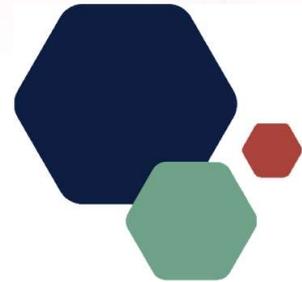


HELP Toolkit Overview

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/trai-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 necessaries 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.