



Family Violence & Family Law Brief

When the Family Court Becomes
the Continuation of Family Violence
After Separation: Understanding
Litigation Abuse

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Introduction:

When Family Courts Become a Tool of Abuse

Social science research and survivor advocacy has established that abusive partners often use the family court process as a tool for exercising continuing coercive control over a former partner. Such actions cause ongoing harm to survivors and their children and waste the time and resources of the family justice system. However, it is not always clear when “litigation abuse” is occurring, and understanding how these behaviours are an aspect of family violence (FV) is not yet widespread among lawyers and other family justice professionals.

The expanded definition of FV in the Divorce Act and legislation like Ontario’s Children’s Law Reform Act creates the need (and opportunity) for justice system professionals to be able to identify and respond effectively to cases involving litigation abuse. The focus of this Brief is to:

- contextualize litigation abuse as a type of FV and coercive control more specifically and to discuss the forms that it takes;
- explain its connection to other forms of post-separation violence;
- discuss the systemic factors involved in this form of abuse and explore how to support victims of litigation abuse; and
- explore the legal responses to litigation abuse.

There are a range of litigation tactics that may be abusive, including: making or threatening to make claims that are without legal merit; introducing evidence that is untrue; introducing evidence that is not legally relevant but is intended to embarrass a former spouse; deciding to be a self-represented litigant despite being able to afford a lawyer with the intent of directly confronting a former spouse; and dragging out proceedings. The salient concern with all these behaviours is not simply with the “abuse” of the legal system. The concern is with the ways that a person with a history of abuse is using mechanisms within the legal system to continue to control and harass a victim.

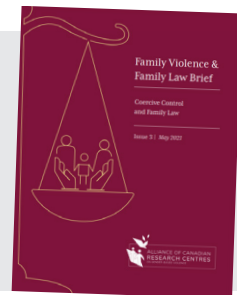
Litigation abuse often arises in a situation where there was coercive controlling violence during the relationship. While the physical violence may end when the parties stop living together, the coercive control continues using the litigation process. Determining whether or not litigation abuse is occurring may be challenging, especially at the early stages of a proceeding. The context, the history of a relationship and patterns of behaviour are all to be considered. Douglas (2018) notes: “engagement with the legal system may be experienced by one party as abuse at the same time that the other party justifies their engagement as a right” (p. 85).

Recognizing litigation abuse and appreciating its negative impacts on partners and children, and preparing appropriate strategies to challenge litigation abuse, are critical steps to achieving

justice in the family court system and for promoting the health of FV survivors and their children (Cross, 2016; Douglas, 2018; Douglas & Fell, 2020). This Brief outlines some critical problems that litigation abuse poses for individuals escaping FV. These considerations will help professionals to better understand the effects of litigation abuse on victims of FV and develop trauma-informed approaches to their work. In some cases, there are legal remedies that lawyers can use to effectively address litigation abuse, but even if there are not effective remedies, it is important for lawyers representing victims to be aware of the effect of litigation abuse on survivors.

Learn More: Coercive Control & Family Law

The current brief addresses litigation abuse, which can be understood as a specific type of coercive and controlling behaviour. For a more detailed examination of coercive control in the Canadian context, [please see Issue #3 of the Family Violence & Family Law series.](#)



Coercive Control in Family Law Proceedings

Coercive control consists of patterns of abusive behaviour used to exercise power and control, often through tactics intended to limit the freedom of others (Jeffries 2016; Katz, 2016). This kind of power and control may be deployed directly through physical violence or threats of violence, but it may also operate indirectly using the target's trauma, their financial precarity, their fears of potential violence, or their children against them (Lux, 2021).

Coercive control has gained recognition from Canadian policymakers and justice system professionals in recent years. Coercive control was included in the definition of family violence in the *Divorce Act* that came into force in March 2021. Internationally, coercive control in intimate relationships is recognized as a crime in England, Wales, Scotland, and New Zealand. In 2021, Bill C-247, a Private Member's Bill was introduced to criminalize coercive control in Canada, but it was not enacted. Coercive control has been addressed in national news publications in Canada (e.g. Hayes, Renzetti, & Grant, March 13, 2022).

While family law legislation in Canada recognizes coercive control, applying this concept remains an ongoing challenge. Many lawyers, judges, and other professionals as well as victims and members of the public are not aware of the concept (Gill & Aspinall, 2020; Lux, 2021; Robinson, Myhill, & Wire, 2017). Ongoing efforts are being made to familiarize judges and lawyers with the concept of coercive control, but it will take time for lawyers and the courts to fully understand and effectively respond to this form of abuses.

Litigation Abuse as Coercive Control

Separation and divorce are psychologically, emotionally, and financially straining though many separating couples can make reasonable and fair arrangements for economic and parenting issues without involving the courts.

If there has been violence in a relationship, however, court and professional involvement will generally be needed to protect the vulnerable and allow for a fair resolution of issues. When there has been coercive control during a relationship, after separation the perpetrator will often use the family litigation process in an abusive way not simply to gain the upper hand in negotiations or court proceedings, but to continue to dominate their target (Lux, 2021; Stark, 2013; Stark & Hester, 2019). Litigation abuse can be understood as “an enactment of coercive control through legal processes” (Gutowski & Goodman, 2022). When coercive control is manifested in the form of litigation abuse, it is difficult to address because the abuser uses aspects of the legal system that are central to its functioning. Litigation abuse exploits the principles of due process, access to justice, and adversarial court proceedings as a way to weaponize the power of the legal system against an ex-partner (Douglas, 2018; Kennedy, 2021; Morissette, 2019).

Like other forms of family violence, litigation abuse is a gendered phenomenon. Women may misuse the court process or take unreasonable positions in settlement discussions and may, for example, make unfounded allegations of abuse against fathers though unfounded allegations of abuse are often the result of misperception or misunderstanding rather than deliberate fabrication (Bala, Mitnick, Trocmé, & Houston, 2007). However, litigation abuse as an aspect of a post-separation pattern of coercive control that started during cohabitation is more commonly perpetrated by men. Men are, for example, more likely than women to decide to self-represent because they want to have the opportunity to cross-examine their former partner (Birnbaum, Saini, & Bala, 2018).

Common Strategies and Tactics of Litigation Abuse

Prolonging the litigation

- Unjustified adjournment requests;
- Deliberately dragging out mediation;
- Repeatedly firing and hiring new lawyers; and
- Disregarding agreements and court orders.

Spurious and dishonest claims

- Lying in court documents;
- Calling witnesses to give irrelevant testimony; and
- Filing specious complains about judges, lawyers, and parenting assessors.

Aggressive “no holds barred” legal strategies

- Submitting motions at a “fast and furious pace”;
- Consulting multiple attorneys as a means of conflicting out available lawyers for the partner; and
- Pursuing legal actions to review prior orders, even immediately after an agreement or decision.

Reactive legal strategies

- Cross-application of protection orders;
- Suing for defamation; and
- Unfounded allegations of “parental alienation.”

(Douglas, 2018, p. 87; Family Court of Australia and Federal Circuit Court of Australia, 2013, p. 16; Marrero, 2018; Miller & Smolter, 2011; Neilson, 2015: 6.4.1)

The family law system presents opportunities for coercive control to continue through court proceedings themselves. The emotional, precarious, and high-stakes circumstances of separation and divorce mean that legal proceedings provide an expedient—and “legally permissible”—means of amplifying distress and maintaining control over an ex-partner. By recognizing the contextual factors of power and control that motivate litigation abuse, courts stand a better chance of not becoming a vehicle for the coercive and controlling tactics of an abuser.

If it is identified, there are a number of potential legal responses to litigation abuse. Perhaps the most significant is that the court may regard this as a form of family violence to consider in making decisions about parenting time and responsibilities, or, as a factor in allowing the victim to relocate with the children. If a court finds that litigation abuse has occurred, this may affect an award for “costs,” requiring a party who has behaved “unreasonably” in the course of litigation to pay part or all of the legal fees and litigation costs of the other party. A person who has been the subject of repeated, unmerited court applications may make an application to have another person declared a “vexatious litigant,” preventing the person who has abused the legal process from bringing further court proceedings. In limited circumstances the courts may make a restraining order to prohibit certain types of behaviours associated with the court process, such as a prohibition on posting abusive information related to the proceedings on the internet.

Most of these legal responses are retrospective, in that they can be invoked only after there has been litigation abuse and generally do not directly prevent on-going litigation abuse. However, justice system professionals can have an important role in warning those who are engaging in litigation abuse that their conduct may have future consequences. Lawyers for victims may do this in correspondence, and judges may give warnings at cases conferences. Judges may also take abusive litigation conduct into account in making cost orders at interim proceedings, sending a clear message to those abusing the litigation process. Lawyers for abusers can also have a significant role in warning their clients that they may forfeit parenting rights or suffer financial consequences if they do not change their behaviour.

Douglas (2018) reported on a study based on interviews with 65 mothers who experienced FV in Australia that highlights the many ways in which the family court system is used to further FV. The examples of litigation abuse in the box above reflect ways that abusers use the courts to exercise control over their ex-partners and children.

Tactics intended to prolong litigation, such as unreasonable adjournment requests, were experienced by many participants (Douglas, 2018). For example, an abuser would request a 6-month adjournment to drag out litigation and mediation processes, only to arrive unprepared (or seek additional adjournment) once the date arrived (Douglas, 2018). Understood within the context of FV, it is important to recognize when these behaviours are not merely the result of carelessness or ineptitude. Rather, they are strategies that impose psychological, financial, and emotional distress and to maintain an omnipresence in the lives of survivors (Katz, Nikupeteri, & Laitinen, 2020; Nonomura, Poon, Scott, et al., 2021).

Learn More: Survivors' Views of Family Courts

In [Issue #12 of the *Family Violence & Family Law Brief series*](#), survivors of FV surveyed by the Canadian Domestic Homicide Prevention Initiative with Vulnerable Populations (CDHPVP) described numerous ways that an abusive partner used legal proceedings to exercise coercive control even after separation. These behaviours included:

- Making unfounded counter-allegations about the survivor's perpetration of partner violence or child abuse.
- Dragging out the litigation process in order to drain the survivor's financial resources.
- Using scheduled court dates to surveil, stalk, intimidate, or harass survivors, sometimes within the courthouse itself.

The experiences of survivors in the CDHPVP interviews reflect the experiences of advocates as well as participants in social science research (Douglas, 2018). Overall, they highlight how coercive control often restricts survivors' freedom through patterns of "non-violent control" that may be difficult to discern (Lux, 2021).



Likewise, spurious and dishonest claims served not only to prolong litigation, they also stymied the mothers' efforts to move forward from an abusive relationship (Douglas, 2018; Nonomura, Sandhu, Gill, et al., 2022). Adding the partner's relatives as parties to litigation added unnecessary financial stress on them, strained the survivor's family relationships and/or humiliated the survivor (Douglas, 2018; Morissette, 2019). Douglas's (2018) research also noted that abusers will sometimes include their own relatives in the conflict, with each one filing separate, spurious claims against the survivor to overwhelm and financially exhaust her.

Responding to a survivor's application with a counter-claim is an especially potent form of litigation abuse because of the ways they can further magnify the marginalization and burdens faced by FV survivors. One example is when a mother seeks child support, or retroactive child support, the father seeks sole or shared parenting time even though he has had little role in caring for the child. Another example is when abused mothers applying for restraining orders encounter cross-applications by their abusers alleging that the violence was bi-directional (Douglas, 2018; Lux, 2021). These allegations derail legal proceedings and create unnecessary financial costs that survivors must then defend (Morissette, 2019). Allegations of "parental alienation" may have similar impacts of intimidating survivors into withdrawing their own applications for restraining orders, especially if they already fear not being believed (Cross, 2016; Douglas & Fell, 2020; Gutowski & Goodman, 2020; Sheehy & Boyd, 2020).

Ultimately, abusive litigation tactics can overwhelm a survivor's capacity to cope. What bears emphasizing is how vulnerabilities present within the specific context of the case; and these often involve disproportionate power and financial resources (Douglas, 2018; Nonomura, Sandhu, Gill, et al., 2022). As with other coercive and controlling strategies, litigation abuse is part of a pattern of behaviours that undermine, discredit, harass, and intimidate survivors—as well as disrupt their

relationship with their children. With litigation abuse the “entrapment” of coercive control is also buttressed by the power of law itself: survivors find themselves (1) compelled by law to interact with their abusers; (2) subjected to the secondary victimization of invasive questioning (or false counter-allegations); and (3) rebuked for attempting to protect their children from a coercive and controlling co-parent (Stark, 2007; Stark & Hester, 2019; Cross, 2016).

Relatedly, it is essential to recognize how conventions and deeply ingrained beliefs about gender, culture, class, ethnicity, religion, and disability can lead to variance in how litigants’ credibility, parental competency, or risks of harm are perceived (Nonomura, Sandhu, Gill, et al., 2022). These forms of social marginalization are targeted and magnified in the context of FV. And both abusers and survivors are aware that these systemic biases exist, with abusers often exploiting them to discourage an ex-partner’s resistance (by, for instance by threatening retaliatory false reports of child maltreatment or immigration services) (Rights of Women, 2016). Against the backdrop of the Millennial Scoop and the “disproportionately high incidences of Indigenous and Black children in admissions into care at many [children’s aid societies]” in Ontario, these threats can instill a high degree of intimidation (Ontario Human Rights Commission, 2018, p. 2).

Coercive Control is a Growing Focus in Family Law

Cases such as these illustrate some of the recent litigation in Canada identifying and responding to litigation abuse and post-separation FV:

Litigation abuse as a factor in parenting decisions: *Berendregt v Grebliunas*, 2022 SCC 22

In *Berendregt v Grebliunas* (2022) the Supreme Court upheld the decision of the trial judge to allow a mother to relocate with her children some 10 hours’ drive from where the parents lived with their children because she had been a victim of the father’s abuse and violence. Justice Karakatsanis held that “because family violence may be a reason for the relocation and given the grave implications that any form of family violence poses for the positive development of children, this is an important factor in mobility cases” (at para. 147). The Court accepted that being a perpetrator of domestic violence is relevant to “parenting ability,” and recognized that harm to children “can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it” (at para. 143). While *Berendregt* was a relocation case, the approach of the Supreme Court is clearly relevant to all parenting cases, with Karakatsanis J observing that the 2021 amendments to the Divorce Act recognize that “findings of family violence are a critical consideration in the best interests analysis.” She also observed that

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

The trial judge and Supreme Court emphasized that the abusive conduct continued after separation and into the litigation process itself, including “most notably” the father including “a nude ‘selfie’ of the mother” in an affidavit filed in the family proceedings, which the trial judge found served “no purpose but to humiliate her” (at para. 179).

Restraining order for internet-based litigation abuse: *A.T. v V.S.*, 2020 ONSC 4198

The parents separated while their son was four months old. While they lived together the father was controlling, for example trying to interfere with the mother’s wishes for pain relief during labour, yelling at her for requesting pain relief. After separation, the child lived with the mother, though spending time with his father. The father refused to consent to medical treatment recommended by the physician, like regular vaccinations, and administered “Herbalife shakes” to his young son, even though his pediatrician had warned that the shakes put the child at risk of kidney and liver damage. During the pandemic, the father refused to follow public health regulations, for example about masking, and led demonstrations against the government regulations, resulting in the mother beginning family court proceedings to restrict his parenting time until he complied with public health requirements. The father began a GoFundMe campaign to finance the parenting litigation and tried to pressure the mother to concede to his demands, threatening to destroy her business. The father went to the residence where the mother lived with the child and live streamed on his Facebook account her name and the name of her business, encouraging his followers to “search for this woman, you can message her and give her your two cents... ask her to end this bullshit now.” His videos were viewed over 1,700 times and generated over 250 comments, many of which are critical of the mother, accusing her of being a “terrible mother” and of being “psycho.” One commenter stated that they “want to really go pay her a visit!!!!”

At a hearing held a few months after the pandemic began, Justice Akbarali made a temporary order that the child would live with the mother, restricting the father’s contact to three video visits a week until the father complied with public health regulations. The court also found that the mother had a “legitimate fear” of the father. Although he had not physically threatened her, he invited his followers to engage “at the very least in online bullying” of the mother. The court issued a restraining order that the father delete the videos and make no future online posts that referred to the litigation, denigrated the mother, or referred to the mother or child and the pandemic. The father was ordered to pay \$16,500 toward the mother’s \$27,000 in legal fees.

Costs against “unreliable” litigant at interim hearing: *Pugsley v Adamantidou*, 2021 ONCJ

During the course of litigation about parenting of their two-year old child, the father made unsupported allegations against the mother, made disrespectful statements about her and her family, and had proxies send the mother abusive emails. He also accosted people he believed were having relationships with her. He took an “unrealistic” position about parenting during most of the litigation, though he made a more reasonable offer to settle a week before the hearing. At a temporary case hearing, the court ordered that the child would have her primary residence with the mother, granted the mother decision-making responsibility for the child, and ordered that

the father's parenting time with the child was to be supervised by a professional parenting time supervisor.

Justice Sherr cited the Ontario Court of Appeal in *Mattina v Mattina* (2018) as identifying four fundamental purposes of costs: "(1) to partially indemnify successful litigants; (2) to encourage settlement; (3) to discourage and sanction inappropriate behaviour by litigants; and (4) to ensure that cases are dealt with justly under the Family Law Rules." The judge ordered the father to pay \$5,500 of the mother's \$10,600 in legal fees. The court found that some of his conduct had been "unreasonable," but noted that he had "limited means" and that some of the work done by the mother's counsel was "excessive."

Full indemnity costs from abusive self-represented litigant: *Steele v Big Canoe, 2019 ONSC 1778*

For several years, the parties have been involved in litigation about the parenting of their daughter, who was 9 years old at the time of the trial. The father sought sole custody with only supervised access to the mother, but after a 7-day trial the court awarded the mother custody, with structured and limited parenting to the father. The father was self-represented and the court characterized his conduct "throughout the entire proceeding as angry, hostile, and unreasonable." He made a "series of wild allegations" against the mother and her mother "without any substantiation." After the decision was released, he sent an abusive email to the judge, including the comment that he "should be ashamed of himself and really rethink his career choice." In ordering that the father pay all of the mother's legal costs (full indemnity costs), Justice Gibson observed:

Poor conduct and intemperate expressions of hurt and anger by the litigants are not uncommon in family law litigation. This may particularly be so in cases involving self-represented litigants, who do not feel constrained by the professional obligations incumbent upon counsel. But there are limits to what the Court can or should tolerate without adverse consequences for parties engaging in flagrant misconduct. There may also be systemic considerations which transcend the particular circumstances of an individual matter. That is so in this case.

The judge ordered the father to pay all of her legal fees of \$31,650.

Vexatious litigant order: *Dobson v Green 2012 ONSC 4432*

After separation, a man continued to harass and threaten his former partner. A couple of years after the separation, the man had been convicted of criminal harassment and was ordered not to contact the woman except through court processes. He breached the terms of that order and served 14 days in jail. He was eventually unsuccessful in the matrimonial property litigation and then brought various other actions against her and her business, alleging fraud. Nearly twenty years after the separation, during which time the man pursued litigation making repeated unfounded allegations of fraud against his former wife, the woman made an application under s. 140(1) of the *Courts of Justice Act* to have him declared a "vexatious litigant." The court observed that the purpose of this provision is to "safeguard

honest citizens and the justice system against individuals who repeatedly misuse the court process.”

The court found that the man was a vexatious litigant and made an order to prevent him from initiating or advancing any family or civil case without prior permission from a judge. The court also made a restraining order to prohibit him from attending the woman’s residence or place of business, or contacting her, as well as ordering him to pay more than \$100,000 in damages and costs awarded. The man was self-represented and there was likely little chance of enforcing the monetary orders, though if he violated the restraining order, the woman could call the police and have him charged and arrested.

How to “Know” and “See” Litigation Abuse: An Ongoing Challenge

The misuse of family legal proceedings is problematic. However, establishing that there has been litigation abuse is often challenging. Identifying actions as litigation abuse requires consideration of a broader context of the behaviour. Despite the growing availability of resources (e.g. Justice Canada’s HELP toolkit), mechanisms for recognizing family violence and responding effectively are not yet widely applied in legal proceedings across Canada. What one judge may see as a high conflict couple engaged in aggressive litigation, another judge may recognize as litigation abuse, as it reflects a larger pattern of unequal power and strategic domination. Courts and legal professionals seeking to assess the presence of litigation abuse are often left to rely on an intuitionism akin to US Justice Potter Stewart’s (in)famous statement about obscenity, saying that he would not attempt to define it, “but I know it when I see it.”

For legal professionals to “see” legal abuse in a litigant’s case, it is vital to “know” how power and control are operating within the wider context of the relationship. The Ontario Family Violence and Family Law Community of Practice (CoP) explored this challenge in a meeting in the spring of 2022. The CoP recognized that litigation abuse escapes easy definition because awareness of context is critical and coercive control is exerted as a process of abuse (Chambers, 2021; Department of Justice, 2019). The appropriateness or abusiveness of a litigant’s actions during family court proceedings are only understood by examining historical factors within the relationship. For instance, choices made out of fear for an ex-partner’s violence (toward oneself or the child) need to be distinguished from those aimed at overwhelming or exhausting the ex-partner, no matter how uncooperative or “unfriendly”

Learn More: The “HELP” Identifying & Responding to Family Violence Toolkit



The HELP toolkit is a suite of resources developed with Justice Canada to facilitate lawyers and family law courts in making appropriate determinations about what arrangements serve the best interest of the child. In addition to guidance on discussing FV with clients and responding to FV concerns in legal proceedings, the toolkit offers supplemental materials on topics like safety planning, making referrals, and working with children who have experienced FV.

the former actions may appear on the surface. For legal professionals, recognizing the presence of litigation abuse involves “connecting the dots” to identify patterns of abuse over time.

One way that the courts can support this process is by promoting the use of a “one family–one judge” model for families involved in ongoing litigation (Bala, Birnbaum, & Martinson, 2010). This would ensure a coordinated and informed approach to questions such as:

- the identification of the relevant issues
- the ways children will participate, including the appointment of an independent lawyer for the child
- whether a parenting assessment is needed and if so, what qualifications the assessor should have
- how the relevant facts required by family law legislation will be obtained and presented as evidence
- the appropriateness of alternate dispute resolution processes, including judicial dispute resolution, and
- interim and “final” decision making, including making parenting plans.

This need is well recognized and requires promoting the use of a systemic early identification system which would identify for management by one judge all cases which raise issues of family violence. The family rules already contain circumstances where a case can be managed by one judge, however these rules could be amended to provide that in high conflict cases a judge of their own volition or upon application by one of the parties be able to appoint one judge as case manager to hear all conferences and motions with respect to that case (Martinson & Jackson, 2017).

When considering the presence of litigation abuse in a case, legal professionals and service providers should consider contexts such as:

How are social circumstances such as gender, cultural background, or socioeconomic status affecting the patterns of behaviour exhibited between litigants?

How does power affect the motives of the client’s legal actions?

What does the history of the litigant’s behaviours reveal about the consequences of the tactics employed?

What screenings and toolkits are available that can provide evidence-informed approaches to address a potential FV situation?

Future Steps

The post-separation context of an abusive relationship is a high-risk situation for continued threats, assaults, and harassment. While the increased risk of serious physical violence during the post-separation period is often correctly recognized, it is also important to address how changing contexts of a relationship alter the tactics used by abusers. The growing legal recognition of coercive control as FV creates an opportunity for legal professionals and social scientists to contribute insights into a critical site of coercive and controlling power: the use of the legal system itself through litigation abuse (Douglas, 2018).

This Brief provides an initial effort to examine this complex issue through collaboration with a CoP focused specifically on family violence and family law. The concepts raised here serve only as a starting point for more in-depth coverage of this complex problem. We therefore “conclude” with a synopsis of ongoing issues and challenges highlighted by the CoP and the current literature.

Survivors benefit from having good advocates who can help synthesize their stories.

As one CoP member said: “if lawyers and judges are fluent in recognizing abusive behaviour, then [the abuse] is obvious.” Collaboration is therefore vital in order for legal professionals to recognize the presence of litigation abuse and to effectively confront the negative impact this form of family violence has on ex-partners’ and children’s well-being. Social science researchers and advocates likewise need the insights of lawyers and judges in order to develop relevant applied research projects, timely information resources, and realistic strategies to supporting litigants experiencing litigation abuse.

“Winning” is not always enough.

A major factor in the effectiveness of litigation abuse is the dilemma that it presents to survivors. Spurious counter-allegations may ultimately be debunked, lawyers’ fees may ultimately be awarded to survivors, and meritless cases may ultimately be dismissed, but this comes at a high cost of time, emotional energy, and money for survivors and the courts. Moreover, further litigation is often needed to collect costs awarded, effectively providing abusers with further contact and financial leverage over survivors. Many survivors report that the pursuit of costs was ultimately not worth the continued stress and manipulation of fighting for them (Douglas, 2018).

A family law case may involve different judges hearing different aspects of the litigation, and this can obscure patterns of litigation abuse.

Involvement of many judges in a case over many years can undermine faith in the justice system both by the parties and the public. If judges are unfamiliar with the full scope of a case and concurrent proceedings, they sometimes give more leeway to self-represented litigants than is safe or fair for the situation (such as in cases involving a self-representing litigant’s history of FV). While cases like *Steele v Big Canoe* may provide precedents for holding abusers accountable, more use

of single judge case management (a one family–one judge approach) would help courts to more effectively identify and sanction instances of litigation abuse.

Litigation abuse extends to institutions and services beyond the family courts.

Although this Brief focuses on the family law system, abuse involving child protective services is also a significant concern. Threatening and making false allegations that may separate a parent from their child are powerful tools of abuse and control, and contrary to the best interests of the child. Likewise, the threats of making malicious reports to police or to immigration services carry particular gravity for individuals whose fear of incarceration or deportation may be heightened due to their position as racialized, Indigenous, and/or migrant people. A deeper intersectional understanding into litigation abuse is therefore vital to addressing the needs of all persons who enter the family courts.

There is need for more research on the identification of litigation abuse.

This Brief highlights some of the challenges in defining and recognizing litigation abuse. Gutowski and Goodman are amongst the first to develop a more comprehensive definition and developed a scale to try to measure this concept: the Legal Abuse Scale (Gutowski & Goodman, 2022). Hopefully researchers and practitioners can test this scale for its utility and begin developing a common understanding of the dimensions of litigation abuse. Doing so could enhance earlier identification and prevention of this form of FV.

All legal professionals have a responsibility to obtain relevant information about FV including social context education.

Family court judges are facing increasingly complex cases—often with parents without legal representation and need to have the most up to date research on the nature of family violence and its impact on parenting and children’s well-being. Judges who are knowledgeable about FV would be better equipped to identify patterns of abuse and offer earlier protection to the child in family law proceedings. This need is especially urgent considering amendments to the Divorce Act and Children’s Law Reform Act dealing with family violence, including litigation abuse and other forms of coercive control as factors in considering children’s best interests.

The Canadian Judicial Council, in 2005, reinforced its support in the 1990s for credible, in-depth, and comprehensive social context education for judges by its recognition that such education must be an ongoing part of this education (National Judicial Institute Social Context Education Board of Governors, October 2009, p. p.1). The kind of education required must be credible, both from the perspective of the judiciary and the public. Current knowledge of social context, including the lived reality of women experiencing FV, together with up-to-date knowledge about equality principles applicable to family law, are essential components of a robust judicial education.

To learn more about the Supporting the Health and Well-Being of Survivors of Family Violence in Family Law Proceedings project, go to www.fvfl-vfdf.ca or our partnered research centres:

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



Western

Centre for Research & Education on
Violence Against Women & Children

<https://www.learningtoendabuse.ca>

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