

Identifying and responding to family violence in family law cases: Results from the 2019 Survey of Lawyers and Quebec Notaries on Family Law and Family Violence in Canada

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Introduction

This report describes key findings from Justice Canada's 2019 national Survey of Lawyers and Quebec Notaries on Family Law and Family Violence in Canada ("the 2019 survey"). The purpose of this survey was to assess how legal advisors identify and respond to family violence in their family law practices, as well as their use of additional tools to facilitate the process.

In 2019, Justice Canada began developing a toolkit (the HELP toolkit) to support legal advisers in safely identifying and responding to family violence among their family law clients.² The development of this toolkit involved multiple research projects to understand the needs of potential users, including the 2019 survey.

Data were collected in the following areas: the presence of family violence in lawyers' family law cases, as well as their practices for identifying and addressing family violence with their clients. The survey was also designed to collect data on lawyers' concerns when working with clients who might have experienced family violence.

Family violence is any form of abuse or mistreatment inflicted by a family member or current or former intimate partner, and encompasses many forms including physical, sexual, emotional and financial abuse as well as neglect.³ Family violence is more common than many people may realize.⁴ In 2019, about one-quarter (26%) of

¹ For more information, please contact: rsd-drs@justice.gc.ca.

² The HELP toolkit is an evidence-based resource developed by Justice Canada and its collaborators for family law legal advisers that provides practical suggestions on identifying and responding to family violence in ways that are safe for clients and legal advisers. For more details, please visit [help-toolkit.pdf \(justice.gc.ca\)](https://www.justice.gc.ca/help-toolkit.pdf).

³ Department of Justice Canada. n.d. "About Family Violence: What is family violence?" [About Family Violence \(justice.gc.ca\)](https://www.justice.gc.ca/about-family-violence). [Accessed February 9, 2023].

⁴ Department of Justice Canada. September 2018. "Research in Brief: Family Violence: Relevance in family law." [Research in Brief - Family Violence: Relevance in family law \(justice.gc.ca\)](https://www.justice.gc.ca/research-in-brief-family-violence-relevance-in-family-law). [Accessed February 9, 2023].

all victims of police-reported violent crime in Canada were victims of family violence (102,316 victims).^{5 6} Violence committed by a current spouse (31%) was the most frequent type of family violence brought to the attention of police.⁷ Women and girls are particularly impacted by family violence; two-thirds (67%) of victims of family violence in 2019 were female.⁸

A 2018 survey on the practice of family law by Justice Canada found that 63% of lawyers reported that family violence was an issue in less than one-quarter of their cases, whereas 10% indicated that family violence was an issue in more than half of their cases. Most (89%) lawyers reported they are familiar with services for their clients in family violence situations.⁹

Methodology

A total of 748 respondents completed the 2019 survey from November 21, 2019 to January 15, 2020. Respondents were selected through snowball sampling, a non-random sampling method where the survey is sent to a group of respondents who are encouraged to send the survey to their colleagues and contacts in the field. This survey was initially sent to members of the advisory group for the HELP toolkit, the Federation of Law Societies, the Canadian Bar Association's Family Law Section, and the Coordinating Committee of Senior Officials on Family Justice. Despite targeted efforts to reach Quebec notaries, no Quebec notaries completed the survey.

The 2019 survey questions were similar to some of the demographic and family violence-related questions in the National Family Law Program surveys, a set of biennial surveys of judges and lawyers working in family law in Canada.¹⁰ Additionally, several questions were specifically developed for this survey, including questions on lawyers' concerns with identifying and responding to family violence, as well as their knowledge and use of support services. In total, the survey contained 22 questions.

There were 737 respondents in the final analysis, as respondents who did not answer most of the questions or who reported they "never" or "rarely" take on family law cases in their practice were excluded. Questions with fewer than 10 responses were not reported.

Findings

Characteristics of respondents

All survey respondents were lawyers,¹¹ predominantly those working in private practice (89%). About 5% of respondents were lawyers in government or an agency, and a similar proportion of respondents were lawyers in

⁵ Conroy, Shana. 2021. "Family violence in Canada: A statistical profile, 2019." Canadian Centre for Justice and Community Safety Statistics. [Family violence in Canada: A statistical profile, 2019 \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/85-62-x/2021001/article/00001-eng.htm). [Accessed February 9, 2023].

⁶ The data on family violence refer to a current or former spouse, as well as non-spousal family members.

⁷ Conroy, Shana. 2021. "Family violence in Canada: A statistical profile, 2019." Canadian Centre for Justice and Community Safety Statistics. [Family violence in Canada: A statistical profile, 2019 \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/85-62-x/2021001/article/00001-eng.htm). [Accessed February 9, 2023].

⁸ Conroy, Shana. 2021. "Family violence in Canada: A statistical profile, 2019." Canadian Centre for Justice and Community Safety Statistics. [Family violence in Canada: A statistical profile, 2019 \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/85-62-x/2021001/article/00001-eng.htm). [Accessed February 9, 2023].

⁹ Department of Justice Canada. May 2021. "The Practice of Family Law in Canada: Results from surveys for the 2018 National Family Law Program." [research-in-brief national-family-law-survey-2018-eng.pdf \(justice.gc.ca\)](https://www.justice.gc.ca/eng/rp-pr/jr/2018surveys-sondages2018/). [Accessed February 9, 2023].

¹⁰ The National Family Law Program surveys cover several family law-related topics including family violence, child support, support enforcement, family law services, and parenting arrangements. For more information, please see the 2016 and 2018 reports: <https://publications.gc.ca/site/eng/9.850248/publication.html> and <https://www.justice.gc.ca/eng/rp-pr/jr/2018surveys-sondages2018/>.

¹¹ Despite targeted efforts to reach Québec notaries, no Québec notaries completed the survey.

a clinic (about 5%).¹² Around 40% of lawyers who completed the survey reported that they had 20 or more years of experience practicing law, whereas about one-fifth (21%) had less than five years of experience.

About seven in ten (70%) respondents identified as women, over one-quarter (26%) identified as men and around 3% identified as non-binary.^{13 14}

About four in ten respondents reported that they practice law in Ontario. The second most frequently cited jurisdiction was Québec (26%), while almost one-quarter (24%) of respondents reported that they practice law in the Prairie provinces and 10% in the Atlantic provinces. Less than 2% each of respondents reported they work in the Northwest Territories and in British Columbia.¹⁵

Characteristics of family law cases

In the 2019 survey, about half (51%) of respondents reported that they often or always take on family law cases that involve family violence.

Nearly one-third (30%) of lawyers handled family law cases that did not receive any funding from legal aid, whereas 41% of respondents' family law cases often or always had partial or full legal aid funding for legal representation.

Only 2% of respondents reported that the other party in their family law cases were never self-represented, while more than one-third (35%) indicated that the other party was often self-represented for part or all of the file in their family law cases.

Most (95%) lawyers indicated that they often or always work on family law cases that involve children, and 69% of lawyers reported that variations of previous orders/agreements often or always take place in their family law cases.

Inquiring about the presence of family violence

Seven in ten (70%) lawyers reported they often or always ask their family law clients about family violence, except for situations where the client has already reported it or the client's circumstances¹⁶ have indicated the presence of family violence.

Most (86%) lawyers indicated that they rely on their professional judgement and experience to guide conversations with family law clients about family violence, whereas 7% use a tool or questionnaire. Among lawyers who use a tool or questionnaire, 31% reported that it had been validated (overall this represents 2% of respondents).¹⁷ Around 6% of lawyers reported that they use another approach for asking their family law clients about family violence.

¹² A very small number of respondents did not answer the question; this number was too low to report.

¹³ Respondents who selected 'other' as their gender identity are referred to as 'non-binary.' This group could include people who are non-binary, agender, gender queer and two-spirit, for example, and more as this is not an exhaustive list. Although respondents had the opportunity to specify their gender identity when they selected 'other,' very few respondents wrote anything.

¹⁴ Around 1% of respondents did not state their gender in the survey.

¹⁵ As the survey used snowball sampling (please see Methodology for details), it is not possible to determine if the proportion of respondents by province and territory are representative of the family law lawyers within their jurisdictions. Additionally, about 3% of respondents selected more than one province or territory.

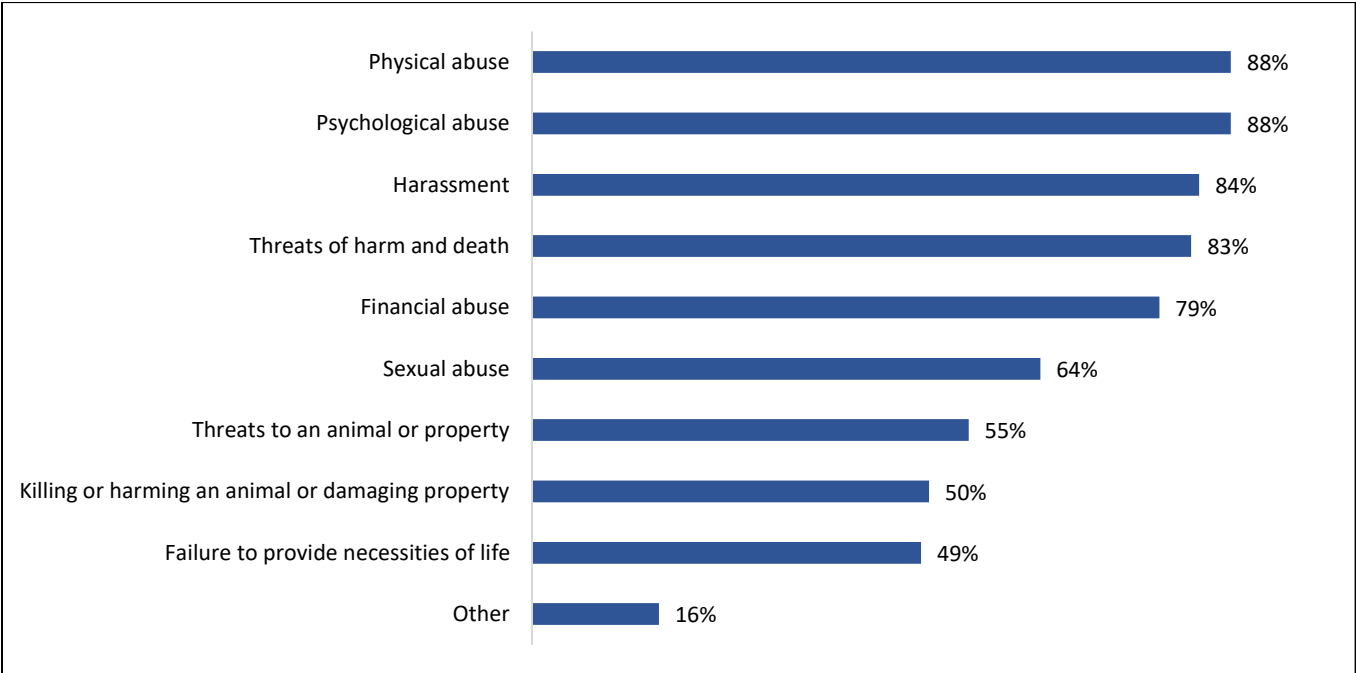
¹⁶ This could include, for example, a client being referred to a lawyer's office through a women's shelter. In these cases, it would be made apparent from the referral that the client is a victim of family violence.

¹⁷ A validated tool or questionnaire has been quantitatively tested to ensure that the questions accurately measure what they are intended to measure.

The majority (93%) of lawyers indicated that when asking their clients about the presence of family violence, they ask if children have been directly or indirectly exposed to family violence. Among the different types of family violence that were presented to respondents, the most common types of family violence that respondents ask their clients about are physical abuse (88%), which includes forced confinement but not the use of reasonable force to protect oneself or others, and psychological abuse (88%; Figure 1). A lower proportion of lawyers reported that they ask their clients about sexual abuse (64%).

Almost half (49%) of lawyers indicated that they inquire about neglect and the failure to provide the necessities of life with their family law clients, and half (50%) ask their clients about the killing of an animal or damage to property (Figure 1).

Figure 1: Percentage of respondents who ask their family law clients about family violence by type of violence, Canada, 2019



Source: Justice Canada, Survey of lawyers and Quebec Notaries on Family Law and Family Violence in Canada, 2019.

About 16% of lawyers indicated that they ask their family law clients about other forms of family violence that were not listed in the survey. The most frequently cited response among these respondents was that they use open-ended questions and conversations with their clients to identify the presence and type of family violence (38%).¹⁸ Among the other open-ended responses, 18% of lawyers reported that they ask their clients if they have experienced controlling behaviours from their spouse, such as restrictions imposed on their relationships and activities, including restrictions on communication, finances and transportation.^{19 20} About 17% of

¹⁸ These responses represent 6% of all respondents.

¹⁹ These responses represent 3% of all respondents.

²⁰ Please note that this category was developed through the analysis of responses to an open-ended question on other forms of family violence. For this study, responses were coded as controlling behaviours if they referenced restrictions on activities, movement and relationships, to differentiate them from other forms of abuse referenced in the responses to “Other” forms of family violence (for example, emotional and verbal abuse).

respondents wrote in the survey that they ask about experiences of emotional and verbal abuse, for example, repeated humiliation, insults, harassment and threats to invoke fear and anxiety.²¹

Other forms of family violence that respondents identified among their clients are online abuse, such as hacking, revenge porn and slandering on social media; litigation abuse; the presence of secondary abusers in the family or community; threats to call police, child protection and/or revoke child custody; threats to immigration status; and threats of self-harm or suicide by the partner.²²

Use of services to address family violence

Most survey respondents indicated a certain level of uncertainty about their knowledge of support services for their family law clients dealing with family violence. About 11% of respondents reported they were very or extremely familiar with support services for family violence, whereas close to three-quarters (73%) were slightly or moderately familiar with the services in their area.

The three services that were most often or always used by respondents' family law clients to address family violence included counselling (48%), police (44%) and child protection services (44%). The three services that were most frequently identified as never or rarely used were relocation services (28%), assessment services (23%) and parental education on the impacts of family violence on children (23%).

Liaising with criminal justice professionals and services

Close to half (47%) of lawyers reported that they occasionally had family law cases involving family violence where their clients were involved in concurrent criminal proceedings as either the victim or accused, and 40% of lawyers said this situation often happened in their family law cases.

When there were concurrent criminal proceedings for a family law case, lawyers who reported that they often or always liaise with the criminal justice professionals were more likely to report working frequently with a criminal defence lawyer when their client was the accused (47%) rather than when their client was the victim (6%). Lawyers were slightly more likely to often or always work with victim services when their client was the victim (15%) rather than the accused (2%) for concurrent criminal proceedings. There was almost no difference among lawyers who reported they liaised often or always with Crown prosecutors when their client was the victim (10%) or the accused (8%).

Concerns about identifying family violence

Overall, around three-quarters (76%) of respondents identified at least one concern they had with asking their family law clients about the presence of family violence. About 2% of respondents reported they had no concerns with asking family law clients about family violence.

The most frequently reported concern was the potential for increased risk to the client and/or to the lawyer (31%; Figure 2). This was followed by concern that using a family violence identification guide would cost a lot of money and time, including uncertainty as to who would cover the cost (29%). Respondents also reported concern with their lack of knowledge of support services and resources available to their clients who have experienced family violence (27%).

The least frequently cited concerns were respondents who indicated that they think screening for family violence is not part of a lawyer's responsibilities (3%), in addition to respondents who indicated that family

²¹ These responses represent about 3% of all respondents.

²² Counts for these categories were too low to be reported on their own according to suppression rules.

courts did not consider family violence (3%), and respondents who were not sure when to ask clients about family violence (8%).

Almost one-fifth (18%) of all survey respondents reported, in their own words, a concern about asking family law clients about the presence of family violence, that was different from those listed in the questionnaire. Among these open-ended responses, three major concerns were identified.

Among respondents who identified other concerns, one-quarter (25%)²³ reported they are concerned that asking about family violence will not be helpful to their clients because the courts do not necessarily consider reports of family violence in their decisions, especially if the family violence was inflicted against a spouse or intimate partner and not against a child or children. The second most frequently reported concern, among the “other” responses, was the issue of false allegations. Close to one-fifth (19%)²⁴ of respondents reported that they are concerned that asking about family violence may result in some parties making false allegations in an attempt to gain an advantage in litigation; some respondents also indicated that in their experience, this can result in considerable harm to children and their alienation from a parent.

The third most frequently cited “other” concern, which was reported in 16% of open-ended responses,²⁵ was that a family violence tool or questionnaire may not adequately address the full range of family violence issues. Clients may feel uncomfortable with the use of the tool or questionnaire, as it may be more blunt than having a conversation with experienced lawyers and mental health professionals.

Figure 2: Percentage of respondents who identified concerns with asking their family law clients about family violence, Canada, 2019²⁶



Source: Justice Canada, Survey of lawyers and Quebec Notaries on Family Law and Family Violence in Canada, 2019.

²³ These responses represent 5% of all respondents.

²⁴ These responses represent 4% of all respondents.

²⁵ These responses represent 3% of all respondents.

²⁶ The concerns came from a pre-determined list. The list of concerns presented to respondents was developed through consultations with family law lawyers during the development of the survey.

Conclusion

These data provide a portrait of lawyers' family law cases and the steps they reported taking to identify and respond to family violence in their family law cases.

In the 2019 survey, half of lawyers reported that they often or always take on family law cases that involve family violence. Most lawyers ask their family law clients about the presence of family violence, unless it was already known that there is family violence and most lawyers indicated that they use their professional judgment and experience to guide discussions on family violence. Notably, very few lawyers reported that they follow a tool or questionnaire to ask their clients about experiences of family violence.

Almost all respondents take on family law cases with children. When asking about the type of family violence experienced by their clients, lawyers frequently inquired about physical and psychological abuse, and to a lesser extent, sexual abuse.

When lawyers were asked if they have concerns with identifying family violence, the most commonly reported concern was the potential for increased risk to the client and/or the lawyer. The second most common concern was that a family violence identification tool or questionnaire would be too costly and time-consuming, as well as uncertainty over who would cover those costs. A third commonly reported concern for lawyers was their lack of knowledge about services and resources for clients dealing with family violence, although almost three-quarters of lawyers reported that they are somewhat or moderately familiar with services for clients in family violence situations. Only a small number of lawyers expressed the opinion that screening for family violence is not part of a lawyer's responsibilities.

These findings show that the lawyers who responded to the 2019 survey rarely use tools or questionnaires to identify family violence in their family law cases, and they have concerns about the financial and time costs of using a tool. During the development of the HELP toolkit, these concerns were taken into consideration to ensure the final product would be appropriate and useful for lawyers. For instance, the toolkit is designed to fit into lawyers' existing practices to reduce the time and work needed to integrate the HELP toolkit into their process for identifying family violence. Future iterations of the survey could provide insights into the use of the HELP toolkit and whether this has changed respondents' practices, as well as their concerns for identifying and responding to family violence in their family law cases.