



JUSTICE

Improving Family Justice System Responses to Family Violence

**Canadian Bar Association – BC Branch
Family Law Sections Meeting
November 10, 2021**

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Family violence – *Divorce Act* amendments

Evidence-based definition: s. 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 (...)



Family violence definition (cont'd)

- (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 provisions

- Primary consideration: child's safety, security and well-being
- Best interests of the child criteria specific to family violence cases – court required to consider family violence and its impact
- Supervised parenting time and transfers (s.16.1(8) and 16.5(7))
- Prohibition on the removal of a child from a geographic area without the written consent of any specified person or without a court order authorizing the removal (s.16.1(9))
- Exceptions to notice of changes of residence and relocation (s.16.8(3), 16.9(3), 16.94(3))
- Provision to promote coordination between criminal, child protection and family cases (s. 7.8)
- Change from “maximum contact principle” to “parenting time consistent with best interests of the child”(s. 16(6))



Implementation Activities

- Training and information sessions on *Divorce Act* amendments for lawyers, judges and other family law professionals
- Public legal education and information materials that include information about family violence and family law: www.family.justice.gc.ca
- A **free** accredited online course on family violence and family law for legal advisers, available at: <https://www.justice.gc.ca/eng/fl-df/cfl-mdf/traiform/index.html>
- New federal funding: supervised parenting time and transfers; improving family justice system responses to family violence, e.g. family court support worker models, family violence tools, counsel for cross-examination, coordination between different parts of justice system



Family violence in family law cases: Justice Canada Research

- 2018 National Family Law Program Survey
 - Around half of lawyers report usually screening for family violence
 - Majority of lawyers do not use a standard tool to identify family violence
- Luke's Place report: *What You Don't Know Can Hurt You: The importance of family violence screening tools for family law practitioners* (2018): <https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/index.html>
 - No universal family violence tools have been designed specifically for use by family law lawyers in Canada



HELP Toolkit for Family Law Legal Advisers: Identifying and Responding to Family Violence

HELP Approach:

- **H**ave an initial discussion about family violence
- **E**xplore immediate risks and safety concerns
- **L**earn more about the family violence to help you determine what to recommend to your client
- **P**romote safety throughout the family law case





Why don't we call it a “screening” tool?

- The title of the HELP Toolkit refers to “identifying and responding to” family violence
- The Toolkit draws from research in other fields, particularly public health. In these fields – the concept of “screening” has been heavily criticized:
 - Implies service providers asking potentially re-traumatizing questions, without necessarily having an impact on the service response
 - Concern about “asking” for the sake of “asking”
- The Toolkit is intended to help legal advisers inquire about family violence, **and then** integrate that information into practice in terms of advice to clients and referrals to services if appropriate.



Purpose and Overview of Tool

- **FILLS A GAP:**

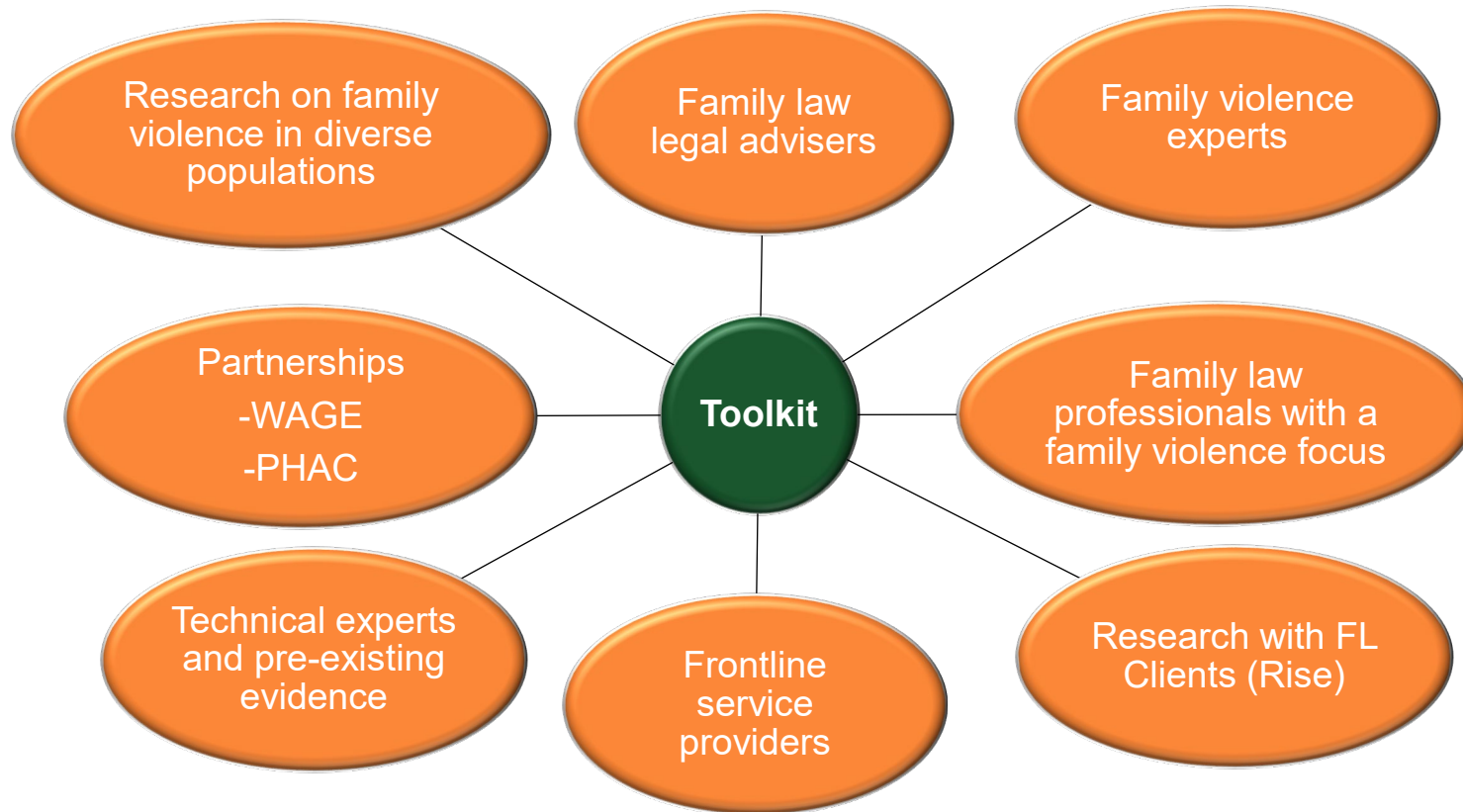
- Developed by and for FLLA, responsive to concerns and realities, reflects the practices of experienced FLLA
- Takes a trauma- and violence-informed approach
- Acknowledges diversity in experiences and responses to family violence (intersectionality and cultural safety)
- Reflects the role of FLLA as the legal advocate for the client in the family law matter

- **FLEXIBLE:** Helps FLLA safely and effectively identify and respond to family violence in their family law cases in a way that fits in with their usual practice.

- **ADAPTABLE:** Provides practical information that is useful and relevant for all, but focus is on those with limited or no experience in talking about family violence with clients



Collaborative and User-Based Development





User Experience Testing and Review Overview

Testing:

- 61 legal advisers from across Canada - all provinces/territories except YK and NU
- 6 weeks total
- 87 Interviews, 38 survey responses, and 8 sets of email feedback

Review:

- Draft toolkit sent to 110 frontline providers and academics with a family violence focus and connection to family law
- Received 20 sets of feedback



Testing Feedback

Feedback:

- A much needed resource for legal advisers; everything is in one place; reinforces training taken
- Acknowledging the usefulness of the toolkit and its practicality and comprehensiveness
- Will challenge some of my current practices
- Saw value in the trauma- and violence-informed practice and cultural safety elements
- Minor additions and changes suggested by some

Impact on practice/greatest benefit:

- Provides reminder to examine practice and make improvements if needed
- Offers support to legal adviser that they can lean on

“The biggest takeaway is that it has made me a better lawyer by focusing on family violence and having a way to articulate it with clients. I think I am offering them a better service. I am better able to address their needs.”



Testing Feedback

Feedback varied by degree of experience/how long practicing

- Experienced: “feels like an old coat”; very similar to what I already do; more of a touchstone – some reminders of good practice, some newer information; “refresher”
- 2-5 years or some experience: noted as useful, mentioned specific elements or aspects as very relevant to them (differs by lawyer), do not necessarily need the level of detail in some areas (but saw as useful or familiar); supplemental materials seen as helpful
- 0-2 years with little experience: see it as containing a lot of new information, an essential tool; like the scripts, like the supplemental materials, mentioned many parts of the tool as being relevant and important



Outline of HELP Toolkit

Overview and Infographic

Why is it important to identify and respond to family violence

Why clients may not disclose

How client trauma can affect the family law case

What is “family violence”?

Infographic: Visual overview of the toolkit elements and how they fit together





Outline of HELP Toolkit

HELP Guide

HELP Checklist: A short overview of the steps of the HELP Guide

Tips for safe and effective discussions

Have an initial discussion about family violence

- Information and scripts on how to start the discussion
- Flags and indicators of violence

Explore immediate risks and safety concerns

- Flags and indicators of continued risk
- Addressing immediate danger
- Referrals and safety planning (for client and you)

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

- Information and scripts for how to have a more in-depth discussion of family violence to help determine what legal advice and recommendations you will provide

Promote safety throughout the family law case

- Checking in with clients and promoting safety throughout the case
- Safety planning for you and your office staff and taking care of yourself



Outline of HELP Toolkit

Legal Response Guide

Dealing with family violence in the family law file: Information on various options that may be considered

Other considerations for the family law file: family dispute resolution, litigation abuse, evidence

Criminal law responses to family violence

Concurrent proceedings



Outline of HELP Toolkit

Supplemental Materials

Reasons Why Your Client Might Not Disclose Experiences of Family Violence

The Impacts of Trauma and Trauma- and Violence-Informed Practice

Types of Intimate Partner Violence

Representing a Client Who May Have Engaged in Family Violence

Children's Experiences of Family Violence

Tips for Discussions with Your Client

How to Incorporate Cultural Safety into Client Interactions

Prevalence of Intimate Partner Violence

Asking about Specific Forms of Family Violence



Outline of HELP Toolkit

Supplemental Materials

Safety Planning

What Clients Need to Know about Contacting the Police

Making Referrals

When Your Family Law Client Is Accused of Family Violence and There Are Concurrent Criminal Proceedings

Talking to a Child Client about Family Violence

Rejection of a Parent by a Child

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



Questions?

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