



Family Violence & Family Law Brief

Contributing to the Health and Safety
of Family Violence Survivors: Reducing
the Risks of Secondary Victimization

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Design

Daphnée B. Ménard, based on Natalia Hidalgo, Communications Coordinator at the Centre for Research & Education on Violence Against Women & Children

Translation

Kathryn Lawson

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Contributing to the Health and Safety of Family Violence Survivors: Reducing the Risks of Secondary Victimization

The same family violence (hereafter “FV”) case may involve parallel interventions across several areas of law, each with its own objectives. Little data is available on the number of cases involving the family, child protection, criminal, and immigration law systems, but a report by the Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence (2013) containing information from several sources gives a better idea of the incidence of parallel child protection, family and criminal law proceedings involving the same family. Among other information, the report says that over one third (38%) of lawyers surveyed in 2010 at the National Family Law Program indicated that in situations involving FV, their clients often or always were also before the criminal courts while the family law proceeding is ongoing. Furthermore, data from the Canadian Incidence Study of Reported Child Abuse and Neglect provides information with respect to child maltreatment cases in 2008:

- There were 50,304 cases in which intimate partner violence was a primary, secondary, or tertiary ground for a child maltreatment investigation. In 36% of these cases, charges were laid in the adult domestic violence case; this represents 18,010 cases where there was a child maltreatment investigation and a criminal proceeding.
- Criminal charges were laid in 28% of cases in which there was also a maltreatment investigation and a child custody dispute; this represents 2,049 cases where a child protection worker reported that the criminal, family, and child protection systems were all involved with the family.

Considering that many cases before family and/or child protection courts are also before criminal courts, this brief looks at survivors’ experiences of navigating the broader judicial system, not just the family law system. Engagement in multiple proceedings can easily prove complex and even confusing. In fact, a multiplication of proceedings has detrimental effects on FV survivors, and a growing amount of literature is decrying the lack of coordination in the justice arena (for example, Alvarez-Lizotte, Lessard & Rossi, 2016; Hester, 2011). Some survivors get discouraged and even overwhelmed by the scale and complexity of the legal steps involved (Corte and Desrosiers, 2020). Moreover, survivors can experience secondary victimization in the judicial process (Frenette et al., 2018; Laing, 2017; Wemmers et al., 2004; Campbell et al., 1999).

Secondary victimization is the result of inappropriate responses from a system (judicial, police, media, medical, educational, etc.) or environment (relative, friends, family, spouse, service providers, etc.). The way family and friends or the system react can be harmful and painful for the victim: they don’t believe the victim, they trivialize the trauma, they blame and hold the victim accountable for the violence, they see the victim’s malaise as a by-product of mental illness, they prescribe medication, they undermine the victim’s self-esteem, etc. (Association des groupes d’intervention en défense des droits en santé mentale du Québec, 2010).

According to a Québec survey of female victims of FV (Côté, 2007), the frequency of secondary victimization (i.e. effect of negative support) is directly tied to the development of post-traumatic stress (PTS) symptoms. The post-trauma reactions of FV survivors are often described as a series of normal reactions to a

traumatizing event (Turgeon et al., 2014). Furthermore, the frequency of post-trauma reactions and a lack of support can play a role in the development of PTS symptoms through increased psychological distress and risk of suicide and more stress-inducing events.

In this brief, we will look at some of the key stages and elements in a FV survivor's journey that are liable to engender secondary victimization and thereby adversely affect the survivor's physical and mental health and safety. The brief focuses primarily on police and criminal justice interventions and, consequently, does not thoroughly address all the spheres of family, child protection, immigration, housing and other law.

It also echoes the second meeting of our community of practice, the theme of which was victim safety. During the meeting, we heard from an FV survivor whose case involved multiple legal proceedings and courts. Her valuable testimonial brought to light numerous shortcomings in her journey through the judicial system. We want to thank her for sharing her story with us. The system intake process was not smooth and constituted a source of secondary victimization. The backdrop to this brief is the critical question of how to ensure the safety of FV survivors while preventing the intake and intervention processes, which are supposed to be protective and restorative, from becoming sources of secondary victimization.

Part I – Consequences of Multiple Secondary Victimization

FV is too often considered an individual problem rather than a societal or structural problem requiring greater collective mobilization and a more appropriate legal, social service and police response. An inadequate response often leaves victims feeling unsafe. If a survivor's safety is threatened or she does not get the proper attention for the trauma suffered, she may feel that she is being revictimized, thereby undermining the supposed state support (Barret, 2004).

Secondary victimization could constitute a special form of revictimization that impacts the psychological and social functioning of victims. Social service and legal practitioners as well as family and friends may wrongly blame, dismiss or hold the victim accountable for the abuse suffered (Côté, 2007). In addition, victims who experience more secondary victimization are reported to have greater PTS symptom severity (Ullman and Filipas, 2001).

Survivors' encounters with the criminal justice system can generate anxiety due, in particular, to a lack of information about judicial procedures in general. Some procedures can also add to the stress, such as applications pressing the victim to testify, the use of legalese and the insecurity related to the intimate partner violence (Wemmers et al., 2004).

It is therefore important that the criminal justice system find ways to ensure that victims who turn to the legal and criminal justice systems for help do not regret it. Violation of a restraining order by the abuser can be enough to revictimize the victim. Fear of not being believed is a key reason why women do not file complaints against their abuser. Just the way victims are treated by authorities can cause them to relive a traumatic experience. Other reasons include past negative experience with prosecutors and police, guilt about the abuse suffered, lack of information, lenient sentences, lengthy procedures, and cross-examination. Participants talked about how the lack of FV training can cause some legal professionals to blame and guilt FV victims. Women also reported encountering prejudice from police officers and experiencing stigma in relation to their socioeconomic status, mental health or handicap (Frenette et al.,

2018). Female immigrants are also at greater risk of secondary victimization if they have not yet been granted permanent resident status and are sponsored by their husbands. While the sponsorship application is being processed, which can take up to a year, the wife may be vulnerable and risk losing her legal resident status, forcing her to leave the country. Furthermore, once a woman has obtained legal resident status, her husband may threaten to take it away if they divorce, even though that is not possible. Disinformation tactics make immigrant women who cannot speak the language of the host country and often do not have a large social network more vulnerable (Smedslund, 2013).

More broadly, most interventions target mothers, as they are generally held responsible for protecting their children (Lapierre and Côté, 2011). Child protection workers place the focus on mothers' ability to care for their children instead of on support and guidance to help mothers leave an abusive situation (Lavergne et al., 2015).

In addition, Québec researchers noted the use of a plethora of euphemisms to describe abusive situations, including "conflicts," "hostility," "disputes," "quarrels," etc. (Bernier et al., 2019), in 250 court rulings in FV cases.

The lack of knowledge and understanding about FV and its consequences leads to unfair blaming of the victim and an abrogation of societal responsibility (Turgeon et al., 2014). Women who have experienced the criminal justice system lament the poor training of some practitioners as well as the lack of knowledge about how FV affects their lives (Frenette et al., 2018). An appropriate response from professionals working with FV survivors is therefore crucial. Police services constitute first responders in this regard.

Part II – FV Survivors' Journey and the Risks of Secondary Victimization

2.1 Survivors' Physical Safety: Role of Police

In FV situations, police authorities constitute one of the first points of entry in the justice system, as well as key players in the physical safety of victims. Among those victims who reported the violence to the police, the most common reason for doing so was to stop the violence and receive protection (82%) (Canadian Centre for Justice Statistics, 2016).

However, the rate of reported violence is very low: just under one in five (19%) victims of intimate partner violence contacted the police themselves to report their victimization (Canadian Centre for Justice Statistics, 2016). The three most prevalent reasons why female victims of violence (intimate partner violence, sexual abuse and/or exploitation) do not report the incident are distrust and fear of not being believed, the perception that victims' safety is not protected, and the influence of legal practitioners and friends and family (Frenette et al., 2018).

According to the same study, the three main deficiencies and barriers cited by women who reported the violence and went through the judicial system are the lack of knowledge about women who are victims of violence (prejudices, rape culture and victimization), the initial contact with the legal system (a determining factor for women's trust) and being made to feel that it was their fault by the justice system.

The fact that few victims decide to report the violence makes it even more important to ensure that those who do are met with an appropriate response from law enforcement. The initial contacts with the police

are therefore crucial in the victim intake and safety process. As emphasized by Frenette et al. (2018, p. 10), their initial contact with law enforcement will determine whether a victim sees the assault as a crime or as an act for which she is to blame. This distinction will also determine whether the victim sees the justice system as an avenue for dealing with the crime committed against her.

Two thirds of intimate partner violence victims whose abuse had been reported to the police were satisfied with how the police handled their situation in stopping the violence and receiving protection quickly (Canadian Centre for Justice Statistics, 2016). However, FV victims' need for protection does not end after the initial intervention. Rather, it continues throughout the judicial process and is closely tied to survivors' feeling of safety (Corte and Desrosiers, 2020). And therein lies the problem: sooner or later, as survivors navigate through the judicial system, the police are no longer physically involved, particularly at the point when other bodies and practitioners take over in assisting the victim through the judicial process, including other proceedings under way, such as in family court.

2.2 Role of Police beyond First Response

2.2.1 Release

Police authorities have obviously refined their response and intervention methods. Tools and procedures have been developed for victims and the police alike, protocols have been reached with various stakeholder organizations, training has been provided, etc. However, as FV survivors can attest, intake could be further improved. Interventions and intake can always be improved in the medium and long terms, particularly to ensure that the police response does not become a source of insecurity or secondary victimization.

Since the perpetrator's release can make the victim feel unsafe, it is important that the victim be informed and that she clearly understands the conditions of release. Currently, the communication protocol signed between *Côté Cour*, the Montréal police force (SPVM) and the office of criminal and penal prosecutors allows for rapidly informing victims of FV of the accused's release and any release conditions (*Protocole Communic-action*, available online at <https://www.tcvcm.ca/page/protocoles-intervention>). In addition, the companion guide to the video produced by the SPVM on the process for reporting a domestic violence crime states that conditions of release are imposed to protect the victim and if the accused violates the conditions of release, the victim should call 911 (p. 12). However, if the victim was not properly informed of the conditions of release or did not understand them, she is not likely to call 911. What is more, when a victim contacts the police to report a violation of the release conditions, an effective police response is essential. It appears that this is not always the case (Bilodeau, 2021).

2.2.2 Security Systems: Panic Button, Alarm System, Electronic Bracelet

According to Corte and Desrosiers (2020), the development of violence prevention tools (mobile emergency apps, alarm systems, panic buttons) needs to be encouraged, as does their routine use by women who have a reasonable fear for their safety, regardless of whether their case is before the courts. Currently, the alarm system installation protocol (available online: <https://www.tcvcm.ca/files/2016-02/protocole-isa-2011.pdf>) between the SPVM, women's shelters, *Côté Cour*, crime victims assistance centres (CAVAC) and the crime victims compensation plan (IVAC) provides victims of FV with a free alarm system and panic button. The goal is obviously to enhance the physical safety and feeling of security by giving victims of FV free access to an alarm system. However, the service is available only in the Montréal, Laval, Longueuil, Gatineau and Saint-Jean-sur-Richelieu areas and depends on whether victims meet the

IVAC eligibility requirements (see below). As a result, FV victims who do not feel safe in their homes must pay out of pocket to have an alarm system installed.

Electronic tags (GPS monitoring bracelets) raise important questions regarding the rights of the accused, particularly their right to privacy. They are used in other countries and a feasibility study on the use of GPS monitoring bracelets in Québec to prevent domestic homicides is under way (Bilodeau, 2021). Québec coroner Stéphanie Gagnon, who investigated the killing of Marylène Lévesque, recently recommended that people convicted of murdering their partners be required to wear a GPS monitoring bracelet when released from prison (Porter, 2021). Note that, while such devices can help FV survivors feel safer by preventing their abuser from coming within a certain distance of them, it does not prevent the abuser from engaging in psychological harassment, for example via phone calls, text messages or social networks.

Police and, more broadly, judicial intervention must not only aim to keep victims safe and intervene with perpetrators of FV, but it must also consider the consequences of the intervention for the victim. Effective police support and guidance is crucial in providing a safety net for FV victims and thereby making them feel safe as they navigate the judicial process. However, psychological safety is an integral part of the victim safety net and its importance must not be overlooked.

2.3 Psychological Safety and Secondary Victimization Issues: Crime Victim Compensation

It is impossible to address FV victim safety without talking about psychological safety. While this is clearly a broad and rich subject, our focus will be on Québec's crime victims' compensation plan (hereafter "IVAC"), which, in our view, raises important issues with respect to the psychological safety of survivors and the risks of secondary victimization by the administrative law system.

Established in 1972, IVAC is central to ensuring a degree of psychological safety for crime victims, including victims of FV. The compensation plan provides benefits and services to help victims recover from injuries (both physical and psychological) sustained as a result of a crime.

On May 13, 2021, the National Assembly of Québec passed Bill 84, *An Act to assist persons who are victims of criminal offences and to facilitate their recovery*. The purpose of the bill is to address the widespread criticism of IVAC in recent years, particularly as regards compensation for victims of sexual violence and intimate partner violence (Lessard, 2020). The Act came into force on October 13, 2021. We want to outline some of the new provisions, focusing on amendments relating to victims of intimate partner violence and secondary victimization.

One of the positive outcomes is that the new plan explicitly provides that the notion of gross fault "does not apply to a person who files an application due to the intimate partner violence or sexual violence of which they are a victim" (s. 21, para. 3). The *Crime Victims Compensation Act* has never defined "gross fault," but the case law of the Administrative Tribunal of Québec considers that "there is gross fault where the victim's behaviour demonstrates a wanton and total disregard for the consequence of her actions and, having regard to the facts, the consequence was so likely and foreseeable (not just possible) that it is hard to believe that, by acting as she did, the victim did not accept the injury sustained" (*C.G. c Québec (Procureur général)*, 2013 CanLII 47717 (QCTAQ), para. 56; *N.K. c Québec (Procureur général)*, 2014 QCTAQ 07840, para. 25; see also *F.F. c Québec (Procureur général)*, 2012 QCTAQ 021039, para. 33.). Under the old plan, some victims of intimate partner violence or sexual violence were denied compensation due to the

interpretation of “gross fault.” For example, a victim of sexual abuse who went to the home of her former partner, the abuser, knowing that he had patterns of violent behaviour, was deemed to be guilty of gross fault (*C.G. c Québec (Procureur général)*, 2013 CanLII 47717 (QCTAQ); see also *C.L. c Procureur général du Québec*, 1999 CanLII 27302 (QCTAQ)). This interpretation of the notion of gross fault had been criticized for years (*Barreau du Québec*, 2021; *Protecteur du citoyen*, 2016) and was especially problematic in terms of secondary victimization.

Bill 84 provides that, before exercising a recourse as a subrogee (the Minister subrogates to the rights of the victim in order to submit a judicial application against the perpetrator of the crime so as to recover an amount paid to the victim), the Minister is henceforth required to obtain the consent of the person who was a victim of intimate partner violence or sexual violence (s. 32, para. 5). This requires the victim’s collaboration and thereby avoids the risk of secondary victimization in subrogatory proceedings, particularly when the victim testifies anew and/or is cross-examined.

Another significant change for victims of FV is the broadening of the notion of offence through the repealing of the list of crimes. Under the old plan, only a victim of a crime mentioned in the schedule to the *Crime Victims Compensation Act* was eligible to receive compensation. Under the new Act, “criminal offence” means any offence under the *Criminal Code* committed after March 1, 1972 and causing a person to suffer interference with their physical or mental integrity (s. 18). Accordingly, FV-related offences previously not mentioned in the schedule, such as criminal harassment (264 Cr.C.), uttering threats (264.1 Cr.C.) or harassing communications (372(3) Cr.C.), are now covered under the new compensation plan. However, not all behaviours that are part of an intimate partner violence dynamic, such as coercive control, are recognized and constitute an offence under the *Criminal Code*.

Part III – Examples of Secondary Victimization of Survivors in their Judicial Journey: Coercive control and Parental Alienation

3.1 Coercive Control

Certain judicial and social service responses can thus prove to be particularly detrimental to the well-being of female victims of FV and their children and cause serious secondary victimization. From a criminal justice perspective, not all behaviours that are part of an intimate partner violence dynamic are recognized as an offence in Canada’s *Criminal Code*. For example, coercive control involves a repeated or ongoing pattern of abusive behaviours that occurs over a period of time and does not necessarily involve physical violence. It can take several forms, including subtle forms of violence, such as coercion and threats, financial abuse, emotional abuse, intimidation or isolation. One of the challenges lies in the fact that violent and controlling men nimbly claim victimization to different social service and legal practitioners. Failure to ascertain the intent to control and, consequently, to discern who is the victimizer and who is the victim in a complex situation is therefore a real risk (Lapierre and Côté, 2021).

In 2015, England and Wales became the first countries in the world to criminalize coercive control, followed by Scotland and Ireland (Lecomte, 2021). In Canada, a research paper by Carmen Gill and Mary Aspinall (Department of Sociology, University of New Brunswick) entitled “Understanding coercive control in the context of intimate partner violence in Canada: How to address the issue through the criminal justice system?” was submitted to the Office of the Federal Ombudsman for Victims of Crime, Department

of Justice Canada, on April 20, 2020. Just before the introduction of the first measures, this seminal paper highlighted the importance of recognizing coercive control as an offence in Canadian legislation. In December 2019, the authors accepted an offer by the Federal Ombudsman for Victims of Crime's invitation to write a research paper examining the issue of coercive control and the desirability for Canadian legislation to criminalize this form of psychological violence in intimate partner relationships.

Coercive control refers to behaviours that manipulate, intimidate and instill fear in an intimate partner. It is more frequently deployed by men against women in the context of intimate partner relationships because it takes shape around the prevalence of male dominance and male superiority over women (Dawson et al., 2019; Stark, 2007). It also negates the classic understanding that intimate partner violence only consists of evidence of physical violence (Stark, 2007). There are four common domains of coercive controlling behaviours, namely controlling/proprietary behaviours, psychological abuse, sexual jealousy, and stalking (Dawson et al., 2019).

In Canada, the government is recognizing coercive control as part of the dynamic of intimate partner violence (Department of Justice, 2015). However, this is not translated into specific offences in the *Criminal Code*. Failure to recognize coercive control as an offence limits the possibility of criminal prosecution, which can result in serious secondary victimization of abused women and their children.

As regards coercive control in the context of family law, the *Divorce Act* (R.S.C. 1985, c. 3 (2nd Supp.)) was recently amended through Bill C-78 (Department of Justice, 2019b) for the purpose of changing Canada's family laws related to divorce, parental responsibilities and enforcement of family obligations. The new provisions deal directly with coercive control in cases of FV. Henceforth, the court must consider any FV – including coercive and controlling behaviour – in determining the best interests of the child in custody proceedings. To learn more about the matter, we recommend another brief prepared for this research project that deals specifically with coercive control and family law (Nonomura et al., 2021).

Secondary victimization occurs when victims' repeated cries for help go unheeded. For example, certain coercive or oppressive acts may be overlooked by the criminal justice system because they are not considered sufficiently grave or injurious to merit a serious crime charge or conviction (Gill and Aspinall, 2020). Sometimes what is perceived to be life-threatening by the victim is perceived as minor in the eyes of frontline police officers (Starck and Hester, 2019; Wiener, 2017).

The above-cited research paper therefore recommends the creation of a task force or committee comprised of the judicial system from all levels (police officers, prosecutors, defence lawyers, judges) as well as experts on coercive controlling behaviours and intimate partner violence and representatives of victim services, to lay the groundwork of the changes to be made. It also recommends the use of the description of coercive control adopted by the Home Office in the United Kingdom as a starting point for a legal test (Home Office, 2015).

On April 27, 2021, the House of Commons Standing Committee on Justice and Human Rights presented a unanimous report and the committee members – including Randall Garrison – gave the federal Minister of Justice one year to engage with his provincial and territorial counterparts to initiate amendment of the *Criminal Code*, considering the approach taken in Bill C-247 or other similar legislation (Lecomte, 2021).

3.2 Parental Alienation

In addition to coercive control, which for years was not included in the Canadian legislation and thus contributed to secondary victimization, the concept of parental alienation allows abusers to deny the existence of FV and, conversely, accuse mothers of “inappropriate conduct” when assessing the mother’s parenting capacity in child custody litigation.

The “parental alienation syndrome” was initially defined as a disorder arising in child custody disputes (Gardner, 1987). The concept refers to a parent (almost always the mother) who turns their child against the other parent based on frivolous or fabricated allegations (Faller, 1998). At the time, the concept was applied especially in cases where a parent was accused of sexually abusing or assaulting their child, particularly after a separation. Many children were pressured to advance false allegations of abuse against a parent as a tactic to restrict custody and access. The work of Richard Gardner has been strongly criticized, particularly for lacking a scientific basis. However, even if the notion of a parental alienation “syndrome” is no longer in use, the concept of parental alienation is still widely employed in various fields, especially child protection and family law (Côté and Lapierre, 2019).

According to Romito and Crisma (2009), a key reason the parental alienation syndrome was coined was the idea that when a couple separates, the mother often falsely accuses the father of abuse. Although numerous studies have demonstrated that false allegations of sexual and FV are extremely rare, the influence of Gardner’s work on players in Ontario contributes to the ongoing belief that the prevalence of false abuse allegations is high (Ladouceur, 2017).

When used in FV cases, this notion negates, denies and disregards allegations and fears expressed by women and children experiencing FV. The phenomenon has been documented in Québec (Lapierre and Côté, 2016; Lapierre & FMHFVD, 2013; Lapierre and Côté, 2021) and elsewhere in Canada (Jaffe et al., 2008; Winstock, 2014). Parental alienation thus constitutes a tactic used to discredit women’s FV claims (Lapierre and Côté, 2021).

Women accused of parental alienation are revictimized by a judicial system that is supposed to protect them. Children also find themselves entrapped by the system because parental alienation may be claimed in cases where a child refuses to have contact with one of the parents, regardless of the reason. In addition, a parent perceived as engaging in alienating behaviour risks losing their custody rights (Lapierre et al., 2015).

An abusive partner can allege parental alienation as a way to continue controlling even after separation by accusing or threatening to accuse their former partner of alienating the children (Côté and Lapierre, 2019). A report prepared following a symposium held in Montréal in 2018 on parental alienation in FV cases in Québec, Europe and Brazil (Côté and Lapierre, 2019) indicates that the use of this concept is largely attributable to the misunderstanding and lack of knowledge of violence by men against women and children, as well as the confusion between FV and high-conflict separation.

A Canadian study on parental alienation began in 2016. Headed by Professor Simon Lapierre and funded by the Social Sciences and Humanities Research Council of Canada (SSHRC), the study has four components: 1) an analysis of policies and other relevant documents; 2) a legal analysis; 3) interviews with key informants; and 4) case studies of female victims of violence seen as having alienating behaviour. Data on

the four components were collected over the past few years in both Ontario and Québec. The data are currently being analyzed and some of the findings have already been published (Lapierre et al., 2020).

It is therefore important that mobilization efforts be stepped up to ensure that parental alienation is not used by social service and legal practitioners to the detriment of women and children experiencing FV. It is crucial that all those working in the field receive training so that they have a better understanding of post-separation violence and can protect women and children.

Conclusion

Obviously, it was impossible to cover the full experience of FV survivors in a single brief. We have nevertheless addressed some key elements of the survivor's journey by focusing on the need for the system to protect the physical and mental health of FV survivors, especially by minimizing the risk of secondary victimization by the system itself as well as by practitioners.

This overview clearly demonstrates the importance of hearing from FV survivors. Their stories reveal weaknesses in the established system so that improvements can continue to be made, as well as the importance of ongoing training of practitioners so that everyone involved learns about new issues and challenges such as parental alienation and coercive control. The system response must not only be aimed at punishing perpetrators of FV, but above all at protecting FV victims and helping them heal. Nor must the system response compound the consequences of FV for survivors. Sadly, this is still all too often the case. Secondary victimization has been proven to have deleterious effects. The justice system therefore has a duty to minimize the risks of secondary victimization across the criminal, child protection, administrative and family law spheres.

To learn more about the *Supporting the Health and Well-Being of Survivors of Family Violence in Family Law Proceedings* project, go to: <https://alliancevaw.ca> or our partnered research centres:

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