

# Canadian Journal of Family Law

---

Volume 34 | Number 1

---

2021

## Psychological Abuse Claims in Family Law Courts in BC: Legal Applications and Gaps

Haya Sakakini

Follow this and additional works at: <https://commons.allard.ubc.ca/can-j-fam-l>



Part of the [Family Law Commons](#), and the [Law and Society Commons](#)

---

### Recommended Citation

Haya Sakakini, "Psychological Abuse Claims in Family Law Courts in BC: Legal Applications and Gaps" (2021) 34:1 Can J Fam L 1.

The University of British Columbia (UBC) grants you a license to use this article under the [Creative Commons Attribution- NonCommercial-NoDerivatives 4.0 International \(CC BY-NC-ND 4.0\) licence](#). If you wish to use this article or excerpts of the article for other purposes such as commercial republication, contact UBC via the Canadian Journal of Family Law at [cdnjfl@interchange.ubc.ca](mailto:cdnjfl@interchange.ubc.ca)

# **PSYCHOLOGICAL ABUSE CLAIMS IN FAMILY LAW COURTS IN BC: LEGAL APPLICATIONS AND GAPS**

**Haya Sakakini**\* \*\*

This research paper investigates a particular form of family violence (“FV”) under the British Columbia *Family Law Act (FLA)*: psychological abuse. The paper defines the scope and assessment of psychological abuse claims in family law courts (“courts”) in British Columbia since 2013. It identifies the shortcomings in addressing such claims and analyzes the multifaceted reasons behind the limitations and gaps which victims of psychological abuse face when bringing forward such claims.

The paper provides a brief background on FV and psychological abuse before moving on to identifying the various forms of psychological abuse accepted by courts in BC, as well as the barriers to adequately responding to psychological abuse claims. The paper emphasizes the importance of addressing these barriers and concludes that despite efforts to address psychological abuse through

---

\* The author completed her Bachelor of Arts (Honours, Global Studies) at Wilfrid Laurier University in 2014 and completed her Juris Doctor from the Peter A. Allard School of Law at the University of British Columbia in April 2021.

\*\* The author is deeply grateful to the Executive Director and Supervising Lawyer at Rise Women’s Legal Centre, Kim Hawkins and Vandana Sood, for their support and feedback in developing this paper.

legislation, barriers remain, which must be addressed to better serve victims in courts.

## INTRODUCTION

Since the reformation of the *FLA* in 2013, the courts in BC examine FV more seriously, particularly when a family member is at risk of significant harm, or when considering parenting orders.<sup>1</sup> This paper will outline the ways in which courts have responded to such claims in BC and identify shortcomings in the courts' analysis of such claims in light of social constructs surrounding psychological abuse. This paper seeks to provide a deeper understanding of psychological abuse as a common form of FV and to study the courts' application of the law when addressing such claims in BC. The main finding is that despite Parliament's intention to address the issue of FV and psychological abuse through legislation, barriers remain that must be addressed by legal professionals and society at large to adequately respond to psychological abuse claims in courts.

This paper has five main components. The first component consists of a brief background on FV and psychological abuse and why they must be addressed in court. The second component outlines examples of what constitutes psychological abuse using primary sources of case law in BC from 2013 onwards. Thirdly, this paper addresses obstacles to adequately handling psychological abuse claims in courts by examining internal shortcomings within the legal profession, including external factors. The fourth component emphasizes the importance of mitigating the grave consequences of psychological abuse on its

---

<sup>1</sup> See Courthouse Libraries BC, "Family Law Act" (2 August 2019), online: *Courthouse Libraries BC* <[www.courthouselibrary.ca/how-we-can-help/legislation-case-law/guides/acts/family-law-act](http://www.courthouselibrary.ca/how-we-can-help/legislation-case-law/guides/acts/family-law-act)>.

victims; this section highlights the effects of psychological abuse and how it can shape protection orders and orders related to parenting arrangements under the *FLA*. Finally, the fifth component summarizes the findings of this research paper and provides the main argument.

### BACKGROUND

The definition of FV includes “various forms of abuse, mistreatment, or neglect that adults or children may experience in their intimate, family, or dependent relationships.”<sup>2</sup> FV can occur in familial relationships, including between current or previous partners—whether married, in a common law relationship, divorced, separated—or dating partners. FV can also be committed against children by a parent, a sibling, or any other family member.<sup>3</sup>

Family lawyers deal with all types of FV, including intimate partner violence (“IPV”), which is violence between current and former intimate partners and spouses.<sup>4</sup> According to a study done in 2011, intimate partners are the most common perpetrators of violent crimes against

---

<sup>2</sup> Canadian Bar Association, “Family Violence Screening by Family Law Lawyers” (15 December 2016) online: *The Canadian Bar Association* <[www.cba.org/Sections/Family-Law/Articles/Family-violence-screening-by-Family-Law-lawyers](http://www.cba.org/Sections/Family-Law/Articles/Family-violence-screening-by-Family-Law-lawyers)>.

<sup>3</sup> See *ibid.*

<sup>4</sup> See US, Centers for Disease Control and Prevention, *Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements*, by Linda E Saltzman et al (Atlanta, Georgia: CDC, 1999) at 5 [CDC, *Intimate Partner Violence Surveillance*].

women,<sup>5</sup> and women experience IPV four times as frequently as men.<sup>6</sup> The World Health Organization has identified IPV as a major global public-health concern that is linked to intergenerational violence and to lasting physical, psychological, and economic impacts on victims.<sup>7</sup> Although most research on IPV has focused on heterosexual cisgender partnerships, IPV is not specific to sexual orientation or gender identity. Recent studies show that the perpetration of IPV in LGBTQ2S communities is unique yet similar to that of cisgender heterosexual partnerships and that LGBTQ2S people are at equal or higher risk of experiencing IPV in comparison to heterosexual counterparts.<sup>8</sup>

The legal definition of FV in BC is found under section 1 of the *FLA*. The focus of this paper will be on subsections 1(d) and 1(e). The definition includes the following:

(a) physical abuse of a family member, including forced confinement or deprivation

---

<sup>5</sup> See Statistics Canada, *Measuring Violence Against Women: Statistical Trends*, edited by Maire Sinha, Catalogue No 85-002-X (Ottawa: Statistics Canada, 25 February 2013) at 8.

<sup>6</sup> See Statistics Canada, *Family Violence in Canada: A statistical profile 2016*, by Marta Burczycka & Shana Conroy, Catalogue No 85-002-X (Ottawa: Statistics Canada, 17 January 2018) at 58 [Statistics Canada, *Measuring Violence Against Women*].

<sup>7</sup> See *ibid* at 56.

<sup>8</sup> See Ellis Furman et al, “‘It’s a gap in awareness’: Exploring service provision for LGBTQ2S survivors of intimate partner violence in Ontario, Canada” (2017) 29:4 *J Gay & Lesbian Social Services* 362 at 362–363.

of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,

(b) sexual abuse of a family member,

(c) attempts to physically or sexually abuse a family member,

(d) psychological or emotional abuse of a family member, including

(i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,

(ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,

(iii) stalking or following of the family member, and

(iv) intentional damage to property, and

(e) in the case of a child, direct or indirect exposure to family violence.<sup>9</sup>

Although anyone can be a victim of FV, women and children tend to be most at risk. There are multiple causes of FV, but it is often related to oppressive power

---

<sup>9</sup> *Family Law Act*, SBC 2011, c 25, s 1 [FLA].

relations and narratives, including victim blaming.<sup>10</sup> Hence, the issue of FV is not merely a private one, but a societal one as well. Psychological abuse is a common form of FV, and it involves “the use of words or actions to control, coerce, isolate, intimidate, deride or dehumanize a partner.”<sup>11</sup> Outside the legal framework, psychological abuse has been defined as “the systemic destruction of a person’s self-esteem and/or sense of safety, often occurring in relationships where there are differences in power and control.”<sup>12</sup> Terms that are used synonymously with psychological abuse include emotional abuse, verbal abuse, mental cruelty, intimate terrorism, and psychological aggression.<sup>13</sup>

Psychological abuse can leave more profound negative consequences on victims than physical violence. A study showed 71% of women attested to that.<sup>14</sup> Studies linked psychological abuse alone to multiple mental, physical, and functional limitations.<sup>15</sup> For example, a study that investigated the association of postnatal depression

---

<sup>10</sup> See Silvia M Straka & Lyse Montminy, “Family Violence: Through the Lens of Power and Control” (2008) 8:3 J Emotional Abuse 255 at 257.

<sup>11</sup> Canadian Bar Association, *supra* note 2.

<sup>12</sup> Public Health Agency of Canada, *Psychological Abuse: A Discussion Paper*, by Deborah Doherty & Dorothy Berglund (Ottawa: Public Health Agency of Canada, 2008) at 1.

<sup>13</sup> See *ibid.*

<sup>14</sup> See Straka & Montminy, *supra* note 10 at 262.

<sup>15</sup> See Lori Heise et al, “Measuring psychological abuse by intimate partners: Constructing a cross-cultural indicator for the Sustainable Development Goals” (2019) 9 SSM - Population Health 1.

with IPV found that the presence of psychological abuse during pregnancy by an intimate partner is strongly associated with postnatal depression—independent of sexual or physical violence.<sup>16</sup> Furthermore, the impact of partner psychological abuse does not escape children. A study showed that children in homes where there is a presence of partner psychological abuse experienced substantially increased risk of maltreatment or neglect.<sup>17</sup> The effects of psychological abuse on victims will be further explored later in the paper.

Most psychology experts agree that psychological abuse is not separate from other forms of abuse, as it often precedes, predicts or coexists with other forms of abuse.<sup>18</sup> Moreover, 19% of women who reported experiencing financial or emotional abuse also reported being physically or sexually abused by the same spouse. On the other hand, 2% of women who had not experienced financial or psychological abuse reported experiencing physical and sexual violence from their spouse.<sup>19</sup> Therefore, understanding psychological abuse and how it relates to other forms of abuse should not be undermined in family law cases.

---

<sup>16</sup> See Ana B Ludermir et al, “Violence against women by their intimate partner during pregnancy and postnatal depression: a prospective cohort study” (2010) 376:9744 *The Lancet* 903.

<sup>17</sup> See Jen Jen Chang et al, “Psychological abuse between parents: Associations with child maltreatment from a population-based sample” (2008) 32:8 *Child Abuse & Neglect* 819.

<sup>18</sup> See Straka & Montminy, *supra* note 10 at 262.

<sup>19</sup> See Canadian Bar Association, *supra* note 2.

Screening for FV is crucial, and it is legislated as an obligation for family lawyers in BC under section 8 of the *FLA*. Screening allows lawyers to “detect, identify and recognize the presence or absence of common indicators of family violence.”<sup>20</sup> Exercising this obligation is important, as it can have an impact on decisions related to child(ren)’s best interests, the legal rights of each party, and the safety of FV survivors. Particularly, when FV is identified, lawyers can use it to assess whether a client and/or the child(ren) need(s) a protection order and to determine the best interests of the child(ren) with respect to parenting orders, including orders regarding parenting time and decision-making responsibilities. It can also help lawyers determine the best way to solve a family law dispute, be it through alternative dispute resolution processes, such as mediation, or through the adversarial court process.<sup>21</sup> Depending on the risk, mediation might not be recommended where there is a history of FV,<sup>22</sup> as it might endanger victims to be in the same room with the abuser, or as it might make clients unable “to negotiate on an equal and safe footing,” or enter into unfair agreements.<sup>23</sup>

In more serious cases, identifying FV and taking the appropriate measures can decrease the risk of homicide by helping the client receive proper safety planning when necessary. Ontario’s Domestic Violence Death Review Committee has confirmed that the two highest risk factors

---

<sup>20</sup> *Ibid.*

<sup>21</sup> See *ibid.*

<sup>22</sup> See *FLA*, *supra* note 9, s 8(2).

<sup>23</sup> Helen Cleak et al “Screening for Partner Violence Among Family Mediation Clients: Differentiating Types of Abuse” (2018) 33:7 J Interpersonal Violence 1118 at 1119.

for domestic homicides are having a history of domestic violence and approaching or recent separation.<sup>24</sup> A 2016 study shows that women made up 79% of intimate partner homicide victims,<sup>25</sup> which further emphasizes the importance of effective screening.

**I. THE EXPANSIVE DEFINITION OF FV,  
INCLUDING PSYCHOLOGICAL ABUSE, UNDER  
THE *FLA* IS AN INDICATION OF LEGISLATIVE  
INTENT TO ADDRESS THIS ISSUE**

Courts in BC identify and accept various forms of psychological abuse; the body of case law discussed below will provide examples of this. The cases are categorized according to the sections of psychological abuse under the *FLA*.

**a) INTIMIDATION, HARASSMENT, COERCION  
AND THREATS:**

This category of psychological abuse is referred to in subsection 1(d)(i) of the *FLA*'s definition of FV. The majority of case law in BC where psychological abuse was found included this category; most cases involved name-calling and threats. In *DDR v KTR*, 2019 BCSC 1805 (*DDR*), for instance, the respondent experienced psychological abuse because the applicant called her

---

<sup>24</sup> See Canada, Department of Justice, *What You Don't Know Can Hurt You: The importance of family violence screening tools for family law practitioners*, by Pamela C Cross et al (Ottawa: Department of Justice Canada, February 2018) at 5.

<sup>25</sup> See Statistics Canada, *Measuring Violence Against Women*, *supra* note 6 at 58.

“lazy,” “ugly,” and “stupid,” threatened to throw her in the garbage, put her on the street, and take the children away from her.<sup>26</sup> A further example of this category of psychological abuse is found in *CR v AM*, 2015 BCPC 76 (*CR*). In *CR*, the claimant asserted that he addressed his substance abuse problem and brought an application seeking unsupervised parenting time with the child. When assessing family violence towards the respondent, the court looked at how the claimant sent text messages calling the respondent names, repeatedly demeaned her, tried to shame her for her sexuality, threatened to make false accusations against her to the police, vilify her to their child, and crush her with litigation until she “lives in a box,” if she does not comply with his demands.<sup>27</sup> After episodes of viciousness, the claimant would portray himself to be apologetic. The judge said, “if this behavior is not psychological and emotional abuse, I don’t know what would be.”<sup>28</sup> In contrast, whenever a court makes a decision in relation to a child, the best interest of the child is always the only consideration, which includes an assessment of family violence, whether it is directed at the child or another family member.<sup>29</sup> This will be further elaborated on.

Moreover, *CLM v MJS*, 2017 BCSC 799 (*CLM*) is another example of a very high-conflict case where the claimant’s behavior constituted coercive and controlling psychological abuse. The claimant restricted information

---

<sup>26</sup> *DDR v KTR*, 2019 BCSC 1805 at para 86 [*DDR*].

<sup>27</sup> *CR v AM*, 2015 BCPC 76 at para 56 [*CR*].

<sup>28</sup> *Ibid* at para 58.

<sup>29</sup> See *FLA*, *supra* note 9, s 37(2)(g).

about the child to the respondent, controlled all aspects of the respondent's parenting time, continuously denied his requests to spend time with the child, even when the child was sick and needed extra care, and unilaterally exercised parental responsibilities without the respondent's knowledge or consent.<sup>30</sup> This conduct also constituted psychological abuse towards the child, which is discussed in more detail below. Additionally, the claimant's litigation conduct constituted psychological abuse towards the respondent and the child as she did not abide by many court orders, did not respond to correspondence, was not cooperative, and did not provide full financial disclosure.<sup>31</sup>

**b) UNREASONABLE RESTRICTIONS ON, OR PREVENTION OF, A FAMILY MEMBER'S FINANCIAL OR PERSONAL AUTONOMY:**

Financial abuse is not directly outlined in the *FLA*, and it is usually treated as a separate category from psychological abuse in case law. However, financial abuse can be referred to as a sub-category of psychological abuse under subsection 1(d)(ii) of the *FLA*'s definition of FV, as this category includes unreasonable restriction on a family member's financial autonomy.<sup>32</sup> Moreover, according to the United States' Centers for Disease Control and Prevention, psychological abuse includes using the victim's money and "denying the victim access to money or other basic resources."<sup>33</sup>The body of case law in BC

---

<sup>30</sup> See *CLM v MJS*, 2017 BCSC 799 at para 134 [*CLM*].

<sup>31</sup> See *ibid* at para 392.

<sup>32</sup> See *FLA*, *supra* note 9, s 1 (d)(ii).

<sup>33</sup> CDC, *Intimate Partner Violence Surveillance*, *supra* note 4 at 13.

shows that financial abuse is often accompanied by other types of psychological abuse and that it is used as a form of control. Although financial abuse might not directly target children, the court often considers it to be strongly related to the best interests of children, as it can gravely affect a parent's ability to provide for their child(ren).<sup>34</sup>

A very obvious form of financial abuse is demonstrated in *DDR*. The claimant did not allow the respondent to have a debit card nor access the family's online banking, and she was required to obtain his consent before making purchases. The claimant also hid the respondent's laptop from her, controlled her access to her own money, and, at some point, drained all of the couple's bank accounts because she cheated on him.<sup>35</sup>

In *BGMS v JEB*, 2018 BCSC 1628 (*BGMS*), the respondent threatened to provide the claimant with less support payments if she created a cause of action in court, and at other times, withheld support.<sup>36</sup> This is a tactic often used to control victims of abuse, especially when the abuser knows that the victim depends on them for financial support. Furthermore, in *GC v AVS*, 2019 BCSC 2242 (*GC*), the claimant earned an income of \$80,000 while knowing the respondent had no source of income and was living in an assisted facility. His failure to pay adequate interim support, and his offer to pay more in support if the

---

<sup>34</sup> See *DDR*, *supra* note 26 at para 87.

<sup>35</sup> See *ibid* at paras 85–87.

<sup>36</sup> See *BGMS v JEB*, 2018 BCSC 1628 at para 65 [*BGMS*].

respondent would agree to relocate to Calgary, constituted psychological and financial abuse.<sup>37</sup>

**c) STALKING OR FOLLOWING A FAMILY MEMBER:**

This category of psychological abuse is referred to in subsection 1(d)(iii) of the *FLA*. According to Statistics Canada, stalking is defined as “repeated and unwanted attention that causes the victim to fear for their personal safety or for the safety of someone they know,”<sup>38</sup> which constitutes part of the definition of criminal harassment under section 264 of the *Criminal Code*.<sup>39</sup> Stalking does not have to include overt threats of physical violence; examples include physical or electronic surveillance, sending unwanted communications through text messages or social media, or having a former intimate partner follow you places. Stalking usually involves a pattern of repeated behavior versus a one-time occurrence. Stalking can also include an unwanted romantic gesture, such as sending cards or flowers to a person’s workplace or home.<sup>40</sup> According to research conducted in 2014 across all Canadian provinces, the most common types of stalking and harassment behavior were “threats or intimidation against someone else in the victim’s life, such as the

---

<sup>37</sup> See *GC v AVS*, 2019 BCSC 2242 at para 72.

<sup>38</sup> Statistics Canada, *Measuring Violence Against Women*, *supra* note 6 at 4.

<sup>39</sup> See *Criminal Code*, RSC, 1985, c C-46, s 264(1) and (2).

<sup>40</sup> See Statistics Canada, *Measuring Violence Against Women*, note 6 at 4.

victim's child or another family member," and the majority of victims were women.<sup>41</sup>

In *CLM*, the respondent's behavior constituted psychological abuse in the form of stalking. The respondent used a computer program to track the claimant's whereabouts, and on one occasion, the respondent removed an item from the claimant's vehicle. The judge concluded that such behavior intruded on the claimant's privacy and constituted "following a family member" over an extended period of time.<sup>42</sup>

**d) INTENTIONAL DAMAGE TO PROPERTY:**

Intentional damage to property is found under subsection 1(d)(iv) of the *FLA*'s definition of FV. Common examples include instances of destroying physical property during arguments between intimate partners. In *JFA v PJA*, 2017 BCPC 369 (*JFA*), for instance, the respondent slammed doors occasionally, broke a door jamb, punched a wall in the bedroom, and put a hole in the bathroom door and the filing cabinet out of frustration. This constituted intentional damage to property, which the respondent admitted to committing.<sup>43</sup> In *Morgadinho v Morgadinho*, 2014 BCSC (*Morgadinho*), the respondent stabbed numerous water bottles with a butcher knife out of jealousy and punched through a kitchen cupboard during an argument. These were acts of intimidation and intentional damage to

---

<sup>41</sup> *Ibid* at 8.

<sup>42</sup> *CLM*, *supra* note 30 at para 379.

<sup>43</sup> See *JFA v PJA*, 2017 BCPC 369 at paras 26, 28, 71.

property, both of which constitute psychological abuse under the *FLA*.<sup>44</sup>

**e) CHILDREN’S DIRECT OR INDIRECT EXPOSURE TO FV:**

Under subsection 1(e) of the *FLA*, FV includes a child’s “direct or indirect exposure to family violence.”<sup>45</sup> The intersection of FV and children is a significant concern in family law cases. In *Primeau v L’Heureux*, 2018 BCSC 740 (*Primeau*), to illustrate, the respondent’s refusal to pay child support and to grant the child permission to participate in a family wedding were examples of FV that directly impacted the child. Moreover, the respondent’s continuous intervention with the claimant’s ability to financially support the child was also found to have the potential to impact the child’s “psychological and emotional safety, security, and well-being”.<sup>46</sup>

More extreme examples of psychological abuse of a child are found in *CLM*. The claimant’s conduct constituted direct exposure of the child to psychological abuse: she manipulated the child by offering rewards, such as toys, if the child could convince his father to cut short their parenting time.<sup>47</sup> She put the child in the middle of the parents’ conflict on many occasions by encouraging him to telephone his father to change or cancel parenting time.<sup>48</sup>

---

<sup>44</sup> See *Morgadinho v Morgadinho*, 2014 BCSC 192 at para 61.

<sup>45</sup> *FLA*, *supra* note 9, s 1(e).

<sup>46</sup> *Primeau v L’Heureux*, 2018 BCSC 740 at paras 94 [*Primeau*].

<sup>47</sup> See *CLM*, *supra* note 30 at para 387.

<sup>48</sup> See *ibid.*

The court noted that there was evidence that the child started exhibiting anxiety, nervousness, and unwillingness to visit his father without an explanation.<sup>49</sup> The child was also exposed to many arguments and tension between the parents, and at some point, the child was under the impression that his father engaged in self-harming behavior. This constituted psychological abuse, as it harmed the child's emotional well-being.<sup>50</sup> Furthermore, conduct such as making demeaning remarks about the other parent to the child, threats to use physical force to compel the child to accompany the parent, and suggestions that the other parent was responsible for the family conflict also constitute emotional abuse of the child.<sup>51</sup>

An example of conduct that was not directed at the children but nonetheless affected their best interests is found in *MWB v ARB*, 2013 BCSC 885 (*MWB*). The court found that the respondent's conduct constituted psychological abuse of the claimant that harmed the children's safety and economic security. The respondent provoked litigation and did not cooperate in selling assets—which in turn caused the claimant to take sick leaves due to stress and harmed the claimant's ability to support the children or pay for access visits.<sup>52</sup>

---

<sup>49</sup> See *ibid* at paras 138-165.

<sup>50</sup> See *ibid* at para 382.

<sup>51</sup> See *DNL v CNS*, 2014 BCSC 1417 at para 72 [*DNL*].

<sup>52</sup> See *MWB v ARB*, 2013 BCSC 885 at paras 199–206.

**II. THE BARRIERS TO ADEQUATELY  
RESPONDING TO PSYCHOLOGICAL ABUSE  
IN FAMILY COURTS ARE OVERLAPPING  
AND MULTIFACETED**

**(a) LAWYERS AND JUDGES ARE NOT WELL-  
VERSED IN THE MULTIDIMENSIONAL FIELD  
OF FV AND DO NOT CONSISTENTLY SCREEN  
FOR IT:**

Understanding FV in courts is a relatively recent development, as it was highlighted in the *FLA*'s reformation in 2013. Although the *FLA* proposes a legal duty on lawyers to screen for FV, this duty is not present in other provinces. The federal *Divorce Act (DA)* did not have any reference to FV, until May 2018 when Parliament introduced Bill C-78 to amend the *DA*, with one of its purposes being to address the issue of FV in courts.<sup>53</sup> The amended *DA* has been in force since March 1, 2021. This late response reflects the inadequacy of responding to FV in courts. The *FLA* does not require lawyers to be trained in FV, and judges are not required to do so in order to adjudicate family law matters.<sup>54</sup> A 2016 study showed that only 46.9% of judges and 69% of family lawyers screen for FV in Canada.<sup>55</sup> Lawyers reported a lack of consistent screening because it is not mandated by legislation and because FV is muddled and outside the scope of lawyers'

---

<sup>53</sup> See Deanne Sowter, "Lawyer (In)competence and Family Violence" (20 March 2019), online (blog): *ABlawg* <[ablawg.ca/2019/03/20/lawyer-incompetence-and-family-violence/](http://ablawg.ca/2019/03/20/lawyer-incompetence-and-family-violence/)>.

<sup>54</sup> See *ibid.*

<sup>55</sup> See *ibid.*

expertise.<sup>56</sup> Both lawyers and judges often lack an in-depth understanding of FV, including psychological abuse. This can pose a set of challenges when adjudicating cases involving FV, including failures to handle psychological abuse in a robust manner and a lack of consensus on what constitutes FV.

Psychological abuse can be especially challenging to address because it requires particular expertise that judges and lawyers do not possess. There are different types of psychological abuse, and the tactics used can be broken down into two main categories: neglectful and deliberate. With the latter being more visible and easier to identify, it is more prevalent in cases claiming psychological abuse than the former. Examples of deliberate tactics include aggressive forms of control, such as blaming the other party unfairly, checking up on their activities, setting unrealistic expectations and standards, yelling, swearing, public shaming, intimidating, harassing, name-calling, blocking the other party's access to money, physically confining a person, and restricting their contact with other people. Neglectful tactics, on the other hand, involve withholding of human interaction or refusing to validate the victim's feelings, such as failing to provide care in a sensitive and responsive manner, interacting in a detached manner, interacting only when necessary, and ignoring the other person's attempts to interact. These tactics may be hard to detect, and the victim might not readily acknowledge them as a form of abuse. Both tactics,

---

<sup>56</sup> *Ibid.*

nonetheless, stem from a willful infliction of mental or emotional harm.<sup>57</sup>

A review of the case law in BC indicates that the majority, if not all, of cases with psychological abuse include deliberate and not neglectful tactics. This is partly due to the complexity of psychological abuse, where many victims do not report or acknowledge certain tactics that are harder to detect, such as neglectful tactics. “[M]any women minimize or deny the violence they have experienced, and underestimate the impact of witnessing the violence on their children.”<sup>58</sup> The other part is due to a limited understanding of psychological abuse in courts and to the *FLA*’s definition of what constitutes psychological abuse. Although the categorizations found under subsections 1(d)(i) to 1(d)(iv) are expansive, these subsections only refer to deliberate tactics of psychological abuse. This limitation may also reflect legislators’ inadequate understanding of the breadth of psychological abuse.

A recent example of the courts’ failure to recognize certain forms of psychological abuse is illustrated in *AB v CD*, 2020 BCCA 11 (*AB*). *AB* wanted gender-affirming treatment in his transition into manhood. His mother and the medical professionals were supportive of *AB*’s transition; *AB*’s father *CD*, however, was not. Despite the father’s misgendering, calling his son by his birth name,

---

<sup>57</sup> See Public Health Agency of Canada, *supra* note 12 at 3–5.

<sup>58</sup> Roberts, Donna, Peter Chamberlain & Paul Delfabbro, “Women’s Experiences of the Processes Associated with the Family Court of Australia in the Context of Domestic Violence: A Thematic Analysis” (2015) 22:4 *Psychiatry, Psychology & L* 599 at 599.

and attempting to stop AB's treatment, the BC Court of Appeal overruled the BC Supreme Court's finding of psychological abuse.<sup>59</sup> Instead, the appellate court deemed the father's behavior as hurtful to AB but lacking evidence of the father's intention to cause harm.<sup>60</sup> Particularly, the appellate court stated that "the evidence does not suggest that CD deliberately intended to harm AB; rather, the evidence suggests that CD cares deeply for AB but, as Marzari J found, he has been irresponsible in the way in which he has dealt with his disagreement with AB."<sup>61</sup>

*AB* further demonstrates the courts' problematic and faulty understanding of FV. The most glaring error was the appellate judge's application of a criminal standard of proof in a civil proceeding;<sup>62</sup> the judge in *AB* did not find psychological abuse, as there was insufficient evidence that the father's hurtful behavior towards AB was intentional.<sup>63</sup> The *FLA*, however, states that psychological abuse includes "unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy" and requires no intention to cause harm.<sup>64</sup> The father's behaviour unreasonably restricted AB's personal autonomy, especially when calling AB by his birth name and misgendering him.<sup>65</sup> The novelty of the issues in the

---

<sup>59</sup> See *AB v CD*, 2020 BCCA 11 at paras 1–7 [*AB*].

<sup>60</sup> See *ibid* at paras 171–72.

<sup>61</sup> *Ibid* at para 179.

<sup>62</sup> See *ibid* at para 171.

<sup>63</sup> See *ibid*.

<sup>64</sup> *FLA*, *supra* note 9, s 1(d)(ii).

<sup>65</sup> See *AB*, *supra* note 59 at para 171.

case triggered judicial anxiety, caution, and hesitation in deeming the father's behavior as psychological abuse.<sup>66</sup> However, *AB* remains significant, as it sets a precedent for similar cases to come. In this case, the shortcoming was not in the legislation but merely in human interpretation and application of the law.

Judges' discretion in determining what constitutes psychological abuse can often lead to unpredictable results, as judges can differ in their interpretation of the law and rules of evidence. For instance, in *PCD v RZV*, 2015 BCSC 1554 (*PCD*), the claimant had a protection order against the respondent who also had supervised contact and parenting time with the child.<sup>67</sup> Despite accepting evidence that the respondent followed the claimant and the child multiple places, including several times from the school to the claimant's mother's house,<sup>68</sup> the judge stated "I accept the respondent was in the habit of 'following' the claimant and A. But I do not regard this behaviour as stalking or harassment."<sup>69</sup> This is in contravention to the *FLA*'s categorization of "following of the family member"<sup>70</sup> as psychological abuse. Instead, the judge focused on the respondent's motivation by stating that,

the respondent attended the school and, in particular, the schoolyard to simply watch, based in large part on his own fear and

---

<sup>66</sup> See *Ibid* at para 175.

<sup>67</sup> See *PCD v RZV*, 2015 BCSC 1554 at paras 18–19, 22 [*PCD*].

<sup>68</sup> See *ibid* at paras 85–86, 92–93, 102.

<sup>69</sup> *Ibid* at para 141.

<sup>70</sup> *FLA*, *supra* note 9, s 1(d)(iii).

concern about what was happening for A. I have no doubt the respondent loves his daughter. Given his own mistrust of the claimant, his preoccupation with educational matters, his suspicion of others such as C.G. and her husband, and his rigid approach and values, I accept that when he went to the school, as he frequently did, he appeared aloof and uncaring rather than concerned.<sup>71</sup>

The judge later added that the respondent frequently drove to the claimant's mother's home while she and A. were staying there and found that he followed the claimant and the child "at least in part [out of] concern and desperation" for his child.<sup>72</sup> As a result, the judge replaced the protection order with a conduct order that limited the parties' contact through counsel or a third party<sup>73</sup> and stated that "the risk of further harm to both A. and the claimant is emotional or psychological rather than physical."<sup>74</sup> This implies a minimization of psychological abuse relative to physical abuse and can be an indication of the lack of understanding of psychological abuse amongst judges themselves.

**(b) THE DISINCENTIVES TO CLAIMING FV IN COURTS ARE OVERWHELMING:**

Some of the disincentives to claiming FV in courts can be linked to abusers instilling fear in victims if they attempt to

---

<sup>71</sup> *PCD*, *supra* note 67 at para 141.

<sup>72</sup> *Ibid* at para 142.

<sup>73</sup> See *ibid* at para 162.

<sup>74</sup> *Ibid* at para 158.

speak out, resulting in the lack of support for victims. The topic of stigma and fear in bringing up FV is a profound societal issue that shapes the discourse of FV. Cases like *CR* and *DDR*, where abusers threaten to harm the victim or someone they love, including if they start a court proceeding, are prime examples of the harm and fear victims face from their abusers if they attempt to seek help. This can explain some victims' reluctance to claim FV in courts or to disclose it to their lawyer in the first place.

Furthermore, victims may feel stigmatized by claiming FV due to societal misconceptions surrounding FV. Such stigma can result from abusers or from the repercussions a victim may face from their families, friends, colleagues, or society at large.<sup>75</sup> Many individuals lack an understanding of IPV and psychological abuse and often blame victims instead, further disincentivizing victims to report or discuss FV. Victim blaming is one of the major components of stigma. Common examples include negative messages implying that victims must have liked or instigated the abuse, or that they could have left the relationship a long time ago. Worse, such stigma can be internalized by victims as a result.<sup>76</sup>

Abusers, moreover, often convince victims that nobody will help or believe them if they try to seek help.<sup>77</sup> Unfortunately, casting doubt on victims' stories often happens due to societal misconceptions about FV, and it

---

<sup>75</sup> See Christine E Murray & Allison Crowe, *Overcoming the Stigma of Intimate Partner Abuse*, (New York: Routledge, 2016) at 69, 75–76.

<sup>76</sup> See *ibid* at 69–71.

<sup>77</sup> See *ibid* at 72.

can happen in court as well.<sup>78</sup> For instance, a victim's statement about abuse is sometimes falsely misinterpreted as a fabrication in order to gain a collateral advantage in a court or parenting proceeding.<sup>79</sup> Such attitudes provide abusers with further immunity to perpetuate their abuse without consequences.

Moreover, other disincentives to claiming FV in courts can be linked to the nature of the court process. The onus lies on the party alleging FV to prove it in court. Narrating the incidents in an affidavit or on the stand while being cross-examined by the opposing counsel or by the abuser can retraumatize the victim. A study shows that one of the most retraumatizing sources for victims in a court proceeding is the process of preparing an affidavit narrating the events of the abuse and later hearing their abuser's version of events in court.<sup>80</sup> In addition, adding FV to a court proceeding can create tension between family members, compromise settlement, and prolong the trial or hearing, consequently increasing financial costs to a process that is already emotionally and financially taxing on the parties involved. Many victims, especially ones in financial hardship, are not willing to spend more money discussing the abuse and being retraumatized with the

---

<sup>78</sup> See *ibid* at 69–87.

<sup>79</sup> See Nicholas Bala, “Legal Responses to Domestic Violence in Canada and the Role of Health Care Professionals”, Syrtash Collection of Family Law Articles 1999 at para 109.

<sup>80</sup> See Roberts, Donna, Peter Chamberlain & Paul Delfabbro, *supra* note 57 at 609–10.

possibility of receiving no advantage in return, such as a protection order or a safer parenting arrangement.<sup>81</sup>

Outside the court system, another barrier inhibiting the efficacy of handling FV claims is the lack of enforcement of protection orders by police officers. This is another topic that merits further research outside the scope of this paper. Research done with the Delta Police shows that the “occupational culture of the police department has contributed to negative stereotypes of women as liars, manipulators, and unreliable witnesses” and endorsed assumptions about the cause of domestic violence.<sup>82</sup> The research also shows that the “[p]olice rationalize their inaction when protective orders are breached by [externalizing blame towards] bureaucratic or technical impediments to obtaining a conviction.”<sup>83</sup> Although this research was conducted in 1995, newer research on this topic proves that this sentiment is not eradicated amongst police in Canada.<sup>84</sup> Despite the fact that the *FLA* gives discretion to police officers to take action to enforce an order and, if necessary, use reasonable force,<sup>85</sup> police might

---

<sup>81</sup> Telephone conversation between John-Paul E Boyd, QC and author (15 April 2020).

<sup>82</sup> George S Rigakos, “Constructing the Symbolic Complainant: Police Subculture and the Nonenforcement of Protection Orders for Battered Women” (1995) 10:3 *Violence & Victims* 227 at 234–235.

<sup>83</sup> *Ibid* at 235.

<sup>84</sup> See Lori Chambers & Nadia Verrelli, “A Missed Opportunity: The Public Investigation into the Conduct of the RCMP in Matters Involving Nicole (Ryan) Doucet” (2017) 32:1 *CJLS and Society* 117 at 119.

<sup>85</sup> See *FLA*, *supra* note 9, s 188(2).

still “display little vigour” to enforce court orders.<sup>86</sup> This leaves many women vulnerable in spite of protection orders.

### **III. A CONCEPTUAL SHIFT IN HOW COURTS INTERPRET AND MANAGE PSYCHOLOGICAL ABUSE CLAIMS CAN MITIGATE ITS GRAVE CONSEQUENCES ON VICTIMS**

#### **(a) EXPERIENCING PSYCHOLOGICAL ABUSE CAN HAVE LONG-TERM AND SHORT-TERM EFFECTS ON ADULTS AND CHILDREN:**

Psychological or emotional abuse is one of the most commonly reported forms of abuse, and certain demographics are more prone to experiencing it. According to the 2004 General Social Survey (GSS), emotional and/or financial abuse was 2.5 times more common between partners than physical abuse. It includes name-calling, jealousy, and controlling behavior.<sup>87</sup> Groups of people who are more vulnerable to experiencing psychological abuse include children with neglectful parents or parents with mental health or substance abuse problems, people with disabilities, people living in poverty or in communities lacking resources for protection, Aboriginal peoples, and people who face cultural or

---

<sup>86</sup> Ed Schollenberg & Betsy Gibbons, “Domestic Violence Protection Orders: A Comparative Review” (1992) 10: 2 Can J Fam L 191 at 193.

<sup>87</sup> See Statistics, Canada, *Family Violence in Canada: A Statistical Profile 2007*, edited by Lucie Ogrodnik, Catalogue No 85-224-XIE (Ottawa: Statistics Canada, October 2007) at 17–18 cited in Public Health Agency of Canada, *supra* note 12 at 6.

linguistic barriers.<sup>88</sup> Acknowledging these factors and understanding the effects of psychological abuse are crucial to understanding why signs of psychological abuse should not be ignored in court, even if they seem minor.

Currently, there is a growing body of evidence alluding to the negative consequences children can experience from indirect exposure to psychological abuse. This indirect exposure is referred to as “vicarious victimization,” and it can have long-term and short-term psychological health effects. Experts describe vicarious victimization as one of the most subtle consequences of exposure to IPV.<sup>89</sup> Psychological abuse of children has also been referred to as the most damaging type of child maltreatment.<sup>90</sup> Courts in BC recognize this fact, and psychological abuse affects orders relating to the best interests of the child. The effects of psychological abuse on children include “posttraumatic stress disorder, low self-esteem, shame, social isolation, attachment problems, intellectual deficits, affective-behavior problems, chronic emotional inhibitions in adulthood, anxiety, depression, and suicidality.”<sup>91</sup> In the cases discussed above, including *CLM*, children began displaying more anxiety and stress

---

<sup>88</sup> See Public Health Agency of Canada, *supra* note 12 at 10–13.

<sup>89</sup> See *ibid* at 15.

<sup>90</sup> See, for example, *ibid* at 6.

<sup>91</sup> Sana Loue, “Redefining the Emotional and Psychological Abuse and Maltreatment of Children: Legal Implications” (2005) 26:3 J Legal Med 311 at 318; James A Twaite & Ofelia Rodriguez-Srednicki, “Childhood Sexual and Physical Abuse and Adult Vulnerability to PTSD: The Mediating Effects of Attachment and Dissociation” (2004) 13:1 J Child Sexual Abuse 17 at 18 cited in Straka & Montminy, *supra* note 10 at 268–269.

due to witnessing one of their parents psychologically abuse the other parent.<sup>92</sup>

The effects of psychological abuse on adults are varied and can be difficult to detect. Psychological violence and threats are used to remove power from victims by using control tactics, such as coercion and threats, or minimizing and blaming.<sup>93</sup> As mentioned earlier, victims of spousal abuse can suffer more from psychological violence than from physical violence.<sup>94</sup> The nature of intimate relationships results in many things remaining private, including violence, which causes victims to be more isolated.<sup>95</sup> Psychological abuse “can result in lowered self-esteem, depression, drug and alcohol abuse, suicidal tendencies and diminished capacity to parent.”<sup>96</sup> When a caregiver is unable to properly care for their child(ren), it in turn affects the child(ren)’s psychological or physical health.

Given that FV is a gendered issue, with women being more at risk, it is important for lawyers and judges to understand FV through a gendered lens. Though men and women who experience psychological abuse have equal diagnostic rates of Post-Traumatic Stress Disorder (PTSD), other consequences of the abuse can differ by gender. Research shows that both men and women reported experiencing psychological abuse almost equally, but

---

<sup>92</sup> See e.g., *CLM*, *supra* note 31 at para 165.

<sup>93</sup> See Straka & Montminy, *supra* note 10 at 261.

<sup>94</sup> See *ibid* at 262.

<sup>95</sup> Murray & Crowe, *supra* note 76 at 82, 88.

<sup>96</sup> Bala, *supra* note 80 at para 14.

spousal abuse seems to have more prolonged negative effects on women than men.<sup>98</sup> Women are also more likely “to report that their partner engaged in name-calling, threatened to harm them or someone close to them, and prevented them from having access to the family income.”<sup>99</sup> This finding could be due to women experiencing this type of abuse more frequently or being more willing to report it. Men, on the other hand, are inclined to use masculine narratives when discussing violence; research shows that men describing abuse tend to minimize their injuries and portray themselves as self-reliant.<sup>100</sup> Additionally, when seeking protection orders against women, men do not report fearing their partner and describe themselves as being in control of the relationship.<sup>101</sup>

Understanding the intricacies of psychological abuse and its effects on victims is crucial for legal professionals in order to better serve victims in seeking appropriate remedies. For instance, adequate and early screening of FV can allow early legal intervention through parenting or protection orders. This practice can reduce victims’ further exposure to psychological abuse. Understanding the courts’ limitations in addressing this issue is also essential. For example, training lawyers on

---

<sup>98</sup> See Public Health Agency of Canada, *supra* note 12 at 6.

<sup>99</sup> *Ibid* at 7.

<sup>100</sup> See Alesh Durfee, “I’m Not a Victim, She’s an Abuser: Masculinity, Victimization, and Protection Orders” (2011) 25:3 *Gender & Society* 316 at 319.

<sup>101</sup> See *ibid* at 323.

community resources available to victims dealing with the effects of psychological abuse is equally important to helping victims seek protection orders, as the former lies outside family lawyers' expertise but is still important for the protection of victims.

**(b) ENFORCING AND ADAPTING THE LAW TO PROTECT VICTIMS OF PSYCHOLOGICAL ABUSE MAY HAVE A POSITIVE IMPACT ON VICTIMS' SAFETY AND PARENTING ORDERS:**

Despite the shortcomings in addressing psychological abuse in courts, disclosing psychological abuse can nonetheless shape the outcome of a hearing regarding protection orders or orders related to children. Therefore, lawyers and judges have a significant role in protecting victims, as their job is to ensure that the law is applied and adapted in a manner that suits the needs of victims. Law enforcement by police officers is also required to ensure that victims benefit from protection orders.

One manner of recourse for victims of abuse is requesting a protection order. Although there are mechanisms in place to seek protection orders, their effectiveness is not merely dependent on obtaining them in court. The court considers multiple factors in deciding whether to grant the order, which can be found under section 184 of the *FLA*. Protection orders can be brought by a person who claims to be at risk, or by a person on behalf of another who is alleged to be at risk, such as a child.<sup>102</sup> If the protection order is violated, the victim can call the police, who have the discretion to take actions to

---

<sup>102</sup> See *FLA*, *supra* note 9, s 183(1)(a).

enforce the order or use force if necessary.<sup>103</sup> However, though the court may make a protection order if FV is likely to occur and the family members are at risk,<sup>104</sup> the efficacy of protection orders is highly dependent on their level of enforcement, the assertiveness of the victim seeking the order, and the level of violence. This method leaves the protection process in the hands of victims, who are already vulnerable, to seek the order and dependent on its enforcement.<sup>105</sup> This factor, in addition to the shortcomings of addressing psychological abuse in courts, highlights the reality of victims of FV when seeking remedies in courts.

In cases that are not high conflict, the abuser might be deterred from committing further violence after a protection order is made. There are many cases where protection orders benefit victims. For instance, there were no allegations of physical violence in *Primeau*, but an interim protection order was awarded, as the respondent's persistent coercive and controlling conduct caused the claimant psychological harm.<sup>106</sup> Examples of the respondent's conduct included destroying his cellphone when it was the only way the claimant could contact him, responding to the claimant in an accusatory manner, stalling the litigation process, and threatening to hurt himself after the claimant broke up with him.<sup>107</sup> On the other hand, in high-conflict cases, a protection order and its

---

<sup>103</sup> See *ibid*, s 188(2).

<sup>104</sup> See *ibid*, s 183(2).

<sup>105</sup> See Schollenberg & Gibbons, *supra* note 87 at para 5.

<sup>106</sup> See *Primeau*, *supra* note 46 at paras 90–97.

<sup>107</sup> See *ibid* at paras 65, 67, 88–97.

enforcement might not benefit the victim. For instance, in *BGMS*, despite a protection order and a finding of physical and psychological abuse, the respondent continued to abuse and threaten the claimant.<sup>108</sup>

Moving on to child-related orders and FV screening for FV when children are involved is extremely significant, as the finding of FV can impact orders relating to parenting arrangements, guardianship, parenting time, or decision-making responsibilities for the child. As mentioned earlier, with any court order related to a child, the court must consider the best interests of the child only, including “the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member, [and] whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs.”<sup>109</sup>

In order to assess FV’s impact on the child(ren), judges must consider the nine factors listed under section 38 of the *FLA*. When looking at emotional or psychological abuse and trying to discern the best interests of the child, judges not only scrutinize the abusive parent’s behavior retrospectively, but also prospectively by predicting how this parent will act in the future. When doing so, judges look at whether the abusive parent recognizes their behavior, whether they have taken measures to adjust their

---

<sup>108</sup> See *BGMS*, *supra* note 36 at para 142.

<sup>109</sup> *FLA*, *supra* note 9, ss 37(1), 37(g)–(h).

character and seek professional help when needed, and how frequent the abuse was.<sup>110</sup>

As with protection orders, adjudication on a child's best interests can be beneficial to certain children but not others. Making decisions related to children in light of psychological abuse can be extremely challenging, especially given the insufficient expertise of judges in this field. This difficulty is exacerbated when the child is younger, as their views and opinions tend to be less significant legally, or when FV is so severe, as it can leave a polarizing or inconsistent effect on the child, rendering their view irrelevant.<sup>111</sup> Aside from the difficulty of formulating such decisions, they are also extremely fact-dependent and make predicting outcomes of hearings very difficult.

In *CLM*, both parents subjected the child to psychological abuse; however, the claimant's behavior was more severe in inflicting psychological abuse towards the respondent and the child, and unlike the claimant, the respondent showed demonstrable changes to his behavior. As a result, the claimant's parenting time and parental responsibilities were terminated until a further court order was received and until the claimant underwent professional counselling.<sup>112</sup> The judge's denial of the claimant's parenting time and parental responsibilities reduced the child's exposure to violence from the claimant. However, since the child was used to having contact with

---

<sup>110</sup> See *ibid*, ss 38(c), 38(h).

<sup>111</sup> See *CLM*, *supra* note 30 at para 397.

<sup>112</sup> See *ibid* at para 404.

the claimant, this order may have harmed the eight-year-old child's mental well-being in other ways about which psychology experts are more aware of than judges. This relates to the shortfalls that occur when legal professionals make child-related decisions in the context of FV, as they often lack a holistic understanding of psychological abuse.

Comparing the outcomes in *CLM* and *DNL* demonstrates the difficulty of predicting outcomes of orders involving children and psychological abuse. In *DNL*, the 12-year-old child directly experienced psychological abuse from the respondent, including threats to cause physical harm if the child did not comply with the respondent's requests and denial of the child's request to contact her mother while she was with the respondent.<sup>113</sup> The court looked at the respondent's demonstrable ability to change his behavior and gave the child the agency to choose the parenting time with the respondent.<sup>114</sup> This outcome is very different than the one in *CLM*, despite the child in *DNL* being only four years older. The children in both cases experienced direct psychological abuse; yet, the judges came to different conclusions on parenting time, and the child in *DNL* was granted a lot of agency, whereas the child in *CLM* was granted none. This unpredictability can be stressful for victims, and it might, in some cases, deter a non-abusive parent from seeking a court order to protect their children.

An example of a case where a parenting order made in light of FV likely had a positive impact on the child is

---

<sup>113</sup> See *DNL*, *supra* note 51 at paras 56, 67, 72, 74.

<sup>114</sup> See *ibid* at paras 75–76.

*CR*. Although the child was only a few months old, her exposure to the psychological abuse by the claimant father was taken into account. The claimant shouting at the infant in frustration due to her crying also constituted direct emotional abuse of the child.<sup>115</sup> As a result, the claimant was not allowed unsupervised parenting time with the child, and he was only permitted to see her three times a week for three hours each visit.<sup>116</sup> Given the previously discussed research suggesting that exposure to psychological abuse can have negative consequences on children, experiencing it directly can only be equally, if not more, damaging to a child's well-being. Therefore, it is likely that this parenting order mitigated harm and prevented the child from experiencing or witnessing psychological abuse, as long as the order was in place.

In *BGMS*, the child's exposure to the physical and psychological abuse of the claimant by the respondent constituted psychological abuse of the child. The respondent's denial of his behavior contributed to the judge's finding that equal parenting time was not in the best interests of the child, especially given the frequency and breadth of the respondent's past violent behavior and the child's strong bond with the claimant.<sup>117</sup>

## CONCLUSION

FV is an ongoing issue with multiple factors at play in its perpetuation. Psychological abuse is a complex category of

---

<sup>115</sup> See *CR*, *supra* note 27 at paras 54–61.

<sup>116</sup> See *ibid* at para 88.

<sup>117</sup> See *BGMS*, *supra* note 36 at paras 143–150.

FV due to overlapping systemic issues. Parliament's intention in addressing these issues is reflected in legislation through the broad definitions of FV and psychological abuse under the *FLA*, the protection orders provided as a response, and the current developments under the *DA*. These initiatives are a step in the right direction to protect victims, and the law should continue to evolve in order to meet victims' needs. However, implementing, interpreting, and enforcing the law is a human impediment, not merely a legislative one.

This research paper uncovered some of the impediments to adequately protecting victims of psychological abuse via courts in BC. The challenges that victims face in courts are due to a combination of legal professionals' inadequate understanding of psychological abuse, the nature of the court process and of psychological violence, and the societal misunderstanding of the nature of FV and psychological abuse, which operates as a framework often embodying these shortcomings. The court system is far from a perfect place for victims of psychological abuse, as there are many forms of psychological abuse still unrecognized in courts, and there is often a lack of judicial consensus on what constitutes psychological abuse.

There is room for improving victims' experiences in courts. The protection of victims of psychological abuse requires proper screening for FV by lawyers, consistent and adequate training of legal professionals and police officers on the nature and effects of psychological abuse, adapting the law to meet the needs of victims, and enforcing the law when protection orders are being violated. Moreover, adding a legislative requirement for

lawyers to be trained in FV might enhance victims' experiences in courts and increase screening for FV.

Lastly, legal professionals have a role in challenging societal misconceptions about FV and psychological abuse. As there is much room for the improvement of victims' experiences in courts, lawyers can take part by being courageous in pushing legal definitions and boundaries as Barbara Finlay did when litigating *AB*, a case that exemplifies the willingness to shift and expand the court's understanding of psychological abuse. Similarly, judges ultimately have the power to change family dynamics, and they can shift societal misconceptions about psychological abuse, set new precedents, and call out "vicious misogyny" when they see it, as Bayliff J did in *CR*.<sup>118</sup> Legal professionals are in powerful positions to lead such shifts, and ignoring that power will only leave abusers feeling more righteous and empowered, while victims carry the burden of the courts' shortcomings in handling psychological abuse claims.

---

<sup>118</sup> *CR*, *supra* note 27 at para 32.

**BIBLIOGRAPHY**

## LEGISLATION

*Family Law Act*, SBC 2011, c 25.

## JURISPRUDENCE

*AB v CD*, 2020 BCCA 11.

*BGMS v JEB*, 2018 BCSC 1628.

*CLM v MJS*, 2017 BCSC 799.

*CR v AM*, 2015 BCPC 76.

*DDR v KTR*, 2019 BCSC 1805.

*DNL v CNS*, 2014 BCSC 1417.

*GC v AVS*, 2019 BCSC 2242.

*JFA v PJA*, 2017 BCPC 369.

*Morgadinho v Morgadinho*, 2014 BCSC 192.

*MWB v ARB*, 2013 BCSC 885.

*PCD v RZV*, 2015 BCSC 1554.

*Primeau v L'Heuruex*, 2018 BCSC 740.

SECONDARY MATERIALS: MONOGRAPHS

Canada, Department of Justice, *What You Don't Know Can Hurt You: The Importance of Family Violence Screening Tools for Family Law Practitioners*, by Pamela C. Cross et al (Ottawa: Department of Justice Canada, February 2018).

Murray, Christine E & Allison Crowe, *Overcoming the Stigma of Intimate Partner Abuse*, 1st ed (New York: Routledge, 2016).

Public Health Agency of Canada, *Psychological Abuse: A Discussion Paper*, by Deborah Doherty & Dorothy Berglund (Ottawa: Public Health Agency of Canada, 2008).

Statistics Canada, *Family Violence in Canada: A statistical profile 2016*, by Marta Burczycka & Shana Conroy, Catalogue No 85-002-X (Ottawa: Statistics Canada, 17 January 2018).

Statistics Canada, *Measuring Violence Against Women: Statistical Trends*, edited by Maire Sinha, Catalogue No 85-002-X (Ottawa: Statistics Canada, 25 February 2013).

US, Centers for Disease Control and Prevention, *Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements*, by Linda E Saltzman et al (Atlanta, Georgia: CDC, 1999).

## SECONDARY MATERIALS: ARTICLES

- Bala, Nicholas, "Legal Responses to Domestic Violence in Canada and the Role of Health Care Professionals" (1999) Syrtash Collection of Family Law Articles.
- Canadian Bar Association, "Family Violence Screening by Family Law Lawyers" (15 December 2016), online: *The Canadian Bar Association* <[www.cba.org/Sections/Family-Law/Articles/Family-violence-screening-by-Family-Law-lawyers](http://www.cba.org/Sections/Family-Law/Articles/Family-violence-screening-by-Family-Law-lawyers)>.
- Chambers, Lori & Nadia Verrelli, "A Missed Opportunity: The Public Investigation into the Conduct of the RCMP in Matters Involving Nicole (Ryan) Doucet" (2017) 32:1 CJLS 117.
- Chang, Jen Jen et al, "Psychological abuse between parents: Associations with child maltreatment from a population-based sample" (2008) 32:8 Child Abuse & Neglect 819.
- Cleak, Helen et al, "Screening for Partner Violence Among Family Mediation Clients: Differentiating Types of Abuse" (2018) 33:7 J Interpersonal Violence 1118.
- Courthouse Libraries BC, "Family Law Act" (2 August 2019), online: *Courthouse Libraries BC* <[www.courthouselibrary.ca/how-we-can-help/legislation-case-law/guides/family-law-act](http://www.courthouselibrary.ca/how-we-can-help/legislation-case-law/guides/family-law-act)>.
- Durfee, Alesh, "I'm Not a Victim, She's an Abuser: Masculinity, Victimization, and Protection Orders" (2011) 25:3 Gender & Society 316.

- Furman, Ellis et al, “‘It's a gap in awareness’: Exploring service provision for LGBTQ2S survivors of intimate partner violence in Ontario, Canada” (2017) 29:4 *J Gay & Lesbian Social Services* 362.
- Heise, Lori et al, “Measuring psychological abuse by intimate partners: Constructing a cross-cultural indicator for the Sustainable Development Goals” (2019) 9 *SSM - Population Health* 100377.
- Ludermir, Ana Bernarda et al, “Violence against women by their intimate partner during pregnancy and postnatal depression: a prospective cohort study” (2010) 376:9744 *The Lancet* 903.
- Rigakos, George S, “Constructing the Symbolic Complainant: Police Subculture and the Nonenforcement of Protection Orders for Battered Women” (1995) 10:3 *Violence & Victims* 227.
- Roberts, Donna, Peter Chamberlain & Paul Delfabbro, “Women's Experiences of the Processes Associated with the Family Court of Australia in the Context of Domestic Violence: A Thematic Analysis” (2015) 22:4 *Psychiatry, Psychology & L* 599.
- Schollenberg, Ed & Betsy Gibbons, “Domestic Violence Protection Orders: A Comparative Review” (1992) 10:2 *Can J Fam L* 191.
- Sowter, Deanne, “Lawyer (In)competence and Family Violence” (20 March 2019), online (blog): *ABlawg* <[ablawg.ca/2019/03/20/lawyer-incompetence-and-family-violence/](http://ablawg.ca/2019/03/20/lawyer-incompetence-and-family-violence/)>.

Straka, Silvia M & Lyse Montminy, "Family Violence: Through the Lens of Power and Control" (2008) 8:3 J of Emotional Abuse 255.

