



[Home](#) → [Reports and Publications](#) → [Family Law](#)

Best Practices for Representing Clients in Family Violence Cases

← Previous Page

Next Page →

Part III: The Trial

Marshalling the Evidence to Prove Your Client's Case

A lawyer advocating for a client in a medical malpractice case must educate him or herself extensively on the client's problem, retain experts to assist the Court, interview the client, locate and interview witnesses, dig for documents and other evidence to corroborate the claim, address common stereotypes about injured persons, become totally familiar with the relevant law and understand how best to persuade the trial judge. No less is required of a lawyer representing a client in a family violence case.^[77]

The Importance of Corroborating Evidence

Corroborating evidence is crucial. Without it, the case becomes one of he said/she said and there is a real risk that the abused client may not be believed. Many abused women express fear that assessors, police, judges and others will not see through their spouse's "Jekyll and Hyde" personality. Abusive men who do not fit the stereotype or who are able to exert self-control when dealing with important individuals about the case can be very persuasive when they deny any wrongdoing.^[78] According to former prosecutor Cheryl Hanna, "Batterers can appear charming, respectful and persuasive; by contrast, abused women can appear hysterical, vindictive or prone to exaggeration."^[79] They can also appear paranoid if they react with great fear to events that appear innocuous to outsiders, such as flowers left on a doorstep. To an outsider, this appears to be a caring gesture of reconciliation. To an abused woman, it is a signal that her spouse is watching her and has been to her home without her knowledge.

The abusive spouse may provide corroborating evidence of the abuse. He may leave verbally abusive phone messages or apologize for past abuse in messages, cards or letters. The client should be instructed to preserve this evidence and turn it over to counsel.

Past spouses or girlfriends who were also abused can be effective witnesses if they are willing to testify. Children may confide in teachers, relatives or friends' parents. Unlike criminal Court, family Courts are usually unwilling to permit children to testify and may accept reliable hearsay from an adult instead. Relatives, friends, doctors or co-workers may have observed the client with injuries, but may also have been provided with false explanations for the injuries by the client.

Obtain corroborating medical records, police incident reports and counseling reports.^[80]

Certificates of conviction can be obtained if there is concern that a spouse will not admit to a criminal record. Transcripts of previous family or criminal proceedings can be used effectively in cross-examination to ensure that previous events or convictions are not minimized or misrepresented. Tapes of 911 calls can dramatically illustrate the severity of abusive behaviour. If the abusive spouse has served time in prison, parole and correctional services files can be subpoenaed. These files often contain a wealth of useful information, particularly regarding substance abuse and the success or failure of previous counseling or treatment.

The Client's Testimony

The client should be instructed to obtain a notebook and record as much detail as possible about previous abuse (including dates, times, circumstances, injuries, medical attention and whether children or others witnessed the abuse or resulting injuries) using calendars and other aids to assist with pinning down the details. The client should also be advised to record details of all significant interactions with her spouse on an ongoing basis, particularly any abusive conduct. The credibility of her testimony may depend on her recollection of detail. She should be instructed to record only facts without any editorializing as it is possible that the notebook could become evidence.

Dealing with Experts

Consider retaining an expert in family violence to place the client's evidence in context and to testify about the risks to the abused woman from ongoing contact with her spouse and the harm to children caused by exposure to spousal violence. Such evidence is particularly important if the client is seeking an order for supervised access or for termination of access. A women's shelter or transition house may be able to provide a referral or offer a worker who can give expert evidence.

A knowledgeable and highly skilled expert is of little use if he or she cannot testify effectively. Do not assume that an expert will handle him or herself well in Court simply because the expert has testified in the past. Before retaining an expert, use a database such as Quicklaw or eCarswell to learn how judges regard the expert's testimony.

Custody and Access Assessors

Carefully consider whether a custody or access assessment is appropriate. Many assessors do not have sufficient understanding of the dynamics of abuse and may strongly favour joint custody.^[81] An assessor who accepts that a client has been abused may become openly sympathetic to the

abused client, thus compromising the assessor's independence and effectiveness as an expert witness. If an assessment is needed, research local assessors and choose an assessor with care.

When the Opposing Party is Self-Represented

Abusive spouses frequently choose to represent themselves in family law proceedings. This inevitably lengthens the proceeding and drives up the legal costs for the abused client, often by thirty to fifty percent or more. Service of documents becomes more difficult, disclosure may be untimely, incomplete, or both, the chance to settle the proceeding through negotiation diminishes, adjournments are common and the trial is drawn out.

Self-represented spouses may test the system by acting out in Court. They may shout or interrupt the abused spouse or her lawyer during evidence or submissions, conduct lengthy cross-examinations of limited relevance, despite directions to the contrary by the Court, or employ non-verbal signals to threaten or intimidate the abused spouse during the hearing. They may show derision by laughing, snorting or facial gestures. It is important for lawyers to raise the issue of misconduct with the Court and request that the Court order the opposing party to desist. If the Court tolerates this conduct, both spouses learn that the Court is unable or unwilling to protect the abused spouse and the abusive spouse is significantly emboldened.

Litigation Abuse

Abusive spouses are particularly able to abuse the Court's processes when they are self-represented but can also do so while represented by counsel. Often, the goal appears to be to keep the abused spouse involved in litigation for as long as possible. Some common forms of litigation abuse include:^[82]

- A parent who has never had a primary caregiver role or who has had little regular involvement with the children applying for sole custody;
- A parent seeking joint or sole custody who cannot or will not produce a comprehensive parenting plan;
- Irrelevant or unsubstantiated claims that the abused spouse has engaged in infidelity;
- Frequent changes of counsel necessitating adjournments (it is not unusual for an abusive spouse to go through three or four lawyers);
- Drawing out applications over a lengthy period and multiple adjournment requests without good cause;
- Repudiating negotiated agreements shortly after they are reached and resuming litigation;
- Inappropriately requesting documentation such as highly personal medical records without adequate foundation as to their relevance;
- Filing unmeritorious complaints about people involved in the case (judges, counsel, experts, etc.) or making false allegations about a spouse to government agencies;
- Making multiple police reports alleging denials of access even though there is no significant lapse in access;

- Re-litigating previously decided issues;
- Making multiple applications to vary custody, access or support over a short time period (i.e. where less than a year has elapsed since the last application was resolved).

Applications for summary judgment or striking of pleadings should be available to eliminate frivolous or vexatious claims. Significant costs awards should be sought. Since it can be difficult to get a large costs award against a self-represented litigant, it is necessary to present the judge with authority for making the costs award. If a claim is dismissed as vexatious, counsel should request that the spouse making the claim be precluded from making further applications without leave of the Court or posting significant security for costs.

Security at the Courthouse

Court appearances offer abusive spouses a prime opportunity to frighten and coerce their partners. Often, a look or gesture is sufficient to thoroughly intimidate an abused client. For this reason, the client should not be left alone in the Court building, even for a few minutes. Her lawyer or a support person should remain with her at all times. The Court may have Victim Services workers available or may be able to provide a private waiting area on request.

If an abusive spouse is particularly volatile, or if counsel has specific knowledge of any risk, the Court Sheriffs should be informed. Counsel can request that a Sheriff remain in the Courtroom during the hearing or ask a Sheriff to accompany the abused spouse to her vehicle afterwards.

[← Previous Page](#)

[Next Page →](#)