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What You Don't Know *Can* Hurt You: The importance of family violence screening tools for family law practitioners

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Appendix B

Recommended Screening Tool Questions

Initial Screening Tool

It is proposed that the initial screening tool be universally used by all lawyers with every new family law client unless the client has voluntarily disclosed abuse, in which case the practitioner would proceed to use the second screening tool.

The lawyer should introduce the tool by telling the client that s/he asks all new family law clients these questions and by reminding the client of solicitor/client privilege. This should help the client feel more comfortable answering the questions honestly. Comfort level can further be increased by administering the tool in a private setting that will feel safe to the client.

The lawyer should tell the client that answering the questions is voluntary, while also pointing out the value to the client of completing the tool (being able to address safety concerns, to gather information that may be helpful to the family law case and to find appropriate other resources). The client should be told that s/he can decline to answer any questions that s/he is uncomfortable responding to.

The initial screening tool should be conducted orally during the first appointment with the new client and should take approximately 10 minutes to administer.

Note: These are template questions, intended as the starting point for discussions towards creating a portfolio of screening tools that reflect the cultural realities of diverse communities.

To assist lawyers, both the initial and second screening tools can be further developed to include a list of responses to listen and watch for that would accompany each question. The Minnesota State Bar Family Law Section Domestic Abuse Committee Screening Tool is a model of how this could be done.

Proposed Questions

1. Have you ever felt afraid of your partner because of something they have said or done to you or to someone else? (If yes, can you give an example?)
2. Has your partner ever been physically aggressive with you? For example, have they choked, hit, kicked, punched or slapped you?
3. Has your partner ever threatened you or someone else in any way (for example, to hurt or kill you, to harm the children or take them away from you, to hurt other people you care about, to hurt or kill themselves, to hurt or kill pets or animals)? (If yes, can you give an example?)
4. Has your partner ever pressured you to have sex or had sex with you when you have said you don't want to? (If yes, can you give an example?)
5. Does your partner control how much money you have, tell you what you can spend money on or make all the decisions about money for your family?
6. Has your partner ever said or done anything to make you feel bad about yourself? For example, have they called you stupid, lazy, ugly or insulted you in other ways?

Second Screening Tool

The lawyer will use the second screening tool only when the first screening identifies red flags ²³ or when the client has self-disclosed abuse.

This tool is not a script for the lawyer to recite. It is a discussion guide meant to assist the lawyer, who must also use her/his professional judgement, analytical skills, critical thinking skills and must observe the client's nonverbal cues to know which questions are the right ones to ask.

For example, if the client has indicated psychological abuse in the first screening, the lawyer should focus on questions related to that kind of abuse in the second screening, perhaps asking only one or two questions related to other categories or as many as seem necessary based on the client's previous responses.

The questions suggested in this report have been divided into categories that reflect common abuse tactics: coercive control, physical, threats, sexual, financial, and psychological.

Naturally, this second screen will take longer to complete, relative to the first one, because there are more questions that the lawyer should ask that are of a conversational nature, unlike the yes/no-type questions of the first screen. The lawyer needs to determine, based on what was identified in the first screen and the type of retainer, etc., how much time to spend using the second screening tool and which sections to focus on.

Proposed Questions

Part One: Coercive Control

1. If you are still living with your partner, is it safe for you to go home today?
2. If you are not still living with your partner, do you feel safe?
3. Do you feel comfortable when you are in the same space as your partner?
4. How did/do you and your partner make decisions?

5. Do you feel that you have meaningful input to decisions?
6. What happens if you don't agree on a decision?
7. More specifically, how do you and your partner make decisions related to the children?
8. What happens if your partner disagrees with something you say or do?
9. Do you hide things you do from your partner because you are afraid of how they will react?
10. Has your partner ever forced you to do something you did not want to do or that you knew was wrong? Tell me about a time this happened.
11. Has your partner ever damaged or destroyed anything that was important to you? Give me an example of this.
12. What impacts do you think your partner's treatment of you is having on your children?
13. Have child protection authorities ever been involved?

Part Two: Physical

1. Has your partner ever subjected you to the following:
 - choking
 - strangling
 - hitting
 - punching
 - kicking
 - pushing
 - scratching
 - pulling your hair
 - holding you down
 - confining you?
2. Have you ever had to see a doctor or go to the hospital because of your partner's physical abuse? Tell me about that.
3. Has your partner ever been charged because of physical abuse? What were they charged with? What happened in the criminal case?
4. Do you have any restraining orders or bail/probation conditions in place to keep your partner away from you? What are the terms of those orders?
5. Does your partner have access to firearms or other weapons? Tell me about that.
6. Has your partner ever threatened you with a weapon or used a weapon against you?
7. Have you ever called the police because of something your partner has done to you?

Part Three: Threats

1. If your partner has ever threatened to hurt you, what has the threat been? Did they carry it out?
2. What threats has your partner made about your children?
3. What kinds of threats has your partner made about your pets or animals?
4. If your partner has threatened to kill themselves, have they ever attempted to carry out the threat or have you been concerned they might?
5. Has your partner ever threatened to call the child protection authority about you?

6. Has your partner ever threatened to hurt a friend or family member?
7. Are you frightened when your partner makes these kinds of threats?
8. If your family has a car, has your partner ever threatened to take away your keys or access to it?
9. Has your partner ever threatened to not let you leave the house?

Part Four: Sexual

1. Has your partner ever pressured you into having sex when you didn't want to?
2. How does your partner react when/if you say you do not want to have sex?
3. Has your partner ever pressured or forced you to do things sexually that you didn't want to do?
4. Has your partner ever forced you to practice unsafe sex/forced or not allowed you to use birth control or tampered with your birth control?
5. Has your partner ever forced you to terminate a pregnancy?
6. Has your partner ever not allowed you to terminate a pregnancy?
7. Has your partner ever intentionally infected you with HIV or an STI?
8. Has your partner ever coerced you into having sex in exchange for letting you do something you want to do (e.g., "I will let you go to visit your family if you have sex with me.")?
9. Has your partner ever forced you to watch or participate in pornography?
10. Has your partner ever forced you to have sex with other people for money or for their pleasure/entertainment?

Part Five: Financial

1. How do you and your partner make decisions about money?
2. What happens if you disagree?
3. Do you argue about money frequently?
4. Do you have access to a joint bank account?
5. Do you have your own bank account?
6. Do you feel like you understand your family's financial situation?
7. Has your partner ever forced you to work or forbidden you from working?
8. Where does your paycheque go?
9. Do you have access to money or does your partner give it to you?
10. Whose names are credit cards in?
11. Can you make decisions about spending money without your partner's permission?

Part Six: Psychological

1. Does your partner call you names or put you down? What are some examples of what s/he calls you?
2. Does your partner draw your children into name calling or putting you down?
3. Can you tell me about one time when they did this?
4. Do they threaten you or insult/put you down in front of your children? Other people?
5. How does it make you feel?

6. Does your partner control or prevent the contact you have with your family and/or friends?
 7. Has your partner ever:
 - followed you
 - parked outside where you are and watched you
 - installed a GPS system on your car or mobile device
 - installed spyware on your computer, laptop, tablet or phone
 - installed hidden video cameras in your home
 - examined your phone records/looked at your emails or text messages without your permission
 - showed up unexpectedly when you are with family or friends
 - texted you relentlessly
 - telephoned you repeatedly in a short period of time
 - sent or left you threatening or rude emails, text or phone messages
 - used social media to threaten, intimidate or embarrass you?
 8. Has your partner done any of these things since you separated?
 9. Has your partner ever been charged with criminal harassment for any of this behaviour?
 10. Is your partner jealous of other people in your life, such as coworkers, friends or neighbours?
 11. Does your partner criticize your personal appearance (e.g., your weight, how you dress, how you do your hair, your makeup)?
 12. Does your partner expect you to think and act like they want you to?
 13. Is your partner dealing with any significant life stressors such as alcohol or drug dependency, job loss, mental health concerns or financial worries?
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Footnotes

- 23 Red flags are indicators, other than specific information provided directly by the client, that there may have been abuse in the relationship. For example, a lawyer should be watching and listening for information that the client's partner is unemployed, has or has had trouble with drug or alcohol use, or has had run ins with the law or other people. Even if the client denies the presence of abuse, if she indicates that she has left on more than one occasion in the past, or that she does not want her partner to know she has seen a lawyer, these are red flags that abuse *may* be an issue. Paying attention to the client's body language may also elicit other red flags (e.g., extreme submissiveness). Being able to identify and analyze red flags and body language correctly and in a culturally competent manner requires training, and these few suggestions cannot serve as a replacement for that.
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