

# Recognizing the Importance of Family Violence for Children's Best Interests in Family Law Contexts

Presented by: Lisa Heslop, Kim Harris &  
Katreena Scott

**Tuesday, April 28, 2026**

1:00 pm - 2:30 p.m. ET

EN

FR

CC



**From Awareness to Action**

# Recognizing the Importance of Family Violence for Children's Best Interests in Family Law Contexts



**Western**  
Centre for Research & Education on  
Violence Against Women & Children

From screening and assessment to developing appropriate parenting plans after family violence



# Agenda

Changes to the Divorce Act and their implications

Screening of family violence in the family law system

Beyond screening: e-SAFeR

Reflections on the use of the e-SAFeR for assessors



**Western**

Centre for Research & Education on  
Violence Against Women & Children



# Survivors Experiences in Family Court

“I went to criminal court and got a safety plan. Then I went to family court and got a danger plan”

- Credibility questioned
- Experiences make no difference
- Advised to consider whether or not to even bring up experiences of abuse
- Lack of understanding of impact of abuse on children
- Accused of parental alienation
- Use of court to continue abuse



# Canadian Legislation

In 2021, amendments to the *Divorce Act* came into force to require courts making post-separation parenting orders to explicitly consider family violence



# A bit About Language

We use *family violence* in this context because it is the language of the legislation and describes abuse within an intimate partner relationship and/or within a family.



# Family Violence & Best Interests

16(2) specifies that “the court *shall* give *primary consideration* to the child’s physical, emotional and psychological *safety*, security and *well-being*.”



# Divorce Act

- (3)** In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (a)** the child's needs, given the child's age and stage of development, such as the child's need for stability;
  - (c)** each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
  - (e)** the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
  - (f)** the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;



# Divorce Act

- (3)** In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (j)** any family violence and its impact on, among other things,
    - (i)** the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
    - (ii)** the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and



# What is Family Violence?

***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



# What is Family Violence?

- (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;



# Factors relating to FV

- **(4)** In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
  - (a)** the nature, seriousness and frequency of the family violence and when it occurred;
  - (b)** whether there is a pattern of coercive and controlling behaviour in relation to a family member;
  - (c)** whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
  - (d)** the physical, emotional and psychological harm or risk of harm to the child;
  - (e)** any compromise to the safety of the child or other family member;
  - (f)** whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
  - (g)** any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
  - (h)** any other relevant factor.



# Changes in Ontario as well

- Children's Law Reform Act
- Changes with respect of FV are basically equivalent

# This is a very big deal

The Supreme Court of Canada only directly addressed the issue of intimate partner violence as a factor in parenting cases in 2022 in *Barendregt v Grebliunas*



# Key points of *Barendregt v Grebliunas* (2022)

## Family violence impacts children's development

*Justice Karakatsanis observes that family violence has “grave implications [and] any form of family violence poses for the positive development of children.” Recognized that “findings of family violence are a critical consideration in the best interests analysis.” She also observed that “the suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives.*



# Key points of *Barendregt v Grebliunas* (2022)

## **Violence can extend beyond or begin after separation**

*not just a case of post-separation “friction,” but one “featuring abusive conduct during the marriage, **at separation**, and at trial” (para. 141). Despite the father’s denials, the trial judge found that he was abusive*

## **Children do not have to be present to be impacted**

*Harm to children “can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it” (para. 143).*



# Key points of *Barendregt v Grebliunas* (2022)

## Credibility of allegations of family violence

*Justice Karakatsanis stated that “[d]omestic violence allegations are notoriously difficult to prove [as] family violence often takes place behind closed doors and may lack corroborating evidence...Thus, proof of even one incident may raise safety concerns for the victim or may overlap with and enhance the significance of other factors, such as the need for limited contact or support” (para. 144).*



**There is other case law as well**



# Intersectional links with other forms of power imbalance

“It is apparent to the court that there is a significant power imbalance between the mother and the father. The father is university educated.... The mother has cognitive and mental health challenges. She is very vulnerable. The father appears to have taken advantage of this power imbalance. It is easy for him to threaten and intimidate the mother. ...it is easy for him to control the mother by telling her how he has powerful friends who will assist him with any abduction. She believes him. He is powerful to her...”

***M.H.S. v. M.R.***, (2021 ONCJ 665)



# Litigation Abuse as a form of Coercive and Controlling Behaviour

“has used the litigation process to try to control and intimidate the mother. His claim for joint decision-making responsibility was a non-starter. In this context, the court draws the conclusion that he maintained this claim as an intimidation tactic.”

*F.S. v. M.B.T.2023 ONCJ 1020*




# Severity and the Importance of Empowering the Non-Offending Parent

“ while a court order cannot stop a bullet, a knife or a fist, it can give this mother and children a chance to make a safety plan to avoid the father’s violence and keep them safe.

*A.J.K. v J.P.B.* 2022 MBQB 43

# Short summaries of decisions




A2A · FROM AWARENESS TO ACTION

**BULLETIN**

**Issue No. 50**

Admission of Surreptitious Recordings in Family Violence Cases

March 2026




A2A · FROM AWARENESS TO ACTION

**BULLETIN**

**Issue No. 49**

Unsuitability of Interim Co-parenting Orders in Family Violence Situations

March 2026



A2A · FROM AWARENESS TO ACTION

**BULLETIN**

**Issue No. 46**

Parental Decision-Making, Relocation, and Coercive Control

December 2025



# Promoting Screening



**Western**

Centre for Research & Education on  
Violence Against Women & Children



# What is Screening?

Screening is not risk-assessment--rather it is a process that begins a conversation about family violence.

- Way to you get to know your client and understand their concerns (versus a fact-finding interview)
- Begin to provide insight into your client's experience of abuse
- Identify current safety concerns



# Why Screen for Family Violence?

## Foremost to enhance the safety of survivors and their children

- Legislative obligation:
  - 2021 Amendments to the Divorce Act (and corresponding changes to provincial/territorial legislation) require consideration be given to family violence in assessing the best interests of the children
  - Professional practice guidelines require screening for family violence prior to engaging in legal processes
  
- Informs process design choices, including ways to mitigate risk and enhance survivors' ability to participate
  
- Flags cases that require a more fulsome assessment
  
- Identify imminent safety concerns that need immediate response (i.e., referrals to an advocate/counsellor, safety planning, or other legal resources)



# Barriers to screening in the legal system

- Concern about not having the knowledge, skill and/or comfort level broach the subject.
- Concern that asking will make it worse for their client
- Lack of screening experience
- Unfamiliarity with available screening tools



# What does the literature say?

When you don't ask, survivors may not disclose for many reasons, such as they:

- feel ashamed or embarrassed
- fear of being judged by you or that you will not believe them
- fear of repercussions from former spouse
- lack of knowledge about family violence or its relevance to the legal issues
- fear of disclosure generating unwanted systems involvement
- fear of losing family support
- lack of knowledge of Canadian legal systems

See: Baobaid, 2020; Clark & Vaish, 2020; Durish, 2020; Linton, 2025; Medhekar et al., 2020; Neilson *CanLII* <<https://canlii.ca/t/ng>>



# Why do we need Screening Tools?

- Normalizes the process for you and for your client
- Eliminates reliance on individuals' knowledge about family violence
- Provides validated, standardized questions



# How to screen

In accordance with your practice guidelines that set out how and by whom screening will take place.

We know clients are more likely to disclose when you:

- have established rapport with your client, including creating a safe environment
- understand the possible impacts of family violence and trauma and what that may look like for your client
- recognize clients have overlapping identities and experiences that are important to consider



# Other considerations...

- Ensure you have set aside sufficient time
- Understand that your client may not disclose immediately
- Risk is dynamic and can change quickly particularly in the context of family litigation. Screening is not a one-time thing
- If you have concerns about your client, share them at the interview
- Be prepared to provide resources, such as a referral to an advocate/counsellor who can safety plan.



# Screening Tools – MASIC-S

MASIC (Holtzworth-Munroe, Beck & Applegate, 2010) and MASIC-S (Rossi et al., 2022)

- 20 weighted items
- Screens for coercive control, physical and sexual abuse, stalking/harassment, severity of abuse and survivor fear
- Benchmark for mediation is less than 3

# HELP Toolkit

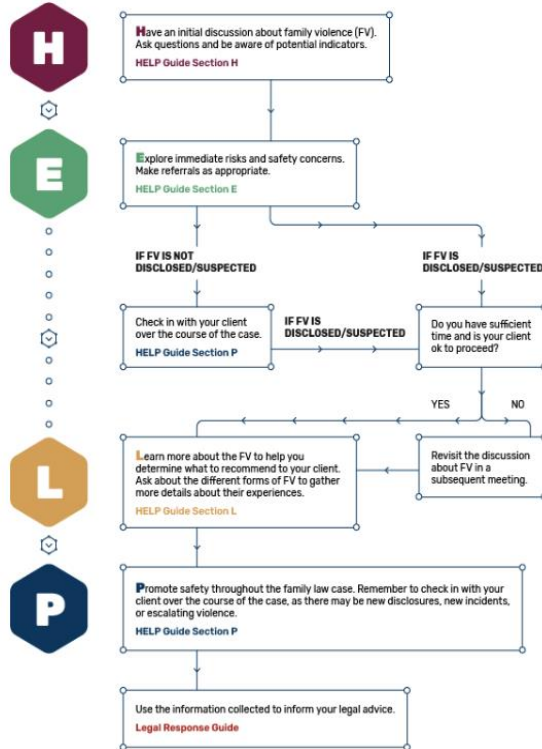
Framework for screening and response in the context of family law:

**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



Western

Centre for Research & Education on  
Violence Against Women & Children



# Beyond Screening: e-SAFer



# In the legal system, knowing if there was **family violence is not enough**

It is important to be able to describe:

- what happened?
- when it happen?
- how often it happened?
- how severe was the abuse?
- what was the impact on the survivor parent and her parenting?
- what was the impact on the children?



# e-SAF<sup>e</sup>R Development

SAFeR

<https://www.bwjp.org/assets/compiled-practice-guides-may-2018.pdf>

RIA

<https://www.couragetoact.ca/blog/ipvtool>

Help Toolkit

<https://www.justice.gc.ca/eng/fl-df/help-aide/index.html>



# Other guiding principles

- Intersectionality Framework
- Trauma & Violence Informed Practice
- Gendered analysis



# www.fvfl-vfdf.ca

## Family Violence Family Law Violence familiale et droit de la famille



Western  
Centre for Research & Education on  
Violence Against Women & Children

[ABOUT THIS PROJECT](#) ▾

[BRIEFS](#) ▾

[WEBINAR RECORDINGS](#) ▾

[LEGAL BULLETINS](#) ▾

[E-SAFER](#) ▾

[Home](#) > [e-SAFeR](#) > [Trained Users](#)

### e-SAFeR

[Trained Users](#)

[New Users](#)

## Prerequisites for using the e-SAFeR Guide

Individuals wishing to use this guide must have a solid understanding of family violence, its impact on survivors and their children, and the principles of trauma- and violence-informed practice.

Users are required to attend a one-day training session, offered free of charge across Canada ([for available training opportunities, please see New Users](#)).

Users are also encouraged to complete training on the use of the Danger Assessment tool and to build relationships with professionals in their communities (lawyers, social workers) who can conduct risk assessments and create safety plans for survivors and their children who may be at ongoing risk of harm.

### TRAINED USERS

[VISIT E-SAFER.CA](#) 



***e-SAFeR is intended for use by family law professionals in cases where FV has been disclosed.***

## **We assume users:**

- screen clients for FV
- are acquainted with T&VIP principles
- understand factors for risk of future violence
- have access to professionals who can complete a risk assessment & safety plan
- understand family violence and coercive control and impact on survivors and children
- understand intersectional barriers



# Best interests of the children

1. The nature, severity of the FV and when it occurred (including coercive control, risk factors for future violence)
2. How involved the children were in the FV and if there are concerns about their safety (abuse & neglect)
3. The impact of the FV on the survivor parent and the children
4. Concerns about parenting of the parent who used abusive behaviours
5. Steps taken by the parent who used abusive behaviours to support the child and take accountability for the abuse



# Individual Circumstances

Corresponds to the ‘any other relevant factor’ reference in the legislation


Identifies:

- Systemic inequalities that create barriers to the legal system
- Identify factors that can be used as a means of coercive control.
- Understanding identity factors can also be sources of resilience and support.




# Abuse in the Relationship

*Parenting assessments that fail to consider the full scope and history of abuse, or that narrowly focus on isolated incidents, can underestimate risk and obscure the seriousness of the violence; ultimately failing to create safety for victimized parents and children. (Jaffe et al., 2023).*

  
**Monitoring,  
Tracking and  
Isolating**

  
**Manipulating  
Unique  
Circumstances**

  
**Physical  
Abuse/Intimidation**

  
**Emotional  
Abuse**

  
**Economic  
Abuse**

  
**Sexual Abuse**

  
**Weaponizing  
Systems**



SUMMARY

## Abuse in Relationship

*No concerns*    *Many concerns*

 **LETHALITY/RISK FACTORS** —

- History of domestic violence
- Actual or pending separation
- Perpetrator depressed
- Obsessive behaviour displayed by perpetrator
- Prior threats/attempts to commit suicide
- Victim has intuitive sense of fear
- Victim vulnerability
- Perpetrator displayed sexual jealousy
- Prior threats to kill victim
- Excessive alcohol and/or drug use
- Perpetrator unemployed
- History of violence outside the family
- Escalation of violence

# Coercive Control

- ❑ Pattern of conduct
- ❑ Implicit or explicit threats, use of force or intimidation to compel compliance
- ❑ Actions have the intent or effect of substantially restricting the other parent's safety or autonomy

NCJFCJ definition

*Contexts and impacts  
are personal, and  
therefore intersectional*



# Thinking/Asking about Coercive Control

Are there ways [your former partner] has restricted you or made you feel unsafe, trapped, or taken advantage of?

## **Pattern**

Is this something that has been repeated often or in different ways, or was it more of a one-time thing?

## **Consequences**

What would happen to you or the children if you didn't do what [your former partner] wanted you to do?

Are there differences between your status in the community and/or access to resources that made it easier for [your former partner] to do these kinds of things?

## **Intent, Impact, and Fear:**

Did you change anything to avoid consequences from [your former partner]?

What was [your former partner] trying to accomplish? What did they get out of it?

What is your worst fear about what might happen?



### **Child(-ren)'s Level of Involvement**

- Intervene in the abuse
- Direct harm from the abuse
- Witnessed the abuse
- Indirect observation of the abuse
- Witness to the initial effects
- Retreat from the abuse
- Experienced the aftermath
- Seemingly unaware of the abuse
- Other

## Use of Child(-ren) as a Tool of FV

- Use the child(-ren) to monitor you and report back to them about what you were doing, where you were going, or who you were spending time with
- Use threats toward the child(-ren) to control you
- Threaten to do something to your child(-ren) to get you to do something or stop doing something
- Share detailed and age-inappropriate information with the child(-ren) about your relationship, the separation, or ongoing problems between you and [the other parent]
- Try to get the child(-ren) to take sides
- Tell the child(-ren) you caused the 'bad things' to happen (e.g., selling the house, moving to a new school, going to a shelter)

No concerns    Many Concerns


  
Use of Child(-ren) as a Tool of FV

## Abusive Disregard of Child(-ren)'s Experiences of FV

- Blaming the other parent for ongoing impacts of family violence in the presence of the child (e.g., having to move, change schools)
- Manipulating the child's experience of family violence (e.g., telling a child that memory is wrong, that they misinterpreted what was happening)
- Refusing to allow a child to attend therapy (that they have requested or want to pursue) to deal with the impacts of family violence
- Deliberately corrupting a child's view of the other parent (e.g., implies or states that the other parent has brainwashed the child, that the other parent never loved the child)
- Minimizing and denying impact of FV on children (e.g., not allowing to take comfort items)

No concerns    Many concerns

  
Abusive Disregard of Child(-ren)'s Experiences of FV





## Protective Behaviours:

### Parent being interviewed

- Seeks and/or supports a way for the child(-ren) to have their voice heard,
- Supports the child(-ren) in doing activities that they choose/like
- Recognizes the impact of family violence on the child(-ren) and takes action to protect them from future FV
- Respects the pace of child(-ren)'s healing
- Listens to and respects child(-ren)'s opinions and views about contact
- Does not use protective behaviours

## Accountability Behaviours:

### Parent being interviewed

- Is able to describe their history of abusive behaviour without minimization or justification
- Takes responsibility for the impact of their abuse on their former partner and child(-ren)
- Demonstrates empathy for the impact of their abusive behaviour on the survivor-parent and the child(-ren)
- Has taken formal steps to end abusive and coercively controlling behaviours (e.g., seek help, attend intervention)
- Does not acknowledge or take accountability for their abusive behaviour



# More about some e-SAFeR applications

- Parenting Plan Evaluations
- Parenting Capacity Assessments
- Civil Litigation
- Divorce Coaching



# Helpful Features

- Assessment of unique circumstances and potential areas of vulnerability
- Question prompts
- Follow-up questions
- Checklists
- Ratings
- Lethality flags
- Direct connection to Divorce Act legislation



# Practice Considerations

- Need to familiarize yourself with the tool before administering
- It can take longer than one session to complete
- Use and documentation of clinical judgement ratings
- Storage of partially complete assessments



# Screening & assessment are good steps toward addressing FV in family litigation

We also need family legal system that provides:

- Access to lawyers
- Designated family courts/family judges
- Integrated trauma & violence informed practices
- Shortened time to proceed through the family court system
- Children's voices
- Understanding of and accounting for multiple intersecting circumstances

# A2A Project Update – Resources Available

## **Webinars:**

Coercive Control & Intimate Partner Violence: Canadian police perceptions and assessment of risk

## **Briefs:**

Enhancing System Responses to Survivors and Perpetrators of Strangulation in Intimate Partner Violence, March 2024

Parenting time-sharing practices of parenting plan evaluators in the context of family Violence: what does the research reveal, April 2024

## **Bulletins:**

Determining the Best Interest of the Child in Relocation Cases: CLT v DTT

Judicial Responses to Litigation Abuse: Cost Awards Kumar v Nash 2024



# Comments or Questions?



<https://www.fvfl-vfdf.ca/home.html>