


Recognizing Litigation Abuse as a Form of Family Violence: Understanding the Concept and the Potential Harm

Supporting the Health of Survivors of Family Violence in Family Law Proceedings

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Welcome to our webinar!



Ellen R. Gutowski
Department of
Applied Psychology
& Human Development
University of Toronto



Justice Maria N. Sirivar
Ontario Court of Justice
Toronto



Nicholas Bala
Faculty of Law
Queens' University



Jared Hydamaka
BC Family Justice
Innovation Lab

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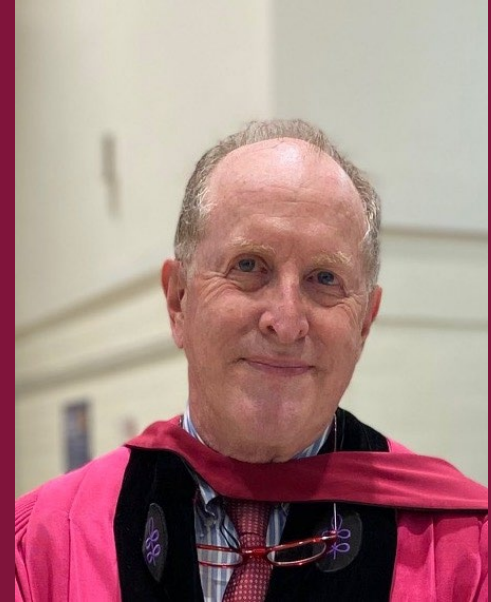
Please think about the traditional lands you are currently situated on and join us in **acknowledging and thanking the generations of Indigenous peoples** who have cared for these Lands and in celebrating the continued strength and spirit of Indigenous Peoples. The ongoing work to make the promise of truth and reconciliation real in our communities and in particular to bring justice for murdered and missing Indigenous women and girls across the country should inform our discussions in this webinar and beyond.



Nicholas Bala

Professor Bala has been at the Faculty of Law at Queen's University in Kingston, Canada since 1980, focussing his work on issues related to children and families involved in the justice system.

Professor Bala was elected a Fellow of the Royal Society of Canada in 2013 and named a Distinguished University Professor at Queen's University in 2019.



Litigation Abuse: The Context

Prof. Nicholas Bala
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Centre for Research & Education on Violence Against Women &
Children
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Litigation Abuse – The Concept

- misuse of legal process in a way that abuses both the other party and the justice system
- can be difficult to identify as legal process is “adversarial”
- objective & subjective elements
 - intent of abuser
 - psychological control; material gain by wearing down the other party to achieve unfair settlement
 - perpetrator may or may not have appreciation of effect of conduct
 - personality disorder of perpetrator may distort perception and understanding
 - experience of victim
 - effect of of conduct
- can occur in different contexts
 - criminal – malicious reports to police; request for “wellness checks”
 - child protection – malicious reports to CPS
 - family



Litigation abuse in family cases

Unjustified actions that increase stress, cost & time, and hence pressure to accept unfair/unsafe settlement

- making claims (or defences) without legal/factual basis (including adding defamation etc.)
- repeated unjustified requests for adjournments
- inflammatory/dishonest statements about other party and/or their lawyer
- refusing to disclose information required (esp. financial)
- refusal to comply with court order (eg. pay child support/parenting time/ no contact)
- unjustified and frequent requests for review, appeal, stays etc.
- unfounded complaints to professional bodies about lawyer for other party, judge etc.
- refusal to accept reasonable offer (consistent with likely court outcome)
- deciding not to have a lawyer when this could be afforded
- threatening gestures or comments at court-house



Litigation Abuse in Family Law

- both fathers and mothers can engage in litigation abuse
 - on the whole, likely substantially more men (doing research now)
 - victims of family violence may respond in fashion perceived to be “unreasonable” or “actually unreasonable” due to trauma
 - may be related to personality disorder
- especial concern when litigation abuse perpetrated by male in context of coercive controlling violence during and/or after the period of cohabitation



Legal Responses

Always requires proof (though may be inferred from context).

- more apparent if single judge case management
- litigation abuse as “best interests” factor in parenting time or relocation
- costs award
 - partial indemnity
 - full indemnity
 - at each appearance
- contempt for violation of court order
- restraining order
- restrict involvement in proceedings (strike pleadings) or found to be a “Vexatious Litigant” (which restricts in any civil/family proceedings)



Support for Victims

- litigation is stressful for most people -> uncertainty, cost, loss of control, being judged etc.
- even more stressful if litigation abuse. Recognize psychological, financial stress, as well as potential for physical violence
- support not agreeing to unfair/unsafe settlement, but need to respect client agency
- lawyers for victims need resilience, support and possibility safety planning
 - be prepared for fake/malicious Google reviews etc.
 - unfounded complaints to Law Society from abuser etc.



Ellen R. Gutowski

Assistant Professor at University of
Toronto in the Department of Applied
Psychology and Human Development

Interests include promoting the well-
being of underserved populations,
psychosocial factors in mental health &
functioning and social justice

Current research centers on IPV



A Continuation of Coercive Control: The Legal Abuse Scale (LAS)

Ellen R. Gutowski
University of Toronto

Acknowledgements: Lisa A. Goodman (co-author), Boston College
Community partners, experts, and survivors who participated in our studies



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Introduction

- ◆ High rates of IPV globally and in both the US and Canada.
- ◆ Separation entails multifaceted risks and challenges for survivors...
 - ◇ Increased risk of physical violence and homicide.
 - ◇ Poverty, homelessness.
 - ◇ Mental health concerns.
 - ◇can be especially challenging for parents.

Cotter, A. (2021) Intimate Partner Violence in Canada, 2018: An Overview. *Juristat: Canadian Centre for Justice Statistics*. 1-23.
DeKeseredy, W. S., Dragiewicz, M., & Schwartz, M. D. (2017). *Abusive endings: Separation and divorce violence against women* (Vol. 4). University of California Press.



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Coercive control

- ◆ Repeated and on-going.
- ◆ One party attempts to gain power and control.
- ◆ Psychologically damaging.
- ◆ Not always physical violence.

Dutton, M. A., & Goodman, L. A. (2005). Coercion in intimate partner violence: Toward a new conceptualization. *Sex Roles*, 52(11), 743-756.

Stark, E. (2009). *Coercive control: The entrapment of women in personal life*. Oxford University Press.



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Coercive control: Considering power and oppression

- ◆ Coercive control involves one party leveraging their social power over another.
- ◆ Intersectional identities of parties and sources of power influence:
 - ◇ How abuse manifests.
 - ◇ How it is experienced.
 - ◇ Social responses from outsiders.

Anderson, K. L. (2009). Gendering coercive control. *Violence Against Women*, 15(12), 1444–1457.

Crenshaw, K. (1991). Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. *Stanford Law Review*, 43(6), 1241-1299.

Stark, E. (2009). *Coercive control: The entrapment of women in personal life*. Oxford University Press.



Legal abuse

- ◆ One parent uses the legal process to coerce and control.
- ◆ Extended form of abuse.

“Start identifying coercive control. That’s been such an incredible component. And the coercive control plays out in the courtroom by excessive litigation, constant abuse, you know, it shouldn’t be tolerated in a court of law. It has no place in a court of law.” – (Gutowski & Goodman, 2020).

Douglas, H. (2018). Legal systems abuse and coercive control. *Criminology & Criminal Justice*, 18(1), 84-99.

Elizabeth, V. (2017). Custody stalking: A mechanism of coercively controlling mothers following separation. *Feminist Legal Studies*, 25(2), 185-201.

Gutowski, E., & Goodman, L. A. (2020). “Like I’m invisible”: IPV survivor-mothers’ perceptions of seeking child custody through the family court system. *Journal of family violence*, 35(5), 441-457.

Miller, S. L., & Smolter, N. L. (2011). “Paper abuse”: When all else fails, batterers use procedural stalking. *Violence Against Women*, 17(5), 637-650.

Watson, L. B., & Ancis, J. R. (2013). Power and control in the legal system: From marriage/relationship to divorce and custody. *Violence Against Women*, 19(2), 166-186.



Developing a measure of legal abuse

- ◆ Survey developed from a prior study based on interviews with 19 family court-involved survivors.
- ◆ Review of existing qualitative research.
- ◆ Consultation with 23 experts.
- ◆ Developed 27 items.
- ◆ Piloted and translated to Spanish.
- ◆ Administered to 222 court-involved survivor-mothers.

The Legal Abuse Scale (LAS)

- ◆ Threatening or attempting to take custody.
- ◆ Threatening or attempting to get unsafe access to children.
- ◆ Using in-person proceedings to cause distress.
- ◆ Distorting information or lying (e.g., to discredit the other parent's parenting ability).
- ◆ Threatening or actually withholding financial support.
- ◆ Threatening or actually attempting to take assets.

The Legal Abuse Scale (LAS)

- ◆ 14-item questionnaire.
- ◆ Two factors:
 - ◆ Harm to Self/Motherhood:
 - ◇ *“Took you to court to get unsafe access to your children.”*
 - ◆ Harm to Finances:
 - ◇ *“Threatened to take control of all assets.”*

Preliminary findings: The harms of legal abuse

- ◆ Association between legal abuse and both PTSD and depressive symptoms, even after controlling for prior abuse.
- ◆ Qualitative data supports psychological, economic and work-related harms.



Preliminary findings: The harms of legal abuse

“I had a stress related heart attack and have permanent heart damage. Generally, just the constant ‘what will happen next, he cannot ever leave things alone’ hanging over my head weighs on me.”

“I have been diagnosed with PTSD and severe anxiety with panic attacks from the abusive marriage and the continuing custody battle, I am now disabled from PTSD.”

Considerations and practical implications

- ◆ Findings support the conclusion that legal abuse is harmful.
- ◆ Limitations and need for on-going research.
- ◆ Prevention efforts are important.
- ◆ Need for education and on-going training on coercive control for all professionals who work with survivors and their families.

Jared Hydamaka

Jared's lived experience as a child whose life was engulfed in the Family Justice System has led him to be a strong advocate for youth. He has volunteered on various advisory boards, spoken at conferences and made presentations to audiences within the legal system.

Jared aided in the redesign of the B.C. Online Parenting After Separation Course.

University of British Columbia student in Philosophy and Psychology.



Justice Maria N. Sirivar

Ontario Court of Justice, Toronto Family and Youth Court

Graduated from Osgoode Hall Law School in 2006 and admitted to the Ontario Bar in 2007.

Prior to her appointment as a judge in 2018, Justice Sirivar ran her own practice (Sirivar Law) focused on family and employment law.

Justice Sirivar was an agent for the Office of the Children's Lawyer and duty counsel.



Questions

Review of questions posted



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