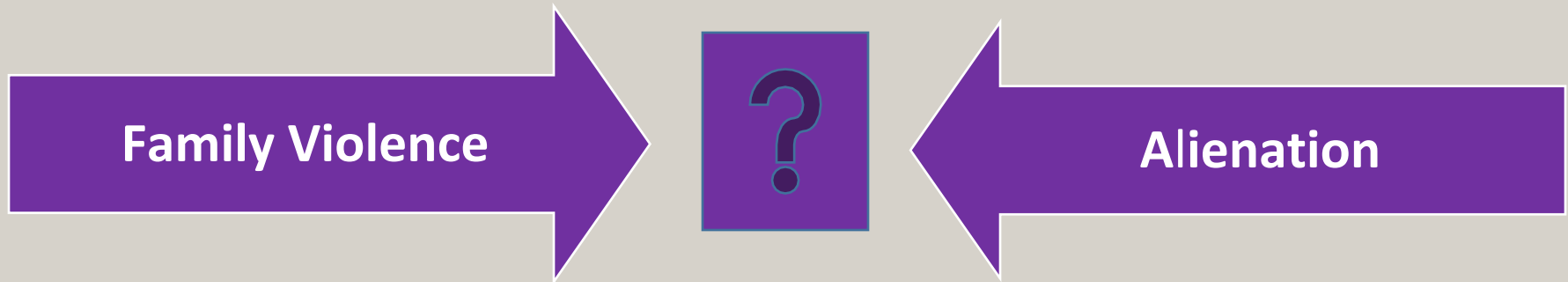
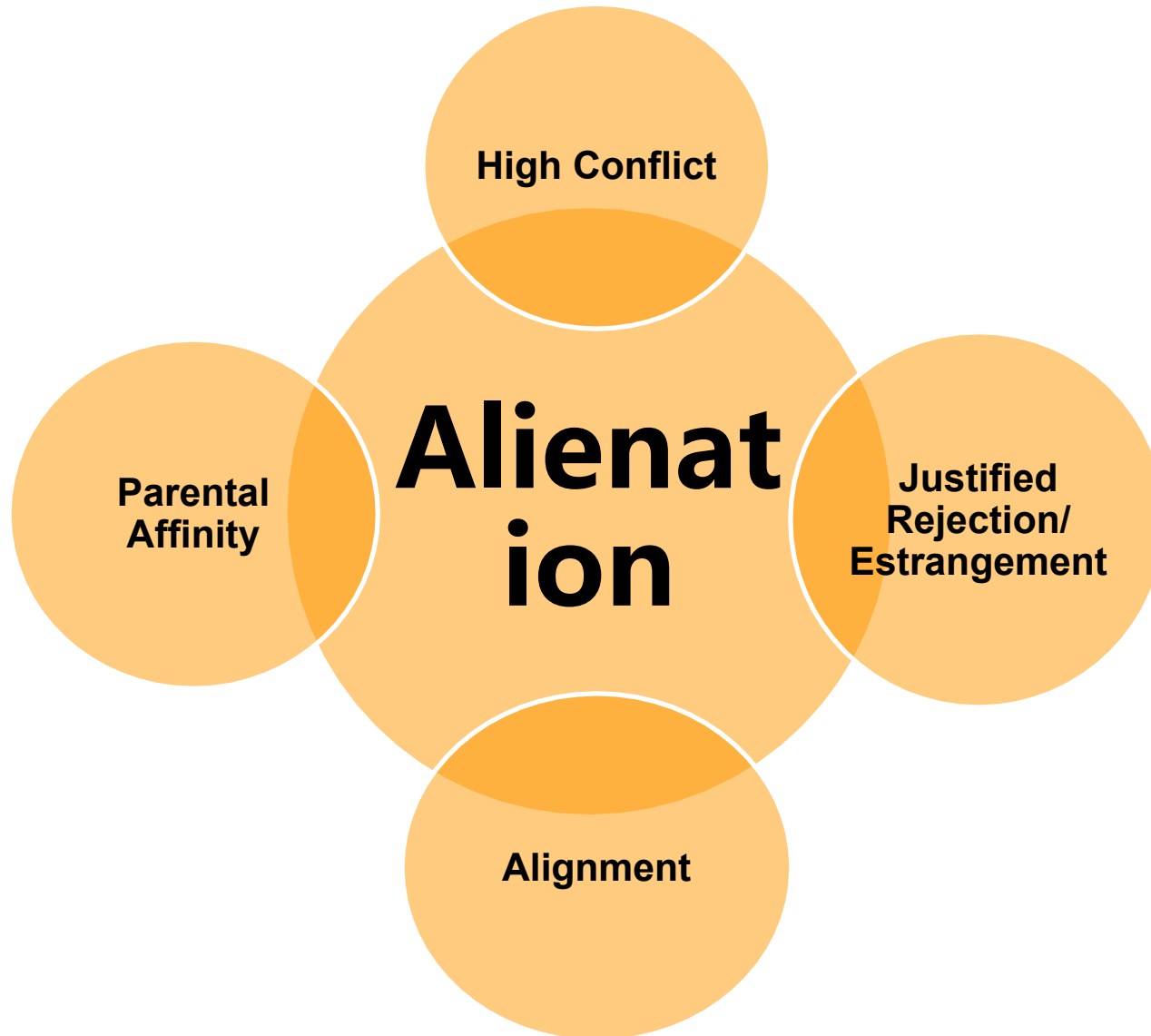


**TAYLOR McCAFFREY**  
LAWYERS

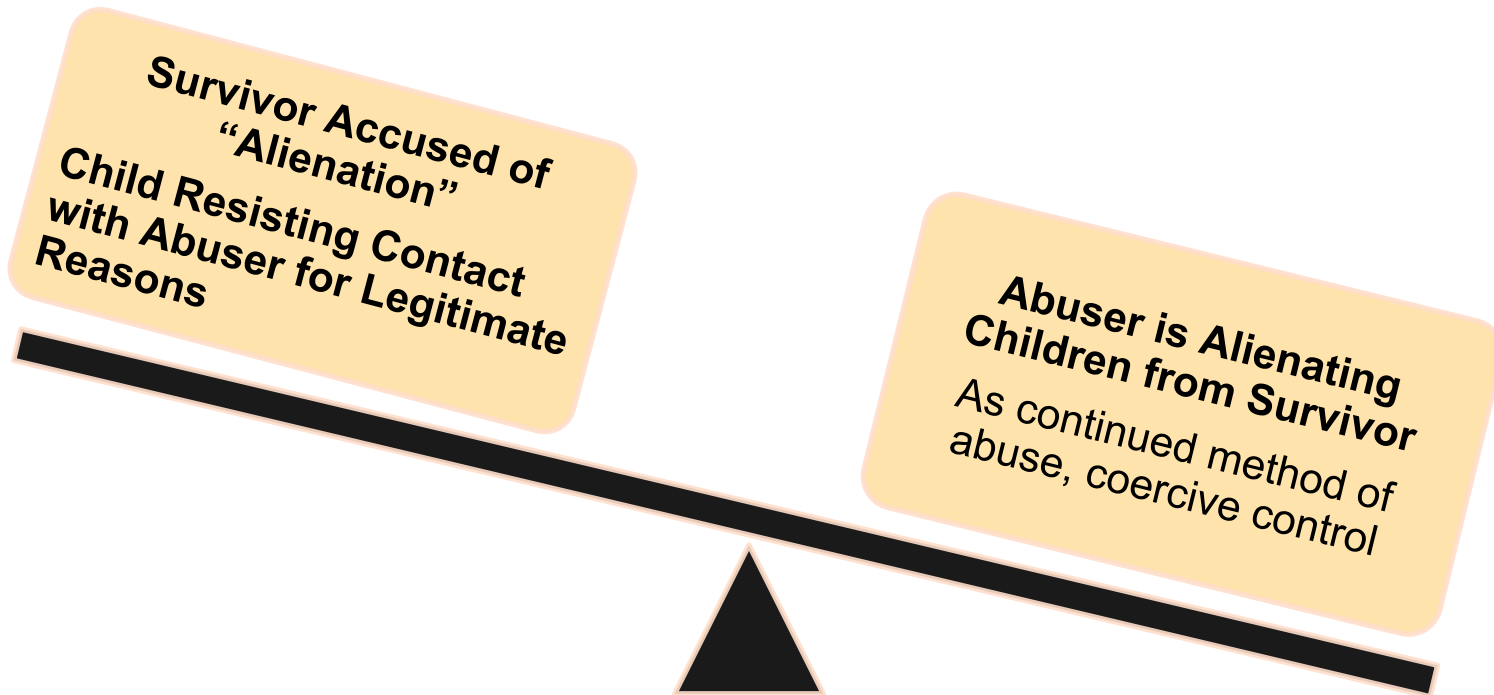
# Reflections from a Family Law Practitioner



**RESOLVE Manitoba Webinar**  
**Robynne Kazina, Taylor McCaffrey**  
**March 15, 2022**



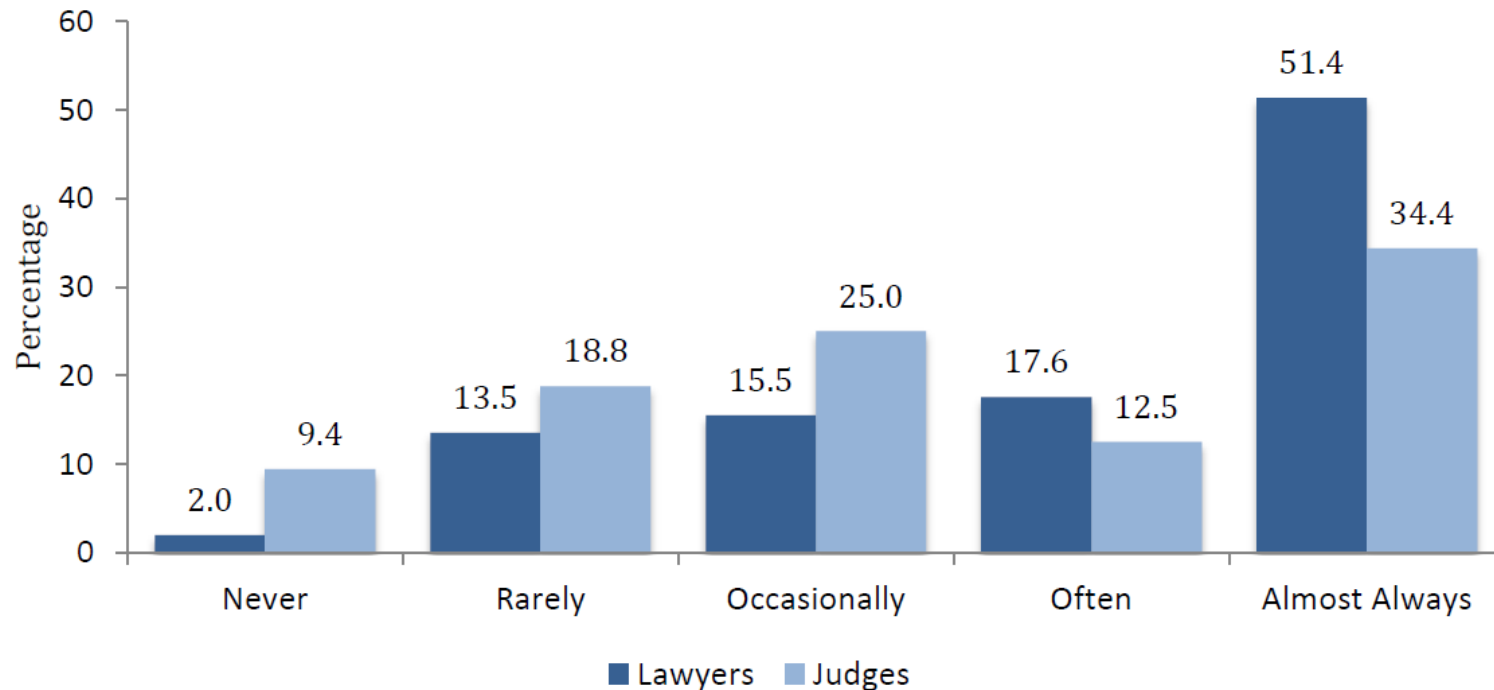
# Family Violence + Child Resisting Contact



# Step One: Need to Know about the Family Violence

**Figure 9.1**

How often respondents screen for family violence



Lawyers n=148; Judges n=32

- **HELP Tool Kit: Identifying and Responding to Family Violence for Family Law Legal Advisors (Federal Department of Justice) (January 2022)**
- **Many Reasons why clients may not voluntarily disclose**
  - embarrassed, shame guilt
  - concerns will not be believed
  - lack of understanding on relevancy, or their experience
  - fear for their own safety or families safety
- **Importance of Training and Education**



# Clients → Survivors Accused of “Alienation”

## 1. Get ahold of the “Narrative” immediately on why Child Resisting Contact

- Often up against gendered stereotypes / assumptions
- Present history of abuse in comprehensive manner
- *Divorce Act* factors for family violence

## 2. Understand Type of Violence to help in appropriate parenting arrangements

- Assess Risk to Child vs Child Picking on Fear of Survivor Parent
- Ensure safety first, and use of Protection Orders

### 3. Help Survivor put in place/brain storm on proposed parenting plan

- Feel every move is criticized, “frozen” to do anything
- Interim, “baby steps” (not just actions, but beliefs of abuser need to change)
- Supervised visits, parallel parenting, 3<sup>rd</sup> party exchanges

### 4. Understand Capacity of Survivor to make decisions regarding the children

- Survivors fearful to be seen alienating so give more time than should, or have been giving more time than appropriate before seeing lawyer



# Clients → Survivors Alienated from Children

## 1. Close examination of allegations of “parenting deficiencies” of survivor

- Be aware of gaslighting, and rationale for behavior during relationship
- Can take advantage of survivor’s mental/emotional struggles from abuse (depression, anxiety, PTSD)

## 2. Control the narrative early on and presence of family violence

- Up against fact many cases unsubstantiated where term thrown around “lightly”
- Similar evidence of coercive control

### 3. Early Intervention

- Avoid periods of withholding
- Access emergent motions
- Get Court Orders in place
- Live issue re: compliance with Orders

### 4. Parenting Plan Considerations

- Frequent Contact with Alienating parent
- Monitored communication (Family Wizard etc)
- Careful of frequent phone calls/face time
- Exclusive decision making

THE SYDNEY MORNING HERALD  
THURSDAY, OCTOBER 17, 1996



# Coordination of Criminal/Child Protection Proceedings

- **Lack of coordination can lead to:**
  - Confusion for families
  - “Retelling” the same story
  - Inconsistent Orders
  - Increased risk to Survivor
  - Lack of public confidence in system
- **Different standards of proof. But Issue of Relevancy**
  - Beyond a reasonable doubt vs balance of probabilities
  - Child in need of protection vs best interests
- **Pick up the Phone/Get the Records**



## ***The Divorce Act***

- ***family violence*** means any conduct, **whether or not the conduct constitutes a criminal offence**, by a family member towards another family member, that is violent or threatening or that constitutes **a pattern of coercive and controlling behaviour** or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct **or indirect exposure** to such conduct — and includes:
  - (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
  - (b) sexual abuse;
  - (c) threats to kill or cause bodily harm to any person;
  - (d) harassment, including stalking;
  - (e) the failure to provide the necessities of life;
  - (f) psychological abuse;

- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property;  
(*violence familiale*)

- **Factors to be considered-Best Interests**

- (3) In determining the **best interests** of the child, the court **shall** consider all factors related to the circumstances of the child, including
- (j) any family violence and its impact on, among other things,
  - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
  - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

- **Factors relating to family violence**
- (4) In considering the impact of any family violence under paragraph (3)(j), the court **shall** take the following into account:
  - (a) the nature, seriousness and frequency of the family violence and when it occurred;
  - (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
  - (c) whether the family violence is directed toward the **child or whether the child is directly or indirectly exposed** to the family violence;
  - (d) the physical, emotional and psychological harm or risk of harm to the child;
  - (e) any compromise to the safety of the child or other family member;

- (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
- (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
- (h) any other relevant factor.



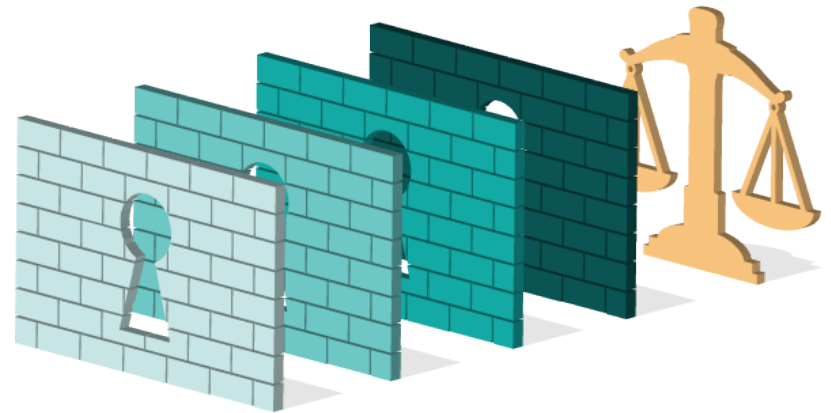
## Counselling/Therapeutic Interventions

- **Essential, however ensure Child Focused**
  - Careful of timing of Reunification Therapy
  - Child's trauma needs to be addressed
- **Compellability/Expert Testimony**
- **Assessments/ Qualifications**
- **Voice of the Child**
- **Firing counsellors/withdrawing consent by Abuser**
  - May need to seek exclusive decision making



# Interwoven Issues of Access to Justice

- **Litigation as a “weapon”**
  - Financial exhaustion
- **Multiple change of lawyers**
- **Self Represented Litigants**
- **Meaning of Access to Justice**
  - Not just access to legal advice or Judge
  - Culturally sensitive, holistic-systems based
- **One Judge model**



# THANK YOU

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