with particular implications for power and choice among those who need to use the legal process. I then show how disputes over child support are often understood by mothers as about responsibility and care, especially when they are left with the majority of the financial responsibility. Also in Chapter 4, I address the “gender contract” and note that after separation the formerly joint decision concerning paid work and care often has quite different consequences for mothers and fathers. These findings can contribute to conflict between the parties and have implications for settlement of their disputes. Finally, I suggest that financial autonomy is a component of personal agency.

In Chapter 5 I explore parents’ accounts of their experiences within the family justice system and their encounters with experts, with a particular emphasis on power and voice. I consider these issues in light of practices of knowledge construction and highlight how, often despite significant constraints, participants exercised their agency in response. Finally, I demonstrate that over time, most participants developed self-authorizing voices.

In Chapter 6 I address participants’ accounts of positive change and the resources they drew on in this regard. There, I analyze participant metaphors of transformation. I also explore the personal and social resources that participants used to navigate their high-conflict divorce process. I suggest that by seeing some of the challenges participants had to confront and often resolved over time as aspects of normal adult development, it is possible to move away from the current conception of high-conflict divorce as reflective of personal or parental pathology and that to do so offers a more constructive way forward.

In Chapter 7, I provide an overview of these findings and my interpretations and conclusions. I also outline potential avenues for future research.<sup>15</sup> Throughout this final chapter, I also reflect on potential ways to transform both the discourses about high-conflict divorce and the experience.

<sup>15</sup> Practical recommendations for parents, those in the legal field, helping professionals, and policymakers can be found in Appendix F.



## **Chapter 2.**

### **Making Sense of High-Conflict Divorce Involving Children—Relevant Literature**

This literature review explores the interlinked nature of parents' experiences of divorce and the meanings attached to these events, experiences, and processes. In order to understand these meanings, it is important to understand the broader social context in which the experiences occur and the factors that contribute to them. In light of this, I review two major fields of literature: (a) the literature on mothering and fathering, including mothering and fathering after divorce, and (b) the research on high-conflict divorce. A review of the literature on mothering and fathering provides an understanding of the context, norms, tensions, and broader social and personal relations and changes within which divorce involving children occurs. The research on high-conflict divorce, both the mainstream (psycho-legal) and critical socio-legal literature, is reviewed to show how the contested nature of the research, including the conceptualization of high-conflict divorce, reflects deep divides and intense debate.

Gender continues to be important in these debates and remains a primary focus of literature on high-conflict divorce. However, recent theoretical developments, including intersectionality (e.g., Bowleg, 2008; Collins, 1994; Crenshaw, 1989, 1991; Davis, 2008; Ferree, 2010; Grabham, Cooper, Krishnadas, & Herman, 2008; Hankivsky et al., 2010) and relational autonomy (e.g., Boyd, 2010; Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011), suggest that a multi-level analysis that includes individual, social and structural levels of analysis may be helpful in better understanding how post-separation conflicts are shaped and experienced, therefore advancing research in this area. For example, intersectionality theory recognizes that a woman who comes from an egalitarian culture may understand her experiences very differently from a woman who comes from a patriarchal one. Similarly, an individual with means who lives in an area where services

are available will be situated very differently from one without means who lives in a rural or remote area, as will a litigant who does not have financial resources or legal knowledge who must face a former spouse who does. Relational autonomy (discussed below in this chapter) also attends to social relations and recognizes that personal relationships intersect with social policies, institutions (such as family law), and social structures (such as globalization). This theoretical lens incorporates the lessons of intersectionality while also exploring the potential implications for people's relational autonomy, and thus can be usefully employed in the context of post-separation parenting disputes to address complex gender issues without resorting to a binary approach and further contributing to polarized debates.

Although there is some indication that researchers and professional groups are increasing efforts towards consensus on a number of the most divisive issues,<sup>16</sup> it is important to remember that debates in the divorce field—like the debates about gender relations and family life described in this chapter—comprise the (socially constructed) knowledge upon which professionals and parents themselves inevitably draw (and also resist, contest, and position themselves in relation to) during the often painful and confusing process of divorce involving children. For participants in my study who experienced a high-conflict and complex divorce, these broader debates often come to frame their individual legal “case” and similarly, they draw from these discourses in making meaning. Such meanings often influence the decisions parents make. But broader social meanings are also at play; for example, as Natalier and Hewitt's 2014 study illustrates, gendered meanings of money are often a factor in financial disputes post-separation. Hence, understanding how social meanings that are embedded in social relations influence parents' decision-making is crucial in the context of such disputes.

Besides these two major areas of literature I also provide an overview of relational autonomy theory, which provides a useful framework to advance my overall

<sup>16</sup> The Association of Family and Conciliation Courts (AFCC) has taken up a number of divisive issues in this regard. See, for example, special issues on overnight care of young children, domestic violence, shared parenting and related consensus statements published in *Family Court Review*: [http://onlinelibrary.wiley.com/journal/10.1111/\(ISSN\)1744-1617](http://onlinelibrary.wiley.com/journal/10.1111/(ISSN)1744-1617)

discussion, followed by a consideration of the literature on and utility of Alternative Dispute Resolution (ADR). Finally, I present a critical assessment of two concepts that are central to my study: agency and transformation. Additional concepts discussed in this thesis are included in the glossary.

To conduct this selected literature review, I used multiple sources of information, including academic journals and books and publicly available policy reports. Although I highlight key studies that are central to my dissertation as a whole, some of which are considered classics in the literature on this topic (e.g., Smart and Neale's *Family Fragments* (1999), and Day Sclater's (1999) *Divorce: A Psychosocial Study*), I have primarily concentrated on works published since 2005. Much of this recent literature comes from the UK and Australia, where researcher interest and funding on this topic has been significant. Comparatively, there is a paucity of research in the Canadian context. Given the interdisciplinary nature of my research, I conducted library searches on generic and discipline-specific databases. I also found many articles and reports through the reference lists of key papers, some of which did not appear in other searches.

## **Motherhood and Fatherhood**

Gender has been at the centre of much of the academic literature on parenthood. Research less commonly focuses on class, race or other social locations. However, as Collins (1994) points out in regard to feminist theorizing about motherhood, interlocking structures of race, class, and gender must also be taken into account. Accordingly, since theories of motherhood cannot generalize to include all women, examining mothers' subjectivity from multiple perspectives and embracing difference will lead to a more nuanced and richer understanding (Collins, 1994). Of course, this is also true in theorizing fatherhood, although the literature is more focused and limited. While the past two decades has seen considerable research interest on fathers (e.g., Collier, 1995, 2005; Collier & Sheldon, 2008; Doucet, 2006; Hobson, 2002; Miller, 2011), much of this literature has focused on new fathers and fathers in the context of family law. Families are generally now recognized as being diverse and fluid (Morgan, 2006, 2011; Smart & Neale, 1999). Further, parents' socio-economic circumstances, the historical and cultural

context in which they were raised (and in which they raise their children), social and legal norms, and the broader impact of social and labour market policies may also shape experiences of mothering and fathering—before or after divorce.

While gender is clearly an important factor in both parents' understanding of their circumstances and their experiences of divorce, little qualitative research has explored how gender and other social locations are interwoven in the divorce context, or how the meanings parents make of motherhood or fatherhood change over the life course or in relation to personal circumstances. This thesis contributes to the literature on motherhood and fatherhood by drawing attention to the interlocking structures and the individual and contextual factors that shape the way parents make meaning of motherhood and fatherhood post-separation and their responsibilities as parents. As I argue throughout this thesis, individual, social and structural problems intersect in the lives and experiences of parents who navigate a high-conflict divorce process. Furthermore, as discussed in Chapter 1 and explored in relation to my study findings in Chapter 5, the social and epistemic resources that are necessary for meaning-making and agency are not equally distributed throughout society (Fricker, 2007). According to Fricker (2007), epistemic injustice is a form of injustice that results when individuals lack sufficient interpretive resources to make sense of their situation, and lack sufficient ability (and credibility) to participate in the production of knowledge about their "group" and circumstances. Dominant discourses upon which parents draw to make sense of their personal experiences are embedded in broader power relations, which are operationalized through neoliberal conceptions of autonomy and choice but without adequate support for parents.

## **Motherhood**

Motherhood is historically, socially, culturally, politically, and morally shaped (Miller, 2005). Motherhood is also shaped legally. As such, it is complex and contested. Although mothering is also a personal and diverse experience, "gendered assumptions and stereotypes continue to shape experiences and knowledge claims, for example, in relation to parenting, while structural and material inequalities prevail" (Miller, 2005, p. 7), making feminism highly relevant in the study of motherhood and informing the

arguments in my thesis. In a classic feminist text on motherhood, Adrienne Rich (1986) describes motherhood as both an experience (i.e., private reality) and an institution that requires selflessness and a focus on “other relations” rather than creation of the self. Rich (1986) suggests that motherhood serves patriarchal interests and draws attention to polarized images of motherhood that reinforce the contradictions mothers face. Mothers, she contends, should be defined not only as “mothers” but as full persons with real choices. However, cultural contradictions regarding motherhood (such as the expectation of unselfish nurturing in the face of a logic of individualism) remain somewhat entrenched (Hays, 1996) and parenting roles remain largely gendered (Milan et al., 2011), which serves to constrain mothers’ autonomy (Boyd, 2010). There is, however, some evidence of gender role convergence (Doucet, 2006), especially among younger generation couples, who in most cases must both participate in the labour force full-time.

Nevertheless, idealized notions of motherhood (including ideologies of good mothers) still shape mothers’ self-constructions (Miller, 2005) and are the standards by which they and others generally judge their parenting (Irwin, Thorne, & Varcoe, 2002). As ideologies shift over time with public, political, and economic changes, the image of a “good mother” also changes (Miller, 2005). According to Miller (2005), mothers construct versions of selves to show they are a “good mother” and impose order on events through their construction and reconstruction, both to make sense of experiences and to portray themselves in particular ways, particularly when expectations do not match experience.

Since the ideal of mothering rarely matches the lived experience, researchers note that it is important to provide needed support in a non-judgmental manner, rather than judging and pathologizing women’s mothering, especially when they are in difficult circumstances (Irwin et al., 2002, Pulkingham & Fuller, 2012). However, although it is often claimed that families are increasingly free from authoritative expectations regarding their form, this does not necessarily hold true for those who have difficulty resolving family legal disputes or otherwise fall well short of ideals and norms. Some mothers silence themselves for fear of being perceived as risky or unacceptable (Taket, Foster, & Cook, 2009). Mothers who fail to meet the ideals of motherhood may be reluctant to

voice even normal difficulties, which results in self-silencing, further perpetuates myths, and allows authoritative knowledge to be reproduced and maintained (Miller, 2005).

Mothering is also undervalued economically (Crittendon, 2001; Hays, 1996; Waring, 1988), which further reproduces gender inequality. When mothers leave their paid jobs to care for children, they may lose important years of earning, job experience, and future pension earnings (Caranci & Gauthier, 2010). Crittendon (2001) points out the paradox that although Americans claim to value families, the work of making families is ignored in law, policy, and business; consequently, those who assume the caring role are penalized and discouraged from fulfilling their family responsibilities. Given globalization and precarious employment, younger parents are now likely to find themselves in very different circumstances than those of earlier generations, which may result in changing patterns of work and care. Nevertheless, it is a paradox of motherhood that care work can be at the same time selfless and exploited (Crittendon, 2001), leaving caregivers' derivative dependency on others (typically the other parent) unrecognized (Fineman, 1995a, 2000, 2005). This derivative dependency arises from the need for material resources, due to undertaking the responsibilities of caring for dependents (usually children) when the collective responsibility for care is privatized within the family (Fineman, 2005). Although society depends on this care, it is generally regarded as the responsibility of individuals and families and is conducted in a private setting with little state support.

Despite the rather bleak picture painted above, mothering has a marked impact on women's identities and may result in self-transformation (Hartick, 1997; McMahan, 1995; Oberman & Josselsen, 1996; Treloar, 2003), even under difficult circumstances such as domestic violence (Irwin et al., 2002), or under significant financial constraints (McMahan, 1995). This presents a further paradox of motherhood—that as a socially determined role it has the potential to oppress women, yet it is also profoundly transformative (McMahan, 1995). That these transformations of identity are both personal and social leads McMahan (1995) to argue that mothers are not just socialized into culturally prescribed roles but are resocialized through the experience and practice of mothering. In this way, both an engendered and an engendering process turn women into mothers and at the same time, children are produced. Although McMahan's (1995)

view understates the resistance and individuality of women who are mothers, socialization and ideology are powerful. It remains to be seen whether a similar resocialization process occurs with fathers, although research by Doucet (2006) suggests this is likely to be the case. Still, as Bonnie Fox (2009) found in her study of how gender divisions change as couples enter parenthood for the first time, gender divisions both evolve and are challenged in part due to the available social and material resources, which underscores the importance of these factors in the development and reinforcement of gender inequalities.

Feminist researchers have drawn attention to polarized images of mothers (e.g., good and bad mothers) that circulate in society, shaping mothers' self-perceptions and meanings and operating as a benchmark by which mothers are judged, regardless of their social location or the complex realities of their lives (Gustafson, 2013). Yet these very images and assumptions can also be used to reinforce binary and oppositional perspectives. This is particularly apparent in the context of child custody disputes (Boyd, 1996; Rhoades, 2002) where mothers may be regarded as obstructing the relationships between fathers and children, even when they have legitimate concerns. I take the approach that mothering is socially constructed, but it is also a key site of adult development and somewhat fluid on a personal level, as well as changing over the life span and in the context of broader social changes. Many family researchers (e.g., Hartrick, 1997; May, 2003, 2008; McMahon, 1995; Miller, 2005; Oberman & Josselson, 1996) share this view, generally seeing motherhood in the context of an adult life course or life history. Oberman and Josselson (1996) contend that rather than being a single stage of development, becoming a mother is a complex developmental process that does not always correspond with views of mothering at a given point in time. They point out that little is known about how mothers experience themselves as mothers, the challenges they face, and how these challenges are overcome. Further, images of good and bad mothers distort the reality that for many mothers the reality is somewhere in between and constantly shifting.

Taking a feminist poststructuralist position that the self is constituted and reconstituted through discourse and develops through social interaction, Hartrick (1997) suggests that mothers are engaged in an ongoing developmental process of self-

definition. Although this process of identity development is in some ways a personal one, it is also relational. As Oberman and Josselson (1996) contend, the experience of mothering is not one of polarization but of dialectical tensions that all mothers must negotiate. “Self-other dilemmas” are a good example; new mothers may struggle to maintain a sense of self in the daily demands of mothering (Oberman & Josselson, 1996). Although mothers are frequently incited to practise self-care to resolve this tension, as Taylor’s (1999) study of mothers with post partum depression suggests, rather than relying only on psychological explanations (and individualizing solutions) for mothers’ emotions, we should consider them in social context. Participants in her study whose husbands did not share child care and household responsibilities felt anger and resentment towards them, and also towards physicians who not only did not acknowledge their suffering but encouraged them to adopt self-sacrificing responses to their circumstances. Noting that medical and psychological explanations see mothers’ response as evidence of individual pathology, Taylor (1999) contends that the source of women’s anger is instead the injustices embedded in the institution of motherhood. In seeking to highlight and then address such injustices, O’Reilly (2006) argues that limited (and limiting) understandings of motherhood must be replaced with those that enable mothers’ autonomy, agency, authenticity and authority as they negotiate the mothering role. She further contends that only when mothers are well rounded and fulfilled persons with multiple identities of their own choosing will children fully benefit from their efforts. This is because children do not ultimately benefit from a mother’s selflessness, but from the overall quality of her life. In this thesis, I argue that the developmental process of becoming a mother is interwoven with the processes of adult life span development. I will develop this argument further in Chapter 6, drawing on my study findings to do so.

Women mother from diverse social locations, and under a wide range of circumstances and conditions. They do so from within a historical context that is both personal and social, and with varying types and amounts of resources. Nevertheless, although these factors—and the institution of motherhood—shape their experiences and the meanings they make of them, they do not determine their experiences, decisions, or outcomes. This makes the study of mothers’ agency and how mothers resist norms and move on with their lives under difficult circumstances important for advancing policy and practice. By exploring mothers’ agency in the context of high-conflict divorce, my study



aims both to fill a gap in the literature concerning the particular individual and social factors at play as mothers' negotiate difficult circumstances, and to understand how these experiences can be transformed.

## **Mothers and Mothering after Divorce**

Feminist researchers have drawn attention to how the ideology of motherhood serves to discipline women. This disciplinary effect is particularly apparent for divorcing mothers (i.e., in the context of child custody law) because it imposes a normative view that does not account for the complexities of women's lives or differences among women (Boyd, 1996). After examining child custody case law in BC and Ontario, Boyd (1996) points out that "even when individual women 'won,' problematic assumptions about motherhood and women were reproduced ideologically, so that women as a group lost" (p. 496). For example, she points to then emerging trends in child custody decision-making that are aligned with positive images of contemporary good mothers, such as the "supermom" who successfully balances both career and family. In contrast, mothers who are state dependent or wish to remain primary caregivers are viewed as problematic. As Parkinson (2011) observes, although many children in Western countries still live with one parent for the majority of the time after divorce, shared parenting is encouraged even in jurisdictions that do not have legal presumptions concerning how children's time will be shared (Parkinson, 2011). Alongside the rise of shared parenting as a normative expectation, ideologies of motherhood and fatherhood are reshaped. Noting the rise of the ideologies of the "new father" and "children's rights or welfare," Boyd (1996, p. 497) emphasizes that what makes ideology so powerful is its flexible nature; ideologies of motherhood both shift and contain paradoxical elements. At the point of separation, dominant legal, policy and therapeutic discourses centre on the potential absence of a father from the heterosexual family unit, and the needs, capabilities, and history of care responsibility of mothers disappear from view (Boyd, 1996).

Similarly, in the Australian context, Rhoades (2002) examines common narratives about mothers in the context of child custody litigation, finding that features of Australian law reforms have constrained understandings of mothers in such circumstances, making it difficult for them to raise concerns about a father's ability to

care for their children. Rhoades (2002) notes that new discourses of parenthood and “the family” emerged alongside legislative reforms that promote an ideal of shared parenting and assume that power and parental involvement are equal. These reforms framed child contact as a child “right.” Following these changes, applications to enforce orders increased significantly and amendments were made to increase the power of the courts to enforce compliance. A similar increase in court applications has been noted across many Western countries (Parkinson, 2011). This approach leaves mothers with legitimate concerns “between a rock and a hard place” (Elizabeth, Gavey, & Tolmie, 2010, p. 253). As research illustrates, mothers may see such paradoxes as unfair (Natalier & Hewitt, 2014; Smart & May, 2004), particularly if their care work is undervalued. As my research will also show, this often leads to primary caregiver mothers feeling resentful and unrecognized.

Few long-term follow-up qualitative studies of parents following divorce have been conducted, Reissman’s (1990) and Wallerstein and Blakesee’s (1989) studies being the main exceptions), and to my knowledge, there are no studies involving high-conflict divorces specifically. However, a follow-up study of mothers who had participated in a divorce “recovery” program (Duffy, Thomas, & Traynor, 2002), found that 10 years later most mothers (74%) assessed changes in their lives in positive terms. Income was the only demographic variable with a correlation to self-esteem, control, and overall assessment. This study underscores the importance of adequate income in women’s adjustment to divorce, a topic I discuss in Chapter 4. Additional issues mentioned by the women in Duffy, Thomas, and Traynor’s (2002) study were related to child care and its meaning, employment, and self-sufficiency. Although their study described these changes in psychological terms (e.g., “sense of control”), from a sociological perspective they could be considered as pertaining to mothers’ relational autonomy, a theoretical concept that I examine in depth in this chapter. I draw on relational autonomy especially in my discussion of the interrelationship of child-related and financial issues in Chapter 4.

Given that mothers still undertake the majority of child care (care that is largely privatized within the family), it is paradoxical that mothers are exhorted to become economically self-sufficient as soon as possible, often at wages that are inadequate to

support two or more people (Fineman, 1995a). As Diduck (2014) points out, autonomy has become “the friendly face of individual responsibility” (p. 96). Hence, in this context, mothers are seen as autonomous only when they have fulfilled contemporary norms of “good mothering” by successfully balancing both career and family (Boyd, 1996; Miller, 2005). These norms are also aligned with neoliberalism and individualistic conceptions of autonomy, as described later in this chapter. Given the privatization of responsibility and cost cutting that are hallmarks of neoliberalism (Chapter 1), the interconnection between financial and child-related issues in the context of high-conflict disputes becomes even more evident. Nevertheless, if and when they are ultimately able to become financially self-sufficient, many mothers do describe their increased autonomy in positive terms.

In the context of post-separation disputes, current norms of being a good mother include taking responsibility for ensuring a good father-child relationship (Boyd, 2013). This responsibility may not only be impossible to achieve or inappropriate (e.g., because the father is abusive or otherwise problematic in relation to the child), but it fails to fully account for the father’s own responsibilities or efforts. In addition, the ways in which mothers exercise choice with regard to self-care and familial caring roles are both shaped by, and rooted in, the socio-political context of neoliberal reforms (Treloar, 2012; Treloar & Funk, 2011). This suggests that notions of responsibility and choice need to be reformulated to better support mothers, especially, in attaining a more realistic (and achievable) balance of care for/about others and self-care.

Relational notions of autonomy (introduced in Chapter 1 and discussed in detail in this chapter) and feminist ethics of care theory (Gilligan, 1982; Hankivsky, 2004; Kittay, 1998; Noddings, 1982; Sevenhuijsen, 1998; Tronto, 1993) offer important insights into gendered moralities of care and responsibility for self and others. Ethics of care (or care ethics) is a normative ethical theory that addresses tensions between caring for oneself and caring for others. These tensions arise from disjunctures between conflicting (often gendered) discourses, as well as between moral imperatives and personal circumstances (Boyd, 2013; May, 2003, 2008). Gilligan (1982) contends that mature moral development for women involves balancing one’s care for self with care for (and of) others. In reconceptualizing care, this approach promotes responsiveness to self as

*well* as others and challenges the perceived disparity between selfishness and responsibility. In other words, self-care is part of a relational field; hence, interdependencies must be recognized. In this view, self-care is not self-sacrificing, nor does it assume that mothers will care for themselves first in order to be able to care for others (or perhaps even to *better* care for others). The reality, for many mothers, is much more complex. Mothers tend to internalize messages found in parenting books, courses, media, etc. and are also aware of (sometimes even reinforce) the bad/good mother dichotomy that circulates in society—a dichotomy that is also imbricated in the good/bad divorce dichotomy. Self-care ideologies and practices vary among mothers and are often associated with their social location, although socio-economic circumstances play a significant role in this variation (e.g., compare Rubin & Wooten, 2007, with McMahon, 1995).

## **Fatherhood**

Like motherhood, fatherhood is shaped historically, socially, culturally, politically, morally, and legally (Collier, 2005; Miller, 2011) and is complex and contested (Collier, 2015). Although ideas about fatherhood have changed over time, there are also continuities such as the importance of paid work (Miller, 2011). The transition to fatherhood is in some ways similar to that of motherhood, with ideas about fathers set in relation to those of mothers: gendered patterns of work and care, family policies and personal choices (or lack thereof) combine to shape fathers' experiences, expectations, and practices (Miller, 2011).

Hegemonic masculinity (Connell, 1995, 2009) is a powerful ideology that like motherhood serves patriarchal and capitalist interests and results in men feeling pressure to live up to idealized images, although perhaps more as men than as fathers. Nevertheless, as Connell (2009), points out, masculinities are multiple, complex, and contradictory. Fathers who do not fit idealized notions of masculinity (e.g., are poor, racialized, or disabled) may have challenges similar to those of mothers (as described above) and be excluded from achieving contemporary ideals of good fatherhood, whether or not they live with the mothers of their children (Dermott, 2008; Edin & Nelson, 2013). In the context of law and masculinity, Collier (1995) has argued that law plays a

powerful role both in shaping and reproducing masculinities, and that it privileges some men while also reproducing power relations between men, women, and children. In his later work, Collier (2010, 2015) emphasizes the importance of locating debates about fatherhood and law within the broader conditions of neoliberalism and related shifts in understandings of gender and care (understandings that may create new tensions and reinforce existing inequalities).

Notions of “good fathering” have changed dramatically in recent generations, now focusing on the expression of affection and emotion (Dermott, 2008). Nevertheless, fatherhood remains a

site of intensely political debate, and a focus for a number of tensions around gender and intimate relationships and the role of the state in “private” life that have emerged in the wake of second-wave feminism and changing economic conditions in western societies. (Lupton & Barclay, 1997, p. 3)

Although Dermott’s study of UK fathers indicates that it is emotions and the emotional connection that matter to them, this connection does not necessarily result in fathers taking on more child care tasks or in equal parenting. Indeed, the fathers she interviewed did not believe that caregiving needed to be divided equally between mothers and fathers. This is an interesting finding since after separation shared parenting often seems to be the expectation, and indeed fathers’ rights advocates (FRAs) contend that it is in children’s “best interests.” However, the notion of children’s “best interests” is contested and varies across provincial and national legal and policy contexts (Mnookin, 1975; Glossary).

Dermott (2008) suggests that the prospect of a new fatherhood could be seen as a shift towards greater gender equality with men becoming more like women, thus complementing women’s greater involvement in the labour force. However, this “back-door equality” in fact arises from men’s greater interest in being involved with their children rather than from a commitment to gender equality. Doucet’s (2006) study of single and stay-at-home fathers who care for their children explored their perceptions of responsibility in caring for children and aimed to understand what happens to men and gender relations when men are active participants in an aspect of social life that is

usually occupied by women. Although she found some differences in fathers' perceptions and practices compared to those of mothers, Doucet (2006) also sees similarities with mothering. She concludes that, although some fathers are crossing boundaries and taking on responsibilities usually assumed by mothers, they also change the meanings of these responsibilities, continuing to parent within the norms of masculinity despite performing traditionally female tasks. Accordingly, she argues that "rather than mothering, men are reconfiguring fathering and masculinities" (Doucet, 2006, p. 210). Since Doucet's study indicates that there is some evidence of gender convergence and continuity when fathers undertake primary care, my research will build on these findings to explore how fathers' parenting, and their meanings of fatherhood, change as a result of partnership dissolution.

When compared to motherhood, fatherhood practices and responsibilities are less defined and "policed." Nevertheless, dominant discourses of the "good" contemporary father are apparent—such fathers are employed, partnered, involved in family life, and financially responsible (Miller, 2011). Fathers who are white, employed in skilled jobs (or professionals), married, and heterosexual are in a structural position that allows them to access resources and choices that those who are less advantaged cannot (Miller, 2011). Like mothers, although perhaps even more so, fathers "do" and "undo" gender in their parenting practices (Doucet, 2006; Miller, 2011). However, given that fatherhood studies primarily focus on the transition to fatherhood and fathers who undertake primary care, little is known about how fathers' changing circumstances such as separation and divorce change the meaning and experiences of fatherhood. More specifically, it would be helpful to know how separation affects the way fathers make sense of their circumstances and the decisions they make when they are not free to make choices as they would in a nuclear family, and lose the authority such a position affords (Natalier & Hewitt, 2014). Although my study involves only seven men, it may shed light on some of these questions.

## **Fathering After Divorce**

Collier (2009, 2010) argues that too little is known about the emotional aspects of fathers' experiences post-divorce, yet how individual men respond to conflict post-

separation can tell us a great deal about the particular attachments they have to gender categories (notwithstanding that these attachments are fluid and may be contradictory in particular contexts) and may be understood as effects of power. In one of the earliest studies of fathers and divorce involving 75 American fathers, Arendell (1995) found that because fathers lack adequate guidance on fathering after divorce, they are inclined to look to dominant views of masculinity instead. She notes that men draw on two main discourses; that of masculinity, and the masculinist discourse of divorce. The first idealizes stereotypical male attributes (e.g., individualized autonomy), and the latter portrays men as victimized in circumstances surrounding divorce. Most were more concerned with their identities as men than with fathering. They complained of having been cheated and drew on a rights framework that involved a “masculinist ethic” (Arendell, 1995, p. 46) with components of individualism, choice, achievement, entitlement, control, and authority. That their former partners might also have rights or claims was “lost in a myopic fog of self-interest” (p. 47). Similarly, Dermott (2008) examined the limitations of structural factors involved in notions of “good fatherhood,” including the way in which intimacy is taken up in fathers’ rights discourse as a claim that may be satisfied through legislative reform. She notes that fathers do not necessarily want equal time, or to share parenting duties equally, but they want to be able to choose the extent of their involvement. Thus the father’s desire for autonomy and choice post-divorce is a common theme in both Arendell (1995) and Dermott’s (2008) earlier studies.

In comparison to the early 1990s when Arendell (1995) was conducting interviews with divorced fathers, fathers now have considerable guidance about divorce, both of a generic nature and for fathers specifically. However, what is not yet well known, especially in the current Canadian context, is where fathers seek and find support at this difficult time and how they make meaning of their circumstances in light of such support. By seeking to understand the personal and social relations upon which fathers draw while in a high-conflict divorce process, my study will help policymakers and practitioners and fathers themselves to understand what is ultimately helpful to fathers in such circumstances, and how fathers take up these supports in ways that may positively change them.

Divorce transforms gender relations of power within the family, with legal and relational changes disrupting men's privileged position and resulting in a sense of loss of familial access and authority. This change in turn shifts men's constructions of masculinity and self, with gender and class interacting to affect the way men negotiate and experience changes in family relationships (Catlett & McHenry, 2004). Catlett and McHenry (2004) note that although the loss of power was a key theme in fathers' narratives, it emerged as loss of entitlement in three areas: the right to access to children, parental authority, and financial control. These entitlements, once associated with men's role as breadwinners and head of the household, have been reduced by women's greater participation in the labour force. Furthermore, they are not equally available to all men. However, men are now expected to assume a greater role in family life—a role embraced by many modern fathers, although sometimes only post-separation.

Importantly, Catlett and McHenry (2004) add the dimension of class to their study, finding that there is a strong relationship between social class and the way fathers attempted to attain masculine ideals. The upper-class fathers who were able to meet the contradictory ideals of "the new hegemonic ideal"<sup>17</sup> (Catlett & McHenry, 2004, p. 179), that is, the form of masculinity that most closely approximates notions of male success and which, post-separation, involves joint custody, believed that their financial resources enabled them to achieve this outcome. Both middle and lower-income fathers saw themselves as having fallen short of contemporary cultural ideas of masculinity. Middle-income fathers were able to at least present themselves as having attained these ideals while married because their status comes from their position of head of the household. Being an involved and expressive father also provides status for middle-class fathers. However, after divorce, their status declines the most of any income group (Catlett & McHenry, 2004). These interesting findings help highlight both how class shapes the way fathers experience and make sense of high-conflict disputes concerning children and how they respond when they fall short of cultural ideals of masculinity and fatherhood. That said, some of their anger might be more usefully directed at notions of hegemonic masculinity. This raises the tension that it is men with these upper and

<sup>17</sup> The term hegemonic masculinity was coined by Connell (1995).



middle-class fathers' former status who benefit most from the power and privilege that hegemonic masculinity entails, and that maintain the very hierarchy that now hurts them. Moreover, just as feminism now also serves capitalism in some ways (Fraser, 2009), hegemonic masculinity may do likewise. Collier (2010) suggests that neoliberal discourses that pose some fathers as the embodiment of the new "ideal father" (i.e., white, middle-class, engaged as parents) further subordinates certain groups, rendering them more vulnerable.

Once divorced, some men may see themselves as "invisible" and disadvantaged (Doucet & Hawkins, 2012) and seek changes to family law, policies, and practices in order to address the interests of fathers post-separation. It is recognized that law has an important symbolic power in reinforcing parental equality, and Collier (2009) notes that fathers, in particular, depend on legal confirmation of their parental identity. However, while such activism could serve a constructive purpose (e.g., by assisting men who are disadvantaged such as due to low income and Aboriginal status, and educating fathers about their legal rights and responsibilities from a less adversarial position), it is widely recognized that the fathers' rights agenda works against women's interests (Doucet & Hawkins, 2012) and those of many men (Collier, 2009; Flood, 2012). Some feminist researchers (e.g., Dragiewicz, 2008, writing in the context of violence against women; and Bertoia and Drakich (1993)) suggest that such groups are primarily concerned with maintaining patriarchal authority within the reconstituted family, and their own position of power and privilege (i.e., hegemonic masculinity). However, Collier (2015) suggests that men who seek out such groups may be responding to broader social changes and tensions involving gender and care that, particularly in the context of neoliberalism, leave them with few places to seek support post-separation.

Whereas women's groups take up issues of child and family policy and welfare reform more broadly, fathers' rights groups appear to focus exclusively on fatherhood (as a gender issue), despite the challenges faced by fathers who may struggle to pay even a minimal amount of child support and may not have adequate housing for their children to spend overnights with them (Catlett & McHenry, 2004; Edin & Nelson, 2013). Such issues faced by fathers after divorce are linked to broader socio-economic inequalities that affect every family member, either directly or indirectly. As such, it is

unfortunate that FRAs see power as a zero-sum game (i.e., if one party has it then the other does not). Collier and Sheldon (2008) reject such a view of power, suggesting that it is not necessary to take something away from mothers in order to improve the overall circumstances of fathers (see also Rhoades, 2002). The effect of such a zero-sum view is to increase hostility, resentment, and polarization in discussions about post-divorce parenting and reform, which also reifies polarized images of mothers and fathers (Lupton & Barclay, 1997). Given this polarization and the provision of mutual aid to fathers involved in custody disputes by FRAs, it is important to understand how fathers use these groups and whether the collective meanings held by such groups are incorporated into the personal meanings of divorcing fathers more generally. Since fathers and mothers involved in a high-conflict divorce process are often aware of the presence of such groups, what sense do they make of their claims and the support they offer? Why do FRA identities have meaning for some men and not others? Collier (2010) urges greater attention to these complex questions. Although previous studies of fathers (and their female allies) involved in FRAs (e.g., Crowley, 2008, 2009; Kaye & Tolmie, 1998) shed some light on these questions, by including fathers who are not involved, my study will expand the scope (albeit modestly) of the literature on this topic.

Feminist researchers have expressed another set of concerns regarding how law and policy respond to disputes over child custody, which is that fathers and mothers are judged by different standards. These different standards result in the overall downgrading of mothers' care work and their concerns in the context of family disputes. For example, Fineman (1995b) raises concerns that fathers have equal right to custody, regardless of their history of caretaking, and Smart (1991) argues that in child custody litigation, fathers are judged by a lower standard and "caring about" a child is often viewed on par with "caring for." Rhoades (2002) suggests that the current "procontact" culture that emphasizes the importance of fatherhood, along with the reconstruction of motherhood, may result in a sense of entitlement by fathers, accompanied by the view that mothers have taken something away from fathers. Nevertheless, as noted by Smart and Neale (1999), while being a good father was formerly associated with financial support, at divorce, it seems that fathers must choose between the "involved father" identity and that of provider. Disputes between parents post-separation are embedded in such broader disputes.

Little empirical research, particularly in Canada, explores how divorce changes the meaning and experience of fatherhood for men. Also, despite the now substantial research on new fathers and on masculinities, there are no studies (to my knowledge) that explore changing meanings of fatherhood across the adult life span, including how the meaning of fatherhood changes for men over time and in different life circumstances. Although my study only involves a small number of men, I hope it will help to encourage further study.

### **Situating Divorce Conflicts within Broader Social Conflicts and Changes**

Recent decades have provided a broad range of social and cultural transformations, including those that bring about changes in gender relations and family life, and family change must be understood in the context of these shifts (Smart & Neale, 1999). The divorce process is complex and contradictory, and these broader changes contribute to personal and social tensions that may result in polarized views and conflicts (Day Sclater, 1999). While some researchers describe these conflicts as a “gender war” (e.g., Bala, 1999; Parkinson, 2011), others do not always agree with this depiction (e.g., Collier, 2009, 2015). Indeed, although such conflict may play out as a battle between mothers and fathers not only in court but also between advocacy groups with opposing views, Collier (2009) argues that these conflicts involve broader concerns about the changing roles of men and women and the uneven distribution of power in society and that power is not a zero-sum game. Furthermore, fathers and mothers occupy complex and diverse social locations and are variously positioned within and beyond family life and broader social practices. Nevertheless, we live in a capitalist society in which social reproduction is privatized and, as Glucksman (1995) has argued, such inequitable power relationships are structured by the organization of unpaid work and the overall social organization of labour.

Not only are families changing, but both families and divorce are divided into good and bad. For example, in a context where shared parenting is viewed as the “ideal” post-separation family form, mothers who raise concerns about a father’s parenting capacity are construed as in opposition to children/fathers, and the value and meaning of

motherhood and fatherhood may be reconstructed (Rhoades, 2002). Specifically, in such a polarized context, parents—as active agents—may take up, attempt to renegotiate or resist the “positions” that are available to them in ways that position themselves as “good” parents (Kaganas & Day Sclater, 2004) but this may also exacerbate conflict with the other parent (who must then occupy the opposite position—i.e., “bad”). This tension illustrates how post-separation conflict involves complex processes that are both personal and social. Moving away from conceptualizing high-conflict divorce (and parents who are, or have at one time been, engaged in such a process) as pathological could assist parents to stop seeing each other as adversaries (within an adversarial approach that fuels conflict) and pathologizing each other.

Despite the “gender war” image being too simplistic, divorce is a gendered process, which for women involves what Day Sclater (1999) calls the double bind of autonomy and welfare/harmony. In the context of economic hardship and the caregiving burden, if a mother is going to claim the “survivor story” and gain independence, it is at the cost of being positioned as a selfish mother who puts her own needs ahead of those of her children, yet she must also avoid depending on others (or the state). Men, on the other hand, argues Day Sclater (citing Collier, 1999), are positioned as the victims of divorce and supported by changes in family law,<sup>18</sup> but often without the support of family policies or their former partner. Further, changes in practice, culture, and men’s “psyches” have not yet caught up to (gender neutral) concepts of parental responsibility in family law (Day Sclater, 1999). Day Sclater (1999) asserts that the welfare discourse—that is, the powerful moral prescription that divorcing parents must put their feelings aside for the sake of the children—constrains women, whereas men interpret this discourse in terms of justice. As a result, each imagines the other has a power that they do not, in fact, possess.

Moreover, as Collier (1995) has noted, to treat issues concerning fatherhood and family law as if they are “gender neutral” serves to perpetuate existing gender inequalities. Mothers may be held to higher normative standards both before and after

<sup>18</sup> Although Day Sclater writes following the introduction of the 1996 *Family Law Act* in England and Wales, a similar argument can be made in the Canadian context, since there are shared legal traditions between the UK and Canada.

separation and take a greater share of responsibility for child care. Yet in the context of family law, they find themselves in a gender neutral policy and law environment that does not fully recognize their disproportionate childrearing contributions (and the financial impact of this post-separation) or the meanings they attach to their role. In contrast, many fathers do now share care to some degree (Milan et al., 2011), although their contributions tend to be over-valorized. Mothers are expected, not only by family law but also by their partners, to provide financially for their own household and to reduce their investment in children, in order that fathers can take their place as full partners in parenting (whether or not they pay child support in full or on time). Although mothers are frequently construed as “gate-keepers” to fathers’ relationships with their children, as Trinder’s (2008) study illustrated, “gate opening or gate closing, can be a dynamic transactional process rather than a linear and unidirectional process running from mothers to fathers” (p. 1298).

In policy discourse, questions about fathers’ financial responsibilities have now become questions about who pays and who cares for children (Hobson & Morgan, 2002). While at one time, understandings of parents’ post-separation responsibilities followed a traditional (gendered) division of labour, family law is now framed in gender neutral terms even though family practices still follow gendered patterns in most cases. Recent Australian research (e.g., Cook, McKenzie, & Natalier, 2015; Natalier, 2012) concerning child support suggests that some fathers do take this responsibility seriously while others do not (i.e., make unilateral and informal variations or do not pay), perhaps as a way to exercise their agency with respect to fathering identities or control over their parenting practices post-separation. Mothers interpreted this failure as symbolic of a lack of care for and commitment to children (Mackenzie & Cook, 2015), as they also do with keeping to child contact arrangements.

Despite shifts in policy, law, and social norms, parents “do” and “undo” gender as they comply with, resist, or attempt to renegotiate understandings of parenthood and their “reformed” responsibilities. Understanding how mothers and fathers make sense of their interrelated responsibilities in light of their circumstances will shed light on these complex and dynamic aspects of high-conflict disputes. Although a small minority of disputes are resolved in the courts, as the next section explains, for parents whose

divorce process is high-conflict, there may be few other alternatives. In exploring how parents make sense of mothering and fathering post-separation and the associated conflicts, my study may assist in understanding how such conflicts can be transformed—both on the individual level and the social.

## High-Conflict Divorce

In this thesis, I use the term “high-conflict divorce” to refer to separation and divorce processes in which former partners or spouses are in ongoing conflict over arrangements for the care (access to,<sup>19</sup> custody,<sup>20</sup> and/or residence) of children throughout the divorce process. In this section, I discuss the dominant view of high-conflict divorce, which I describe as psycho-legal. I refer to this position as “dominant” because it is the shared understanding common to the legal and expert-practitioner fields. Somewhat in contrast is the socio-legal view, and those who adopt this approach often adopt a critical, advocacy, or feminist approach and draw attention to social, political, and economic contexts. In practice, these views may overlap, and some advocacy literature draws strategically from both. I draw from a relational approach which is both critical and feminist and is associated with the socio-legal approach. However, as I argue in Chapter 3 and elsewhere in this thesis, relational notions are often appropriated in individualist discourses, including those promulgated by neoliberalism. These more mainstream notions also underlie psychological approaches that primarily regard the individual and couple as the locus of change. I reject the application of the term “high-conflict” to couples, “cases,” and families because I view both social relations and individual identities as dynamic rather than fused. Further, I view high-conflict divorce as a process rather than an event, and this process may be more (or less) difficult at different times for a number of reasons, both individual and social. Put simply, individuals may decide to divorce, but they do so in a particular social,

<sup>19</sup> Although access may refer to each parent’s time with their children, the term usually refers to the contact schedule of the non-resident parent (CBA, 2011). In my thesis I will use this term when discussing disputes over the division of *time* with children.

<sup>20</sup> Legal rights and responsibilities to make decisions about the child (see Glossary for a discussion of the use of these terms under federal and provincial statutes).

cultural, and economic context, which is in some ways changing and in other ways slow to change. Furthermore, individuals also partner and separate across the adult life course and as sociological researchers have recently emphasized, families in general are dynamic not static (Morgan, 1996, 2011; Smart & Neale, 1999).

## **Dominant Conceptualization of High-Conflict Divorce: The Psycho-Legal View**

The term “high-conflict divorce” is often used quite narrowly in the psycho-legal literature to refer to the dynamics of the post-separation parental relationship. In this view, the divorce process reflects issues in the marital relationship, problematic parenting styles (Whiteside, 1998) and/or individual pathology. The “relationship” is seen to be fraught with hostility and harassment, and issues and arguments continue without resolution (Whiteside, 1998). Psycho-legal approaches<sup>21</sup> tend to focus on markers such as the presence of blame, physical attacks, sabotage of the child’s relationship with the other parent, unclear boundaries, low parental self-esteem, difficulty communicating and cooperating several years post-separation, high levels of anger and distrust, and repeated litigation and relitigation (Johnston & Roseby, 1997). Johnston (1994), whose early research on the dynamics of divorce conflicts has had a significant influence on court practices in this area, contends that high-conflict divorces can be distinguished by three dimensions: domain, or disagreements over particular issues (e.g., access or child rearing); tactics, or the manner in which couples attempt to resolve these issues informally (e.g., verbal/physical aggression, avoidance) or formally (e.g., litigation, negotiation through lawyers); and attitudinal, degree of hostility or negativity, whether overt or covert. Johnston further notes the difficulty in conceptualizing high-conflict along these dimensions, given that the parties may differ in terms of one or more of them. In her later work, she also acknowledges that professionals and courts may fuel, or at least contribute to, these conflicts (Roseby & Johnston, 1997).

<sup>21</sup> While I refer to the psycho-legal literature as taking a particular view, there is, as in other disciplines and professions, considerable variation and ongoing debate.

In an Australian study of parents who were ordered to attend a program for parents with a history of contravening child-related orders (Cashmore & Parkinson, 2011), key concerns of primary caregiver parents' included: the other parent's parenting style and capacity (e.g., abuse or neglect); the difficulties of children who had a limited relationship with the other parent and were therefore upset being with them; and new partners. The study authors also noted that some cases featured additional issues, such as payment of child support and alleged personality disorders, and that in most cases children were very young and so perceived by the parent as especially vulnerable. Cashmore and Parkinson (2011) concluded that for these parents, traditional ways of settling disputes (i.e., mediation, litigation, and lawyer negotiation) were ineffective. Some of these concerns are unlikely to be resolved by way of out of court dispute resolution processes, not the least because they involve the complex intersections of family law, child protection, and perceptions of risk. Instead, as I discuss in the next section, socio-legal studies may be useful to better understand how parents make meaning of these complexities.

Although the consensus is that high-conflict disputes often involve multiple issues and are particularly complex and that ongoing conflict is damaging to all parties (as well as costly to the courts), the suffering of children and potential long-term effects is of particular concern (Cashmore & Parkinson, 2011; Johnston & Roseby, 1997; McIntosh, 2003; Trinder, Kellett, & Swift, 2008), leading to a call for the reduction of parental conflict to be a key policy goal (Cashmore & Parkinson, 2011). While directing the focus towards children's needs and experiences is an important topic that has garnered considerable research and practice interest, it has not reduced parental conflict in this regard.

In a review for Justice Canada, Stewart (2001) proposes a number of external markers to differentiate high-conflict divorce: several or frequent changes in counsel, involvement of child welfare agencies, the number of times a case is litigated, a large amount of affidavit material collected, the length of time it takes for the case to settle, a history of access denial, and a history of criminal conviction. Gilmour (2004), in another research report for Justice Canada, cites Australian research suggesting that cutbacks to legal aid funding may impede timely resolution of family disputes and points out that



along with a reduction in other services and material differences between former spouses, additional opportunities exist for conflict to arise. However, Gilmour ultimately accepts Stewart's (2001) definition of high-conflict, with the exception of replacing "criminal conviction" with domestic violence or sexual offences.

### **Alternative Conceptualization of High-Conflict Divorce: The Socio-Legal View**

Socio-legal researchers more commonly address high-conflict divorce in broader terms, contextualizing divorce within the particular social conditions and power relations in which it occurs and recognizing the dynamic nature of social relations. According to Day Sclater (1999), the traditional approach has "failed to see experiences of divorce, and their expression, as socially constructed or historically contingent" (p. 109). Within the social frame, meaning is made in interaction. How people make meaning of (i.e., interpret) events has a considerable impact on how they live their lives. Unfortunately, negative depictions of divorce abound in our culture and have been sustained by individualistic and psychological perspectives that largely pathologize individuals and families in such circumstances (Day Sclater, 1999). Moreover, dominant divorce discourses represent the prevailing views and rules of dominant decision-making groups and disciplines and are rarely constituted from the perspectives of those directly affected. The stories of individuals who have experienced a high-conflict divorce and retrospectively regard it as having been transformative have largely gone untold and are absent from academic literature or policy reports.

For all these reasons, I locate both my conceptualization of high-conflict divorce and my study within the socio-legal tradition. That is not to say that I disagree with the notion that ongoing dynamics continue between former spouses, or that individual issues may be involved. Rather, considering issues of agency and transformation sociologically and providing a social account of gender conflict (e.g., the privatization of care responsibilities, child custody politics) rather than an individualized one may challenge normative conceptions of high-conflict divorce as well as raising awareness of the complex circumstances facing mothers and fathers post-divorce.

As earlier research has shown, understanding how parents make meaning of their circumstances and responsibilities can illuminate some of the ways in which parents' identities and emotions play out in this context and can be useful in informing policy, practice, and family law reforms. For example, in her 2012 study of fathers and child support, Natalier noted that even a father who was among the top 10% of income earners saw the payment of child support as a "loss" and that fathers who fell short of ideals of the "good divorce" (see Ahrons, 1994; Day Sclater, 1999; Dewar, 1998; Reece, 2003) tended to respond to the perception of failure by describing ex-partners as mentally ill or vindictive. This finding lends support to Kaganas and Day Sclater's (2004) argument that parents in contested divorces tend to position themselves in ways that enable them to maintain a perception of themselves as good parents. In exploring parents' meaning-making, my study explores some of these issues in more depth.

### **The Social Construction of High-Conflict Divorce: Politics of Post-Divorce Parenting**

As noted in the introduction to this thesis, while post-separation disputes are most apparent as individual issues between parents, conflicts between parents may be exacerbated by intense debates and differences among professionals, academics, advocates, and other groups. Indeed, "divorce is a process that is framed at the intersections of legal practice, social policy, welfare ideology, relationship breakdown and personal pain" (Kaganas & Day Sclater, 2004, p. 2). Moreover, as Day Sclater (1999) contends, a "dual process of idealisation and denigration, which is occurring at the level of social discourse and political rhetoric, mirrors a psychological defence for coping with overwhelming anxiety" (p. 176). The idealized "good divorce" involving both welfare and harmony sits at one end of a continuum, but in the presence of human psychological needs and processes and the shadow of the bad divorce (Day Sclater, 1999).

One of the difficulties with characterizations, and indeed with the language used by researchers, professionals, and policymakers—for example, "high-conflict families" or cases (Birnbaum & Bala, 2010)—is that they serve to reify identity categories while ignoring their socially constructed and ideological nature (May, 2010). Once categorized,

individuals are fused to a set of attributes (based on particular assumptions about their feelings, thoughts, and actions) that comprise the “complete identity of the subject” (May, 2010, p. 437). Hence, such understandings form part of the process by which individuals come to “know” themselves and their lives; that is, how they are made subjects (Foucault, 1982, 1994; Miller & Rose, 2008; Rose, 1996).

In contemporary legal and policy discourse, however, the social, material and political contexts in which gendered practices and power relations are located, as well as differences *among* men and women, are often obscured. Such discourses decontextualize these disputes from broader social conflicts and changes, political strategies (e.g., the neoliberal precept of “individual responsibility”) and ideologies (e.g., “good motherhood”), and a number of dynamic and intersecting social structures and relations (e.g., financial circumstances, labour force involvement, health, race, sexual orientation, relationship status, social support). This decontextualization contributes to the construction of divorce as an individual issue amenable to professional intervention and to change through policy and legal remedies. Further, if high-conflict divorce is understood as an individual and interpersonal problem, then it is assumed that psycho-educational approaches or building family resilience will resolve these problems. Cashmore and Parkinson (2011), for example, recommend therapeutic intervention and parent education (including parental skills training and advice on how to better manage conflict with the other parent). While they also recommend increased funding for child protection investigations, this is primarily to ensure that parental concerns about child risk are fully explored. Given the complex intersections between divorce-related issues and broader social and structural inequalities and injustices, such approaches will often fall short. In the contemporary context of neoliberalism, with a retraction of the state in the provision of social welfare and a shift of responsibilities to individuals and families, their failure is even more likely.

Dominant discourses<sup>22</sup> are knowledge and understandings that are largely generated by those with power to impose meaning, although they may also be generated and shared among members of a group. Drawing from the groundbreaking

<sup>22</sup> See the Glossary for expanded definitions of discourse and dominant discourse.

work of earlier feminist legal scholars (e.g., Boyd, 1989, 1991; Fineman, 1988, 1989; Smart, 1984, 1989), who argued that extra-legal and legal discourses and ideologies influence judicial decision-making, and Fineman's (1995b) influential book, in which she asserts that legal discourse plays a significant part in structuring the individual experiences of contesting parties, Collier (2001, 2009) notes that both family law and extra-legal discourses (e.g., those of child "welfare") contain inherent contradictions and inaccurate or outdated notions of motherhood, fatherhood, and childhood that have the effect of polarizing fathers' and mothers' positions. Recently, in British Columbia, a government White Paper (British Columbia Ministry of Attorney General, 2010) set out proposals for a new provincial Family Law Act (now in effect) that emphasizes cooperation and a shared parenting norm after separation. These changes were intended both to reflect and to construct the "new" face of contemporary motherhood and fatherhood after divorce.

However, as a review of recent Australian research has demonstrated (Fehlberg, Smyth, Maclean, & Roberts, 2011), attempting to engineer behavioural change through law and policy may have unintended effects. Following legislative changes in 2006, the greatest increase in shared parenting in Australia has come from litigated cases.<sup>23</sup> Of particular concern is that shared parenting is now more often ordered when a parent has raised concerns about a child's safety. The authors suggest that many fathers now believe they are entitled to shared time, and mothers are more hesitant to raise issues of child welfare, including domestic violence. This finding is troubling because considerable research suggests that the conflict typical of litigated cases generally contra-indicates such shared parenting arrangements (Fehlberg et al., 2011). Rather, shared parenting has been shown to be more likely to work when parents can cooperate. Historically, this group of parents tends to be fairly homogenous and self-selected. Shared parenting is not an arrangement that works for or is best for everyone (Fehlberg et al., 2011).

<sup>23</sup> This interesting finding warrants further exploration. In Canada, shared parenting more frequently arises from negotiated settlements (Juby, Marcil-Gratton, & Le Bourdais, 2004). However, as Robert Mnookin and Lewis Kornhauser (1979) have argued, individuals negotiate in the shadow of the law.

While socio-legal scholars have investigated how the sense individuals make of their divorce conflicts is shaped by contemporary socio-political-legal discourses and processes (e.g., Day Sclater, 1999; Smart & Neale, 1999), as well as the gender politics of family law reform (e.g., Boyd, 2003; Collier, 2005; Pulkingham, 2006), professionals and policymakers as well as the general public tend to view high-conflict divorce as mainly a gender conflict between individuals (Smart, 2003) and a “sex war” (Kaganas & Day Sclater, 2004). Advocacy groups and conservative family moralists may further contribute to this view (Coltrane & Adams, 2003).

As a former counsellor who worked with divorcing parents, I believe that in order to eventually mitigate these conflicts, it is important to explore how discourses shape personal meanings and experiences of conflict in such situations. These discourses can not only influence the impact of legal norms but may actually become embedded in them (Boyd, 1991; Fineman, 1988; Kline, 1992). In other words, they have ideological effects. For example, fathers’ rights discourses, notions of (good) motherhood, or the notion of divorce being harmful to children may affect parents’ meaning-making and the decisions they make. This raises an interesting question: How do some parents attempt to resist dominant conceptions of themselves as “high-conflict cases” and express agency in the face of the discursive framework that surrounds them?

Very little is known about how parents who have gone through a high-conflict divorce come to resolve their difficulties. To date, no Canadian research has focused on mothers’ or fathers’ personal agency, defined here (and discussed further below) as the subjective awareness of one’s capacity for creative action. This gap in the literature is significant, given that parents who have managed to move through the difficulties of high-conflict divorce are ideal informants for policy and practice, and further, that child outcomes are linked to parental well-being (Kelly & Emery, 2003).

There is also a need for research on gender and family law reform that attends to the interconnectedness of the lives of women, men, and children (Collier, 2010; Featherstone, 2009), while at the same time continuing to draw attention to the uneven and gendered terrain of power in child custody disputes (Boyd, 2003, 2010; Collier, 2005; Smart & Sevenhuijsen, 1989, and others). Relatedly, while family law and policy

has aspired to be more gender neutral (and to transform families accordingly), as Bollen, Verbeke and Euwema (2013) point out, mediators and legal professionals may then assume an equal distribution of power between mothers and fathers where it does not necessarily exist. Given the “stubbornly gendered” landscape in Canada (Boyd, 2010) and elsewhere, this assumption may disadvantage the party with less material power (usually the mother). Law may also provide fathers with debilitating power—the power to hinder a mother’s individual development (Rhoades, 2002). However, as Bollen et al. (2013) contend, mothers may also deploy immaterial power resources, often associated with their place in the “gender order” (Connell, 1995); that is, exercising their power as the parent who performs more of the child care. Natalier and Hewitt (2014) similarly noted that in disputes over child support, mothers were more likely to stress their child-focused authoritative position and fathers more likely to emphasize their authority as breadwinners. Although Bollen et al. (2013) make an important point about the various forms of power at play in child-related disputes, their solution involves an open discussion about power sources during the mediation process, with the potential for a “rebalancing of power” being the result. Unfortunately, this solution does not involve change beyond the “couple level,” and so may not be lasting. Later in this chapter I critically examine the literature on Alternative Dispute Resolution (ADR) in this regard.

While the academic and professional literature largely reflects the views of professionals, hearing from parents as to their experiences and strategies for “successfully” navigating the challenges they faced is relevant to policy and practice and provides fresh insights into how divorce might be transformed, whether on a personal or a social level. I discuss the concept of transformation below. Moreover, such insights are likely to be valuable to other parents in the midst of a difficult divorce. Having witnessed (as a divorce counsellor and researcher) the challenges faced by parents who must simultaneously deal with difficulties with their former spouse, manage professional interactions and legal processes, and at the same time care for and support their children through divorce and often other complex circumstances and changes, I learned a great deal both about the challenges faced by parents and about their resourcefulness. However, while domestic violence advocates and fathers’ rights activists have challenged our understandings and perceptions in this area, through both academic research and law reform submissions, we know little about the spectrum of experiences

and circumstances of parents who experience and move through a conflicted divorce process. What is known, however, from the scant literature is that many parents who do experience court proceedings find the experience tremendously stressful and even traumatic (Hunt, 2010).<sup>24</sup> A nuanced understanding of parents' experiences that illustrates the range of issues, circumstances, and contextual factors, as well as the potential meanings involved, can provide a better understanding of what helps and what further contributes to these disputes.

Mothers and fathers each comprise a diverse group and it is often the sum of their social locations, rather than their gender specifically, that shapes the way they make meaning of motherhood or fatherhood and the decisions they make. My master's research (Treloar, 2003), which explored four mothers' experiences of high-conflict divorce, indicates that self-transformation is in fact possible in high-conflict divorce, although sometimes only after years of struggle. In that study, mothers described what they regarded as positive outcomes in both personal well-being and social relationships. This study builds on that research to explore the meaning-making of both fathers and mothers in high-conflict divorce, and, further, in focusing on how tensions in broader social discourses of gender relations shape personal understandings of the divorce process, represents a shift in both scope and analytic framework.

## **Transforming High-Conflict Divorce**

To summarize my discussion of high-conflict divorce, while there are various definitions of high-conflict divorce and different explanations as to the causes, what is clear is that parents themselves are often alert to these debates, which leave limited room for those directly affected to have a voice and to be heard, that is, parents and children. Psycho-legal approaches generally rely on individual and interpersonal explanations and understandings of change (including "managing" and resolving interparental conflict), whereas socio-legal understandings take a broader view that takes social and structural factors and context into account. As such, in order to

<sup>24</sup> Hunt's report summarized UK studies in this regard. Despite the somewhat different legal and policy context, her summary reflects what I heard from parents while working in the separation and divorce counselling field in BC.

transform high-conflict divorce, transformation of gender relations, economic and other inequalities, and inter-professional conflicts is also needed to transform the meanings and experiences of individuals and families as they divorce and move forward in their lives. In the next section, I introduce relational autonomy theory, which, as a transformative project (Nedelsky, 2011), offers promise in this regard. Although researchers (e.g., Bala, 2015; Parkinson, 2011) often describe debates concerning high-conflict divorce as a gender war with fathers' rights advocates on one side and feminists on the other, this binary view may itself suggest to parents in the midst of divorce that there are battle lines to be drawn. Relational autonomy theory, while a feminist theory, is, in contrast, concerned with transforming gender relations (Nedelsky, 2011).

## **Relational Autonomy**

Relational autonomy is an “umbrella term” that comprises a number of related perspectives (Mackenzie & Stoljar, 2000). From this view, we come into being through relationships and maintain interdependencies throughout life (Nedelsky, 1989, 2011); hence, we can achieve autonomy *because* of our interdependencies rather than because we are free from them. As such, our decisions inevitably affect others (Herring, 2010), just as theirs do us. Relational autonomy theory relies on a relational view of the self while also recognizing individual agency (Llewellyn & Downie, 2012), thus highlighting the importance of context and social relations and their implications for an individual's capacity to make choices that are in accordance with his or her own values. Importantly, relational theory understands selfhood as an ongoing process, with relational selves existing in—and being shaped by—“a web of interconnected (and sometimes conflicting) relationships. Individuals engage in the activities that are constitutive of identity and autonomy (e.g., defining, questioning, revising, and pursuing projects) within a configuration of relationships, both interpersonal and political” (Sherwin, 1998, p. 35).

In Nedelsky's (2011) view, social relations incorporate structural and institutional relationships, such as gender, economic relations, and state power. She contends:



Once people begin to make a habit of relational thinking, of seeing how both personal relationships and personal choices are inevitably shaped by wider relationships, they can see how these relationships intersect with institutions, such as family law (which defines marriage and stipulates spousal and parental obligations), a market economy, the presence or absence of state-supported child care, the presence or absence of a “family wage” (and thus norms of one or both parents in the paid labor force). These national (or regional) institutions, in turn, interact with global markets and institutions, such as the World Bank, as well as with relations of economic and political power generated over centuries (Nedelsky, 2011, p. 21).

The above quote is useful in thinking about how personal relations are embedded within broader social and cultural relations, including those of gender and class, and how these shape the choices people make, as discussed throughout this thesis. Nedelsky’s (2011) point is an important one, as it shifts the focus from one of gender polarization (as detailed in the previous section) to suggest that high-conflict disputes involving children are located within broader social relations and arrangements. Such arrangements have different implications for parents depending on the alignment between their values and extant social and legal norms, as well as on their social location—that is, the sum of “the intersectionality of dimensions of privilege and oppression” (Neysmith, Bezanson, & O’Connell, 2005, p. 8)—which come together to affect people’s experience differentially. I argue for a shift from viewing these disputes as simply reflective of a “gender war” to one of relational autonomy in which social relations and the potential for their transformation are more central.

## **Feminist Critiques of (Neoliberal) Autonomy**

Mainstream notions of autonomy are rooted in a liberal individualistic view which holds that individuals have agency and consequently are responsible for making choices that are not only in their own interest but also the interest of their family and society more broadly. Inherent in this view is the assumption that social actors are similarly situated to each other (that is, gender/class/race neutral); thus people’s decisions are also neutral in terms of gender, socio-economic considerations, and so on. A related assumption is that

if people make “correct” choices (i.e., those that are in line with social norms) they can overcome problems that are connected to class, gender, and other social locations. An individualistic conception of autonomy obscures the social arrangements that support the privilege and independence of some members of society as well as the relevance of “supportive social conditions for fostering autonomous action” (Sherwin, 1998, p. 25) and fails to account for the socially constructed nature of people’s identities and values, or to recognize that perceptions are to a significant degree the product of one’s social environment (Sherwin, 1998).

Relational theories of autonomy, in contrast with liberal conceptions of autonomy and the individualistic self, recognize that the individual is embedded in social and political relations and consider people’s experiences in their full complexity (Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011). As an alternative feminist model, relational autonomy can draw attention to structural obstacles to autonomy (e.g., access to the legal system, economic policies that can curtail gender equality) and the importance of context in decision-making. Thus relational theory treats marital separation or divorce as embedded in a wide set of relationships, both public and private, and attends to potentially intersecting vulnerabilities that are likely to be missed in a more theoretical, abstract, or economically motivated view. Indeed, as Diduck (2014) contends, vulnerability is inherent in our autonomy. Through the lens of relational autonomy, vulnerability is understood as a function of our interconnectedness, therefore should not be conflated with deficiency or weakness (Diduck, 2014) and cannot simply be eliminated by promoting independence or with resources of some sort, nor by a focus on building resilience.

Relational autonomy theory attempts to reconfigure liberal notions of autonomy in relational terms (Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011) and seeks “to answer the question of how internalized oppression and oppressive social conditions undermine or erode agents’ autonomy” (Stoljar, 2013, n.p.). Significantly, a relational autonomy lens can highlight the complex relational ties between parents, and between parents and children, that come to bear on parents’ agency and autonomy (Boyd, 2010). Indeed, as Mackenzie, Rogers, and Dodds (2013) point out, the exercise of autonomy “requires extensive social scaffolding and support [such] that its development can be

thwarted by exploitative or oppressive interpersonal relationships and by repressive or unjust social and political institutions” (p. 17). Thus they call for policy responses that support both the development of autonomy and the ability to exercise it. In that the approach highlights how some policy responses to vulnerability instead “entrench or exacerbate existing vulnerabilities” (Mackenzie, Rogers, & Dodds, 2013, p. 17), the authors argue that relational theory offers an alternative critical perspective. This approach falls within the broad critical and feminist framework of my study, and I draw on it in particular in Chapter 4, which examines the interconnectedness of financial and child-related issues in parents’ disputes.

Relationships can both facilitate and constrain parents’ autonomy (Boyd, Chunn, Kelly, & Wiegers, 2015; Nedelsky, 2011) depending in part on how their values and decisions are aligned with social and legal norms. For example, parental autonomy in making arrangements for children only exists insofar as these decisions fit with prevailing views of child welfare (Diduck, 2003). In some cases, parents may also be constrained by the shifting preferences of their ex-partner, particularly as they align with ideals of father involvement post-separation. For example, mothers who have been primary caregivers by agreement pre-separation may suddenly find that they are expected to accede to their former partner’s desire to change the balance of paid work and care, regardless of their own wishes and values or their views about what is in the interests of their children.

Notions of responsibility and individual choice as promulgated through neoliberalism may appeal to notions of autonomy (Diduck, 2016), but this view of autonomy is not a relational one (Boyd, 2010; Buckley, 2015). A relational view recognizes that once people have children together, they remain to some degree interdependent and affected by the decisions and choices made by each other. Herring (2010) notes the appearance of purportedly neutral autonomy language in discussions of mediation (e.g., incitement for parties to resolve their own disputes), the privatization of child support collection (now in place in the UK) and other areas of family law, and Buckley (2015) has warned of the potential for neoliberal understandings of choice to replace more relational ones. This underscores the proclivity for the language of autonomy to be appropriated for political purposes, such as in service of greater

individualization and privatization (Diduck, 2016) that, despite the language of “choice” (Buckley, 2015; Eekelaar, 2011), may render some parents (often mothers) even more vulnerable (Boyd, 2010; Diduck, 2016; Treloar, 2015). Such privatization leaves both fathers and mothers who do not have emotional support or financial resources to fend for themselves at what is arguably a difficult time. Given that children depend on their parents for their autonomy, such measures are shortsighted and work against the meaningful autonomy of all family members in a relational sense. I return to this point with regard to ADR in the next section.

Nedelsky (2011) sees the impact of social relations as multidirectional, with individuals having the power to resist or reinforce gender norms and roles even if individual decisions are structured and constrained by law. Nevertheless, as the Boyd, Chunn, Kelly, and Wiegers (2015) study of “autonomous motherhood” has shown, the choices available to women largely depend on socio-economic privilege, and neoliberal imperatives may be imbricated in these choices. While the authors challenge the assumption that a child “needs” a father and fatherless families are somehow deficient (i.e., patriarchal notions of fatherhood), their larger point is that more flexibility towards the forms families take is needed and that the privatization of the costs of social reproduction must be challenged. Hence a lone father by choice or a two-father family may have some advantages based on their gender and/or economic circumstances but given norms about the centrality of mothers in children’s lives, may face similar challenges in the face of dominant social norms that privilege heterosexual two-parent families. Further, a family that is less privileged in social location may need some assistance by way of support and resources in order to have meaningful options (Jackson & Day Sclater, 2009). According to the relational autonomy view, this need should be accepted as a function of our interdependence rather than stigmatized or marginalized.

Next, I turn to ADR and some concerns about how such approaches may be promoted as neutral and as reflecting the choice and autonomy of parties but may instead be used to promote settlement and reduce public costs. Relational autonomy theory challenges individualistic thinking about the distribution of costs and benefits within such reforms (and for social reproduction more broadly). In highlighting the

complex interdependencies between family members and how these affect autonomy and vulnerability, relational autonomy provides a useful framework for considering the implications of this shift.

## **Alternative Dispute Resolution (ADR)**

In this thesis, I use the term ADR narrowly to refer to any out of court dispute resolution mechanism. More precisely, ADR includes mediation, Collaborative Family Law (CFL), lawyer assisted negotiation, arbitration, or the use of a parenting coordinator (PC). However, in-court settlement conferences such as Judicial Case Conferences (JCC) or other in-court negotiations could be included in a looser definition of any settlement prior to trial (i.e., outside a court-decided case). ADR was important in the legislative and policy context in which the former statute (*Family Relations Act*, 1996) operated, and it remains so today. ADR has long been touted as the preferred alternative for couples to negotiate their divorce on the basis that it is less adversarial and cheaper than litigation through the courts, and that it provides parents with more autonomy in decision-making. Indeed, the ability to resolve child-related disputes out of court is central to contemporary norms of divorcing “responsibly” (Reece, 2003). Yet most disputes are negotiated informally or formally, as was the case even before ADR was promoted in a formal sense. Although ADR may well have benefits for some parents post-separation, its implementation by governments, both in BC and elsewhere, is associated both directly and indirectly with a shift in costs and responsibilities for resolving family law disputes to individuals and families (Eekelaar, 2011; Treloar, 2015, 2016; Treloar & Boyd, 2014; Treloar & Funk, 2008, 2011).

After briefly describing mediation and collaborative family law (CFL), two approaches to out of court resolution that, although they are understudied empirically, have been extensively discussed in the literature, I turn to a summary of these studies and critiques. It is important to note that examining ADR research and practice is complex, not least because the legal and policy framework varies by country (and in Canada by province). In some jurisdictions, lawyers have a statutory obligation to inform clients of ADR options and mediation may be voluntary or mandatory. Funding and public awareness are additional differences.

## **Mediation**

Mediation is perhaps the best known, used and researched form of ADR. In BC, mediation emerged in the late 1970s, largely in response to the legal profession's struggle to effectively deal with interpersonal conflicts and a search for alternatives (Boyle, 2013). Although mediation may vary in terms of how it is practised and funded, and the extent to which it is genuinely voluntary, generally it is a voluntary process in which a trained third party attempts to bring parties in conflict to a consensual agreement (i.e., a "win-win" solution). The third party is said to be neutral in the dispute, although this has been a matter of debate in the sense that mediation is settlement driven. Recent research by Saini, Birnbaum, Bala, and McLarty (2016) and conducted in Ontario found that mediation was associated with the outcome of more overall contact hours per month with the non-primary parent.<sup>25</sup> This result may be associated with the particular characteristics of those who opted for mediation (e.g., domestic violence cases may have been screened out and/or parents opting for mediation in the first place may be more inclined to cooperation) or even a mediator's approach or values, making it an interesting finding that requires further study.

## **Collaborative Family Law (CFL)**

Collaborative Family Law (CFL) is a newer approach that involves both parties and their lawyers (and sometimes a multidisciplinary team that includes divorce coaches and financial and child specialists) meeting face to face to negotiate a settlement. The parties sign a participation agreement committing to the process and to negotiate in good faith. A defining feature of this comprehensive approach is a "disqualification agreement" by which both lawyers must withdraw if the case does not settle. Although proponents of this approach claim that it is effective and results in high client satisfaction (Tesler & Thompson, 2006), there have been few empirical studies to date and only one

<sup>25</sup> This finding is similar to that of Trinder and Kellett (2007) regarding in-court conciliation in the UK. Trinder and Kellett found that it resulted in contact for more children as well as an increase in contact compared to previously. Nevertheless, parents remained in conflict (with 40% returning to court within two years) and some agreements broke down. Accordingly, simply knowing the path of resolution and initial outcome does not mean these agreements are sustained. Further, little is known about the usefulness of ADR in cases of high conflict.

Canadian study that includes the experiences of clients (Macfarlane, 1995). To my knowledge, there are no empirical studies on the use of CFL in high-conflict family disputes. Like mediation, it is often zealously promoted as a better alternative to litigation, with benefits including improved communication and more creative and harmonious solutions. However, participants select into the process and are normally those with higher incomes, and many claims concerning outcomes lack empirical evidence (Zylstra, 2011).

## **ADR: Issues and Critiques**

Claims by mediators and policymakers that mediation results in better and faster outcomes at lower expense (see, for example, Salem, 2009) and is generally better than a litigated outcome remain a matter of debate. Nevertheless, ADR is heavily promoted on the basis of its “promise” for reaching agreement (Kaganas, 2010). Mediation is framed in opposition to adjudication and is often promoted as such, yet another example of the polarization that exists in the field of family law research and practice. In the context of non-family ADR research, Genn and her coauthors (2007) have raised a number of issues concerning this polarization and noted that there are diverse views as to the effectiveness of ADR approaches. They have also noted that mediation is commonly set in opposition to litigation, a view that they see as problematic for a number of reasons, including that litigation is not necessarily an inferior option and that it is based on a different philosophy. Litigation is also used far less often than ADR to resolve family law disputes. Attempting to evaluate studies on mediation outcomes has been described as comparing apples with oranges (Shaw, 2010) while comparing mediation to other forms of dispute resolution could be considered as “apples vs. lemons” (Parkinson, 2013, p. 213).

A recent international literature review commissioned by the Scottish Government (Scottish Civil Justice Council, 2014) concluded that although many of the studies of mediation suffered from “common problems,” most parties found it to be a satisfactory way to resolve disputes when compared to a trial. However, “satisfactory” does not fully address the complexity of costs versus benefits, which may vary by gender, financial circumstances, and other social locations. In a meta-analysis of divorce

mediation research conducted in the United States, Shaw (2010) found a small to moderate positive overall effect of mediation (0.36) and noted that although there were moderate positive effects in terms of satisfaction with the process, outcome, spousal relations and understanding children's needs, there were also "costs" in terms of a small to moderate negative effect on substantive outcomes, pressure to concede, and some aspects of emotional satisfaction. Shaw (2010) suggests that despite the benefits of mediation, these findings "reveal the cost of seeking a win-win solution and decreased hostility in mediation" (p. 466). She notes that the emphasis on reducing hostility may mean that participants "may be more likely to go along with something they do not want out of fear of appearing to be hostile" (p. 466). Although this finding does not address gender specifically, it parallels Day Sclater's (1999) earlier UK findings that women who mediated scored lower on the General Health Questionnaire (GHQ). Day Sclater (1999) further suggests that although ADR is promoted as the ideal solution for resolving post-separation disputes—an ideal that is more easily embraced by mothers, due to the (gendered) discourse of harmony and child welfare—mothers may not, in the end, feel positive about the outcome.

Three feminist critiques that are often directed at ADR are that it may disadvantage the party with lesser economic power (often mothers), that women are more likely to feel pressured to compromise because of social conditioning, and that it is usually inappropriate when there is a history of domestic violence (Semple, 2012). Gutman (2010) raises ethical issues in this regard, particularly concerning power imbalance between the parties, mediator use of power, pressures to settle, and cost. Therefore, although ADR may on the surface appear to fit with a relational approach because it is based on values of consensus and autonomy, Gutman (2010) points out that mediation may, in fact, contain coercive elements and there may be an imbalance of power between the parties as well as between the parties and the mediator. Semple (2012) also highlights feminist concerns about the privacy of the process, pointing out that mediation can be seen as a form of privatization in the sense that it is no longer open to public or legal oversight and therefore may lead to the wealthier party having an advantage and power imbalances being further entrenched. The confidential nature of such processes can make it very difficult to revisit the agreement later if one party discovers that the other did not fully disclose their assets or income. A final feminist



concern summarized by Semple (2012) is that of mediator neutrality and bias. He notes that mediators may hold gender stereotypes and that because of what he describes as the “almost clandestine nature of the settlement mission” (p. 236), there is insufficient oversight and few safeguards. Nevertheless, drawing on Rhoades (2010a) argument that mediators are now required to undertake training with respect to domestic violence whereas judges and lawyers are not, Semple (2012) suggests that, paradoxically, the feminist critique may actually favour mandatory mediation in cases of domestic violence where the alternative is the “informal and unregulated settlement mission” (p. 239). At present, those who have experienced domestic violence may be screened out<sup>26</sup> and are not required to participate in mediation. This interesting and provocative argument suggests that debates about the value and appropriateness of mediation are likely to carry on for some time yet.

Turning to CFL, a significant critique concerns its cost. First, this form of ADR is expensive, largely due to the number of professionals involved, and must be financed by the parties (typically on a 50-50 cost sharing basis, even if their incomes are quite disparate). Also, there may be considerable pressure to settle, and settlement is not always in a party’s interests. Further, if the parties do not settle then they will incur far greater expense than if they had gone to court in the first place. For some, it may deplete the resources they could otherwise have used for litigation. Non-settlement also lengthens the time involved to resolve the disputes because the parties must begin with new lawyers as a result of the disqualification agreement (Zylstra, 2011). The significant cost of CFL also means that those in family law disputes have very different access to services based on their income level (Treloar & Boyd, 2014).

A second broad concern raised in the literature (Healy, 2015) is that the client-led process of CFL may mean that lawyers may be slow to identify (or acknowledge) when the process is not working or a party is either not ready or unsuitable. Nevertheless, among those who did use the process, satisfaction was high (Healy, 2015). Barlow et al.’s (2014) Mapping Paths to Family Justice Project undertaken in England and Wales

<sup>26</sup> The existing *FLA* (2011) appears to leave this screening out to the discretion of mediators rather than creating a rule.

involved similar findings in terms of satisfaction, outcomes, and sense of control over the CFL process. This suggests that in spite of the concerns previously raised, parties who use CFL generally find it to be of benefit, although more needs to be done to determine whether the many benefits that are claimed are symbolic or are reflected in outcomes (Zylstra, 2011).

Additional concerns involve issues of informed consent and the potential for one party to use the process as a stalling tactic (Macfarlane, 2005; Zylstra, 2011), and whether CFL could contribute to power imbalances (Wiegers & Keet, 2008). Although mostly positive about the potential for CFL practice, MacFarlane (2005) suggests that four key values should guide its development:

Commitment (carefully balancing commitment to the process, to one's client and to one's colleagues); transparency (being frank with one's clients regarding core values and what might go wrong); flexibility and responsiveness (developing different styles of CFL practice and adjusting one's own practice to client needs); and a recognition of the limitations of the CFL model and practice (realizing that not every case is suitable for CFL and not every lawyer has the necessary skills for every potential CFL case). (p. xiv)

As for whether or not ADR increases access to justice, Genn (2009) argues that it does not increase access to the courts because it is not court based. It also involves "putting aside" thoughts of legal rights in order to focus on common ground. Further, it is often seen by policymakers as a way to reduce government costs, and, since its primary aim is to settle a dispute, it should be evaluated against doing nothing rather than against litigated outcomes (Genn, 2009). Parkinson (2013) also emphasizes that the parties need legal advice during and after the process and that they bargain "in the shadow of the law" (i.e., each party is likely influenced by the knowledge of their entitlements and likely outcomes in court). Indeed, as Kaganas (2013) points out concerning the introduction of a presumption of joint parental involvement post-separation in the 2013 UK *Children and Families Bill*, in ADR parents would likely be expected to agree to arrangements that involve both parents being responsible and involved. In some circumstances this expectation may actually contribute to the

vulnerability of mothers and children. The next section builds on these critiques and indicates that there remain a number of concerns about the shift to private ordering, especially when so little is known about the experiences of parents in a high-conflict divorce process who use ADR. Further, there is little research on the success of ADR in such situations and no research on the long-term outcomes. It is important to know whether or not agreements were made, and if they were, whether those agreements were sustainable.

## **The Privatization of Family Disputes**

My earlier work (e.g., Treloar & Boyd, 2014; Treloar & Funk, 2011) raised concerns about ADR and the fact that such processes are now framed as the best way to resolve family law disputes, noting that they also shift costs back to families and that they may not always be appropriate means of resolving disputes, particularly in more high-conflict situations. As noted in the introduction, all participants in this study separated and began legal proceedings under the former *Family Relations Act* (1996). I will not revisit those discussions in depth in this thesis since they involved proposed or recent reforms. Rather, I focus on broader issues and the trend towards the privatization of family law disputes, and I highlight the shift in political discourse in that regard.

To begin, however, I must briefly revisit an earlier point. I noted that the BC Ministry of the Attorney General's Working Group on Family Justice Reform (2005) proposed that "families should have primary responsibility for making their own arrangements, even if their legal relationships are changing" (p. 39), while also declaring that their recommendations were "designed to change the way people think about resolving family disputes" (p. 40). The Working Group concluded that a "reversal of long held assumptions must be reflected in public spending priorities. Subsidies should be shifted so that the fee for taking a family matter to court more closely reflects its true cost" (p. 39). Despite a lack of clear evidence about ADR costs and outcomes, as discussed above, the Working Group believed that mandatory mediation was not only less costly in terms of relationships but also to the public purse. They recommended that the government cover the cost of a single session and that there be a sliding scale for those who wished to continue thereafter. Further, those who could afford to do so should

be “free to use, and pay for, the services of a CDR professional who charges more, if they so choose” (British Columbia Ministry of the Attorney General, 2005, p. 50). Given the significant cost of CFL, particularly when a multidisciplinary team of professionals is involved, the Working Group showed little concern about the shift of ADR services to the market and the downstream implications, including a lack of access for those without financial resources. This discourse reflects a clear trend towards the privatization of family law disputes in BC, including during the period in which some of my study participants were attempting to resolve their disputes.

Parents whose divorce processes are categorized as high-conflict receive little assistance or research attention, despite what are often complex circumstances and the fact that their disputes consume considerable court time. Perhaps this is because, as Eekelaar points out, family law disputes are seen to arise as a consequence of individual choices (Eekelaar, 2011). Nevertheless, this position ignores the fact that, in family situations, the “choices” one individual makes have consequences for others, and potentially for their vulnerability (Eekelaar, 2011). This position also fails to consider the interdependencies that are highlighted by a relational autonomy theoretical approach. Moreover, it does not take into account that some high-conflict divorces involve complex and unanticipated circumstances (e.g., medical issues), or the implications for justice (whether real or perceived). Perceptions of injustice may be significant either when the parties’ financial resources are extremely dissimilar or when both parents have lower incomes. Therefore, the promotion of ADR to the parties for its stated advantages without ensuring that it is a real “choice” seems rather harsh, especially given cuts to legal aid and other support programs, most of which hurt low-income women and their children (Chapter 1). Overall, the result of shifting the costs of ADR and other legal services back to families alongside a downgrading of public funding has implications for social justice, and especially for gender equality.

Considerable research suggests that a prudent approach would ensure that families receive sufficient assistance to successfully navigate difficult family changes, especially given the many financial, health, and social costs of protracted conflict and litigation (e.g., Amato, 2000; Avison, 1997; Currie, 2007; Genn, 2009; Hunt, 2010; Lorenz et al., 2006; Pleasence et al., 2004; Treloar & Funk, 2011; Wickrama et al.,

2006). An increasing number of self-represented litigants, both in Canada (Macfarlane, 2013) and elsewhere (the UK, for example: Sommerlad, 2015; Trinder, 2015) has placed additional strain on the courts. If parents cannot afford to access the legal system, this provides further reason to use limited public funds for alternatives, even if some situations still require adjudication. The court's role has shifted to handling only the most complex cases. With this refocus, costs are shifted to individuals, families, and communities (Treloar, 2015). That ADR processes are settlement driven (Fiss, 1984; Semple, 2012) raises concerns about whether settlement and cost cutting are now prioritized over just outcomes.

Since mothers still do more of the care work and earn less money overall (Chapter 1), individualizing the costs of ADR, as well as litigation and other family supports if necessary, will most likely result in unequal and gendered access to justice. More research is needed that explores parents' experiences of various forms of ADR, as well as the outcomes for parents in a high-conflict situation. Although my study does not directly address this issue (and gap), by providing information about parents' experiences of ADR, it will add to the literature and may also provide direction for future studies. Next, I turn to a critical assessment of two concepts that are central to my study: agency and transformation.

## **Agency**

In this thesis, I define agency as the subjective awareness of one's capacity for creative action. Following Mahmood (2005), I note that this capacity is both created and enabled in specific power relations; however, it is distinct from notions of resistance. Such a definition recognizes that divorcing parents are surrounded by a discursive framework, act (or accommodate or resist) in the context of specific constraints, are socially embedded, and have differential access to power and privilege. Moreover, agency is not static, even within a single interview. As Reissman (2002) points out, narrators can position themselves as "agentic beings...[that] purposefully initiate and cause action" (p. 702) in one context and as passive or as victims in another. However, awareness of one's capacity to act creatively neither obliges an agent to act nor implies free choice. Mackenzie and Stoljar (2000) contend that oppressive social relationships

can shape preferences and impair autonomous agency. On that basis, an adequate conception of agency may require that an individual “participate in practices that may be partially constitutive of their oppression” (Sherwin, 1998, p. 33), a view that is consistent with that of Mahmood (2005), as described above, and also with a relational view of autonomy.

I concur with McNay (2003), who argues that rather than an account of agency that takes the subject as being discursively formed, a more generative view is required that considers active processes of self-interpretation. A more generative account of agency provides space for individual and collective action (including transformation) without in any way minimizing the material, social, or discursive effects that may be experienced as a result of divorce. Madhock, Phillips, and Wilson (2013) similarly suggest that agency cannot be adequately theorized outside its relation to power. My view is generally consistent with a socialist feminist account of agency (c.f. Wilson, 2008) that regards agency as contingent on specific power relationships (e.g., gender, class) and locates it at both the individual and collective levels. Western feminist conceptions have largely ignored the cultural specificity of agency (Mahmood, 2005; Ortner, 2006; Wilson, 2008). As Mahmood (2005) points out, since agency may involve inhabiting norms (i.e., illiberal desires<sup>27</sup>), it can come from within structures rather than simply from resistance to norms. I do not see this view as contradictory to my position that agency is contingent on particular power relationships, since such a view does not preclude different paths to agency and different choices or constraints within varying cultures and their respective power structures.

Moreover, it is important to recognize that like power, agency is not a “zero-sum game.” A view that acknowledges the structural constraints of law and the complex realities of many individuals’ lives allows me to explore agency without simply conflating it with either resistance or autonomy. Wilson (2008) makes the point that agency, along with “choice,” has become an object for neoliberal appropriation. As agency is conceptually linked with power, resistance, transformation, and autonomy, and is

<sup>27</sup> Drawing on her research on the Islamic women’s piety movement, Mahmood (2005) argues that agency may involve the choice *to* wear a veil according to custom.

culturally specific, reconceptualizing the link between these concepts or redefining any one of them is likely to result in a shift in how the others are conceptualized. Wrenn (2015) distinguishes between “real” agency and what she describes as neoliberal, or inauthentic agency. This latter form of agency is inauthentic, she claims, “because individuals are not fully aware of the difference between the rhetoric of neoliberalism and the reality. Inauthentic agency sustains neoliberalism...and perpetuates the illusion of autonomous decision making” (p. 1233). This important point highlights the need to separate individualistic notions of autonomy and agency from relational ones, and which I discuss further in Chapter 6.

## **Transformation**

Transformation is an emergent concept in my work. I began by using the term to refer to positive change over time in an overall sense (i.e., transforming divorce both as an institution and as a personal experience). I then tentatively extended the concept to refer to self-transformation, or change over time (Lawler, 2002), space, and context experienced by individuals as a *result* of exercising agency (as defined above) rather than simply as a result of divorce. Including space and context allows identities to be conceptualized as shifting and multiple. I distinguish this latter conceptualization of transformation from entirely psychological and cognitive notions of personal change, in which transformation is understood as an individual phenomenon and an internal process. While critical reflection and emotion may well be dimensions of self-transformation as I define it, I argue that social relations play a significant role in this process. Moreover, by elucidating the link between collective meanings and personal meanings and experiences of conflict in the context of divorce, I aim to explore the interrelationship between personal and social change. Relational autonomy theory, in that it seeks both to critique and transform, is invaluable in this regard. Although my primary focus in this study is gender relations, they are set into broader social relations and structures that must also be transformed.

## Summary

Together, the body of research reviewed in this chapter describes the many complex and polarized debates within the divorce literature, as well as between various stakeholder groups. These debates are interlinked with an additional set of debates, those about gender relations and the changing roles of mothers and fathers in family life. These interlinked and often volatile debates play out in the background of parental conflicts (as does neoliberalism) and likely play a role in how parents make meaning of their own circumstances. Parents' meaning-making remains to be fully explored, as does the question of how these broader discussions can be taken up in a manner that does not minimize either gender differences or other inequalities, nor the particular challenges faced by individual parents. A relational autonomy lens and attention to agency offers the potential not only to better understand parents' experiences and the decisions they make within their broader social, economic and political context but also to shape policy and practice in this regard.



## **Chapter 3.**

### **Researching Meaning-Making in the Context of High-Conflict Divorce: Theoretical Approach, Methodological Orientation, and Research Design**

In this research, I explore how parents make sense of their experiences of a high-conflict divorce process and the interpretive resources they draw on to do so. Given the goals and questions that guide this research (Chapter 1), I chose a qualitative research design and a critical feminist framework that is grounded in a relational ontology and social constructionist epistemological perspective. Ontology refers to assumptions about the nature of reality, whereas epistemology addresses assumptions about the framework of knowledge. Since I view the world as socially constructed (Berger & Luckmann, 1966), the assumptions I hold—and which are implicated in my research—must be explicated. After a brief explanation of the social constructionist view, I explain how this view differs from the objectivist views that underlie the scientific method. I then describe three ontological assumptions that inform my research: human interdependence, the centrality of power relations, and the importance of the broader context. Next, I explain that while these assumptions share aspects of both critical and social constructionist positions, I do not see these positions as fundamentally incompatible. Indeed, both critical and constructionist positions are consistent with a relational ontology, broadly conceived. I did not expect to resolve all potential ontological “incompatibilities” in advance; notwithstanding that a relational approach may not always be a feminist one and vice versa. Rather than engaging the liberal assumptions and ideals that may obscure the problematic dimensions of power and notions of individual agency, in the end, I situate my work as fitting most closely with the relational autonomy theoretical approach. This approach was discussed in Chapter 2.

## Social Constructionism

Social constructionist approaches have a number of key tenets. These include: (a) realities are local and specific, thus vary between groups of individuals (Guba & Lincoln, 1994; Schwandt, 2000); (b) reality is actively constructed, therefore what an actor regards as reality is dependent on his or her values (i.e., “value neutral” actors do not exist) (Guba & Lincoln, 1994); and, (c) reality is socially constructed by individuals in interaction with others. Hence, social constructionists focus on the social process by which individuals make sense of their experience, rather than individual cognitive processes. A focus on individual meaning-making has more in common with the interpretive approach—an approach that aims to understand how individuals and members of society make sense of their circumstances and how these subjective meanings are affected by social context—although the interpretive and social constructionist approaches share common philosophical roots in George Herbert Mead’s (1934) view of the self as emerging through social interaction (Andrews, 2012). Schwandt (2000) notes that while both these approaches attend to the process through which meanings are created, negotiated, maintained, and modified in a particular context, interpretivists generally apply an empiricist methodology drawn from the natural sciences to their inquiry. Although my own view engages the interpretivist position in a broad sense, my primary interest is in the social dimension of meaning-making.

Social constructionism does not make ontological claims (Andrews, 2012). Rather, it is concerned with the social construction of knowledge and the social implications of this construction (Berger & Luckmann, 1966). For example, Berger and Luckmann note the emergence of “expert knowledge.” Experts first develop a specialized field of knowledge and then claim authority over that knowledge. Over time, this knowledge is institutionalized into social understandings. Through conversation and over time, meanings and subjective reality become shared to the extent that concepts do not need to be continually redefined and understandings of reality are largely taken for granted (Berger & Luckmann, 1966). Since researchers who use a social constructionist methodology see the findings of their research as one possible construction among many, they do not present themselves as neutral and their findings as truth (Andrews,

2012). Instead, they seek to have their findings accepted as plausible, based on a convincing argument (Andrews, 2012).

The social constructionist view is in contrast with objectivist notions that reality can be objectively known and is best studied using the scientific method (Schwandt, 2000). Critics of this objectivist position, such as C. W. Mills (1959), claim that since researchers are themselves embedded in the social context under investigation, “the social scientist is not some autonomous being standing outside society” (p. 204). More important is to understand where the researcher stands within it (Mills, 1959). As Stanley (2013) also points out, “researchers’ understandings are necessarily, temporally, intellectually, politically and emotionally grounded” (p. 23). Nonetheless, we can and do share common experiences that make it possible to test our theoretical descriptions of the social world (Stanley, 2013). The researcher is not immune to socially constructed understandings, including those that circulate within a particular discipline or research area. What is often missing from the understandings that circulate in a field of knowledge is how that knowledge came about in the first place. Hence, the remainder of this section outlines the ontological and epistemological assumptions that underpin the conception, goals, and design of this study, as well as my analytic approach.

## **A Relational Ontology**

Three key aspects of relational ontology underlie my methodological choices. First, relational ontology takes individuals to be socially located and is rooted in the interpretive sociological tradition (Mauthner & Doucet, 1998). From this relational view, human beings are interdependent and embedded in a complex web of social relationships that involve both responsibilities and care. These relational connections affect both how people understand the world and themselves. A relational ontology rejects an atomistic view of individuals in favour of one where people are interdependent and care is valued. This normative framework is in contrast to the tenets of liberal political thought and Western notions of individual self-sufficiency that privatize responsibility for care within families and other intimate relationships. Care is understood to be an important social responsibility rather than simply an individual or family one (Fineman, 2005a; Hankivsky, 2004; Kittay, 1999, 2001; Tronto, 1993). Further, ethical

decisions are viewed as contextual and situationally contingent. This view also invites an examination of the role of policy in shaping norms and influencing social practices.

Second, while I assume that categories of knowledge and reality are actively constructed in social relationships and through social interactions, I also recognize that power relations, as a component of all human relationships, influence such constructions. A relational orientation not only requires attention to human interdependence, vulnerability, and caring, but, importantly, also “enables an understanding of and accounting for how current post-separation norms and discourses gloss over the inequalities—economic and otherwise—that complicate parenting relationships” (Boyd, 2010, p. 152). In Chapter 4, I draw explicitly on feminist theorizing concerning relational autonomy (Boyd, 2010; Leckey, 2008; Mackenzie, 2013; Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011) to examine the interrelationship of financial and child-related concerns.

Recent British Columbia family law reforms (Chapter 1) can at first seem to be in line with a relational approach in that they emphasize family connectedness, cooperation, and the vulnerability of children where parents do not “work together” in the “best interests” of their children. However, one of the difficulties with these reforms is that in that they are articulated in a gender-neutral manner, they fail to account for both a history of gender specificity (e.g., patterns of responsibility and care), and the social, relational and personal locations that map onto variance in power and privilege, as discussed in Chapter 2. As such, a relational approach that is grounded in assumptions of gender “neutrality” and obscures other dimensions of power and difference may differentially impact parents according to their locations on such axes. Eliding these differences in gendered experience has implications not only for a parent’s ability to provide care, but also for their health, dignity, and social citizenship. Moreover, obscuring these dimensions of difference in family law and policy may, in fact, either directly or indirectly increase the vulnerability of children.<sup>28</sup>

<sup>28</sup> While many children are resilient and the circumstances that make them vulnerable may be temporary, for some children (as with adults) the sum of these circumstances may be overwhelming.

Third, I assume that people are located within particular social, economic, cultural, historical, gender, and political contexts and sets of predominant values and norms. What is understood to be a problem relies not only on shared understandings that circulate among members of the “general public” (i.e., discourses) but also involves those shared among members of particular groups (e.g., professions, academic disciplines, institutions, and activist organizations). However, these groups may have conflicting needs, opinions, and agendas. While I believe that there is no single valid or accurate interpretation to be uncovered, critical reflection on the social, ethical, and political ramifications of these interpretations is of crucial importance.

Although the relational approach is compelling in that it affirms the importance of human relationships, I was at first concerned that my work could be taken up in ways that align with neoliberal strategies, rather than values of equality and social justice. For example, mediation and other forms of ADR are theoretically grounded in relational values but do not always lead to equitable or just outcomes (Genn, 2012; Grillo, 1991). Moreover, gendered patterns of power and privilege could potentially be obscured and my work co-opted to that end. Consequently, I adopt a relational approach with care and contextualize my research within the dynamic matrix of power relations in which families and other social relationships are embedded.

## **A Critical and Social Constructionist Approach to the Research**

Drawing on a critical and social constructionist epistemological perspective, I begin with the assumption that what we consider to be knowledge is not “truth” but shared understandings that come about within the context of power relations. Constructions of high-conflict divorce that reflect particular social and behavioural norms and values found in texts, conveyed by professionals, friends and family, and support/advocacy groups are therefore likely to be implicated in the meaning-making of parents who have gone through such a process. Hence, it is particularly important to explore how collective meanings drawn from extra-legal discourses (such as child welfare discourses, fathers’ rights discourse, and contemporary notions of good mothering/fathering and responsibility) shape individual meanings and experiences of

conflict in such situations and influence the impact of legal norms. Understanding how knowledge and norms are socially constructed enables an exploration of how they can be transformed.

As a former family counsellor and parent “educator,” I believe that it may be misguided to adopt a uni-directional view of parents as rational actors, who, with appropriate guidance and education, will not only “cooperate” with each other but adopt dominant norms in the interest of their children. On the one hand, there is the (neo)liberal view of similarly situated and autonomous rational agents who make “choices” based on abstract principles (Ells, 2003). On the other, “individuals are highly situated in relationships” (Ells, p. 218) with others and with institutions such that we cannot “disembed” ourselves to make the kind of informed moral choices that the liberal imagination requires. A “choice” always takes place within relations of power. Therefore, it is important to attend to how power relations affect how we understand ourselves and our circumstances. Further, following the assumption that power relations influence knowledge (i.e., what we take to be real or true), then all social relations have a political element and political strategies are embedded in the production of norms that guide the divorce process, as well as in representations of fathers, mothers, and children involved in divorce.

Social constructionist epistemology, in keeping with a relational ontological position, regards meaning as co-created to produce a subjective account of social reality. These meanings are made through social interaction, are generally agreed upon by members of a social collective, and are modified continually over time (that is, they are historically, spatially, and contextually contingent). Relatedly, meaning shapes action; people tend to act according to their extant understandings of themselves and their circumstances. As such, I anticipated that shared meanings and norms derived from practices of knowledge creation (and, therefore, implicated in processes of meaning construction) would be present in participants’ narratives. Rather than simply documenting these meanings and highlighting their appearance in participants’ talk, my study aims to understand how participants accommodate, resist, attempt to renegotiate, or otherwise act to transform these dominant meanings and norms and in so doing transform themselves.

Since critical researchers also take the perspective that meaning is not pre-existent and contend that knowledge is contextual and mediated by power relations (Hesse-Biber & Leavey, 2004), I locate my epistemological position at the confluence of the critical and constructionist paradigms. This view has important implications in terms of my role in the research and underscores the importance of reflexivity and locating myself in my work. As noted by Schwandt (2000), interpreting the lives of others involves engaging one's biases rather than attempting to set them aside. Since I take participant meanings to be socially constructed, these meanings are also continually transformed. Further, while the research findings are grounded in an understanding of the meanings of participants, I, as a researcher, am implicated in participant meaning-making.

## **Research Design and Rationale**

In-depth interviews are the main method of data generation. For this study, I conducted all of the interviews in person. Since the interviews themselves identified that very few study participants read divorce-related popular books or other materials intended for parents, I did not do discourse analysis as originally planned, nor did I undertake an analysis of relevant policy documents and non-academic literature produced by government and other relevant organizations, beyond the analysis undertaken in earlier work (Treloar & Boyd, 2014; Treloar & Funk, 2008, 2011) that is relevant to the dissertation research. As described in the study findings, participants instead drew from a variety of sources for divorce-related information.

Prior to recruiting or interviewing participants, I obtained approval from the Research Ethics Board at Simon Fraser University. I sought consent through telephone pre-screening, as well as formally through written informed consent (Appendix D).

I adopt a qualitative research design for this study as qualitative research aims to provide in-depth descriptions of the experiences of a small number of research participants to reveal subjective meanings that contribute to that experience (Popay, Rogers, & Williams, 1998). Rather than aiming to produce findings that are independent of context, the qualitative researcher "seeks to maximize the use of context as a means of locating lay knowledge and understanding subjective meaning" (p. 346).

There is a dearth of qualitative research on personal experiences and meanings of high-conflict divorce, especially in the Canadian context (see Chapter 2 for UK and Australian studies). Qualitative methods are well suited to studies that seek to understand individuals' perceptions, experiences, and the ways that they interpret and act towards the "realities" that comprise their daily worlds (Sandstrom, Martin, & Fine, 2010), as they enable a rich and in-depth understanding of personal experience that would not be possible with quantitative approaches.

My study uses in-depth semi-structured interviews (see Appendix E for the interview guide) designed to address particular aspects of the research questions while maintaining some space and flexibility for "participants to offer new meanings to the topic of study" (Galletta & Cross, 2013, p. 2). A semi-structured interview enables a fine-grained analysis of complex phenomena and generates "openings for a narrative to unfold, while also including questions informed by theory. It also leaves a space through which one might explore with participants the contextual influences evident in the narratives but not always narrated as such" (p. 2). In essence, semi-structured in-depth interviews obtain rich descriptions of participants' experiences and meanings of the divorce process.

A critical approach emphasizes the oppositions, contradictions, and conflicts within society and social practices and regards interviews as "windows into dominant ideologies [rather than the] reality of a participant's experience" (Funk & Stajduhar, 2009), while a constructionist approach assumes that knowledge is socially constructed and contextual and uses interviews to understand how people interpret the meanings of their own and others' actions (Creswell, 1998; Schwandt, 2000). In keeping with my ontological position that there is no "true" self and my epistemological stance that both knowledge and meanings are socially constructed, I view interviews as a way to create, rather than simply collect, data (Holstein & Gubrium, 1997). From this perspective, what is salient is the meaning people make of their circumstances, often best understood through interview data.

In-depth interviews illuminate the *relation* of individuals to their social and cultural context, rather than telling us about the context specifically (Miller & Crabtree, 2004).



They are “interactional encounters” (Fontana & Frey, 2007, p. 121) “in which members draw on their cultural knowledge, including their knowledge about how members of categories routinely speak” (Baker, 2004, p. 163). Moreover, as noted by Arendell (1997), Deutsch (2007), Gailey and Prahaska (2011), Schwalbe and Wolkomir (2001), and others, research interviews, as a site of social interaction, may also operate as a site of “doing gender” (West & Zimmerman, 1989), making them an ideal method to understand how mothers and fathers take up social and legal norms and come to make meaning of and know themselves through the process of a high-conflict divorce.

Interviews often involve the interviewer and interviewee negotiating power, particularly when women interview men<sup>29</sup> (Crowley, 2007; Gailey & Prahaska, 2011; Smart, 1984) and where gender is a focus of the research topic (Pini, 2005). This is because the negotiation of power is usually more apparent when gendered encounters reverse normative gender relations. Arendell (1997), in a study of divorced men, noted that many of her participants attempted to control the interview situation. However, while interviews may indeed reproduce gendered power relations, Hopkins and Noble (2009) offer an important theoretical insight that “there are a range of vectors of relationality present within masculinities in different places and at different times” (p. 812). Moreover, hierarchical power relations also arise among both women (Fellows & Razack, 1998) and men (Connell, 1995). Since people may belong to both dominant and oppressed groups, as Bowleg (2008) has pointed out, when conducting qualitative interviews it is important to ask questions that get at experiences of intersecting identities, without either hinting of, or resorting to, an additive approach that might prompt an interviewee to focus on one locus of power to the exclusion of another.

Interviews are also “heavily dependent on people’s capacities to verbalize, interact, conceptualize and remember” (Mason, 2002, p. 64). As such, they construct and reconstruct experiences and meanings; that is, interviews generate data (Mason, 2002). Selves and identities are constantly being revised, including within the research interview (Presser, 2004), and research participants “negotiate how they want to be

<sup>29</sup> I also anticipated negotiating power relations across other dimensions of difference. I view power relations as multiple, fluid, and contextual (see Scharff, 2010 for a discussion of reflexivity and interview ethics on this point).

known in the stories they develop collaboratively with the audience in the interview situation” (Reissman, 2003, p. 8). As an interviewer, I am an active participant in the construction and reconstruction of meaning (Holstein & Gubrium, 1997).

Within this framework, I made every possible effort to make interviews conversations between equals, both of whom sought to make sense of the experience of high-conflict divorce. To ensure that the interviews canvassed important areas of interest, I developed a general interview guide (Appendix E) before commencing interviewing. However, a general interview guide is a framework rather than a fixed list of questions. The researcher does not always cover every question or ask each question in the order listed. In some cases, the participant has already provided the desired information or the question may not be relevant. In this approach, an interviewer may use probes to elicit in-depth information or further clarification, encourage reflection, and ask additional questions. There is ample room for the participant to discuss topics of importance to him or her and for other, potentially important details to emerge.

At times, the conversation with my participants was more informal. For example, one of the participants spoke about being self-critical and harsh towards herself at times. She then mentioned that she had left the house without makeup that morning and had been concerned that I would judge her. On discovering that I was not wearing makeup she described herself as very relieved, and we had a good laugh together. A further example of this conversational tone is the response of one participant to a question about whether there was anything we hadn’t covered that she thought was important:

I have no clue (both laugh). It’s like cooking a soup, you put all the things in the pot and you stir, and you see the carrot and the celery and the pieces of potato going by as you’re stirring with your big wooden spoon. I have no concept of what we have left behind or what we should rather have said.

Thus, although the general interview guide served as a framework, each interview was unique and a product of the interaction between researcher and participant. As data collection progressed, these questions evolved based on themes that emerge from previous interviews.

## Recruitment Strategies

I initially sought between 25 and 30 divorced<sup>30</sup> parents for the study, with twenty-five ultimately being interviewed. The three main criteria for inclusion in the study were (1) that the participant's divorce involved disputes concerning the living arrangements and/or access to children, (2) that it fit the definition of a high-conflict divorce, and (3) that in retrospect, the participant regarded surviving or navigating the experience of a "high-conflict" divorce as having changed them in a positive sense.<sup>31</sup> While I anticipated that most participants would have been legally married, that was not a criterion for participation.

Since I had worked in the divorce counselling field before commencing doctoral studies, I initially decided to recruit in communities where I did not have connections. I attempted to recruit participants through lawyers, counsellors, mediators and community agencies in two cities in different regions of British Columbia. I selected these cities because they offer comprehensive services for divorcing parents. First, I anticipated that it would be easier to recruit participants where specialist professionals and programs existed. Second, I thought it more likely that potential participants would have had exposure to (and possibly even participated in the circulation of) dominant discourses largely promulgated through related professions and would have utilized locally available services for divorcing parents.

I mailed or emailed counsellors who specialized in working with divorcing parents, family mediators, and members of the Canadian Bar Association family law group(s) in two selected communities. In my correspondence (Appendix A), I introduced myself, described the study, and asked the individual to consider forwarding the "Invitation to Participate in a Research Study" (Appendix B) to former clients or contacts who had experienced a high-conflict divorce. Although these professionals were "gatekeepers," it would then be up to potential participants to determine if they met the

<sup>30</sup> To the best of my knowledge, all but one of the participants were legally married and divorced. See also footnote 1.

<sup>31</sup> While the participant initially determined whether he or she met the criteria for participation, the criteria were discussed further during a pre-interview telephone call, as described below.

study criteria, decide if they wished to be involved, and contact me directly. I determined that given the size of my study group, I would accept a maximum of four participants per referral source. I also placed advertisements or flyers in strategic locations (e.g., community centres and libraries) in both cities.

Of approximately 100 letters sent, I received only three responses. However, one of these was a very enthusiastic response from the Director of a large family serving agency. She invited me to attend a workshop where I could meet agency staff and board members and offered to distribute my recruitment materials (Appendices B, C, and D) within the community. Although the staff and board were very supportive and interested in the study, in the end, this effort did not result in contacts with anyone who met the study criteria. I received a single response from an alternative dispute resolution (ADR) practitioner to say that she did not have former clients, nor did she know of others, who would fit the criteria. Finally, I received a letter from the local Family Justice Access Centre to say that “decisions regarding the involvement of Family Justice Services’ clients in research are not made at the local level.” I was invited to contact the Executive Director if I wished to pursue the matter.

After some consideration, and with the recognition that Ministry of Justice staff were also obligated to consider the ethical implications involved, I contacted the Executive Director. Shortly thereafter, a staff member called me regarding some additional questions, the answers to which she would discuss with her team. I then received an email providing a number of reasons why they could not assist. These included: that their database did not specifically identify clients as “high-conflict,” thus to identify potential participants would require staff to draw on memory, which would require time and was prone to error; that once clients cease to use their service their file is closed and they have no further contact, and further, parties often move; that it would be a logistical challenge; and that the service was confidential and although they did ask clients for permission to contact them in the future for purposes such as research or evaluation, my request would involve them contacting former service users who would then contact me directly if they wished to participate, thus my request fell outside their confidentiality policy. Nevertheless, this exercise provided valuable information useful to myself and others in designing future studies.

Next, I turned to my own contacts in the field, one of whom had offered to distribute my materials at her Collaborative Family Law practitioner group meeting, as well as to vouch for me personally. This effort resulted in a small number of contacts, one of whom I interviewed (I spoke to another on several occasions, but he was still in the divorce process and did not meet the criteria at the time). In the months that followed, I made additional contacts through community agencies and health professionals, as well as through participants I had previously interviewed. A former participant sent my recruitment materials to her professional contacts, many of whom were aware of her personal experience of divorce, and this resulted in two further interviews. In this chain referral strategy, key informants who know which “cases” are information rich help to identify potential participants (Miles & Huberman, 1994). This strategy, also known as snowball sampling, is particularly valuable when attempting to identify a hidden population or one that might be hesitant about coming forward. However, since the approach does not involve random sampling, the research participants cannot be considered to be representative of the population of parents who have experienced a high-conflict divorce process. From that point forward, recruitment was slow and in the final six months of recruitment I broadened recruitment to include the entire province, placing classified advertisements in newspapers in three additional communities and offered a financial incentive.

I made the decision to provide participants with monetary compensation largely due to recruitment difficulties. Although I had some misgivings about paying some participants and not others, my supervisory committee encouraged me to view it as a pragmatic decision to attract participants, with those who participated early on having agreed to participate on different terms. Fourteen participants were given \$50 each for participation, as I anticipated that the process would take at least two hours of their time. However, in retrospect, I think that \$25 in the form of cash or a gift card would have been more appropriate. Many participants remarked that they appreciated the opportunity to participate, to be heard and to continue with their own meaning-making long after their separations were over. Thus, it was clear that the opportunity had non-monetary value to them.

Whether participants were referred through a third party or referred themselves directly, it was a requirement that they personally agree that they met the study criteria. There were some differences between self-referred participants and those referred by professional gatekeepers. For example, those who responded to my advertisements had already decided to participate and were keen to do so. In contrast, those who were identified by third parties sometimes needed to reflect on whether they met the criteria and wished to participate before contacting me, were likely to discuss participating with the referral source at length prior to volunteering (as well debriefing with them afterwards), and were likely to have used counselling or participated in ADR.

The newspaper advertisements resulted in contacts from a number of people who did not meet the criteria, misunderstood the purpose of the study, were “triggered” by the advertisement because they had previously experienced a traumatic divorce and wanted to talk, or were contacting me on behalf of a family member. Since I recognized that it took courage to contact a stranger and to consider participation, once I realized the caller was not a potential candidate for the study, I spent time listening to them and provided referrals to suitable services when required. Furthermore, even those who did not participate in the study (thus their experiences are not included in the written findings in Chapters 4 through 6) helped me to better understand the experience and possible long-term impacts of high-conflict divorce.

In hindsight, three recruitment strategies seemed to be effective: drawing on former contacts in the field that would vouch for me personally, chain referral strategies, and newspaper advertisements. I was not surprised that “cold contacts” with professional gatekeepers were ineffective. As a family counsellor working in a community agency, I was often approached by researchers unknown to me, and I did not respond to their recruitment efforts for two reasons. First, since I did not know them, I was unable to judge their motivations, including any that were not explicit. Second, professionals, for ethical and other reasons, are protective of their clients, especially when they have had a difficult experience. Nevertheless, I had hoped that my introductory letter (Appendix A) would assuage some concerns and that at least a small number of professionals would be interested in knowing more, even if they didn’t ultimately distribute the materials. I am also most grateful to those who did, and I hope

that if they read the results of this study, they will feel that their trust was well placed. Finally, a possible reason for the lack of referrals of former clients, as identified in my MA research on a similar topic (Treloar, 2003), is that many practitioners and agencies simply do not know how a former client's experience turned out, and how they made sense of the experience retrospectively. Of course, without speaking to practitioners and asking them directly, it is difficult to know why this recruitment strategy was ineffective, whether for the reasons suggested above or simply because they were too busy.

### **Choosing Participants<sup>32</sup>**

Qualitative research can be used to gain insight into people's experiences and their interpretation of these experiences, rather than to provide statistical explanations based on a conception of individuals as comprised of a set of fixed traits. Explicating the subjective meanings experienced by research participants is particularly important if research aims to inform policy and practice (Popay et al., 1998). Indeed, a qualitative approach regards meanings as fluid and individuals as representative of particular types of experiences (Luborsky & Rubenstein, 1995). Hence, rather than seeking a representative study group, the qualitative researcher is more concerned with whether the study group provides "the type of knowledge necessary to understand the structures and processes within which the individuals or situations are located" (Popay et al., p. 346).

Although I aimed to recruit a diverse group of participants, including approximately equal numbers of men and women, I experienced difficulties in recruiting fathers. I ultimately decided it was most important to recruit participants who could provide a rich description of the phenomena under study, regardless of their gender. Although having more fathers as participants would have been preferable, I seek to understand participants' meanings and experiences as more than reflective of binary categories or singular social locations. Still, as Patton (2002) points out, when diverse participants describe similar experiences, it likely suggests especially strong themes.

<sup>32</sup> Although commonly described as "sampling," the social constructionist approach eschews this term.

In the initial recruitment letter (see Appendix B) I emphasized only that a participant saw themselves as having been changed, in a positive sense, as a result of their experience of high-conflict divorce. However, despite feeling that the experience had changed them in this way, a vast majority of participants also described ongoing difficulties in some areas. Thus it quickly became clear that, despite having changed them positively overall, a participant's experience was far more complex and dynamic than initially expected. I decided to interview all participants who identified themselves as having changed in a positive sense and met the other criteria to allow further illumination of multifaceted experiences.

I declined to interview only two people, neither of whom had completed a first round of litigation concerning their children. Although I spoke to them several times during the recruitment period, they were some distance from being able to reflect back on the experience and how they had changed. As a result of one of my newspaper advertisements I also spoke to a mother who was on stress leave from her employment. She explained her stress as a result of historical divorce trauma, which was amplified by her experiences as an Aboriginal woman and of family violence. Although I believed that she would contribute much to the study, I did not feel it would be ethical to include her because of the potential risk that participation would further contribute to her stress and she was already overwhelmed.<sup>33</sup> We jointly decided that she would not participate at that time. Instead, I offered support and a referral to an agency in her community. Also, although all participants lived in British Columbia at the time of the interview, one participant was divorced in another province. Since she lived and worked in BC during her divorce and had used services in the province, I determined that she fit the study criteria.

There are few clear guidelines to assist the qualitative researcher in determining an appropriate "sample size" or when they have collected enough data (Mason, 2002). Previous studies have identified a broad range of study group sizes as appropriate for in-depth interviews, but there is no clear consensus on how many interviews are enough

<sup>33</sup> Of course, this is debatable. It is also possible that the interview would have been helpful to her. However, as a PhD researcher, I am inclined to be conservative in my interpretation of possible risks and Research Ethics Board guidelines.



(Guest, Bunce, & Johnson, 2006; Mason, 2010). I am cognizant that a purposive sampling approach (an approach involving the deliberate selection of a small number of participants who can provide rich information and convey perspectives from an appropriately diverse range of sources) (Russell & Gregory, 2003; Thomas, 1993) would ideally include more men and non-Caucasian Canadians than I ultimately interviewed, and involve previously unknown parties for assistance with recruitment. Given the difficulty attracting participants and time constraints, however, I ultimately continued recruitment until I had generated sufficiently rich data (Cresswell, 2009; Kvale, 1996) to provide me with relevant policy, practice, and theoretical insights.

The concept of theoretical saturation, defined as the saturation of thematic categories where no new themes or categories emerge (Thomas, 1993), is frequently used by researchers to rationalize the termination of data collection (Morse, 1995, 2000; Guest et al., 2006). However, this rather “elastic notion” (Mason, 2010, para. 60) assumes that a researcher aims to generate theory (Crouch & McKenzie, 2006), which is not the intent of my study. As I was aiming for analytic generalizability (Kvale, 1996) in terms of concepts and ideas (as distinct from generalizability to the larger population of divorcing parents), I concluded my recruitment efforts once I had generated sufficient rich data and found concepts and ideas were frequently repeated, thus indicating key themes. Statistical generalization involves making inferences on the basis of a representative and ideally random sample from the sampled population, whereas analytic generalizability refers to the researcher being able to generalize findings drawn from the study population to broader existing theory (Yin, 2009) (rather than generating new theory). While additional narratives would provide further examples of existing themes, I thought it was unlikely that entirely new ones would appear. Hence, I am confident that the information generated during participant interviews is adequate to meet the objectives of my study.

## **Setting of Interviews**

In total, 22 (out of 25) participants lived in or near one of British Columbia’s two largest cities. The remaining three participants lived in or near communities that had some legal and extra-legal services, but to access many of the services they needed

(including court and/or ADR practitioners and counselling) they had to travel outside the community.

Of 25 interviews, I conducted 15 in the participant's home, four in a public location (coffee shop, library, or park), two in the participant's office, two in a meeting room at the university, one in a hotel meeting room, and one in three locations—her car, the courthouse, and her home, as explained below. Meeting in public places such as coffee shops was far from ideal, but each participant chose the meeting place for their interview. In some cases, participants would have preferred to meet at the university. However, my limited access to office space and participants' busy schedules made this an option that was rarely feasible. Unfortunately, public spaces are often noisy, and the presence of others in close proximity may have affected some participants' disclosures. I conducted one interview in a park near the participant's residence where frequent disruptions (e.g., a leaf blower and lawn mower) resulted in poor quality audio recordings. The recording quality was also poor when interviews took place in coffee shops.

Interviewing participants in their homes allowed me to meet these participants in a quiet setting that was private, comfortable and familiar to them. In-home interviews also reduced the power differential as I was a guest in their home. However, not all participants wished to meet in their home. While none offered a reason for choosing a different option, I think it is likely that they were concerned about being judged, although two participants lived with other people (roommate or new partner), so privacy could have been a factor. Those who described particularly negative experiences with custody assessments were a disproportionate number of those interviewed in public spaces.

In some cases, I was introduced to adult children or new partners as they passed through the home. Most participants had already explained the meeting and purpose of my study to family members and had found the conversation afforded them an opportunity to revisit matters concerning the divorce. Furthermore, several participants mentioned that their children were also interested in speaking about their experiences and would enjoy the opportunity to do so. Since I did not plan to interview young adults about their experience of their parents' high-conflict divorce and believed that it would

require an additional ethics application, I did not pursue the matter. However, on reflection, including family members could have positively contributed to the study. Although I did not conceptualize my own research as including additional family members, a future study might usefully do so.

I arrived at one participant's home as arranged, only to discover that she had decided to apply for a variation of child support and was hoping that I wouldn't mind accompanying her to the courthouse and interviewing her in the car. Since she expected that the trip to the courthouse would involve considerable periods of waiting and she had a busy day, I had the option of rescheduling or conducting a "mobile" interview. As I live a full day travel from her city and rescheduling would be difficult, I decided to go along. The trip gave me an unexpected opportunity to observe the process and challenges she faced, as well as the nature of her interactions with court staff. Fortunately, the courthouse was not busy, and after three trips to the counter, she managed to get the forms filled correctly. The remainder of the interview was conducted at her home and through email.

## **Dates and Length of Interviews**

Interviews took place between December 2012 and December 2014, with the majority occurring during 2013 and 2014. The interviews ranged in length from 50 minutes (two were under an hour) to five hours (the latter with a transcript of approximately 27,000 words, or 54 typed pages). Most interviews were about two hours in length. When scheduling interviews, I suggested that we book two hours, although I indicated that the interview was likely to be one and a half to two hours in length. At times, the participant's schedule or the availability of a place to meet constrained the length of the interview. Consequently, a small number of meetings ended prematurely and I completed them by telephone or email.

## **Prescreening**

I pre-screened potential participants by telephone. The purpose of this contact was to explain my study, and the research process and requirements, and to ascertain

whether there were concerns about their participation (for example, currently involved in a related litigation process). I also answered questions and began to build rapport. Most calls were 15–20 minutes long but some were more than half an hour. Most often, longer calls were the result of a participant providing an overview of their story, possibly to determine if they felt comfortable enough to discuss their experience in depth. I ensured that the participant had enough information and could ascertain whether or not they wanted to proceed, and then we made arrangements to meet. If a potential participant did not already have written information about the study, I sent it by mail or email, along with a confirmation of our meeting time. I also telephoned or sent a reminder email a few days before the interview. There was one last-minute cancellation. Although the participant said she would rebook, I left her two telephone messages and did not receive a response. Possibly she had a last minute change of heart and found this the best way to handle it.

## **Interview Procedures**

Semi-structured interviews should include a mixture of questions, from more open-ended questions to provide space for description of a participant's experiences, to more theoretically driven ones (i.e., questions guided by constructs that exist within the researcher's discipline) (Galletta & Cross, 2013). Although my dissertation is interdisciplinary in nature, its theoretical constructs largely come from the critical and feminist socio-legal literature, rather than (for example) psychology or law.

Galletta and Cross (2013) suggest conceptualizing interviews as having an early stage, middle stage, and final stage. Generally, my interviews developed in this manner. At the start of each interview, I provided a brief overview of the purpose of the research and reviewed the informed consent form. I also ensured that I had permission to record the interview and made sure they were comfortable with the digital audio recorder. Finally, I asked if they had questions. Once I had turned on the recorder, I explained that the questions I would ask covered the following areas: background, how they got through the experience, how the experience changed them, and how their experience might inform others. I also communicated that they might want to cover additional topics of importance. In most cases, I had already covered these points by telephone in the

pre-screening interview and had emailed them a copy of the form to review in advance. Nevertheless, it was important to provide each participant with the opportunity to ask questions or raise concerns and to establish the participant's rights (such as to end the interview at any time or to decline to answer any question). I sought to establish rapport and respect from the outset.

The initial question, "Can you tell me a bit about you?" was designed to obtain background information without directing the participant to focus on one social location over another. If asked for direction, I responded with, "whatever is important to you." Most began with some biographical information (e.g., age, number of children)<sup>34</sup> and then launched into the details of their divorce. Thus, although some participants had already divulged details during the prescreening interview, the early part of the interview, which is open-ended, elicits the central story (Galletta & Cross, 2013). I made sure that any details from our previous discussions were repeated during the interview to ensure that I included them in my transcript, and I also used the opportunity to fill in details and ask further questions.

This early stage of the interview relies on the researcher's knowledge of the topic and their ability to facilitate "the unfolding of the participant's narrative" (Galletta & Cross, p. 47) from the participant's "angle of vision" (p. 48). Although I noted important points, emotions, insights, emerging meanings, and tensions in the narrative, participants were eager to get their story out, and in most cases, I ensured they could do so in whatever order or level of detail made sense to them. As a trained counsellor who understands the need to balance attentive listening with awareness of the risks of retraumatizing individuals, I was prepared to refocus the conversation, especially if it moved too far from the topic of research or the participant was becoming increasingly upset and remained so. However, given the selection criteria and pre-screening, I was confident that the participants were able and sufficiently resourced to respond to light redirection, if necessary. Although a small number of participants were clearly still traumatized by their experience, they were able to return to the questions when gently prompted to do so. Over the course of the interview, this enabled them to critically reflect on the extent to

<sup>34</sup> I did not collect demographic information systematically for this study, as explained below.

which they had changed. For example, after mentioning that she still struggled to trust men and was often very self-critical, one mother said:

I think if I hadn't had this conversation with you, I wouldn't have realized how far I have come....But I have made shifts and changes and I didn't recognize them until I'm sitting somewhere else, in an office, talking to somebody that's not emotionally charged on this.

During the middle stage of the interview, having built trust and rapport, as evidenced by increasing openness and occasional laughter and humour, I moved on to two key questions, "How did you get through the experience?" and "How did the experience change you?" These questions and their sub-questions were both theoretically and experientially focused. Each question framed further questions, if appropriate or not previously covered. As well, during this stage, I returned to earlier comments for greater nuance or clarification and to summarize important points woven through the interview. For example, in the early stage participants often mentioned people or programs that had supported them through the process. During the middle portion of the interview, I also sought to understand how the presence of supportive personal or social relations had made a difference, and what it meant to them.

The final portion of the interview was intended to draw together key themes and meanings and had three key aims. Since some participants had reflected on more than fifty years of their adult life (and in some cases childhood experiences and events as well), I wanted to ensure that they had a sense of coherence or closure, both in terms of the narrative and the interview. This is particularly important in that some of the experiences they shared with me were traumatic. Also, since the focus of my study was to understand how people navigated these challenges and ultimately moved on in their lives, I wanted to develop a shared understanding of the gains that had, in the end, come from these experiences. Yet, as the excerpt above illustrates, it was not all gains, and participants often felt mixed as they looked back and forth from past to present. Nevertheless, at the end of each interview, I asked for a metaphor or phrase to describe the participant's experience of navigating their divorce. According to Crano, (2014) who writes in the context of political conflicts, metaphor is a tool that "can produce superb

visions...with few or no words...they evoke strong associations...and they carry these important meaning-heavy associations with utmost efficiency” (p. 284). I decided to ask participants for a metaphor for two reasons. First, while conducting interviews for my MA research (Treloar, 2003), I noted that mothers’ metaphors were rich in meaning and reflected shifts in a participant’s sense of agency. Second, metaphors are frequently used by professionals, politicians, and the public when speaking about groups of parents who are the recipients of “public scorn and opprobrium under a dominant group consensus of what parenthood should look like” (Cammett, 2014, p. 238). Metaphor is often used when speaking about divorced parents, especially if they are in conflict, with mothers most likely to bear the brunt of harsh metaphorical language (see, for example, Boyd, 2006; Harrison, 2008; Mandell, 2002; Rhoades, 2002; Wallbank, 1998). Thus, I sought to explore the implicit meanings that I expected would be conveyed in parents’ metaphors. I also expected that these metaphors would depict the richness and full complexity of a participant’s experience, and their interpretations of these experiences, and would reflect processes of personal transformation. Many of the participants’ metaphors reflected both the struggles and the gains. I discuss these metaphors in depth in Chapter 6 of this thesis.

Lastly, I used the final stage of the interview as an opportunity to engage in shared meaning-making and to critically reflect on their experience (Galletta & Cross, 2013), although several participants who had already spent decades critically reflecting on their experience, often with professional support, did so throughout the interview. Although Galletta and Cross (2013) suggest that the last part of an interview is a good time to address tensions or contradictions in a participant’s narrative, I was cautious in this regard for two reasons. First, it was not my intent to leave participants with a greater sense of what was unfinished, and second, many of the tensions reflected in narratives could not be addressed on an individual level because they were reflective of broader social tensions. I concluded the interview by asking participants if they had advice for others (thus reinforcing that they had progressed through the process to the extent that they were able to offer advice to those entering or in the midst of the process), and whether there was anything I hadn’t asked that they thought was important. Finally, I thanked them for their contribution and, for participants recruited at a later stage, provided payment.

After each interview, I made field notes. Usually, I made analytical notes and recorded issues or concerns that arose during the interview. I also recorded thoughts, feelings, insights and connections between the interview and others I had conducted. Occasionally a significant comment was made before the recorder was switched on, or after it was turned off, and I was particularly careful to include such comments in my notes.

As a final note, although I did not ask participants for documents, some brought, emailed or offered documents. These included a separation agreement, court orders, and newspaper clippings. Although I did read them, overall, the materials supported factual details but did not add to my understanding of participants' narratives. My impression was that most of those who brought materials wanted to be believed and were of the opinion that "evidence" was necessary. As such, the documents were intended to validate details that were conveyed verbally through their narrative. Since some of their stories might indeed be unbelievable to a researcher less familiar with the field, this is understandable.

## **Transcribing**

I transcribed all 25 interviews personally. In one case, I decided not to transcribe the interview in full because the content was of such a sensitive nature that I would be very limited in terms of what I could use when disseminating my findings. Instead, I transcribed key sections and summarized the remainder. In all other cases, I transcribed the interviews verbatim apart from the names of and sensitive details regarding third parties. For example, I did not include details of difficulties experienced by a third party in the study, generally for ethical reasons. Pauses, non-verbal communication, and non-lexical utterances (pause fillers such as "um," "erm") were included in the transcript because they were (or could be) analytically important. For example, pause fillers were more common when a participant had not previously thought about the question or was actively making meaning in response to a question. Although I did not wish to "sanitize" the transcripts (Elliot, 2005), I removed some fillers from the excerpts included in my written findings and occasionally edited out repetitive portions and fillers for clarity. However, I was careful to do so only where the content and meaning would remain



unchanged. Once I had transcribed the interviews, I invited each participant to read their interview transcript and contact me with clarifications or concerns if they wished to do so. Since it was optional, I do not know how many participants did read the transcript. However, I was contacted by two participants: one responded that she disliked the inclusion of non-lexical utterances even though she appreciated that they were part of normal speech, and the other elaborated on several points.

## **Data Analysis**

Consistent with a constructionist orientation to interviewing, in which individual meaning-making is understood as ongoing and as occurring in social contexts (including research interviews), I generated data over a two-year period. During this period I also started to analyze individual interviews, but without assuming that analysis of these interviews was complete. Such an approach is largely in contrast to the notion of “data saturation,” in which the researcher seeks to develop “fairly complete and stable” (Guest et al., 2006, p. 78) themes early on, with nuance and less common themes developed later in the analytic process. Although I started coding interview data with NVIVO, after coding approximately a third of the interviews, I decided that it was insufficiently flexible for my purposes and instead used the program to search for keywords and text and to explore and visualize data.

After examining individual accounts, paying particular attention to key themes and noting how dominant discourses and social locations such as gender, generation, and employment status, as well as individual and interpersonal factors, shaped these accounts, I summarized key themes within each account. During this first stage of analysis, in order to locate individual experiences within extant social and political processes and power relations, I analyzed individual experiences of a high-conflict divorce process in relation to motherhood, fatherhood, and other social locations. I approached my study with the intention to remain open to less frequently studied dimensions of experience and intersecting identities/social locations (Bowleg, 2008; Collins, 1994; Crenshaw, 1989, 1991; Davis, 2008; Ferree, 2010; Grabham et al., 2010; Hankivsky et al., 2010; Hankivsky, de Leeuw, Lee, Vissandjée, & Khanlou, 2011), rather than predetermining these parameters in advance. After examining these individual

themes at length and determining the common themes across interviews (a process aided by highlighting and cutting up sections of transcript), I made a separate Word document for each of the common themes and transferred relevant interview excerpts into the Word document for further analysis. I read and reread the accounts within each theme and further developed them into subthemes. I also worked extensively with a whiteboard and flipchart to gain a visual sense of how themes and subthemes fit together. Final data analysis attended to shared meanings and experiences, traced processes of meaning construction, and situated these processes in practices of knowledge creation that are used by individuals to make meaning of their circumstances.

Because I aimed to interpret meanings in context, it was neither possible nor appropriate to finalize research strategies in advance of beginning to generate data (Patton, 1990). Hence, I took an emergent approach to data analysis. This inductive and iterative approach involves allowing insights, meanings and themes to unfold throughout data generation and analysis and revising my understanding in response, rather than determining the analytic approaches “a priori” (Guba & Lincoln, 1994). Ultimately, while some of the analytic approaches I used (or tried) were more or less fruitful, the iterative process of reading and rereading the interviews and developing ideas, as well as comparing emerging themes with the extant research, resulted in me becoming intimate with the data.

## **Description of the Study Group**

I interviewed 25 participants for the study. This section describes the characteristics of my study group and summarizes a number of considerations and challenges raised by its composition. I discuss these challenges in greater depth below (limitations of the study). When designing my research study, I determined that although a diverse participant group with approximately equal numbers of women and men would be ideal, there were advantages to not foregrounding gender as *the* key factor in the research.

Besides gender, parenting arrangements, social class, generation, culture, health, and employment status all play a role in the way parents navigate and make

sense of their experiences. Importantly, however, there is fluidity in some of these characteristics over time (e.g., parenting arrangements, financial circumstances, employment status, geographic location), and even though my research identifies a range of participant characteristics, I did not collect demographic data systematically. Rather, this information emerged in interviews and on occasion was inferred from the interview data. My initial question, “Can you tell me a bit about you?” was intended to generate details that were important to participants, although it is possible that some provided details in line with typical responses to requests for information, or details they thought I would want to know. In discussing the findings of this study, I note demographic information or social locations only when I consider that these differences likely shape participants’ experiences. The overall content of the interview informs such considerations. Similarly, the General Interview Guide (Appendix E) does not include questions about who initiated the divorce, whether domestic violence was a factor or specific background details about the history of the divorce process. Although a number of participants did include such details, they are not the focus of this study. Nevertheless, certain details, such as the number and age of children and the approximate year of separation were consistently mentioned by participants and are summarized below.

Eighteen women and seven men participated in the study.<sup>35</sup> All of the relationships with former spouses or partners described in this study were heterosexual and gender normative. After experiencing difficulties in expanding the pool of participants to include more fathers, in reflecting on the implications of an unequal number of fathers and mothers in the study, I determined that what was more important was finding individuals who were willing to share their experiences and could provide a rich description of these experiences and of the personal meaning of these experiences. A combination of factors likely resulted in the recruitment of more mothers than fathers. First, my materials were more likely to have been seen by mothers. Women partake of counselling and community agency services more frequently and are more likely to work within these occupations (HR Council for the Non-Profit Sector, 2013; Ferrao, 2010). Second, my recruitment materials (and the research objectives described within them)

<sup>35</sup> None of the participants were former partners.

could have appealed to women more than men. Fathers in Canada, as elsewhere, have engaged in political action in relation to family law reform, so it is possible that fathers who are inclined to engage in this topic seek a different outlet for their engagement than is possible in a research interview of the type I conducted. Since women's activism involves a broad spectrum of issues, mothers typically do not lobby or engage in collective action in this regard (Chapter 2);<sup>36</sup> however, the domestic violence community plays a more active role in family law reform. This may also be one reason that fathers generate broad sympathy for their concerns, whereas the domestic violence community is more likely to be regarded as a special interest group. Third, women may be more comfortable talking to a female researcher than men would be, especially about a sensitive topic many see as linked to gender and power relations. Although the literature on gender relations and power in interviews suggests this is likely to be the case (Arendell, 1997; Bott, 2010; Crowley, 2007; Schwalbe & Wolkomir, 2001), social locations and power relations are not always clear-cut along gender lines so it is difficult to ascertain whether or not this played a role. Finally, chain referral sampling may have played a role in the number of men and women recruited to the study. Chain referral brought only one man to the study, whereas I located four women in this manner.

In describing the characteristics of my study group, I begin with the fixed characteristics of the group members and later describe those that were more fluid over time. However, beyond the age range of participants and the "era" in which they separated, it is difficult to make more than broad generalizations. For example, among the seven participants (four men, three women) aged in their forties at the time of separation, the number of years since separation ranged from four to twenty-three. Therefore, some separated and went through legal disputes during their twenties, others more recently and within their forties. Further, of eleven participants aged in their fifties, ten were women and only one was male. This gender distribution is interesting, and given the "era" of family law reform and the rise of the fathers' rights movement during

<sup>36</sup> I was unable to find literature that compared the extent of mothers' political activism in family law reform relative to fathers'. To the best of my knowledge, there are no organized mothers' groups that focus on family law reform. Activism by and for mothers impacted by divorce tends to be directed at the different sets of issues and associated services that arise as a consequence of separation/divorce (e.g., single mothers and welfare, violence against women, child care, and housing).

the 1990s (Smart, 2014) it could be relevant to the comparatively low number of fathers in that age group who wished to participate in the study. However, such exploration is outside the scope of the current study. Four participants were in their sixties (three female, one male) and three participants (two female, one male) were in their seventies. All participants in their sixties or seventies were approximately two or more decades beyond separation and, therefore, were reflecting on a very different social and legal landscape. Nevertheless, in some ways, their experiences and sense-making were similar to those who were younger and had separated more recently.

Turning to the year of separation (estimated to within two years), eight participants separated in the 1980s, six in the 1990s and eleven in the 2000s. Of those who separated in the 2000s, four separated in the period from 2000 to 2004, and seven between 2005 and 2010.

At the time of separation, two participants had step-children and three had foster children or adopted children as well as their own biological children. Participants had from one to six children at the time of separation. Three participants were pregnant at the time of separation (one of whom was in a casual relationship), three described their youngest child as between birth and one year of age, seven described their youngest child as one to two years of age, and five described their youngest child as between the ages of three and four years of age. In sum, eighteen parents had children four or younger. Three parents described their youngest child as between five and ten years of age, and the remaining four parents described their youngest child as eleven to fourteen years of age at separation. Therefore, 72% of parents (18/25) had at least one very young child who was the subject of the dispute and had not yet reached school age at the time of separation. In the Australian context, Cashmore and Parkinson (2011) note that high-conflict disputes often involve very young children, who are seen as potentially more vulnerable. Although no comparable Canadian statistics exist, it is likely that a similar pattern occurs.

Two participants identified as (second-generation) Chinese Canadian and one as Latina (born outside Canada). All other participants were Caucasian. As explained earlier, I excluded the one Aboriginal potential participant for ethical reasons. In total,

eight participants were born outside Canada, most in Europe. Participants who had immigrated to Canada either came with their families or alone as young adults.

Although participants described themselves in terms of their “social class,” this term is contested and poorly defined. Had I collected demographic information, social class would have been extremely difficult to describe because participants’ financial situation, employment situation, and education were often fluid. For example, some returned to university or trained in a new field after separation, and some repartnered. At the time of the interview, one participant mentioned having not graduated from high school but had a trade. Five had post-graduate degrees, and fairly even numbers of the remainder had a high school diploma or an undergraduate degree as their highest educational qualification. Some also had further training or certificates in a particular field. Not all participants were working within their field of training. Three participants were on disability pensions, and five were retired (although the extent of retirement also varied). Participants’ labour force participation had also varied over time, and some had changed occupations once or more over their adult lifespan. Again, the fluid nature of participants’ employment and financial circumstances varied significantly over time, particularly among mothers who participated.

Similarly, the custody<sup>37</sup> (residence) of children varied over time, either in response to legal actions and decisions or for other reasons. These reasons included children “voting with their feet” (often changing from a poorly working shared parenting arrangement to maternal primary care<sup>38</sup>) or a parent moving to pursue a new opportunity (either with or without the children) or for practical and logistical reasons as the children grew older. Five parents described child protection issues as having been raised by one

<sup>37</sup> Since all participants divorced under the former *Family Relations Act*, I am using the term in effect at the time. In the current statute (FLA, 2011), an expanded notion of guardianship, which includes both parental responsibilities and parenting time, has replaced the terms custody and access.

<sup>38</sup> This shift is fairly common. See: Juby, H., Marcil-Gratton, N., & Le Bourdais, C. (2005). *When parents separate: Further findings from the National Longitudinal Survey of Children and Youth*. Report to the Department of Justice, Children and Youth Section. Ottawa, Canada; Maccoby, E., & Mnookin, R. (1992). *Dividing the child: Social and legal dilemmas of custody*. Cambridge: Harvard University Press.

or both parents (and investigated), and three participants described their children as having been abducted by the other parent.

Approximately half of the parents described significant health issues, which they believed were related to the stress of the high-conflict divorce. These were physical and/or emotional, short-term and prolonged. Four parents, all mothers, were hospitalized for serious (physical) health issues. An additional two parents developed an autoimmune disease, two said they had PTSD, two mentioned struggling with depression including having suicidal thoughts at the time of going through the divorce, and several described stress so severe that it impacted their overall health. Six parents said, concerning their children's health, that their children had been under treatment for mental health issues. Although two of these parents believed their child's difficulties were related to the marital or divorce difficulties, others did not see them as related. However, they felt that their difficult situation made it challenging for them to provide a peaceful environment and continuity of care. Finally, a number of parents described their former partner as having mental health issues. I discuss these allegations in Chapter 5.

Like many individuals and families, participants sometimes moved within the province or country. Some moved to new communities with their young family prior to separation, while others moved after separation, either with their children or alone. Therefore, although approximately half of the participants remained in the same community they had lived in while married, others had moved. Hence, the fact that they lived in or near to a major city at the time of interview does not necessarily mean that they did so while married or while raising their children.

## **Ethical Considerations**

All research has ethical implications that require careful consideration at all stages of the study. However, when the researcher is dealing with participants' sensitive personal, family, and legal issues, research ethics are especially complex. In this section, I describe the most important of these issues as they pertain to my study. These ethical issues, all of which were anticipated, included the benefits versus risks to

participants, confidentiality and the protection of privacy, knowledge production and representation, and issues of reflexivity. Each of these issues will be explored in turn.

## **Benefits of Research to Participants Versus Risks**

My ability to conduct this study was enhanced by having conducted a similar study of mothers for my MA degree (Treloar, 2003), as well as significant experience in counselling separating and divorcing parents and children in a family serving agency setting. While the current interviews were not therapeutic interviews or interventions, I was confident that I could manage any unanticipated difficulties should they arise. For this group of participants, given that they have already been engaged in (and successfully navigated) a difficult legal process, the risks involved in discussing their issues were similar to or less than what they have encountered in their daily lives. However, in order to mitigate risk, for example, if a participant lacks social support or is struggling with mental health issues, a researcher must be skilled and sensitive to unintended effects and make every effort to ensure that participants are suitable in the pre-selection stage. Recognizing this responsibility, I discussed the emotional risks with participants in the pre-selection stage and offered to provide them with a list of counsellors or community agencies in the local area if needed. I raised the issue again when we went over the informed consent prior to commencing the interview. Since participants that met the recruitment criteria were, for the most part, well versed in the supports available to them, no participant requested this list. With regard to potential emotional effects, most participants described the interview as having a positive effect, which suggests that the process of transformation is ongoing for these participants.

Van Manen (1990) notes that in-depth conversational interviews, if done well, may result in greater self-awareness, altered priorities, and other changes. Since many of the participants in my study were already well into a long-term process of personal development that parallels the changes van Manen describes, I believe that the interview further enhanced that process. Making meaning and weaving a difficult experience into one's life is ongoing, even long after the experience is over. For those who felt that they were still struggling, as a researcher, I was a "witness" to their struggles and transformation. A number of participants commented afterwards that they



found me to be sensitive and respectful throughout the process, and that they felt that I was trustworthy. Further, in the process of shared meaning-making through the interview, many described the interview as an opportunity to really feel heard and to help others in the process, and they noted that in retrospect, they could see how far they had come. Although unintended, this consequence was a benefit for participants.

## **Confidentiality and the Protection of Privacy**

Particular attention to the privacy and rights of both participants and third parties informed the design of my study. Specifically, in order to protect individuals, as well as the university, my research was designed to ensure (to the extent possible) that no participant or other involved party could be identified or implicated in transcripts, field notes, research results, publication, or any other manner of dissemination. Furthermore, if collaterals (for example, former spouses, children, or professionals) were mentioned in my written findings, I took particular care to ensure that they could not be identified. Although a small number of participants wanted to waive full confidentiality and consent to participate in the knowledge that their identities would be known, I explained that it was not an option. I further explained why I could not do so, and that I was bound to a set of ethical guidelines and understandings, the basis upon which my study was approved. Because of the relational nature of this study and participants' previous legal involvement, I had an additional ethical responsibility to protect the privacy of third parties.

Since only about 10% of divorces are high-conflict (Johnston & Roseby, 1997), and the family law and ADR communities in BC are quite small with each profession's groups closely connected, I decided that to protect participants' privacy, it was necessary to use common themes in my written findings rather than providing detailed individual portraits (as in a case study approach). Within each theme carefully selected, portions of individual narratives appear, but I have removed most of the identifying details so as not to provide a common individual thread running through consecutive themes which might allow the reader to derive any individual portraits. However, even removing identifying information and using pseudonyms involves a small risk that others could link up interview excerpts or commentary across the thesis (Morse, 1998), and

conceivably, additional publications, to deduce participants' identities. Further, since I am likely to use excerpts across different publications and contexts, I am aware that I could potentially, although inadvertently, describe a participant's circumstances so that an individual reading or listening could ultimately develop a composite picture of one or more participants. Accordingly, careful notes will be made to ensure this does not occur.

With these concerns in mind, I employed four additional strategies to protect participants' confidentiality. First, where participants' identities could be recognized by someone knowledgeable about the details of their case, those details were left out of the written findings. Second, at times I decided against using a particular interview excerpt only because in combination with other excerpts from the same interview I was uncertain whether others might recognize the individual or case involved. Third, following the advice of Morse (1998), who advises researchers not to identify the participant in every quotation, "unless there is a compelling reason to do so" (p. 302), I have not always used a pseudonym. On four occasions, each of which relates to a different participant and a significant but sensitive issue, I have indicated in a footnote that I have done so. At times, I have described the participant as "a father" or "a mother," or grouped participants' comments together. Finally, in order to protect the identity of individuals involved, I occasionally changed minor details that would not change the meaning of the excerpt. Although these additional measures have disadvantages—for example, the rich and complex details of an individual's circumstances cannot be conveyed in their entirety, by instead emphasizing common themes, I highlight collective issues. Nevertheless, I endeavoured to find a balance between rich detail and attention to the protection of participants' privacy in a way that does not detract from the overall findings of the study. When researching sensitive topics or within small, specialized populations, there is a real tension between upholding confidentiality and protecting the identities of participants while ensuring that participants' meanings are retained (Drake, 2013). In this regard, Drake (2013) carefully examined each chapter of her thesis, asking questions such as whether the participant could be identified by elimination, or whether the participant used particular idiosyncrasies in terms of language. I engaged a similar process, noting, for example, speech patterns, idiomatic expressions, or opinions that could identify participants.

Confidentiality within the study group must also be considered, including a researcher's ability to maintain the details of participant involvement when third parties have been referred to the study. Since my study involved both chain referrals from former participants (two participants each referred me to an additional two participants) and third party referrals, in some cases participants were not unknown to each other. Indeed, three worked in the same profession. Nevertheless, it was a requirement of the study that participants who were referred to the study had to contact me directly. Indeed, as anticipated, on a number of occasions, individuals asked whether I had been contacted by, or made reference to, a participant in the study who had been referred by them. I addressed this by reminding them that I could not tell them who had contacted me or participated and drawing their attention to that requirement as described in my recruitment materials.

Privacy protection and the storage of materials was a particular concern in my research. Considerations of privacy of person and information were addressed according to standard research protocols and as required by my university Research Ethics Board (REB). Specifically, anonymized interview transcripts, notes, and records were stored in a locked file cabinet. All materials, whether in print or electronic form, were filed using numbers instead of participant names. Further, anonymized files and recordings were stored on a password protected flash drive and stored in a locked file cabinet. Finally, paper records will be destroyed five years after the completion of the study and audio recordings will be destroyed after two years.

## **Knowledge Production, Representation, and Sharing**

This study raises a number of ethical issues concerning the production and representation of knowledge. Throughout all stages of the study, I reflected on whether my decisions and actions could harm others. Despite careful consideration of the potential for misuse or misrepresentation, I acknowledge that I cannot fully control how the knowledge I produce will be used and that despite all efforts to mitigate the potential for harm, there is still a small possibility that harm could occur to participants or to me.

With regard to the production of knowledge, I have taken steps to protect participants who have divulged considerable information of a personal nature. At the start of each interview when discussing and obtaining informed consent, I highlighted the possibility of such a risk and reminded participants that they could ask me to turn off the audio recorder at any time. Indeed a number of participants did so (for example, if they were sharing sensitive details involving a child). Participants were also invited to read their transcripts for accuracy in case I had misunderstood any aspect of their experience. In addition, I am acutely aware of the anguish participants felt when they told their stories and “explained themselves” in the legal process and were unheard, disbelieved, or treated dismissively. I do not have a way to verify the details of each participant’s narrative, nor do I wish to do so. My research attends to how participants make sense of the experience, rather than the “truth” of their description.

Concerning the representation of study findings and dissemination through this thesis and other publications or conferences, I am aware that given the sometimes contentious “politics of the field” there is a risk that my findings will be misrepresented. Further, I am cognizant that my interpretations and knowledge, once disseminated, will be incorporated into the meanings (and potentially the knowledge and experiences) of others. Nevertheless, that is how knowledge is produced and transformed over time. Knowledge is produced dialogically (Sevenhuijsen, 1998), thus the researcher is always implicated, at least to some degree, in the research process.

While the academic literature (e.g., Arendell, 1997; Devault, 1999; Doucet & Mauthner, 2008; Warr, 1999) suggests that not all participants will fully share or agree with my final interpretations, I consider it to be both an important ethical challenge and my responsibility as a researcher not only to protect participants from harm, but to represent them with care and respect for their beliefs, views, and autonomy. To that end, my authorial voice has been, and will continue to be, developed reflexively, responsibly, and with care. While as researcher, I have both ethical responsibility and the final authorial voice, it will be up to my readers to judge my success in this regard.

## Reflexivity: The Researcher's Voice and Positioning

Reflexivity plays a central role in feminist interview research. Feminist researchers attempt to create reflexive knowledge, while at the same time being reflexive about their production of knowledge. Reflexivity may be broadly defined as a critical self-reflection on the impact a researcher has on the entire research process, including assumptions and motivations in relation to their research and an analysis of intersubjective dynamics (Finlay & Gough, 2003, p. ix). Self-reflection involves reflection not only on one's personal autobiography but also on one's political, intellectual, and theoretical autobiography, including the influence of critical relationships (Doucet, 2008). By situating both the researcher and the research project, reflexivity challenges the view of an objective, impartial researcher and at the same time makes the researcher's role more transparent (Finlay, 2002). Reflexivity not only involves an ongoing internal dialogue (Hertz, 1997) that involves both reflecting *about* experience and being present *in* experience but also provides insight into both knowledge production and the social/political world (Hertz, 1997). Where and how a researcher is positioned across a number of political and institutional dimensions has differential implications for the practice of reflexivity.

In addressing reflexivity as a final category of ethical consideration, I reflect on the role of my positioning and voice as researcher in relation to specific ethical issues that arose as a result of my theoretical and methodological approach. In addition, since I have multiple positions in relation to the topic, I explore how this reality impacts my research.

Given that my study centres on a topic that involves contentious gender and power relations, an overarching issue is that of the appropriateness of using a feminist lens for interviewing men and for interpreting and representing men's experiences. In examining this issue, a number of ethical issues arose in relation to my theoretical and methodological decisions. These include issues pertaining to the researcher-research participant relationship, positionality, representation, and author(ity). After much reflection and exploration of "feminisms," I chose a relational framework (as described above). Not only do I believe it to be a good fit for my study, but it also allows me to be true to my personal ethics and political commitments. Moreover, I am committed to

reflexivity and attention to power relations, including in my relations with research participants. Much has been written about how differences such as age, socio-economic status and gender between researchers and those who participate in their research can affect power relations and result in participants framing their accounts accordingly (Kvale & Brinkman, 2009), but power relations must also be considered more broadly.

Having first grappled with the question of whether or not I should interview both men and women, I concluded that doing so is both important and appropriate given my topic. Moreover, as Ramazanoglu and Holland (2002) point out, since gender and power relations are central to feminist research, the study of men and masculinities plays a significant role in feminist research. Further, I cannot assume that participants, regardless of gender, would see my feminist views as problematic to the extent of changing their willingness to participate. Such an assumption would be essentialist; feminist views are not shared by all women, nor do all men reject feminism. Areas of similarity and difference, agreement and disagreement (and so on) will have multiple dimensions, not just that of gender. Given my belief that interviews are co-constructed, while I was forewarned of the potential tensions inherent in interviewing men as a feminist researcher (cf. Arendell, 1997; Crowley, 2007; Doucet & Hawkins, 2012), I recognized that I could not anticipate all issues in advance. Nevertheless, I acknowledge that I was often more relaxed while interviewing women and that there were occasional moments while interviewing one of the men when I had to ignore sexist comments or was uncomfortable. Such moments were rare. I was aware of times with most participants, regardless of gender, that we shared some opinions, experiences, and social locations and did not share others. Yet, since my focus was on the participants' experiences and meaning-making, I made sure that I noted but was not distracted by these similarities or differences.

As a woman who interviewed both men and women, I was also aware that issues of boundaries and personal safety could arise, particularly when interviewing men. Of the seven men who participated, five were referred by a third party (either a professional or previous participant). Thus most men were "vetted" by third parties in advance. Of the two who were recruited through a newspaper advertisement, one chose to meet in a public place, and I met the other at his home.

Despite third party vetting, there were two situations where issues of boundaries and personal safety arose for me as a researcher. During one interview, I felt concerned about my safety. However, I stress that my anxiety arose because of particularly disturbing details shared by the participant—his behaviour towards me was entirely respectful. Nevertheless, I recognized that no one knew where I was and if I needed to leave there was no way to the door without passing the male participant. Despite the ethics protocol in place, which was that I would end the interview and leave if necessary, the situation did not lend itself to such an exit. Further, his behaviour gave me no reason to leave. Having listened to some of his story and realizing that I could not include it in any reported study findings because it would immediately identify him to professionals familiar with his case, I explained that to him, and we moved on to a different topic. Fortunately, as a former counsellor, I have learned to listen and maintain my focus on a client, even when they tell stories that are difficult to hear or express strong emotions, while managing my own feelings and reactions at the same time. Nevertheless, recognizing that I could have found myself in a dangerous situation but be unable to leave, I think it would be helpful to put in place a different protocol. For example, as suggested by Kenyon and Hawker (1999), I could have left details of my whereabouts in a sealed envelope with a third party, or put into place other strategies to ensure my safety. Although my interaction with this participant reminded me of the importance of a lone researcher considering safety strategies in advance, my discomfort arose from my awareness of risk rather than any action on his part.

With one exception, all male participants maintained appropriate boundaries for the context. The one participant who transgressed boundaries on several occasions made comments about the fact that I didn't have a wedding ring on and asking whether I was married. On each occasion, he prefaced the comment with words to the effect of, "I probably shouldn't but...." I addressed each situation separately, either answering or ignoring the question as seemed to make sense at the time. My interpretation of this boundary crossing was that it was intentional, with the participant enacting and asserting a masculine identity in the research context (Arendell, 1997).

Researchers rarely occupy stable and unitary roles in relation to their research. Rather, they occupy multiple subjective roles that bear on their research in a variety of

ways (Riley, Schouten, & Cahill, 2003). I recognize that I am multiply positioned in my research and that this provides me with a unique perspective that is an asset in my work. For example, I understand the family legal system and am familiar with the legal and social services available. Not only did that relieve participants of the need to provide descriptions of these systems and services,<sup>39</sup> but my previous experiences in the field likely afforded me greater credibility with participants. However, I am also aware that divorce researchers rarely include their positionality relative to divorce in their research findings (for an exception see Hopper, 2001). Nevertheless, given the intensely political nature of divorce research, most are “outed” regardless, especially if their findings counter established views and existing knowledge. Hence, since I recognized at the outset that my insider-outsider role was an asset, especially from the perspective of research participants, I included the following personal information in my letter to potential participants: “As a divorced parent, former divorce counsellor, trained mediator, and the child of happily married parents who recently celebrated their golden wedding anniversary, my interest in this topic has spanned more than two decades” (Appendix B). From an ethical perspective, I understand the impact of these different positions. I also recognize that no single position I hold in relation to my research can be separated from the others. Therefore, as I see it, my positions intersect in such a manner that I am ideally situated to undertake interdisciplinary work in this area, and, hopefully, to make a constructive contribution to the field.

## **Limitations of the Study**

Next, I turn to some limitations of the study and, where relevant, how I attempted to overcome them. The main limitations of the study are epistemological in nature. Specifically, these include the use of qualitative research methods and in-depth interviews and the nature of the study group. Since these limitations have implications for the generalizability (Kvale, 1996) of the results to the broad population of divorcing parents, the research findings should be interpreted with that in mind. However, these findings may be helpful in assisting researchers, policymakers, and other interested

<sup>39</sup> This is also a potential limitation of this study (see limitations below).



parties to better understand the complexity of the issue, as well as possible meanings made by parents in similar circumstances. Kvale (1996) refers to this as naturalistic generalizability. Specifically, naturalistic generalizability tends to involve tacit knowledge and arises from people's experiences. Further, by providing a reasoned argument that demonstrates how broader social processes serve to organize the lives of study participants, the study may also have analytic generalizability (Kvale, 1996) in that the findings could apply to similar processes or individual experiences involving a different social situation.

Although qualitative research is designed to yield rich data, as described above, this often means that the research group is of a smaller size and is less representative than in studies using quantitative or mixed methods. Nevertheless, my study group size was consistent with that recommended in the qualitative research literature (Charmaz, 2006; Cresswell, 2007) as well as with similar research by doctoral students. The size of the group is, however, smaller than in studies conducted by groups of researchers in other countries, particularly where that research has generated significant funding. Such funding permits both a larger number of participants and the involvement of multiple researchers.

It would have been ideal to have a more diverse study group, particularly in terms of gender and ethnicity, as discussed above. Although I do not know precisely how a more diverse group would alter the study findings, I was curious to explore how gender, in combination with other dimensions of difference, is implicated in meaning-making. I suspect that the findings would be more nuanced. However, although gender, ethnicity and class are social locations that are commonly thought of as important in terms of diversity, my study group did include participants of different generations, as well as mothers and fathers who had (at least at some point) primary care of children and fathers and mothers who did not. It would have been particularly interesting to explore influences and differences among the north/south and urban/rural populations of the province. Most of the participants come from large urban areas in the southernmost part of the province, where most services are also located. Indeed, this would be an interesting focus for a future study. Similarly, an interprovincial or cross-national study

could provide interesting differences comparatively. The findings did suggest similarities with UK and Australian research that would be interesting to pursue further.

As noted above, my knowledge of the legal system and experience of divorce could be a limitation to this research, whereby participants did not say as much about services they received or their understanding of the legal system than they might have done if they believed I was entirely unfamiliar with them. Further, my assumption (as well as the assumption of participants) of shared knowledge about the family legal system could be a limitation in the sense that I might have missed some interesting and different insights from the participants. Despite this limitation, I did not assume that participants' experience or knowledge and the meaning they made from such knowledge and experience was the same as my own, or was shared among participants who were similarly located to each other.

Using in-depth interviews also presented limitations for the scope of my research findings. First, since interviews are a product of the interaction between the researcher and participant and the researcher is the primary research instrument, they could not be replicated by another researcher. Second, questions in the interview guide were focused on meaning-making. Participants responded by drawing on memory and memory of events is not always accurate. Nevertheless, as described above, my intent was not to determine the "truth" of the events but to understand how parents made sense of them retrospectively (and at a particular point in time, i.e., the research interview). As a former counsellor who also has some previous experience with research interviewing, I am confident that these interviews generated quality data.

In the next three chapters, I present the overall thesis findings and provide a comprehensive picture of how mothers and fathers interviewed for my dissertation research make sense of their experience of a high-conflict divorce. In the first of these findings chapters (Chapter 4), I present findings concerning the interrelationship of financial and child-related issues, showing how these disputes are connected with broader issues of gender and power, including the implications for power and choice among those who need to use the legal process. I argue that disputes over child support also involve gendered meanings of responsibility and care, which further contributes to

conflict between the parties and has implications both for settlement of their disputes and for their autonomy. As well, I make the case that gender, generation, class, and other social locations, *in combination*, influence the meanings parents assign to money and autonomy. In Chapter 5, I explore parents' accounts of their experiences with the family justice system, their encounters with affiliated professionals, and the way they take up various knowledge claims as they attempt to resolve difficulties. I apply Fricker's (2007) concept of epistemic injustice to practices of knowledge construction about high-conflict divorce to argue that an individual's epistemic resources are central to meaning-making and agency. Furthermore, power and privilege largely determine which discourses will prevail both in court and more generally, and whose voices will be heard. I demonstrate that even in the face of significant constraints, participants exercised their agency and over time most participants developed self-authorizing voices. In Chapter 6, I address participants' accounts of positive change and the resources they drew on in this regard. There, I suggest that by seeing some of the challenges participants had to confront and often resolved over time as aspects of normal adult development, it is possible to move away from the current conception of high-conflict divorce as reflective of personal or parental pathology and that to do so offers a more constructive way forward.

## Chapter 4.

### **The Interrelationship of Financial and Child-related Issues: Gender Matters**

Although lawyers and allied professionals (e.g., mediators and psychologists that work in the family law field) are taught that money and child-related issues are distinct issues that should be kept separate post-separation, the quantum of money available to a party has significant implications for their ability to access the justice system, as well as for their relative power and autonomy. Bala and Gordon (2012) have noted that although the Canadian courts will not enforce agreements where there appears to be an “exchange” of kids for cash (or vice versa), in the minds of lawyers and parents, these matters are often interconnected. Even children whose parents are divorced tend to see money and love as interconnected, in part because we live in a market society where family resources are implicated in social relations (Haugen, 2005). In the UK, Smart and May (2004) found that in court files issues concerning children’s arrangements and financial issues were often enmeshed, such that “even the benign idea of parental responsibility could be highly contentious in normative contexts where one parent was seen to be acting irresponsibly by trying to claim and assert parental responsibility through the courts” (p. 358). While acknowledging that the interlinking of financial and child-related disputes is often seen as illegitimate (e.g., due to vindictiveness), Smart and May (2004) suggest that the issues are not discrete; rather, they often involve complex ethical issues concerning parental responsibility, child welfare, fairness of financial arrangements, and so on. Thus financial inequities between parents post-separation (or perceptions thereof) may contribute to ongoing conflict, constrain choices available to the less well-off party—usually the mother, and may also result in legitimate legal disputes going unaddressed and unheard.

Considerable research suggests that the primary reason that financial and child-related issues are so contentious is that these disputes tap into broader issues of gender and power, often linked to the distribution of paid work and care in family life. According to Carol Smart (2014) it was not until the 1980s that the “gender contract,” an arrangement by which many women gave up their jobs at marriage to become a full-time wife and mother, while men assumed a breadwinning role and continued to advance in their careers, was recognized by the Women’s Movement as failing to protect women from economic consequences when the arrangement failed. Among the five participants in this study who separated during the 1980s, only one did not follow this pattern, yet she found herself in poverty nevertheless. However, my study suggests that economic disadvantage at separation—whether in the 1980s or more recently—is more complex and nuanced in practice than a simple focus on the gendered division of work and care would allow, for a number of reasons. These include fluidity in patterns of employment and care, both on the individual and parental level, complex parent or child health issues, and the role of family law and policy in promoting arrangements of shared responsibility and care—arrangements that are not always viable or enforceable. Thus while clear gender patterns may result in different kinds of bargaining power on the couple level (Bollen, Verbeke, & Euwema, 2013), these same gender patterns have implications for knowledge production, and, therefore for policy and law reform (Cook & Natalier, 2014). In a recent study on child support, Natalier and Hewitt (2014) note that

the benefits of engaged fathering as they are promoted through policy and political claims can exist in tension with women’s financial autonomy and legitimacy as mothers. For most fathers in this study, contributing child support was only part of fathering: retaining control by “having a say” over how mothers spent “my” money enabled men to father in ways that aligned with and reproduced hegemonic masculinity. When these claims are incorporated into policy or law, they institutionalize domination and subordination by reinforcing hegemonic masculine control over money and compelling traditional feminine subservience to men’s interests and financial authority. At a material level, mothers may be directed by fathers to spend child support on costs they did not choose and cannot afford in the context of strained budgets. Thus, already poor mothers may experience further economic and social vulnerability. (p. 922)

In the contemporary capitalist and neoliberal context, money has a great deal to do with the choices (and resources) available to separating parents, not only to resolve their disputes with the other parent and then move on, but also to raise their children according to mainstream notions of good parenting and with the opportunities to encourage their individual success. Household resources have a considerable impact on parents' ability to provide for their children in terms of social networks and opportunities, in addition to having implications for children's education, health, and overall well-being. Money is also necessary for parents to obtain support and other needed services, such as counselling, for themselves and their children. Those who must access the courts and who have limited means must often forego these services in order to pay legal fees. As such, resources have a considerable impact on resilience (Fineman, 2010) as well as maternal autonomy (Boyd, Chunn, Kelly, & Wiegers, 2015). Since the study participants (all of whom identified themselves as having changed in a positive sense as a result of their high-conflict divorce process) often made extensive use of counselling, group programs, personal coaching, and community agency programs, as Chapter 6 demonstrates, cutbacks to publicly funded programs and services (described in Chapter 1) are short-sighted and counterproductive. In conjunction with sufficient financial resources and personal support, these services are invaluable, both as parents navigate their disputes and in transformation over time.

The interrelationship between financial and child-related conflicts is one of three common themes that emerged from my analysis of participant narratives. In this chapter I examine this theme, exploring how parents negotiate the complex terrain of child support, parental responsibilities, care, and autonomy, and make choices about whether to pursue or continue with litigation. I describe the impact that financial disputes have on parents' perceptions of their former partner as a *parent* and how they can aggravate conflict, particularly when financial constraints affect their ability to provide for children or to obtain a just resolution to disputes. Gender is central to these narratives; however, participants' other social locations (e.g., labour force participation or social class) and individual contextual factors (e.g., child or parent with a medical condition, child abduction, domestic violence) provide additional nuance. I draw on relational autonomy theory (for example, Boyd, 2010; Leckey, 2008; Mackenzie, 2013; Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011) as an analytic lens for contextualizing these disputes, and

for highlighting how gendered meanings of money and of autonomy intersect in participants' accounts, with particular implications for autonomy and equality.

As discussed in Chapter 2, relational theory, in contrast with liberal and individualistic notions of autonomy and the individualistic self, views the individual as embedded in a broad range of social and political relations and therefore regards people's experiences as complex (Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011). Thus, relational autonomy theory views vulnerability as a function of our interconnectedness, not simply a lack of resilience and independence that can be remedied with resources of some sort, with the aim to eliminate vulnerability entirely.

Natalier and Hewitt (2014) have recently explored how parents with disputes over child support both reproduce and contest gender in their accounts, with mothers stressing their child focused authoritative position and fathers emphasizing their authority as breadwinners. My findings were quite similar in that regard, but they highlight the burden on the receiving parents (usually mothers) when they are left with inadequate resources and cannot obtain or enforce child support orders. Mothers in my study saw this as a significant injustice, and one that made it extremely challenging to fulfil their child-related responsibilities. As discussed in Chapters 1 and 2, in Canada, breadwinning is still valued over care-giving (Caranci & Gauthier, 2010; Turcotte, 2013); thus, ignoring the material difficulties mothers face when they are left to pick up the pieces in a context that does not value their care-work, further perpetuates injustice, and, as Natalier and Hewitt (2014) rightly point out, reproduces their subordination.

The following sections address four main subthemes of the interrelationship of financial and child-related issues theme: (1) the costs of justice and access to justice (including alternative dispute resolution (ADR) and the implications for those who must use the legal process in terms of power and choice), (2) responsibility and care in the face of limited or uneven material resources particularly when disputes also involve financial support for children, (3) gender roles, gendered norms and the "gender contract," and (4) financial autonomy as a component of personal agency. I will now explore each of these subthemes in turn, although, as excerpts from interviews show, in many ways, these subthemes are interrelated and interwoven.

## Money, Power, and the Costs of Access to Justice

Access to money largely determined participants' access to justice (whether formally or informally as ADR) as well as to other forms of support. Furthermore, access to money was significant in the choices participants made in pursuing that justice. As noted above, the costs of justice, responsibility, and care for children under difficult material conditions, the marital division of labour within households (and expectations thereof) and financial autonomy are interlinked. Notably, all but two participants (both fathers, minimal litigation) mentioned the cost of justice, with most linking the cost of lawyers and litigation to their ability to access the legal system and/or ADR. They understood this had implications in terms of their power and choice in the legal process, with many also noting that with less money than the other parent<sup>40</sup> they were at a disadvantage. Participants seemed to regard this disadvantage as the consequence of an inequity of power and social class, with wealthier parties able to play the system and/or exhaust the resources of the other party. Money was understood as a tool of power, used and wielded by those with more of it, largely determining the ability to get a fair outcome. Even when participants came up with the money for legal services, in the end, most felt that it had not been worth the enormous expense and they were no further ahead. Thus there is a contradiction that on the one hand, money is necessary to participate in the legal process, but on the other, few were able to secure a satisfactory outcome. As Cindy, a mother who had ongoing issues with child support, said:

there was no way of doing it differently because there was no one to help. I mean, yes, you could go and see a lawyer again and he would take your money, and there would be no solutions even if he said oh, it will be like this, or oh, I think...after you've paid him for every minute you sat in his office. It was like ka-ching—another twenty-five dollars, another hundred dollars, another two hundred dollars, and eventually you just get to the point like I can't do that. There's no money for this.

<sup>40</sup> In some cases, the parent and his or her extended family. Interestingly, the fathers I interviewed considered their ex-wife's parents' and new partner's resources as part of the wife's resources (whereas they saw their own resources as individual in making the same determination).



While Cindy's narrative clearly articulates her frustration at the cost of legal services, it also suggests that she sought assistance in the hope that someone would help her to finally resolve her disputes. This suggests a somewhat passive help-seeking approach that is in line with gender norms. However, despite her perception of injustice, in the end she exercised her agency by giving up on the legal system and money owing to her and putting extra hours into her business. Unfortunately, this meant less time with her children which she perceived as unfair, especially as she had already agreed to shared parenting (defaulted to parallel parenting<sup>41</sup>) against her better judgment.

Rick and Ben (both fathers in their forties and 5 years post-separation) described a similar frustration with significant legal expenses after going through several lawyers with little "progress." In contrast to Cindy, they were not looking for help just to *resolve* the dispute, they were looking to advance their position in a conflict over shared parenting (Rick) and the quantum of time with the goal of shared parenting (Ben). As Rick explained,

There was a lot of back and forth high-conflict and [I] paid a lot of money and didn't really gain a lot of ground. I think [that] was the most difficult part—not getting any traction and trying to come up with some sort of common ground as far as sharing parenting.

Once a relative who was a lawyer offered to take on his case, however, things changed completely for this father and he was able to reverse an earlier court decision and gain sole custody of his children. This example shows how parents can experience similar challenges, but depending on the resources at hand, some give up, and others decide (or are able) to persist in their efforts to resolve family law disputes.

Another father, Jeff, who was battling both his former partner and the Ministry of Children and Families regarding child protection issues, reported that he used up the retainer he was required to pay his lawyer on dealing with the division of assets. The

<sup>41</sup> In this form of post-divorce parenting, parents share parenting time but each has the authority to parent independently without the requirement to communicate with the other or reach consensus.

lawyer was adamant that the division of assets and child issues be dealt with separately, and that the assets be resolved first. Although he was also hoping to retain the lawyer to settle issues regarding their children's living arrangements, it did not take long before his finances were exhausted and he had to seek legal aid. Although neither party was particularly wealthy in this case, as discussed above, some parents believed that the outcome of litigation has at least as much to do with the parties' relative financial power as it does the merits of the case. For example, one mother believed she lost custody largely because of financial inequalities between herself and her ex-husband, meaning that the outcome was largely due to his ability to afford a "better" lawyer and work the system to his advantage:

He had money. I was...legal aid represented me so I had a limited choice of lawyer, where he had...he kept our money. He had control over all the bank accounts and everything so I had no access to money. I was on welfare while he was living in a castle, if you will, while travelling and doing his thing. So he had his choice of top lawyers. (Carol)

Some parents who described significant financial inequities between themselves and their former partner sought free advice through clinics, legal advocates, or community agencies and/or were loaned money by their parents. Margo mentioned that her parents financed her divorce, despite them having very limited means. Although she was working full-time in a government job, Margo was barely able to cover the monthly expenses including child care, and she did not qualify for legal aid. She was particularly grateful for her employee medical benefits, which included counselling. Without the support of her counsellor, "I think it would have been really gruesome...and in those days it wasn't limited like it is now. So I really feel for people who don't have that opportunity. I also frequented single parent programs at [neighbourhood house]." Having exhausted her financial resources and without an end in sight, Andrea went to a women's advocacy centre hoping they could help her, but they were in the midst of packing boxes. They told her that they had been forced to close due to provincial budget cuts. Notably, many of the resources mothers found helpful are no longer available or exist in limited scope under the current provincial (Liberal) government (Caledon Institute, 2002; Griffin-Cohen & Klein, 2011; Klein & Long, 2003; McBride & McNutt, 2007; Teghtsoonian, 2003). Three

mothers (Kathy, Carol, Andrea) also mentioned their lack of independent access to family funds for legal advice or litigation—often because these funds were tied to a business—and described how they attempted (not always successfully) to obtain alternative support. Another returned to her husband after he had assaulted her because she had no access to funds (he also threatened to have her institutionalized<sup>42</sup>).

Parents with particularly complex situations, especially those that put them or their children at risk, may need extensive legal support from an experienced lawyer. Even though she qualified for legal aid, a participant who had both exited an abusive relationship and dealt with the abduction of her children was advised by the police to “hire a good lawyer.” They told her that legal aid would provide a “substandard” service, and without proper representation, she and the children were in imminent danger. Although she was living in a transition house and was on temporary social assistance (welfare), she cashed in her remaining assets, including her retirement savings plan. Final resolution of the child-related issues took years and took a tremendous toll on her emotional well-being. Now, as she faces her senior years in poor health and poverty, she is far from the young vibrant professional she once was. Although her marriage ended more than two decades ago and the opinion provided to her by the police at that time is debatable,<sup>43</sup> provincial cutbacks since that time have decimated family law legal aid (Beveridge, 2009; Treloar, 2015). These cutbacks have had serious implications for those who require legal representation, particularly now that legal services are beyond the means of many low and middle-income Canadians (Trebilcock, Duggan, & Sossin, 2013).

Most participants believed that their case was won or lost on the quality of their legal representation, which was based on what they could afford, over and above the interests of the children. Jen (mid-sixties), who was formerly married to a lawyer and in a dispute over where their children would live, described how she sought legal advice in a

<sup>42</sup> She believed he would make good on his threat because he was a helping professional and she saw him as having power in the system. Also, since one of her grandparents had been institutionalized, she feared that would be used against her.

<sup>43</sup> In my view (as a former counsellor in this field), the quality of legal aid representation is variable. Participants in this study also reported a range of experiences which varied according to their lawyer and the particulars of their case.

different city. That lawyer suggested that she work with his junior lawyer, on cost grounds. Although she “liked his attitude,” the junior lawyer was not very knowledgeable. She wrote all her own materials under his guidance and was grateful that he “didn’t charge what he could have.” However, she lost the dispute. In this particular situation, although “unbundling” legal services enabled her to access both advice and representation, and was in some ways empowering, she believed that her case was one in which money, power, and knowledge of law ultimately trumped the interests of her children. She may well be correct. Feminist legal scholars (for example, Boyd, 2003; Fineman, 1994; Smart & Sevenhuijsen, 1989) have extensively reported on how unequal financial resources, gendered power relations, and the historical exclusion of women from the “public” realm may result in their disadvantage in the context of child custody disputes. In Jen’s case, both her former husband’s legal skills and the fact that she had no legal experience and could only afford limited services from an inexperienced lawyer, when combined with other factors, likely contributed to her losing the case. Thus, although she exercised her agency, and over time the situation did change, the fact that she had less money and power probably played a significant role early on.

Another participant, this time a father (Doug), flagged money as a significant factor in all processes and outcomes:

If you try and mediate everything, [there are] a lot of vindictive smart people out there. They will push it right to the limit...because you can get away with falsehoods in family law forever, if you don't go to trial. If you don't have that option, sorry.... I don't see that there is much you can do about it if somebody is that determined, and particularly if you have no money.

He also pointed out that after spending a considerable amount of money and expending much effort, the other party can just walk out.

So you get no agreement, in fact, it's a complete waste of money. You are worse off than you were in the beginning...and you're going to go right back into the full blown court process.... You know, they trumpet how wonderful cooperative law is, but you can use [it] as a weapon too.

Finally, he recommended against “naively” following the advice of collaborative lawyers, saying “they are business people, they are interested in revenues too, billable hours, and so are psychologists.” Overall, he highlighted the importance of understanding how the system works and of self-advocacy, as well as drawing attention to the fundamental tension between experts and lawyers as business people, on one hand, and as neutral guides through the divorce process who will advocate on the client’s (and/or children’s) behalf as necessary, on the other hand. Doug divorced prior to the introduction of CFL, so in this instance he is not speaking from personal experience. He did, however, mention that others turned to him for advice.

Another father (Rick) expressed a similar sentiment about expert opinions, “lots of the time those experts are the best ones because they have been paid the most money, right? Or they are the more convincing person because they have been paid the most money, not necessarily speaking the truth.” However, in addition to suggesting that experts are not always neutral, he suggested that favourable expert opinions can be “bought.” Although those experts might counter that his view is that of a disgruntled litigant, in fact, the father did seek out an expert that he believed—based on his research and that of his supporters—would see things his way, and he was successful in achieving his goals. Robert Emery (n.d.), an eminent academic and psychologist in the child custody field, has critiqued child custody evaluations as questionable, not only because they lack a scientific foundation, but because lawyers often shop for evaluators who will favour their client and judges may see them as biased. Further, as retired BC Supreme Court Justice Donna Martinson (2013) recently pointed out in a workshop paper presented to the College of Psychologists of BC, many concerns have been raised about the independence and impartiality of parenting assessments, especially when family violence is a factor. She proposed that College members carefully evaluate the merits of these concerns, take all necessary steps to address them, and address any misconceptions that they regard as being without merit. Nevertheless, in British Columbia at least, these assessments and expert opinions do generally carry considerable weight.

A third participant (Sally) suggested that rather than each parent using their own experts or attempting ADR, their money would be better spent on a child lawyer.

Otherwise, she saw it as one parent's "team" against the other. "Those are not neutral. Right? So you've got these teams arguing, right, with all different interests, including getting paid, and let's keep this going because we're getting a nice salary (*laughs*), so where is the child in that?" Here, again, we see a parent questioning both the neutrality of experts and their ability to place the interests of a child ahead of their own personal (largely financial) interests. This is an interesting twist on the common belief that parents in conflict over the interests of their children often put their own needs and interests ahead of those of their child(ren).

Finally, a participant who had exited an abusive relationship only to find herself under attack as a mother during the legal process (Nicole) described using up her share of the proceeds of the family home on lawyers and experts. The situation caused her so much stress and upheaval that shortly after the trial she was hospitalized with a neurological disorder, which was followed by months of rehabilitation and several years on a disability pension. Given the difficulties she experienced in the legal process, in her mind there was a direct connection between her experience of litigation and her illness. Her story overall is an excellent example of how expert discourse, ideologies of "good mothering" (Hays, 1996) and the multiple intersecting pressures of legal conflicts (i.e., the costs), can—when experienced in combination and for a prolonged period of time—have significant health implications, which in turn have financial repercussions (Currie, 2007; Pleasence, Balmer, & Buck, 2008; Pleasence et al., 2004). Given the extent of these impacts, which often have a domino effect, it is hard to find justification either for legal aid cuts or cuts to programs and services that families depend on. The research evidence overwhelmingly points to the need for robust service improvements rather than moving these costs to communities, families, and individuals, or into the future (i.e., beyond the political business cycle). Furthermore, as discussed in the next chapter (Chapter 5), the issues parents raised about the cost of obtaining a just resolution of their disputes, particularly where there is an imbalance of power and resources, often left them with a sense of being failed by the justice system and of not being heard.

## Alternative Dispute Resolution (ADR)

Although out of court dispute resolution processes are currently favoured by family law policymakers in BC (Treloar & Boyd, 2014) and elsewhere (Genn, 2009, 2012), many participants who had used ADR<sup>44</sup> felt that it had not been especially helpful. Rather, it had depleted limited resources that they would later need for litigation (making litigation no longer an option), leaving them frustrated and feeling that they had been misled. Furthermore, ADR had prolonged the process, leaving them with the stress and the cost of the process but without resolution of their issues. Although ADR may be helpful for some parties (especially those with low levels of conflict), it does not always result in resolution and can delay resolution and increase overall costs. One mother (Anne) said that an attempt to divide family assets through the collaborative family law (CFL) process:

was not a very good process...he just wasn't cooperative or collaborative at all and he threatened to take me to court and sue my ass off, like just really awful things. So try as I might to continue to pursue some kind of collaboration, you can't collaborate if there is only one person.

Consequently, she advised others who do not have a cooperative partner to “get a lawyer and get on with it because it will save you money in the end. Because whatever you think you spend now you'll spend five times it later.”

A lack of empathy and support for parents involved in litigation is often justified by notions of choice. That is, if people make poor choices of partners, they should face the consequences of those decisions, including paying for the services they need, rather than relying on the “public purse.” However, notions of choice are socially constructed

<sup>44</sup> Twenty-three of 25 participants mentioned using one or more forms of ADR (lawyer negotiation, mediation, CFL, parenting coordinator). However, it is important to note that (a) I did not specifically ask about ADR, (b) some participants separated before ADR was developed in a formal sense, and (c) the two participants (both over 60 years of age) who did not attempt ADR had experienced domestic violence and there were also other complex issues involved. Had they separated more recently, it is difficult to know whether they would have been screened out as inappropriate for ADR. It is possible that lawyer assisted negotiation was involved but this was not mentioned.

and tend to ignore social contexts, power relations, and other factors (Boyd, 2011) that may position parents differentially in the ADR process. ADR typically assumes that both parties have approximately equal bargaining power, yet parenting generally imposes greater limitations on mothers' autonomy than on men's autonomy as fathers (Boyd, 2011).

A related assumption is that parents who are in conflict are equally unreasonable people who would rather fight with each other than focus on their children's needs and interests. However, my research provided ample evidence that such assumptions are often mistaken. For example, a participant<sup>45</sup> whose former spouse had suddenly developed a medical condition (resulting in cognitive impairment, emotional deficits, and frequent abusive outbursts, amongst other problems) attempted to resolve their issues "fairly" through the collaborative family law (CFL) process. However, because of the challenges involved, it was unsuccessful, both in terms of bargaining and in terms of their differing abilities to understand the children's interests and meet their needs. From this mother's perspective, the lawyers and other experts (such as psychologists) involved in the collaborative process were unable to accept or acknowledge that the issues were not going to get resolved through the CFL process, which resulted in extra costs and delays. Once it failed, she not only had to pay the outstanding bills but also had to come up with a retainer and pay bills for a new lawyer. As well, she was required to share the cost of a number of expensive assessments, find and pay for counselling for their children, and was left to assume complete responsibility for the costs of raising their children—all on a moderate salary (and outside of her paid work time). By the time she finished with litigation, she had spent more than \$100,000 and had yet to "see a dime" of child support. What is particularly notable about her situation is that prior to the development of her ex-husband's medical condition, this was a "stable nuclear family." Ultimately, she exited the relationship because of the impact on their children and concern about their emotional health and safety (i.e., the best interests of her children). In contrast with the view that parents should "take responsibility" for their choices and that instead of going to court they should just resolve their disputes in a reasonable

<sup>45</sup> I have not provided the pseudonym (otherwise used in this thesis when quoting or referring to this particular participant) because of the risk that the parties could be identified.



manner, this woman had emptied her own purse to try to resolve her disputes and address her concerns. Moreover, she has yet to find a professional who has the skills to assist her children *and* the willingness to assist them, given the complex nature of her family law dispute.

Although lawyers often point out the disadvantages of litigation and try to encourage out of court settlement, honesty and full disclosure are essential to the success of ADR. Significantly, while participants who tried Collaborative Family Law (CFL) believed in the *ideal* of collaboration and saw its promise, ultimately none found it helpful. Some felt there was no accountability or enforcement beyond the process, while others complained that their former partner refused to produce financial records that were integral to resolution and/or believed the other party used CFL as a stalling tactic.

Even though CFL is but one form of ADR, participants raised a number of issues that apply across these approaches. Enforcement and lack of accountability were raised most often, but for participants who tried a number of approaches without success, or who used up their funds to make an agreement that was not honoured, there was significant difficulty with accessing the courts once their resources were depleted. For example, even though she had a separation agreement made through lawyers, a mother of three children (Leanne) described being unable to get the agreed child support from her former husband (a physician who lived in a different city). Despite simultaneously experiencing a number of difficulties, including the recent death of her father, and juggling a full-time job and the needs of her children, she decided to take it to court to enforce the terms of their agreement. On top of the other challenges she faced and the demands on her time, she found the process extremely difficult:

Super, super stressful because he delayed a bunch of times. Eventually I had no more money to do it and I had to represent myself, but of course he hired some lawyer. Anyway, it went on, I had to take time off work; I didn't get paid for the time I took off work. I went to court, sometimes he would cancel, say he couldn't make this date or that date or whatever, I lost a lot of time on it. And in the end I lost because they said that the separation agreement didn't apply.

Leanne said that she was informed that the agreement was not enforceable on the basis of her former husband's claim that he had no money, and that he was working less while she was working more (as was necessary to cover family and household expenses). She was aware that he did private work and was not declaring all of his income but could not prove it. She added:

(Leanne) At the end of that I was so angry. As I came out of the court I can remember walking away from the courthouse and going, I will never do this again! I will never go here again! The justice system is not fair, there is no way of resolving any of this stuff, it's just he said, she said, goes back and forth and it doesn't go anywhere. So I just kind of came home from that and said, never again. I will never go there again. I just concluded the only people who are making money on this are the lawyers. They have no vested interest in who wins and loses, they have a vested interest in making this litigation go on as long as possible so they can make as much money as possible.

(Rachel) At the end of the day they didn't produce an outcome for you that was worth all that.

(Leanne) No. I have been divorced for 15 years, I have not had one dollar of child support increment during that time. One of my children has [documented] special needs; he was supposed to pay for those extra things. He has never paid one cent.... He was supposed to pay for half or all post-secondary expenses. I have paid so far [for all of it]. He has not given me one cent. Not one penny. And whenever I call him to talk to him about it, "oh, I have no money. I have no money. I have no money." And could I go back to court? I suppose. Hire a lawyer, pay a lawyer, pay a private investigator, do all that kind of stuff. But I'm not convinced that the system has changed and I'm not convinced I will get anything. Over the course of the years as I've kind of come to that conclusion, I've just basically said, I'll live my life, do my own thing. Do I feel bitter? Of course. Do I feel angry? Yes. But I didn't see that I had a chance of...winning anything. Really, what's the point?

Again, in this example, we hear the frustration and sense of injustice felt by those who cannot enforce their child support claims, even when child support was negotiated through ADR. This participant found herself alone in bearing responsibility for the children, whereas the lawyers who represented her did not deliver but had to be paid regardless. People in her situation, often mothers, have all of the responsibility and far too little support. As Smart (1991) has noted in the context of child custody disputes, fathers are often treated like the prodigal son whereas mothers often feel a real sense of injustice when their work and loyalty evidenced over many years is minimized in comparison. Moreover, they are often blamed when things go wrong and experience far greater scrutiny than mothers in intact families.

Although norms of good post-divorce parenting involve the expectation that parents will resolve their disputes through ADR and cooperate for the sake of the children, it does not always live up to its promise. Research also suggests that in the context of post-separation disputes mothers more often draw on normative ideals of cooperation and contact with both parents as central to a child's well-being (welfare discourse), whereas fathers tend to argue more on the basis of individual rights (rights discourse) (Day Sclater, 1999).<sup>46</sup> "Stubbornly gendered" (Boyd, 2010, p. 140) parenting arrangements and social expectations that mothers will be selfless in facilitating their children's well-being and autonomy, while also accepting significant constraints on their own autonomy (Boyd, 2010), may place mothers at a disadvantage in the negotiation process.

As described later in this section, in order for ADR to live up to its promise, both parties must be genuinely committed to full disclosure, resolution and follow through on their agreements. Furthermore, there needs to be greater understanding of power imbalances and the appropriateness of ADR for all cases. Indeed, ADR may not be the best option for those in high-conflict disputes as a result of complex circumstances, such as that of the mother whose former spouse is cognitively impaired. A better understanding of which cases are suitable and which are not would spare those for

<sup>46</sup> However, Kaganas and Day Sclater (2004) suggest that both mothers and fathers use the welfare discourse strategically. That is, they resist and reinterpret it in ways that enable them to maintain themselves as a good parent.

whom the approach is not suitable from wasting resources and enable faster resolution of their disputes. However, as described in the next section, going to trial may not be a viable solution. Indeed, as I argue throughout this thesis, greater attention to financial and social support needs, alongside a fundamental shift in how we think about and respond to post-separation parenting disputes is needed.

## **Court Trial**

Among the participants who went to trial (21/25), most mothers felt that the other party (fathers)<sup>47</sup> had misled the court to their own advantage. This was mainly attributed both to the (other) party themselves (i.e., seeking a “win” at any cost) and the party’s greater social/public power, which was often perceived as being due to their professional status and to their greater access to money to fund litigation. Although a number of mothers were largely successful in their application(s) involving financial issues, they later found themselves unable to enforce the order and were then faced with the option of either giving up for the sake of their own and their children’s well-being, or taking on the financial and emotional cost of further litigation. The fathers, on the other hand, generally had little faith in the legal system and some were prepared to use any means available in order to make small “gains.” These fathers tended to have attended meetings, communicated with, and/or read materials developed by fathers’ rights activists, and to believe that the courts favour mothers (Collier & Sheldon, 2006; Crowley, 2008; Flood, 2012). They were also most focused on shared parenting and the percentages of time children spent with each parent, although this focus seemed to strengthen post-separation, rather than precede it. Finally, Ben, a father who had spent a considerable sum on ADR, expert reports, and litigation, expressed:

[Initially] I had no clue what lawyers cost or going to court or anything. I was just frightened. I was like, what...? Now all the money is gone, all the savings is gone to the lawyers and I still owe them. So here I am now, just kind of trying to.... I’ve

<sup>47</sup> As described in Chapter 3, all of the parents in this study had been in a heterosexual relationship with the child or children’s other parent.

got [child] 40%, just over 40%<sup>48</sup> of the time...it's not easy for sure. Sometimes you go, "Oh, what did I do that for," but it's important that [child] has both parents.

After the most recent dispute, however, although he largely stayed within the terms of the order, he decided to just live his life "the way I would without this order. And if she wants to complain about it she can go take me to court because I think it's a cat and mouse game now, who is going to take who." Unhappy that he was being "replaced" by a wealthy step-parent (who also financed his former partner's litigation), he believed that not only did the system favour women but also that it was an issue of social class. Moreover, he said that it was the interpretation of his experts that she was trying to create a new nuclear family and alienate him. Whether or not that was her motivation, it was clear that his interpretation of the circumstances was influenced by expert discourse as well as classed and gendered interpretations derived from his meaning-making and that of his supporters, many of whom subscribed to "father's rights" and the shared parenting imperative that they promote (Amyot, 2010; Flood, 2012). That said, he ultimately settled on a "take the high road" approach. He reflected that:

(Ben) I think the trap that everybody falls into is that you get so emotionally wound up and all this and if you get an email from somebody that's a complete lie, you're like okay, I'm going to catch them out at this and you send it to the lawyer and the lawyers go at it and before you know it the bill is up and it was totally unnecessary for that to happen. You've got to, as easy as it sounds for me to say this, you've got to take the high road. That is what you've got to do unless you want to do what I did or like thousands of others or just go right, I'll get my lawyer to sort you out...and it's all just hot air. Unless the kid is in some sort of danger or there's been an assault or something along those lines then, you know, from what I can see the fathers are getting more and more time.... Still, you know, in my situation where she was the one that applied and I had to go hire lawyers to stop her [from relocating], I find that completely unfair.

<sup>48</sup> According to the child support guidelines, to have a shared custody arrangement a parent must exercise access to, or have physical custody of, the children for 40% or more of the time in one year. This may or may not have a bearing on his reference to 40% of the time (I did not pursue that line of questioning).

(Rachel) So if one person wants to carry on with it the other person doesn't have any say in it.

(Ben) Yeah. So basically if you've got money you're going to win.

Thus although many held to the *ideal* of justice and understood that the legal process was supposed to be about the best interests of children, they largely felt disappointed, frustrated and a sense of injustice that the courts were not there for them or their children. Unfortunately, even those who did pour all their resources into litigation were no more satisfied with the process or outcome, even after years of struggle. As often as not, it was a struggle to enforce the terms of the order. Two mothers, whose former husbands' were self-employed, mentioned that their former spouse had unilaterally reduced the court ordered payments. In one case that went back to court, the judge reduced the arrears, resulting in hardship to the receiving parent (mother). Mothers who did have to return to court to address issues of child support noted that financial settlements often went to cover legal expenses. In response to a question about what would have made the process easier, one mother said

What would have made it easier at the time? (long pause) Well, for sure more money would have made it easier at the time...to change anything means you have to go back to court. If the person is not willing, then it's just more litigation, more fees, more money, and in the end you just basically give up and you say, "I can't do this." So what would have made it better? I would have liked to have seen something that [could be] enforced. (Leanne)

She, like three of the other mothers who had difficulty collecting child support, suggested that income should be automatically reassessed every year, based on tax returns. She felt that mandatory reporting, with follow-up if the payor claimed reduced or no income, would relieve her of the burden and cost of enforcement. Without third party involvement and enforcement she has nowhere to turn, because:

He is like, "I'm not paying. I won't. You can't make me." And he says now he's not working full-time because he's too stressed. Okay well he's always been

stressed. He's always doing whatever and I just look at it sometimes and I think, okay, so there's nothing I can do about this.

This section has described how participants link the cost of justice to their ability to access the legal system and ultimately to their chances of a just outcome. Those with less money saw themselves at a disadvantage in that regard and described numerous issues with respect to the other party using their greater assets to achieve their desired outcomes, sometimes in ways that left them without any hope for a just outcome. Lawyers were often seen as part of the problem. In part, this perception was because they are unaffordable, but also because they are perceived as business people who make a living in a system that does not work well for those who it is meant to serve, and, moreover, they do little or nothing to help those without the means. A few participants described their lawyers (including those who provided legal aid) as having gone above and beyond and as providing unbundled services such as coaching them in producing their own legal materials. Still, service provision is variable and that directly affects outcomes. Money affects not only access to legal services (including ADR) and expert opinions, but also to other services and supports that parents and families need and depend on in difficult times. Some parents also described depleting their resources on ADR and being left without money for a lawyer when it proved necessary. In a small number of these cases, practitioners appear to have been overly optimistic about their ability to assist, while in others more careful screening could have enabled faster resolution at lower expense to the parties.<sup>49</sup> Recent research conducted in England (Barlow, Hunter, Smithson, & Ewing, 2014) found considerable evidence of improper screening and varying beliefs among ADR professionals about which cases are appropriate for mediation. Given the state of development of the field, similar issues may well exist in BC. Nor does going to trial, which entails significant expense, always provide the finality desired and in some cases, as with ADR, it was left to the receiving party to attempt to enforce payments or to return to court.

<sup>49</sup> All of the participants who went to court had their cases heard under the former *Family Relations Act*, Section 8 of the new FLA (2011) introduces some screening provisions, primarily for domestic abuse and power imbalance. However, it is likely those provisions would have "screened out" only one of the cases described in this study.

## **Responsibility and Care in the Face of Limited or Uneven Material Resources**

A second subtheme of the interrelationship between financial and child-related conflicts was that of responsibility and care in the face of limited or uneven material resources, particularly when disputes also involved financial support for children. Like the previous subtheme, participants' understandings of responsibility for the provision of care had a distinctly gendered dimension, with mothers frequently associating responsibility with care, thus seeing their former spouse's resistance to child support obligations and non payment as reflective of a person who puts themselves ahead of the needs of their children and does not act like a full parent. While some of the older fathers were more traditional in assuming the breadwinner role, most of the fathers resented the expectation that they would continue to do so post-divorce, and attempted to shift the balance of paid work and care in order to take on more care and less paid work. Indeed, they were frequently encouraged by friends, family members, and professionals to do so. They were also more likely to see money as an individual asset and related to their status as men (more than as fathers), whereas the mothers generally understood money in relational terms (e.g., enabling children's full social participation and allowing them to pursue activities or interests). This distinction, and the individualist and relational conceptions of autonomy that underlie such views, has gendered consequences. An explanation for this gender difference may be found in the gender order; that is, socially developed patterns of power relations involving notions of hegemonic (dominant) masculinity (Connell, 2009).

Mothers also described fears of their children not being able to pursue opportunities or to fit in, and of themselves having to go on welfare and being without financial resources in their senior years (e.g., becoming "a bag woman in my later life"). Mothers took their responsibilities very seriously, understanding successful parenting as making sure their children could fulfil their potential and nurturing their strengths. Hence, if the father was recalcitrant in financial matters, mothers tended to see them as not being responsible or caring.



Occasionally, mothers spoke of their feeling of shame at being unable to provide adequately for their children, and two described making purchases they could not afford and/or going without themselves in order to keep up class expectations or protect their children from social exclusion and feelings of shame. Although not all mothers spoke of feelings of shame, it was apparent among most of the mothers, regardless of social class. However, a mother who came from a more egalitarian culture noted that lone mothers in Canada have a “bad reputation” and are “constructed as needy.” She said, “of course you are needy, but I made it a point to never ask a person in the neighbourhood or anywhere for babysitting...when you’re dealing with a family breakdown you get labelled anyway” (Helen). In response to a probe about whether she had ever felt shame, she spoke of her awareness of the potential for shame and for active resistance to it.

(Helen) I could easily have felt shame.

(Rachel) I was curious if you did because of what you said about single mothers being constructed as needy and deficient...and I wondered if you resisted it somehow.

(Helen) Somewhere in the dark crevices that I would not have acknowledged to myself even, because you can not acknowledge something that you know that you don’t own...no, I don’t think I feel shame. I don’t feel shame and I don’t want to say that I feel...it could easily be that if you don’t feel shame, [you] maybe feel self-righteous.

(Rachel) I think I get what you are saying, that you didn’t feel shame but you were aware that you could, or some people would...you saw that it was not appropriate and you resisted it.

(Helen) I could see it, yes, but I resisted it, but it took work probably to resist.... I’d not been concerned with something like self-esteem because that’s so North American that women...this is a country of self help books it’s like we all have something wrong with us.

(Rachel) So something we should be fixing because there's something wrong with us as opposed to seeing how hard work it is and making mothers feel valued...that's another cultural difference.

(Helen) That's another cultural difference...we are dealing with human beings, we are dealing with mothers that are vulnerable with their little children and the children need care, they need constant care.

This participant was deeply aggrieved by the way lone mothers are treated in Canada, in contrast to the culture in which she was raised. She emphasized that mothers and children are vulnerable and need to be protected, cared about, and supported, not criticized, marginalized and stigmatized. As a mother who had experienced violence during her marriage and both family law disputes and family poverty after separation, she emphasized the need for greater integration of services. Pulkingham and Fuller (2012) raise a number of similar issues in their discussion of the way recent welfare reforms in BC and Ontario treat poor lone mothers, who are already stigmatized on the basis of their financial and family status, concluding that they are medicalized in policy discourse. That is, they are turned into candidates for treatment and surveillance by a process that shifts policy attention away from social issues and recreates them as "individual" problems (Pulkingham & Fuller, 2012). The stigmatization of dependence (Fineman, 2000; Fraser & Gordon, 1994; Gazso & McDaniel, 2010) and lack of regard for the vulnerability of both care recipients and care providers to which this mother refers, is reflective of a society in which policy and law continue to protect and reproduce extant inequalities, "a world where some individuals are subsidized and supported in their "independence," while other individuals are left mired in poverty or burdened by responsibilities not equitably shared" (Fineman, 2000, p. 27). Furthermore, as Lind (2013) rightly states, "voluntarily assumed responsibility creates vulnerabilities and (inter) dependencies" (p. 85). Thus, when marriages end, if the responsibilities and dependencies that result from that relationship go unacknowledged in law, then by not intervening, law further empowers the already more powerful party and disadvantages the party that provides care (Lind, 2013), rendering them more vulnerable in legal disputes concerning their children.

As described earlier, money was largely understood as associated with interpersonal, social, and legal power, and since money was necessary to access both the courts and ADR, participants believed that it was necessary to get a fair outcome. Thus although participants held the ideal of justice and understood that the legal process was supposed to be about the best interests of children, they largely felt betrayed and frustrated and had a sense that the courts did not provide a just outcome, either for them or their children. This was particularly true among participants who perceived significant financial inequities between households, those who believed the other party was fraudulent and/or truculent concerning financial disclosure, “played games” with them around money, or used their greater financial power (and sometimes influence) to bully them.

According to contemporary discourses of post-divorce parenting, former spouses are expected to change their relationship from one of marital partners to one of parenting partners (see, for example, Pedro-Carroll, 2010). Thus not only did many mothers view the system as having failed them, especially in terms of forcing financial disclosure and the enforcement of orders, they also felt let down by their “parenting partner” where child-related responsibilities were concerned. Two women felt that their former partner should not expect to be involved in parental decision making when they had not behaved like a parent in taking financial responsibility for their children. Some mothers also felt that both their former spouses and the courts had failed to consider the best interests of their children and had left them to deal with the fallout. Four mothers explicitly referred to the notion of “best interests of the child” (Glossary) in relation to disputes over financial provision.<sup>50</sup> Most noted that the money they had wasted during the legal process would—and *should*—have been spent on raising their children. Simply put, in the words of one mother, “I shouldn’t have to fight tooth and nail.”

Although it was usually mothers who described such experiences, fathers whose former spouses had repartnered with men who they perceived as wealthy also felt at a disadvantage, both on the household level and in the legal process. Moreover, two of the

<sup>50</sup> In contrast to child custody law, child support law includes little reference to the “best interests of the child.” Nevertheless, for mothers, money and the “best interests” of children seem to be interconnected.

fathers (both in their forties and with young children) seemed to link their perceptions of an “inadequate” degree of parenting time or control over decision making with disputes over financial issues.<sup>51</sup> Thus although there is a clear gender dimension to these disputes, with gendered meanings often apparent, social class and normative understandings of post divorce arrangements and family life also factor into these conflicts. Since these norms shift over time and are likely to vary according to culture, a participant’s generation and cultural origin also play a role in making meaning of post divorce conflict.

Another common theme mentioned by participants, particularly when speaking about money, was that of a lack of accountability and enforcement. This lack of enforcement was problematic regarding both mediated agreements and court decisions, with some parents believing the other had “gamed” the system. For example, five years after her lawyer mediated agreement had been made, one mother described how her self-employed former spouse sought to have it reduced by claiming that his income was reduced by half. Not only did that leave her with almost the full cost of raising their children (with considerable stress and financial insecurity as a consequence) but also she was angry with both the judge for “not recognizing his game” and “the system for enabling it.” She said,

the judge was just horrendous. He looked at my ex’s material and said obviously this man has been paying [too much] child support and child support will be...boom. And I was like, really? I just paid a lawyer \$12,000 for you to say that he’s paying far too much in child support when he’s been paying \$600 a month for three kids...are you kidding me? When he’s a self-employed person and half of his income is being hidden through his business. Are you kidding? But because he was self-employed I was like, how am I going to justify his income? I knew how much he made, but he does cash jobs all the time. (Lisa)

Rather than her former husband being held accountable for his financial responsibilities to the children, she was expected to absorb the shortfall herself. This left

<sup>51</sup> Since some fathers had separated when children were older or had a shared residence arrangement in place, further research is needed to explore this issue.

her with a sense of injustice and powerlessness that, at least in her opinion, the system allows self-employed people to hide income. Furthermore, in most cases it is the receiving parent who has to attempt to find out if the other parent's income has increased, and then to do something about it. Similarly, the parent who receives child support (also invariably the parent with lower income and in many cases the primary responsibility for children) is responsible to attempt to enforce an order and to return to court at her/his own expense if unsuccessful.

Regardless of the process by which they attempted to resolve the issues, many participants reported that the other parent had later unilaterally changed the financial provisions (whether "agreed" or ordered), and with their own emotional and financial resources already exhausted they were unable to enforce it. The repercussions for their own households were that given their lesser resources they were faced with the "choice" of working harder (with the stress and reduced time with children that are involved) or contemplating further litigation. Thus, although all participants understood that disputes about child support were *supposed* to be kept separate from disputes about children's time or living arrangements, in terms of "lived experience" they were not. Furthermore, some saw it as a moral issue, either in that it disaggregated responsibilities and relationships, or that it "rewarded" parents who were dishonest or recalcitrant about their responsibilities and did not hold them accountable.

Conflicts over finances compounded conflicts over children's arrangements, with some parents (typically men), using their greater financial power as leverage to gain more time with their children, and other parents (typically women) perceiving the other parent as not having "taken responsibility" for their children or "putting them first." This was the case whether or not child-related issues such as residence or parenting time had been resolved, either by agreement or by litigation. Indeed, in some cases the children were already in or nearing their teen years and able to speak for themselves, thus their living arrangements were not at issue. Furthermore, there were often complicating factors such as domestic violence or parents residing in different provinces or regions of the province. Nevertheless, although there was a clear connection between unresolved or unenforceable financial disputes and mothers' perceptions of fathers as

responsible and caring parents, there did not appear to be a clear connection between mothers resisting greater parenting time in the face of financial disputes specifically.

Most participant mothers whose former partner resisted his<sup>52</sup> financial responsibilities, attempted to deceive her or outright refused to contribute appropriately for their children, found it difficult to see their ex-husband as a parenting partner. Indeed, for these mothers, the ex-husband's resistance resulted in their own increased sense of responsibility and sense of being left on their own as a parent. However, as discussed elsewhere in this thesis, a small number of custodial<sup>53</sup> parents did not seek child support. One mother (Becky) who believed her son needed a father figure in his life gave up significant child support payment arrears in the hope that he would stay involved (he did not). Another mother (Shelly) who went to court twice—first to obtain, and later to update the amount of, child support, found the process intimidating and stressful. She was particularly upset to discover that her former partner's income had doubled. The following excerpt from our conversation shows that although she knows that legally she is incorrect, in her mind, the fact that he is deliberately intransigent about financially supporting his children means that he is not entitled to criticise her parenting or to participate in shared decision making.

(Shelly) The only reason I know that [his income has doubled] now is I finally had to take him back to court to get child support (sighs exasperatedly).

(Rachel) So how do you feel about that? You've got this other parent who is also responsible for the kids, but it sounds like you've taken pretty well all the responsibility.

(Shelly) Yeah. Like I've raised them, I take care of them when they are sick, I help them with their homework...he gets to see them for one weekend a month...no, he *chooses* to see them one weekend a month because I would send them there more often if I could, if he would take them. So he pays me minimally

<sup>52</sup> In this study it was men who were non- (or under-) payers, at least where financial responsibility had been established.

<sup>53</sup> The term "custody" was in use at the time all participants were engaged in litigation.

and then he pays me almost nothing and has the nerve to demand to see their report cards and to have some input into whether or not I'm doing a good enough job raising them. (Gives example). So my attitude is, he hardly supports them in any way, he has no right to any decision making, whatsoever. This is my opinion. This is not legally the opinion, but it is...or it was my opinion and I was like...fuck you! You don't pay me anything, and to think that you have any input whatsoever? Yeah-no!

(Rachel) So the issue is that he's not taking responsibility but he is expecting to have....

(Shelly) The privileges! But not the responsibilities, that is right.

Both she and two other mothers reported that when they filed their court application, the other parent responded with a counter application for a change of the children's primary residence on the basis of her allegedly poor parenting. However, now that her former spouse is paying what he should be, Shelly said that she regards him as much more of a parenting partner and is hopeful that over time they will develop a more cooperative relationship that prioritizes their children's interests and needs. While feminist literature (for an overview see Flood, 2012) has long criticized the fathers' rights movement for focusing on the assertion of rights rather than responsibilities, Shelly carefully distinguished between her rights and those of her children. She was also careful to position herself outside feminist discourse by noting that although she was a woman and he was a man, in some cases, the woman is "a total asshole." Having earlier described herself as someone who "did not have a normal family upbringing," she noted that if she had done so she likely would have seen child support as her right (i.e., to a fair contribution by the other parent). However, once she recognized that her children were suffering, she realized it as "*their* right, then I was like, okay, it's easy. But when I was thinking of it as *my* rights, it was easy for me not to say anything."

Thus it is not surprising that participants who had struggled through lengthy and complex disputes over children's arrangements were sometimes willing to (at least temporarily) forego child support and a few "opted" not to pursue it at all. Some parents made the decision to restore peace and stability in their home. Further litigation was

seen as too risky, stressful, and as likely to create further conflict. Indeed, to pursue the matter could compromise their ability (i.e., emotional energy or parenting time) to care *for* their children, or result in the children being drawn into the conflict—thus withdrawing from litigation was also an aspect of caring *about* (cf. Smart, 1991) the children. It is also possible that parents who can afford to forego child support may do so in order to gain some autonomy (in the sense that non payment could be understood as reducing the relational responsibility on the part of the custodial parent to ensure contact between the other parent and child).

Several parents who were primary caregivers (four mothers and one father) did not pursue child support because of fear of further litigation over children's living arrangements and parenting time. Indeed, some participants were either threatened in that regard by their former partner, or the outcome was as they feared. Becky, then a young mother, had a former partner who tried to relocate to another province with their infant in order that the child could be cared for by his parents. He made many allegations that she was unfit, which although untrue, caused her severe stress and anxiety to the extent that she was hospitalized with intestinal disease. Ultimately she did seek legal advice, and her lawyer persuaded her to seek child support. The father then dropped out of the picture and disappeared, and she was left with the full responsibility, both to raise and to provide financially, for their child. However, although Becky did not express a desire for autonomy, either in an individualistic sense or in the relational sense that being a parent requires, her parental autonomy was imposed by the disappearance (and irresponsibility) of her former spouse (cf. Boyd, Chunn, Wieggers, & Kelly, 2015). Ultimately, she concluded that in the long run parenting autonomously was better for her child, even though in many ways it had been difficult for her and would not have been her choice.

Finally, for some participants, the decision not to pursue child support is made not only because it will stir up conflict once again, but also for strategic reasons. Thus, despite the perception of injustice on one hand, on the other, these parents see themselves as having made “conscious” choices and to some extent as being in a position of power. As Rick (sole custodial father) put it,



Well, at this point I have just let that go. My feeling is that if I do start trying to push her for money it is going to make her more volatile than she is. And that's not going to do her any good, it's not going to do me any good, it is going to make things worse so I have just let it go. I feel that it is unfair [explains], but I've just made that conscious decision to let it go. But I also hold it as a bargaining chip, you know, where if she does start chirping and say, you know, I want to go to court, I'd just say, well, the first thing we are going to talk about is money. And she doesn't want to talk about that (*laughs*).

Participants whose disputes mainly involved money, and who perceived the other parent as being dishonest and not transparent about assets or income, often expressed anger and frustration, not only with the other parent but also with the legal system. As described in the previous section, some felt that it would be much better to have an administrative process track parents' income and automatically update the amount of child support payable, rather than leaving the receiving parent with the individual responsibility to obtain updated financial information and then to engage in the court process if necessary. Again, this was often experienced as an issue (and imbalance) of power and resources, with a lower income or primary caregiving parent not only at a loss as to how to do this, but often with this parent having to devote the time and suffer the relational consequences of enforcing the other parent's responsibilities. The following interview excerpt illustrates how the manner in which one mother made sense of the process changed over time.

In the beginning I thought that litigation was the way. I thought that the courts would see it fairly. I thought that it would be presented fairly. It didn't take me very long to see how much people manipulated the system. (Leanne)

Overall, from her story and others, it was apparent that over time participants came to feel that they were on their own in providing for their children. Where the other parent was not willing to take financial responsibility and the system seemed to have failed them, most gave up trying (despite a sense of injustice and bitterness) and worked even harder to make ends meet. For some, that meant taking a second job in addition to being the primary caregiver. Although in some cases this forced financial

“independence” and years of struggle ultimately contributed to the development of a parent’s sense of agency and their autonomy (as discussed in the section after next); for a few participants the relentless stress and pressures either contributed to, or resulted in, serious health issues, PTSD, and/or poverty in later life.

Furthermore, mothers who had young adult children still living at home reflected that times had changed and their children were not yet self-sufficient. In many cases that meant postponing retirement, especially for mothers who had earlier left the work force to care for their children and did not have a pension. Two expressed doubt about whether their young adult children would be in a position to help them later in life if needed. In this context, although it is often argued that the current generation of young people are getting “left behind” (cf. Kershaw, 2015), these narratives serve as a potent reminder that in some cases, parents have emptied their own pockets to raise children, to the detriment of their own financial security in later life. At the same time, they are also deeply concerned about the challenges faced by their children and many others of their children’s generation. While Kershaw rightly notes that the current generation of baby boomers is one of the wealthiest generations to date, such generalizations are based on “typical” boomers. The narratives here suggest that not all boomers are ripe with wealth and the privileges it brings.

Some mothers explicitly contrasted themselves with stereotypes of lone mothers (Dowd, 1997, Gazso & McDaniel, 2010; May, 2010; Zartler, 2014), largely on the basis of class—a finding similar to that of Boyd, Chunn, Wieggers and Kelly’s (2015) study of mothers who “chose” to parent alone from the start. Leanne said, “I am not your typical single parent.” In particular, she took great pride in having become financially independent and in having a career in place. Moreover, in having worked long enough to save for a home before starting her family, she already had stable housing. Somewhat in contrast, another mother (Julie) who faced a number of significant challenges post-separation, including being jobless, homeless and feeling overwhelming despair, agreed to temporarily give up care of the child to her ex-husband while she got herself together, only to then find that he had moved to another city with the child. She was adamant during that time that she would not go on welfare; she would not be dependent on others. Indeed, she blamed herself for all of her difficulties and inability to exert her

agency. In a way, both women, despite their very different circumstances, had incorporated neoliberal tenets (e.g., taking personal responsibility and the importance of financial independence) into their sense of identity. Rather than suggesting that these mothers were without agency, their accounts reveal that their ability to express their agency is limited to particular domains. Thus their experiences of high-conflict divorce may not only constrain or inhibit their agency, but may also facilitate it. For example, one of the mothers I interviewed (Helen) was politically active in addressing child poverty. However, despite her activism, she continues to struggle with post-traumatic stress following an abusive marriage and a protracted dispute over arrangements for her children. Furthermore, although she works hard for justice for others, because of her own experiences she feels a fundamental loss of trust in social institutions.

In the context of post-separation family life, the responsibilities for children's emotional care and material provision are interconnected—even if some parents agree that one parent will perform the child care duties, while the other is primarily a breadwinner. While it was agreed that the homemaker mothers in this study would be the primary caregivers, which results in derivative dependency (Fineman, 1995a, 2005), following separation there appeared to be new expectations regarding their role that they had not bought into—and in many cases had not prepared for. Moreover, the consequences of the formerly joint decision—either that she would exit the labour force to be a full-time caregiver to their children, or would not undertake training that would enable her to adequately provide for a family—became particularly salient for her at that time. Feminist legal scholars (e.g., Boyd, 2003, 2010; Fineman, 1995a; Turnbull, 2001) have raised concern about the post-separation ramifications for mothers who have taken greater responsibility for carework. In particular, the diminished material circumstances that mothers often experience (compared to fathers) following marital separation may place them in an unequal bargaining position in the legal process and pose challenges for mothers and children's well-being. Furthermore, occupational gender segregation remains prevalent in Canada (Fortin & Huberman, 2002; Milan et al., 2011) and there continues to be a wage penalty for motherhood (Budig & England, 2001; Budig & Hodges, 2010; Caranci & Gauthier, 2010).

Issues around financial autonomy and personal agency were also apparent in relation to responsibility and care; however, these will be discussed in the final section of this chapter. Next, I extend the discussion of responsibility and care in the face of limited or uneven material resources by exploring a third subtheme of the interrelationship between financial and child-related conflicts—that of the division of labour within households and expectations regarding how it should (or should not) change post-separation.

## **Gender “Work” and Care: Contract and Conflict**

A third subtheme of the interrelationship between financial and child-related issues was the division of labour within households, both prior to separation and afterwards. This is not surprising, since even in two parent households the balance of paid work and family responsibilities must be organized, with roles either assumed or negotiated between spouses. The division of labour both prior to, and after, separation has changed slowly over the past generation (cf. Smart & Neale, 1999), although the gendered landscape of care within the family still persists (Boyd, 2010). The division of labour is also subject to generational and class norms and thus reflects both social change and change within individual households. However, as feminist scholars have noted, gendered power relations play a key role in this division of labour. Pateman (1988) coined the term “sexual contract” to draw attention to issues of sexual domination and gender injustice. She further argued that “contract is the means through which modern patriarchy is constituted” (p. 1). Since Pateman, many feminist scholars, especially those from Nordic countries, have used the concept of “gender contract” to describe power relations between men and women, particularly pertaining to the gendered division of paid and unpaid labour. This concept draws attention to the structural and normative frameworks that influence (and may even restrict) the ability of women and men to negotiate their roles. These contracts occur broadly in the social organization of paid and unpaid work, as well as within the workplace and on the family level. As discussed in Treloar and Boyd (2014), although men’s participation in child care has increased (Milan et al., 2011), family responsibilities are still largely organized by gender and it is often mothers who exit the labour force to have and care for children.

Thus women's lower earnings (Milan et al., 2011) and the intermittency of their labour force participation (Caranci & Gauthier, 2010), in combination with a lack of affordable quality child care (OECD, 2009) play a significant role in perpetuating these gendered arrangements. Nevertheless, "often missing in discussions about post-divorce parenting is recognition of the material basis of the privatized family and responsibility for care work" (Treloar & Boyd, 2014, p. 80).

Participant narratives about the division of labour, both during marriage and as contested during separation, reflect broader social tensions and the unevenness of this change over time, particularly where expectations and norms in one area (e.g., shared work and care) are unmatched in another (e.g., family friendly labour force policies or the availability of child care). Therefore, it is not surprising that at a time of personal and family upheaval there is conflict and ambivalence about changing the balance of paid work and care between parents. It is also unsurprising that a gendered division of labour had implications for access to justice and support resources, primarily for the women in this study, as described above. Fathers in the study who sought greater involvement with their children post-separation often described personal changes in terms of the meaning that fatherhood held.

Most participants described their relationships as having followed a gendered division of paid work and care, with men working full-time during the marriage and women taking primary responsibility for children and domestic activities, whether or not they were in the labour force. While they were married, just over a third of the mothers in the study either did not work outside the home, or worked part-time around the needs and schedules of their children and partner. In other words, their primary role was to care for and support their family. Most sought employment at some stage post-separation, and one started her own business. Approximately two-thirds of the women worked full-time while married (with breaks to care for their infants), and most maintained or increased their work hours after separation, although one later reduced her work hours due to a child having mental health issues. Two mothers were on long-term disability at the time of the interview (one, the result of an injury sustained during spousal assault, and the other because of a medical condition that was attributed to the

stress of prolonged litigation). Overall, their employment situations were more fluid and diverse than those of the men who I interviewed.

All of the seven fathers were in full-time employment during their marriage, with one participant having what amounted to two full-time jobs. Post-separation, four maintained their work hours and three reduced them, with one of the latter group ultimately exiting the workforce due to an accident. Rather than returning to the labour force in a different capacity, as the parent with sole legal custody, he opted to access a disability pension and to stay home and care for his child who had special needs. Thus there were continuities as well as changes in the balance of paid work and domestic work among participants, with men being more likely to work less and women being likely to increase the number of hours in paid work.

Generally, then, fathers reported exercising their agency and choosing to work less so they could spend more time with their children, whereas mothers' choices were more often in response to the circumstances chosen by others (e.g., non-payment of child support or court decisions). Thus mothers' ability to exercise their agency or make choices regarding the balance of work and care is limited if their former spouse resists paying child support and insists on sharing care. This is not only because of their weaker financial position resulting from formerly agreed domestic arrangements, but because shared work and care post-separation is now the norm unless parents agree or a court orders otherwise. Although both mothers and fathers are agentic in their choices around work-family balance, fathers seem to expect to be autonomous in their choices, whereas mothers in this study were choosing within constraints.

To illustrate the "gender contract" described at the start of this section, one mother (Kathy) described how she and her former husband "were childhood sweethearts" and while he went to university, she went to secretarial school, because they agreed that her role would be in the home. "He had a very bright future ahead of him...and he seemed to love me a lot and vice versa and so that's where we were headed." Thus she did not pursue education or training with the intention to be in the labour force full-time. In line with feminist literature on the public-private divide (e.g., Boyd, 1997; Fineman, 2005; Pateman, 1989), most participants described men's work

as prioritized within their marriage, whereas women's work inside the family was often invisible outside of it. Furthermore, although the work of both was crucial to family functioning, the man's contribution tended to be aligned with dominant conceptions of work and was visible outside the home. Among the older women in my study and those of upper-middle class (e.g., married to professional men), work typically involved attending to the needs and activities of her husband and children, caring for their home and garden, and sometimes overseeing major renovations or improvements to their home.

Although they embraced motherhood and took on these responsibilities wholeheartedly, some women described how following separation their former spouse wanted to change the arrangement. This was particularly true among mothers who believed both that the father wished to displace her from the primary caregiver role and that he was dishonest about finances. Even those who had exited the labour force when they became mothers and had no recent experience were immediately pressured to look for employment. This often occurred at a time when they were settling distressed children, dealing with litigation and sometimes selling the family home or moving. Therefore, what was seemingly happily agreed upon during the marriage (i.e., the "gender contract") became contentious at separation. For instance, Doug described his former wife with thinly disguised contempt as having "never worked" during their marriage, thus portraying her as a non contributor to the household. Two mothers also described being treated with contempt during the legal process for wishing to remain full-time caregivers. Andrea's close relationships with her children was later reconceived as gate-keeping and parental alienation<sup>54</sup> (another woman faced similar allegations). For example, Andrea described her former husband's frequent international travel, which meant that she was often alone with the children for extended periods of time. When one of their children developed significant health problems, they agreed that she would home school all three of their children. However, post-separation this father's poor relationship (and lack of experience) with the children became problematic and she was pressured to return to the paid labour force—ostensibly because she was seen as a gatekeeper to the children's relationship with their father and as interfering with his greater involvement in

<sup>54</sup> See Glossary.

their lives. Despite the conduct of her former husband and lack of caregiving history, she felt that she was not only expected to adjust or concede to his demands, she was also criticized for her mothering activities. Thus, in the context of family law,

when you get into court it's fault, fault, fault divorce and you are constantly blamed and there's somebody to blame. So I felt like one of those little voodoo dolls and the whole legal system was constantly looking for the dyke. Like where do we put it that she is going to completely implode. I phoned my lawyer one day and...I said, what is the point of this? It is not healthy. I'm a full-time caregiver and it's really hard for me to contain this all the time and to be relaxed around my children and...be effective at what I do when I have to be under this kind of pressure all the time. I'm also being told, don't poison your children. So I was working really hard to not show it in my face and body and not to say anything.... I didn't see the value added for me to be spewing about what was going on in our divorce to our children. It was not going to help them, they were already stressed out enough.

In court, she perceived herself as being treated with contempt and her child-rearing efforts as without value. Given the energy and love she had poured into her children (interlinked with her identity as a mother and strong family values) it is understandable that she would both resist and resent being portrayed in such a manner.

To a large extent, gendered generational norms played a role in the established division of labour. Older participants usually described a more traditional division of labour. Sheila described this as "the conditioning of the times." Participant narratives suggested that was often the case, although even those who bought into the arrangement made statements that suggested occasional ambivalence about their role. Only one mother (Lisa, early fifties) described herself as having done the majority of breadwinning and most of the family care work, saying that her husband was "just like another child." Among participants who more recently separated during their thirties and forties, there was more evidence of shifting roles, sometimes with accompanying tension. Although social change is apparent in family life over time (i.e., generations),



such changes do not occur distinct from broader social or policy continuities and changes.

Generational change in gender roles was particularly evident in the narratives of fathers who were in their forties at the time they were interviewed. Of the four fathers in that age group, two had wives who worked full-time throughout their marriage, and three of the four desired (and sought) a shift in the balance of work and care post-separation. For two fathers (Steve, Rick), both of whom had worked more than a standard 35-40 hour work week, it was largely a matter of shifting their own work arrangements to a more manageable number of hours. However, Rick, who described his priorities as having been “off,” wanted his former partner to seek employment in order to reduce his financial obligations and so that he could then spend more time caring for the children. The shift in priorities described by Rick is largely in line with ideologies of the “new father” and contemporary ideals of motherhood as involving both employment and child care, as discussed in Chapter 2. However, in that he frequently references shared parenting and having the children half-time, I am left wondering whether he is influenced by fathers’ rights (FRA) discourses as well. For instance, he explained that he decided to seek a different employment situation because “I need[ed] to try and start working on making myself more free, making my life more available to the kids so that they could have me half of the time.” Ben, the third father who sought more parenting time, was self-employed and quite financially stressed as he attempted to get a new business off the ground, while also paying off his legal bills. Ben and Rick both described strong resistance from their former spouse, each of whom had exited the labour force when they started their family, and had no current employment experience or formal qualifications. In this regard, Smart and Neale (1999) point out that it is too much to expect parents to simply start “equal parenting” at the point of separation if the pattern was not established beforehand.<sup>55</sup> Such expectations, they argue, are an attempt at social engineering.

<sup>55</sup> Smart and Neale (1999) were writing in the context of the then proposed *Children’s Act* (1996) (England and Wales).

Coincidentally, both men said that their former wife had repartnered a man with higher income fairly soon after separation. They expressed resentment about their obligation to pay child support to a former spouse who appeared to have a higher household standard of living, and whose spouse they believed was financing the litigation. Rick resented his former wife's financial dependence and referred to child support as her "paycheque." He said,

as soon as we weren't together anymore she wanted, what it felt like she wanted, was to maintain the lifestyle and just kind of have me out of the picture, which would be having the kids full-time...whereas me saying okay, let's forget about the money for a bit and let's focus on the kids. I'll take the kids half the time and I'll adjust my lifestyle, you adjust your lifestyle...it didn't fly at all.

As a result of litigation, he became the primary caregiver of the children but given what he saw as the tenuousness of the situation, he decided not to ask for child support. Ultimately, as a full-time breadwinner and caregiver, he faced similar challenges to those described by mothers in the study, although he was fortunate to experience less stigma and more social support than most of the mothers. Ben was worn out with the stresses of litigation and his small business. Besides feeling resentment that his former wife had repartnered with a high income professional, he was angry and hurt about her constant comparisons with her new partner. He felt criticized and undermined, both as a man and a father, by her unfavourable comparisons.

Overall, five of seven men in the study wanted more time with their children post-separation (of the two others, Andrew became the primary caregiver by default as a result of his former wife's poor health and Graham and his former wife agreed on and implemented a 50/50 time split at the outset). While Steve and his former wife also agreed to a 50/50 time split, Steve needed to reduce his work hours first in order to make the arrangement viable (his wife also worked full-time or more throughout the marriage). All five were successful in changing the balance of care to some degree, and

three of the five had the primary responsibility for their children at some point.<sup>56</sup> Those who sought greater involvement with their children described how this involvement changed the meaning of fatherhood for them. Steve, whose greater involvement came from reducing his work to the equivalent of one full-time position, described himself as happier living within his means and enjoying the greater involvement with his children.

Yet, as described above, some mothers are largely content with the pre-separation status quo and feel the continuity is in the interests of their children. In this study, such mothers are often those who left the work force by agreement, and see their unpaid work as their contribution to the family. In fact, two mothers spoke of their former husband's absolute insistence on their role as a homemaker. One refused to allow her to return to work, even when his business was failing. Sheila (now in her seventies) quoted her husband as saying, "if you're not there to make me breakfast in the morning I consider that grounds for divorce...that's your job. There is no if's, ands and buts." Despite his unwillingness to negotiate or interest in participating in domestic duties, she subsequently described how she loved to attend to the needs of others. Thus, despite some suggestion of ambivalence at his greater power in the relationship (and more broadly), she was also complicit in the arrangement. However, her lack of access to shared resources ultimately left her vulnerable to domestic violence. As set out in the "gender contract" of her generation, women often relinquished control over certain aspects of married life, in exchange for financial security and male protection. Indeed, that was particularly the case among couples who sought an "upwardly mobile" life plan and agreed on a traditional division of labour.

Gender also intersects with "class" post-separation, with norms and expectations about family life often coming from participants' family of origin, or their current social networks. In terms of pressures from their family of origin, two women described how their own mothers encouraged them to seek a family minded man with good earnings potential. One detailed the advice her Chinese mother gave her: "Look for a good family,

<sup>56</sup> For some fathers, the challenge was not a legal one. Rather, it was to reduce the number of hours they spent in paid employment in order to be more available to their children.

look for a good income, somebody who's a good hard worker...work ethic, and is going to be a good family man.”

Almost half of the women described an “upwardly mobile life plan” (shared with their former spouse), with two speaking with considerable pride about homes they had designed and which were later featured in magazines. Others referred to residential neighbourhoods (as markers of class) when contrasting themselves with their former spouse. Indeed, post-separation, with their life plans in disarray and in the face of conflicts over money (and in the context of broader awareness of/social tension about income inequality), most participants raised issues that seemed to have a class conflict dimension. Some spoke of the other as having a privileged upbringing (versus their own hard working “down-to-earth” family ethic), the wealthy new partner of their former spouse, as well as marked differences in income, education, and aspirations. One man referred to having been internationally educated, while his former wife grew up in state subsidized housing, while another described his extensive work and travel experience and stable parents as in complete contrast to that of his former spouse. Although on the surface it appears that these are simply descriptions of class differences and attempts by one party to differentiate themselves from the other, it could also be that in some cases participants are stirring old class wounds and insecurities (Reay, 2005) or claiming “status.” Thus what is clear from these stories is not only the relevance of gendered meanings of work and care, but also the relevance of perceptions of unequal social class in post-divorce conflicts and identities.

Work-life balance was a particular challenge mentioned by participants. Although most had ideals about family life and work-family balance, a number of participants mentioned the effect of prolonged litigation on their careers, or the challenges they faced in doing everything that needed to be done. Although such juggling and stress is common for parents, with many struggling to reconcile their productive and reproductive lives (Calder, 2007), the additional demands of litigation can be overwhelming. Some participants also had children with special needs or health issues, as well as aging or ill parents to care for. Three women were hospitalized for medical issues that were likely precipitated by stress and a number of other participants either described periods of severe emotional stress or medical conditions that were triggered or exacerbated by

stress (e.g., auto-immune disease). Part-time work was sometimes seen as necessary when children had special needs. Among mothers with large families, part-time employment was preferred in order to accommodate the needs and schedules of their children.

As described here, labour force attachment varies among participants, largely along gender lines. While generation and class also play a role, there is considerable diversity among participants. Sometimes these variations are due to preferences and choice, but more often they are due to the unique challenges and contextual factors faced by a parent or parents—such as the chronic illness of a parent or child. However, as discussed later in this thesis, for some parents labour force participation holds the seeds of agency and personal transformation; whereas for others either an increase in parental responsibilities or the satisfaction of superb child outcomes achieved through hard work and personal struggle, can have a similar effect.

Mothers, especially, feel tremendous pride and pleasure when they reflect that they raised great kids in very challenging circumstances. For some there is also pride at having become financially independent, although several were terrified at the outset of that journey. A small number of participants, however, were frustrated or even traumatized by what seemed like “no-win” outcomes. Although they had been able to express agency in small ways and overcome considerable challenges, they were apprehensive about the future. As the examples described in the previous section illustrated, some mothers even blamed themselves for circumstances that were beyond their control. For example, Julie spoke about her decision not to go on welfare in a manner that reflected negative social judgments about welfare dependence. Such judgments and stereotypes are often wrapped into lone mothers’ subjectivity (Pulkingham, Fuller, & Kershaw, 2010). Somewhat in contrast, but still reflective of neoliberal imperatives, another mother emphasized that all she had achieved was by careful saving prior to starting her family and her prudent decision to return to full-time employment as soon as her youngest child was in school full-time. Although the former decision was made long in advance of separation, the decision to return to the labour force was made once she recognized that her marriage was not viable. Hence, although high-conflict divorce may facilitate maternal agency, it is often done on neoliberal terms.

As demonstrated by studies of lone mothers on welfare (Gazso & McDaniel, 2010; Pulkingham, Fuller, & Kershaw, 2010), as well as Boyd, Chunn, Wiegers and Kelly's (2015) study of autonomous motherhood, choice and agency are enacted in a neoliberal context that may constrain or enable mothers autonomy, according to their socio-economic (and other) circumstances. Even mothers who are economically privileged and parent autonomously from the start contend with stigmatization because of their family status (Wiegers & Chunn, 2015).

As described in this section, gendered norms regarding the division of paid work and care affect the decisions parents make, both when in a relationship and post-separation. Generational and class norms also influence the decisions that parents make in this regard. That said, change is often uneven and contested, and ambivalence and resistance towards change featured in many narratives of post-separation transitions and conflicts. In reflecting on parents' response to upheaval and change, I was reminded of Ridgeway's (2011) explanation for the persistence of gender inequality in contemporary society. Ridgeway's thesis is that when faced with uncertainty and change people draw on cultural frames (or shared expectations) to assist them in organizing new ways of doing things. By so doing, they reinscribe gender stereotypes into new activities and forms of organization. In the context of my own research, it seems that gender stereotypes and gendered patterns of behaviour are particularly apparent (and often stubbornly entrenched) in the context of post-separation conflicts. In the next section I take up the final subtheme, that of financial autonomy as a component of personal agency. By so doing, I aim to further illustrate how money and child-related issues are largely interconnected and the implications for parental agency and autonomy.

## **Financial Autonomy as a Component of Personal Agency**

The final subtheme of the interrelationship between financial and child-related issues was that of financial autonomy as a component of personal agency. Financial autonomy in relation to child support was largely a gendered theme in this study, linked not only to the household division of paid work and care but also to broader cultural norms. Men in the study tended to see financial autonomy as a component of individual

identity (i.e., in terms of power, status, and ownership), and within their domain; whereas women were more likely to see financial responsibility in more relational terms, while also sometimes (usually later on) coming to see it as an aspect of personal agency. However, among both men and women in the study, ethnicity, generation, and other social locations also influenced understandings of the relationship between money, power, and autonomy. Thus although there are gendered dimensions to this sub-theme, there are tensions and nuances, even within individual narratives. As described in the previous section, these differences can be at least partly attributed to broader social changes that are often in tension with each other and not clear cut. For many parents, divorce is a time where change occurs on multiple interacting levels. As well, their ability to respond to, and cope with, these changes has a great deal to do with the personal, social, and material resources available to them. This subtheme builds on the previous section by illustrating how the distribution of financial and child responsibilities may have repercussions for parents' relational autonomy.

## **Fathers**

Most of the fathers' narratives indicated that, at least to some degree, they saw money as a key component of their identities as men, in line with dominant conceptions of male success. Furthermore, although narratives of the younger fathers suggested some ambivalence about such a conception, both fathers who were over 60 years of age had already achieved financial stability. As such, having achieved financial success, they were able to speak from within such a discourse as well as to position themselves outside it (i.e., as having achieved financial success through their individual efforts and as observers who recognize that successful men are vulnerable post-separation). The following interview excerpt indicates how Doug (aged 60+, upper-middle income bracket) described his financial affairs at the time of separation:

I had just bought a new house with my inheritance, which probably had some effect on triggering the divorce. Well, I suspect there was a financial aspect-there were some financial issues, you know, you wait until the money has been paid into a...a mortgage, [house] becomes a family asset, right? There were all these financial things that probably triggered some of it.

Notably, here (and elsewhere) he positioned himself as financially responsible and secure and his former wife both as non-contributing and as intentionally waiting to separate in order to take “his” money. He continued,

She lost her job after we were married for a month and has never worked since then.<sup>57</sup> So I think she was really looking for complete financial security [but she] certainly didn't make it clear to me. I mean, not that I didn't provide that, but I didn't have as much money as a result because she didn't work, you know...but we survived, you know, and I bought her a nice house.

On the other hand, although the four men who were in their forties spoke in the same way to varying degrees, on at least one occasion each spoke in more relational terms. When asked about how the meaning of fatherhood had changed for him after the separation, Steve responded:

Now it's different because...I am a little more involved with my kids' lives, because I have more free time, because I'm not working as much, right? I have my days off. I choose to work a second job but only when I have to, whereas before, I had no choice. We needed to have the money...even though we both worked [full-time] it was a struggle.

Rick spoke about the challenges of seeing his children less often, and how, after his youngest child clung to him tightly after an absence, his priorities suddenly changed.

That was the turning point for me when I said, okay...I need to try and start working on making myself more free, making my life more available to the kids so that they could have me half of the time. Up until that point, the kids would stay home with their mum while I worked so it was a massive adjustment.

<sup>57</sup> It was unclear what his idea of work was; she did have an occupation at the time. Furthermore, during the interview he mentioned that she owns a small business. Although the participant saw himself as an equally involved parent, he was employed full-time, whereas she was (at least for some of the time) providing primary care.



After a lengthy and damaging custody dispute, which resulted in the children being in his care full-time, Rick now finds himself struggling to juggle the demands of full-time employment, homemaking, and child care. In many ways his situation is similar to that of some of the mothers in this study, suggesting a gender convergence of sorts.

Graham, also in his forties, made a point of letting me know early in the interview that he paid his child support, by the guidelines and in full. However, rather than discussing child support matters with his former wife, he looked up the guidelines, determined the amount and sent it to her. In part that seemed to be motivated by the desire to avoid criticism for not paying. He said, "I had to get something set up because I don't want it to come back on me that I'm not paying child support. So I made sure that I set up those things properly myself." Still, he and his former wife disagreed over special and extraordinary expenses. He refused to pay half these costs on the basis that he had not agreed to them, because "she put the kids in everything...well, I'm not paying. You can't just spend my money." He felt that "she's always trying to get more money from me." However, he exercised his own agency by leaving a well-paying job to start a new career.<sup>58</sup> He believed that because he continued to pay the base amount that had been agreed on, he was under no obligation to agree to anything else. He cancelled his medical plan, believing that since his former wife also had a plan through employment, it was unnecessary. However, his daughter was concerned because the medication she required for a chronic medical condition was not covered under her mother's plan. He told her, "don't worry, I'm more than child support to you kids. You've gotta need me for more than that." Although money is clearly a tension in his life, his narrative suggests that he is resisting the association between fathers and breadwinning, and rejecting the idea that he is "just a wallet" (a term often utilized by father's rights advocates). Thus although in some ways this father had stepped up to the plate, it was largely on his terms and he did not appear to fully consider the relational dimension of his decisions for his children.

<sup>58</sup> Although it is not unusual to find child support cases where the payor father has developed (or changed to) a new career which pays less, judges may still base the quantum of support on the amount he could be earning.

Andrew, a participant now in his seventies, described how his former wife's physical disability led to addiction, and later to poor mental health. Although their children ultimately opted to live with him, he described her in dispassionate terms, "she would...manage fine for 9 months or so and then...she'd be spending over her budget, run out of money...not be able to pay the bills." At one point his ex-wife asked for more money. His lawyer "wrote back a very formal but nice letter that spelled it out quite definitely that I wouldn't be paying more. And that was the end of it." Although he likely had his hands full with both employment and childrearing, and was relieved that his marriage had come to an end, he positioned himself as the party who decided about money and what was fair. What was notable in his narrative was that there was no sense of the relational in it at all. Despite his ex-wife's health challenges, he portrays himself as autonomous and independent, such that when she spent over "her budget" he seems to have little sympathy for her. Yet, in reflecting on the interview, it was apparent to me that he applied the same blunt approach to his own challenges. In many ways he is a man of his generation and background (raised and educated internationally). However, a similar sentiment was reflected in the previous interview with a man who is 30 years younger, born and raised in Canada, who also felt entitled to comment on and in some ways oversee the spending habits of his former wife. It is difficult to know what to make of this similarity, although I favour the view of Natalier and Hewitt (2014), who contend that fathers making such comments are attempting to manage gendered identities—in this case to support masculine authority. Although there are likely generational and individual factors at play, commenting on the spending habits of the other parent functions as a way of criticizing the other parent while portraying himself as fiscally responsible and paying his fair share.

As described above, another common theme in men's narratives, regardless of generation, is that there were spousal differences in labour force expectations, as well as expectations about the division of paid work and unpaid care once they became parents. Most of the men in the study either assumed their wife would work full-time outside the home, or that she would work at least part-time once the children were of a certain age. Even where men were content for their wives to be full-time homemakers, once separation occurred, they seemed to expect them to change gears and share both paid work and child care regardless of their wishes and training/recent experience.

Although some men do reconsider their priorities at separation and seek to take a more active role in childrearing (priorities that are aligned with the shared parenting focus of ADR and contemporary norms) they do not seem to take into consideration that their former partner may not share their realigned goals and may not see such a change as in the interests of their children, especially during family reorganization. That said, two of the men who had their children living with them full-time following a protracted high-conflict and complex legal dispute described their primary focus as to ensure their children would turn out all right. As such, their greater focus on the needs of children may be linked to their caregiving role rather than their gender (Doucet, 2006), although it is beyond the scope of the current study to speculate, or draw conclusions about, the reasons for this refocus.

A final difference between the fathers and mothers in the study with regard to financial support and the balance of work and care, was that when their former wife remarried a wealthy man (or had wealthy parents), fathers seemed to either resent the financial resources of the other party (who did not have a *responsibility*<sup>59</sup> to support the children)—presumably because it tipped the balance of power—or used it to attempt to reduce their own responsibility to support their children, thus suggesting that she and the children should now become financially dependent on another family member or partner instead. Surprisingly, three of the seven fathers in the study also referred to their former wife as having repartnered a “multi-millionaire.” Given the small number of fathers who participated in this study, it is difficult to know whether this matter is significant or not.

Overall, these findings suggest that fathers feel some ambivalence about the balance of paid work and care. They are aware of the power and status of money, and in the face of relationship loss and change hold onto money tightly. Also, most see money in individual terms, rather than drawing on notions of shared ownership or responsibility. However, at the same time, all of the men in the study—to varying degrees and for different reasons—also wanted to change their relationship with their children so that their role was less as a breadwinner and more as an actively involved parent. While

<sup>59</sup> Although if new partners were determined to be acting as a parent/step-parent to the child, they could have some support responsibilities (in a legal sense).

some fathers, especially those with older children, had already agreed to an approximately equal division of time with their children, those who had not sought to change the balance. They felt their priorities had been “off” in regard to the balance of paid work and child care prior to separation. Thus, the findings among the men in this study suggest that they could be negotiating or responding to conflicting norms and are reflective of broader social tensions and changes.

## **Mothers**

Among mothers in the study, issues concerning the division of paid work and unpaid care and gender roles and expectations largely overlapped. Most were constrained in their ability to meet household expenses and struggled with the implications for their long-term financial autonomy. As well, mothers often found themselves struggling with their lesser financial power during legal negotiations, having to make ends meet with no money or limited funds at their disposal, seeking or attempting to maintain employment, and meeting the needs of their children during the family transition—all at the same time as they are being expected (by the courts and their former spouse) to “step back” from their role as mothers. Many also felt pressured or misled during legal negotiations, which they attributed to the other party as well as to their own lack of knowledge and/or power. In combination, these pressures often significantly impacted their view of their former spouse and contributed to the further deterioration of their relationship.

As discussed in Chapter 2, dominant discourses of the “good divorce” (Ahrons, 1994), which are perpetuated in policy and by professionals, promote the ideal of former spouses as parenting partners. Such an ideal is more closely aligned with the views expressed by mothers in this study, whereas fathers tended to adopt more mainstream (and masculinist) societal ideals of personal and financial autonomy.

Although all of the mothers in the study understood that financial and child-related issues should be legally separate, in terms of the practical realities they faced, money and the responsibility for children were intertwined. Those who were pressured into shared parenting agreements during post-separation negotiations (arrangements

that have significant financial implications), despite their concerns about the viability of such an arrangement or whether it was in the interests of their children, often found that having agreed to the parenting arrangement, important financial details of the separation went unresolved. Alternately, details were agreed to in the negotiations but were later either not adhered to or not enforceable, as seen above.

Consequently, regardless of whether these mothers went to court to litigate financial issues or abandoned their claim entirely, they felt that both the system and their former partner were unfair. In particular, many felt that their former partners had played the system and were not held to account for their financial responsibilities. As such, they found it very difficult to reconcile that someone who seemed to act in self-interest at the expense of his family (and his integrity) was a caring parent who they could continue to trust to put the interests of their children ahead of his own. Even the mothers who were of the view that some form of shared parenting was possible and even desirable found that as soon as the discussion turned to money, mediation or the CFL process fell apart.

Despite the fact that parental decision making post-separation is supposed to be about children's best interests, mediation turns on notions of "give and take;" thus parents who had conceded in one area (which was then often formalized and put into practice) often felt that they had been deceived. As a consequence, mothers who had not anticipated being in the labour force while they had young children at home and had not undertaken training or education with that expectation, found the process of moving from financial dependence (at the same time as they were dealing with litigation and the needs of young children) most challenging. Those who continued to work full-time, or who maintained part-time employment were often in positions that did not provide sufficient income for them to support children alone. Mothers who were able to support their children on their own income post-separation were the minority. One such mother (Leanne) was glad that she had established her career before starting her family, as once she realized her marriage was not going to work, she returned to the labour force full-time. She was particularly grateful to her parents for encouraging her to get a good education and for teaching her to be self-supporting. They taught her not to depend on anyone else to support her and to live within her means. After saving carefully for a new home, she was very reluctant to answer people's questions about her marital status

because “in my neighbourhood, if someone asks if I’m a single parent, I know that what they are really asking me is ‘if you are a single parent, how can you afford to live here?’” Furthermore, she believed that if she told people the occupation of her former spouse, who only pays minimal child support, they would assume that she lives where she does because he is paying for it, whereas she has a beautiful home in a very nice neighborhood through her own work and financial decisions.

Yet despite the many challenges they faced, those who did manage to achieve financial independence took great pride in the result of their efforts, although some made significant health and personal sacrifices in order to do so. In some cases their children also suffered. Julie described how she agreed to her child’s father taking their child because she had no job, no money, and nowhere to live. She was also suicidal. A friend suggested that she go on welfare, but “that was a trigger for me. I’m not going on welfare, not now, not ever. I have all sorts of education, that shouldn’t be necessary.” Although she did get a job and find housing, by the time she was able to find and regain custody of her child, who had been moved to another city without giving her information about their whereabouts, her child was suffering from significant mental health and behavioural issues.

As well, many mothers, as described elsewhere in this thesis, returned to school or undertook training, began businesses, and or found creative ways to earn extra income. In some cases, they worked at a second job from home while their children were in bed at night. Carol, who sold her family business after exiting an abusive marriage and then combined social assistance and low paid jobs for several years, decided to obtain an education in order to better support her children (her ex-husband refused to pay child support). First she completed her high school diploma and then she decided to undertake a law degree. Unsure how she would pay for it, she was fortunate to find a social worker who supported her plan. She used her own experience and knowledge of the law to help others going through divorce. Another mother dropped out of university to support her husband during a post-graduate degree and then become a full-time mother. After her separation and a lengthy child custody dispute she could not bear to return to court to battle over financial issues. Without any financial support from him, she returned to university, studied counselling, and then developed a successful

mediation practice. Throughout her divorce she had held to an ideal of a friendly and cooperative post-divorce parenting relationship with her former husband. Unable to achieve it, she went on to use what she had learned to assist others, building her financial independence in the process.

Although she has started her own business and is just starting to make money, another mother still feels a strong sense of injustice. The following interview excerpt reveals the mixture of pride in her self-efficacy and autonomy alongside her frustration with the injustice that she is left with the majority of the financial responsibility on a lesser income.

I was thinking I'd go back to court and try and get more money and all of that stuff, but it just sucked the life out of me...made my life horrible. So for the last 6 years my quality of life said okay, I'm not going to touch that arena. But now it's ridiculous not to. And financially my business is just now starting to take off. I feel successful...and yet I've got \$1200 in my bank account between me and my next mortgage payment and no other income, right. So it's like I have to work my ass off to get [contracts] to be able to sustain this whole process. (Lisa)

Overall, unless they were already in secure full-time employment, mothers often felt vulnerable and were afraid about how they would support themselves and their children. Not only did mothers carry the financial responsibility of both parents (a responsibility that had direct implications for their autonomy) but improving their financial circumstances became paramount in order to reduce the vulnerability they and their children faced. As Carol put it:

My biggest thing was to gain financial independence so that I would never again find myself in that situation. Because I stayed so long that I had no finances at all. And I knew that when I left, he would make sure that I had no finances. So I wanted to gain financial independence because I understood it would allow me to be me and not worry about how I was going to survive. Because when I was busy trying to survive I couldn't grow, right? It was survival mode. So I knew I had to do something else and that's what pushed me through.

Thus some mothers found themselves on their own to support their children. Despite the many challenges they faced, their effort to survive and thrive ultimately bore fruit and the seeds for their financial autonomy. All of this group felt they had been let down, not only by their children's other parent, but also by the system. Thus while they felt pride and took great pleasure in their accomplishments and in those of their children, for many parents there was also a lingering sense of betrayal and loss of trust. Not only was the father not held accountable, but because he neglected his parental responsibility (Kershaw, Pulkingham, & Fuller, 2008), a number of mothers were left with the majority of financial responsibility on a lower income. Although some had prepared for such an eventuality, it was an injustice nevertheless.

Arguably, financial matters are inevitably difficult post-separation, with both parents having to find ways to manage on less money overall. Many of the fathers who participated were keen to step back from being the primary breadwinner and sought to take a greater role in their children's lives. Mothers who were not in the labour force were at a significant disadvantage in such a situation, particularly where there were shared expectations that their primary role would be in the home and they had not trained in careers that would allow them to support a family. Although their former partner's priorities might have changed, theirs had not. In many cases the division of labour and concomitant financial implications were addressed through some form of ADR—which is based on an assumption that both parties are acting with good faith and that there is full disclosure. Unfortunately, this does not always turn out to be the case. Mothers in the study saw their former partners who resisted paying child support as failing to put the needs of their children first and, therefore, as not being responsible. Although some did continue to try to pursue the matter legally, others gave up and put their energy into their children and careers instead. Cindy summed this up succinctly, “we play different games. So he plays the game of the one with the most money wins and, ah, for me it's about who am I being in the world and am I fulfilling my purpose.” She went on to talk about her decision to invest in herself rather than spend money on litigation after years of investment in ADR unravelled without a financial settlement. She believed that investing in her education, as well as personal counselling and coaching, was “a better investment...I'm not a gambler. I might get the money or I might not get the money. I think that also contributed to my empowerment, me making a choice for me.



Not depending on anyone else to give me the money.” Thus she saw herself as making a choice and an investment in herself. Others, however, do have to depend on social assistance for a period of time. Carol, for example, said that she felt that all the systems had failed her children and herself. In order to achieve her goal of self-sufficiency and family well-being, her experience was of struggling to exercise agency within the constraints of social assistance and her minimal income. Similar contradictions concerning the agency and autonomy of low-income mothers’ were described by Pulkingham, Fuller and Kershaw (2010) and others (e.g., Gazso & McDaniel, 2010; Hanson & Hanson, 2011).

This final subtheme of the interrelationship between financial and child-related issues explored financial autonomy as a component of personal agency. Financial autonomy in relation to child support was largely a gendered theme, with men tending to see financial autonomy as an aspect of individual identity whereas women were more likely to see financial responsibility in more relational terms in that they recognize the interdependencies that comprise family life. However, as with the other subthemes described above, additional social locations and individual factors play a role. A common theme in men’s narratives was the expectation that after separation their former spouse would take on a greater role in financial provision for herself and their children, whether or not she was in the labour force or had recent experience. At the same time, they also sought a greater parental role. Mothers more often found themselves with less financial power during negotiations, struggling to make ends meet and expected to seek or maintain employment, regardless of their perceptions of the children’s needs or their own wishes.

In the context of family law, Alison Diduck (2014) contends that autonomy has become “the friendly face of individual responsibility” (p. 96). It is ironic, then, that family relations, which involve both care and interdependencies, “are simultaneously encouraged and rendered invisible...in the rush to promote the parties’ autonomy post-separation” (Diduck, p. 96). Given contemporary notions of personal choice and responsibility, now embedded in social and legal norms, those left disadvantaged when the other parent does not, or in some cases can not, step up to the plate find themselves abandoned by the state, and hence more vulnerable.

## Summary

A significant theme that recurred in both mothers' and fathers' narratives, albeit in different ways, was financial disputes with the other parent. These issues involved: the costs of justice and access to justice and the implications in terms of power and choice in the legal process; responsibility and care in the face of limited or uneven material resources particularly when disputes also involved financial support for children; gender roles, gendered norms and the "gender contract;" and financial autonomy as a component of personal agency. Participant narratives show that in many ways these subthemes are interrelated and interwoven and, as the next chapter will show, they also help to inform other findings. While gender was central to participants' accounts, individual contextual factors and varying social locations were also significant in helping to illustrate some of the complexities of the challenges parents face.

Although financial disputes are generally viewed as disputes between parents that are, and should be, kept separate from parenting matters, parents described how financial conflicts often compounded other challenges and stresses and spilled over into most aspects of personal and family life, thus impacting not only the quality of their parenting and family life, but also their personal autonomy. For example, if one parent hides or minimizes their income, the other parent might have to spend several hours each evening when the children are in bed working on a second job from home, rather than enjoying their very limited free time and some respite. Participants also described children being subjected to complaints about child support, and their own sadness, frustration, anger and shame when their children went without. On the other hand, some also described their pride at the opportunities they were able to resource for their children, and in their own steps towards financial autonomy. In that it helps to highlight how gendered meanings of money and of autonomy intersect in participants' accounts, the analytic lens of relational autonomy proves fruitful for contextualizing these disputes, and for understanding the gendered implications for autonomy and equality.

This chapter illustrates how money and child-related issues are interconnected, both in the practical sense of parents' lived experiences and in terms of the gendered meanings of money—which include not only the ability to provide for children in a

material sense but also what it means to be responsible and to care. As I will show in the next chapter, the issues parents raised here about the cost of obtaining a just resolution of their disputes, particularly where there is an imbalance of power and resources, are interconnected with their beliefs about having been failed by the justice system, and, in particular, not being heard.

## Chapter 5. Seeking Justice, Expert Knowledge, and Being Heard

In Chapter 4, I described the impact that financial disputes have on parents' perceptions of their former partner as a *parent*, particularly when financial constraints affect their ability to provide for children or obtain a just resolution to disputes. Chapter 4 also highlighted how gender, generation, class, and other social locations influence the meanings parents assign to money and autonomy. Such meanings not only affect a parent's perceptions of the other parent, thereby potentially contributing to conflict, they also play a part in a parent's legal decision-making and the outcomes they seek.

In this chapter, I take up the second major theme that emerges from participant narratives, that most participants did not feel their voices were heard in the legal system and did not feel they received justice. Given that participants do speak on their own behalf<sup>60</sup> in court and ADR, as well as when dealing with experts,<sup>61</sup> it is important to seek potential explanations for this finding. In legal venues, people are spoken for and about, according to particular ways of knowing, and are represented according to legal rules and norms and sometimes constrained by the law of evidence (Sarat & Felstiner, 1995). As Finley (1989), drawing from Foucault, puts it, "Law is...a form of discourse...a language of power [that] can pronounce definitively what something is or is not and how a situation or event is to be understood...Law has the power to silence alternative meanings—to suppress other stories" (p. 888). Power and its relation to the professions (both legal and extra-legal) and expert knowledge are linked to the issue of voice (i.e., not feeling heard). Epistemic power and privilege (Fricker, 1999) largely determine which discourses will prevail both in court and more widely, and whose voices will be heard.

<sup>60</sup> Parents also attempt to speak on behalf of their children.

<sup>61</sup> I use this term to refer to legal professionals (e.g. lawyers, judges) and expert witnesses (e.g. psychologists).

This has significant implications for the autonomy—and *experience*—of both mothers and fathers in the context of high-conflict divorce.

Generally, in the context of high-conflict family law disputes, it is professionals who speak and are heard. Their discourses (and discursive practices) largely determine the forms of knowledge, or “the tacit rules that regulate what can and cannot be said, who can speak with the blessings of authority and who must listen, whose social constructions are valid and whose are erroneous and unimportant” (Kincheloe & McLaren, 2000, p. 291). Many of the participants, especially those who were involved in lengthy litigation, described their anguish at not having been heard in the process and felt they had been misrepresented or misrecognized. This finding illustrates how dominant understandings and representations of mothers, fathers and the dynamics of a high-conflict divorce influence the views of both the parties and practitioners and shape social and legal norms.

Dominant forms of knowledge have a considerable impact on parents’ perspectives. Once involved in the family law system, many experienced difficulties having their voices heard, particularly with respect to their knowledge of their children’s needs and interests. Most parents in this study held strong values about justice and integrity, and some were particularly vocal in expressing their frustration and disappointment. Not only were they disappointed in their former partner, but many also felt let down by the family justice system (and less commonly by their lawyers).<sup>62</sup> Their expectations of what law does and how it could (or should) help them were clearly not met. In some cases, the system seemed to fail entirely, leaving them with serious health and/or financial impacts following years of stress and litigation.

This chapter expands on the theme of justice by drawing on three subthemes: seeking justice; encounters with experts and expert knowledge; and voice. In the first section, I explore participants’ expectations of the justice system and how they make

<sup>62</sup> All participants had a lawyer at some stage. However, for some the conflicts often went on for years and involved multiple issues. A number of these participants changed lawyers at least once, while others used lawyers for advice only, or self-represented, usually for financial reasons.

sense of their experiences with both formal and informal (private) family law processes. In the second section, I detail participants' encounters with experts in the child custody field and how they make sense of these encounters retrospectively. I also examine the knowledge-power nexus and the way participants exercise agency—often with mixed success—as they negotiate and contest expert discourses and retain (or regain) a sense of personal authority. Third, I describe participants' experiences of not being heard in the context of family law disputes and link this to practices of knowledge production. In response to a perception of injustice, some participants exercised political agency in attempts to reform the system. Others trained in related fields to assist others in similar circumstances with the hope of making the process easier or found creative ways to support others. For most participants, this helped to facilitate their transformation (a key focus of Chapter 6).

Despite the many challenges participants describe, their narratives demonstrate that, over time, most found innovative and creative ways to be heard. In this way, participants engage in a process of reconstructing their identities as self-authorizing, that is, as individuals who speak about their experience and are heard. However, this was not true of all participants, nor was it by any means a finished process. Some participants grapple with trauma related to the legal process and, even at the time of the interview, still struggled to make sense of aspects of their experience of high-conflict divorce. Finally, I describe some of the discourses that participants drew on to make sense of their experiences and trace these discourses to processes of knowledge production. Such processes are not neutral; rather, they are socially constructed, power-laden, and rife with politics (Code, 2008; Fricker, 2007; Langton, 2007; Medina, 2011, 2013).

## **Seeking Justice and Making Sense of the Legal System**

Prior to their encounters with the legal system, most of the participants had an idealistic understanding of the legal system and what it does or is supposed to do. However, once involved, they became frustrated, angry, disillusioned, frightened, intimidated, and/or confused as their experience did not come close to meeting expectations. In fact, according to the 2013 General Social Survey on Social Identity,

only 51% of British Columbians has confidence in the justice system and courts (Cotter, 2015), a finding essentially unchanged since 2003. According to Currie (2007), when people perceive injustice—for example when they experience the adverse consequences of justiciable problems or believe they have been treated unfairly—they are more likely to develop negative attitudes towards the justice system. Those who have multiple justiciable problems are least likely to see the justice system as fair, whether or not they use the courts to resolve these problems. Thus “the formal justice system is the lightning rod of discontent when the fundamental values that the laws and the justice system embody are offended” (Currie, 2007, p. 83). As such, it is not surprising that parents with ongoing family law disputes, whether or not they ultimately make use of the courts to resolve them, are likely to perceive the justice system as “unjust.”

Indeed, in the current study, parents expected both a process and an outcome that was aligned with the ideal—or promise—of justice. Instead, participants overwhelmingly described the financial, health, and emotional costs of protracted litigation and/or unresolved disputes, not only for themselves but often for their children. Julie, for example, developed an autoimmune disease. She said, “You can’t have this sort of emotional intensity without it affecting your health. The children are also imprinted with trauma and crisis.” Ultimately, some participants lost trust in the ability of social institutions to protect them and their children from harm and most no longer believed that they live in a just society.

Drawing on their own meanings of justice, participants variously described the family law system as unjust, unfair, biased, too complex, full of loopholes, and so on. For example, as Lisa put it, “the legal system is not just. It doesn’t represent mothers, it doesn’t represent people. It represents...statutes and affidavits and knowing the court system but it doesn’t actually do anything for the people that are part of that system.” Similarly, Doug went so far as to say, “I found it quite abusive to the children, I mean, I found it quite appalling.” Some participants persisted in the legal process because they were seeking what they believed the system would offer—that is, a fair and just resolution according to basic moral principles. Thus, justice-related discourses have considerable influence on parents’ expectations and, therefore, on the way individuals

make sense of their experiences with the family legal system. This point is explored in more depth later in this chapter.

This section explores how participants made meaning of the family justice system as they moved through the process of a high-conflict divorce. I also discuss their critiques of the family law system. In addition to perceiving that the system had failed them, participants overwhelmingly found the legal system complex. Legal rules and norms, obscure institutional practices, and “expert” ways of knowing seemed to predominate over what were seen as essential aspects of a just system: fairness, neutrality, transparency, accountability, and the ability to be heard.

## Meanings of Justice

In detailing what justice meant to them and the role it played in the outcomes they sought, many participants described notions of justice as fairness or truth in their initial meaning-making. However, retrospectively, few participants held such a belief. Not only did their perceptions of what law *is* change, their perception of what law *does* also changed during the process. Commonly held understandings of what law is and does are often based on ideals, thus in some ways they are misperceptions. However, in another sense, law promises more than it can deliver. This is particularly evident in the contemporary economic, social, and political climate where access to justice—once a fundamental pillar of the welfare state and understood as a fundamental democratic right—is uneven and uncertain (Chapter 2).<sup>63</sup> Rather, a political focus on economic costing and reducing demands on the system has shifted attention away from key values on which the legal system rests (i.e., justice and impartiality). In struggling to make sense of this disconnect, and how such a justice system was in the “best interests” of children, participants ultimately determined that family justice is *not*, for the most part, about the best interests of children. In their words, it is “a crapshoot,” “fallacy,” “game,” “dance,” or “battleground.” Rather than being fair or just, to most participants it seemed more like “a performance in which few know the rules” but too many “game the system,”

<sup>63</sup> See also: Eekelaar, 2011; Maclean, 2011; Picontó-Novales, 2015; Sommerlad, 2015; Treloar, 2015.



“manipulate,” and “use loopholes” or other tactics in order to win. Ideals of truth and integrity do not necessarily prevail, and those with greater material resources, family connections, or legal “know how” (i.e., power and privilege) have an advantage and may even get away with abuse of the system as a result. Certainly, this sense of unfairness or inequity was the perception of many participants.

Although most participants were generally satisfied with their lawyer overall, many described a loss of trust in lawyers and the legal system. Prior to their involvement with the family legal system, most participants trusted lawyers and believed that they would act in the interests of their clients; however, in retrospect, some came to see lawyers as primarily business people and more concerned with their relationships with their peers than the client and/or their children. Some also felt that those who benefit most from the current system (described as some lawyers and their wealthy clients) have little interest in changing it. Nevertheless, two parents (Kathy, Lisa) said that after all is said and done, they were willing to engage the legal process as a matter of principle. They believed that the justice system could, or at least should, bring honesty, accountability, and fairness to bear in resolving their dispute. In other words, were they not to pursue the matter, then the other party would be successful in their efforts and would be rewarded for their dishonesty. Thus, potentially, the legal system may *enable* those who lack integrity and responsibility, while at the same time *contributing* to the challenges faced by those who are already taking more than their share of the responsibility for children and are at an economic disadvantage.

As a result of their experiences, participants changed their perceptions of the law, the legal system, and what may be accomplished with both. In most cases, they came to see that law as a structure and framework that involves complex rules and practices rather than a system of enforcing moral principles or a set of ideals. Indeed, law is a set of tools that cannot itself solve human problems. Some participants had engaged the legal process believing that there would be recognition of harm (e.g., as a result of domestic violence) and that this recognition would afford them some protection. Others sought facts that proved elusive. For example, those for whom a spouse’s affairs were a contributing factor to divorce believed that such conduct was indicative of the kind of person their former spouse was (e.g., dishonest, self-centred). If their former

spouse claimed a lower income than expected, then trustworthiness was an issue. If the court did not adequately scrutinize these claims, and especially if it created financial hardship for the participant, then the participant was likely to be upset with the courts as well as with their former spouse. Participants also felt that the family law system does not work well when emotional, psychological, and medical issues are involved. Based on their lived experiences, the majority of participants felt that family law does not belong in the legal system (alongside criminal law, for example). Further, they felt that ADR should be taken out of the free market. The latter point is thought-provoking; indeed, as discussed in Chapter 2, it is contrary to trends in family law in Canada and most other common law jurisdictions, where the responsibility for resolving issues that arise as a result of “family breakdown” (alongside the cost) is increasingly regarded as that of the family or individuals involved rather than a public responsibility (Eekelaar, 2011; Treloar, 2015; Treloar & Boyd, 2014; Treloar & Funk, 2008, 2011; Trinder, 2015).

Parents were particularly disturbed by what they perceived as a disconnect between what the family law system says it is about (e.g., the best interests of children) and how it operates in practice.<sup>64</sup> They also were upset about mixed messages such as those between (ostensibly) gender neutral family law and gendered discourses of mothering and fathering, as well as conflicting discourses about parenting. For example, notions of good mothering in intact families may be very different from notions of good mothering post-separation. Mothers whose family law disputes involved custody, which in BC is now termed “parenting time,” felt that their caregiving had suddenly become problematic in the eyes of the courts, such that they were “turned into” gatekeepers and alienators, and pathologized, whereas prior to separation, they would have been considered excellent mothers by contemporary standards. In this reconstruction, their (demonstrated) good care, commitment to children’s well-being and concerns about the other parent disappear in favour of a focus on father involvement. Evidence of “good mothering” may then become evidence of some pathology, a paradox extensively detailed by feminist scholars (Kaganas & Day Sclater, 2004; Rhoades, 2002; Smart, 1997; Wallbank, 1998, 2007).

<sup>64</sup> See Chapter 4. This point is elaborated further below.

While there was little difference between mothers and fathers in terms of their satisfaction with public family law procedures, in general, fathers who participated in the study seemed to be more satisfied with the ADR process than were mothers. Mothers were more likely to feel pressured to agree, to be aware of power imbalances (especially in the context of domestic violence), and to feel that their former partners agreed to things on a strategic basis and were not held accountable for agreements. Nevertheless, mothers frequently spoke about their desire for collaboration and a “parenting partner” and many described a profound sense of loss at no longer having a working relationship with the children’s other parent. If issues arose, they wanted to be able to discuss them with the other parent and come to a consensus of sorts. Importantly, their focus was on sharing the responsibilities of parenting. That said, mothers who had been primary caregivers still wanted to be respected as such, including being recognized for their knowledge of their children. Fathers, on the other hand, were mainly focused on sharing parenting time and seemed more interested in parenting alone on a shared time basis. Some seemed keen to prove that they were as capable as parents as the mother was and to come to know themselves more fully as fathers; thus they preferred the form of post-divorce parenting known as parallel parenting, in which parents share parenting time, but each has the authority to parent independently without the requirement to communicate with the other or reach consensus. Parallel parenting orders are often used to deal with high-conflict situations, although not without considerable debate among legal academics. Epstein and Madsen (2004) maintain that such an approach may be based less on the interests of children (who may still find themselves in the midst of conflict) than on judicial resistance to choosing between parents and a belief that parents in conflict can be forced to cooperate. Birnbaum and Fidler (2005) respond that while parallel parenting is no panacea, it protects children from parental conflict and provides a framework that protects children’s relationships with both parents.

When viewed through the lens of relational autonomy—an approach that revises the construct of autonomy to account for the centrality of social relations and intersecting social locations in shaping our identities (MacKenzie & Stoljar, 2000), this finding suggests that after separation, fathers prefer to parent based on liberal individualist values of autonomy and self-governance, whereas mothers approach post-separation parenting with more of a view that children are part of an interconnected web of social

relationships that involve both care *and* responsibility. This latter view is more consistent with relational notions of autonomy and a feminist ethic of care (Gilligan, 1982; Hankivsky, 2004; Kittay, 1998; Noddings, 1982; Sevenhuijsen, 1998; Tronto, 1993). Without wishing to reinforce binary conceptions of social location (Cooper, 2004), mothers' and fathers' orientations are largely reflective of broader power structures and social norms rather than simply reflective of independent or individual views.

Put simply, when the mothers and fathers in this research engaged in ADR, it was with different understandings of collaboration. Although mothers sought collaboration in general, when they agreed (or conceded) on shared parenting what they "got" was more likely to be a division of time without the ability to discuss or cooperate on child-related issues. As discussed above, in the context of a high-conflict divorce, there has often been a significant erosion of trust, which makes ongoing communication difficult. In some cases, this lack of trust precedes the separation (e.g., as the result of an affair or abuse), but sometimes the tactics used during the legal process are as, or more, responsible. These tactics are often termed "scorched earth" tactics because they impair trust and reduce the possibility of future cooperation.

## **Critiques of the Legal System**

The vast majority of participants who used the courts to resolve their disputes (or attempted to) were extremely critical of the legal system. In addition to the criticisms summarized above, such as that the system is too expensive, unjust, unfair, and biased, many described the system as complex and not user friendly. As Cindy put it, "I'm well-educated. I can't even imagine what somebody who is not well-educated must feel...how they could even attempt to go after that person when they can't even figure out the system." However, those who did attempt to access the system had largely exhausted other options and found no other viable alternatives. For example, several participants with ongoing challenges with child support felt that updating child support should be an administrative process that did not take place in the courtroom. As Shelly suggested, if it was an automatic process—for example, linked to annual tax returns (like a number of means tested benefits), then it would not stir the same emotional response as when it was dealt with through litigation. Finally, the legal process was found to be extremely

slow, particularly for participants who had attempted one or more forms of ADR and/or were also dealing with complex medical issues.

A number of participants (e.g., Doug, Kathy) felt the system was not user friendly, and that it does not adequately serve those who need it. In particular, they felt that the courts (and allied family court professionals such as psychologists and mediators) often take “a ‘cookie cutter’ approach” to certain problems rather than making the effort and spending the time to understand the situation of the parties and complexities involved. They frequently complained that orders are not enforceable, the system is not accountable for its failures, and users are left with the fallout. When there is an error, no one apologizes for the harm (this complaint was also levelled at mental health professionals). As users of the courts, they described the system as “foreign,” “full of unseen rules” and “loopholes,” and as “not transparent.” A small number of participants (e.g., Shelly) described the physical setting of the courts as intimidating, but more often participants saw the institutional structures as “impenetrable” and the legal system as one in which there are insiders and outsiders. Participants saw insiders as those who were wealthy, some professionals, and those who were knowledgeable about the legal system or had connections with people who did. Although people who are poor, Aboriginal people, recent immigrants, and people with low levels of education are most evident as outsiders, almost all of the participants perceived themselves as outsiders. This suggests that they regard themselves both as outsiders to the legal system and as having less power than the other party (for example, as a result of their lesser finances, knowledge, or connections). Whenever there is an imbalance of power between the parties, it is likely that one party will be at a disadvantage in terms of outcomes. Indeed, this very power imbalance is often the source of many of the issues in dispute. For example, a mother who had been married to a physician (Leanne) described how her former spouse had used his connections and status to gain advantage and mislead the courts concerning both child support and access issues. Four participants (including a father who had been involved with law reform, two mothers who currently work in the legal field, and another mother who did so previously) positioned themselves as both outsiders and as insiders with personal experience.

In addition to difficulties with navigating institutional structures, participants also perceived that the family legal system was unfair. Specifically, they mentioned gendered assumptions and expectations, stereotypes, bias, and a lack of accountability. Examples of gendered expectations described by mothers included being “nice” (i.e., accommodating—Nicole, Sofia, Krista) and putting up with “bullying,” including during ADR. Krista, for example, perceived both the mediator and her former partner as bullying her during a mediation session. Although only one other mother used the term bullying to describe the behaviour of a mediator and former spouse in combination, five mothers in total described experiencing intense pressure tactics during ADR sessions. This suggests that they were conscious of the gendered expectations described above, in combination with an imbalance of power.

In response to these expectations, mothers said that the system enables bullies and three (Cindy, Sofia, Andrea) pointed out that it is not in the “best interests” of their children to allow their mother to be bullied. Fathers also felt that they were subject to gendered expectations and assumptions, although these were more often social in nature rather than emerging during litigation. For example, Graham, a father in his forties, said that he felt that he always had to defend himself from criticism (real or perceived) of his parenting. In response to a question about what he needed at the time of his divorce, he responded:

(Graham) One of the things that would have made it easier for me in the process is me. If I went through it now, knowing what I know now, not just from being divorced but from everything I’ve learnt in the last couple of years, it would be completely different... I wouldn’t be fighting at all. I wouldn’t be giving in, but 95% of it was pointless fighting...or arguing. Not even to win, there was nothing to win. It was just defence, I was always defending...and I had to defend the way I was doing things. I felt I had to defend, maybe I didn’t... I probably didn’t have to.

(Rachel) Hmm. So you probably got the impression you weren’t good enough the way you were.

(Graham) Yeah, I’m the shit father and unless I do these things I’m going to be labelled the shit father. And I realize now that I could have done all those things,

I'd still be a shit father. It's a no-win. So in the end you've got to do what you have to do, and I go back to that *What to Expect When You're Expecting* book. It's a stupid book.

He went on to explain that parents (and fathers in particular) should ignore expert advice and instead "figure it out...stay calm, and true to who you are.... It sucks, but it's about staying in it, and then you recover." These excerpts suggest that this father sees expert knowledge (in this case both about parenting and parenting after divorce) as interfering with a painful, but essentially inevitable, natural, and time-limited process of adjusting to separation. Although the two other fathers in their forties who also had young children at the time of separation described a similar struggle with confidence as they learned to parent on their own in the early stages, most fathers did turn to parenting books, friends, or family for advice.

Some participants described the courts as operating with and/or reinforcing stereotypes (e.g., gender, class, race), including stereotypes about people involved in a high-conflict divorce (as discussed in Chapters 2 and 4). Among participants who went to court, while most felt that the judge did the best they could, there was a common perception that it is a "crapshoot" who you get for a judge.<sup>65</sup> The judge may or may not "get it" (i.e., understand the complexities of the case, including power dynamics) and the outcome could be influenced by factors such as a judge's own experience of parenting (or lack thereof), as well as their personal opinions, experiences, and stereotypes. One judge was described by a participant as "shooting from the hip." In other words, he was perceived as speaking without thoughtfully considering the issues or the impact of his words. A small number of participants even described being ridiculed by the judge, to the amusement of their former partner and his or her lawyer, which in the context of a courtroom and considerable personal stress felt humiliating. Two participants mentioned that the judge had come directly from a criminal case, one of which was a case where a parent had murdered their children, and they felt that this had affected the judge's mood and outlook.

<sup>65</sup> This perception tends to be reinforced by lawyers (Sarat & Felstiner, 1995) and ADR practitioners.

Although some of the participants had tried several lawyers in order to resolve (or attempt to resolve) their dispute, most seemed moderately satisfied with their lawyer's handling of the case, generally regardless of the outcome. However, lawyers still received considerable criticism. These criticisms were in many ways reminiscent of those described by socio-legal researchers Sarat and Felstiner (1995), who found that lawyers and clients tend to have different meaning systems, which must be negotiated in the legal office. For example, in establishing their authority and expertise, lawyers tend to disempower clients—often by assuming that client perceptions are clouded by emotion and, therefore, not to be trusted (Sarat & Felstiner, 1995). Understandably, clients are likely to resist such meanings. My study participants saw lawyers as having multiple interests that were not always aligned with the interests of their clients. Furthermore, they described lawyers as “business people” who ask for large retainers, often prolong matters, and are part of an “old boys’ network” (both social and professional) that dates back to law school.<sup>66</sup> Particularly strong criticism was reserved for lawyers who were seen as either having inflamed matters or as not having relational values: overly zealous lawyers who seek a win above all, those who behave like bullies, and those who are “turned on by the potential of money and conflict” (Andrea). Nevertheless, one participant described how she found a creative way to respond to attacks by her former husband's lawyer:

They had been going at me for about two hours and I was really exhausted. I leaned forward and I looked at his lawyer and I said, “it must be so hard for you to have to hate me this much...day after day,” and I just smiled. I didn't do it with animosity, really. Honestly, I felt compassion for her that she was never going to know me, because she would not allow herself to.... So it was good for me to be able to do that, [although] I couldn't always contain it. (Andrea)

<sup>66</sup> Clearly lawyers are running a business and do need to make a profit. Although participants did not say as much, it is likely that the issue may be one of power/powerlessness. While lawyers deal with family law matters in the course of their work and clients assume they can leave the issues behind at the end of the day, those clients who are embroiled in lengthy and costly disputes cannot. In their book *Divorce Lawyers and their Clients*, Sarat and Felstiner (1995) discuss these issues at length.



Although she found few opportunities to exercise her agency in the legal process, Andrea did so by politely expressing compassion (thereby inhabiting feminine norms) and speaking authentically instead of responding in a combative manner. Although she managed in a small way and on a single occasion to resist the opposing lawyer's construction of her, this was the exception. In many respects, participants' frustration and disappointment was directed at the legal system and at the professionals who work within it. Clearly, they did not think the legal system provided a just, fair, and transparent resolution to their dispute, but, for those who used it, neither did ADR.

Having examined how parents seek and understand justice and make sense of the legal system, as well as their critiques of it, this chapter now moves on to discuss the remaining subthemes of power and expertise and of voice and being heard. These sections shed light on how participants attempted to make sense of their experience with the legal system and exercise their agency within the constraints of their circumstances.

## **Knowledge Construction and Professional Expertise in the Family Law Context**

This section examines participants' encounters with experts in the child custody field and how they describe and make sense of these encounters retrospectively. In addition to consideration of the role of professions and experts and professional discourses, it examines the power-knowledge dynamic in this context. Nikolas Rose (1996) describes expertise as the authority that is "claimed by those who have acquired the power to speak the truth about persons" (p. 301). Of note is how a number of participants—in different ways and at different times during the interview—contested expert discourses. Not only are these expert discourses questioned by participants, in most cases long after the legal dispute was concluded, but some participants also attempt to position themselves as authoritative in relation to these discourses. As individuals who are not only knowledgeable but who also have *experience*, they engage with both academic research and alternative discourses to develop counter-narratives: stories that challenge dominant narratives, and, by extension, the assumptions or beliefs that underlie them (Bamberg & Andrews, 2004). Thus, in examining parents' perspectives of professional encounters alongside an exploration of the forms of

knowledge that participants draw on to make sense of their experiences, it is clear that experts have significant power to insert their construction of an individual into the litigation process. Whether or not an individual is recognized as credible is likely to significantly impact the outcome of their dispute.

As I argue throughout this thesis, knowledge in the context of child custody disputes is not neutral in the sense that there is some sort of truth that can be uncovered. It is a field of knowledge that is largely constructed by those with (a) power, and (b) a vested interest in the outcome of that knowledge. Nevertheless, family law litigation involves assessment (whether formally or informally) of the credibility of each parent and their ability to meet a child's needs. It is, therefore, imperative that professional regulatory bodies and the courts carefully consider the potential for what Miranda Fricker (2007) terms "epistemic injustice" in this context. Fricker explains epistemic injustice as follows:

Since so much of what we know depends on one or another sort of testimonial transaction, it matters whether our habits of attributing credibility are in good order. Clearly it matters from a purely epistemic point of view: if, for instance, a hearer's prejudice wrongly deflates her judgement of credibility, then the flow of knowledge is blocked, truths fail to flow from knower to inquirer. But this is not all. The dysfunction of unduly deflated credibility may be not only an epistemic dysfunction, it may also be an ethical dysfunction. For the speaker who receives a prejudicially deflated degree of credibility from a hearer is thereby wronged—he is wronged specifically in his capacity as a knower. This idea of being wronged in one's capacity as a knower constitutes my generic characterization of epistemic injustice. (2008, p. 69)

Fricker (2007, 2008) further distinguishes between the testimonial and hermeneutical forms of injustice, both of which she describes as *discriminatory* forms of epistemic injustice. Testimonial injustice wrongs the subject in his or her capacity as a giver of knowledge, with stereotypes and credibility bias on the part of the hearer preventing the speaker from being heard. In contrast, hermeneutic injustice, when a person is hindered in making sense of a social experience due to a hermeneutic gap (a

gap in collective interpretive resources), results in experiences being unintelligible to others and sometimes to the individual. Participants in the study frequently felt unheard and complained of stereotyping and of having their credibility doubted when they were telling the truth. Some also struggled to make sense of their experience, ultimately concluding that the experience simply did not make sense. In part, that was because their disputes were at first understood to be individual and interpersonal in nature. Nevertheless, over time, these participants came to understand that certain aspects of their divorce dispute were interlinked with broader social and structural issues. Hence, I contend that in the context of high-conflict divorce involving children, both of these discriminatory forms of epistemic injustice are present. Arguably, the other type of epistemic injustice described by Fricker (2007), that of *distributive* epistemic injustice, is present by virtue of unequal access to expert advice and education. Although there have been recent efforts to improve online access to information and advice, such information is not always helpful or accessible.

Although outside the scope of this dissertation research, there is a need for greater critical reflection on knowledge construction processes in the context of high-conflict divorce. Such reflection could accompany a new framework for family law that is based on a more nuanced understanding of the various inequalities that play a role in post-separation parenting relationships and how these are often obscured in contemporary norms and discourses (Boyd, 2010). In Chapter 7, I will propose that a more “bottom up” approach to high-conflict divorce that includes the views of former service users, rather than one that is politically driven, could make a significant difference to individuals and families as they navigate these complex experiences and move on. Furthermore, greater inclusion of participants’ voices and experiences, both in the production of new knowledge and in developing ideas for change, would generate epistemic friction. Medina (2011) defines epistemic friction as “the mutual contestation of differently normatively structured knowledges which interrogates epistemic exclusions, disqualifications, and hegemonies” (p. 21). Facilitating, and indeed normalizing, the friction of ideas as a *constructive* and inclusive process with room at the table for discordant voices and subjugated knowledges could have a profoundly transformative effect on polarized positions and the production (and nature) of knowledge about high-conflict divorce.

## Experts Know Best?

Expert discourses, not only about divorce but also about child rearing, seem to play a significant role in child-related disputes post-separation. Common among these discourses is the notion that experts “know best.” Many of the participants in this study initially accepted that interpretation. Over time, however, they came to doubt, question, or actively contest professional knowledge. For example, a mother (Nicole) spoke about her former spouse as a “high-conflict person,” a notion that runs counter to the dominant professional view that “it takes two to tango.” In the dominant discourse of high-conflict post-separation disputes, the parties are commonly described as “high-conflict families,” or “high-conflict couples/parents.” As Birnbaum and Bala (2010) have pointed out, the term “high-conflict” in the context of child custody disputes is often used loosely, and the meaning is not articulated. Thus it is important to be more precise and to differentiate between disputes that are primarily driven by one parent and those where both parties are responsible (Birnbaum & Bala, 2010).

Expert discourses also circulate in texts and are apparent in social norms regarding child rearing. Many participants mentioned the significant value of parenting experts in shaping their parenting approach, with those who separated more than a decade ago being likely to mention books that involved child-led and intensive parenting approaches, such as Barbara Coloroso’s *Kids Are Worth It: Raising Resilient, Responsible, Compassionate Kids* (a book that emphasizes treating children with dignity and respect), and those who separated more recently mentioning contemporaries such as Gordon Neufeld’s and Gabor Maté’s best-selling *Hold On to Your Kids: Why Parents Need to Matter More Than Peers*.

As described in Chapter 3, I had initially expected that most parents would have consulted books and other texts on post-divorce parenting, but this was rarely the case. Although in some ways, this finding was surprising, it suggests that this particular group of divorcing parents think of themselves primarily as parents, while they are more likely to be seen as *divorced* parents by policymakers and other professionals in the field. Two participants (Shelly, Rick) mentioned the book *Mum’s House, Dad’s House: Making Two Homes for Your Child* (Ricci, 1980, 1997). Otherwise, no single text was referred to by more than one participant. One of the two parents (Rick) found the book helpful, saying

that it suggested that kids adapted to different household rules and routines, rather than that they should have continuity between households; whereas the other (Shelly) was annoyed by the book, pointing out that each divorce involves different issues and challenges and that shared parenting was not the ideal for all families. Parents who did read post-divorce parenting books were often frustrated by the view expressed in them, either explicitly or implicitly, that parental harmony is possible if one “works on themselves” and communicates well.

Rather than thinking of themselves first as divorced parents, the parents in the study thought of themselves predominantly as parents. In line with this focus, some parents read popular parenting texts, and a number of parents mentioned reading personal development literature. Although I did not ask participants whether they read such literature prior to separation and divorce, it was my impression that they were more likely to do so afterward. Men, in particular (e.g., Steve, Jeff, Rick), mentioned reading books that were recommended by friends, counsellors, and other professionals. Among parents in this study, those who had separated more recently were as likely to have read parenting books as those who separated several decades ago. Similarly, participants who are now in their sixties or seventies (most of whom were at least somewhat involved in the human potential movement<sup>67</sup> of the late 1960s and beyond), were as likely to have participated in personal development groups as participants who are now in their forties, although the nature of the courses they attended and books they read were somewhat different. Thus participants variously drew from expert discourses of parenting, good post-divorce parenting, and personal development—alongside discourses promulgated by advocacy groups<sup>68</sup>—in making sense of their circumstances. Some also positioned themselves in such a way as to convey that they were a good mother or father, perhaps as a carryover from the requirement to portray themselves in a favourable light during the legal process. As such, participants frequently drew on “expert knowledge,” often found on the Internet; including discourses of father contact, shared parenting, attachment theory, and children’s “best interests,” as relevant to their legal disputes.

<sup>67</sup> A term used for humanistic psychotherapies. See: Puttick, E. (2004). The Human Potential Movement, in *New Religions: A Guide* (pp. 399–402). New York: Oxford University Press.

<sup>68</sup> Discourses promulgated by activist groups circulate verbally (in conversation and self-help groups), online, and through scholar-advocacy literature.

Some also mentioned—and contested—discourses subscribed to by their former spouse. For example, Ben, who was born in the UK to working-class parents, commented on North American middle- and upper-class practices such as attendance at prenatal classes and the “intensive parenting” beliefs to which his former spouse subscribed, suggesting that they were unnecessary and classist.

## **Contentious Knowledge: Parents Respond**

Among parents with younger children (under 13) at the time of separation, about half of the participants in the study had one or more section 15 reports in some form. A section 15 report is an expert opinion on the needs of the child, with the purpose of informing the court about parenting issues under the former *Family Relations Act*.<sup>69</sup> In these reports, experts use psychological tests, interviews, and third party “references” to create a psychological profile of each parent and typically also assess their parenting capacity and relationship with the children. These experts (usually psychologists) also gave evidence in court, and in some cases, one of the parents hired a second expert to critique the findings of the first. Generally, participants who had a full section 15 report were more satisfied than those that had a brief report; however, these reports are so costly that few can afford them. Litigants may, therefore, be tempted to opt for a shorter report and to cut corners. Typically the cost of such reports is equally divided between the parties, which is problematic when there is a substantial discrepancy in the parties’ income or ability to access assets. Moreover, parents who have issues obtaining or collecting child support are likely to be under considerable financial pressure to meet child-related and household expenses.

Of the fathers who had a section 15 report, all were largely satisfied. Mothers, on the other hand, were mixed, both in terms of satisfaction and their perception of the process. In particular, those who had experienced domestic abuse in their relationship with the father described numerous issues including a lack of understanding of domestic violence from outside the domestic violence community and that some experts were

<sup>69</sup> Under the *Family Law Act* (2011), a similar type of report may be ordered under section 211, but all study participants who had a report had it completed under the former statute.

disrespectful, and they frequently described the domino effect of system failures. However, in response to these issues, some mothers began to connect the personal and political and to exercise their agency. In some ways, this parallels the experience of several of the fathers, who felt the legal system had failed them. Although their concerns and experiences were in some ways different, they also drew connections between their personal struggles and systemic failures and exercised their agency by engaging in collective action with other fathers. This relates to epistemic injustice in that when parents do not feel heard and perceive their concerns to go unaddressed by professionals and the legal system, they may seek new ways to be heard, developing new strategies and discourses. Nevertheless, such strategies do not always result in the desired legal or policy outcome and may further contribute to conflicts between the parties and across groups.

Several parents thought that the expert who conducted their report was not neutral. Although an expert is meant to be a “neutral” and objective “knower” in providing guidance to the court, in some cases (as perceived by participants) the assessor also acted as an advocate for one of the parents, ostensibly on behalf of the child or children. Parents and lawyers typically assess the neutrality (and potential biases) of the assessors before agreeing on and hiring one. Parents responded in a variety of ways to the way in which they were constructed in these reports. For example, a participant who chose an expert based on the belief that she would see him favourably and agree with his view of the situation described feeling validated. Others who were portrayed positively described feeling relieved. Very occasionally, a participant who received a report that was “mixed” described it as fair and balanced. However, some parents clearly felt misrecognized, both as a person and a parent, in response to these professional constructions, and it is worth considering how these parents responded to the information in their reports.

For example, “Sally,” who was portrayed negatively in the Section 15 report, resisted this construction by trying to “reclaim herself,” asserting herself as a very different person from the caricature that was presented to the court. During the interview, she emphasized her education, personal resources, and understanding of child development. She also attempted to clarify her intentions, specifically, “It was never my

intention to take the child from his father. Never. It was my intention to get me safe, to get the child safe, and to work out some sort of arrangement with the father.” Thus she both positioned and explained herself to me in relation to discourses of father importance and mother blaming (Kaganas, 1999, 2010; Kaganas & Day Sclater, 2004; Neilson, 2001), providing a potent example of the impact of feminist discourses on meaning-making. In explaining herself vis-à-vis how she was characterized, she positioned herself as a moral person, responsible citizen, and community member, a good mother who understands attachment theory and is attached to her child in a healthy way (Kaganas & Day Sclater, 2004). She also drew extensively on her education and professional background—perhaps both as a means to be heard and in order to make some sense of her experience. Although she is outspoken—even audacious—it is clear that she did not feel seen or heard in the legal process. Rather, she felt pathologized and her behaviour medicalized in terms of the discourse of parental alienation.<sup>70</sup> Yet, instead of allowing herself to be subjectified (Foucault, 1988) in such a way (that is, accepting the expert’s view of her), she responded in a two-fold manner. First, she re-presented herself to me as someone with knowledge who understands what is right and correct. Having conveyed that, she then explained herself in relation to moral and legal norms (Kaganas & Day Sclater, 2004) of motherhood and divorcing responsibly (Reece, 2003).<sup>71</sup> However, as illustrated in the excerpt above, she also speaks as an abused mother. Her account suggests that she understands both domestic violence and fathers’ rights discourses. What is particularly interesting about her narrative is the way she speaks about her lived experience—first, as a knowledgeable and neutral observer, and secondly, as a knowing subject. This familiarity (and multivocality) is not unusual for someone who has spent considerable time in court and has read and researched extensively in ultimately becoming a self-represented litigant.

As explained in Chapter 3, participants’ meaning-making is ongoing, including in the interview process. Therefore, it is difficult to separate out how this participant exercised her agency during the court proceedings versus how she reconstructed her

<sup>70</sup> See Glossary.

<sup>71</sup> Although to some extent I am reading this in, Sally drew extensively on dominant understandings of motherhood, parenting, and divorce in her account. For example, she spoke passionately about her responsibility to (and for) her child on a number of occasions.



agency and authority after the fact (in this case during the interview). Nevertheless, in thinking about what is happening in this narrative, it seems that by employing a “neutral knower” counter-narrative, Sally is both resisting the way she is constructed by others and attempting to reclaim authority about herself; in this way, she is exercising her agency. However, although she is somewhat successful in resisting the expert’s pathological construction of her, in part because she hired another expert who disagreed with the first, her agency (and power) remains constrained in the legal context. Even as she rises up and “reclaims her agency,” asserting herself as one who “knows”—an authoritative subject—she perceives herself as rendered invisible and turned into a caricature that suits the claims of the other party. She describes her expert encounters as follows:

I would have to go to these appointments with all these “experts” and the moment I walked into that waiting room and they came and said hello to me, it was like I could feel myself being quashed into a box and the problem that everybody had is that I wasn’t fitting into the box! I’m sitting there and wait a minute, that’s not me! And I would leave the appointment and I could literally feel myself stepping out of there and I would be thinking...wait a minute...what the *hell* was that! And no matter what I said or how I tried to say it, it was always dismissed.

Sally sees herself as framed, classified—at one point she is even labelled as mentally ill. However, she rejects the labels. As a person who “knows” herself and has familiarized herself with the law and psychological expertise, she understands the paradigms, knows the rules. She says that what the expert is describing is not her; she does not fit his box. This process, and Sally’s refusal to be characterized as someone she knows she is not, was the beginning of her political agency. However, as McNay (2014) points out, we should be cautious about overestimating the prospects for women’s political agency—indeed, individuals in certain circumstances are “unable to act as agents in their own interests” (p. 37). This is likely to be the case in child custody litigation in which the only legitimate concern is that of the “best interests” of children.

Nicole, on the other hand, was initially confident that an expert report would help to clarify her child's (special) needs and ensure that the recommended parenting arrangements would be in her child's best interests. Describing herself as someone who trusted professionals implicitly, she said, "I was so naive. I thought that it would turn out okay because you know, these are the experts." However, in the context of her child custody dispute, during which she spent two weeks witnessing what was "basically a battle of the experts" in which entire "teams of experts" argued about the child's mental health diagnosis and her parenting skills, her trust and confidence were shattered. She was traumatized by the process, which by the end seemed to be more about "this black and white issue. Is he or isn't he [diagnosis], or does he or does he not have special needs" and finding fault with her, rather than about the interests of her child. Thus the child's everyday needs (Nicole's focus) disappeared into a dispute between professionals concerning his diagnosis.

Although these two mothers responded very differently to attacks on their parenting and their mental health, there were similarities in their circumstances. Both had exited abusive marriages, and both were later subject to what could be called abuse through litigation (Elizabeth, Gavey, & Tolmie, 2012; Watson & Ancis, 2013). The pathologizing of mothers (Chapter 2) who seek primary care of children is not uncommon in the context of family law litigation, even when domestic violence is a factor (Harrison, 2008; Kaganas, 2010; Rhoades, 2002; Wallbank 1998, 2007). However, it runs counter to the interests of family well being. Specifically, a parent who is under attack must (unless they are prepared to concede) use their resources to respond rather than to focus on the needs of their children and on moving forward (Treloar, 2016; Treloar & Funk 2008).

Involving mental health professionals in a child custody dispute can quickly take on a life of its own. However, for those with serious concerns that affect parental capacity, it is often necessary to hire experts to advise the court, as well as additional mental health professionals to support the family. In such a context, not only can the costs quickly become unmanageable, but not all experts have the knowledge or experience to assist. For those parents without financial resources, any existing services are likely to be operating under tight budgetary constraints and limited staff resources.

Accordingly, very few professionals (e.g., counsellors or psychologists) will step in to assist or offer their services once they know there is litigation involved unless these costly psycho-legal assessments are the focus of their practice.

Anne, a mental health professional herself, found herself in precisely such a situation. As she put it, in terms of seeking out resources, “[I] was more skilled than most of the people I went to for help.” If she couldn’t find assistance and was fully extended trying to manage the situation, she didn’t know how others would cope or navigate the multitude of challenges involved.<sup>72</sup> As she quickly found out, those who will get involved generally work on a private basis. Although many experts may aim to help, they can quickly find themselves out of their depth, leaving the client with an additional expense and little to show for it. Those with complex situations (e.g., involving physical or mental health issues, whether of an adult or child) often described being passed from one agency or service to another and professionals frequently lacking expertise across issues.

Perhaps mirroring the knowledge practices of these professionals, a number of participants made mental health “assessments” of their former spouse during the litigation process. Furthermore, some tapped into dominant stereotypes or social constructions of categories of people, perhaps to advance their cause. Although I am not able (or willing) to pass judgment on the veracity of their diagnoses, I believe that it is important to seek explanations—to make sense of their sense-making. For example, by “diagnosing” their former partner they may hope to win their case, to cast blame, or to position themselves as without fault. It may also be a way of silencing or dismissing the concerns of “the other,” or that the participant has determined, on the basis of a belief that the courts are biased or unfair, that a custody battle can only be “won” by such means. Finally, their assessment of the former partner may be reasonably accurate.

<sup>72</sup> In some cases, expertise is not enough. Professionals may not have the knowledge or skill to help (especially with complex and intersecting problems, as was likely the case here), or a party may not be heard due to prejudice or bias on the part of the hearer. Paradoxically, in this context, Susan Penfold was dismissed as an expert witness because she was deemed “biased” as a feminist (see, for example, Penfold, S. (1997). Questionable beliefs about child sexual abuse allegations during custody disputes. *Canadian Journal of Family Law*, 14(1), 11–30; Penfold, S. (1995). Mendacious moms or devious dads? Some perplexing issues in child custody/sexual abuse allegation disputes. *Canadian Journal of Psychiatry*, 40(6), 337–341.

Nevertheless, little thought seems to be given to the consequences (or indeed the ethics) of diagnosing their former spouses, with some apparently willing to participate in the same unethical behaviour they criticize in others.

Several fathers in the study described their former partners as likely to be mentally ill, and one attributed a stunning number of labels to his ex-wife, many of which carry pathological connotations.<sup>73</sup> Additionally, he commented that he had found the Internet very helpful in learning about such things and that, as a result of his research and conversations with others, he is convinced that she suffers from one of two psychiatric disorders. He also mentioned that he had dated a psychiatrist, from whom he had learned a considerable amount about these disorders. Although it may simply be that he found an ally in this woman, and he was able to learn from her in order to further his own knowledge or position, an alternate explanation is that he was implying that a psychiatrist would only date someone of sound mind. Another father<sup>74</sup> also sought an ally in the form of an expert, because he had learned about parental alienation syndrome (PAS) on the Internet and was convinced that was what was going on. He explained:

I had always tried to understand their mum's behaviour and how she approached situations, how she emotionally reacted to...you know major situations or approached stuff and I came up with borderline disorder, and narcissism and you know, all these different traits that all seemed to fit, uh, but wasn't educated enough to be able to be able to portray them. And then as I started reading more about the parental alienation a lot of it started making sense and really twigged and you know, hearing other stories and you go, wow, you know what? That is me!

Through his research he found a psychologist who had appeared in a similar case and he was able to secure her involvement. Several mothers also described their former spouse as personality disordered (usually a narcissist), while fathers referred to their former spouses as "borderline." For example, one mother described her efforts to

<sup>73</sup> Note: a pseudonym cannot be used here, as the details are likely to be recognized by others familiar with his case.

<sup>74</sup> As above.

protect her children from “their father’s vitriol and how his narcissistic personality played out. It was all about him and he would say or do anything to get his way” (Andrea). Another mother (Kathy) said, “I don’t really know how to identify his personality disorder, whatever it might be, but it does bother me.” She also mentioned that a friend, a psychiatrist, had suggested that her former spouse was a narcissist, and had recommended that she read the book *Snakes in Suits* (Babiak & Hare, 2007).

Although a number of participants (both men and women) were aware of common stereotypes about mothers and fathers, they drew on these stereotypes strategically and positioned themselves in relation to them. This occurred most frequently during discussions around domestic violence and father involvement. Some parents invoked these discourses in the interview and others referred to discourses and stereotypes as having been used strategically by the other party during litigation. Thus it can be said that in the context of child custody disputes, many parents learn the discourses and knowledge that circulate within the field. Although experts position themselves as neutral and unbiased, academic literature suggests that is not always the case (for example, Caplan & Wilson, 1990; Shultz & Leslie, 2004), likely reflective of broader stereotypes about divorced mothers and fathers (Valiquette-Tessier, Vandette, & Gosselin, 2015). However, although many experts do a good job and leave the parties satisfied that they have been thorough and fair, participant narratives suggest that there is more work to be done in this regard. Family law is a complex system, not without its faults and blind spots; nevertheless, when those who work within the system do poor work without consequences and an individual or family suffers as a result, then clearly an injustice has occurred. As Sally commented, it is hard to forgive experts whose poor work did harm, but nevertheless, she is “working on it.” She further explained that she is trying to forgive for the sake of her own well-being.

Not only did participants have issues with experts post-divorce, expert practices and discourses can play a role in shaping views of childbirth and childrearing, and in interparental conflicts about these practices. Such practices are also, at least to some degree, shaped by culture and class. Parenting discourses and practices also vary across generations; however, all of the participants in the current study were in relationships with a spouse of a fairly similar age (i.e., of the same generation). One of

the fathers in the study (Ben) grew up in a two-parent working-class household in the UK, where men typically went down to the pub at the end of the day rather than actively participating in childrearing. He subscribes to the view that childbirth and child rearing is natural, normal, and does not require special skills or training. Instead, he believes that people find their own ways as parents. His Canadian (former) wife, in contrast, was born into a culture of “intensive mothering” (Hays, 1996) in which mothers engage in an intensive professional approach to parenting and assist in building children’s social standing (Bourdieu, 1986). His former wife insisted that they attend prenatal classes and quickly became knowledgeable about all aspects of child rearing. She did not want to return to work after their child was born and she looked to him to improve their shared financial circumstances. Although it is likely that neither understood the “culture” of the other, it was clear to me that norms of good mothers and fathers and “expert” childrearing discourses played a significant role in their conflict. Although Ben had come to realize this over time, he was ultimately able to find his own way and his own community of support. Other participants also described conflicting approaches to parenting, such as “he was a...‘my way or the highway’ kind of dad” (Margo, mother who practised non-violent communication).

In concluding this section, I note that to a considerable extent, expert knowledge is both valued and contested by participants. Some also draw on expert discourse in order to support or advance their perspective, or to demonstrate the weakness of the other party’s position, thus positioning themselves as “knowing” subjects. At times, when participants contested a professional’s “expertise” or authority, there was an interesting juxtaposition of the subject and object of the knower’s gaze. Some participants who drew on both professional knowledge and personal experience also turned the locus or focus of the problem back onto a professional or professional group, thereby disputing their neutrality and pathologizing the professionals. Such a transgressive counterdiscourse (Irving, 1999) could be thought of as an assertion of a participant’s agency, for agency involves having the opportunity to see oneself as one who can transgress the given meanings in a discourse and by imagining new possibilities (Davies, 2005). Further, as family law and affiliated professionals categorize, stereotype, and pass judgment, so too do the objects of their gaze.

Thus in attempting to understand what forms of knowledge participants draw on to make sense of their experience, alongside their experiences in relation to these professionals, I am left with the impression that although professionals and other experts may claim to be neutral<sup>75</sup> in the context of family law litigation, neutrality is not always achieved in practice. Implicit in expert knowledge is a theory (or more accurately, theories) about what has gone wrong and what is needed to set it right. Professionals have more power to implement (or even impose) their version of reality, so it may be helpful to pay careful attention to stereotypes and credibility prejudice (Fricker, 2007) both for the sake of justice and as a matter of care.

Building on the work of Fricker (2007), I propose that rather than categorizing and labelling those involved in high-conflict disputes over children, a better starting place would be a place of openness or “not knowing.” Code (2008) describes this approach in epistemological terms as “unknowing.” In essence, Code’s “unknowing” involves a negative “(Foucauldian) ‘politics of truth’” (p. 32) that can enhance the agency of those so labelled without resorting to politically dubious (i.e., individualizing) rhetoric that separates people from their social context. For example, she suggests that “informed, careful advocacy” (p. 45) is an effective way to augment the epistemic agency of those who have been harmed by stereotypes and insensitive policies and practices that have not served them well, and can serve as a mechanism to re-examine and “undo” unjust knowledge structures that lay an “epistemic grid” (p. 47) over the lives of “Others.”

“Not knowing” ensures that those with family law disputes feel heard and are able to access the supports they need without preconceived notions about what is best for them getting in the way. Beginning with the categorization “high-conflict couple” pathologizes a parent who has a legitimate concern and may well result in what Fricker (2007) terms testimonial injustice. If, instead, the courts and allied professionals took a life course perspective that recognizes that all of us enter adulthood as “selves” in progress (and continue to develop throughout our lifespan in a fluid and multidimensional manner, often influenced by context and life events), those engaged in

<sup>75</sup> To be clear, professionals are generally expected to take a neutral stance in child custody disputes. However, in practice, neutrality is a contested notion. See Treloar, 2007.

family disputes would be better served. Thus, by participating in—and encouraging—such processes, they can set an example of how post-separation conflict can transform individual and family lives. In the next chapter I discuss such personal developmental processes as they were apparent in participant narratives, but before doing so, I move to the final subtheme of this chapter, that of voice. Here I continue to apply and extend the work of Fricker (2007) and draw on feminist legal scholarship to explain how transformation occurs and may be apparent in the context of high-conflict divorce.

## **Authority and Voice: Speaking and Being Heard in the Context of Family Law Disputes**

This section explores the subtheme of agency and voice and connects it to broader knowledge construction practices in the context of family law disputes. Although many participants felt that they did not have a voice and were not heard in the process, some later found their voice and were innovative and creative in speaking and being heard. In this process, which often involved personal development in some form or another (and/or political engagement), participants were able to reconstruct their identities as people with agency to be heard. By reclaiming the right to speak and finding a way to be heard, they developed self-authorizing voices.

Power has a great deal to do with who speaks and who gets heard, thus playing a key role in shaping knowledge construction. As Sarat and Felstiner (1995) put it, “‘who says what’ is as important as ‘who gets what’ in revealing law’s power” (p. 144). Although parents are key witnesses in child custody litigation, it is generally the experts who speak about and for the parties. Psychologists, lawyers, and academics in the field are regarded as authoritative not only about the problem of high-conflict divorce but also about the parties. Participants’ knowledge about themselves as people and parents, as well as their knowledge of their own children (typically gained over years of relating to them), has little authority in comparison. In some ways then, the narratives of participants in this study can be seen as a way of regaining authority about themselves and their children. That is, participants are claiming the power to speak about their experience and to be heard. As witness to, and participant in, these narratives and processes of reclaiming authority about themselves and their own experience (i.e.,



speaking as someone who *knows*), I had the sense that some of the participants had never really been heard. Indeed, in some cases I suspected that a profound injustice had occurred. Fricker (2007) describes this sort of injustice as “testimonial injustice,” a type of injustice that occurs when the credibility of a speaker’s words is diminished by prejudice on the part of the hearer.

Krista described feeling particularly betrayed by both legal and mental health professionals because after she had consistently encouraged the father’s involvement in her son’s life:

He would accuse me of trying to withhold (son). I did everything in my power to make sure that (son) had access to his dad, even when his dad didn’t want it. I was the one who was always pushing for him to have access to his dad and then I got accused of being unreasonable. That was the part that really felt like a betrayal of the system, they just agreed with (son’s father), they didn’t even bother listening to my part of it.

Thus, even though she had done all the “right things,” Krista was categorized in line with how she was depicted by the child’s father (i.e., in line with stereotypes of mothers withholding access from fathers to get revenge), to the extent that her own efforts to promote the father-son relationship were invisible. It is likely that the other party was able to tap into dominant discourses that circulated at that particular historical moment—discourses about the importance of fathers and mothers as malicious or vindictive in the context of child custody disputes (Smart & Neale, 1999). As Boyd and Young (2002) and Rhoades (2002) point out, the standards for mothers’ credibility are much higher in the context of child custody disputes, in part because fathers are able to tap into dominant conceptions of mothers as interfering with the father-child relationship. This is an important point, as it draws attention to the fact that there is the potential for one party to a family law dispute to be the beneficiary of epistemic injustice, especially if their claims are in line with dominant discourses and their wishes are aligned with social and legal norms. As Medina (2013) points out, credibility excesses, and not just deficits, may also

result in epistemic injustice. Indeed, Collier (2006) points to a body of literature<sup>76</sup> that tracks the empowering of fathers in the new “contact culture” concomitant with the downgrading of the interests of mothers. Thus, rather than *enabling* the resilience of parents with family law problems and providing needed resources, the legal system may be complicit in processes that have a *disabling* effect. Furthermore, professionals who work in the legal system may be complicit in particular knowledge construction practices that perpetuate injustice.

### **Agency and Voice/Having a Voice**

The discourses that participants draw on in making sense of their experience can be traced to particular epistemological beliefs, or “ways of knowing.” Participants in the study frequently described the experience of not having a voice in the context of family disputes. Graham put it succinctly: “The thing about divorce is that nobody is heard. People just want to be heard, really heard.” Another participant said, “the biggest challenge [was] being honoured in the court system in any way shape or form, feeling like you had voice” (Lisa). Generally, when participants spoke about their experience in this regard, they variously described being ignored, silenced, even belittled, and their experiences minimized. Where common stereotypes (e.g., men as potential child sexual abusers, mothers as vindictive post-separation) seemed to be a factor, both men and women described encountering a credibility bias on the part of professionals they encountered. Therefore, they felt that they first had to establish their credibility and then work hard to be heard. Depending on the material and social supports or resources available to them, some persisted or resisted, and others withdrew or gave up on the legal system entirely. Although the latter group of parents had not achieved a satisfactory outcome, they settled for “being able to sleep at night” (Becky) and a sense of personal integrity despite also having a sense that they had experienced an injustice.

<sup>76</sup> See, for example, Coltrane, S., & Hickman, N. (1992). The Rhetoric of Rights and Needs: Moral Discourse in the Reform of Child Custody and Child Support Laws. *Social Problems*, 39(4), 400–420; Bertoia, C., & Drakich, J. (1993). The Fathers' Rights Movement: Contradictions in Rhetoric and Practice. *Journal of Family Issues*, 14(4), 592–615.

## **Mothers, fathers, and gendered credibility bias.**

Gender played a key role in whether participants felt heard or not, with cultural background, upbringing, generation, and/or economic inequality intersecting to compound their difficulties. For example, a soft-spoken Chinese-Canadian mother<sup>77</sup> who had exited an abusive relationship spoke about her section 15 report as being particularly damaging:

The way it was done, it was just to condemn. I'm going to take a side and then I'm going to condemn the other person.... I felt like, Oh my god, who's going to listen to me because, I mean, this is done by, you know, a psychologist, well regarded in his field. Who's going to listen? They're going to think, "Oh well...she's just bitter of course because it didn't go in her favour."

Notably, the psychologist who wrote the report was an older white man, a pattern that was repeated throughout the legal process. For example, during her Judicial Case Conference (JCC) she found herself the lone woman in the room with her former spouse and three older white men—two lawyers and a judge. Although her lawyer was present on her behalf, at times he exerted considerable pressure on her to accommodate to things that she did not feel were in her child's best interests. Neilson (2001, 2002) described similar pressures on abused mothers as they attempt to navigate the family legal system. Unfortunately, it appears that these practices still exist. In response to a question about whether she felt heard in the legal process, this mother replied:

No. No. I felt like I was just like this (gestures) small. Because there was this psychologist who was saying, "You know what? The reason why this...the child has problems is because [of the mother's] poor parenting." And I felt like...Oh my god...I even felt like my own lawyer believed him.

<sup>77</sup> I have not provided a pseudonym here since in combination with other excerpts in which I do use a pseudonym for this participant, she could potentially be identifiable.

Like most participants, she continued to seek out resources and someone who would listen and understand, but it wasn't until she found a legal advocate<sup>78</sup> that she felt heard at all. While it is possible that her cultural background and other factors may have played a role in her silence and silencing, many women described similar experiences. Carol, who described her culture of origin (Southern European) as one in which women were open with their emotions, spoke about the role of emotion in the process. For her, the idea that emotion has no place in law, including family law (cf. Day Sclater, 1999), was incongruent with her beliefs. She saw the expression of strong feelings as normal; however, her experience was one of constant fighting to be heard and to obtain support and housing for her large family.

Most often, mothers saw voice as a women's issue—a result of social conditioning. Some mentioned not “speaking up,” others felt that women's work was not valued, that because society did not give women credit, they did not value themselves as much as they should. As one mother with an agreed “equal” time parenting arrangement that does not exist in practice put it, “We're just so, so habituated to (sighs) putting others' needs ahead of ours and it's a real unlearning or relearning” (Margo). When her ex-spouse travelled for business on days he was responsible for their children, she could have used some extra assistance with child care. In particular, she neglected her own needs but did not speak up and say so. In retrospect, she thinks it would have been better if she had, “because it is hard work to be a full-time single parent...and society doesn't recognize that.”

Another participant, Sheila (now in her seventies), spoke about her inability to say what she needed or express strong emotions as a younger woman. She attributed her inability to speak to her upbringing and generation. She believed that had she been able to do so and to set boundaries for her husband's behaviour, likely he would not have been so dominating. She advises others to be “honest [about] what the voice in your head is telling you. And then look at that. There is a voice in everyone's head. It's pretty clear. I think people actually know what it is...if they'd just stop.” Because her

<sup>78</sup> Most legal advocates work out of community agencies. They have training and knowledge in particular areas but are not lawyers. See [http://www.familylaw.lss.bc.ca/resources/fact\\_sheets/what\\_An\\_Advocate\\_Can\\_Do.php](http://www.familylaw.lss.bc.ca/resources/fact_sheets/what_An_Advocate_Can_Do.php)

husband was a highly regarded professional and very charming, especially to women, finding a counsellor who could see beyond that was very difficult. Indeed,

couple therapy and family therapy was a disaster. It was very poor, so that wasn't helpful. I didn't feel met at all in my needs. People were so charmed by him because he is so intelligent and capable and attractive and charming. Perhaps it was...there weren't any male therapists available at that time. The only ones I knew were women.

In a number of participants' narratives, issues of voice and knowledge construction overlapped, with those who have more financial and social power (generally men) being better able to make themselves heard. Since power is connected to knowledge construction, this potentially has significant implications for outcomes. Krista's narrative illustrates how intersecting social locations alongside professional biases about credibility based on dominant stereotypes—in *combination*—resulted in her not being heard. Krista described herself as having been in a weaker and more precarious economic position compared to the child's father, with whom she had only a brief relationship. When I asked about how she ended up with an equal time parenting arrangement and no child support, she said:

He was very good at making his point of view heard, he is better at presentation skills than I am. I wasn't particularly good at asserting myself, or.... I've never been good at getting listened to. I mean (*laughs*) it's an unusual experience for me to actually be listened to...that was a whole part of my upbringing [described being parented in an authoritarian manner], which he took advantage of. I mean, I don't think he deliberately chose me for that but, you know, it was definitely a quality that I had that he took advantage of, that I expected people not to listen, not to take my concerns seriously and they didn't.

Thus Krista described an unequal economic situation and unequal ability to present herself favourably, alongside her expectation that she would not be listened to. However, to further compound her difficulties, she described the beliefs of the time (the early 1990s), where,

it was very fashionable around that time, to say, “Oh, it’s so tough for men in custody battles because they always automatically give it to the woman.” So they made it...you know, basically I had to do twice as much to get half as much credibility because everybody was bending over backwards to prove that they weren’t prejudiced against men. So I mean that was sort of a social environment, I don’t know whether that’s still a problem but back then it was a huge problem.

In the excerpt above, Krista is depicting precisely what Fricker (2007) describes as testimonial injustice. This may result in silencing, but whether or not it has that effect, it means that what the speaker says is not “heard.” Krista also described encounters with a family court counsellor and the other parent in which she was asked to speak (or to respond), silenced, and then judged in line with dominant stereotypes of mothers as overprotective and as gatekeepers to fathers’ relationships with their children. She perceived the family court counsellor as only listening to the father “and anytime she even allowed me to open my mouth it was to shoot down whatever came out of it. It was just automatic, and (father) just sat there snickering and smirking...and she didn’t call him on it.” Krista’s case is but one example, as stereotypes about both mothers and fathers in the context of high-conflict divorce continue to be prevalent. Even the parents who separated more recently reported feeling that they were judged on the basis of stereotypes—or at the very least, they had to work extra hard to prove their credibility in the face of potential stereotyping or bias.

Krista was also silenced in mediation and in court. She described mediation as follows:

Just a nightmare...so when that was over, I was just shaking. I was just horrified. I thought this is how it’s going to go. I’m going to get steamrollered and bullied over and over and over again, like they didn’t even let me talk. They just talked over me.

Furthermore, Krista could not seem to find a way to get her voice heard in court. She had no legal experience and was completely overwhelmed. “I just felt completely beaten up and battered...and shamed and humiliated. I remember the judge even

making disparaging remarks that I was probably stupid...in front of everyone, including my son's father even." She described the (older male) judge as:

absolutely horrible! It was a no-win situation because if I'd stood up for myself he would have probably told me to shut up and you know, would have cut me down for being too bossy, or too loud but because I was respectful and I was quiet and I didn't...and you know, I thought before I spoke and he took that as she is too stupid to give an answer and so he interrupted me and never let me answer and just went ahead and [explains further] made a stupid crack and of course got a big laugh out of [child's father]...and ended up with joint custody.

At first, Krista blamed herself, but "there came a point where I just realized, it's them, it's not me. It's absolutely them 100% and the question is, how do I get heard?" Once their "custody battle" began, "finally I was in an arena where I could fight back, where I could be heard. Where everything was going to be in writing and I could say everything I had to say." She spent many hours drafting her own affidavits, which were her way of being heard because she was not heard when she spoke in court. Although she knew that the other party was capable of extreme acts of retaliation, she felt that she was not taken seriously when she warned her lawyer what to expect. In a sense, then, she was disregarded as a "knower," which further thwarted her agency.

(Krista) So it was just this constant, constant battle of not being heard, not being believed, not being taken seriously over, and over, and over again by everyone I went to. So it was an extremely frustrating situation. If I had to pick one thing that was the most frustrating than anything else, it was just that lack of listening, that automatic assumption that the man was right and the woman was hysterical, emotional. Of course I started getting emotional because I was...you know, I was freaked out because, you know, I was telling the truth and people weren't believing me. And you know, you do start to act in suspicious ways, (*laughs*), you know, it get's...er...

(Rachel) You get more wound up and you try even harder.

(Krista) Exactly. Exactly. And then they say, you know, you're too emotional.

(Rachel) You can't win.

(Krista) Exactly, and it was a no-win situation.

At the end of this excerpt she clearly indicates that she sees this as a structural problem—a no-win situation, rather than an individual one. She, like other participants, in recognizing that “the personal is political,”<sup>79</sup> recognized and then exercised her agency. Realizing her difficulty in getting heard, she signed up for a presentation skills course. She believed that the main reason she was not heard was

because I was female, and there was probably nothing I could do differently. But I thought, if there is anything that I can do differently that is going to make me heard, I want to find out what that is.... I wanted to present myself in a way that would get me heard.

This excerpt shows how voice, gender, and the search for justice intersect. Although Krista saw her gender as potentially precluding her agency, she recognized that in order to be heard and to have a fair resolution in a system that she believes is biased, she needed to find a way to present herself and be heard. When I asked what would have made it easier for her and what she needed at the time, she responded

Well, first of all...not such a heavy bias on proving that the system wasn't biased in favour of women, so I think that would have helped. I think just being heard. Just having people listen when you're telling the truth. Just having people listen at all would have been nice.

As she was going through the legal process, Krista reconciled her situation as follows: “I just realized that I was in a war and I had to behave like a soldier.” Although she had been punished as a child for behaving in a way that did not fit strict expectations for a girl, she recognized that her inability to act in a confident and self-assured manner was making her unsuccessful in the legal process. Despite the shift in her agency, as

<sup>79</sup> Although the expression the “personal is political” is associated with women's activism, in this study the data does not suggest such gendering.



described above, she did not get a better legal result. However, she recognized that her agency was constrained by social and structural factors and that it was in her overall interest to make some personal changes in response. For example, she needed to access her anger and learn how to deal with conflict—something she did not learn as a child.

If I'm dealing with an unreasonable or unjust person who just wants what they want, I just go into warrior mode and...I've discovered that being angry gets you a hell of a lot of things.... At heart I'm not a fighter, I'm really not. I don't like conflict, I've never liked it and I don't like it now, but I've recognized that dealing with conflict is a tool that you need to have in your toolkit because we live in a really hostile world (*laughs*) as I've learned...sometimes you just have to slam your hand on the table and make everybody jump, and you get their attention that way. It's not a way that I like but as long as it is effective I will do it (*laughs*).... I mean, I'm glad there is something that is effective, but I wish it was being reasonable because I much prefer that.

Although most of the mothers described not feeling heard in the legal process, some fathers also faced challenges in being heard, particularly where their experiences diverged from gender stereotypes or countered the beliefs upon which most practice was based. Some of the fathers also described tremendous frustration with not being heard or believed in the legal process. For example, Rick said that every time he had to go in front of a new judge, he had to start over. Furthermore, "as soon as I'd walk in there'd be an immediate bias, like 'I don't know, this doesn't sound quite right.' And, you know, have to be extremely out of the norm to try to prove what was going on." Not only did Rick experience this difficulty with the court, he had a similar problem when he explained to the Family Maintenance Enforcement Program (FMEP) that there had been a change of custody. Until it was resolved his wages were garnished, despite having shown FMEP the documents to prove it.

It was awful.... I got on the phone with one lady, you know, after three or four ladies that were making these decisions and uh, this is one of the occasions when I absolutely blew my lid. You know, I was on the phone and I was

screaming at her saying listen, you are taking food out of children's mouths, they are with me full-time, I've been to court to try and get to this point, I can't deal with the financial stuff quick enough, you need to give me some breathing room. And the lady said, "Well, you know what? You are going to have to pay in the end so like suck it up." And I absolutely melted. I had to leave work that day, I went down to the ocean and walked around and bawled my eyes out, was just shaking because I had gone through so much at that point that was just...I couldn't believe it.

Jeff had a similar challenge in establishing his credibility, this time during encounters with the Ministry of Children and Families and the police. Both he and his former spouse had made allegations against each other. He said, "They believed her story over mine. The Ministry thought they were protecting her and they needed to...now I felt that my children were at risk, I didn't have any idea where they were." He went to see his lawyer about what was going on. The lawyer said that they could not raise the issue because it was "one of the main allegations that parents use against each other." Although he eventually found a social worker who advocated for him within the Ministry, he otherwise thought the (all female) staff were biased towards believing a woman—"Some of them just hated men. I felt that initially from the supervisor that was there. She just had it for me...right out of the gate." However, once he had a section 15 report done, he felt things got back on track. He saw the psychologist as professional, "I would say he was definitely an advocate...for the children." It is difficult to know whether the fact that the social workers were all female and the psychologist was a male affected either his perception or theirs (and the outcomes he described); however, his comments about the biases of female professionals are in line with claims made by fathers' rights groups (Boyd, 2004) and he did attend such groups for a period of time.

In describing his experience of not being believed in the legal process, a third father said that what got him through it was his persistence:

I'm a bit of a stubborn person...well I'm a truthful person and it offended me enormously. I mean, I believed in...firstly, I believed in the legal system. I don't really think family law is a legal system though, because it doesn't deal with

facts.... I sort of felt, you know, that you can't...you can't destroy somebody's life without any facts, you know. And I (*laughs*) believed that.... Perhaps I'm a bit naïve. (Doug)

Although Doug felt that he had been misrepresented by the “other side,” he had a great deal of support from professionals and advocacy groups, as well as from family members and friends. However, he expressed concern that persistence is not enough, because “if somebody's really totally unethical and they can do that kind of thing. I don't see that there is much you can do about it if somebody is that determined...particularly if you have no money.”

Most participants who engaged the litigation process described experiences of having their knowledge of their children or former partner overridden in significant ways. Furthermore, participants often felt that they had been misrepresented or “othered” in some fashion, in order to fit in with the discourses that were being promulgated by their previous partner or his/her lawyer. In other words, although they were depicted in ways that differed from their sense of identity (i.e., it was “not them” that was being spoken about), they could not seem to find a way to make themselves seen or heard in the legal process—they were no longer self-authoring subjects. In this regard, several participants who were involved in protracted litigation described how their former partner and their legal team seized on a popular discourse (e.g., parental alienation, mother as gatekeeper, father as incompetent/risky or sexually abusive) to achieve their desired goals. Notably, these discourses had a gendered dimension. Even if the other parent was not ultimately successful, the allegations could potentially affect social relationships and were a source of distress for the party who was subject to such allegations. For example, two fathers who were accused of abuse (one of child sexual abuse and the other of domestic violence) worried that people might think the allegations were true and that it could affect their social relationships or how they were perceived in the community. One described having social worker friends and wondered whether they might access the records to check him out, even if they shouldn't do so without authorization—to do so would be both illegal and unethical. Another lived in a small community and wondered whether locals might still think the allegations were true, even though he was ultimately successful in obtaining sole custody of his children. Mothers

who were accused of parental alienation also felt vilified, and mothers accused of poor parenting in some form, which included being unable to create a good post-divorce relationship with their former spouse (Boyd, 2003; Hardesty & Chung, 2006), often felt judged and marginalized.

### **Being recognized.**

Participants who perceived that they had been misrepresented by the other party and his or her legal team described the tremendous relief that came either with being recognized or seen as correct in their position, by a judge. As Anne put it,

When I got the final order for the kids and the access and the divorce...it was incredibly freeing. It was very sad but it was incredibly freeing too. Because now I have a piece of paper...that [gives] me more legitimacy...that I wasn't a crazy person and the...hyper-vigilant mum, you know, that was out to get the dad. I actually had a judge agree with me. And it says right on the order how many days we've been in court, you know, and so it shows that it was a really long trial and that, you know, I survived that. So I think that gave me a lot of confidence in myself, where that wasn't something that I was really good at before, and um...it just helped build resiliency in every part of my life.

In the above excerpt, the mother connects the outcome, which she sees as recognizing her as a good mother with legitimate concerns, with her ability to survive years of complex and difficult litigation. Thus being recognized gave her confidence and enabled her resilience more broadly. While not all participants managed to obtain the outcomes they sought, those who did were more easily able to put adversarial legal tactics (discrediting, pathologizing, drawing on dominant discourses, etc.) behind them. What then of those who were never heard (or seen clearly) in the process? I have encountered parents, both in my counselling practice and through my search for research participants, who have been traumatized and disabled by their experiences with family law. Not all bounce back after litigation. The fact that resilience can be built, even in part, by having been heard and recognized in the process of family law litigation (and not simply by a positive outcome), suggest that there is a better way—specifically, a more caring way—to support families and ensure a just outcome that is in children's

best interests. In Chapter 7 and Appendix F, I explore possible ways forward in this regard.

### **Multiple systems.**

Some participants felt failed by multiple systems at the same time. Although satisfied with the outcome, the father described above who had difficulty with the Ministry of Children and Families and the police found the process very challenging. Carol, a mother with six children, said that all the systems had failed her and her children.

Whether it was the judicial system, the Ministry or welfare.... It was like fight, and fight and fight. It's like they couldn't see what I was trying to achieve. And that was to raise my family and to better their life and to better our future. It was like I've got to fight for what was needed.... I was constantly fighting for the safety of my kids. Fighting for everything. The Ministry was not listening, the workers were not.

When I asked what would have made it easier and what she needed at the time, Carol responded,

I needed a voice. I needed to be heard. I needed people to be more qualified for one. I should never have had a junior lawyer because I knew what he had to face. I should have had social workers that understood violence way better than they did. And it would have been good to have an advocate but I didn't know in those days that those even existed. So that was my other challenge. I was not informed enough about, you know, how I could support myself, really. And so I think I needed people with better education, better knowledge, better understanding of the situation and people that would talk to me really. And I found that a lot of them didn't really...besides saying you need to do this and that and that...nobody really listened or even really asked me how things were going or what I was going through.

Essentially, Carol needed to be heard, to have qualified and well-trained people working on her behalf and advising her, and a better understanding of her options, including self-help. What she is describing is precisely what legal advocates often do. As an alternative to (or in conjunction with) expensive lawyers and other professionals, they offer an inexpensive and comprehensive service. Participants who were able to access a legal advocate most often described them as the single most helpful service provider.

### **Recognition by the other parent.**

Several of the participants mentioned how hard it was to parent without any acknowledgement, credit, or support from their former spouse. One mother (Shelly) said that to get some sort of recognition from her children's father, who criticized her relentlessly—both as a person and a parent—was the one thing that would make a real difference in her life. A father (Ben) described a similar wish to be recognized by his former spouse. He said that the criticism and blame had “battered me emotionally” to the extent that he was at times “almost on the verge of a panic attack, breakdown.” Although surrounded by supportive friends, groups, and professionals who like him and think he is a good person,

when you've been battered as much as I have...sometimes, you don't believe it. They'll say things like, you're doing such a good job with [child], such a good job and you almost feel like crying because why isn't that the person that matters that could say that?

Notably, in the context of litigation, both parents and their legal teams are engaging in tactics that make a working co-parenting relationship after completion of litigation even more difficult to achieve. Such tactics are in contrast with those that support transformation, as argued throughout this thesis.

### **Whose Voice? Recognition and a Self-Authoring Voice**

One of the mothers who participated in my study perceived herself as undervalued and unrecognized as a mother, particularly by legal professionals. Despite her considerable knowledge of her children and focus on their needs, not just after the

separation but throughout her marriage, in the eyes of the legal profession, she was seen as interfering with the children's relationship with their father. It is ironic that what was agreed on with her former spouse at the point of separation and seen as meeting the ideal of motherhood (i.e., putting her children first), was not only redefined but was deemed problematic. She described the treatment she received in court as follows:

When I was on the stand I was skewered. For being a stay at home mother, like "What do you do with your time all day?" Not just the question but the tone of voice. A couple of times [described circumstances] I look[ed] at the judge in an inquiring way, like are you not going to call this lawyer on how she is speaking to me? Because I was not rude or disrespectful at all about what my husband was doing for a profession. (Andrea)

This excerpt raises the question of whose knowledge of these children is privileged. Although arguably this mother knows her children best, after separation the locus of power shifts to professionals as possessing expert knowledge. She was unsuccessful in her attempt to draw the attention of the judge to an imbalance of power between herself and her ex-husband and the manner in which she was treated in court. By emphasizing that she was (essentially) a professional mother who had devoted herself to the children, she seemed to be exercising her agency in the only way available, which was to portray herself as the one with expert knowledge of her children. Yet here we see a paradox—that by exercising her agency she risks being seen as capable of influencing her children and as responsible for facilitating their relationship with the father—who by virtue of his fatherhood and professional status (i.e., by his greater social and economic power) is recognized by the court. Furthermore, rather than being judged according to idealized notions of motherhood—ideals to which many women continue to aspire, although they are now largely discredited (Smart, 1991), mothers tend to be judged according to how selflessly they facilitate the relationship between a father and "his" children (Boyd, 2003). This responsibility has significant implications for mothers' autonomy in a shared parenting climate (Boyd, 2010). Not surprisingly, this judgment (and the responsibility to facilitate a relationship with the other parent) does not apply to the same extent for fathers, even if they are primary

caregivers. This difference likely arises because the ideology of fatherhood makes room for a father's autonomy interests (Boyd, 2010).

Another participant also spoke about her struggle to be heard and her frustration with being misrepresented. Despite "doing the right things, nobody was listening or understanding...and nothing that I could do, you know, this picture that was being painted of me [describes her family background/upbringing]. We are very hard working, honest people who tell the truth." (Sally). This excerpt suggests that she sees herself as without agency, or at least with her agency very constrained. This participant clearly understood what was expected of her; however, although she did what was expected (much of which she described), it seemed that her actions were misinterpreted. Moreover, despite being very articulate, she did not feel heard. As the situation deteriorated, she was hospitalized with a medical condition that was likely precipitated by stress. While there, she decided that for the sake of her survival, she would agree to her former spouse having custody of their children. However, once again she wasn't heard. Her lawyer was adamant that such an arrangement would not be in the children's best interest. She responded that she saw it as the only way to end the dispute. Furthermore, she could not afford the cost of further litigation or the "insanity" of it all. The lawyer told her that they would go into a shared parenting arrangement and everything would be fine. "So once again, I am not being listened to. I am not being heard." Regardless, she agreed to his proposal, but the arrangement quickly proved not to be viable. At that point, she became self-represented and began to learn how the legal system worked and to prepare her own materials. Once she got to court, however,

everybody had a field day. The lawyer, my ex-husband, and new wife in the back, giggling and laughing like they were watching a movie. They did whatever they could to break me on the stand. In hindsight I realized what they were doing. They were trying to create this persona...of overconfident woman...bossy, controlling...so the more I had to argue back about the true facts, the more the judge was...there you go, see?

Thus because she presented herself as confident in court, even audacious at times (qualities that in a man might be seen more positively), she was not seen as



vulnerable or requiring the protection of the court, despite a history of domestic violence. This reflects an unquestioned assumption regarding her (in)vulnerability and ability to exercise her agency. Further, there arises a paradox in terms of how she needs to speak in order to be heard, and how she needs to present herself to obtain protection. That is, if she can speak assertively on her own behalf, she does not need the protection of the court (Treloar, 2016). Once her motives and her very identity had been reconstructed through litigation, she was left with no way to redeem herself in the eyes of the court and no way out. The court decided in favour of the father, regardless of her concerns and the expressed wishes of the children. However, the following year the children returned to live with her without opposition from their father.

Speaking about how she was misrepresented in the legal process, Sally spoke with authority about herself:

I know that I am a very, very good mother. And anybody who talks about me will say, I'm an extremely loving mother. I am quite strict on certain issues, but I mean, I'm a good mother in that...unlike how the courts portrayed me, I'm not a smothering mother.

Rather than succumbing to her pain and fear, she focused on her resilience. "I have no more fear (pause). You know, I did some amazing things, including standing up in Supreme Court." As well as overcoming the fear of representing herself and speaking in court, she also overcame her concern about the opinions or judgments of others. In sum, she not only affirmed her self-knowledge, but also her authority to speak for herself and about herself. This self-authorization in the face of being silenced and misrepresented illustrates that, despite constraints on her agency, she continued to exercise her agency. As she put it, "to not succumb to caricature but to spend time doing yoga, meditating, empowering, reading, watching movies about lawyers and stuff. To understand...was key in this situation." As we ended the interview, I said that I really hoped she felt heard. She responded, "It's not so important for me anymore to be heard. Because it's not for me anymore, it's for the others." This interesting point reflects the statements of many other participants, all of whom were determined to improve the system or the experience of others within it. Those who perceived a particular bias in the

system were most likely to work to improve the conditions for others similar to themselves (e.g., fathers, abused women, those with unequal access to the legal system), although several participants saw the legal system as so flawed that they sought to improve it for everyone. The key points of agreement among all of these parents are that there is unevenness in access to the system and that all voices are not equally heard. Gendered constructions of parenthood and in particular, “good mothers” further complicated the ability of study participants to be heard.

### **What Discourses or Understandings do Participants Draw On?**

One finding stands out in the subtheme of authority and voice. Participants draw on particular understandings and discourses in order to make sense of their experiences of a high-conflict divorce. Like professional experts, they gather information and attempt to make sense of it—in this case, of the experts and their knowledge systems. It is the experts and their discourses that are subject to participants’ gaze. Experts are supposed to be confident and able to justify their conclusions—indeed, experts are supposed to “know.” Yet, as participant narratives indicate, some experts may be too quick to make assumptions and use shortcuts, which may raise the potential for misjudgment and unjust outcomes. That said, some professionals do take a more careful and nuanced approach and were able to contribute to more positive outcomes.

On the other hand, when fathers and mothers are in a high-conflict dispute they are likely to look to a variety of sources for help. These include academic research, mental health professionals, advocacy groups, friends, neighbours, and the Internet. Although they are seeking information and support, few have the skills or the time to critically evaluate these sources, especially at what is already an overwhelmingly emotional and busy time. However, what was clear from listening to the diversity of experiences and complexities described by participants is that they sought out information and advice that was specific to the challenges they faced, rather than generic information. For example, a well-educated mother (Anne) who was experienced at seeking out support resources described one of her greatest challenges:

I couldn't find a voice that matched my experience and I didn't have a lot of time to research either so there was all this stuff around collaboration and cooperation, the fairway, and all this stuff and [non profit agency], but which was really expensive...and um, a lot of it I had to say, well, you know, that doesn't fit.

In the absence of advice or support to assist them in resolving their disputes, some parents turned to the Internet and advocacy groups for guidance, while others turned to personal development as an antidote to the helplessness and frustration they felt. In the next chapter, I explore a number of themes pertaining to personal development and transformation, as described by participants. Some participants chose this path alongside others (e.g., increased political engagement, continuing with litigation) to navigate the challenges they faced, and others ultimately chose it as the only possible solution likely to result in a positive outcome. Regardless of the path chosen, it helped them manage their sense of frustration with their former partner and the failings of the system, but it did not change their perceptions of injustice.

## Conclusion

This chapter explored the second theme that emerged from parents' narratives—that of considerable difficulty navigating the family justice system, not only because they found the system complex and lacking in transparency, but also because they felt unheard. Although being unheard did not appear to exacerbate conflict, *per se*, it did contribute to a participant's sense of injustice and difficulty "moving on." Despite the opportunity to present their case and having lawyers to speak on their behalf, many felt frustrated and misunderstood and said that the process had not worked well for them. Even when participants sought out authoritative experts they did not always feel heard. Being heard *and understood*, rather than simply being spoken for (and about) is another important aspect of what makes people feel that the process and outcome were just and fair. I first described how parents made sense of the legal system; second, I conveyed participant experiences of, and thoughts about, professional knowledge construction and expertise in the family law field; and third, I discussed issues around voice and authority in the context of family law disputes, illustrating how some parents came to develop a self-authorizing voice and exercised their agency in the process of their struggle to be

heard. Finally, I explored the discourses that participants drew on to make sense of their experiences and link these discourses to particular epistemological beliefs, or “ways of knowing.” Different ways of knowing carry differential power in terms of knowledge construction. Furthermore, knowledge is not neutral. It is infused with power and privilege (Fricker, 2007; Medina, 2013). By participating in—and encouraging—epistemic friction (Medina, 2011, 2013), family law and mental health professionals could transform difficult debates and polarized positions within the family law field, thus setting an example of how conflict has the potential to transform even the most entrenched positions.

Those who are regarded as “experts” in the field draw from a particular body of knowledge and disciplinary rules and norms in coming to an authoritative opinion. Similarly, in attempting to make sense of their experiences, study participants variously drew on social norms, dominant discourses about mothers and fathers, and authoritative discourses that circulate within law or psychology (e.g., the best interests of the child). As well at times, some participants also drew on alternative sources of information, such as that found on the Internet or in support groups. Finally, most often later in the process of making meaning, participants actively engaged with a broad range of discourses—sometimes to contest or resist them and in some cases to position themselves in relation to them. At times parents seemed to draw on these discourses selectively or uncritically and at other times they did so in a more reflexive and thoughtful manner. Participants also developed counter-narratives in response to dominant narratives and discourses. For example, they described the legal system as unjust and spoke about integrity and the best interests of children in authoritative, but alternative ways. Sofia, for example, felt strongly that it was not in the best interests of her child to be shuffled “back and forth,” especially when the other parent is abusive and refuses to agree to a regular pattern of parenting time. She said, “It’s not like I’m blaming him, but he didn’t want to do what was best, right?” Importantly, participants’ voices are not singular or homogenous, nor are they necessarily collective. Rather, their voices tend to be fluid and multivocal; although some were clearly silenced during the legal process, each participant had their own story that deserved to be heard.

Returning to Kincheloe and McLaren's (2000) quote about the role of power and authority in knowledge construction in the introduction to this chapter, it is clear that in the course of reconstructing their sense of self and reclaiming their authority, that is, the right to speak for themselves and about their experience, most participants ultimately constructed themselves as authoritative and as having agency, albeit within significant constraints. In most cases, this was a lengthy process that, at the time of our interview, remained ongoing.

The findings in this chapter also raise important issues of collective social responsibilities and ethics, for, as Medina (2011, 2013), Fricker (2007) and others contend, academics and professionals have an ethical obligation to listen, to continue learning, and to support epistemic friction. In the next chapter, I will argue that these are parallel processes to what parents involved in post-separation disputes must confront and that it would benefit parents if professionals would pave the way by engaging more "care-fully"<sup>80</sup> with knowledge and debates in the field.

<sup>80</sup> I use the word "care-fully" here both in keeping with an ethic of care and to emphasize that more care is needed (i.e., caring fully).

## Chapter 6. Personal Transformation in Context

In the previous chapter, I described how when participants found themselves unable to fully resolve their disputes through litigation or ADR, all sought support outside the family legal system. Seventeen participants turned to personal development as the best available solution to assist them in moving forward in spite of the challenges and circumstances they faced, whereas six turned to research, advocacy and political strategies that would help to reform the system and assist others facing similar circumstances.<sup>81</sup> Although participants usually leaned towards one or the other of these approaches in response to the frustration and sense of disempowerment and injustice they felt, many engaged in both strategies. In some cases, they also continued with or thought about continuing litigation. These strategies can be seen as forms of agency, with personal development (the focus of this chapter) as personal agency and advocacy and political action as political agency.

The previous chapter also addressed how participants sought justice, how they did not feel heard in the legal process, and the challenges they faced in terms of agency and self-authorization, given the power of professionals and their role in knowledge construction. As participants gained a sense of how the family law system works (i.e., law's rules, norms, and language) they actively engaged with a broad range of discourses—contesting them, positioning themselves in relation to them or incorporating these discourses into their sense-making (i.e., the way they spoke about and understood their experience). By doing so, many became experts in the process by way of

<sup>81</sup> However, I did not ask participants about whether they used these strategies in particular, or for details such as the timing and duration. Rather, I asked them about how they navigated the process and what was helpful to them. Participants in this study comprise a diverse group in terms of (a) when they separated, (b) where they were in the adult life span at the time of the interview, and (c) the circumstances involved. For example, a parent with four young children at home and limited finances may not have time or resources to attend counselling; the immediate needs of their children may be their priority. Similarly, a parent who is dealing with a serious health issue is probably unlikely to engage in political action.

experience. Some participants also spent considerable time on the Internet, seeking either information that would be helpful or the support of others. A few were particularly careful in evaluating the “neutrality” or source of the information, while, conversely, a few sought out only information that would advance their own case. In the previous chapter, I also noted that a number of participants developed counter-narratives in response to dominant narratives and discourses. Finally, I described a number of ethical issues related to voice and knowledge construction.

In the current chapter, I discuss participants’ metaphors of transformation, summarize the resources that participants drew on to navigate the experience of a high-conflict divorce process, and use the lens of adult life course development (Day Sclater, 1999; Gilleard & Higgs, 2016; Gilligan, 1982; Hartrick, 2007; May, 2003, 2008; Mayer, 2009; Miller, 2005, 2011; Oberman & Josselson)<sup>82</sup> to reflect on the changes participants made in light of these experiences. First, three key themes emerged in participants’ metaphors of transformation: death and rebirth, overcoming adversity, and transforming one’s perspective. In conjunction with the findings described in the previous two chapters, these metaphors powerfully illustrate the many challenges faced by participants, not only as they made their way through the process of a high-conflict divorce, but also as men and women, mothers and fathers making their way through adulthood. Some participants ultimately chose a path of personal or spiritual development as the only possible avenue likely to result in a positive outcome, while some chose this path alongside others (e.g., increased political engagement, researching and strategizing, continuing with litigation) to navigate the challenges they faced. A small number of participants either employed political strategies exclusively or had no clear strategy—they were simply relieved to be able to move on with their lives and struggled through the best way they could. Although each participant’s approach helped them manage their sense of frustration with their former partner and the failings of the system, the nature of the path they chose and the way in which they exercised their agency did not change their perceptions of injustice.

<sup>82</sup> As noted in Chapter 1, I am referring to the overall idea that people change over time and in response to their circumstances, rather than a particular model or theory of development.

Second, I summarize some of the key supports and resources that participants described as invaluable, either in helping them to survive the experience or to move beyond it. Broadly, these included (a) personal support systems; (b) spiritual practices; (c) social support resources, including counselling; and (d) undertaking new challenges in order to gain confidence. Third, I discuss the importance of understanding adult development over the life course, arguing that by seeing some of the challenges participants had to confront (and in most cases did sort out over time) as aspects of normal adult development, it is possible to move away from the extant conception of high-conflict divorce as reflective of some sort of individual or interpersonal deviance. Consequently, adversarial approaches that are punitive and pathologize those engaged in the process, thereby *contributing* to their difficulties, could—in most cases—be replaced by approaches that normalize the process and policies that provide better support to the parties and their families. Although ADR is frequently portrayed as the respectful and healthy alternative to adversarial approaches and as facilitating improved relationships among the parties (Chapter 2), participants' narratives and significant research demonstrate that such a dichotomous view is inaccurate.

Many of the challenges and changes participants described (learning how to deal with conflict, communicate effectively and set boundaries, and move beyond cultural expectations—including gendered ones in a relationship, as a parent and more broadly) are largely adult tasks that can be made more challenging by a lack of personal, social, and material support or resources. Furthermore, an individual's epistemic resources, as discussed in the previous chapter, are central to meaning-making and agency. As Fricker (2007) has argued, hermeneutic injustice results when individuals and groups who have less power to shape collective conceptual resources are unable to understand and frame their experiences within existing interpretive resources. Therefore, although this chapter explores the individual dimension of transformation—how participants changed in a positive sense—I challenge the neoliberal narrative that people should simply change themselves. Rather, I aim to summarize key themes from participant narratives that indicate how high-conflict divorce becomes transformed into a positive experience and what facilitates this process, while also arguing that the transformation participants describe is incomplete. While these individuals' stories are in many ways remarkable and some are reflective of “success” in a neoliberal sense, taken together,



the findings in this thesis suggest that an over-emphasis on the individual dimension of change does little to alter social and cultural ideologies and expectations and fails to address the injustices that harm us all. Indeed, a relational approach not only illuminates the liberal individualist assumptions that underlie these views but also regards individuals as embedded in social and political relations and considers the complexities of people's experiences (Mackenzie & Stoljar, 2000; Nedelsky, 1989).

As noted in earlier chapters, participants also described ongoing challenges—often alongside a sense of relief that accompanied exiting the legal process and the pride they felt at having raised their children successfully and other accomplishments. These challenges, as described in previous chapters, included financial struggles, a sense that the world was not a caring or just place, difficulty trusting others, feeling shame, and in some cases, post-traumatic stress. Participants' challenges were frequently compounded by the neoliberal context in which they occurred. Thus, although in many ways, there were adult developmental processes at play and many participants found that personal development approaches such as counselling were helpful in addressing or moving through them, I remain concerned about access to justice and to needed resources—especially in the current neoliberal context. Particular issues that arise in the context of neoliberalism are: (a) the tension between the benefits of working on oneself (including practices of self-care and self-management in the absence of needed supports and resources) and the disadvantages participants faced as a result of the privatization of family justice; (b) concerns about the implications *for* justice (or, more accurately, *injustice*), and (c) the issues that arise when there is not only economic inequality *between* disputing parents, but increasingly inequality *among* disputants. Post-separation, parents may not have similar incomes, which puts the party with a lower income (usually the mother) at a disadvantage, leaving them more vulnerable when there are legal disputes concerning children (Boyd, 2003; Pulkingham, 2006). Also, as discussed in earlier chapters (e.g., Chapters 1, 2, and 4), many low- and middle-income individuals have difficulty accessing the legal system at all. As such, the issues raised in this study are likely to become even more pressing for current and future divorcing parents than they were even at the time participants in the current study were separating and involved in the family legal system. Finally, these tensions and the contradictions

that arise as a result of them raise questions about participants' agency, especially in the context of neoliberalism.

## **Metaphors of Transformation**

At the end of the interview, each participant was asked for a metaphor or phrase to describe their process of navigating high-conflict divorce. Among the 22 participants who provided metaphors, three themes of transformation were apparent. They were death and rebirth, overcoming great challenges and adversity (often through a difficult journey), and transforming one's perspective. Some metaphors overlap these themes, but in many cases they were quite distinct.

Overall, the women who participated seemed to find it easier than the men to come up with a metaphor and their metaphors were more elaborate. Few studies have explored gender differences in metaphors, although Charteris-Black (2012) found in a recent study of metaphors for depression that while the content of depression metaphors varied little by gender, there were differences *between* genders in how metaphors are used. Women in his study, as in my own, provided metaphors that were more emotionally expressive and elaborate, with one metaphor sometimes activating another. Although no conclusions can be drawn from this observation given the small sample size and exploratory nature of this study, the gender difference invites further exploration concerning language, gender, and meaning-making. I now turn to some examples of death and rebirth metaphors.

### **Death and Rebirth (Post-traumatic Growth)**

Metaphors of death and rebirth or destruction followed by post-traumatic growth were provided by a number of women, although there was no common identifiable thread among them or their circumstances beyond that of having experienced a high-conflict divorce. In response to a question about how she reconciled the experience as she was going through it, Jen said that she recognized that losses were:

part of life...I did a lot of personal work so I think I made it transformational. What's that saying..."And this too shall pass." I think I took more of a Buddhist view, like it's the meaning you make out of what happens that counts. Why should I be exempt from suffering? This is my pain, this is my trauma...we all go through something. Again, I mentioned the optimism, a sense of faith and a sense of support from those who've gone as well as from my friends. Um, so how do I reconcile.... I've created a great life here. I've seen myself grow. I can see you can move forward...phoenix out of the ashes, yeah! Yeah! I've exposed myself to workshops with wonderful people...so doing a *lot* of growth, a lot of self-growth. A lot of spiritual growth, always reworking it. They say you can't change the past but you can actually change the energy around the past. You can change the perception of the past. When you do that you have different feelings and views. So kind of understanding at a very deep level, what were those themes going on between my former husband and I. In what ways could I have stood up to him in ways that would have been more beneficial, not only for me but for my family. Um, you know, how helpful is it to keep blaming him for what happened, or blaming the system, you know, just learn about it...understand why that happened. What more could I have done.... Maybe if I *had* called the RCMP things would have been different. Um, well, it would have been different, that's for sure (*laughs*)! Was that a good thing to do not to call them, or a bad thing to do? I don't know. I learned that from Buddhism too. Is it bad? Is it good? Well, I don't know. It just is. You know, we're all doing the best we can, including him. You know, whatever caused him to behave the way he did. So being sort of philosophical about it...being compassionate about it and continuing to do my own work.

Jen took a philosophical, "big perspective" approach to her experiences, noting that she came to recognize conflict as part of relationships and as part of life—an opportunity to grow. Regarding conflict, she used the metaphor of a broken bone—that when the bone heals, it is stronger. This is a clear metaphor of post-traumatic growth. Although Jen now sees her situation as "an opportunity for growth," she did not see it that way at the time. When asked for a metaphor for her experience of high-conflict

divorce, she responded with another metaphor for destruction followed by post-traumatic growth:

(Jen) Well...the first thing that comes to mind is a tsunami. It is as if a tsunami occurred, broke down all the buildings and then, um, I, we, went through all the debris and built enough homes to live off of. And then those homes grew into a village...again. Something like that. Mhm. So you have to go around just picking up the boards here and there out of the debris, you know, and trying to create something new.

(Rachel) Everything is literally in bits.

(Jen) Yeah. Start finding the pieces. And trust that you can do it. You have kind of a vision and a knowing in a sense. And allow.... It's not just you creating a new vision but the new vision creating you. All the debris is there, all the pieces are there. All the particles are there, you know, all the waves are there. It's just putting the waves together into particles. So again, the phoenix rising out of ashes.

In this powerful metaphor, she is talking about using “the debris” to rebuild self, home, and community—which she did. In addition, she retrained and now uses her skills and personal experiences to help others. However, without wishing to in any way minimize her remarkable personal transformation and service to others, it is important to note that the training, personal development, and spiritual training she undertook was only possible at significant cost and took decades to accomplish—it would have been even more challenging had her children been living with her at the time. Another participant who also engaged in considerable “personal work” calculated her total investment, including the costs of ADR, which was not helpful in the end, at about \$100,000—enough to pay for her children’s university education. Still, she said, “No, I don’t think I would’ve changed it. I mean I think I was supposed to learn certain lessons. I didn’t learn them soon enough, but hopefully I can pay it forward to my clients, to my kids” (Cindy). Clearly, both participants feel that the cost was both necessary and worth it; however, the question must be asked (as both did), what about those who are less privileged? This is an important question that I have addressed earlier in this thesis and

elsewhere (Treloar, 2015; Treloar & Boyd, 2014; Treloar & Funk, 2008, 2011), and to which I will return in the concluding chapter.

Several participants also used war metaphors to describe their experiences. In response to my question about a metaphor for her experience, Sally, a mother who had survived domestic violence and a protracted legal “battle,” responded, “Well, the Holocaust pops to mind...because the terror, the harassment...the fear...the having to go into hiding...and then liberation...you know, it’s definitely I’ve had liberation day.” She further described the process of leaving her marriage and the aftermath (i.e., litigation) as, “you’re living in a war. Waiting for bombs to go off. So if you look at.... If I can be so bold, if you look at Auschwitz survivors...that’s what I looked like. *Terrified!*” In describing the violence, terror, hiding, and then liberation, she thinks of her survival as “a triumph of the spirit.” Although she had considerable difficulty with the legal process, and in some matters lost badly, in the end—to draw on another participant’s metaphor—she “lost the battle but won the war” because her child has returned to live with her and there is now peace in their lives.

A number of other participants also drew on violent imagery to describe the experience of the divorce process. As Lisa put it:

The divorce part was easy. Child support was like pulling my heart out of my chest and having it trampled on several times over by [former spouse] and his partner with every affidavit they would issue. That pain was enough to make me want to quit. So I did. Until I had enough self-love and motivation to go for more child support. This time around, he could swear at me all he wants but at the end of the day, the court finally ruled in my favour.

Although it took her several years to work up the courage to address child support issues, in the end, she not only overcame her fears but now has the financial support she needs. In saying “time heals all wounds,” she draws attention to the healing power of “getting justice” and feeling supported, following what she experienced as violence through litigation (i.e., post-separation abuse) (Rhoades, 2002; Varcoe & Irwin, 2004; Wallbank, 2007).

## A Risky Journey: Surviving to Thrive

The second group of metaphors for transformation, the “risky journey,” shares the theme of overcoming a tremendous challenge, often beginning the process without the necessary skills, tools, or resources. This theme is important because in speaking about the challenges they faced and ultimately overcame, participants were also conveying a sense of tremendous accomplishment as they began to exercise their agency. The clearest example of this theme in participants’ metaphors was provided by Cindy, who described her experience as:

like climbing Mount Everest without...anything. No base camp, nothing. Did you ever watch the show where the guy from MEC gets dumped someplace in the world and he’s got seven days to get out? He knows how to survive the elements but he doesn’t know where he is. So he has to feed himself...he gets put into these places with only what he’s got in his backpack. That’s kind of how I felt. But instead of seven days it took seven years to get out. Because I didn’t know where I was...it was foreign territory, and I didn’t have the skills he had, I only had my backpack and I had to figure it all out.... I had to go and find my own resources. I’d never climbed a mountain. I don’t know the resources. I don’t know the terrain. It was *completely* foreign territory. [My backpack] was my own resources. But my backpack didn’t have camping gear because I don’t camp. Didn’t have climbing, or hiking gear...it probably had my laptop, my schoolbooks, my purse...you know, totally unprepared...but that’s it, right! That’s all I had. Yeah, because who I was in the past was I was kind of like the hotel kind of person, not the backpacking kind of person.... It was taking me completely out of my element, and anybody I could ask about it had never climbed Mount Everest because they were the hotel kind of people too.

This participant described being without a guide through the process, lacking a supportive community or resources, and beginning her journey without the survival skills, tools, or experience to summit Everest. Despite being stretched beyond her previously imagined limits, over a seven-year period, she learned to draw on her internal resources, gathered the tools she needed, and became both more self-reliant and more connected to supportive others. She also developed a vision for her life, did the necessary work,

and persisted. Indeed, hers was a remarkable journey that led her to a new career, a mutually supportive relationship, and a focus on ensuring her children have the skills they need for adulthood. Regarding her children, she reflected:

I don't have the money but if I look at the bigger picture that's a small piece, but what's most important is if I look at the bigger picture am I modeling skills and ways of being for my kids...and that they have an alternate way of seeing how they can be.

Being without a guide on a very difficult journey, being in the dark or underground and having trouble finding the way also emerged in a number of other participants' metaphors. Anne said,

it felt like...I made a decision to enter a cave with no lighting and I had to feel everything as I went...the short pointy stuff that made me bleed (*laughs*) fell down a rabbit hole or two...fell into the water and went under...went under a bunch of times but in the end came out the other side of the mountain.

This participant came to accept that the process had a life of its own and that although she has agency in terms of her choices and responses ("I made a decision"), she has little control over her particularly complex circumstances. In a way then, her acceptance is incongruous with the difficulty of her lived experiences, because she does not know what to expect on a daily basis. "Maybe I fell into the water that day, maybe I put my hand out on the wall and pulled it back or maybe not, right. You never knew...I never knew." At the time of our interview, she said that she isn't quite out of the mountain, but "I can certainly see the daylight and it is the daylight, not an oncoming train which usually it has been. Like I see a light, and I'm like, oh, damn! A train just ran me over again (*laughs*). Her laughter suggests that although she still faces challenges, to some extent her perspective has shifted such that she has come to accept them and deal with them the best way she can. Sheila provided a similar metaphor—that of "searching for shining white breadcrumbs in a very dark forest...the path that the crumbs would take me on." Who she is now is the end of that path. She has no regrets, because "it seemed that it was necessary."

Mountains also featured in the metaphors of two other participants. Leanne spoke of overcoming many obstacles in order to get to the top and now having the ability (and perspective) to enjoy the view that she worked so hard to gain. She said,

It is like hiking ten kilometers up the mountain and...and you know, it's hard work and you are breathing hard and you are panting and you are going crazy and you slip down a little bit and...it is wet, or you've come to the water and you know, the dam is there and there is water in the way and you have to figure a way around...it's kind of like, finally I've reached the top and I see the beautiful view. I guess it's like that. Yeah, that's what comes to mind. But it was...you know, it was like walking through the forest a lot and there were some muddy, mucky regions, times that you wanted to turn around and say forget it...but the reward is making it to the top and seeing the view and seeing that your kids are okay. And I guess...not nice to say, but there's a certain satisfaction that I got to see the view.

Thus despite the many challenges she faced, she is through the forest, the slippery sections and the mud and has the satisfaction of seeing what she has accomplished, largely on her own. Although some of the participants mentioned developing a supportive community along the way, others (both men and women) drew on metaphors that reflected a significant personal accomplishment. However, Shelly described her experience of mountaineering in more relational terms. In the following excerpt, she elaborates, while referring to another metaphor she drew on during the interview—that of “having to dance on the tightrope with a partner that is making it swing.”

(Shelly) You know when you are mountain climbing and you are walking on the ridge of the mountain. So divorce is like you're walking on the ridge of the mountain and on either side of you, if you should slip it is certain death or destruction (*laughs*) and of course ridges aren't just straight, they are just like this (*gestures*) so there's a challenging road ahead so you have to be very careful with your footing and you are tied to a partner who is reluctant for some reason. Either they are scared or they are fighting you so basically they are fighting you while you are traversing this very...narrow torturous route to...I don't know where.



You are both on the ridge and you are mad at each other about it but will eventually have to learn to work together to be successful, or you could both fall off different sides and then still have to work together to not die (*laughs*) but you're not enjoying the...it's like when you're mad at someone and you're tied to them literally, you might pull on their rope just to be spiteful or.... So you have to learn how to adapt to their way of doing things. Maybe they are slower than you, maybe they have a weird gait...but you also have to let go of the spiteful angry behaviour in order to be successful and get to where you are going which is wherever it is that you are going. Yeah. I mean, it's kind of like the tightrope one I mentioned before and (*sighs*).... I'm just thinking that you are tied to them forever, because with the tightrope everything they do affects you. Like you are very much in a dance to stay on the tightrope because neither of you want to fall off the tightrope but it's different because you can't...I mean, you sort of work together but there is no real lasting forever on that tightrope. It's more individuals who are trying to stay on it, whereas the mountaineering one I like better I think, because you have to be tied to somebody when you are mountain climbing. You are supposed to be working partners, and when you marry each other you tie yourself to them, you are supposed to be working partners. And when you are working well together it is great...like I've never mountain climbed (*laughs*) but I've done a lot of hiking and I can just imagine if I was on Mt Everest or whatever and hiking along that ridge and my partner was in a bad mood and they were stomping along, you know, I can just picture it and it would be a very difficult climb if they were not working with me. And then there's the internal bit.

(Rachel) So there's a dynamic that happens between you and there's something that goes on inside yourself.

(Shelly) Yes! Because you are also trying to stay on that ridge and move forward in your life journey and [that] life journey is a hard journey, there's going to be lots of ups and downs and slippery foot placements. So not only are you struggling to just stay on the path and be successful that way, you are also fighting against this person and then you either have to learn to drag them along, or you both fall

off or you learn to work together and...it very much sounds like I'm still married to him forever except just not living in the same house (sighs).

In the metaphor of climbing the ridge of a mountain while roped to a partner, she notes that there is "sure death" on either side, thus considerable care is required. Since climbing (i.e., parenting) partners are roped together (in this case, forever), although angry, they have to learn to work together, to build trust and adapt to each other. Shelly also highlights the tension between the internal work necessary to climb a mountain and the need to either learn to work together or find a way to pull the other person along. Her previous metaphor of dancing on a tightrope with a partner who is making it swing described the many positive changes she felt she had made.

I'm actually thankful that I've gone through all that stuff, because I wouldn't be the level-headed person that I am now if I had not had to experience the dynamic range of feelings and experiences that this situation has brought out. You know, to have a happy well adjusted family life is not nearly as growth providing.

While a number of the previous examples suggest that participant's "journey" involved looking for a path through (or above) their difficulties, Krista described it as more like "kicking an anvil through a swamp...barefoot!" In other words, it was the very ground beneath her feet that lacked a signpost and she was not well equipped. One can only imagine how slow progress would be if kicking an anvil in such conditions. The following section considers metaphors that speak to a shift in perspective; these metaphors were more likely to be generated by the fathers in the study.

### **Shift of Perspective**

Most of the men in the study provided a metaphor that suggested a shift of perspective rather than one of death and rebirth or overcoming adverse physical conditions. However, one father (Jeff) described himself as "a little dinghy on a stormy sea...tossed about, to and fro," which initially seemed more in line with the previous theme of a risky journey and overcoming adversity. Although his larger perspective was to reach "a safe harbour," he didn't find it on his own. Rather, the storm brought him there. Now that he is in the harbour and happy again, his energy is freed up for other

things. He said, “I don’t feel the stress as much anymore, and I can let things roll. It was a storm, boy, it keeps you up at night.... I’m not suicidal but if I [wasn’t religious] I definitely would have considered it...probably.” Although this metaphor also fits into the risky journey category, it is illustrative of a shift in perspective. God brought him to a safe harbour, and since he is the dinghy (rather than the person *steering* the dinghy), his perspective has shifted from being in stormy seas to being safe in harbour.

Although the theme of perspective shift was less common among women as a standalone theme, it was more often present in combination with one of the themes described above and conveyed in relational terms. For example, Helen, a mother who had not only experienced domestic violence but also the abduction of her small children, described herself in the early stages as:

the lioness roaring in my corner and with everything I had protecting my little ones. And then I started to think, why do I see a lioness...we have bears up here. So I started to see myself as the bears I have met in the woods and we picked blueberries on the same bush and I say well, they are really my icon...the bear with the three cubs.

Although Helen saw the need to fiercely protect her young at first, over time (and as she gradually felt safer), she maintained a watchful eye on her children but was able to step out and gather the necessary provisions and resources to care for her family.

Among the fathers in the study the metaphors tended to be less elaborate and several struggled to come up with one at all. However, persisting towards a goal was reflected in several fathers’ metaphors. This allowed them to refocus on the long-term, rather than on a particular issue that faced them, or allowing themselves to be overcome by frustration or impatience. Ben summed this up:

You just have to take the high road as much as you can. It’s um, slow and steady wins the race when there’s a lot of conflict and [like]...this guy keeps saying to me, “It’s not about the battle, it’s about the war, because you think you’re winning the battle but it’s just a long war.” I mean that’s a bit of a...you don’t want to be

saying wars but...yeah, just knowing that your kids will always love you, kind of thing...but there are so many things can take it sideways, right?

Although it did feel very much like a battle to him, thinking about taking the high road and focusing on his child helped Ben to stay on track and be less reactive. Doug also emphasized the importance of persistence, saying “if you are comfortable in your skin you hang tough (*laughs*). If you know what you're doing is right...and I always felt that way, just see it through.”

Occasionally fathers preferred phrases to describe their experiences, and again these phrases reflected the importance of perspective. These were often along the lines of “tomorrow is another day, and you will make it” or simply “being conscious” and “be prepared to make personal changes if necessary.”

A perspective metaphor identified by one mother (Andrea) speaks powerfully about the peace and relief that was the ultimate reward for a number of participants, despite the many challenges they faced. Andrea described herself now as “like a tree.” She said, “I have solid, steady roots, flexible resilient and powerful core (trunk) and an elegant and beautiful sway to my life (branches). I have learned to take it all in stride. I watch my beautiful daughters do the same.” For the parents who are able to come to such a place there is often a tremendous sense of pride and inner harmony after living through—and becoming stronger through—their experiences. However, as most readily acknowledged, they had considerable internal and relational resources. Although they faced significant financial challenges, in many cases, they were often fortunate to have a job, equity, or parents who were able—and willing—to assist them on a temporary basis. Thus although I in no way wish to minimize their personal efforts or accomplishments in very challenging circumstances, those who were less privileged and had fewer resources (whether personal, social, or material), in most cases, also lacked access to needed services either for themselves or their children that had the greatest potential to assist them with meaning-making and moving on. I now turn to the personal and social relations and processes that supported participants’ transformation and the transformation of their high-conflict divorce experience.

## **Not Just Surviving: Supports for Transformation**

This section examines the most commonly identified resources and supports mentioned by parents as they moved through the experience of high-conflict divorce. This experience was transformative for many participants, and some made significant changes in their lives—and themselves—as a result. These changes are illustrated by participants’ metaphors and discussed in the previous section. As described in Chapter 3, one of the selection criteria for participating in this study was that in retrospect, despite the challenges faced at the time, the individual regarded surviving or navigating the experience of a “high-conflict” divorce as having changed him or her, in a positive sense (i.e., as transformative). Therefore, it is important to remember that the participants in the study are not representative of all parents who have experienced a high-conflict divorce. Nevertheless, participants’ narratives of facing and largely overcoming the challenges they faced, and then moving on, are more than individual stories of experience. In highlighting the context in which people live and survive, personal narratives shine a light on the social, political, and economic conditions that affect these experiences (Andrews, Day Sclater, Squire, & Tamboukou, 2004). Furthermore, these narratives can inform practitioners, policymakers, and other parents facing similar challenges about potential paths through a high-conflict divorce, and provide new ideas about how to positively transform policy and practice.

This section summarizes some of the key sources of support described by participants as helping them to survive and to move beyond the high-conflict divorce process. These included: (a) personal support networks and relationships; (b) social support resources, including counselling, personal development courses and groups, and services offered through community agencies; and (c) diverse forms of spirituality; and (d) undertaking personal challenges as a way to develop confidence or build resilience. Over time, many participants came to find new ways to exercise their agency, developed their personal skills and relational resources, and in some cases, developed new meanings of motherhood or fatherhood.

For most participants, a combination of internal resources and their personal and social relations helped them to navigate the process and, in the end, facilitated their transformation. As Jen put it:

[It was a] combination of friends, spiritual support, um, I think I have a, you know...a sense of myself, a trust in myself, in getting through things. I also come from a strong line of women who are very self-sufficient, can be very independent. I've kind of stored it up.

While Jen's internal resources assisted her tremendously, this excerpt—although reflecting an individualistic ethos—suggests that these internal resources were developed relationally, through the scaffolding of generations of strong women within her family. She also described herself as having determination, resourcefulness, a “pioneering spirit,” and optimism—all qualities typically associated with resilience. Furthermore, Jen is deeply rooted in her community, with many close friends and a sense of “a village holding me.” This sense of being cared about and social connection was crucial because after losing custody of her children, and with that a real “loss of identity and mothering role,” she returned to university to become a helping professional. Ultimately, she became a:

quintessential earth mother, you learn to love other people. You learn to spread the love out.... The love in your heart you have for your children gets spread out to your clients, to other people, to serving others.... That's mainly how I did it.

Thus this participant's engagement in the community and strong social network was not only developed relationally but resulted in an expanded sense of mothering. The care that she could not immediately provide for her children was shared with others, such that she was both recipient and provider of care. Jen described her spirituality, counselling and personal development, and participation in competitive cycling as further resources in her transformation.

Steve similarly described strong community ties, support from friends and family, counselling, and changing meanings of fatherhood as—in combination—having supported his transformation. As a “first responder,” he was particularly fortunate in

having a multi-pronged set of supports available through his workplace, including a “critical incident stress team” that supports employees in both work-related and personal crises, an Employee Assistance Program (EAP) that provides extensive coverage for counselling, and an ethic of mutual support among fellow employees.

These two examples of participants who described a combination of strong community and social ties and the ability to access support and services—at the same time as they also *contribute* to their communities—highlight a finding of this study, that participants who were able to get the support they needed and were at the same time able to continue to maintain a high level of social and community engagement, overall seemed most resilient. Furthermore, these two participants were able to use all of the resources at hand—internal or personal resources, as well as social relations, to facilitate their transformation. Since few participants were as well resourced as these two, this finding has important implications for outcomes. Furthermore, participants recruited to the study were those that felt that they had changed positively as a result of the experience of high-conflict divorce. Generally, they were most likely to have resources available and to make use of them. At the end of this chapter, I will return to discuss the relationship between resilience, supportive social relations and access to support and services.

## **Supportive Interpersonal Relations**

There is a paucity of research on the role of family and friends in advice seeking for legal problems, although limited literature does indicate that people turn to friends and family rather than making decisions on a purely individual basis (Buck & Smith, 2015). Buck and Smith (2015) found that family and friends play a key role. However, their quantitative study was unable to provide sufficiently rich and detailed information about how and why they do so. Although I did not interview family and friends, I hope that the perspectives of those who were at one time involved in a family law dispute will go some distance to filling this gap in understanding how supportive social relations provide assistance, and the types of assistance that are helpful. However, I share the concern expressed by Buck and Smith (2015) that while to date policymakers have paid little attention to the potential role of friends and family in policy development, in the

context of increasing responsabilization instigated by neoliberal governments, the full range of implications (and their effects) should be considered. For example, friends and family may not always be available, and even if they are available, it cannot be assumed that they will offer support in a positive sense. Further, as discussed in my earlier research (Treloar & Funk, 2008, 2011), a shift of responsibility to friends and families, who may then be expected to take on a greater role, has potential consequences for their own well-being and autonomy.

In my study, the supportive personal relations mentioned most frequently by participants were family members and close same-sex friends. Those with new partners also described them as supportive, providing perspective and even a distraction from their troubles. At the time of the interview, some also had grandchildren, which not only gave them considerable pleasure but the opportunity to support their own children at a later (and less stressful) stage in life. Among family members, participants most often mentioned their mothers as the main source of support, although some mentioned both of their parents, fathers only, or one or more of their siblings as having been their primary source of support. For example, Sally said, “my mother was there 24/7,” and Kathy, “my parents have been like rocks.” Graham described his “daily bitch sessions” with his parents as helping him early in the process. “Constantly calling them, ‘Can you believe!’ I guess it’s the rallying the troops syndrome, trying to get everybody on my side.” Later on, having received much-needed support from his parents and with his legal issues largely resolved, Graham found himself less angry and defensive and developing new strengths. Consequently, he shifted his focus to how he could help others.

A number of participants mentioned that one or both their parents were deceased, either while they were going through the divorce or at the time of our interview. A small number of participants, however, described themselves as not close to either of their parents. One was raised in foster care, and two described having been raised in a harsh and debilitating family environment. Thus, in the absence of family support, they had to find support elsewhere. Overall, participants described varying levels of closeness to and support by family members, as is typical of families generally.



In addition to family support, most participants also described having one or more close friends, usually of the same sex, who provided crucial support throughout the divorce process and beyond. As Anne said, "I have amazing girlfriends in my life that remind me of things when I forget." Further, she mentioned that "having places to just download [was] critical.... Having people remind me that I was going to survive it...that was really important because it didn't feel like it in the middle of it." During her trial, her parents cared for her children every day, and a girlfriend:

picked me up every morning to take me to the courthouse, picked me up after court and brought me home. I had another friend who made me dinner every night and the expectation was I come, I eat, I leave. If I ever wanted to stay that was fine but that wasn't the expectation so I had people like...and I still do, in my life who I could call on and just say, can you take my kids? Something's happened I need to deal with it, and it wasn't just my parents.

Similarly, a father (Rick) who went through years of litigation with his former spouse and ultimately was awarded custody of his children, mentioned a close friend who was instrumental in helping him survive the process and move on with his life. Importantly, the friend provided a sympathetic but balanced ear:

We'd go for walks in the beach. He had a very analytical mind and was able to use a lot of metaphors to help me deal with my frustrations...and lots of times he would just call me on things and say, "That's not a good way to look at it. You're being...you know, you're not being fair to the female species because you're generalizing, you've just got to..." Yeah, there were times when I was obviously really, really angry and not trusting anybody. Yup...there were times when he said, "You've got to take a break, just spend a couple of weeks away from it and not think too much about it."

Overall, the participant believed that he had gained tremendous resilience as a result of having had the experience. He said,

I had always seen myself as a strong person but to tap into that strength when you are at your lowest, when you are at your weakest point, when you're feeling

like a target, when you feel like you are being scrutinized for everything you do...and emotionally, you know, you are battered...it really is hard on the confidence level, you know. I remember there being one point where I didn't get out of bed for three days, I was just down and out. It was, you know, to try to recover from that point is extremely difficult.

Although his friend was key in providing emotional and practical support, Rick also saw himself as fortunate to have a sympathetic employer, a family member in the legal profession, and to be able to identify experts who would assist him in the legal process. Realizing that he was in many regards "lucky," he commented, "it really frustrates me to know that not everybody has those types of luxuries but might very well be going through a very similar situation." Rick draws attention to the fact that resilience and ultimately personal transformation as a result of the experience are largely linked to one's resources.

Although many participants were able to sustain longstanding friendships and even occasionally develop new ones, other participants described losing or being unable to maintain friendships due to stress and time constraints. Some mentioned that their friends had grown tired of listening or had distanced themselves over time, occasionally because the friend had taken sides. A small number of mothers believed (or had been told) that one or more of their female friends was uncomfortable with them around her husband. They believed that this was a result of being perceived as a "threat" on account of their single status. A small number of participants had distanced themselves from family or friends because of difficulties in their marriages and concern about the judgments of others.

### **Supportive Social Relations: Personal Development through Counselling, Communities, and Groups**

Most participants described obtaining support through counselling, counselling groups, personal growth seminars, or services provided by community (not for profit) agencies. Some participants described having lost friends as the result of separation, and finding new and supportive social connections through personal development or counselling groups helped them to rebuild their social networks. Most participants who

participated in these groups and/or used counsellors drew on their own financial resources to do so. Several mentioned beginning counselling but being unable to continue due to the burden of legal expenses. Given the number of participants that found counselling either helped them to survive or promoted significant transformation on a personal level, it is unfortunate that one of the most helpful resources is financially inaccessible to many parents struggling with legal problems post-divorce.

What participants found most helpful about counselling was the opportunity to understand themselves and make meaning of their circumstances in the context of a safe, supportive, skilled, and client-focused relationship (rather than one that focused exclusively on the needs of their children—a concern they also shared). In some cases, participants also described counsellors assisting them in finding new ways to manage difficult situations and difficult people. Counsellors who had experienced divorce and lone parenting and who had legal knowledge were regarded as most helpful. As a participant who later entered one of the helping professions explained, counselling provided significant benefits:

The regret I have is that in the early years I wasn't fully present for my kids because I was so much drowning in my own confusion, self blame...seeking to understand what happened...trying to launch a new business—all of those things...that counsellor was a lifesaver. You know I owe a lot to her because she made me look at myself...like I didn't know how to do that before. I thought I was just a shallow kind of person, right. I couldn't.... So she helped me to connect with me and then from that, that just opened up everything. (Cindy)

A second mother, Sheila, described herself as feeling victimized and facing significant challenges after separation from a husband she described as domineering and sometimes abusive. Counselling helped her to understand herself and her role in the dynamic:

I did not see my part in creating the dynamic...the very unhealthy dynamic. I didn't see my part in it initially. So I had to come to own that. I didn't...was not able to draw any lines. I was unable...right from the get go at various times to say...you know, this behaviour towards the children, or myself...is not

appropriate. I'm willing to listen to you but I'm not willing to listen if you are yelling.

In seeing that she played a part in the dynamic between her husband and herself, in part because she had not learned to express anger or set boundaries concerning the behaviour of others, Sheila's narrative reflects a personal tension, and, I would argue, also a social tension. On the personal level, counselling was helpful in that it helped her understand how her upbringing was implicated in her adult relationship issues. As a result, she was able to shift her sense of victimization to one of empowerment. Arguably this was a positive shift, as it changed her self-perception from a victim to one who has agency. However, her narrative downplayed the impact of factors beyond herself and her family, such as gendered and generational norms and expectations that women be subservient, particularly if they are married to powerful professional men. Furthermore, by "taking responsibility" for her part in the dynamics, she may remove responsibility from her former spouse, and the social norms that still perpetuate women's subordination go unchallenged. In this way, "taking responsibility" may reinforce or minimize abusive behaviour and fails to address gendered patterns that can disadvantage and harm women and children. Finally, since counselling focuses almost exclusively on personal change, opportunities to improve the system may get lost. Nevertheless, sometimes personal changes are a matter of survival. As Sally commented, "the piece that I had to get is that I wasn't going to change the system, I was only going to change me. Me, right? So that I could function in the system." At the end of this chapter, I return to address a number of tensions regarding psychological approaches in the context of neoliberalism.

Although participants' narratives revealed clear gender, class, and generational patterns, some of those who participated in the study had actively resisted such norms, even while inhabiting them. For example, several of the fathers described using counselling or other forms of personal development in order to address problematic aspects of their behaviour, including lack of emotional availability, anger issues, and addictions. One father, who works in a male-dominated workplace, actively participates in making it a safe place for other men to deal with their emotions. Helen, a mother who raised her children on welfare following an abusive marriage and protracted litigation,

spent decades advocating for mothers on welfare. As discussed above, she spoke of the necessity for lone mothers to resist shame. Although she was able to resist shame by emphasizing her value as a mother, many mothers described tremendous frustration at the lack of value or legitimacy accorded to their mothering activities after separation (Duncan & Edwards, 1999; Gazso, 2007; Pulkingham, Fuller, & Kershaw, 2010; Treloar & Funk, 2008, 2011).

While some participants were able to find money to pay for private counselling, generally this was only after their financial issues were resolved. Very few participants had access to counselling throughout the legal process, either because they were self-employed or because they were not in the labour market. Those who did accessed these services through employment benefits. For Steve, who had comprehensive services available through his workplace (described above), the availability of both formal and informal support was instrumental in guiding him through the emotional and legal aspects of his separation. Indeed, rather than seeking out information on the Internet or accessing groups which might steer him in less constructive directions, he emphasized that he chose to deal with the “emotional part...the therapy part.” His male counsellor had been through divorce and had worked in the criminal justice system, so Steve felt that the counsellor understood his world. The counsellor was also knowledgeable about the type of support that would be beneficial. In response to my question about what he would say to others who were in a difficult divorce situation, Steve responded:

If you have access to things like therapy and that...use it! Don't be afraid...don't ever be afraid to say that you used it...because though some people might think that you are crazy, you are not. Therapy is...definitely a great avenue. So for men that are going through it...yeah, seek therapy. It doesn't mean that you are a weak person. It means that you needed help and you are getting it. That's all.

Another participant (Margo), a former government employee who drew heavily on her employee benefits at the time of separation and still found the process very difficult, wondered how those without such benefits managed. Indeed, some participants (generally mothers) made use of community agencies or government services—if and when they existed. As noted in Chapter 4, some of the agencies that once supported

parents through divorce or other family transitions or crises have been shut down due to a lack of government funding or other sources of financial support. Even crisis centres, which used to be community-based, are now put out to tender and are often located in another part of the province where staff may be less familiar with local resources.

Not-for-profit resources that received particularly positive reviews were the programs available through transition houses (shelters, counselling, speaker series, and legal advocacy services), single parent resource centres (counselling, group counselling, free clothing, and a sense of community) and neighbourhood houses (counselling or the availability of social workers, including those that specialized in court support, mediation, groups, referrals to family camps, and a sense of community). Becky described how she eventually attended a counselling group through a community agency and found that other mothers had similar experiences:

It wasn't until I actually went to a counselling group and *heard* other women in the same situation as me...and I felt better about knowing they were in the same situation as me even though we were all in a bad situation with that particular subject, but *knowing* that other people have had the same experiences as you.

Thus meeting others who faced similar challenges helped her not only to feel less isolated but to recognize that her situation was not just an individual problem. Those who used legal advocacy services available through a transition house also felt that their situation—seemingly so difficult for others to understand—was immediately understood by the counsellor. Feeling that someone “*gets it*” and believes them can make a tremendous difference to abused mothers with post-separation disputes.

Despite counselling being so highly valued by participants, less than half of those interviewed had attended divorce specific groups and counselling. These services and programs were found to be helpful most of the time, although two parents resented being “forced” to attend, as is now required for separating parents before they can apply for or change an order in most BC Provincial courts.<sup>83</sup> Furthermore, since legal expenses

<sup>83</sup> Most participants separated prior to this requirement. Of the few who did attend, they either did so because it was required or because they were under the impression that it was required.

left them without spare funds for personal support such as counselling, the expense of attending added to their difficulties.<sup>84</sup>

Some participants mentioned personal growth workshops and courses as having been particularly helpful. These included personal empowerment courses (e.g., Context Training Systems *The Pursuit of Excellence*) and workshops based on the human potential model. Others had undertaken leadership or professional courses that involved personal development (e.g., counsellor or coach training programs). These courses were typically very expensive to attend and participants often met on a regular basis once the courses were over. On the other hand, a small number of participants mentioned self-help groups that did not have a divorce-specific focus (e.g., Alcoholics Anonymous, single mothers' group) but nevertheless, those who used them found them helpful in the sense that the challenges they faced were intersecting rather than discrete. Participants who were in their mid-sixties to mid-seventies (both men and women) most often mentioned personal growth groups as having facilitated their transformation. This is not surprising since they entered adulthood during the 1960s. Again, not all participants in that age group had the resources to seek these supports and a small number were dealing with serious issues such as child abduction and domestic violence at a time when few resources existed to assist them.

## **Spirituality**

Spirituality or organized religion was mentioned as a resource by a number of participants.<sup>85</sup> Spirituality took diverse forms including a Buddhist approach, Christianity, and the exploration of spirituality through energy healing and shamanism. One father who described himself as Christian said, "I believe in a higher power and God's order of

<sup>84</sup> At one time, counselling programs such as those offered by the Separation and Divorce Resource Centre in Victoria, BC (now BC Families in Transition) were offered free or at a minimal cost. With increasingly limited government funding, a lack of core funding for operations and the ongoing need to reinvent new programs to access one-time funding just to stay afloat, such programs are requiring parents to pay higher and higher fees for service. For parents who have several children and large legal bills, even if they are employed full-time this expense is a burden.

<sup>85</sup> Although one father left the church due to conflicts with his former spouse over religious education.

things” (Jeff). That is, he believed that God would not give him challenges that he could not handle.

Some participants who had been raised in a Christian family returned to organized religion during their divorce, whereas others who did not have a religious upbringing but wanted a safe, peaceful and supportive place to bring their children began to attend church on a regular basis. As Andrea said,

I hadn't gone to church in many years except for Christmas, but I started going to church every Sunday and taking my daughters because it was a place where I was surrounded by goodness and honesty. Not that churches are full of all goodness and honesty, but you know what the tenet of it would be.... I felt that I had to go someplace once a week where I felt loved and supported...99% of them had no idea what I was going through. It wasn't about a pity party or finding sympathy or anything, it was about finding a place where I wouldn't be judged, that I would be loved for who I was and my three daughters would be loved for who they are...and it was peaceful and the phone wasn't ringing and I wasn't getting emails, just a place of peace.

Anne also described her spiritual community as extremely supportive and as helping her to have faith in herself and get through rough times. In particular, they had set up a small group for divorced parents. Helen mentioned that her children had been able to attend a church camp, which had not only given her some time to deal with legal issues but had also been a positive experience for her children. Finally, Carol's belief that God would sustain her during difficult times, along with a supportive church community, were key resources as she navigated tremendous challenges and sought needed resources for herself and her six children.

## **Undertaking Personal Challenges**

A small number of women mentioned that they undertook personal challenges to develop confidence or build resilience. In some cases, they recognized an area of weakness that directly affected their ability to be successful in the legal process. For example, as previously mentioned, one mother took a course in presentation skills in



order to develop the qualities she believed would make her successful (and more confident) in the courtroom. Her course involved theatrical activities such as being bossy and critical, qualities that she abhorred. Other women took up martial arts, adventure/extreme sports, or competitive sports. Some found these activities provided a release for anger, while others described them as helping to integrate the body and mind, assisting them in breathing and being more mindful. Focusing on breathing and “being present” was a way of dealing with the stress of litigation or worrying about unpaid bills. A mother who took up martial arts described it as a key aspect of her life and her personal transformation:

[It] was my anger management strategy—punching or kicking as hard as I could for as long as I could—when doing something passive did not work. I learned how to actually breathe again. It taught me how to be around safe men. It taught me how to defend myself in any situation and most of all it helped me to learn that I did not have to be scared any more. I found a powerfulness in my body and a strength in my mind that required precision, focus and synchronicity. I was scared of lots of things before I started martial arts, and now I am not scared of much. I walk taller and with more confidence. That is a big difference for me.  
(Anne)

Another mother (Krista) undertook a number of challenging activities in order to overcome her fears, including a fear of heights. These activities included white water rafting, bungee jumping, and skydiving. She explained that “I did a lot of things that really challenged my boundaries. I have agoraphobia, so height related stuff is big for me (*laughs*).” These activities not only helped Krista conquer her fears but also increased her confidence and resilience.

Although not a physical challenge, five women and one man also returned to post-secondary education and trained in a helping profession. This training pushed them both intellectually and emotionally and helped them to become more confident and resilient and to find ways to exercise their agency. Again, it must be remembered that most of the mothers had significant challenges finding either the time or the funds to do anything for themselves at all. That notwithstanding, those who were able to undertake

these challenges and push themselves hard described themselves as stronger, more courageous, and more capable of withstanding the stresses of their legal and family troubles than they were previously. Thus these activities helped to build resilience and supported their transformation.

## **An Adult Developmental Perspective**

Having canvassed some of the personal and social relations (and other resources) that assisted participants in overcoming the challenges they faced, and which over time facilitated their transformation, I now suggest that the personal processes of navigating a high-conflict divorce are in many ways intertwined with the ongoing processes of adult development. Several common themes emerged in participants' narratives as central to their transformation. These were: figuring out power and agency and becoming self-authorizing subjects; developing adult relationship skills, including effective communication, developing healthy boundaries and learning to deal with conflict; and, finally, meaning-making over time and in relation to broader social changes. Unifying these threads is the notion that adult development is a normal, ongoing, and active process that occurs over the life course (Day Sclater, 1999; Gilleard & Higgs, 2016; Gilligan, 1982; Hartrick, 2007; May, 2003, 2008; Miller, 2005, 2011; Oberman & Josselson, 1996), with the experience of high-conflict divorce providing a locus, and thereby organizing, these processes.

Although personal transformation is most often conceptualized as psychological, in this thesis I conceptualize transformation as also involving a social dimension (see Chapter 2). Understanding the broader conditions in which interpersonal conflict occurs (i.e., the social, political, and material context) means that the social roots of conflict can be better understood and changed. Simply focusing on individual transformation in the context of high-conflict divorce would be to obscure the broader context in which participants faced their many challenges, and the sense of injustice most described; hence it would foreclose further discussion about transformation and change beyond the individual level. Further, it would imply that I see parents' difficulties as ones that can (and should) be overcome on the individual level, in line with neoliberal imperatives. As I have argued in this thesis, complex personal, interpersonal, social and structural

problems intersect in the lives and experiences of parents who navigate a high-conflict divorce process. Further, the meanings parents make “take shape in a complex matrix of legal practice, welfare ideology and personal psychological imperatives” (Kaganas & Day Sclater, 2004, p. 6), as well as social and legal policies and practices that often have different meanings (and implications) for men and women.

When each individual narrative is viewed from a developmental perspective, and participants’ intersecting social locations (e.g., gender, class, the culture in which they were raised, labour force participation) are considered, the ways people can be better supported through the process become more apparent. This approach stands in contrast to “othering” and pathologizing the parties and referring to them as “high-conflict couples” or families—parents who presumably would prefer to fight than to behave responsibly or consider the “best interests” of their child or children.

In the previous chapter, I discussed how participants figure out how power works and become self-authorizing subjects—a theme that also came up in narratives of personal development through adulthood. Accordingly, I now turn to the development of relationship skills, such as communication and conflict resolution. I intentionally describe these skills as relationship skills, rather than interpersonal skills, because relationships typically involve layers of emotion and previous experience (including with one’s family of origin). Although some challenges are common, each relationship has its own unique context. Also, parents transmit these skills to their children—a responsibility that all of the parents in this study took very seriously. Many mothers worried about the messages their children would pick up indirectly, such as that bullying or dishonesty are acceptable, or that of not being heard. These messages are the opposite of the messages parents hope to convey to their children. Mothers’ concerns about how their children come to understand bullying, integrity, and voice are relational concerns; however, these are also important social and gender issues that should be taken more seriously in family law.

Although popular notions of human development emphasize development as linear and occurring through childhood and adolescence, adulthood is also a time that people learn about adult relationships and learn skills for being in intimate relationships, such as effective communication and having healthy boundaries and mechanisms to

deal with conflict (Day Sclater, 1999; Gilleard & Higgs, 2016). As participants' narratives indicated, they did not enter their marriages with all of these skills solidly in place. Indeed, few people do. The marital difficulties many participants described suggest that many of these challenges involved "normal" adult development, albeit often in a compressed manner post-separation. At the same time, many also became parents for the first time while in their twenties and thirties. Although some would argue that people who haven't "grown up" should not have children, that there are thousands of books about relationships and parenting indicates that many people are seeking ways to learn about, improve, or enhance their relational lives and continue to do so throughout adulthood, whether or not they experience a high-conflict divorce process.

Participants extensively discussed their struggles with conflict, communication, and self-confidence. However, they framed these struggles as an evolutionary process—that is, as growth, rather than as the result of any stable personal "attribute" or deficiency. Importantly, when parents are in a high-conflict divorce process, those they encounter (e.g., mental health and legal professionals) see them at a particular point in time. That time may be when one or both parties appears at their worst and is struggling with strong emotions, intense loss and a sense of betrayal, and sometimes utter devastation (as depicted in the death and rebirth narratives above). These three areas—conflict, communication, and confidence—while interconnected, were integral to participants' transformation. That said, most participants recognized that as human beings, they would always be developing. From this view, then, participants' narratives are both narratives of adult development and narratives of a process of personal change in relation to a high-conflict or complex divorce.

Sofia's narrative provided a clear example of this development during adulthood. Although her divorce process did not involve repeated litigation, it did involve a history of controlling and coercive behaviour that continued post-separation. In response to a question about how the meaning of being a mother changed for her over time, Sofia said that she felt she had changed both as a person and as a parent. "I think you grow up with your children." After describing herself as stronger and more independent than she was prior to separation, she reflected that it was difficult to separate out the extent to which these changes were the outcome of her relationship difficulties and parenting

alone, “because you go through different stages, you know, your twenties, thirties, forties, fifties...you change anyway.” Further, although she saw herself as always having been independent (for example, she emigrated alone from South America in her twenties), “sometimes when you get in a relationship, you just like...give things away just to have harmony. Now I wouldn’t at all, I don’t believe I have to make somebody happy. I want to be happy.” While she recognized that with a partner who allowed her “more freedom” it would likely not have been as difficult, she is in many ways a very different woman now from the one who she was then. Certainly, she would not have stayed in a relationship that she described as controlling and coercive from the start, and now in her mid-fifties, she is simply unwilling to remain in a difficult relationship of any sort. Therefore, Sofia’s narrative reflects not only individual change across time but change across a shifting social landscape. The past twenty-five years has been a period of rapid social change, and both gender roles and social norms have changed in significant ways. We also live in an era that emphasizes choice and autonomy, although this individualistic notion of autonomy—in line with neoliberalism—is very different from the notion of relational autonomy (Chapter 2). So while people’s identities are somewhat fluid (as with social change), there are also continuities. For example, Sofia sees herself as having always been independent, yet she is no longer willing to forego her autonomy for the sake of harmony.

Many participants discussed their learning about conflict, and only a small number said that they still preferred to avoid it. They said that they needed to learn skills, as well as to “pick [their] battles,” manage strong emotions, and deal with differences. Few participants grew up having seen healthy modelling of conflict, so they tended to be “overly reactive” (e.g., Graham) or intimidated by it (e.g., Cindy). However, over time, most came to see conflict as “part of life” (e.g., Nicole), something they had to deal with and accept. Relatedly, many participants described themselves as having gained confidence in their ability to deal with difficult situations and to assert themselves or set boundaries when necessary. At the time of the interview, although most participants did not like conflict, they had grown comfortable with it over time, and some saw conflict as an opportunity for growth. As Jen, who retrained as a helping professional stated, “I have much more education around conflict. I just didn’t have the education back then.” Having grown up in a household where everyone “tiptoed around conflict, I understand conflict

now as part of relationships and as part of life. And it's an opportunity to grow." She further described learning to deal with conflict as strengthening, in contrast to her early learning that conflict should be avoided: "sometimes conflict in relationship if we know how to handle it with grace and effectiveness, uh, without hurting ourselves and other people, if we can get through it then it helps us grow stronger."

Another mother, who described herself as having been in an abusive relationship and as raised in a style she did not wish to replicate with her own children, responded to a question about what conflict meant to her during her separation and how her understanding of conflict has changed as follows:

Conflict then was survival. The bigger person wins, right. So you have to yell louder, to scream louder, you have to fight. So that was conflict for me. Conflict now...is two people with different ideas that, you know, neither one is right or wrong, mostly, and...it is something that you can talk about. Conflict is just differences of opinion. So let's talk about this. You know, it doesn't have to be a conflict. (Carol)

Finally, all participants were aware of the importance of not putting their children in the middle of parental conflicts or discussing their conflicts when their children could hear. Many took great pride in not having done so and described their efforts in that regard as having contributed to their children's adjustment to the separation and their well-being. In addition to their concern about protecting their children from their conflicts, several mothers and one father also spoke about the importance of teaching or modelling healthy conflict resolution to their children, either as a way of mitigating the conflict they did see or as a preventative measure.

Communicating, especially in the context of conflict and difficult emotions, was mentioned by many participants, with few feeling that they had the relevant skills while married. Clear, assertive communication and the ability to set boundaries were skills that participants had to learn (or hone). Andrew, for example, explained that he had largely learned to communicate and resolve conflicts in personal growth courses. "That had more effect on me than anything else. It gave me a framework in which to see things...it gave me non-confrontational ways of negotiating things." Furthermore, some participants

felt that they had not communicated authentically or communicated their values while married, often to keep the peace and avoid conflict. Sheila, who had married at a very young age, said, “had I been able to express anger or draw limits...then he would have not been able to push and push.” In response to my comment that we don’t necessarily enter adulthood with such skills fully developed and practiced, she said, “*Oh! I didn’t know! That’s right!* That’s totally true...I had no idea who I was. I was too young, I didn’t know myself...I mean, my ideal was to be a Japanese wife...because I loved serving.” However, once she became what she believed to be a stereotypical Japanese wife, Sheila found herself

taken for granted or not appreciated, or...served in other ways that was reciprocal. I didn’t know any of that. I just did not ask for it, I had no idea how to ask for it, for what I needed. No idea as I say, to set any kind of boundaries and um...or just stand up to it, or counter, or...I had this belief...just...you know, it’s that Christian thing...just love. Love will solve it all, right?

A small number of participants described themselves as having been “over-reactive” or “hot-headed” while married. They came to regret that and to be aware of the effect on their children or former spouse, thus had sought to change their behaviour. One father said that he had formerly “had a tough time communicating” and dealt with his anger “through a bottle, but now I can communicate better. I don’t get hot-headed any more. It is very rare. I’ve learned to control myself, or my temper.” He further described himself as someone who “wasn’t a mean guy, anyways [but] now I stop and I think of what the issue is and how to handle it” (Steve).

Many of the mothers spoke about having begun the separation process with cooperative ideals but ultimately finding themselves unmet in the process. One said,

At first I was all about collaborate, collaborate, but then at some point I was like this is not working and it would take me out for a week after a phone call and he’d just hang up on me in the middle of a conversation. He didn’t want to hear anymore, he would hang up on me. So...that wasn’t rebuilding my self-esteem, that was continuing to erode it. (Cindy)

Andrea also began the separation process hoping for a cooperative and respectful parenting relationship. She said,

I wished above all else to have a decent respectful divorce so that we could parent together as divorced parties. When I suggested that numerous times to my ex he told me usually to “F off.” I learned that being soft, sensible, collaborative did not work. I feel the bruise of that still.

While she described feeling a sense of loss on behalf of her children and feeling deeply traumatized by her experiences with her former husband and family law litigation, a third mother described collaboration as the ideal, but only one that was viable for reasonable people. “Yeah, that was the biggest thing for me, communication.... Not that I could communicate with my ex, but I’m talking *reasonable* people. Some people are not reasonable, and some people just don’t want to” (Carol).

These three excerpts collectively reflect the power of the norm of collaborative parenting post-divorce. Some mothers felt a sense of failure and disappointment at not having been able to fulfil this norm, despite their best efforts. As discussed in Chapter 4, participants are not always told early enough that their case is inappropriate for ADR.

Participants also spoke about communication while looking backward to the way they were raised and forward to the importance of communication with their children. This aspect included ensuring that their children were heard and that they were raised in a manner that could save them from experiencing some of the parent’s own struggles. For example, Cindy, who said that she did not learn to be assertive until after her separation, said

had I not gone through this divorce or separation, or what I would call a life crisis for me, I would not have this kind of insight or this kind of self-awareness, or this way of thinking or believing to be able to communicate to my kids. I’d just be carrying on the same pattern my mother carried on with me because I wouldn’t have known any different. If I’d stayed in the marriage I would have been...it was crazy-making for me. I’m sure it was for him too, because we both couldn’t get



what we needed or wanted and so we would've been in the same cycle and I would've just passed that cycle along.

While married, Cindy and her former husband argued often. She described fluctuating between being aggressive and passive-aggressive, and her former husband as “stonewalling”:

Just trying to reason with [him]...“I just want you to hear my opinion” and we talked ad infinitum and he’d just walk out because he’d be fed up, like “I don’t want to hear it anymore” and the aggressive part that I get to, I get to lecturing, I get to making people (*laughs*) wrong. Like you know, the more I feel that I haven't been heard the more I just try and get heard! We were both so frustrated. So he felt like I was scolding and lecturing like a mother, which I was, and I felt like he was cavalier and, um, he stonewalled...like, “Can we talk about this now?” “Yeah, later.” “Can we talk about this now?” “No later.” And so we never actually got to the conversation. [We] never got the issues resolved. And when I would call him on stuff, like “You said you would do this and I've done my part,” he goes, “Well, I changed my mind.”

In a final theme concerning development, a small number of parents described themselves as now able to attend family events with their former spouse or even share a meal. However, in doing so, they felt that they still needed to avoid certain issues. As Jen put it, “there’s that balance between truth over harmony.” In other words, although the issues may never be fully resolved, she may not attempt to do so because she places considerable value on family harmony.

As excerpts in this section illustrate, participants did not generally enter adulthood and their marriages with their relationship skills fully developed. Many found themselves on a steep learning curve during these relationships and even more so following separation. In thinking about many of the challenges participants confronted, and mostly resolved over time, many of these difficulties are part of normal adult development. Thus, reconceptualizing their difficulties as such could open new ways of understanding and supporting parents through the divorce process. Moving away from the extant view of high-conflict divorce (and each of the parties involved) as deviant and

pathological could also assist parents in moving away from seeing each other as adversaries (within an adversarial approach that fuels conflict) and pathologizing each other (within a system that pathologizes the parties and their difficulties, regardless of the unique circumstances involved). Punitive and shaming approaches could then be replaced by approaches that support transformation, such as those informed by a feminist “ethic of care,” as discussed in Chapter 2 in relation to dominant discourses of motherhood and self-other tensions. Such an approach also requires changes to the way in which care, responsibility, and choice are understood.

Smart and Neale (1999), who have conducted extensive research on post-separation conflict between parents, draw on the ethic of care framework to propose the application of four principles to these disputes: actuality (i.e., realities and contexts), care, recognition of selfhood, and recognition of loss. Such principles also reconceptualize understandings of care to include care for those whose well-being and practices the welfare of children is dependent upon. It is important, then, to critically reflect on how separated and divorced parents, particularly in circumstances of high parental conflict, might make caring, moral decisions that can be reconciled with “legalistic ethical codes [that] often lack the capacity to do justice in an appropriate way to the ambiguities and nuances of ‘lived’ social moralities” (Sevenhuijsen, 1998, p. 118). Thus the central challenge—from an ethic of care perspective—might be to reflect on “how we can create the conditions for good care to flourish” (Barnes, 2011, p. 160). I explore this challenge in Appendix F, where I generate practical recommendations to better support parents through a high-conflict divorce and beyond.

Study participants highlighted the importance of normalizing the separation process and their need for constructive and context-specific support. As described in this section, over time—and despite the challenges they faced—many parents learned how to deal with conflict (and in many cases to pick their battles), to communicate effectively and set boundaries, and to move beyond cultural expectations—including gendered roles and expectations—as men or women, as partners, and as mothers or fathers. These are largely adult tasks that society can either support or make more challenging. Ensuring that parents have the support and resources they need, and recognizing that “one size fits all” approaches may not be best for every parent (or former couple), would

be a good start. Moreover, from the perspective of relational autonomy, which highlights the interdependency within families, initiatives that benefit parents inevitably benefit children, while at the same time also supporting the autonomy of all family members.

## Discussion

In this chapter, I have examined the personal and interpersonal dimensions of the experience of a high-conflict divorce, as described by participants. These experiences occur within a particular social and political context, giving rise to specific tensions and issues. I have drawn together a number of key ideas that, in combination, convey the extent of the complexity of personal experiences of high-conflict divorce involving children. Together, participants' narratives reflect both personal and social change across the individual life course, generations, and social locations and involve the complex intersections of personal, interpersonal, and social issues—as experienced individually by each participant in the context of their divorce. These complex intersections will be addressed in more depth in the next chapter. Despite each participant's perception of self-transformation (often experienced relationally), many described residual challenges. These challenges, as discussed in Chapters 4, 5, and the current chapter, include: (a) feeling, struggling with, and sometimes resisting, shame for not having measured up as a parent, often as a result of failing to accomplish norms of a “good divorce” or idealized notions of motherhood; (b) loss of trust in others and social institutions; (c) financial problems; and (d) an enduring sense of injustice.

The issues raised in this chapter, particularly when viewed alongside the findings from earlier chapters, raise two key concerns. The first issue centres on the privatization and individualization of responsibility and unequal access to justice in the context of neoliberalism and family law disputes (see also Treloar, 2015, 2016; Treloar & Boyd, 2014; Treloar & Funk, 2008, 2011). Given the increasing economic inequity and expectations that those with legal conflicts take responsibility for resolving their “individual” and “domestic” problems that have accompanied neoliberalism, there are real risks that injustices will result.

Of particular concern are the privatization of justice and responsibility alongside increasingly limited support resources, unequal social or financial power between spouses that may significantly impact outcomes, and increased vulnerability, especially among those with few resources and mothers who have exited abusive relationships. The uncritical incorporation of “resilience” into policy and practice, particularly within the politics of neoliberalism (as discussed in Chapter 1 and again in the next chapter), has the effect of refocusing attention on individual responsibility for adaptation to adversity and away from the social and political context (e.g., the dismantling of the welfare state, including legal and extra-legal functions that are central to democracy) that provides the conditions for adversity and inequality to occur in the first place (Aranda & Hart, 2015; Dagdeviren, Donoghue, & Promberger, 2016; Garrett, 2015; Harrison 2013; Mohaupt, 2009; Seccombe, 2002; Sommerlad, 2004, 2015). Individual change and resilience are important but without increased attention to the social context, in the context of neoliberalism the responsibility for change is likely to fall solely on individuals and families.

Second, although many participants found psychological approaches such as counselling invaluable in assisting them through their difficulties and making sense of their experiences, these approaches typically only involve change on the individual level. While not wishing to minimize the many benefits described by participants, in certain respects these approaches are in tension with agency and meaningful autonomy. A therapeutic focus on the self (Rose, 1996; Furedi, 2004) and practices of the self (including individual(ized) self-care, self-management, and more recently, mindfulness) involve responsabilization (Rose, 1996), which is a strategy of neoliberal approaches to governance. In this strategy, individuals are encouraged to act on themselves, making responsible choices that, although they appear to be entirely individual, are invisibly aligned with governmental objectives (Chapter 1). In this case, these objectives include “empowering” parents to fulfil their needs and resolve their legal and family problems, entirely at their own expense and without recourse to the state. Furthermore, these parents are abandoned by the same state that in some instances contributed to injustice.

At the same time, by revealing and then questioning some of the assumptions inherent to neoliberalism as they arise within the therapeutic relationship, participants

can see what is currently invisible—the relationship between personal problems and social or political ones. Currently, feminist and social justice counselling approaches do use such a model, but these practitioners are rarely invited to participate in policy or family law reform discussions. Consequently, there is little opportunity for epistemic friction (Medina, 2011, 2013) and space for knowledge from “below.” Furthermore, most practitioners (psychologists and other mental health professionals, lawyers, judges, and ADR practitioners) tend to work within silos, building and reinforcing knowledge within disciplines and practice areas, but less frequently working across them or asking difficult questions regarding disciplinary knowledge construction.

Angela Harris (2016) has recently addressed the incorporation of “therapy culture” into state institutions and the law, arguing that for therapy culture to be progressive in such a context, it must move away from individualism, instead critiquing power relations and drawing people into relationships, including those that encourage collective action. That is, it must re-politicize, with a particular focus on “the task of understanding and resisting the abuses of power made possible by relations of care and connection themselves” (Harris, 2016, p. 118). Another potential way forward that does not exaggerate agency or individualism involves recognizing that there is

an inarticulable disconnect between the rhetoric and the reality of neoliberalism. The way forward requires individuals to recognise this disconnect and to acknowledge the impotency of the individual acting alone. Only then can individuals work to transcend the actual limits to agency and through coordinated, collective action, redesign social institutions into structures that support authentic living and the broader flourishing of individuals. (Wrenn, 2015, p. 1242).

A common assumption also persists that those with personal experience of high-conflict divorce are somehow less credible as knowers (Fricker, 2007), perhaps, at least in part, because of the stigma attached to those categorized as “high-conflict parents.” Thus, in the context of neoliberalism, which involves shrinking support resources and the privatization of family justice, alongside the personalization of social problems, those involved in a high-conflict divorce process may not only be less likely to receive the

support and services they need but may also lack the epistemic resources that could allow them to connect their personal experiences with those of others. Connecting the personal and the political—that is, working across the intersection of public issues and personal problems (Mills, 1959) has long been central to critical feminist research and practice. Thus, in Chapters 4, 5, and 6, by situating participants' experiences in the social and political context within which they occur (rather than simply reinforcing the notion that these are individual problems), I have aimed to not only illuminate the complexity of these experiences but also show how they are linked to broader social tensions and changes and attempt to reach across duelling disciplines to encourage discourse that is more constructive, more caring, and more considered.

## Chapter 7. Conclusions and Recommendations

This thesis provides a comprehensive picture of how mothers and fathers make sense of their experience of a high-conflict divorce process and how high-conflict divorce can be transformed into a more positive experience. In this final chapter, I discuss my findings and conclusions, followed by suggestions for future research.

Recommendations for policy and practice and parents, including those made by participants, can be found in Appendix F. Finally, I consider the question of how, given the contemporary political and socio-economic context in which decisions are made, both family law and high-conflict divorce experiences can be transformed. I draw attention to the complexities of parents' lives and circumstances, and to knowledge constructions and stereotypes that may contribute to epistemic injustice and unjust outcomes.

Using a social constructionist and relational framework, my thesis builds extensively on feminist and family law literature (especially the work of Boyd, Collier, Day Sclater, Fineman, Kaganas, and Smart) as well as critiques of neoliberalism (e.g., Rose, 1996; Harris, 2016), and applies the theoretical concepts of epistemic injustice (Fricker, 2007) and relational autonomy (Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011) to high-conflict divorces involving children. I also draw on broad notions of adult life span development (Gilleard & Higgs, 2016; Mayer, 2009), including their applications to motherhood or fatherhood, in developing my arguments. This study asked two main questions. First: How do individual mothers and fathers come to make meaning of and know themselves through the process of a high-conflict divorce? Two key sub-questions were: (a) How are individual interpretations influenced by social locations, social relations, and discourses (e.g., of motherhood/fatherhood and responsibility, rights, and care) as well as debates about gender relations and family life?; and, (b) How do collective meanings drawn from extra-legal discourses (e.g., child welfare) shape personal meanings and experiences of conflict in such situations and influence the take-

up of legal norms? Second: How does (can) high-conflict divorce become transformed into a positive experience? In particular: What personal and social processes and relations facilitate this process? What challenges are encountered and how are they overcome?

At the beginning of my study, I sought to understand how parents were transformed by the experience despite the many difficulties they faced. I suspected there was something about the parents as individuals or the personal, interpersonal, and social resources they drew on that resulted in the perception that they had changed in a positive sense as a result of their high-conflict divorce process. As a former divorce counsellor working in a non-profit family-serving agency, I was very aware of the profound impact the factors raised in my first question had on parents. However, having been trained initially in psychological disciplines and understanding notions of change as residing within the individual (a way of thinking that is significantly aligned with neoliberalism), the extent to which structural factors and social and legal discourses and norms are implicated in parents' experiences and understandings was not fully apparent to me.

Having completed this study, I have concluded that to focus on "successful" individuals as reflective of exceptional resilience and to valorize them as exemplars of positive change would be to minimize the significance and relevance of the very contexts that contributed to the difficulties they experienced and that led them to be legible as fitting the definition of high-conflict divorce in the first place. While their ability to overcome most aspects of their difficulties is remarkable and contributed significantly to my understanding of what is helpful to parents in such circumstances, were I to not examine the findings in light of the neoliberal context in which they function and raise their children, I would be complicit in the practices and ways of thinking I critique in this study. Thus, this study shows how individuals come to exercise agency *despite* the challenges they faced. Participants were clear that the family justice system and related policies and practices frequently did not help them resolve their disputes and often added to them. Since my study seeks to better understand parents' meaning-making, I must also clearly relate my personal impression of the injustices and challenges that were reflected in participants' narratives.



Given that neither the courts nor ADR was useful to most parents in the study, a question that must be asked is what *is* helpful. Although I summarized a number of factors that were helpful to parents in Chapter 6, this chapter (supported by Appendix F) draws together the insights of participants, my own ideas that flow from these findings, and recommendations made by other scholars and practitioners<sup>86</sup> that I think are helpful. The short answer, however, is that solutions on a single level are likely to prove insufficient and that responsibility for constructive change must be shared. For example, although I agree with Cashmore and Parkinson (2011) that therapeutic intervention and educational approaches may be helpful, such programs only address the individual level, which has the effect of perpetuating the notion that high-conflict divorce is simply a conflict between individuals.

My findings clearly indicate that a dichotomous success/failure framing of how parents navigate high-conflict divorce is central to exacerbating its worst aspects. Drawing on these findings and the concept of epistemic injustice, I suggest that categorizing parents as “high-conflict” shifts the responsibility for social problems and broader tensions in gender relations to individuals. Given the complex intersections between personal issues and social and structural inequalities and injustices, such approaches not only fall short but tend to pathologize individuals without addressing the challenges they may face. What is lost is a clear picture of the complexity of these experiences, and, consequently, attention to how policy and practice can better address parents’ needs and support their autonomy, agency, and transformation. In the contemporary context of neoliberalism, with a retraction of the state in the provision of social welfare and a shift of responsibilities to individuals and families, this pathologizing is even more likely. Despite improvements in the current legislation, deep change is needed on a number of levels. That change is likely to be incremental and uneven, especially in a context of increasing economic inequality (Statistics Canada, 2015), high legal costs, and extremely limited access to legal aid.

<sup>86</sup> Here I am referring to professionals who work with or assist families or parents (usually lawyers, counsellors, social workers or ADR practitioners) rather than academics or policy-makers.

Although all study participants separated under the previous legislation in British Columbia (FRA, 1996),<sup>87</sup> I suggest that my research findings are as relevant under the FLA as they were under the former FRA for a number of reasons. First, people who are facing family dissolution for the first time are unlikely to be legally literate. Therefore, they are unlikely to pay much attention to new laws that do not appear to have relevance to them. Second, although the law has changed, people's family/relationship practices, values, and familial-cultural backgrounds do not suddenly change course, and they certainly do not do so in reverse. Therefore, although there is no doubt that men and women's roles, practices, and meanings will continue to change over time, this change is gradual and may or may not correlate to legal change. Third, the emotional experience of divorce is complex and appears to occur in similar ways across legal jurisdictions and cultures (certainly across Western cultures), raising the question of how central differences in legal regimes are to personal experience. Changing divorce culture, especially as it pertains to "high-conflict" divorce, also takes time and that means that personal experiences are likely to be similar under the new Act. Finally, the FLA remains a long and complex statute that is not particularly accessible to lay persons.

Recent research also suggests some need for caution as families attempt to negotiate new legal norms, particularly in the contemporary socio-political context and in light of extant gender inequities (Boyd & Ledger, 2014; Boyd & Lindy, 2016, Boyd & Treloar, 2014). As Treloar and Boyd (2014) cautioned in an assessment of the FLA one year after it came into full effect, "without adequate resources to support families and improved access to justice, the innovative aspects of the FLA may be thwarted" (p. 77). Boyd and her co-authors raise additional concerns about how family violence is interpreted, as judicial interpretation results in indeterminate outcomes. These outstanding issues indicate that although change is occurring, real transformation may take time. Such transformation relates to broader social issues and policies that must also be addressed and the support needs of parents and families. As Strid, Walby, and Armstrong (2013) have rightly noted, although multiple inequalities and their intersections are now largely apparent in single policy domains such as domestic

<sup>87</sup> Participants also separated under the federal *Divorce Act* (1985), as explained in Chapter 1.

violence policy, inequalities in one policy domain (such as domestic violence) also intersect with other policy domains (such as post-separation parenting disputes).

## **Key Findings and Conclusions**

In this thesis, I have argued that the dominant discourses upon which parents draw to make sense of the high-conflict divorce process and their personal experiences are socially constructed and embedded in broader power relations, especially in gender relations and encounters with experts. These discourses, and the assumptions that underlie them, also operate through neoliberal conceptions of autonomy and choice that may obscure not only the particularities of individual circumstances but also the social and structural factors that contribute to them. Additionally, categorizing and then pathologizing parents as “high-conflict” shifts the full responsibility for resolving these problems to parents, often resulting in parents not feeling heard, their issues unaddressed, and without access to services that can assist them. As a result, parents often feel that they did not receive justice. Despite these difficulties, individuals do exercise their agency, albeit with constraints. Transformation occurs as individuals change, make sense of, and respond to their circumstances across the life course. This process occurs in a social, political, and legal context that also changes over time and across generations. Therefore, drawing on Wrenn (2015) and Harris (2016), I argue that in order to facilitate transformation on a personal level, policies and practices that promote agency, resilience, and autonomy, without resorting to neoliberal appropriations of these concepts, are needed. Consequently, I regard the potential for transformation as occurring not only on a personal level but a broader socio-political and legal one. For lasting change to occur, both must be addressed.

### **Dominant Discourses and Meaning-making**

In the first of four interlinked arguments that comprise my thesis, I address the dominant discourses upon which parents draw to make sense of their circumstances, noting that these discourses are grounded in individualistic assumptions and embedded in power relations. In this discussion, I build on previous feminist socio-legal scholarship on gender, power, and justice, Pateman’s (1988) notion of the “gender contract,” and

Boyd's (2010) application of relational autonomy theory to family law. Considerable research suggests that the primary reason that financial and child-related issues are so contentious is that these disputes tap into broader issues of gender and power, often linked to the distribution of paid work and care in family life. However, my study suggests that economic disadvantage at separation is more complex and nuanced in practice than a simple focus on the gendered division of work and care would allow. Fluidity in patterns of employment and care, on both the individual and parental level, complex parent or child health issues, and the role of family law and policy in promoting arrangements of shared responsibility and care all contribute to arrangements that are not always viable or enforceable.

When fathers have not played a central role in child care pre-separation and then wish to do so after separation, whether because their meaning of fatherhood has changed or to reduce child support obligations, social and legal norms seem to favour fathers in this regard. However, in the context described in this thesis, to unproblematically make shared parenting a legal presumption may imply that mothers' primary care work is not of value or importance, therefore contributing to their subordination and affecting their sense of dignity and worth. The lack of financial parity between mothers and fathers often further disadvantages mothers in the divorce process and impacts their autonomy. In contrast, a father's position is more congruent with the individualistic and currently hegemonic approach of neoliberalism, promoting their autonomy.

Shared parenting can be considered as a blend between extra-legal and legal discourse.<sup>88</sup> The norm of shared parenting first emerged in the social sciences and public discourse and was later translated into legal norms through some legislation and judicial discourse (Boyd, 2004; Fineman, 1988, 1994). Social norms and ideologies (e.g., father involvement), although extra-legal, penetrate legal discourse through lawyer talk, judicial discourse, law reform discourse, and in conferences where members of psychological disciplines inform legal professionals. Fathers' sense that their priorities had been "off" in regard to the balance of paid work and child care prior to separation

<sup>88</sup> Thanks to Susan Boyd for this point.

suggests that in addition to their personal meanings of fatherhood, fathers may also be negotiating or responding to conflicting norms that are reflective of broader social tensions and changes, as well as debates that circulate within academic and professional discourses.

As discussed in Chapters 2 and 4, dominant discourses of the “good divorce” are perpetuated in policy and by professionals, in order to further the ideal of former spouses as parenting partners. This ideal is more closely aligned with the views expressed by mothers in this study, whereas fathers tended towards more hegemonic ideals of personal and financial autonomy. However, mothers are also aware of dominant notions of intensive parenting and motherhood. They sought to *be* good mothers, as well as to be *perceived* as good mothers, and many struggled with the expectation that they should step back from their active involvement in order to give fathers more time. Relatedly, as discussed in Chapter 4, their understandings of shared parenting involved communication and active involvement, whereas fathers’ meanings generally involved an actual division of time. In other words, mothers and fathers understood sharing in gendered ways, with fathers preferring to parallel parent (i.e., to parent autonomously in an individualistic sense) while mothers tended to understand sharing in relational terms, that is, in terms of interdependence. These gendered meanings sometimes contributed to conflict and misunderstandings. Therefore, there is an interplay between collective meanings and personal meanings of shared parenting; both are infused with tension and conflict that becomes visible at the point of separation. As well, choice and agency are enacted in a neoliberal context that may constrain or enable mothers’ autonomy according to their socio-economic (and other) circumstances.

Concerning gendered meanings about shared parenting, as discussed in Chapter 4, mothers and fathers seem to have quite different understandings about what shared parenting means. These meanings are also interlinked to gendered meanings of child welfare, money, and autonomy that circulate broadly in society. However, collective meanings also contain tensions and nuances, as do individual narratives. First, in a nuclear family the role and value of mothers and their contributions are generally assumed and unquestioned. Although it is now commonly understood that children benefit from the active involvement of both parents in their lives, the division of labour

pre-separation does not yet reflect this norm in most families. While mothers are now much more likely to be employed than in earlier generations, they still feel that they have the primary responsibility for children (because they generally do). Broader discourses of father involvement and the need for children to benefit from both parents has changed pre-separation parenting but fathers still have the ability to opt in and out in a way that mothers do not. Post-separation, meanings regarding fatherhood and shared parenting are now reflected in legal norms. This means that if fathers wish to share care, a mother who has concerns or different values is likely to be unsuccessful in a dispute because notions of shared parenting and father involvement are largely embedded in legal discourse (Boyd, 2004, 2010; Fineman, 1988, 1994; Treloar & Boyd, 2014).

Second, regardless of post-separation norms, broader social conflicts (often gendered and classed) about the division of labour shape personal meanings. Since social change is uneven and experienced and reflected in a multitude of ways within families, expectations and norms regarding shared care are not adequately supported across policy domains. This has implications for parental autonomy and constrains parents' real choices at separation.

Given my finding that disputes over child support are often understood by mothers as about responsibility and care, especially when they are left with the majority of the financial responsibility for children, it is clear that such disputes can contribute to conflict and have implications for settlement. Among parents in my study, previously made decisions concerning the division of labour had very different consequences. When fathers wished to change the balance of paid work and child care post-separation, they too found that the previous division of labour presented difficulties. However, fathers' wishes were generally in line with contemporary post-separation norms, whereas mothers found little support if they sought to maintain the pre-separation status quo, making them less likely to be successful against the father's wishes. However, among my study participants, even mothers that were employed full-time had difficulty obtaining child support (even when the father had a high-income; e.g., Leanne, Jen) and/or enforcing court orders and agreements. Nevertheless, in the long-term, labour force participation, the satisfaction of positive child outcomes achieved through hard

work and personal struggle, and greater responsibility for children all contributed to parents' autonomy and enabled personal agency and transformation.

In Chapter 4, I drew on Australian research by Natalier and Hewitt (2014), which found that gender especially influences the meanings parents make of child support payments. My study both confirms their research and builds on it in the Canadian context, finding that participant fathers are more likely to see money as an individual asset and related to their status as men (more than as fathers), whereas mothers generally view money in relational terms, that is, as necessary to their children's opportunities, well-being, and autonomy. I also apply the lens of relational autonomy (Boyd, 2010; Mackenzie & Stoljar, 2000; Nedelsky, 1989, 2011) to argue that this distinction and the individualist and relational conceptions of autonomy that underlie such views have gendered consequences for parents' autonomy. I also show that financial disputes impact mothers' perceptions of their former partner as a *parent*, particularly when financial constraints affect their ability to provide for children or to obtain a just resolution to disputes. Similarly, fathers' perceptions of their former spouse as a potential breadwinner come into play when they seek to reduce their own financial responsibilities and take a greater role in child care. While previous studies have emphasized gender (and often socio-economic circumstances) as significant in post-separation disputes concerning child support, my study also attends to cultural and generational influences on the meanings that parents assign to money and autonomy. Such meanings not only affect a parent's perceptions of the other parent, thereby potentially contributing to conflict, but also play a part in a parent's legal decision-making and the outcomes they seek.

It is not just gendered social meanings of money that operate in post-separation disputes. Gendered ideologies, often originating in expert knowledge and circulating in society are also at play. Dominant understandings of motherhood and fatherhood and men and women play a significant role in parents' meaning-making in these circumstances. Mothers especially work hard to fulfil idealistic expectations at the same time as they negotiate expectations that they be breadwinners post-separation and meet the requirements of neoliberal citizenship. Mothers in my study felt that not only were they still held to ideals of the "good mother" (which most also held themselves) but also

that any disadvantage they faced as a result was “brushed under the carpet” and effectively erased, post-separation. That said, not only did they feel the pressure of expectations and stereotypes, they also questioned them.

Some mothers sought new careers that would allow them to be more autonomous (in an individualistic sense) and better provide for their family (in a relational sense). However, many mothers were also aware of their derivative dependency upon their former partner (Fineman, 2005), which constrained their autonomy. It may also be said that although they needed support and care themselves, mothers “took responsibility” for solving their own difficulties—even when it meant that they were left with the sense that the world is not a just and caring place (e.g., Helen, Leanne).

Fathers seem to resort to more hegemonic versions of masculinity and interpretations of conflict, yet often come to know themselves according to discourses of the “new father,” discourses that exist in tension with hegemonic masculinity. Some fathers also described perceiving themselves as vulnerable and disadvantaged, especially early in the divorce process. Often this was related to bargaining over children’s arrangements—a perception that was likely influenced by FRA discourses, and reinforced within their social networks, that fathers are at a disadvantage in child custody disputes. Most fathers also felt vulnerable financially, often due to the potential for loss of male status and the fear that their former partner was going to take this status away (along with the children). In this way, my findings are similar to those of Natalier (2012), who described fathers with obligations to pay child support in her study as understanding their obligations in terms of either loss or resilience. In my study, fathers (and mothers) variously positioned themselves in relation to loss and resilience at different points in the interviews. A possible explanation for this difference is that my study concerned high-conflict divorce and did not focus on child support specifically.

Although fathers tended to assume that they should be autonomous in an individualistic sense post-separation (i.e., autonomous from the other parent), many wanted to be more involved with their children post-separation. This tension between individual and relational meanings of autonomy presents a dilemma for fathers. Fathers often described how the separation precipitated not only a change in priorities but also a



change in the meaning of fatherhood. However, most fathers also wanted to maintain individual financial authority and experience only minimal impact on their financial resources, which meant that they sought more care time with children and less financial responsibility, in line with post-separation social and legal norms. Instead of taking up relational discourses of care or responsibility as mothers did, they generally drew on modern discourses of father contact and shared parenting being central to their children's well-being post-separation. This finding suggests that fathers reconcile the tension between individual and relational understandings of autonomy (and associated implications for responsibility and care and children's "best interests") through a desire for, and insistence upon, shared parenting. This approach also allows them to maintain a moral identity in line with contemporary norms (May, 2008) of "good fathers" at the same time as they resolve "self-other" dilemmas (as discussed in Chapter 2 in relation to mothers). This insight could help to explain why fathers are so insistent on shared care of children, despite empirical evidence that such arrangements may not always be best for all children or in all circumstances (Fehlberg et al., 2011; Smyth, McIntosh, Emery, & Higgs Howarth, 2016).

Consistent with studies by Natalier and Hewitt (2014) and Mackenzie and Cook (2015), gendered social meanings of money were particularly apparent in fathers' narratives. As researchers such as Smart and May (2004) have shown, money and child-related issues are not discrete in parents' minds. In line with parents in Smart and May's (2004) study, the parents I interviewed saw finances and children's arrangements as intertwined. Further, since money is also linked to dominant understandings of children's life chances and future success, viewed relationally, money is central to child-related issues and has particular implications for mothers' autonomy and equality. Thus my findings concerning the interrelationship of financial and child-related issues also underscore the challenges faced by mothers who have difficulties securing child support and the ways in which they exercise agency and respond to these challenges. I discuss this agency in relation to transformation below. These findings also support research by Boyd et al. (2015), which demonstrates that choices mothers make with respect to children are made relationally and are "structured and constrained in many ways, including by law" (p. 216). In the high-conflict divorce context, however, my findings suggest that mothers' autonomy is significantly constrained both by law and by a broad

range of social policies because of the way in which legal and extra-legal norms regulate mothers' choices. Mothers must not only negotiate legal norms that are likely to be consistent with the wishes of their former partner (e.g., shared parenting) but are also likely to experience particular difficulties in situations where their view of what is in the interests of their children, as well as themselves, is in tension with gender expectations and post-separation norms.

Social relationships also influenced participants' interpretations and the meanings they made of their circumstances. These relationships, both formal (e.g., counselling) and informal (e.g., friends), were generally supportive and played a positive role overall. In some cases, the participant found the support they received to be invaluable. However, without exception, participants' overall support needs were not met during the legal process. Even those who had significant support from family, new partners and friends were not always able to find the professional support they required, particularly when there were complex issues involved that spilled over to affect the children.

Generally, both mothers' and fathers' interpretations were influenced by broader debates and tensions around gender, power, and preferred family forms. Some parents were aware of these norms and discourses prior to separation, but others were "educated" about them by professionals, friends, or advocates. Parents positioned themselves in relation to discourses and norms about post-separation parenting as well as discourses of good and bad mothers, fathers, and divorces. For example, some mothers used these discourses to position themselves positively in contrast to stereotypes about lone mothers and welfare, while some fathers did so regarding child support. Both mothers and fathers positioned themselves in a way that allowed them to speak authoritatively and as good parents (Kaganas & Day Sclater, 2004).

Perceptions of injustice or entitlement seemed to result in greater focus on these tensions and debates, and it is my impression that the longer issues went unresolved (or were not resolved in a satisfactory manner) the stronger this perception became. Some parents interpreted their difficulties as due to bias, either on the part of professionals or the legal system. They saw the law and some professionals as favouring the other

gender. Other parents saw their difficulties as related to broader inequities, largely based on money and power. For example, when non-payment had implications for mothers' ability to access the legal system or when there were significant disparities between parents, this sense of injustice increased. One possible explanation for this profound sense of injustice is that it disrupted commonly held beliefs that when people have a legal dispute they can get a just outcome, as discussed in Chapter 5, as well as beliefs about what the law does.

Since parents' interpretations are significantly influenced by social locations, social relations, and discourses as well as debates about gender relations and family life, a key tension concerns whether gender roles should change at separation, regardless of previous agreements and arrangements. Even parents who were satisfied with pre-separation arrangements and/or had limited awareness of post-separation norms found themselves expected to adjust at a time when they were likely feeling overwhelmed, including by strong emotions such as anger, fear, and loss. It is unsurprising, then, that these emotions coalesce around children and money. This raises two issues, both of which concern debates around gender and care and what the post-separation family "should" look like.

The first issue concerns post-separation norms. Smart and Neale (1999) point out that it is too much to expect parents to simply start "equal parenting" at the point of separation if the pattern was not established beforehand. Such expectations, they argue, are an attempt at social engineering. Although social policies and family laws are often intended to shape social behaviour, when this engineering differentially impacts the autonomy of family members, there is real potential for injustice. The heated debates about post-separation arrangements affect parents' meaning-making and expectations and contribute to conflict and tension on the parental level. These debates are not only about children's arrangements but also about power, resources, care, and responsibilities. Academics, professionals, and advocacy groups have often weighed heavily into these debates, perhaps without sufficient thought about the way that parents incorporate these positions and claims in their meaning-making.

Another issue concerns the absence of policies that support pre-separation choice and flexibility for parents. It is not possible to fully address the gendered division of labour within individual legal disputes because they are set into a broader context that overvalues market activity and undervalues care. This means that women who are economically dependent on their former partners are likely to perceive their care work (and concerns) as having less value in bargaining (hence unjust). In the extant capitalist and still gendered social order, it is generally men who have been breadwinners that benefit from these arrangements. Nevertheless, unless disrupted (and not only at the point of separation), the gender order also frustrates the ability of some men to take a greater role in caring and may also constrain their choices. I make recommendations that address both these issues in Appendix F.

While gender remains a key social relation in shaping parents' experiences and the meanings they make of their high-conflict divorce, participants' narratives indicate that gender often intersects with class. This finding has interesting implications for policy in that mothers who were married to wealthy men often had considerable difficulty enforcing child support orders. However, had I been able to recruit a more diverse group of fathers that included poor men, I might find that paying child support had a significant negative impact on their ability to spend time with their children, for example by preventing them from securing suitable accommodation for their children to stay overnight. If policy responses that address child support are rigorously enforced, they are likely to most negatively affect men who are vulnerable, certainly in an economic sense (and perhaps also in other respects). Furthermore, the meagre amounts they would likely pay are unlikely to lift a low-income child support recipient out of poverty. Although the preferred solution appears to be better social welfare support for low-income lone mothers, this is unlikely in the current policy environment.

My study advances the literature on high-conflict post-separation disputes by bringing in an intersectional perspective in a preliminary way. By drawing attention to factors that complicate gender (e.g., socio-economic factors, labour force participation, cultural factors, and generational norms) my research challenges simple binaries of fathers' and mothers' experiences of high-conflict divorce. As well, I draw attention to differences among and between the mothers and fathers in my study, as well to

commonalities, which help to counter binary understandings of mothers' and fathers' experiences and make gender differences a little less salient. For example, in Chapter 4, I discussed how the meaning of fatherhood changed for fathers in my study who assumed greater child care responsibility, and I noted that the challenges they faced were often similar to those of mothers who juggle responsibility for financial provision and primary care. However, as my study illustrates, each participant's circumstances, including the challenges they faced as they navigated the divorce process and the particularities of their case, in combination with their social location, complicate and provide additional nuance to my findings. My aim in conducting this study was to identify some of these nuances and additional factors that go beyond the stock discourse of divorce as a "gender war." However, one of the challenges I faced in working with the literature is that it often replicates binary views of gender. From these understandings, dominant discourses have emerged that have been taken up by professionals as well as parents.

### **The Social Construction of "High-Conflict Parents"**

My second key argument builds on Miranda Fricker's (2007) concept of epistemic injustice to maintain that expert discourse and other forms of socially constructed knowledge in combination with stereotypes about parents involved in a high-conflict divorce do not provide an accurate or sufficiently nuanced picture of the challenges parents in such circumstances face. This failure results in epistemic injustice, and may also lead to unjust outcomes. Here, I also draw on Fricker's concept to develop my earlier work (Treloar, 2015; Treloar & Boyd, 2014), which was informed by a broad body of feminist and access to justice literature, to argue that material inequities between and among parents, particularly in the contemporary neoliberal context, may further contribute to perceptions of being unheard and of unjust outcomes. The cost of obtaining a legal resolution of their disputes, particularly where there is an imbalance of power and resources, may leave parents in a high-conflict or complex divorce with a sense of being failed by the justice system. My finding concerning being heard and its relationship to perceptions of getting justice underscores the importance of understanding how some parents exercise agency and reconstruct their identities to be self-authorizing subjects who can speak about their experience and are heard. By linking the concept of epistemic

injustice (Fricker, 2007) to issues of voice and credibility and applying them to the family law context, I also build on the work of Smart (2006) to advance understandings about how dominant discourses and gendered constructions of mothers and fathers play a role in whether or not their voices are heard.

Chapter 5 relates how, as participants gained an understanding of family law processes, they actively engaged with a broad range of discourses—contesting them, positioning themselves in relation to them, or incorporating them into their own meanings. By doing so, many became experts in family law process through experience. But even then most participants did not feel that their voices were heard in the legal system or that they received justice. They struggled with complex rules and felt without authority in the legal process, despite the significance of the issues in their lives. This process is about knowledge construction within family law and related disciplines and illustrates how some parents come to develop a self-authorizing voice and exercise their agency in the process of their struggle to be heard.

Furthermore, parents do not understand children's best interests as simple legal text (i.e., what the law says).<sup>89</sup> Similar to parents in Kaganas and Day Sclater's (2004) study, participants in my study tried to maintain a sense of themselves as good persons and parents and portray themselves as such. This perception is crucial in an adversarial context of litigation and negativity towards those who divorce "badly" and reinforces my comments concerning the problematic pathologization of parents who are (or have been) in a high-conflict divorce process. In particular, parents who were engaged in the most contested and protracted disputes interpreted children's "best interests" in ways that conflicted with expert and legal understandings but were still in keeping with the overall notion of "best interests." Mothers who took primary responsibility for the care of children while married especially believed they knew their children best. They felt that they, not the courts nor the experts, were in the best position to know and understand their children's needs and interests. Some also felt their former partner was using the legal system to undermine them and the value of their mothering or fathering. Indeed, in

<sup>89</sup> Under the current FLA (2011), which came into full effect in 2013, children's best interests are explicitly defined. However, as noted earlier, all parents in this study separated while the former statute was in place.

conflicts over parenting post-separation, both parents may feel undermined and disempowered. As a result, many felt that they had not obtained a fair outcome and some continued litigating in hope of obtaining one.

When fathers and mothers are in a high-conflict dispute, they also turn to a variety of sources for help, including academic literature, mental health professionals, advocacy groups, friends, neighbours, and the Internet. While they seek information and support, few have the skills or the time to critically evaluate these sources, especially at an already overwhelmingly emotional and busy time. However, what became clear from listening to the diversity and complexity of experiences described by participants is that they sought information and advice that was specific to the challenges they faced rather than generic information. Although the information they obtained was a source of their meanings, it was not always suitable for their circumstances. As well, some of this information or support fuelled legal disputes, which again suggests that there is a need for improved support from (and access to) knowledgeable and skilled professionals. If this is not available, people are likely to fend for themselves by seeking out whatever help is available.

Following Fricker (2007), Code (2008) and others, I argue that an individual's epistemic resources are central to meaning-making and agency. Participants also developed counter-narratives in response to dominant narratives and discourses. For instance, they described the legal system as unjust and spoke of integrity and the best interests of children in authoritative but alternative ways, as detailed in Chapter 5. In reconstructing their sense of self and reclaiming their authority, that is, the right to speak for themselves and about their experience, most participants ultimately constructed themselves as authoritative and as having agency, albeit within significant constraints. This self-reconstruction and reclaiming voice was a lengthy and ongoing process.

Consistent with a social constructionist perspective (Chapter 3), which regards "reality" as actively and socially constructed, my study found that collective meanings drawn from extra-legal discourses, such as those of children's best interests and shared parenting, shape personal meanings and experiences of conflict in post-separation disputes and influence the take-up of legal norms. This suggests that gendered

understandings, norms, and perceptions are the result of collective meaning-making; hence, rather than just intervening on the individual level, greater attention to collective meanings that fuel conflict is needed. People make sense of their circumstances through social interaction (conversation, interaction, the media, groups, and reading<sup>90</sup>), not as the result of a detached cognitive process, although their upbringing and life experiences do play a role in this regard. However, in most instances, parents in this study also made sense of discourses and legal norms such as “best interests” according to what it meant to them as individuals. This is because, in order to make sense of their circumstances, they are likely to evaluate their experience against shared norms and meanings (and find a way to resolve any tensions or discrepancies). However, although norms are commonly understood and accepted, they may differ by gender, socio-economic circumstances, culture, and generation, as does the impact of these norms.

Individuals and groups also struggle to shape collective conceptual resources and frame their experiences within existing interpretive resources. On the one hand, fathers’ groups and women’s groups may serve a valuable role in supporting men and women<sup>91</sup> (and in the case of many women’s groups, those who experience intersecting injustices or inequalities), as well as providing interpretive resources to make sense of their circumstances. While participants’ narratives suggested that these resources could (and often did) support their autonomy, agency, and transformation, these interpretive frames could, potentially, contribute to conflict between parents. This potential was recognized by Steve’s counsellor (as detailed in Chapter 6) in advising him to address his issues with alcohol and communication rather than focusing on fathers’ issues in the context of family law. Still, understanding the connection between personal issues and broader social and political issues was very helpful and empowering for some participants.

<sup>90</sup> I include reading as a form of interaction since the reader is engaging with the ideas and “constructions” of others.

<sup>91</sup> In this study, most fathers and a small number of mothers contacted fathers’ rights or women’s groups for assistance at some point. As noted in Chapter 2, FRA groups and women’s groups have different origins and purposes.



Increasingly, Canadians are being made aware of inequalities through the media and advocacy groups. Accordingly, my findings suggest that many people are becoming sensitive about inequities that affect them. At separation, the parent with lower income is likely to be aware of their disadvantage, especially if they need to access the legal system. Similarly, fathers may be aware of meanings or narratives that circulate among fathers' rights groups (and among men more generally) that they are at a disadvantage on child-related issues, especially if they did not share care pre-separation, and that they are perceived both by their former spouse and the courts as little more than a "wallet." Fathers' rights groups have done much to "educate" men in this regard and, as Collier (2009) and Flood (2012) say, these claims do not serve most men well. Such claims appear to contribute to conflict and a sense that men must fight over scarce resources, even though many realize, at least on some level, that they benefit from privileges as men that are not available to some men or most women.

Returning to epistemic injustice and the importance of an individual's epistemic resources to meaning-making and agency, it would be of considerable benefit to parents if the available discourses about high-conflict divorce were provided in a manner that promoted transformation, "real agency" (Wrenn, 2015), and relational autonomy, rather than excluding those with lived experience of high-conflict divorce from knowledge construction processes that concern them. Although participants in my study did develop counter-narratives in response to dominant narratives and discourses about them, and in order to regain authority about themselves, this did not result in their being heard in the legal system and it did not often result in a decrease in conflict with the other parent.

### **Transformation is Individual, Social, and Temporal**

My third argument concerns how transformation occurs on the individual level. Here, I draw on Day Sclater's (1999) psychosocial analysis of post-separation disputes that takes into account discourse, emotion, and subjectivity and the view that Harris (2016) develops concerning law, neoliberalism, and therapy culture to suggest that agency and personal transformation occur over time, often interlinked with adult life course development and supported by adequate social, material, and epistemic resources. Chapter 6 shows that navigating a high-conflict divorce is in many ways

intertwined with the ongoing processes of adult development over the life course. Although common processes emerged in participants' narratives as central to their transformation (figuring out the meaning of power and agency, becoming self-authorizing subjects, developing adult relationship skills, meaning-making over time, and meaning-making in relation to broader social changes), the notion that adult development is a normal, ongoing, and active process was particularly apparent. Furthermore, the experience of high-conflict divorce provided a focal point around which these processes were organized and meanings were made. Parents also had other experiences and interconnected dimensions of their lives around which they made meaning.

Many of the challenges and changes described by participants, such as learning how to deal with conflict, communicate effectively and set boundaries, and move beyond cultural expectations, including gendered ones, are largely adult tasks that can be made far more challenging by a lack of personal, social, and material support or resources. Participants framed these struggles as an evolutionary process and ultimately came to understand that their problems were not simply individual ones. As well, some participants incorporated neoliberal imperatives into their meaning-making and described their self-transformation in neoliberal terms. Therefore, making meaning of divorce was largely a social process that occurred over the life course. Indeed, all participants were still making sense of their experiences, even decades post-separation.

Retrospectively, the vast majority of parents in this study came to recognize that gendered meaning systems (such as the division of labour, or understandings of how relationships "work") exist in a particular social and historical context. They saw themselves as "having evolved" over time. However, at the same time as they changed in a personal sense, so did social practices. Furthermore, their place in the adult life span also changed (e.g., their children grew up) and some experienced additional transitions (e.g., repartnering, changes in employment). As children and parents developed over time, parents in the study were less invested in these gender norms and most parents actively questioned or resisted them. On a personal level, participants described many positive changes. The passage of time also helped calm matters somewhat, even though some legal issues went unresolved. There were, however, lingering difficulties for some participants, such as financial or health issues and difficulty

with trust. This finding is consistent with UK research by Trinder, Connelly, Kellett, and Swift (2006) and Trinder and Kellett (2007), who also noted adverse effects on parents' well-being following high-conflict parenting disputes. Mothers in my study who had experienced spousal assault particularly struggled when they were not believed or taken seriously during the legal process, which resulted in harms (such as a loss of trust in social institutions to protect them) as well as transformation.

Transformation and meaning-making occurred through adult development over the life course, rather than through any particular legal or policy intervention. However, parents who were able to access quality counselling or other avenues for personal development, had support from family and friends, and were engaged in their communities seemed to accomplish meaning-making in a way that facilitated positive changes across other aspects of their lives. This finding underscores the importance of personal and social relations in the process of transformation, although this is an underdeveloped area of research in the legal context. In the neoliberal environment of shrinking support services and resources, it has two implications in particular. On the one hand, it does suggest that people exercise their agency and seek out all available supports, as well as drawing attention to the reciprocal and dynamic aspect of care giving and receiving (in the context of aging, see Funk, 2012). However, on the other hand, by shifting expectations that families and communities can and should support members in need, it also shifts the responsibility away from the state's role in service provision and ensuring access to justice and related family law support services. While ideally families and communities would attempt to help, not all individuals in this study had families that were able and willing to assist them, and, as demonstrated throughout this thesis, in the context of high-conflict divorce, more support is needed.

Ultimately some participants turned to personal development as the best available solution to help them in moving forward in spite of the challenges and circumstances they faced, whereas others turned to political advocacy or careers that would allow them to support others facing similar circumstances, changing themselves in the process. Although participants generally leaned towards one or the other of these approaches in response to the frustration and sense of disempowerment and injustice they felt, some engaged in both personal and political strategies. Most participants

eventually gave up on the legal system (both formal and informal) as providing a solution to their difficulties. Although they felt that both the legal system and the other parent had let them and their children down, and in many cases their material resources were exhausted, they were also relieved to be able to move on with their lives and struggled through the best way they could.

As noted in Chapter 6, participants described personal supports (family and friends), spiritual practices, social support resources (counselling, group programs, personal coaching, and community agency programs), and undertaking new challenges (including new careers) as invaluable, either in helping them to survive the experience or to move beyond it. Overall, those who received the personal and material assistance they needed and at the same time maintained a high level of social and community engagement seemed most resilient. These participants made use of all available resources to facilitate their transformation. This raises the issue of the needs of those with few resources, who are often the parents who face the most complex disputes.

### **Social and Epistemic Resources**

For difficult debates and polarized positions to be transformed within the family law field, transformation of knowledge about high-conflict divorce must occur on a social and structural level. In this thesis, I show that resilience and, ultimately, transformation as a result of the experience of a high-conflict divorce are not simply the result of individual efforts and processes but are largely linked to one's resources and the broader social context. Although early in the process of high-conflict divorce most participants saw their problem as an individual or interpersonal one, over time they became aware—to varying degrees and through different pathways—that their problems were interlinked with other social inequalities and structural issues and that their struggles were shared by others. In reconceiving their difficulties as not simply individual ones, participants also made new meanings. This suggests some important connections between individual and collective meaning-making, with implications for resilience, agency, autonomy, and social change.

Epistemic resources are foundational to meaning-making and agency in the context of high-conflict divorce. Importantly, as Fricker (2007) and those who engage with her concept of epistemic injustice point out, epistemic resources are not equally distributed in society. Here, I engage with Fricker (2007), as well as Medina's (2011, 2013) arguments concerning the value of epistemic friction in knowledge construction. I also extend the work of Day Sclater (1999) and Kaganas and Day Sclater (2004), who contend that parents' meanings are made not only on a personal level but within a broad matrix of discourses, to draw attention to neoliberal understandings of subjectivity and autonomy that are embedded in legal, policy, and professional discourses. As I argue throughout my thesis, complex personal, interpersonal, social, and structural problems intersect in the lives and experiences of parents who navigate a high-conflict divorce process, so that attempting to engineer change on the individual level without addressing the social and structural factors that play a role is unlikely to be effective.

Returning to Shelley Day Sclater's (1999) psychosocial study of divorce, which also characterizes divorce as an interpretive process in which social discourses about divorce provide a template for meaning-making, I am struck by the similarity of my findings almost two decades later. Although practices, laws, and policies have been revised and reformed, the overall polarizations and tensions Day Sclater (1999) describes, though reconfigured, remain. Day Sclater suggests that this polarization underlies the psychological experience of divorce and interacts with dispute resolution processes to shape and reshape discourses and personal meanings. Rebuilding after divorce, she argues, "involves revisiting and reinterpreting the past of the marriage from the vantage point of the present; this making sense of the past may be a pre-requisite for letting go and moving on" (p. 184). Hence, she challenges policymakers and dispute resolution practitioners to find ways to enable people to "own" their most intense and destructive feelings alongside the ambivalence, fear, and losses that often arise during this difficult time. Grillo (1996) makes a similar argument in the context of transformative mediation, suggesting that anger and resistance have a place in the process and that, as a matter of respect for the parties' personal process, the mediator make room for them.

As Day Sclater and Piper (2001) argue, ending a relationship can bring positive changes, so practitioners and policymakers need to be careful not to pathologize

emotions and to recognize that there is a wide range of possible emotions. My study clearly demonstrates that feelings do change over time and vary among individuals. Graham, for example, described himself as having been short-fused for some time after he separated from his wife. During the interview, he described much of his anger as defensive and he later came to recognize the conflict as unnecessary and as “pointless fighting.”

These views stand in contrast with current policy directions and given the dearth of extra-legal services now available, those who need a setting in which to sort out their emotions have few places to turn, especially if they do not have significant financial resources. However, as Day Sclater (1999) notes, the emotional complexity of divorce does not necessarily suggest that additional therapeutic interventions are needed, or that law take a therapeutic turn. Harris (2016) and others have warned against the potential for viewing this as a solution. Rather, Day Sclater (1999) argues that we need to reconsider the way society pathologizes emotions and to better tolerate the paradoxes, tensions, and conflicts that divorce often stirs up. While I agree with her conclusion in principle, the transformative vision she presents is a long-term project that, if achieved, also requires change on many levels. In Appendix F, I outline my thoughts on a way forward by way of recommendations for parents, legal professionals, and policy makers. Next I provide suggestions for future research.

## **Recommendations for Future Research**

There is a clear need for more Canadian research in the family law field. In their 2013 report, *Meaningful Change for Family Justice: Beyond Wise Words*,<sup>92</sup> the Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters noted,

We have surprisingly little empirical information about the nature and scale of family dispute in society generally, or about the adequacy of the justice system’s

<sup>92</sup> This report is available at <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf>

response or the consequences of adequate or inadequate resolution of family disputes. We lack an empirical understanding of what happens to family cases after they enter the justice system. We know that a very small percentage go to trial but we have no data about what happens to the remainder. We don't know how many cases settle, when or why they settle, or after what cost and on what basis they resolve. (p. 61)

While the focus of the working group's recommendation appears to be on the operation and administration of the courts and how people are resolving disputes, my research shows that a focus on what happens to "cases" should include the voices of those with experience of the system, as well as attention to the broader social context.

Although I have pointed to what may be many fruitful ideas for further research throughout this thesis, I believe three of these would make the greatest contribution to the field at present. First, there is a need for longitudinal and life history research that examines long-term outcomes for parents and children. Almost no research has explored long-term outcomes of divorce in Canada or elsewhere (but see Reissman, 1990, and Wallerstein & Blakesee, 1989). This gap is significant given that policymakers and law reformers are often seeking change, sometimes with a particular idea in mind but with insufficient evidence to suggest that it will make a difference.<sup>93</sup> Life history narratives across different eras of divorce law would be fascinating from a socio-historical point of view. One possibility would be to sample court files from 10 years ago (as an example) and attempt to contact the parties for an interview, followed by re-interviewing the parties every five years. A second and interlinked study could be conducted with parents who separated under the current family law statute (for example, in 2014 or 2015), re-interviewing them every two years for at least a decade. At some stage, outcomes pre- and post-reform could be examined using the relevant interviews.

<sup>93</sup> Indeed, as noted by Graycar (2000), gendered discourses and stereotypes may have greater influence on family law reform than empirical evidence. Melville and Hunter (2001) make a similar point concerning myths of gender bias in family law. See also Hunter, R. (2008). Would you like theory with that? Bridging the divide between policy-oriented empirical legal research, critical theory and politics. *Studies in Law, Politics and Society, Special Issue: Law and Society Reconsidered*, 41, 121–148; and Trinder, L. (2014). Climate change: The multiple trajectories of shared care law, policy and social practices. *Child and Family Law Quarterly*, 26(1), 30–50.

In a similar vein, court users should be surveyed or interviewed about their experience of the legal system (i.e., follow-up surveys), as is the case, for example, when individuals use other programs and services. This feedback should be provided to judges and court personnel and a summary of the overall findings made publicly available in order to hold the system accountable.

Second, more research is needed on diverse family forms or arrangements. Such research shifts the focus from privileging any particular family form or post-separation arrangement to looking at similarities and differences in some of the tensions and debates around gender or preferred family forms and how they might play out differently for different families. For example, there is no sociological research on post-separation disputes in two-father families. If, as Fiona Kelly's 2009 study of lesbian mothers demonstrates, disputes between lesbian mothers reveal a focus on care, as does my research on heterosexual mothers, it would be very interesting to explore this dimension in child-related disputes between gay fathers. In addition, there is scant literature concerning how cultural differences might factor into post-separation conflicts. This dimension could be key, since people who were raised outside Canada may have different meanings, values, and expectations in this context, which could complicate family law disputes. Further, almost no research addresses post-separation disputes where a child was conceived unintentionally (e.g., as was the case with Krista, who conceived in the context of a casual relationship).

Third, there is almost no literature on the role of family and friends in support provision.<sup>94</sup> Given that my participants frequently cited family and friends as providing invaluable assistance, this aspect needs further exploration, especially in the context of privatization of family law disputes.

<sup>94</sup> But see Smart (2007) and Smart and Neale (2005). There is, however, literature on the role of family and friends in the provision of support more generally. For example, see Cronin, A. M. (2015). "Domestic friends": women's friendships, motherhood and inclusive intimacy. *The Sociological Review*, 63(3), 662–679; and in the context of family caregiving and intergenerational relationships, see Funk, L. (2010). Prioritizing parental autonomy: Adult children's accounts of feeling responsible and supporting aging parents. *Journal of Aging Studies*, 24(1), 57–64.



Finally, as I have earlier mentioned, gendered understandings and meanings of shared parenting need to be furthered explored, as well as meanings of motherhood and fatherhood and how these vary over time and across social locations, and cross-nationally. Given an increasingly diverse Canada and in the context of globalization, research must pay close attention to cultural meanings concerning gender and family life and the role these meanings do, or could, play in post-separation disputes. One finding in particular that warrants further study is that fathers and mothers had different understandings of “shared” parenting. Given fathers’ understanding of shared parenting as synonymous with parallel parenting, and their preference for parallel parenting, which is often awarded in high-conflict situations, the implications need to be explored.

## **Final Reflections: Transforming High-Conflict Divorce**

I now turn to consider the question of how, given the contemporary political and socio-economic context in which decisions are made, not only by parents themselves but also by policymakers and those engaged in efforts to reform family law, high-conflict divorce experiences can more easily be transformed. In this thesis, I draw attention to the complexities of parents’ lives and circumstances, to knowledge constructions and stereotypes that may contribute to epistemic injustice and unjust outcomes, and to the types of support that parents themselves needed or sought.

Many of the participants in this study felt that their voices were not heard and described difficulties navigating the system. Most participants described significant challenges as well as positive changes. This finding suggests that transformation is complex and gradual, with positive changes being most apparent in terms of long-term outcomes. Yet most expressed some ongoing challenges (e.g., difficulty with trust, financial difficulties) and a small number still felt somewhat traumatized, suggesting that much more attention needs to be given to ongoing support, both during and after the separation process. Many participants felt that the support and information they needed was unavailable at the time, especially parents who described issues involving domestic violence, abduction, addiction, or a parent or child with complex medical issues.

Still, especially notable in interviews with older participants whose children are now either young adults or adults with children of their own is that by and large parents do ultimately find ways to navigate these difficulties and move on in their lives, especially once litigation has ended. However, since long-term follow-up studies are rarely conducted—and to my knowledge, none have been conducted in Canada—we know little about what helped them either during the process or in the long term. Similarly, little is known about long-term child outcomes. Accordingly, much valuable knowledge and the wisdom gained from experience is not disseminated to practitioners or policymakers. This gap is unfortunate given the costs not only for families but society more generally.

In reflecting on the findings of my research as well as my experience working with divorcing families, I am struck by two things. First is the need for constructive interdisciplinary conversations, and second is the importance of studying family disputes in their socio-economic and political context. As discussed in Chapter 2, the research, professional, and advocacy debates concerning gender and family law can be heated and polarized. While interdisciplinary conversations have long been called for and some consensus has been reached on divisive issues,<sup>95</sup> both within the empirical literature and between disciplines, tensions remain. When I consider the difficulty and slow pace at which this change has occurred, it seems unsurprising that separating parents may find themselves inside such significant contention. Thus personal conflicts and their meanings intersect with a number of broader tensions and debates.

When I compare my findings to those of earlier British studies,<sup>96</sup> as well as to more recent research conducted in Australia,<sup>97</sup> the persistence of gender as a tension and the similarity of personal experiences and meanings—both across national contexts and over time—is quite remarkable. This consistency of findings suggests that there are continuities both in personal emotional experiences and in key debates that have been

<sup>95</sup> See footnote 16.

<sup>96</sup> See, for example, Day Sclater (1999), Kaganas and Day Sclater (2004), Smart and Neale (1999), and Smart and May (2004).

<sup>97</sup> See, for example, Cook and Natalier (2014); Fehlberg, Millward, Campo, and Carson (2013); Mackenzie and Cook (2014); Natalier and Hewitt (2014); and Smyth, Rogers, Son, and Vnuk (2015).

sustained over almost two decades, despite social and legal changes. Although there are family law and policy similarities between Canada, Australia, and England and Wales, the past two decades has also seen significant reforms, some of which have had limited or paradoxical effects with respect to conflict between the parties, which suggests that broader debates and conflicts are at play.

Nevertheless, just as participants drew on socially produced knowledge and acted to transform that knowledge in strategic and/or empowering ways, practitioners, policymakers, academics, and other interested parties could act to change the tenor and focus of these debates. Following Fricker's (2007) call for greater epistemic friction, as discussed in Chapter 5, those who care about and are committed to these issues could transform these many difficult debates and polarized positions, thus setting an example of how caring about conflict has the potential to transform even the most entrenched positions. Doing so would go some distance towards reconstructing family law and social science knowledge in ways that are more equitable, considered, and socially just.

In the introductory chapter to *Emotion: New Psychosocial Perspectives* (Day Sclater, Jones, Price, & Yates, 2009), the authors argue that emotions "have a mercurial status, not existing without an individual to experience the emotion, but often having little significance without a socio-cultural framework that imbues feelings with meaning" (p. 1). These authors further argue that disciplinary splits between psychology and sociology can limit investigation into how an individual's inner world and broader social relations are mutually constitutive. I endorse this view and add that it underscores the importance of a relational approach to autonomy and conversations across disciplines, professions, and advocacy groups. Interdisciplinary conversations that invite collaboration, curiosity, creativity and those who care about transformation offer the greatest hope for a way forward, both to find better ways to support families in conflict post-separation and for the sake of those who follow. Consequently, one of my strongest recommendations is for more constructive interdisciplinary conversations and efforts towards consensus. Ideally, those conversations would include those who have personal experience, but at a minimum, it must make room for research that includes their voices. Taken together, the findings in this thesis suggest that an over-emphasis on the individual dimension of

change does little to alter underlying social and cultural ideologies and expectations and fails to address injustices that may harm all.

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## Appendix A.

### Request for Assistance: Referrals for Research Study

Ethics Application Number: 2011s0783

#### Request for Assistance: Referrals for Research Study

Dear (name),

I am a graduate student at Simon Fraser University, completing an interdisciplinary Doctoral degree by Special Arrangements. As part of my degree requirements, I am conducting a study entitled “The Construction and Transformation of High-Conflict Divorce Involving Children.” This study is funded by the Social Sciences and Humanities Research Council of Canada.

I am hoping to gain insight about how mothers and fathers who have experienced a high-conflict divorce make sense of and understand this experience. I am particularly interested in speaking to individuals who, in reflecting back on the experience, see themselves as having changed, in a positive sense, as a result.

As a former divorce counsellor, trained mediator, divorced parent, and the child of happily married parents who recently celebrated their golden wedding anniversary, my interest in this topic has spanned more than two decades. As you know, the academic and professional literature on this topic is voluminous; however, we know little about what happens to people once they ‘exit’ the system. The possibility to learn what helped, or would have helped, in these circumstances is then lost.

I believe that the voice of personal experience has much to offer professionals in the field. I want to know not only how fathers and mothers survived the experience, but how it has changed them and what they have learned from the experience that might be helpful to others in the midst of it. From this study I am hoping to learn more about how professionals and policy makers can help parents move through the divorce process (and potentially its aftermath), and what kind of supports help and/or are needed. I intend to make my findings available to practitioner and policy audiences, as well as to write a book for members of the general public. Having already worked with hundreds of parents and children in my position as Director of Counselling for parents and children at a non-profit agency, where I also designed a group counselling program and other resources for children, this is an exciting ‘next step’ for me.

Please read the enclosed ‘Invitation to Participate in a Research Study’ and consider forwarding it to former clients or contacts who you think might meet the study criteria. While interview participants must refer themselves to the study by contacting me directly, your assistance in helping me identify possible research participants will be invaluable. Of course, participation will be entirely voluntary and the identities of both participants and third parties (for example, children and/or former spouses) will remain confidential, along with any identifying details that might make them recognizable to those familiar with their story. Participants will be given a \$50 cash honorarium in recognition of their time and input. This study has received the approval of the research ethics board at Simon Fraser University.

If you have further questions, I would be pleased to answer them. My contact details are below.

Sincerely,

Rachel Treloar, PhD Candidate (Principal Investigator)  
Department of Graduate Studies, Special Arrangements  
Simon Fraser University  
Telephone: [...]  
Email: [...]

2014-03-12

## Appendix B.

# Invitation to Participate in a Research Study

Research Ethics Application: 2011s0783

### INVITATION TO PARTICIPATE IN A RESEARCH STUDY

#### Title of Project:

The Construction and Transformation of High-Conflict Divorce Involving Children

My name is Rachel Treloar, I am a graduate student at Simon Fraser University, in Burnaby, B.C., completing an interdisciplinary Doctoral thesis by Special Arrangements. I am hoping to gain insight about how mothers and fathers who have experienced a high-conflict divorce process make sense of and navigate this experience. I am particularly interested in speaking to individuals who, in reflecting back on the experience, see themselves as having changed, in a positive sense, as a result.

As a divorced parent, former divorce counsellor, trained mediator, and the child of happily married parents who recently celebrated their golden wedding anniversary, my interest in this topic has spanned more than two decades. While the academic and professional literature on this topic is voluminous, the voices and personal experiences of fathers and mothers who have gone through the experience are underrepresented. I believe that the voice of personal experience has much to offer professionals in the field, as well as other divorcing parents. What tends to happen is that once these issues get resolved, whether through litigation or other means, people move on with their lives and cease to be in touch with related professionals and support agencies. The possibility to learn what helped, or would have helped, in these circumstances is then lost.

From this study I am hoping to learn more about how professionals and policy makers can help parents through the divorce process (and potentially its aftermath), and what sort of support people find helpful and/or think is needed. I want to know not only how you survived the experience, but how it has transformed you and what you have learned from the experience that might be helpful to others in the midst of it.

Your participation is entirely voluntary. If you would like to participate in my research I will contact you by telephone to explain the study and answer any questions you may have. You may refuse to answer any question and are free to decline to participate and to withdraw from the study at any time. The research interview will be approximately two hours in length. At the end of the interview you will receive a \$50 cash honorarium in recognition of your time and contribution to the study. Afterward I will provide you with a transcript of our conversation with all identifying details removed, and invite you to check its accuracy. If changes are necessary, or you have more to add, we could meet a second time. Common themes, processes and experiences amongst participants will be emphasized in my written conclusions, rather than detailed individual stories. Only my supervisor and I will have access to the transcripts. Your confidentiality will be maintained at all times, and your review of the interview transcript will help to ensure that you are not identifiable to others. Altogether your time commitment would be about 4 hours over a two month period.

If you would like a summary of the research results once the study has been completed, you may obtain one by contacting me c/o the Department of Sociology and Anthropology, Simon Fraser University, Burnaby, B.C. V5A 1S6, or by email at [...].

Please seriously consider this invitation to participate and the important contribution you could make to helping me and others understand the experience of high-conflict divorce from a personal perspective. I look forward to hearing from you and discussing my research with you should you decide to volunteer.

Sincerely,

Rachel Treloar, PhD Candidate (Principal Investigator)  
Department of Graduate Studies, Special Arrangements  
Simon Fraser University  
Telephone: [...]  
Email: [...]

Dr. Jane Pulkingham (Co-investigator)  
Department of Sociology and Anthropology  
Simon Fraser University  
Telephone: [...]  
Email: [...]

2014-03-12

# Appendix C.

## Recruitment Flyer

Research Ethics Application: 2011s0783

### Call for Research Participants:

#### The Construction and Transformation of High-Conflict Divorce Involving Children

*Have you experienced a 'high-conflict' divorce involving children in the past?*

*Did you?*

- ✓ Disagree with your former partner/spouse about arrangements for the care (access to and/or residence) of children throughout the divorce process and beyond?

*Were there?*

- ✓ High levels of anger, blame, hostility and distrust?

*Was there?*

- ✓ Poor communication?
- ✓ Lack of cooperation?
- ✓ Frequent litigation and re-litigation?

*If so:*

- ✓ **Looking back**, would you say that **in spite of the difficulties** you faced at the time, surviving or navigating the **experience has changed you** in a positive sense?

*If the answer is YES, I want to learn from you!*

I am a PhD student at Simon Fraser University, with funding from the Social Sciences and Humanities Research Council of Canada. My research involves understanding how parents who have experienced a high-conflict divorce process come to make sense of the experience over time. **Learning from you and others** will provide important information about the personal experience of a high-conflict divorce that can help parents in similar circumstances, and inform professionals and policy makers about the needs, challenges and experiences of those involved in difficult divorces, as well as what helped, or could have helped at the time. **In particular**, I believe that parents who have moved through these difficulties and 'moved on' beyond or in spite of them are ideal informants for policy, practice, and other divorcing parents.

**Your participation would involve** one interview (approximately 2 hours) with me, and about 2 additional hours of follow-up over a two month period (optional). You will receive a \$50 cash honorarium at the end of the interview in recognition of your time and contribution.

Involvement is voluntary and **everything you share is confidential**. Particular care will be given to protecting the confidentiality of research participants and third parties by ensuring that all identifying information is removed from study documents and reports.

If you would like to participate or learn more, please contact me directly. My contact details are below.

**Principal Investigator:** Rachel Treloar  
Department of Graduate Studies (SAR)  
Simon Fraser University  
Telephone: [...]  
Email: [...]

**Co-Investigator:** Dr. Jane Pulkingham  
Department of Sociology and Anthropology  
Simon Fraser University  
Telephone: [...]  
Email: [...]

2014-03-12

## Appendix D.

# Consent Form for Participation in the Research Project Entitled: The Construction and Transformation of High-Conflict Divorce

### Consent Form for Participation in the Research Project Entitled: The Construction and Transformation of High-Conflict Divorce

My name is Rachel Treloar, I am an interdisciplinary graduate student at Simon Fraser University. As part of the requirements for my PhD degree, I'm conducting a research project called "The Construction and Transformation of High-Conflict Divorce." This research is supported by a doctoral award from the Social Sciences and Humanities Research Council of Canada and a Graduate Fellowship from the Law Foundation of British Columbia.

This form details the purpose of this study, a description of the involvement required and your rights as a participant.

The purpose of this study is to gain insight about how mothers and fathers who have experienced a high-conflict divorce process make sense of and navigate this experience. I am particularly interested in speaking to individuals who, in reflecting back on the experience, see themselves as having changed, in a positive sense, as a result. I am also interested in finding out what was, or could have been, helpful to you during the process, and how you dealt with the challenges you faced.

The benefits of the research will be:

- To provide insights into how divorce conflict may be navigated more successfully
- To identify factors that facilitate this process
- To identify the challenges involved and better understand how these challenges may be overcome
- To contribute to knowledge about divorce conflict that can be used to develop more supportive policies and services, and educate others

I hope that you will also find the interview of personal benefit, both in providing an opportunity to reflect on your experience and to share insights that will help me and others to understand how policies, practices and supports can be improved.

Your involvement is entirely voluntary. Should you decide to participate, I anticipate that the interview will last approximately 2 hours. In recognition of the value of your time and contribution to this study you will receive a \$50 cash honorarium at the end of the interview. If you decide to withdraw from the study or leave the interview part way through, this honorarium will be pro-rated in proportion to your participation. I may also contact you by telephone to follow up or request further clarification. The total time commitment will be approximately 4 hours over a two month period. You have the option of approving or disapproving subsequent contact beyond the initial interview.

Our discussion will be audio-taped to help me capture your insights in your own words. The tapes will be transcribed by me for the purpose of this study. If you feel uncomfortable with the tape recorder, you may ask me to turn it off at any time. I will return a transcript of our interview to you for your review and further clarification. The transcript will have all details that might identify you, or others, removed. Please let me know if you feel the transcript accurately depicts your experience and preserves your anonymity, and add any corrections or clarifications. If you wish to retain a copy of this transcript, please let me know and I will provide you with one. These individual transcripts will be used to establish and discuss common themes among research participants. Although direct quotes from you may be used, your name and identifying information (and that of any third parties) will remain confidential. I will take all possible precautions to protect your identity and the personal information you share with me. When including examples in my findings, I will remove details such as places and specific details that could conceivably be used to identify you. However, there are legal rules that would require me to release information under specific situations (evidence of child abuse or if you pose a serious threat of immediate harm to yourself or others).

By reviewing the transcript with you, special effort will be taken to ensure that the identities of former partners, children, and named others referred to in the transcripts are absolutely protected. No statement prejudicial to these persons will be included in the transcripts.

2014-03-12



You also have the right to refuse to answer any particular question, and to withdraw from the study at any time, without consequence or explanation. In the event that you choose to withdraw, all information that you provide will be destroyed and tapes will be erased. The information you provide will be omitted from my thesis and any related publications.

Insights from research interviews will be used in writing a doctoral thesis through Simon Fraser University, and will be shared through publication and at conference presentations. I may also use these insights in further related research in the future. If you would like a summary of my findings once the study has been completed, please let me know.

It is possible that strong feelings or temporary emotional distress may arise as a result of your participation. If you want to stop the interview as a result, or for any other reason, please let me know. In the event that you are troubled by feelings or issues arising during, or after the interview, and want to pursue them further, I will provide you with a list of counsellors and community resources with expertise in this area. Any costs incurred will be at your own expense.

Paper records (contact information, consent forms and field notes), digital audio recordings and interview transcripts (both of which will be saved on a password protected flash drive) will be kept in a locked file cabinet in my home office. All paper records will be shredded five years after completion of the study. Digital recordings will be deleted two years after completion of the study. With the possible exception of the audio recording from our interview, no data will contain names of third parties or specific identifying details. These identifying details will be removed from the recording immediately after our interview and before the interview is transcribed. Once transcribed, the text of our interview will also be stored on a password protected computer and will not be used for any public purpose (other than as described above) or further research without your express consent. Only the researcher, Rachel Treloar, and co-researcher, Jane Pulkingham, will have access to the interview transcripts. You have the option of approving or disapproving subsequent contact beyond the initial interview.

Factors that may harm you or place you at risk in any way have been carefully considered and addressed in the planning of this research. While identifying details will be deleted and/or changed in consultation with you, and confidentiality is expected to result, it cannot be absolutely guaranteed. There may be a possibility that some person familiar with your circumstances could recognize your story nevertheless. If you are concerned about this possibility you may not wish to participate in the study.

If you would like a summary of the research results once the study has been completed, you may obtain one by contacting me c/o the Department of Sociology and Anthropology, Simon Fraser University, Burnaby, B.C. V5A 1S6, or by email at [...].

If you have any concerns about your rights as a research participant and/or your experiences while participating in this study you should contact Dr. Jane Pulkingham in the Department of Sociology and Anthropology, Simon Fraser University, Burnaby, BC, V5A 1S6. She can be reached at [...]. If you still have concerns after speaking to Dr. Pulkingham, you may contact Dr. Jeffrey Toward, Director, Office of Research Ethics at [...]. My application number is 2011s0783.

I can be reached at [...] if you have further questions. This research is supervised by Dr. Jane Pulkingham in the Department of Sociology and Anthropology. She can be reached at [...].

By signing this consent form I certify that I understand the above information and have been given an opportunity to have any questions answered, and \_\_\_\_\_ agree to the terms of this agreement. (Print full name here)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

2014-03-12

## Appendix E.

### General Interview Guide

1. Background questions
  - a. Can you tell me a bit about yourself?
  - b. Can you tell me a bit about the background of your divorce (e.g., age of children, what was going on in your life at the time, what were the issues involved)?
  - c. What did it mean to you then to be a mother/father?
  - d. What were the main influences for you? How did you learn what it was to be a father/mother?
  - e. What sort of relationship do you have with your former husband/wife now?
2. How did you get through the experience of a difficult divorce?
  - a. What helped you to navigate the experience or process?
  - b. Did you read any books or online materials or attend meetings/talks?
  - c. What challenges did you need to overcome or resolve?
  - d. What people or systems made the process more challenging and how did you overcome these challenges?
  - e. What would have made the process easier? What did you need at the time?
  - f. How did you reconcile the experience as you were going through it?
  - g. How do you think mums and dads should handle conflicts over kids? Has that changed since you were going through the process personally?
  - h. What do you think the legal system expects of parents in this situation?
  - i. What do you think others close to you expected from you?
  - j. Do you have a sense about how ideas/norms/expectations about good divorcing affected/impacted the decisions you made?
3. How did the experience change you?
  - a. What have you learnt from the experience and what has it meant to you?
  - b. When you look back to how you saw yourself before the divorce, how are you different now?
  - c. How has the meaning of motherhood/fatherhood changed for you over time?
  - d. What did conflict mean to you then and what does it mean to you now?
  - e. When you look back on who you were and how you've changed, what are your feelings and thoughts?
  - f. How have you woven this experience into the fabric of your identity and your life?
  - g. If you were to use a phrase or metaphor to describe your process of navigating your divorce, what would it be?
4. If you were supporting a close friend through the process of a difficult divorce now, what would you do or say and how has your own experience informed you about the needs of people in this situation?
5. Is there anything else you would like me to know?

## **Appendix F.**

### **Recommendations—Some Thoughts on a Way Forward**

#### **For Divorcing Parents**

The findings of this study should be particularly helpful to parents who are in the midst of a high-conflict divorce or who have experienced a high-conflict divorce process. Chapter 6 should offer not only helpful ideas for a path through the process but also hope for a positive outcome. Most of all, I encourage parents to understand that this process takes time and in some ways has a life of its own. I strongly encourage parents to find a guide or mentor through the process and to make sure that their guide has both the wisdom and a relational ethic to support them in a constructive way. Although high-conflict divorce is in many ways a personal process, as this thesis shows, many of the issues involved have social roots and are interlinked with broader social issues and tensions. In this regard, it might be helpful to think of the expression that “the personal is political,” and that the opposite is also true. For the sake of future generations, once their struggles have passed, I encourage parents to find a constructive way to work towards improving gender relations as well as greater acceptance of and support for diverse family forms and parenting arrangements.

#### **For Legal Professionals**

Although I recognize that many family lawyers’ practices include both ADR and litigation, my first recommendation concerns those who are overly zealous advocates for their clients, especially those who assist their clients in a manner that fuels conflict and results in negative perceptions of lawyers and the justice system among the general public. Although some parents deliberately sought out lawyers who took a more conciliatory approach, others described tactics, either used by their own lawyer or that of the other party, which contributed to the deterioration of trust and a working relationship with the other parent (e.g., enabling financial non-disclosure, seeking out an “expert” with a known bias). While it may be that some clients demand a win at any cost, regardless of the means, I believe that lawyers have an ethical obligation to consider the

risk of future harm to family relationships. Here, a relational autonomy framework could be a useful guide to legal ethics, as it rejects a view of autonomy that involves domination (Nedelsky, 2011), in this case, a win at any cost. Furthermore, if the legal profession is genuinely concerned about the impact of high-conflict divorce on children, parents, and court resources, then they need to do their part in monitoring and stopping lawyer conduct that fuels it. Interdisciplinary work and practice would be invaluable in this regard and is discussed below.

Second, although my study findings raise a number of questions about the role of experts and expert reports, findings that are generally consistent with those of Rahman and Track (2012), I am particularly concerned about the role of experts in high-conflict situations involving spousal violence. As described by participants in my study, especially mothers, violence has not only immediate and direct physical and emotional effects but in some cases long-term effects. These include physical illnesses attributed to a combination of litigation stress and emotional trauma and impacts on employment (raising the odds of poverty both immediately and later in life). Given that women who had experienced violence did not feel heard or that violence was sufficiently understood by the professionals they encountered, Fricker's (2007) concept of epistemic injustice certainly applies, with the former being testimonial epistemic injustice, and the latter, hermeneutic. This finding, in light of the potential for epistemic injustice, underscores the importance of both legal and extra-legal education concerning domestic violence, as well as greater attention to impartiality, not only of judges but all the professionals parents encounter along the way, not all of whom have sufficient understanding of domestic violence. Martinson (2013) and Martinson and Jackson (2012, 2016) make a number of excellent recommendations in this regard. Although their recommendations are directed at the current British Columbia legislation (*FLA*, 2011), they are relevant to my study because they are made on the basis of insights and experiences under the previous statute. Martinson and Jackson (2012) also note that violence against women may be minimized and that some "experts" are biased or have preconceived ideas that are not supported by research evidence, and they emphasize the need for proper screening for domestic violence. Thus, they recommend that judges take a greater leadership role in ensuring that family violence is not only adequately screened for, but also fully considered in determining the best interests of a child or children.

This recommendation has great merit, although it does require greater attention to judicial education at a time when judges themselves are struggling with increasing workloads and diminishing resources, also linked to neoliberalism. Indeed, at a recent international conference<sup>98</sup> I attended, judges and researchers from a number of countries spoke about the challenges family courts currently face, with governments cutting resources and an increasing number of complex cases, often with one or both parties self-represented. My research, in line with these observations and a burgeoning body of international literature (for an overview of this problem, with country examples see Maclean et al., 2015), suggests that these cuts reduce the likelihood of just outcomes, are counter-productive, and may shift the costs downstream or into the future. Below, I make recommendations for policymakers in this regard.

Third, and more generally, if the courts, policymakers, legislators, and legal professionals wish parties to focus on their individual responsibility in these conflicts and to be more reflective, rather than reactive, it can be helpful to normalize the process and strong feelings very early on. While in a formal sense that is not the role of legal professionals, as Sarat and Felstiner (1995) have shown, there is often a mismatch between clients' expectation of what the law *does*, the role of legal systems, and the role of lawyers in that system. Since lawyers are often the first point of entry into the divorce process, it would be helpful for them to offer more referrals to professionals and organizations who are known and trusted and who can serve as a guide through the non-legal aspects of the process, such as normalizing emotions, and constructively explain the presence of broader tensions and debates in what are otherwise seen as conflicts between individuals. More multi-disciplinary referrals would be helpful.

Finally, although it is the role and duty of a lawyer to inform clients of their legal rights and responsibilities, my research shows that it is also important in the very early stages not to inflame tensions by suggesting immediate changes to pre-existing arrangements, other than in exceptional circumstances. In the short term at least, clients need to have room for strong emotions and breathing room for reflection and

<sup>98</sup> "Culture, Dispute Resolution and the Modernised Family," International Centre for Family Law, Policy and Practice, King's College, London, UK, July 6–8, 2016.

reorganization and attending to their children. It may be that in most circumstances, it is better for children to have two equally involved parents, but there are benefits and risks involved in such an arrangement (Smyth et al., 2016) and social and labour force policies do not yet support such a model. Hence, there is no “one size fits all” arrangement that works best for families (Fehlberg et al., 2011; Smyth et al., 2016) and it is problematic for law, policymakers, academics, or advocacy groups to suggest that there is. While most rightly recognize that different arrangements work best for different families at different times, others maintain that presumptions of shared parenting will reduce conflict. Based on the findings of my study, I disagree.

### **For Helping Professionals**

As suggested above, the support of helping professionals (e.g., counsellors, community agency, and transition house workers) plays a key role for many parents as they navigate a high-conflict divorce. Most importantly, helping professionals can assist parents by normalizing the process and making space for strong feelings to be expressed. They can also offer information and referrals as needed. Also, given the importance of meanings of motherhood and fatherhood for parents, as shown in my study, it would be particularly helpful to ask clients what it means to them to be a mother or father. This may also bring up client issues related to dominant social constructions of “good” and “bad” mothers or fathers, as well as ideals of post-separation parenting. Helping professionals should also know that many parents in my study were aware of, and highly sensitive to, commonly circulating stereotypes (e.g., about lone mothers as deficient). Once raised, parents can assess whether their values and experiences fit with such views. If they do not, a counsellor could support the parent to affirm their self-knowledge. That is, to determine what is true about themselves. Once addressed, the client could determine whether or not there are helpful actions they can take, either in responding to others or simply to protect themselves in an emotional or legal sense.

Similarly, given the finding in Chapter 4 that meanings of shared parenting may be gendered, with fathers understanding shared parenting in terms of the equal division of time with children and mothers more often understanding shared parenting as a collaborative venture that involves communication and consensus on child-related

issues as they arise, I also recommend asking parents about their understandings of shared parenting and what it means to each of them. Further, what might such an arrangement look like and how could it be made workable? Understandings about children's best interests could also be canvassed and discussed if appropriate. In this way, significant meanings and understandings (and the social locations and relations that play a role in this regard) can be explored with parents. Exploring meanings could also enable a conversation about personal obstacles and structural problems that would shift the focus away from the other parent as the main problem.

Funding impediments are significant, a point to which I return in the next section. I also recommend that parents in the midst of a high-conflict divorce have a guide to support them through the process and perhaps even beyond (for example, a knowledgeable counsellor, divorce coach, or community agency worker). When I worked as a family counsellor in the divorce field, many parents told me they wished they had some sort of knowledgeable and supportive guide through the process, and participants in this study as well as my earlier research expressed similar sentiments. Quite often the information and support that people receive is piecemeal and not particularly relevant to the particularities of their case. Ideally, this person would serve as a "coach" who can also assist with broader life changes and reorganization.

Of particular concern is differential access to the courts and other services. Parents who have a low income (especially when combined with a low educational level and language barriers) have considerable need for the assistance of professionals with the necessary skills and knowledge. Study participants in situations where the other parent had greater access to funds for litigation found themselves at a particular disadvantage. As was seen in my study, middle-income parents also struggle to obtain support, especially when disputes are ongoing. These findings indicate that a multidisciplinary approach would be invaluable. Furthermore, warm referrals (i.e., those within a community of service providers) might be especially useful when families are dealing with complex and intersecting problems or have few personal supports.

In addition to these recommendations, it is important to remember that my thesis shows that for many individuals, these legal conflicts may shape their adult lives and

parenting. At the same time, meaning-making is ongoing across the adult life course—a fact that is currently missing from dominant understanding of high-conflict divorce and the policies and practices that are intended to address it. My research shows that parents will have different needs, struggles, and perceptions at different times. Finally, in applying May's (2010) insights about the effect of categorization on lone parents' subjectivity, I caution helping professionals, especially those who conduct expert reports, to be attentive to stereotypes and to refrain from using the label "high-conflict" about families, parents, or couples. Professionals that conduct these reports should also undertake specialized education, while regulatory bodies must pay greater attention to training and ethics.

### **For Policymakers**

A key finding that is relevant to policymakers is that of the role and significance of meaning-making. Since meaning-making affects parents' understandings of the legal system and justice, and hence what parents expect and the decisions they make, more attention must be given to understanding the role collective meanings play in individual meanings in this context. If policy reforms are intended to promote a particular policy direction and parents interpret it differently, then policies are unlikely to have the intended effect. One example is Australian law reforms that were intended to reduce conflict and promote shared parenting but instead increased litigation (Parkinson, 2011) and, therefore, public expense.

Overall, my research suggests that if policymakers wish to change parental behaviour post-separation, then having ensured that parents from a range of social locations share such goals (which they may or may not, given the gendered differences I and others have identified) they must first address the conditions that would support such a change. For example, if policymakers assume that most parents wish to share parenting (both before and after separation), then parental leave policies and pay equity, alongside quality jobs that pay a living wage including for a one-earner household) would facilitate such a shift and also support parents' relational autonomy. Greater attention must be paid to broader social and labour market policies that support family well-being and provide real choices for parents, including affordable housing, child benefits, and



quality early childhood education and care. Addressing the obstacles that parents face when returning to the labour force when they have child care responsibilities would not only help parents who are still partnered but should go some distance to easing the transition for mothers returning to the labour force, if they wish (or are required) to do so.

Attention must be given to how social locations and gender relations may advantage or disadvantage parents post-separation. My study findings highlight the complex intersections of legal issues, gender relations, and other social issues and inequities and how they intersect in particular ways at separation to differentially affect the parties involved. It seems ironic that the re-division of child care and paid work really only becomes contentious in this family law policy context. A parent's relative power and resources, as well as the fit between their values and preferences, have implications for their agency and autonomy. As Rhoades (2010b) convincingly argues, using the values upon which relational autonomy is based when developing law and policy can help to avoid the perpetuation of injustice and inequalities. Importantly, relational autonomy also reminds us about the importance of adequate social support and care for parents and families during difficult times. This relational approach stands in contrast to the neoliberal approach, which in privatizing the responsibility for family dispute resolution, as well as cutting costs for other programs and services that families need and depend on, fails to provide adequate support or hope for a way forward. Properly funding family law related support services must be a priority, not only for the sake of families who need support but because the downstream costs of not doing so are substantial (Track, 2014; Treloar, 2015).

In addition to these broader policy recommendations, I have three specific recommendations for family law and policy reforms. The first is to change the child support system to a model similar to that used in Australia (Fehlberg, Millward, Campo, & Carson, 2013; Smyth, Rogers, Son, & Vnuk, 2015). In the Australian model, the calculation, adjustment, and collection of child support are done by the state unless parents agree to a private arrangement. Although the child support recalculation service, a model involving annual recalculation of child support based on tax returns, which has

been piloted in the Kelowna Provincial Court,<sup>99</sup> has some benefits, it also has a number of shortcomings, besides being limited to a single Provincial Court. First, except where a court order is made (the minority of cases), it is currently available only on request and by agreement. Based on the findings in Chapter 4, agreement on this point is unlikely. Such a policy also likely places the burden on the recipient parent to seek such agreement. Second, since the model currently being used in Kelowna is not available when there is income from a partnership or self-employment, it may not be of much help to those with spouses in business or professions who are likely knowledgeable about tax avoidance and other measures that can similarly be used to avoid child support and other financial obligations post-separation. The KPMG “offshore scheme” uncovered in 2016 was promoted as such,<sup>100</sup> and the Panama Papers fiasco<sup>101</sup> is another example that suggests some high-income earners use tax havens to avoid child support responsibilities. The current model leaves it up to the payor to declare changes in (usually) his income to the other parent. That generally means it falls to the receiving parent (often a mother) to first ask and then to apply to the court if unsuccessful in direct negotiations.

Making child support an administrative process (e.g., tied to tax returns) would relieve parents with dependent children of the difficulties of calculating, collecting, updating, and enforcing child support (as discussed in Chapter 4). Under this model, not only is the amount calculated automatically on an annual basis, it takes the receiving parent out of the middle and allows them to focus on care for children while reducing inter-parental conflict and eliminating issues of uneven power. There is no guarantee that child support will be paid (or adequate) but it should reduce conflict and make finances more transparent. This general approach was on the wish list of several mother participants who had difficulty collecting support and resented the expense and stress of going to court to obtain it. When changes to the amount (or recipient) are required, it is

<sup>99</sup> See <http://www.bclaws.ca/civix/document/id/roc/roc/331105891#part5>

<sup>100</sup> See: <http://www.cbc.ca/news/business/kpmg-tax-dodge-divorce-1.3618743>

<sup>101</sup> See: <http://www.theatlantic.com/business/archive/2016/04/panama-papers-crimes/477156/>

important that the system is responsive and there are measures in place to quickly make adjustments if needed (e.g., as in Rick's case, a change of primary caregiver).

My second recommendation addresses the problem that currently, families appear before a different judge each time they go to court and at each stage of the proceedings. A one-judge model (Bala, Birnbaum, & Martinson, 2010) would make judges who are interested in family law and have specialized training responsible for case management as families make their way through the legal system. This model could be particularly helpful for complex situations such as those involving medical or child protection issues. It would relieve parents from having to continually repeat their stories, facilitate trust development, enhance communication and accountability, and relieve some stress for the parties. In this manner, judges could "promote relational autonomy by implementing law in ways that shape the kinds of relations that foster autonomy" (Nedelsky, 2011, p. 299). Based on the findings of my research, under such a model participants are more likely to feel heard and that the legal system is just. It is also likely that legal decisions will be made with a full understanding of the problem, the children's interests, and the concerns of the parties. An additional advantage of this model is that the judge could quickly identify frivolous applications or court-related harassment. Judges would be better able to get a sense of whether they were effective in their approach as well as a better understanding of the outcomes of their decisions.

Third, as mentioned, there is a clear need for some form of effective and constructive emotional support as parties attempt to resolve their disputes. This support should be accessible and affordable. Australian Family Relationship Centres (FRCs) serve as an international model in this regard (Parkinson, 2011). FRCs are intended to be a "one-stop shop" with staff providing warm referrals to other professionals and agencies as required. In BC, the model could be developed to include trained (non-lawyer) legal advocates. Legal advocates received particular accolades from participants in my study who had used them, often because they immediately understood the dynamics and circumstances and what needed to be done. Having a trained advocate available in the courthouse would be an excellent way to provide effective and comprehensive frontline services, including the completion of documents, likely with overall cost savings to the court system. Having a "one-stop shop" would save the

parties considerable time and stress since at present, they are on their own to find resources, even if they have a lawyer. A slightly different idea, which is also based on the idea of a “one-stop shop” and multidisciplinary practices, is that lawyers work within community agencies servicing women (Track, 2014). This approach would also go some distance to addressing issues of access to justice for low-income or marginalized parents.