

# Girls' deaths in Oak Bay prompt debate about judges and domestic violence

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Laura Kane / The Canadian Press

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Hundreds of people hold candles in support and memory of Aubrey Berry, 4, and her sister Chloe, 6, during a vigil held at Willows Beach in Oak Bay, B.C., on Saturday, December 30, 2017. THE CANADIAN PRESS/Chad Hipolito

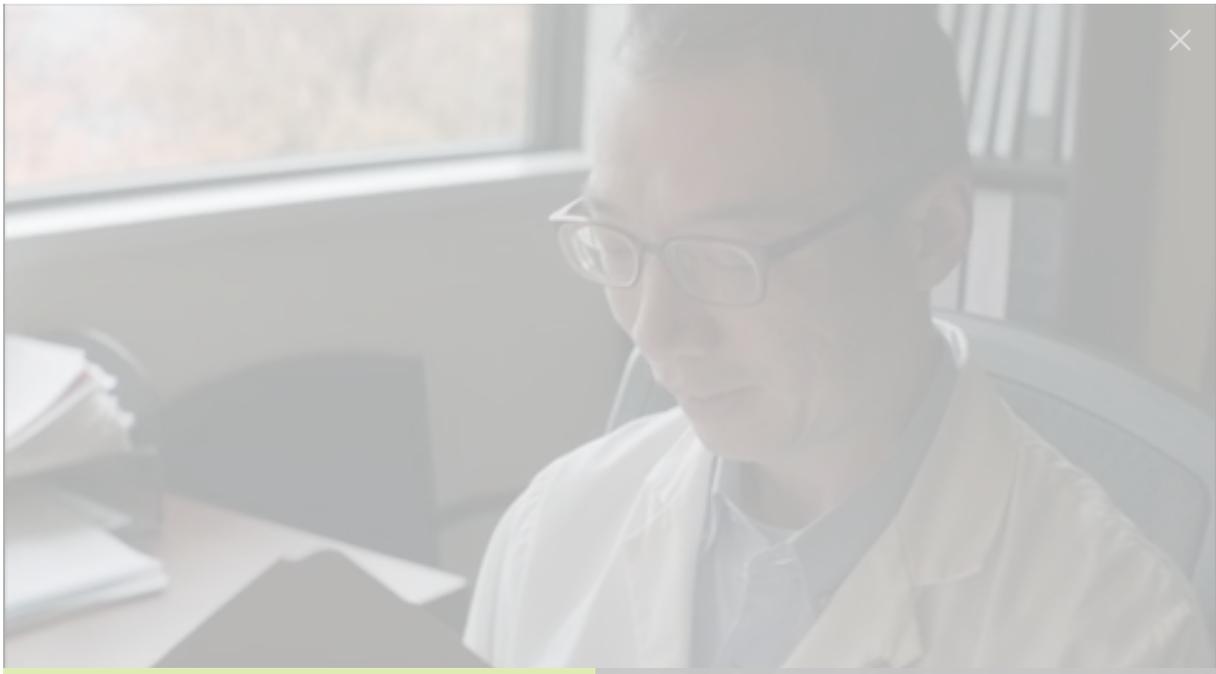
The deaths of two young girls in British Columbia who were previously the subject of a custody dispute have prompted debate about how judges decide cases involving allegations of domestic violence.

Andrew Berry, 43, has been charged with two counts of second-degree murder in the deaths of his six-year-old daughter Chloe and her four-year-old sister Aubrey. The sisters' bodies were found on Christmas Day inside an Oak Bay home.

Berry made his first appearance in provincial court Thursday and his case was adjourned until February. None of the allegations against him have been tested in court.

The girls' mother, Sarah Cotton, alleged during a custody dispute in 2016 that Berry had threatened to blow up their home, had thrown clothing at her and pinned her to a bed. A B.C. Supreme Court justice hearing the case ruled his behaviour did not justify denying him significant time with the children.

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Angela Marie MacDougall of Battered Women's Support Services said more training is needed to help judges understand the warning signs of family violence.

"Domestic homicide is one of the most predictable homicides that there is and the most preventable," said MacDougall. "What happens consistently is that the system fails to take it seriously — minimizes it, denies the implications and doesn't hold the abusive partner accountable."

MacDougall said domestic violence involves a pattern of domination that escalates over time, in which the abusive partner can use tactics including emotional, financial and physical abuse. The courts tend to fail to recognize this pattern, she said.

She said she believes Justice Victoria Gray minimized the allegations made against Berry in the custody case.

Miriam Kresivo, president of the Law Society of B.C., said the parents had come to their own agreement on a parenting schedule that included visits with the father and it's hard to say that Gray should have reached a different conclusion.

She said the case was no different than the thousands of disputes that go through the courts.

"There is nothing unusual in her judgment," she wrote in a letter to the editor published Friday by the Times Colonist. "Gray applied the law based on the evidence before her."

Kresivo said in an interview that she wrote the letter because judges aren't free to defend themselves and it's not uncommon for the law society to speak up when there is criticism of a judge.

Gray's ruling, delivered last May, was intended to settle custody of the children and distribution of assets after Berry and Cotton separated in 2013.

Cotton's position was that she should primarily parent and make decisions concerning the children, while the father sought an order that the parents share the same amount of time with them and have an equal voice in their activities.

Cotton alleged in court that in the months before the separation, Berry grew increasingly critical and called her foul names in front of their daughters. When he was angry, he drove erratically and didn't always buckle the girls into their car seats properly, she alleged.

One morning, Cotton said Berry threw a drink at her. He sent her an email requesting a detailed budget before he came home at lunch looking "angry and crazed" and threatened to "blow up the house," Cotton alleged.

A couple days later, Cotton said she was in bed at 3 a.m. when he pinned her down after pulling the bed covers off her. She said she called police and the couple separated.

The judgment says Berry did not testify about these allegations. He was not represented by a lawyer in court.

The province's child welfare agency investigated an allegation he inappropriately touched one of his daughters in 2015. In court, Berry testified he tickled one of the girls but not inappropriately.

Gray concluded that Berry's aggressive behaviour around the time of separation and during some exchanges of the children had been "transient and relatively minor."

The children are generally happy and healthy, she wrote. She ruled the children should spend more time with their mother, with some time spent with the father on evenings and weekends.

"The father is a loving father who has much to offer his daughters. It is in the best interests of the girls to have significant parenting time with the father."

The federal government announced nearly \$100,000 in new funding last April to the National Judicial Institute to develop training for judges on gender-based violence, including sexual assault and domestic violence.

Every federally appointed judge goes through two weeks of mandatory training in their first year, which includes a family law component that covers custody disputes, said Justice Adele Kent, head of the institute and an Alberta judge.

The aim is to give judges skills to decide each case on its individual evidence. Judges learn how to manage high-conflict cases, communicate with agitated people, understand the social context for domestic violence and dispel myths, Kent said.

"What I would say — having walked out of courtrooms sometimes having hopefully made the right decision — is that these are probably some of the most complicated cases that we have to decide," she said.

Judges also go through training through their individual courts, which varies from province to province, and the institute offers an additional family law program that judges can take.

Peter Jaffe, an expert in violence against women and children at the University of Western Ontario, said the research shows domestic homicides are the most predictable and preventable of killings.

Of about 250 domestic homicides in Ontario in recent years, about three-quarters of them were preceded by well-known warning signs, such as a history of violence, separation, depression, stalking, prior threats and alcohol or drug abuse, he said.

Eighty per cent of victims of domestic homicide are women, 10 per cent are children and 10 per cent are men, he said.

"When you're worried about the safety of the mother, you should always be worried about the safety of the children as well," he said.

Jaffe said he thinks there should be more specialization among judges with some focusing exclusively on domestic violence. But he added judges have difficult jobs and must balance children's safety with the need to have a relationship with both parents.

Tracy Porteous, executive director of the Ending Violence Association of BC, said in addition to more training for judges, more funding is needed to ensure victims have access to a community-based advocate to help them develop a safety plan.

"Many women who are trapped in the throes of abusive or violent situations don't necessary know the extent of danger that they're in," she said.

"The idea that somebody could kill a loved one or somebody who they once loved, or their children, is simply unthinkable."

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