



# EFFECTIVE LAW IN AN EFFECTIVE STATE

*Local conditions in the global context in the face  
of 21st century challenges of fighting crime.*

## **Canadian ‘good practices’ for representing clients in family and domestic violence cases**

**Author of the analysis:**

**Dr Grzegorz Skrobotowicz**

*Translated by:*

*Marta Cechowicz*



Fundusz  
Sprawiedliwości



Ministerstwo  
Sprawiedliwości



FUNDACJA  
INSTYTUT PRAWA  
USTROJOWEGO

*„Financed by the Justice Fund administered by the Minister of Justice”*

**A study prepared as part of the project:**

*Effective law in an effective state. Local conditions in the global context, in the face of 21st century challenges of fighting crime.*

**FUNDACJA  
INSTYTUT  
PRAWA  
USTROJOWEGO**



[www.ipu.org.pl](http://www.ipu.org.pl)  
<https://efektywne-prawo.org.pl/>



<https://www.facebook.com/fundacjaipu>



[fundacja@ipu.org.pl](mailto:fundacja@ipu.org.pl)



FUNDACJA  
INSTYTUT PRAWA  
USTROJOWEGO

„Financed by the Justice Fund administered by the Minister of Justice”

## Table of contents

Introduction .....	4
1. Canadian ‘good practices’ for representing clients in family and domestic violence cases .....	5
Summary .....	12
Bibliography.....	13

## Introduction

The Domestic violence is a serious issue that requires lawyers' attention and concern. In 2022, 28% of all documented cases of child maltreatment in Canada involved children exposed to spousal violence. A growing body of research shows that spousal violence has a negative impact on children, increasing the likelihood of child abuse and emotional and behavioural problems. Therefore, it is essential to develop and implement specific practices, from the initial contact with a person reporting a suspected crime until the conclusion of the proceedings. A child-centered justice strategy emphasizes non-adversarial dispute resolution, but the dynamics of family conflicts, disputes, and the violence that can result may make amicable solutions such as mediation and other alternative dispute resolution (ADR) techniques more appropriate<sup>1</sup>.

To mitigate the risk of conflict escalation, exclusive care with defined or supervised access is recommended as a 'good practice.' This may also involve a ban on direct contact between parents. It is important to be aware of the remedies for violating family law and criminal law, including criminal charges, restraining orders, and the measures set forth in the Domestic Violence Act. It is also crucial for all stakeholders (parties involved, their lawyers, and the courts) to dispel common myths about domestic violence. People should be aware that domestic violence may continue even after separation, and that it has an impact on parenting and contact with the child against whom violence has been committed<sup>2</sup>.

---

<sup>1</sup> Action Committee on Access to Justice in Civil and Family Matters (2013, April). Meaningful Change for Family Justice: Beyond Wise Words. Final Report of the Family Justice Working Group. <https://www.cfcjfcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf> [accessed on 28.07.2023, 20:00].

<sup>2</sup> Barreau du Québec (July 2022). Personnes victimes d'agression sexuelle et de violences conjugales. Guide des meilleures pratiques en matière d'interrogatoires et de contre-interrogatoires. <https://www.barreau.qc.ca/media/3214/guide-meilleures-pratiques-interrogatoires-contre-interrogatoires.pdf> [accessed on 28.07.2023, 20:00].

## 1. Canadian ‘good practices’ for representing clients in family and domestic violence cases

The Canadian Incident Study of Reported Child Abuse and Neglect (CIS) is one of the national surveillance programs of the Public Health Agency of Canada (PHAC)<sup>3</sup>, dedicated to the health of children in Canada in conjunction with other national surveillance programs on unintentional injury, perinatal health, and chronic and infectious diseases. Surveillance, which is a core function of public health, is a systematic process of data collection, expert analysis and interpretation, and communication of information in order to take actions that are crucial to public health. The CIS examines the incidence of reported child maltreatment and the characteristics of the children and families investigated by child welfare authorities in all 13 provinces. This data is key to developing ‘good practices’ and better understanding of child abuse and neglect and responding to this very important issue of children’s health and well-being<sup>4</sup>.

Recent years have seen some changes in the family law regulations in many Canadian provinces. The Canada’s Divorce Act and the British Columbia’s Family Law Act<sup>5</sup> are two examples of such legislative changes. The Divorce Act has been amended to introduce measures to support courts in dealing with family violence (FV). Pursuant to this Act, courts are obliged to take into account cases of domestic violence and its effects when deciding on the best interest of the child.

While these new acts are crucial for helping victims of family violence, the Divorce Act does not expressly provide that lawyers are obliged to have received training in FV or that they must systematically screen for FV when taking on a new case. This raises the following questions: Are legal practitioners capable of identifying situations in which these provisions could be applied? Do they have the qualifications and training needed to handle FV cases? FV is an important factor in family law cases. When FV is present, legal expertise in the matter is fundamental to identifying all of the family law issues that need to be addressed, the support

---

<sup>3</sup> *The Public Health Agency of Canada.*

<sup>4</sup> <https://cwrp.ca/incidence-studies/canadian> [accessed on 28.07.2023, 22:00].

<sup>5</sup> *Canada’s Divorce Act and British Columbia’s Family Law Act.*

services a client might need and the means of promoting the safety of the client and their children throughout the judicial process<sup>6</sup>.

The Code of Professional Conduct for Lawyers<sup>7</sup> provides that lawyers must always act in the best interests of their client(s) (Sec. 23). In addition, the lawyer owes the client the duty to be competent (Sec. 20) and to provide a high quality service (Sec. 22). Lawyers must carry out their professional activities in a competent way and to do so they must broaden and update their knowledge and skills (Sec. 21). To this end, lawyers have an obligation to continue professional development: they are required to complete at least 30 hours of approved training during each 2-year reference period, including 3 hours of training on ethics, professional conduct or professional practice. More specifically, before accepting or pursuing a mandate, a lawyer must bear in mind any limits to their skills in light of the area of law involved or the nature of the professional activities required, the time available for carrying out the mandate and the possibility of collaborating with another person. If the lawyer believes such limits will jeopardize the quality of their services or the proper protection of the client's interests, they must notify the client and advise the client about the conditions for the performance of the mandate so the client can make an informed decision. A lawyer who, with the consent of the client, undertakes or pursues a mandate notwithstanding the limits identified must take reasonable means to obtain the necessary assistance for its performance (Sec. 29). A lawyer must cease to act for a client if the lawyer determines that they do not have the competence required to continue to perform the mandate (Sec. 49).

The Report of the Expert Committee on Support for Victims of Sexual Assault and Domestic Violence<sup>8</sup> recommended creating the so called *bank of sexual assault and FV lawyers*<sup>9</sup> in private practice who should receive relevant and lifelong training in such matters. This led to establishing a bank of lawyers in the province of Quebec who specialize in sexual and family violence. Anyone who wants to be represented by a lawyer, especially a family

---

<sup>6</sup> Canadian Judicial Council (2004). *Ethical Principles for Judges*. [https://cjc-ccm.ca/sites/default/files/documents/2019/news\\_pub\\_judicialconduct\\_Principles\\_eng.pdf](https://cjc-ccm.ca/sites/default/files/documents/2019/news_pub_judicialconduct_Principles_eng.pdf) [accessed on 21.07.2023, 16:00].

<sup>7</sup> *The Code of Professional Conduct of Lawyers* - [https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-\(1\)/Codes-of-Professional-Conduct](https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-(1)/Codes-of-Professional-Conduct) [accessed on 27.07.2023, 16:00].

<sup>8</sup> *The Expert Committee on Support for Victims of Sexual Assault and Domestic Violence*.

<sup>9</sup> *The Bank of sexual assault and FV lawyers*.

lawyer in private practice, who has been trained and is aware of the realities of victims of FV and has been prepared to inform, advise, assist or represent them, may access the bank. Lawyers registered with the bank have received free, general training in the field of FV, financed by the *Minister de la Justice du Quebec* and available to lawyers and other professionals who are interested in developing know-how and strategies to better advise and support victims in the legal proceedings.

Canadian judges are another group of lawyers. In accordance with the Judicial Code of Ethics and the Code of Ethics for Municipal Judges of Quebec,<sup>10</sup> the judge has a duty to foster his professional competence (Sec. 3) and should be, and be seen to be, impartial and objective (Sec. 5). The judge should also uphold the integrity and defend the independence of the judiciary, in the best interest of justice and society (Sec. 10). A recent amendment to the Act introduced a requirement for judges to complete a professional development program on the realities of sexual and domestic violence (Article 257 of the Courts Act<sup>11</sup>). On 26 November 2021, the National Assembly of Quebec passed Bill 92 - an Act to create a court specialized in sexual and domestic violence.<sup>12</sup> The Act provides that candidates for the office of judge (municipal, common court or justice of the peace) are required to undertake to complete the professional development program if appointed, on the realities of sexual and domestic violence established by the *Conseil de la magistrature*. Although the newly established Division Specialized in Sexual Violence and Domestic Violence is part of the Criminal and Penal Division of the Court of Quebec, the requirement to complete a professional development program applies to every person running for judgeship, not just for the Criminal Division. The Act provides for continuing education on the realities relating to sexual violence and domestic violence to persons who may intervene within the specialized court, in particular defence lawyers, prosecutors, clerks, investigators, police officers, court employees, translators and social workers. Unfortunately, as the Act applies only to those who can intervene within the specialized Criminal Division, the new law does not apply to lawyers and other family law practitioners.

---

<sup>10</sup> *The Judicial code of ethics and the Code of ethics for municipal judges of Québec* – <https://www.canlii.org/en/qc/laws/regu/cqlr-c-t-16-r-1/latest/cqlr-c-t-16-r-1.html> i <https://www.legisquebec.gouv.qc.ca/en/document/ct/t-16,%20r.%202> [accessed on 27.07.2023, 16:00].

<sup>11</sup> *Courts of Justice Act* - <https://www.ontario.ca/laws/statute/90c43> [accessed on 26.07.2023, 16:00].

<sup>12</sup> *Bill 92 - An Act to create a court specialized in sexual violence and domestic violence* - <https://www.canlii.org/en/qc/laws/astat/sq-2021-c-32/latest/sq-2021-c-32.html> [accessed on 24.07.2023, 16:00].

Given the increase in the number of litigants acting alone before the court, especially before family courts, equipping judges with the skills and training necessary to handle FV cases is all the more important considering that the judge is one of the few people in a position to detect FV, even if the judge is not obligated to systematically screen for FV in every litigant whose case they hear. However, in the context of a family dispute, the court may suspend the proceedings or adjourn the hearing at any time to enable the parties to enter into or continue mediation. Before making such a decision, the court considers such factors as whether there is an equal balance of power between the parties and whether there have been incidents of FV.

In Canada, notaries can also help separating couples navigate various steps, from support payments and child custody to the separation agreement. Under certain conditions, a notary may also represent a party in court. The Code of Ethics for Notaries<sup>13</sup> in Canada obliges every notary to consistently strive to maintain up-to-date knowledge of their profession. Notaries must always remain informed of developments in the areas in which they practise, and maintain their skills in these areas (Sec. 5). However, like lawyers, they have no specific ethical obligation to obtain training in FV or to screen their clients for FV.

Family mediators in Canada include lawyers, notaries, social workers, couples therapists, psychologists, psycho-educators and career advisors. All of them are required to comply with their respective codes of professional conduct and best practices.

Since the codes of professional conduct of the different groups involved do not necessarily include specific rules regarding family mediation practice, the *Comité des Organes accréditeurs en médiation familiale* (COAMF) considered it necessary to establish common standards of practice to ensure high standards of practice, as well as to harmonize the quality of family mediation practices. These can be found in the guide entitled *Standards of Practice in Family Mediation*.<sup>14</sup> It should be noted that these standards do not have the force of law; rather, they constitute a type of self-regulation specific to this field.

---

<sup>13</sup> *The Code of ethics of notaries* - <https://www.legisquebec.gouv.qc.ca/en/document/cr/n-3,%20r.%202> [accessed on 26.07.2023, 16:00].

<sup>14</sup> *Standards of Practice in Family Mediation* - <https://www.oafm.on.ca/about/standards/standards-of-practice/> [accessed on 28.07.2023, 20:00].



What is particularly interesting about the guide is that it includes an entire section on domestic violence (DV, chapter 5) and the rights and obligations of family mediators in a DV situation. Ensuring the psychological and physical well-being of their clients represents the guiding principle of the family mediator's approach in a DV context (5.2.1). Furthermore, it is the duty of all mediators to act competently while taking into account the particular issues within a domestic violence context (5.2.2). In the context of domestic violence the mediator's competency includes the ability to identify the problem and the appropriate intervention. The mediator may also suspend or terminate the mediation process if there is persistent domestic violence and the abuser or the abused person is unable to negotiate respectfully face to face. When it comes to FV, the guide stipulates that:

- 5.3.1. The family mediator needs to understand two appropriate tools/ techniques for recognizing domestic violence and distinguishing it from strategies couples use in fighting.
- 5.3.2. In each new family mediation the family mediator must use the means that he deems pertinent to differentiate the type of dynamic to which he is confronted. That is; circumstantial conflict, the dynamics of high level conflict and finally domestic violence.
- 5.3.3. This evaluation is made continuously throughout the family mediation process.

In addition, the Regulation respecting family mediation,<sup>15</sup> which sets out the conditions for certification, supervision and the fees payable by the government for family mediation services, requires that family mediators be certified, which involves completing a basic training course in family mediation that includes at least 6 hours to promote awareness of domestic violence, in particular spousal abuse (Sec. 2(4)). Quebec's Code of Civil Procedure<sup>16</sup> provides that individuals who provide a certificate attesting that they have contacted a victims assistance organization recognized by the Minister of Justice for help as a person who is a victim of FV are exempt from participating in the mandatory mediation information session (Sec. 417).

The Canadian authorities encourage legal practitioners to be proactive and broaden their knowledge on this important social issue until more legislative reforms have been made to more

---

<sup>15</sup> *The Regulation respecting family mediation.*

<sup>16</sup> *Quebec's Code of Civil Procedure* - <https://www.legisquebec.gouv.qc.ca/en/document/cs/c-25.01> [accessed on 28.07.2023, 20:00].

effectively address FV within the justice system (e.g., mandatory FV training for family lawyers). There are a growing number of resources available to legal practitioners who want to improve their knowledge in family law cases involving FV. The most important include:

- 1) Educating oneself about FV, dispelling prejudices and myths, believing victims of FV and developing *know-how*;

The information kit developed by the *Institut National de santé publique du Québec* (INSPQ) is a good starting point for anyone who is not familiar with FV. It addresses myths and prejudices about FV that need to be dispelled. No change in the law is required for lawyers to believe women who report that they have been abused. If a female client has experienced FV, lawyers must understand that the judicial process can be a definite source of secondary victimization, a victim may be fearful of having contact with the abuser - especially in court, or may want to protect her children from the abuser, etc. All this requires interpersonal skills, the ability to listen carefully, and show empathy. Although limited to the context of examination, the *Barreau du Québec* has recently published best practice guidelines for examination and cross-examination of victims of sexual assault and domestic violence, which outline the best practices in relation to lawyers' know-how, skills and attitude as well as the myths and stereotypes and the impact of trauma.<sup>17</sup>

- 2) Screening for FV in every case;

Clients often cannot disclose immediately that they have experienced violence. Some women do not disclose domestic violence to their lawyers as they may be afraid of the consequences or they are just ashamed of it. Therefore, it is recommended that all new clients be screened for FV with the use of a standard two-step approach. First, a simple tool for a quick identification of FV indicators should be used. If there are indicators of FV or if the client has self-disclosed FV, another tool should be used. Screening should be administered in person, in a confidential and safe setting. This should be viewed as an ongoing process because the client's situation and level of risk and safety may change over the course of a case. There are many FV screening tools available. The best practice is to train legal practitioners how to use a specific

---

<sup>17</sup> Department of Justice, Government of Canada. (2021). HELP ToolKit: Identifying and Responding to Family Violence for Family Law Legal Advisers. <https://www.justice.gc.ca/eng/fl-df/help-aide/docs/helptoolkit.pdf> [accessed on 27.07.2023, 16:00].

screening tool. A final good practice is to verify the minute book as well as the existence of other civil, criminal or youth court proceedings.

3) Risk assessment and ensuring the victim's safety if FV is detected;

Once FV has been detected, the risk of danger can be assessed with other tools. The breakup of a relationship (separation or divorce) is one of the two risk factors that have been the most clearly established in the scientific literature, the other being a history of FV. In the context of separation, women are more likely to be the victims of homicide or serious injury. Depending on the danger risk, various legal tools can be used to keep the family safe. Of course, a protection order and sureties to keep the peace can be requested. Although shared parenting is often given priority in family law cases, sometimes in the best interests of the child it is necessary to question the ability of an abusive parent to be a good parent. Supervision of access rights (supervised custody exchanges or supervised visits) may be required to ensure a safe and neutral environment for the child and/or their parent.

4) Seeking services from specialized agencies or organizations.

Lawyers and judges can act only in legal matters and in keeping with their professional competence. However, they can always refer their clients, whether they are victims or abusers, to agencies or organizations that specialize in FV. In addition, each region in Canada has its own resources and organizations. Within each organization, it is possible to develop a network of resource people to build a stronger bridge between the resources they have and their clients. In addition, there are numerous publications aimed at providing a more-in-depth insight into FV issues and improving practices.

## Summary

In summary, lawyers and notaries have only general duties of competence and training, while judges are required to complete training on sexual violence and domestic violence. Family mediators are already required to take a training course on the realities of FV in order to be certified, and although they are just guidelines, the “Standards of Practice in Family Mediation” are still the most specific and detailed standards for detecting FV and navigating family mediation.

The recent legislative reforms aimed at giving more consideration to FV in family law cases were necessary. Such reforms must be implemented by all Canadian provinces that do not yet have the legal provisions to ensure consideration of FV in family dispute resolution. In addition, for the effective implementation of new laws, it is essential that all justice system workers receive more training so that they can effectively detect and identify FV, create a safety net around victims, and prevent secondary victimization. Training and awareness about FV, an important social problem, also prevent both ethical misconduct and legal reasoning that is based on FV myths and prejudices and constitutes errors in law, two crucial factors in restoring public trust in the justice system, especially for those who have experienced sexual violence and domestic violence. Additional resources designed to equip those involved in FV matters are being developed and made available free of charge to legal practitioners to help them improve their practices. The first step still remains to believe women who claim to be experiencing FV and not to discount or ignore their experiences or concerns.

## Bibliography

### Internet sources:

1. Action Committee on Access to Justice in Civil and Family Matters (2013, April). Meaningful Change for Family Justice: Beyond Wise Words. Final Report of the Family Justice Working Group. <https://www.cfcjfcj.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf> [accessed on 28.07.2023, 20:00].
2. Barreau du Québec (July 2022). Personnes victimes d'agression sexuelle et de violences conjugales. Guide des meilleures pratiques en matière d'interrogatoires et de contre-interrogatoires. <https://www.barreau.qc.ca/media/3214/guide-meilleures-pratiques-interrogatoires-contre-interrogatoires.pdf> [accessed on 28.07.2023, 20:00].
3. Canadian Judicial Council (2004). *Ethical Principles for Judges*. [https://cjc-ccm.ca/sites/default/files/documents/2019/news\\_pub\\_judicialconduct\\_Principles\\_eng.pdf](https://cjc-ccm.ca/sites/default/files/documents/2019/news_pub_judicialconduct_Principles_eng.pdf) [accessed on 21.07.2023, 16:00].
4. Department of Justice, Government of Canada. (2021). HELP ToolKit: Identifying and Responding to Family Violence for Family Law Legal Advisers. <https://www.justice.gc.ca/eng/fl-df/help-aide/docs/helptoolkit.pdf> [accessed on 27.07.2023, 16:00].
5. <https://cwrp.ca/incidence-studies/canadian> [accessed on 28.07.2023, 22:00].
6. [https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-\(1\)/Codes-of-Professional-Conduct](https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-(1)/Codes-of-Professional-Conduct) [accessed on 27.07.2023, 16:00].
7. <https://www.canlii.org/en/qc/laws/regu/cqlr-c-t-16-r-1/latest/cqlr-c-t-16-r-1.html> [accessed on 27.07.2023, 16:00].
8. <https://www.legisquebec.gouv.qc.ca/en/document/cr/t-16,%20r.%202> [accessed on 27.07.2023, 16:00].
9. <https://www.ontario.ca/laws/statute/90c43> [accessed on 26.07.2023, 16:00].
10. <https://www.canlii.org/en/qc/laws/astat/sq-2021-c-32/latest/sq-2021-c-32.html> [accessed on 24.07.2023, 16:00].

11. <https://www.legisquebec.gouv.qc.ca/en/document/cr/n-3,%20r.%202>  
[accessed on 26.07.2023, 16:00].
12. <https://www.oafm.on.ca/about/standards/standards-of-practice/>  
[accessed on 28.07.2023 , 20:00].
13. <https://www.legisquebec.gouv.qc.ca/en/document/cs/c-25.01>  
[accessed on 28.07.2023, 20:00].