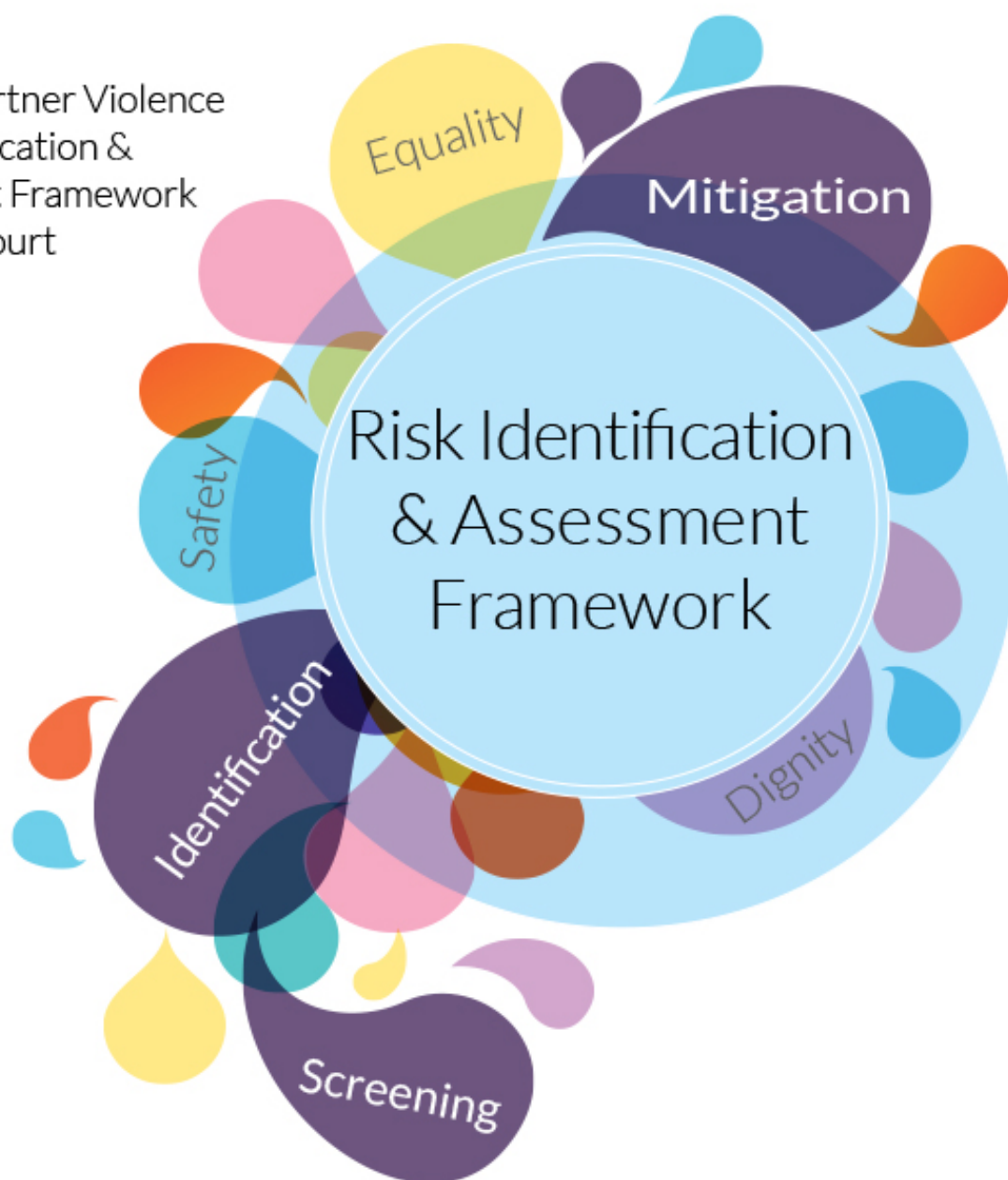




Intimate Partner Violence
Risk Identification &
Assessment Framework
in Family Court



Intimate Partner Violence Risk Identification and Assessment Tool User Guide

September 2020

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1) Acknowledgments

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The Barbra Schlifer Commemorative Clinic is grateful for the valued collaboration of all family court stakeholders who provided their expert advice on their experiences providing services to survivors of violence in family court. A special thank you to the survivors of violence who shared their experiences in family court and their contributions toward the project.

Project Enhanced Safety in Family Courts

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IPV RIA Tool

We would like to acknowledge the recommendations towards the design of the IPV RIA tool by family court stakeholders Lauren Calderwood, Ishbel Ogilvie, Antoinette Clark; project partners experts from the Center of Research and Education of Violence Against Women Barb MacQuarrie, Margaret Macpherson, Peter Jaffe; project consultant Pam Cross and Professor Janet Mosher from Osgood Hall Law School, York University.

Disclaimer

The content of the IPV RIA user guide was compiled to the best of our knowledge and was created without consulting directly the authors, editors, and/or creators of the works cited.

You must not rely on the information in this document as an alternative to legal advice.

2) Project background

The Barbra Schlifer Commemorative Clinic (“The Clinic”) received funding from the Law Foundation of Ontario for a two-year project called **Enhanced Safety: Risk Assessment Tool in Family Courts**. The main goal of the project was to create a risk assessment tool to assist survivors of gender-based violence who are involved in family court proceedings. The risk assessment tool was to consider the complex lived realities of survivors and their needs in the family court, as well as current understanding of gender-based violence (GBV). Hence, the present risk assessment tool takes into consideration physical, emotional, mental, social/cultural, racial, financial, legal, and spiritual abuse and the multiple sources of oppression and systemic barriers that women are often subject to.

The creation of this tool involved extensive consultations with court stakeholders and survivors of violence. The Clinic took counsel from the Centre of Research and Education of Violence Against Women and Children (CREVAWC) from Western University and worked in partnership with agencies that deliver the Family Court Support Worker Program in Durham Region, Luke’s Place and Peel Region, Indus Community Services. The Family Court Support Worker Program is a provincial program funded by the [Ministry of The Attorney General](#). Family court support workers provide direct support to victims of domestic violence who are involved in the family court process.

The overall project goals were to:

- Consult with family legal system actors including lawyers, judges, mediators, clerks, family court support workers and survivors;
- Observe court operations in Toronto, Brampton, and Durham and conduct a needs assessment for these courts to identify knowledge gaps;
- Create a free online risk assessment tool and user guide that addresses gaps identified in the needs assessment;
- Develop risk management protocols in high-risk cases;

- Facilitate collaboration across family courts and other systems when responding to high-risk cases;
- Develop training for family legal system actors to be delivered in person; and
- Create and make available a free online multimedia training module in English and French.

Summary of the main stages of the project:

- Compilation of literature review; annotated bibliography format;
- Research of risk assessment tools used in Canada and overseas; creation of a database of most common tools used and any potential GBV risk assessment tool;
- Meetings and consultations with community partners, court stakeholders, legal actors in family court, and high-risk clients;
- Analysis and compilation of data from needs assessment interviews.
- Development of a risk assessment tool and user guide tailored to family courts based on needs assessment results and literature review;
- Pilot risk assessment tool internally and request input from Barbra Schlifer Clinic staff;
- Pilot risk assessment tool in Family Court and request input from court staff;
- Development in-person training to be delivered to court staff; and
- Creation of multimedia training to be permanently available online in English and French.

3) Intimate Partner Violence, Family Violence, and “Honour-Based” Violence

Intimate partner violence (IPV), also called domestic violence, refers to abuse and violence directed by one partner to the other in current and former intimate relationships.¹ The IPV risk identification and assessment tool was created to identify potentially high risk domestic violence situations in family court. While the tool primarily assesses cases of IPV, it also considers potential occurrences of violence committed by family members other than intimate partners. Family Law Practitioners (FLPs) will also consider violence arising out of forced marriage situations and so-called “honour-based” violence and killings.²

It is important to have a clear definition of the types of violence before administering this tool. Therefore, you will find below a brief definition of Intimate partner violence, family violence and honour-based violence.

Intimate Partner Violence refers to a pattern of behaviour by one partner designed to coerce, control, and dominate the other partner.³ Such behaviour includes physical, psychological, sexual, emotional, financial, verbal, online, and social abuse and intimidation.⁴ Intimate Partner Violence can occur between current and former spouses (married, common-law, or domestic partners),

¹ Linda C Neilson, *Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases*, 2nd ed (E-book: CanLII, 2017) at 6, online:

<[² The term “honor based” is used within certain cultures as an excuse for violence against women and girls based on culture norms and traditions, but the authors do not see any honour in these acts of violence. Culture in the context of honour-based violence must be examined more critically to “understand the link between culture and relations of power and domination”. The Barbra Schlifer Clinic’s position on the issue and a more detailed discussion can be found below. Also see Yakin Erturk, Report of the Special Rapporteur on Violence Against Women, its causes and consequences’ \(18 May 2009\) A/HRC/11/6, para 18. See Gill, A., & Brah, A. \(2014\). Interrogating cultural narratives about ‘honour’- based violence. *European Journal of Women's Studies*, 21\(1\), 72-86.](https://commentary.canlii.org/w/canlii/2017CanLIIDocs2#!fragment//BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoByCgSgBplTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA> [Neilson 2017].</p></div><div data-bbox=)

³ Jocelyn Coupal, “Domestic Violence Interview Guide for Lawyers” (2011), online (pdf): The Continuing Legal Education Society of British Columbia; Neilson 2017, *supra* note 1 at 4.2.

⁴ Canada, Department of Justice, *Intimate partner violence risk assessment tools* by Melissa Northcott (Ottawa: Department of Justice, Research and Statistics Division, 2013) at 6, online (pdf): *Department of Justice* <https://www.justice.gc.ca/eng/rp-pr/cj-ip/fv-vf/rr12_8/rr12_8.pdf>.

dating partners, and ongoing sexual partners.⁵ While it is predominantly perpetrated by men against women, anyone can be the victim or perpetrator of IPV.⁶ Intimate Partner Violence occurs among heterosexual, homosexual, bisexual, and transgender individuals and couples⁷ and across all socio-economic, cultural, racial, educational, and religious backgrounds.⁸

There are three primary categories of IPV:

- 1) minor, isolated violence;
- 2) victim-resistance violence; and
- 3) coercive (controlling, patterned) violence.⁹

Minor, isolated violence refers to violence that is not associated with a pattern of abuse. It is non-repetitive and does not cause lingering fear or harm. This includes violence occurring only at the time of separation.¹⁰

Victim-resistance violence refers to violence that may be used to respond to a perceived imminent threat, violence that is a response to psychological harm resulting from past domestic violence, violence to resist violence, and violence associated with attempting to escape the relationship.¹¹

Coercive (controlling, patterned) violence is part of a patterned process where one intimate partner attempts to control the other through physical violence and/or non-violent intimidation tactics.¹² Victims may experience a magnification of earlier harm through each new incident of violence.¹³

⁵ Katie Bush & Kim Nash, “Joint Position Statement” (2014), online (pdf): *Emergency Nurses Association* <https://www.ena.org/docs/default-source/resource-library/practice-resources/position-statements/joint-statements/intimatepartnerviolence.pdf?sfvrsn=4cdd3d4d_8>.

⁶ *Supra* note 1 at 4.2.

⁷ *Supra* note 1 at 4.2

⁸ Elizabeth Miller, “Intimate Partner Violence” (2019) 380:9 *New England Journal of Medicine* 850-857.

⁹ *Department of Justice: Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection): A Family Law, Domestic Violence Perspective*, by Linda C Neilson, www.justice.gc.ca (2014) at 9, Last Modified: 2014-08-18 [Neilson 2014].

¹⁰ *Ibid* at 30.

¹¹ *Ibid* at 31.

¹² *Ibid* at 32.

¹³ *Ibid* at 32.

Family violence is violence directed at one or more individuals that is perpetrated by one family member against another, such as between siblings, adolescent or adult children to their parents,¹⁴ or parents-in-law to their children-in-law thus extending beyond violence between intimate partners.¹⁵ Family violence can also include the exposure of children to violence.¹⁶ Violence may occur a single time, or numerous times, creating a pattern of abuse or neglect.¹⁷ It often includes an abuse of power by the perpetrator, using controlling and coercive tactics against the victim.¹⁸ Family violence can happen in families of any culture, socioeconomic class, or religion.¹⁹

"Honour-based" Violence

The following is a brief description of the concept of gender-based violence arising out of so-called "honour-based" violence and killings.

So-called "**Honour-based" violence** (HBV) can be defined as acts of violence, usually murder, committed by male family members, in most cases against female family members²⁰ who are perceived to have brought dishonor upon the family.²¹ ... Honour crimes are not specific to any religion; nor are they limited to any one region of the world"²² It is believed to be morally justified, as it is aimed to protect the value system that is the source of the norms and beliefs about honour.²³

¹⁴ Victoria, Australia, Ministry for Family Violence Reform in Victoria, *Family Violence: risk assessment and risk management* (Melbourne: Family Violence Coordination Unit, Department for Victorian Communities, 2007) at 21.

¹⁵ Victoria, Australia, Family Safety Victoria, *Family Violence Risk Assessment and Risk Management: Policy and Practice, Consultation Draft – June 2018* (Melbourne: Family Safety Victoria, 2018) at 8.

¹⁶ *Supra* note 14 at 8.

¹⁷ Department of Justice, "About Family Violence" (2019), online: *Department of Justice* <<https://www.justice.gc.ca/eng/cj-jp/fv-vf/about-apropos.html>>.

¹⁸ Domestic Violence Victoria, "Submission to Family Safety Victoria: Family Violence Information Sharing and Risk Assessment and Risk Management Framework" (2018) at 19, online (pdf): *Domestic Violence Victoria* <<https://www.ntv.org.au/wp-content/uploads/2018/07/FINAL-Joint-Submission-FVIS-and-MARAM-Framework-10.7.18.pdf>>.

¹⁹ Manitoba Status of Women, "Family Violence Prevention Program" (2019), online: *Manitoba* <<https://www.gov.mb.ca/msw/fvpp/>>.

²⁰ Aisha Gill, "Introduction: 'Honour' and 'Honour'-Based Violence: Challenging Common Assumptions" in *"Honour" killing and violence: Theory, policy, and practice*, ed by Gill et al (London: Palgrave Macmillan, 2014) at 3.

²¹ *Supra* note 17.

²² Rashida Manjoo. "Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences," 23 May. 2012, United Nations Human Rights Office of the High Commissioner for Human Rights, 12 February 2013 at 1.

²³ Aisha Gill, & Avtar Brah, "Interrogating cultural narratives about 'honour'-based violence" (2013) 21:1 *European Journal of Women's Studies* 72.

While perpetrators of honour-based violence are typically the victim's male relatives or in-laws, however older women, such as mothers and mothers-in-law, can also perpetrate violence.

The problem with "honour" in HBV

"Honour"-based violence is not merely domestic violence occurring within ethnic groups; the invocation of "honour" creates additional harms and constraints on the victim²⁴, and there have been many valid criticisms to the use of this term for this particular form of violence. For instance, the Canadian Council for Muslim Women is strongly opposed to the term "honour killing" particularly because no murder of a woman should be categorized by the rationale provided by the murderer, or by society itself, whether it be a so-called "honour killing" or a "crime of passion."²⁵ A second line of critique is that calling this violence something grounded in "honour" not only makes it seem as if femicide is a highly unusual event, but also paints the picture that femicide is confined to specific populations within Canada, and specific national cultures or religions globally, even though neither of these propositions are true.²⁶ Instead, it is argued that so-called "honour killings" should be placed under the umbrellas of gender-based violence and femicide.

The Barbra Schlifer Clinic takes these concerns seriously and maintains that any reference to "honour" is in reference to relevant literature.

4) The Family Law System and Intimate Partner Violence

The Canadian legal system has made positive steps in recent decades to better understand IPV and recognize its harms and effects on women. In a landmark decision from the Supreme Court of Canada ("the SCC"), *R v Lavallee*, the Court denounced many myths and stereotypes surrounding IPV.²⁷ In this case, the accused was a victim of domestic violence who was charged with attempted

²⁴ Natasha Mulvihill, "The experience of interactional justice for victims of 'honour'-based violence and abuse reporting to the police in England and Wales" (2018) 29:6 *International Journal of Research and Policy* 640.

²⁵ Canadian Council for Muslim Women

²⁶ Yasmin Jiwani and Homa Hoodfar, "Should We Call it 'Honour Killing?'" 31 Jan. 2012 *Montreal Gazette*. 3 Feb. 2013, online: < <https://www.pressreader.com/canada/montreal-gazette/20120131/281831460623735>>.

²⁷ *R v Lavallee*, [1990] 1 SCR 852, 1990 CanLII 95 [*Lavallee*].

murder and aggravated assault.²⁸ Writing for the majority, Justice Wilson highlighted some of these myths believed by judges and jurors regarding IPV, such as "(e)ither she was not as badly beaten as she claims or she would have left the man long ago," or, "she must have stayed out of some masochistic enjoyment of it."²⁹ In successfully applying the defence of "The Battered Woman" for the first time,³⁰ Justice Wilson affirmed the use of expert testimony in cases involving IPV in order to dispel harmful myths and promote trial fairness for abused women. However, battered woman syndrome testimony continues to be narrowly applied and fails to successfully protect all women who experience battered woman syndrome.³¹

Therefore, despite some progress, the Canadian Family Law system continues to operate on myths and assumptions relating to IPV that marginalize women and their children. Judicial perceptions of women who experience violence are underpinned by cultural norms and assumptions about women's sexuality and autonomy, importing cultural biases, myths, and stereotypes into judicial decision making.³² While many judges nominally recognize the "serious harm" that IPV poses to women and their children, many family court decision-makers continue to divorce or minimize the effects of IPV in making final decisions, particularly those relating to child custody.³³ Courts have minimized allegations of IPV, portraying IPV as instances of inter-parental conflict, rather than as patterns of abuse.³⁴

Through the normalization of divorce in recent decades and the rise of no-fault divorce, courts increasingly have taken a hands-off approach to family violence legal issues, prioritizing familial privacy and autonomy.³⁵ While positive in some respects, this approach risk to masking instances

²⁸ *Ibid* at 852.

²⁹ *Ibid* at 873.

³⁰ *Ibid* at 878.

³¹ Kwon-leung Tang, "Battered Woman Syndrome Testimony in Canada: Its Development and Lingering Issues" (2003) 47:6 International Journal of Offender Therapy and Comparative Criminology 618 at 622.

³² Susan Ehrlich, "Legal Discourse and the Cultural Intelligibility of Gendered Meaning" (2007) 11:4 Journal of Sociolinguistics 452 at 455.

³³ Catherine Naughton, Aisling O'Donnell & Ronnie Greenwood, "'Ordinary decent domestic violence': A discursive analysis of family law judges' interviews" (2015) 26:3 Discourse & Society 349 at 359.

³⁴ Janet Johnston & Nancy Ver Steegh, "Historical Trends in Family Court Response to Intimate Partner Violence: Perspectives of Critics and Proponents of Current Practices" (2013) 51:1 Family Court Review 63 at 66.

³⁵ *Ibid* at 65.

of IPV.³⁶ Courts often "focus on the future, not the past," which ultimately underserves families experiencing IPV by minimizing past abuse and failing to account for the continuing effects of IPV following separation.³⁷ The failure to recognize abuse can lead to family court decisions that put women and children at a greater risk for continued, and often heightened abuse, following separation.

Many decision makers share a common misconception that IPV will abate upon separation. This misconception has been debunked by numerous studies that demonstrate that abusers may use litigation and joint-custody arrangements as a vehicle for continued abuse.³⁸ Statistics Canada data from 2007 to 2011 reveal that women's risk of being murdered by a legally separated spouse was nearly six times higher than their risk from a legally married spouse.³⁹ A study in California found that 34% of abusers threatened to kidnap the child/children during child visitation.⁴⁰ The same study showed that 19% of abusers threatened to contest the custody arrangement as a means to force the victim to return to the relationship, rather than proceed with the separation.⁴¹

Correspondingly, it has been shown that, rather than turning to the family court system for protection, women victims of IPV often *avoid* court in order to minimize risks of violence by limiting interactions with their abuser.⁴² Women feared advocating for their wellbeing and that of their children in court, for fear that this could cause retaliation by their abuser.⁴³ Similarly, women have also feared that highlighting partners' abuse would backfire and cause courts to view them as

³⁶ *Ibid* at 65.

³⁷ *Ibid* at 66.

³⁸ Peter Jaffee, Nancy Lemon & Samantha Poisson, *Child Custody and Domestic Violence: A Call for Safety and Accountability* (Thousand Oaks, California: Sage Publications, 2003) at 19.

³⁹ Canada, Statistics Canada, *Family Violence in Canada: A Statistical Profile, 2011* by Maire Sinha (Ottawa: Statistics Canada, 2013) at 43, online (pdf): *Statistics Canada* <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2013001/article/11805-eng.pdf?st=106hh5qB>>.

⁴⁰ Mary Kernic, "Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence" (2005) 11:8 *Violence Against Women* 991 at 992.

⁴¹ *Ibid* at 992.

⁴² April Zeoli et al, "Post-Separation Abuse of Women and their Children: Boundary-Setting and Family Court Utilization Among Victimized Mothers" (2013) 28:6 *Journal of Family Violence* 547 at 548.

⁴³ *Ibid* at 556.

hostile to the separation process.⁴⁴ The "friendly parent factor," where courts award primary custody to the parent perceived as most likely to encourage contact, has silenced women, discouraging them from coming forward about the abuse to which they have been subjected.⁴⁵

Courts have historically operated on the assumption that contact with both parents is in the best interests of the child. This is highlighted in the United Nations' *Convention on the Rights of the Child*, by article 9(3) which reads, "State Parties shall respect the right of the child...to maintain personal relations and direct contact with both parents on a regular basis, *except if it is contrary to the child's best interests*".⁴⁶ Given that some courts have minimized IPV as "inter-parental conflict" rather than recognizing it as a pattern of abuse, there is a significant risk that this assumption will not be rebutted in cases with IPV.⁴⁷ The misguided characterization of IPV as isolated incidents that are unlikely to continue post-separation supports a pro-access approach to custody where both parents have a court-ordered right to continued access to children.⁴⁸

Canadian courts and legislatures have attempted to address the risks posed to children through unfounded assumptions surrounding IPV and a pro-access approach through the consideration of the "best interests of the child" by incorporating the best interests of the child analysis into Federal and Provincial legislation. The SCC has held that the best interests of the child analysis is guided by the right of the child to a parent who will pursue their best interests.⁴⁹ This is meant to be a highly contextual, child-centric analysis, giving courts wide latitude to balance a variety of considerations.⁵⁰

On June 1, 2019, Bill C-78, *Act to Amend the Divorce Act, The Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make*

⁴⁴ Christine Harrison, "Implacably Hostile or Appropriately Protective? Women Managing Child Contacts in the Context of Domestic Violence" (2009) 14:4 *Violence Against Women* 381 at 395.

⁴⁵ *Supra* note 34 at 64.

⁴⁶ *Convention on the Rights of the Child*, 20 November 1989, UNTS 1577 3 at art 9(3) (entered into force 2 September 1990).

⁴⁷ *Supra* note 34 at 66.

⁴⁸ *Supra* note 33 at 353-354.

⁴⁹ *Young v Young*, [1993] 4 SCR 3 at page 20, 1993 CanLII 34 [Young].

⁵⁰ *Ibid.*

consequential amendments to another Act (“Bill C-78”), received Royal Assent. Bill C-78 includes many amendments to the *Divorce Act* as well as other statutes that are addressing the specific needs and circumstances of individuals and children fleeing family violence. The changes to the *Divorce Act* was initially scheduled for July 1, 2020, however, due to circumstances related to the COVID-19 pandemic, the coming into force date has been deferred until March 1, 2021. Therefore, as of March 1, 2021, section 2(1) of the *Divorce Act* will contain a definition of family violence rooted in the best interests of the children in any divorce proceeding:⁵¹

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; (*violence familiale*)⁵²

⁵¹ Canada, Department of Justice, *The Divorce Act Changes Explained*, (technical guide, 3 June 2020) at 18. online: Department of Justice <<https://www.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/div50.html>>.

⁵² *Bill C-75, An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, 1st Sess, 42nd Parl, 2019, cl 16 (assented to 21 June 2019) at s 2(1).

The Divorce Act's new definition of family violence refers to violent acts in and of themselves, as well as a child's exposure to those violent acts.⁵³ The definition is broad and encompasses conduct that is violent or threatening, that follows a pattern of coercive and controlling behaviour, or that causes a family member to fear for their safety or the safety of another person. The burden of proof on the party alleging such behaviours do not have to meet the criminal burden of proof—*i.e.*, "beyond a reasonable doubt"—nor do the behaviours have to qualify as criminal offences in order to be deemed as family violence.⁵⁴ *The Divorce Act* will also include a non-exhaustive list of behaviours that courts can consider when rendering decisions regarding family violence.

Additionally, Bill C-78 reframes orders regarding the care and control of children. The new *Divorce Act* now refers to "parenting orders" instead of custody orders, and features concepts and words focused on relationships with the children, in order to centre the best interests of the child in a divorce proceeding.⁵⁵ Parenting orders dictate the parenting time and decision-making responsibilities assigned under the *Act*. Only spouses and certain non-spouses may apply for a parenting order, while others, such as grandparents, can apply for contact orders under section 16.5(1) of the *Divorce Act*. Parenting plans under section 16.6(1) of the *Divorce Act* are to be included in parenting and contact orders and are encouraged to promote agreement between the parties involved in a divorce proceeding.⁵⁶ Section 16(2) requires that the court "give primary consideration to the child's physical, emotional and psychological safety, security and wellbeing."⁵⁷ Additionally, the new section 16(3) sets out a non-exhaustive list of factors that the court should consider when making decisions regarding custody/parenting orders and access, which explicitly includes:

(a) any family violence and its impact on, among other things,

⁵³ *Supra* note 51 at 18.

⁵⁴ *Ibid.*

⁵⁵ *Supra* note 51 at 112.

⁵⁶ *Ibid* at 136.

⁵⁷ *Supra* note 52 at s 16(2).

- (b) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (c) 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.⁵⁸

Under the new *Divorce Act*, the best interest of the child remains paramount. When determining what parenting or contact order is in the best interests of the child, courts must consider an inexhaustive list of factors provided in section 16(3).

The new approach to assessing a child's best interests notably de-emphasizes the "friendly parent" factor that directed courts to give effect to the "maximum contact" principle that stated that children should have as much contact with each spouse as was consistent with their best interests. This principle required a consideration of the willingness of the spouse for whom custody was sought to facilitate the child's contact with the other spouse.⁵⁹ Now, while a spouse's willingness to support the child's relationship with the other spouse is one factor that courts must take into account,⁶⁰ family violence must also be considered.⁶¹

However, while the inclusion of these factors increases the court's awareness of family violence, the changes are still criticized for cementing the idea that it is always in the child's best interest to spend as much time as possible with both of their parents. Research has shown that, particularly in cases of family violence, the best interests of the child are not served by the presumption in favour of maximum contact, thereby requiring further changes to the test.⁶²

⁵⁸ *Ibid* at 16(3).

⁵⁹ *Divorce Act*, RSC 1958, c 3 (2nd Supp), s 16(10).

⁶⁰ *Supra* note 52

⁶¹ *Ibid* at s 16(3)(j).

⁶² Suki Beavers, Anastasia Berwald & Pamela Cross, "BILL C-78: An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act", online (pdf): Luke's Place < <https://lukesplace.ca/wp-content/uploads/2018/11/NAWL-Lukes-Place-Brief-on-C-78-final-for-submission-2.pdf>>.

Ontario's Provincial Family Law legislation also requires that courts focus on the best interests of the child when making orders for custody arrangements. Section 24 of the Ontario *Children's Law Reform Act* ("the CLRA") contains a list of factors that courts must consider when deciding custody or access issues:⁶³

- (2) The court shall consider all the child's needs and circumstances, including,
 - (a) the love, affection, and emotional ties between the child and,
 - (i) each person, including a parent or grandparent, entitled to or claiming custody of or access to the child,
 - (ii) other members of the child's family who reside with the child, and
 - (iii) persons involved in the child's care and upbringing;
 - (b) the child's views and preferences, if they can reasonably be ascertained;
 - (c) the length of time the child has lived in a stable home environment;
 - (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;
 - (e) the plan proposed by each person applying for custody of or access to the child for the child's care and upbringing;
 - (f) the permanence and stability of the family unit with which it is proposed that the child will live;
 - (g) the ability of each person applying for custody of or access to the child to act as a parent; and

⁶³*Child Law Reform Act*, RSO 1990, c C-12, s 24(2).

(h) any familial relationship between the child and each person who is a party to the application.⁶⁴

Notably, under s. 24(3), a court must also consider whether a person has at any time committed violence or abuse against his or her spouse, a parent to whom the application relates, a member of the person's household, or any child. This is the only time that a person's past conduct may be considered when determining custody arrangements under the *CLRA*.⁶⁵

The Canadian Family Law system has made several positive steps to better protect women and children from the effects of IPV, including the forthcoming amendments to the *Divorce Act*. However, significant work remains. Effective recognition of IPV as a *pattern of abuse*, rather than as isolated incidents of violence, imbued with myths and stereotypes associated with risk remains a fundamental issue in the family law system in order to give effect to the legislative safeguards for women and children.

5) Family court: Screening and assessment of IPV and risk

It is important that FLPs be able to distinguish between screening for and assessment of IPV in Family Court matters. While some tools have a combination of screening and assessment for risk, the purpose of the IPV RIA is to screen and identify any potential risk for future violence where a history of IPV has been identified.

The Australian Institute of Family Studies explains the difference between screening and risk assessment. Screening is required to identify the warning signs for the risk of IPV. Screening involves the identification of victims and survivors of family violence or IPV to determine whether

⁶⁴ *Ibid* at 24(2).

⁶⁵ *Child Law Reform Act*, RSO 1990, c C-12, s 24(3).

further intervention is required. Routine screening is the process of asking questions related to IPV to all clients who access family related services.⁶⁶

In contrast, risk assessment refers to the ongoing efforts to determine the degree of harm that is likely to occur as a result of past, present or future intimate partner violence.⁶⁷ There are three approaches to IPV risk assessment: unstructured professional judgment; actuarial decision making; and structured professional judgment.

Unstructured professional judgment, also known as unstructured clinical decision making, is the most commonly used approach to assessing IPV.⁶⁸ This method relies on the professional discretion of the evaluator. Results are justified by the experience and qualifications of the professionals who conduct the assessments. The method requires that professionals use their intuition to determine risk—which can allow for tailored and context-specific risk management strategies—but may also result in important gaps based on the background, training and biases of the evaluator.⁶⁹

The actuarial decision-making approach was designed to use a numerical and quantifiable system whereby specific behaviours could be predicted within a particular time frame.⁷⁰ According to Kropp, the goal of actuarial approaches is to compare an individual to a "norm-based reference group" and to provide a precise estimate of the probability of violence within a particular time period.⁷¹ Using a fixed set of factors, the actuarial approach is designed to provide a score as an indicium of risk. While, according to Kropp, actuarial decision-making tools provide the

⁶⁶ Elly Robinson & Lawrie Moloney, "Family violence: Towards a holistic approach to screening and risk assessment in family support services" (2010), online: *Australian Institute of Family Studies* <<https://aifs.gov.au/cfca/publications/family-violence-towards-holistic-approach-screening/export>>.

⁶⁷ Centre for Research & Education on Violence against Women & Children, "Domestic Violence Risk Assessment and Management Curriculum" (1 December 2012), online (pdf): *Western Education* <http://onlinetraining.learningtoendabuse.ca/sites/default/files/lessons/DVRAM%20full-text%20December%202012_1.pdf> at 16.

⁶⁸ Randall Kropp, "Intimate Partner Violence Risk Assessment and Management" (2008) 23: 2 *Violence and Victims* 202 at 205.

⁶⁹ *Ibid.*

⁷⁰ *Ibid* at 206.

⁷¹ *Ibid.*

"appearance of objectivity and precision," in practice, they only have a modest correlation with violence and are subject to statistical limitations.⁷²

Finally, structured professional judgment combines aspects of the unstructured professional judgment and actuarial decision-making approaches. Kropp and Hart defined this approach as "a decision made without fixed and explicit rules but based at least in part on consideration of a standardized information base."⁷³ It incorporates professional judgment as well as non-discretionary risk assessment tools.⁷⁴ While there are guidelines pertaining to information gathering, communication, and specific violence prevention methods, there are no restrictions on the weighting or final combination of risk factors.⁷⁵ The considerable degree of professional discretion allowed in a structured professional judgment approach might be subject to the same criticisms as the unstructured professional judgment approaches. Many studies indicate that interrater reliability for professional judgments concerning overall levels of risk as well as the presence of individual risk factors, is strong.⁷⁶

Effective identification of risk for IPV requires teamwork. A wide range of professionals working with survivors of IPV are required to gather detailed information about the history of violence and past and current safety concerns to determine risk for future harm. While some practitioners assess risk based on their professional experience in an informal way, others utilize different risk assessment tools.⁷⁷

In the Family Law context, there is a high prevalence of domestic and family violence cases among litigants, amplified by communication problems among lawyers and courts. Using tools to collect information about the history of domestic violence, the pattern of abuse, and potential risks "is

⁷² *Ibid.*

⁷³ Randall Kropp & Stephen Hart, "The Spousal Assault Risk Assessment (SARA) Guide: Reliability and Validity in Adult Male Offenders" (2000) 24: 1 Law and Human Behaviour 101 at 103.

⁷⁴ Tonia Nicholls et al, "Risk Assessment in Intimate Partner Violence: A Systemic Review of Contemporary Approaches" (2013) 4: 1 Partner Abuse 76 at 82.

⁷⁵ *Supra* note 68 at 207.

⁷⁶ *Ibid.*

⁷⁷ P Randall Kropp, "Some Questions Regarding Spousal Assault Risk Assessment" (2004) 10:6 Violence Women 676-697, online: <<http://journals.sagepub.com/doi/10.1177/1077801204265019>> at 677.

recommended in all family law, including child protection matters."⁷⁸ Therefore, it is essential that the courts have accurate information about past or ongoing abuse to better address survivor and child(ren) 's safety concerns.⁷⁹

There is overwhelming evidence that demonstrates that the risk of IPV is heightened during or after separation⁸⁰ and that the commencement of court proceedings can escalate the risk of violence even further.⁸¹ This is true for spouses and the entire family.⁸² Many survivors disclose continued abuse after separation, including threats towards their children.⁸³ The use of risk assessments can assist FLPs to collect relevant information with matters that involve decisions on child custody and access⁸⁴ since the presence of IPV is often an "important indicator of the risk of physical and sexual abuse of children."⁸⁵

According to Statistics Canada, between 2007 and 2011, the risk of a woman being killed by a legally separated partner was six times higher than the risk of a married woman. Jealousy was often a factor associated with homicide of legally separated women.⁸⁶ The rate of re-offence among IPV perpetrators is higher than other perpetrators of violent crimes.⁸⁷

In cases involving IPV, litigants who have experienced domestic violence are particularly vulnerable to settlement pressure.⁸⁸ The use of a standard tool enables the lawyer to determine the most appropriate course of action while ensuring that safety mechanisms are established for the client.⁸⁹

⁷⁸ Neilson 2014, *supra* note 9 at 8.

⁷⁹ Pamela Cross et al, *Department of Justice - What You Don't Know Can Hurt You: The importance of family violence screening tools for family law practitioners*, online: www.justice.gc.ca (2016) at 15, Last Modified: 2016-08-05.

⁸⁰ Nicholls et al, *supra* note 74.

⁸¹ Desmond Ellis, "Divorce and the family court: What can be done about domestic violence?" (2008) 46:3 Family Court Review 531-532.

⁸² Jennifer E McIntosh, Yvonne Wells, & Jamie Lee, "Development and validation of the Family Law DOORS" (2016) 28.11 Psychological Assessment 1516, at 1516.

⁸³ Zeoli et al, *supra* note 42 at 547.

⁸⁴ Kropp 2004, *supra* note 77 at 687.

⁸⁵ Johanna Hiitola & Teija Hautanen, "Assessing violence in the family-social work, courts, and discourses" (2017) 7.1 Nordic Social Work Research 30, at 33.

⁸⁶ <https://www150.statcan.gc.ca/n1/pub/85-002-x/2013001/article/11805/11805-3-eng.htm>

⁸⁷ Nicholls et al, *supra* note 74.

⁸⁸ Neilson 2017 *supra* note 1 at 14.

⁸⁹ *Ibid* at 16.

Some Family courts use screening tools to identify appropriate dispute resolution methods.⁹⁰ IPV screening can also assist courts in triaging cases, where families are routed into the least intrusive process that will meet their particular needs and circumstances.⁹¹ The Matrimonial Commission of the State of New York has identified that understanding the nature of the conflict in cases as early as possible and routing them accordingly can encourage responsible self-determination by the parties involved.⁹² However, routing cases in a triage system is also most effective when there is a nuanced understanding of the IPV, its characteristics and complications, and the availability of options to the clients.⁹³ For lawyers representing victims and survivors of abuse, screening and assessment tools can inform what other legal recourse they may seek to ensure the safety and wellbeing of their clients. For example, a lawyer might suggest a restraining order or discuss the possibilities of perusing criminal charges with their client.⁹⁴

Detailed screening and assessment tools provide lawyers with an understanding of the nature and context of the abuse as it pertains to parenting and the wellbeing and safety of children. Particularly where children are involved, courts need to be aware of the presence and nature of family violence in order to make the most appropriate orders about child-related decision making by parents, including living arrangements, communications, and exchanges.⁹⁵ Courts must also consider whether continued child-parent contact would be in the best interest of the child as it relates to psychological factors, such as trauma experienced by the child.⁹⁶

The British Columbia *Family Law Act* requires that all dispute resolution professionals assess for IPV in order to determine the dispute resolution process that is appropriate for the family. A Family Justice Center in British Columbia has adopted the use of IPV assessment and screening tools in Family Court. The center screens for family violence, child protection issues, mental health issues,

⁹⁰ Nancy Ver Steegh, Gabrielle Dabis, & Loretta Frederick, “Look Before You Leap: Court system triage of family law cases involving intimate partner violence” 95 *Marquette Law Review* 955 at 963.

⁹¹ *Ibid* at 960.

⁹² *Ibid* at 962.

⁹³ *Ibid* at 987.

⁹⁴ Cross et al, *supra* note 79 at 18.

⁹⁵ *Ibid* at 15.

⁹⁶ Canada, Department of Justice, *Making the Links in Family Violence Cases: Collaboration among the Family, Child protection and Criminal Justice Systems*, vol 1 (November 2013) at 44.

problems of drug and alcohol abuse in order to determine the best outcomes based on the family's unique needs.⁹⁷ Such screening allows lawyers to identify family violence and other issues that may impact the parties' respective abilities to care for children.⁹⁸ British Columbia also uses their *Violence Against Women in Relationships (VAWIR) Policy, a Protocol for Highest Risk Cases*, which is intended to enhance the justice and child welfare system as it pertains to experiences of IPV that are determined to be of high risk upon assessment.⁹⁹

We can look to other jurisdictions for examples of successful screening techniques. In Manitoba, mediators, lawyers, associated social workers, as custody and access assessors who work in the government's Family Conciliation office, are required to conduct screenings for IPV.¹⁰⁰ In Australia, the *Detection of Overall Risk Screen (DOORS)* framework has recently been adopted to assist the family law system with detecting risk to the wellbeing and safety of families.¹⁰¹ The DOORS framework involves several layers of assessment that help in identifying risks and resources to assist families.¹⁰²

In conclusion, FLPs must be able to assess for risk effectively. In cases of IPV, "there is no such a thing as no risk."¹⁰³ All instances of IPV impose some level of risk, and risk assessments should inform practitioners the "nature, form and degree of danger."¹⁰⁴ Family Law Practitioners are often the first point of contact for survivors of IPV¹⁰⁵ and are critical players in identifying "the risk of domestic violence and abuse during and following divorce proceedings."¹⁰⁶ Adequate identification of IPV and risk of future abuse will better inform what steps to take during a family law proceeding,

⁹⁷ *Ibid* at 41.

⁹⁸ *Ibid*.

⁹⁹ *Ibid* at 44.

¹⁰⁰ *Ibid* at 41.

¹⁰¹ *Ibid* at 43.

¹⁰² *Ibid*.

¹⁰³ Kropp 2004, *supra* note 77 at 677.

¹⁰⁴ *Ibid*.

¹⁰⁵ Cross et al, *supra* note 79 at 5.

¹⁰⁶ Ellis, *Supra* note 81 at 531.

such as mediation or other forms of ADR.¹⁰⁷ Better identification of risk of IPV may lead to more effective restraining orders, both in criminal and family law context.¹⁰⁸

What is Risk?

There are a few conflicting definitions about the risk for violence. In cases of IPV, risk can be defined as the likelihood that violence will occur in the future if actions and safety measures are not in place.¹⁰⁹ It is imperative to identify patterns, frequency, severity and nature of violence in addition to its imminence to occur in the future.¹¹⁰

The Centre for Research & Education on Violence Against Women & Children at Western University outlines that risk factors for intimate partner violence can be categorized as either dynamic, static, or victim-focused.¹¹¹ This checklist of risk factors was created to raise awareness among service providers regarding the "issues and risk factors surrounding spousal violence and to develop an appropriate safety plan and response to threats for victims". Dynamic risk factors include personal circumstances and/or characteristics that are changing. As dynamic risk factors fluctuate, so do levels of risk of intimate partner violence.¹¹² An actual or pending separation as well as age, are some examples of dynamic risk factors. It is important to note that dynamic risk factors can become static. For instance, being chronically unemployed is a static risk factor, whereas losing a job is dynamic.¹¹³ Static factors are those that do not change and describe a past circumstance or personal characteristic that is permanent. For example, whether a perpetrator has a history of violence.¹¹⁴

While dynamic and static risk factors are largely perpetrator-focused, tools also recognize a third category of risk factors that are victim-focused.¹¹⁵ These victim-focused factors account for the

¹⁰⁷ Alexandria Zylstra, "Mediation and domestic violence: a practical screening method for mediators and mediation program administrators." (2001) *Journal of Dispute Resolution* 253.

¹⁰⁸ Mandeep Talwar, "Improving the enforcement of restraining orders after *Castle Rock v Gonzales*" (2007) 45.2 *Family Court Review* 322.

¹⁰⁹ Neilson 2014, *supra* note 9 at 44.

¹¹⁰ Kropp, *supra* note 77 at 768.

¹¹¹ *Supra* note 67 at 18.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid* at 21.

¹¹⁵ *Ibid* at 18.

victim or survivor's own feelings and senses of danger and risk in a way that integrates their needs and vulnerabilities into the assessment. They allow the assessor to consider the life circumstances, social factors, and personal characteristics that might impact the choices and resources that a survivor feels are available to them.

Some IPV risk factors are specific to individual communities. For example, Toivonen & Backhouse identify factors that arise in the LGBTQIS2 community and therefore require particular attention, such as threats from perpetrators of IPV to "out" their partner's sexual history and/or gender identity, whereas transgender, intersex or gender non-conforming people might experience violence specifically intending to challenge their identity.¹¹⁶ Likewise, Joy Wunderstiz's report on Indigenous perpetrators of violence in Australia suggests that more attention should be paid to identifying "protective factors" for Indigenous violence, such as cultural resilience, family linkages, and personal coping and adjustment skills, rather than risk factors.¹¹⁷ Therefore, while static, dynamic and victim-focused risk factors are the three major categories of risk factors in IPV, a suitable procedure must be mindful of the intersectional realities of survivors of IPV and take into account culturally appropriate and contextual considerations in assessing risk.

*Dynamic, Static and Victim-focussed Domestic Violence Risk Factors*¹¹⁸

Dynamic	Static	Victim-focused
<ul style="list-style-type: none"> -Actual or pending separation -Child custody or access disputes -Escalation of violence -Perpetrator unemployed -Victim and perpetrator living common-law -Excessive alcohol and/or drug use by perpetrator -Depression – in the opinion of family/friend/acquaintance or 	<ul style="list-style-type: none"> -History of domestic violence - History of violence outside of the family by perpetrator - Prior threats to kill victim - Prior threats or assault with a weapon - Prior threats or attempts to commit suicide by perpetrator - Prior attempts to isolate the victim 	<ul style="list-style-type: none"> -Extreme fear of perpetrator -Inconsistent attitude or behaviour (i.e. ambivalence) -Inadequate support or resources -Unsafe living situation -Health problems -Mental health issues -Addictions (alcohol/drug abuse) -Disability

¹¹⁶ Cherrie Toivonen & Corina Backhouse, "National Risk Assessment Principles for domestic and family violence" (2018), online (pdf): *ANROWS* < https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2018/07/19030421/ANROWS_NRAP_National-Risk-Assessment-Principles.1.pdf>.

¹¹⁷ Austl, Commonwealth, Australian Institute of Criminology, *Indigenous perpetrators of violence: Prevalence and risk factors for offending*, by Joy Wondersitz (AIC Reports: Research and Public Policy Series, 2010) 105 at 97 & 98.

¹¹⁸ Supra note 111 at 21.

professionally diagnosed – perpetrator -Other mental health or psychiatric problems - perpetrator -Obsessive behaviour displayed by perpetrator, including stalking and/or possessive jealousy -New partner in victim's life -Access to or possession of any firearms -Sexual jealousy – perpetrator -Misogynistic attitudes – perpetrator - Extreme minimization and/or denial of spousal assault history - Youth of couple - Significant perpetrator life changes	- Controlled most or all of victim's daily activities - Prior hostage-taking and/or forcible confinement - Prior forced sexual acts and/or assaults during sex - Prior destruction or deprivation of victim's property - Prior violence against family pets - Prior assault on victim while pregnant - Choked victim in the past - Perpetrator was abused and/or witnessed domestic violence as a child - Presence of stepchildren in the home - Failure to comply with authority – perpetrator - Perpetrator exposed to/witnessed suicidal behaviour in family of origin - Age disparity of couple - Perpetrator threatened and/or harmed children	-Language and/or cultural barriers (e.g., new immigrant or isolated cultural community) -Economic dependence Living in rural or remote locations -Fear or distrust of legal authorities -Lack of awareness or suspicion of mainstream services
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When it comes to risk assessment, it is crucial to note that the risk for violence can be influenced by context and can rapidly increase or decrease according to the change of circumstances.¹¹⁹ Therefore, the assessment of risk and safety should be ongoing.¹²⁰

6) Intimate Partner Violence Risk Identification and Assessment risk factors criteria

6.1) Intimate Partner Violence Risk Identification and Assessment (“IPV RIA”)

IPV RIA is to be used by Family Court stakeholders to screen and identify any potential risk for future violence where a history of IPV has been identified. IPV RIA can assist stakeholders in

¹¹⁹ Kropp 2004, *supra* note 77 at 682.; Neilson 2014, *supra* note 9 at 9.

¹²⁰ Neilson 2014, *supra* note 9 at 54.

identifying potentially high-risk situations by gathering information on current and historical factors related to the survivor's experience of IPV.

The development and design of the IPV RIA were informed by extensive consultation with family court stakeholders, survivors of violence, and a review of IPV and risk screening and assessment scientific literature. Most risk factors included in the tool for investigation have been validated through research and should be considered as red flags for potential future harm and/or lethality.

IPV RIA questions and categories considered the definition of family violence under the new *Divorce Act*¹²¹ and factors that courts must consider when assessing situations of family violence. IPV RIA questions allow the assessor to explore the types of abuse, including its nature, frequency, and escalation. The assessor seeks detailed information on patterns of coercive and controlling behaviour in the context of IPV, as these patterns might indicate that abuse is likely to continue and escalate after separation. In cases involving coercive control, the likelihood of severe harm or lethality is higher than when other types of abuse are also present.¹²²

6.2) IPV RIA Risk factors criteria: Literature review and Domestic Violence Death Review Committee

There is much consensus in the literature about the most common risk factors to be examined in the context of IPV.¹²³ IPV RIA includes these factors validated by research and recommended by the Domestic Violence Death Review Committee (“DVDRC”).

The DVDRC was created in 2003 to assist the Chief Coroner Office in the review and investigation of deaths caused by domestic violence. The DVDRC is comprised of a multidisciplinary team specialized in domestic violence, including the criminal justice system, the health care system, law enforcement, social services, and academia. The main objective of the DVDRC is to make recommendations based on reviews and investigations of homicide cases to enhance awareness,

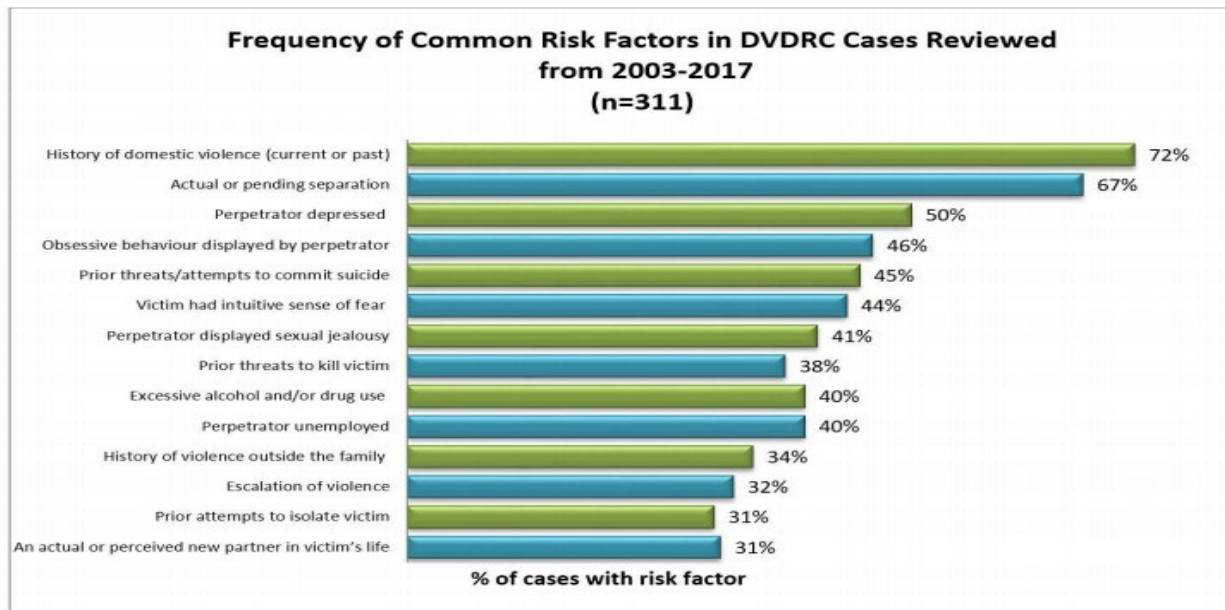
¹²¹ RSC, 1985, c 3 (2nd Supp.)

¹²² Andy Myhill & Katrin Hohl, “The ‘Golden Thread’: Coercive Control and Risk Assessment for Domestic Violence” (2019) 34:21–22 *J Interpers Violence* 4477–4497, online: <<http://journals.sagepub.com/doi/10.1177/0886260516675464>>.

¹²³ Kropp 2004, *supra* note 77 at 679.

education, and current responses and strategies to prevent future lethality cases as a result of domestic violence incidents¹²⁴.

The DVDRC identified eight of the most common risk factors for homicide IPV. The graph below demonstrates the frequency of the most common risk factors in the cases reviewed by the committee from 2003-2017.



The DVDRC's data showed that in 71% of cases of IPV, resulting in a homicide, seven or more risk factors were present.¹²⁵ The combination of these risk factors in the majority of spousal homicide cases demonstrates the need for professionals working with survivors of IPV to conduct more in-depth assessments of potential future harm and/or lethality.

6.3) IPV RIA Risk factors criteria: Family Court needs-assessment interviews

The objective of the needs-assessment with court stakeholders was to identify practices, protocols, and potential use of tools when assessing IPV cases and potential high-risk situations. Court

¹²⁴ Domestic Violence Death Review Committee Annual Report 2017, (Ontario, Canada, 2018).

¹²⁵ *Ibid.*

stakeholders shared their perspectives and suggestions regarding the development of the risk assessment tool in Family Court.

Thirty-eight Family Court stakeholders participated in in-person, one-on-one interviews. Participant positions ranged from duty counsel manager, full-time duty counsel, per diem duty counsel and advice lawyers, information referral coordinators, family court support workers, and mediators.

The design of IPV RIA I and II included consideration of most recommendations from the needs-assessment interviews. The table below summarizes family court stakeholders' risk factors suggestions during face-to-face consultation meetings.

❖ Imminent risk of harm to women and their children	❖ Social media use
❖ History or imminent risk of child abuse	❖ Perpetrator history of violence against other people and pets
❖ Safety concerns raised by survivors of violence	❖ Police involvement
❖ Existing criminal charges, bail conditions	❖ Children's issues – safety concerns
❖ Child protection services involvement	❖ Financial control issues
❖ Self-containment	❖ Choking
❖ Types of abuse (emotional, psychological, financial, spiritual, sexual and physical)	❖ Injuries and hospitalization
❖ Parties still living in the same house ❖ Recent separation	❖ Perpetrator breach of court orders
❖ Access to weapons	❖ History of not returning children from an access visit/ and or child abduction
❖ Relationship history	❖ Culture/religion backgrounds
❖ Recent incidents of violence	❖ History of separation
❖ Mental health concerns	❖ History of staying in a shelter
❖ Survivor's level of fear	❖ Situations where people are in isolation
❖ Perpetrator criminal history/ charges	❖ Language barriers

❖ Substance abuse	❖ Stalking
❖ Access to passports or attempts to issue new passports	❖ Power imbalances
❖ Family ties in other jurisdictions	❖ Communication with the other party
❖ Frequency of incidents by all types of abuse, escalation over time	❖ Surveillance/ monitoring issues such as cameras, GPS devices, not access to phone or emails)

6.4) Risk factors criteria: Survivor interviews

The needs assessment interviews with survivors aimed to document their perspectives and experiences with service provision and outcomes in family court. Survivors shared their experiences and provided inputs on service delivery strengths and challenges. A summary of survivors' suggestions is below, and the details of interviews were included in the needs assessment report that has been shared with family court stakeholders.

Survivors Shared experiences in family court

All survivors accessed services in family court through Family Law Information Centres, and overall, respondents stated that they were satisfied with services.

Two survivors indicated that they were referred to the family court support program during their first contact with family court, another had the referral after requesting a motion to change due to safety concerns, and others were not familiar with the program.

One of the respondents indicated that she was not satisfied with the services provided. She stated that she was not provided with sound legal advice and had to fill out the application by hand since she did not qualify for Legal Aid Ontario (LAO) but could not pay legal fees. She indicated that her safety concerns were not acknowledged during the family court process. She stated that after receiving final orders, she had to file a motion to change due to safety concerns. She mentioned that after a few not positive experiences with duty counsel in family court, her last interaction with a different duty counsel was very helpful. She stated that "Duty counsel was very attentive, provided legal advice and a referral to Legal Aid Ontario and the family court support program."

Another survivor indicated that she had to self-represent since she did not qualify for LAO and was referred to the family court support program after she disclosed her concerns. She stated the following:

"I think the Barbra Schlifer Clinic does a good job to help stop the violence, protect the woman or at least document it. But we need help with the legal part; it is important to have access to lawyers, to your rights and obligations, and understand the law. I'm a minority group, even if I can read and write in English, but we are experiencing the cuts. I am an educated woman but still, in this situation, having access to legal advice is crucial to get out of it. There is a lot of fear about the court: of not doing things right, big fear of going to court, that the court is bureaucratic, fear of documents, that it is long and expensive. So how much money I need to avoid going to court and get an agreement with my ex-partner for my protection? I see that lawyers can extend the negotiation period with possibly not even ending in an agreement. I found that I can just start a court process by myself and use the resources in the court instead (duty counsel). It is a myth; you cannot do this process yourself".

Another survivor stated that even though she included her ex-husband's charges and stalking behavior in her family court application, she had to facilitate exchanges every other week. She further stated that "every way I turned, I did not have help. Nobody recommended me a restraining order; the judge asked us to work on an agreement. I had to do a lot of the exchanges, which was very uncomfortable. He was very aggressive. Even though I said that I was concerned about my safety, nobody took that into consideration. My ex-partner has been stalking me continuously, even nowadays and he ended up assaulting my new partner, and I reported everything to the police. He was arrested and charged with criminal harassment and assault. I still have concerns about him, concerns for my safety and my child".

Another respondent indicated that she felt that the court did not acknowledge her safety concerns and the impact of intimate partner violence on her and her child. She stated that "No one wanted to help, people would be referring me to others all the time, talk to someone, call here and call there. I

just wonder when people notice this situation, only when someone dies? Why not deal with the situation before someone dies?"

Suggestions and recommendations

All survivors suggested more LAO funding and services for survivors of intimate partner violence. One survivor included other topics such as therapy and group sessions, having more spaces for women to share ideas for support/solidarity. She also noted the need for more awareness and training about ongoing safety issues as violence does not end with separation, especially when there are children involved, and to have ongoing education of domestic abuse for survivors. Another survivor stated that having a tool to assist court staff and judges to validate the survivor's safety concerns would help with better court orders. Another suggestion was related to childcare volunteers for small children, making courts child-friendly for women, provision of safe waiting space, more students helping with the forms, and more family court support workers. A different suggestion was the need for more training for court staff and lawyers on the impact of trauma on survivors and children and how abusers can use the system to continue his abuse towards survivors. A final suggestion was more follow-up from the Victim Witness Assistance program worker.

7) Looking beyond acts of physical abuse: Coercive controlling behaviour

Many risk assessment tools emphasize physical safety.¹²⁶ They often focus on the likelihood of future harm, including lethality, based on risk factors associated with physical violence or threats.¹²⁷ However, in Family Law and Child Protection contexts, it is essential to understand and identify types of domestic violence beyond the physical. Family Law Practitioners must be able to identify patterns of coercive control and the resulting emotional and psychological effects on the survivor and children.¹²⁸

¹²⁶ Neilson 2017, *supra* note 1 at 60.

¹²⁷ Kropp 2004, *supra* note 77 at 676.

¹²⁸ Neilson, *supra* note 1 at 60.

Several research studies have emphasized the need to explore the history of abusive and controlling behaviours from the perpetrator.¹²⁹ According to one study, the dynamics of coercive control should be seen as the "Golden Thread for domestic violence cases" since it has been identified in most high-risk cases. Some of the coercive controlling behaviours cited in the study were isolation from family and friends, controlling daily activities, stalking or harassing, excessive texting and phoning, extreme jealousy, threats to kill, and threats of self-harm or suicide.¹³⁰

Stark (2013) defines coercive control as "a strategic course of oppressive conduct that is typically characterized by frequent, but low-level physical abuse and sexual coercion in combination with tactics to intimidate, degrade, isolate, and control victims."¹³¹ It is thus essential that FLPs be attentive and ask IPV survivors about the history of coercive controlling behaviour and its escalation over time. Most cases of lethality analyzed by the DVDRC had a component of coercive controlling behaviour, along with other types of abuse.¹³² Further, several research studies suggest that, in cases involving coercive control, the likelihood of severe harm or lethality is higher than when other types of abuse are present.¹³³ As explained by Cross *et al.*, in both Family and Criminal Law, "relationships of coercive controlling violence require the strongest legal interventions."¹³⁴

¹²⁹ Evan Stark, *Coercive control: how men entrap women in personal life* (New York; Oxford: Oxford University Press, 2009); Andy Myhill, "Measuring Coercive Control: What Can We Learn From National Population Surveys?" (2015) 21:3 Violence Women 355–375, online: <<http://journals.sagepub.com/doi/10.1177/1077801214568032>>; Jacquelyn C Campbell et al, "Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study" (2003) 93:7 Am J Public Health 1089–1097, online: <<http://ajph.aphapublications.org/doi/10.2105/AJPH.93.7.1089>>; Myhill & Hohl, "The 'Golden Thread'", *supra* note 122.

¹³⁰ Myhill & Hohl, *supra* note 122.

¹³¹ Stark, E, "The dangers of dangerousness assessment." (2013) 6:2 Family & Intimate Partner Violence 13–22 at 18.

¹³² *Supra* note 124.

¹³³ Stark, *supra* note 131; Myhill & Hohl, *supra* note 122; Campbell et al, *supra* note 129.

¹³⁴ Cross et al, *supra* note 79 at 9.

8) IPV Risk Identification and Assessment Framework (RIA)

The IPV RIA framework is a three-part tool—IPV RIA I, II, and III—used to identify potential high-risk situations and inform how to best assist victims of IPV in Family Court. It was designed from extensive consultation with Family Court stakeholders, survivors of violence, and a review of IPV and risk assessment scientific literature. Most risk factors have been validated through research and should be considered as red flags for potential future harm and/or lethality.

8.1) IPV RIA I: Risk Screening

IPV RIA I was designed to identify potential high-risk situations that require more in-depth assessments and/or interventions to protect survivors from future harm. It consists of 13 yes-or-no questions based on risk factors validated by multiple research studies and the Death Review Committees. The 12 risk factors are identified in the table below.

Table II: RIA I Risk Factors

Category	Risk factors to be investigated
Type of abuse	Verbal, emotional, financial, physical, and sexual. Coercive control: controlling behaviour, intimidation and isolation, stalking, harassment calls, cyberstalking, video surveillance, extreme jealous behaviour).
Relationship history	Actual, pending or abuser's perception of potential separation, escalation of abuse in severity and frequency.
Perpetrator background	Use of alcohol and drugs, suicide threats and attempts, criminal charges and/or conviction order, breach of court orders and/or resistance to being arrested, history of violence against others (previous partner, acquaintances, strangers, pets), access to weapons (use or threat to use).
Survivor	Survivor's level of fear, expressed safety concerns, previous attempts to end the relationship, social isolation and access to support.

Child(ren)

History of child(ren) abductions and/or threats.

Questions related to the history of abuse explore the timeline of the perpetrator's behaviour in terms of the incidents, as recent (within the previous 4 weeks) or past (more than 4 weeks ago). The frequency of the behaviour, noted on a scale from 1-5, should also be investigated as frequency may relate to the severity of abuse and the possibility for serious harm. The assessor must inquire into the frequency and severity of abuse for each risk factor listed in the assessment tool.

8.2) IPV RIA II: Risk Identification:

IPV RIA II consists of seven categories that allow the assessor to investigate current and historical factors related to the survivor's experience of violence that can impact the safety of the survivor and/or children. The tool identifies broader systemic barriers that can contribute to the survivor's level of risk of future harm. The main categories are listed in the figure below.



For each category, there is a myriad of risk factors to be investigated by the assessor. A summary of each category and its main risk factors are below, followed by a table that lays out all risk factors of IPV RIA II.

1) Types of abuse

Family Law Practitioners should ask questions about various types of past and threatened abuse, including verbal, emotional, financial, physical, and sexual abuse. Even though the purpose of IPV RIA is to identify risk of future harm, researchers note that a pattern of "past emotional, financial, physical, or sexual violence and abuse against family members" has been associated repeatedly with continuing IPV.¹³⁵ In addition, FLPs need to be aware of the types and patterns of abuse and understand how these can be related to parenting and children's wellbeing and safety.¹³⁶ Specific examples of abuse include threats of harm to individuals, pets, and personal property, sexual abuse and forced sexual activity; emotional abuse and insults; and online abuse, such as cyberstalking.¹³⁷

Of note, the severity of abuse is often not linear. Family Law Practitioners should ask questions that could demonstrate a pattern of increasing or escalation of frequency or severity of abuse and violence¹³⁸

Details regarding a former partner's behaviour during the course of the relationship that are indicators of risk include an attempt to impose significant levels of control over various aspects of the survivor's life, including financial control or relationship-decision making, such as about children.¹³⁹ Obsessions with the survivor, including high levels of possessiveness and jealousy, are also red flags¹⁴⁰.

¹³⁵ Neilson 2017, *supra* note 1 at 46.

¹³⁶ Cross et al, *supra* note 79 at 29.

¹³⁷ *Ibid* at 36.

¹³⁸ Neilson 2017, *supra* note 1 at 47.

¹³⁹ Cross et al, *supra* note 79 at 89.

¹⁴⁰ Neilson 2017, *supra* note 1 47.

Several research studies have demonstrated that stalking overlaps with physical violence and coercive control, and also a significant increase in stalking behaviour during separation.¹⁴¹ The use of different devices to cyberstalking and monitor survivors has been a growing concern and "is now such a regular occurrence as to be characteristic of many coercive domestic violence cases."¹⁴²

Family Law Practitioners should also inquire about the history of strangulation attempts. Strangulation (choking) is a well-documented risk factor for lethality in domestic violence. As noted by Neilson, "medical research now makes clear that victims can die from strangulation without the presence of a single external mark."¹⁴³

¹⁴¹ Logan, T (2010). Research on partner stalking: Putting the pieces together. Lexington, KY: University of Kentucky, Department of Behavioral Science & Center on Drug and Alcohol Research at 4.

¹⁴² Neilson 2014, *supra* note 9 at 37.

¹⁴³ Neilson 2017, *supra* note 1 at 362.

2) Relationship history

History of the intimate relationship can be indicators of a risk of future harm, such as the status of separation or divorce proceedings. According to Desmond Ellis, "[a]pproximately 50% of couples who have separated report being victims of violence and/or emotional abuse by their former intimate partners."¹⁴⁴ According to Statistics Canada, common-law couples have become more prevalent, and research has suggested that individuals in common-law relationships are at a higher risk of spousal violence.¹⁴⁵

3) Perpetrator background

Aspects of the perpetrator's background, including prior incidents, character traits, and overall health, can also be indicators of risk. According to Nichols-Hadeed, perpetrators are more likely not to have graduated from high school, have problems with drug or alcohol abuse, are in fair or poor mental health (including thoughts of suicidal ideation), and have a history of threatened or actual pet abuse.¹⁴⁶ Pet abuse can indicate instances of coercion and control as an attempt to reconciliation "or to punish, control, or silence children."¹⁴⁷ It is also crucial to investigate suicide attempts or threats since there is a correlation between suicidal tendencies and domestic violence, homicide and suicide, and also harm to children.¹⁴⁸

Perpetrators may also have experienced exposure to violence as a child, have patterns of unemployment or financial hardship, or experienced other types of trauma throughout their lives. They may have histories with gun use or access to weapons, and incidences of sexual assault and/or rape,¹⁴⁹ or other prior criminal (*i.e.*, non-domestic) convictions for violence, assault, or

¹⁴⁴ Ellis, *supra* note 81 at 531.

¹⁴⁵ Maire Sinha, "Section 3: Intimate Partner Violence" (2011) at 38, online (pdf): Statistics Canada <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2013001/article/11805-eng.pdf?st=U856CpEW>>.

¹⁴⁶ Corey Nichols-Hadeed *et al*, "Assessing danger: What judges need to know" (2012) 50.1 Family court review 150 at 151.

¹⁴⁷ Neilson 2014, *supra* note 9 at 37.

¹⁴⁸ Neilson 2017, *supra* note 1 at 355.

¹⁴⁹ Corey Nichols-Hadeed *et al*, *supra* note 146 at 155.

harassment.¹⁵⁰ Finally, they may have a history of problems with authority, such as failing to comply with restraining or no-contact orders, other court orders, or failing to complete IPV prevention programs.¹⁵¹

4) Children

Domestic violence does not need to be explicitly directed at a child in order to cause harm. The emotional consequences of direct and indirect domestic violence on children include psychological, emotional, and neurological effects that can cause a host of long-term behavioural and mental health problems.¹⁵²

There is substantial evidence to show that a father's violence towards a child's mother has adverse impact on the child, whether this abuse is witnessed directly or indirectly.¹⁵³ Exposure to such abuse is associated with numerous adverse outcomes for children, such as fear and anxiety, anti-social behaviour, and increased behavioural problems.¹⁵⁴ These outcomes may continue throughout their lives.¹⁵⁵ Further, in 30-60% of homes experiencing IPV, child abuse also takes place.¹⁵⁶ Perpetrators may redirect abusive behaviour towards the children when the abused parent is no longer present.¹⁵⁷

Women who share children with an abuser are at a higher risk of post-separation violence, given that they often have ongoing contact with the abuser.¹⁵⁸ Information about the perpetrator's interactions with and involving the children of the relationship can provide insight into the risk of future harm, including how the survivor has historically been able to manage conflict with the other

¹⁵⁰ Neilson 2017, *supra* note 1 at 46; Talwar, *supra* note 108 at 330.

¹⁵¹ Neilson 2017, *supra* note 1 at 47.

¹⁵² *Ibid* at 187.

¹⁵³ Lynne Harne, *Violent Fathering and the Risks to Children: The Need for Change* (Bristol, UK: Policy Press, 2011) at 23.

¹⁵⁴ *Ibid* at 23

¹⁵⁵ *Ibid* at 19.

¹⁵⁶ Zeoli et al, *supra* note 42 at 547.

¹⁵⁷ Neilson 2017, *supra* note 1 at 196

¹⁵⁸ Jennifer L Hardesty & Grace H Chung, "Intimate partner violence, parental divorce, and child custody: Directions for intervention and future research." (2006) 55.2 Family Relations 200 at 201.

parent.¹⁵⁹ Key red flags include whether the child has witnessed one or more domestic assault incidents and direct violence against the children by the perpetrator.¹⁶⁰ Other risk factors may include whether the survivor is permitted to make decisions about the children, threats to take children away, or other coercive behaviours relating to the children¹⁶¹, and the presence of stepchildren¹⁶².

The risk factors associated with potentially lethal outcomes in domestic violence situations are the same for adults and children.¹⁶³ Therefore, as advocated for by Neilson, "suspension of access until risk and safety can be assessed and assured is the safest course of action."¹⁶⁴

5) Institutional/ Systemic Factors

Intimate Partner Violence is often about power and control. The power imbalances at the center of IPV is one of gender inequality and patriarchy, which is perhaps why IPV disproportionately impacts women. Intimate Partner Violence -related power imbalances also affect trans and non-binary people. Intersecting factors such as immigrant and refugee status, income level, race, residence, sexuality, and ability can contribute to the risk of IPV.¹⁶⁵

Understanding gender-based violence requires an intersectional lens. Intersectionality refers to the multiplicities of one's social identity and the impacts of the same on a person's unique experiences.¹⁶⁶ As it relates to IPV, intersectionality refers to hierarchies of power and oppression that exist in various dimensions and impact an individual's experience of IPV, including any barriers that they may face in receiving support and finding safety, and the efficacy of different interventions.

¹⁵⁹ McIntosh et al, *supra* note 82 at 1517.

¹⁶⁰ Talwar, *supra* note 108 at 330.

¹⁶¹ Cross et al, *supra* note 79 at 59-60.

¹⁶² Peter Jaffe, Canada & Department of Justice, *Risk factors for children in situations of family violence in the context of separation and divorce* (Ottawa: Department of Justice, 2015) at 24.

¹⁶³ Neilson 2014, *supra* note 9 at 60.

¹⁶⁴ *Ibid.*

¹⁶⁵ "Intimate partner violence (IPV) and child welfare", online: *OACAS Library Guides* <<https://oacas.libguides.com/c.php?g=706916&p=5031046>>.

¹⁶⁶ Nicole Jeffrey et al, "Preventing Domestic Homicide in Canada: Current Knowledge on Risk Assessment, Risk Management and Safety Planning with Vulnerable Populations" (2018), online: *Canadian Domestic Homicide Prevention Initiative* <www.cdhipi.ca/literature-review-report>.

The social location also impacts the unique manifestations of individual personal, social, and financial consequences of violence.¹⁶⁷ Violence is shaped by gender roles, as well as many other social positions and the inequalities that exist between them. Per Strid and Verloo, "[t]he structural intersectionality question is about how other inequality regimes intersect with the gender regime, creating incentives and opportunities for violence, and about differentiating which persons socially located at the intersections of these inequality regimes are most at risk from violence."¹⁶⁸

While IPV can affect everyone regardless of social status or cultural background; however, , immigrant and refugee women are more vulnerable to IPV as they have "compounding and interrelated individual, familial, cultural, social and systemic level risk factors."¹⁶⁹ The risk for domestic violence among immigrant and refugee women can vary based on "immigration status, length of stay in the host country, and culture as well as migration processes, acculturation levels, gender role expectations, socioeconomic status, marginalization, religious beliefs, and socio-cultural influences."¹⁷⁰ Migrant women face increased vulnerability due to social and physical isolation, language barriers, and systemic barriers that create further silence around domestic violence. Immigrant women may also be dependent on their partners for post-migration status or sponsorship and may not be aware of their legal rights due to a lack of knowledge of the Canadian systems, laws and culture. All of these factors serve to reinforce barriers to seek supports that are available to them in Canada that can further compromise their safety.

There are no recorded differences between immigrant and Canadian-born women in the physical and psychological consequences of IPV. This could be because of the lack of data specific to migrant women and non-status women experience. There is a large percentage of women with precarious immigration status, non-status for the whole, it's almost impossible to capture any data because of systemic barriers. The lower levels of trust held by immigrant women survivors of abuse towards

¹⁶⁷ *Ibid.*

¹⁶⁸ Sofia Strid & Mieke Verloo, "Intersectional complexities in gender-based violence politics" in Elizabeth Evans & Eléonore Lépinard, eds, *Intersectionality in Feminist and Queer Movements*, 1st ed (London: Routledge, 2019) 83 at 85.

¹⁶⁹ Sarah Yercich & Kate Rossiter, "Immigrant and Refugee Populations" (2018), online: *Canadian Domestic Homicide Prevention Initiative* <www.cdhipi.ca/literature-review-report>.

¹⁷⁰ *Ibid.*

institutions can have significant implications on their help-seeking behaviour and suggest a need for intervention and prevention programs that are culturally appropriate and sensitive.¹⁷¹ In situations where victims and survivors leave their abusive partners, they may become more vulnerable and isolated.¹⁷²

Many immigrant and refugee women identify as racialized. This adds another layer of nuance to their experience of violence. Nixon and Humphreys suggest that "the increased vulnerability to domestic violence of minority ethnic women is related to poverty and income" as minority ethnic families in "late capitalist societies" are more likely to experience poverty than white families.¹⁷³ Poverty is associated with underemployment, cultural isolation, under education, language barriers, and undocumented status.

Household income may not provide an accurate measure of a woman's access to that income. Women who are employed are at less risk of experiencing IPV, and the social networks and financial independence associated with employment can be profound in supporting women from various social locations.¹⁷⁴ Some immigrant and refugee women are unable to work for multiple reasons and are therefore more reliant on their partners and more susceptible to violence. Women belonging to cultures that practice forced marriages, honour killings, or other cultural norms that are averse to separation and/or perpetuate violence towards women may also be at increased risk.¹⁷⁵

Women with disabilities are susceptible to a wider range of abusive behaviours than women without disabilities are likely to experience.¹⁷⁶ More than one in five women with a disability experience emotional, financial, physical, or sexual abuse committed by an intimate partner in the past 5 years, and roughly one in four women with a cognitive or mental health-related disability

¹⁷¹ Janice De Mont & Tonia Forte, "An exploratory study on the consequences and contextual factors of intimate partner violence among immigrant and Canadian-born women" (2012) at 1, online (pdf): [BMJ Open <cdhipi.ca/sites/cdhipi.ca/files/consequences_of_IPV.pdf>](http://bmj.open.cdhipi.ca/sites/cdhipi.ca/files/consequences_of_IPV.pdf).

¹⁷² *Ibid.*

¹⁷³ Jennifer Nixon & Cathy Humphreys, "Marshalling the Evidence: Using Intersectionality in the Domestic Violence Frame" (2010) 17:2 Social Politics 137 at 147.

¹⁷⁴ Yercich & Rossiter, *supra* note 169.

¹⁷⁵ McIntosh et al, *supra* note 82 at 1516.

¹⁷⁶ Nixon & Humphreys, *supra* note 173 at 151.

were sexually abused by an adult before the age of 15.¹⁷⁷ Women with disabilities also face low rates of employment. The resulting increased social isolation increases their susceptibility to IPV.¹⁷⁸

Black women face unique risks of violence. As Robyn Maynard writes in her book *Policing Black Lives*, "in many Canadian cities, Black children and youth are removed at appalling rates from their families and placed in state care or foster homes, where they experience trauma, isolation and a wide variety of other harms."¹⁷⁹ This experience and the threat of police brutality, coupled with the fear of reinforcing racist stereotypes around Black male aggression, creates significant barriers for women seeking support and safety when experiencing IPV, especially when thinking of leaving their abusive partners¹⁸⁰.

For 2SLGBTQ+ individuals, the frequency of abuse by the police is also a consideration in whether to leave an abusive relationship and whether they will have access to appropriate support and safety resources. Profiling transwomen as sex workers and selective non-enforcement in domestic violence investigations are added concerns for 2SLGBTQ+ individuals.¹⁸¹ Gay and trans victims and survivors have often turned away from shelters and denied protection orders, which form critical supports for people fleeing violence.¹⁸²

Threats of state-based violence for many marginalized survivors, particularly associated with law-and-order approaches that contribute to mass incarceration, prevent many victims and survivors from accessing support and increase their vulnerability to violence.¹⁸³

¹⁷⁷ Adam Cotter. 2018. "Violent victimization of women with disabilities, 2014." *Juristat*. Vol. 38, no 1. Statistics Canada Catalogue no. 85-002-X.

¹⁷⁸ Nixon & Humphreys, *supra* note 173 at 149.

¹⁷⁹ Robyn Maynard, *Policing Black lives: state violence in Canada from slavery to the present*, (Winnipeg, Manitoba: Fernwood Publishing, 2017) at 186.

¹⁸⁰ *ibid*

¹⁸¹ Krista McQueeney, "Teaching Domestic Violence in the New Millennium: Intersectionality as a Framework for Social Change" (2016) 22:12 *Violence Against Women* 1463 at 1464.

¹⁸² *Ibid*.

¹⁸³ *Supra* note 177 at 127.

Furthermore, a holistic assessment of a survivor's situation and risk should account for how these social factors may impact their choices and decisions, particularly as it relates to her experiences of IPV.¹⁸⁴ While some risks to survivors of IPV are apparent and have an immediate relation to the abuse, there may be other significant risk factors that remain less obvious or hidden. These risks, called social risks, reflect on a survivors' external conditions, pressures, norms, and practices that may increase their level of danger.¹⁸⁵ This concept encourages practitioners to assess the needs of each survivor from different angles¹⁸⁶ in order to have a fulsome picture of their survival needs, skills, strengths, priorities, and understanding of their response to abuse.¹⁸⁷

The assessment of social risks acknowledges that risk does not arise just from isolated incidents or singular experiences, but rather that they interact with complex and historically entrenched systems.¹⁸⁸ Each survivor's identity is an intersectional amalgamation of their specific life events and experiences, as well as the collective consciousness of their community and society.¹⁸⁹

Family Law Practitioners must consider all factors associated with women's intersectionality that require a fulsome and robust understanding of IPV and an awareness of how women's social location impacts their experiences of IPV and oppression. Family Law Practitioners should ask questions about a survivor's history with social services, systems, and institutions, which may make the survivor reliant on a partner in order to obtain continued institutional support and also involvement in court proceedings (criminal, civil, or otherwise), and disability payments.

Indigeneity factors

¹⁸⁴ Radhia A Jaaber & Shamita Das Dasgupta, "Assessing Social Risks of Battered Women" (2016), online (pdf): *Praxis International* <<http://praxisinternational.org/wp-content/uploads/2016/02/AssessingSocialRisk.pdf>> at 12.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid* at 14.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

Intimate Partner Violence is a serious issue in Indigenous communities¹⁹⁰. According to a report from the Royal Commission on Aboriginal Peoples, "the failure in family functioning can be traced in many cases to interventions of the state deliberately introduced to disrupt or displace the Aboriginal family".¹⁹¹ Historical genocide and ongoing racism and colonialism have resulted in the marginalization and neglect of Indigenous peoples and communities in Canada, particularly Indigenous women, girls and 2SLGBTQQIA people.¹⁹² The *Indian Act of 1876*, a colonial policy still in force that continues to discriminate and oppress First Nations, is responsible for the establishment of the residential school system that removed approximately 150,000 Indigenous children from their homes with the intention of assimilating them with white society¹⁹³.

Former Chief Justice Beverly McLachlin described the Indian Residential School experience as a "cultural genocide" with the attempt to destroy Indigenous peoples and their culture.¹⁹⁴ Many reports describe sexual, physical, emotional, mental, spiritual and cultural abuses that were inflicted on Indigenous children at these schools. Such traumas were left untreated and thus were passed on intergenerationally. Other state actions, such as the theft of Indigenous land and disregard for Indigenous forms of governance and sovereignty, contribute to the disproportionate experience of violence against Indigenous women.¹⁹⁵

For many Indigenous peoples, colonialism lies at the root of the violence they experience today, as it has severed their ties to their cultures, negatively impacted their health, security and access to justice.¹⁹⁶ Colonization refers to all the state processes used to dispossess Indigenous Peoples of their lands and resources.¹⁹⁷ As a result, the particular harms to Indigenous women and gender-diverse people is a crisis that has been reinforced for centuries. According to the National Inquiry

¹⁹⁰ Olivia Peters, Jae Ursel & Claudette Dumont-Smith, "Indigenous Population" (2018), online: *Canadian Domestic Homicide Prevention Initiative* <www.cdhipi.ca/literature-review-report>.

¹⁹¹ Canada, Royal Commission on Aboriginal Peoples, *Gathering Strength*, vol 3 (1996) at 52.

¹⁹² National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Executive Summary of the Final Report* (2019) at 3.

¹⁹³ *Supra* note 191.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ *Supra* note 192 at 17.

¹⁹⁷ *Ibid.*

into Missing and Murdered Indigenous Women and Girls (MMIWG), “the process of colonization has, in fact, created the conditions for the crisis of missing and murdered Indigenous women, girls and 2SLGBTQIA people that we are confronting today.”¹⁹⁸

As a result of the myriad of harms to Indigenous communities flowing from colonialism, Indigenous populations are more likely to experience other concurrent risk factors in addition to IPV, including substance abuse and poverty, compromised mental health.¹⁹⁹ Indigenous people are more than twice as likely to report being victims of domestic violence than non-Indigenous people, and many instances of IPV likely go unreported.²⁰⁰

Limited access to social and health supports and services, and pervasive experiences of racism when accessing social, health and justice systems, prevent many survivors of IPV from seeking help. While Indigenous women and girls are more likely to be survivors and victims of violence, they experience distinct discrimination by various institutions, including police, the justice system, and child protective services. Further, many Indigenous peoples live in rural, remote, and northern communities, where barriers to accessing services are even higher. In order to seek assistance, some Indigenous women must leave their communities, families, and support networks for an extended time and may have to engage with services that are culturally insensitive and inappropriate.

Table III: RIA II risk factors

Category	Risk factors to be investigated
Type of abuse	Verbal, psychological, coercive control, financial, physical, and sexual. Coercive control: Controlling behaviour, forcible confinement, intimidation and isolation, stalking, harassment calls, cyberstalking, video surveillance, and jealous behaviour.
Relationship History	Actual, pending, or abuser’s perception of potential separation, escalation of abuse in severity and frequency.

¹⁹⁸ *Supra* note 192 at 17.
¹⁹⁹ *Supra* note 191.
²⁰⁰ Native Women’s Association of Canada, “Fact Sheet: Violence Against Aboriginal Women” (2010) at 5, online (pdf): NWAC <<https://www.nwac.ca/browse/>>.

Perpetrator background	Mental health concerns/diagnosis, use of medications and history of hospitalization, suicide threats and attempts, criminal charges and/or conviction order, breach of court orders and/or resistance to being arrested, history of violence against others (previous partner, acquaintances, strangers, pets), employment conditions and history, access to weapons (use or threat to use), recent changes of life circumstances (loss of a family member, job loss, financial difficulties, immigration status, disability (medical condition), trauma due to conflict zone or war.
Survivor	Survivor's level of fear, expressed safety concerns, previous attempts to end the relationship, financial condition/employment, history of child abuse, mental health/addiction issues, access to resources, language barriers, support system (family and friends), housing issues metropolitan or rural areas – limitations and challenges, access to resources / support services in rural areas.
Child(ren)	Abuse against the child, the relationship between each parent and child(ren), emotional ties between each parent and child(ren), current living arrangements, willingness to encourage a close relationship between the child(ren) and other parent, parent's ability to care for the child(ren), parent's plan for the child's care and upbringing, current access arrangements, history of child(ren) abductions and/or threats, child(ren)'s developmental concerns, child(ren)'s emotional concerns, mental health diagnosis or treatment, child(ren)'s health concerns, and child(ren)'s behaviour concerns. Presence of a stepchild in the home.
Systemic/ Institutional Factors	Immigration status, racial identity, forced marriage, class, religion, trauma due to conflict zone and/or war, child protection involvement, government income assistance, criminal court involvement, civil court, economic status/ challenges, ability/ disability, gender identity, sexual orientation, systemic bias based on substance use, mental health issues and type of employment.
Indigeneity Factors	Woman identifies as an Indigenous, partner is /is not Indigenous, extended family, living on or off-reserve, matrimonial property on reserve, child protection involvement.

9) RIA III: Risk Mitigation

At IPV RIA III, FLPs and survivors create a safety/action plan, which may include pursuing court orders, based on risk factors identified at IPV RIA I and II. Family Law Practitioners are to provide appropriate referral and or action plans base on the unique circumstances of survivor's situation.

Identifying current safety risks is critical within the Family Court context as involvement in Family Court proceedings--particularly separation proceedings—can cause abuse to escalate.²⁰¹ There are many responses that FLPs can implement that are designed to assist survivors of IPV and their children.

Court orders such as civil restraining and protection orders may be effective IPV prevention and mitigation tools.²⁰² These orders can assist by reducing the severity and frequency of abuse and violence, deterring some perpetrators entirely with early intervention, and encourage the safety planning measures sought by victims and survivors in these cases.²⁰³

Another effective risk mitigation when potential harm to the victim is identifiable and targeted is safety planning.²⁰⁴ The goal of safety planning is to prevent or minimize the impact of violence on the survivor. Women Against Violence Europe identified that safety planning involves dynamic and static security resources,²⁰⁵ recognizing how social risk and the complexities of a survivors' risk factors can inform a safety plan.²⁰⁶

People who are targeted by domestic violence are not always aware of the extent of the threat of danger to themselves or their children, which is why it is particularly important to become familiar with indicators of risk and danger.²⁰⁷ Safety planning should be an empowerment-based intervention focused on the needs of the survivor and their children²⁰⁸ since they are often the best able to judge whether civil orders of protection will reduce or increase their level of risk or danger.²⁰⁹ Pressuring survivors into seeking a civil protection order is not necessarily safe, and in these situations, intensive cooperation and planning amongst other resources might be most

²⁰¹ Zeoli et al, *supra* note 42 at 547.

²⁰² Neilson 2017, *supra* note 1.

²⁰³ *Ibid.*

²⁰⁴ Women Against Violence Europe, "PROTECT – Identifying and Protecting High Risk Victims of Gender-Based Violence – an Overview" (2nd ed, Vienna 2011), online (pdf): < [http://files.wave-network.org/trainingmanuals/PROTECTI Protecting High Risk Victims 2011 English.pdf](http://files.wave-network.org/trainingmanuals/PROTECTI%20Protecting%20High%20Risk%20Victims%202011%20English.pdf)> at 17.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ Neilson 2017, *supra* note 1.

²⁰⁸ Amanda M Stylianou, "Family Court Survivor-Centered Practice: A Qualitative Study of Advocate-IPV Survivor Safety Planning Interactions" (2018) 34 *Journal of Family Violence* 245 at 246.

²⁰⁹ Neilson 2017, *supra* note 1.

effective.²¹⁰ Further, some women, particularly those from marginalized communities, might fear that advocating for their wellbeing in Family Court could result in retaliatory behaviour from the perpetrator in which can potentially increase the risk of future harm.²¹¹ Therefore, safety planning is fundamentally a collaborative effort and entails focusing on survivor choice and interventions that meet their complex needs in a way that is survivor-centric.²¹²

Family Court can play an essential role in protecting survivors of violence, and safety planning should be a continuous process. Depending on the level of risk and danger, intensive collaboration among several services is required.²¹³

10) Considerations when screening IPV and Risk

Survivor's Level of fear

Stories and reports from victims of domestic violence are the most accurate sources of information about risk and future harm, largely because they are familiar with the perpetrator's behaviour patterns.²¹⁴ According to Neilson, a survivor's fear is "one of the most dependable predictors of continuing risk of physical violence."²¹⁵ When victims express safety concerns, lawyers and service providers must assess the level of risk and address necessary safety measures.²¹⁶

Barriers to disclose abuse

Survivors of IPV as part of their coping of trauma in many cases underestimate risk or do not share the seriousness of it , ²¹⁷ this could be because of many factors that include fear of the abuser, fear

²¹⁰ *Ibid.*

²¹¹ Zeoli et al, *supra* note 42 at 556.

²¹² Stylianou Amanda, *supra* note 208 at 246.

²¹³ Neilson 2017, *supra* note 1

²¹⁴ Neilson 2014, *supra* note 9 at 45; *Domestic Violence Risk Assessment: Informing Safety Planning & Risk Management Brief*, by M Campbell et al, cdhpi.ca (London, Ontario: Canadian Domestic Homicide Prevention Initiative, 2016) at 8.

²¹⁵ Neilson 2014, *supra* note 9 at 37

²¹⁶ *Ibid.*, at 50.

²¹⁷ Kropp 2004, *supra* note 77 at 685; Campbell et al, *supra* note 129 at 8.

of child protection services, upcoming court cross-examination,²¹⁸ or prior experience with the criminal system.²¹⁹ Risk assessment instruments can enhance survivor's awareness of the level of danger, and consequently, their engagement in safety planning and preventive measures to avoid future violence.²²⁰

Survivor's trauma

There are a multitude of consequences associated with IPV. Mental health consequences can include Post-Traumatic Stress Disorder ("PTSD"), substance abuse, depression, and anxiety-related problems.²²¹ Survivors of IPV with PTSD show more significant levels of other mental health and psychological issues²²², and rates of PTSD and complex PTSD are particularly high in cases of severe and/or repetitive IPV.²²³

The state of an IPV survivor's mental health can impact the information that they choose to share with service providers,²²⁴ which may have negative impacts on a service provider's assessment of the survivor's credibility.²²⁵ Fear of not being believed—compounded by feelings of embarrassment or shame, fear of threat or further violence, fear being reported to child protection services, and fear of re-traumatization—may prevent survivors of IPV who experience negative impacts on their mental health from disclosing abuse.²²⁶

Ongoing trauma and its impact on mental health may compromise women's ability to fully participate in family law proceedings. As a result, they may find hard to concentrate and understand legal terms and concepts and make important decisions regarding their family law claims²²⁷. In

²¹⁸ Kropp 2004, *supra* note 77 at 685–686.

²¹⁹ Neilson 2017, *supra* note 1 at 65.

²²⁰ Neilson 2014, *supra* note 9 at 12.

²²¹ Mysore Narasimha Vrandha et al, "Barriers to Disclosure of Intimate Partner Violence among Female Patients Availing Services at Tertiary Care Psychiatric Hospitals: A Qualitative Study" (2018) 9:3 Journal of Neurosciences in Rural Practice 326 at 326 & 327.

²²² *Ibid* at 181.

²²³ Neilson 2017, *supra* note 1.

²²⁴ Natalie Pill, Andrew Day & Helen Mildred, "Trauma responses to intimate partner violence: A review of current knowledge" (2017) 34 Aggression and Violent Behaviour 178 at 179.

²²⁵ Mysore Narasimha Vrandha et al, *supra* note 222 at 329.

²²⁶ *Ibid* at 328.

²²⁷ Cross et al, *supra* note 77 at 14.

addition, trauma survivors many “either under-or-over identify risk of harm.”²²⁸ It is thus crucial that FLP’s have a broad understanding of the consequences of trauma on survivor’s mental health and “to the subtle and wide-ranging influence of trauma exposure up on survivor coping and relational functioning”²²⁹ in order to provide services appropriated to their needs.

Rules of Professional Conduct

Different codes of ethics and professional rules govern professionals providing services to survivors in family court, including lawyers. This section of this manual focuses on the Ontario Rules of Professional Code of Conduct for lawyers only.

When working with a client who is experiencing IPV, lawyers need to carefully fulfill their duties under the Professional Rules to ensure they are protecting their clients’ best interests. Clients experiencing IPV are vulnerable to continued abuse from their partner and, in some cases, inadequate protection by the justice system. It is essential that lawyers fearlessly advocate for clients experiencing IPV and fulfill the responsibilities outlined in the Rules of Professional Conduct.

Lawyers have a duty to meet a minimum standard of competence. Rule 3.1-2 provides that “[a] lawyer shall perform any legal services undertaken on a client’s behalf to the standard of a competent lawyer.”²³⁰ The commentary goes on to state that “[c]ompetence involves more than an understanding of the legal principles; it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied.”²³¹ The duty of competence requires that lawyers remain up-to-date on developments in their areas of law. In Family Law, lawyers must be aware of the unique risks facing clients experiencing IPV, and the challenges and barriers clients may face when accessing justice.

²²⁸ *Ibid.*

²²⁹ Shanti Kulkarni, “Intersectional Trauma-Informed Intimate Partner Violence (IPV) Services: Narrowing the Gap between IPV Service Delivery and Survivor Needs” (2019) 34:1 J Fam Violence N Y 55, online: <<http://search.proquest.com/socabs/docview/2108029651/abstract/C6140687EDA6452BPQ/2>> at 58.

²³⁰ Law Society of Ontario, *Rules of Professional Conduct*, Toronto: LSO, 2000, ch 3.1-2.

²³¹ *Ibid* at ch 3.1-2, commentary (2).

Lawyers also have a duty to honourably, yet fearlessly, advocate for their clients. According to Rule 5.1-1, “[w]hen acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.”²³² The commentary elaborates on this duty, explaining that “[i]n adversarial proceedings, the lawyer has a duty to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client’s case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law.”²³³ The duty of fearless advocacy is a particularly pressing duty when serving clients experiencing IPV because the risks of harm that they face are so significant.

The duty of fearless advocacy applies to any children involved in the litigation. The commentary to Rule 5.1-1 goes on to state that “[i]n adversarial proceedings that will likely affect the health, welfare, or security of a child, a lawyer should advise the client to take into account the best interests of the child if this can be done without prejudicing the legitimate interests of the client.”²³⁴ This duty calls for explicit consideration of the best interests of the child when developing and carrying out any legal strategy. This is a nuanced and contextual analysis in cases of IPV when the best interests of the child may not be immediately clear. Lawyers should be careful to understand the risks that any children may face when their parent is experiencing IPV to ensure that they are fulfilling all of their professional duties.

[Changes in the Divorce Act: The duty to consider all aspects of family violence](#)

Family violence was not referenced in the prior version of the *Divorce Act*. Following the recent amendments, courts must explicitly consider the appropriateness of making an order that would require cooperation between the persons to whom the order would apply.²³⁵ This requirement ensures that courts consider the potential impact on women's safety created by shared custody arrangements, which may require interaction with an abusive former partner.

²³² *Ibid* at ch 5.1-1.

²³³ *Ibid* at ch 5.1-1, commentary (1).

²³⁴ *Ibid* at ch 5.1-1, commentary (4).

²³⁵ *Supra* note 52.

When the new version of the *Divorce Act* comes into force, courts may prioritize the factors in section 16(3) when considering what order is in the "best interest" of the child based on the particular circumstances of the case.²³⁶ Commentary from the Department of Justice on the changes to the *Divorce Act* states that in cases of family violence, courts would need to consider whether a person might be violent with a child, and whether they might use the relationship with the child to be violent with, or control, the other person.²³⁷

Under s 16(4) of the amended *Divorce Act*, courts must consider a variety of factors relating to family violence. Such factors include the nature and seriousness of the violence; any patterns of coercive and controlling behaviour towards any family member, whether the child is directly *or indirectly* exposed to family violence; and any compromise to the safety of the child or other family members.²³⁸ Additionally, the changes reflect a greater understanding of how trauma might impact ongoing relationships with the perpetrator, and thereby the ability of parties to maintain a co-parenting relationship.²³⁹ The Department of Justice highlights the impacts of family violence on children and the intergenerational and gendered consequences.²⁴⁰ These changes to the *Divorce Act* are a positive step in Canadian legislation and will hopefully work better to protect children and adult survivors from family violence.

²³⁶ *Supra* note 51.

²³⁷ *Ibid*

²³⁸ *Supra* note 52 at s 16(4).

²³⁹ *Supra* note 51 at 96.

²⁴⁰ *Ibid*.

RIA I: Risk Screening

11) Appendix I: IPV RIA Worksheets

Name:

DOB:

Assessor:

Date:

RIA I consists of 13 yes-or-no questions based on risk factors validated by multiple research studies and Death Review Committees. A yes response to one or more questions should be considered as a red flag for potential future harm and/or lethality and requires the administration of RIA II and III for a more in-depth identification of other risks and a discussion of a safety /action plan.

Questions related to the history of abuse explore the timeline of the perpetrator's behaviour. Questions regarding the frequency of abusive behaviour, to be rated on a scale of 1-5, relate to the severity of abuse and the possibility of serious harm.

1 – never

2 – one time

3- once a month

4- every week

5- every day

Risk Factors	Yes	No	Recent	Past (more than 4 weeks)	Frequency of Behaviour (1-5)
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1. Has your partner followed/ controlled your whereabouts to know precisely where you are? (stalking) (e.g., often showing up at your workplace or school, contacting you through a third party, contacting you with harassing phone calls and/or text messages, and using technological devices (GPS, phone apps, drones)					
2. Has your (ex) partner expressed controlling and/or jealous behaviour towards you? (e.g. controlling your daily activities, finances/expenses, whereabouts, being jealous?					
3. Has your (ex) partner isolated you from your family/friends?					
4. Has your (ex) partner ever hurt you? (physically)					
5. Has your (ex) partner assaulted you with a weapon? (Any object that can hurt you such as a gun, knife, baseball bat, etc.) ? Do they have access to weapons?					
6. Has your (ex) partner tried to choke, suffocate or strangle you?					
7. Has your (ex) partner ever threatened and/or tried to take the child/ren away from you and/or move with the child/ren out of the province without your knowledge and/or consent?					
8. Has your (ex) partner ever hurt or threatened to hurt your child/ren?					
9. Has your (ex) partner threatened to hurt him/her self? (commit suicide)					
10. Has your (ex) partner disobeyed/ violated any court orders in the past? (e.g., restraining order, bail conditions, peace bond, etc.)					
11. Is there a recent or pending separation? If yes, have you noticed an escalation of your (ex) partner's abusive behaviours since separation?					
12. Has your (ex) partner threatened to kill you?					
13. Do you think your partner is capable of killing you and/or your children?					

Professional Judgement plan of action:

RIA II: Risk identification

Name:	DOB
Assessor:	Date

Questions in RIA II are based on the seven categories of factors identified above that relate to the survivor's experience of violence. These questions help identify potentially harmful situations that can impact a survivor's safety. Certain questions from RIA I are repeated in RIA II to allow for a more in-depth assessment of abuse and its escalation over time. RIA II helps identify broader systemic barriers that may contribute to the survivor's level of risk of future harm, and includes a comment session where the assessor can provide more details of the survivor's responses to each category.

Type of Abuse				
Risk Factors	Yes	No	Escalation (past 3 months)	Comments
1. Has your (ex) partner emotionally /psychologically abused you? (by making condescending comments to you, calling you names, insulting you, putting you down and/or making you uncomfortable in front of others, constant yelling or criticism)				
2. Has your partner damaged your belongings and/or property?				
3. Has your (ex) partner isolated you from your family/friends?				
4. Has your (ex) partner expressed controlling and/or jealous behaviour towards you? (eg. controlling your daily activities, your finances/expenses, your whereabouts, jealousy)				
5. Has your partner followed/ controlled your whereabouts to know precisely where you are? (stalking) (e.g., often showing up at your workplace or school, contacting you through a third party)?				

6. Has your (ex) partner ever cyber-stalked you (social media monitoring and tracking usage, sending excessive emails and/or text messages)?				
7. Has your partner ever tried to monitor you using tracking devices such as GPS, cell phone, video monitoring, and others?				
8. Has your (ex) partner ever forcibly confined you or prevented you from leaving the house for work/school and/or contacting family/friends?				
9. Has your (ex) partner tried to choke, suffocate or strangle you?				
10. Has your (ex) partner threatened any other family member or friends?				
11. Has your (ex) partner injured, threatened, or killed a family pet?				
12. Has your (ex) partner taken money away from you and/or controlled your finances?				
13. Has your (ex) partner tried to prevent you to work and/or look for a job?				
14. Has your (ex) partner ever hurt you? (physically)				
15. Have you sought medical attention/treatment as a result of an injury caused by your (ex) partner?				
16. Has your (ex) partner assaulted you with a weapon? (Any object that can hurt you such as a gun, knife, baseball bat, etc.) ? Do they have access to weapons?				
17. Has your (ex) partner threatened to kill you?				
18. Has your (ex) partner ever pressure or forced you to engage in sexual activities against your will?				
Relationship History				
Risk Factor	Yes	No	Comments	
19. Has there been a recent separation or previous attempts to separate from your partner?				
20. Have you noticed an increase in frequency or severity of violence, threats and/or stalking behaviour since separation?				

Perpetrator Background			
Risk Factor	Yes	No	Comments
21. Is your (ex) partner taking any prescribed medication for depression and/or anxiety? If no skip question 24.			
22. Has your (ex) partner taken the prescribed medication regularly?			
23. Has your (ex) partner been hospitalized due to a mental health or addiction issue?			
24. Does your (ex) partner use alcohol or drugs?			
25. Has your (ex) partner attempted or threatened to hurt himself/herself? (commit suicide)			
26. Is your (ex) partner currently employed? If yes, for how long? If no, proceed to the next question.			
27. How long has your (ex) partner been unemployed?			
28. Has your (ex) partner been criminally charged or convicted? If yes, please describe the nature of the offence and/or conviction.			
29. Has your (ex) partner ever resisted being arrested by the police?			
30. Has your (ex) partner violated /breached any court orders in the past?			
31. Are there any recent life change circumstances in your (ex) partner's life (Loss of a family member, job loss, financial difficulties, immigration problems, disability, medical condition)?			

Survivor			
Risk Factors	Yes	No	Comment
32. Do you believe that your (ex) partner can cause you severe harm or kill you?			
33. Do you believe that your (ex) partner can cause severe harm or kill your child/ren?			
34. Have you ever requested a protection order (e.g., a restraining order or a peace bond) against your (ex) partner? If yes, specify.			

Survivor			
Risk Factors	Yes	No	Comment
36. Are you able to financially support you and your child/ren?			
37. Do you have family and/or friends who can provide support to you and your child/ren?			
38. Has your current geographical living situation (metropolitan or rural area) impacted your ability to access resources and/or seek safety measures for you and your child/ren? If yes, how?			
39. Do you have any physical and/or mental health condition that has impacted your ability to access resources and/or seek safety measures for you and your child/ren? If yes, how?			

Child			
Risk Factors	Yes	No	Comment
40. Has your (ex) partner ever hurt or threatened to hurt your child/ren?			
41. Do you have any concerns about your (ex) partner's interactions with your child/ren?			
42. Is there any access schedule in place? If yes, specify.			
43. Has your (ex) partner ever threatened and/or tried to take the child/ren away from you and/ or out of the jurisdiction?			
44. Has the child/ren expressed fear or concerns about seeing			

their father?			
45. Do you have any concerns related to your child/ren's development?			
46. Do you have any concerns related to your child/ren's mental health? If yes, is there a diagnosis or treatment in place?			
47. Does your child/ren have any health-related issue?			
48. Does your child/ren have any behaviour related issue?			

RIA II: Risk identification

Child			
Risk Factors	Yes	No	Comment
49. Who has been making the main decisions about the child/ren's life? E.g., Daycare/ school, health-related issues, recreational activities, etc. Please specify.			
50. Do you believe that you and your (ex) partner will be able to communicate and cooperate on issues regarding the upbringing of your child/ ren? (co-parenting issues)			
51. Do you believe that your (ex) partner will encourage a close relationship between you and your child/ren?			
52. Do you have children from a previous relationship? If no, skip to question 54.			
53. Has your (ex) partner acted as a step-father? (assisting with the child(ren) 's upbringing?			
54. Do you have any concerns about your (ex) partner's interactions with your child/ren?			
Systemic/Institutional Factors			
Risk Factors	Yes	No	Comment
55. Has your immigration status impacted your ability to access resources and/or seek safety measures for you and your child/ren?			
56. Has your race impacted your ability to access resources and/or seek safety measures for you and your child/ren? If yes, how?			
57. Has your faith impacted your ability to access resources and/or seek safety measures for you and your child/ren?			
58. Has your gender identity and/or sexual orientation impacted your ability to access resources and/or seek safety measures for you and your child/ren?			
59. Is there a history of forced marriage within your and/or (ex) partner's families?			

60. Has your family forced you to get married? If yes, do you have any concerns about their reaction to your separation?			
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RIA II: Risk identification

Systemic/Institutional Factors			
Risk Factors	Yes	No	Comment
61. Has your family or (ex) partner's family committed any violence against someone who did not follow their family norms?			
62. Have you suffered any type of abuse (emotional, verbal, physical, sexual) from any of your (ex) partner's extended family member (s)?			
63. Have you or your (ex) partner lived in a conflict zone/ war and/or refugee camp?			
64. Has a children's aid society been involved with your family? If yes, in what capacity? (e.g., support or child protection concerns/ investigation).			
65. Have you been involved with the criminal system? If yes, in what capacity?			
66. Have you been involved with the civil court? If yes, provide details.			
Indigeneity			
Risk Factors	Yes	No	Comments
67. Do you identify as an Indigenous person? If not, skip to question 71.			
68. Do you believe that your Indigenous status has impacted your ability to access resources and/or seek safety measures for you and your child/ren?			
69. Do you have any property on reserve?			
70. Would you be interested in having support from an Indigenous agency/ support worker?			
71. Does your (ex) partner identify as an Indigenous person?			

RIA III: Risk Mitigation

RIA III assists with the development of strategies, actions, and court orders that can enhance the safety of survivors and their children. It helps facilitate an action plan based on the risk factors identified on RIA I and II.

It is essential that Family Court stakeholders discuss all risk factors identified with the survivor and create, with the survivor's input, risk mitigation and safety/action plan strategies that can mitigate the risk of future harm. In some cases, it might be necessary to involve other service providers, such as Victim/Witness Assistance Program (V/WAP) workers, child protection workers, shelter workers, criminal court high-risk committees, etc.

It is essential that stakeholders request the survivor's consent to share serious safety concerns and risk mitigation plans with any service providers involved with the family.

For each risk factor identified in the seven main categories of RIA II, a safety/action plan and/or referral should be discussed and listed in the boxes below.

Types of Abuse		
Risk Factors Identified	Referral	Safety/Action Plan
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		

Relationship History		
Risk Factors Identified	Referral	Safety/Action Plan
1.		
2.		

Survivor		
Risk Factors Identified	Referral	Safety/Action Plan
1.		
2.		
3.		
4.		
5.		
6.		

Child		
Risk Factors Identified	Referral	Safety/Action Plan
1.		
2.		
3.		
4.		
5.		
Systemic/Institutional Factors		
Risk Factors Identified	Referral	Safety/Action Plan
1.		
2.		
3.		

4.		
5.		
6.		
7.		
Indigeneity Factors		
Risk Factors Identified	Referral	Safety/Action Plan
1.		
2.		
3.		
4.		
5.		

Other Considerations:

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