
***Safety Planning in Family Law
Cases: An Emerging Duty of
Care for Lawyers?***

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Safety Planning in Family Law Cases: An Emerging Duty of Care for Lawyers?

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Summary:

Research and experience tells us that intimate partner homicides are the most predictable and preventable of murders. We also know that adversarial processes and adversarial lawyering escalate conflict and therefore risk. Our knowledge base of the predictive factors for domestic murder and murder-suicide is extensive. The research supporting the accuracy of various screening tools in identifying predictive factors is well known. And the steps that family/collaborative lawyers, mediators and arbitrators can take, based on informed screening, to enhance their own clients' safety (and their clients' spouses' safety)—the protective factors—are also well established.

Given this state of knowledge, this paper asks whether there is an emerging duty of care for family/collaborative lawyers, mediators and arbitrators to understand the predictive factors and protective factors, to apply the most appropriate screening tools and to engage in appropriate safety planning for clients who are at risk of being harmed or killed by their spouses.

Article:

The manner in which family law negotiations are conducted is in the midst of profound change.

There are many reasons for this. More parties are unrepresented; more clients want collaborative, non-adversarial negotiations; the variety and complexity of issues being negotiated has grown; the demographics of our clients have changed; more family lawyers are holding themselves out to be mediators and arbitrators; clients and professionals are more knowledgeable about the factors that influence negotiation, its effectiveness and safety; and best practices for identifying, assessing and managing power balance and family violence in negotiation are evolving rapidly and are supported by credible data.

In this context, procedural triage (screening) has emerged. Family lawyers, mediators, arbitrators, collaborative practitioners and parenting coordinators are increasingly seeking to identify, assess and manage power imbalances and risk before starting or even accepting a file.

There are three compelling reasons for family law dispute resolution providers to implement procedural screening and safety planning protocols into their work.²

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² Screening is mandated under the new British Columbia *Family Law Act*, s. 8, for all family dispute resolution professionals. Designated forms of training are required for all professionals providing such services and screening for family violence and power imbalances must be done by

First: there is a proven connection between family law negotiations and spousal homicide. “Membership in the marital status categories of separation and divorce significantly increases the risk of an early or premature death.”³ A legal consultation alone increases the chance that an abused spouse will be murdered. The Chief Coroner of Ontario noted in one case:

“This case represents one of many that have been reviewed where abuse victims have sought advice from family law lawyers shortly before being killed by their partner”.⁴

Adversarial processes and adversarial lawyering increase conflict between separating parties more than collaborative processes like mediation.⁵ The risk of femicide will be greater among separated parties participating in adversarial proceedings.⁶

Second, spousal homicides in the separation context are the most predictable and preventable of all murders. Research of such cases has yielded a clear set of predictors of spousal homicide.⁷

Third, even if no such risk of harm is present, the process of screening itself is procedurally invaluable as it helps family law professionals identify, assess and manage power imbalances and risk in their practices. It provides important information to design and deliver a dispute resolution process that is more likely to be effective in addressing the procedural needs of each client. This invariably will lead to better and more lasting outcomes, more satisfied clients, and safer processes.

all family lawyers, mediators, arbitrators, and parenting coordinators for the purpose of identifying, assessing and managing power imbalances, to ensure that the most appropriate and safest negotiation process is being used. B.C. is the first jurisdiction in Canada to formally recognize the emerging duty on family law professionals to conduct such screening. For more information, see “Family Law Act Transition Guide”, *CLEBC*, 2013.

³ Ellis, Desmond, *Marital Separation and Lethal Male Partner Violence* (2014) *Violence Against Women*, p. 3

⁴ *Annual Report of the Domestic Violence Death Review Committee*, 2011, Office of the Chief Coroner for Ontario, p. 36. In the case in question, the Report recommended that “*The Law Society of Upper Canada should adopt a policy of ensuring that lawyers who deal with family clients are aware of the risk and safety issues in domestic violence cases.*”

⁵ Ellis, *ibid*, p 13

⁶ Ellis, *ibid*, p.16. Also, see Ellis, Desmond and Stuckless, Noreen, *Mediating and Negotiating Marital Conflicts*, (1996) Sage Publications; 2011 *Ontario Domestic Violence Death Review Committee Report*, Office of the Chief Coroner, Case DVDRC-2011-02- OCC file # 2003-16227; Holtzworth-Munroe, Amy; Beck, Connie J. A.; & Applegate, Amy G., “The Mediator’s Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain” 48 *Family Court Review* (2010), No. 4, 646-662; Ver Steegh, Nancy, “The Uniform Collaborative Law Act and Intimate Partner Violence: A Roadmap for Collaborative (and Non-Collaborative) Lawyers”, 38 *Hofstra Law Review* 699 (2009); and Neilson, Linda C., “Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems” (2012), *Centre for Research and Education on Violence against Women and Children*, Western University, London, Ontario, Canada.

⁷ Ontario’s coroner produces a bi-annual report, the Domestic Violence Death Review Committee Report; see also www.spotthesigns.ca.

Family mediators have incorporated screening principles and processes into their work for years.⁸ The process is also now applied, by legislative requirement, to family arbitration⁹ and parenting coordination, and is increasingly being incorporated into collaborative practice, four-way lawyer-client meetings, and even litigation. In the courts, Information and Referral Coordinators and mediators in Family Law Information Centres, all trained to identify, assess and manage power imbalances and family violence, are screening cases that are before mediators, judges and dispute resolution officers as part of the family information and mediation services they provide.¹⁰

Lawyer Malpractice

The suggestion that lawyers may have a duty to incorporate current knowledge and best practices of screening for family violence into their daily practices is not a new one. Associate professor Margaret Drew (University of Cincinnati College of Law) wrote in 2005:

“Failure to recognize when a client or opposing party is or has been abused by a partner and failure to consider abuse in making strategic decisions are forms of lawyer malpractice..... No reason (for failing to take such steps) may be sufficient to overcome a cause of action for malpractice or other action for failure to recognize, advise on and strategize around issues of domestic violence.”¹¹

Drew explores the reasons why some family lawyers may be inclined to avoid this subject, including that they may have their own difficult history with family violence; they may not want to deal with the additional financial and legal complications that arise in such cases; they may feel they are inadequately trained and therefore just avoid asking questions all together; or they may wrongly assume that all they are dealing with is “high conflict” or emotional immaturity. But, she writes, standards of professionalism have evolved.

“At the heart of domestic violence practice is safety planning. At each stage of the litigation, the attorney and the client must discuss whether or not a certain action, inaction or strategy raises or decreases the risk of abuse to the client and other family members. ...

“Family law may be one of the few areas of law where malpractice may be committed solely by the attorney’s aggressively pursuing all legal remedies available to the client...For example, if the perpetrator has threatened that he will kill the client if she

⁸ See the *Ontario Association of Family Mediation Standards of Practice* and *Abuse Policy*, requiring all accredited family mediators to personally screen for domestic violence and abuse at the beginning and throughout the mediation.

⁹ The Ontario Ministry of the Attorney General's website has detailed information about the [screening requirements in family arbitration](#).

¹⁰ See the Ontario Ministry of the Attorney General [website](#) for more information about the services provided by court connected family information and mediation services; see also www.mediate393.ca.

¹¹ Drew, Margaret B., “Lawyer Malpractice and Domestic Violence: Are We Revictimizing Our Clients?” (2005) 39 *Fam. L.Q.* 7; University of Cincinnati College of Law, *Public Law and Legal Theory Research Paper Series* No. 08-28, December 1, 2008.

ever pursues him for child support, the well-intentioned lawyer may dramatically increase the risk to the client by filing and insisting that the father be required to pay every dime to which the client and the children are entitled.”¹²

Screening Tools and Research

Family mediators use data-based checklists and protocols to help them engage in the task of identifying, assessing and managing power imbalances and family violence.¹³ There are many such checklists, the Mediator’s Assessment of Safety Issues and Concerns being one of the more recent, publicly available and comprehensive such tools.¹⁴ Another widely researched and respected tool for assessing the potential for lethal outcome is Jacqueline Campbell’s Danger Assessment. <http://www.dangerassessment.org/>.

The percentage of family law cases involving some form of family violence/abuse has remained steady at about 50% in all research to date. The important first step is therefore to structure a screening interview that permits prospective clients to feel safe enough to disclose any history of violence.¹⁵ Victims of family violence are often too afraid, embarrassed or unaware of the risk they face to disclose it to their lawyers or to understand its significance. The higher the incomes and social status, the more obstacles there are to disclosure. Screening training includes extensive review of the research and literature around family violence, and how one can, through careful and specific forms of questioning, learn enough information to accurately assess the risk of harm resulting from any violence that is disclosed.

Predictors of Continuing Violence: Linda Neilson, in a 2012 research paper¹⁶, explains the factors that predict domestic violence and compares them to the factors that predict domestic

¹² Drew, *ibid.* Drew & Buel, Sarah, address the symmetrical “duty to warn” that lawyers for abusive clients may have, in “Do Ask and Do Tell: Rethinking the Lawyer’s Duty to Warn in Domestic Violence Cases”, (2006) 75 *University of Cincinnati Law Review* 447-496. “Empirical data document that while domestic violence victims face high risk of recurring abuse, batterers’ lawyers may be privy to information that could avert further harm. ... We contend that a lawyer handling domestic violence cases has a higher duty to recognize risk factors unique to those matters, including verbal and non-verbal clues a client might give that a third party is at heightened risk...apart from whether an attorney discloses client threats, she may be held liable in tort for failure to properly investigate, attempt to dissuade or warn in the context of domestic violence cases.” (447, 449)

¹³ All mediators who are accredited by an accrediting organization such as the Ontario Association of Family Mediation, Family Mediation Canada, or the ADR Institute of Canada, are required as a condition of their status to engage each client in an individual, confidential pre-mediation screening process before deciding whether to accept the case. See for example the OAFM Policy on Abuse, <https://www.oafm.on.ca/docs/abuse-policy.pdf>, which sets out in some detail the steps accredited family mediators must follow when screening their clients.

¹⁴ See Footnote 6, *supra*.

¹⁵ Ontario’s Superior Court of Justice, in *Wainwright v. Wainwright*, 2012 ONSC 2868(Canlii) established the best practices in screening for power imbalances and family violence in family mediation and arbitration cases, confirming that the Abuse Policy of the OAFM should be applied in family mediation and mediation-arbitration processes. For more information on best practices in mediation-arbitration screening, see Linton, H., “Risky Business: Why Family Mediator-Arbitrators Should Take Risk Screening Seriously”, (2014) 23 *Canadian Arbitration and Mediation Journal* No. 1, 59-64.

¹⁶ “Enhancing Safety”: see footnote 6.

homicide, finding that the following are associated with continuing domestic violence:¹⁷

- A pattern of past emotional, financial, physical or sexual violence and abuse against family members.
- Sexual abuse
- Financial control with abuse
- Emotional and psychological abuse associated with coercion or control
- Prior criminal conviction for violence (keeping in mind that the fact that domestic violence is raised for the first time is not a reliable indicator that the domestic violence was a first-time occurrence. The normal tendency is for domestic violence to occur many times before it is disclosed to police or to lawyers.)
- The degree to which the violence is recent. While, subject to the cautionary comments in the endnote, the degree to which domestic violence is recent can be an important risk factor, the research is indicating that the pattern of past domestic violence conduct is as important as the particulars of the latest incident.
- Abuse and violence toward other family members, former intimate partners, and members of the public
- Escalation of frequency or severity of abuse and violence
- Patterns of generalized violence against non-family members
- Controlling and obsessive forms of emotional or psychological bond (e.g., monitoring, stalking, high levels of possessiveness, jealousy).
- Failure to comply with restraining or no-contact orders, support and other court orders, and dropping out of domestic violence intervention programs. All are documented indicators of heightened risk. (Note: This is why maintaining a continuing record of compliance with court orders and treatment programs is extremely important as is requiring domestic violence intervention programs to release information regarding participation. When a party drops out of a program, risk increases and clients should take preventative action.)
- Victim fear of the perpetrator. Targeted persons' fear of perpetrators has been

¹⁷ Neilson, *ibid*, p. 49.

empirically verified as a reliable predictor of continuing domestic violence (although the absence of fear is not a reliable indicator of safety). People who are targeted by domestic violence are often unaware of their own danger.

- Unstable lifestyle (for example erratic employment, refusal to assume family responsibilities)
- Substance abuse (alcohol or drug)
- Separation, which is known to be a period of enhanced risk, particularly for women.

Predictors of Lethal Outcome:

Compare these with the factors that Neilson's research¹⁸ suggests are predictive of domestic homicide:¹⁹

- Access to weapons, particularly guns. Removal of access to guns is critically important in domestic violence cases.²⁰
- Unemployment. Perpetrator unemployment is identified regularly and appears to be a strong predictor (when associated with other indicators). This is perhaps, in part, because avoidance of support obligations is a form of continuing harassment and control as well as a form of economic child abuse. It may reflect some of the behaviors characteristic of many domestic violence perpetrators such as self-indulgence, entitlement, and non-acceptance of responsibility. Alternatively, social circumstances that produce stress are known to increase danger.
- Pending or actual separation (for female victims).
- Prior domestic violence, escalating in severity or frequency. Not all cases will include documented incidents of prior domestic violence known to the police. The absence of a record of police involvement does not indicate safety.
- The presence of children in the home, particularly children not biologically related to the perpetrator.

¹⁸ Neilson, *ibid*, p. 60-62.

¹⁹ Neilson notes that about 15% of cases of homicidal domestic violence are not predictable using any current indicators or assessment tools.

²⁰ Neilson notes that judicial options for removal of guns in a family law context are now considerably reduced with the abolition of Canada's long gun registry.

- Death threats. (The absence of a death threat may not indicate safety when other factors are present.)
- Attempted strangulation (choking). Prior non-lethal strangulation is strongly associated with homicidal domestic violence
- Suicidal tendencies and attempts to commit suicide. Perpetrator threat of, consideration of, or attempted suicide should be taken very seriously since suicidal tendencies are strongly associated with domestic violence homicide followed by suicide in the domestic violence literature
- Stalking, monitoring
- Forced sexual acts and sexual abuse. Keep in mind that both victims and violators are known to under-report sexual abuse.
- Victim fear of being killed
- Controlling, obsessive forms of psychological bond. For example a pattern of coercive domestic violence and inability to contemplate the possibility of life without the other; high levels of possessive jealousy.
- Threat(s) with weapons
- Violence during pregnancy
- Significant perpetrator life changes

Other factors that have commonly been identified as predictors of lethal domestic violence outcome are: ²¹

- Child abduction
- Threats to harm children
- Prior police involvement
- Violation of protection orders
- Age disparity
- Common law relationship and young age of victim (under 25)
- Anti-social personality disorder
- Depression
- Child custody and access dispute

²¹ Neilson, *ibid*, p. 62

- Relocation of victim with children to different jurisdiction
- Animal cruelty
- Alcohol and drug abuse

For those seeking a comprehensive understanding of the factors that predict murder, the Domestic Violence Death Review Committee Report of Ontario's Coroner includes a list of the risk factors present in the cases it reviews.²²

A Case Study: Katherine and Kyle Newman

On January 12, 2012, Oakville Ontario resident Kyle Newman went to the home of his estranged wife Katherine and stabbed her to death. He then went to the Halton police station and began ramming cars in the lot. When confronted he drew a knife and was shot by the police. The tragic murder-suicide left their three young sons without parents and shocked the community. It also came as a surprise to the lawyers, according to an article written by Kyle Newman's lawyer:²³

"There had been four-way meetings and case conferences at which they were more than civil to each other. They were nice people.... One day we were emailing each other about travel consents..... two days later, they were both dead. No clues. No hints."²⁴

And yet, at least one person close to the couple saw deeply troubling behaviours. Katherine's father, retired judge Walter Stayshun, said at the time:

"I've been worried for the last year and a half because he's changed. I was afraid he was going to do something to her."²⁵

He noted that because there was no history of violence, his daughter had been unable to obtain a restraining order. He spoke of his son-in-law becoming more and more irrational, and of having difficulty facing hard financial realities. "He needed help, and he didn't get help", Justice Stayshun was quoted as saying. He believed his daughter's murder was planned.²⁶

²² The list of 39 risk factors are described in some detail in Appendix B to the Report.

²³ Cochrane, Michael, "Hearts Broken All Around". JUST magazine, September 2012.

²⁴ Cochrane, *ibid*.

²⁵ "Father Mourns Daughter Murdered Thursday", Hamilton News, January 16, 2012. <http://www.hamiltonnews.com/news/father-mourns-daughter-murdered-thursday/>

²⁶ "A Shattered Father Speaks", Toronto Sun January 14, 2012.

The Newman case highlights the challenges faced by family law dispute resolution professionals in our practices. The case is discussed in this paper without any criticism of the capable counsel acting for Katherine and Kyle. It is not possible, nor necessary, to blame or pass judgement on anything either counsel did or did not do in this complicated, unusual case. But the profession can, in hindsight, learn valuable lessons from cases where such tragedy occurs.

The parties had been separated for about 20 months when the murder-suicide took place. During this time, with the assistance of counsel, they had tried negotiating settlements, documented by voluminous correspondence in the court file. However, the conflict was escalating, even as the parties were able to resolve some issues at a case conference held two months before the murder-suicide. After many efforts to negotiate through counsel, Katherine eventually instructed her lawyer to bring a motion. Katherine was murdered three weeks after Kyle was served with her affidavit, less than a week before the scheduled motion date.

According to her affidavit (Kyle never filed a responding affidavit), Katherine was doing all she could to work with Kyle, but he actively worked against her at every turn. She described his behaviour with such words as bitter, hostile, denigrating, defensive, disdainful, belligerent, aggressive, threatening, angry, and accusatory.

She felt stymied in her efforts to cooperatively parent the children, obtain financial disclosure, sell the house, communicate respectfully in front of the children, and obtain appropriate child and spousal support. She claimed that Kyle was harassing her and accusing her of blocking his access to the children. On one day he called eight times and left four voice messages. "Since we separated, (Kyle's) communications with me have become increasingly harassing, critical and abusive. "²⁷

Although there was no known history of violence, Katherine's affidavit discloses several of the predictors of spousal homicide identified by Linda Neilson:

- *Separation*: the parties had been separated for over one year.
- *Suicide threat*: As the negotiations proceeded, Kyle became "increasingly belligerent and aggressive towards me. It was also during this period that (Kyle) threatened to kill himself."
- *Presence of children in the home*
- *Police involvement*: the police were called to the home in February 2011 when Kyle

²⁷ Katherine Newman swore a detailed affidavit, in support of her motion seeking primary care and decision making for the parties' three young sons; retroactive child support; retroactive spousal support; financial disclosure including credit and mortgage applications, bonuses and credit card statements; non-communication provisions; and orders requiring Kyle to refrain from disparaging Katherine or discussing the case with the children, to refrain from permitting the children to drive a car and requiring him to use seat belts when the children were in the car. The affidavit was sworn and served December 23, 2011 with a motion return date of January 18, 2012.

refused to leave the home (the parties had a nesting arrangement after the separation.) Kyle later called the police himself on another occasion.

- *(Indirect) death threat.* Kyle insisted on an urgent agreement to name guardians for the children “in the event of their deaths”, which may have been or been perceived as an indirect threat.
- *Unemployment.* Kyle had a history of employment instability, having lost his job in 2009, obtaining new work and then leaving it in 2010, and being terminated from another job in 2011. He had just started a new job in the fall of 2011.
- *Significant perpetrator life changes.*
- *Child custody and access dispute*

The Newman case highlights many of the tensions facing family lawyers and other dispute resolution professionals and raises professionalism questions such as:

- In all too many cases, the person who may be at risk of being harmed may also need the protection and assistance of the court. If adversarial processes are more likely to increase conflict, what should a lawyer do when representing an at-risk client?
- How do we interpret risk when there is no known history of violence?
- How do we help clients who do not perceive themselves to be at risk?
- What do we do once we have assessed risk? How can we help both parties stay safe?

Safety Planning in Family Law: be guided by the research

Family law professionals can turn to the research for guidance on how to respond when they have concerns about risk.

“Separation is the most common risk factor present in a domestic homicide. (81%). While leaving may be the best response to a violent relationship, it is in leaving without adequate safety planning that the majority of women are killed.”²⁸

One recurring theme emerges: mediation can be safer than lawyer negotiations or litigation for victims of violence, their children, and perpetrators of violence when it is provided by a professional who designs a supportive, non- judging and empowering process that includes extensive screening for power imbalances and family violence.

Research has found that voluntary mediation (if it includes appropriate screening by a skilled mediator) can be safer for victims of violence than adversarial processes such as lawyer-

²⁸ Coupal, Jocelyn, “Spot the Signs- Before Someone Dies”, www.spotthesigns.ca

negotiations.²⁹ As well, research confirms the conclusion that the litigation process escalates conflict, and thereby escalates risk of parties being harmed or killed.³⁰

Research findings show that those who engage in violent acts are less likely to do so again if they are supported or feel supported by friends, family, “the system” and society.³¹

Some Suggested Steps for Safety Planning in Potentially High Risk Cases:

- 1- Take all clients through extensive screening interviews before choosing a dispute resolution process and a professional to provide that process. Ensure that best screening practices are followed in any mediation, arbitration or med-arb process in which you are participating. Become informed about those best practices. Take screening seriously.
- 2- Do not make assumptions about the risk involved in any case, no matter who the parties are, what their incomes are, what the issues being negotiated are, and who their lawyers are. High risk cases cut across all personal and professional demographics.
- 3- Mediate whenever possible and appropriate, using a mediator who follows the screening protocols and Abuse Policy of the Ontario Association of Family Mediation. (See *Wainwright v Wainwright* for judicial comment on best screening practices in family mediation and arbitration.³²) If mediation is not an option because the parties need more support, consider collaborative process. Adversarial lawyering and approaches should be avoided.
- 4- Never let clients be alone together to discuss settlement options. Not during a mediation, negotiation or four-way meeting, even if they ask to be left alone. Never

²⁹ see Ellis, Desmond and Stuckless, Noreen, *Supra* note 6, page 62.

³⁰ See Ellis, Desmond, “Divorce and the Family Court: What can be Done About Domestic Violence?”, (2008) 46 *Family Court Review*, 531.

³¹ See “Men’s Accountability From Two Voices” (2011) Centre For Research and Education on Violence , London Ontario.
http://www.vawlearningnetwork.ca/sites/learningtoendabuse.ca.vawlearningnetwork/files/Mens_Accountability_from_two_voices.pdf

³² Wainwright, *supra* note 15.

assume that you have accurately assessed risk and do not take unnecessary risks with your clients' safety. Risk assessment is hard to get right, and even the most seasoned professionals make mistakes. Err on the side of caution when you can.

- 5- Arrange, as a rule, to have the vulnerable person arrive last for mediations, meetings or at court, and have the potentially dangerous person arrive first. Have the vulnerable person leave first, holding the dangerous person back long enough for the first party to be assured that they will not be followed.
- 6- Ask clients what process will make them feel safe and empowered. Discuss process options with clients from a safety planning, power balance perspective. Elicit from clients all concerns they may have about a process. Be adaptable in how you practice and be prepared to require accommodations for clients in all family dispute resolution processes. If you cannot address a client's concerns, recommend another process.
- 7- Have separate waiting areas and as a rule do not permit parties to wait alone together at any time, either for mediation, arbitration, four-way meetings or at court.
- 8- If you are using shuttle mediation, ensure that clients' caucus rooms are far apart and that neither party knows what room the other is in.
- 9- Train staff and colleagues to understand the basics of risk and safety planning, and have them familiar with your standard safety protocols at the office.
- 10- Create a safe environment for clients to disclose their fears and concerns to you as lawyer, mediator, parenting coordinator or mediator-arbitrator.
- 11- Ensure that the confidentiality of safety disclosures, in all processes, will be respected by the process and the person providing the process. If confidentiality of disclosures of fear, risk, violence, etc., is not maintained, clients and children could be put at risk of harm. Ensure that any mediator, parenting coordinator and mediator-arbitrator

follows best practices in screening, confidentiality and safety planning.

- 12-Be familiar with basic safety planning guides. The services in your community for abused men and women will have safety planning resources. All family law professionals should have copies of such resources in their offices and available to clients. One excellent general such resources is “Safety Planning Across Culture and Community”, published by Ending Violence Association of BC.
[http://www.endingviolence.org/files/uploads/ure_and_Community_Manual - EVA BC Dec 9 2013.pdf](http://www.endingviolence.org/files/uploads/ure_and_Community_Manual_-_EVA_BC_Dec_9_2013.pdf)
- 13-Be familiar with the many risk assessment resources available to victims of violence, to help them (and their lawyers) better understand the potential risk they (and their families, and/or their spouses) may be facing. For example,
www.dangerassessment.org.
- 14-Understand different types of violence, how to identify each, and what the implications are of such differentiated assessments. The article by Joan Kelly and Michael Johnson is an excellent resource for this purpose. (see footnote 16)
- 15-Be familiar with the various screening tools including their limitations.
- 16-Secure a working relationship with the Family Court Support Workers in your jurisdiction. Know when to refer a client or prospective client for support or counselling before, during and after a family dispute resolution process.
- 17-Use the court connected onsite mediators whenever possible to meet with and screen clients where there are any concerns. Use the resources in the Family Law Information Centres in all courts, including the knowledgeable Information and Referral Coordinators.
- 18-Understand link between violations (however minor) of bail terms (however seemingly

minor the assault) and risk of escalated assault or murder, and have a working relationship with a good criminal lawyer to whom victim clients can be referred for advice about violations of bail and restraining orders.

19-Be familiar with the resources to support men, particularly if the man appears depressed, isolated, unable to take responsibility, is blaming and critical and unsupported.

20-Discuss your risk assessment directly with the client. If you are mediator, mediator-arbitrator or parenting coordinator, discuss your concerns for each party with each party, ensuring that you maintain confidentiality of all that they both told you and yet are still supportive of the needs and concerns that each disclosed to you in confidence. Help clients better assess their own risks and better engage in their own safety planning.

21-Discuss with clients the reasons for the instructions or settlement positions they give. A client may be prepared to settle for an amount that you think is unreasonable because that is what they believe will keep them safe.

22-Always take very seriously client perceptions of danger. Research shows that a client's fear of being killed is a reliable predictor of his or her murder.

23-Know the steps to take and referrals to make if a client hints at suicidal thoughts or plans. Have a resource sheet to provide to clients who are suicidal, including referrals to local agencies. Take client disclosures of suicidal thoughts or acts very seriously. Take client disclosures of the other party's suicidal thoughts, threats or acts very seriously.

24-Know your obligations under the *Rules of Professional Conduct* to report any information suggesting that a person is at risk of imminent harm. (Rule 3.3-3 of the Amended Rules of Professional Conduct.)

25-Know your obligations as a mediator, arbitrator or PC under s. 72 of the *Child and Family Services Act* to report a child at risk of harm.

26-Take appropriate steps to keep yourself safe. There are too many cases where family lawyers, mediators and their clients have been harmed or killed and where little or no screening/safety planning was done.

27-Pay attention to and take seriously the fears, intuitions and instincts of family and friends.

28-Support both parties. If you have a concern that a party is depressed, address that concern in a supportive and positive way and seek undertaking that clients will obtain counselling and other supports. Design your process with the safety and well being of both parties and their children in mind and do not proceed until you are satisfied that your and/or your client's concerns have been appropriately addressed.

29-Educate clients about the harmful impact that adversarial court processes can have. When they are providing instructions to take procedural steps, ensure that you have helped them contemplate, identify and assess risks. Ask clients to consider and share with you their safety plan for the most dangerous times, including when clients are retaining counsel, having lawyer meetings, serving proceedings, four-way meetings, mediation, an arbitration hearing, and the time leading up to and immediately following a court hearing.

