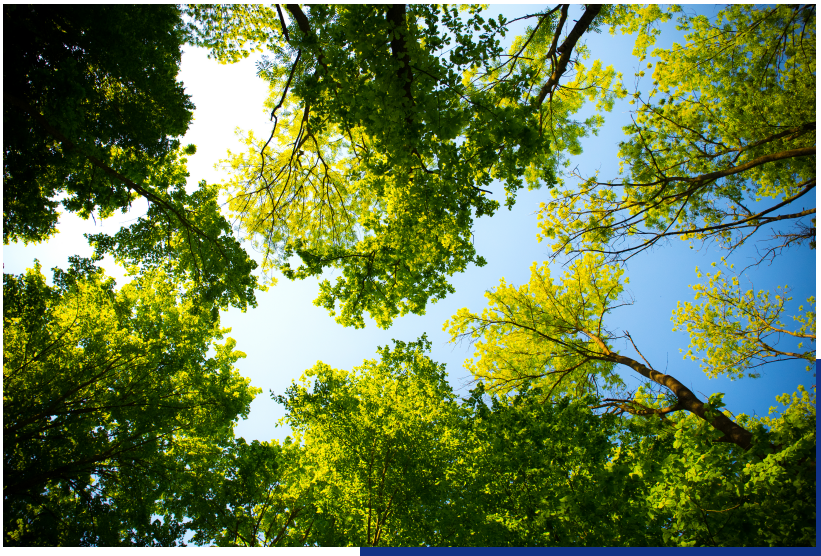
SURVEY REPORT

APRIL 2024

Responding to Emergency Situations in Family Court



Survey Report: Responding to Emergency Situations in Family Court

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The No Longer on My Own project
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Summary

Addressing family violence claims in family court has emerged as a major access to justice concern in Canada. In order to understand how these cases are proceeding in Nova Scotia, we surveyed family law lawyers across the province, and asked them to tell us about their experience representing clients in situations of family violence. We asked about their experience with family court as well as applying for Emergency Protections Orders (EPOs) and peace bonds. Respondents were asked about best practices to aid others assisting clients who have experienced family violence. We heard from 23 family lawyers across the province, with a relatively equal split in responses from urban and rural areas.

Respondents shared a number of helpful best practices including referring clients to community services such as mental health services and transition houses. Some reported on the importance of supervised access and exchange programs and encouraged greater investment in these services across the province. Some respondents commented on the importance for survivors and their children of addressing housing and economic insecurity, providing credit score repair on the basis of compassionate grounds, and investing in public education campaigns to de-stigmatize family violence.

Respondents noted a number of challenges faced by families inside the family justice system including challenges understanding family violence by some justice system personnel, difficulties accessing legal counsel and delays in accessing the court. A number of respondents indicated that mechanisms such as emergency or urgent hearings in family court or access to Emergency Protection Orders (EPOs) are in theory a helpful best practice to get safe orders for survivors of violence, however, both come with challenges and drawbacks. Chief among these challenges were difficulties in meeting thresholds to obtain orders such as convincing the court that the matter was "urgent" or an "emergency," or that an order should be made "forthwith."

Importantly, respondents provided some helpful ideas that may inform justice system responses to family violence. These included greater investment in training for those responding to family violence in the justice system, with a focus on the dynamics of family violence and how this impacts families and children. Some respondents also commented on the need to take a different approach to family violence cases in family court. Suggestions included ensuring oversight of family violence cases by judges with specialized family violence training, greater attention to how certain litigation strategies may be furthering family violence (i.e. "litigation abuse"), clearer direction to lawyers about how to handle this type of abuse, and relaxed rules around evidentiary requirements for family violence cases (such as financial disclosure, notice requirements and thresholds to prove family violence to access particular safeguards in court). Further ideas included the creation of a dedicated family violence support office and victim services in family court as well as a feedback mechanism to allow justice system personnel to evaluate what strategies are working for family violence cases.

Despite the limitations of the survey data given the small sample size, many of the concerns and challenges raised by family lawyer respondents are similar to challenges highlighted in research and

reports across the country such as the *Mass Casualty Commission Final Report – Turning the Tide Together*, *The National Action Plan to End Gender Based Violence* and the *Desmond Fatality Inquiry Final Report*. We make note of these in our discussion of the data below.

Below we set out the key takeaways from the survey before reporting on respondent answers in greater detail.

Key Takeaways:

Prevalence of family violence in family law cases of respondents: More than half (60%) of respondent lawyers indicated that they "often" or "almost always" see family violence in their cases.

The impacts of the COVID-19 pandemic: Respondent lawyers identified several changes since the onset of the COVID-19 pandemic, including a shift to virtual platforms, an increased prevalence of family violence, an increase in housing and financial challenges for clients and delays in accessing the court.

While some felt that virtual meetings or hearings were helpful and beneficial to survivors, others noted that virtual platforms may make conversations around family violence more challenging.

The Importance of community services and supports: Community services are an important source of referrals for lawyers, especially mental health services and transition houses. However, lawyers noted some challenges including:

- Long wait times for mental health services.
- Limited services for men.
- Lack of financial rehabilitation services for survivors of violence.

Supervised Parenting and Exchange Programs: Lawyers saw Supervised Parenting and Exchange Programs as an important service for families experiencing family violence, but lack of affordability and availability across the province were cited as limitations.

Supporting survivor wellbeing outside of the justice system: Survivor wellbeing includes meeting basic needs like housing and financial stability as well as emotional needs and safety. Lawyers provided suggestions to support survivor well-being including:

- Addressing housing and economic instability.
- Funding for survivors of family violence.
- Credit score repair on the basis of compassionate grounds.
- Public education campaigns to de-stigmatize family violence.

Barriers to addressing family violence in the family justice system: The most significant barriers to addressing family violence in the family justice system identified by respondent lawyers were:

- Challenges understanding family violence by some justice system personnel in the family justice system.
- Difficulty accessing legal counsel.
- Delays in accessing the court.

Family violence and self-represented litigants: Some respondents noted that survivors in family court may have to represent themselves due to the prohibitive costs (and sometimes delay) of retaining counsel.

Survivors who represent themselves are additionally challenged by the complexity of legal proceedings, making lack of access to counsel a major barrier to justice. Even where survivors have Legal Aid, the added complexity may require more time than provided for with Legal Aid certificates.

Effectiveness of orders to enhance safety: Half (48%) of respondent lawyers identified emergency hearings in family court as a potential best practice to assist survivors of family violence to obtain orders to enhance safety. This was the most frequently cited best practice.

Urgent and emergency hearings in family court: Although respondent lawyers generally felt that emergency and urgent hearings may be a helpful mechanism for safety in circumstances of family violence, such hearings were described as difficult to obtain for two central reasons:

- Convincing the court that the matter was "urgent" or an "emergency."
- Having urgent or emergency matters addressed in a timely manner.

Respondent lawyers provided helpful advice for obtaining urgent and emergency hearings, including:

- Include a clear and simple covering letter indicating that the matter is an emergency.
- Provide details clearly and comprehensively in the application about the family violence and safety concerns. Include an affidavit and corroborating evidence.
- Consider seeking narrow relief on an application for an urgent or emergency hearing.
- Have information ready about the involvement of other agencies such as child protection or police.

Emergency Protection Orders (EPOs): Answers varied widely when lawyers were asked how successful clients were at obtaining an EPO from a Justice of the Peace. However, consistent challenges were raised in respondent lawyer answers with respect to EPOs:

- EPOs last for too short a duration (only 30 days).
- Challenges proving imminent risk as required by the "forthwith" requirement to obtain an EPO, especially when time has passed since the last incident of violence.
- Challenges obtaining EPOs in relation to certain types of violence like emotional or psychological abuse or appreciation for the heightened risk at the time of separation.
- The emotional toll and cost for survivors of obtaining an EPO.

Respondent lawyers suggested best practices for obtaining EPOs including applying promptly and having as much documentation as possible.

Peace bonds: Respondent lawyers were less likely to find peace bonds an effective mechanism for safety (i.e. as compared to emergency protection orders or emergency hearings). Lawyers perceived peace bond applications as time consuming and less likely to be successful.

Some best practices identified were to:

- Apply as quickly as possible as it may be more difficult to prove fear or risk of harm further down the line.
- Provide for peace bond applications to be heard in family court by Supreme Court (Family Division) Justices.

Suggestions for improving outcomes for survivors in the family justice system: Respondents had the following suggestion to improve outcomes for survivors of family violence in family court:

- Increasing awareness and understanding of family violence in the justice system.
- Timely access to justice and expanded access to court hearings (including urgent and emergency court hearings).

Some survey respondents identified a need for greater investment in training and education for those in the justice system. This includes training on:

- The impact of family violence on children and parenting.
- The dynamics of abuse including coercive control, emotional, psychological and financial abuse (including how child and spousal support may be used as a mechanism for control).
- How to undertake a trauma-informed approach in addressing family violence.
- How to conduct a more in-depth analysis of family violence.

Some respondents noted the need for a different justice system response when dealing with family violence cases in family court. Ideas included:

- Relaxed requirements to "prove" family violence to access safeguards; institute measures available to anyone who raises violence as an issue.
- Increased access to court dates including urgent and emergency hearings.
- Reliable access to Supervised Access and Exchange programs.
- Institute an efficient online filing system.
- Provide greater access to the courts' schedule.
- Institute an approach that limits contact between parties.
- Oversight by judges with specialized training in family violence.
- Include special considerations during judicial settlement conferences in family violence cases.
- Address litigation abuse, including rules around lawyers' ethical duties & facilitating litigation abuse.
- Institute less stringent rules around financial disclosure, notice requirements and evidence in some circumstances to facilitate easer access to court processes (especially in initial stages).
- Re-think child-protection approaches that put responsibilities on women who are victims of violence.
- Increase the ability for survivors to relocate with their children.
- Ensure police enforcement of family court orders in family violence cases.
- Provide more non-punitive options for safety planning for families.

Respondent lawyers commented on the need to take a trauma-informed approach in family court, by, for example:

- Allowing broader access to accommodations in family court for survivors of family violence.
- Ensuring predictability in family court orders.
- Providing additional hours on Legal Aid certificates for cases involving family violence.

Respondents had ideas about the creation of a support office and specialized assessments in family violence cases, including:

- A dedicated family violence support office in family court.
- An office of experts to complete assessments in a timely and low or no-cost manner.
- A new framework for an assessment to assess risk and family violence (in addition to Voice of the Child Reports and Parenting Capacity Assessments).
- Implementing a victim services program in family court.

- Creating a feedback mechanism about what is and is not working well in the family justice system so that evaluation of services can take place.

One respondent highlighted the importance of improving coordination between criminal and family courts and suggested undertaking a hybrid approach to parallel family and criminal court proceedings.

Overview of the Project

The "*No Longer on My Own*" project is dedicated in part to researching the barriers and challenges faced by survivors of family violence as they navigate the family justice system in Nova Scotia. In the course of the project, we developed and disseminated a survey for family lawyers in Nova Scotia to understand the effectiveness of legal system responses outside of the traditional criminal justice system when there has been family violence. Specifically, we queried family lawyers about the availability and effectiveness of various legal options such as urgent or emergency hearings in Supreme Court (Family Division) ("family court"), civil emergency protection orders and peace bonds.

The survey was advertised to lawyers though the Nova Scotia Barrister's Society InForum Newsletter. We reached out to family law lawyers in Nova Scotia by email and advertised the survey through our website, newsletter, and webinar series for family law lawyers. The data collected is a mix of both qualitative and quantitative information.

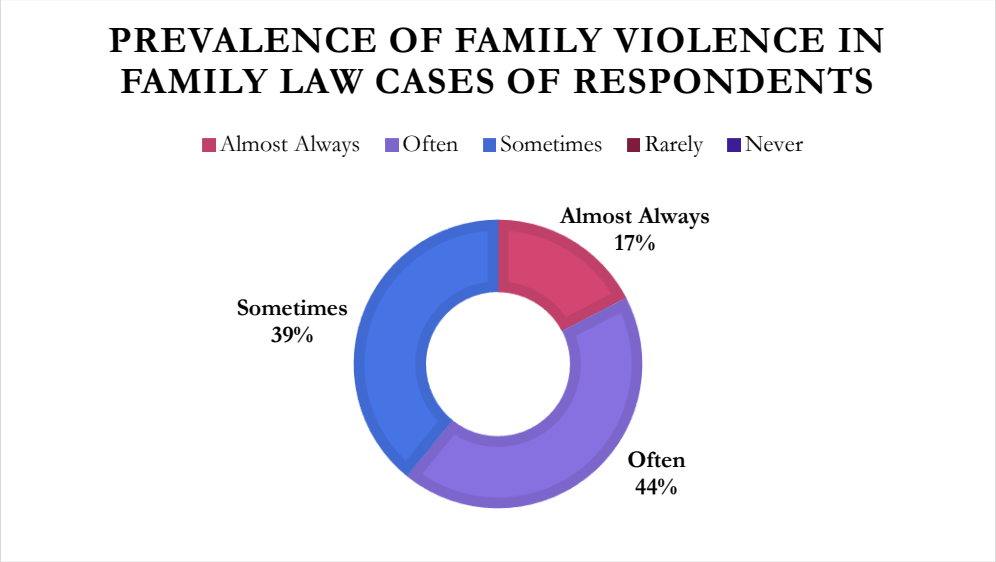
We received responses from 23 family lawyers across the province of Nova Scotia. There was a relatively equal split in responses from urban and rural areas, with 11 respondents practicing in the Halifax Regional Municipality and the remainder in rural areas around the province. We received responses from the following regions across the province: the Annapolis Valley, South Shore, Northern, Highland and Cape Breton regions. Several lawyers indicated that they work in multiple regions across the province.

Where relevant, this report highlights where Nova Scotia's approach may be different from other jurisdictions to gain some comparative perspective and ideas for potential reforms.

Limitations

It is likely that many of the respondents to the survey had an interest in or strong understanding of the intersection of family violence and family law. Many of our respondents likely heard about the survey through attending one of our webinars on the topic or receiving related resources from us through our website or newsletter. Additionally, our survey sample was relatively small and limited to 23 lawyers. Accordingly, the responses in this survey are not reflective of the entire family law bar in Nova Scotia and widespread generalizations or conclusions cannot be made from this data.

Prevalence of Family Violence in Family Law Cases of Respondents



Respondents were asked how often they see family violence in their family cases. The survey referenced the definition of family violence contained in the *Divorce Act*.[1] As indicated in the chart above, approximately 60% of respondents answered that they often or almost always see family violence in their cases. The remaining respondents noted that family violence is present sometimes. No one replied that they rarely or never see family violence in their files.

Respondents were also asked how often they screened for or asked their clients about family violence. Approximately 90% of lawyers reported that they "often" or "almost always" ask clients about family violence. All responding lawyers indicated that when screening for or asking about family violence, they generally use questions or approaches they developed themselves, rather than a standardized tool. One lawyer specifically noted that they model their questions on those in the HELP toolkit[2] when screening for family violence.

[1] RSC 1895, c 3 (2nd Supp), s 2(1) [*Divorce Act*]. As defined In the *Divorce Act*, 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 necessaries of life; (f) psychological abuse; (g) financial abuse; (h) threats to kill or harm an animal or damage property; and (i) the killing or harming of an animal or the damaging of property.

[2] "HELP Toolkit: Identifying and Responding to Family Violence for Family Law Legal Advisers" (2021), online (pdf): *Department of Justice Canada* <https://www.justice.gc.ca/eng/fl-df/help-aide/docs/help-toolkit.pdf>.

Discussion:

While the data here cannot be generalized to cover the experience of all family lawyers in the province, it is noteworthy that the final report of the *Mass Casualty Commission* describes the prevalence of gender-based violence, intimate partner violence and family violence in Canada as an "epidemic"[3] and called on all levels of government to make a declaration to this effect. Statistics cited in Canada's *National Action Plan* similarly highlight the high rates of intimate partner violence and other forms of gender-based violence nationally.[4] For example, the *National Action Plan* references high lifetime experiences of intimate partner violence for women overall (44%),[5] with reference to even higher rates of intimate partner violence against the following groups: Indigenous women (61%),[6] LGB+ women (67%),[7] and women with disabilities (55%).[8]

The *National Action Plan* further emphasizes that available data on the prevalence of intimate partner violence is undoubtedly an underestimate given challenges around data collection and the lack of data to support an intersectional lens.[9]

Key Takeaway:

More than half (60%) of respondent lawyers indicated that they "often" or "almost always" see family violence in their cases.

The Impacts of the COVID-19 Pandemic

We asked lawyers whether the COVID-19 pandemic had changed anything in their work in the context of family violence.

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[3] "Turning the Tide Together: Final Report of the Mass Casualty Commission Volume 3: Violence" (2023) at 268, online (pdf): *Mass Casualty Commission* <https://masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-Volume-3-Violence.pdf> [MCC Volume 3: Violence].

[4] Government of Canada, "National Action Plan to End Gender-Based Violence" (November 2022), online: *Women and Gender Equality Canada* <https://femmes-egalite-genres.canada.ca/en/gender-based-violence/intergovernmental-collaboration/national-action-plan-end-gender-based-violence/first-national-action-plan-end-gender-based-violence.html> [National Action Plan].

[5] Adam Cotter, "Intimate partner violence in Canada, 2018: An overview" (2021), online (pdf): *Statistics Canada* <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00003-eng.pdf?st=G7DNI4c0>.

[6] Loanna Heidinger, "Intimate partner violence: Experiences of First Nations, Métis and Inuit women in Canada, 2018" (2021), online (pdf): *Statistics Canada* <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00007-eng.htm>.

[7] Brianna Jaffray, "Intimate partner violence: Experiences of sexual minority women in Canada, 2018" (2021), online (pdf): *Statistics Canada* <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00005-eng.htm>.

[8] Laura Savage, "Intimate partner violence: Experiences of women with disabilities in Canada, 2018" (2021), online (pdf): *Statistics Canada* <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00006-eng.htm>.

[9] See the discussion under "The evidence" in the National Action Plan, *supra* note 4.

Four lawyers (22% of those who responded to this question) reported no change to their work since the onset of the COVID-19 pandemic, and one respondent indicated they did not have sufficient experience to speak to any changes. Others cited some changes, most notably, a shift to a greater use of virtual or telephone meetings and court appearances, with 8 lawyers (50%) commenting on this change. Four lawyers (22%) cited benefits to a virtual approach, while 5 (28%) identified some drawbacks of virtual hearings for survivors of family violence. At least two lawyers specifically noted that they perceived more instances of family violence since the onset of the pandemic.

Additional changes resulting from the COVID-19 pandemic that were identified by survey respondents included:

- Prompting more people to talk about their experiences of family violence.
- A shift in practice habits including relaxed rules around filings.
- Delay in getting to court.
- Less housing options making leaving situations of family violence difficult.
- Less ability for clients to pay legal fees.
- A move to virtual or telephone meetings may require more time and cost.

Discussion:

Lawyers spoke to the pros and cons of moving to a virtual platform when there has been family violence. Overall, respondents had mixed opinions about whether the shift to incorporating virtual platforms in family court was positive or negative.

One lawyer remarked that virtual meetings can make intake appointments and conversations around family violence less likely and less clear. Another stated that virtual meetings can result in clients feeling as though they are not being properly heard. In terms of settlement conferences, one lawyer commented that a return to in-person settlement conferences would likely lead to more productive conversations.

Two respondents indicated that not all clients will have the ability to access programs and meetings electronically. Even if they do, one respondent observed that survivors may not have access to a safe space to conduct such meetings.

"I am more mindful of the issue of family violence than ever. I believe a lot of family lawyers adapted their law practises post-covid to suit them (i.e. no physical office space, virtual meetings etc.) and I think a lot of those changes put survivors at greater disadvantage, as they may not have safe access to internet, privacy etc."

"There has been far more family violence occurring in my files since the onset of COVID, and now with the cost of living crisis which we are seeing."

As indicated, four respondents expressed that virtual platforms and the expanded use of telephone and virtual conferences have been helpful and a benefit to survivors, who can then avoid seeing their abusive ex-partner in court.

One lawyer indicated that a best practice they employ in using telephone and virtual conferences is to spend more time with clients on the phone or in virtual meetings to mitigate the drawbacks and impersonality of such platforms.

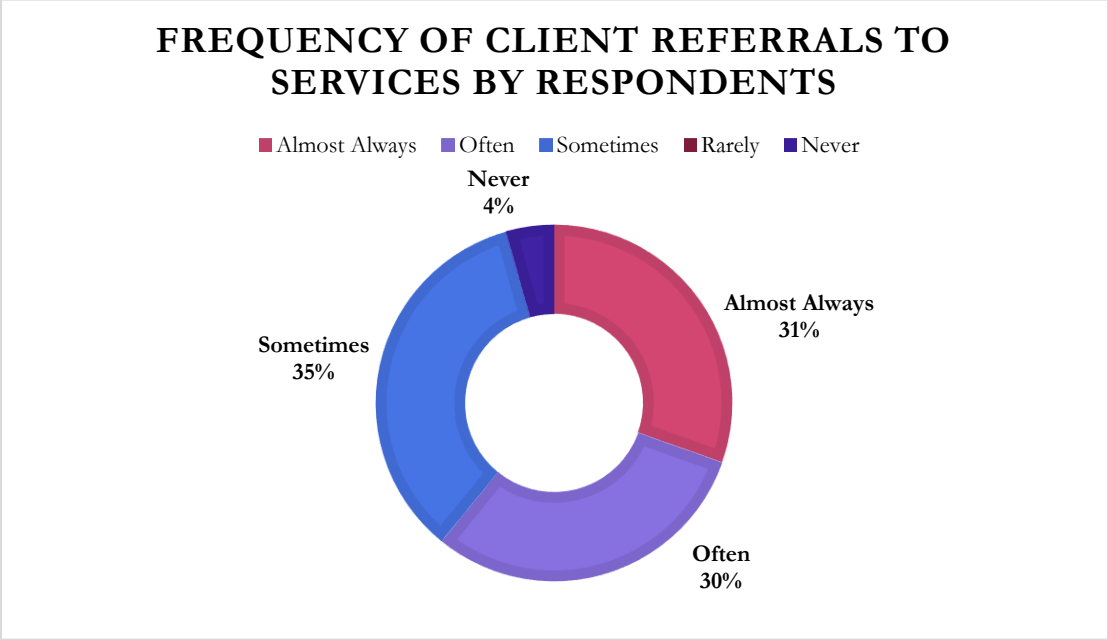
Key Takeaways:

Respondent lawyers identified several changes since the onset of the COVID-19 pandemic, including a shift to virtual platforms, an increased prevalence of family violence, an increase in housing and financial challenges for clients and delays in accessing the court.

While some felt that virtual meetings or hearings were helpful and beneficial to survivors, others noted that virtual platforms may make conversations around family violence more challenging.

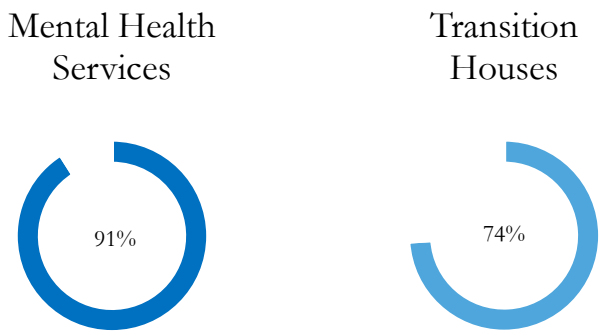
The Importance of Community Services and Supports

We asked respondents how often they make referrals to services and community organizations when there is family violence. Sixty-one percent said they often or almost always refer clients to community organizations. Thirty-five percent said they sometimes refer clients to services or community organizations. Only one respondent indicated that they never refer to community services or organizations.



We provided respondents with a list of services and community organizations and asked them to identify services to which they refer their clients.[10] Respondents could select multiple options or identify other options that were not listed. Most lawyers indicated they made referrals to multiple services and community-based organizations, with the top three being mental health services (91% of lawyers made referrals), transition houses (74%) and women's centres (56%). Other common referrals included family resource centres, health care and sexual assault services.

Lawyer Referrals to Services



[10] Options included: women's shelters/transition houses, emergency shelters, women's centres, sexual assault centres, crisis lines, health care, family resource centres, mental health services, intervention programs, and other (please specify). See the appendix for the full question.

Lawyers were asked to comment on which services they found most helpful for their clients, including either survivors or perpetrators of family violence. Many lawyers had positive experiences with the services provided at transition houses, women's centres and counselling opportunities. Transition houses and women's centres were reported as being particularly useful for clients because they are free, provide prompt resources and have knowledgeable staff who are aware of other services, including wait times for other services. Counselling and mental health services were cited to be beneficial to help survivors process and heal from trauma.

One respondent noted that wraparound services are particularly helpful, where services such as childcare and transportation could be paired with opportunities for counselling. Another noted that the Halifax Regional Police victim services unit was the primary place to which they sent clients.

"The Transition House is extremely helpful because it gives clients a place to go and resources they can access, if need be."

"It is my experience that [individualized counselling and mental health services] are best suited to get to the root causes of family violence, and can often be tailored to a client's specific needs."

"HRP victim service unit is my #1 referral for help. Charges do not have to be laid."

Discussion:

Overall, respondents saw a key role for community services and supports. As noted above, respondents indicated that mental health services were the services lawyers most frequently referred clients to. Despite this, one lawyer noted that wait times for these services can be months, and this is often during a time when clients are most in need. Another indicated that because of the lack of access to prompt mental health treatments, this can cause clients to become involved with the child protection system, even when they are the victims of family violence.

Some respondents cited challenges experienced by their clients in accessing services and community supports despite not being asked specifically to speak to this theme. For example, one respondent stated that there is "tragically little" in terms of services for men in violent situations. Another respondent mentioned that survivors may be fearful to access services. One lawyer indicated that the lack of "financial rehabilitation" options was a massive gap in services for survivors including help with housing, credit repair, short terms grants, etc.

Again, while these responses are not generalizable, several of these concerns are directly reflected in the *Mass Casualty Commission* report, which recommends greater access to mental health care in rural

and urban Nova Scotia,[11] and emphasizes the importance of promoting healthy masculinities.[12] The *Desmond Fatality Inquiry* final report additionally addresses the availability of mental health supports and recommends that steps are taken to recruit African Nova Scotian/Black and diverse mental health professionals to provide "culturally informed and responsive care."[13]

Both the *National Action Plan* and the *Mass Casualty Commission* report stress the critical nature and importance of survivors having access to culturally appropriate supports and services in their communities. A key finding in both is the absence of, and need for, sustainable and long-term funding for such programs and supports.[14]

In addition, prior to the release of the *National Action Plan*, in 2021, Women's Shelters Canada released their report, *A Report to Guide the Implementation of a National Action Plan on Violence Against Women and Gender-Based Violence ("Roadmap for the National Action Plan")* to help inform the development of the *National Action Plan*.[15] This report called for improved and consistent funding for support and services for survivors[16] and ensuring that sufficient supports are available for all survivors regardless of where they live.[17]

Key Takeaways:

Community services are an important source of referrals for lawyers, especially mental health services and transition houses. However, lawyers noted some challenges including:

- Long wait times for mental health services.
- Limited services for men.
- Lack of financial rehabilitation services for survivors of violence.

[11] "Turning the Tide Together: Final Report of the Mass Casualty Commission Recommendations" (2023) at 60, online (pdf): *Mass Casualty Commission* <https://masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-List-of-Recommendations.pdf>.
[12] MCC Volume 3: Violence, *supra* note 3 at 392.
[13] The Honourable Judge Paul Scovil, "Report of the Inquiry Into the Deaths of the Desmond Family" (31 January 2024) at 86, online (pdf): *Desmond Fatality Inquiry* <https://desmondinquiry.ca/Desmond_Fatality_Inquiry_Final_Report_Jan_31_%202024_WEB.pdf>.
[14] See "Pillar one: Support for victims, survivors and their families" of the National Action Plan, *supra* note 4; MCC Volume 3: Violence, *supra* note 3 at 392.
[15] Amanda Dale, Krys Maki & Robtah Nitia, "A Report to Guide the Implementation of a National Action Plan on Violence Against Women and Gender-Based Violence", online (pdf): *Roadmap for the National Action Plan on Violence Against Women and Gender-Based Violence* <https://nationalactionplan.ca/wp-content/uploads/2021/06/NAP-Final-Report.pdf>.
[16] *Ibid* at 96.
[17] *Ibid* at 81.

Supervised Parenting and Exchange Programs

Although respondents were not specifically asked to comment on Supervised Parenting and Exchange Programs, 11 lawyers made observations about this program when answering an open-ended question about best practices to obtaining safe orders for victims of family violence.[18] Eight respondents identified the Supervised Parenting and Exchange Programs as a best practice and 3 others expressed challenges with the program.

Cost and availability of services: While 8 lawyers highlighted the importance of this program, the most frequently cited barrier to accessing supervised access programs was the lack of availability of these services across the province or cost when the program was not freely available. Five lawyers mentioned this in their answers, two of whom had identified supervised access as a best practice.

"The cost and the lack of availability of supervised access becomes another impediment, sometimes leading clients to try to supervise parenting time themselves - something that I usually recommend against."

"…this program has limited geographical scope and serious efforts need to be made to ensure that it is available on a more widespread basis."

"I note that my region has been without a formal Supervised Access and Exchange Program. This has created all kinds of challenges, both for the custodial parent and the supervised parent. For instance, supervising parenting time is a big ask for friends and family members, not only because of the time commitment and responsibility, but also because it can be difficult to find someone parents trust to supervise access who does not have a strained relationship with the other parent (e.g. close friends/family of custodial parent may feel unsafe around supervised parent; custodial parent may not trust friends/family of supervised parent to intervene when necessary or truthfully report incidents). Further, there can be cost implications for low income families, as "neutral territory" for parenting time (especially during the winter months) are usually public places like indoor playgrounds, McDonald's, etc."

One suggestion when asked about how to improve outcomes for survivors of family violence within the family justice system was to ensure reliable access to a formal Supervised Parenting and Exchange Program across the province. The *National Action Plan* similarly suggests supporting supervised

[18] Note: supervised access and exchange was listed as a potential example of a best practice in this question which may have contributed to why several lawyers wrote about this program in their answers (See the Appendix for the full survey question).

parenting programs following a divorce or separation to ensure the safety and well-being of children and families.[19]

Key Takeaway:

Lawyers saw Supervised Parenting and Exchange Programs as an important service for families experiencing family violence, but lack of affordability and availability across the province were cited as limitations.

Supporting Survivor Wellbeing Outside of the Justice System

Although lawyers were not asked specifically about this topic, one theme arising from the survey was concern for the wellbeing of survivors outside of the justice system. This included meeting basic needs like housing and economic stability as well as emotional needs and safety. Difficulty accessing housing and the cost-of-living crisis were cited as barriers to survivors leaving an abusive relationship and finding a safe place to go.

"Housing has resulted in clients staying longer in dangerous situations and being desperate with no place to go."

Some respondents had suggestions for improving survivor supports outside of the justice system. One suggestion included public or third-party funding for survivors of family violence, with another respondent suggesting programs to help survivors repair their credit score on compassionate grounds (such as family violence).

Another lawyer suggested that public education and awareness campaigns may be useful to de-stigmatize discussing the topic of family violence and increase awareness. One respondent commented that a combination of COVID-19, media attention and changes to legislation prompted more people to speak about their experiences of family violence.

Discussion:

Some respondents identified a need to support survivors outside of the justice system. It is noteworthy that the *National Action Plan* likewise calls for investment in social infrastructure, given the increased risks of gender-based violence for those who experience systemic inequities such as lack of housing or poverty.[20] The *Mass Casualty Commission* final report also emphasizes the essential importance of

[19] See "Pillar Three: Responsive Justice System" of the National Action Plan, *supra* note 4.
[20] See "Pillar five: Social infrastructure and enabling environment" of the National Action Plan, *supra* note 4.

ending poverty and ensuring that women and girls are properly resourced so they can access pathways to safety.[21] Likewise, the *Roadmap for the National Action Plan* report advocates for access to permanent and consistent housing for survivors.[22]

One lawyer suggested that public education campaigns could be a useful tool. The *Desmond Fatality Inquiry* report makes similar recommendations to this effect, including that the province of Nova Scotia have a public information campaign about programs related to intimate partner violence (with specific reference to African Nova Scotian needs and cultural identity),[23] and increase awareness of websites that provide information to people who may encounter intimate partner violence.[24]

Key Takeaways:

Survivor wellbeing includes meeting basic needs like housing and financial stability as well as emotional needs and safety. Lawyers provided suggestions to support survivor well-being including:

- Addressing housing and economic instability.
- Funding for survivors of family violence.
- Credit score repair services.
- Public education campaigns to de-stigmatize discussing family violence.

Barriers to Addressing Family Violence in the Family Justice System

Respondents were asked an open-ended question about what they identified as the most significant barriers in the family justice in addressing family violence. This elicited a variety of responses with many lawyers identifying multiple challenges. The three most commonly cited challenges were:

1. **Understanding family violence:** Eleven lawyers (50% of those who responded to this question) spoke to this in some capacity. Some responses referred to challenges understanding family violence and its impact on behalf of some justice system personnel, and how to appropriately respond to this in family court. Responses also included the challenge of survivors being believed by those in the legal system and having family violence taken seriously in court.

2. **Difficulty accessing legal counsel:** Seven lawyers (32%) indicated that challenges to access legal counsel and the costs of litigation were significant barriers to addressing family violence in court, as well as long wait times for Legal Aid and the cost of private legal services (this

[21] MCC Volume 3: Violence, *supra* note 3 at 441.
[22] Dale, Maki & Nitia, *supra* note 15 at 26.
[23] The Honourable Judge Paul Scovil, *supra* note 13 at 95-96.
[24] *Ibid* at 91.

issue is discussed in greater detail below under "Family Violence and Self-Represented Litigants").

3. **Delays in accessing the court:** Eight lawyers (36%) indicated that timely access to the courts was a significant barrier in the family justice system, especially in emergency or crisis situations.

Additional challenges identified in response to this question included:

- Ineffective Emergency Protection Order laws.
- Flawed and complicated legal processes.
- Lack of accommodations in family court for survivors (akin to those provided in criminal court).
- Reluctance on behalf of the court to grant *ex parte* hearings.
- Lawyers approaching family law in too adversarial a manner.
- Lack of certainty in family court outcomes.
- Hesitation to grant interim orders in family court.
- Lack of training including trauma-informed training for justice system personnel.
- Lack of Supervised Access and Exchange Programs in all jurisdictions.
- Lack of access to resources especially in rural areas.
- Lack of access to prompt mental health treatment causing people to become involved in the child protection system (even for victims of family violence).

In addition to the answers provided above, commentary throughout the survey answers expanded upon the following barriers to addressing family violence in the justice system:

Understanding family violence: As previously indicated, a central theme throughout respondents' answers highlighted the challenge of having family violence understood and taken seriously in the justice system. Overall, 12 lawyers commented on this theme despite not being directly asked about this topic. Eleven respondents commented on this when asked about barriers in the justice system (as indicated above) and an additional answer was provided in response to a question about best practices to assist clients to obtain safe orders.

For example, one lawyer indicated that the complexities of family violence are not often well understood by some justice system personnel, particularly when there has been limited physical violence and the central concerns include emotional, psychological or financial abuse. This point was echoed by another respondent who reported that some justice system personnel may have a difficult time understanding the effects of family violence when there is no documented physical violence. Another lawyer suggested that some justice system personnel may not recognize how child support and spousal support can be used as mechanisms of control, creating ongoing financial hardships for the survivor and any children.

One lawyer commented that family violence provisions in family law legislation can be given insufficient weight in making decisions in family court, and another indicated that survivors may simply not be believed. Another lawyer remarked that although family law legislation is good for the most part, people in the family justice system can be "afraid to call out" family violence and may not know what to do about it. One lawyer noted that they are often concerned about their clients' safety given the limitations of court orders.

"It's a difficult situation with many competing interests. I do worry about the safety of many of my clients and the limitations of Court orders."

"To permit the aggressor to continue to have control over the family dynamic and still involved in the lives of the child and the other parent (victim) is not effective. There needs to be more application of the family violence provisions applied in real life. that is not happening, in my experience."

Delay in accessing the court: Over half of the respondents (13 lawyers or 56%) indicated at some point in their responses that delay in the court system contributed to challenges in obtaining relief for clients.[25]

Respondents commented that challenges with staffing, lack of access to the court schedule and the COVID-19 pandemic have all contributed to increased delays in the court process.

Key Takeaways:

The most significant barriers to addressing family violence in the family justice system identified by respondent lawyers were:

1. Challenges understanding family violence by justice system personnel in the family justice system.
2. Difficulty accessing legal counsel.
3. Delays in accessing the court.

[25] Eight respondents commented on delay in response to a general question about barriers in the family justice system, while other comments arose in response to other survey questions (for example when asked about changes since COVID-19).

Family Violence and Self-Represented Litigants

Although respondents were not directly asked about self-representation or access to counsel, there were a number of comments on these topics throughout the survey responses.

Access to Counsel: Ten lawyers (43%) commented on the fact that many litigants going through the justice system are unable to afford and access counsel or pay for the cost of the legal process. Seven lawyers raised this in response to the question about the most significant barriers in the family justice system, and three other respondents spoke to this theme in response to other questions (for example, when we asked about improving outcomes for survivors or changes since COVID-19).

One respondent indicated that for those who do qualify for Legal Aid, the extra time needed to deal with the complexities of a family violence file may not always be covered given the limits on hours for Legal Aid certificates.

Another respondent commented that justice system participants are not always aware and conscientious of the costs to survivors, both financially and emotionally. The same lawyer remarked that access to Legal Aid has become increasingly difficult, in part because Legal Aid certificates are not competitive with private rates and in part because there may be a wait time to have counsel appointed through Legal Aid. Another lawyer indicated that COVID-19 had contributed to litigants being less able to afford the costs of court proceedings, and another respondent noted concerns with access to counsel in rural areas, in particular.

"Many people can't afford a private lawyer and don't qualify for Legal Aid - this is a common experience. And because the Court process can be slow, and often abusers engage in litigation abuse which causes the process to be more expensive than necessary, this can be a significant barrier."

One lawyer suggested that keeping costs in mind would be helpful in situations of family violence:

"Keep the cost of private legal fees in mind - victims who come to court are often there through no choice of their own. They didn't plan to be in court, haven't saved for it, and really can't afford it."

Complexity of the legal system: Several lawyers commented on the complexity of navigating the family justice system, especially for those who represent themselves. For example, one lawyer noted that the court process is complicated and cannot generally be navigated without a lawyer. Another

respondent commented that the "sheer volume of work" required to bring an application before the court makes being a self-represented litigant "unfeasible."

One lawyer shared that clients may find the assistance of police or child protection unhelpful in navigating the court process, or they may receive legal advice from non-lawyers, adding stress and confusion to the process.

An additional respondent commented that survivors of family violence often cannot navigate the stringent rules required in Supreme Court (Family Division) on their own. For example, one respondent shared that although court officers have the authority to issue interim child support orders for example, this rarely happens and may be something that self-represented litigants may not know about the existence of, or process for making such a request.

One lawyer mentioned that there is limited thought given to a survivor being cross-examined by their abusive ex-partner in the family court context if the ex-partner is representing themselves. They noted that:

"Civil Procedure Rules allow for the Court to order someone to retain counsel for this purpose but this is rarely done and requires proof of emotional harm. An expanded version of this exists in criminal proceedings directly in the criminal code and the test is much lighter."

To improve outcomes for self-represented litigants, suggestions included providing easier access to services in the family justice system and better resources for self-represented litigants.

Another lawyer commented that more flexible rules around notice and evidence would improve outcomes in cases involving family violence, highlighting that Supreme Court is complicated and survivors have difficulty learning these rules on their own.

Discussion:

Full legal representation is important in family violence cases,[26] and may be one of the most significant concerns for survivors navigating family court.[27] One of the reasons it is so important to access counsel is because the time period leading up to and after separation is often the most dangerous time for a

[26] See, for example "Self-Represented Litigants and Family Violence: Making a Difficult Situation Even Worse" (15 June 2021), online (webinar): *Family Violence and Family Law, Centre for Research & Education on Violence Against Women & Children* < https://fvfl-vfdf.ca/webinar-recordings/Webinar_self-represented-litigants.html> [Self-Represented Litigants].

[27] Pamela Cross, "It Shouldn't Be This Hard: Family law, family court and violence against women and children" (2012) at 3, online (pdf): *Centre for Research & Education on Violence Against Women & Children, Learning Network, Western Education* <https://www.vawlearningnetwork.ca/our-work/briefs/briefpdfs/LB-01.pdf>.

survivor,[28] however access to counsel during this critical period can be exceptionally difficult.[29] The primary reason why people represent themselves is due to lack of funding.[30] Concerningly, the number of self-represented litigants in family court has been increasing, with one national report from 2021 estimating numbers of self-represented family law litigants at 58%.[31]

The issue of accessing legal counsel was also raised in the *National Action Plan*. The commentary by survey respondents aligns with a suggested action in the *National Action Plan* to expand free legal services and legal advice to survivors of intimate partner violence and sexual assault.[32] Likewise, the *Roadmap for the National Action Plan* report recommends ensuring access to effective legal representation for survivors.[33] In Nova Scotia, there is a program providing up to four hours of free legal advice for survivors of sexual assault,[34] however, no corresponding government-run program exists for survivors of other types of intimate partner or family violence.

Key Takeaways:

Some respondents noted that survivors in family court may have to represent themselves due to the prohibitive costs (and sometimes delay) of retaining counsel.

Survivors who represent themselves are challenged by the complexity of legal proceedings, making lack of access to counsel a major barrier to justice. Even where survivors have Legal Aid, the added complexity may require more time than typically provided for with Legal Aid certificates.

Effectiveness of Court Orders to Enhance Safety

Lawyers were asked an open-ended question about what best practices they would recommend to others to assist clients to obtain orders for safety where they have experienced family violence.[35] Lawyers provided input on what orders were most beneficial along with some general tips and best practices.

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[28] MCC Volume 3: Violence, *supra* note 3 at 383.
[29] See Janet Mosher, "Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by their Intimate Partners" (2015) 32 Windsor Y B Access Just 149 at 168-169. This article discusses that many websites advertise the importance of timely legal advice, however access to counsel is often quite limited.
[30] Self-Represented Litigants, *supra* note 26; Pamela Cross, "Through the Looking Glass: The Experiences of Unrepresented Abused Women in Family Court" (2008), online (pdf): *Luke's Place* <https://www.oaith.ca/assets/files/Publications/Family%20Law/Through-the-looking-glass.pdf>.
[31] Lyndsay Ciavaglia Burns, "Profile of family law cases in Canada 2019/2020" (2021) online (pdf): *Statistics Canada* <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00011-eng.htm>.
[32] See "Pillar Three: Responsive Justice System" of the National Action Plan, *supra* note 4.
[33] Dale, Maki & Nitia, *supra* note 15 at 72.
[34] "Independent Legal Advice for Adult Survivors of Sexual Assault" online: *Government of Nova Scotia* <https://novascotia.ca/sexualassaultlegaladvice/>.
[35] Note: This question listed possible answers as examples including emergency hearings, interim orders and supervised access and exchange. See the appendix for the full survey question.

Eleven lawyers (48%) indicated that emergency hearings can be helpful, with 3 respondents specifying that *ex parte* emergency hearings are helpful (i.e. where no notice of the hearing is provided to the other side).

Five lawyers (22%) indicated that Emergency Protection Orders were a preferred route to obtain an order for safety, and 7 lawyers (30%) remarked that the Supervised Parenting and Exchange Programs were beneficial (discussed above).

In terms of general tips for assisting clients to obtain orders for safety, one lawyer commented that speed and proper documentation was important. This was echoed by a second respondent who noted that clearly stating the request and the need for a timely and safe order was helpful. Another respondent remarked that vague and unclear requests can lead to complications, and therefore asking for detailed parenting plans and provisions was a helpful best practice. These general takeaways to be clear, detailed, and timely were echoed in other responses to specific legal options (emergency hearings, emergency protection orders etc.) and are summarized below.

Importantly, some respondents expressed caveats or challenges with each of these routes which are set out in the sections below. Some respondents were also reluctant to use each of these routes given the challenges and barriers that can arise.

Key Takeaway:

Half (48%) of respondent lawyers identified emergency hearings in family court as a potential best practice to assist survivors of family violence to obtain orders to enhance safety. This was the most frequently cited best practice.

Urgent and Emergency Hearings in Family Court

Respondents were asked several questions about urgent and emergency hearings in family court. They were first asked whether they have ever requested an urgent or emergency hearing when there's been family violence. Sixteen lawyers (70%) said they had experience requesting an urgent or emergency hearing in family court when there is family violence.

As indicated above, 11 lawyers (48%) indicated emergency hearings can be helpful, with at least 3 specifying that *ex parte* emergency hearings are helpful.

Lawyers were asked approximately how long it took to appear in court if their request for an urgent or emergency hearing was successful. Answers varied, with 4 lawyers (25% of respondents to this question) indicating that, particularly if the matter was heard *ex parte*, matters could be heard or dealt with within a few hours or even on the same or follow day. Five lawyers cited timelines ranging from

one week, to a month or sometimes longer, especially for *inter partes* hearings (i.e. hearings where both parties would receive notice and be able to attend the hearing).

Three respondents expressed that they were rarely if ever successful in obtaining urgent or emergency hearings. One lawyer indicated that the COVID-19 pandemic had increased the wait time for an urgent or emergency matter to be heard from 4 hours before the onset of the pandemic to approximately 14 days afterwards.

"For an ex parte application, you can get into court within a day or 2. Then you typically come back again within a month or two and get another interim order. The main delay is caused by the scheduling of a final hearing, which can take several months."

"In my local court I can sometimes get things heard within a month if I request it be treated as an emergency. Very seldom is the turn around less then that."

Finally, respondents were asked, if they were successful in their request for an urgent or emergency hearing, whether they were encouraged by the court to settle, or whether the matter proceeded to a hearing. Almost half of respondents (47% of those who responded) reported that settlement was encouraged in most of these cases.

Two lawyers indicated that if the matter was granted on an *ex parte* basis, it would not settle given that the other party would not be notified and have an opportunity to settle. Other lawyers indicated they had experienced both outcomes depending on the circumstances.

Discussion:

Two central challenges with respect to obtaining emergency or urgent hearings emerged from the survey data:

1. Convincing the court that the matter was "urgent" or an "emergency."
2. Having urgent or emergency matters addressed in a timely manner.

Convincing the court that the matter was "urgent" or an "emergency": Even though a number of respondents indicated that emergency hearings may be a preferred approach to get safe orders for clients in situations of family violence, the central challenge raised by lawyers was a reluctance or hesitancy for the court to deem a situation "urgent" or an "emergency," with at least 10 lawyers commenting on this point. Respondents noted that, in their experience, courts may not view the situation as sufficiently urgent to warrant proceeding on an urgent or emergency basis, or that emergency hearings simply did not seem to be available.

"The Court will often view a situation as "not an emergency" because the parent who applies has their children in their care. This does not mean there is a not a risk of family violence the Court could address through an order for no contact, confirm custody so the children are not taken by the other parent, etc."

Addressing urgent or emergency situations in a timely manner: For those circumstances that were deemed sufficiently urgent, another challenge raised by respondents was having the urgent or emergency situation addressed in a timely fashion. Four respondents suggested throughout their survey responses that an expanded ability to access emergency hearings with earlier or easier access to court dates would be a helpful improvement.

"It takes far too long to get your matter before a judge in the case of real emergencies. While some clients are able to find support from family or friends and therefore are reasonable safe, many cannot so time is critical."

"…often times the lawyer must have all their evidence in place prior to asking for such an order or hearing. That means that the victim and the children (if any) are further exposed to the family violence until the necessary information can be obtained and presented alongside the request for the emergency hearing or order."

Respondents made several suggestions to assist in obtaining an emergency or urgent hearing. Respondents commented that laying out details clearly and comprehensively in the application for an urgent or emergency hearing was important, with an affidavit and corroborating evidence. Additionally, respondents suggested being very clear that there is family violence and to articulate what the safety concerns are when applying. One respondent suggested seeking narrow relief, and another noted that having information ready about the involvement of other agencies such as child protection or police is important. Three lawyers mentioned the value of a clear and simple covering letter to the application indicating conspicuously that the matter is an emergency.

"Provide clear, comprehensive Affidavits. Seek narrow relief that largely tries to confirm the status quo arrangements for the child. Ensure notice can be given quickly. Ensure that evidence is available from police or DCS, if applicable."

"Put as much detail as the client is comfortable with in the affidavit."

"…provide [a] covering letter explaining circumstances and need for emergency, draft narrow, focused Affidavits that clearly lay out the circumstances of family violence, focus on risk of harm to children, including emotional harm from being removed from the home or denied contact with the other parent, include all information regarding involvement of other agencies (DCS, police, etc), ask for clear and narrow relief for a short window of time…"

Lastly, one lawyer commented on the importance of consistency across the province:

"We need more consistent practices for emergency Orders across the province. The chance of success and protocol is going to vary widely based on what courthouse ad [sic] judge happens to receive the application."

In considering the need for consistency and standards, British Columbia, for example, has a more well-defined system of determining what they call "priority parenting matters" in their Provincial Court. These matters will be heard in priority to other family court matters and tend to address issues such as: risks to the health of the child, relocation issues and wrongful removal of a child[36]. Wrongful removal of a child, including withholding the child counter to agreed upon or ordered parenting time may be a marker of coercive control, for example, and may occur in relationships where there is family violence.

In British Columbia, priority parenting applications may typically be made with 7 days notice to the other party, or if an order is needed in less than 7 days, an application can be made for the matter to be heard earlier.[37] Additionally, it is noteworthy that British Columbia's family court forms are prepared in very plain language format that is easier for self-represented litigants to understand.[38]

[36] *Provincial Court Family Rules*, BC Reg 120/2020, r 2.
[37] *Ibid*, r 77-78.
[38] See Form 15 regarding Priority Parenting Matters for example: "Preparing an Application About Priority Parenting Matter" (January 2022), online (pdf): < https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/courthouse-services/court-files-records/court-forms/family/PFA722.pdf>.

Nova Scotia on the other hand, appears to provide less guidance with respect to urgent and emergency matters, indicating only that an emergency motion may be granted in situations where there is "sufficient gravity" to require a speedy hearing.[39]

Key Takeaways:

Although respondent lawyers generally felt that emergency and urgent hearings may be a helpful mechanism for safety in circumstances of family violence, such hearings were described as difficult to obtain for two central reasons:

1. Convincing the court that the matter was "urgent" or an "emergency."
2. Having urgent or emergency matters addressed in a timely manner.

Respondent lawyers provided helpful advice for obtaining urgent and emergency hearings, including:

- Include a clear and simple covering letter indicating that the matter is an emergency.
- Provide details clearly and comprehensively in the application about the family violence and safety concerns. Include an affidavit and corroborating evidence.
- Consider seeking narrow relief on an application for an urgent or emergency hearing.
- Have information ready about the involvement of other agencies such as child protection or police.

Emergency Protection Orders

Respondents were asked whether they had ever represented a client seeking or reviewing a civil emergency protection order ("EPO"). Approximately 74% of respondents (17 lawyers) indicated that they either represented or had given legal advice to a client seeking or reviewing an EPO. When asked what conditions lawyers or their clients most typically requested in their EPO applications, respondents indicated that the most requested conditions were exclusive possession of the home (69%), no-contact between the parties (62%) and temporary custody of the children (56%). Four lawyers indicated that they (or their clients) typically requested all the conditions listed as examples in the question.[40]

[39] *Nova Scotia Civil Procedure Rules*, Royal Gaz Nov 19, 2008, r 59.53(3). The party must also show that it is possible for all parties to attend the hearing and that the gravity of the emergency outweighs any inconvenience to a party. Emergency hearings can also be requested on an *ex parte* basis and Rule 22.03(2) of the *Nova Scotia Civil Procedure Rules* provides four examples of possible circumstances of sufficient gravity to justify an *ex parte* motion including that (a) a child may be harmed if notice is given, and the court's obligation to secure the best interests of the child requires the court to proceed without notice and (b) notice will likely lead to violence, and an *ex parte* order will likely avoid the violence.

[40] Examples included no contact, exclusive occupation of the home, temporary possession of personal property such as a car, removal of the respondent, temporary control of specified property, temporary custody of children, weapons seizure. See the Appendix for the full survey question.

Conditions most often requested by respondent lawyers or their clients in EPO applications

Respondents were asked about any difficulties obtaining an EPO and cited a few key challenges. The central challenge raised was that clients were not successful in obtaining EPOs and had difficulty proving "imminent" risk. For example, it may be difficult to show imminent risk in situations where a more nuanced understanding of domestic violence is required, such as when there is increased risk around the time of separation, or circumstances of emotional and psychological violence. At least 7 respondents (58% of those who answered this question) noted that violence may be minimized or be found to have occurred too long before the request to grant an EPO. Other challenges identified included:

- The duration of EPOs is too short (30 days).
- The process may result in increased time and cost to a client.
- The outcome may be dependent on the views of the Justice of the Peace who hears the matter.

Respondents were also asked how effective they felt an EPO was at achieving safety for their client. Twelve respondents (80% of those who answered this question) generally felt that EPOs could be an effective tool for achieving safety for clients. Three lawyers (20%) said they are not effective. However, at least 5 lawyers (33%), 4 of whom generally felt that EPOs could be effective, commented that EPOs are too short-term and temporary, factoring against their effectiveness. Two lawyers who indicated that there may be some helpful aspects to EPOs expressed additional caveats, including that the EPO may not deter the abusive partner and that it could in fact anger the abusive partner and escalate the violence.

Finally, lawyers were asked about best practices in obtaining EPOs. Two respondents reiterated that applying for an EPO as soon as possible is good practice. Another lawyer suggested that it might be a good idea to make an EPO application as soon as possible and concurrently with a Family Division application. One respondent suggested that preparation and having as much documentation as possible is useful. Additionally, another lawyer indicated that if there have been multiple instances of violence, it may be helpful to name them immediately before giving details on each.

Discussion:

As noted, a primary concern raised by respondents about EPOs was the difficulty to obtain one. Specifically, lawyers talked about the challenge of proving there was an "imminent" risk to their client, even if the lawyer believed an EPO was warranted. One lawyer mentioned that it is difficult to prove that a situation is an "emergency" or that there is ongoing current risk regarding an incident that occurred in the past. Another respondent noted that a lot can get lost in a phone proceeding (as opposed to in-person for example), and one commented that EPOs were not an efficient use of time and resources given that, in this lawyer's experience, they are "almost always" overturned. An additional respondent expressed that various forms of violence such as emotional or psychological violence are not always appreciated or acknowledged in the EPO process.

"[The] EPO was denied because physical violence occurred 5-6 weeks prior to application, and JP did not appreciate that risk was heightened because client was planning to leave the home."

"Lack of understanding of the cycle of domestic violence … I have had clients seek an EPO as a result of escalating violent behaviour, and had it denied because the client sought the EPO when they were preparing to leave rather than immediately following the last act of violence."

Success rates in obtaining EPOs: In Nova Scotia, if an EPO is granted by a Justice of the Peace, it will be reviewed by a judge of the Supreme Court within 7 days, at which time the EPO may either be confirmed, varied or set down for a hearing.[41] If a judge directs a hearing on the matter, the judge may then confirm, vary or terminate the EPO.[42] Lawyers were asked how often they estimated their clients were successful in obtaining EPOs from a Justice of the Peace. Answers varied, with lawyers indicating their perception that their clients were successful at the following rates: 28% indicating "often," 22% indicating "half of the time," and 28% indicating "sometimes." Sixteen percent answered that in their experience, their clients' applications were "rarely" or "never" successful.

It is noteworthy that statistics from the Justice of the Peace Centre from 2021 indicate that 61% of EPO applications were denied at first instance (i.e. by Justices of the Peace). Thirty-four percent of EPO applications were granted by Justices of the Peace, and 5% were abandoned. Furthermore, while several lawyers had the perception that even if a client were granted an EPO, it would be overturned at the Supreme Court level, the same statistics show that confirmation rates by the Supreme Court are over 90%.

Effectiveness and duration of EPOs: As indicated above, most respondents who answered this question generally felt that EPOs could be an effective and sometimes an extremely effective tool for

[41] *Domestic Violence Intervention Act,* SNS 2001, c 29, ss 11(2)-(3) [*DVIA*].
[42] *Ibid*, s 11(7).

achieving safety for clients. However much of the effectiveness was seen to be minimized by the short duration of EPOs (i.e. 30 days).

A comparison to other jurisdictions in Canada shows that Nova Scotia's EPOs are granted for the shortest window of time (30 days). Some Canadian jurisdictions provide *ex parte* civil protection orders up to a year[43], 3 years[44] or in some circumstances do not have mandated maximum time periods.[45] Other Canadian jurisdictions with *ex parte* protection order regimes make such orders available for at least up to a 90-day period.[46]

"[An EPO] helps initially in some ways, but then the other party is furious and that can escalate where there's physical violence. And, without being able to get an Interim Order before the EPO expires, sometimes it just makes the whole situation worse because of financial issues."

"[EPOs] are a short term solution to a long term problem."

Emotional toll of the process: Another theme that arose in responses from lawyers commenting about difficulties in obtaining an EPO was the toll and stress on survivors, particularly because clients are typically making such applications at a very challenging time when they are at their most vulnerable.

"[EPO applications] require speaking directly to the victim and often they are still so traumatized that they often don't provide answers that assist them in moving further. Remember that often times, the victims are still in the middle of the "fight" or trauma situation and are often still in the sympathetic stage where they are scared of retaliation from the aggressor."

"They are often left calling the JP line to request the EPO on their own --- in a very agitated state."

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[43] *Protection Against Family Violence Act*, RSA 2000, c P-27, s 7. Orders may not exceed one year unless extended by a further order.
[44] *Domestic Violence and Stalking Act*, CCSM 1998, c D93, s 8.1(1)-(2) [*DVSA*-MB]. Orders may be granted for a longer period of time if necessary for the protection of the subject.
[45] *The Victims of Interpersonal Violence Act*, SS 1994, c V-6.02 (silent on expiration date); *Family Violence Prevention Act,* RSY 2002, c 84, s 4(5) (the designated Justice of the Peace may set a date for expiry however a maximum duration is not specified. S 4(3)(e) does specify that weapons may only be surrendered for a period up to 180 days).
[46] *Intimate Partner Violence Intervention Act*, SNB 2017, c 5, s 5(1) [*IPVIA*-NB] (180 days); *Family Violence Protection Act*, SNL 2005, c F-3.1, s 7(2) (90 days); *Victims of Family Violence Act,* RSPEI 1988, c V-3.2, s 4(4) (90 days unless otherwise ordered by a judge); *Protection Against Family Violence Act*, SNWT 2003, c 24, s 4(5) (90 days); *Family Abuse Intervention Act*, SNu 2006, c 18, s 10 [*FAIA*-NU] (1 year however many provisions may only last 90 days including temporary possession of belongings in s 7(2)(e), temporary custody of a child in s 7(2)(h), surrender of weapons in s 7(4) and occupation of the family home in s 7(7)(a).

Definition of domestic violence: In Nova Scotia's *Domestic Violence Intervention Act (DVIA),*[47] the acts and omissions that comprise "domestic violence" are not as comprehensive as definitions of family violence in provincial or national family law legislation[48] or in other Canadian jurisdictions' protection order regimes. For example, protection order laws in British Columbia, New Brunswick and Manitoba all include definitions of family violence that include considerations of coercive control and emotional or psychological abuse, none of which are explicitly mentioned in Nova Scotia's definition.[49] Given that Nova Scotia's *DIVA* does not use this terminology, a person would have to argue that such conduct amounts to domestic violence under the Act.[50] As one lawyer indicated in their response, emotional and psychological violence is not well understood or acknowledged in EPO applications. Additionally, in Ontario's restraining order regime under the *Family Law Act,* there is no definition of domestic or family violence, rather, applicants must demonstrate reasonable grounds for fearing for their safety or that of a child.[51]

It is also noteworthy that in Nova Scotia, dating partners who have not lived together and do not have a child together are excluded from applying for an EPO.[52] This differs from other jurisdictions with more inclusive practices which allow partners who have not lived together or have a child together to apply.[53]

Relief granted: Respondent lawyers indicated that the conditions they (or their clients) most requested in their EPO applications were exclusive possession of the home (69%), no-contact between the parties (62%) and temporary custody of the children (56%). 2021 statistics from the Justice of the Peace Centre indicate that these conditions were granted at the following rates: exclusive possession (45%), no-contact between the parties (94%), and temporary custody of children (20%). In 2021, additional relief was granted at the following rates: no further violence by the respondent toward the victim (89%), respondent to remain away from a place (81%), publication ban of the victim's identity (70%), peace officer assistance to obtain belongings (45%), peace officer assistance to remove the

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[47] *DVIA, supra* note 41, s 5(1). Per the *DVIA*, domestic violence has occurred when any of the following acts or omissions has been committed against a victim: (a) an assault that consists of the intentional application of force that causes the victim to fear for his or her safety, but does not include any act committed in self-defence; (b) an act or omission or threatened act or omission that causes a reasonable fear of bodily harm or damage to property; (c) forced physical confinement; (d) sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation; (e) a series of acts that collectively causes the victim to fear for his or her safety, including following, contacting, communicating with, observing or recording any person.

[48] Definitions for family violence in both the *Divorce Act, supra* note 1, s 2(1) and Nova Scotia's *Parenting and Support Act*, RSNS 1989, c 160, s 2(da) [*Parenting and Support Act*] specifically include acts such as coercive control, financial abuse, psychological abuse and threats to pets, none of which are explicitly listed in the *DVIA*.

[49] *Family Law Act*, SBC 2011, c 25, ss 1, 184(1)(c) (also includes financial abuse which is not listed in Nova Scotia's *DVIA*)*; IPVIA*-NB, *supra* note 46, ss 2(1), 4(3)(d) (also includes financial abuse)*; DVSA*-MB, *supra* note 44, ss 2(1.1), 6.1(1).

[50] For example, by reference to s 5(1)(e) of the *DVIA*, *supra* note 41.

[51] *Family Law Act*, RSO 1990, c F3, s 46 [*FLA*-ON]; *Children's Law Reform Act*, RSO 1990, c. C 12 [*CLRA*-ON] also has a similar standard in s 35(1) and a longer definition of "family violence in s 2 which includes coercive control, psychological abuse and financial abuse.

[52] *DVIA*, *supra* note 41, s 2(g).

[53] *IPVIA*-NB, *supra* note 46, s 1; *DVSA*-MB*, supra* note 44, s 2(1)*; FAIA*-NU, *supra* note 46, s 2(3).

respondent from the property (25%), seize weapons (21%), temporary possession/control of specified personal property (20%) and "any other condition" (11%).

"Forthwith" requirement: In Nova Scotia, the *DVIA* places a burden on the applicant to prove that domestic violence has occurred and the order should be made "forthwith."[54] The Supreme Court of Nova Scotia has interpreted this as requiring a "sense of urgency or immediacy" and indicated that the *DIVA* is intended to provide a "zone of safety for abused spouses in those cases where there is a realistic threat of immediate harm to the spouse or child."[55] This requirement of immediacy has been referenced to revoke EPOs in situations where the alleged violence was deemed not recent enough[56] and to confirm that the *DVIA* is not designed to provide a solution to parenting arrangements except in the case of *immediate* temporary protection of a victim or child.[57]

Ontario and British Columbia allow for restraining orders or protection orders within their family law legislation, with options to proceed either *ex parte* or with notice depending on the circumstances.[58] In Ontario for example, there is no protection order regime, but restraining orders are available under the *Family Law Act* and the *Children's Law Reform Act*. Applications can be made without notice in circumstances of immediate danger where the delay would have serious consequences.[59] Alternatively, if circumstances are less urgent, the other party may be notified, and a hearing date will be set.[60]

In British Columbia, civil protection orders are available in Provincial Court or Supreme Court under their *Family Law Act* and can proceed with or without notice.[61] Indeed, one lawyer who responded to the survey suggested that Nova Scotia adopt similar protection laws to the British Columbia model with Family Division judges hearing such cases.

In British Columbia, eligible applicants do not need to prove "urgency or immediacy" to warrant civil protection, but rather need to show that family violence is *likely* to occur.[62] As indicated above, in Ontario, an applicant must show they have reasonable grounds to fear for their safety or the safety of their child. The standards in both British Columbia and Ontario seem to provide a much lower threshold for applicants to satisfy than requiring the *DVIA*'s "forthwith" requirement. This may be because both these jurisdictions are not exclusively *ex parte* regimes, but applications can also be made with notice, an option that is not available in Nova Scotia.

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[54] *DVIA*, *supra* note 41 at s 6(1).
[55] *TLT v RT*, 2003 NSSC 251 at paras 31, 34.
[56] *EMG v GRW*, 2007 NSSC 356 at para 20.
[57] *EAW v MJM*, 2012 NSSC 216 at para 27.
[58] *FLA-ON*, *supra* note 51, s 46; *CLRA*-ON, *supra* note 51, s 35; *FLA-BC, supra* note 49, ss 182-186.
[59] *Family Law Rules,* O Reg 114/99, r 14(12). Additional circumstances are outlined where an application may be made without notice.
[60] *Ibid*, r 14(11).
[61] *FLA*-BC, *supra* note 49, s 186.
[62] *FLA*-BC, *supra* note 49, s 183(2)(a).

Key Takeaways:

Answers varied widely when lawyers were asked how successful clients were at obtaining an EPO from a Justice of the Peace. However, consistent challenges were raised in respondent lawyer answers with respect to EPOs:

- EPOs last for too short a duration (only 30 days).
- Challenges proving imminent risk as required by the "forthwith" requirement to obtain an EPO, especially when time has passed since the last incident of violence.
- Challenges obtaining EPOs in relation to certain types of violence like emotional or psychological abuse or appreciation for the heightened risk at the time of separation.
- The emotional toll and cost for survivors of obtaining an EPO.

Respondent lawyers suggested best practices for obtaining EPOs including applying promptly and having as much documentation as possible.

Peace Bonds

Respondents were asked if they have ever had a client apply for a peace bond in the context of family violence. Fourteen lawyers (61%) indicated they had.

Respondents were also asked to estimate how long, in their experience, it took to successfully obtain a peace bond. Five respondents reported that a peace bond would take approximately 2-4 months to obtain, with 3 respondents estimating 3-4 weeks. Two respondents noted that a peace bond could be obtained more quickly, even immediately, if it is not contested, and that the process is often much lengthier when contested.

Lawyers were asked if their clients experienced any difficulties with the peace bond process. Those who responded highlighted several challenges including:

- Parenting issues being discussed at the peace bond hearing.
- Intimidation and indirect threats not being sufficient to obtain a peace bond.
- Significant waiting times.
- Survivors having to testify in front of their abusive partner/ex-partner.
- Applications tend to be contested and outcomes can be hit or miss.

Lawyers were asked how effective peace bonds are at achieving safety for clients when there is family violence. Six lawyers (46% of those who answered this question) indicated that peace bonds may have some level of effectiveness and 5 (38%) expressed that they are not overly effective. Seven lawyers

(54%), including 4 who indicated they may be effective, commented that they are often breached or only amount to "a piece of paper."

Lastly, lawyers were asked about any best practices to obtain a peace bond when there has been family violence. Only two lawyers provided a substantive answer to this question with one suggesting that a peace bond application could take place in family court and another suggesting that an application be made as quickly as possible.

Discussion:

Overall, respondents appeared to be less likely to consider peace bonds as an effective tool for safety than emergency hearings or EPOs. Respondents referenced several challenges with respect to peace bonds in their answers.

Lack of trauma-informed approach: One respondent noted that a person is often left to apply on their own for a peace bond. If the peace bond is contested, they may have to testify in front of the person who has been abusive without the benefit of counsel.

Timeliness and level of success: Like the challenges identified with emergency hearings and EPOs, 4 lawyers commented that the peace bond application process was time consuming and/or did not have a particularly high degree of success.

"Again, the client was on their own to do this. If the other party does not consent to the peace bond, there is a trial [and a] chance to abuse again through that process, etc."

"The requirement for personal service on the alleged perpetrator can cause significant delay. If the peace bond application is contested, additional delay is caused due to busy court dockets."

Effectiveness: Overall, lawyers seemed to perceive that peace bonds are not always effective to enhance safety and can be insufficient at deterring future violence, with breaches being common and consequences minimal. Three lawyers specifically stated that they do not usually recommend peace bonds. Respondents who did indicate that peace bonds had some effectiveness used terms such as "moderately," "somewhat," or "fairly" effective for example.

"It [a peace bond] helps, but depends on the actual people involved. Many people think nothing of breaching a peace bond."

"Often times, when a peace bond is granted, the offender often states that "it's just a piece of paper." There appears to be no fear of the aggressor when he (often times it is a male) is determined to harm the victim (often times a female) again."

In Canada, peace bonds are available when a person has reasonable grounds to believe that a person will cause personal injury to them or damage their property.[63] Terms of a peace bond require a person to keep the peace and be of good behaviour[64] and may require a person to refrain from contacting a person or to stay away from a specified place[65] or include a weapons prohibition.[66] Courts can also impose any additional reasonable conditions.[67] While respondent lawyers were dissatisfied with the maximum duration of EPOs (30 days), peace bonds can remain in place for up to a year.[68] If a peace bond is breached, a person may be charged criminally and could face a maximum sentence of up to four years in prison.[69]

The *Domestic Violence Intervention Act* on the other had, includes a long list of potential conditions that may be included in an EPO such as exclusive occupation of the home, no-contact with the applicant or another specified person, ordering the respondent to stay away from a specific place, possession over specific property, temporary care and custody of a child and weapons seizure among others.[70]. Additionally, although a failure to comply with an EPO does not constitute a criminal offence, a person may be subject to consequences on a summary conviction including a fine up to $5000 and a term of imprisonment up to three months for a first offence.[71]

Despite the potential serious consequences for breaching a peace bond and the longer duration of the order, respondent lawyers did not overall find peace bonds to be as effective as EPOs for survivors of family violence. This could speak to the lack of explicit remedies available to protect family safety, where EPOs, although much shorter in duration, specifically provide for exclusive possession of the home, or temporary care and custody of children.

[63] *Criminal Code*, RSC 1985, c C-46, s 810(1). Note: Peace bonds are also available when a person has a reasonable fear that another person will harm their intimate partner or child or will commit an offence under section 162.1 (voyeurism or publication of an intimate image without consent).
[64] *Ibid,* s 810(3).
[65] *Ibid*, s 810(3.2).
[66] *Ibid, s* 810(5).
[67] *Ibid*, s 810(4.1)
[68] *Ibid, s* 810(3).
[69] *Ibid*, s 811.
[70] *DIVA, supra* note 41, s 8.
[71] *Ibid*, s 18.

The *National Action Plan* indicates there is a need to improve coordination between family and criminal courts to better support survivors and their children.[72] Two lawyers suggested addressing peace bonds in family court rather than provincial court in family law cases where there is family violence could bolster their overall effectiveness. One of the lawyers specifically commented that they don't recommend peace bonds as they tend to be contested in a "foreign" court and would be better addressed in the Family Division.

Best practices: As indicated, few best practices were suggested with respect to obtaining a peace bond for clients. One lawyer did comment that it would be helpful to apply quickly as time is of the essence and it may be more challenging to prove fear or risk of harm further down the line. Another indicated that allowing peace bond applications in family court may be a helpful best practice, especially given that jurisdiction is not a concern for Supreme Court (Family Division) Justices.[73]

Key Takeaways:

Respondent lawyers were less likely to find peace bonds an effective mechanism for safety (i.e. as compared to emergency protection orders or emergency hearings). Lawyers perceived peace bond applications as time consuming and less likely to be successful.

Some best practices identified were to:

- Apply as quickly as possible as it may be more difficult to prove fear or risk of harm further down the line.
- Provide for peace bond applications to be heard in family court by Supreme Court (Family Division) Justices.

Suggestions for Improving Outcomes for Survivors in the Family Justice System

Respondents were asked an open-ended question about what they thought would be helpful to improve outcomes for survivors of family violence in the family justice system. Lawyers again identified many ideas and areas for improvement, with two suggestions appearing most frequently:

1. **Increasing awareness and understanding of family violence in the justice system:** Six lawyers (27%) commented on this point. This included suggestions for training for the

[72] See "Pillar Three: Responsive Justice System" of the National Action Plan, *supra* note 4.
[73] See the *Judicature Act*, RSNS 1989, c 240, s 32(A)(2)(e). The Governor in Council may by order confer on the Supreme Court (Family Division) jurisdiction over certain matters including s 810 of the *Criminal Code* (peace bonds) where the parties are spouses or parent and child.

judiciary (specifically trauma-informed training and a consideration of how to handle judicial settlement conferences involving family violence). Responses on this theme included suggestions for a more in-depth analysis of family violence in decision-making in family court, and a greater willingness to apply the family violence provisions of family law legislation. One respondent suggested that there needs to be a greater understanding of the complexities and cycles of family violence.

2. **Timely access to justice and expanding access to court hearings:** Five lawyers (23%) commented on this theme. This included suggestions for earlier hearing dates to resolve parenting issues and easier access to urgent and emergency hearings. Other suggestions included access to timely assessments and more access to the court's schedule.

Additional suggestions to improve outcomes for survivors in the family justice system included:

- Safety planning in responsive and non-punitive ways.
- Police enforcement of family court orders.
- Re-thinking child protection approaches for survivors of violence.
- Greater access to Legal Aid and lower private legal costs.
- Less stringent rules in family court.
- Separate protocols for family violence cases including judges with specialized training.
- Increased access to resources and services, including self-represented litigants.
- An efficient online court filing system.
- Creation of a family violence support office.
- Increase availability expert assessors at low or no-cost in family violence cases.
- New framework to assess risk in family violence cases.
- Make relocation easier for survivors of violence.
- Increase predictability in outcomes in family court.
- Funding or credit-relief programs for survivors of family violence.
- Public education and awareness campaigns around family violence.
- Early intervention options.
- Access to a list of accommodations available through the court.
- Reliable and consistent access to Supervised Access and Exchange Programs.

Discussion:

Several suggestions were raised about effectively supporting survivors in the justice system. The discussion below elaborates on responses from the question above about improving outcomes for survivors and incorporates additional responses from the survey answers connected to this theme.

Training for justice system professionals: Five respondents (22%) spoke specifically to the need or importance of training for judges and justice system personnel, with two lawyers emphasizing that there is a need for more trauma-informed training specifically.

"… we especially need judges to understand when a victim is at highest risk."

"Some judges are very attuned to the re-traumatization that the family justice system can create, while others seem to treat family violence cases no differently than cases where violence and coercive control are not factors."

The suggestion to increase training for justice system professionals is timely as there have been recent changes with a federal law passed that will expand training opportunities for judges on family violence and coercive control.[74] This law began as Bill C-233 (*Keira's Law*),[75] named after a young girl who tragically died when in the care of her father, to whom the court ordered unsupervised parenting time despite his history of abusive behaviour. *Keira's Law* provides opportunities for training on family violence and coercive control for federally appointed judges, but this would not apply to provincially appointed judges or Justices of the Peace in Nova Scotia. Notably, Ontario has also passed Bill 102, *Strengthening Safety and Modernizing Justice Act, 2023*, extending opportunities for this training to their provincial judges and Justices of the Peace.[76]

The *National Action Plan* specifically identifies the need for training in the family justice system. The report notes that despite changes to family laws, "more needs to be done to continue to increase awareness of gender-based violence and its relevance to family law matters, encourage trauma and violence-informed approaches, and promote outcomes that protect the safety of all family members."[77]

The *National Action Plan* also emphasizes the need to develop and implement training for justice system professionals and others to create a more responsive justice system.[78] The *Roadmap for the National Action Plan* makes a similar recommendation for training with specific focus on the dynamics of post-separation abuse and understanding coercive control & litigation abuse.[79] The *Desmond Fatality Inquiry* final report likewise stresses the importance of education, recommending that justice system and other professionals are "up to date with current information about intimate partner violence, the dynamics

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[74] *Judges Act,* RSC 1985, c J-1, s 60(2)(b).
[75] Bill C-233, *An Act to amend the Criminal Code and the Judges Act (violence against an intimate partner)*, 1st Sess, 44th Parl, 2022.
[76] *Courts of Justice Act*, RSO 1990, c C.43, s 51.10.1(1)-(2); *Justices of the Peace Act*, RSO 1990, c J.4, s 14(4)-(5).
[77] See "Pillar Three: Responsive Justice System" of the National Action Plan, *supra* note 4.
[78] *Ibid.*
[79] Dale, Maki & Nitia, *supra* note 15 at 65.

in these relationships, the impact of intimate partner violence on children and the potential for lethality in these cases."[80]

Taking a different approach in family violence cases: The responses of several lawyers pointed to a need to take a different approach in family violence cases. One respondent mentioned that in an adversarial system, it is necessary to "prove" family violence to access safeguards, however there "should be measures in place that are available simply to someone who raises violence as an issue."

As indicated above, suggestions arising in respondent's answers included expanding access to court hearings (including urgent and emergency hearings) and increasing reliable access to Supervised Access and Exchange Programs. One lawyer also called for an efficient online filing system, and another called for more access to the court's schedule.

Three lawyers shared ideas about adopting a different approach or protocol in family violence cases. Examples included an approach that limits contact between parties or that has judicial oversight by a judge with specialized training in family violence. Another suggested including special considerations during settlement conferences when there has been family violence. This was raised because the same lawyer noted that at times judges can be dismissive of survivors' concerns and anxieties about being in the same room with an abusive ex-partner in an effort to bring parties together.

"Often the clients experience fear and anxiety at having to be in the same room of course. I have had success working with other lawyers to make arrangements to deal with these concerns, but it is certainly a problem in general."

Two lawyers referenced the challenges of litigation abuse, where the person who has been abusive uses the court system to inflict further violence, through for example, frivolous claims or allegations, causing delay, failing to make disclosures or responses etc. In this sense, as one lawyer said, the abusive partner can then "turn the court process into another form of abuse." The same respondent then connected this to a lawyer's ethical duties in family court, stating:

"I think there is certainly the importance of advocacy but I think we have an ethical obligation not to take positions to court that can be reasonably understood to be litigation abuse … I would like to see stronger discouragement of advancing unfair and unreasonable positions - not just costs - in the hopes that it will discourage this type of approach to family law litigation. There is a role for trials, and there are issues that will need to be adjudicated. But there are too many trials due to one party taking an unreasonable position - and it's usually in an abusive situation."

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[80] The Honourable Judge Paul Scovil, *supra* note 13 at 109-110.

In their answers, lawyers advocated for easier access to the court process with relaxed or less stringent rules in some circumstances. For example, one respondent suggested that the requirement for disclosure of all financial information in the initial stages be eased, especially for survivors of family violence situations who may not be able to access their records quicky, thereby adding to the delay. Another lawyer felt that more flexibility around notice and evidence would improve outcomes.

One survey respondent also suggested re-thinking child protection approaches to family violence. The respondent noted that current approaches often put responsibilities on women who are victims of family violence to complete services because they have "exposed" the children to family violence.

One lawyer suggested making relocation easier to access for survivors of family violence and their children. Changes to family laws in 2021 created a presumption in favour of parents with the "vast majority" of parenting time to be able to relocate with their children.[81] A subsequent Supreme Court of Canada decision referenced these legislative changes[82] and connected them to family violence, emphasizing 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."[83] Despite this, it is unclear whether these changes have yet made it easier for survivors with primary care who have raised family violence as an issue to relocate with their children.[84]

In terms of enforcing family court orders, one respondent advocated for police enforcement of court orders.

Lastly, one respondent spoke to the need for safety planning for families:

"We need to figure out a way to safety plan for "a family" that is responsive, not necessarily punitive, and tolerable for everyone."

Taking a trauma-informed approach: Three respondents commented that survivors can be traumatized from their experiences, and one lawyer noted that it can be difficult to have the emotional resources to see the legal process through. One lawyer commented that accommodations, such as those available in criminal court, should be adopted in family court. Interestingly, in a "highly unusual"

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[81] *Divorce Act*, *supra* note 1, s 16.93(2); *Parenting and Support Act*, *supra* note 48, s 18(H)(1A)(b).
[82] *Barendregt v Grebliunas*, 2022 SCC at paras 121-123
[83] *Ibid at* para 147.
[84] See for example *Friesen v Friesen,* 2023 SKCA 60. In this case the court took judicial notice of the gendered nature of relocation. However, the mother's relocation application was denied despite a history of family violence and the child having been in her primary care since separation. The Saskatchewan Court of Appeal did not interfere with the trial judge's finding that both parties bore the burden of proving whether the relocation was in the child's best interest because the mother had not substantially complied with the parenting agreement. Leave to appeal to the Supreme Court of Canada was denied.

and "exceptional" case, a survivor was recently allowed to testify behind a screen in her family law matter in British Columbia.[85] On a similar note, the same respondent suggested there ought to be access to a list of accommodations that are available in family court and distributed to parties.

Another lawyer commented that in addition to the impact on clients and their children, lawyers' mental health is also impacted when they are managing a family violence file over a long period of time.

One respondent connected the impacts of abuse to how a survivor may experience the justice system:

"Often, they're afraid of the other party where there's been [family violence] - whether physical or not - and they've been conditioned to consider themselves unworthy, incapable and that they won't be successful in anything they attempt. The Court process and delays sometimes reinforce what clients have heard from the abuser."

Another lawyer commented that predictability in court orders is an important factor for survivors:

"Be predictable. People experiencing trauma need predictability. Lawyers need to be able to predict what will happen in Court so they can pass that info/advice onto the client."

The notion that the justice system may compound trauma is echoed in the *National Action Plan* which explains that justice system participation can be a traumatic experience for survivors of violence, and particularly so for survivors with intersecting identities.[86]

Importantly, some suggestions from the literature on undertaking a trauma-informed approach to lawyering where there has been family violence include: prioritizing relationship building and connecting with a client prior to asking heavy questions, building in extra time for meetings and/or breaking emotionally challenging conversations into separate meetings.[87] One lawyer noted that they are not often granted the required additional hours needed on Legal Aid certificates in family violence cases to represent their client in a trauma-informed manner. Given this, it may be useful to consider facilitating the ability of lawyers to take more time with a client who is experiencing family violence (for example by reimbursing lawyers for a greater number of hours for Legal Aid certificates when there is family violence).

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[85] See Bethany Lindsay, "'Exceptional' measures helping abuse victim testify in family court cheered by B.C. advocates", *CBC News* (22 December 2022), online < https://www.cbc.ca/news/canada/british-columbia/bc-family-court-accommodations-domestic-violence-1.7065845>.

[86] See "Pillar Three: Responsive Justice System" of the National Action Plan, *supra* note 4.

[87] Myrna McCallum & Haley Hryma, "Decolonizing Family Law Through Trauma-Informed Practices" (2022), online at 25 (pdf): *Rise Women's Legal Centre* <https://womenslegalcentre.ca/wp-content/uploads/2022/02/Decolonizing-Family-Law-RiseWomensLegal-Jan-2022-WEB.pdf>.

Dedicated family violence office and assessments: One lawyer recommended a dedicated family violence support office and an office of experts available to complete assessments in a timely and low or no-cost manner. The same lawyer further suggested a new framework for assessing risk and family violence (in addition to Voice of the Child Reports and Parenting Capacity Assessments). Another respondent suggested that a victim services program in family court, like the program in criminal court, would be a helpful addition.

Just as with undertaking assessments in criminal court (such as Impact of Race and Culture Assessments or "IRCAs"),[88] it is critical that parent and child-focused assessments consider the impacts of culture and race. This could be particularly important where child protection is involved, especially given the overrepresentation of Black (including African Nova Scotian children provincially) and Indigenous families in the child protection system.[89]

Lastly, one respondent suggested creating a feedback mechanism about what is and is not working well so that learning can take place.

Improving coordination between criminal and family courts: One respondent highlighted that criminal and family courts often operate in silos and suggested undertaking a "hybrid approach" to parallel family and criminal court proceedings to avoid conflict. This suggestion compliments proposed action in the *National Action Plan* to improve coordination between family and criminal courts to better support survivors and their children.[90]

Key Takeaways:

Respondents had the following suggestion to improve outcomes for survivors of family violence in family court:

1. Increasing awareness and understanding of family violence in the justice system.
2. Timely access to justice and expanded access to court hearings (including urgent and emergency court hearings).

[88] To read more about IRCAs, see Blair Rhodes, "N.S. ruling sets pattern across Canada for considering systemic racism when sentencing Black offenders", *CBC News* (24 August 2021), online <https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-sentencing-guidelines-to-be-exported-across-canada-1.6151643>.
[89] See for example "Reducing the number of Indigenous children in care" (February 2023), online: *Government of Canada* <https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851>; P.-G Noorishad, A Kasprzyk, S-E McIntee, J.N Mukunzi, W.P Darius & J.M Cénat, "Overrepresentation of Black children in the child welfare system. Fact sheet for community settings" (2021) online (pdf): *Department of Psychology, University of Ottawa* <https://socialsciences.uottawa.ca/vulnerability-trauma-resilience-culture-research-laboratory/sites/socialsciences.uottawa.ca.vulnerability-trauma-resilience-culture-research-laboratory/files/fact_sheet_the_overrepresentation_of_black_children_in_the_child_welfare_system_.pdf>.
[90] See "Pillar Three: Responsive Justice System" of the National Action Plan, *supra* note 4.

Some survey respondents identified a need for greater investment in training and education for those in the justice system. This includes training on:

- The impact of family violence on children and parenting.
- The dynamics of abuse including coercive control, emotional, psychological and financial abuse (including how child and spousal support may be used as a mechanism for control).
- How to undertake a trauma-informed approach in addressing family violence.
- How to conduct a more in-depth analysis of family violence.

Some respondents noted the need for a different justice system response when dealing with family violence cases in family court. Ideas included:

- Relaxed requirements to "prove" family violence to access safeguards; institute measures available to anyone who raises violence as an issue.
- Increased access to court dates including urgent and emergency hearings.
- Reliable access to Supervised Access and Exchange programs.
- Institute an efficient online filing system.
- Provide greater access to the courts' schedule.
- Institute an approach that limits contact between parties.
- Oversight by judges with specialized training in family violence.
- Include special considerations during judicial settlement conferences in family violence cases.
- Address litigation abuse, including rules around lawyers' ethical duties and facilitating litigation abuse.
- Institute less stringent rules around financial disclosure, notice requirements and evidence in some circumstances to facilitate easer access to court processes (especially in initial stages of the court process).
- Re-think child-protection approaches that put responsibilities on women who are victims of violence.
- Increase the ability for survivors to relocate with their children.
- Ensure police enforcement of family court orders in family violence cases.
- Provide more non-punitive options for safety planning for families.

Respondent lawyers commented on the need to take a trauma-informed approach in family court, by, for example:

- Allowing broader access to accommodations in family court for survivors of family violence.
- Ensuring predictability in family court orders.
- Providing additional hours on Legal Aid certificates for cases involving family violence.

Respondents had ideas about the creation of a support office and specialized assessments in family violence cases, including:

- A dedicated family violence support office in family court.
- An office of experts to complete assessments in a timely and low or no-cost manner
- A new framework for an assessment to assess risk and family violence (in addition to Voice of the Child Reports and Parenting Capacity Assessments).
- Implementing a victim services program in family court.
- Creating a feedback mechanism about what is and is not working well in the family justice system so that evaluation of services can take place.

One respondent highlighted the importance of improving coordination between criminal and family courts and suggested undertaking a hybrid approach to parallel family and criminal court proceedings.

Appendix: Survey Questions

Questions

1. This is an anonymous survey but we are interested in differing practices based upon your county. Could you please identify the region(s) in which you practice (select all that apply) (optional):

- Valley (Annapolis, Digby, Kings, and West Hants Counties)
- South Shore (Lunenburg, Queens, Shelburne, and Yarmouth Counties)
- Halifax Regional Municipality
- Northern (Colchester, Cumberland, and East Hants Counties)
- Highlands (Antigonish, Guysborough, and Pictou Counties)
- Cape Breton (Cape Breton, Inverness, Richmond, and Victoria Counties)

<u>Prevalence of Family Violence</u>

1. Approximately how often do you see family violence in your cases?

   Family violence is defined in the *Divorce Act* as:

   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 necessaries of life;
   (f) psychological abuse;
   (g) financial abuse;
   (h) threats to kill or harm an animal or damage property; and
   (i) the killing or harming of an animal or the damaging of property

- Never
- Rarely
- Sometimes

- Often
- Almost Always

Asking Clients About Family Violence

2. How often do you ask your clients about family violence?

- Never
- Rarely
- Sometimes
- Often
- Almost Always

3. If you do ask your clients about family violence, do you use a standardized tool, or have you developed your own questions?

- Standardized Tool (please specify)
- Developed my own questions
- Other (please specify)

4. For those clients where there is family violence, how often do you refer them to services or community organizations?

- Never
- Rarely
- Sometimes
- Often
- Almost Always

5. If you do make referrals, to what types of services/community organizations do you refer?

- Transition Houses
- Emergency Shelters
- Women's Centres
- Sexual Assault Centres
- Crisis Lines
- Health Care
- Family Resource Centres
- Mental Health Services
- Intervention Programs
- Other (please specify)

6. Which services do you find are most helpful for your clients (both victims and perpetrators of family violence) and why?

Family Justice

7. In your opinion, what are the best practices to assist clients who are victims of family violence to obtain safe orders? (for example, emergency hearings, interim orders, supervised access or exchange etc.)

8. From your perspective, what are the most significant barriers in the family justice system in addressing family violence?

9. Has Covid changed anything in your work in the context of family violence?

10. What do you think would help to improve outcomes for survivors within the family justice system?

11. Is there any further information you would like to share about family violence in the family justice system?

Urgent/Emergency Family Court Hearings and Orders

12. Have you ever requested an urgent or emergency hearing in Family Court where there is family violence?

- Yes
- No
- Other (please specify)

13. If you were successful in your request for an urgent or emergency hearing, on average in how many days/months were you able to appear in court?

14. If you were successful in your request for an urgent or emergency hearing, did the matter actually go to a hearing or were the parties encouraged to settle the matter?

15. What obstacles (if any) have you experienced obtaining an urgent or emergency order for a client?

16. What best practices are there for getting orders quickly in the context of family violence?

Emergency Protection Orders

17. Have you ever represented a client seeking or reviewing an Emergency Protection Order?

    - Yes
    - No
    - No, but I've provided advice to a client applying for an EPO

18. What conditions do you (or your clients) most typically request in an Emergency Protection Order? (i.e. no contact, exclusive occupation of the home, temporary possession of personal property such as a car, removal of the respondent, temporary control of specified property, temporary custody of children, weapons seizure, etc.)

19. How often do you estimate your clients are successful in obtaining an Emergency Protection Order during the initial application to a Justice of the Peace?

    - Never
    - Rarely
    - Sometimes
    - Half of the time
    - Often
    - Almost Always

20. Once a client has obtained an Emergency Protection Order from a Justice of the Peace, how often are such Orders confirmed by a judge in Supreme Court?

    - Never
    - Rarely
    - Sometimes
    - Half of the time
    - Often
    - Almost Always
    - Other (please specify)

21. Can you broadly tell us about any difficulties clients may experience obtaining an Emergency Protection Order?

22. In your opinion, how effective is an Emergency Protection Order at achieving safety for your client?

23. Do you have best practices you'd like to share about obtaining an Emergency Protection Order for your clients?

Peace Bonds

24. Have you had a client apply for a peace bond in the context of family violence?

    - Yes
    - No

25. If you've has a client apply peace bond in the context of family violence, did they experience any difficulties with the peace bond process? Please explain.

26. In your experience, approximately how long does it take to obtain a peace bond (if successful)?

    - 0-2 weeks
    - 3-4 weeks
    - 1+ month
    - 2-4 months
    - 5-7 months
    - 8-11 months
    - 1 year
    - More than 1 year
    - Variable (please explain)

27. In your opinion, how effective is a peace bond at achieving safety for your client when there is family violence?

28. Do you have best practices you'd like to share about obtaining a peace bond in circumstances of family violence?

29. Is there any further information you would like to share?