

Recent Developments in Family Law to Address Family Violence

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Family violence is serious.

To address this, several recent changes have been made to legislation, a common law tort of family violence has now been recognized (as of February 2022), and on May 20, 2022, the Supreme Court of Canada outlined the impact of family violence on parenting and a spouse.

Legislation

The *Divorce Act* and *Children's Law Reform Act* were changed in 2021 to add family violence as a consideration when determining the best interests of a child (*Divorce Act*, sections 16(3)-(4); *Children's Law Reform*, sections 24(3)-(4)).

Family violence has been held to have a "broad" definition ([Barendregt v. Grebliunas](#), 2022 SCC 22, para. 146), which recognizes "the many insidious forms that domestic violence can take other than physical violence" ([Armstrong v. Coupland](#), 2021 ONSC 8186, para. 21).

While the *Divorce Act* and *Children's Law Reform Act* provides examples of family violence, the respective lists have been held to be non-exhaustive, leaving the Court open to concluding other conduct falls within the meaning of family violence, such as cyber-bullying ([S.B. v. J.I.U.](#), 2021 ONCJ 614, paras. 27, 38; [Armstrong v. Coupland](#), 2021 ONSC 8186, para. 21).

A recent direction from the Divisional Court, on appeal, was that "[e]ven if there is no objective evidence, judges must make some attempt to analyze the evidence of family violence without dismissing it out of hand as merely unsupported allegations..." ([Bidgood-Lund v. Marston](#), 2022 ONSC 2357, para. 50).

In the end, "Courts must consider family violence and its impact on the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child" ([Barendregt v. Grebliunas](#), 2022 SCC 22, para. 146)

The Tort of Family Violence

A significant development has been the recognition of the tort of family violence. In *A. v. A.*, Mandhane J. recognized, for the first time, the tort of family violence, and awarded damages of \$150,000.00 ([2022 ONSC 1303](#)).

Mandhane J. reasoned that:

- a. "[t]he Divorce Act does not provide a victim/survivor (“survivor”) with a direct avenue to obtain reparations for harms that flow directly from family violence and that go well-beyond the economic fallout of the marriage” (para. 46).
- b. The recognition of this tort “is consistent with the overarching imperative to remove the economic barriers facing survivors that try to leave violent relationships and access justice” (para. 67); and
- c. Extreme power imbalance needs to be addressed: “courts must send a strong message that it is not acceptable to resort to violence in the domestic context” (para. 70).

The elements of the tort were shaped off the family violence changes to the *Divorce Act* (para. 52), and now provides a new remedy.

Supreme Court of Canada Input

Lastly, the Supreme Court of Canada, in *Barendregt v. Grebliunas*, addressed many important aspects of family violence, the impact of this conduct, and the harms. For example:

- a. **Impact on Parenting Ability:** the Court addressed family violence in relation to children and parenting ability ([para. 143](#)):

“The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator’s parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives...”

- b. **Harms:** the Court noted that the harm can result from direct or indirect exposure (**para. 143**):

“Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it...”

The Court stated that family violence not taking place in the children’s presence “could not be determinative” as “*indirect* exposure to conflict [can] have implications for the children’s welfare...” (**para. 185**)

- c. **One Incident:** the Court recognized the difficulty in proving domestic violence (**para. 144**), and that it mostly goes unreported (**para. 145**), stating that “proof of even one

incident may raise safety concerns for the victim or may overlap with and enhance the significance of other factors, such as the need for limited contact or support” (**para. 144**)

The Supreme Court importantly noted that “cooperating, staying, or reconciling with a party does not necessarily indicate that an incident of abuse or violence was not serious” (**para. 186**).

The change in legislation, creation of the tort of family violence, and Supreme Court input in the area of family violence are providing a clear message that this conduct must be considered by the Courts and has consequences.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent developments in the law and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.