



Department of Justice
Canada

Ministère de la Justice
Canada

HELP Toolkit:

Identifying and Responding to Family Violence for Family Law Legal Advisers

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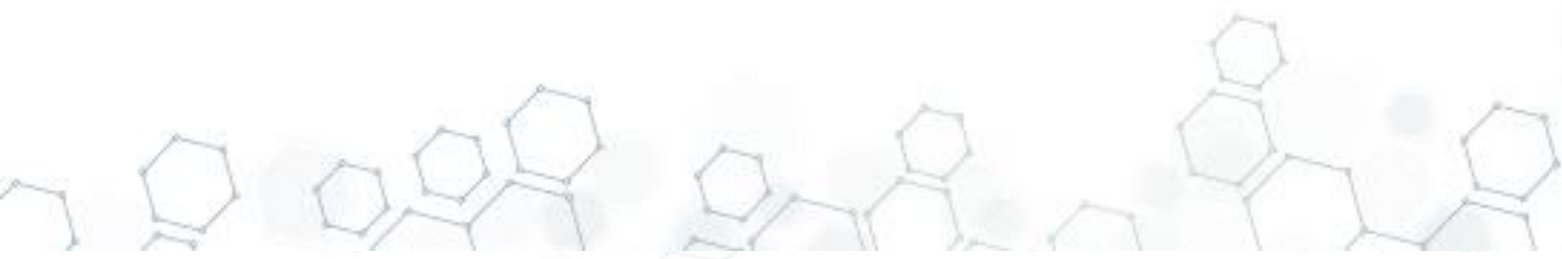




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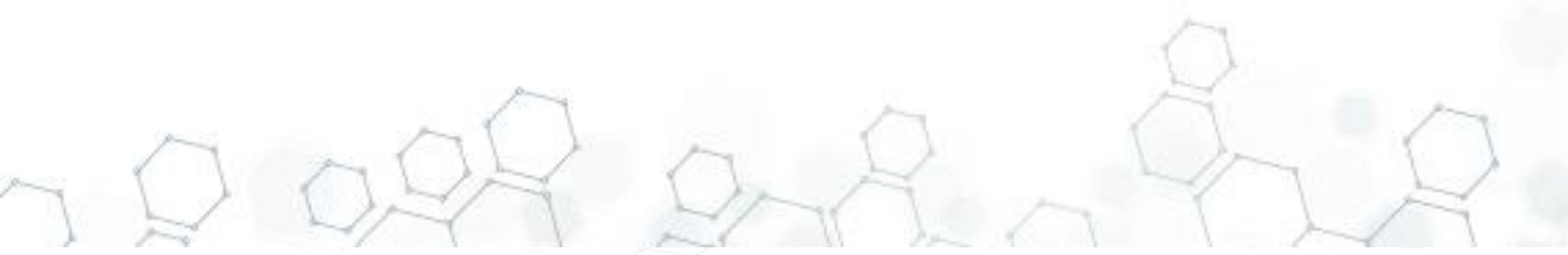
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Key partners in this project include:

- The members of the project's Advisory Group, who provided expert guidance throughout all stages of the project;
- A team of subject-matter experts, who developed content for many elements of the HELP Toolkit; and
- Federal colleagues from the Public Health Agency of Canada and the Department of Women and Gender Equality Canada, who collaborated with the Department of Justice Canada from the outset of the project.

We also want to express our gratitude to all of the legal advisers, frontline service providers, researchers, and provincial and territorial government officials, as well as the Canadian Bar Association's Family Law Section, the Federation of Law Societies of Canada and others, who provided feedback and support at different points in the development process. In particular, we recognize the 61 legal advisers who tested out the draft HELP Toolkit in their family law practices. Their contributions were invaluable.

Finally, special thanks go out to all of the individuals who took the time to review and provide comments on draft versions of the HELP Toolkit.



HELP Toolkit Overview

Family violence is a reality for Canadians from all walks of life. It can cause, contribute to, or be a consequence of relationship breakdown. Separation and divorce can exacerbate an already violent or abusive relationship. The period immediately following separation is a time of heightened risk for escalating and sometimes lethal violence. Children may also be at an increased risk of experiencing family violence during and after separation and divorce.



Why family violence is relevant to your family law case

Amendments to the *Divorce Act* that came into force on March 1, 2021 require judges to take family violence into account, particularly in relation to parenting cases and the best interests of the child. In addition, provincial and territorial family law statutes include provisions relating to family violence.

It is important for legal advisers to be aware of family violence that has occurred or is occurring as well as the potential for future violence. This information is relevant not only for parenting cases, but also for other family law matters, such as property disputes or motions to change. This is crucial to a legal adviser's ability to identify all of the family law issues that need to be addressed, the support services a client may require, and ways to promote the client's and their children's safety throughout the family law case and beyond.

Clients may be reluctant to disclose family violence

There are many reasons why clients may not voluntarily disclose family violence, including:

- ▶ discomfort about sharing information;
- ▶ concerns that the legal adviser will not be interested or might not believe them;
- ▶ a lack of understanding that they are experiencing family violence or that it is relevant to their case;
- ▶ fear for their own or their family's safety; and
- ▶ shame or guilt.

Therefore, it's important that legal advisers talk to their clients about family violence on a regular basis. See [Tab #1: Reasons Why Your Client Might Not Disclose Experiences of Family Violence](#).

Client trauma can affect the family law case

Clients who have experienced trauma from family violence or other causes may not react or interact in ways you might expect. For example, a victim of violence may struggle to focus on or convey particulars of traumatic events, have difficulty concentrating on what you are saying, or be unable to provide meaningful instructions. This toolkit uses a trauma- and violence-informed approach to help you work safely and effectively with clients who have experienced trauma. See [**Tab #2: The Impacts of Trauma and Trauma- and Violence-Informed Practice**](#).

Purpose of the toolkit

This toolkit was developed with input from family law and family violence experts from across Canada. It is designed to:

- ▶ **Respond to research** calling for a tool designed specifically for family law legal advisers to use in identifying and responding to family violence;
- ▶ **Provide practical guidance** to legal advisers to gather the information they need both for the family law case and to connect clients to other services to promote their safety;
- ▶ **Assist legal advisers with varying levels of experience** in dealing with cases involving family violence; and
- ▶ **Be incorporated into a legal adviser's existing practice** and support them in using their own experience, expertise and professional judgment.

Please note that while the toolkit contains relevant background information and practical guidance, it is not intended to replace more comprehensive education and training on family violence; these are important to increase your understanding of the complex dynamics of family violence and family law. The Department of Justice Canada offers a free accredited online course on Family Violence and Family Law for Legal Advisers: <http://www.justice.gc.ca/eng/fl-df/cfl-mdf/tra-i-form/index.html>. Law societies, bar associations and many other organizations also offer training on family violence.

Contents of the toolkit

The toolkit is comprised of several elements:

- ▶ [**HELP Approach**](#): provides a visual summary of how you can use the toolkit in your practice;
- ▶ [**HELP Checklist**](#): highlights key steps in the HELP approach;
- ▶ [**HELP Guide**](#): describes the HELP approach, including detailed scripts and guidance for identifying family violence;
- ▶ [**Legal Response Guide**](#): provides information about legal options that can help promote safety; and
- ▶ [**Supplemental Materials**](#): provide more detailed information on relevant topics.

How to use the toolkit

It is recommended that you read the entire toolkit at least once to familiarize yourself with its contents. Once you have read the toolkit, you can integrate whatever content you find useful into your practice as you see fit.

The toolkit was developed to be used flexibly in practice. For example, you may choose to use the [HELP Checklist](#) to quickly refresh your memory before meeting with clients, or you may decide to have certain supplemental materials on hand during client meetings.

What is “family violence”?

In this toolkit, “family violence” refers to behaviour that would come within the definition of family violence in the *Divorce Act*.

The *Divorce Act* sets out a broad, evidence-based definition of family violence in subsection 2(1):

“family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person – and in the case of a child, the direct or indirect exposure to such conduct – and includes:

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property”

Family violence can be words, acts or even neglect. It may be a single incident or a pattern of behaviour. While individual acts viewed in isolation may not constitute family violence, they can amount to family violence when the behaviour forms part of a pattern of conduct aimed at controlling a family member or causing fear.

The definition clarifies that the behaviour does not have to be a criminal offence to be considered family violence under the *Divorce Act*.

The definition also makes it clear that in the case of a child, any exposure to family violence constitutes family violence in and of itself.

This toolkit is primarily focused on abuse directed by one partner against the other, which also has serious impacts on children in the family. The terms “intimate partner violence,” “domestic violence” and “domestic abuse” are commonly used to describe abuse that happens between currently or formerly married couples as well as unmarried couples, including dating partners; “intimate partner violence” (IPV) is used in this toolkit. Although IPV is often equated with physical acts, it can take many forms, including psychological and financial abuse.

Coercive controlling violence is a form of IPV that involves a pattern of cumulative behaviours aimed at dominating or controlling a partner. This form of IPV is extremely dangerous, putting victims, including children who are exposed to it, at high risk of serious psychological and physical harm. See [Tab #3: Types of Intimate Partner Violence](#).

IPV can involve a primary aggressor and a primary victim, or it can involve both partners. This toolkit focuses mainly on helping family law legal advisers represent clients who are victims of IPV, where the ex-partner is the primary aggressor. However, the toolkit also includes information on representing clients who may have engaged in abusive behaviours. See [Tab #4: Representing a Client Who May Have Engaged in Family Violence](#).

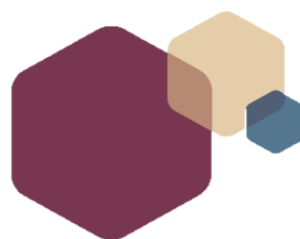
While this toolkit focuses primarily on violence between partners, any violence involving children will be highly relevant in the family law context. This includes both violence directed at children and children’s exposure to violence between other family members. See [Tab #5: Children’s Experiences of Family Violence](#).

Notes about terminology

- ▶ The term “**victim**” is used in the toolkit to refer to someone who has experienced IPV. The term is not intended to convey a lack of agency of the person victimized; it recognizes people’s strengths and resilience.
- ▶ The term “**abuser**” is used in the toolkit to refer to someone who has or is alleged to have engaged in family violence. This term is used for the sake of simplicity and is not intended to define a person or to be judgmental. From a practice perspective, it is important to be cautious about labelling someone who has caused or is suspected of causing harm, particularly when referring to a person who continues to have a relationship with the client or child.
- ▶ The term “**ex-partner**” is used throughout the toolkit; however, it is possible that a family law client may not have left their partner yet or may return to the relationship.
- ▶ The term “**legal adviser**” refers to professionals who come within the definition of “legal adviser” in the *Divorce Act* (any person who is qualified, in accordance with the law of a province, to represent or provide legal advice to another person in any proceeding under this Act).
- ▶ The terms “**violence**” and “**abuse**” are both used to refer to behaviour that falls within the *Divorce Act* definition of family violence. The behaviour may or may not involve physical violence.

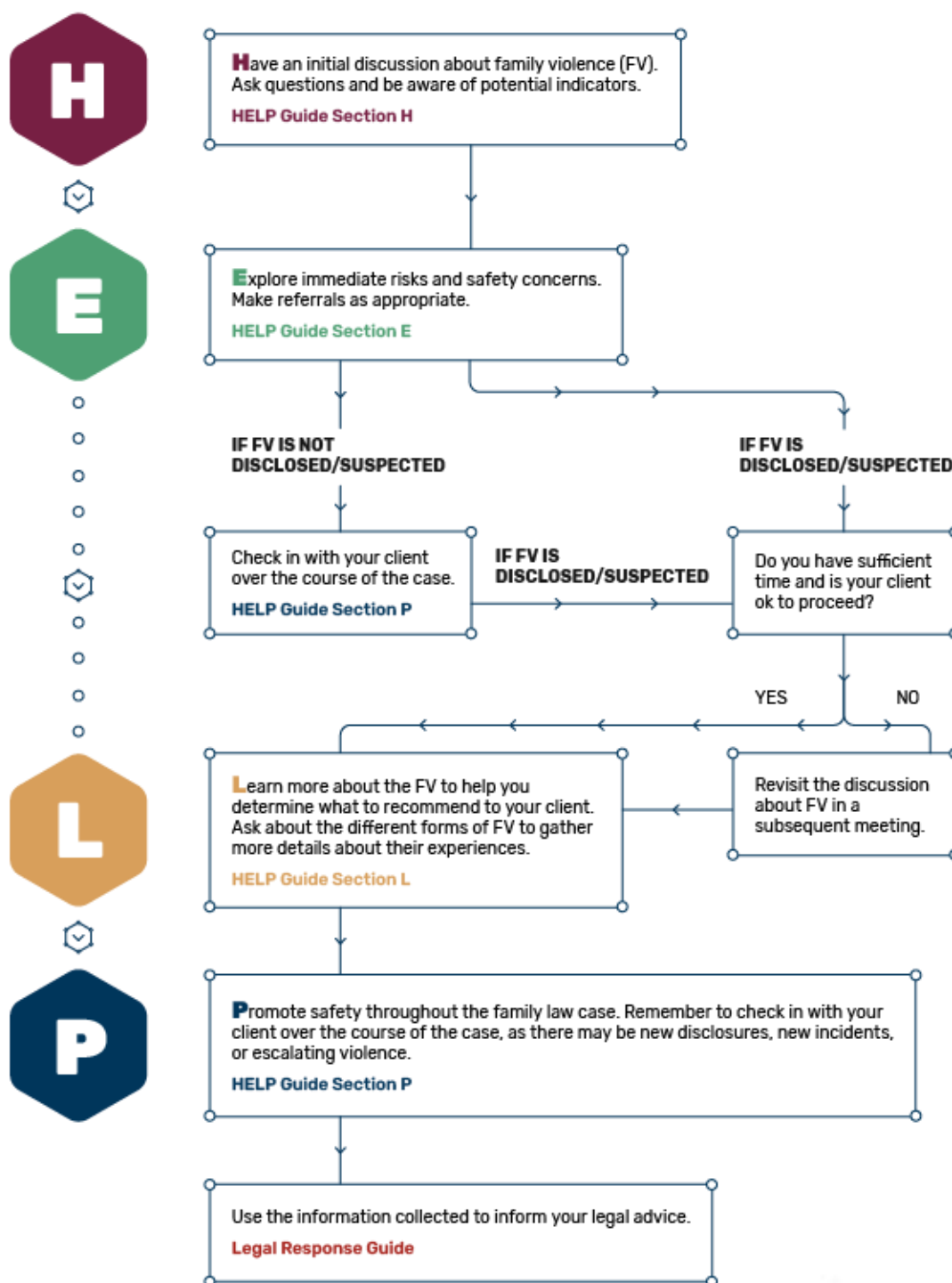


HELP GUIDE



HELP Approach

Designed to be used flexibly in your practice



HELP Checklist

The HELP approach has four components:

- HAVE** an initial discussion about family violence
- EXPLORE** immediate risks and safety concerns
- LEARN** more about the family violence to help you determine what to recommend to your client
- PROMOTE** safety throughout the family law case

This Checklist sets out the key steps of the HELP approach for identifying and responding to family violence, which are meant to be integrated flexibly into your practice. However, we recommend that you review all of the content in the [HELP Guide](#) at least once.

HAVE an initial discussion about family violence ([HELP Guide Section H](#))

- ✓ Begin the discussion about family violence in the first meeting with a client.
- ✓ Be aware that your client may suffer from trauma, which can affect how they interact with you and the family law process (e.g. difficulty focusing, sharing or processing information or making decisions).
- ✓ Understand how overlapping identities and experiences can shape a client's perspective and compound their experiences of family violence.
- ✓ Pay attention to potential indicators, such as the ex-partner controlling aspects of their life and ask your client about them.
- ✓ Introduce the topic of family violence if the client does not bring it up. Normalize the conversation (e.g. *"I ask all my clients about their experiences with family violence..."*).
- ✓ If your client agrees to proceed, ask some initial questions to begin to identify whether family violence is a concern.
- ✓ Listen without judgment, thank the client for sharing, and offer support.
- ✓ Continue to apply the HELP approach during subsequent meetings.

EXPLORE immediate risks and safety concerns ([HELP Guide Section E](#))

- ✓ Ask the client about potential risk and safety concerns regardless of whether they have disclosed family violence.
- ✓ Ask about immediate danger and plans for staying safe. Consider referrals to appropriate community resources and whether police or child protection should be contacted.
- ✓ Discuss safe ways to contact the client and flag these clearly to your office staff.

LEARN more about the family violence to help you determine what to recommend to your client ([HELP Guide Section L](#))

- ✓ Ask about different forms of family violence based on what your client has shared in initial discussions, and explain why this information is relevant to their case.
- ✓ **Do not ask questions as a checklist**. Ask about family violence sensitively and in a way that follows the flow of the discussion with your client.
- ✓ Try to understand the seriousness, frequency and duration of family violence, and look for patterns of abusive behaviour, particularly coercive and controlling behaviour.
- ✓ Be aware that your client may have engaged in family violence.
- ✓ Revisit the issue of family violence throughout the family law case, regardless of whether there was an initial disclosure.

PROMOTE safety throughout the family law case ([HELP Guide Section P](#))

- ✓ Remember that separation is a time of heightened risk for family violence.
- ✓ Discuss with your client how the family law process can increase risk. Adopt strategies to reduce your client's risk in relation to the family law process.
- ✓ Develop a safety plan to protect your safety and that of your office staff.
- ✓ Be aware of how your cases involving family violence and the trauma experienced by your clients may be affecting you.



HELP Guide – How to Have a Discussion about Family Violence¹

Learning about your client's experience of family violence is crucial to informing the legal advice and recommendations you give them. The approach set out in this Guide is designed to help you get the information you will need for your file, and is intended to be incorporated within your existing practices.

While each case is different, the overall approach should involve the same four components (“HELP”):

HAVE an initial discussion about family violence

EXPLORE immediate risks and safety concerns

LEARN more about the family violence to help you determine what to recommend to your client

PROMOTE safety throughout the family law case

It is generally recommended that you discuss family violence at your first client meeting and that you continue to apply the HELP approach below at subsequent meetings. As you build rapport and trust with your client, they may be more willing and able to discuss their experiences of family violence with you. In addition, family violence is dynamic and can change over time. Therefore, it is important to check in with clients over the course of a case.

Your ability to explore issues of family violence with your client in a given meeting will be impacted by the complexity of the family law file, the realities of costs and time, and your client's readiness to engage in discussions. Again, the HELP approach is meant to be flexible. However, it is important to remember that what you learn about your client's experiences of family violence has the potential to impact many aspects of the family law case.

Tips for safe and effective discussions

Below you will find a few important tips to help you discuss family violence with your client in a way that is safe, sensitive and effective. In addition, [Tab #6: Tips for Discussions with Your Client](#) provides additional tips, including how to have discussions through email and other virtual communications.

- ▶ **Understand the impacts of trauma:** Trauma is both the experience of and a response to an overwhelming negative event or experience. Clients who have experienced trauma from family violence or other events may not react or interact in ways you might expect. See [Tab #2: The Impacts of Trauma and Trauma- and Violence-Informed Practice](#).
- ▶ **Understand the effect of people's overlapping identities and experiences:** Your clients will have multiple and diverse demographic characteristicsⁱ that intersect to shape their perspectives, ideologies and experiences.² These do not exist in isolation from each other. They can compound a victim's experience of family violence and their sensitivity to perceived judgments and assumptions about their credibility. It is also important to be aware of your own biases and assumptions. See [Tab #7: How to Incorporate Cultural Safety into Client Interactions](#).
- ▶ **Understand the gendered nature of family violence:** All members of a family can be victims of family violence, but there are gender differences. For example, women account for the vast majority of victims of police-reported IPV, including intimate partner homicide. In addition, some populations, such as Indigenous women and women with disabilities, are more at risk of IPV than others.³ See [Tab #8: Prevalence of Intimate Partner Violence](#).
- ▶ **Do not assume that a client has only experienced or only committed family violence.** Family violence can be perpetrated by one person or more than one person in a family.
- ▶ **Know that you may not get an answer.** Some clients may not want to talk about very personal and sensitive topics at the first meeting or at all. Respect the client's autonomy.
- ▶ **Ensure that you leave sufficient time.** Discussing family violence may take considerable time and be distressing for the client, and should not be rushed.
- ▶ **Understand both your duties and your client's duties under the child protection legislation** in your particular jurisdiction, along with your professional and legal obligations.

ⁱ This includes characteristics, such as gender, religion, national and ethnic origin, Indigenous origin or identity, age, sexual orientation, socio-economic condition, place of residence and disability, and experiences with racism and other forms of discrimination.

“H”: Have an initial discussion about family violence

Initiating a discussion about family violence can happen in different ways. For example:

- ▶ A client may come to you specifically about a family law issue relating to family violence.
- ▶ Through the course of your meeting(s) with a client, you might become aware of possible family violence indicators. You can ask about these indicators as an opening to a discussion about family violence.
- ▶ You can introduce the topic of family violence by explaining what it is and then asking if the client has experienced it.

Regardless of how you initiate the discussion about family violence, remember to follow your client's lead. Tailor your approach to your individual client's particular situation.

Initial meetings with clients may not allow for sufficient time for an in-depth discussion of family violence, and your client might not be ready to disclose. Developing trust with your clients is key. Beyond that, the “H” part of the approach is about gathering enough information to allow you to identify any indicators of family violence or disclosures your clients are ready to make so you can better address immediate risk and safety concerns. Talking about family violence is a process that will unfold over several meetings with your client.

H.1 If your client discloses family violence at the outset

Some clients may disclose their experiences to you at the outset of your initial meeting or to staff in your office when they make an appointment. These clients may have already written down their experiences or identified evidence of the abusive behaviours, or your staff may have taken notes. You can still follow the HELP approach, using the information you have as a starting point for the discussion.

H.2 If not, how to start: Ask general questions about the family relationships

Often your clients will not immediately disclose their experiences, and you will need to introduce the topic of family violence. It is usually a good idea to start the discussion by asking generally about the family relationships. For example:

- ▶ *“Tell me about how things are between you and your ex-partner.”*
- ▶ *“What challenges are you experiencing in this relationship?”*
- ▶ *“How are the children?”*
- ▶ *“Can you tell me a bit about the relationships each of you has with the children?”*
- ▶ *“Who decided to initiate the separation?”*
- ▶ *“How did you feel about the way decisions were made when you were together?”*

H.3 If you become aware of potential indicators of family violence

You might become aware of possible indicators of family violence when asking about other topics, such as how the couple made decisions about their children or managed the household's finances.

A client may reveal information that suggests coercive control by the ex-partner, for example not letting the client see family or friends, not giving them access to their own bank account or preventing them from practising their religion. This information can serve as a starting point for a discussion about family violence.

Other possible indicators of family violence that victims might display or describe include things, such as:

- ▶ visible signs of injuries, including to the head, face, mouth, teeth, neck, wrists, knees or feet (at various stages of healing);
- ▶ reduced physical and/or cognitive functioning or quality of health;
- ▶ hypervigilance, depression and/or anxiety disorders;
- ▶ problematic substance use, either by the client or by the ex-partner;
- ▶ appearing to be fearful when their partner or ex-partner is mentioned; and/or
- ▶ involvement of police and/or child protection.

See [Tab #9: Asking about Specific Forms of Family Violence](#) for additional indicators of family violence.

Interpreting indicators of family violence can be challenging, as your client may present some indicators without ever having experienced abuse. For example, if a client with a disability presents potential indicators of family violence, it may be difficult to discern whether these indicators are linked to abuse, experiences of devaluation or the disability itself.⁴

If you identify possible indicators of family violence, you may wish to use this as an opening to ask about family violence. Start with asking about the behaviour. For example:

- ▶ *"You mentioned that your ex-partner is using alcohol more often. Can you tell me about that?"*
- ▶ *"You told me that you have no access to bank accounts and have no idea of the state of the family's finances. Can you tell me more about that?"*
- ▶ *"You mentioned that your ex-partner does not let you see your family and friends. Can you tell me more about that?"*

If the responses to these questions uncover possible indicators of family violence, you can introduce more direct questioning with the following:

- ▶ *“Sometimes this can be associated with other problems happening in the family, such as you or someone else being harmed physically or emotionally. This is a very important issue that I discuss with all my clients, as it helps me understand your situation and make appropriate recommendations for you and your family. Would it be okay if I asked you some more questions about this now?”*

H.4 Asking directly about family violence

There are many different ways to introduce the topic of family violence. For example, you could acknowledge that it is a difficult topic, but one that you talk to all your clients about.

- ▶ *“I would like to talk about family violence. This is something I go through with all my clients to make sure I know about their situation and give the best advice I can. Some people find talking about these issues difficult, but information about safety is really important in family law matters.”*

To help your client understand what you mean by “family violence,” you may want to offer them a definition, such as the one set out in the *Divorce Act*. For example:

- ▶ *“I find it useful to refer to the definition of family violence in Canada’s Divorce Act to explain what I mean when I talk about safety and family violence. Canada’s Divorce Act says that family violence is behaviour that*
 - ~ *is violent;*
 - ~ *is threatening;*
 - ~ *makes a person fearful about their safety or someone else’s; or*
 - ~ *is a pattern of coercive and controlling behaviour – one person trying to control another over a period of time.*

Family violence includes many different types of behaviours and experiences. It is not only physical violence or abuse, but also other types, including psychological, sexual and financial abuse, harassment and stalking. It can also include threats to harm or kill a person or an animal, such as a family pet.

To help me better understand your situation, I would like to ask you some questions about family violence. If you want to take some time to think about this, we can come back to these questions later in this meeting or we can discuss this another day.”

If your client indicates a willingness to proceed with talking about family violence and there is sufficient time left in your meeting to allow for this discussion, you can ask some initial questions to begin to identify whether family violence is a concern. It can be helpful to provide examples of behaviour, as they may not recognize their experiences as abusive. If your client indicates that they have experienced behaviour that might be family violence, ask them to describe it to you. The following are examples of some initial questions you could ask:⁵

- ▶ *“Have you ever felt afraid of your ex-partner because of something they have said or done to you or to someone else? (If yes, can you give an example?)”*
- ▶ *“Family violence can involve physical violence, such as choking, hitting, kicking, punching or slapping. Have you experienced any of this in your relationship with your ex-partner?”*
- ▶ *“Violence might also be threatened, such as a threat to hurt or kill someone, to take away someone’s children or to hurt a family pet. Has your ex-partner ever threatened you in any way? (If yes, can you give an example?)”*
- ▶ *“Does your ex-partner control how much money you have, tell you what you can spend money on or make all the decisions about money for your family?”*
- ▶ *“Sometimes a person constantly says things that makes another person feel bad about themselves, such as insulting them or calling them stupid, lazy or ugly. Have you experienced that in your relationship?”*
- ▶ *“Children can also be victims of family violence. Has your ex-partner ever hurt your child(ren) or have you ever been concerned about their safety?”*

See [Tab #9: Asking about Specific Forms of Family Violence](#) for some more specific questions you could ask if there is time at this initial meeting or for future meetings.

Give the client time to think and allow plenty of time for responses; this may result in some awkward silences. Remember that this may be the first time that anyone has asked your client these questions.

H.5 When family violence is suspected but not disclosed

If you suspect your client or their children may have experienced family violence, but they do not disclose it to you, it is important to respect your client’s autonomy. Recognize that there are many reasons why a client may not disclose their experiences to you. See [Tab #1: Reasons Why Your Client Might Not Disclose Experiences of Family Violence](#). Remember to check in with your clients about family violence in subsequent meetings, as they may be ready to disclose once trust and rapport increase. In addition, it is a good practice to ask about risk and safety concerns regardless of whether the client has disclosed family violence. See [HELP Guide Section E](#).

H.6 Responding to a disclosure

It is important to demonstrate that you are open to having your clients show distress, for example through crying. This can be done for example by:

- ▶ sitting quietly and showing your concern by asking them if they would like a glass of water;
- ▶ offering tissues if it seems the client will need them; and/or
- ▶ recognizing that this is an emotional and stressful time, and reassuring them that it is okay to take their time, take a few breaths, or take a break.

If the client was accompanied by a support person, you can offer to step out and have the support person join them from the waiting room. If the client is too distraught to continue, you can speak with them about available supports and suggest rescheduling for another time. Be aware that despite having made a disclosure, your client may still not be ready to share specific details about their experiences.

Respond to the client's trust in you and willingness to talk about these difficult issues with gratitude and non-judgment. While you can denounce the behaviours, avoid vilifying the other party. Thank the client for sharing information with you, validate how they are feeling and assure them they are not at fault.

- ▶ *"I appreciate the courage it took for you to tell me about your experiences."*
- ▶ *"Thank you for sharing this information with me today. This is an important topic to address for your case."*

Do not promise them everything will be OK, but help them to understand that they can take steps to get help including to protect them and their children. For example:

- ▶ *"If it is okay with you, I would like to come back to this the next time we meet. For today, I want to make sure that we discuss your safety and supports that may be helpful."*

“E”: Explore immediate risks and safety concerns

When a client makes contact with a family law legal adviser, this can increase their risk of violence or of escalating violence. As there are many reasons why a client might not initially disclose their family violence experiences to you, it is a good idea to ask about safety regardless of whether they have disclosed anything. Discuss safety implications of potential legal and non-legal actions with the client.

E.1 Be attuned to factors that can indicate increased risk for continued violence or lethal violence

While not all family violence or family homicides can be predicted, some risk factors have been consistently identified in homicide reviews and research. The following indicators can indicate the presence of immediate heightened risk.⁶

Risks for continuing violence	Lethality risk factors
<ul style="list-style-type: none"> ▶ A pattern of past emotional, financial, physical or sexual violence and abuse against family members ▶ Sexual abuse ▶ Financial control with abuse ▶ Emotional and psychological abuse associated with coercion or control ▶ Prior criminal conviction for violence ▶ The degree to which the violence is recent ▶ Abuse and violence toward other family members, former intimate partners, and members of the public ▶ Escalation of frequency or severity of abuse and violence ▶ Patterns of generalized violence against non-family members ▶ Controlling and obsessive forms of emotional or psychological bond (e.g. monitoring, stalking, high levels of possessiveness, jealousy) ▶ Failure to comply with restraining or no-contact orders, support and other court orders, and dropping out of domestic violence intervention programs ▶ Victim fear of the perpetrator ▶ Unstable lifestyle behaviours (e.g. erratic employment, refusal to assume family responsibilities) ▶ Substance use (alcohol or drug) ▶ Separation (particularly for women) 	<ul style="list-style-type: none"> ▶ Access to weapons, particularly to guns ▶ Unemployment ▶ Pending or actual separation (for female victims) ▶ Prior domestic violence, escalating in severity or frequency ▶ Presence of children in the home, particularly children not biologically related to the perpetrator ▶ Death threats ▶ Attempted strangulation (choking) ▶ Suicidal tendencies and attempts to commit suicide ▶ Stalking, monitoring ▶ Forced sexual acts and sexual abuse ▶ Victim fear of being killed ▶ Controlling, obsessive forms of psychological bond (e.g. high levels of possessive jealousy) ▶ Threat(s) with weapons ▶ Violence during pregnancy ▶ Significant perpetrator life changes

Be aware that a victim's risk is compounded when several of the above risk factors are present in their case. Note that strangulation or choking is strongly associated with domestic homicide.

E.2 Ask about risk and safety

While legal advisers are not trained to do actual risk assessmentsⁱⁱ, it is good practice to ask some general questions about your client's risk and safety to know whether it might be appropriate to refer them to services that may help them stay safe.

Below are some sample questions that can be integrated into your discussion with the client, but they should not be asked as a checklist.⁷ Remember to keep the risk factors in mind when asking your client about their safety and risk.

- ▶ Regardless of whether there has been a disclosure:
 - "Do you feel safe to leave my office?"*
 - "Does your ex-partner know you are here?"*
 - "Would you like someone to walk you to your car?"*
- ▶ Questions about the ex-partner's state and potential triggers:
 - "Does your ex-partner use alcohol or drugs in a way that is problematic? If so, have you noticed that the abusive behaviours increase when they are drinking or using drugs?"*
 - "Has your ex-partner threatened self-harm or attempted to commit suicide?"*
 - "Does your ex-partner have access to weapons, particularly guns?"*
- ▶ If violence has been disclosed: *"Has anything about the violence changed lately? Has it become worse? If so, how?"*

E.3 Address immediate danger

If the client responds "yes" to any questions about immediate risk and safety concerns, consider these important follow-up actions:

1. Explore with them whether they have a plan for their safety before they leave your office.

Encourage your client to seek specialized help in assessing their level of danger. They may want to reach out to family violence services, such as a frontline advocate or victim services.

These services have experience in helping victims in crisis and can support your client to address safety concerns. See [**Tab #10: Safety Planning**](#).

ⁱⁱ A risk assessment is a way of evaluating the risk that someone will commit an act of violence; it determines the level and types of risk of violence, including the risk of lethality. It is conducted by professionals, such as psychologists and victim service providers, who have received specialized training.

2. Sometimes, it is appropriate for your client to call child protection and/or the police.

It may be helpful for your client to talk to you, another legal adviser or an advocate to understand the complexities around involvement of police or child protection services. See [Legal Response Guide LR.4.2](#) and [Tab #11: What Clients Need to Know about Contacting the Police](#).

3. You may want to discuss the option of seeking a Protection/Restraining Order.

See the [Legal Response Guide LR.1.3](#).

4. Discuss safe ways to contact your client.

- ▶ When you first ask about communication preferences, a client may not recognize potential risks, for example related to leaving phone messages. It is important to highlight this issue and determine how to safely contact the client:
 - To which address can you send emails safely?
 - At what number can you leave phone messages without the risk that the abuser will hear them?
 - Is there a safe address to which you can send regular mail?
 - What should the protocol be when video or phone calls drop or when the client abruptly hangs up?
- ▶ Ask whether the ex-partner could access the information. Does the client share an email address/telephone number/passwords with the ex-partner? Do they use an email or cell phone password that the ex-partner could easily guess? Do children know how to access the client's email or cell phone?
- ▶ Consider whether it is safe to give the client a business card or other documents to take away from the first appointment. Is there a risk that these documents could be found by the ex-partner? Is there a safe place for the client to store the documents?
- ▶ Abusers may use technology to track a client, such as GPS devices in cars or spyware on phones and computers. See [Tab #10: Safety Planning](#) for a list of technology safety planning resources.

5. Clearly flag files with limits on how you can communicate with your client.

It is a good practice to create a communications form, outlining the client's preferences for safe communication. This form will help office staff avoid accidental communications that the ex-partner can access (e.g. a bill sent via mail, when the client has said no mail should be sent).

E.4 Making referrals

If you suspect family violence or it is disclosed, you should gather some information to determine what types of immediate support your client may need. For example, you may want to ask your client if they or their children have any immediate needs such as a safe place to stay.

Once you have a better sense of your client's situation, you can suggest how they can get the assistance they require. Key services for immediate safety and advocacy may include:

- ▶ emergency shelters/transition houses;
- ▶ victim services;
- ▶ advocacy services, which offer safety planning and legal, housing or financial advice, and can facilitate access to community resources;
- ▶ sexual assault centres;
- ▶ organizations that provide services for men experiencing or perpetrating violence;
- ▶ other family violence services or counselling services; and
- ▶ other community-based services (e.g. Indigenous services, ethno-racial agencies, 2SLGBTQ+ supports).

Be sensitive to the fact that your client's needs may be different depending on their backgrounds (e.g. gender, ethnocultural origins). You may also have to consider other needs for your client, such as costs, transportation, language, accessibility, and access to childcare. It is important to avoid making any assumptions about your clients based on their background; ask your clients for their preference regarding referrals to services. See [Tab #12: Making Referrals](#).

E.5 If your client goes back to their ex-partner

Many victims of family violence try to terminate their relationship with their abuser more than once. Some will return several times.⁸ The reasons for these returns are numerous and will vary (e.g. ex-partner's expressions of remorse, continued emotional attachment to the relationship, economic need, fear of losing the children, fear of retaliation).

Or, your client may not have yet left their abusive relationship.

For these clients, it will be important to refer them to community-based services and other resources that can help with safety planning.

“L”: Learn more about the family violence to help you determine what to recommend to your client

Gathering details about your client's experience of family violence will help you to determine what types of family law processes and remedies would be safe and appropriate. It is likely that in most cases you will need to gather this information over several meetings due to time constraints, a client's level of comfort, and/or their ability to get into details. Remember, you should revisit the issue of family violence throughout the family law case, regardless of whether there was a disclosure in the initial meeting.

When clients have disclosed family violence, you can explain why gathering more detailed information is important. For example:

- ▶ *“You know how we talked about family violence during our last meeting? I have a few more questions to ask you if that is okay. These questions will help me to understand what legal options might be most appropriate for us to consider.”*

Tab #9: Asking about Specific Forms of Family Violence provides examples of questions you might ask for each of these different forms of family violence, including:

- ▶ physical abuse;
- ▶ sexual abuse;
- ▶ threats;
- ▶ psychological (or emotional) abuse;
- ▶ financial abuse (e.g. controlling the client's finances, controlling how they spend money);
- ▶ harassment and stalking;
- ▶ coercive controlling violence;
- ▶ failure to provide the necessities of life;
- ▶ violence directed at children; and
- ▶ children's exposure to violence.

When asking about different forms of family violence, you should gather information about the seriousness, frequency, duration and impacts of family violence; this will affect the advice you give. It is also important to look for patterns of behaviour, particularly coercive controlling behaviour.

After asking about different forms of family violence based on the information your client has provided, it is important to ask the client whether they have been harmed by their ex-partner in any other ways that you have not asked them about. For example:

- ▶ *“We have gone through a lot of questions together. Please tell me about any other ways in which you have been frightened, threatened or hurt by your ex-partner that we haven’t discussed.”*
- ▶ *“Are there any ways in which your children may have been frightened, threatened or hurt by your ex-partner that we haven’t discussed?”*

It may also be important to ask about family violence that is perpetrated by extended family members. For example, you should consider whether:

- ▶ other family members engaged in abuse against your client; or
- ▶ the ex-partner is likely to engage other family members to harass, stalk or otherwise abuse your client, including through the family law case.

In the course of your discussions about family violence, your client may disclose that *they* have engaged in abusive behaviours. See [**Tab #4: Representing a Client Who May Have Engaged in Family Violence**](#).

“P”: Promote safety throughout the family law case

Family violence can be unpredictable and risks may continue, increase or change throughout the family law case. It is important to check in with clients about their immediate risk and safety concerns, and continue to watch for signs of violence. For example, if you do not hear from a client who normally responds rapidly to your emails, you may want to check in with them. It is also important to plan for times of increased risk.

P.1 Check in with clients about safety and family violence

As previously noted, it is a good practice to check in with your clients over the course of the case about safety concerns and the potential escalation of any violence. They may be experiencing new or more serious forms of family violence, or they may be ready to talk about things that happened in the past.

Checking in with your clients does not need to be a long process. By asking a few questions, you may be able to uncover information from your client that is relevant. For example:

- ▶ *“How are you doing? How are your children?”*
- ▶ *“Have you had any contact with your ex-partner since we last spoke? How did that go?”*
- ▶ *“Do you have any concerns about your safety or the safety of your children?”*

P.2 Risks relating to the family law process

Separation is a time of heightened risk for family violence, including potentially lethal violence. In addition, involvement with legal advisers and the family law process itself can increase risk. For example:

- ▶ Contacting or serving an abusive ex-partner with court documents may increase the risk of family violence; they may see such activity as a challenge to their power and control.
- ▶ It is not uncommon for an abusive ex-partner to escalate harassment of their ex-partner in the days leading up to a court appearance or a mediation session to pressure them to concede.
- ▶ The victim and abuser may come into direct contact with one another through the family law case, for example at the courthouse or in mediation waiting areas.
- ▶ Outcomes in court, mediation or negotiations that are contrary to an abuser’s wishes or objectives may also increase the risk of retaliation or punishment. This can come in the form of increased aggression, intimidation or violence.

You can work with your client to understand and reduce risks in relation to the family law process. In addition, you may want to encourage them to reach out to community supports to develop a safety plan. See [**Tab #10: Safety Planning**](#).

P.3 Safety planning for you and your office staff

When thinking about immediate risk and safety concerns for your client, also consider the same for yourself and others in your office.

The following considerations can help you evaluate your risk and the risk to your staff:⁹

- ▶ Does the other party know that your client has a legal adviser or has started a legal proceeding?
- ▶ Does the other party have legal representation? If so, ask the other party to communicate with you and your staff only through their legal adviser. If they are self-represented, ask them to communicate in writing only.

Do you have a safety plan in place for you and your staff that addresses safety at the office, at home and at other locations, such as the courthouse?

Additional good practices include:

- ▶ Encouraging your office staff to take some family violence training so they understand the clients you may be dealing with and the importance of safety;
- ▶ Not revealing your personal information or that of your staff, where possible; and
- ▶ Increasing your privacy settings and/or using a different name for your personal social media accounts.

P.4 Taking care of yourself

When a legal adviser works with clients who have experienced trauma as a result of family violence, the trauma can have an impact on the legal adviser too.

The impact of exposure to this trauma is cumulative and can manifest in different ways. Some negative coping strategies that you should be aware of include:

- ▶ cynicism;
- ▶ anxiety;
- ▶ a sense of hopelessness; or
- ▶ unhealthy substance use.¹⁰

Be aware of how your cases involving family violence may affect you. It may be helpful to:

- ▶ have a safe place or an activity (e.g. exercise) to decompress;
- ▶ discuss things with a trusted colleague or someone outside of the workplace while still respecting your clients' confidentiality; or

- ▶ seek professional assistance.

Below are a few online resources that you may find helpful.

Canadian Bar Association:

- ▶ Compassion fatigue in the legal profession? (n.d.): <https://www.cba.org/Publications-Resources/CBA-Practice-Link/Work-Life-Balance/Health-Wellness/Compassion-Fatigue-in-the-Legal-Profession>
- ▶ Things you didn't learn in law school: Dealing with vicarious trauma and other issues (2019): <https://www.cba.org/News-Media/News/2019/March/trauma-and-other-issues>

Canadian Lawyer Magazine:

- ▶ How compassion fatigue affects lawyers and what they can do about it (2021): <https://www.canadianlawyermag.com/news/features/how-compassion-fatigue-affects-lawyers-and-what-they-can-do-about-it/354883>
- ▶ Vicarious trauma: the cumulative effects of caring (2015): <https://www.canadianlawyermag.com/news/general/vicarious-trauma-the-cumulative-effects-of-caring/269679>

For information about the wellness resources available to you, please contact your law society or bar association.



LEGAL RESPONSE GUIDE





Legal Response Guide

Family violence can affect all aspects of a client's family law case. In some situations, you may also want to make your client aware of legal options outside of family law. This section reviews some of the main options¹¹ that you can explore with your client, as well as additional factors for you and your client to consider. When discussing options, be sure to provide realistic expectations to your client, as you may not be successful in attaining the measures sought to increase their safety and well-being.

Tip: Do not take any action in response to your client's disclosures about being a victim of family violence without their express consent unless you have a legal, professional or ethical obligation to do so. If you have such an obligation, before taking any action make every effort to explain to your client why you are doing so and the result you hope to achieve.

Remember: even though a client may make a disclosure of family violence, this does not necessarily mean that they want to raise the issue in court and related documents.

Remember that this toolkit focuses on representing victims of family violence. Therefore, detailed guidance on representing an alleged abuser is beyond its scope. However, the following document contains some information that may be helpful to you: [Tab #4: Representing a Client Who May Have Engaged in Family Violence](#) and [Tab #13: When Your Family Law Client Is Accused of Family Violence and There Are Concurrent Criminal Proceedings](#).

LR.1 Dealing with family violence in the family law case

When considering legal responses, it is important to be mindful of how family violence may be impacting your client's ability to participate in discussions and proceedings and to give instructions. For example, your client may be suffering from trauma or fearful of the ex-partner. They may also be anxious to settle things as quickly as possible even if that means agreeing to outcomes that are not in their interests or in the best interests of their children.

LR.1.1 Interim arrangements

When your client discloses that they have been a victim of family violence, you may need to discuss interim arrangements. Talk with your client about where they will live, how they will cover expenses, how they will manage childcare, etc. This information may have an impact on the need to apply for interim orders for child support or a protection or restraining order. For example:

- ▶ Do they wish to stay in the family home or will they live elsewhere, for example with family, friends, an emergency shelter or a transition home, on a temporary basis?
- ▶ Is communication with the ex-partner safe for the client and children?

LR.1.2 Parenting arrangements

The *Divorce Act* states that in determining parenting arrangements for children, judges must take into account the impact of any family violence and give primary consideration to the child's physical, emotional and psychological safety, security and well-being. Similar provisions can be found in many provincial and territorial statutes.

Both IPV and children's exposure to IPV are highly relevant to parenting arrangements. For example:

- ▶ Research indicates that people who engage in IPV are significantly more likely to abuse their children.
- ▶ IPV often continues after separation. Physical abuse, psychological abuse, stalking and harassment continue at significant rates after separation, and may increase in both frequency and severity.
- ▶ In extreme cases, violence following separation is lethal, including for children. Separation increases the risk of intimate partner homicide as well as that of retaliating filicide (killing of a child by a parent to cause harm and suffering to the other parent) and familicide (killing multiple members of the family).
- ▶ Promoting contact between children and an abusive parent may create opportunities for ongoing or new IPV through arrangements for decision-making, parenting time and transfers of children.

- ▶ An ex-partner may pursue parenting responsibilities as a means of maintaining power over a former partner. Similarly, they may use family dispute resolution (FDR)ⁱⁱⁱ or litigation as a form of ongoing control, harassment or punishment.

Many persons who have engaged in IPV parent their children differently than other parents.¹² For instance, patterns of behaviour that are typically associated with IPV, such as manipulation, coercion, control, domination, surveillance, and excessive physical punishment can often be reflected in parenting practices. These parenting practices can first appear following separation or become more apparent because the protective parent is not around, and can cause the children harm.¹³

On the other hand, not every parent who has engaged in IPV will adopt negative parenting behaviours. Despite the IPV, the abusive parent may be an important person to the children and may offer them a beneficial relationship. Some abusive parents will choose to no longer engage in IPV and will try to reduce conflict with the other parent to focus on the children's needs and well-being.

The impacts of family violence on the best interests of a child must be carefully considered for both short- and long-term parenting arrangements. Parenting arrangements need to take into account the effects on the child of past and current family violence as well as the risk to all family members of future harm. This does not necessarily mean that children cannot have a relationship with an abusive parent; it does mean that the arrangement should minimize ongoing risk of harm to both the children and other family members.

Parenting arrangements requiring significant cooperation between the parents may not be safe where family violence is involved. This is especially true in cases of coercive controlling violence. For the safety and well-being of both the child and the victim, it may be appropriate for the non-abusive parent to have primary responsibility for caring and making decisions for the child, to minimize the negative impact of the abuser's control of the client and the child. In very serious cases of family violence, it may not be in the best interests of the child to spend any time with or have any contact with the abuser.

It is important to let your client know, however, that even when there is a history of abuse or violence, the courts may determine for various reasons that making an order for children to spend time with both parents is in the best interests of the child. This may be because the court finds that there is insufficient evidence of the abuse. This may also be the case when the abusive parent is actively involved in the child's life. Discuss potential options that could help to enhance safety. This can include transfers or parenting time in a public location, pick-ups at a day care centre or school rather than at home, or the supervision of parenting time.

ⁱⁱⁱ The term "family dispute resolution" is used in the *Divorce Act* to describe out-of-court processes used by parties to attempt to resolve matters in a family law dispute, including negotiation, mediation and collaborative law.

Children's Views

The best interests of the child test in Section 16(3)(e) of the *Divorce Act* provides that courts must consider children's views and preferences, giving due weight to their age and maturity, unless those views cannot be ascertained. Similarly, provincial and territorial family law statutes in most jurisdictions provide that the views of children must be considered as a factor in determining what is in the best interests of the child.

Parents often do not realize the extent to which their children are exposed to family violence. Therefore, to accurately assess the extent and impact of the family violence, it may be important to obtain information from the children themselves. There are different ways to do this, such as directly with the assistance of counsel who represents the child, a voice of the child report, or a parenting assessment.

In cases involving family violence, if an assessment is ordered, it is important that the professional preparing the assessment have expertise and training in family violence, trauma and risk assessment. They must be able to provide details about the impact of exposure to family violence on the children and connect those impacts to the best interests of the child. Legal advisers who represent children also need specialized knowledge and skills to safely and effectively talk to them about family violence. For more information on working with a child client who has experienced or is at risk of experiencing family violence, see [Tab #14: Talking to a Child Client about Family Violence](#).

Additional considerations for parenting arrangements:¹⁴

- ▶ Clear and detailed parenting arrangements are important. Provisions that lack clarity can provide opportunities for further abuse, particularly by those trying to maintain control over an ex-partner; they can cause confusion and conflict and could result in additional family violence.
- ▶ You may want to consider requesting additional clauses to increase children's safety, such as a non-removal clause (i.e., prohibiting the child's removal from a specific geographic area) and clauses that address issues such as access to information about the child and who will hold important documents, like the child's passport. These additional clauses may be particularly important in cases where there is a flight risk and the ex-partner and children have dual citizenship or nationality.
- ▶ It is important that your client understand that if a parent denies parenting time or appears to be interfering with the child's relationship with another parent, the court will take this very seriously. If the client believes the child is being harmed or is at risk of being harmed during time with the other parent, consider seeking an original or variation order. Avoid encouraging denial of parenting time unless the child is clearly in danger (in which case, the client may want to alert child protection authorities or police, or apply for an emergency protection order).

- ▶ Your client should be aware that abusive ex-partners sometimes claim that they are being unjustly “alienated” from their child. This claim can be used to attempt to deflect allegations of violence and explain why their children feel unsafe around them, or to harass or control their ex-partner. See [Tab #15: Rejection of a Parent by a Child](#).

For more information about parenting arrangements in cases of family violence, you may wish to consult the Department of Justice Canada’s online course on 1) family violence and family law: <http://www.justice.gc.ca/eng/fl-df/cfl-mdf/trai-form/index.html> and 2) parenting under the *Divorce Act*: <http://www.justice.gc.ca/eng/fl-df/cfl-mdf/trai-form/index.html>.

LR.1.3 Protection/restraining orders

Depending on your province or territory, civil protection/restraining orders can be sought under family law or family violence legislation. The remedies available under these orders generally include:

- ▶ emergency protection orders granting the victim temporary exclusive occupation of the home;
- ▶ no-contact/no-communication orders;
- ▶ temporary possession of personal property (including family vehicles or credit cards);
- ▶ temporary care of the children;
- ▶ interim support orders; and
- ▶ specific prohibitions against selling, converting, or damaging property.

Protection orders are also available under the federal *Family Homes on Reserves and Matrimonial Interests or Rights Act*. An Emergency Protection Order allows a designated judge^{iv} to order that a spouse or common-law ex-partner be excluded from the family home on reserve on an urgent basis for up to 90 days in situations of family violence.^v

Your client does not have to have experienced physical violence nor do they have to wait until the violence or the abuse has escalated before applying for a protection/restraining order. However, different statutes have different legal tests, so it is important to familiarize yourself with situations in which a protection order can be made. There are also different rules about whether someone else (e.g. police, victim services) can apply on a victim’s behalf.

^{iv} As of October 2020, Nova Scotia, New Brunswick and Prince Edward Island have authorized persons to act as “designated judges” for the purposes of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

^v This period may be extended under s 17 of the Act.

Some factors to consider with protection/restraining order:

- ▶ Can an application be made *ex parte*? For many victims, a without notice application or short-leave application is necessary to keep them safe. However, ensure your client is aware that even when these applications are made *ex parte*, the other party will receive their materials and have an opportunity to respond.
- ▶ If your client is currently living in a safe place, such as a shelter, it may be necessary to provide evidence about why there is still a need for a protection order. For example, you may outline that the shelter will only allow the client to stay for a brief period and that the client will have to leave the shelter to shop, take their children to school, attend appointments, etc.
- ▶ While protection/restraining orders are civil matters, a breach can result in charges for a provincial/territorial or criminal offence, depending on the jurisdiction. Penalties can include both fines and imprisonment. As a result, a protection order generally requires strong evidence to support a claim.
- ▶ Have a discussion with your client about related issues, such as the potential for retaliation, the other party's likelihood of complying with the provisions, and how an order would be enforced.

LR.1.4 Exclusive possession of the family home

Many clients you work with will already have left the family home. You may nonetheless wish to explore with your client whether they wish to seek an interim order for exclusive possession of the family home. It may also be possible to obtain an order for exclusive possession of certain property such as the family vehicle.

An order for exclusive possession does not, on its own, provide the same protections as a protection order/restraining order. For example, an interim order for exclusive possession is unlikely to increase your client's safety if they have concerns about the ex-partner knowing where they live, or harassing (including stalking) them near the family home. There are also financial commitments associated with remaining in the home, which can be an important consideration for your client.

Matrimonial real property on reserves has special considerations.¹⁵

The federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* sets out provisional rules for the division of family property held on First Nations reserves, which apply until a First Nation enacts its own legislation. The Act applies to married or common-law couples living on-reserve, where at least one partner is a First Nation member or Status Indian. Rights and interests vary depending on whether the spouses are First Nations members, and the extent to which the spouses provide care to First Nations members, including children and Elders.

LR.1.5 Child support and spousal support

Being economically secure is key to safety for victims and their children; a lack of financial independence is one reason that a victim may stay with or return to an abuser. Victims of violence, however, may be reluctant to pursue support to which they are entitled.

You will want to help your client understand that children have a right to have financial support from their parents, and you may want to explore whether spousal support would likely be awarded in their case. You may also want to encourage them to find out about government benefits that may be available to them.

LR.1.6 Preservation orders

Preservation orders can provide protection to your client if they are concerned that the abuser will dispose of family property upon separation. Interim orders may be requested to prevent the distribution of property by the other party. This may be a particularly important remedy if the ex-partner has already engaged in financial abuse.

LR.1.7 Other orders

Depending on your province or territory, there may be other types of orders available. For example, conduct orders are available in some jurisdictions and can be used to restrict communication from one or more parties, require parties to attend counselling, prevent the misuse of court processes and require a party to pay for debts or services for the family home.

LR.2 Other considerations for the family law file

As with all family law cases, in cases involving family violence you will need to determine whether your client wants to resolve matters through family dispute resolution (FDR) or through litigation. As you discuss available options with your client, it will be important to help them assess the potential safety risks of both processes and potential outcomes.

LR.2.1 Family dispute resolution

The family justice system strongly encourages out of court FDR processes, such as mediation, collaborative law and negotiation, to promote settlement. This is reflected in the *Divorce Act* as well as provincial/territorial legislation.

While every situation involving family violence needs to be assessed individually, FDR may not be appropriate when there are vulnerabilities that would prevent genuine, respectful and voluntary negotiations. Abusive ex-partners may use FDR as an opportunity to threaten or control their ex-partners. Intimidation and control tactics may make the client feel pressure to settle the case quickly without consideration for long-term implications. Participants need to feel physically and emotionally safe for the process to be fair and effective.

On the other hand, FDR may have benefits in cases involving family violence:¹⁶

- ▶ Some FDR professionals are well trained in family violence and have expertise in addressing power imbalances through the FDR process and promoting safety.
- ▶ FDR can be structured in a way that prevents direct contact between the parties, for example through the use of shuttle mediation in which the parties are in separate rooms and the mediator travels back and forth between them.
- ▶ FDR can be faster, which can be good for all involved, especially the children, where there is family violence.
- ▶ In certain situations, an FDR process can help the victim feel more empowered than in a court process. If the victim feels comfortable and safe, it can be a positive experience.
- ▶ Some victims report that their ex-partners follow a mediated resolution because they feel as though they played a role in creating it, whereas some abusers' refusal to follow court orders may be, in part, because they don't want to do what someone else tells them.

In determining whether a particular FDR process is appropriate in your client's case, you should consider some practical matters. For example:

- ▶ Does your client feel able to express themselves freely and fully, and to assert their views? Are they fearful of or intimidated by the other party? Are they trying to get through the process faster to be free from the other party's control?
- ▶ Does the FDR professional have the training and skills necessary to facilitate a settlement in a case involving family violence?

- ▶ Will it be possible to make arrangements such as having parties in separate rooms or conducting FDR remotely, by either phone or video?
- ▶ Will the victim be able to bring a support person or family violence advocate with them if they want to?

For more information about family dispute resolution in cases of family violence, you may wish to consult the Department of Justice Canada's online course on Family Violence and Family Law for Legal Advisers and the online course on Family Dispute Resolution and Duties for Parties and Legal Advisers under the New *Divorce Act*: <http://www.justice.gc.ca/eng/fl-df/cfl-mdf/trai-form/index.html>.

LR.2.2 Litigation abuse

Some abusers, particularly those who engage in coercive controlling violence, may use the family law process – whether that is the court process or FDR – as a way to control and harass their ex-partner. This is sometimes referred to as legal bullying or litigation abuse and can consist of a wide range of behaviours.

Examples of legal bullying include:

- ▶ abusers representing themselves even if they could have had a legal adviser represent them, so they can exert control over the victim;
- ▶ consulting with all the family law legal advisers in the community so the victim cannot find a legal adviser who is not in a conflict;
- ▶ engaging in stalling tactics, such as cancelling required appointments or requesting repeated postponements of court dates;
- ▶ refusing to complete court documents;
- ▶ refusing to provide complete or timely financial disclosure;
- ▶ repeatedly and unnecessarily changing legal advisers;
- ▶ initiating repeated and frivolous motions;
- ▶ providing false information in court documents;
- ▶ harassing the ex-partner at court and in the days leading up to court appearances;
- ▶ filing unmeritorious complaints about the professionals involved in the case;
- ▶ refusing to follow court orders; and
- ▶ offering to “make a deal” that they won’t fight for shared parenting time if the victim won’t testify against them in criminal court.

For more examples of litigation abuse tactics, you may wish to consult Chapter 7.4 in the CanLII e-book by Linda C. Neilson, entitled *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (Ottawa: Canadian Legal Information Institute CanLII, 2020, 2nd edition), online: CanLII <<https://canlii.ca/t/ng>>.

There are ways to curtail legal bullying, such as putting the other party on notice to try to prevent them from engaging in abusive litigation tactics. However, your client may need additional support to be able to continue with the family law case. You can assist by connecting the client to appropriate supports in the community and encouraging them to keep copies of relevant documents, emails and other records that demonstrate what the abuser is doing so those can become part of the evidence of abuse in the case.

LR.2.3 If an abuser is self-represented

Some abusers decide to represent themselves to exert control over the victim, for example, by directly cross-examining the victim in court.

It is important, at the earliest possible opportunity, to develop a plan for how to handle the self-represented individual. For example, you may want to consider:

- ▶ communicating in writing to reduce their ability to make false claims about what has been said;
- ▶ setting limits on how often or quickly you will respond to letters or email to discourage inappropriate contact, avoid running up the client's bill, and prevent the individual from calling your office or coming there in person;
- ▶ developing a plan to ensure the safety of your office staff, including being prepared to call the police if the individual engages in threatening or aggressive behaviour, either in person or over the telephone;
- ▶ involving court security so that both you and your client are safe during and while waiting for court appearances; and
- ▶ documenting all interactions with the self-represented individual in your client's file.

LR.2.4 Evidence in the family law process

Ensuring the court has clear, detailed evidence of family violence is critical to achieving appropriate outcomes. This may be particularly true for non-physical forms of family violence, such as psychological and financial abuse, which may not be as easily understood or recognized as family violence.

Telling the story chronologically makes it easier for the court to understand patterns and escalation. The evidence should focus on the impact of the abuse on your client as well as on the children. The court should be made aware of a child's exposure to the violence, particularly if parenting arrangements are at issue. For example, stating whether the child was in the home when the violence occurred, was aware of their parent's fear, or saw the police or paramedics come to the home, can provide important linkages for the court.

Remember that it can be challenging for victims of family violence to recall the details and chronology of traumatic events. See [Tab #2: The Impacts of Trauma and Trauma- and Violence-Informed Practice](#).

Sources of evidence:

- ▶ A victim may have a recording of abusive incidents or photos of injuries.
- ▶ If the victim has spoken about the family violence with their family doctor or another health professional, a religious leader, an Indigenous healer or Elder, a child protection worker or someone in a community organization, that person may have made notes about the disclosure or be able to provide an oral account.
- ▶ If a victim has been seen at a clinical setting such as a hospital, there may be medical records that support your client's story.
- ▶ Even if the abuser has not been charged, there may be police records of 911 calls or visits to the family home. There may also be reports to child protection authorities.
- ▶ Relatives, friends and co-workers may have observed physical injuries or changes in behaviour, such as self-isolation and withdrawal.
- ▶ Neighbours may have overheard fighting, or children may have fled to the home of a neighbour during an assault.
- ▶ Teachers or daycare workers may have relevant information to share.
- ▶ Previous or subsequent partners of the abuser may be willing to talk about any abuse they have experienced.
- ▶ Text messages, emails and social media posts may all contain usable evidence of abuse.

For more sources of evidence, you may wish to consult Chapter 4.3.5 in Linda C. Neilson's CanLII e-book, entitled *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (Ottawa: Canadian Legal Information Institute, CanLII, 2020, 2nd edition), online: CanLII <<https://canlii.ca/t/ng>>.

LR.3 Criminal law responses to family violence

If you think the violence that your client has experienced may constitute a criminal offence, you can advise them of the process for reporting it to the police and the potential for criminal charges to be laid. There will likely be a number of issues your client will need to consider. For example:

- ▶ Has your client called the police in the past about their violent ex-partner? What was the response?
- ▶ Do they feel the police will increase their safety? Note that for many people, the police may be seen as a threat and not a safety provider, based on their own personal experiences or that of their community, particularly racialized and Indigenous communities. Be aware of your client's lived experiences.
- ▶ Does your client have any concerns about the repercussions on their ex-partner? For example, a victim may be reluctant to make a police report for fear that their abuser could lose their job, which may lead to them being unable to pay child support.
- ▶ Can you help your client connect with victim services in your community? Are there websites or other resources that can help them?
- ▶ Is your client at risk of facing consequences themselves, including potential child protection or immigration status repercussions or criminal charges, if they reach out to the police? In particular, recognize the history of Indigenous people's experience with the child protection system, and be sensitive to your Indigenous clients' concerns about the possible removal of their children from their community.

See [Tab #11: What Clients Need to Know about Contacting the Police](#).

LR.4 Concurrent court proceedings

When you are dealing with a case that involves family violence, it is important that you are informed about any other legal proceedings in which the family is involved. This will help minimize confusion and avoid conflicting orders.¹⁷

Under the *Divorce Act*, in any proceeding where there is a request for a parenting order, or a child or spousal support order, courts are required to consider whether there are any current or pending civil protection, child protection or criminal proceedings or orders relating to the parties. There are similar requirements under provincial legislation in some jurisdictions.

LR.4.1 Concurrent criminal law proceedings

In general, a criminal law proceeding is separate from the family law proceeding, although some jurisdictions have processes in place to coordinate these processes.^{vi} If your family law client is involved in criminal proceedings, you will want to be aware of the timing and steps in the criminal proceeding and any orders made.

See [Tab #13: When Your Family Law Client Is Accused of Family Violence and There Are Concurrent Criminal Proceedings](#) and [Tab #16: When Your Family Law Client Is the Victim of Family Violence and There Are Concurrent Criminal Proceedings](#).

LR.4.2 Concurrent child protection proceedings

Where there are concerns about family violence, a child protection agency (CPA) may become involved with the family to prevent harm to a child. The legal basis for CPA involvement is that a child is in “need of protection” as defined in the applicable legislation. While definitions vary, all child protection statutes in Canada include emotional or psychological harm or abuse as a basis for CPA involvement, and a number of statutes explicitly include exposure to IPV.¹⁸

Approaches to responding to child protection concerns vary across Canada based on legislation, implementation practices, and resources. The most common CPA response is the voluntary provision of supportive services because the child’s caregiver(s) is often willing to work with a CPA worker to address the protection concerns.¹⁹ However, a CPA may commence a child protection proceeding when it believes that a child is in need of protection, and their caregiver(s) fail or refuse to take steps to address the protection concerns. Orders arising from a child protection proceeding may include removal of the child from their caregiver(s) and placement with another caregiver or into foster care, conditions on contact with the child, and conditions or recommendations for the caregiver(s), such as a recommendation for therapy, parent education, or other services to address the protection concerns. Under most child protection legislation, if the protection concerns are not addressed within a set time period, the child may be placed in permanent care or wardship.

^{vi} For example, there is an Integrated Domestic Violence Court in the Ontario Court of Justice in Toronto, Ontario. In certain cases of IPV, the same judge can hear both the related family and criminal cases.

A CPA may be reluctant to intervene in cases where there is an ongoing family law dispute involving parenting arrangements, particularly when the parties are before the court. However, in some jurisdictions, if CPA court proceedings are commenced, family law proceedings relating to parenting arrangements for the child are suspended until the completion of the child protection proceeding. You will need to be aware of any agreement or order reached in the child protection case in order to ensure that it is taken into account in the family law case.

It can be helpful to familiarize yourself with the child protection agencies that operate in your area and the role they play in cases involving family violence. You may also want to reach out to legal advisers who do child protection work to seek their advice on navigating these situations.



SUPPLEMENTAL MATERIALS



Supplemental Material

Tab #1: Reasons Why Your Client Might Not Disclose Experiences of Family Violence

There are many reasons why a client may not disclose family violence on their own or may not want to talk about it. For example, they may:²⁰

- ▶ not recognize that what is happening to them is abuse;
- ▶ not realize that family violence has any relevance for the family law case;
- ▶ be afraid of what their ex-partner will do to them or their children if the violence is disclosed;
- ▶ be afraid that their children will be taken away from them;
- ▶ feel shame or be embarrassed about their experiences (particularly male clients);
- ▶ not know or recognize the danger they are in, as they have developed coping mechanisms or they perceive the violence to be “normal”;
- ▶ be struggling to process their own culpability if they fought back;
- ▶ be intimidated by meeting with a legal adviser, leading them to feel reluctant to open up or to think that their legal adviser will not want to hear about it;
- ▶ be uncomfortable disclosing their experiences to a legal adviser of another gender;
- ▶ have a mistrust of people in the justice system, including legal advisers, based on previous interactions that have been negative, judgmental or racist;
- ▶ fear not being believed: victims of IPV often face doubt, disbelief and dismissal of their stories, including when they turn to the justice system for protection;
- ▶ be dependent on their ex-partner (e.g. financially, emotionally or physically, especially if their ex-partner acts as their caregiver);
- ▶ fear having their autonomy taken away from them (e.g. forced into a care facility, removal of their decision-making ability);
- ▶ fear being ostracized or isolated or losing support from their family or their community;
- ▶ fear being deported;
- ▶ be concerned that a disclosure may result in them having to leave their community because, for example, their community does not offer emergency resources;

- ▶ have limited knowledge about Canadian laws, the justice system, the legal process and their rights;
- ▶ be unable to communicate in a way that is understood (e.g. language barriers);
- ▶ be triggered by discussions of the abuse or experience flashbacks as they try to tell you about what has happened;
- ▶ be living with the impact of trauma or brain injury, which can significantly affect cognitive functioning (brain and nervous system); and/or
- ▶ want to avoid distressing thoughts about traumatic events.

Legal advisers can help support disclosure by routinely asking their clients about family violence in an accessible and culturally safe way, using a trauma- and violence-informed approach to asking questions, being respectful and showing concern, and helping clients connect with services and supports. See the [HELP Guide](#).

Supplemental Material

Tab #2: The Impacts of Trauma and Trauma- and Violence-Informed Practice

Trauma is the result of an individual's experience of an overwhelmingly negative event or series of events, such as violence. Understanding the impacts of trauma can help legal advisers interview clients effectively and get needed information, while minimizing the potential for additional harm to the client. It can also help in exploring the legal remedies appropriate in the client's circumstances.²¹

Individuals who do not understand the complex impacts of violence and trauma may unintentionally "trigger" clients, and re-traumatize them. Triggers can be anything a victim associates with a traumatic experience; for example, a seemingly innocuous touch on an arm can trigger a sense of threat. Re-traumatization can happen when a victim has to talk about their traumatic experience. It can also happen when people experience discrimination, marginalization or stigma when seeking help.

1. Impact of trauma and violence on clients

Trauma is both the experience of and a response to an overwhelming negative event or experience. A victim of IPV may have a history of individual trauma or collective trauma that affects a whole group of people, such as trauma experienced by Indigenous peoples due to colonization and residential schools. This history of trauma may be compounded by the abuse from their ex-partner.

Trauma can have various impact on victims, such as:²²

- ▶ anxiety or depression, including phobias and panic disorders;
- ▶ disengagement, including in their relationships with others;
- ▶ difficulty regulating emotions;
- ▶ having a distorted perception of their abuser (e.g. seeking revenge, giving power to them);
- ▶ chronic health issues;
- ▶ feelings of helplessness, guilt or shame;

- ▶ eating and sleeping disorders;
- ▶ problematic substance use;
- ▶ self-harming behaviours, suicidal ideation;
- ▶ Post-Traumatic Stress Disorder (PTSD); and/or
- ▶ increased levels of fear and higher daily stress levels.

Victims who live with an abusive partner may also experience frequent unreported and untreated physical violence involving the head, which can lead to traumatic brain injury.^{vii,23} According to a U.S. study in 2018, 50% of women with lived experience of IPV reported probable traumatic brain injury.²⁴ This type of trauma can lead to long-term negative outcomes on victims of IPV, including memory problems, physical symptoms, mood changes, sleep difficulties and difficulties learning new information.²⁵

People react differently to trauma, depending on the nature, severity, frequency and duration of the abuse, their individual characteristics, and their access to support and resources. There is no “right” way for someone to act after experiencing trauma.

2. Client trauma can affect the family law process

Clients who have experienced family violence may not react or interact in ways you might expect.

When representing clients who have experienced IPV, you should watch for symptoms of trauma-related behaviour and indicators of family violence.

Be aware that trauma can significantly affect cognitive functioning and physiology in many ways. This harm can make it difficult for them to:

- ▶ concentrate on what you are saying;
- ▶ take in advice;
- ▶ provide meaningful instructions;
- ▶ process and retain the information you are providing;
- ▶ be organized and keep track of court dates;
- ▶ recall specific details about their experiences or in a coherent chronological order;
- ▶ provide the information you require to proceed with the case;
- ▶ make decisions; and
- ▶ have realistic expectations about possible outcomes, which can result in a lack of satisfaction in what you or the legal system can offer them or their children.²⁶

^{vii} Traumatic brain injury is an injury that affects the brain’s ability to function normally. This disruption can impact a person’s physical, cognitive and/or emotional well-being, and can lead to long-term disability.

Some victims may remain hyper-vigilant when there is no immediate or clear risk, while others may under-estimate the risk because they have shut down emotionally. The victim may appear unsympathetic, hostile, disengaged or untrustworthy.²⁷ Some manifestations of trauma may have a negative impact on how others respond to the victim.

Your client's experiences of IPV can affect other aspects of your professional relationship with them. For example, clients may:

- ▶ repeatedly cancel visits with you;
- ▶ fail to respond to phone calls or letters;
- ▶ over-consult on issues including small life decisions;
- ▶ be uninterested in pursuing a valid claim for support or other money owing to them, such as an equalization payment;
- ▶ be willing to agree to settlements without any negotiation;
- ▶ not follow through on an agreed-upon plan of action without explanation; and/or
- ▶ act in other ways that could be perceived as difficult.

If the client does not wish to act on your advice, or seeks to do something that is not in their interests, document your advice but respect their decision. Set the ground rules from the beginning: let them know that you will take direction from them after you have fully discussed the options and that you will put the decisions in writing to avoid any misunderstandings about the steps that the client wants you to take on their behalf.

You may also want to refer the client to a family violence expert or advocate for risk and danger assessment, and assessment for the presence of manipulation or intimidation. Alternatively, you can inform them that you support their ability to make choices that make sense for them, but if they decide to proceed in ways contrary to your advice/their legal interests, you may ask them to sign something confirming they are acting against legal advice. If this occurs, you may wish to consult your rules of professional responsibility or consult with colleagues on how to respond.

3. Trauma- and violence-informed practice²⁸

Trauma- and violence-informed approaches are policies and practices that recognize the connections between violence, trauma, negative health impacts and a person's behaviour. The aim of trauma- and violence-informed practice is to provide emotional, physical and cultural safety for all clients, whether or not they are known to have a history of trauma.

The following four principles can help you integrate a trauma- and violence-informed approach into your practice:

1. Understand trauma and violence, and their impacts on people's lives and behaviours;
2. Create emotionally and physically safe environments;
3. Foster opportunities for choice, collaboration, and connection; and
4. Provide a strengths-based and capacity-building approach to support client coping and resilience.

Strategies that reflect the above principles have been incorporated into this toolkit.

The following resources relating to trauma- and violence-informed practice may be helpful to you:

- ▶ The Trauma Informed Lawyer Podcast: <https://www.cba.org/Truth-and-Reconciliation/Events/The-Trauma-Informed-Lawyer>
- ▶ Trauma-Informed Approaches to Family Violence in Family Law: <https://www.fvfl-vfdf.ca/briefs/issue7.html>
- ▶ Trauma-Informed Legal Practice Toolkit - Golden Eagle Rising Society: <https://www.goldeneaglerising.org/initiatives-and-actions/trauma-informed-toolkit-for-legal-professionals/>
- ▶ Trauma-Informed Lawyering: A Tip Sheet for Family Lawyers: <https://onefamilylaw.ca/wp-content/uploads/2019/03/TILTIPSheet-Final.pdf>
- ▶ Trauma- (and Violence-) Informed Approaches to Supporting Victims of Violence: Policy and Practice Considerations: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd9-rr9/p2.html>
- ▶ The Public Health Agency of Canada: <https://www.canada.ca/en/public-health/services/publications/health-risks-safety/trauma-violence-informed-approaches-policy-practice.html>
- ▶ Trauma-informed: The Trauma Toolkit - Klinik Community Health Centre: http://trauma-informed.ca/wp-content/uploads/2013/10/Trauma-informed_Toolkit.pdf
- ▶ National Center on Domestic Violence, Trauma and Mental Health: <http://www.nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/>

Supplemental Material

Tab #3: Types of Intimate Partner Violence

This document describes some of the different types of intimate partner violence (IPV) that you may see in your family law practice.²⁹ When reviewing this document, it is important to bear in mind the *Divorce Act*'s broad definition of family violence. See [Overview – What is family violence?](#)

In addition, for a non-exhaustive list of specific behaviour/conduct that may constitute IPV, see [Tab #9: Asking about Specific Forms of Family Violence.](#)

There are many manifestations of IPV, ranging from isolated incidents to long-standing abuse. In some relationships, the violence may be occasional at the beginning, but become more frequent and severe over time. In other relationships, the first act of violence may be lethal and come with no warning.

In social science research, the concept of IPV is often described by various typologies or categories, which can be helpful in understanding the ways IPV can manifest in different relationships. Familiarity with different typologies can help in:

- ▶ understanding what IPV might look like;
- ▶ assessing the harm caused by the violence and future risk of harm;
- ▶ determining appropriate legal responses; and
- ▶ identifying the services and resources required to protect family members.

However, while these categories can be helpful, IPV is complex and dynamic. Real-life situations rarely fall exclusively into one category. In addition, there is not one set of universally-accepted typologies or categories.

Legal professionals should not rely on these typologies to assess risk, but should focus on a client's individual circumstances. In particular, it is important to look for patterns of behaviour and cumulative effects, rather than looking at isolated incidents.

1. Coercive controlling violence

Coercive controlling violence is a pattern of abusive behaviour people use to control or dominate another family member. It often includes the use of multiple forms of abuse (e.g. physical, sexual, psychological, social, financial) that cause the victim to live in fear of their partner or ex-partner; it gives the abuser power and control over them. Coercive controlling violence may or may not involve physical violence.

While all genders may engage in or be a victim of coercive controlling violence, research shows that most coercive controlling violence is perpetrated by men against their women partners.³⁰ In the family law context, coercive controlling violence is an extremely dangerous type of violence. It puts victims at high risk of serious psychological and physical harm. Exposure of children to coercive controlling violence in the home is a very harmful form of child abuse.

Throughout this toolkit, the term “coercive controlling violence” is used to describe conduct that constitutes a pattern of coercive and controlling behaviour, as reflected in the definition of “family violence” in the *Divorce Act*.

Coercive controlling violence can follow different patterns. Many victims describe a cycle of violence that begins with a period of tension-building, during which the abuser’s behaviour becomes increasingly threatening. Then there is an explosive incident, which may be physically violent, but could also be psychologically abusive. After this, the cycle moves into what is often called the “honeymoon phase”. During this phase, the abuser is apologetic and remorseful, offering gifts and promises to change, and the victim becomes hopeful and agrees to stay in the relationship.

Other victims of coercive controlling violence do not experience abuse as a cycle with a honeymoon period. Instead, they experience fear and domination as a constant presence in their lives. Even when their abuser is being “nice,” they are conditioned by past incidents and still live with the fear instilled in them through the coercive controlling tactics their abuser uses.

Coercive controlling violence is more likely than other forms of IPV to continue and to escalate after separation. Risk often increases after separation because the abuser feels a loss of control.

Following separation or divorce, an abuser may use different ways to try to assert control over their former partner, either directly or through the children. For example, an abusive spouse may attempt to assert control by:

- ▶ refusing to comply with court orders;
- ▶ threatening their former partner with the loss of parenting time with a child;
- ▶ making unilateral decisions about children;
- ▶ picking up or dropping off children late;
- ▶ refusing to make support payments on time or at all;

- ▶ sharing inappropriate information with children;
- ▶ excessively e-mailing, phoning or texting the former partner;
- ▶ stalking, harassing, or threatening to hurt someone;
- ▶ filing false reports with the police or a child protection agency; and/or
- ▶ engaging in abusive tactics in relation to the legal process.

Perpetrators of coercive controlling violence have been found to be less able to differentiate their role as a spouse from their role as a parent, and are more likely to abuse their children after separation and divorce.³¹

2. Separation instigated violence

Sometimes when people separate, one person may be unable to accept that the relationship is over. They may react by engaging in what is known as separation instigated violence. This can happen for couples where there is no prior history of abuse. While separation instigated violence is typically limited to a few episodes during the separation process, the violence can range from minor to severe, and can even be lethal. Again, it is necessary to assess the pattern, severity and impact of the violence. Even a single incident of separation instigated violence can be extremely dangerous.

3. Minor, isolated violence

In some cases, IPV may involve one or more relatively minor, isolated incidents of abuse. The abuse is not rooted in the dynamics of power and control, but rather results from an inability to manage conflict or anger in a particular situation.

4. Violent resistance / victim resistance violence³²

Violent resistance or victim resistance violence are terms used to describe the violent response by some victims to violence perpetrated by their partner. This occurs most often in response to ongoing coercive controlling violence, but may also occur in response to other types of family violence, such as when there is a perceived imminent threat, or in response to psychological harm caused by previous experiences of IPV. Since coercive controlling violence is primarily committed by men, violent resistance is primarily committed by women.

Supplemental Material

Tab #4: Representing a Client Who May Have Engaged in Family Violence

In the event that a client discloses having engaged in family violence, this information will help you to work with them to determine appropriate courses of action in their family law matter. You can be an important support to your client in reaching out to community resources.

It can be difficult to ask clients whether they have been abusive. This document provides some guidance on how to ask clients whether they have engaged in family violence and how to respond to these disclosures. Before you ask about family violence, make sure you are aware of your professional and legal obligations, including any obligations you may have to report suspected child abuse, and discuss these with your client.

1. How to ask

- ▶ You can follow questions about experiencing family violence with questions about engaging in family violence. One way to get at this information in the initial stages of a case may be to ask clients, *“I have asked you about what you have been experiencing in your relationship with your ex-partner and with your children. Do you think your ex-partner will make allegations of violence or abuse against you?” “How will you respond to that?”*
- ▶ When asking about ways in which your client may have engaged in family violence, it is important to listen, be non-judgmental and provide them the opportunity to speak about these issues without being interrupted.
- ▶ It is important to explore whether your client may have engaged in violence in order to protect themselves or their children. This occurs most often in response to ongoing coercive controlling violence, but may also occur in other situations, such as when there is a perceived imminent threat.
- ▶ You may have noticed some warning signs from information provided by your client about their interactions with their ex-partner when you asked them about experiencing family violence (e.g. anger or hostility, blaming the other party, threats to “punish” the other parent by preventing them from seeing the children). You may want to explore these responses further.

- ▶ Those who have engaged in family violence often deny, minimize or deflect responsibility for the abuse. They may claim that they are in fact the victims of abuse or were acting in self-defence. If your client tells you that the ex-partner's allegations of family violence are false, you can accept what they tell you and then request additional information: *"As your legal adviser, I need to be prepared to respond to what the other side will claim. Any information you can offer me ahead of time about this will help me provide you with effective advice and representation."*

2. Responding to disclosures³³

Below are some examples of what to say when a client discloses engaging in family violence:

- ▶ *"Telling me about this is important."*
- ▶ *"I appreciate the effort it took for you to tell me about your behaviour."*

You can refer to [Tab #9: Asking about Specific Forms of Family Violence](#) when asking clients about whether they have engaged in family violence and in interpreting what the client tells you about family violence.

If the client acknowledges that they have been abusive, you can support them by asking if they would like help to deal with their behaviour. If so, you can offer to provide suggestions of programs that might be able to assist. You may also want to offer to call an intervention program to schedule an appointment. Explain to your client that participation in an intervention program is likely to be viewed favourably by a judge in relation to parenting and other aspects of the case.

Remember to follow up about the steps the client has taken to understand or change their behaviour. Be positive and encouraging.

3. Family violence allegations when your client is the alleged abuser

- ▶ If the other party alleges that your client was abusive and your client denies it, you will need to ask about any potential evidence that indicates abuse: *"Is there any evidence you think your ex-partner might put forward to support an allegation of family violence against you?"*
- ▶ The client should understand that if a court concludes that a parent is falsely denying abusive behaviour, it is likely to take the false denial and failure to take responsibility for the abusive behaviour into account when determining parenting arrangements.

- ▶ An honest acceptance of wrongful past behaviour may make a court more receptive to allowing an ongoing relationship with the children, especially if it is accompanied by 1) acknowledging the harm the children may have experienced from exposure to family violence and 2) demonstrating steps taken to change the behaviour and minimize future risk to the children.
- ▶ You may want to suggest to your client that certain options, such as attending a parenting program or agreeing to supervised parenting time, may help them build a better relationship with their children.
- ▶ If your client is engaging in aggressive or threatening behaviour toward their ex-partner, you can try to de-escalate such behaviour by pointing out to your client the harm to the children caused by ongoing violence or conflict, as well as the strategic advantages of ending this behaviour. Legal advisers can help de-escalate the situation by:
 - Helping the client understand why bullying, threatening or intimidating their ex-partner is both inappropriate and unhelpful, particularly if they want a relationship with their children.
 - Explaining that evidence of angry exchanges or messages could be presented by the other side as evidence of continuing abuse, which could negatively affect the client's case.
 - Assisting the client to set boundaries for their own actions and behaviours. For instance, you could suggest to your client that they stop using text messages to communicate with their ex-partner and use email instead; this will allow them more time to reflect before sending the message. You may also want to suggest that they have someone they can talk to when they are feeling angry or frustrated, rather than communicating with the ex-partner.
 - Reminding the client that they must comply with all court orders.
 - Assisting the client to connect with community and professional resources that can help them change their behaviour and be a better parent. See [Tab #12: Making Referrals](#).
- ▶ Consider whether your client is trying to use the legal process to control or harass their partner. Be mindful of your professional obligations if a client insists on using the legal system to engage in inappropriate behaviour, and make the client aware of these obligations. If you are unable to advance your client's case in the manner requested, consider advising the client to find new counsel.
- ▶ You also need to be aware of your legal and professional obligations in situations where there is a serious and imminent risk of harm to others.

When representing a client who may have engaged in family violence, you may need to establish a safety plan for you and your office staff. See [HELP Guide Section P.3](#).

4. False allegations of family violence

The issue of false or exaggerated allegations of family violence is a topic of much discussion. There is no doubt that a false allegation of family violence can have significant and damaging consequences for the person falsely accused, as well as for children. However, it is important to consider concerns about false family violence allegations in context.

- ▶ There are some situations in which one person makes a deliberately false or exaggerated allegation against their partner to gain an advantage in the family court case or to seek revenge.
- ▶ There are also situations in which an allegation of abuse is unfounded. However, research indicates that unfounded allegations of child abuse in the context of parental separation are often a result of honest mistakes, parental anxiety and misinterpretations of children's statements, rather than intentional lies.
- ▶ There are yet other situations in which an allegation of family violence cannot be substantiated but may be true. Victims of family violence often have difficulty substantiating their claims due to insufficient evidence. In addition, a victim may present poorly in court because of the impacts of trauma. For example:
 - they may appear defensive, hostile, aggressive, or uncooperative;
 - their thoughts may be disorganized;
 - they may have trouble recalling specific details; and/or
 - they may appear emotionless, even when describing abuse.
- ▶ While there is a lack of data on the substantiation of IPV claims, in the case of child abuse, research demonstrates that false allegations of family violence are relatively rare. For example, data from the 2008 Canadian Incidence Study of Reported Child Abuse and Neglect, which tracked child maltreatment investigations nationwide, indicates that for reports of child maltreatment where there was also a child custody dispute between the parents, 10% of reports were intentionally false. Sixty-five percent of these allegations were made by a parent, as opposed to others such as neighbours, but it is not possible to distinguish which parent made the allegation. By contrast, in 60% of cases where there was also an ongoing custody dispute, either the report of maltreatment was substantiated or maltreatment was suspected. In a further 18% of cases, the report of maltreatment was considered unfounded, but there was no malicious intent by the person who made the report.³⁴

Supplemental Material

Tab #5: Children's Experiences of Family Violence

Children's experiences of family violence are highly relevant in the family law context. The *Divorce Act* and most provincial and territorial family law statutes include provisions addressing the impact of family violence on children. For example, section 16 of the *Divorce Act* requires judges to consider the impact of any family violence on the best interests of the child when determining parenting arrangements. It requires judges to give primary consideration to a child's physical, emotional and psychological safety, security and well-being.

1. Direct abuse

Child abuse includes physical abuse, sexual abuse, neglect and emotional abuse. A few examples of direct forms of child abuse include:

- ▶ causing a child physical pain or injury (e.g. pushing, slapping, strangling, biting, burning, excessive shaking);
- ▶ sexually touching a child, forcing a child to touch someone else, or making a child watch a person touch their own private parts or engage in other sexual activity;
- ▶ using words or actions to control, frighten, or isolate a child (e.g. threatening to harm them, deliberately intimidating them); and
- ▶ failing to meet a child's basic needs (e.g. not providing proper food or clothing).

2. Exposure to intimate partner violence

Direct or indirect exposure to intimate partner violence (IPV) is another form of child abuse. Children may be direct witnesses to IPV because they are in the room and see what is happening or are close enough to hear it. They may be even more directly involved if they are in the way of the abuser during a physical assault or if they attempt to intervene to stop the abuse from happening.

Even when they are not direct witnesses, children can be exposed to and affected by family violence in the home. They may experience the aftermath of abuse, for example by seeing a parent's physical injuries, observing changes in a parent's behaviour, or knowing about police or child protection involvement with the family. Children are also sensitive to atmosphere and tension, and can often tell when one parent is afraid of the other, no matter how hard that parent attempts to hide what is going on.

3. When there are children in the home where IPV has occurred, assume that the children have been exposed and affected.

Research from 2008 shows that children's exposure to IPV represented 34% of substantiated child protection cases in Canada.³⁵ Additionally, in 2009, almost three-quarters (72%) of individuals with children who experienced violence post-separation reported that a child had seen or heard a violent incident.³⁶

IPV and direct child abuse overlap considerably. Research has found that in families where IPV occurs, child abuse is often present.³⁷ This increased risk to children is reflected in the data, notably:

- ▶ In 2014, 70% of adults who reported having witnessed parental violence in the home as children also reported being a victim of childhood physical and/or sexual abuse.³⁸
- ▶ Children who witnessed parental violence were more likely to have experienced the most severe forms of childhood physical and sexual abuse.³⁹
- ▶ Between 2008 and 2018, police found that in over one-third (34%) of family-related homicides that involved one child victim and one accused, there was a history of family violence.⁴⁰
- ▶ Not only does separation increase the risk for domestic homicide (killing of an intimate partner), but it also increases the risk of retaliating filicide (killing of a child to cause harm and suffering to the other parent).⁴¹

4. Impact of family violence on children

Violence within the family affects the children, even if they do not experience or witness the abuse directly. The impacts of being exposed to family violence are similar to those of direct abuse and can be severe and long-lasting.

Experiencing family violence through either direct abuse or exposure to IPV can cause a child to suffer emotional, physical, social, cognitive and behavioural problems. The stress and anxiety caused by living in a home with family violence can negatively affect the development of a child's brain, with life-long consequences.

Some of the impacts of family violence for children at different developmental stages include the following:⁴²

Infants, toddlers, and preschoolers (ages 0-3)	School-age children (ages 4–12)	Adolescents (ages 13-19)	Into adulthood
<ul style="list-style-type: none"> ▶ infant mortality, preterm birth, and low birth weight ▶ adverse neonatal outcomes from mother's abuse of substances in order to cope with violence ▶ parent experiencing violence forms unhealthy attachment with child due to heightened state of stress/anxiety ▶ behavioural issues ▶ social difficulties including difficulty in regulating emotions ▶ Post-traumatic stress disorder (PTSD) symptoms ▶ difficulty with empathy and verbal abilities ▶ excessive irritability, aggression, temper tantrums, sleep disturbances, and emotional distress ▶ resist comfort ▶ adverse psychosomatic effects ▶ impact neurocognitive development ▶ filicide ▶ physical injuries 	<ul style="list-style-type: none"> ▶ develop anti-social rationales for abusive behaviour ▶ self-blame ▶ internalizing behaviours (e.g., humiliation, shame, guilt, mistrust, low self-esteem) ▶ anxiety and fear ▶ difficulty with social skills ▶ difficulties with emotional regulation ▶ negative peer relations ▶ depression ▶ bullying ▶ academic abilities compromised ▶ filicide ▶ physical injuries 	<ul style="list-style-type: none"> ▶ depression ▶ suicidal ideation ▶ anxiety ▶ aggression ▶ social withdrawal ▶ unhealthy attachments leading to difficulties forming healthy intimate relationships ▶ distorted views of intimate relationships ▶ lack of trust ▶ heightened risk for violent behaviours toward peers or intimate partners ▶ substance use ▶ anger issues ▶ long-term emotional distress ▶ filicide ▶ physical injuries ▶ difficulties with emotional regulation 	<ul style="list-style-type: none"> ▶ risk of perpetrating violence in own families ▶ depression ▶ anxiety ▶ dissociation ▶ PTSD ▶ difficulties in emotional regulation ▶ decrease in parenting quality ▶ low educational achievement ▶ chronic diseases (e.g., liver disease, sexually transmitted diseases) ▶ sleep disorders ▶ substance abuse

5. Impact of family violence throughout a child's life⁴³

Children of any age who experience family violence are likely to feel grief or sadness because their family is not the same as their friends' families or those they see in mainstream representations. They may experience self-blame, or they may mistrust or feel anger towards either or both parents or more generally.

As children become older, they may begin to take on a parental role at home or engage in protective behaviours towards a parent who has been abused, such as misbehaving to draw the abuser's attention away from the other parent or intervening physically between the parents to protect the victim.

Because children want to feel safe, they may identify with the abusive parent even though they know the abuse is wrong and are worried about their other parent. This can create complex feelings of guilt and resentment. They may also feel that they have two choices in terms of their own behaviour: to be the aggressor or to be the victim.

Because of the often-gendered nature of family violence, particularly coercive controlling violence, children who experience it over time may develop stereotyped and unhealthy views of men – aggressive and angry – and women – weak and vulnerable – that they will take into their adult lives and relationships.

If a child lives in a home with IPV, they may be denied the opportunity to learn about appropriate adult role models, and healthy intimate relationships and parenting.⁴⁴

While many children who experience family violence grow up to have happy, healthy relationships, research has identified that boys who grow up in abusive homes are at greater risk of perpetrating violence in their intimate relationships later in life, while girls are at greater risk of being victimized.⁴⁵

6. Impact of trauma on children – individual factors

As with adults, the impact of trauma on a child and how it manifests will depend on many factors, including:

- ▶ the age and temperament of the child;
- ▶ the nature and extent of their experience of family violence; and
- ▶ the ways in which the adults who are around them and care for them respond to the family violence.

If a child is well supported and has strong, safe and secure attachments to other adults, such as the other parent or grandparents, the impact of the family violence can be reduced. This contributes to what is known as the child's resiliency, or their ability to cope effectively following a negative response.

Another important resiliency factor for children who are exposed to IPV is the safety and well-being of an abused parent. Generally speaking, greater protection for parents who are victims of violence also means greater protection for their children.

Supplemental Material

Tab #6: Tips for Discussions with Your Client⁴⁶

The safety of clients is paramount throughout the family law process, including when asking about family violence. Consider the following recommendations when communicating or meeting with your clients.

1. Tips for safe and effective communication

In addition to the tips set out at the beginning of the [HELP Guide](#), the following tips are aimed at promoting safe and effective communication with clients.

- ▶ Be attentive to your client's verbal and non-verbal cues, as well as your own cues, as you interact with them.
- ▶ It is important to be patient and ensure your body language is open and positive.
- ▶ Understand that some clients who have experienced trauma or violence may find physical proximity or contact uncomfortable, inappropriate or frightening (e.g. shaking hands, leaning toward them, sitting too closely), or may need to sit close to the door in order to feel safe.
- ▶ Listen carefully to your client's words and check in to make sure that you have understood them correctly.
- ▶ Recognize that the client may need breaks. As the discussion continues, it is helpful to ask the client how they are doing and whether they need to take a break from the discussion.
- ▶ Be aware that some clients may have difficulty verbalizing their experiences to you. You may want to ask a client if they would prefer to write things down.
- ▶ Display community resources in the waiting room and office. Sometimes, having materials about family violence available will help to initiate discussions about this issue. The materials should also be available for clients to take at any time, whether or not they have disclosed family violence. Another good practice is to have links to community resources available on your website; but remember that it is important to have a quick escape button (when this button is clicked, it will close the current page and open another page such as a weather website) and other built-in precautions for websites that serve victims of family violence. It can also be helpful to display overt signs of allyship

and inclusion, for example showing 2SLGBTQ+ posters or accessibility signage; these signs may help clients to feel more comfortable.

- ▶ Be aware of who is in the room. Where possible, the topic of family violence should first be raised with the client alone, even if they insist that the person accompanying them remain throughout the discussion. You can say that it is essential for you to have a few minutes alone with the client and that the person can rejoin after the discussion if this is the client's preference. Before continuing, it is essential to ensure that the discussion cannot be overheard by anyone, including a child.
- ▶ When you are alone with the client, explain to them that it is important for you to understand the role of the individual who has accompanied them. Explain that information about relationships can be highly sensitive and can involve safety and evidentiary issues. If appropriate, allow the client to make the decision to invite the support person (e.g. formal support worker, a trusted friend or family member) to rejoin you for the balance of the meeting and future meetings.
- ▶ If your client has a disability, they may require that a support person be present at all times to help with communication and to help them feel at ease. In this case, be alert to any warning signs of abuse from the support person, for example, speaking without permission.

2. Tips for effective email communication

Legal advisers frequently communicate with their family law clients by email. The following tips may be particularly helpful for emailing clients who have experienced trauma as a result of IPV or another traumatic event.

Consider how much written information your client can process through email. For example, does your client have any literacy and/or language barriers? In addition, remember that clients who have experienced trauma may have difficulty taking in advice or concentrating on the information in the email.⁴⁷ You may need to tailor your emails to be short and concise and focus on only a small number of topics and questions; some clients may not respond if the email is too long. Pay attention to the words that you use, as words and tone can be misinterpreted over email.

You can end your emails by offering to have a call to discuss any information outlined in the email. The client may become overwhelmed when reading the email and may not be able to process the information. By having a follow-up call, you can discuss the important parts of the email and receive responses to the questions you may have asked.

Be aware that you may receive multiple emails in response to the information and questions you sent out in one email. Your client might send several one-line response emails as opposed to one email. Be sensitive to the fact that this may be the only way your client can manage to provide you with the information you require to proceed with the case.

It is a good practice to **send summary emails after any calls or meetings** with your clients. These emails provide you the opportunity to acknowledge what was discussed in the call, which

will indicate to your client that you did listen to them and will provide a written record of decisions. The follow-up emails can also help you to confirm decisions before you move forward with any instructions.

3. Tips and suggestions for virtual meetings⁴⁸

As virtual meetings become more common, awareness of the importance of good virtual legal practices has increased.

If you must have the discussion virtually rather than face-to-face, consider whether it would be more appropriate to have a video or phone call. Remind clients about potential safety risks, such as whether they might be overheard by someone.⁴⁹

Choose a videoconference over a phone call when possible: This is the closest you can come to a face-to-face meeting and will make it much easier to develop a rapport with your client. If the initial consult occurs by phone, ask the client if it would be possible to arrange a videoconference for the next meeting. If your client has limited or no access to technology, try to find a solution, such as using the computer of a trusted friend or family member in a private location.

Be aware of your client's needs and circumstances: Some clients may have difficulty accessing technology (e.g. limited or no access to phone, computer or internet or digital literacy issues). It is important to ask your client how you can support them in participating in meetings that are not in-person.

Remember that situations can quickly escalate and risk can increase. A scheduled meeting may no longer be a safe time to call. Remind your client that they can stop the call at any time.

Before asking your client about their case or about whether they have experienced family violence, **it is important to ensure that they are alone and safe.** You could set up a safe word or signal that the client can use or you could ask closed-ended questions that only require “yes” or “no” answers from your client, for example:

- ▶ *“Are you alone?”*
- ▶ *“Are you at home with your ex-partner? Is your ex-partner in the same room?”*
- ▶ *“Is it safe to ask you about your relationship with your ex-partner?”*

For more information on technology safety, see [**Tab #10: Safety Planning**](#).

Be patient: Leave a short pause after your client finishes speaking to ensure that you are not rushing them. This will also help avoid talking over each other, a challenge with video and audio calls.

You may need to **spend more time building rapport with your client** before asking them about family violence. Note that vulnerable clients, especially victims of IPV, may not trust as easily, so there may be additional challenges in trying to connect with them by phone or by videoconference.

Eye contact and **reacting to facial cues and other non-verbal clues** are important to building connections, but difficult to achieve in video calls.

Tip: Set up your video so the client is in the top third and centre of the screen. When you are looking at their image, it will seem more like you are making direct eye contact.

Supplemental Material

Tab #7: How to Incorporate Cultural Safety into Client Interactions

While people from all walks of life can experience many of the same forms of family violence, certain individuals and groups may also experience marginalization, racism and other forms of discrimination.⁵⁰ Family violence should be understood within the broader context of historical oppression and the current realities that many Indigenous peoples and marginalized and vulnerable groups in Canada face. It is important to understand that intersecting social identities (e.g. race, gender, immigration status, age, religion, Indigenous identity, physical ability, sexual orientation) and experiences (e.g. education, mental health, previous trauma) can affect how an individual experiences family violence and how they access supports and resources. For instance, if an Indigenous woman has experienced family violence, it is important to understand that her experiences may be shaped by her gender and Indigenous identity as well as by intergenerational trauma caused by historical practices in Canada, such as residential schools.

Cultural safety practices aim to counteract the harms of racism and discrimination and mitigate the potential trauma and lack of safety that people may experience as they seek help.⁵¹ Cultural safety is inextricably linked to trauma-and violence-informed practice: both are needed to ensure clients feel respected, comfortable, and acknowledged as persons with unique life circumstances.

Cultural safety requires systems, organizations and individuals to be responsible for ensuring that the environment is safe for everyone. It asks people to be more attentive to the judgments and assumptions that may be driving their thoughts, actions and practices, and focuses on counteracting the everyday impacts of racism and discrimination on people's lives. Cultural humility is an important part of cultural safety. This involves making a lifelong commitment to: learning, understanding and respecting different perspectives and lived experiences, self-reflection and self-critique.⁵²

Culturally safe care is particularly important when working with Indigenous and Black peoples in Canada, given the history and ongoing effects of racism, colonization, and slavery. It is important to understand the significant social and racial barriers individuals often face in engaging with policing and legal systems.

Many persons from other communities also face barriers navigating the legal system and accessing justice. For example, newcomers to Canada, those in rural and remote areas, 2SLGBTQ+ persons, and persons with disabilities may face unique barriers in navigating the legal system and accessing justice.

Stereotyping and negative social attitudes toward persons from diverse communities continue to shape their access to legal services, their experiences of the justice system and their outcomes.⁵³ In situations of family violence, it is especially important for legal advisers to be aware of and consider these barriers when supporting their clients.

Key features of a cultural safety approach for legal advisers include:

- ▶ creating interactions and environments that are safe, accepting and non-judgmental;
- ▶ taking steps to offset the inherent power imbalances between themselves as a legal adviser and the person coming to them for services; and
- ▶ being conscious of and actively working to counteract the implicit biases and stigmatizing judgments that can negatively affect their work with clients.

The following can help legal advisers incorporate a cultural safety approach into their practice.

1. Take an implicit bias test

Taking an implicit bias test will give you a glimpse into how we judge everyone we encounter, and how we are continually evaluating who is a productive member of society, who is most deserving of services and who has the most legitimate legal needs or concerns. These implicit biases, which operate unconsciously for the most part, are not “just” the product of our individual psychologies. They reflect the wider social interchange of ideas operating in Canada – in our schools, the justice sector, the media and in everyday conversations inside and outside our homes.

An example of an implicit bias test can be found here:

<https://implicit.harvard.edu/implicit/langchoice/canada.html>

If you want to overcome your implicit biases, it is important to be aware of your own biases and slow down your decision-making to reflect on what may be causing you to act or react in a certain way.⁵⁴ To increase awareness of how implicit biases may be influencing your views of your clients, their personal circumstances, or your interactions with them, you might ask:

- ▶ How might my views of this person be influenced by stereotypes or biases that I might not fully recognize or even realize I hold?
- ▶ How have my upbringing and personal circumstances influenced my views of particular people or groups of people?

- ▶ What assumptions about this client might be operating in the back of my mind? How might those assumptions be influencing my thoughts about this client, what they should or should not do, why they are or are not taking action, or what they might want?
- ▶ What might be influencing how this client is interacting with me? What is influencing how I am reacting to them? How does asking myself these questions open up my perspective and/or create a broader view of this client and their circumstances?

2. Do a cultural safety walk-through⁵⁵

Doing a cultural safety walk-through prompts you to consider how your practice environment might affect clients and whether they are likely to feel welcome, and culturally and emotionally safe. Put yourself in your client's shoes and imagine what it might be like for them to be in your physical and social space.

Ask yourself questions about the following, such as:

Physical space

- ▶ Is this a place where people from my local community will feel welcome, acknowledged and recognized as community members? Will they feel they belong? For example, are there signs or messages that reflect the local languages used in your community? Or is the assumption that everyone is fully literate and can read English or French?
- ▶ Is there anything about the ways in which people in your office interact with clients or how your office is laid out that might make clients feel uncomfortable, unwelcome or judged (e.g. spaces that look intimidating rather than inviting, not having someone to welcome clients to the office)?
- ▶ What could you (or your office/colleagues) do within the physical space to help clients feel that they are welcome? For example, can you add visuals that promote a positive space for 2SLGBTQ+ clients?

Social space

- ▶ Who greets the client and how?
- ▶ What questions are asked? When and how are they asked?
- ▶ What kinds of power relations are at play? Be aware that there are inherent power dynamics between you and your client, which may be even more apparent depending on your client's culture and background. How might past experiences with the legal sector be influencing the client's current experiences?
- ▶ Are you from the same cultural community as the client? Some clients may have concerns related to their privacy if they belong to the same community as you. This may prevent them from feeling comfortable and/or disclosing their full experiences to you.

- ▶ Be cautious about asking people a seemingly innocuous question such as, “Where are you from?” It’s a simple question that’s often asked as a way to get to know someone better, but the question can stir up a multitude of negative or contradictory emotions for some people. For example, this may engender fear for persons who have experienced stigma and discrimination in Canada based on their country of origin.

3. Learn about your local community and resources

Knowing about your local community and local resources will help you implement a culturally safe approach. For example, you will be better able to anticipate how to communicate effectively, offer support in ways that align with people’s actual needs, convey a sense of understanding and recognition of people’s circumstances, and find resources that are suitable for your clients based on their individual circumstances.

Key things to understand about your community include:

- ▶ Who are the people/populations in your local area? How do you pronounce the name of the community, for example, the name of a religious group or a First Nation? What terminology should you be using (e.g. for 2SLGBTQ+ clients, for clients with a disability)?
- ▶ Who are the local Indigenous communities where you work? Acknowledging Indigenous lands, rights, and peoples is a starting point to understanding the long presence and histories of Indigenous peoples as well as their historical, social, and physical locations. Be aware that some Indigenous peoples prefer to be called by the name of their specific nation or community.
- ▶ Where are newcomers to Canada arriving from?
- ▶ What are the languages frequently spoken in your local area?
- ▶ What do relationships look like in different cultures and religions? How do your clients view the gender roles in their family?
- ▶ Consider how factors, such as income, affordable housing, education, language, racism and other forms of discrimination, geography, gender/gender identity, and sexual orientation affect different people’s quality of life in your local area.
- ▶ What culturally appropriate family violence support services and resources are available in your local community, including for example, Indigenous liaison workers?
- ▶ Remember to avoid making assumptions or generalizations about your clients based on their culture, religion and experiences.

For more information about cultural safety, you may wish to consult the following resources:

- ▶ EQUIP Health Care’s Equipping for Equity Online Module 4:
<https://equiphealthcare.ca/equipping-for-equity-online-modules/>
- ▶ Canadian Bar Association’s Unconscious Bias Resources (2020):
<https://www.cba.org/Sections/Women-Lawyers/Resources/Resources/2020/Unconscious-Bias-Resources>

- ▶ Roberto Aburto and Natalia Thawe's presentation slides on Unconscious Bias in the Profession from the 28th Annual Institute of Family Law Conference (2019): <https://canlii.ca/t/sqcd>
- ▶ San'yas Indigenous cultural safety training: <http://www.sanyas.ca/>

In addition, you might find the following resources helpful with respect to working with Indigenous persons:

- ▶ Guide for Lawyers Working with Indigenous Peoples (A joint project of the Advocates' Society, the Indigenous Bar Association, the Law Society of Ontario): https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/Guide_for_Lawyers_Working_with_Indigenous_Peoples_may16.pdf
- ▶ Law Society of Alberta, Indigenous Education Series: Guide for Lawyers Working with Indigenous Peoples: <https://www.lawsociety.ab.ca/resource-centre/key-resources/webinars/indigenous-education-series-guide-for-lawyers-working-with-indigenous-peoples/>
- ▶ Law Society of Ontario, Indigenous Initiatives: <https://lso.ca/lawyers/practice-supports-and-resources/equity-supports-resources/indigenous-initiatives>
- ▶ Canadian Bar Association, Truth and Reconciliation Resources "Take Action": <https://www.cba.org/Truth-and-Reconciliation/Resources/Take-Action>
- ▶ Lorna Faden, Communicating Effectively with Indigenous Clients (An Aboriginal Legal Services Publication): <https://aboriginallegal.ca/downloads/communicating-with-indigenous-clients.pdf>
- ▶ Department of Justice Canada, Principles respecting the Government of Canada's relationship with Indigenous Peoples (2018): <https://www.justice.gc.ca/eng/csjsjc/principles-principes.html>

Supplemental Material

Tab #8: Prevalence of Intimate Partner Violence

Intimate partner violence (IPV) is more common than many people may realize and causes significant short- and long-term emotional, physical, social and financial issues for many Canadians. While statistics alone cannot explain how an individual actually experiences the abuse, the data do help identify the prevalence, incidents, common characteristics of victims and offenders, and the direct and indirect impacts of IPV.

1. While both women and men self-report experiencing IPV, there are differences in the type, severity, frequency and impacts of abuse they experience

Statistics indicate that:⁵⁶

- ▶ More than four in ten (44%) women and one-third (36%) of men indicated that they were victims of IPV in their lifetime. However, within three broad categories of IPV – psychological, physical and sexual abuse – significantly higher proportions of women than men experience violence.
- ▶ Women also disproportionately experience the most severe forms of IPV, such as being sexually assaulted, choked, and assaulted or threatened with a weapon. They are more likely to receive threats to harm or kill them or someone close to them, be confined or locked in a room or other space, be made to perform sex acts they did not want to perform, and be harassed or stalked.
- ▶ Women are more likely to experience more frequent instances of violence and multiple specific abusive behaviours, and they more often report injury and negative physical and emotional consequences as a result of the violence.
- ▶ Women report fear at a higher rate than men do: 37% of women who were IPV victims reported being afraid of a partner, while 9% of men did.
- ▶ Women are also more likely than men to report feeling controlled or trapped by an abusive partner (43% of women and 36% of men).
- ▶ Police-reported crime statistics also demonstrate the gendered nature of IPV. For example, in 2019, almost 8 out of 10 (79%) victims of police-reported IPV were women.⁵⁷

2. Impacts of intersecting identity factors

Data show that some populations are more at risk of IPV than others. For example:

- ▶ Indigenous women (61%) and men (54%) are more likely to have been victims of IPV in their lifetime than their non-Indigenous counterparts (44% and 36% respectively).⁵⁸
- ▶ Indigenous women are also almost twice as likely as non-Indigenous women to experience physical abuse (42%) and sexual abuse (21%) by an intimate partner, when compared to non-Indigenous women (22% and 11%). A significantly higher proportion of Indigenous women experience psychological abuse in their lifetime (60%) compared with non-Indigenous women (42%). Indigenous women are almost three times more likely than non-Indigenous women to experience financial abuse.⁵⁹
- ▶ Women with disabilities are more likely than women without disabilities to experience psychological abuse (53% vs. 36%), physical assault (32% vs. 17%) and sexual assault (18% vs. 7%) by an intimate partner in their lifetime. Men with disabilities also report a higher prevalence of experiencing IPV (44%) than men without disabilities (32%).⁶⁰
- ▶ More than half of sexual minority men (54%) and women (67%) report having experienced IPV in their lifetime, a much higher prevalence than reported by heterosexual men (36%) and women (44%). Sexual minority men and women are also significantly more likely to experience some of the most severe IPV behaviours, such as being choked or being made to perform sex acts that they did not want to perform.⁶¹

For some victims, intersecting identity factors can not only increase the risk of IPV, but also create additional challenges in deciding whether to leave or stay in an abusive relationship. In fact, some populations are more vulnerable to IPV not because they are abused more often, but because when they are abused, they face greater barriers in gaining access to the resources and supports they need.⁶² For instance, victims of IPV who live in rural communities are more likely to feel isolated or trapped due to the remoteness and lower availability of community services.⁶³

3. Intimate partner homicide⁶⁴

Between 2014 and 2019, there were 497 victims of intimate partner homicide. The large majority of victims were women (80%). Of these female victims, 75% were killed by a current or former spouse or common-law partner and 25% were killed by their non-spousal intimate partner, such as a current or former boyfriend or girlfriend. Male victims of intimate partner homicide were also more likely to be killed by a current or former spouse or common-law partner (65%) than a non-spousal partner (35%). From 1997 to 2016, women represented 18% (or 323) of those accused of intimate partner homicide and men represented 82% (or 1,480).⁶⁵ While the research-documented indicators of the potential for intimate partner homicides are complex, between 2008 and 2018, six in ten (60%) intimate partner homicides involved a known history of family violence.⁶⁶

4. The period around separation or divorce is a time of heightened risk for abuse

IPV often continues after the relationship ends and can intensify when the abuser perceives their partner is thinking about leaving. Risk can also increase when circumstances change, such as when the victim enters a new intimate relationship, or if the abuser loses their job or experiences changes to their mental health (e.g. suicidal thoughts, depression).⁶⁷

According to 2019 self-reported data, 45% of victims of spousal violence indicated that they suffered abuse after their relationship with their ex-spouse or partner had ended.⁶⁸ In addition, almost half of those who reported post-separation abuse in the 2014 General Social Survey on Victimization stated that the severity of the abuse increased after the relationship ended. Both men and women were likely to report this escalation following a separation.⁶⁹

The period right before and after separation is when victims of IPV are at the highest risk of being killed by their ex-partner. From 2007 to 2011, a woman's risk of being killed by a spouse she was separated from was nearly six times higher than the risk from a spouse with whom she was still living.⁷⁰ An Ontario Domestic Homicide Death Review conducted from 2003 and 2018 found that, out of 329 cases, 67% of homicides involved a couple with an actual or pending separation.⁷¹

Supplemental Material

Tab #9: Asking about Specific Forms of Family Violence

This document contains examples of:

1. questions you could ask in relation to family violence; and
2. different forms of family violence that you may want to ask about.

These examples are designed to accompany the information provided in [HELP Guide Section H.4](#) regarding how to explore family violence with clients.

Do not treat the examples as a checklist, but rather ask questions about family violence sensitively and in a way that follows the flow of the discussion with your client.

Use your judgment when considering what to ask each client. Ask questions that make sense based on your client's responses. Also, when reviewing the examples of questions and different forms of conduct, bear in mind the *Divorce Act's* definition of family violence. See [Overview – What is family violence?](#)

Incidents of family abuse or violence should not be interpreted in isolation without also considering patterns of behaviour, including coercive and controlling behaviour.

In addition to identifying different forms of family violence that your client may have experienced, you should also try to understand the nature, seriousness, frequency, duration and impacts of family violence; this may affect the advice you give.

As you engage in discussions with your client, you will want to gather details, such as:

- ▶ Have there been multiple incidents? Multiple incidents increase the harm created by earlier abusive incidents.
- ▶ Is the person who engaged in the violence the one who holds the power in the relationship?

- ▶ Is there a pattern of coercive and controlling behaviour? Coercive controlling violence is a pattern of abusive behaviour people use to control or dominate another family member. It often includes the use of multiple forms of abuse (e.g. physical, sexual, psychological, social, financial) that cause the victim to live in fear of their partner or ex-partner; it gives the abuser power and control over them. Coercive controlling violence may or may not involve physical violence.
- ▶ Do the incidents occur periodically? The abusive behaviours do not need to occur on a daily or regular basis to constitute a pattern of IPV. Some victims experience a cycle of violence, where there is a period of tension-building, leading up to an explosive incident, followed by a period of peace and harmony. The periods of calm do not negate the danger, harm and cumulative effects that new incidents can have on victims. Other victims may experience constant fear, control and domination as a constant presence in their lives, as they are conditioned by past incidents to live with instilled fear.
- ▶ If the violence against your client was an isolated incident, could it be part of the ex-partner's pattern of abusive behaviour against others? For example, if there is any indication of the ex-partner engaging in abusive behaviours with other former or current partners, the isolated incident for your client may actually be part of a behaviour pattern.
- ▶ If your client engaged in abusive behaviours, was it in response to abuse from their ex-partner? Was it a reaction to coercion and control exerted by their ex-partner?
- ▶ For how long have these incidents been occurring?
- ▶ Has your client experienced abuse recently? When did the last incident occur?
- ▶ Are the frequency and severity of incidents increasing?
- ▶ Was the abuse instigated or exacerbated by separation? Following separation, an abuser may use different ways to try to assert control over their former partner, either directly or through the children. For example, an abusive spouse may attempt to assert control by:
 - threatening their former partner with the loss of parenting time with a child;
 - sharing inappropriate information with children;
 - excessively e-mailing, phoning or texting the former partner;
 - stalking, harassing, or threatening to hurt someone; and/or
 - filing false reports with the police or a child protection agency.
- ▶ Have there been any incidents directly related to the family law case?
- ▶ Have other family members engaged in abusive behaviour in relation to the family law case? Consider your client's situation, and background when thinking about violence by extended family members. A focus solely on the acts of the ex-partner may not be enough depending on the broader context of the family, especially if they live in a multi-generational household.
- ▶ What is/was the impact of the abusive behaviour on your client and on the client's children? This does not apply only to physical impacts, but also to psychological, emotional, cognitive, financial and other impacts.

1. Sample questions

Sample questions about forms of family violence that are included in the *Divorce Act's* definition are set out below. The questions are designed to help you engage in discussion with your client, not to be asked as a checklist.

Note that the forms of family violence and the sample questions provided in this document overlap; for instance, questions about psychological abuse may also apply to coercive and controlling behaviours.

In general, it is good to use an open-ended questioning style, even if there are some points at which you need to ask more specific yes/no questions. This approach is an effective way to gather information and allows your client to elaborate on their own experiences.

As you talk with your client about family violence, they may question whether their experience is abusive. Below are some suggestions for what you could say to the client:

- ▶ *“There are many different ways that people can be abused. Sometimes, a person isn’t even aware it is happening to them — for example, where a person is experiencing very controlling behaviour.”*
- ▶ *“Abuse and violence are not only physical; they can be financial, sexual or emotional, including controlling behaviour.”*

Physical violence

Most clients will have some idea of what types of physical acts are abusive. You can start the conversation by telling the client: *“There are many ways in which a person can be physically hurt or threatened. Please tell me about any ways in which your ex-partner has physically hurt or threatened to hurt you.”*

Depending on the response from your client, you could ask more specific questions about the physical violence. For example, you could ask questions about whether the violence involved being slapped, hit with an object, punched, kicked, bitten or beaten in any way and about threats to harm the client physically.

You could also ask about other physically abusive behaviours that might be less obvious, such as stopping them from leaving the house.

Note that strangulation is strongly associated with intimate partner homicide, so you should ask about this as well.

Sexual abuse

Asking the client about sexual abuse can be particularly distressing and triggering, and many clients will not want to address this form of family violence within the context of their family law matter. However, sexual abuse can be a very harmful form of family violence and is considered a risk factor for continuing IPV.

Clients may not identify with the words sexual abuse, sexual assault or rape, particularly in the context of intimate relationships. Also, they may have a narrow sense what sexual abuse includes (see the table below for examples of the range of behaviours that may constitute sexual abuse). One way to ask would be:

- ▶ *“When someone feels like they cannot say no to a sexual activity, this can be a sign of abuse. Have there been situations where you have felt like that?”*

Probing the client’s response can provide the details you might need for the case:

- ▶ *“Did you feel like you could say no to your ex-partner when they wanted to have sex?”*
- ▶ *“Sometimes one partner does not let the other partner use birth control or may force them to have sex if they want money or to be able to leave the house. Have situations like this ever come up for you?”*

Threats

This form of family violence can cause significant psychological harm to your client and any children who are affected.

You could say: *“Family violence includes threats from your ex-partner towards you or others you care about. This can include threatening to hurt or kill you or themselves, threatening to take your children away, or threatening to hurt or kill pets, or destroy your personal items. Have you experienced anything that is similar to what I just described?”*

You can also ask the client: *“Has your ex-partner done or said things that make you feel as if they might hurt you or hurt someone or something you care about?”*

Threats related to the family law case may also arise and can be part of legal bullying behaviour. You can probe about threats that the ex-partner has made regarding the family law case. For example, you could ask: *“Has your ex-partner made any threats to you that have come up around your separation or divorce, such as threats about preventing you from seeing your children? If so, can you tell me about them?”*

Psychological (emotional) abuse

Psychological abuse may include verbal or non-verbal behaviour and may be difficult for your client to identify without some specific questions. You might start by saying: *“Part of the definition of family violence includes psychological abuse. This could include your ex-partner bullying you or often saying things that make you feel bad about yourself, for example that you’re stupid or lazy. It could also include criticizing your personal appearance. Does this type of behaviour seem familiar to you?”*

Probing further, you could say: *“Some other behaviours that you might have experienced could include your ex-partner consistently blaming you for things that you have no control over or that you had no part in or denying that conversations or events happened, making you question your memory or mental state. Can you think of any times where this might have occurred?”*

Financial abuse

Financial abuse is a common form of IPV, often used to gain or demonstrate power and control over the other person. It may co-occur with other forms of violence. Examples include withholding money, threatening to cut up bank or credit cards, or incurring debts in someone’s name without their knowledge.

You can ask the client: *“Did your ex-partner control your finances and/or decisions about money? Did they ever take money that is yours, or take away your wallet or your credit cards?”*

You could probe further by asking: *“Financial abuse also includes situations where someone is prevented from going out to work, or they lose their job because they were made to miss work. Has anything like this happened to you?”*

Harassment and stalking

Remember that harassment in the form of stalking is a risk factor for intimate partner homicide.

Questions should include in-person and remote or virtual forms of harassment and stalking. You may also find that other family members (e.g. the ex-partner’s parents or siblings) engage in these behaviours, particularly in the context of separation or divorce.

You can say: *“If someone keeps track of your whereabouts, follows you, or constantly bothers or contacts you, we call that harassment and stalking. Engaging in these behaviours can be a form of family violence. These behaviours might include following you when you leave your house or calling you on your phone. It is also common now for abusive behaviours to include monitoring, stalking, intimidation and harassment using technology such as computers, cell phones and other tracking equipment. Tracking can occur through social media and other apps that are installed on your phone or devices (e.g. Facebook, Snapchat). Have you experienced any of these kinds of behaviours?”*

You can probe further by asking: *“Another form of harassment is posting intimate photos/videos or inappropriate messages about someone on social media or sharing them in other ways. Have you experienced anything like this from your ex-partner?”*

Coercive controlling violence

Coercive controlling violence is more likely than other forms of IPV to continue and to escalate after separation. Risk often increases after separation because the abuser feels a loss of control.

You might say: *“Coercive control is pattern of abusive behaviour that someone uses to control or dominate another person and cause them fear. It can involve any of the forms of abuse we have talked about today, but the goal is to intimidate and control the other person. Within an intimate relationship, a controlling partner often tries to use the children to assert control. For example, they might threaten to never let the victim see the children again if the victim leaves. Have you experienced anything like this with your ex-partner?”*

You can probe this with your client: *“Sometimes controlling behaviour is not seen as abusive by those experiencing it because the control is exerted on all areas of life. Were there situations with your ex-partner where you felt controlled or powerless?”*

If you need to probe further, you can ask: *“Some other examples of coercive control might include monitoring your phone calls or reading your texts or emails, preventing you from seeing others when you want to, or preventing you from seeking medical care or any type of health care for physical or emotional health needs. Have you experienced anything like that with your ex-partner?”*

You can also ask: *“Are you afraid of your ex-partner? Please explain what concerns you about their behaviour.”*

Failure to provide the necessities of life

Neglect is often thought of in terms of children’s needs, but your client may also experience neglect by their ex-partner. This form of abuse may be experienced more frequently by your clients who have a disability or other mental or physical health condition.

You can tell your client: *“Neglect is also abuse and involves not giving you what you need to survive, such as food, clothing, medical care, or shelter. Has your ex-partner withheld basic things you need, such as food or money?”*

If the client has a disability or other mental or physical health conditions, you can ask questions, such as:

- *“Has there been a situation when your ex-partner withheld basic care from you, such as assistance with bathing or dressing, taken away your mobility device (wheelchair, walker, etc.) or refused to give you medication?”*

Family violence and children

Children's experiences of family violence are highly relevant in the family law context, including both family violence directed at them and exposure to family violence in the home. Often, it is the impact of the violence on the children that prompts victims to take action.

Most children are aware of abuse going on in the home, even if their parents do not realize it. Children are harmed simply by being present in the home – whether or not they directly witness or experience family violence.

Violence directed at children

In addition to asking about family violence directed at the client, ask your client about abuse directed at their children. Remember to inform your client of any disclosure obligations you have regarding child abuse.

You can ask: *“Considering the types of behaviours we have talked about, would you say that your child(ren) have experienced abuse by your ex-partner or other family members? Can you tell me about it?”*

You can probe further: *“Some behaviours that might not be seen as abuse by some people could include keeping children in a room, basement or garage, or using locks or restraints to prevent them from getting out, being cruel to the family pet in front of the children, or undermining the children in other ways. Have any of these sorts of things happened to your children?”*

Children's exposure to violence

Children may be direct witnesses to IPV because they are in the room and see what is happening or are close enough to hear it. They may get in the way of the abuser during a physical assault or if they try to stop the abuse. Even when they are not direct witnesses, children can be exposed to and affected by family violence in the home. For example, they may see a parent's physical injuries, observe changes in a parent's behaviour, or know about police or child protection involvement with the family. See [Tab #5: Children's Experiences of Family Violence](#).

Although your client might not realize that the children can be affected by abuse they have not directly experienced, you should assume that they have been.

You can start by saying: *“Do you think that your children are aware of your partner's abusive behaviour toward you?”*

If the answer is “no” you might follow up with: *“Children can be affected by any abuse that is occurring in the home. For example, children may be direct witnesses to violence between their parents because they see it or hear it. Has your ex-partner ever engaged in abusive behaviours when your children have been in the house?”*

You can also say: *“Even when they are not direct witnesses, children are often aware of violence happening between their parents. For example, they can often tell when one parent is afraid of the other, no matter how hard that parent attempts to hide what is going on. They may see bruises or other injuries or notice changes in a parent’s behaviour, such as crying or anger, or they may know that police have come to the home. Do you think your children may have experienced anything like this?”*

Questions to follow after asking about specific forms of family violence

You can also ask the client whether there are any other ways in which they or their children have been harmed by their ex-partner that you have not asked them about:

- ▶ *“We have gone through a lot of questions together. Are there any ways in which you have been threatened, made to feel unsafe or hurt by your ex-partner that we haven’t discussed?”*
- ▶ *“What about ways your children may have been threatened or hurt by your ex-partner that we haven’t discussed?”*

2. Examples of different forms of family violence

Below is a list of examples of different forms of family violence that may help you explore your client’s experiences. The categories and the examples of behaviour in each category may overlap.

The specific types of family violence you ask about will depend on the responses from your client, along with other indicators you may observe. As noted above, not all examples below necessarily constitute family violence on their own but they may be part of a pattern of conduct that is family violence. Again, it is important to understand whether behaviour: 1) is violent; 2) is threatening; 3) forms a pattern of coercive or controlling behaviour; or 4) causes fear for safety.

The list of examples below is **not** meant to be a substitute for asking questions embedded in your client meetings or an exhaustive list of forms of family violence.

Examples of family violence**Physical abuse**

- ▶ biting, scratching the client with their nails, using keys or other objects to hurt the client, throwing things at the client, or threatening any of these actions
- ▶ slapping, hitting, pulling the client's hair, pushing, kicking or twisting the client's arm, or threatening any of these actions
- ▶ pushing, shoving or dragging the client, or threatening any of these actions
- ▶ strangling, choking or holding the client down, or threatening any of these actions
- ▶ forcibly confining the client, for example by holding the client down or locking the client in a room, or threatening any of these actions

Sexual abuse

- ▶ pressuring or forcing the client to have sex or perform a particular sex act
- ▶ forcing the client to perform a degrading, humiliating or painful sex act
- ▶ forcing the client to watch pornography or to watch other people have sex or masturbate
- ▶ stopping the client from leaving the house or refusing to give the client money unless the client performs a sexual act
- ▶ forcing the client to have sex in a way that doesn't align with their gender identity
- ▶ unwanted sexual touching
- ▶ manipulation of birth control
- ▶ touching the client inappropriately when washing, bathing or dressing them (for clients with a disability)
- ▶ forcing public displays of affection in an area that is not 2SLGBTQ+ friendly to intimidate the client or to "out" them

Threats

- ▶ threatening to hurt or kill the client
- ▶ threatening to harm any children or take them away from the client
- ▶ threatening to hurt other people the client cares about
- ▶ threatening to hurt or kill themselves
- ▶ threatening the client in any other way
- ▶ threatening to harm animals or damage property
- ▶ threatening to "out" the client to their parents, children, other family members, friends, employers, faith communities, etc.
- ▶ threatening to report the client to immigration authorities or to law enforcement for receiving income under the table
- ▶ threatening the client with institutionalization

Psychological abuse

- ▶ humiliating the client or making the client feel bad about themselves
- ▶ constantly calling the client lazy, stupid, ugly or insulting the client in other ways (including using homo/bi/transphobic slurs or degrading language related to their disability)
- ▶ constantly criticizing personal appearance (e.g. weight, dress, hairstyle, makeup)
- ▶ posting or threatening to post intimate images of the client without the client's consent
- ▶ doing or saying things that make the client question their mental state or their memory (gaslighting)
- ▶ publically shaming the choices the client made or was forced to make in their previous country of residence (e.g. forced prostitution, choice of employment, forced marriage)

Financial abuse

- ▶ trying to control or controlling the client's finances and money (including disability income cheques)
- ▶ preventing the client from working or forcing the client to work
- ▶ controlling access to the client's bank account, income or benefits
- ▶ controlling how the client spends money
- ▶ incurring credit card debts in the client's name
- ▶ controlling ownership of property (real and personal) (e.g. it has to be in partner's name alone)
- ▶ committing fraud against the client and/or in the client's name

Harassment and stalking

- ▶ harassing the client or making the client feel scared or intimidated by contacting the client, following the client, or monitoring the client's activities
- ▶ constant or unwanted calling, emailing, texting or messaging
- ▶ following the client when the client goes out
- ▶ watching the client's home or workplace
- ▶ monitoring the client through apps or video cameras or GPS trackers
- ▶ posting intimate photos/videos or inappropriate messages about the client on social media

Coercive and controlling behaviour

- ▶ trying to control the client or to force the client to do things they don't want to do
- ▶ preventing the client from working or forcing the client to work
- ▶ preventing the client from practising the client's religion, spiritual beliefs or culture (e.g. using religion to justify behaviour, stopping them from participating in community events and ceremonies, or preventing them from seeing an Elder)
- ▶ withholding money for basic necessities, such as food, medication or clothes, until the client does something the ex-partner wants them to do
- ▶ preventing or interfering with the client's ability to see friends and family
- ▶ controlling what the client wears
- ▶ threatening to turn the client's child(ren) against the client if the client doesn't do what they want
- ▶ refusing to comply with parenting orders unless the client does what they want
- ▶ questioning the client's child(ren) about the client's activities
- ▶ using the client's child(ren) to communicate abusive messages to the client
- ▶ physically isolating the client in a rural location
- ▶ controlling the client's use of the phone or taking the client's phone with them
- ▶ controlling access to important documentation, including immigration or sponsorship papers
- ▶ forcing power of attorney and substitute decision-making arrangements against their will (if the client has a disability)

Failure to provide the necessities of life

- ▶ withholding money for basic necessities, such as food and clothing
- ▶ failing to provide fuel for heating the home
- ▶ withholding medication or hormones for gender transition
- ▶ withholding basic care if the client has a disability (e.g. not assisting with personal care, not keeping mobility device charged, forcing them to live in an inaccessible setting)

Child(ren)'s experiences of IPV

- ▶ being in the home when violence occurred
- ▶ being aware of the violence
- ▶ seeing physical injuries (e.g. bruises, cuts) on client
- ▶ being present when the ex-partner physically hurts the client
- ▶ being present when the ex-partner verbally berates the client (e.g. calling them names, criticizing their parenting abilities)
- ▶ witnessing threats or harassing behaviour
- ▶ seeing social media posts about the other parent
- ▶ witnessing police or paramedics come to home
- ▶ being injured during an assault by one parent against the other

Direct child abuse

- ▶ physically hurting any child in the family
- ▶ sexually touching any child in the family or forcing them to engage in a sexual activity
- ▶ shaking, pushing, grabbing, throwing, hitting, punching, kicking, choking, strangling, burning or excessively restraining any child in the family
- ▶ failing to keep any child in the family safe
- ▶ failing to provide basic necessities, such as food, clothing, education and medical care
- ▶ being consistently hostile to any child in the family or frequently insulting them
- ▶ refusing to send children to school
- ▶ refusing to allow any child in the family to participate in activities
- ▶ denying a child's reality by saying "I didn't say that, I didn't do that"
- ▶ keeping a child in a room, basement or garage with locks or restraints to prevent them from getting out
- ▶ being cruel to the family pet in front of a child

Violence toward animals or property

- ▶ threatening to hurt or kill pets or other animals, including farm animals
- ▶ threatening to harm or destroy the client's property or belongings

Harm to animals or damage to property

- ▶ harming or killing pets or other animals, including farm animals
- ▶ damaging or destroying the client's property or belongings

Supplemental Material

Tab #10: Safety Planning

A safety plan is an individualized plan that identifies methods to enhance the safety of victims and their children when confronted by family violence.

A good safety plan will include:

- ▶ names and telephone numbers of people to contact;
- ▶ strategies to address immediate needs, such as housing, food, health care, employment/income, parenting time and childcare; and
- ▶ the location of documents that may be necessary to pursue legal remedies, such as passports, birth certificates, status cards, citizenship cards, divorce or separation documents, and financial records.

Risk is not static, so the safety plan must be dynamic to reflect changes in the victim's circumstances as well as those of the abuser. **While an important focus of any safety plan is physical safety, emotional safety must also be taken into account.**

Remember to be cognizant of your client's particular circumstances and try to find resources that suit their individual situations. See [Tab #7: How to Incorporate Cultural Safety into Client Interactions](#). Your clients may be more likely to contact and "buy in" to resources and services that demonstrate specific consideration of intersectional factors.

1. Whenever possible, you should work with your client to connect them to a support person, such as a frontline advocate, to help address safety concerns.

You may need to explain to your clients that you are acting only as the legal adviser and that other community services are better placed to help them evaluate their safety risks, develop a safety plan and provide them with the tools and resources they will need to sustain themselves throughout the legal process. The Public Health Agency of Canada has resources to help guide victims of family violence in developing a safety plan: <https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/plan-your-safety.html>.

A good practice is for you to become familiar with the resources in your community that can assist your client in the areas you cannot. Collaboration and information sharing will be important to ensure there are no gaps or overlaps in what people are doing.

Your clients may find it helpful if you prepare or obtain a handout, card or other way to safely provide information to them on local resources. Remember to discuss ways the person can conceal the materials provided or website visits from their ex-partner, or otherwise ensure that having the handout or card will not put them at increased risk.

See [Tab #12: Making Referrals](#).

Frontline advocates may not be available in all circumstances. While a trusted family member, friend, colleague or member of the community can help support your client, for example by accompanying them to meetings, you should caution that the involvement of these informal support persons in promoting safety could make those people targets of violence where there are indications of higher levels of danger and lethality.

Tip: Remember that the time of preparing to separate and actual separation are when many victims are at increased risk of serious injury and death.

2. Safety planning and the family law process

As you work with your client, consider how you can help to reduce their risk in relation to the family law case:

- ▶ Discussing safe ways to contact your client. See [HELP Guide Section E.3](#).
- ▶ Addressing contact and communication between the parties (through court orders and agreements if needed)
 - Your client may need to communicate with the ex-partner regarding the children. Consider how this communication will happen. For example, will it be by phone, text or email or through a parenting app? Should your client be using a general email account or should they set up an email account solely for communicating with their ex-partner?
 - If both parties have parenting time, discuss how to enhance your client's safety regarding transfers of the children. For example, can the transfers occur in a public location? Consider situations that may affect the location of the transfers, such as the closure of a shopping mall on a statutory holiday.
- ▶ Planning when and where to serve documents
 - Have a discussion with your client about the most opportune time and place to serve their ex-partner; consider how their ex-partner may react when being served. For example, if the children are with the ex-partner, it is probably not a good time to serve them. If they have a lawyer, perhaps they can be served at their lawyer's office.

- Make sure you let your client know what day their ex-partner will be served. Speak with your client about their concerns for their ex-partner's reaction.
- ▶ **Safety at court**
 - Before court dates, you should discuss with your client the layout of the building, the entrances and exits, a safe waiting place, and how to leave court without being followed by the abuser. The more information you can give about the process and logistics, the more your client can prepare and create a safety plan.
 - It may be helpful for your client to visit the courthouse in advance to familiarize themselves with the building, parking, access by public transit, court security, accessible facilities, washroom locations and possible courtroom location.
 - Have your client attend court with a support person when possible, and stagger their arrival and departure times with those of the abuser. This will also help manage the client's safety after court if their ex-partner is unhappy with the outcome.
 - Consider meeting your client in a designated location in the courthouse, such as the victim/witness office, at a specific time.
 - To help enhance psychological safety in the courtroom, try to create ample physical and visual distance between the victim and their abuser if possible. Ask for breaks, if needed.
 - You may want to contact court staff or court sheriffs in advance of a court hearing to discuss possible protective measures that can be put in place. For instance, a sheriff may be able to walk the client to and from their car.
 - If your client and the ex-partner will be attending a family dispute resolution session together, many of the same considerations will apply. In addition, it may be possible to request further safety measures, such as having parties in separate rooms (e.g. shuttle mediation).

Consider offering your client information on technology safety (see below for some resources).

3. Safety planning resources

There are many safety planning resources available online, including:

- ▶ the Public Health Agency of Canada's webpage on how to plan for your safety if you are in an abusive relationship: <https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/plan-your-safety.html>
- ▶ the Safety Planning Guide by the Peel Committee Against Woman Abuse that is available in several languages, including Chinese, French, Hindi, Polish, Portuguese, Punjabi, Urdu, Tamil, Spanish, Italian, Tagalog, Arabic and Vietnamese: <http://www.pcawa.net/safety-planning-guide.html>
- ▶ the Healing Journey's website for tips on safety planning for Aboriginal women and children: <http://www.thehealingjourney.ca/inside.asp?51>

- ▶ a brief by the Canadian Domestic Homicide Prevention Initiative on how to create a safety plan for vulnerable populations, including Indigenous women, immigrant and refugee women, children exposed to IPV, and rural/remote/Northern women: http://cdhpi.ca/sites/cdhpi.ca/files/Brief_6-Online_0.pdf
- ▶ a brief by the Canadian Domestic Homicide Prevention Initiative on culturally informed risk and safety strategies to reduce domestic homicide in immigrant and refugee populations: http://cdhpi.ca/sites/cdhpi.ca/files/Brief_4-Online-Feb2018-linked-references.pdf

For resources specific to technology safety, you may wish to consult the following links:

- ▶ Barbra Schlifer Commemorative Clinic's Technology Safety: A Toolkit for Survivors, which includes guidance to victims on cyber abuse, etiquette for attending virtual meetings and virtual family court appearances: <https://schliferclinic.com/wp-content/uploads/2020/08/Technology-Safety-A-Toolkit-for-Survivors-1.pdf>
- ▶ National Network to End Domestic Violence offers a comprehensive Digital Services Toolkit as well as a bilingual resource on Technology Safety Plan with Survivors: Tips to discuss if someone you know is in danger (Canadian Version): <https://www.techsafety.org/digital-services-toolkit> and <https://nnedv.org/mdocs-posts/technology-safety-planing-with-survivors-canada/>
- ▶ Tips that Shabna Ali and Cynthia Fraser (Safety Net Canada) presented on technology safety at the 2012 National Victims of Crime Awareness Week Symposia is available on the Government of Canada's website: https://www.victimsworld.gc.ca/symp-colloque/past-passe/2012/presentation/Shabna_Ali_Cynthia_Fraser_1.html
- ▶ Luke's Place offers a Tech Safety Toolkit: Identify, manage & document tech abuse on their website: <https://lukesplace.ca/resources/tech-abuse/>

Supplemental Material

Tab #11: What Clients Need to Know about Contacting the Police

As a family law legal adviser, you may encounter situations where your client is considering contacting the police about a family violence matter. This document offers you some general information for these situations.

1. Considerations for your client about making a statement to the police and/or calling 911

- ▶ Some police departments have specialized domestic violence units (which may go by different names). The benefit of connecting with these specialized units is that the police undergo additional training and use procedures that are more sensitive to the situation (e.g. they may use an unmarked car or arrange to meet outside of the house).
- ▶ If your client or their children are in immediate danger, calling 911 may be the best option. If criminal charges are laid, this may be one of the fastest and most effective ways of having protective conditions, such as a no-contact order, put in place. Your client may also want to explore the option of seeking a recognizance under the *Criminal Code*, which does not require that a criminal offence has been committed. Often referred to as a “peace bond,” this is a criminal court preventative order that requires a person keep the peace and be of good behaviour. It can include specific protective conditions, such as no-contact and non-attendance conditions in relation to a victim.
- ▶ Victims of sexual offences may be able to make police reports through a third party, such as a victim services worker in your jurisdiction.
- ▶ When your client reports a crime, they will be asked to make a statement to the police. This statement will be essential evidence in the investigation and throughout the criminal file if charges are laid. It would be helpful if someone, such as a support worker, could accompany them when making the statement, but you should advise the client that the actual statement will likely be made alone with the police officer(s).
- ▶ In every case, police must consider many factors in deciding whether criminal charges are appropriate. Even if a charge is not laid, a 911 call or any other information that your client provides to the police will become part of the police file and will establish a record that assistance was sought.

Many jurisdictions in Canada have policies regarding investigation and prosecution of IPV offences. These policies may be referred to as “zero tolerance,” “pro-charge,” “mandatory-charge” or “pro-prosecution” policies. Generally speaking, the policies pertaining to police require that charges be laid in cases of IPV where, following an investigation, police have reasonable grounds to believe that an offence has been committed. These policies are intended to reflect the fact that a criminal offence committed within an intimate relationship must not be treated as a private matter between the individuals involved, but as a criminal act. At the same time, prosecution policies across Canada require that prosecutors proceed with charges only where there is a reasonable or substantial likelihood (or prospect) of conviction, and prosecution is in the public interest.

When allegations of criminal conduct are made against both intimate partners, many jurisdictions have “primary aggressor” or “dominant aggressor” policies that require police and prosecutors to try to determine whether there is a dominant aggressor, and consider whether a victim may have been acting in self-defence. Nonetheless, in some circumstances, charges against both partners may be seen as appropriate by those making decisions about charging.

If no charges are laid

- ▶ The police may still have investigated the complaint, and your client may have given a statement to police. Police incident investigation reports, along with victim statements and any police notes or other reports, may be helpful evidence in the future for your family law case.
- ▶ In many jurisdictions, police administer verified risk assessment tools when investigating criminal family violence cases. Even if the case does not result in charges, the police-administered risk assessments may provide information that helps to assess the level of risk in the family law case.
- ▶ Even if no charges are laid, that does not mean that the conduct does not amount to family violence that is relevant to the family court proceedings.
- ▶ If charges are not laid, it is important to be aware that your client may potentially be in a more dangerous position, as the other party may be upset that the police were called. See [**Tab #10: Safety Planning**](#).

If charges are laid

- ▶ If the police lay a charge against a person for a criminal offence and the person is released by police, there will likely be a condition of the police release that prohibits the accused from having contact with the victim. Breaches of such conditions can result in criminal charges and possible incarceration.
- ▶ Victim services can be helpful in obtaining a copy of the release conditions, which should be reviewed for impacts on the family law matter. For example, if there is a no-contact order, are there specific locations that the person cannot go to, such as the residence of the victim? Check to see if other family members have been included in the release conditions. For instance, sometimes there are provisions in the release order governing or prohibiting contact with children.

- ▶ For more information on concurrent family and criminal proceedings, see [Tab #13: When Your Family Law Client Is Accused of Family Violence and There Are Concurrent Criminal Proceedings](#) and [Tab #16: When Your Family Law Client Is the Victim of Family Violence and There Are Concurrent Criminal Proceedings](#).

Involvement of child protection authorities⁷²

- ▶ It is important that your client understands that in some circumstances, calling the police may lead to involvement of child protection authorities. In many cases, police have a legal duty to report disclosures of IPV affecting children, as well as direct child abuse, pursuant to the applicable child protection legislation.
- ▶ Of course, it is also important that you understand your own legal and professional obligations in relation to the duty to report when a child is in need of protection in your province or territory.

When a child protection agency becomes involved in a case of family violence, the response will depend on the individual circumstances of the case along with other factors, such as legislation, policy, resources, training and intervention options. In cases involving children's exposure to IPV, there may be a focus on the victim parent's ability to protect the children from harm. This can make some IPV victims feel as though they are being blamed for not protecting their child, rather than supported. Supporting your client to engage in services to understand the impact of IPV, including the impact on their children, is important in these circumstances.

Supplemental Material

Tab #12: Making Referrals

Connecting clients with resources is fundamental when identifying and responding to family violence. It is important for you to be aware of intervention options, including supports for both victims and abusers. This will allow you to concentrate on your area of expertise – family law – knowing that other professionals are working with your client on other issues (e.g. mental health, housing, financial assistance).

1. Be prepared

Find out in advance what supports and resources for family violence are available in your community. It will be helpful if you develop a list of community resources for clients and keep it up-to-date. See the list below for more information. You may find it helpful to visit or have a personal contact at places like shelters, sexual assault/domestic violence centres or related services. This will help you understand the services they provide and give referrals. A direct referral to someone you know can make the process much easier for the client.

Keep in mind the gendered nature of family violence services in Canada. For instance, women's resource centres or shelters can provide support services to clients; however, these organizations only provide services to women and to some members of the 2SLGBTQ+ community, along with their children. It is often more challenging to find community resources for male and 2SLGBTQ+ clients.

The following two links can help you start developing a list of local community resources:

Public Health Agency of Canada, “Find family violence resources and services in your area”, *Stop Family Violence* (last updated 2020-10-22): <https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/services.html>.

Women and Gender Equality Canada, “Provincial and territorial resources on gender-based violence”, *Gender-Based Violence Knowledge Centre* (last updated 2021-05-07): <https://women-gender-equality.canada.ca/en/gender-based-violence-knowledge-centre/provincial-territorial-resources.html>.

You may want to connect with your local law association or legal aid clinic to see if they have an existing list of services that they can share with you. You may also want to reach out to other legal advisers in your area, as they may have already identified services to which they refer clients.

If your client is a victim

Consider the context of the relationship, and the type, severity and impact of the family violence being experienced as well as the client’s needs. For instance, if your client received threats related to their immigration status or sponsorship, you could refer them to an immigration lawyer or provide them with information on immigration laws and regulations. If they have received threats to “out” them, you could refer them to 2SLGBTQ+ advocacy and support groups and provide them with information on hate crimes. Refer to the [HELP Guide](#) for more information.

If your client has been abusive

Consider the following services if relevant to your client’s situation:

- ▶ specialized family violence intervention programs for perpetrators,^{viii} which provide participants the opportunity to change attitudes that led them to abuse and to develop skills to better deal with their coercive and controlling behaviours;
- ▶ specialized parenting programs for those who engage in family violence;
- ▶ culturally appropriate counselling; and
- ▶ mental health or substance use programs.

^{viii} These programs are distinct from anger management programs, which are not generally appropriate for those who commit coercive controlling violence because they do not explore the dynamic of power and control in intimate relationships or assist participants to unlearn or change socialized gender-based attitudes.

2. Helping to complete a referral⁷³

The following are some suggestions about making referrals for your clients:

- ▶ Offer to call or to have an office staff person call to make an appointment for them while they are in your office if this would be helpful. For example, you could ask your client:
 - *“Would you like me to call with you now, and I can put it on speaker phone so we can hear the options together?”*
- ▶ If possible, provide details such as contact or website information, location and the name of someone they could speak to.
- ▶ Suggest that the client may want to arrange for a trusted person, such as a friend or family member, to accompany them to the first appointment.
- ▶ Ask your client about their past experiences with community resources to help you consider which services would be appropriate. For example, newcomers from war-torn countries may have a mistrust of the police, and may not feel comfortable calling the police.
- ▶ Avoid making assumptions about your client; be sure to ask them whether they would be comfortable with referrals to services within their cultural community. Cultural communities can be small and cohesive, and some victims may not want to access these services due to shame, confidentiality concerns or concerns about their social status within their community.
- ▶ If your client says that they find it challenging to go to a referred service, think creatively with them about solutions. Problems you might discuss include:
 - lack of childcare while accessing services;
 - ex-partner finding out and trying to prevent access;
 - no transportation and/or travel is too expensive;
 - employment implications, such as loss of work time;
 - cost of services; and
 - cultural barriers.
- ▶ Many people will not immediately take up a referral. If this happens, here are some things you can say:
 - *“When you feel ready, there are services that can help. Here’s some information. If it’s not safe to keep or take home, do you have somewhere safe to keep it?”*
 - *“You can always come back here to discuss this some more. It’s very common for people to take some time to make these decisions.”*
 - *“Here’s a link to a website. If you do choose to visit it, remember it is safer to use devices at a different location if you’re worried your ex-partner might check your online activity at home.”*

3. Local community resources

The list below includes some examples of resources that may be available in your community. If appropriate, you could develop a sheet with available resources to share with your clients.

It can be difficult for victims of IPV who have experienced trauma to navigate a long list of resources and contact information. In these cases, it may be more helpful for you to make the connection with or for your client. If you are planning to share the list with clients, make sure that the contact information is easy to navigate, for example, by including specific URLs that may be useful as opposed to just the homepage of a website.

Potential Community Resources	
Emergency Services <ul style="list-style-type: none"> • 911 (police) • local police domestic violence unit • other police numbers (OPP) • child protection services • adult protection services 	Clearinghouse Referral Portals <ul style="list-style-type: none"> • Sheltersafe.ca • Public Health Agency of Canada • Women and Gender Equality Canada • 211
Housing/Shelters <ul style="list-style-type: none"> • Salvation Army • advocacy groups • housing programs 	Crisis Lines <ul style="list-style-type: none"> • sexual assault crisis lines • suicide-prevention lines • distress centres • helplines • domestic violence help lines
Support and Advocacy <ul style="list-style-type: none"> • advocates/support workers (family law information centres, family court support workers) • sexual assault/abuse supports (sexual assault 24-hour crisis line, sexual assault programs) • victim services (local victim services contact information) 	Legal Information and Services <ul style="list-style-type: none"> • Public Legal Education and Information (PLEI; PLEI websites, family court information) • other family law support services (supervised parenting (access, visitation exchange) programs) • other legal professionals (legal aid, law society lawyer referrals, criminal lawyers, immigration lawyers)
Newcomer and Immigrant Community Services <ul style="list-style-type: none"> • immigration services • newcomer information services • multicultural community centre 	Indigenous Support Services <ul style="list-style-type: none"> • Native Friendship Centres • Pauktuutit Inuit Women of Canada • Hope for Wellness Help Line • Indian Residential Schools Survivors Society Crisis Line

Potential Community Resources	
2SLGBTQ+ Services <ul style="list-style-type: none"> National Coalition for the Homeless – LGBT LGBT Youth Line 2SLGBTQ+ community centres 	Mental Health Services and Hospitals <ul style="list-style-type: none"> hospitals, family doctors mental health crisis teams, psychologists family violence counselling programs for victims and children Wellness Together Canada website
Resources for Children <ul style="list-style-type: none"> youth services Kids Help Line youth centres child and youth advocacy centres children's hospital child abuse teams 	Family Services <ul style="list-style-type: none"> family resource/support centres YM/YWCAs parenting programs Caring Dads programs
Alcohol/Addiction Services <ul style="list-style-type: none"> addictions treatment helplines addiction clinics addiction programs Wellness Together Canada website 	Services for Abusers <ul style="list-style-type: none"> specialized family violence programs family violence intervention programs
Financial Assistance and Employment <ul style="list-style-type: none"> legal aid employment insurance disability support programs child tax benefits financial planners debt restructuring advisers 	Language Interpretation Services <ul style="list-style-type: none"> Sign Language interpretation/translation international languages interpretation services
Other Support Services <ul style="list-style-type: none"> transportation (public transportation, Uber, taxi numbers) emergency food services (local food bank, Salvation Army Family Services) pets (foster animal services) 	Safety Planning Online Resources <ul style="list-style-type: none"> Public Health Agency of Canada webpage: How to plan for your safety if you are in an abusive relationship myplanapp.ca

See also [Tab #10: Safety Planning](#)

Supplemental Material

Tab #13: When Your Family Law Client Is Accused of Family Violence and There Are Concurrent Criminal Proceedings

This document provides practical information and suggestions on how to approach family law cases when your client is accused of committing family violence and is facing criminal charges. It is also recommended that you read [Tab #16: When Your Family Law Client Is the Victim of Family Violence and There Are Concurrent Criminal Proceedings](#).

1. Lawyers^{ix} in the criminal court matter and the family court matter

- ▶ While you may practise criminal law in addition to family law, many family law lawyers do not. If the client has more than one lawyer, with the client's consent both lawyers should work closely together and share information. This is important because even experienced family law counsel are at a disadvantage if they do not understand the criminal court process/matter. What the criminal lawyer does can affect the family file and vice versa.
- ▶ If your client is charged and arrested, it can be helpful for you to establish contact with the criminal lawyer as soon as possible. Your client may need to sign authorizations for lawyers so they can share information with each other.
- ▶ Your client may not be represented by counsel on the criminal matter. While they may be assisted by duty counsel, duty counsel will have limited time to spend on your client's case.
- ▶ In most jurisdictions, the criminal court matter and the family court matter will proceed separately, but they may overlap.

^{ix} In this document, the term "lawyer" is used for simplicity; however, it is intended to include other professionals who come within the definition of "legal adviser" in the *Divorce Act*.

2. Importance of release conditions

- ▶ Your client may be released by police with or without conditions, or released following a bail hearing. If your client is detained on the charges and there is a bail hearing, you or your client may want to ask the criminal lawyer to request certain conditions to assist with the family court file, especially when there are children involved.
- ▶ There will most likely be no-contact and non-attendance conditions with the victim on the release order. There may also be no-contact and non-attendance conditions with the children.
- ▶ Other common release conditions include an abstain from drugs and alcohol clause, a weapons prohibition, a requirement to report to the police or bail program at specific times and restrictions on visiting specific places and specific people.
- ▶ It will be important to consider how the release conditions will affect decision-making and parenting time for children. A criminal charge does not automatically mean the accused person will not have time with their children.
- ▶ Remember, the Crown Attorney is concerned about the safety of the complainant and the public, including any children involved, and protecting the integrity of the criminal case; however, their responsibility does not extend to the family law case.

3. Seeking changes to release conditions

- ▶ If the conditions of release have a negative impact on your client's situation in family court, you or your client may need to speak with the criminal lawyer about seeking a variation. For example, you will want to consider the potential impact on parenting arrangements. It can take time to have conditions varied, so the request should be made as soon as possible.
- ▶ Your client may want to seek an exception to a no-contact condition along the following lines: "except as may be outlined in an Order dealing with family law issues involving children or support granted by a court of competent jurisdiction."
- ▶ It may be necessary to set up an agreed upon third party contact for communication regarding the children. If the release conditions do not allow for this, a change would need to be requested.
- ▶ If the complainant is self-represented in family court, you may also need an exception in the release conditions for you as the family law adviser to be able to contact them.
- ▶ Conflicting orders need to be addressed. For example, there may be conflicts between bail conditions and family court orders regarding parenting time/access, exchanges, decision-making or communication.

4. Release conditions related to non-attendance at certain places

- ▶ The release conditions may include a non-attendance condition for the complainant's place of residence, employment, education and place of worship, among other places.
- ▶ The release conditions may have the effect of prohibiting your client from living at or visiting the family home. Your client may need a variation in the release conditions if the family court order allows them to remove items from the family home.

5. Understanding the criminal proceedings before drafting the family court pleadings

- ▶ Before you and your client make a decision about whether to provide your client's version of events in relation to the criminal charges in the family case, you should consider discussing this with the criminal lawyer. The pleadings in family court can be used for cross-examination purposes in criminal court, as can statements made to a child protection agency.
- ▶ It is important to be aware of the next step in the criminal file and understand the potential impact on your client's family law case.
- ▶ Be cautious if your client tells you that the victim is having the charges dropped or is changing the release conditions. It is helpful to ask them to provide some type of documentation. It is also a good idea to ask questions to ensure that your client is not pressuring the victim to withdraw the charges, as evidence of intimidation or manipulation could be used against the client in the family law case.
- ▶ If there is a criminal trial and the complainant testifies, that testimony will be relevant to the family case. Similarly, the criminal court may want to see the complainant's family court pleadings for cross-examination purposes in criminal court.

6. Knowing what your client pled guilty to and what facts were acknowledged

- ▶ Plea negotiations happen often. Guilty pleas can be made to some, all or lesser charges than the original charges an accused person was facing. During the plea process, the accused person can also agree to some or all of the facts.
- ▶ You or your client may need to seek details from the criminal lawyer about the plea. It may also be helpful to request a transcript or the agreed statement of facts so you can understand the charges the client pled to and the facts they admitted.
- ▶ It is important to understand both the guilty plea and the agreed upon facts. For example, you may need to prevent the other side in the family law matter from continuing to cite the original charge information if it is no longer appropriate. You may also need to explain to the court what your client has pled to, and knowing the details is important.

- ▶ Family court is not the place to re-litigate criminal court matters. For example, your client should avoid denying allegations in family court after having already pled guilty in criminal court.

7. Resolution of the criminal matter: Understanding how the criminal matter is resolved is critical for the family matter

- ▶ **Conviction after trial:** While your client can still choose to deny the allegations in family court after being convicted, it is important to remember that the criminal court has made a finding on the basis of the higher criminal standard of proof beyond a reasonable doubt.
- ▶ **Peace bond (s. 810):** Resolving the criminal charge by way of a peace bond is not an acquittal. When they are given the option to enter a s. 810 peace bond in exchange for having the criminal charges withdrawn, your client may be required to acknowledge that their actions have caused the victim to be fearful for their own safety or the safety of their children or new partner. If the charges are stayed or withdrawn, there is no entry on the criminal record but there are conditions the client must respect for up to a year, with criminal consequences for breaches.
- ▶ **Incarceration:** If there is a term of incarceration, you will need to consider how that will affect the parenting arrangements.
- ▶ **Probation:** Similar to pre-sentence release conditions, probation conditions can have an impact on the family law case. It is important to understand these conditions and to try to prevent conflicting orders between different courts.
- ▶ **Acquittal:** An acquittal in criminal court does not necessarily keep the incident out of family court because the two systems have different standards of proof: beyond reasonable doubt versus balance of probabilities. In addition, family violence does not have to be criminal in nature to be relevant in the family law case.

Criminal court may make findings of fact that may be detrimental to your client in family court without convicting them of a criminal offence. It may be helpful to order transcripts to understand everything that was stated by the court.

Supplemental Material

Tab #14: Talking to a Child Client about Family Violence

This document aims to support legal advisers who represent child clients in family law cases and provides high-level guidance on talking to a child about family violence. Most family law legal advisers do not represent children, but some specialize in this area. In addition to specialized training in child development and age appropriate questioning, legal advisers who represent children should also have training and expertise in family violence and childhood trauma before they talk to child clients about family violence.

Please note:

- ▶ This document is supplementary to the [HELP Guide](#) and [Legal Response Guide](#), and should be read in conjunction with them.
- ▶ In this document, the term “child” is used to refer to a child or youth who is under the age of majority.
- ▶ For more information on the impacts of family violence on children, see [Tab #5: Children’s Experiences of Family Violence](#).

1. Talking to a child client about their experience

Child clients have varied levels of capacity to feel safe to engage with you, to answer questions and to identify their needs. Some general tips about talking to a child client about family violence are set out below.

- ▶ Take extra time to build rapport and trust before asking about family violence.
- ▶ Explain why it is important to understand more about the client’s experiences, including experiences that may involve family violence. Explain why this information is relevant: for the case, to help ensure the client is safe, and to identify resources/services that may be helpful to them.
- ▶ It is important that children understand that there may be limits to confidentiality and that in some situations, you may have a duty to report concerns about safety. You should explain these limits and your relevant legal and professional obligations in a way that the client can understand.

- ▶ Provide an opportunity for the child to share any concerns they may have about disclosing family violence to their parents and discuss how information can be shared safely.
- ▶ Remember that your client will decide if and when to share their experiences with you. Be respectful and do not pressure.
- ▶ During a conversation, you may unintentionally trigger a client. A good practice is to provide support and a safe environment for your client. For example, you can tell them that their reaction is normal.
- ▶ Encourage your client to tell you if your questions are causing them to feel uncomfortable and/or upset. This will allow you to understand what is happening and to take breaks when the client needs them.
- ▶ Understand that children suffering from trauma can be expected to exhibit the following types of behaviour:
 - difficulty recalling and giving detailed information about traumatic events;
 - confusion about timing and sequencing of events;
 - delayed and incremental disclosure;
 - minimization or denial of traumatic events;
 - lack of emotional response (such that information about severe acts may be given in a detached, emotionless manner); and/or
 - confusion about related details.⁷⁴
- ▶ It is also important to understand that there are many reasons why a child client might not disclose family violence, including the following:
 - not understanding that abusive behaviour is wrong or not normal;
 - embarrassment or desire for privacy;
 - being warned to "keep your mouth shut";
 - believing they caused the violence;
 - having no trusted adult in their lives;
 - fear of consequences for themselves (e.g. being taken from the family); and
 - fear of consequences for the family (e.g. arrest of parent, divorce, parent being hurt).⁷⁵

2. Asking about family violence

When discussing family violence with children, it is important to adapt questions to the age and maturity of your client. Below are some examples of ways to adapt questions for use with child clients.

- ▶ *"What do you like about your family? What do you not like about your family? What would you change about your family if you could?"*
- ▶ *"Who in your family do you feel safe with?"*

- ▶ *“Is there anyone in your family who doesn’t make you feel safe? What does that person do that makes you feel like you are not safe?”*
- ▶ *“Are you worried about the safety of anyone else in your family?”*
- ▶ *“Can you tell me about a time when you thought that someone in your family was not safe?”*
- ▶ *“Have you ever been worried about the safety of a family pet?”*
- ▶ *“Does anyone stop you from seeing or talking to people you care about?”*
- ▶ *“Do you want to spend time with or talk to ____? Is there anything that makes you nervous or uncomfortable about seeing them or talking to them? Is there something that would make you feel more comfortable about talking to them or spending time with them?”*

3. The impact of family violence on the family law case

- ▶ If a child discloses family violence, this will affect all aspects of your client’s case.
- ▶ Consider the nature of the violence: Is the violence directed at the client, a parent or another sibling?
- ▶ What type of parenting arrangement will protect your client from future harm while supporting healthy relationships? Consider responses that may range from suspending parenting time to creating situations that minimize the likelihood that violence will occur, such as by having visits or transfer of care from one parent to another occur under supervision. Also, consider the frequency and duration of the visits: Should they be for a few hours? For longer periods with or without overnights?
- ▶ Who can support the parenting arrangements? For example, is there a third party or relative who can support parenting time with supervision or supervised transfers?
- ▶ What other supports are in place to reduce the likelihood of future harm? For example, is the abusive family member engaged in counselling or in a specialized family violence prevention program to learn about their harmful or inappropriate behaviours? Do they have a mental health or addiction issue for which they are seeking professional care?
- ▶ If your client continues to have a relationship with their abusive parent, what services might help to heal and prevent future harm to your client? For example, consider whether individual counselling would be useful.
- ▶ What type of outcome will support your client to have healthy relationships with important people in their lives? If a client has a good relationship with the abuser’s extended family, should these relationships continue?
- ▶ Once parenting arrangements have been established, how will your client be able to express their concerns about a risk of violence or violence that is occurring during parenting time? Should they talk to a parent? To you? To someone in the community?

- ▶ How will concerns about your client's safety affect their options for expressing their views in the family law matter? For example, if their voice will be represented in an affidavit, a parenting assessment or a voice of a child report, it is important that any professional working with your client have expertise and training in family violence, trauma, adverse childhood experiences and risk assessment. They must be able to provide details about the impact of exposure to family violence on the child and connect those impacts to the best interests of the child.
- ▶ If direct participation in a family dispute resolution process or direct testimony in a trial is necessary, a child may be able to participate by using a screen or video link to avoid direct confrontation with a parent who has caused them harm.

4. Connecting with resources

Depending on your client's situation, it may be important to talk to them about how you can help connect them with people in their community who can support them to address their experiences of violence or prevent further harm. Remember that any outside referral should be made only with the client's consent, unless you have a legal duty or professional responsibility to report. See [Tab #12: Making Referrals](#).

Supplemental Material

Tab #15: Rejection of a Parent by a Child

There are many reasons why a child may reject a parent and resist spending time with them or refuse to. This rejection can be a natural consequence of experiences such as parental conflict before or after separation, family violence, personality factors, or poor parenting. However, when a child's rejection of a parent seems to be without justification, and it appears that the other parent has encouraged the child to turn against the rejected parent, the child may be referred to as "alienated." The topic of parental or child alienation has engendered much discussion and debate.

Understandings of how a child can come to reject a parent have advanced significantly from the mid-1980s when the term "parental alienation syndrome" was first introduced. Today, cases in which a child is resisting contact with a parent are generally recognized by experts as not reflecting a "syndrome." For example, the concept of parental alienation syndrome was rejected by the American Psychiatric Association in their update of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, which is recognized across North America as the basis upon which a diagnosis of a mental disorder is made. However, it is generally recognized that alienating behaviour can occur in families and in family law proceedings, and that this behaviour can harm a child by undermining a parent-child relationship.

Our understanding of the complex relationships between children and their parents has become more nuanced, and most experts agree that a child can resist contact with one parent for a wide variety of reasons. Therefore, in cases where a child is resisting contact with one parent, it is necessary to assess the conduct and attitudes of both parents, and to understand the views and experiences of the child.

1. Resistance to spending time with an abusive parent

It is important to recognize that in situations involving family violence, a child's resistance to spending time with a parent who has been abusive should not be seen as unusual. While there are cases in which children are influenced by one parent to reject the other parent without justification, when a child has experienced family violence, anxiety about or fear of contact with the abusive parent is to be expected.

Abusers may attempt to blame the other parent for the child's resistance to spending time with them and may make unfounded claims of alienation. Research shows that allegations of alienation are often made in family law cases in response to allegations of family violence. This can impact the family law matter in different ways. For example, allegations of alienation can:

- ▶ be used as a means to try to control and harass a former partner through the family justice process;
- ▶ shift the focus of professionals preparing parenting assessments and of judges away from family violence and related safety risks for children;
- ▶ limit consideration of a child's needs, their relationships with each parent, each parent's ability and willingness to care for the child, and other factors that are relevant to the child's best interests;
- ▶ lead to findings that a parent who does not support a child's relationship with an ex-partner due to safety concerns is deliberately trying to undermine the child's relationship with that parent; or
- ▶ result in a discounting of the views and preferences of a child, including fear or anxiety expressed by the child, based on erroneous assumptions.

In cases involving family violence, if a child is rejecting a parent and an allegation of alienation is made, it is important to undertake a careful assessment of the circumstances. Ideally, such an assessment would be undertaken by a professional who has expertise in family violence and the impacts of trauma on children, with an understanding of concerns about alienation.

2. More information about children resisting contact can be found in the following resources

- ▶ Jassamine Tabibi, Peter Jaffe & Linda Baker, "Misuse of Parental Alienation in Family Court Proceedings Involving Allegations of Intimate Partner Violence – Part 1: Understanding the Issue", *Learning Network Issue 33* (London, Ontario: Centre for Research & Education on Violence Against Women & Children, 2021): http://vawlearningnetwork.ca/our-work/issuebased_newsletters/issue-33/index.html.
- ▶ Jassamine Tabibi, Peter Jaffe & Linda Baker, "Misuse of Parental Alienation in Family Court Proceedings Involving Allegations of Intimate Partner Violence – Part 2: Impacts on Survivors and Children", *Learning Network Issue 34* (London, Ontario: Centre for Research & Education on Violence Against Women & Children, 2021): http://www.vawlearningnetwork.ca/our-work/issuebased_newsletters/issue-34/index.html.
- ▶ Linda C. Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (Fredericton: Muriel McQueen Fergusson Centre for Family Violence and Vancouver: FREDA Centre for Research on Violence Against Women and Children, 2018): <https://fredacentre.com/wp-content/uploads/Parental-Alienation-Linda-Neilson.pdf>.
- ▶ Haley Hrymak & Kim Hawkins, *Section 211 Toolkit* (Vancouver: RISE Women's Centre, 2021): <https://womenslegalcentre.ca/wp-content/uploads/2021/04/Rise-Womens-Legal-Centre-Section-211-Toolkit-1.pdf>.

- ▶ Simon Lapierre & Isabelle Côté, “Abused women and the threat of parental alienation: Shelter workers’ perspectives” (2016), *Children and Youth Services Review* 65: <https://www.sciencedirect.com/science/article/abs/pii/S0190740916300925>.
- ▶ Linda C. Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (Ottawa: Canadian Legal Information Institute, CanLII, 2nd edition, 2020) at 10.12: <https://canlii.ca/t/ng>.
- ▶ Family Court Review, *Special Issue: Parent-Child Contact Problems: Concepts, Controversies and Conundrums* (2020), *Family Court Review* 58:2: <https://onlinelibrary.wiley.com/toc/17441617/2020/58/2>.
- ▶ Peter Jaffe et al., *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (2014): <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfv-freevf/rfcsfv-freevf.pdf>.
- ▶ Report of the Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, *Making the links in Family Violence Cases: Collaboration among the Family, Children Protection and Criminal Justice Systems* (2013): <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mlfvc-elcvf/index.html>.

Supplemental Material

Tab #16: When Your Family Law Client Is the Victim of Family Violence and There Are Concurrent Criminal Proceedings

This document provides practical information and suggestions on how to approach cases when your client is the victim of family violence and the ex-partner is facing criminal charges. Criminal proceedings can create additional stressors for your client and their children, and add significant complexity to the family law case. At the same time, criminal law proceedings can provide greater protections for your client and may also assist them by providing concrete evidence of family violence for their family law case.

In most jurisdictions, the criminal court matter and the family court matter will proceed separately. However, there are often overlapping issues, such as concerns around contact between the parties. Improving your understanding of the criminal charges, release conditions, court dates and outcomes will help you better serve your client.

Clearly, charges against your client will complicate the family law case even further. It is recommended that you also consult [Tab #13: When Your Family Law Client Is Accused of Family Violence and There Are Concurrent Criminal Proceedings](#).

1. Circumstances surrounding the charges against your client's ex-partner

Many details surrounding criminal charges against a client's ex-partner may be relevant to the family law case. For example, it is important to know:

- ▶ Circumstances of the arrest – are there children and were they at home at the time?
- ▶ Have child protection services been in contact? Have they recommended any restrictions on the parenting arrangements?
- ▶ Where is the ex-partner now? Are they permitted to return home, and if so, under what circumstances?
- ▶ Does the ex-partner have a criminal lawyer?
- ▶ What are the facts that gave rise to the arrest?

- ▶ Who called the police? Were police called at the time of the incident or after?
- ▶ Did your client provide a statement (written or videotaped)?
- ▶ Were there witnesses? Did the witnesses provide a statement?
- ▶ Has your client been in contact with victim services?

2. Importance of release conditions

Find out if the accused has been released by police or by a court, has been detained for a bail hearing, or has been detained awaiting trial following a bail hearing. If the accused has been released, the following are some of the key things you should consider with respect to the release conditions:

- ▶ Do the release conditions contain a no-contact condition and/or a non-attendance condition so that the accused cannot communicate directly or indirectly with your client or appear at any place they may be?
- ▶ If children are involved, do the no-contact conditions include the children? There may also be a condition in place that allows the accused to communicate with the victim about the children through a third party.
- ▶ Accused persons can and often do apply to have release conditions modified by a court in order to permit contact with the victim to make parenting arrangements. Therefore, it is important that your client ask the Crown prosecutor to keep them informed about any applications to modify the release conditions.
- ▶ The accused may also pressure or manipulate your client, either directly or through the children, to withdraw or recant their criminal complaint. It is important to discuss possible implications for the family law case. You may be able to assist your client to develop strategies to document and resist manipulation and intimidation.
- ▶ Do the release conditions permit the accused to communicate with the children (and sometimes even the victim) as permitted by a family court order dated after the release document? If so, it will be important to identify with your client any parameters that they would be prepared to agree to. You may need to advocate against direct communication in your family court pleadings if the client does not feel this would be safe for them or their children.
- ▶ Do the release conditions permit the accused to return to live at the family home (or provide this as the address at which the accused will be living)?
- ▶ Is there a “no weapons” condition? Speak with your client about any weapons the accused may have in the home. If there are weapons in the home, it may be important to advise the police or consider how/whether this issue can be addressed in a civil protection/restraining order.
- ▶ If the accused has not yet been released, your client may be able to provide input about release conditions, either through victim services, the Crown Attorney’s office or a police officer with whom they are in contact about the case.

- ▶ Remember that the victim does not decide about the conditions or how the charges are resolved. Although their concerns or views may be taken into account, a victim is not a party in criminal proceedings.
- ▶ Remember that the “best interests of the child” is not a legal consideration for making decisions in criminal proceedings. However, the criminal justice system is concerned with the protection and safety of the public, including the victim, children and witnesses.

3. Understanding the release conditions and what constitutes a breach

- ▶ It is important to understand what constitutes a breach of the no-contact and non-attendance conditions, and what the exceptions are. For example, depending on the wording of the conditions, an email, a text, or a message from the accused’s mother could be considered breaches. Your client should be aware of their right to report this to the police, and you should consider how this may affect any relief that you are requesting in the family law case.
- ▶ Your client is not bound by the no-contact and non-attendance conditions. Unless your client is also facing charges, the conditions limiting how the parties interact bind only the accused. If the accused contacts the victim and they respond, the victim can still advise the police about the breach.
- ▶ However, the victim also has to respect these conditions, even if they do not agree with them. The victim cannot “invite” a breach by continually contacting the accused. Such behaviour can result in a criminal charge, although this rarely happens. Facilitating a breach can also be used by the accused in the family court proceeding to challenge the victim’s evidence about ongoing abuse or ongoing fear of the accused.
- ▶ If there are children, it is important to avoid having any family court order contradict the criminal orders that bind the accused.
- ▶ Your client may want to communicate with the accused about financial issues (e.g. child support) even if they are still fearful of them. If there are no-contact conditions, you may want to seek an exception so that legal advisers in the family law matter can communicate with each other on behalf of the parties, or that you can communicate with the accused on behalf of your client.

4. Following the criminal matter

It is important to follow the criminal process. For example, you will need to know:

- ▶ Will there be proceedings in court, such as a preliminary inquiry, trial or sentencing hearing? If so, will your client testify?
- ▶ Will there be another resolution such as a plea agreement? Your client may be consulted by the Crown or victim service providers about it. In addition, they have the right to provide a victim impact statement in relation to sentencing.

- ▶ If the abuser is diverted to a specialized IPV intervention program, getting the completion report can assist in family court since it should comment on their level of participation, whether they took responsibility for their actions, etc.
- ▶ It is helpful to request a transcript of any guilty plea or resolution. As the family court counsel, you need to be able to clearly articulate to the court what the accused admitted to. Was there a plea of guilty to one charge or to all of them? Sometimes an agreement is made for the accused to plead to one count of assault but the facts read into the court during the plea mention a number of different assaults on the victim (or different behaviour) and are admitted to by the accused. This will be reflected in the transcript, whereas the actual court documents (and subsequent criminal record) will only reflect the offence(s) to which the accused pled guilty.
- ▶ A criminal charge may be resolved by an agreement that a criminal charge will be withdrawn if the defendant agrees to enter into a recognizance through a peace bond proceeding (*Criminal Code* s. 810). Such a recognizance usually binds the accused to conditions for a year. Even if it's not a conviction, in practice these agreements often require the defendant to acknowledge that they have caused the victim to fear that the defendant will cause them or their children personal injury. The peace bond may include no-contact and non-attendance conditions and a weapons prohibition, but may also include an exception to communicate, with the victim's written revocable consent. It is helpful if the family law legal adviser is able to work closely with their client to support them in providing the Crown with information as to what practical conditions would best protect the client.
- ▶ If the accused is convicted and the sentence involves probation, all of the above comments regarding release conditions should be reviewed to see how they apply to the probation conditions. Before the sentence is imposed, the victim can, through their victim impact statement, provide information that may result in related probation conditions. Probation orders can last up to three years.
- ▶ If the accused is acquitted in criminal court, the incident is not necessarily kept out of family court. The two systems have different standards of proof: beyond reasonable doubt versus balance of probabilities. In addition, family violence does not have to be a criminal matter to be relevant in the family law case.
- ▶ It is important to consider the substance and scope of any release conditions, peace bonds or probation conditions, and how long they will be in force, to determine whether to seek civil protection/restraining orders for your client to avoid gaps in protection.

5. Using caution when describing family violence in the pleadings

- ▶ A criminal lawyer may use the family court documents to cross-examine the victim during the criminal trial. Although you will want to include details in the family court pleadings to demonstrate the nature, severity, frequency, and impact of the family violence, it is important to indicate that this is an overview and is not intended to be a complete version of the client's version of events. The criminal lawyer may review the pleadings, and the victim may be cross-examined about any inconsistencies at the trial.

ENDNOTES

- ¹ Information in this Section is based, in part, on the following: 1) VEGA (*Violence, Evidence, Guidance, Action*) family violence education resources (Hamilton, ON: McMaster University, 2019), online: *McMaster University* <<https://vegaproject.mcmaster.ca/>> (adapted with permission from VEGA); 2) Pamela C. Cross et al., *What You Don't Know Can Hurt You: The importance of family violence screening tools for family law practitioners* (2018), online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/can-peut.pdf>>; and 3) Public Health Agency of Canada, "Trauma and violence-informed approaches to policy and practice" (2 February 2018), online: *Government of Canada* <<https://www.canada.ca/en/public-health/services/publications/health-risks-safety/trauma-violence-informed-approaches-policy-practice.html>>.
- ² For more information on intersectionality, see: Department of Women and Gender Equality Canada, "Introduction to GBA+" (2020), online: *Government of Canada* <https://women-gender-equality.canada.ca/gbaplus-course-cours-acspplus/eng/mod00/mod00_01_01.html>.
- ³ Adam Cotter, *Intimate partner violence in Canada, 2018: An overview*, Juristat 85-002-x (2021), online: *Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00003-eng.htm>>.
- ⁴ Doris Rajan, *Family Violence & People with Disabilities: A Gender-Based Intersectional Analysis* (Ottawa: Department of Justice Canada, 2020, unpublished).
- ⁵ Questions have been adapted from: Pamela C. Cross et al., *What You Don't Know Can Hurt You: The importance of family violence screening tools for family law practitioners* (2018), online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/index.html>>.
- ⁶ The indicators of risk in the table were taken directly from: Linda C. Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection) A Family Law, Domestic Violence Perspective* (2013, 2nd edition), online: *Department of Justice Canada* <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhan-renfo/neilson_web.pdf>. For more information on the indicators of risk, please consult the report.
- ⁷ For more information about risk factors for family violence, including lethality risk factors, see: 1) Linda C. Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection) A Family Law, Domestic Violence Perspective* (2013, 2nd edition), online: *Department of Justice Canada* <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhan-renfo/neilson_web.pdf>; 2) Jacquelyn C. Campbell, *Danger Assessment* (2019 Edition), online: *John Hopkins School of Nursing* <<https://www.dangerassessment.org/about.aspx>>; and 3) Barbra Schlifer Clinic, *Intimate Partner Violence Risk Identification and Assessment Tool* (2020), online: *Barbra Schlifer Clinic* <<https://www.schliferclinic.com/wp-content/uploads/2020/11/IPV-RIA-User-Guide-Final.pdf>>.

- ⁸ Sascha Griffing et al., “Domestic Violence Survivors' Self-Identified Reasons for Returning to Abusive Relationships”, *Journal of Interpersonal Violence* 17, 306-319 (2002), online: Sage Publications <<https://journals.sagepub.com/doi/pdf/10.1177/0886260502017003005>>.
- ⁹ Questions adapted from: Pamela C. Cross, “How lawyers can stay safe in family violence cases” (17 March 2020), online: *Luke’s Place* <<https://lukesplace.ca/how-lawyers-can-stay-safe-in-family-violence-cases/>>.
- ¹⁰ Marie-Eve Leclerc, Jo-Anne Wemmers & Alain Brunet, “The unseen cost of justice: post-traumatic stress symptoms in Canadian lawyers”, *Psychology, Crime & Law* 26:1, 1–21 (2020), online: Taylor & Francis Online <<https://www.tandfonline.com/doi/abs/10.1080/1068316X.2019.1611830?scroll=top&needAccess=true&journalCode=gpcj20>>.
- ¹¹ Note that there are other legal responses that you and your client may want to consider. For more information on legal responses, such as civil protection proceedings and grandparent contact orders, see Linda C. Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (Ottawa: Canadian Legal Information Institute CanLII, 2020, 2nd edition), online: CanLII <<https://canlii.ca/t/ng>>.
- ¹² For example, 1) Linda C. Neilson, *Spousal abuse, children and the legal system final report for Canadian Bar Association, Law for the Futures Fund* (2001), online: UNB Libraries <<https://unbscholar.lib.unb.ca/islandora/object/unbscholar%3A9034>>; and 2) Peter Jaffe et al., *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (2014), online: Department of Justice Canada <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfv-freevf/rfcsfv-freevf.pdf>>.
- ¹³ Linda C. Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (Ottawa: Canadian Legal Information Institute CanLII, 2020, 2nd edition), online: CanLII <<https://canlii.ca/t/ng>>.
- ¹⁴ For more information on adverse parenting behaviours and considerations for supervised access and parenting arrangements, see Chapters 11 and 14 of Linda C. Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (Ottawa: Canadian Legal Information Institute CanLII, 2020, 2nd edition), online: CanLII <<https://canlii.ca/t/ng>>.
- ¹⁵ For more information, see legislation on: *Family Homes on Reserve and Matrimonial Interests or Rights Act*, SC 2013, c 20.
- ¹⁶ This information has been adapted from: 1) Hilary Linton, “Best Practices for Screening for Family Violence and Power Imbalances in Family Mediation-Arbitration” (2016), online: *Riverdale Mediation* <<https://www.riverdalemediation.com/wp-content/uploads/2017/09/Linton-Best-Practices....pdf>>; 2) Family Justice Reform Working Group, *A New Justice System for Families and Children: Report of the Family Justice Reform Working Group to the Justice Review Task Force* (2005), online: *British Columbia Ministry of the Attorney General* <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-reform-initiatives/fjr_report_09_06.pdf>; and 3) Department of Justice Canada, “Fact Sheet –

Family dispute resolution: resolving family law issues out of court” (2020), online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/fl-df/fsfdr-firfd.html>>.

- ¹⁷ For more information about concurrent proceedings see: Report of the Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, *Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems* (2013), online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mlfvc-elcvf/index.html>>.
- ¹⁸ Linda C. Neilson, “17 Domestic Violence & Child Protection”, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (Ottawa: Canadian Legal Information Institute CanLII, 2020, 2nd edition), online: *CanLII* <<https://canlii.ca/t/ng>>.
- ¹⁹ Nicholas Bala & Kate Kehoe, *Concurrent Legal Proceedings in Cases of Family Violence: The Child Protection Perspective* (2015), online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/fv-vf/index.html>>.
- ²⁰ This information is based on: 1) Linda C. Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (Ottawa: Canadian Legal Information Institute, CanLII, 2020, 2nd edition), online: *CanLII* <<https://canlii.ca/t/ng>>; 2) Archana Medhekar et al., *Domestic Violence in Ethno-cultural Communities: the Potential Impact on the Identification and Response to Domestic Violence by Family Law Lawyers* (Gatineau: Department for Women and Gender Equality, 2020, unpublished); 3) Antoinette Clarke & Mina Vaish, *Viewing the Impact of Family Violence through Interlocking, Intersectional and Ethnocultural Lens: Screening for Family Violence and Supporting Victims from Newcomer and Ethnocultural Minority Identity Groups* (Ottawa: Department of Justice Canada, 2020, unpublished); 4) Doris Rajan, *Family Violence & People with Disabilities: A Gender-Based Intersectional Analysis* (Ottawa: Department of Justice Canada, 2020, unpublished); 5) Mohammed Baobaid, *Identifying and Responding to Family Violence in Muslim Communities* (Gatineau: Department for Women and Gender Equality, 2020, unpublished); and 6) Pat Durish, *Intimate Partner Violence in LGBTQ+ Relationships* (Ottawa: Department of Justice Canada, 2020, unpublished).
- ²¹ Information in this section is based in part on: Public Health Agency of Canada, “Trauma and violence-informed approaches to policy and practice” (2 February 2018), online: *Government of Canada* <<https://www.canada.ca/en/public-health/services/publications/health-risks-safety/trauma-violence-informed-approaches-policy-practice.html>>.
- ²² Based in part on: 1) Linda C. Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases* (Ottawa: Canadian Legal Information Institute, CanLII, 2020, 2nd edition), online: *CanLII* <<https://canlii.ca/t/ng>>; and 2) Linda C. Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection) A Family Law, Domestic Violence Perspective* (2013, 2nd edition), online: *Department of Justice Canada* <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhancement/neilson_web.pdf>.
- ²³ For more information on traumatic brain injury, see: 1) Gwen Hunnicutt et al., “Exploring correlates of probable traumatic brain injury among intimate partner violence survivors”, J of

- Aggression, Maltreatment and Trauma 28:6, 1-18 (2019), online: *Taylor & Francis Online* <<https://www.tandfonline.com/doi/abs/10.1080/10926771.2019.1587656>>; and 2) Yelena Goldin, Halina L. Haag & Charlotte T. Trott, "Screening for history of traumatic brain injury among Women Exposed to intimate partner violence", *PM R* 8:11, 1104-1110 (2016), online: *National Library of Medicine* <<https://pubmed.ncbi.nlm.nih.gov/27208397/>>.
- ²⁴ Jacquelyn C. Campbell et al., "The effects of intimate partner violence and probable traumatic brain injury on central nervous system symptoms", *J Women's Health* 27:6, 761-767 (2018), online: *National Library of Medicine* <<https://pubmed.ncbi.nlm.nih.gov/29083256/>>.
- ²⁵ Diane Lalonde, Linda Baker & Robert Nonomura, "Traumatic Brain Injury and Violence Against Women", *Learning Network Issue* 28 (2019), online: *Centre for Research & Education on Violence Against Women & Children* <http://www.vawlearningnetwork.ca/our-work/reports/report_2019_1.html>.
- ²⁶ Pamela C. Cross et al., *What You Don't Know Can Hurt You: The importance of family violence screening tools for family law practitioners* (2018), online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/index.html>>.
- ²⁷ Linda C. Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection) A Family Law, Domestic Violence Perspective* (2013, 2nd Edition) online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhan-renfo/index.html>>.
- ²⁸ Information in this section is based in part on: Public Health Agency of Canada, "Trauma and violence-informed approaches to policy and practice" (2 February 2018), online: *Government of Canada* <<https://www.canada.ca/en/public-health/services/publications/health-risks-safety/trauma-violence-informed-approaches-policy-practice.html>>.
- ²⁹ Descriptions adapted from: 1) Linda C. Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection) A Family Law, Domestic Violence Perspective* (2013, 2nd edition), online: *Department of Justice Canada* <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhan-renfo/neilson_web.pdf>; 2) Holly Johnson & Myrna Dawson, *Violence against women in Canada: research and policy perspectives, Themes in Canadian sociology* (Don Mills, ON: Oxford University Press Canada, 2011); 3) Joan Kelly & Michael Johnson, "Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions", *Family Court Review* 46:3, 476-499 (2008), online: *ResearchGate* <https://www.researchgate.net/publication/227644045_Differentiation_Among_Types_of_Intimate_Partner_Violence_Research_Update_and_Implications_for_Interventions>; 4) Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, *Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems* (2013), online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mlfvc-elcvf/index.html>>; 5) Michael P. Johnson, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* (Lebanon, NH: UPNE, 2008); and 6) Peter Jaffe et al., *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (2014),

online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfv-freevf/rfcsfv-freevf.pdf>>.

- ³⁰ 1) Joan Kelly & Michael Johnson, “Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions”, *Family Court Review* 46, 476–499 (2008), online: *Wiley Online Library* <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1744-1617.2008.00215.x>>; and 2) Robert Nonomura et al., “Coercive Control and Family Law”, *Family Violence & Family Law Brief* 3 (2021), online: *Centre for Research & Education on Violence Against Women & Children* <<https://www.fvfl-vfdf.ca/briefs/issue3.html>>.
- ³¹ Peter Jaffe et al., *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (2014), online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfv-freevf/rfcsfv-freevf.pdf>>.
- ³² Some of the text has been adapted with permission from: Linda C. Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection) A Family Law, Domestic Violence Perspective* (2013, 2nd edition), online: *Department of Justice Canada* <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/enhancer/enfo/neilson_web.pdf>. You may wish to consult this resource for more information on victim resistance violence.
- ³³ Information in this section is based in part on *VEGA (Violence, Evidence, Guidance, Action) family violence education resources* (Hamilton, ON: McMaster University, 2019), online: *McMaster University* <<https://vegaproject.mcmaster.ca/>> (adapted with permission from VEGA).
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- ³⁵ Nico Trocmé et al., *Canadian Incidence Study of Reported Child Abuse and Neglect 2008 (CIS-2008): Major Findings* (Ottawa: Public Health Agency of Canada, 2010), online: *Canadian Child Welfare Research Portal* <<https://cwrp.ca/publications/canadian-incidence-study-reported-child-abuse-and-neglect-2008-cis-2008-major-findings>>.
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