

Domestic-violence victims may have injuries used against them in custody battles: study: Diagnosis can become double-edged sword used to argue lessened capacity for parenting, UBC researchers report

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FULL TEXT

Women who have suffered brain injuries from intimate-partner violence run the risk that their diagnoses will be used against them in custody disputes, according to a recent study by researchers at the University of British Columbia. The study, published late last year in the *Journal of Law and the Biosciences*, found that lawyers in family law cases can use brain injury as evidence of abuse, but the diagnosis can become a double-edged sword if it is used by an alleged abuser to argue that their partner has a diminished capacity to parent, potentially leading to the abuse victim losing custody.

“The study is important because it takes into consideration the impact of traumatic brain injury for survivors but also in the context of the family law system and how their diagnoses can be used against them by an abusive partner,” said Angela Marie MacDougall, executive director of the non-profit Battered Women’s Support Services. She was not involved in the study.

The study recommends the involvement of trauma-informed medical professionals in family law cases who can testify to the impact, or lack of impact, of brain injuries on the ability to parent. It also suggests that parenting capacity assessments should be incorporated into brain-injury screenings so there is a paper trail of the injury’s impact.

Mild traumatic brain injuries, or concussions, are common in intimate-partner violence. Most do not affect a woman’s ability to parent, said Quinn Boyle, the lead author of the study and a PhD candidate with the research institute Neuroethics Canada at UBC.

Mr. Boyle noted that having a parenting capacity assessment is simply to satisfy judges, who heavily weigh expert opinion and screening tools in their decision making.

The researchers involved in the study interviewed 12 family law practitioners in B.C. and Ontario about their strategies to incorporate brain injury into a custody dispute. All of them said that, if representing the mother, they would consider how significant the brain injury was before deciding to use it as evidence.

They also said they would be prepared for opposing counsel to use the brain injury to argue the woman is an unfit mother, Mr. Boyle said.

And if they were representing the alleged abuser, they said they would do the same. As they explained, a lawyer would have a duty to represent their client if that client denied the allegations of abuse.

“There’s a long history of sexism in family law which traditionally disadvantages women’s rights,” Mr. Boyle said.

“Our society traditionally views women as the primary nurturer and holds them to a much higher standard in regard to mental health, substance use, even recreational drinking. ...Anything that’s raised about the woman and her parenting is completely under a spotlight.”

Across Canada in 2021, there were 114,132 victims of police-reported intimate-partner violence –almost 80 per cent

of whom were women and girls, according to Statistics Canada. But experts say many thousands of incidents go unreported.

The Globe and Mail reported last year about research into the effects of concussions as a result of intimate-partner violence.

Because physical abuse is most commonly inflicted to the head, neck and face, Halina Haag, a social worker and PhD candidate in social work at Wilfrid Laurier University, has concluded that up to 75 per cent of abused women suffer a concussion or other brain injury as a result. Violence, mild or not, when inflicted repeatedly over time, can lead to permanent injury or disability.

Ms. MacDougall told The Globe there is “minimal to no education” within the medical system regarding domestic abuse, so it would be very difficult to find medical professionals to advocate for survivors. Ms. MacDougall works as a trainer for new medical residents, giving them a one-hour session on domestic violence before they go on to become general practitioners.

“The trauma-informed and violence-informed practice is more of a throwaway line than it’s in the actual practice,” she said.

She said that, despite good intentions, it is very hard to make sure a brain-injury diagnosis will benefit a woman instead of being weaponized against her in court. She noted that many women who survive domestic abuse cannot afford a lawyer and end up representing themselves.

Even if they do have a lawyer, many lawyers are not versed in the impact of brain injury on women in the context of intimate-partner violence.

With a report from Molly Hayes

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