

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